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

SPONSOR Jennings **ORIGINAL DATE** 02/17/11 03/02/11 **LAST UPDATED** 03/22/11 **HB**

SHORT TITLE Tax Liability Credit for Certain Physicians **SB** 282/aSFC

ANALYST Golebiewski

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
		Between (20) and (50) *	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

*Please see Fiscal Implications section below.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			$20.0	$20.0	Recurring	Taxation and Revenue Department

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Medical Board (MB)
Department of Health (DOH)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 282 proposes to offer *oncologists* in rural New Mexico the credit for physician participation in cancer treatment clinical trials.

Fiscal Implications of SFC Amendment

The amendment clarifies the types of physicians who are eligible for the credit. There are approximately 18 licensed oncologists in rural New Mexico. Of the licensed oncologists, between 10 and 13 are currently practicing. If we assume 4 patients per oncologist in rural New Mexico and that a portion of their practices do not have the capability to perform the clinical trials, the fiscal impact will be between $20 thousand and $50 thousand.

Synopsis of Original Bill

Senate Bill 282 would create a new Personal Income Tax credit for physicians whose practice is in rural New Mexico. The credit amount is $1,000 "for each patient participating in a cancer clinical trial under the taxpayer's supervision for a maximum credit allowed for all cancer clinical trials conducted by that taxpayer during the taxable year of…$4,000." The credit can only be claimed for the taxable year in which the physician participates as an investigator in the clinical trial.

SB 282 also required the Taxation and Revenue Department to compile an annual report that includes the number of taxpayers approved to receive the credit in the tax year, the amount of cancer clinical trial tax credits in the tax year, the number of patients in participated in the tax year in cancer clinical trials and the location of the cancer clinical trials for which tax credits were claimed.

FISCAL IMPLICATIONS

The estimate of fiscal impact of Senate Bill 282 depends on the intention of the legislation. It is unclear whether the credit applies to primary care physicians in rural New Mexico who refer their patients to participate in cancer clinical trials, their patients choose to participate, and then the physicians assist in the medical supervision of the clinical trial, without participating as investigators in the clinical trial. If it does, the fiscal impact will likely be on the order of $1 million annually, reflecting approximately 250 doctors referring 4 patients each year. According to the National Cancer Institute, there are over 200 active cancer treatment clinical trials currently being conducted in New Mexico.

If, on the other hand, the credit only applies to physicians in rural New Mexico who refer their patients to cancer clinical trials and then participate as investigators in the clinical trial, the fiscal impact estimate will be much lower - on the order of $20 thousand, reflecting 5 doctors participating as investigators, with the maximum of 4 patients each. The low estimate of 5 doctors reflects the environment in which cancer treatment clinical trials are administered.

The vast majority of clinical trials are administered in cancer treatment centers, which are usually affiliated with major hospitals. Oncologists are more likely to locate in urban centers - in general, physicians who specialize in specific types of illness locate in major hospitals where they can treat a greater number of patients. The major hospitals in urban centers are also able to provide the necessary support staff required to collect reliable data related to the results of the cancer treatment clinical trials. This is probably the most substantial barrier to entry for physicians in rural New Mexico who want to participate as investigators in cancer treatment clinical trials.

SIGNIFICANT ISSUES

The state currently provides a personal income tax credit of up to $5,000 per year for rural health care practitioners – approximately 1,300 taxpayers take advantage of the rural health care practitioners tax credit each year. As with all tax credits, deductions and exemptions, Senate Bill 282 narrows the tax base and creates additional complexity to the New Mexico tax system. These characteristics run contrary to the tax policy principles of efficiency and simplicity.

DOH:

Cancer clinical trials are research studies designed to translate scientific research results into better ways to prevent, diagnose, or treat cancer. Cancer clinical treatment trials provide access to either the best available standard treatment or a promising new treatment for patients with cancer. Advances in cancer care and the development of cancer therapeutics depend largely upon an effective clinical trial process. For eligible patients, the experimental procedures available only through cancer treatment clinical trials may increase survival or improve quality of life compared to standard treatment.

Only three to five percent of adult cancer patients participate in clinical treatment trials. Certain populations, such as those that are low income, elderly, racial/ethnic minorities, or those who live in rural areas have the smallest percentage of clinical trial participants (http://iccnetwork.org/cancerfacts/ICC-CFS11.pdf).

Researchers have identified a number of barriers to clinical trial enrollment, including lack of public awareness, reluctance by physicians to refer patients to trials, distrust of clinical researchers, inconvenience of participating, and concerns about the costs of participating in clinical studies
(www.cancer.gov/clinicaltrials/conducting/developments/doctors-barriers0401).
In New Mexico, "the two main reasons for nonparticipation are lack of protocol availability and lack of interest on the part of the patient or physician. More patient education must be planned to improve clinical trial enrollment" (Journal of Clinical Oncology, 2005 C.F. Verschraegen et al.).

According to the New Mexico Cancer Care Alliance (www.nmcca.org/) many trials are available to New Mexican cancer patients in Albuquerque, Santa Fe and Las Cruces. Because of their size, these cities have the infrastructure and skilled staffing necessary to conduct trials. They also have the patient population base required by the pharmaceutical or bio-technology companies to complete the trial. The gaps in availability outside of the Rio Grande corridor are primarily due to a lack of appropriate patient population size and the infrastructure to support clinical trial activities. Many do not have the specifically trained staffing that is required to comply with clinical trial guidelines.

A 1999 survey of physicians conducted by the American Society of Clinical Oncology found that the cost to physicians for data management and other research expenses associated with enrolling a patient in a cancer clinical trial (Phase III) was about $2,000 (www.cancer.gov/clinicaltrials/conducting/developments/doctors-barriers0401).

Although physician expenses are reported to be a barrier to recruitment, there may be other successful incentives. A report of the ATAC (Arimidex, Tamoxifen, Alone or in Combination) adjuvant breast cancer trial in post-menopausal women found that the

factors physicians reported to be most important to them for participating in the trial were the scientific rationale of the trial (84% of responding physicians) and how closely the study design reflected standard clinical practice (74%), compared to the level of financial support provided (29%)
(www.breastcancerupdate.com/miamiconference2003/posters/6.pdf).

In the 2010 Legislative Session, Senate Joint Memorial 19 and House Memorial 36 requested the Department of Health make recommendations to the Legislature on how to expand access to cancer clinical trials to all parts of the state. The response suggested that New Mexico could consider using a model adopted by the US Department of Health and Human Services as part of the National Best Practice Initiative. The model includes ongoing public education on what clinical trials are being conducted and their potential benefits. By using this approach in a rural community, Maryland has seen a 40-fold increase in clinical trial participation (http://benchmarks.cancer.gov/2006/09/minority-participation-in-clinical-trials/).

PERFORMANCE IMPLICATIONS

DOH:

SB282 relates to the following goal of *The New Mexico Cancer Plan 2007-2011*: To increase access to and participation of New Mexicans in (1) cancer prevention and therapeutic clinical trials, and (2) long term follow-up, survivorship, and epidemiological research studies (www.cancernm.org/cancercouncil).

ADMINISTRATIVE IMPLICATIONS

TRD:

The Department will need to update forms, processing and systems to track this credit. The requirement of an annual report will add to the administrative burden. Total costs are approximately ¼ FTE.

TECHNICAL ISSUES

As mentioned in the Fiscal Implications section, the terms “supervision” as used on page 2, line 1 and “investigator” as used on page 2, line 14 need to be defined and/or clarified.

DOH:

Section G: Page 3 lines 12-13 starts the definition of cancer clinical trial with the words (1) “cancer clinical trial” means a clinical trial: and then proceeds to define with sub sections (a) through (g) what a clinical trial is. Subsection (e), page 4, lines 18-19 “that is considered part of a cancer clinical trial” appears to be redundant with (1) on page 3 lines 12-13.

On page 3, delete lines 14 through 17 that contain language which is inconsistent with the standard definition of a cancer clinical trial and which conflicts with the language in Section 1. G. (1) c. 7.

On page 3, delete lines 18 through 20 and replace with the following language: “that is a Phase II, III or IV cancer treatment clinical trial or a cancer prevention clinical trial.”

TRD:

The provisions in Section 1, Subsection D could conflict with Subsection A. Subsection D implies that a partnership or a business association qualifies for the credit. Yet, a literal interpretation of Subsection A could lead to the conclusion that the tax credit may be claimed only by a physician licensed pursuant to the Medical Practice Act. The Medical Practice Act defines "licensed physician" as a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico. If the New Mexico Medical Board does not issue licenses to partnerships or business associations, those entities arguably would not be entitled to the credit under Subsection A. To avert potential interpretation issues, it is suggested that SB-282 be amended to include language that specifically allows the credit for partnerships or business associations. Such language should provide that either 1) the partnership or business association; or 2) the members of the partnership or business association, but not both, may claim the credit.

In Section 1, Subsection F could conflict with the confidentiality provisions of Section 7-1-8, as it allows for disclosure of information probably contained in taxpayer tax returns, including the locations of the cancer clinical trials for which the clinical trial tax credits were claimed. Such information could identify a taxpayer who claimed the credit. If such disclosure is intended, a new exception to the confidentiality provisions of Section 7-1-8 NMSA should be added to this bill. For example, Section 7-1-8.8 could be amended to permit disclosure all of the information that is required to be disclosed in an annual report pursuant to Subsection F of Section 1 of this 2011 act.

The bill does not specify whether the credit is refundable or non-refundable or what the carry forward period would be.

OTHER SUBSTANTIVE ISSUES

DOH:

Certain populations, such as those that are low income, elderly, racial/ethnic minorities or those who live in rural areas have the smallest percentage of clinical trial participants (http://iccnetwork.org/cancerfacts/ICC-CFS11.pdf).

ALTERNATIVES

As noted by DOH, there may be issues associated with giving physicians financial incentives to refer their patients to participate in cancer treatment clinical trials, especially from the patient perspective. There is a substantial cost associated with providing the patient with sufficient information to guide their participation decision – approximated at 4 hours. This action may be more appropriate to associate with the tax credit – the act of supplying information to the patient regarding participation in the clinical trial.

JAG/svb:mew

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity***: *taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc