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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/20/06

SPONSOR Fox-Young LAST UPDATED \_\_\_\_\_ HB 84

SHORT TITLE ELIMINATE DAILY BED SURCHARGE & REBATE SB \_\_\_\_\_

ANALYST Schardin

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	See Fiscal Impacts		

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
(14,400)	(20,900)		Recurring	General Fund
(1,450)			Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB88, SB113. Duplicates HB162 and SB213.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)

Human Services Department (HSD)

### SUMMARY

#### Synopsis of Bill

House Bill 84 repeals the daily bed surcharge by repealing Sections 7-1-6.45 and 27-11-6 NMSA 1978, as well as deleting the reference to the bed surcharge in Section 7-1-2 of the Tax Administration Act.

The bill also creates a tax rebate for New Mexico residents who have paid for services provided by licensed nursing homes, intermediate care facilities for the mentally retarded, or residential treatment centers between June 30, 2004 and July 1, 2006. The rebate will be in the amount of any daily bed surcharge that one of these facilities paid per day for a bed occupied by the taxpayer.

The bill's effective date is July 1, 2006.

**FISCAL IMPLICATIONS**

<b>Fiscal Impact of Repealing the Bed Tax with Rebate</b>		
	<b>FY06</b>	<b>FY07</b>
<b>FY07 REVENUE</b>	<b>Rebate</b>	<b>Repeal Surcharge</b>
Federal Bed Tax Payments	-\$14,400	-\$13,470
State Bed Tax Payments		-\$5,340
Private Bed Tax Payments	-\$1,450	-\$2,090
<b>TOTAL Revenue</b>	<b>-\$15,850</b>	<b>-\$20,900</b>
<b>APPROPRIATIONS</b>		
Medicaid Nursing Homes Reimbursements		-\$5,340
<b>TOTAL Appropriations</b>	<b>\$0</b>	<b>-\$5,340</b>
<b>Net Impact (Revenue less Appropriation)</b>	<b>-\$15,850</b>	<b>-\$15,560</b>

Repealing the Bed Surcharge

The consensus revenue estimating group expects the bed surcharge to generate \$20.9 million general fund revenue in FY07. According to a joint estimate by TRD and HSD, about 90 percent of this \$20.9 million will come from Medicaid reimbursements: \$13.5 million from federal Medicaid matching funds and \$5.3 million from state Medicaid matching funds (based on an HSD projection that the federal match for this service will be 71.61 percent in FY07). The remaining 10 percent, or \$2.1 million, is paid by about 980 New Mexicans who pay the bed surcharge out-of-pocket.

In addition to this \$20.9 million general fund revenue reduction, repealing the bed tax should reduce state Medicaid reimbursements to nursing homes by \$5.3 million. This reduction will occur through action by HSD to reduce reimbursement rates rather than through legislation. Once these rates are reduced, the true impact on the state budget will fall from \$20.9 million to \$15.6 million (see table above).

The revenue decrease associated with repealing the bed surcharge is classified as recurring based on recurring revenue estimates reported by DFA and LFC in FY07 budget documents. It is likely that the consensus revenue estimating group will reclassify bed tax revenue as nonrecurring to reflect current law, which repeals the bed surcharge at the end of FY07 under current law.

Personal Income Tax Rebate

TRD estimates that the rebate created in House Bill 84 will reduce general fund personal income tax revenue by about \$1.45 million in FY06, a nonrecurring impact. HSD reports that it received 503 claims totaling \$725 thousand in income tax credits for payments to nursing homes in tax year 2004. This amount should be equal to the amount that will be rebated to private-payers of the bed surcharge. TRD assumes that the rebate will be the same size in tax year 2005 for a total of \$1.45 million (\$725 thousand X 2).

In addition to the cost of creating a rebate for New Mexicans who paid the bed surcharge out of pocket, HSD is concerned that the rebate will cause CMS to withhold federal Medicaid reimbursements for the bed surcharge, as they did in FY05 (see Significant Issues). HSD is currently appealing to CMS to get about \$14.4 million in withheld reimbursements for FY05. HSD reports that CMS would likely withhold a similar amount of payments for FY06.

### **SIGNIFICANT ISSUES**

Under current law, a daily bed surcharge of up to \$10 per day may be imposed on licensed nursing homes, intermediate care facilities for mentally retarded (ICF-MR), and residential treatment facilities. The rate, which is set by HSD, is currently \$8.82 per day on nursing homes and ICF-MR, while the rate is \$0 for residential treatment facilities. Although the bed surcharge is levied on health facilities, it is understood that its cost is passed on to people who occupy beds at these facilities. The bed surcharge is set to repeal on June 30, 2007.

The bed surcharge was passed in the 2004 legislative session along with a nursing home receipts personal income tax credit that directly reimbursed New Mexicans who paid the surcharge out-of-pocket (Section 7-2-18.12). The Centers for Medicare and Medicaid Services (CMS) said it would not pay the bed surcharge so long as this personal income tax credit made the federal government the only entity paying the surcharge. CMS withheld \$14.9 million in federal reimbursements before the credit was repealed in the 2005 legislative session.

In addition to repealing the nursing home receipts personal income tax credit, the 2005 Legislature passed a \$2.8 thousand per year personal income tax credit for persons over 65 with annual out-of-pocket medical expenses over \$28 thousand (Section 7-2-18.3 NMSA 1978). Although there was no strict relationship between repealing the original bed surcharge personal income tax credit and passing this new credit, it is generally thought that the new credit was meant to offset the costs for private-payers from the bed surcharge. The new credit applies to many taxpayers who do not pay the bed surcharge, but fails to shield people in long-term care facilities under 65 from the bed surcharge.

### **ADMINISTRATIVE IMPLICATIONS**

TRD reports it will experience administrative savings if the bed surcharge is repealed. Administering the rebate will impose a moderate impact on TRD.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 84 duplicates House Bill 162 and Senate Bill 213. It relates to Senate Bills 88 and 113: these bills repeal the bed surcharge but do not create a personal income tax rebate.

### **TECHNICAL ISSUES**

Although HSD reimbursement rates for nursing homes were increased when the bed surcharge was enacted, this bill does not guarantee that HSD must decrease them when the bed surcharge is repealed. Consider adding a contingent decrease in appropriations for Medical Assistance Division of HSD to the General Appropriation Act in the amount of \$5.34 million, contingent on repeal of the bed surcharge and requiring HSD to decrease nursing home reimbursement rates by the proper amount.

HSD notes that the bill repeals sections governing administration and enforcement of the bed surcharge but does not repeal Section 27-11-6 NMSA 1978, which allows HSD to impose the surcharge. This technical issue could be solved administratively if HSD reduces the amount of the surcharge from \$8.82 to \$0.

**OTHER SUBSTANTIVE ISSUES**

Although the personal income tax credit for people over 65 with medical expenses over \$28 thousand per year was not a direct replacement for the original bed surcharge personal income tax credit, repeal of the bed surcharge may warrant repeal of the PIT credit for these people over 65. This credit is estimated to reduce personal income tax revenue to the general fund by about \$6.6 million per year.

SS/yr