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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3062

01/31/2020 Authored by Daudt and Neu The bill was referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; repealing the gross revenues tax on hospitals and health care
1.3 providers; repealing Minnesota Statutes 2018, sections 295.50, subdivisions 1, 1a,
1.4 2, 2a, 6, 6a, 7, 9c, 10a, 10b, 12b, 13; 295.51, subdivision 1; 295.52, subdivisions
1.5 4a, 5, 6; 295.53, subdivisions 2, 3, 4a; 295.54; 295.55; 295.56; 295.57, subdivisions
1.6 1, 2, 4; 295.58; 295.581; 295.582, subdivision 2; 295.59; Minnesota Statutes 2019
1.7 Supplement, sections 295.50, subdivisions 2b, 3, 4, 7a, 9b, 10c, 13a, 14, 15, 16;
1.8 295.51, subdivision 1a; 295.52, subdivisions 1, 1a, 2, 3, 4, 8; 295.53, subdivision
1.9 1; 295.57, subdivisions 3, 5; 295.582, subdivision 1.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. REPEALER.

1.12 (a) Minnesota Statutes 2018, sections 295.50, subdivisions 1, 1a, 2, 2a, 6, 6a, 7, 9c, 10a,
1.13 10b, 12b, and 13; 295.51, subdivision 1; 295.52, subdivisions 4a, 5, and 6; 295.53,
1.14 subdivisions 2, 3, and 4a; 295.54; 295.55; 295.56; 295.57, subdivisions 1, 2, and 4; 295.58;
1.15 295.581; 295.582, subdivision 2; and 295.59, are repealed.

1.16 (b) Minnesota Statutes 2019 Supplement, sections 295.50, subdivisions 2b, 3, 4, 7a, 9b,
1.17 10c, 13a, 14, 15, and 16; 295.51, subdivision 1a; 295.52, subdivisions 1, 1a, 2, 3, 4, and 8;
1.18 295.53, subdivision 1; 295.57, subdivisions 3 and 5; and 295.582, subdivision 1, are repealed.

1.19 EFFECTIVE DATE. This section is effective for gross revenues received after
1.20 December 31, 2020.

**295.50 DEFINITIONS.**

Subdivision 1. **Definitions.** For purposes of sections 295.50 to 295.59, the following terms have the meanings given.

Subd. 1a. **Blood components.** "Blood components" means the parts of the blood that are separated from blood by physical or mechanical means and are intended for transfusion. Blood components do not include blood derivatives.

Subd. 2. **Commissioner.** "Commissioner" is the commissioner of revenue.

Subd. 2a. **Delivered outside of Minnesota.** "Delivered outside of Minnesota" means property which the seller delivers to a common carrier for delivery outside Minnesota, places in the United States mail or parcel post directed to the purchaser outside Minnesota, or delivers to the purchaser outside Minnesota by means of the seller's own delivery vehicles, and which is not later returned to a point within Minnesota, except in the course of interstate commerce.

Subd. 2b. **Emergency medical reasons.** "Emergency medical reasons" means a public health emergency declaration pursuant to United States Code, title 42, section 247d; a national security or peacetime emergency declared by the governor pursuant to section 12.31; or a situation involving an action by the commissioner of health pursuant to section 144.4197, 144.4198, or 151.37, subdivisions 2, paragraph (b), and 10, except that, for purposes of this subdivision, a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason.

Subd. 3. **Gross revenues.** "Gross revenues" are total amounts received in money or otherwise by:

- (1) a hospital for patient services;
- (2) a surgical center for patient services;
- (3) a health care provider, other than a staff model health plan company, for patient services;
- (4) a wholesale drug distributor for sale or distribution of legend drugs that are delivered in Minnesota by the wholesale drug distributor, by common carrier, or by mail, unless the legend drugs are delivered to another wholesale drug distributor who sells legend drugs exclusively at wholesale; and
- (5) a staff model health plan company as gross premiums for enrollees, co-payments, deductibles, coinsurance, and fees for patient services.

Subd. 4. **Health care provider.** (a) "Health care provider" means:

(1) a person whose health care occupation is regulated or required to be regulated by the state of Minnesota furnishing any or all of the following goods or services directly to a patient or consumer: medical, surgical, optical, visual, dental, hearing, nursing services, drugs, laboratory, diagnostic or therapeutic services;

(2) a person who provides goods and services not listed in clause (1) that qualify for reimbursement under the medical assistance program provided under chapter 256B;

(3) a staff model health plan company;

(4) an ambulance service required to be licensed;

(5) a person who sells or repairs hearing aids and related equipment or prescription eyewear;  
or

(6) a person providing patient services, who does not otherwise meet the definition of health care provider and is not specifically excluded in clause (b), who employs or contracts with a health care provider as defined in clauses (1) to (5) to perform, supervise, otherwise oversee, or consult with regarding patient services.

(b) Health care provider does not include:

(1) hospitals; medical supplies distributors, except as specified under paragraph (a), clause (5); nursing homes licensed under chapter 144A or licensed in any other jurisdiction; wholesale drug distributors; pharmacies; surgical centers; bus and taxicab transportation, or any other providers of transportation services other than ambulance services required to be licensed; supervised living facilities for persons with developmental disabilities, licensed under Minnesota Rules, parts 4665.0100 to 4665.9900; housing with services establishments required to be registered under

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chapter 144D; board and lodging establishments providing only custodial services that are licensed under chapter 157 and registered under section 157.17 to provide supportive services or health supervision services; adult foster homes as defined in Minnesota Rules, part 9555.5105; day training and habilitation services for adults with developmental disabilities as defined in section 252.41, subdivision 3; boarding care homes, as defined in Minnesota Rules, part 4655.0100; and adult day care centers as defined in Minnesota Rules, part 9555.9600;

(2) home health agencies as defined in Minnesota Rules, part 9505.0175, subpart 15; a person providing personal care services and supervision of personal care services as defined in Minnesota Rules, part 9505.0335; a person providing home care nursing services as defined in Minnesota Rules, part 9505.0360; and home care providers required to be licensed under chapter 144A for home care services provided under chapter 144A;

(3) a person who employs health care providers solely for the purpose of providing patient services to its employees;

(4) an educational institution that employs health care providers solely for the purpose of providing patient services to its students if the institution does not receive fee for service payments or payments for extended coverage; and

(5) a person who receives all payments for patient services from health care providers, surgical centers, or hospitals for goods and services that are taxable to the paying health care providers, surgical centers, or hospitals, as provided under section 295.53, subdivision 1, paragraph (b), clause (3) or (4), or from a source of funds that is exempt from tax under this chapter.

Subd. 6. **Home health care services.** "Home health care services" are services:

(1) defined under the state medical assistance program as home health agency services provided by a home health agency, personal care services and supervision of personal care services, home care nursing services, and waived services or services by home care providers required to be licensed under chapter 144A; and

(2) provided at a recipient's residence, if the recipient does not live in a hospital, nursing facility, as defined in section 62A.46, subdivision 3, or intermediate care facility for persons with developmental disabilities as defined in section 256B.055, subdivision 12, paragraph (d).

Subd. 6a. **Hospice care services.** "Hospice care services" are services:

(1) as defined in Minnesota Rules, part 9505.0297; and

(2) provided at a recipient's residence, if the recipient does not live in a hospital, nursing facility as defined in section 62A.46, subdivision 3, or intermediate care facility for persons with developmental disabilities as defined in section 256B.055, subdivision 12, paragraph (d).

Subd. 7. **Hospital.** "Hospital" means a hospital licensed under chapter 144, or a hospital licensed by any other jurisdiction.

Subd. 7a. **Manufacturer.** "Manufacturer" has the meaning provided in section 151.01, subdivision 14a.

Subd. 9b. **Patient services.** (a) "Patient services" means inpatient and outpatient services and other goods and services provided by hospitals, surgical centers, or health care providers. They include the following health care goods and services provided to a patient or consumer:

(1) bed and board;

(2) nursing services and other related services;

(3) use of hospitals, surgical centers, or health care provider facilities;

(4) medical social services;

(5) drugs, biologicals, supplies, appliances, and equipment;

(6) other diagnostic or therapeutic items or services;

(7) medical or surgical services;

(8) items and services furnished to ambulatory patients not requiring emergency care; and

(9) emergency services.

(b) "Patient services" does not include:

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- (1) services provided to nursing homes licensed under chapter 144A;
- (2) examinations for purposes of utilization reviews, insurance claims or eligibility, litigation, and employment, including reviews of medical records for those purposes;
- (3) services provided to and by community residential mental health facilities licensed under Minnesota Rules, parts 9520.0500 to 9520.0670, and to and by residential treatment programs for children with severe emotional disturbance licensed or certified under chapter 245A;
- (4) services provided under the following programs: day treatment services as defined in section 245.462, subdivision 8; assertive community treatment as described in section 256B.0622; adult rehabilitative mental health services as described in section 256B.0623; adult crisis response services as described in section 256B.0624; children's therapeutic services and supports as described in section 256B.0943; and children's mental health crisis response services as described in section 256B.0944;
- (5) services provided to and by community mental health centers as defined in section 245.62, subdivision 2;
- (6) services provided to and by assisted living programs and congregate housing programs;
- (7) hospice care services;
- (8) home and community-based waived services under chapter 256S and sections 256B.49 and 256B.501;
- (9) targeted case management services under sections 256B.0621; 256B.0625, subdivisions 20, 20a, 33, and 44; and 256B.094; and
- (10) services provided to the following: supervised living facilities for persons with developmental disabilities licensed under Minnesota Rules, parts 4665.0100 to 4665.9900; housing with services establishments required to be registered under chapter 144D; board and lodging establishments providing only custodial services that are licensed under chapter 157 and registered under section 157.17 to provide supportive services or health supervision services; adult foster homes as defined in Minnesota Rules, part 9555.5105; day training and habilitation services for adults with developmental disabilities as defined in section 252.41, subdivision 3; boarding care homes as defined in Minnesota Rules, part 4655.0100; adult day care services as defined in section 245A.02, subdivision 2a; and home health agencies as defined in Minnesota Rules, part 9505.0175, subpart 15, or licensed under chapter 144A.

Subd. 9c. **Person.** "Person" means an individual, partnership, limited liability company, corporation, association, governmental unit or agency, or public or private organization of any kind.

Subd. 10a. **Pharmacy.** "Pharmacy" means a pharmacy required to be licensed under chapter 151, or a pharmacy required to be licensed by any other jurisdiction.

Subd. 10b. **Regional treatment center.** "Regional treatment center" means a regional center as defined in section 253B.02, subdivision 18.

Subd. 10c. **Pharmacy benefits manager.** "Pharmacy benefits manager" means an entity that performs pharmacy benefits management.

Subd. 12b. **Staff model health plan company.** "Staff model health plan company" means a health plan company as defined in section 62Q.01, subdivision 4, which employs one or more types of health care provider to deliver health care services to the health plan company's enrollees.

Subd. 13. **Surgical center.** "Surgical center" is an outpatient surgical center as defined in Minnesota Rules, chapter 4675, or a similar facility located in any other jurisdiction.

Subd. 13a. **Third-party purchaser of health care services.** "Third-party purchaser of health care services" includes but is not limited to a health carrier or community integrated service network that pays for health care services on behalf of patients or that reimburses, indemnifies, compensates, or otherwise insures patients for health care services.

Subd. 14. **Wholesale drug distributor.** "Wholesale drug distributor" means any person engaged in wholesale drug distribution including but not limited to manufacturers; repackagers; own-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and pharmacies that conduct wholesale drug distribution. A wholesale drug distributor does not include a common carrier or individual hired primarily to transport legend drugs.

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Subd. 15. **Legend drug.** "Legend drug" means a drug that is required by federal law to bear one of the following statements: "Caution: Federal law prohibits dispensing without prescription" or "Rx only." Legend drugs do not include nutritional products as defined in Minnesota Rules, part 9505.0325, subpart 1, and blood and blood components.

Subd. 16. **Wholesale drug distribution.** "Wholesale drug distribution" means the sale or distribution of legend drugs to a person other than a consumer or patient, but does not include:

(1) a sale between a division, subsidiary, parent, affiliated, or related company under the common ownership and control of a corporate entity;

(2) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a legend drug for its own use from the organization or from other hospitals or health care entities that are members of such organizations;

(3) the sale, purchase, or trade of a legend drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1988, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) the sale, purchase, or trade of a legend drug among hospitals or other health care entities that are under common control;

(5) the sale, purchase, or trade of a legend drug for emergency medical reasons;

(6) the transfer of legend drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage; or

(7) the distribution of legend drug samples by manufacturer representatives.

**295.51 MINIMUM CONTACTS REQUIRED FOR JURISDICTION TO TAX GROSS REVENUE.**

Subdivision 1. **Business transactions in Minnesota.** A hospital, surgical center, or health care provider is subject to tax under sections 295.50 to 295.59 if it is "transacting business in Minnesota." A hospital, surgical center, or health care provider is transacting business in Minnesota if it maintains contacts with or presence in the state of Minnesota sufficient to permit taxation of gross revenues received for patient services under the United States Constitution.

Subd. 1a. **Nexus in Minnesota.** (a) To the extent allowed by the United States Constitution and the laws of the United States, a person who is a wholesale drug distributor, a person subject to tax under section 295.52, subdivision 4, or a person who sells or repairs hearing aids and related equipment or prescription eyewear is subject to the taxes imposed by this chapter if the person:

(1) has or maintains within this state, directly or by a subsidiary or an affiliate, an office, place of distribution, sales, storage, or sample room or place, warehouse, or other place of business, including the employment of a resident of this state who works from a home office in this state;

(2) has a representative, including but not limited to an employee, affiliate, agent, salesperson, canvasser, solicitor, independent contractor, or other third party operating in this state under the person's authority or the authority of the person's subsidiary, for any purpose, including the repairing, selling, delivering, installing, facilitating sales, processing sales, or soliciting of orders for the person's goods or services, or the leasing of tangible personal property located in this state, whether the place of business or the agent, representative, affiliate, salesperson, canvasser, or solicitor is located in the state permanently or temporarily, or whether or not the person, subsidiary, or affiliate is authorized to do business in this state;

(3) owns or leases real property that is located in this state; or

(4) owns or leases tangible personal property that is present in this state, including but not limited to mobile property.

(b) To the extent allowed by the United States Constitution and the laws of the United States, a person who is a wholesale drug distributor, or a person who is subject to tax under section 295.52, subdivision 4, is subject to the taxes imposed by this chapter if the person:

(1) conducts a trade or business not described in paragraph (a) and sells, delivers, or distributes legend drugs from outside this state to a destination within this state by common carrier or otherwise; and

(2) meets one of the following thresholds:

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(i) makes 200 or more sales, deliveries, or distributions described in clause (1) during any taxable year;

(ii) the gross revenues of a wholesale drug distributor that sells, delivers, or distributes legend drugs as described in clause (1) totals more than \$100,000 during any taxable year; or

(iii) the price paid by a person who is subject to tax under section 295.52, subdivision 4, totals more than \$100,000 for legend drugs that the person sells, delivers, or distributes as described in clause (1) during any taxable year.

(c) To the extent allowed by the United States Constitution and the laws of the United States, a person who sells or repairs hearing aids and related equipment or prescription eyewear is subject to the taxes imposed by this chapter if the person:

(1) conducts a trade or business not described in paragraph (a) and:

(i) sells, delivers, or distributes hearing aids and related equipment or prescription eyewear from outside of this state to a destination within this state by common carrier or otherwise; or

(ii) repairs hearing aids and related equipment or prescription eyewear outside of this state and delivers or distributes the hearing aids and related equipment or prescription eyewear to a destination within this state by common carrier or otherwise; and

(2) meets one of the following thresholds:

(i) makes 200 or more sales, deliveries, distributions, or repairs described in clause (1) during any taxable year; or

(ii) the gross revenues of the person who sells, delivers, distributes, or repairs hearing aids and related equipment or prescription eyewear described in clause (1) totals more than \$100,000 during any taxable year.

(d) Once a taxpayer has established nexus with Minnesota under paragraph (b) or (c), the taxpayer must continue to file an annual return and remit taxes for subsequent years. A taxpayer who has established nexus under paragraph (b) or (c) is no longer required to file an annual return and remit taxes if the taxpayer:

(1) ceases to engage in the activities or no longer meets any of the applicable thresholds in paragraph (b) or (c) for an entire taxable year; and

(2) notifies the commissioner by March 15 of the following calendar year, in a manner prescribed by the commissioner, that the taxpayer no longer engages in any of the activities or no longer meets any of the applicable thresholds in paragraph (b) or (c).

(e) If, after notifying the commissioner pursuant to paragraph (d), the taxpayer subsequently engages in any of the activities and meets any of the applicable thresholds in paragraph (b) or (c), the taxpayer shall again comply with the applicable requirements of paragraphs (b) to (d).

**295.52 TAXES IMPOSED.**

Subdivision 1. **Hospital tax.** A tax is imposed on each hospital equal to 1.8 percent of its gross revenues.

Subd. 1a. **Surgical center tax.** A tax is imposed on each surgical center equal to 1.8 percent of its gross revenues.

Subd. 2. **Provider tax.** A tax is imposed on each health care provider equal to 1.8 percent of its gross revenues.

Subd. 3. **Wholesale drug distributor tax.** A tax is imposed on each wholesale drug distributor equal to 1.8 percent of its gross revenues.

Subd. 4. **Use tax; legend drugs.** (a) A person that receives legend drugs for resale or use in Minnesota, other than from a wholesale drug distributor that is subject to tax under subdivision 3, is subject to a tax equal to the price paid for the legend drugs multiplied by 1.8 percent. Liability for the tax is incurred when legend drugs are received or delivered in Minnesota by the person.

(b) A tax imposed under this subdivision does not apply to purchases by an individual for personal consumption.

Subd. 4a. **Tax collection.** A wholesale drug distributor with nexus in Minnesota, who is not subject to tax under subdivision 3, on all or a particular transaction is required to collect the tax

imposed under subdivision 4, from the purchaser of the drugs and give the purchaser a receipt for the tax paid. The tax collected shall be remitted to the commissioner in the manner prescribed by section 295.55, subdivision 3.

**Subd. 5. Volunteer ambulance services.** Volunteer ambulance services are not subject to the tax under this section. For purposes of this requirement, "volunteer ambulance service" means an ambulance service in which all of the individuals whose primary responsibility is direct patient care meet the definition of volunteer under section 144E.001, subdivision 15. The ambulance service may employ administrative and support staff, and remain eligible for this exemption, if the primary responsibility of these staff is not direct patient care.

**Subd. 6. Hearing aids and prescription eyewear.** The tax liability of a person who meets the definition of a health care provider solely because the person sells or repairs hearing aids and related equipment or prescription eyewear is limited to the gross revenues received from the sale or repair of these items.

**Subd. 8. Contingent reduction in tax rate.** (a) By December 1 of each year, beginning in 2011, the commissioner of management and budget shall determine the projected balance in the health care access fund for the biennium.

(b) If the commissioner of management and budget determines that the projected balance in the health care access fund for the biennium reflects a ratio of revenues to expenditures and transfers greater than 125 percent, and if the actual cash balance in the fund is adequate, as determined by the commissioner of management and budget, the commissioner, in consultation with the commissioner of revenue, shall reduce the tax rates levied under subdivisions 1, 1a, 2, 3, and 4, for the subsequent calendar year sufficient to reduce the structural balance in the fund. The rate may be reduced to the extent that the projected revenues for the biennium do not exceed 125 percent of expenditures and transfers. The new rate shall be rounded to the nearest one-tenth of one percent. The rate reduction under this paragraph expires at the end of each calendar year and is subject to an annual redetermination by the commissioner of management and budget.

(c) For purposes of the analysis defined in paragraph (b), the commissioner of management and budget shall include projected revenues.

#### **295.53 EXCLUSIONS AND EXEMPTIONS; SPECIAL RULES.**

**Subdivision 1. Exclusions and exemptions.** (a) The following payments are excluded from the gross revenues subject to the hospital, surgical center, or health care provider taxes under sections 295.50 to 295.59:

(1) payments received by a health care provider or the wholly owned subsidiary of a health care provider for care provided outside Minnesota;

(2) government payments received by the commissioner of human services for state-operated services;

(3) payments received by a health care provider for hearing aids and related equipment or prescription eyewear delivered outside of Minnesota; and

(4) payments received by an educational institution from student tuition, student activity fees, health care service fees, government appropriations, donations, or grants, and for services identified in and provided under an individualized education program as defined in section 256B.0625 or Code of Federal Regulations, chapter 34, section 300.340(a). Fee for service payments and payments for extended coverage are taxable.

(b) The following payments are exempted from the gross revenues subject to hospital, surgical center, or health care provider taxes under sections 295.50 to 295.59:

(1) payments received for services provided under the Medicare program, including payments received from the government and organizations governed by sections 1833, 1853, and 1876 of title XVIII of the federal Social Security Act, United States Code, title 42, section 1395; and enrollee deductibles, co-insurance, and co-payments, whether paid by the Medicare enrollee, by Medicare supplemental coverage as described in section 62A.011, subdivision 3, clause (10), or by Medicaid payments under title XIX of the federal Social Security Act. Payments for services not covered by Medicare are taxable;

(2) payments received for home health care services;

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(3) payments received from hospitals or surgical centers for goods and services on which liability for tax is imposed under section 295.52 or the source of funds for the payment is exempt under clause (1), (6), (9), (10), or (11);

(4) payments received from the health care providers for goods and services on which liability for tax is imposed under this chapter or the source of funds for the payment is exempt under clause (1), (6), (9), (10), or (11);

(5) amounts paid for legend drugs to a wholesale drug distributor who is subject to tax under section 295.52, subdivision 3, reduced by reimbursement received for legend drugs otherwise exempt under this chapter;

(6) payments received from the chemical dependency fund under chapter 254B;

(7) payments received in the nature of charitable donations that are not designated for providing patient services to a specific individual or group;

(8) payments received for providing patient services incurred through a formal program of health care research conducted in conformity with federal regulations governing research on human subjects. Payments received from patients or from other persons paying on behalf of the patients are subject to tax;

(9) payments received from any governmental agency for services benefiting the public, not including payments made by the government in its capacity as an employer or insurer or payments made by the government for services provided under the MinnesotaCare program or the medical assistance program governed by title XIX of the federal Social Security Act, United States Code, title 42, sections 1396 to 1396v;

(10) payments received under the federal Employees Health Benefits Act, United States Code, title 5, section 8909(f), as amended by the Omnibus Reconciliation Act of 1990. Enrollee deductibles, co-insurance, and co-payments are subject to tax;

(11) payments received under the federal Tricare program, Code of Federal Regulations, title 32, section 199.17 (a)(7). Enrollee deductibles, co-insurance, and co-payments are subject to tax; and

(12) supplemental or enhanced payments authorized under section 256B.196 or 256B.197.

(c) Payments received by wholesale drug distributors for legend drugs sold directly to veterinarians or veterinary bulk purchasing organizations are excluded from the gross revenues subject to the wholesale drug distributor tax under sections 295.50 to 295.59.

**Subd. 2. Deductions for staff model health plan company.** In addition to the exemptions allowed under subdivision 1, a staff model health plan company may deduct from its gross revenues for the year:

(1) amounts paid to hospitals, surgical centers, and health care providers that are not employees of the staff model health plan company for services on which liability for the tax is imposed under section 295.52;

(2) net amounts added to reserves, to the extent that the amounts added do not cause total reserves to exceed 200 percent of the statutory net worth requirement, the calculation of which may be determined on a consolidated basis, taking into account the amounts held in reserve by affiliated staff model health plan companies;

(3) assessments for the comprehensive health insurance plan under section 62E.11; and

(4) amounts spent for administration as reported as total administration to the Department of Health in the statement of revenues, expenses, and net worth pursuant to section 62D.08, subdivision 3, clause (a).

**Subd. 3. Separate statement of tax.** A hospital, surgical center, health care provider, or wholesale drug distributor must not state the tax obligation under section 295.52 in a deceptive or misleading manner. It must not separately state tax obligations on bills provided to patients, consumers, or other payers when the amount received for the services or goods is not subject to tax.

Pharmacies that separately state the tax obligations on bills provided to consumers or to other payers who purchase legend drugs may state the tax obligation as the wholesale price of the legend



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drugs multiplied by the tax percentage specified in section 295.52. Pharmacies must not state the tax obligation based on the retail price.

Whenever the commissioner determines that a person has engaged in any act or practice constituting a violation of this subdivision, the commissioner may bring an action in the name of the state in the district court of the appropriate county to enjoin the act or practice and to enforce compliance with this subdivision, or the commissioner may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, a permanent or temporary injunction, restraining order, or other appropriate relief must be granted.

Subd. 4a. **Credit for research.** (a) In addition to the exemptions allowed under subdivision 1, a hospital or health care provider may claim an annual credit against the total amount of tax, if any, the hospital or health care provider owes for that calendar year under sections 295.50 to 295.57. The credit shall equal 2.5 percent of revenues for patient services used to fund expenditures for qualifying research conducted by an allowable research program. The amount of the credit shall not exceed the tax liability of the hospital or health care provider under sections 295.50 to 295.57.

(b) For purposes of this subdivision, the following requirements apply:

(1) expenditures must be for program costs of qualifying research conducted by an allowable research program;

(2) an allowable research program must be a formal program of medical and health care research conducted by an entity which is exempt under section 501(c)(3) of the Internal Revenue Code as defined in section 289A.02, subdivision 7, or is owned and operated under authority of a governmental unit;

(3) qualifying research must:

(A) be approved in writing by the governing body of the hospital or health care provider which is taking the deduction under this subdivision;

(B) have as its purpose the development of new knowledge in basic or applied science relating to the diagnosis and treatment of conditions affecting the human body;

(C) be subject to review by individuals with expertise in the subject matter of the proposed study but who have no financial interest in the proposed study and are not involved in the conduct of the proposed study; and

(D) be subject to review and supervision by an institutional review board operating in conformity with federal regulations if the research involves human subjects or an institutional animal care and use committee operating in conformity with federal regulations if the research involves animal subjects. Research expenses are not exempt if the study is a routine evaluation of health care methods or products used in a particular setting conducted for the purpose of making a management decision. Costs of clinical research activities paid directly for the benefit of an individual patient are excluded from this exemption. Basic research in fields including biochemistry, molecular biology, and physiology are also included if such programs are subject to a peer review process.

(c) No credit shall be allowed under this subdivision for any revenue received by the hospital or health care provider in the form of a grant, gift, or otherwise, whether from a government or nongovernment source, on which the tax liability under section 295.52 is not imposed.

(d) The taxpayer shall apply for the credit under this section on the annual return under section 295.55, subdivision 5.

(e) Beginning September 1, 2001, if the actual or estimated amount paid under this section for the calendar year exceeds \$2,500,000, the commissioner of management and budget shall determine the rate of the research credit for the following calendar year to the nearest one-half percent so that refunds paid under this section will most closely equal \$2,500,000. The commissioner of management and budget shall publish in the State Register by October 1 of each year the rate of the credit for the following calendar year. A determination under this section is not subject to the rulemaking provisions of chapter 14.

**295.54 CREDIT FOR TAXES PAID.**

Subdivision 1. **Taxes paid to another state.** A hospital, surgical center, or health care provider that has paid taxes to another jurisdiction measured by gross revenues and is subject to tax under sections 295.52 to 295.59 on the same gross revenues is entitled to a credit for the tax legally due and paid to another jurisdiction to the extent of the lesser of (1) the tax actually paid to the other

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jurisdiction, or (2) the amount of tax imposed by Minnesota on the gross revenues subject to tax in the other taxing jurisdictions.

Subd. 2. **Pharmacy refund.** A pharmacy may claim an annual refund against the total amount of tax, if any, the pharmacy owes during that calendar year under section 295.52, subdivision 4. The refund shall equal the amount paid by the pharmacy to a wholesale drug distributor subject to tax under section 295.52, subdivision 3, for legend drugs delivered by the pharmacy outside of Minnesota, multiplied by the tax percentage specified in section 295.52, subdivision 3. If the amount of the refund exceeds the tax liability of the pharmacy under section 295.52, subdivision 4, the commissioner shall provide the pharmacy with a refund equal to the excess amount. Each qualifying pharmacy must apply for the refund on the annual return as prescribed by the commissioner, on or before March 15 of the year following the calendar year the legend drugs were delivered outside Minnesota. The refund shall not be allowed if the initial claim for refund is filed more than one year after the original due date of the return. Interest on refunds paid under this subdivision will begin to accrue 60 days after the date a claim for refund is filed. For purposes of this subdivision, the date a claim is filed is the due date of the return if a return is due or the date of the actual claim for refund, whichever is later.

Subd. 3. **Wholesale drug distributor credit.** A wholesale drug distributor who has paid taxes to another state or province or territory of Canada measured by gross revenues or sales and is subject to tax under sections 295.52 to 295.59 on the same gross revenues or sales is entitled to a credit for the tax legally due and paid to another state or province or territory of Canada to the extent of the lesser of (1) the tax actually paid to the other state or province or territory of Canada or (2) the amount of tax imposed by Minnesota on the gross revenues or sales subject to tax in the other taxing jurisdictions.

**295.55 PAYMENT OF TAX.**

Subdivision 1. **Scope.** The provisions of this section apply to the taxes imposed under sections 295.50 to 295.58.

Subd. 2. **Estimated tax; hospitals; surgical centers.** (a) Each hospital or surgical center must make estimated payments of the taxes for the calendar year in monthly installments to the commissioner within 15 days after the end of the month.

(b) Estimated tax payments are not required of hospitals or surgical centers if: (1) the tax for the current calendar year is \$500 or less; or (2) the tax for the previous calendar year is \$500 or less.

(c) Underpayment of estimated installments bear interest at the rate specified in section 270C.40, from the due date of the payment until paid or until the due date of the annual return whichever comes first. An underpayment of an estimated installment is the difference between the amount paid and the lesser of (1) 90 percent of one-twelfth of the tax for the calendar year or (2) one-twelfth of the total tax for the previous calendar year.

Subd. 3. **Estimated tax; other taxpayers.** (a) Each taxpayer, other than a hospital or surgical center, must make estimated payments of the taxes for the calendar year in quarterly installments to the commissioner by April 15, July 15, October 15, and January 15 of the following calendar year.

(b) Estimated tax payments are not required if: (1) the tax for the current calendar year is \$500 or less; or (2) the tax for the previous calendar year is \$500 or less.

(c) Underpayment of estimated installments bear interest at the rate specified in section 270C.40, from the due date of the payment until paid or until the due date of the annual return whichever comes first. An underpayment of an estimated installment is the difference between the amount paid and the lesser of (1) 90 percent of one-quarter of the tax for the calendar year or (2) one-quarter of the total tax for the previous calendar year.

Subd. 4. **Electronic payments.** A taxpayer with an aggregate tax liability of \$10,000 or more in a fiscal year ending June 30 must remit all liabilities by electronic means in all subsequent calendar years.

Subd. 5. **Annual return.** The taxpayer must file an annual return reconciling the estimated payments by March 15 of the following calendar year.

Subd. 6. **Form of returns.** The commissioner shall prescribe the content, format, and manner of the estimated payment forms and annual return pursuant to section 270C.30.

Subd. 7. **Extensions for filing returns.** If good cause exists, the commissioner may extend the time for filing MinnesotaCare tax returns for not more than 60 days.

**295.56 TRANSFER OF ACCOUNTS RECEIVABLE.**

When a hospital, surgical center, health care provider, or wholesale drug distributor transfers, assigns, or sells accounts receivable to another person who is subject to tax under this chapter, liability for the tax on the accounts receivable is imposed on the transferee, assignee, or buyer of the accounts receivable. No liability for these accounts receivable is imposed on the transferor, assignor, or seller of the accounts receivable.

**295.57 COLLECTION AND ENFORCEMENT; REFUNDS; APPLICATION OF OTHER CHAPTERS; ACCESS TO RECORDS; INTEREST ON OVERPAYMENTS.**

Subdivision 1. **Application of other chapters.** Unless specifically provided otherwise by sections 295.50 to 295.59, the interest, criminal penalties, and refunds provisions in chapter 289A, the civil penalty provisions applicable to withholding and sales taxes under section 289A.60, and the audit, assessment, appeal, collection, enforcement, and administrative provisions of chapters 270C and 289A, apply to taxes imposed under sections 295.50 to 295.59.

Subd. 2. **Access to records.** For purposes of administering the taxes imposed by sections 295.50 to 295.59, the commissioner may access patients' records that contain billing or other financial information without prior consent from the patients. The data collected is classified as private or nonpublic data.

Subd. 3. **Interest on overpayments.** Interest must be paid on an overpayment refunded or credited to the taxpayer in the manner provided in section 289A.56, subdivision 2.

Subd. 4. **Sampling techniques.** The commissioner may use statistical or other sampling techniques consistent with generally accepted auditing standards in examining returns or records and making assessments.

Subd. 5. **Exemption for amounts paid for legend drugs.** If a hospital, surgical center, or health care provider cannot determine the actual cost or reimbursement of legend drugs under the exemption provided in section 295.53, subdivision 1, paragraph (b), clause (5), the following method must be used:

A hospital, surgical center, or health care provider must determine the amount paid for legend drugs used during the month or quarter and multiply that amount by a ratio, the numerator of which is the total amount received for taxable patient services, and the denominator of which is the total amount received for all patient services, including amounts exempt under section 295.53, subdivision 1, paragraph (b). The result represents the allowable exemption for the monthly or quarterly cost of drugs.

**295.58 DEPOSIT OF REVENUES AND PAYMENT OF REFUNDS.**

The commissioner shall deposit all revenues, including penalties and interest, derived from the taxes imposed by sections 295.50 to 295.57 and from the insurance premiums tax imposed by section 297I.05, subdivision 5, on health maintenance organizations, community integrated service networks, and nonprofit health service plan corporations in the health care access fund. There is annually appropriated from the health care access fund to the commissioner of revenue the amount necessary to make refunds under this chapter.

**295.581 PROHIBITION ON NON-MINNESOTACARE TRANSFERS FROM FUND.**

Notwithstanding any law to the contrary, and notwithstanding section 645.33, money in the health care access fund shall be appropriated only for purposes that are consistent with past and current MinnesotaCare appropriations in Laws 1992, chapter 549; Laws 1993, chapter 345; Laws 1994, chapter 625; and Laws 1995, chapter 234, or for initiatives that are part of the section 1115 of the Social Security Act health care reform waiver submitted to the federal Centers for Medicare and Medicaid Services by the commissioner of human services as appropriated in Laws 1995, chapter 234.

**295.582 AUTHORITY.**

Subdivision 1. **Tax expense transfer.** (a) The tax expense generated by section 295.52 may be transferred as follows:

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(1) a hospital, surgical center, or health care provider subject to the tax under section 295.52 may transfer the tax expense to all third-party contracts for the purchase of health care services on behalf of a patient or consumer;

(2) a wholesale drug distributor subject to the tax under section 295.52 may transfer the tax expense to entities that purchase legend drugs from the wholesale drug distributor; and

(3) a pharmacy that has paid the tax expense transferred by a wholesale drug distributor may transfer the tax expense to all third-party contracts for the purchase of health care services on behalf of a patient or consumer. Nothing shall prohibit a pharmacy from transferring the tax expense generated under section 295.52 to a pharmacy benefits manager.

(b) The transfer of the tax expense under paragraph (a) must comply with the following:

(1) the tax expense transferred to the third-party purchaser or a pharmacy benefits manager must not exceed the tax percentage specified in section 295.52 multiplied against:

(i) gross revenues received under the third-party contract; and

(ii) co-payments and deductibles paid by the individual patient or consumer; and

(2) the tax expense must not be generated on revenues derived from payments that are excluded or exempted from the tax under section 295.53.

(c) Payment of the transferred tax expense is required as follows:

(1) all third-party purchasers of health care services, including but not limited to third-party purchasers regulated under chapter 60A, 62A, 62C, 62D, 62H, 62N, 64B, 65A, 65B, 79, or 79A, or under section 471.61 or 471.617, and pharmacy benefits managers must pay the transferred expense. This is in addition to any payments due under existing contracts with the hospital, surgical center, pharmacy, or health care provider, to the extent allowed under federal law; and

(2) all entities that purchase legend drugs from a wholesale drug distributor must pay the transferred expense.

(d) A third-party purchaser or pharmacy benefits manager must comply with this section regardless of whether the third-party purchaser or pharmacy benefits manager is a for-profit, not-for-profit, or nonprofit entity.

(e) Nothing in this section limits the ability of a hospital, surgical center, health care provider, pharmacy, or wholesale drug distributor to recover all or part of the section 295.52 obligation by other methods, including increasing fees or charges.

(f) Any hospital, surgical center, or health care provider subject to a tax under section 295.52 or a pharmacy that has paid the additional expense transferred under this section by a wholesale drug distributor may file a complaint with the commissioner responsible for regulating the third-party purchaser if at any time the third-party purchaser fails to comply with this section.

(g) If the commissioner responsible for regulating the third-party purchaser finds at any time that the third-party purchaser has not complied with this section, the commissioner may take enforcement action against a third-party purchaser which is subject to the commissioner's regulatory jurisdiction and which does not allow a hospital, surgical center, pharmacy, or provider to pass-through the tax expense. The commissioner may by order fine or censure the third-party purchaser or revoke or suspend the certificate of authority or license of the third-party purchaser to do business in this state if the commissioner finds that the third-party purchaser has not complied with this section. The third-party purchaser may appeal the commissioner's order through a contested case hearing in accordance with chapter 14.

Subd. 2. **Agreement.** A contracting agreement between a third-party purchaser or a pharmacy benefits manager and a resident or nonresident pharmacy registered under chapter 151, may not prohibit:

(1) a pharmacy that has paid additional expense transferred under this section by a wholesale drug distributor from exercising its option under this section to transfer such additional expenses generated by the section 295.52 obligations on to the third-party purchaser or pharmacy benefits manager; or

(2) a pharmacy that is subject to tax under section 295.52, subdivision 4, from exercising its option under this section to recover all or part of the section 295.52 obligations from the third-party purchaser or a pharmacy benefits manager.

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**295.59 SEVERABILITY.**

If any section, subdivision, clause, or phrase of sections 295.50 to 295.582 is for any reason held to be unconstitutional or in violation of federal law, the decision shall not affect the validity of the remaining portions of sections 295.50 to 295.582. The legislature declares that it would have passed sections 295.50 to 295.582 and each section, subdivision, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, or phrases is declared unconstitutional.