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

ORIGINAL DATE 03/02/15
SPONSOR Baldonado **LAST UPDATED** 03/12/15 **HB** 480/aHBEC

SHORT TITLE Health Care Sharing Ministry & Insurance **SB**

ANALYST Boerner/Clark

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	**FY16**	**FY17**		
	Negative and Potentially Significant	Negative and Potentially Significant	Recurring	Insurance Premium Tax
	Negative and Potentially Significant	Negative and Potentially Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
NM Attorney General's Office (AGO)
Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of House Business and Employment Committee

The HBEC amendment adds language stipulating that an annual audit of the health care sharing ministry shall be available to participants and that the written disclaimer providing notice the organization is a health care sharing ministry should be in 12 point font rather than 10 point as previously stated.

Synopsis of Original Bill

House Bill 480 adds a new section to the New Mexico Insurance Code establishing that a health care sharing ministry will not be considered to be engaging in the business of insurance for purposes of the Insurance Code.

The bill defines a "health care sharing ministry" to be a non-profit exempt from taxation under the Internal Revenue Code Section 501, which limits its membership to those of a "similar faith," "... acts as a facilitator between participants who have financial or medical needs and other participants with the present ability to assist those in need in accordance with criteria established by the health care sharing ministry...," and "...provides for the financial or medical needs of a participant through contributions from one participant to another...." This is largely consistent with the Alliance of Health Care Sharing Industries' characterization of what a health care sharing ministry is and how they function.

FISCAL IMPLICATIONS

The Office of Superintendent of Insurance (OSI) notes that to the extent any of these companies would choose to do business as a regulated entity they would pay premium tax. This bill would make the company exempt from regulation and in turn exempt them from the insurance premium tax. OSI has no record of any companies of this description doing business in New Mexico to date; however, participation in this type of company is rapidly expanding nationwide (see Significant Issues).

It is unclear what the fiscal impact would be if such an exemption were allowed and a health care sharing ministry formed in New Mexico. As due to the Affordable Care Act (ACA) requirement for everyone to be insured, this bill would presumably remove certain insurance policies from being taxable under the insurance premium tax. A significant portion of insurance premium taxes are deposited in the general fund; in FY14, $115 million was transferred to the general fund, $74 million was transferred to the fire protection fund (which also partially reverts to the general fund), and $9 million was transferred to the law enforcement fund.

SIGNIFICANT ISSUES

According to the Alliance of Health Care Sharing Industries:
(http://www.healthcaresharing.org/hcsm/) A health care sharing ministry (HCSM) provides a health care cost sharing arrangement among persons of similar and sincerely held beliefs. HCSMs are not-for-profit religious organizations acting as a clearinghouse for those who have medical expenses and those who desire to share the burden of those medical expenses.

- HCSMs receive no funding or grants from government sources.
- HCSMs are not insurance companies. HCSM do not assume any risk or guarantee the payment of any medical bill. Twenty-four states have explicitly recognized this and specifically exempt HCSMs from their insurance codes.
- HCSMs serve more than 170,000 people, with participating households in all fifty states.
- HCSMs' participants share more than $165 million per year for one another's health care costs.
- HCSMs strive to be accessible to participants regardless of their income, because traditionally shares are a fraction of the cost of insurance rates.

According to the Alliance of Health Care Sharing Industries, member ministries of the Alliance each publish and distribute a monthly publication to a group of committed Christian participants who have offered to give a certain amount each month. This money is shared among the participants to assist those with medical bills. The publication lists the current needs of its participants and shows who the gift is to help that particular month. This brings Christians together to share medical bills with one another. The key is that medical needs are shared among participants. The personal approach of HCSMs facilitates Christians to bear one another's burdens in a very tangible way. Biblical principles are foundational to HCSMs and the participants treat each other with respect, prayer, and genuine care.

A list of neighboring states that have adopted similar legislation:

- **Arizona:** SB 1122 was passed by the Arizona Legislature (23-6 Senate, 39-19 House) and signed into law by the Governor in 2011. SB 1122 created Arizona Statute 20-122 clarifying that health care sharing ministries are not insurance and not subject to Arizona insurance regulations;
- **Utah:** SB 14 was passed by the Utah Legislature and signed into law by the Governor in 2004. SB 14 created Utah Statute 31 A-1-103(3)(c) clarifying that health care sharing ministries are not insurance and not subject to Utah insurance regulations.
- **Colorado:** *Colorado State College and University Policy on Students Participating in a Health Care Sharing Ministry:* H 1315 was passed by the Legislature and signed into law by the Governor in 2013. H 1315 amended Colorado Revised Statute 23-5-106 to read, "If a governing board of an institution of higher education requires a student to purchase health care insurance, the board **must allow the same exemption for those participating in a health care sharing ministry** as specified in the federal "patient protection and affordable care act."
- **Texas:** SB 874 was passed by the Texas Legislature (134-0 House, 31-0 Senate) and signed by the Governor in 2013. SB 874 created Texas Code Title 8, Subtitle K, 1681 clarifying that health care sharing ministries are not insurance and not subject to Texas insurance regulations.
- **Kansas:** HB 2783, was passed by the Kansas Legislature (40-0 Senate (SB 113), 123-0 House) and signed into law by the Governor in 2008. HB 2783 clarified Kansas Statute 40-202 to reaffirm that health care sharing ministries are not insurance and not subject to Kansas insurance regulations.
- **Oklahoma:** HB 3115 was passed by the Oklahoma Legislature and signed into law by the Governor in 2008. HB 3115 amended existing Oklahoma Statute 39-110-11 to reaffirm that health care sharing ministries are not insurance and not subject to Oklahoma insurance regulations.

PERFORMANCE IMPLICATIONS

OSI states that the bill seeks to exempt HCSM companies from regulation as an insurer as a matter of law and that this is a policy decision within the exclusive province of the Legislature. The argument is that these companies are not insurers, but rather act as facilitators helping others to fulfill their Christian duty to help others in need. The sincerity of those in this business is not in question here. However, it is relevant to inquire how this arrangement would be perceived by the ordinary member, regardless of technical legal arguments about acceptance of risk or contracts of indemnity. Most lay consumers will perceive and describe this arrangement as "insurance" - members pay a monthly amount, and when they incur medical expenses the company arranges for reimbursement or payment, viz., indemnification. If the normal person would perceive this product or service as insurance, the public would reasonably expect the consumer protections which ordinarily accompany insurance coverage.

In at least in one "agreement" found at the website for Samaritan Ministries, http://samaritanministries.org, the member agrees to keep their "sharing" up to date and current or lose eligibility for participating in sharing themselves. This is similar to a contract of insurance, which requires prompt payment of monthly premium to be eligible for payment of benefits.

Concerns for consumer protection arise in other areas as well. Notably, the member waives any right to take the HCSM to a civil court in the event of a dispute about benefits. See: http://samaritanministries.org/wp-content/uploads/2014/07/20140601-MemberApp_type1.pdf and http://samaritanministries.org/how-it-works/guidelines/

All states have insurance regulators in order to ensure that consumer protections are in place. The arrangement proposed in this bill exempts Health Care Sharing Ministries from any oversight in New Mexico. All protections such as appeals and grievance procedures, required inclusion of legislated mandates, mental health parity and limits on out of pocket expenses would not be in place for the consumers participating in this program. Importantly, no protections regarding the solvency of the company, reserve and surplus requirements would apply to these companies.

State insurance regulation also seeks to ensure a level playing field for the insurers. This kind of organization also excludes preexisting conditions and has limits on benefits, removing the healthiest members from the regular market and leaving the gravely ill and long term chronic patients in the regular insurance market. This in turn skews that market and inflates costs and premiums for regulated carriers.

TECHNICAL ISSUES

The AGO points out the bill does not define the entity with the authority to enforce the bill’s provisions. Whether this bill’s effect of removing such organizations from being defined as engaging in the business of insurance, also exempts them from the authority of the insurance oversight entities is unclear.

CEB/je/bb/je