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HOUSE BILL 560

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Nora Espinoza

AN ACT

RELATING TO PUBLIC HEALTH EXPENSES; PROVIDING A HEALTH CARE TAX CREDIT; PRESERVING FREEDOM FOR CITIZENS TO PROVIDE FOR THEIR HEALTH CARE.

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

SECTION 1. A new section of the Income Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ CREDIT--HEALTH CARE PURCHASES CREDIT.--

A. A person who is a New Mexico resident and who files an income tax return pursuant to the Income Tax Act may apply for, and the department may approve, a refundable credit against the income tax liability of the person, for expenditures made to obtain health care insurance. For an individual and that individual's spouse and dependents, the credit may be approved in an amount equal to the premium

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1 percentage multiplied by the premium paid for health care
2 insurance. For a business, the credit may be approved in an
3 amount equal to fifty percent of the premiums paid during the
4 taxable year for the employees of the business, not including
5 elective contributions made on behalf of the employees. For a
6 tax-exempt small business, the credit may be approved in an
7 amount equal to thirty-five percent of the premiums paid during
8 the taxable year for the employees of the tax-exempt small
9 business, not including elective contributions made on behalf
10 of the employees. The credit provided in this section may be
11 referred to as the "health care income tax credit".

12 B. The purpose of the health care income tax credit
13 is to provide a tax credit substantially similar to the tax
14 credits provided in Sections 1401 and 1421 of the federal
15 Patient Protection and Affordable Care Act to persons who
16 purchase health care insurance.

17 C. The department shall report the number of people
18 claiming the health care income tax credit and the aggregate
19 amount of credits allowed pursuant to this section and require
20 the tax credit recipient to report annually by August 31 on a
21 form developed by the department information required by the
22 department to evaluate the effectiveness of the credit.

23 D. A health care income tax credit shall not be
24 allowed for premiums included in the person's itemized
25 deductions, as defined in Section 63 of the Internal Revenue

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1 Code or pursuant to the Income Tax Act.

2 E. A husband and wife who file separate returns for
3 a taxable year in which they could have filed a joint return
4 may each claim only one-half of the health care income tax
5 credit that would have been allowed on a joint return.

6 F. A person who otherwise qualifies for and claims
7 a health care income tax credit who is a member of a
8 partnership or other business association may claim a credit
9 only in proportion to the taxpayer's interest in the
10 partnership or business association. The total credit claimed
11 in the aggregate by all members of the partnership or business
12 association in a taxable year with respect to premiums paid by
13 the partnership or business association for health care
14 insurance for employees shall not exceed the amount of credit
15 allowable pursuant to this section had the credit been claimed
16 by a single taxpayer.

17 G. Any amount of the health care income tax credit
18 allowed by the department that exceeds the income tax liability
19 of the person submitting a return in the taxable year pursuant
20 to this section is refundable.

21 H. The department shall compile a report annually
22 for the revenue stabilization and tax policy committee that
23 sets forth the number of taxpayers approved to receive health
24 care income tax credits, the aggregate amount of credits
25 approved and the average and median amounts of credits

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1 approved. The department shall analyze every three years
2 beginning in 2013 whether the health care income tax credit is
3 performing the purpose for which it was created.

4 I. The health care income tax credit shall be
5 applied to the taxpayer's tax liability before application of
6 any other tax credit claimed for the taxable year by the
7 taxpayer.

8 J. Acceptance of the health care income tax credit
9 is authorization for the department to reveal the amount of the
10 tax credit claimed by the person filing a return pursuant to
11 this section, aggregated with all other return filers pursuant
12 to this section when possible, as needed to report fully as
13 required by this section to the revenue stabilization and tax
14 policy committee of the legislature.

15 K. As used in this section:

16 (1) "business" means an "eligible small
17 employer" as that term is defined in Section 1421 of the
18 federal Patient Protection and Affordable Care Act, but does
19 not mean a corporation required to file a return pursuant to
20 the Corporate Income and Franchise Tax Act;

21 (2) "FPL" means the federal poverty level;

22 (3) "health care insurance" means an insurance
23 plan that is available to individuals or to small groups
24 through the employer of the group and that is not a qualified
25 health plan as that term is used in the federal Patient

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1 Protection and Affordable Care Act;

2 (4) "person" means:

3 (a) an individual who is a resident, who
4 may or may not have a liability pursuant to the Income Tax Act
5 and whose adjusted gross income is equal to or less than four
6 hundred percent of the federal poverty level;

7 (b) a business, that may or may not have
8 a tax liability pursuant to the Income Tax Act; and

9 (c) a tax-exempt small business;

10 (5) "premium percentage" means:

11 If adjusted gross income is:	Premium percentage is:
12 Up to 133% of FPL	98%
13 Over 133% but not over 150% of FPL	96%
14 Over 150% but not over 200% of FPL	93.7%
15 Over 200% but not over 250% of FPL	91.8%
16 Over 250% but not over 400% of FPL	90.5%
17 Over 400% of FPL	0%; and

18 (6) "tax-exempt small business" means a
19 business that is not required to pay income tax pursuant to the
20 Internal Revenue Code and the Income Tax Act."

21 SECTION 2. [NEW MATERIAL] LAWFUL HEALTH CARE SERVICES--
22 PAYMENT.--

23 A. A person may make direct payment for lawful
24 health care services and shall not be required to pay penalties
25 or fines for making direct payment for lawful health care

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1 services.

2 B. A health care provider may accept direct payment
3 for lawful health care services and shall not be required to
4 pay penalties or fines for accepting direct payment from a
5 person for lawful health care services.

6 C. The purchase or sale of health insurance shall
7 not be prohibited.

8 D. A resident shall not be mandated to purchase
9 health insurance pursuant to any law enacted by the United
10 States congress that exceeds the congress' authority to
11 regulate commerce with foreign nations and among the several
12 states and with the Indian tribes as provided in Article 1,
13 Section 8 of the United States constitution.

14 E. This section does not:

15 (1) affect which health care services a health
16 care provider or hospital is required to perform or provide;

17 (2) affect which health care services are
18 permitted by law;

19 (3) prohibit care provided pursuant to any
20 statutes enacted by the legislature relating to workers'
21 compensation;

22 (4) affect laws or rules in effect as of
23 January 1, 2009; or

24 (5) affect the terms or conditions of any
25 health care system to the extent that those terms and

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1 conditions do not have the effect of punishing a person or
2 employer for making direct payment for lawful health care
3 services or a health care provider or hospital for accepting
4 direct payment from a person or employer for lawful health care
5 services.

6 F. As used in this section:

7 (1) "direct payment" means payment for lawful
8 health care services without a public or private third party,
9 not including an employer, paying for any portion of the
10 service;

11 (2) "health care system" means a public or
12 private entity whose function or purpose is the management of,
13 processing of, enrollment of individuals for or payment for, in
14 full or in part, health care services or health care
15 information for its participants;

16 (3) "lawful health care services" means any
17 health-related service or treatment to the extent that the
18 service or treatment is permitted or not prohibited by law or
19 regulation that may be provided by persons or businesses
20 otherwise permitted to offer such services; and

21 (4) "penalty or fine" means a civil or
22 criminal penalty or fine, tax, salary or wage withholding or
23 surcharge or any named fee with a similar effect established by
24 law or rule by a government-established, -created or
25 -controlled agency that is used to punish or discourage the

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1 exercise of rights protected under this section.

2 SECTION 3. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2011.

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