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

SPONSOR Papen **DATE TYPED** 03/18/05 **HB**

SHORT TITLE Nursing Home Receipt Gross Receipts **SB** 534/a SCORC/a HFL#1/a HTRC

ANALYST Padilla-Jackson

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
$1,600.0	$3,200.0	Increasing	Recurring	General Fund (Personal Income Tax)
($200.5)	($802.0)	Increasing	Recurring	General Fund (GRT)
($133.8)	($535.0)	Increasing	Recurring	Local Governments (GRT)

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 401, HB 446, and SB 73

Responses Received From
Taxation and Revenue Department (TRD)
Human Services Department (HSD) (for bill as amended by SCORC)
Department of Finance (DFA) (for bill as amended by SCORC)

SUMMARY

Synopsis of HTRC Amendment to Senate Bill 534

Senate Bill 534 has been amended by the House Taxation and Revenue Committee (HTRC). The amendment would strike the House Floor # 1 amendment, which struck all three of the Senate Corporations and Transportation Committee (SCORC) amendments. The HTRC amendment effectively leaves the bill in its original version, as amended by SCORC. See the "Synopsis of SCORC Amendments to Senate Bill 534" for an analysis of this version of the bill.

Synopsis of House Floor #1 Amendment to Senate Bill 534

Senate Bill 534, as amended by SCORC, was amended by the House Floor. The amendment struck all three of the SCORC amendments described below, taking the bill back to the originally proposed bill, which provides a gross receipts tax deduction for nursing home receipts for the provision of medical services to Medicare beneficiaries. The effective date of the provisions of the bill, as reinstated by the House Floor Amendment is July 1, 2005. See the "Synopsis of

Original Bill" below.

Synopsis of SCORC Amendments to Senate Bill 534

Senate Bill 534 was amended by the Senate Corporations and Transportation Committee. The amended Senate Bill 534 would repeal Section 7-2-18.12 NMSA 1978, passed during the 2004 legislative session, which currently provides an income tax credit of up to $10 per day to taxpayers for out-of-pocket expenses for nursing home services. Additionally, the amendment would eliminate the effective date of July 1, 2005 included in the original bill and would invoke an emergency clause, so that the provisions of the bill take effect immediately.

Synopsis of Original Bill

Senate Bill 534, as originally proposed, would provide a gross receipts tax deduction for nursing home receipts for the provision of medical services to Medicare beneficiaries. Eligible receipts must come from the U.S. government or any agency thereof for services pursuant to the provisions of Title 18 of the federal Social Security Act. The bill would also codify a section of law passed in the 2003 legislative session, which made Medicare receipts of clinical laboratories and home health agencies deductible.

Significant Issues

With respect to the SCORC amendments, HSD noted that the repeal of the income tax credit in the amended bill was necessary to avoid a disallowance of approximately $15 to $17 million in federal funds. They note that the Centers for Medicaid Services (CMS), the federal agency responsible for oversight of the Medicaid program, has determined that the long term care bed surcharge is impermissible due to the existence of the out of pocket income tax credit. CMS reportedly stated that they will disallow the federal revenue associated with the surcharge if the income tax credit is not repealed. HSD notes that the bed surcharge is expected to generate approximately $20 million in revenue for the state.

DFA cautioned that the amendments to the bill would effectively remove the bed tax money from the Federal Government while having private-pay individuals in long term care pay the bed tax out of pocket. They note that, according to HSD's estimate in the 2004 session, approximately 600 individuals in nursing homes, institutions for mentally retarded and long term care facilities will pay bed tax of about $3,150 per year ($8.63 per day times 365 days per year).

PERFORMANCE IMPLICATIONS

In the event of lost revenues associated with the disallowance of federal funds (explained above), HSD notes that it would need to implement significant cost containment measures for FY05 and beyond. These measures would likely include reductions to provider rates and benefits.

FISCAL IMPLICATIONS

Fiscal Implications of House Taxation and Revenue Amendment

See the discussion under "Fiscal Implications of SCORC Amended Bill" for the fiscal impact.

Fiscal Implications of House Floor Amendments

The House floor amendment eliminated the repeal of the income tax credit, leaving only the impact associated with the gross receipts tax deduction for nursing home receipts for the provision of medical services to Medicare beneficiaries. TRD has updated the fiscal impact estimate for this deduction to reflect new information received from the Human Services Department.

TRD reports that Medicare pays for about 508 nursing home bed in the state. They assume that on average 90 percent of these beds are occupied and that the average annual cost of a nursing home bed is $45 thousand. Thus, the tax base is $20.5 million (508 beds X 90% X $45,000). Applying the statewide average gross receipts tax rate of 6.6 against the base implies a $1.36 million revenue loss. Sixty percent of this, or $802 thousand, is the revenue loss to the general fund; the remainder is a revenue loss to local governments.

Fiscal Implications of SCORC Amended Bill

The SCORC amendments to the bill would alter the fiscal impact by repealing the income tax credit and therefore would have had a positive net impact on the general fund of approximately $2.4 million. The full-year fiscal impact of the bill as amended by SCORC was estimated by TRD and HSD as follows: personal income tax revenues would have increased by $3.2 million; gross receipts tax (GRT) revenue would decrease by $1.36 million. The GRT decrease is split between the state and local governments, with the state absorbing approximately -$802 thousand of the decrease.

Gross Receipts Tax Credit
According to the revised TRD analysis, which is based on new data received by HSD, Medicare pays for about 508 nursing home beds in the State. With a ninety percent occupancy level and an annual cost of $45,000 a year for each bed, the total tax base is $20.5 million. Gross Receipts tax deduction for Medicare-reimbursed nursing home payments will reduce state and local revenue by $1.337 million per year. Sixty percent of this impact, or $802 thousand, would be on state revenue and the remainder on local revenue. Due to the emergency clause, TRD notes that the gross receipts fiscal in impact FY05 would be only 25 percent of the full-year impact.

TRD believes that there is no fiscal impact associated with the provision for clinical laboratories and home health agencies because the department is currently honoring the deductions for clinical laboratories and home health agencies as passed in Laws 2003 Chapter 350. See the discussion under "OTHER IMPACTS AND ISSUES" for a further explanation of this issue.

Repeal of Income Tax Credit
According to information provided by the HSD, there are 1,089 nursing home beds paid for privately in the state. Assuming an average 90 percent occupancy rate for all facilities suggests roughly 980 people are in private-pay beds. According to national information published by the Centers for Medicaid and Medicare, about 10 percent of privately financed nursing home beds are paid for through long-term care insurance. Thus the base for the tax credit is 1,089 * .9 * .9 * 365 * $10 = $3.2 million. Fiscal impacts of the credit repeal assume that the repeal is effective for tax year 2005 and after. Under the State's accrual method of accounting, one-half of the tax year 2005 impacts accrue in Fiscal Year 2005.

Information provided by HSD suggests that the estimate in the table may under-state the full fiscal impacts of the income tax credit on the state. The reason is that some nursing home patients who pay for their care with Social Security benefits would be eligible for the credit but would not be included in the "private pay" tax base that was used for the estimate. TRD does not have information on the extent of this subset of the market at this time, but it could be significant. Thus, the fiscal impacts of the credit shown in the table are likely to be a minimum estimate of the full impacts.

<u>Fiscal Implications of Original bill</u>
The fiscal impact of the originally proposed bill was originally estimated is -$1.8 million in FY06, -$1.08 million of which will impact the general fund and -$720.0 of which will impact local governments. The estimate is based on the number of Medicare bed days (118,728) times the average Medicare rate ($227.5) times the average gross receipts rate (6.7 percent). Due to the emergency clause, TRD notes that the fiscal in impact FY05 would be only 25 percent of the full-year impact, or $450 thousand. This estimate has since been revised and is reflected above.

ADMINISTRATIVE IMPLICATIONS

If the bill passes, TRD notes that system coding and troubleshooting must be performed; forms and instructions must be revised; taxpayer education materials and instruction publications must be prepared; and personnel must be trained. These can be implemented with existing resources.

OTHER IMPACTS AND ISSUES

TRD highlighted the following issue:

Laws 2003, Chapter 350, Section 1 amended the deduction under Section 7-9-77.1 NMSA 1978 to include Medicare receipts of home health agencies and clinical laboratories. However, because Laws 2003, Chapter 351, Section 1, which also amended Section 7-9-77.1, was signed last by the Governor, it was codified, while Laws 2003, Chapter 350, Section 1 (deduction for clinical labs and home agencies) appears in the annotations to that section. The Tax Department interprets the annotations of the statute to be binding as law until and unless they are omitted in a subsequent amendment of the statute. The Department's position is based on the argument that rules of statutory construction are only aids when interpreting true legislative intent (Quintana v. New Mexico Dep't of Cors., 100 N.M. 224, P2d 1101 [1983]).

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