Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

		LAST UPDATED	1/24/23
SPONSOR	Ortiz y Pino	**ORIGINAL DATE**	1/23/23
SHORT TITLE	Health Care GRT Exemption for ARPA Payments	**BILL NUMBER**	Senate Bill 36
		ANALYST	Graeser

REVENUE* **(dollars in thousands)**

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**	**FY26**	**FY27**		
($183.0)	($146.0)				Nonrecurring	General Fund
($74.0)	($60.0)				Nonrecurring	Municipalities
($45.0)	($36.0)				Nonrecurring	Counties

Parenthesis ( ) indicate revenue decreases.
*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal			TRD Operating

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From
New Mexico Attorney General (NMAG)
Taxation and Revenue Department (TRD)

No Response Received
Human Services Department (HSD

SUMMARY

Synopsis of Senate Bill 36

Senate Bill 36 expands the exemption of gross receipts tax for health care providers to include payments from the federal American Rescue Plan Act of 2021.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or action be postponed until the implications can be more fully studied.

However, since the funding source is nonrecurring, the impacts of the provisions of this bill are also nonrecurring.

HSD's portion of impacts from the federal $1.9 trillion is estimated in the plan as follows:

Table 2 – Funding for HCBS Reinvestment

Year of Reinvestment	Year 1	Year 2	Year 3	3 Year Total
Time Period	Apr 2021 – Mar 2022	Apr 2022 – Mar 2023	Apr 2023 – Mar 2024	
% of Total Fund Spend in Each Year	25.00%	40.00%	35.00%	**100.00%**
GF Associate with Base Group	$27,788,812	$44,462,099	$38,904,337	
GF Associate with OAG Group	$1,228,223	$1,965,156	$1,719,512	
General Fund Total	$29,017,035	$46,427,255	$40,623,848	**$116,068,139**
Base FFP	89.78%	75.04%	73.26%	
OAG FFP	95.00%	90.00%	90.00%	
Federal Share	$267,585,267	$151,322,040	$122,062,430	**$540,969,737**
Total Computable	$296,602,302	$197,749,295	$162,686,279	**$657,037,876**
Reinvestment Funds Attributable to the HCBS FMAP Increase	$28,432,008	0	0	

From this table, LFC Staff expect HSD to spend ¼ of the $162 million highlighted above in FY23 and the remainder in FY24. These payments will be funded from a 6.2-percentage point increase in the federal matching percentage (FMAP). Medicaid payments are ordinarily subject to the Gross Receipts Tax. The bill, however, provides a temporary deduction of these amounts.

However, current payments are running $80 to $90 million per quarter and the 6.2 percent FMAP increase is being phased down, as in the following table:

Transition Period	FMAP Enhancement
Beginning of the PHE through March 31, 2023	6.2 percentage points (as under FFCRA)
April 1, 2023 through June 30, 2023	5.0 percentage points
July 1, 2023 through September 30, 2023	2.5 percentage points
October 1, 2023 through December 31, 2023	1.5 percentage points
January 1, 2024	FFCRA FMAP bump expires

We have applied a total 7 percent effective rate for the receipts and divided it between the state, municipalities and counties in the ratio of 60 percent, 25 percent and 15 percent.

TRD expects the impacts to be significantly more than the LFC determination.

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2023	FY2024	FY2025	FY2026	FY2027		
($300)	($1,300)	($1,300)	--	--	NR	General Fund
($200)	($900)	($900)	--	--	NR	Local Governments

This bill proposes to add payments from the American Rescue Plan Act (ARPA) to the existing exemption provided by Section 7-9-41.6 NMSA 1978. The Taxation and Revenue Department (TRD) employed data from the Health Resources and Services Administration to estimate the lost revenue from this exemption. This dataset shows the number of providers that have been approved to receive a payment from ARPA rural distribution program since November 2021. In New Mexico, a total of 292 health providers have been approved to receive $71,791,376.[1]

ARPA rural recipients must only use payments for eligible expenses associated with serving rural healthcare needs associated with Covid-19, including services rendered with lost revenues. Thus, estimated fiscal impacts assume that those eligible services and expenses will remain constant at the level and value of the payments already approved to health providers. This assumption is based on the fact that costs associated with Covid-19 are expected to stabilize as the preventive measures have aided in controlling the pandemic impacts.

Since it is unclear whether a portion of payments under ARPA rural might have already been made and thus not eligible for the exemption (see Other Issues), the estimated revenue impact evenly prorates the current funding approved through the end of the federal timeframe which ends in FY25. For FY23, the fiscal impact presumes only payments received on or after the effective date of this bill will be exempted.

Finally, the effective gross receipts tax rate assumed for FY24 and FY25 accounts for the scheduled state GRT rate reduction of 0.125 percent that will take effect on July 1, 2023.

SIGNIFICANT ISSUES

The expansions of Medicaid services to be implemented are detailed in the February 15, 2022 document entitled, "Home and Community-Based Services (HCBS) Spending Plan."[2]

Other useful references include:

https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=1&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

https://www.nmlegis.gov/Handouts/ALFC%20072121%20Item%204%20Federal%20Relief%20

[1] https://www.hrsa.gov/provider-relief/data/targeted-distribution/arp-rural

[2] https://www.hsd.state.nm.us/wp-content/uploads/NM_HCBS-Spending-Plan_Quarterly-Update_Clean-Version_Rev.-2.15.2022.pdf

Funds%20Brief%20July%202021.pdf
TRD notes the following two significant issues:

> ARPA payments exempted from GRT in this bill are to support health care providers severely impacted by the COVID-19 pandemic. By exempting these gross receipts payments from GRT, this provides relief to these rural providers and prevents the increase of costs for all recipients of health care in the state. The treatment of ARPA payments will be consistent with previously exempted Coronavirus Aid, Relief, and Economic Security Act (CARES) federal payments also aimed at supporting health care providers serving during the COVID-19 pandemic.
>
> Under the New Mexico Constitution, and applicable case law, a tax exemption may not be retroactive. Therefore, the proposed tax exemption for certain health care providers with respect to ARPA funds that they receive can only apply to receipts received on or after the effective date of this bill. ARPA payments already made will remain taxable under the GRT.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is <u>not</u> met since TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The NMAG notes the following:

> Relates to SB24, which proposes to create new reporting requirements for school districts and state-chartered charter schools regarding the use of federal funds provided through the federal Coronavirus Aid, Relief, and Economic Security Act, the federal Coronavirus Response and Relief Supplemental Appropriations Act and the federal American Rescue Plan Act of 2021.
>
> Duplicate of a portion of SB147. Specifically, all of SB36 is included within SB147, but the latter bill contains additional provisions as well that are not included within SB36.

OTHER SUBSTANTIVE ISSUES

It is unknown if the provisions of this bill will adversely affect any other programs administered by HSD or DOH.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Effective reimbursement rate to Medicaid providers will not increase by the required gross receipts and compensating tax percentage.

POSSIBLE QUESTIONS

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✓	
Targeted		
Clearly stated purpose	✗	None stated
Long-term goals	✗	Short-term provisions
Measurable targets	✗	
Transparent	✗	
Accountable		
Public analysis	✗	
Expiration date	✓	Deduction only applies to non-recurring receipts received as reimbursements from the ARPA
Effective		
Fulfills stated purpose	✗	
Passes "but for" test	✗	
Efficient	✗	
Key: ✓ Met ✗ Not Met ? Unclear		

LG/al/ne