Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

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

		ORIGINAL DATE	02/01/13		
SPONSOR	Trujillo	**LAST UPDATED**	02/06/13	**HB**	99/aHHGIC
SHORT TITLE	Durable Medical Equipment Gross Receipts			**SB**	
				ANALYST	Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
		($1,772.0)	($1,812.0)	($1,854.0)	Recurring	General Fund
		($1,181.0)	($1,208.0)	($1,236.0)	Recurring	Local Governments
		($2,953.0)	($3,021.0)	($3,091.0)	Recurring	Total

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB 269 (if amended)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Human Services Department (HSD)
Department of Health (DOH)
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HHGIC Amendment

The House Health, Government & Indian Affairs Committee amendment to House Bill 99 changes the effective date from July 1, 2013 to July 1, 2014.

Synopsis of Original Bill

House Bill 99 amends Section 7-9-73.2 NMSA 1978 to expand the gross receipts tax and governmental gross receipts tax deduction for prescription drugs and oxygen to include durable medical equipment (DME), infusion therapy services, and medical supplies. Only a taxpayer participating in the New Mexico Medicaid programs, whose gross receipts are no less than 90 percent derived from the sale or rental of prescribed DME, prescribed medical supplies, oxygen or oxygen services or infusion therapy services qualifies for the deduction.

The purpose of the deductions provided is to help protect jobs and retain businesses in New Mexico that sell or rent prescribed durable medical equipment, infusion therapy services and prescribed medical supplies.

The bill specifies that DME and medical supplies must have been prescribed by a physician or other person licensed by the state to prescribe. The bill also provides applicable definitions of durable medical equipment, medical supplies, and prescription drugs.

The effective date of this bill is July 1, 2013. The sunset date of this bill is July 1, 2024. (SB 269 has a sunset date of July 1, 2023.)

FISCAL IMPLICATIONS

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure’s fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

The HHGIAC amendment delays the fiscal impact to FY14 from FY13.

As provided by TRD, according to the information provided by the industry, there are about 54 New Mexico durable medical equipment suppliers licensed by Medicare and Medicaid, and whose sales are no less than 90 percent prescribed DME or prescribed medical supplies. The bill excludes pharmacies and large multistate medical equipment sellers from the deduction.

Based on TRD data, these 54 entities reported approximately $39 million dollars in taxable gross receipts and $2.8 million in gross receipts tax in FY12. With no way to differentiate between qualifying and non-qualifying gross receipts, and given that the bill specifies that no less than 90 percent of sales come from prescribed DME, this analysis assumes that all gross receipts from qualifying entities will be deducted. Annual growth rates follow Global Insight forecast Health Care CPI growth.

When the Medicaid Program, through the managed care organizations, pays providers for rentals of these items, gross receipts tax is paid in addition to the amount that the program allows for the service. Since this tax payment includes a federal share (approximately 70 percent of the tax amount), the Medicaid Program would have to cease paying the provider for the gross receipts tax if the provider is exempt from paying that amount to the TRD. The payment of the gross receipts tax would not continue to be an allowable payment using federal funds. Therefore, Medicaid would experience a decrease in payments estimated to be $105,000 annually, of which approximately $31,500 would be state general funds.

SIGNIFICANT ISSUES

This bill intends to exclude pharmacies and multistate sellers from durable medical equipment suppliers certified by Medicare and Medicaid. On its face, this looks like an extension of the medical services deduction at Section 7-9-93 NMSA 1978. Section 7-9-93 was enacted primarily because Medicare does not reimburse the providers for their gross receipts taxes paid. Thus, doctors and other health care providers working in the State were receiving less net compensation than their colleagues working in other states.

This bill will further narrow the gross receipts tax base and would move New Mexico away from the tax policy goal of a gross receipts tax with a broad equitable base and a low rate.

As reported by HSD, HB 99 restricts the applicability of the tax deduction to providers participating in the state Medicaid program. The number of DME providers in New Mexico who participate in the Medicaid program has been decreasing. This appears to result from a decreasing type of business of this nature in New Mexico, rather than because the providers are unwilling to participate in Medicaid. The provider will only benefit financially from this bill if the provider continues to charge gross receipts tax to the patient, but does not, in turn, pay that money collected to the TRD.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to revenue stabilization and tax policy committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

According to TRD, requiring taxpayers to separately state deductions is an inaccurate method of capturing this information. In addition, current confidentiality laws (Section 7-1-8 NMSA 1978 et. seq.) may limit the information that can be reported to the Revenue Stabilization and Tax Policy (RSTP) committee in determining if the deduction is performing its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD reports a high administrative burden.

TRD is upgrading its data systems relating to GenTax, requiring that the systems be "locked-down" to any modification until July 1, 2013. The department's IT resources are fully engaged with contractors during this period to test and validate the systems' upgrades, and pursuant to contractual agreements and best-practice standards may not undertake systems changes until system upgrade verifications are completed. TRD's IT personnel are unavailable to begin to develop systems modifications (e.g., new deductions, data reporting, functionality, etc.) until after July 1st, and therefore NO SYSTEMS CHANGES CAN BE IMPLEMENTED UNTIL OCTOBER 1, 2013, to allow adequate time for development, testing and verification of any new system requirements. As a result TRD will not be able to implement the GenTax modifications necessary to record and claim the tax deduction until at least October 1, 2013, after the effective date of the legislation.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

EWM/bm:svb