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

SPONSOR Ingle **ORIGINAL DATE** 03/02/11 **LAST UPDATED** **HB**

SHORT TITLE Hospital Provider Fees Act **SB** 541

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	**FY12**		
	See Fiscal Implications		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	See Fiscal Implications			

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Human Services Department (HSD)
Department of Health (DOH)
Health Policy Commission (HPC)
NM Hospital Association

SUMMARY

Synopsis of Bill

Senate Bill 541 establishes the Hospital Provider Fees Act. The act authorizes the Human Services Department to charge and collect provider fees on inpatient and outpatient hospital services. The fees shall be used to obtain federal financial participation in the Medicaid program, specifically to (1) reduce the amount of "underpayment" to hospitals for providing medical care to Medicaid and other low-income and uninsured populations, (2) increase the persons covered by Medicaid and similar programs (e.g., State Coverage Insurance) and (3) pay administrative costs of HSD and the newly established board for administering the act.

Fees are set subject to recommendations of the new "provider fees oversight and advisory board," which is administratively attached to the department. The board is composed of 13 members appointed by the Governor, with the advice and consent of the Senate, as follows:

- Five member from hospitals in New Mexico, with at least one from a rural hospital; one from a safety net hospital; and one from an urban hospital.
- One member who is a representative of the statewide organization of hospitals.
- One member who is a representative of a statewide organization of health insurance carriers
- One member of the health care industry but not a representative of a hospital or insurance carriers
- One member who is a consumer of health care, but not an employee or representative of a hospital, health insurance carrier or other health care industry entity
- One member who is a representative of persons with disabilities or who is living with a disability and who is not an employee or representative of a hospital, health insurance carrier or other health care industry entity
- One member who is a representative of a business that purchases or otherwise provides health insurance for its employees
- Two employees of the Human Services Department.

FISCAL IMPLICATIONS

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

Provider fees, also known as "assessments" or taxes," are typically designed to generate state funding to match with federal Medicaid revenue to support Medicaid health care programs. The bill is silent on the rate of the fee, which will be determined by HSD with recommendation from the board. Setting the fee would be subject to applicable federal law, which allows fees to be set up to 5.5 percent of receipts, rising to 6 percent on September 30, 2011.

Without a set fee or an estimate of the receipts subject to the fee, it is difficult to determine the fiscal implications of this bill. However, the following is provided as a simplified example of an application of such a fee.

Total net hospital revenue in 2009 was about $3.875 billion. If the department establishes a 3 percent fee on net revenue, $116.3 million would be deposited to the new fund. This would be matched with federal revenue of $275.6 million, for total revenue of $391.9 million. This is based on the current average federal medical assistance percentage (FMAP) rate for New Mexico's Medicaid programs of 70.33 percent in FY12.

According to the bill, this $391.9 million would be available for the Medicaid program for the following purposes:

1. Maximize payments to hospitals for inpatient and outpatient services subject to the upper payment limit;
2. Ensure adequate hospital reimbursements up to one hundred percent of the hospital's uncompensated care costs;
3. Pay quality incentive payments as set forth by department rule;

4. Subject to available revenue, expand eligibility for public medical assistance to persons not otherwise covered through federally matched programs;
5. Pay the department's actual administrative costs of implementing and administering the Hospital Provider Fees Act, including the following:
    a. Expenses of the board, including the department's personnel services and operating costs related to the administration of the board
    b. HSD's actual costs related to implementing and maintaining the provider fees, including personal services, operating and consulting expenses; and
    c. HSD's actual costs for the changes and updates to the Medicaid Management Information System (MMIS).

Further, the bill states that if Legislature reduces appropriations from the general fund to support the New Mexico Medicaid program, the provider fees shall be reduced by an amount equal to the reduction in general fund appropriations.

SIGNIFICANT ISSUES

Since 1991, in the effort to leverage state and local revenues, many states have enacted targeted provider fees to generate new revenue to match federal Medicaid funds. According to the National Conference of State Legislatures (NCSL), in FY10, 45 states and the District of Columbia had at least one Medicaid provider tax. (Due to the premium tax assessed on health insurers, New Mexico is included that number.) Of these, 26 states assess a fee on hospitals. Typically, these taxes have been used to expand Medicaid services to new populations or at least maintain Medicaid reimbursement rates to hospitals and other providers.

Federal law does not allow a guarantee that taxes will be returned to a provider; however, a so-called 'safe harbor' provision of federal law allows the return of taxes to providers if the sum is less than 5.5 percent of the provider's revenue, rising to 6 percent in September 2011. This effectively allows states to impose a 5.5 percent tax on provider revenue and send it back to providers in their Medicaid reimbursement. The tax revenue for the state may be matched with federal funds and used broadly in the Medicaid program.

There is substantial federal law and regulation governing health care related taxes. The provisions of Senate Bill 541 would be subject to applicable federal law, as stated in the bill, as would subsequent rules promulgated by HSD. In addition, the recent budget submitted to Congress by President Obama aims to curb the use of provider fees by limiting the fees to 3.5 percent in 2015.

In 2009, Colorado enacted the Colorado Health Care Affordability Act. SB 541 is similar to and appears to be modeled on that legislation, including a significant role for a statewide association of hospitals.

The New Mexico Hospital Association raised several concerns about SB 541 and is opposed to the legislation as introduced. In particular, NMHA states "the proposed tax and payment provisions of SB 541 are vague and afford significant discretion to the Human Services Department." Although the new board will have significant representation from hospitals, NMHA notes that the department is only required to "consider" its recommendations.

According to the Health Policy Commission (HPC), the New Mexico Hospital Association (NMHA) estimates uncompensated care at New Mexico hospitals to be $384 million. Specifically, citing a NMHA report, HPC provided the following:

> Uncompensated care is care provided by New Mexico hospitals for which no payment is received from the patient or insurer. It is the sum of a hospital's "bad debt" and the charity care it provides. Charity care is care for which hospitals never expected to be reimbursed. A hospital incurs bad debt when it cannot obtain reimbursement for care provided; this happens when patients are unable to pay their bills, but do not apply for charity care, or are unwilling to pay their bills. Uncompensated care excludes other unfunded costs of care, such as underpayment from Medicaid and Medicare.
>
> Hospitals combine bad debt and charity care costs to arrive at the hospital's total costs of unreimbursed care provided to medically indigent and underinsured patients. In terms of accounting, bad debt consists of services for which hospitals anticipated but did not receive payment. Charity care, in contrast, consists of services for which hospitals neither received, nor expected to receive, payment because they had determined, with the assistance of the patient, the patient's inability to pay. In practice, however, hospitals often have difficulty in distinguishing bad debt from charity care.

The Department of Health reports:

> The definition of "hospital" in SB 541 is any general or special hospital licensed by the DOH, whether publicly or privately owned. The Department of Health's Office of Facilities Management oversees the operations of three facilities that meet this definition: New Mexico Behavioral Health Institute, New Mexico Rehab Hospital and Turquoise Lodge Hospital.
>
> The DOH-operated hospitals provide safety net services to many individuals that are Medicaid eligible, have no payer source or are indigent. In many instances, other hospitals are either unwilling or unable to care for these individuals who have complex medical and/or psychiatric conditions. Very often, DOH facilities are the provider of last resort and play a critical role in serving difficult and underserved populations. In FY 2010, DOH facilities provided $34,033,360 of charity or uncompensated care.
>
> According to the proposal set forth in SB 541, the DOH-operated facilities fall under the criteria for exemption from fees if these criteria should be adopted by the Board. The DOH-operated facilities would appear to benefit from the redistribution proposed in SB541. Otherwise, the facilities are ill-equipped to incur higher fees and increased reporting obligations due to budget cuts and employees freezes.

ADMINISTRATIVE IMPLICATIONS

SB 541 allows for the provider fee act to fund the administration of HSD's actual cost of implementing and administering the hospital provider fees act. This fund will cover HSD's expenses for the board, personnel services, consulting expense, medical management information systems and any other actual cost of implementing and maintain the provider fees act.

HSD estimates the need for at least 2 FTE to implement the Hospital Provider Fees Act -- one FTE for the implementation, maintenance and regulatory oversight and one FTE for the review of reporting and distribution of the funds.

OTHER SUBSTANTIVE ISSUES

The health care sector comprises a large and rapidly growing share of the New Mexico economy. Health care employment currently comprises at least 15 percent of the total workforce, and researchers at the University of New Mexico forecast that 27 percent of employment growth over the next 5 years will come from the health care sector.

Health care spending is also a very important component of the state's budget. General fund spending on Medicaid and other health care programs is budgeted at over $870 million, or 16.2 percent of recurring appropriations in FY11. Federal matching funds will increase total spending on state-administered health programs to over $5 billion in FY11. General Fund spending on health care and other human services has absorbed almost one-third of the total increase in recurring appropriations over the last ten years.

In addition to these amounts, the state is "spending" a large amount annually on tax exemptions, deductions and credits for the health care sector. A few of the more important preferences include the gross receipts tax (GRT) deduction for services purchased through managed care plans, GRT credits for hospitals, income tax preferences for health insurance, various tax exemptions for non-profit health care operations, and premium tax credits for the state's high risk insurance pool.

BE/svb