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	2/27/23
SPONSOR	Ortiz y Pino	**ORIGINAL DATE**	2/20/23
SHORT TITLE	Counseling & Therapy Gross Receipts	**BILL NUMBER**	Senate Bill 475
		ANALYST	Graeser

REVENUE
(dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**	**FY26**	**FY27**		
	Up to ($28,900.0)	Up to ($31,200.0)	Up to ($23,700.0)	Up to ($36,300.0)	Recurring	General Fund
	Up to ($15,200.0)	Up to ($16,700.0)	Up to ($18,300.0)	Up to ($20,100.0)	Recurring	Local Governments
	Up to $6,100.0	Up to $6,100.0	Up to $6,200.0	Up to $6,200.0	Recurring	Local Govt's Medical Services Hold Harmless Distributions

Parenthesis ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT
(dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
$5.6	--	--	$5.6	Nonrecurring	TRD IT
$1.1	--			--	$1.1

Parenthesis ( ) indicate expenditure decreases.

Sources of Information
LFC Files

Responses Received From
Human Services Department (HSD)
Regulation and Licensing Department (RLD)
Taxation and Revenue Department (TRD)
Municipal League (NMML)
Department of Health (DOH)

SUMMARY

Synopsis of Senate Bill 475

Senate Bill 475 would allow a gross receipts tax deduction for all persons licensed pursuant to the Counseling and Therapy Practice Act (61-9A-1 NMSA 1978) provided the services rendered are within the scope of the therapist's practice. Deductions must be separately reported and TRD is directed to report utilization in the annual tax expenditure report.

The effective date of this bill is July 1, 2023. LFC recommends all tax expenditures provide a delayed repeal data. In this case, the Counseling and Therapy Practice Act (61-9A-1 NMSA 1978) carries a delayed repeal date of July 1, 2028, which would make a convenient delayed repeal date for the GRT deduction.

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.

The uncertainties of this estimate are detailed in the following discussion:

RLD notes that the Counseling and Therapy Practice Board (Board) licenses 5,136 counselors and therapists:

- Licensed Professional Clinical Mental Health Counselor (LPCC) – 2,497;
- Licensed Mental Health Counselor (LMHC) – 1,147;
- Licensed Marriage and Family Therapist (LMFT) – 417;
- Licensed Associate Marriage and Family Therapist (LAMFT) – 64;
- Licensed Substance Abuse Associate (LSAA) – 351;
- Licensed Alcohol and Drug Abuse Counselor (LADAC) – 451;
- Licensed Professional Art Therapist (LPAT) – 80; and
- Continuing Education Provider (CEU Provider) - 129.

According to Salary.com[1] the average licensed professional counselor salary in New Mexico is $51,006 as of January 26, 2023, but the range typically falls between $46,114 and $57,394. Salary ranges can vary widely depending on the city and many other important factors, including education, certifications, additional skills, and the number of years spent in the profession.

Many, if not most licensees work for larger organizations. However, the 2017 Economic Census indicates about 40 percent of typical professional services organizations total revenues are used for wages and salaries.

Under 7-9-93 NMSA 1978, a deduction is allowed for most medical services. However, the deduction does not cover Medicaid payments, copays, and direct payments for services, which would likely be covered by SB475. TRD data[2] show about 1,400 returns filed quarterly by licensed counselors and therapists showing about $20 million in total gross receipts with about a

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[1] https://www.salary.com/research/salary/recruiting/licensed-professional-counselor-salary/nm#:~:text=The%20average%20Licensed%20Professional%20Counselor,falls%20between%20%2446%2C114%20and%20%2457%2C394 .

[2] RP80, for NAICS 62133 and 621330

30 percent deductions ratio.
LFC staff report the following estimates, which may have an increased margin of error because an unknown portion of patients of counselors and licensed therapists are insured:

			($1,000s)			
	Licensees	Average Salary	FY24	FY25	FY26	FY27
Licensed Professional Clinical Mental Health Counselor (LPCC)	2,497	$73,000	$182,300	$200,000	$219,400	$240,700
Licensed Mental Health Counselor (LMHC)	1,147	$73,000	$83,700	$91,800	$100,700	$110,500
Licensed Marriage and Family Therapist (LMFT)	417	$73,000	$30,400	$33,300	$36,500	$40,000
Licensed Associate Marriage and Family Therapist (LAMFT)	64	$51,006	$3,300	$3,600	$3,900	$4,300
Licensed Substance Abuse Associate (LSAA)	351	$51,006	$17,900	$19,600	$21,500	$23,600
Licensed Alcohol and Drug Abuse Counselor (LADAC)	151	$51,006	$7,700	$8,400	$9,200	$10,100
Licensed Professional Art Therapist (LPAT)	80	$51,006	$4,100	$4,500	$4,900	$5,400
Continuing Education Provider (CEU Provider)						
Total Wages & Salaries			$329,400	$361,200	$396,100	$434,600
Multiplier between gross receipts and wages						
(From the 2017 Economic Census for New Mexico assuming the 1st quarter wages and salaries are reflective of annual.)	2.40		$790,560	$866,880	$950,640	$1,043,040
But some portion will be deductible if tab is paid by insurance.						
From the RP80 for 2022:Q1, Q2 & Q3 for NAICS 62133 & 621330						
75 million in taxable sales w/ about 30% deduction ratio	0.7		$553,390	$606,820	$665,450	$730,130
	7.13%		$38,070.0	$41,750.0	$45,780.0	$50,230.0
	60%		($22,800.0)	($25,100.0)	($27,500.0)	($30,100.0)
	40%		($15,200.0)	($16,700.0)	($18,300.0)	($20,100.0)

TRD approached the estimate somewhat differently from LFC and points out that this estimate is beset with an unusually large amount of uncertainty:

> To determine the fiscal impact, TRD used an average cost of a consultation with a licensed counselor or therapist, as well as the average number of people in New Mexico that might need and have access to these services.[3] A more precise impact would require determining the number of people demanding these services with and without insurance as those receipts with insurance are already covered under Section 7-9-93 NMSA 1978 currently (see Technical Issues). In addition, the final impact would need to be determined by the session frequency and the number of services purchased per person since some people might need more than one licensed specialist to treat their illness. Finally, the revenue loss estimate is based on the GRT revenue growth from the December 2022 Consensus Revenue Estimating Group (CREG) forecast and is based on the effective gross receipts tax rate.
>
> The shift of practitioners who currently are taking Section 7-9-93 NMSA 1978 and may take this new deduction (see Technical Issues) is unknown and is dependent in large part on taxpayer behavior. This shift will reduce the amount of receipts deducted under

[3] https://www.nami.org/NAMI/media/NAMI-Media/StateFactSheets/NewMexicoStateFactSheet.pdf

Section 7-9-93 NMSA 1978, which is directly tied to the distribution of hold harmless payments to municipalities and counties under Sections 7-1-6.46 and 7-1.6.47 NMSA 1978. In fiscal year 2022, there was $15.8 million in total medical hold harmless distributions to municipalities and counties. If practitioners adopt the deduction in this bill, rather than in Section 7-9-93 NMSA 1978, that will reduce the amount of hold harmless distributions.

SIGNIFICANT ISSUES

This bill narrows the gross receipts tax (GRT) base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

Currently, 7-9-93 NMSA 1978 exempts most receipts for practitioners, including all licensees pursuant to the Counseling and Therapy Practice Act. Services provided by this particular medical specialty may be taxed more heavily than other specialties because of insurance coverage. However, relieving this group of medical providers from the residual taxable gross receipts tax obligation should be considered in the context of whether it is appropriate to be taxing any medical services.

HSD/Behavioral Health Services Division notes:

> Based on reviews of available research and stakeholder interviews, the U.S. Government Accountability Office identified three key categories of barriers that pose challenges to recruiting and retaining behavioral health providers: financial, educational, and workplace.[4] Affording these providers with a gross receipts tax deduction could ease that financial burden and decrease that workforce development barrier.

The Counseling and Therapy Practice Act provides a number of classes of license, about 80 percent (by number of licensees) require a masters or doctoral degree while others require an associates or bachelors with some combination of education and experience. The following are typical:

Professional clinical mental health counselor (61-9A-11);
Marriage and family therapist (61-9A-12);
Licensed associate marriage and family therapist or counselor (61-9A-12.1);
Professional art therapist (61-9A-13);
Licensed mental health counselor (61-9A-14);
Substance abuse associate (61-9A-14.1); and
Alcohol and drug abuse counselor (61-9A-14.2).

DOH notes a somewhat bigger picture issue:

> New Mexico had an estimated total population of 2,102,656 in 2019. This population was unevenly distributed across its 33 counties. Seven counties were classified as parts of

[4] https://www.gao.gov/products/gao-23-105250

Federal Metropolitan Statistical Areas (MSAs) and contained about two-thirds of the total state population. It should be noted that several counties with MSAs are large in extent and contain remote census tracts that are considered rural/frontier by the Federal Office of Rural Health Policy (New Mexico Primary Care Needs Assessment, June 7, 2021, page 2, https://www.nmhealth.org/publication/view/general/6782/).
Under current healthcare reimbursement systems, communities with a large proportion of low-income residents and rural communities may not generate sufficient paying demand to assure that providers will practice in these locations (2020-2022 New Mexico State Health Improvement Plan, page 11:

https://www.nmhealth.org/publication/view/plan/5311). The rural to urban migration of health professionals inevitably leaves poor, rural, and remote areas underserved and disadvantaged. Skilled health professionals are increasingly taking job opportunities in the labor market in high-income areas as the demand for their expertise rises.

Since the demands for health care services and providers continues to increase, providing incentives to health care providers who work in rural areas may help stabilize and improve health care services (2020-2022 New Mexico State Health Improvement Plan, page 12). SB475 could encourage more counselors or licensed therapy providers to practice in rural areas of the state.

TRD notes some of the same issues:

Healthcare is a large portion of the New Mexico economy and there are several different tax expenditures that apply across various sub-categories of healthcare services, such as the 60 percent GRT deduction for Department of Health (DOH)-licensed hospital receipts under 7-9-73.1 NMSA 1978 and the GRT deduction for services provided by health care practitioners and association of health care practitioners under 7-9-93 NMSA 1978. As noted below in Technical Issues, this proposed deduction has potential overlap with 7-9-93 NMSA 1978. Looking at the deduction from the type of services provided, counseling and therapy services, the deduction erodes horizontal equity between physical and mental health services by providing what appears to be a more preferential deduction for mental health services. This creates a further uneven playing field in terms of what is taxable in the healthcare industry. The other side of this deduction is the broader public good of potentially lowering the costs of mental health services which are often not covered by insurance and recipients of services often pay for the costs out-of-pocket. If the deduction for GRT is passed on to the beneficiaries of the services, then there are health and social benefits gained by communities in New Mexico.

The recent GRT state rate reduction to 5.00 percent and the additional rate drop to 4.875 percent on July 1, 2023, are aimed to benefit all taxpayers and support fewer tax incentives. While tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures and/or narrowing the tax base, with a negative impact on the general fund; and, (2) increases the burden of compliance on both taxpayers and TRD. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement 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.

ADMINISTRATIVE IMPLICATIONS

RLD reports no increase in workload.

TRD will need to make information system changes including adding a new separately reported deduction code and update forms, instructions and publications. These changes will be incorporated into annual tax year implementation and cost $5,554 in workload costs for the Information Technology Division (ITD) of approximately 100 hours or about one month. TRD's Administrative Services Division (ASD) will work along ITD staff to implement and test the changes to the deduction and associated distribution changes.

CONFLICTS, RELATES TO, COMPANION

DOH notes the following relationships or conflicts:
House Bill 38 (HB38) Rural Health Care Practitioner Additions,
Senate Bill 7 (SB7) rural Health Care Delivery Fund,
Senate Bill 67 (SB67) Interstate Medical Licensure Compact,
House Bill 247 (HB247) Interstate Medical Licensure Compact,
House Bill 437 (HB437) Expand Rural Health Care Tax Credit,
Senate Bill 454 (SB454) Health Professional Loan Repayment,
Senate Bill 448 (SB448) Health Practitioner Gross Receipts.

In more detail:

- House Bill 38 (HB38) would modify Section 7-2-18.22 NMSA 1978, the statute authorizing the Rural Health Care Practitioner Tax Credit, to expand the type of practitioners eligible for qualification under the program. HB38 proposes to add certain pharmacists, registered nurses, social workers, behavioral health counselors and therapists and physical therapists who qualify.
- Senate Bill 7 (SB7) proposes to create a non-reverting fund to defray operating losses incurred in providing inpatient, outpatient, primary, specialty, or behavioral health services to New Mexico residents.
- Senate Bill 67 (SB0067) proposes to develop an interstate medical licensure compact [Compact] with any other states that legally join the Compact.
- House Bill 247 (HB247) proposes to develop an interstate medical licensure compact [Compact] with any other states that legally join the Compact.
- House Bill 437 (HB437) would modify Section 7-2-18.22 NMSA 1978, the statute authorizing the Rural Health Care Practitioner Tax Credit, to expand the types of practitioners eligible for qualification under the program.
- Senate Bill 454 (SB454) proposes to appropriate $5 million from the general fund to the health professional repayment fund for expenditure in fiscal year 2024 to increase funding for the health professional loan repayment program.
- Senate Bill 448 (SB448) would modify Section 7-9-93 NMSA 1978 (being Laws 2004, Chapter 116, Section 6, expanding a gross receipts tax deduction for healthcare practitioners and associations of healthcare practitioners to include receipts from a

copayment or deductible paid by an insured or enrollee to a health care practitioner or an association of health care practitioners for commercial contract services pursuant to the terms of the insured's health insurance plan or enrollee's managed care health plan may be deducted from gross receipts.

TECHNICAL ISSUES

The effective date of this bill is July 1, 2023. LFC recommends that all tax expenditures provide a delayed repeal date. In this case, The Counseling and Therapy Practice Act (61-9A-1 et seq NMSA 1978) carries a delayed repeal date of July 1, 2028, which would make a convenient delayed repeal date for the GRT deduction.

TRD notes more specific technical issues:

Currently some of the receipts for services rendered under the Counseling and Therapy Practice Act are deductible under Section 7-9-93 NMSA 1978. The following technical issues stem from the interaction of the Section 7-9-93 NMSA 1978 and this new proposed deduction.

- Under Section 7-9-93 NMSA 1978, the receipts are associated with a counselor or therapist licensed pursuant to the Counseling and Therapy Practice Act; thus that statute refers to "counselors" as a category of person. Under the Counseling and Therapy Practice Act, there is no defined "counselor" only a person licensed to engage in counseling services regulated by the Act. The proposed language in this bill covers the entire range of services provided by practitioners under the Counseling and Therapy Practice Act.

- Under Section 7-9-93 NMSA 1978, receipts from both practitioners and practice groups are deductible but receipts must be paid for through a managed care provider or health care insurer. This proposed deduction only references to the practitioner but has no limitation on the type of receipts, (i.e. who the receipts are paid through), thus all receipts would be deductible. Thus, receipts not associated with managed care providers or health care providers payments would now be deductible, including co-pays which are not presently deductible under Section 7-9-93 NMSA 1978 or any other statute. Many health plans do not cover the type of medical receipts that would be covered by this bill; that is, many patients receiving the care covered by this bill must pay for the services out of their own pockets, as they are not covered by insurance. Such receipts are currently not deductible under Section 7-9-93 NMSA 1978 but would be under this provisions of this bill.

- As the new deduction does not clearly delineate between practitioners and practice groups, those receipts for practice groups may not be deductible under this new deduction but would remain deductible under Section 7-9-93 NMSA 1978 if paid through a managed care provider or health care insurer. The Legislature amended Section 7-9-93 NMSA 1978 to clarify that that deduction was also allowed to practice groups, and TRD recommends adding similar language here to avoid future disputes about the scope of the deduction. Specifically, TRD recommends adding the words "or an association of such persons" on page 1, line 20, after "Consulting and Therapy Practice Act".

- The final technical issue is the language under subsection B, page 1 lines 24 and 25 through page 2, lines 1 through 3, stating that this deduction must be taken last after all other deductions. The deduction provided in Section 7-9-93 NMSA 1978 also has this language under subsection B of that statute. Both deductions cannot be taken last and therefore, the taxpayer would decide as to which deduction would be best to take. The law would not allow them to take both because one would not be ‘last’ and therefore not legally accessible to take both. Given the points above, taxpayers will determine which is more advantageous to take. That decision would potentially have an impact with the associated distributions to municipalities and counties under Sections 7-1-6.46 and 7-1.6.47 NMSA 1978, which are based on the deducted receipts reported under Section 7-9-93 NMSA 1978.

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. Implicit is to allow total deduction for all sources of receipts for this class of medical providers.
Long-term goals	✘	LFC policy recommends a delayed repeal
Measurable targets	✘	
Transparent	✓	Requires separate reporting and inclusion in the annual TER
Accountable		

Public analysis Expiration date	✘ ✘	
Effective Fulfills stated purpose Passes "but for" test	 ✘ ?	No purpose stated. Should be part of larger discussion about taxing any medical services.
Efficient	✘	
Key: ✓ Met ✘ Not Met ? Unclear		

LG/hg/ne/al