NM Hospital Taxation Issues

"This is *not* a provider tax"

- In the 2017 Session, NMHA supported the *hospital components* (SFC amendments) as finally passed in HB 202 / HB 2. The key elements are:
  - **ALL** Not-for-profit, governmental and investor-owned hospitals are included in the State portion of GRT tax base leveling
  - A 60% deduction is applied to the revenue base.
  - The estimated total GRT proceeds are $107M, *a significant new tax burden on hospitals*
  - The revenue is appropriated to:
    - $26M for Medicaid through the County Supported Medicaid Fund, generating a $104M federal match for a total $130M from which:
      - Hospitals would see a restoration of 2016 payment cuts
      - A crucial 10% rate enhancement for rural hospitals
    - $81M for the state general fund, available for appropriation, could generate $400 million if also used for Medicaid
  - There is minimal local government GRT impact

New Mexico Hospital Association

NMHA Member Hospitals by Ownership Status

NOT-FOR-PROFIT (13)

CHRISTUS Health
CHRISTUS St. Vincent Regional Med Center – Santa Fe

Otero County Hospital Association d/b/a Gerald Champion Regional Med. Center
Gerald Champion Regional Med. Center Alamogordo

Presbyterian Healthcare Services (PHS)
Plains Regional Medical Center – Clovis
Presbyterian Espanola - Espanola
Presbyterian Hospital - Albuquerque
Presbyterian Kaseman – Albuquerque
Presbyterian Rust Medical Center – Rio Rancho
Socorro General Hospital – Socorro

Operated by PHS:
Lincoln County
Lincoln County Medical Center - Ruidoso
Quay County
Dr. Dan C Trigg Memorial Hosp – Tucumcari (Presbyterian Healthcare Services)

Rehoboth McKinley Christian Health Care Services (self-owned) – Gallup

San Juan Regional Medical Center, Inc.
San Juan Regional Medical Center – Farmington

Taos Health Systems, Inc.
Holy Cross Hospital, Taos (QHR)

( ) = management contract
BOLD = owner

2017 HB 2 Rural Add-On Hospitals

INVESTOR-OWNED HOSPITALS (21)

Ardent Health Services
Lovelace Medical Center – Albuquerque
Lovelace Rehabilitation Hospital - Albuquerque
Lovelace Westside Hospital - Albuquerque
Lovelace Women's Hospital – Albuquerque
Lovelace Regional Hospital - Roswell

Behavioral Health Services of NM LLC
Central Desert Behavioral Health Center

Community Health Systems, Inc. (CHS)
Carlsbad Medical Center LLC – Carlsbad
Eastern NM Medical Center – Roswell
Lea Regional Medical Center – Hobbs
MountainView Regional Medical Center – Las Cruces

Ernest Health, Inc.
Advanced Care Hospital of Southern New Mexico – Las Cruces
Rehabilitation Hospital of Southern New Mexico – Las Cruces

Haven Behavioral Healthcare, Inc.
Haven Behavioral Hospital of ABQ

HealthSouth Corporation
HealthSouth Rehabilitation Hospital – Alb.

Kindred Healthcare, Inc.
Kindred Hospital – Albuquerque

LifePoint Health
Los Alamos Medical Center – Los Alamos
Memorial Medical Center – Las Cruces

Quorum Health Corporation
Alta Vista Regional Hospital – Las Vegas
Mimbres Memorial Hospital – Deming

Strategic Behavioral Health, Inc.
Peak Hospital & Behavioral Health Services, LLC – Santa Teresa

Universal Health Services, Inc.
Mesilla Valley Hospital – Las Cruces

GOVERNMENTAL (11)

Artesia Hospital District
Artesia General Hospital – Artesia ***501 (c) 3***

Clayton Health System, Inc. dba
Union County General Hospital-
(Community Hospital Corporation, Inc.)

Cibola General Hospital Corporation
Cibola General Hospital, Grants ***501 (c) 3***
(QHR)

Grant County
Gila Regional Medical Center, Silver City

Guadalupe County *501 (c) 3*
Guadalupe County Hospital - Santa Rosa
(New Mexicare, Inc.)

Joint Power Agreement (Sierra County, Village of Williamsburg, City of T or C & City of Elephant Butte)
Sierra Vista Hospital – T or C
(Governing Board of SVH)

Nor-Lea Hospital District
Nor-Lea General Hospital – Lovington ***501 (c) 3***

Roosevelt General Special Hospital District
Roosevelt Gen Hospital - Portales

State of New Mexico
Miners' Colfax Medical Center – Raton

University of New Mexico, Health Sciences
UNM Hospitals – Albuquerque
Sandoval Regional Medical Center – Rio Rancho

HB 2 Language

- “Contingent on enactment of House Bill 202 or similar legislation of the first session of the fifty-third legislature authorizing additional distributions to the county-supported medicaid fund, up to twenty-six million four hundred thousand dollars ($26,400,000) is appropriated to the medical assistance program of the human services department for increases to inpatient and outpatient hospital rates, including five million dollars ($5,000,000) for rate increases at hospitals classified during fiscal year 2017 as smallest and small for the purpose of receiving payments for uncompensated care from the safety net care pool fund. The other state funds appropriation is from the county-supported medicaid fund.”

- CSMF Appropriation
  $26.4M
- Rate Restoration
  $14.3M
- 10% Rural Add-On
  $5M

New Mexico Hospital Association

Consultant Opinions

- **Supportive Opinion from Cindy Mann at Manatt Health. (Former Medicaid Director for CMS)**
- **Supportive Second Opinion from Pat Casanova, Principal, Health Management Associates**

- **EXCERPT FROM HMA SECOND OPINION MEMO:**

"…I spoke with Kristin Fan, Director of the Financial Management Group at CMS, and shared copies of the proposed legislation and a detailed overview of the GRT, including its history and the uses of the revenue from this tax.

The Financial Management Group reviewed the legislation and reviewed federal regulation around healthcare taxes. CMS views the New Mexico proposed tax structure to include hospitals as **permitted** *even if the stringent healthcare related tax requirements were to apply*. CMS was clear that **the tax structure is in compliance with federal requirements**, and there is no evidence of gaming. CMS declined to opine on whether or not the proposed tax is a healthcare tax since that issue is not dispositive because even if it were a provider tax, it would be permitted."

New Mexico Hospital Association

NM hospital taxation issues

- NMHA opposed HB 412, tax reform bill
  - Applied the full 5.78% GRT to all hospitals
  - Created a $320 million impact on hospitals
  - All proceeds went to state general fund
    - No help to Medicaid program or hospitals
  - A decimating impact on small, rural hospitals
  - Hospitals would receive minimal benefit from anti-pyramiding

New Mexico Hospital Association

manatt
manatt | phelps | phillips

To:	Governor Susana Martinez
From:	Cindy Mann and Anne Karl, Manatt Health
Date:	March 10, 2017
Subject:	House Bill 202
Copy:	Jeff Dye, President and CEO, NMHA

On behalf of the New Mexico Hospital Association, we have reviewed HB 202, as amended to incorporate changes suggested by the Association, to consider whether the reform of New Mexico's gross receipts tax (GRT) proposed in that bill would be considered a provider tax under federal Medicaid law. For the reasons discussed below, we believe the tax changes in HB 202 do not constitute a provider tax under federal rules.

A tax is considered a provider tax (referred to in the law as a healthcare-related tax) under federal law if it meets *either* of these two prongs of the definition:

- Eighty-five percent of the burden of the tax falls on healthcare providers or
- The tax provides for a different treatment for healthcare providers than for others.

HB 202 does not meet either prong of the definition.

- The proposed changes would not make the GRT a health care tax under the first prong because 85% of the burden of the GRT would not fall on healthcare providers. In 2015, the gross receipts tax generated roughly $3.0 B in revenue; HB 202 would raise less than two percent of total revenue.
- HB 202 does not meet the second prong of the federal definition because hospitals are not treated differently under the tax.
    - Hospitals would be subject to the same structure, definitions, methodologies and rate as others who are subject to the tax.
    - Hospitals would receive a partial credit against this tax, similar to the treatment of other entities long subject to the tax. As drafted, the credit conforms with the language in the current GRT as applied to other taxpayers, such as businesses qualifying for the small business research and development credit or the technology jobs research and development credit.
    - In fact, the large number and broad range of exemptions, deductions, and credits embedded within the gross receipts tax suggest that various credits,

Manatt, Phelps & Phillips, LLP
1050 Connecticut Avenue, N.W., Suite 600, Washington, District of Columbia 20036
Telephone: 202.585.6500 Fax: 202.585.6600

deductions, and exemptions are a core feature within New Mexico's gross receipts tax.

The changes proposed in HB 202 do not create a new provider tax but rather bring hospitals into the normal structure of the GRT, the burden of which does not fall primarily on healthcare providers. As such, HB 202 does not meet either of the two prongs of what constitutes a healthcare-related tax under federal law. It bears noting, however, that even if CMS were to conclude that the proposed modification is a healthcare-related tax—which we believe is highly unlikely—the arrangement would comply with CMS requirements for health care related taxes.[1]

[1] Specifically, the gross receipts tax as proposed in HB 202 is "broad based" because it applies to all hospitals licensed in the state; it is "uniform" because the same rate applies to all revenue and all hospitals; and hospitals are not guaranteed a return of their tax dollars.

Memorandum

To: Legislators

From: Pat Casanova, Principal, Health Management Associates

CC: Jeff Dye, President and CEO, NMHA

Date: May 18, 2017

On behalf of the New Mexico Hospital Association, in preparation for the legislative special session scheduled to begin on May 24, 2017, we have reviewed the hospital-specific elements of the GRT proposal included in the amended versions of House Bill 202 and House Bill 2. This proposal closes loopholes and levels the playing field for all for-profit, not-for-profit and governmental hospitals. It was put forward in the 2017 legislative session, and some questions have been raised about the permissibility of the proposal under federal Medicaid law. As part of our review we have also reviewed the March 10, 2017 memo prepared by Manatt Health on this matter.

We second the findings of Manatt Health. The proposal does not meet the definition of a provider tax. As noted in the Manatt Health memo, there are two elements of the federal definition of a provider tax. The tax must meet at least one of the elements. A provider tax requires:

- Eighty-five percent of the burden of the tax falls on healthcare providers, OR
- The tax provides for a different treatment for healthcare providers than for others.

Neither element is true of the GRT proposal, for the reasons set out in the Manatt Health memo.

The proposed language would make the playing field more even for hospitals by subjecting all hospitals to the GRT regardless of tax status. Future versions of the legislation will clarify that the tax applies to gross receipts of hospitals as determined by the New Mexico Tax and Revenue Department. All governmental hospitals and non-governmental hospitals would be taxed at the existing state standard rates.

Taxes imposed by a state, even if CMS views them as a provider tax, do not need to be approved by CMS. **Therefore, this proposal does not require federal approval prior to implementation.**

Though there is a new administration at the federal level, there have been no changes to the law or guidance regarding provider taxes. As an additional step to validate our opinions, we reached out to CMS informally to inquire if the New Mexico proposal would present any issues or concerns at the federal level.

Anne Karl of Manatt Health and I spoke with Kristin Fan, Director of the Financial Management Group at CMS, and shared copies of the proposed legislation and a detailed overview of the GRT, including its history and the uses of the revenue from this tax.

The Financial Management Group reviewed the legislation and reviewed federal regulation around healthcare taxes. CMS views the New Mexico proposed tax structure to include hospitals as **permitted even if the stringent healthcare related tax requirements were to apply**. **CMS was clear that the tax structure is in compliance with federal requirements, and there is no evidence of gaming. CMS declined to opine on whether or not the proposed tax is a healthcare tax since that issue is not dispositive because even if it were a provider tax, it would be permitted.**

The conversations with the CMS Financial Management Group staunchly support the original findings of Manatt Health, and our agreement with their findings. The language of HB 202 brings hospitals into the normal structure of the GRT, while addressing the state's significant deficit. The concepts embodied in the HB 202 / HB 2 hospital package provide a benefit to the State and to hospitals in a federally compliant manner.