

<b>LFC Requester:</b>	<b>Peter vanMoorsel</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: **Date** February 25, 2015  
**Original**     **Amendment**        **Bill No:** HB 351  
**Correction**     **Substitute**   

**Sponsor:** Rep. Terry H. McMillan    **Agency Code:** Attorney General's Office  
**Short**    Unreimbursed Medical    **Person Writing**    Luis Carrasco, AAG  
**Title:**    Expense Tax Deduction    **Phone:** 827-6040    **Email** LCarrasco@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

## **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

### **SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

### **BILL SUMMARY**

Synopsis: House Bill 351 ("HB351"), is an act that proposes to created a new deduction from net income when calculating a taxpayer's liability under the Income Tax Act, NMSA 1978, Sections 7-2-1 through -36 (1965, as amended through 2014). If enacted, HB351 would permit a taxpayer to deduct from his/her net income a certain percentage of the medical care expenses incurred during the taxable year for the medical care of the taxpayer, the taxpayer's spouse or a dependent when such expenses are not reimbursed or compensated for by insurance and were not included in the taxpayer's itemized deductions. The deduction from net income authorized by HB351 would range from 10-25%, depending on the taxpayer's filing status and adjusted gross income, and would be deducticle beginning in the 2015 tax year.

Medical care expenses eligible for the deduction are those made for the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body that are provided by a physician or in a health care facily and include: prescribed drugs/insulin; certain qualified long-term care services; medical care insurance, including premiums paid under Part B of Title 18 of the Social Security Act or for certain qualified long-term care insurance contracts, when such insurance or premiums are paid from income included in the taxpayer's adjusted gross income; nursing services provided by a practical nurse or professional nurse license to practice in New Mexico; specialized treatment or the use of therapeutic devices when prescribed by a physician and the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and care in institutions other than hospitals, in the principal reason for institutionalization is to receive medical care (and may include meals and lodging expenses if a necessary part of the medical care provided) Cosmetic surgery would not constitute a medical expense eligible for the deduction.

### **FISCAL IMPLICATIONS**

N/A

### **SIGNIFICANT ISSUES**

The text of HB351 is identical to that found at NMSA 1978, Section 7-2-35 (2000). However, the legislation creating Section 7-2-35 contained a contingent effective date of July 3, 2000. The contingency language contained in the legislation specified that it would not become effective unless Senate Bill 33 or a similar bill of the second special session is enacted into law and that the 2000 General Appropriation Act passed by that body included an appropriation of \$4,975,000 for the purpose of implementing an amendment to the state medicaid plan making eligible an individual who is the parent of a child under 19 years of age who resides with that parent and whose family income does not exceed 60% of the federal poverty guidelines. Senate Bill 33 and the \$4,975,000 appropriation were respectively vetoed and line-item vetoes, and thus, Section 7-2-35 never came into effect.

Although HB351 excludes from the deduction cosmetic surgery expenses, it is otherwise silent as to the eligibility of expenses that are not medically necessary or “elective.” Should the legislature wish to exclude such elective expenditures, it would be prudent to make the exclusion explicit.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

N/A

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

#### **TECHNICAL ISSUES**

See SIGNIFICANT ISSUES above.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The status quo will remain. Taxpayers will not be able to exclude medical care expenses from their net income for purposes of calculating their liability under the Income Tax Act, unless they include such expenses in their itemized deductions.

#### **AMENDMENTS**

Should the legislature wish to exclude from the deduction medical expenses that are not otherwise medically necessary, it could add the phrase “and services, treatment or procedures that are not medically necessary” immediately after “surgery” on line 23 of page 3.