FISCAL IMPACT REPORT

		LAST UPDATED	2/6/24
SPONSOR	Cates	**ORIGINAL DATE**	1/24/24
SHORT TITLE	Medicaid Home Modification Gross Receipts	**BILL NUMBER**	House Bill 93
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
HSD/HCA	$0	($92.0)	($99.7)	($107.2)	($115,2)	Recurring	General Fund
HSD/HCA	$0	($234.7)	($252.4)	($271.3)	($291.6)	Recurring	Federal Funds
TRD/GRT	$0	($280.0)	($290.0)	($300.0)	($320.0)	Recurring	General Fund
TRD/GRT	$0	($190.0)	($190.0)	($200.0)	($210.0)	Recurring	Local Governments

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD	$12.2	$2.5	$0	$14.7	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
Aging and Long-Term Services Department (ALTSD)
Health Care Authority (formerly the Human Services Department) (HCA)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of House Bill 93

House Bill 93 (HB93) provides a gross receipts tax deduction for the provider of environmental modification services reimbursed by the medical assistance division. The recipient must be eligible to receive Medicaid-related services and meet the financial and medical level of care to receive medical assistance division services through one of HCA’s waiver programs. The environmental modification, including purchase and installation, must be necessary to ensure the health, welfare, and safety of the recipient, or to enhance the recipient's access to their home environment, including to increase the recipient's ability to act independently. The eligible provider must meet the requirements of the medical assistance division to provide environmental modifications pursuant to a federal waiver to provide home and community-based services to recipients.

The effective date of this bill is July 1, 2024, and sunsets for modifications installed after July 1, 2034.

FISCAL IMPLICATIONS

This bill creates or expands a tax expenditure. Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

HCA has provided an estimate of the revenue consequences impacting the agency including loss of federal Medicaid match reimbursement. However, the impact on HCA seems to ignore the direct impact on the general fund and local governments of the deduction. TRD has used older data to calculate the direct impact and may have underestimated the amount of expenditure under fee-for-services programs. The HCA presentation is included as an appendix. For the out-years, LFC staff applied a 7.5 percent growth rate. The following is the impact table presented by HCA:

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26	FY27	FY28		
	($92.0)	($99.7)	($107.2)	($115.2)	Recurring	General Fund
	($234.7)	($252.4)	($271.3)	($291.6)	Recurring	Federal Funds
	($326.7)	($352.1)	($378.5)	($406.8)	Recurring	TOTAL

TRD presented the following estimate of the direct impact on the general fund and defers to HCA for the impact on that agency:

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY24	FY25	FY26	FY27	FY28		
--	($280)	($290)	($300)	($320)	R	General Fund
--	($190)	($190)	($200)	($210)	R	Local Governments

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

> Using data from the HCA, TRD estimated that in 2021 approximately 1,341 Medicaid recipients had benefited from environmental modifications at the aggregate cost of $5,788,099. TRD used S&P's growth rate for the health care chained price index to assume inflationary cost increases for the services provided. The impact to the general fund is from the direct impact of the Gross Receipts Tax (GRT) deduction only and is not adjusted for changes to Medicaid state and federal matching funds. TRD defers to HSD's impact to the general fund as relates to general fund appropriations and federal revenue impacts.

Note that HSD/HCA reports 2023 expenditures in total of $7,213,243 for 2023. Thus, the direct impacts reported by TRD probably need to be increased by some amount. TRD, LFC, and HCA will work to resolve this discrepancy.

SIGNIFICANT ISSUES

This bill narrows the gross receipts tax (GRT) base. Many New Mexico tax reform efforts over the last few years have focused on broadening the GRT base and lowering the rates. Narrowing the base leads to continually rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

ALTSD has provided some background:

> This proposed legislation offers financial benefits to providers of home and community-based service recipients who perform environmental modifications, including much of the population that ALTSD serves. This GRT deduction will: 1) incentivize providers to engage in environmental modification services for Medicaid providers and 2) leverage federal funds.
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> Of New Mexico's 328,905 adults with a disability, 22.4 percent (73,621) are living below the poverty level (U.S. Census Bureau, American Community Survey 2022; table 18130). Approximately 29 of persons aged 60 years and older in New Mexico have difficulty walking or climbing stairs (Behavioral Risk Factor Surveillance System Survey, 2021. Centers for Disease Control and Prevention, with New Mexico Department of Health). Further, 9 percent (171,350) of New Mexicans aged 18 years and older have an ambulatory difficulty (U.S. Census Bureau, American Community Survey 2022; table S1810); this percentage is higher than the national percentage (7 percent). Further, based on U.S. Census Bureau projections, it is anticipated that by 2030 New Mexico will be ranked 4th highest in the nation for total senior population per capita (University of New Mexico Geospatial Population Studies). Finally, 18 percent of New Mexican adults aged 65 years and older are Medicaid-eligible, thereby necessitating innovative ways to pay for the services. This data underscores the need for services to ensure that older and disabled adults can "age-in-place."
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> Vulnerable New Mexicans face geographic, economic, language, and cultural barriers in accessing the resources that permit them to remain safely in their own home, *e.g.*, grab bars in showers and accessibility ramps. HB93 provides access to one such service as an economic incentive to eligible providers.

HCA comments:

- Medicaid environmental modifications (Emods) services are provided under several Medicaid home and community-based services programs (HCBS): Centennial Care Community Benefit (CB); Developmental Disabilities Waiver; Mi Via Waiver; Medically Fragile Waiver; and Supports Waiver. Program recipients are allowed six thousand ($6,000) dollars every five years in CB and five thousand ($5,000) every five years in the waiver programs. Before recipients can access Emods, all requests must undergo utilization review for medical necessity.
- Under the Medicaid program, the provider's GRT costs incurred for the Emods is built into the provider's bid and reimbursed in the total payment to the provider.

- Approximately 36 thousand New Mexicans participate in HCBS programs.

TRD also comments on the tax policies involved:

> The bill seeks to aid in reducing the cost of making environmental modifications to Medicaid recipients' homes. TRD assumes this tax reduction would be passed on to New Mexico Medicaid program's outlay for these services whereby the state and federal match would be reduced, saving additional general fund dollars. The impact though is not offset for local governments. The Medicaid recipients themselves would continue to have these modifications covered through Medicaid and thus not be impacted by the reduction of the tax due.
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> 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 TRD. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met because TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose. TRD suggests adding language stating this deduction is required to be separately reported. The effectiveness of this deduction will be unknown without the requirement to state the new deduction separately.

HCA notes the following:

- DDSD does not have performance measures related to HB93.
- HB93 is related to goals #1, #2, and #3 of the HCA Strategic Plan.

ADMINISTRATIVE IMPLICATIONS

TRD will need to update forms, instructions, and publications and make information system changes. TRD Administrative Services Division (ASD) anticipates this bill will take approximately 40 hours, split between two existing full-time employees to be implemented. TRD Information Technology Division (ITD) estimates that implementing the bill will require approximately 220 hours or one month and an estimated staff workload cost of $12,210.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY24	FY25	FY26	3 Year Total Cost		
--	$2.9	--	$2.9	NR	TRD ASD – Operating
$12.2	--	--	$12.2	NR	TRD ITD – Staff Workload Cost

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

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Similar to HB220 (2023); Related to HB26 Medicaid Environmental Modifications Services.

TECHNICAL ISSUES

TRD notes two possible technical issues:

> Considering the definition of "eligible provider" in the bill, it is unclear if this deduction should be extended to governmental gross receipts tax as well.
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> The bill provides a deduction for the provision of "environmental modification services." But "environmental modifications" are defined to include "the *purchasing* and installing of equipment…" In order to ensure that the deduction covers all aspects of environmental modification, TRD suggests changing the words "environmental modification services" to just "environmental modifications" on p. 1, line 21.

OTHER SUBSTANTIVE ISSUES

ALTSD notes a possible unintended consequence:

> An unintended consequence of the proposed legislation may be potentially incentivizing environmental modification providers to prioritize Medicaid modifications in a currently stressed construction environment. This may create further delays for non-Medicaid-eligible Seniors and Adults with disabilities.

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

APPENDIX

The following is the base calculation provided by HCA:

> In FY23, there were approximately 1,441 (=140 fee-for-service (FFS) + 1,301 managed care organization (MCO)) Medicaid recipients who benefited from environmental modifications to their homes at a total cost of $7,213,243. Medicaid recipients who utilized agency-based community services and self-directed community services would benefit from the gross receipts tax (GRT) deduction of 7.1741 percent (the state average gross receipts tax rate for all areas as of January 1, 2024).
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> On the FFS portion, the Medicaid program does not pay GRT to not-for-profit providers or on services that were exempted from the GRT (e.g., prescribed drugs). For for-profit providers, the GRT is added to the base payment based on service location. In FY23, environmental modifications were provided to 140 recipients for a total cost of $678,837, including $30,748 GRT amount which calculated to an effective GRT rate of 4.7444 percent. The projected cost for FY25 is $719,070, including $32,570 GRT amount, a 5.93 percent increase from FY23. The proposed GRT deduction by HB93 will remove that effective GRT rate and will save the Medicaid program $32,570 ($9,720 General Fund with a composite FMAP of 71.84 percent for FY25). For FY26, the reduction is estimated at $33,536 ($9,497

GF) with the FFY25 FMAP of 71.68 percent.

On the MCO line of business, the providers are reimbursed based on negotiated rates with the respective MCO. However, GRT payment is assumed to mirror the practice on the FFS side, i.e., not for-profit providers do not collect GRT and remit no GRT to the state. In FY23, the MCOs paid a total of $5,536,495, including an estimated GRT amount of $250,770. Based on the estimated expenditure growth between FY23 and FY24 of 8.3 percent, the FY25 projected cost is $6,494,200, including a projected GRT amount of $294,155 based on a 4.7444 percent effective GRT rate. Thus, the proposed GRT deduction by HB93 will result in $294,155 ($82,834 GF) reduction in Medicaid payment. For FY26, the reduction is estimated at $318,582 ($90,222 GF) with the FFY25 FMAP of 71.68 percent.

Overall, the GRT deduction by HB93 will reduce the Medicaid expenditure for environmental modifications by $326,725, of which $92,006 is General Fund in FY25 and $352,118 ($99,719 GF) in FY26.

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