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

ORIGINAL DATE 1/19/22
SPONSOR Ortiz y Pino **LAST UPDATED** 2/10/22 **HB**

SHORT TITLE Health Care Quality Surcharge Act Changes **SB** 40

ANALYSTS Graeser/Rees

REVENUE (dollars in thousands)

Estimated Revenue Impact					Recurring or Nonrecurring	Fund(s) Affected
FY2022	FY2023	FY2024	FY2025	FY2026		
	$29,640.0	$29,640.0	$29,640.0	$29,640.0	Recurring	Health Care Facility Fund; Disability Health Care Facility Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL HSD OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Program Total	$23,712.0	$23,712.0	$23,712.0	$71,136.0	Recurring	Other State Funds
	$91,750.0	$91,750.0	$91,750.0	$275,250.0	Recurring	Federal Medicaid Matching Funds
Admin Total	$5,928.0	$5,928.0	$5,928.0	$17,784.0	Recurring	Other State Funds
	$5,928.0	$5,928.0	$5,928.0	$17,784.0	Recurring	Federal Medicaid Matching Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Estimated Additional Operating Budget Impact				R or NR	Fund(s) or Agency Affected
FY2022	FY2023	FY2024	3 Year Total Cost		
$0	$16.6	$33.3	$49.9	Recurring	Tax & Rev – ASD FTE

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

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

SUMMARY

Synopsis of Bill

Senate Bill 40 repeals the delayed repeal of the Health Care Quality Surcharge Act enacted in Laws 2019, Chapter 53, Section 12. This is an innovative program that imposes a daily surcharge on skilled Nursing Facilities (NFs) and Intermediate Care Facilities for individuals with Intellectual Disabilities (ICF/IIDs) for non-Medicare "bed days". These facilities pay the surcharge to the Taxation and Revenue Department (TRD) which distributes the funds to the Health Care Facility Fund and the Disability Health Care Facility Fund (Facility Funds). HSD administers the Facility Funds and uses the revenue as the source of state general fund to obtain federal Medicaid matching funds and increase payment rates to facilities in the form of:

- Per diem rate increases;
- Inflationary rate increases; and
- Supplemental quality payments based on performance data (NFs only).

The act requires that 80 percent of the matched funds go directly to facilities, with 20 percent going to HSD for administering the program.

Essentially, in 2019, the Health Care Quality Surcharge was enacted with a delayed repeal date of January 1, 2023. This bill makes the Health Care Quality Surcharge permanent by repealing the delayed repeal.

SB40 has no effective date. It is assumed that the effective date is 90 days following adjournment of the 2022 Legislature, or May 18, 2022.

FISCAL IMPLICATIONS

This innovative program was enacted in the 2019 session, but funds did not begin flowing until July 1, 2021. The 2021 fiscal year transfer to the general fund totaled $77,903. This represents 60-day money and not money transferred to the two beneficiary funds. See OTHER SIGNIFICANT ISSUES for an explanation of the discrepancy.

HSD emphasizes that failure to pass SB40 would result in the loss of $85.8 million per year in federal Medicaid matching funds that is currently paid to Nursing Facilities (NFs) and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs)

The proposal eliminates the delayed sunset for the Health Care Quality Surcharge, which makes the revenue recurring. The revenue fiscal impact was prepared by the Human Services Department (HSD), which manages both funds. This bill maintains the status quo, which allows HSD to continue to receive Medicaid matching funds. The last table above from HSD details the program and administrative HSD budget impacts from both the state general fund and federal Medicaid matching funds with the extension of the health care quality surcharge.

TRD notes that following enactment of the healthcare quality surcharge in 2019, TRD implemented the surcharge into its GenTax system at a nonrecurring cost of $1.8 million. Extending the surcharge will ensure that State continues to reap a return on that investment in the GenTax system.

DOH notes that as a result of the Healthcare Surcharge Act (7-41-1) and pertaining specifically to revenue it helps generate for the three Department of Health (DOH) operated Nursing Facilities (NFs):

- The FY22 average Low NF rate increase is $7.76 (seven dollars and seventy-six cents) per day.
  - The DOH total number of NF licensed beds is 497.
    - At just a 50 percent Medicaid payor census, FY22 additional revenue is estimated at $705.3 (249 residents times $7.76/day times 365 days)
- The FY22 quarterly estimated quality payments total $1,542.0 based on Human Services Department past distributions, methodology and current quarter notifications.
  - The total FY22 revenue estimated for quality payments is $6,168.0 ($1,542.0 times 4 quarters)
- FY22 NF Rate increase plus quality payments estimated Grand TOTAL is $6,873.3.

*The actual surcharge is not being considered as a reduction to revenue estimates since it essentially results in a net zero; it is paid to the Facility as an addition to the daily per diem amount, then the Facility pays the surcharge to the Taxation and Revenue Department calculated using number of non-Medicare bed days.

SIGNIFICANT ISSUES (TRD)

TRD explains the policy issues here as follows:

> The Health Care Quality Surcharge (HCQS) program supports quality of care in nursing facilities that results in pay-for-performance for improved outcomes. Continuation of the program is directly tied to HSD's overarching strategic mission to design and deliver innovative, high-quality health and human services that improve the lives of New Mexicans.
>
> Failure to continue the program would result in termination of the HCQS program and the loss of $85.81 million per year in federal Medicaid matching funds that is currently paid to nursing facilities and intermediate care facilities for individuals with intellectual disabilities.
>
> Additionally, HSD's ability to improve performance and drive provider accountability for important health outcomes is directly tied to the continuation of the HCQS program and would be in jeopardy if the program were to sunset as scheduled on January 1, 2023.

SIGNIFICANT ISSUES (HSD)

SB40 repeals the delayed repeal section (Laws 2019, Chapter 53, Section 12) of the Health Care Quality Surcharge Act ("Act"), Sections 7-41-1, et seq., NMSA 1978. The delayed repeal currently in law would repeal Sections 1 through 8 of the Act effective January 1, 2023. By enacting SB40, the Legislature would allow the act to continue in effect as originally adopted in 2019.

By repealing the HCQS sunset provision, SB 40 would preserve $29.64M in annual general fund revenue that is currently generated through the surcharge program. This general fund revenue is used as the source of state funds to secure an additional $91.75M in federal Medicaid matching funds, most of which is then paid to affected Medicaid providers in the form of both reimbursement rate increases and supplemental quality payments based on performance data. The Human Services Department (HSD) retains 20 percent of the surcharge revenue for administration of the program.

In State Fiscal Year 2021 (FY21), providers received $115.46 million in Medicaid payments through the HCQS program, a net revenue increase of $85.81 million per year (see table below). If the HCQS program is repealed on January 1, 2023, then the source of general fund revenue to leverage Federal Financial Participation (FFP) would be eliminated and the enhanced reimbursements to providers would terminate.

SFY 2021 Fiscal Impact			
($000s)	**General Fund**	**Federal Financial Participation**	**Total Computable**
HCQS Revenue	$ 29,640		
Program Administration (20%)	$ 5,928	$ 5,928	$ 11,856
Provider Payments (80%)	$ 23,712	$ 91,750	$ 115,462

SIGNIFICANT ISSUES (HSD)

The HCQS program was created under SB246 in the 2019 regular legislative session. The program imposes a daily surcharge on skilled Nursing Facilities (NFs) and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs) for non-Medicare "bed days".

Facilities pay the surcharge to the Taxation and Revenue Department (TRD), which then goes to the Health Care Facility fund and the Disability Health Care Facility Fund. The Human Services Department (HSD) administers the Facility Funds and uses the revenue as the source of state general fund to obtain federal Medicaid matching funds and increase payment rates to facilities in the form of:

- Per diem rate increases;
- Inflationary rate increases; and
- Supplemental quality payments based on performance data (NFs only).

The bill requires that 80 percent of the matched funds go directly to facilities, with 20 percent going to HSD for administering the program.

Since the start of the program on July 1, 2019, HSD has paid $220.65 million to facilities under the HCQS program as follows:

HCQS Provider Payments Summary			
($000s)	**FY20**	**FY21**	**Total**
Surcharge Revenue (GF)	$31,390	$29,640	**$61,030**
Total Paid to Nursing Facilities	$102,980	$112,200	**$215,180**
Total Paid to ICF/IIDs	$2,210	$3,260	**$5,470**
Total Paid to Providers	**$105,190**	**$115,460**	**$220,650**

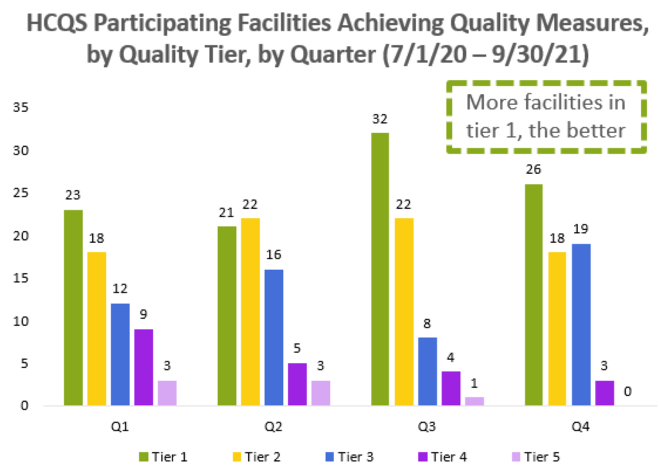
PERFORMANCE IMPLICATIONS (HSD)

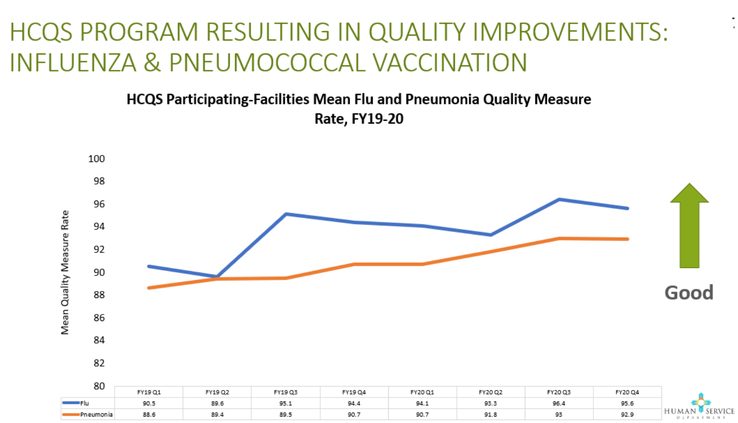
The HCQS program includes an important quality component for Nursing Facilities that results in pay-for-performance for improved outcomes. Continuation of the program is directly tied to HSD's overarching strategic mission to design and deliver innovative, high quality health and human services that improve the lives of New Mexicans.

Since the start of the HCQS program in 2019, HSD has paid a total of $127.21 million to NFs for reporting quality data and improving quality scores. The HCQS quality measures are:

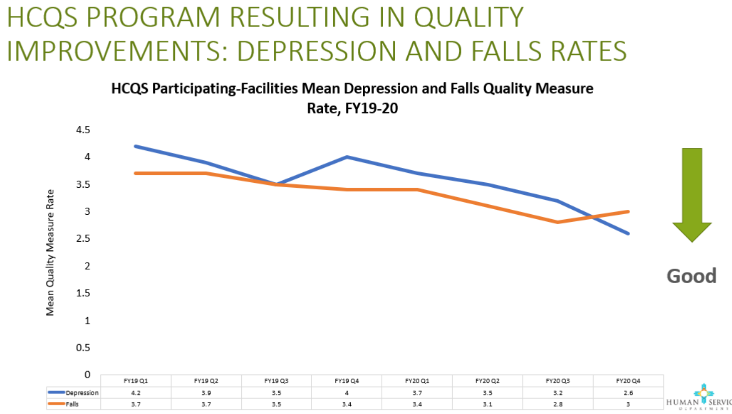
1. Falls with major injury
2. Depression
3. Flu shots
4. Pneumonia vaccine

Switching to quality payments has resulted in performance improvements across the facilities, as shown below. **HSD's ability to improve performance and drive provider accountability for these important health outcomes is directly tied to the continuation of the HCQS program, as allowed by SB40.**





	FY19 Q1	FY19 Q2	FY19 Q3	FY19 Q4	FY20 Q1	FY20 Q2	FY20 Q3	FY20 Q4
Flu	90.5	89.6	95.1	94.4	94.1	93.3	96.4	95.6
Pneumonia	88.6	89.4	89.5	90.7	90.7	91.8	93	92.9



The LFC tax policy of accountability may be met since the surcharge is reported monthly on the DFA General Fund Report and the GAA appropriates the money from the Health Care Facility Fund; Disability Health Care Facility Fund as OSF or Federal Funds. However, because of the complexity of this arrangement, special reports prepared by HSD to the Legislature might be warranted.

ADMINISTRATIVE IMPLICATIONS

TRD reports the following:

> The continuing administration of the surcharge by the Administrative & Compliance Division (ACD) of TRD presents no additional costs. This change is anticipated to impact the Administrative Services Division (ASD) to dedicate a ½ Full Time Employee (FTE), at pay band 65, as this tax program would become permanent. This ½ FTE will provide ongoing production support for this monthly distribution and cash control tasks.

TECHNICAL ISSUES

TRD notes that the issue of reconciliation may be based on an unusual revenue recognition requirement.

> The Health Care Quality Surcharge has an unusual revenue recognition requirement defined in Section 7-41-4 (E) and (F) NMSA 1978. Revenue for year-end financial statements is required to be based on an estimate from HSD, and in the two years since this was implemented the estimate has been overstated by $3 million. The Taxation and Revenue Department (Tax & Rev) recommends a language change to Section 7-41-4 (E) NMSA 1978 to read "calendar quarter for the most recent ended calendar quarter" instead of "calendar quarter prior to the previous quarter.

OTHER SIGNIFICANT ISSUES

According to HSD, under current federal regulations, States may not use provider tax revenues for the State share of Medicaid spending unless the tax is broad-based, uniformly imposed, and does not hold providers harmless from the burden of the tax. Federal regulations create a safe harbor from the hold harmless test for taxes where collections are 6 percent or less of net patient revenues.

This program was implemented in TRD's GenTax processing system on March 28, 2020. GenTax Reports, however, were not implemented until after the July 2020 reporting month.

Thus, the first report summed the activity in the program for March, April and May accruals. Of note, there was an unusually high amount of "60-day money" transferred to the general fund. This sort of transfer is required by Section 7-1-6.1 NMSA 1978:

7-1-6.1. Identification of money in tax administration suspense fund; distribution.
After the necessary disbursements have been made from the tax administration suspense fund, the money remaining, except for remittances received within the previous sixty days that are unidentified as to source or disposition, in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the applicable provisions of the Tax Administration Act. After the necessary distributions and transfers, any balance shall be distributed to the general fund.

The GenTax report for this tax for the initial period is shown below.

Accrual Month	Jun-20
Reporting Month	Jul-20
Distribution Month	Aug-20
Payments (Prior Balance)	836,636
+ Net Cash	6,749,454
+ Net Transfers	(126,232)
- Net Refunds	(2,093)
- 60 Day To General Fund	(835,832)
+ 60 Day From General Fund	6,493
- Net Cash Distributions	(6,611,771)
Cash < 61 Days	16,655

The FY21 total reported by HSD and TRD of $29,640.0 is entirely consistent with the GenTax data, which shows a total distribution to the two funds of $28,877.0. The GenTax data for the period may have been slightly adjusted in the agency audit.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Health Care Quality Surcharge Act delayed repeal will remain in effect and the Act will be repealed effective January 1, 2023.

According to HSD, failure to pass SB40 before January 1, 2023, would result in the loss of $85.81 million per year in federal Medicaid matching funds that is currently paid to Nursing Facilities (NFs) and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs).

Additionally, HSD's ability to improve performance and drive provider accountability for important health outcomes is directly tied to the continuation of the HCQS program, and would be in jeopardy if the program were to sunset as scheduled on January 1, 2023.

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