# FISCAL IMPACT REPORT

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|---|---|---|---|
| | | **LAST UPDATED** | |
| **SPONSOR** | Moores | **ORIGINAL DATE** | 1/31/24 |
| **SHORT TITLE** | Fee-For-Service Payment Receipts | **BILL NUMBER** | Senate Bill 25 |
| | | **ANALYST** | Torres, Ismael |

**REVENUE***
**(dollars in thousands)**

| Type | FY24 | FY25 | FY26 | FY27 | FY28 | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|---|
| GRT | | ($15,700.0) | ($16,400.0) | ($17,000.0) | ($17,800.0) | Recurring | General Fund |
| GRT | | ($10,500.0) | ($10,900.0) | ($11,400.0) | ($11,900.0) | Recurring | Local Governments |
| Hold Harmless Payment | | ($4,100.0) | ($3,600.0) | ($3,000.0) | ($2,500.0) | Recurring | General Fund |
| Hold Harmless Payment | | $4,100.0 | $3,600.0 | $3,000.0 | $2,500.0 | Recurring | Local Governments |
| **TOTAL** | | **($19,800.0)** | **($20,000.0)** | **($20,000.0)** | **($20,300.0)** | Recurring | General Fund |
| **TOTAL** | | **($6,400.0)** | **($7,300.0)** | **($8,400.0)** | **($9,400.0)** | Recurring | Local Governments |

Parentheses ( ) indicate revenue decreases.
*Estimates on the impacts of this bill are particularly difficult to discern. Numbers provided are intended to illustrate a potential magnitude of impact and not an exact amount. Please see *Fiscal Implications* for more information.

### Sources of Information

LFC Files
TRD Analysis

Agency Analysis Received From
Taxation and Revenue Department (TRD)
Human Services Department (HSD)
Department of Health (DOH)

## SUMMARY

### Synopsis of Senate Bill 25

Senate Bill 25 (SB25) amends the gross receipts tax deduction for health care services to include fee-for-service (FFS) payments for medical services and those services deemed medically necessary. SB25 also amends the definition of fee-for-service payment to mean payment by a health care insurer to a health care practitioner for each health care service performed.

The effective date of SB25 is July 1, 2024.

## FISCAL IMPLICATIONS

This bill expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the substantial risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures. 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 table on page one presents an estimate of potential impacts intended to illustrate a magnitude rather than an exact amount. To gauge potential impacts on production, the Taxation and Revenue Department (TRD) used National Council on Compensation Insurance (NCCI) data retrieved from the State of New Mexico Workers' Compensation Administration and data from the Health Care Authority (HCA) formerly the Human Services Department. More specifically, Medicaid budget projections were used to proxy the potential amount paid by health care insurers, while the NCCI data is used to estimate medical payments by patients for different categories of services. Of these estimates, only the proportion for fee-for-service expenditures was used to calculate an impact. Finally, the price index growth rate for healthcare spending produced by S&P Analytics were used for growth rates and the effective statewide gross receipts tax (GRT) rate was applied to the totals.

TRD caveats:

> First, it is unclear if the definition in the bill applies to fees paid to health care practitioners by patients for each service rendered or fees paid to health care practitioners by health care insurers for each service they provide to enrollees, or both. TRD assumes the definition encompasses both and, therefore, that all the services provided by health care practitioners are deductible.
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> Second, TRD does not have data on the number of claims made by health care practitioners to a health care insurer indicating that a service has been provided as well as the number of office-based payments made by patients.
>
> Third, TRD does not know the type of service/procedure performed by health care practitioners to apply the corresponding fee. Fourth, since this type of service is available for insured and uninsured patients, it is difficult to delimit the target population, which would ultimately be the entire population of New Mexico.
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> Fifth, the analysis requires knowing what type of services/procedures are managed on an FFS basis by healthcare insurers in New Mexico, as well as the number of visits to the doctor under this modality. In this regard, it is essential to note that there is high variability in the number of visits to the doctor depending on age group, with infants and the elderly population averaging more visits compared to children and adults.

## SIGNIFICANT ISSUES

This bill narrows the GRT base. Many New Mexico tax reform efforts over the last few years have 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.

The Department of Health (DOH) notes:

> Since the demands for health care services and providers continues to increase, providing incentives to health care providers, associations of healthcare practitioners, and individuals in rural areas may help stabilize and improve health care services (2020-2022 New Mexico State Health Improvement Plan, page 12). One example is DOH's Rural Health Care Practitioner Tax Credit. This Program tracks the total rural health care providers approved for a tax credit, such as in Tax Year 2022, two thousand and fifty-eight (2,058) rural health care providers were approved (retrieved from the NM Rural Health Care Practitioner Tax Credit Program database). SB25 could encourage more health care providers to provide services in rural areas of the state if Fee-For-Service payments and payments from individuals to be allowed for a gross receipts tax deduction for services provided by health care practitioners.

TRD adds:

> The recent GRT state rate reductions 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.
>
> GRT rests upon the general presumption that all receipts of a person engaged in business in New Mexico are subject to GRT and that this rate represents the rate upon which the State collects taxes on transactions. GRT represents the largest recurring revenue source for the state general fund at around 34 percent, about 80 percent of municipal revenue, and 30 percent of county revenue. This revenue source is strongly tied to the underlying economic activity in the State, which is susceptible to economic downturns and positively responsive to economic expansions. The GRT is ideally a broad-based tax including the taxing of services, noting that New Mexico is one of only three states that taxes all services (the others being Hawaii and South Dakota).

## TECHNICAL ISSUES

Section 1, Subsection C, page 2, line 14. The bill provides for "medically necessary services paid by an individual." Suggest adding services paid "by, or on behalf of, an individual." In addition, "medically necessary services" should be defined under Subsection G.

On page 4, Subsection G(4), the "fee-for-service" (FFS) definition employed in the bill applies only to fees paid to health care practitioners by health care insurers. On page 2, subsection 2, receipts paid by individuals are deducted. These payments may also be considered FFS in medical financing. For clarity, TRD suggests clarifying the definition of "fee-for-service" to cover both types of sources of the payment.

## OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

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

In addition, staff reviews whether the bill meets principles specific to tax expenditures. Those policies and how this bill addresses those issues:

| Tax Expenditure Policy Principle | Met? | Comments |
|---|---|---|
| **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. | ✗ | |
| **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals. | | |
| Clearly stated purpose | ✗ | |
| Long-term goals | ✗ | |
| Measurable targets | ✗ | |
| **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies | ✓ | |
| **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. | | |
| Public analysis | ✓ | |
| Expiration date | ✗ | |
| **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. | | |
| Fulfills stated purpose | ? | |
| Passes "but for" test | ? | |
| **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results. | ? | |
| Key: ✓ Met ✗ Not Met ? Unclear | | |

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