

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

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/4/16
SPONSOR Ingle **LAST UPDATED** 2/12/16 **HB** _____

SHORT TITLE Insurance Code Changes **SB** 164/aSCORC

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18	FY19	FY20		
	\$0.0	(\$385.0)	(\$770.0)	(\$770.0)	Recurring	General Fund
	Positive – See Fiscal Implications				Recurring	General Fund

Parenthesis () indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			Unknown but likely a reduction		Recurring	Insurance Operating Fund and General Fund

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Superintendent of Insurance (OSI)

Attorney General's Office (AGO)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee Amendment removes Medicare Supplement policies from the health insurance premium surtax, increasing the negative revenue impact from \$554 thousand in the original bill to \$770 thousand (see attachment for details). The amendment also strikes language in the original bill specifying in detail how penalties may

accrue but keeps language more generally describing what actions may result in penalties and adding that penalties begin to accrue after OSI provides notice and demand. The amendment also strikes language from underpayment penalties specifying the penalties accrue beginning on the date from which the underpayment exists, replacing it with language stating the penalties accrue from the time OSI provides notice and demand.

Changing penalty accrual periods from the time the underpayment or nonpayment exists to when OSI provides notice and demand would likely result in slightly lower revenues compared with the original bill. The revised penalty method essentially gives entities interest-free loans for underpayment or nonpayment from the time the inaccuracy exists to the time OSI staff discover the error and send notice. Because of this incentive, in effect, the amendment changes the due date from any dates set in rule or statute to the date a company is notified by OSI it did not make a payment or underpaid. This is at odds with traditional tax penalties, which require companies and individuals to make correct payments at the time they are due and receive penalty assessments from the time the underpayment or nonpayment exists.

The amendment also makes minor typographical and grammatical corrections.

Synopsis of Original Bill

Senate Bill 164 amends the Insurance Code to improve clarity regarding which policies are subject to the health insurance premium surtax, to improve the efficiency of operations at the Office of Superintendent of Insurance (OSI), and to adopt national standards to bring New Mexico in line with the majority of states for portions of its insurance regulation statutes.

OSI provided the following summary breakdown of the bill's effects (see Other Substantive Issues for a more detailed breakdown of the effects).

- Sections 1, 2, and 3 adopt portions of the National Association of Insurance Commissioners' model law on examinations of insurance companies.
- Section 4 allows OSI to fine insurers that fail to file timely and accurate financial statements without requiring that the attorney general sue the insurer.
- Section 5 inserts a severability clause into the Risk-Based Capital Act.
- Section 6 clarifies language regarding the taxation of insurance premiums and the use of medical insurance pool credits.
- Section 7 goes into effect January 1, 2018 and provides a simpler method for determining which health insurance policies are subject to the health insurance premium surtax.
- Section 8 provides greater detail on the penalties to insurers that fail to report or pay taxes or fees.
- Section 9 clarifies language regarding refunds and credits for overpaid taxes and fees.
- Section 10 allows insurers to pay claimants by electronic fund transfers.
- Section 11 penalizes insurers that fail to pay their insurance fraud fund assessment when due.
- Sections 12 and 13 treat student health insurance policies as individual health insurance policies rather than as group policies.
- Section 14 extends the time that OSI has to review health insurers' marketing materials from 30 days to 60 days.
- Section 15 extends the time that OSI has to review credit life and credit health insurance product filings from 30 days to 60 days.
- Section 16 clarifies the language of definitions used in the Patient Protection Act.

The bill has no effective date for most sections, and it is assumed that the new effective date is 90 days after this session ends for these sections. However, as noted above, there is a delayed effective date of January 1, 2018 for the provisions contained in Section 7 that affect the applicability of the health insurance premium surtax.

FISCAL IMPLICATIONS

OSI reports the bill, which simplifies the determination of which health insurance products are to be surtaxed, will produce an annual reduction in surtax of approximately \$554 thousand, not accounting for growth over time in the overall volume of premiums. This is approximately a 1.2 percent reduction in surtax revenue and a 0.15 percent reduction in total OSI revenues. Because the surtax changes would take effect in January 2018, there will be no fiscal impact in FY17, half the impact will occur in FY18, and the full impact will be realized in FY19 and subsequent years. See the attachment accompanying this analysis for how OSI arrived at this projected impact.

In addition to these negative fiscal impacts, there is also a positive, but incalculable, impact. Under previous OSI administrative practice, a company, while not explicitly allowed to, was able to erroneously claim medical insurance pool credits twice, potentially resulting in artificially decreased annual premium tax payments of more than \$4 million per company per annum (see Appendix A for a table showing this issue, the correction, and the potential magnitude for a company's payments). OSI identified the process deficiency a little more than a year ago and implemented a new reporting process to help reduce the possibility of double-claiming credits, and the agency estimates this could generate at least \$20 million additional recurring general fund revenues. This bill codifies this new procedural process, enhancing the agency's authority to prevent possible underpayments. The bill itself would not create this \$20 million impact, but it would improve OSI's ability to enforce collection of these revenues and prevent the possibility of a company disputing the process.

SIGNIFICANT ISSUES

This bill amends various sections of the Insurance Code to achieve the following benefits reported by OSI:

- to adopt portions of National Association of Insurance Commissioners' (NAIC) model laws;
- to remove administrative obstacles in penalizing insurers that fail to pay taxes, fees, and assessments;
- to clarify and simplify premium tax and surtax collection;
- to regulate student health insurance policies as individual rather than group policies;
- to allow for the payment of claimants by electronic fund transfers; and
- to provide OSI with more time to review health insurers' marketing materials and to review credit life and credit health insurance product filings.

NAIC requested that Sections 1, 2, 3, and 5 be enacted for accreditation purposes.

ADMINISTRATIVE IMPLICATIONS

OSI reports this bill will make it easier for the agency to determine and collect health premium surtaxes since it will eliminate the need to determine which health products are hospital/medical expense incurred and which health insurers are truly non-profit.

OTHER SUBSTANTIVE ISSUES

The Attorney General's Office provided the following detailed breakdown of the bill's effects.

Section 1 of SB 164 amends Section 59A-4-9, to require examiner in charge to deliver written examination report to Superintendent of Insurance ("SOI") within 60 days of completion of an examination.

Section 2 of SB 164 amends Section 59A-4-10, relating to examination reports, to specify the time within which a person examined shall confer with the SOI and examiner about requested corrections and modifications to examination report. It requires the SOI to enter order accompanied by findings of fact and conclusions of law within 30 days of the period allowed for receipt of written submissions or rebuttals. The order issued by the SOI shall adopt the examination report as filed or with modification and correction, including any action the SOI deems necessary and appropriate to cure violation, reject the examination report with directions to the examiners to reopen the examination, or call for an investigatory hearing. The investigatory hearing contemplated by SB 164 shall be conducted by SOI or an authorized representative as a non-adversarial, confidential proceeding, as needed for the resolution of any disputed issue raised by the person examined or the SOI. In connection with an investigatory hearing, SB 164 grants subpoena powers to the SOI or SOI's representative to compel the attendance of witnesses or the production of documents. The person being examined and the SOI may present testimony relevant to the investigation, but only the SOI or SOI's representative is allowed to ask questions to any person subpoenaed and to conduct cross-examination.

Section 3 of SB 164 amends Section 59A-4-12, to require each member of an insurer's board or directors to file an affidavit, within 30 days of the issuance of examination report, stating under oath that they have received a copy of the adopted report and related orders.

Section 4 amends Section 59A-5-30, relating to penalties for late and false annual statements, and removes requirement that the Attorney General file a civil action against an insurer in order to recover penalty assessed for failure to annual statements as required by law.

Section 5 adds a severability provision to the Risk-Based Capital Act, NMSA 1978, and Sections 59A-5A-1 to 13 (1995).

Section 6 of SB 164 amends the various clauses of Section 59A-6-2, relating to the health insurance premium surtax, to revise surtax from one percent of gross insurance premiums to one percent of direct health insurance premiums. The amount of the premium tax and health insurance premium surtax reported and payable will no longer be estimated. It shall be based on the current actual tax due for the calendar quarter preceding the premium tax due date. New Mexico medical insurance pool credits shall no longer be included in the quarterly report; they shall be granted only after medical insurance pool final assessments have been issued for the prior year and shall not exceed the annual premium tax due on the final annual premium return.

Section 7 of SB 164 repeals the current Section 59A-6-2 and replaces it with a new Section 59A-6-2, as amended by Section 6 above.

Section 8 of SB 164 amends Section 59A-6-4, relating to penalties for the failure to file a report or pay tax or fees due, by including bail bondsmen, among those subject to a penalty and delineating when penalties accrue and the amount of the penalty for failure to file a complete report, to pay timely in full a fee due, to pay in full the amount of health insurance premium surtax owed.

Section 9 of SB 164 makes minor changes to Section 59A-6-5, including replacing “division” with “office of superintendent of insurance.”

Section 10 amends Section 59A-16-21, relating to payment of claims, by adding electronic transfer to the methods of payment an insurer may use to pay claims.

Section 11 amends Section 59A-16C-14, to specify the date on which the fee collected by the SOI to implement the provisions of the Insurance Fraud Act shall be due. It also authorizes \$1000 per month penalty for late fee payment due under this provision.

Section 12 amends Section 59A-22-1, to include student policies within the scope of the article relating to policies of individual health insurance.

Section 13 amends Section 59A-23-2, relating to blanket health insurance, to delete clause related to policy issued to a college, school or other institution of learning as the policyholder, covering students and teachers, and adds a new clause stating that a blanket sickness or accident policy or contract issued to a college, school or other institution of learning shall not be identified or sold as “a student health plan.”

Section 14 amends Section 59A-23B-5, by extending the time within which SOI must complete review and approve marketing materials submitted by insurers.

Sections 15 and 16 of SB 164 make minor changes to Section 59A-25-8, relating to the filing, approval and withdrawal of forms, and Section 59A-57-3, relating to definitions used in the Patient Protection Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Consequences include disputes with health insurers over which products and companies are to be surtaxed and how medical insurance pool credits can be used; insufficient time for OSI to review health insurers’ marketing materials as well as to review credit life and credit health product filings; and administrative obstacles in penalizing insurers that fail to pay taxes, fees, and assessments.

JC/al

APPENDIX A

Premium Tax Payment and Collection Procedures and the Effects on a Hypothetical Company's Payments (dollars in thousands)			
Prior Procedure Potentially Resulting in Erroneous Payments		New, Corrected Procedure Resulting in Correct Payments	
A company might deduct all of the interim payments to MIP from the current year along with last year's Final Assessment. The "Interim Assessments" make up the total on the Final Assessment for that year, as indicated by the colors below. Additionally, MIP issues refunds to companies at the end of the year. If the company is only submitting the interim reports and related checks and not the Final Assessments, OSI would not know to reduce the company's tax credit. Therefore, OSI would have already credited the company for the payment and the tax liability would not increase.		A company may only deduct the prior year's amounts from the Final Assessment of total credit due and includes any refunds issued to companies.	
2013 Final Premium Tax Due	\$ 5,000.0	2013 Final Premium Tax Due	\$ 5,000.0
2012 Final MIP Assessment (total due)	\$ (1,000.0)	2012 Final MIP Assessment (total due)	\$ (1,000.0)
2013 Interim MIP Assessment (less)	\$ (250.0)		
2013 Interim MIP Assessment (less)	\$ (250.0)		
2013 Interim MIP Assessment (less)	\$ (250.0)		
2013 Interim MIP Assessment (less)	\$ (250.0)		
Refund issued to company by MIP on Final Assessment (excluded)	\$ 500.0		
Total Premium Tax Due after MIP Credits	\$ 3,000.0	Total Premium Tax Due after MIP Credits	\$ 4,000.0
2014 Final Premium Tax Due	\$ 5,000.0	2014 Final Premium Tax Due	\$ 5,000.0
2013 Final MIP Assessment (total due)	\$ (1,000.0)	2013 Final MIP Assessment (total due)	\$ (1,000.0)
2014 Interim MIP Assessment (less)	\$ (250.0)		
2014 Interim MIP Assessment (less)	\$ (250.0)		
2014 Interim MIP Assessment (less)	\$ (250.0)		
2014 Interim MIP Assessment (less)	\$ (250.0)		
Refund issued to company by MIP on Final Assessment (excluded)	\$ 500.0	Refund issued to company by MIP on Final Assessment	\$ 500.0
Total Premium Tax Due after MIP Credits	\$ 3,000.0	Total Premium Tax Due after MIP Credits	\$ 4,500.0
2015 Final Premium Tax Due	\$ 5,000.0	2015 Final Premium Tax Due	\$ 5,000.0
2014 Final MIP Assessment (total due)	\$ (1,000.0)	2014 Final MIP Assessment (total due)	\$ (1,000.0)
2015 Interim MIP Assessment (less)	\$ (250.0)		
2015 Interim MIP Assessment (less)	\$ (250.0)		
2015 Interim MIP Assessment (less)	\$ (250.0)		
2015 Interim MIP Assessment (less)	\$ (250.0)		
Refund issued to company by MIP on Final Assessment (excluded)	\$ 500.0	Refund issued to company by MIP on Final Assessment	\$ 500.0
Total Premium Tax Due after MIP Credits	\$ 3,000.0	Total Premium Tax Due after MIP Credits	\$ 4,500.0

Fiscal Impact of SB 164/aSCORC

After Removal of Medicare Supplement from Surtax

<u>Type of Health Product</u>	Direct Premiums Written in 2014 by Health Insurers (\$000)	% of Total	Estimated Portion That Is Currently Surtaxable	Current Surtax (\$000)	Portion That Will Be Surtaxable Effective 1/1/2018	Surtax Effective 1/1/2018 (\$000)	Reduction In Surtax From Health Insurers (\$000)	Reduction In Surtax From All Insurers (\$000)
Individual Comprehensive	224,797	3.9%	100%	2,248	100%	2,248		
Group Comprehensive	618,092	10.7%	100%	6,181	100%	6,181		
Medicare Supplement *	19,873	0.3%	100%	199	0%	-		
Vision Only	9,532	0.2%	50%	48	0%	-		
Dental Only	65,081	1.1%	50%	325	0%	-		
Federal Employees Health	330,390	5.7%	0%	-	0%	-		
Title XVIII Medicare	800,368	13.9%	0%	-	0%	-		
Title XIX Medicaid	3,626,007	62.9%	100%	36,260	100%	36,260		
<u>Other</u>	<u>68,524</u>	<u>1.2%</u>	20%	<u>137</u>	0%	-		
TOTAL	5,762,664	100.0%		45,398		44,689	709	770

Note: Premium amounts provided for New Mexico by NAIC.

Federal Employees Health and Title XVIII Medicare are exempted by statute from surtax.

* Medicare Supplement includes \$4.5 million from AARP Medicare Supplement plans.

With the exception of AARP Medicare Supplement plans, does not include accident & health policies written by Life insurers and Property/Casualty insurers, which account for approximately 8% of all accident & health premiums.

Vision Only and Dental Only products written by non-profits are currently exempt from surtax.

"Other" contains a variety of accident & health-related products, most of which are not hospital/medical expense incurred.