F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	02/27/09		
SPONSOR	Trujillo	**LAST UPDATED**	03/06/09	**HB**	841/aHHGAC
SHORT TITLE	Maximize Hospital Funding Federal Match			**SB**	
				ANALYST	Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	Indeterminate but Substantial	Indeterminate but Substantial	Recurring	Sole Community Provider Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB543 and HB764

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Human Services Department (HSD)
Department of Health (DOH)
Health Policy Commission (HPC)

SUMMARY

Synopsis of HHGAC Amendment

The House Health and Government Affairs Committee amendment to House Bill 841 changes the amount of the fee to be *up to* 2 percent, instead of 2 percent and allows the fee to be applied to hospitals instead of "a hospital". The amendment also adds a new Subsection C which requires the Medical Assistance Division of the Human Services Department to determine if the fee authorized is consistent with federal laws and regulations prior to the fee being imposed.

Synopsis of Original Bill

House Bill 841 authorizes the Department of Health (DOH) to identify hospitals that are designated as sole community providers that have failed to transfer to the sole community provider fund sufficient revenue to fully match the federal funds available and to assess a fee on such hospitals of 2 percent of the gross patient revenues of that hospital for the previous fiscal year. This fee shall be referred to as the "Hospital Patient Gross Revenue Fee" and will be administered and enforced by the Taxation and Revenue Department as part of the Tax Administration Act.

The revenue from this fee shall be distributed to the sole community provider fund and appropriated to the department to match the base or supplemental sole community provider allocation on behalf of any county that has imposed the second 1/8 increment of the county gross receipts tax but has not fully matched the base and supplemental sole community provider allocation.

The effective date of this bill's provisions is July 1, 2009.

FISCAL IMPLICATIONS

LFC and TRD are unable to determine a fiscal impact at this time because the particular data that is necessary to determine a dollar amount is not available to us. The revenue impact will depend on the number of counties containing a hospital designated as a sole community provider that did not transfer sufficient revenue to fully match all available federal funds in the sole community provider base and supplemental allocation for the hospital during the previous fiscal year. It will also depend on both the gross patient revenues of each specified hospital and the remaining unmatched federal funds available.

The revenue from this fee is allocated on behalf of "any county that has imposed the second 1/8 increment of the county gross receipts tax". Thirty-one of the state's thirty-three counties impose the second 1/8 increment. Harding and Socorro Counties currently do not participate. According to the Health Policy Commission's November 2008 *County Financing of Health Care* report, 24 of the 30 (Catron only began the second 1/8 increment in January 2009) reporting counties contribute to or have available funds to contribute to the program.

If more than one county qualifies for the match, the amount of a county's match will be in the same proportion as the amount of fees paid by hospitals in that county compared to the total amount paid by all hospitals in the state.

SIGNIFICANT ISSUES

HSD:
The amendment allows for the possibility that the Centers for Medicare and Medicaid Services (CMS) may view this as an impermissible assessment. As was stated in the original analysis of HB841, the fee may be impermissible for two reasons:

> First, CMS may find it to not be "broad-based" because the assessment is only to those counties who have a hospital located in their county that is designated as a Sole Community Provider Hospital. This may have been addressed by the amendment since it removed specific reference to that designation. However, to be broad-based, all providers within a group would need to be equally assessed. It still appears that this bill would not lead to an assessment on all hospitals in the state but rather only those in counties that failed to transfer sufficient revenues to fully match the federal Sole Community Provider Hospital funds.

> CMS may also find this impermissible based on the "hold harmless" regulation because the funding would be returned directly to the Human Services Department for matching federal funds. If CMS determines that this is an impermissible assessment, they could defer or disallow the federal dollars associated with this program.
>
> The amendment would allow for the non-imposition of the fee if it is determined to be inconsistent with federal law. However, it is sometimes difficult for individual states to make such determinations without unduly involving federal oversight agencies. The bill, as amended, puts the onus of making the determination on HSD. This may not be a simple task as it asks a state agency to render a legal opinion on federal law.

TRD:
Information with respect to the hospital patient gross revenue fee would be exempted from the confidentiality provision of Tax Administration Act per Section 7-1-8(X) NMSA 1978.

ADMINISTRATIVE IMPLICATIONS

HSD:
Dependent on where the revenues are distributed, DOH or HSD may have to track the revenues in their budget. With the amendment, there are further administrative implications in that HSD would need to make a determination regarding consistency with federal law. This comes with some amount of administrative burden and risk.

DOH would need to assign staff to manage the responsibilities proposed by HB841 but this could likely be managed with existing resources.

TRD:
New forms, instructions, publications, reporting procedures for the new program need to be created. Coordination with DOH. ½ of an additional FTE would be needed to administer the program. Furthermore this bill will have a Moderate IT impact. A new Tax Program will need to be added to GenTax (approximately 720 hours of effort)

RELATIONSHIP

House Bill 841 relates to:

House Bill 543 - enacts a new section of the Health Information System Act, which would require, by November 1 of each year, the Health Policy Commission (HPC) to develop, implement and publish an annual standardized report on Sole Community Provider (SCP) Fund spending and costs and report its findings to the Legislative Health and Human Services Committee.

House Bill 764 - expands the Local Hospital Gross Receipts Tax Act to allow any county other than a class A county, with a population over 300,000, to impose and dedicate the Local Hospital Gross Receipts Tax as matching funds for state or federal programs benefiting a hospital that is located in the county and is designated as a Sole Community Provider (SCP) by the Centers for Medicare and Medicaid Services (CMS) or benefiting patient care at the hospital.

TECHNICAL ISSUES

Under the Indigent County and Hospital Health Care Act, “department” is defined as HSD. However, this bill refers to “department” as DOH.

BLG/mc:mt

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity***: *taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc