WEST VIRGINIA CODE: §11-27-39

§11-27-39. Contingent increase of tax rate on certain eligible acute care hospitals to increase practitioner payment fee schedules.

(a) In addition to the rate of the tax imposed by §11-27-9, §11-27-15, and §11-27-38 of this code on providers of inpatient and outpatient hospital services, there shall be imposed on certain eligible acute care hospitals an additional tax of 0.13 percent on the gross receipts received or receivable by an eligible acute care hospital that provides inpatient or outpatient hospital services in this state.

(b) Beginning July 1, 2023, the tax rate shall be increased as needed, to provide non-federal share funding for practitioner payments, as described in subsection (d) of this section, to the maximum amount allowed by the Centers for Medicare and Medicaid Services (CMS). The CMS allowable tax rate and maximum payment amount shall be calculated by the West Virginia Bureau for Medical Services (BMS) pursuant to CMS-approved methodology. Using the certified calculations from the West Virginia Bureau for Medical Services, the Tax Commissioner shall publish by Administrative Notice, 30 days prior to implementation, the rates to be applicable.

(c) For purposes of this section, the term "eligible acute care hospital" means any inpatient or outpatient hospital conducting operations 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 §16-5B-14 of this code.

(d) The provisions of this section are intended to maximize federal funding to increase practitioner payment fee schedules for practitioners employed by eligible acute care hospitals as described in this section. For the purposes of this section, the term "practitioner" means a physician licensed pursuant to the provisions of §30-3-1 *et seq*. and §30-14-1 *et seq*. of this code: *Provided*, That upon the first rate increase permitted pursuant to subsection (b) of this section, the term “practitioner” shall include a physician contracted with billing and collection responsibility by an eligible acute care hospital.

(e) The taxes imposed by this section may not be imposed or collected until the occurrence of each of the following:

WV Legislature

(1) The West Virginia Bureau for Medical Services incorporates the payment methodology into the appropriate contracts and agreements; and

(2) The West Virginia Bureau for Medical Services receives the necessary approvals from the Centers for Medicare and Medicaid Services.

(f) There is continued a special fund known as the Acute Care Clearing Fund. The amount of taxes collected under this section and under §11-27-38 of this code, 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 such refunds, and costs of administration and collection, shall be deposited into the Acute Care Clearing Fund created by this section. The Tax Commissioner shall maintain the funds collected under this section and then periodically distribute the same by the fifth day of the month following the end of the calendar quarter in which the taxes were collected: *Provided*, that notwithstanding any provision of the code to the contrary, the portion attributable to the taxes, any interest, additions to tax, and penalties associated with the tax imposed under §11-27-38 of this code shall be distributed into the Eligible Acute Care Provider Enhancement Account and the portion attributable to the taxes, any interest, additions to tax, and penalties associated with the tax imposed under this section shall be distributed into a new account to be created under the Medicaid State Share Fund to be designated as the Eligible Acute Care Practitioner Enhancement Account. Disbursements from the Eligible Acute Care Practitioner Enhancement Account within the Medicaid State Share Fund may be used only to support increasing practitioner payment fee schedules for practitioners employed by eligible acute care hospitals.

(g) The imposition and collection of taxes imposed by this section shall be 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 towards 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 the state or federal government that disqualifies the tax from counting towards state Medicaid funds available to determine federal financial participation for Medicaid matching funds or creates 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 acute care hospitals are not used to effectuate the provisions of this section.

(h) Any funds remaining in the Eligible Acute Care Practitioner Enhancement Account, upon the occurrence of any of the events described in subsection (g) of this section, that cannot be used to match eligible federal Medicaid funds for this program, shall be transferred to the

WV Legislature

West Virginia Medical Services Fund. These funds shall be used during the state fiscal year in which they were transferred at the discretion of the West Virginia Bureau for Medical Services.

WV Legislature