

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 241 DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF HEALTH CARE PRACTITIONERS

3.2.241.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.241.1 NMAC - N, 4/29/05]

3.2.241.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.241.2 NMAC - N, 4/29/05]

3.2.241.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.241.3 NMAC - N, 4/29/05]

3.2.241.4 DURATION: Permanent.

[3.2.241.4 NMAC - N, 4/29/05]

3.2.241.5 EFFECTIVE DATE: 4/29/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.241.5 NMAC - N, 4/29/05]

3.2.241.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.241.6 NMAC - N, 4/29/05]

3.2.241.7 DEFINITIONS: "SCOPE OF PRACTICE" DEFINED: As used in Section 7-9-93 NMSA 1978, the term "scope of practice" means the health care activities authorized to be conducted by, or at the direction of, the health care practitioner under a license granted to the health care practitioner by the appropriate body under any of the acts specified under Paragraph (3) of Subsection B of Section 7-9-93 NMSA 1978.

[3.2.241.7 NMAC - N, 4/29/05]

3.2.241.8 RECEIPTS DEDUCTIBLE UNDER OTHER SECTIONS: Health care practitioners may not deduct under Section 7-9-93 NMSA 1978 receipts that are deductible under other sections of the Gross Receipts and Compensating Tax Act. Receipts deductible under other sections include:

A. receipts from the United States or an agent thereof under Part B of medicare (Title 18 of the federal Social Security Act); these receipts are deductible under Section 7-9-77.1 NMSA 1978;

B. receipts from a third party administrator of the federal TRICARE program; these receipts are deductible under Section 7-9-77.1 NMSA 1978; and

C. receipts from health care services sold to a hospital or other person for re-sale with respect to which the practitioner has accepted a Type 5 nontaxable transaction certificate executed by the buyer; these receipts are deductible under Section 7-9-48 NMSA 1978.

[3.2.241.8 NMAC - N, 4/29/05]

3.2.241.9 RECEIPTS FROM THIRD PARTY CLAIMS ADMINISTRATORS: Payments by a third party claims administrator to a health care practitioner for health care services rendered by the practitioner within the scope of his or her practice and pursuant to a contract with a managed care company or a health insurer that are otherwise deductible under Section 7-9-93 NMSA 1978 may be deducted from gross receipts. A third party claims administrator is an entity that processes health care claims and performs related business functions for a health plan.

[3.2.241.9 NMAC - N, 4/29/05; 3.2.241.9 NMAC - N, 5/31/06]

3.2.241.10 RECEIPTS OF HEALTH CARE PRACTITIONERS FROM MANAGED HEALTH CARE PROVIDERS AND HEALTH CARE INSURERS PURSUANT TO CONTRACT WITH INDEPENDENT PRACTICE ASSOCIATIONS:

A. For purposes of Section 7-9-93 NMSA 1978, an "independent practice association" means an entity which acts as an administrative intermediary between health care practitioners and other managed health care

providers or health care insurers. Independent practice associations generally contract with health care practitioners, other managed health care providers and health care insurers. In order for receipts of a health care practitioner to be deductible under Section 7-9-93 NMSA 1978, each health care practitioner contracted with the independent practice association must be qualified to receive reimbursement from each managed health care provider and health care insurer contracted with the independent practice association subject to limitations and a fee schedule established by the independent practice association and agreed to by both parties through their individual contracts with the independent practice association. Thus, a single contract between a health care practitioner and an independent practice association eliminates the need for the individual contracts between the health care practitioner and the independent practice association's other managed health care providers and health care insurers. Receipts from payments by other managed health care providers and health care insurers to health care practitioners pursuant to the parties' contracts with an independent practice association and that are otherwise deductible under Section 7-9-93 NMSA 1978 are deductible. Receipts from payments by independent practice associations to health care practitioners are deductible under Section 7-9-93 NMSA 1978.

B. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills and receives payment through the independent practice association from a health care insurer that is also contracted with the independent practice association. The health care insurer is registered in New Mexico. Even though the health care practitioner does not have a direct contract with the health care insurer, he or she may deduct payments he or she receives for services that are otherwise deductible under Section 7-9-93 NMSA 1978 because he or she has contracted with the independent practice association.

C. Example: A health care practitioner contracts with an independent practice association. The health care practitioner bills the managed health care provider or health care insurer that the independent practice association has contracted with. The managed care provider or health care insurer makes payment to the independent practice association according to its contract with the independent practice association. The independent practice association then makes payment to the health care practitioner according to its contract with the health care practitioner. The receipts of the health care practitioner are deductible pursuant to Section 7-9-93 NMSA 1978. [3.2.241.10 NMAC - N, 4/29/05; A, 5/31/06; 3.2.241.10 NMAC - N, 10/16/06]

3.2.241.11 RECEIPTS FOR ADMINISTRATIVE SERVICES NOT DEDUCTIBLE: Receipts of a third party for administering a health insurance or medical plan are not deductible under Section 7-9-93 NMSA 1978. [3.2.241.11 NMAC - N, 4/29/05; 3.2.241.11 NMAC - Rn, 3.2.241.16 NMAC, 5/31/06]

3.2.241.12 RECEIPTS NOT DEDUCTIBLE UNDER SECTION 7-9-93 NMSA 1978: Receipts of a health care practitioner other than from payments by a managed health care provider or health care insurer for commercial contract services or medicare part C services provided by the health care practitioner are not deductible under Section 7-9-93 NMSA 1978. Receipts of health care practitioners not deductible under Section 7-9-93 NMSA 1978 include:

A. receipts from any payment, such as a co-payment, that is the responsibility of the patient under the managed health care plan or health insurance;

B. receipts on a fee-for-service basis; "fee-for-service" means a traditional method of paying for health care services under which health care practitioners are paid for each service rendered, as opposed to paying in accordance with a schedule of fees in a contract the health care provider has entered into with a third party;

C. receipts from providing services to medicaid patients; and

D. receipts from selling tangible personal property such as nonprescription medicine that is not incidental to the provision of a deductible service.

[3.2.241.12 NMAC - N, 4/29/05; 3.2.241.12 NMAC - Rn, 3.2.241.9 NMAC, 5/31/06]

3.2.241.13 RECEIPTS OF CORPORATE PRACTICE: A corporation, unincorporated business association, or other legal entity may deduct under Section 7-9-93 NMSA 1978 its receipts from managed health care providers or health care insurers for commercial contract services or medicare part C services provided on its behalf by health care practitioners who own or are employed by the corporation, unincorporated business association or other legal entity that is not:

A. an organization described by Subsection A of Section 7-9-29 NMSA 1978; or

B. an HMO, hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility licensed under the Public Health Act.

[3.2.241.13 NMAC - N, 4/29/05; 3.2.241.13 NMAC - Rn & A, 3.2.241.10 NMAC, 5/31/06]

3.2.241.14 VALID CERTIFICATE OF COMPLIANCE REQUIRED: A person is not a “health care insurer” as defined by Section 7-9-93 NMSA 1978 if the person does not have a valid certificate of compliance issued by the public regulation commission under the New Mexico insurance code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan. Receipts of health care practitioners from persons without such a valid certificate of compliance are not deductible under Section 7-9-93 NMSA 1978. [3.2.241.14 NMAC - N, 4/29/05; 3.2.241.14 NMAC - Rn, 3.2.241.11 NMAC, 5/31/06]

3.2.241.15 SELF-INSURERS MAY BE “MANAGED HEALTH CARE PROVIDERS”: If a person provides for the delivery of comprehensive basic health care services and medically necessary services to the person’s employees enrolled in a self-insurance plan through contracting with selected or participating health care practitioners, that person is a “managed health care provider”. Example: New Mexico state government’s self-insured plan under the Group Benefits Act. [3.2.241.15 NMAC - N, 4/29/05; 3.2.241.15 NMAC - Rn, 3.2.241.12 NMAC, 5/31/06]

3.2.241.16 PAYMENTS FROM WORKERS COMPENSATION: Receipts of a health care practitioner from the state of New Mexico pursuant to the Workers Compensation Act are not receipts from a managed health care provider or health care insurer and are not deductible under Section 7-9-93 NMSA 1978. [3.2.241.16 NMAC - N, 4/29/05; 3.2.241.16 NMAC - Rn, 3.2.241.13 NMAC, 5/31/06]

3.2.241.17 RECEIPTS OF HEALTH CARE FACILITIES NOT DEDUCTIBLE: An organization, whether or not owned exclusively by health care practitioners, licensed as a hospital, hospice, nursing home, an entity that is solely an outpatient facility or intermediate care facility under the Public Health Act is not a “health care practitioner” as defined by Section 7-9-93 NMSA 1978. Receipts of such an organization are not deductible under Section 7-9-93 NMSA 1978. [3.2.241.17 NMAC - Rn & A, 3.2.241.14 NMAC, 5/31/06]

3.2.241.18 RECEIPTS FROM “MEDIGAP” INSURANCE POLICIES NOT DEDUCTIBLE: Payments from an insurer in accordance with a medigap policy are not deductible under Section 7-9-93 NMSA 1978. Medigap policies are not paying for “commercial contract services” as defined by Section 7-9-93 NMSA 1978. For purposes of the deduction under Section 7-9-93 NMSA 1978, a medigap policy meets the statutory definition of a "medicare supplemental policy" contained in 42 U.S.C. 1395ss(g)(1). It is a health insurance policy or other health benefit plan offered by a private entity to those persons entitled to medicare benefits and is specifically designed to supplement medicare benefits. Medigap policies do not include limited benefit coverage available to medicare beneficiaries such as "specified disease" or "hospital indemnity" coverage. [3.2.241.18 NMAC - Rn & A, 3.2.241.15 NMAC, 5/31/06]

History of 3.2.241 NMAC: [RESERVED]