WEST VIRGINIA CODE: §11-27-38

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

(a) In addition to the rate of the tax imposed by §11-27-9 and §11-27-15 of this code on providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute care hospitals an additional tax of 75 one-hundredths of one percent on the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a directed payment program, or its successor, in accordance with 42 C.F.R. § 438.6.

(b) The tax rate shall be increased on eligible hospitals, as needed, to provide non-federal share funding as described in subsection (d) of this section, up to the maximum amount allowed by the Centers for Medicare and Medicaid Services (CMS). The CMS allowable tax rate and maximum payment shall be calculated by the West Virginia Bureau for Medical Services (BMS) pursuant to CMS-approved methodology. The Tax Commissioner, using the certified calculations from the West Virginia Bureau for Medical Services, shall publish the rates to be applicable by Administrative Notice at least 30 days prior to implementation on the first day of the next calendar quarter following publication.

(c) For purposes of this section, prior to approval by CMS of the state plan amendment made pursuant to amendment and reenactment of this section in 2024, the term "eligible acute care hospital" means any inpatient or outpatient hospital conducting business in this state that is not:

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

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

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

(4) A licensed long-term acute care hospital; or

(5) A facility designated pursuant to §16B-3-14 of this code.

For purposes of this section, on and after approval by CMS of the state plan amendment made pursuant to amendment to this section in 2024, the term "eligible hospital" means any inpatient or outpatient hospital conducting business in this state that is not a state-owned or state-designated facility. A licensed psychiatric hospital with an average annual inpatient census patient mix of greater than 95 percent of court-ordered forensic and civil involuntary commitments from state custody or from a state-owned hospital shall qualify as a "state-designated facility".

(d) There is continued a special revenue account in the State Treasury designated the

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Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under §11-10-1 *et seq*. of this code, less the amount of allowable refunds, the amount of any interest payable with respect to the refunds, and costs of administration and collection, shall be deposited into the special revenue fund and do not revert to General Revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section in an account to be designated as the Eligible Facility Directed Payment Program Enhancement Account. The amounts collected shall be deposited, within 15 days after receipt by the Tax Commissioner, into the Eligible Facility Directed Payment Program Enhancement Account. Disbursements from the Eligible Facility Directed Payment Program Enhancement Account within the Medicaid State Share Fund may only be used to support West Virginia Medicaid and the directed payment program, or its successor, in accordance with 42 C.F.R. § 438.6 and as otherwise set forth in this section.

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

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

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

(3) If the tax payments remitted by the eligible hospitals are not used to effectuate the provisions of this article.

(f) Any funds remaining in the Eligible Facility Directed Payment Program Enhancement Account as of June 30, 2024, and on June 30 of each year thereafter, shall be transferred to the West Virginia Medical Services Fund after that June 30 but no later than the next ensuing September 30. These funds shall be used during the state fiscal year in which they were transferred at the discretion of the Bureau for Medical Services.

(g) The changes in this section enacted in the regular session of the Legislature, 2024, are effective upon approval by CMS of the state plan amendment.

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