BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 24, 2024

Bill: SB-25 **Sponsor:** Senator Mark Moores

Short Title: Fee-for-Service Payment Receipts

Description: The bill amends Section 7-9-93 NMSA 1978 to expand the existing health practitioner gross receipts tax (GRT) deduction to include receipts from fee-for-service payments and receipts paid by an individual for medically necessary services within the scope of practice of the health care practitioner that are not already deductible pursuant to other subsections of 7-9-93.

Effective Date: July 1, 2024

Taxation and Revenue Department Analyst: Pedro Clavijo

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	(Unknown but around $15,700)	(Unknown but around $16,400)	(Unknown but around $17,000)	(Unknown but around $17,800)	R	General Fund
--	(Unknown but around $10,500)	(Unknown but around $10,900)	(Unknown but around $11,400)	(Unknown but around $11,900)	R	Local Governments
--	(Unknown but around $4,100)	(Unknown but around $3,600)	(Unknown but around $3,000)	(Unknown but around $2,500)	R	General Fund – Hold Harmless distributions under 7-1-6.46 and 7-1.6.47 NMSA 1978
--	Unknown but around $4,100	Unknown but around $3,600	Unknown but around $3,000	Unknown but around $2,500	R	Local Governments – Hold Harmless distributions under 7-1-6.46 and 7-1.6.47 NMSA 1978

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

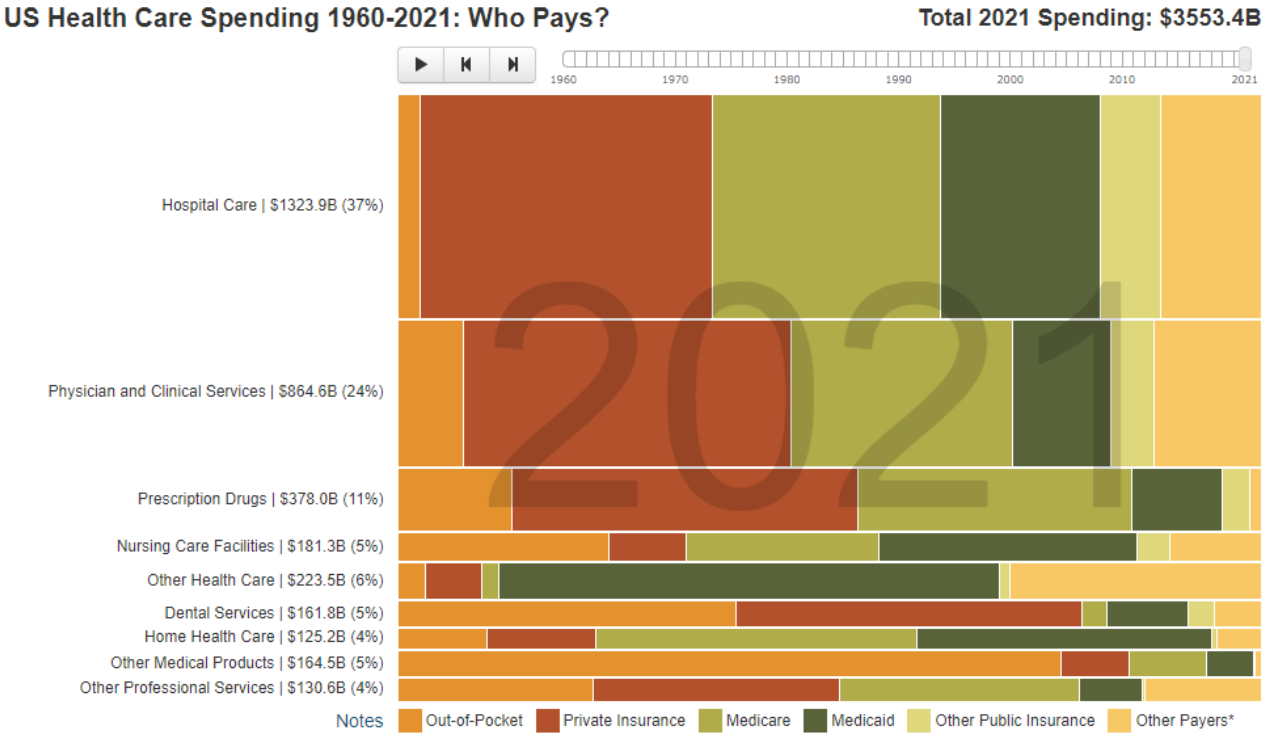
Methodology for Estimated Revenue Impact: This bill expands the current gross receipts tax (GRT) deduction under 7-9-93 NMSA 1978 for certain health receipts to fee-for-service (FFS) payments. Several crucial and unknown aspects do not allow the Taxation and Revenue Department (Tax & Rev) to estimate a precise fiscal impact.

First, it is unclear if the FFS definition in the bill applies to fees paid to health care practitioners by patients for each service rendered or fees paid to health care practitioners by health care insurers for each service they provide to enrollees, or both. Tax & Rev assumes the definition encompasses both and, therefore, that all the services provided by health care practitioners are deductible. Second, Tax & Rev does not have data on the number of claims made by health care practitioners to a health care insurer indicating that a service has been provided as well as the number of office-based payments made by patients. Third, Tax & Rev does not know the type of service/procedure performed by health care practitioners to apply the corresponding fee. Fourth, since this type of service is available for insured and uninsured patients, it is difficult to delimit the target population, which would ultimately be the entire

population of New Mexico. Fifth, the analysis requires knowing what type of services/procedures are managed on an FFS basis by healthcare insurers in New Mexico, as well as the number of visits to the doctor under this modality. In this regard, it is essential to note that there is high variability in the number of visits to the doctor depending on age group, with infants and the elderly population averaging more visits compared to children and adults.

In addition to the variability in types of care, is the source of payments. The chart below illustrates the complexity of payments by types of healthcare. Health care practitioners are assumed to appear primarily in the second row below – "Physician and Clinical Servies."

Figure 1: Calendar Year 2021 National Health Care Spending and source of Payments



Source: National Health Expenditure historical data (1960–2021), Centers for Medicare & Medicaid Services.

A portion of the payments to health care practitioners are currently deductible under Section 7-9-93 NMSA 1978, the fiscal impact attempts to estimate the "out-of-pocket" payments and portions of insurance and public payments not deducted in the chart above. Using data from the National Council on Compensation Insurance (NCCI) retrieved from the State of New Mexico Workers' Compensation Administration[1] and data from the Human Services Department (HSD), Tax & Rev estimates a benchmark fiscal impact around which the actual fiscal impact might gravitate. HSD's data about the Medicaid budget projection for some FFS programs is used to proxy the potential amount paid by health care insurers, while NCCI's data is employed to capture medical payments by patients for different categories of services. Tax & Rev's benchmark fiscal impact uses only data on payments for some FFS categories under the presumption that those other categories of services are covered by other laws. Finally, the lost revenue estimate is based on the price index growth rate for healthcare spending produced by the firm S&P and the effective statewide GRT rate. The fiscal impact also accounts for the impact to

[1] https://workerscomp.nm.gov/sites/default/files/documents/publications/NM_Medical_Report_2021.pdf

the hold harmless payments to municipalities and counties under Sections 7-1-6.46 and 7-1.6.47 NMSA 1978 based on the benchmark fiscal impact.

Policy Issues: If enacted, the bill would allow most every payment to a health care practitioner to be subject to a deduction from GRT as illustrated in Figure 1. If that is the intent, stating as much instead of amending Section 7-9-93 NMSA 1978, would likely be clearer to the taxpayer and thus easier to implement for Tax & Rev.

Rising health care spending is one of the most considerable fiscal challenges facing state governments and continues to be a concern for patients who cope with growing medical costs. This is a concern for New Mexico. Hence, any fiscal incentive to reduce health care costs will positively affect health care consumers. The proposed fiscal incentive would also reduce the tax burden between health care insurers and health care practitioners, facilitating the delivery of medical care. However, reducing health care costs by containing their main underlying drivers, apart from taxes, should be a priority for state governments. Studies have shown that low health care spending by individuals contributes to increasing disposable income for workers, boosting job growth. Lower health care spending also affects state budgets because it results in lower health insurance spending for government employees and reduces lost tax revenue due to the deductions to ease the burden of health insurance spending.

The recent GRT state rate reductions benefit all taxpayers and support fewer tax incentives. While tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures and/or narrowing the tax base, with a negative impact on the general fund; and, (2) increases the burden of compliance on both taxpayers and Tax & Rev. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

GRT rests upon the general presumption that all receipts of a person engaged in business in New Mexico are subject to GRT and that this rate represents the rate upon which the State collects taxes on transactions.[2] GRT represents the largest recurring revenue source for the state general fund at around 34%, about 80% of municipal revenue, and 30% of county revenue. This revenue source is strongly tied to the underlying economic activity in the State, which is susceptible to economic downturns and positively responsive to economic expansions. The GRT is ideally a broad-based tax including the taxing of services, noting that New Mexico is one of only three states that taxes all services (the others being Hawai'i and South Dakota).

Technical Issues: Section 1, Subsection C, page 2, line 14. The bill provides for "medically necessary services paid by an individual." Suggest adding services paid "by, or on behalf of, an individual." In addition, "medically necessary services" should be defined under Subsection G.

On page 4, Subsection G(4), the "fee-for-service" (FFS) definition employed in the bill applies only to fees paid to health care practitioners by health care insurers. On page 2, subsection 2, receipts paid by individuals are deducted. These payments may also be considered FFS in medical financing. For clarity, Tax & Rev suggests clarifying the definition of "fee-for-service" to cover both types of sources of the payment.

Other Issues: Tax & Rev is now required by Section 7-1-84 NMSA 1978 to compile and present a tax expenditure budget, which includes the number of taxpayers that claim and the amount of claims for a tax expenditure. Deductions are seen as a tax expenditure and will be included on this report. For that reason,

[2] Section 7-9-3.5(A)(1) NMSA 1978.

Tax & Rev recommends that on page 3, lines 1 through 9 are stricken in full.

Administrative & Compliance Impact: Tax & Rev will need to update forms, instructions, and publications.