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

		ORIGINAL DATE	03/04/11		
SPONSOR	Griego, E	**LAST UPDATED**	03/12/11	**HB**	
SHORT TITLE	Opioid Treatment Income Tax Credit			**SB**	544
				ANALYST	Golebiewski

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	($112.5)-($262.5)	($247.5)-($577.5)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

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

SUMMARY

Synopsis of Bill

Senate Bill 544 would provide a tax credit for certified physicians who treat opioid addiction with medication-assisted therapy, using Schedule III, IV or V narcotic medications approved by the FDA. The credit is intended to increase access to medication-assisted opioid addiction therapy. The non-refundable, non-transferrable credit is capped at $5 thousand per physician per year. The Department of Health is responsible for approving treatment programs and certifying taxpayers for the purposes of the opioid treatment income tax credit.

FISCAL IMPLICATIONS

According to the Department of Health, only osteopathic physicians are currently able to prescribe Suboxone, one of the Schedule III narcotic medications. There are 500 doctors of osteopathy in New Mexico, and 130 who have the required federal waiver to prescribe buprenorphine. The fiscal impact estimates above reflect this estimate of eligible physicians grown to 150 in FY12, and grown 10 percent per year in the following fiscal years. The estimates also assume that each eligible physician has a monthly average patient count between 30 and 70, since the Department of Health states “demand for [medication-assisted therapy for opiate addition] outweighs the current capacity to supply those services.”

SIGNIFICANT ISSUES

In a report prepared for the Interim LHHS on House Memorial 9 (November 4, 2009), the Department of Health states that there are approximately 25,000 injection drug users in New Mexico. The prevalence of opioid abuse reflects the decrease in price of heroin, relative to other drugs, like cocaine – DOH notes that the price for an ounce of heroin is less than 20 percent of the price in 1991.

Only 10-15% of the 25,000 injection drug users in New Mexico are receiving medication assisted treatment. Senate Bill 544 would incentivize physicians to provide medication-assisted opioid addiction treatment if currently authorized and if not, to receive training and the corresponding federal waiver to provide the treatment. The credit will likely have a positive effect on the availability of opioid treatment across the state.

DOH notes that there are approximately 200 individual physicians located in New Mexico who are registered to prescribe suboxone and buprenorphine, but many do not. They also identify the counties of Eddy, Chavez, and remote parts of Rio Arriba counties that have no medication-assisted treatment.

DOH:

> The negative consequences in New Mexico of opiate dependence and abuse (both illicit, such as heroin, and prescription narcotic pain medications) are well documented, with substance abuse ranking as the third leading cause of death among New Mexicans (Source: *NM Vital Records and Health Statistics, 2003-2007*). In New Mexico, the overdose death rate from a combination of illicit and prescription drugs increased 150% in the past five years from 1.4 per 100,000 in 2004 to 3.6 in 2008 (*NM State of Health Report, 2011*). Opiate dependence and abuse impacts families, individual productivity, the criminal justice system, and the medical care system, and is linked to the acquisition of infectious diseases including hepatitis B, hepatitis C, and human immunodeficiency virus (HIV).
>
> Medication-assisted therapy for opiate addiction is a key component of a continuum of treatment options. Medication-assisted therapy involves the use of medications, including buprenorphine and Suboxone, as an "opiate replacement" to treat opiate dependence. At this time, only physicians and doctors of osteopathy may prescribe Suboxone. These physicians must have a federal waiver that allows qualifying physicians to practice medication-assisted opioid addiction therapy with Schedule III, IV, or V narcotic medications specifically approved by the Food and Drug Administration (FDA) (http://buprenorphine.samhsa.gov/waiver_qualifications.html). Subutex and Suboxone tablets are currently the only medications approved for this treatment.
>
> Approximately 130 New Mexican physicians have the required federal waiver to prescribe buprenorphine. Of these, the majority are practicing in Albuquerque. Each waivered physician may see 30 patients at one time for the first year and 100 patients in subsequent years for office-based treatment with buprenorphine. Due to limited numbers of primary care physicians currently providing medication-assisted therapy for opiate addiction, demand for this service outweighs the current capacity to supply those services. SB544 provides incentives to expand the number of waivered-physicians providing medical assisted treatment for opiate addiction and thereby reduces unmet need for drug treatment services in the state.

SB 544 is a reasonable attempt to accomplish the tax policy goal of increasing access to medication-assisted opioid addition therapy, especially considering the negative externalities imposed on society by the lack of adequate treatment for drug abuse. However, it should be noted that SB 544 complicates New Mexico tax system and creates inefficiencies.

PERFORMANCE IMPLICATIONS

DOH:

SB544 relates to the DOH FY2012 Strategic Plan Goal 1: Improving Individual Health, Individual Objective 4: Decrease the transmission of infectious diseases and expand primary and secondary prevention services for persons at risk of infectious disease.
Individual Objective 6: Reduce the abuse of alcohol, drugs and tobacco.

ADMINISTRATIVE IMPLICATIONS

TRD:

Notwithstanding any other section of law to the contrary, including confidentiality provisions of Section 7-1-8 NMSA 1978, Section 1, Subsection L would permit the Department to disclose "any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of the opioid treatment income tax credit." This provision may be overly broad, since it does not specifically limit disclosure to the legislature or any specific committee of the legislature. Further, the phrase "any other information required by the legislature" could inadvertently create permission to disclose taxpayer information beyond that required to report statistical data related to the credit.

As currently written pg 4 lines 6 -12 places the responsibility to certify the taxpayer as meeting the requirements of the bill of an average minimum 10 patients per month on the department of health. TRD does not approve the credit rather applies the credit to the return based on the dated certificate of eligibility issued by the department of health. TRD will audit the records maintained by the department of health. Current tax system will need the ability to capture this credit information (a business credit manager) as required for reporting purposes. TRD would need at least 2 additional auditors to perform the required audits that are in the bill.

DOH:

SB544 would require the adoption of rules, the establishment of a new program to approve an opioid addiction treatment program, and the preparation and distribution of tax certificates. A model of a similar medical provider tax credit certification does exist within DOH: the Office of Rural Health administers provider certification for the Rural Health Care Practitioner Tax Credit. Administration of an opiate treatment income tax credit program would require additional staff and staff time to certify providers and administer the tax credit certification.

TECHNICAL ISSUES

TRD:

On page 6, line 9, “notwithstanding” should be changed to “notwithstanding.”

“Opioid treatment” needs to be defined in the bill.

Page 3, subsection F, - if the spouse is the one performing the service that is required by the credit, it is not clear why the spouse would get half of the credit on a separate return.

DOH:

> There may be a technical error in Section 1, Lines 19 – 25, replace with: A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who has provided, with the approval of the department of health, medication-assisted opioid addiction therapy <u>health care services in New Mexico</u> with Schedule II, IV, or V narcotic medications specifically approved by the United States Food And Drug Administration ~~health care services in New Mexico~~, may claim a tax credit.

OTHER SUBSTANTIVE ISSUES

SB544 also allows physicians who qualify for the opioid treatment tax credit and the rural health care practitioner tax credit to claim both credits. It requires the rural health care practitioner health credit to be applied first, and the opioid treatment tax credit to be applied to the remaining income tax liability.

JAG/bym:svb

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