

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS TAX DEDUCTIONS FOR CERTAIN HEALTH CARE PROVIDERS; PROVIDING AN INCOME TAX CREDIT FOR RURAL HEALTH CARE PRACTITIONERS; PROVIDING A GROSS RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS FROM THE SALE OF OXYGEN AND OXYGEN SERVICES; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR INDIAN HEALTH SERVICE PAYMENTS FOR CERTAIN MEDICAL AND HEALTH SERVICES; ADDING CERTAIN CLINICAL LABORATORIES TO HEALTH CARE PRACTITIONERS ELIGIBLE FOR A GROSS RECEIPTS TAX DEDUCTION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS RELATED TO FITTING AND DISPENSING HEARING AIDS AND VISION AIDS; PROVIDING A PHASED-IN CREDIT FOR THE STATE PORTION OF THE GROSS RECEIPTS TAX FOR CERTAIN HOSPITALS; PROVIDING A GROSS RECEIPTS TAX CREDIT FOR UNPAID SERVICES OF A PHYSICIAN WHILE ON CALL; REVISING TAX INCENTIVES FOR HEALTH INSURERS THAT ARE ASSESSED PURSUANT TO THE MEDICAL INSURANCE POOL .

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION ADJUSTMENT--TAX ADMINISTRATION SUSPENSE FUND--CREDIT FOR RECEIPTS OF HOSPITALS.--Distributions from the tax administration suspense fund to the general fund of net receipts attributable to the gross receipts tax shall be

adjusted for the full cost of credits issued pursuant to the Gross Receipts and Compensating Tax Act for receipts of hospitals licensed by the department of health."

Section 2. A new section of the Income Tax Act is enacted to read:

"TAX CREDIT--RURAL HEALTH CARE PRACTITIONER TAX CREDIT.--

A. A taxpayer who files an individual New Mexico tax return, who is not a dependent of another individual, who is an eligible health care practitioner and who has provided health care services in New Mexico in a rural health care underserved area in a taxable year, may claim a credit against the tax liability imposed by the Income Tax Act. The credit provided in this section may be referred to as the "rural health care practitioner tax credit".

B. The rural health care practitioner tax credit may be claimed and allowed in an amount that shall not exceed five thousand dollars (\$5,000) for all eligible physicians, osteopathic physicians, dentists, clinical psychologists, podiatrists and optometrists who qualify pursuant to the provisions of this section, except the credit shall not exceed three thousand dollars (\$3,000) for all eligible dental hygienists, physician assistants, certified nurse-midwives, certified registered nurse anesthetists, certified nurse practitioners and clinical nurse specialists.

C. To qualify for the rural health care practitioner tax credit, an eligible health care practitioner shall have provided health care during a taxable year for at least two thousand eighty hours at a practice site located in an approved, rural health care underserved area. An eligible rural health care practitioner who provided health care services for at least one thousand forty hours but less than two thousand eighty hours at a practice site located in an approved rural health care underserved area during a taxable year is eligible for one-half of the credit amount.

D. Before an eligible health care practitioner may claim the rural health care practitioner tax credit, the practitioner shall submit an application to the department of health that describes the practitioner's clinical practice and contains additional information that the department of health may require. The department of health shall determine whether an eligible health care practitioner qualifies for the rural health care practitioner tax credit, and shall issue a certificate to each qualifying eligible health care practitioner. The department of health shall provide the taxation and revenue department appropriate information for all eligible health care practitioners to whom certificates are issued.

E. A taxpayer claiming the credit provided by this section shall submit a copy of the certificate issued by the

department of health with the taxpayer's New Mexico income tax return for the taxable year. If the amount of the credit claimed exceeds a taxpayer's tax liability for the taxable year in which the credit is being claimed, the excess may be carried forward for three consecutive taxable years.

F. As used in this section:

(1) "eligible health care practitioner"

means:

(a) a certified nurse-midwife licensed by the board of nursing as a registered nurse and licensed by the public health division of the department of health to practice nurse-midwifery as a certified nurse-midwife;

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act;

(c) an optometrist licensed pursuant to the provisions of the Optometry Act;

(d) an osteopathic physician licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978 or an osteopathic physician assistant licensed pursuant to the provisions of the Osteopathic Physicians' Assistants Act;

(e) a physician or physician assistant licensed pursuant to the provisions of Chapter 61, Article 6 NMSA 1978;

(f) a podiatrist licensed pursuant to the provisions of the Podiatry Act;

(g) a clinical psychologist licensed pursuant to the provisions of the Professional Psychologist Act; and

(h) a registered nurse in advanced practice who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

(2) "health care underserved area" means a geographic area or practice location in which it has been determined by the department of health, through the use of indices and other standards set by the department of health, that sufficient health care services are not being provided;

(3) "practice site" means a private practice, public health clinic, hospital, public or private nonprofit primary care clinic or other health care service location in a health care underserved area; and

(4) "rural" means an area or location identified by the department of health as falling outside of an urban area."

Section 3. Section 7-9-73.2 NMSA 1978 (being Laws 1998, Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as amended) is amended to read:

"7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND
GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--OXYGEN.--

A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider may be deducted from gross receipts and governmental gross receipts.

B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353."

Section 4. Section 7-9-77.1 NMSA 1978 (being Laws 1998, Chapter 96, Section 1, as amended) is amended to read:

"7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN
MEDICAL AND HEALTH CARE SERVICES.--

A. Receipts from payments by the United States government or any agency thereof for provision of medical and other health services by medical doctors, osteopathic physicians, doctors of oriental medicine, athletic trainers, chiropractic physicians, counselor and therapist

practitioners, dentists, massage therapists, naprapaths, nurses, nutritionists, dietitians, occupational therapists, optometrists, pharmacists, physical therapists, psychologists, radiologic technologists, respiratory care practitioners, audiologists, speech-language pathologists, social workers and podiatrists or of medical, other health and palliative services by hospices or nursing homes to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

B. Receipts from payments by a third-party administrator of the federal TRICARE program for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

C. Receipts from payments by or on behalf of the Indian health service of the United States department of health and human services for provision of medical and other health services by medical doctors and osteopathic physicians to covered beneficiaries may be deducted from gross receipts.

D. Receipts from payments by the United States government or any agency thereof for medical services provided by a clinical laboratory to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

E. Receipts from payments by the United States government or any agency thereof for medical, other health and palliative services provided by a home health agency to medicare beneficiaries pursuant to the provisions of Title 18 of the federal Social Security Act may be deducted from gross receipts.

F. For the purposes of this section:

(1) "athletic trainer" means a person licensed as an athletic trainer pursuant to the provisions of Chapter 61, Article 14D NMSA 1978;

(2) "chiropractic physician" means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act;

(3) "clinical laboratory" means a laboratory accredited pursuant to 42 USCA 263a;

(4) "counselor and therapist practitioner" means a person licensed to practice as a counselor or therapist pursuant to the provisions of Chapter 61, Article 9A NMSA 1978;

(5) "dentist" means a person licensed to practice as a dentist pursuant to the provisions of Chapter 61, Article 5A NMSA 1978;

(6) "doctor of oriental medicine" means a person licensed as a physician to practice acupuncture or oriental medicine pursuant to the provisions of Chapter 61,

Article 14A NMSA 1978;

(7) "home health agency" means a for-profit entity that is licensed by the department of health and certified by the federal centers for medicare and medicaid services as a home health agency and certified to provide medicare services;

(8) "hospice" means a for-profit entity licensed by the department of health as a hospice and certified to provide medicare services;

(9) "massage therapist" means a person licensed to practice massage therapy pursuant to the provisions of Chapter 61, Article 12C NMSA 1978;

(10) "medical doctor" means a person licensed as a physician to practice medicine pursuant to the provisions of the Medical Practice Act;

(11) "naprapath" means a person licensed as a naprapath pursuant to the provisions of Chapter 61, Article 12E NMSA 1978;

(12) "nurse" means a person licensed as a registered nurse pursuant to the provisions of Chapter 61, Article 3 NMSA 1978;

(13) "nursing home" means a for-profit entity licensed by the department of health as a nursing home and certified to provide medicare services;

(14) "nutritionist" or "dietitian" means a

person licensed as a nutritionist or dietitian pursuant to the provisions of Chapter 61, Article 7A NMSA 1978;

(15) "occupational therapist" means a person licensed as an occupational therapist pursuant to the provisions of Chapter 61, Article 12A NMSA 1978;

(16) "osteopathic physician" means a person licensed as an osteopathic physician pursuant to the provisions of Chapter 61, Article 10 NMSA 1978;

(17) "optometrist" means a person licensed to practice optometry pursuant to the provisions of Chapter 61, Article 2 NMSA 1978;

(18) "pharmacist" means a person licensed as a pharmacist pursuant to the provisions of Chapter 61, Article 11 NMSA 1978;

(19) "physical therapist" means a person licensed as a physical therapist pursuant to the provisions of Chapter 61, Article 12D NMSA 1978;

(20) "podiatrist" means a person licensed as a podiatrist pursuant to the provisions of the Podiatry Act;

(21) "psychologist" means a person licensed as a psychologist pursuant to the provisions of Chapter 61, Article 9 NMSA 1978;

(22) "radiologic technologist" means a person licensed as a radiologic technologist pursuant to the provisions of Chapter 61, Article 14E NMSA 1978;

(23) "respiratory care practitioner" means a person licensed as a respiratory care practitioner pursuant to the provisions of Chapter 61, Article 12B NMSA 1978;

(24) "social worker" means a person licensed as an independent social worker pursuant to the provisions of Chapter 61, Article 31 NMSA 1978;

(25) "speech-language pathologist" means a person licensed as a speech-language pathologist pursuant to the provisions of Chapter 61, Article 14B NMSA 1978; and

(26) "TRICARE program" means the program defined in 10 U.S.C. 1072(7)."

Section 5. Section 7-9-93 NMSA 1978 (being Laws 2004, Chapter 116, Section 6, as amended) is amended to read:

"7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

A. Receipts from payments by a managed health care provider or health care insurer for commercial contract services or medicare part C services provided by a health care practitioner that are not otherwise deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts, provided that the services are within the scope of practice of the person providing the service. Receipts from fee-for-service payments by a health care insurer may not be deducted from gross receipts. The deduction provided by this section shall be

separately stated by the taxpayer.

B. For the purposes of this section:

(1) "commercial contract services" means health care services performed by a health care practitioner pursuant to a contract with a managed health care provider or health care insurer other than those health care services provided for medicare patients pursuant to Title 18 of the federal Social Security Act or for medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(2) "health care insurer" means a person that:

(a) has a valid certificate of authority in good standing pursuant to the New Mexico Insurance Code to act as an insurer, health maintenance organization or nonprofit health care plan or prepaid dental plan; and

(b) contracts to reimburse licensed health care practitioners for providing basic health services to enrollees at negotiated fee rates;

(3) "health care practitioner" means:

(a) a chiropractic physician licensed pursuant to the provisions of the Chiropractic Physician Practice Act;

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act;

(c) a doctor of oriental medicine licensed pursuant to the provisions of the Acupuncture and Oriental Medicine Practice Act;

(d) an optometrist licensed pursuant to the provisions of the Optometry Act;

(e) an osteopathic physician licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978 or an osteopathic physician's assistant licensed pursuant to the provisions of the Osteopathic Physicians' Assistants Act;

(f) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act;

(g) a physician or physician assistant licensed pursuant to the provisions of Chapter 61, Article 6 NMSA 1978;

(h) a podiatrist licensed pursuant to the provisions of the Podiatry Act;

(i) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act;

(j) a registered lay midwife registered by the department of health;

(k) a registered nurse or licensed practical nurse licensed pursuant to the provisions of the Nursing Practice Act;

(l) a registered occupational therapist licensed pursuant to the provisions of the Occupational

Therapy Act;

(m) a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act;

(n) a speech-language pathologist or audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(o) a professional clinical mental health counselor, marriage and family therapist or professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act who has obtained a master's degree or a doctorate;

(p) an independent social worker licensed pursuant to the provisions of the Social Work Practice Act; and

(q) a clinical laboratory that is accredited pursuant to 42 U.S.C. Section 263a but that is not a laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C. Section 1395x;

(4) "managed health care provider" means a person that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in a plan through its own employed health care providers or by contracting with selected or participating health care providers. "Managed health care

provider" includes only those persons that provide comprehensive basic health care services to enrollees on a contract basis, including the following:

- (a) health maintenance organizations;
- (b) preferred provider organizations;
- (c) individual practice associations;
- (d) competitive medical plans;
- (e) exclusive provider organizations;
- (f) integrated delivery systems;
- (g) independent physician-provider organizations;
- (h) physician hospital-provider organizations; and
- (i) managed care services organizations; and

(5) "medicare part C services" means services performed pursuant to a contract with a managed health care provider for medicare patients pursuant to Title 18 of the federal Social Security Act."

Section 6. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS--HEARING AIDS AND VISION AIDS AND RELATED SERVICES.--

A. Receipts that are not exempt from gross receipts taxation and are not deductible pursuant to another

provision of the Gross Receipts and Compensating Tax Act that are from the sale of vision aids or hearing aids or related services may be deducted from gross receipts.

B. As used in this section:

(1) "hearing aid" means a small electronic prescription device that amplifies sound and is usually worn in or behind the ear of a person that compensates for impaired hearing, including cochlear implants, amplification systems or other devices that are:

(a) specifically designed for use by and marketed to persons with hearing loss; and

(b) not normally used by a person who does not have a hearing loss;

(2) "low vision" means impaired vision with a significant reduction in visual function that cannot be corrected with conventional glasses or contact lenses;

(3) "related services" means services required to fit or dispense hearing aids or vision aids;

(4) "vision aid" means closed circuit television systems, monoculars, magnification systems, speech output devices or other systems that are:

(a) specifically designed for use by and marketed to persons with low vision or visual impairments; and

(b) not normally used by a person who

does not have low vision or a visual impairment; and

(5) "visual impairment" means a central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or a limitation in the fields of vision so that the widest diameter of the visual field subtends an angle of twenty degrees or less."

Section 7. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"CREDIT--GROSS RECEIPTS TAX--RECEIPTS OF CERTAIN HOSPITALS.--

A. A hospital licensed by the department of health may claim a credit for each reporting period against the gross receipts tax due for that reporting period as follows:

(1) for a hospital located in a municipality:

(a) on or after July 1, 2007 but before July 1, 2008, in an amount equal to seven hundred fifty-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(b) on or after July 1, 2008 but before July 1, 2009, in an amount equal to one and fifty-one hundredths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(c) on or after July 1, 2009 but before July 1, 2010, in an amount equal to two and two hundred sixty-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(d) on or after July 1, 2010 but before July 1, 2011, in an amount equal to three and two hundredths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(e) on or after July 1, 2011, in an amount equal to three and seven hundred seventy-five thousandths percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(2) for a hospital located in the unincorporated area of a county:

(a) on or after July 1, 2007 but before July 1, 2008, in an amount equal to one percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(b) on or after July 1, 2008, but before July 1, 2009, in an amount equal to two percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(c) on or after July 1, 2009 but before July 1, 2010, in an amount equal to three percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken;

(d) on or after July 1, 2010 but before July 1, 2011, in an amount equal to four percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken; and

(e) on or after July 1, 2011, in an amount equal to five percent of the hospital's taxable gross receipts for that reporting period after all applicable deductions have been taken.

B. For the purposes of this section, "hospital" means a facility providing emergency or urgent care, inpatient medical care and nursing care for acute illness, injury, surgery or obstetrics and includes a facility licensed by the department of health as a critical access hospital, general hospital, long-term acute care hospital, psychiatric hospital, rehabilitation hospital, limited services hospital and special hospital."

Section 8. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"CREDIT--GROSS RECEIPTS TAX--UNPAID CHARGES FOR SERVICES PROVIDED IN A HOSPITAL.--

A. A licensed medical doctor or licensed

osteopathic physician may claim a credit against gross receipts taxes due in the following amounts:

(1) from July 1, 2007 through June 30, 2008, thirty-three percent of the value of unpaid qualified health care services;

(2) from July 1, 2008 through June 30, 2009, sixty-seven percent of the value of unpaid qualified health care services; and

(3) on and after July 1, 2009, one hundred percent of the value of unpaid qualified health care services.

B. As used in this section:

(1) "qualified health care services" means medical care services provided by a licensed medical doctor or licensed osteopathic physician while on call to a hospital; and

(2) "value of unpaid qualified health care services" means the amount that is charged for qualified health care services, not to exceed one hundred thirty percent of the reimbursement rate for the services under the medicaid program administered by the human services department, that remains unpaid one year after the date of billing and that the licensed medical doctor or licensed osteopathic physician has reason to believe will not be paid because:

(a) at the time the services were provided, the person receiving the services had no health

insurance or had health insurance that did not cover the services provided;

(b) at the time the services were provided, the person receiving the services was not eligible for medicaid; and

(c) the charges are not reimbursable under a program established pursuant to the Indigent Hospital and County Health Care Act."

Section 9. Section 59A-54-10 NMSA 1978 (being Laws 1989, Chapter 154, Section 10, as amended by Laws 2005, Chapter 301, Section 5 and by Laws 2005, Chapter 305, Section 5) is amended to read:

"59A-54-10. ASSESSMENTS.--

A. Following the close of each fiscal year, the pool administrator shall determine the net premium, being premiums less administrative expense allowances, the pool expenses and claim expense losses for the year, taking into account investment income and other appropriate gains and losses. The assessment for each insurer shall be determined by multiplying the total cost of pool operation by a fraction, the numerator of which equals that insurer's premium and subscriber contract charges or their equivalent for health insurance written in the state during the preceding calendar year and the denominator of which equals the total of all premiums and subscriber contract charges written in the state;

provided that premium income shall include receipts of medicaid managed care premiums but shall not include any payments by the secretary of health and human services pursuant to a contract issued under Section 1876 of the Social Security Act, as amended. The board may adopt other or additional methods of adjusting the formula to achieve equity of assessments among pool members, including assessment of health insurers and reinsurers based upon the number of persons they cover through primary, excess and stop-loss insurance in the state.

B. If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

C. The proportion of participation of each member in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed with it by the member. Any deficit incurred by the pool shall be recouped by assessments apportioned among the members of the pool pursuant to the assessment formula provided by Subsection A of this section; provided that the assessment for any pool member shall be allowed as a fifty-percent credit on the premium tax return for that member and a

seventy-five-percent credit on the premium tax return for that member for the assessments attributable to pool policy holders that receive premiums, in whole or in part, through the federal Ryan White CARE Act, the Ted R. Montoya hemophilia program at the university of New Mexico health sciences center, the children's medical services bureau of the public health division of the department of health or other program receiving state funding or assistance.

D. The board may abate or defer, in whole or in part, the assessment of a member of the pool if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligation. In the event an assessment against a member of the pool is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in Subsection A of this section. The member receiving the abatement or deferment shall remain liable to the pool for the deficiency for four years."

Section 10. APPLICABILITY.--

A. The provisions of Section 2 of this act apply to taxable years beginning on or after January 1, 2007.

B. The provisions of Section 7 of this act apply to reporting periods beginning on or after July 1, 2007.

C. The premium tax credit in Section 9 of this act shall apply to assessments made pursuant to the Medical Insurance Pool Act beginning on or after July 1, 2007.

Section 11. EFFECTIVE DATE.--The effective date of the provisions of Sections 3 through 6 and 8 of this act is July 1, 2007.
