

**WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4209**

(BY ELLINGTON, SUMMERS, HOUSEHOLDER, ROHRBACH,

STANSBURY, CAMPBELL AND FLEISCHAUER)

[Passed March 8, 2016; in effect July 1, 2016.]

HB 4209

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[Passed March 8, 2016; in effect July 1, 2016.]

1 AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended,  
2 relating generally to health care provider taxes; changing rate of tax imposed on certain  
3 eligible acute care hospitals for the fiscal year 2017; specifying purposes for which funds  
4 collected may be expended; providing for distribution of remaining funds at the end of  
5 fiscal year; and extending expiration date for tax.

*Be it enacted by the Legislature of West Virginia:*

1 That §11-27-38 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 27. HEALTH CARE PROVIDER TAXES.**

**§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.**

1 (a) In addition to the rate of the tax imposed by sections nine and fifteen of this article on  
2 providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute  
3 care hospitals an additional tax of seventy-four one hundredths of one percent on the gross  
4 receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient  
5 hospital services in this state through a Medicaid upper payment limit program.

6 (b) For purposes of this section, the term "eligible acute care hospital" means any inpatient  
7 or outpatient hospital conducting business in this state that is not:

8 (1) A state-owned or -designated facility;

9 (2) A nonstate, but government-owned facility such as a county or city hospital;

10 (3) A critical access hospital, designated as a critical access hospital after meeting all  
11 federal eligibility criteria;

12 (4) A licensed free-standing psychiatric or medical rehabilitation hospital; or

13 (5) A licensed long-term acute care hospital.

14 (c) The taxes imposed by this section may not be imposed or collected until all of the  
15 following have occurred:

16 (1) A state plan amendment is developed by the Bureau for Medical Services, as  
17 authorized by the Secretary of the Department of Health and Human Resources;

18 (2) The state plan amendment is reviewed by the Medical Fund Services Advisory Council;

19 (3) A comment period of not less than thirty days for public comment on the state plan  
20 amendment shall have passed; and

21 (4) The state plan amendment is approved by the Centers for Medicare and Medicaid  
22 Services.

23 (d) The state plan amendment shall include all of the following:

24 (1) The provisions of the proposed upper payment limit program or programs;

25 (2) A state maintenance of effort to maintain adequate Medicaid funding; and

26 (3) A provision that any other state Medicaid program will not negatively impact the  
27 hospital upper payment limit payments. The taxes imposed and collected may be imposed and  
28 collected beginning on the earliest date permissible under applicable federal law under the upper  
29 payment limit program, as determined by the secretary.

30 (e) There is continued a special revenue account in the State Treasury designated the  
31 Medicaid State Share Fund. The amount of taxes collected under this section, including any  
32 interest, additions to tax and penalties collected under article ten of this chapter, less the amount  
33 of allowable refunds, the amount of any interest payable with respect to such refunds and costs  
34 of administration and collection, shall be deposited into the Special Revenue Fund and may not  
35 revert to general revenue. The Tax Commissioner shall establish and maintain a separate account  
36 and accounting for the funds collected under this section in an account to be designated as the  
37 Eligible Acute Care Provider Enhancement Account. The amounts collected shall be deposited,  
38 within fifteen days after receipt by the Tax Commissioner, into the Eligible Acute Care Provider  
39 Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement  
40 Account within the Medicaid State Share Fund may only be used to support West Virginia

41 Medicaid and the hospital Medicaid upper payment limit program and as otherwise set forth in  
42 this section.

43 (f) The imposition and collection of taxes imposed by this section is suspended  
44 immediately upon the occurrence of any of the following:

45 (1) The effective date of any action by Congress that would disqualify the taxes imposed  
46 by this section from counting toward state Medicaid funds available to be used to determine the  
47 federal financial participation;

48 (2) The effective date of any decision, enactment or other determination by the Legislature  
49 or by any court, officer, department, agency or office of state or federal government that has the  
50 effect of disqualifying the tax from counting toward state Medicaid funds available to be used to  
51 determine federal financial participation for Medicaid matching funds or creating for any reason a  
52 failure of the state to use the assessment of the Medicaid program as described in this section;  
53 and

54 (3) The effective date of an appropriation for any state fiscal year for hospital payments  
55 under the state Medicaid program that is less than the amount appropriated for state fiscal year  
56 ending June 30, 2011.

57 (g) Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement  
58 Account as of June 30, 2016, shall be transferred to the West Virginia Medical Services Fund.  
59 This transfer shall occur no later than September 30, 2016. These funds shall be used during  
60 state fiscal year 2017 at the discretion of the Bureau for Medical Services. The remaining fifty  
61 percent of any funds in the Eligible Acute Care Provider Enhancement Account as of June 30,  
62 2016, shall remain in the Eligible Acute Care Provider Enhancement Account and shall be used  
63 in state fiscal year 2017. If the program expires on June 30, 2017, as set forth in subsection (i) of  
64 this section, fifty percent of any funds remaining as of June 30, 2018, shall be transferred on that  
65 date to the West Virginia Medical Services Fund. This transfer shall occur only after state fiscal  
66 year 2017 fourth quarter tax collections and program payments. The remaining fifty percent of the

67 funds shall be distributed to the eligible acute care providers no later than June 30, 2018. The  
68 distribution of funds to the eligible acute care providers shall be made in the same proportion as  
69 the taxes paid by the eligible acute care providers into the Eligible Acute Care Provider  
70 Enhancement Fund during state fiscal year 2017.

71 (h) The changes to the tax rate in this section enacted in the 2016 Regular Session are  
72 effective July 1, 2016, upon the approval of the state plan amendment.

73 (i) The tax imposed by this section expires on and after June 30, 2017, unless otherwise  
74 extended by the Legislature.

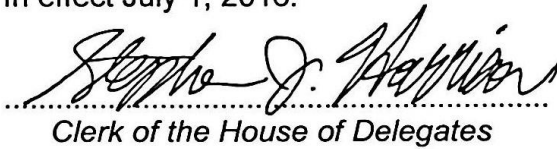
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman, House Committee

  
.....  
Chairman, Senate Committee

Originating in the House.

In effect July 1, 2016.

  
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Clerk of the House of Delegates

  
.....  
Clerk of the Senate

  
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Speaker of the House of Delegates

  
.....  
President of the Senate

The within ..... *is approved* ..... this the *16th* .....  
day of ..... *March* ....., 2016.

  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 11 2016

Time 2:55 pm