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

ORIGINAL DATE 2/09/2020
SPONSOR HHHC **LAST UPDATED** 2/12/2020 **HB** 278/HHHCS

SHORT TITLE Health Insurance Tax & New Fund **SB**

ANALYST Esquibel/Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**	**FY23**	**FY24**		
$0.0	$49,550.0	$99,100.0	$99,100.0	$99,100.0	Recurring	Health Care Affordability Fund
$0.0	$12,800.0	$25,600.0	$25,600.0	$25,600.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD – All Associated Costs with Implementation		$79.0	$0.0	$79.0	Nonrecurring	General Fund
State Share – Medicaid MCO rate increases		$10,989.0	$22,791.4	$33,780.4	Recurring	General Fund
Federal Share - Medicaid MCO rate increases		$43,574.4	$90,373.4	$133,947.8	Recurring	Federal Medicaid Matching Funds
State Share – Two FTE		$89.8*	$89.8*	$179.6*	Recurring	General Fund
Federal Share - Two FTE		$89.8*	$89.8*	$179.6*	Recurring	Federal Medicaid Matching Funds
State Share - Actuarial Analysis		$125.0*	$125.0*	$250.0*	Recurring	General Fund
Federal Share - Actuarial Analysis		$125.0*	$125.0*	$250.0*	Recurring	Federal Medicaid Matching Funds
Total Recurring General Fund		$11,203.8	$23,006.2	$34,210.0	Recurring	**General Fund**
Total Federal Share (Revenue + administrative activities match)		$43,789.2	$90,588.2	$134,377.4	Recurring	**Federal Medicaid Matching Funds**
TOTAL		$55,072.0	$113,594.4	$168,666.4		

(Parenthesis ( ) Indicate Expenditure Decreases)

HB278 relates to an appropriation in the General Appropriation Act of $500 thousand in FY21 for HSD to study coverage initiatives.

SOURCES OF INFORMATION
LFC Files

HB278/HHHCS Response Received From
Taxation and Revenue Department (TRD)

HB278 Responses Received From
Human Services Department (HSD)
NM Retiree Health Care Authority (RHCA)
Office of the Superintendent of Insurance (OSI)

No Responses Received From
Department of Health (DOH)
General Services Department (GSD)

SUMMARY

Synopsis of Bill

The Health and Human Services Committee substitute for House Bill 278 (HB278/HHHCS) delays the implementation of increases to the health insurance premium surtax from taking effect January 1, 2021. The fiscal impacts reflect the surtax increase beginning halfway through FY21 instead of at the beginning of FY21.

HB278/HHHCS would also raise the health insurance premium surtax, currently at 1 percent, by 2.25 percent, making the total surtax 3.25 percent. HB278/HHHCS would create the nonreverting "health care affordability fund," which would receive 55 percent of total revenue generated by the health insurance premium surtax.

HB278/HHHCS states the purpose of the health care affordability fund is to "provide initiatives" to reduce the cost of healthcare coverage for New Mexico residents, such as costs of premiums and cost-sharing for healthcare plans through the New Mexico Health Insurance Exchange, and coverage programs through the New Mexico Human Services Department.

However, HB278/HHHCS then goes on to delineate the revenue in the fund may be appropriated and expended in the following two ways:

(1) Every fiscal year, at a minimum, 60 percent of the health care affordability fund must be expended to reduce costs for individuals who purchase health insurance on the New Mexico Health Insurance Exchange (NMHIX) and are eligible for federal premium tax credits. Individuals are eligible for federal premium tax credits if their income is up to 400 percent of the federal poverty level (FPL), which includes individuals with annual incomes up to $49,968 and families of four with annual incomes up to $103,008.

(2)The remaining 40 percent or less of the health care affordability fund is prohibited from being expended to leverage federal Medicaid funds, but can be expended to maintain coverage for individuals on NMHIX if the federal Affordable Care Act is repealed, or to maintain other coverage provisions provided for under the Affordable Care Act if its repeal affects existing coverage for New Mexico residents.

The Human Services Department, with the assistance of the Office of Superintendent of Insurance and the Department of Finance and Administration, would monitor expenditures of the health care affordability fund and "take measures" to ensure the fund remains solvent. However, these solvency measures are not defined.

HB278/HHHCS requires HSD, in coordination with the Office of Superintendent of Insurance (OSI), develop a healthcare affordability improvement proposal that includes cost reduction initiatives, income-based consumer cost savings, enrollment projections, market impacts, and any other relevant information. The proposal would be presented by HSD and OSI to the Legislative Finance Committee (LFC), interim Legislative Health and Human Services Committee (LHHS), and the board of the New Mexico Health Insurance Exchange (NMHIX). Public input would then be gathered and a final proposal submitted to the LFC, LHHS, and NMHIX board no later than December 1, 2020.

HB278/HHCS specifies the additional revenue cannot be used to pay for state costs related to Medicaid or Medicare.

FISCAL IMPLICATIONS

LFC, TRD, and HSD staff estimate the increased insurance premium surtax would result in total revenues of $180.1 million, an increase of $124.7 thousand from current collections. HB278/HHCS distributes 55 percent of total revenue to the newly created "health care affordability fund," which would result in approximate annual revenue of $99.1 million. The remaining 45 percent of total health insurance premium surtax revenue would be distributed to the general fund, representing an increase of $25.6 million from current revenues.

This bill creates a new fund and provides for continuing direct distributions to the fund. The LFC has concerns with including earmarking language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

HSD reported for the original bill that due to the 2.25 percent surtax increase proposed in the bill and in order to draw down the federal share portion of the increase, HSD would have to adjust the Medicaid program's per-member-per-month (PMPM) capitation rates HSD pays to the Medicaid managed care organizations (MCOs). For FY21, this would result in a general fund impact of $10.9 million, which would leverage approximately $43.6 million in federal Medicaid matching funds. For FY22, HSD assumes a growth rate of 2.4 percent resulting in a general fund impact of $22.7 million necessary to increase Medicaid MCO capitation rates. This funding would leverage approximately $90.3 million in federal Medicaid matching funds.

HSD estimates it would need two additional FTE for the design of a coverage initiative plan and the administrative ramp up for the coverage initiatives. For FY21, total salaries for two Administrative/Operations Manager I level FTE would be $179.7 thousand. HSD would be able to receive a 50 percent federal match resulting in an impact to the general fund of $89.9 thousand.

The coverage initiative plan would also require contracts for actuarial analysis which HSD estimates costing $250 thousand in FY21. HSD could receive a 50 percent federal match resulting in a general fund impact of $125 thousand.

*Currently, in the HSD FY21 budget as passed by the Housing Appropriations and Finance Committee, there is $500 thousand from the general fund for coverage initiatives. If this request is funded in the General Appropriation Act of 2020, the funding would help cover the costs of actuarial analysis and additional FTE needed as well as other coverage initiative-related activities. In this case there would not be additional administrative impact as a result of HB278/HHHCS passing.

SIGNIFICANT ISSUES

In December 2019 the U.S. Congress permanently repealed as the “health care provider fee” which was authorized under the federal Affordable Care Act (ACA). The federal “health care provider fee” tax was levied on health insurance carriers to help support state health insurance exchanges created under the ACA. With the repeal of the “health care provider fee,” HB278 is seeking to impose a similar fee on health insurance carriers in New Mexico with a goal of shifting the previously levied revenue to the state for use on initiatives to reduce the cost of health care coverage for New Mexico residents.

Revenue in the health care affordability fund cannot be used to leverage federal Medicaid funds under the provisions of the bill, unless the ACA is repealed and then revenue in the fund could be used only to cover the adult expansion category of eligibility population.

HSD reports it is currently studying different policy options that New Mexico could undertake to expand and reduce the cost of health care coverage for New Mexicans. HB278/HHCS could provide the funding for whatever recommendation(s) come out of HSD’s study, which are unknown at this time.

The LFC is also currently managing a contract analyzing the fiscal impact of the Health Security Act. Alternatively, other policy options for coverage could be analyzed and proposed for funding with the revenue generated under the provisions contained in HB278/HHCS.

HSD reports at the federal level, the health care provider fee, when collected, resulted in a tax on health insurance carriers of approximately 2.75 percent to 3 percent on average. Under current New Mexico law, there is a general premium tax of 3.003 percent which applies to multiple types of insurance including life, title, health, etc., and on top of that general premium tax, New Mexico also levies an additional 1 percent premium surtax.

Under HB278/HHCS, the general premium tax of 3.003 percent would remain in place. The bill also would raise the premium surtax by 2.25 percent to a total of 3.25 percent.

PERFORMANCE IMPLICATIONS

The Retiree Health Care Authority (RHCA) indicates HB278/HHHCS would not have a direct impact on RHCA, but it could potentially indirectly affect RHCA long-term if the proposed health care affordability fund were to subsidize insurance plans for individuals at a rate competitive with RHCA plans.

ADMINISTRATIVE IMPLICATIONS

HSD reports the design and implementation of a coverage initiative plan will require additional FTE at HSD and contracting for actuarial analysis.

HB278/HHCS does not appear to create the need for an additional study beyond the one already contemplated by HSD and, therefore, should not result in additional costs to study health care coverage initiatives.

TECHNICAL ISSUES

HB278/HHHCS provides two purposes for which the health care affordability fund can be expended: 60 percent to lower costs for individuals on the exchange who are eligible for federal premium tax credits and 40 percent if a provision of the federal Affordable Care Act is repealed and the repeal affects maintaining coverage for New Mexican residents. The substitute does not allow for expenditure of the health care affordability fund to pay for coverage initiatives, although that is the stated purpose of the fund.

HB278/HHHCS requires HSD, with the assistance of the Office of Superintendent of Insurance and the Department of Finance and Administration, to monitor expenditures of the health care affordability fund and "take measures" to ensure the fund remains solvent. However, these solvency measures are not defined and could have significant impacts on individuals coverage or cost of coverage.

OTHER SUBSTANTIVE ISSUES

HSD reports states are allowed to tax health insurance carriers, including Medicaid managed care organizations (MCOs), without risking federal financial participation in the Medicaid program. Federal law restricts how much states can tax certain health care-related entities in order to limit states from using the proceeds to finance the state's Medicaid program. The federal government presumes that a state is in compliance with federal rules if the tax is under 6 percent.

A state tax is considered health-care related under federal law if it meets either of two prong:

1) 85 percent of the burden of the tax falls on health care providers; or
2) The tax provides for a different treatment for health care providers than others.

New Mexico has a general premium tax of 3.003 percent that applies broadly to all insurers. According to data published by the New Mexico Superintendent of Insurance, the state's general premium tax raised approximately $253.5 million in FY19. https://www.osi.state.nm.us/wp-content/uploads/2020/01/OSI-2019-Annual-Report.pdf. Of that amount, approximately 66 percent is attributable to health insurance, which would place the general premium tax below the threshold for the first prong. The second prong is not met either because all premiums under the general premium tax are subject to the same 3.003 percent rate with no different treatment for health care providers. Given that neither prong is triggered, the 3.003 percent general premium tax is not factored into the 6 percent overall limit for health care-related taxes under federal rules.

The premium surtax proposed in the bill, however, would be a health-care related tax under federal rules and therefore factored into the 6 percent cap. HB278 would raise the premium surtax to 3.25 percent which is still below the 6 percent cap. It should also be noted that Medicaid managed care organizations and other health insurance carriers are one of 19 classes of health care providers under federal rules. Each class has its own 6 percent cap. Thus, any other taxes the state imposes on hospitals or other provider classes would not affect the 6 percent cap for the insurance premium surtax.

ALTERNATIVES

Recently, HSD contracted with the Urban Institute to do a demographic study of New Mexico's uninsured populations. The study found that 187,000 New Mexicans, under age 65, are uninsured. Of that total, 43,000 are currently eligible for premium tax credits through the New Mexico Health Insurance Exchange but remain uninsured.

https://www.hsd.state.nm.us/uploads/PressRelease/2f473c14ee654f868b5a25b3cfd15a6d/PR_Urban_Institute_Uninsured_in_NM_12_18_19.pdf).

POSSIBLE QUESTIONS

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.

IT/RAE/sb