

1 SENATE BILL 227

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Steven P. Neville

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10 AN ACT

11 RELATING TO TAXATION; EXPANDING THE TYPE OF PROVIDERS ELIGIBLE
12 FOR CERTAIN HEALTH CARE GROSS RECEIPTS TAX DEDUCTIONS.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN MEDICAL
18 AND HEALTH CARE SERVICES.--

19 A. Receipts of a health care [~~practitioner~~]
20 provider from payments by the United States government or any
21 agency thereof for provision of medical and other health
22 services by a health care [~~practitioner~~] provider or of medical
23 or other health and palliative services by hospices or nursing
24 homes to medicare beneficiaries pursuant to the provisions of
25 Title 18 of the federal Social Security Act may be deducted

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1 from gross receipts.

2 B. Receipts of a health care [~~practitioner~~]
3 provider from payments by a third-party administrator of the
4 federal TRICARE program for provision of medical and other
5 health services by medical doctors and osteopathic physicians
6 to covered beneficiaries may be deducted from gross receipts.

7 C. Receipts of a health care [~~practitioner~~]
8 provider from payments by or on behalf of the Indian health
9 service of the United States department of health and human
10 services for provision of medical and other health services by
11 medical doctors and osteopathic physicians to covered
12 beneficiaries may be deducted from gross receipts.

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

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

25 F. Prior to July 1, 2024, receipts of a dialysis

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1 facility from payments by the United States government or any
2 agency thereof for medical and other health services provided
3 by the dialysis facility to medicare beneficiaries pursuant to
4 the provisions of Title 18 of the federal Social Security Act
5 may be deducted from gross receipts.

6 G. A taxpayer allowed a deduction pursuant to this
7 section shall report the amount of the deduction separately in
8 a manner required by the department. A taxpayer who has
9 receipts that are deductible pursuant to this section and
10 Section 7-9-93 NMSA 1978 shall deduct the receipts under this
11 section prior to calculating the receipts that may be deducted
12 pursuant to Section 7-9-93 NMSA 1978.

13 H. The department shall compile an annual report on
14 the deductions created pursuant to this section that shall
15 include the number of taxpayers approved by the department to
16 receive each deduction, the aggregate amount of deductions
17 approved and any other information necessary to evaluate the
18 effectiveness of the deductions. The department shall ~~compile~~
19 ~~and~~ present the ~~[annual reports]~~ report to the revenue
20 stabilization and tax policy committee and the legislative
21 finance committee with an analysis of the effectiveness and
22 cost of the deductions and whether the deductions are providing
23 a benefit to the state.

24 I. For the purposes of this section:

25 (1) "clinical laboratory" means a laboratory

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1 accredited pursuant to 42 USCA 263a;

2 (2) "dialysis facility" means an end-stage
3 renal disease facility as defined pursuant to 42 C.F.R.
4 405.2102;

5 (3) "excluded entity" means:

6 (a) an organization described in
7 Subsection A of Section 7-9-29 NMSA 1978; or

8 (b) a health maintenance organization,
9 hospital, hospice, nursing home or intermediate care facility
10 licensed by the department of health pursuant to the Public
11 Health Act;

12 [~~3~~] (4) "health care [~~practitioner~~]
13 provider" means:

14 (a) an athletic trainer licensed
15 pursuant to the Athletic Trainer Practice Act;

16 (b) an audiologist licensed pursuant to
17 the Speech-Language Pathology, Audiology and Hearing Aid
18 Dispensing Practices Act;

19 (c) a chiropractic physician licensed
20 pursuant to the Chiropractic Physician Practice Act;

21 (d) a counselor or therapist
22 practitioner licensed pursuant to the Counseling and Therapy
23 Practice Act;

24 (e) a dentist licensed pursuant to the
25 Dental Health Care Act;

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- 1 (f) a doctor of oriental medicine
2 licensed pursuant to the Acupuncture and Oriental Medicine
3 Practice Act;
- 4 (g) an independent social worker
5 licensed pursuant to the Social Work Practice Act;
- 6 (h) a massage therapist licensed
7 pursuant to the Massage Therapy Practice Act;
- 8 (i) a naprapath licensed pursuant to the
9 Naprapathic Practice Act;
- 10 (j) a nutritionist or dietitian licensed
11 pursuant to the Nutrition and Dietetics Practice Act;
- 12 (k) an occupational therapist licensed
13 pursuant to the Occupational Therapy Act;
- 14 (l) an optometrist licensed pursuant to
15 the Optometry Act;
- 16 (m) an osteopathic physician licensed
17 pursuant to the Osteopathic Medicine Act;
- 18 (n) a pharmacist licensed pursuant to
19 the Pharmacy Act;
- 20 (o) a physical therapist licensed
21 pursuant to the Physical Therapy Act;
- 22 (p) a physician licensed pursuant to the
23 Medical Practice Act;
- 24 (q) a podiatrist licensed pursuant to
25 the Podiatry Act;

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1 (r) a psychologist licensed pursuant to
2 the Professional Psychologist Act;

3 (s) a radiologic technologist licensed
4 pursuant to the Medical Imaging and Radiation Therapy Health
5 and Safety Act;

6 (t) a registered nurse licensed pursuant
7 to the Nursing Practice Act;

8 (u) a respiratory care practitioner
9 licensed pursuant to the Respiratory Care Act; [~~and~~]

10 (v) a speech-language pathologist
11 licensed pursuant to the Speech-Language Pathology, Audiology
12 and Hearing Aid Dispensing Practices Act; and

13 (w) a qualifying health care entity;

14 [~~(4)~~] (5) "home health agency" means a for-
15 profit entity that is licensed by the department of health and
16 certified by the federal centers for medicare and medicaid
17 services as a home health agency and certified to provide
18 medicare services;

19 [~~(5)~~] (6) "hospice" means a for-profit entity
20 licensed by the department of health as a hospice and certified
21 to provide medicare services;

22 [~~(6)~~] (7) "nursing home" means a for-profit
23 entity licensed by the department of health as a nursing home
24 and certified to provide medicare services; [~~and~~]

25 (8) "owned and controlled" means equity

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1 ownership in a corporation, limited liability company,
2 partnership or other legal entity that:

3 (a) represents at least fifty percent of
4 the total voting power of the entity; and

5 (b) has a value of at least fifty
6 percent of the total value of the equity of the entity;

7 (9) "qualifying health care entity" means a
8 corporation, limited liability company, partnership or other
9 legal entity that is not an excluded entity and is owned and
10 controlled, directly or indirectly, by one or more individuals
11 who are health care providers and who are duly licensed or
12 legally authorized to provide the medical and other health care
13 services provided by the entity; and

14 [~~(7)~~] (10) "TRICARE program" means the program
15 defined in 10 U.S.C. 1072(7)."

16 SECTION 2. Section 7-9-93 NMSA 1978 (being Laws 2004,
17 Chapter 116, Section 6, as amended) is amended to read:

18 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
19 SERVICES PROVIDED BY HEALTH CARE [~~PRACTITIONER~~] PROVIDERS.--

20 A. Receipts of a health care [~~practitioner~~]
21 provider for commercial contract services or medicare part C
22 services paid by a managed health care provider or health care
23 insurer may be deducted from gross receipts if the services are
24 within the scope of practice of the health care [~~practitioner~~]
25 provider providing the service. Receipts from fee-for-service

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1 payments by a health care insurer may not be deducted from
2 gross receipts.

3 B. The deduction provided by this section shall be
4 applied only to gross receipts remaining after all other
5 allowable deductions available under the Gross Receipts and
6 Compensating Tax Act have been taken and shall be separately
7 stated by the taxpayer.

8 C. A taxpayer allowed a deduction pursuant to this
9 section shall report the amount of the deduction separately in
10 a manner required by the department.

11 D. The department shall compile an annual report on
12 the deduction provided by this section that shall include the
13 number of taxpayers that claimed the deductions, the aggregate
14 amount of deductions claimed and any other information
15 necessary to evaluate the effectiveness of the deductions. The
16 department shall present the report to the revenue
17 stabilization and tax policy committee and the legislative
18 finance committee with an analysis of the cost of the
19 deductions.

20 [~~G.~~] E. For [~~the~~] purposes of this section:

21 (1) "commercial contract services" means
22 health care services performed by a health care [~~practitioner~~]
23 provider pursuant to a contract with a managed health care
24 provider or health care insurer other than those health care
25 services provided for medicare patients pursuant to Title 18 of

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1 the federal Social Security Act or for medicaid patients
2 pursuant to Title 19 or Title 21 of the federal Social Security
3 Act;

4 (2) "excluded entity" means:

5 (a) an organization described in
6 Subsection A of Section 7-9-29 NMSA 1978; or

7 (b) a health maintenance organization,
8 hospital, hospice, nursing home or intermediate care facility
9 licensed by the department of health pursuant to the Public
10 Health Act;

11 [~~2~~] (3) "health care insurer" means a person
12 that:

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

17 (b) contracts to reimburse licensed
18 health care [~~practitioners~~] providers for providing basic
19 health services to insureds or enrollees at negotiated fee
20 rates;

21 [~~3~~] (4) "health care [~~practitioner~~]
22 provider" means:

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

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- 1 (b) a dentist or dental hygienist
2 licensed pursuant to the Dental Health Care Act;
- 3 (c) a doctor of oriental medicine
4 licensed pursuant to the provisions of the Acupuncture and
5 Oriental Medicine Practice Act;
- 6 (d) an optometrist licensed pursuant to
7 the provisions of the Optometry Act;
- 8 (e) an osteopathic physician or an
9 osteopathic physician's assistant licensed pursuant to the
10 provisions of the Osteopathic Medicine Act;
- 11 (f) a physical therapist licensed
12 pursuant to the provisions of the Physical Therapy Act;
- 13 (g) a physician or physician assistant
14 licensed pursuant to the provisions of the Medical Practice
15 Act;
- 16 (h) a podiatrist licensed pursuant to
17 the provisions of the Podiatry Act;
- 18 (i) a psychologist licensed pursuant to
19 the provisions of the Professional Psychologist Act;
- 20 (j) a registered lay midwife registered
21 by the department of health;
- 22 (k) a registered nurse or licensed
23 practical nurse licensed pursuant to the provisions of the
24 Nursing Practice Act;
- 25 (l) a registered occupational therapist

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1 licensed pursuant to the provisions of the Occupational Therapy
2 Act;

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

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

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

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

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

21 (r) a qualifying health care entity;

22 ~~(4)~~ (5) "managed health care provider" means
23 a person that provides for the delivery of comprehensive basic
24 health care services and medically necessary services to
25 individuals enrolled in a plan through its own employed health

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1 care providers or by contracting with selected or participating
2 health care providers. "Managed health care provider" includes
3 only those persons that provide comprehensive basic health care
4 services to enrollees on a contract basis, including the
5 following:

- 6 (a) health maintenance organizations;
- 7 (b) preferred provider organizations;
- 8 (c) individual practice associations;
- 9 (d) competitive medical plans;
- 10 (e) exclusive provider organizations;
- 11 (f) integrated delivery systems;
- 12 (g) independent physician-provider
13 organizations;
- 14 (h) physician hospital-provider
15 organizations; and
- 16 (i) managed care services organizations;

17 [~~and~~

18 ~~(5)] (6) "medicare part C services" means
19 services performed pursuant to a contract with a managed health
20 care provider for medicare patients pursuant to Title 18 of the
21 federal Social Security Act;~~

22 (7) "owned and controlled" means equity
23 ownership in a corporation, limited liability company,
24 partnership or other legal entity that:

- 25 (a) represents at least fifty percent of

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1 the total voting power of the entity; and

2 (b) has a value of at least fifty
3 percent of the total value of the equity of the entity; and

4 (8) "qualifying health care entity" means a
5 corporation, limited liability company, partnership or other
6 legal entity that is not an excluded entity and is owned and
7 controlled, directly or indirectly, by one or more individuals
8 who are health care providers and who are duly licensed or
9 legally authorized to provide the medical and other health care
10 services provided by the entity."

11 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
12 provisions of this act is July 1, 2020.