Colorado Legislative Council Staff

# HB16-1212

# FINAL FISCAL NOTE

**FISCAL IMPACT:** ☒ State ☐ Local ☐ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

**Drafting Number:** LLS 16-0896
**Prime Sponsor(s):** Rep. Roupe

**Date:** July 7, 2016
**Bill Status:** Postponed Indefinitely
**Fiscal Analyst:** Kate Watkins (303-866-3446)

**BILL TOPIC:** TEMPORARY TAX INCENTIVE FOR UNREIMBURSED MEDICAID FEES

| Fiscal Impact Summary | FY 2015-2016 | FY 2016-2017 | FY 2017-2018 |
|---|---|---|---|
| **State Revenue** | **($40.2 million)** | **($84.5 million)** | **($88.2 million)** |
| General Fund | ($40.2 million) | ($84.5 million) | ($88.2 million) |
| **State Expenditures** | | **$35,038** | |
| General Fund | | 35,038 | |
| **TABOR Impact** | | | ($88.2 million) |
| **Appropriation Required:** $35,038 - Department of Revenue (FY 2016-17). | | | |
| **Future Year Impacts:** Ongoing revenue decreases and expenditure increases through FY 2018-19. | | | |

**NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.**

## Summary of Legislation

The bill creates an income tax credit for health care providers serving Medicaid patients in tax years 2016, 2017, and 2018. The tax credit is calculated as 50 percent of the difference between Medicare and Medicaid reimbursement rates. If no Medicare equivalent or billing code exists, the credit is calculated as the difference between the Medicaid reimbursement and the amount published in the most recent Colorado-specific cost-of-care or compensation survey. The credit is nonrefundable, meaning it is limited to a taxpayer's income tax liability, and may not be carried forward.

## Background

Reimbursement payments to providers for services under Medicaid tend to be lower than those for the same services under Medicare. The differences between payment rates vary by service and change over time based on state and federal government funding decisions. Table 1 provides comparisons of Medicaid and Medicare reimbursement rates across several categories of service. Comparisons between Colorado's and other states' Medicaid reimbursement rates are provided where Medicare rates are not comparable. In November 2015, these estimates were provided to the Joint Budget Committee by the Department of Health Care Policy and Financing (HCPF).

| Table 1. Colorado Medicaid Provider Payment Rate Comparison Report | |
|---|---|
| **Provider Type** | **Percent of Medicare or Other Rate Comparison** |
| Practitioner | 68.3% |
| Durable Medical Equipment/Supplies | 81.7% |
| Transportation | 51.8% |
| Dental | 67.9% |
| Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) | 87.6% |
| Independent Laboratory | 93.8% |
| Home and Community Based Services* | 57.6% to 140.6% |
| Home Health/Private Duty Nursing* | 111.7% to 179.3% |

*Source: Department of Health Care Policy and Financing, Colorado Medicaid Provider Payment Rate Comparison report. Published November 1, 2015.*
**Ranges are shown for highest and lowest state comparisons.*

***Total Medicaid payments.*** In FY 2014-15, net reimbursement payments to providers under Medicaid totaled $6.2 billion. HCPF projects that payments will grow 13.1 percent in FY 2015-16 with the expansion in the Medicaid population. In FY 2016-17 and FY 2017-18, payments are expected to grow at a slower rate of 5.1 percent and 4.3 percent per fiscal year, respectively.

**State Revenue**

This bill will result in an estimated **General Fund revenue reduction of $40.2 million in FY 2015-16 (half-year impact), $84.5 million in FY 2016-17, $88.2 million in FY 2017-18, and $44.1 million in FY 2018-19 (half-year impact).**

***Data and assumptions*.** Revenue estimates are based on data provided by HCPF. These data provide the payment amount reimbursed to each Medicaid provider in FY 2014-15. Governmental entities, estates, and trusts were excluded from the data, as these entities are generally not subject to Colorado state income tax.

Of the 6,011 providers with unique federal employer identification numbers (FEINs), 405 could be matched to income tax data by the Colorado Department of Revenue. An estimate of the tax credit under this bill was calculated for each of the matched providers based on each taxpayers' Medicaid reimbursement payment, income tax liability, and an assumed ratio of Medicaid to Medicare payments of 71 percent. The 71 percent ratio is used as a simplifying assumption as Medicaid payment data do not include more detailed data for the type or amount of services offered. Based on these calculations, the average state income tax liability for these 405 providers was $12,749. The estimated average tax credit was $11,830 per taxpayer. Only 31.1 percent of the 405 taxpayers had a net income tax liability greater than $0.

To determine the total state revenue impact, the average credit amount was multiplied by the larger universe of 6,011 providers. This amount was grown by HCPF's projections of growth in total Medicaid payments to arrive at the estimates for FY 2015-16 and beyond. Revenue

estimates may under- or over-estimate the impact of this bill to the extent that the 405 providers for which tax data could be matched do not represent the full universe of providers, and to the extent that the 71 percent ratio under- or over-estimates the average reimbursement rate across services.

## TABOR Impact

This bill reduces state revenue to the General Fund, which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Table 2 shows the projected impact on the mechanisms used to refund the TABOR surplus in current law. Revenue is refunded in the year following the year in which it is collected. In FY 2017-18, this bill is expected to reduce the surplus by $88.2 million to an amount below the trigger for the individual income tax rate reduction refund mechanism. Remaining surplus revenue will be refunded through the Six Tier Sales Tax Refund mechanism.

**Table 2. Impact of HB 16-1212 on Current Refund Mechanisms**

| | FY 2017-18 Surplus<br>FY 2018-19 Refund<br>Tax Year 2018 |
|---|---|
| **Current Law** | |
| Revenue above the TABOR limit | $246.1 million |
| Income Tax Rate Reduction | 230.1 million |
| Sales Tax Refund | 16.0 million |
| **HB16-1212** | |
| Revenue above the TABOR limit | 177.5 million |
| Income Tax Rate Reduction | 0 |
| Sales Tax Refund | 177.5 million |
| **Change from Current Law** | |
| Revenue above the TABOR limit | (68.6 million) |
| Income Tax Rate Reduction | (230.1 million) |
| Sales Tax Refund | 161.5 million |

*Source: Legislative Council Staff March 2016 Forecast.*

## State Expenditures

This bill will **increase state General Fund expenditures by $35,038 in FY 2016-17 for the Department of Revenue.** Costs include programming, testing, and form change costs, as summarized in Table 3.

**Table 3. Expenditures Under HB16-1212**

| Cost Components | FY 2015-16 | FY 2016-17 | FY 2017-18 |
|---|---|---|---|
| GenTax Programming | | $30,000 | |
| GenTax Testing | | 3,838 | |
| Form Change Costs | | 1,200 | |
| **TOTAL** | | **$35,038** | |

***Department of Revenue.*** This bill requires changes to the Department of Revenue's GenTax software system. Changes are programmed by a contractor at a rate of $200 per hour. The changes in this bill are expected to increase General Fund expenditures by $30,000, representing 150 hours of programming. GenTax testing for this bill will require the expenditures for contract personnel totaling $3,838, representing 160 hours of testing at a rate of $24 per hour. This fiscal note assumes that the Department of Revenue will have limited access to information allowing verification of eligibility for credits claimed due to state and federal prohibitions on reviewing medical information. Therefore, the workload increase required to review and audit claims is expected to be accomplished within existing resources.

***Department of Personnel and Administration.*** Scanning and imaging software will require modification to implement changes to the deduction. This will require $1,200 for individual income tax form 104CR in FY 2016-17 reappropriated from the Department of Revenue to the document management line for the Department of Personnel and Administration.

***Department of Health Care Policy and Financing.*** HCPF is not directed to take action in implementing this bill. However, to implement the bill, the Department of Revenue would likely require HCPF to provide an annual report of enrolled Medicaid providers. Generating such a report would require a minimal workload increase and could be accomplished within existing resources.

## Technical Considerations

For many Medicaid services, a comparable Medicare service does not exist and Colorado-specific cost-of-care or compensation surveys do not exist to offer alternative comparisons. It is unclear how Medicaid providers would determine the rate difference in these instances or how they would be verified. Additionally, federal law and state regulations prohibit the Department of Revenue from reviewing medical records. The Department of Revenue would therefore be unable to validate the credits claimed without the assistance of a third party. Due to the complexity of Medicaid payment rates, validation would likely require significant state expenditures.

## Effective Date

This bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on April 13, 2016.

## State Appropriations

In FY 2016-17, the Department of Revenue will require a General Fund appropriation of $35,038. The Department of Personnel and Administration requires $1,200 in reappropriated funds for document management.

## State and Local Government Contacts

Health Care Policy and Financing
Human Services
Personnel and Administration
Information Technology
Revenue