
WEST VIRGINIA CODE CHAPTER 11
ARTICLE 27

WV Legislature

§11-27-1. Legislative findings.

The Legislature finds and declares that:

(a) Medicaid provides access to basic medical care for our citizens who are not physically, mentally or economically able to provide for their own care.

(b) Inadequate compensation of health care providers rendering Medicaid services is a barrier to indigent persons obtaining access to health care services.

(c) Without adequate compensation for the provision of Medicaid services, this state cannot attract or retain a sufficient number of health care providers necessary to serve our indigent population.

(d) While participation by a state in the Medicaid program created by Title XIX of the Social Security Act is voluntary, the reality is that states, and particularly this state, have no choice but to participate. The alternative is to deprive indigent citizens and particularly the children of indigent families of basic medical services.

(e) The federal government sets the criteria for eligibility to obtain Medicaid services. The federal government also requires that certain services be provided as part of a state's Medicaid program.

(f) Enactment by the United States Congress in 1991 of Public Law 102-234, amending Section 1903 of the Social Security Act, places limitations and restrictions on the flexibility states have to raise state share for its medical assistance program.

(g) The tax enacted in this article is intended to conform with the requirements of Public Law 102-234.

§11-27-2. Short title; arrangement and classification.

This article may be cited as the "West Virginia Health Care Provider Tax Act of 1993". No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article. No legal effect shall be given to any descriptive matter or heading relating to any part, section, subdivision or paragraph of this article.

§11-27-3. Definitions.

(a) General. — When used in this article, words defined in subsection (b) of this section have the meaning ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the word is used clearly indicates that a different meaning is intended.

(b) Definitions. —

"Business" includes all health care activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity. "Business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership, and services by a member of any other business entity on behalf of that entity, are the business of the employer, or partnership, or other business entity, as the case may be, and reportable as such for purposes of the taxes imposed by this article.

"Broad-based health care related tax" means a broad-based health care related tax as defined in Section 1903 of the Social Security Act, including a health-care related tax for which a waiver from the broad-based or uniformity requirements has been granted and is in effect by the federal Centers for Medicare and Medicaid Services pursuant to the provisions of Section 1903 of the Social Security Act and implementing regulations.

"Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engaged in activities taxable under this article.

"Department" means the Department of Human Services.

"Includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

"Partner" includes a member in a "partnership", as defined in this section.

"Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised, and which is not within the meaning of this article a trust or estate or corporation. It includes a limited liability company when such company is treated as a partnership for federal income tax purposes.

"Person" means any individual, partnership, association, company, corporation or other entity engaging in a privilege taxed under this article.

"Secretary" means the Secretary of Department of Human Services.

"Social Security Act" means the Social Security Act of the United States, as amended by Public Law 109-171, and codified in Title 42, Section 1396b of the United States Code.

"Tax" means any tax imposed by this article and, for purposes of administration and collection of such tax, includes any interest, additions to tax or penalties imposed with respect thereto under article 10 of this chapter.

"Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the tax imposed by this article is computed. In the case of a return made under this article, or regulations of the Tax Commissioner, for a fractional part of a year, the term "taxable year" means the period for which such return is made.

"Taxpayer" means any person subject to any tax imposed by this article.

"This code" means the Code of West Virginia, 1931, as amended.

"This state" means the State of West Virginia.

§11-27-4. Imposition of tax on ambulatory surgical centers.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing ambulatory surgical center services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing ambulatory surgical center services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for ambulatory surgical center services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Ambulatory surgical center services" means those services of an ambulatory surgical center as defined in Section 1832(a)(2)(F)(1) of the Social Security Act.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-5. Imposition of tax on providers of chiropractic services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing chiropractic services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing chiropractic services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for chiropractic services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Chiropractic services" means those services furnished in the practice of chiropractic by a person entitled to practice chiropractic in this state.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-6. Imposition of tax on providers of dental services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing dental services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing dental services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for dental services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Dental services" means those services furnished in the practice of dentistry by a person entitled to practice dentistry or dental surgery in this state.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-7. Imposition of tax on providers of emergency ambulance service.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing emergency ambulance service, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be five and one-half percent of the gross receipts derived by the taxpayer from furnishing emergency ambulance service in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for emergency ambulance service furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Ambulance" means any privately or publicly owned vehicle or aircraft which is designed, constructed or modified, equipped or maintained, and operated for the transportation of patients.

(4) "Emergency ambulance service" means the transportation by ambulance, and the emergency medical services rendered at the site of pickup and en route, of a patient to or from a place where medical, hospital or clinical service is normally available.

(5) "Emergency medical services" means emergency medical services as defined in section three, article four-c, chapter sixteen of this code.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-8. Imposition of tax on providers of independent laboratory or X-ray services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing independent laboratory or X-ray services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be five percent of the gross receipts derived by the taxpayer from furnishing independent laboratory or X-ray services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for independent laboratory or X-ray services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Independent laboratory or X-ray services" means those services provided in a licensed, free standing laboratory or X-ray facility. It does not include laboratory or X-ray services provided in a physician's office, hospital inpatient department, or hospital outpatient department.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-9. Imposition of tax on providers of inpatient hospital services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing inpatient hospital services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be two and one-half percent of the gross receipts derived by the taxpayer from furnishing inpatient hospital services in this state.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for inpatient hospital services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Inpatient hospital services” means those services that are inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

§11-27-10. Imposition of tax on providers of intermediate care facility services for individuals with an intellectual disability.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing intermediate care facility services for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section is five and one-half percent of the gross receipts derived by the taxpayer from furnishing intermediate care facility services in this state to individuals with an intellectual disability.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for intermediate care facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers are allowed to reduce gross receipts by their contractual allowances, to the extent those allowances are included therein, and by bad debts, to the extent the amount of those bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Intermediate care facility services for individuals with an intellectual disability" means those services that are intermediate care facility services for individuals with an intellectual disability for purposes of Section 1903(w) of the Social Security Act.

(d) Effective date. -- The tax imposed by this section applies to gross receipts received or receivable by providers after May 31, 1993.

§11-27-10a. Imposition of tax on managed care organizations.

(a) *Imposition of tax.* — For the privilege of holding a certificate of authority within this state to establish or operate a “health maintenance organization” pursuant to §33-25A-4 of this code (hereinafter “certified HMO”), there is hereby levied and shall be collected from every such certified HMO an annual broad-based health care-related tax.

(b) *Rate and measure of tax.* — (i) Prior to July 1, 2022, the tax imposed by this section shall be based on the following rates applied to each taxable health plan’s total Medicaid member months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V:

- (1) Tier I — \$35 for each Medicaid member month under 250,000;
- (2) Tier II — \$20 for each Medicaid member month between 250,000 and 500,000;
- (3) Tier III — \$1 for each Medicaid member month greater than 500,000;
- (4) Tier IV — 25 cents for each non-Medicaid member month under 150,000; and
- (5) Tier V — 10 cents for each non-Medicaid member month of 150,000 or more.

(ii) On and after July 1, 2022, the tax imposed by this section shall be based on the following rates applied to each taxable health plan’s total Medicaid member months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V:

- (1) Tier I — \$36.26 for each Medicaid member month under 250,000;
- (2) Tier II — \$20.72 for each Medicaid member month between 250,000 and 500,000;
- (3) Tier III — \$1.036 for each Medicaid member month greater than 500,000;
- (4) Tier IV — 25.9 cents for each non-Medicaid member month under 150,000; and
- (5) Tier V — 10.36 cents for each non-Medicaid member month of 150,000 or more.

(iii) On July 1, 2023, and every July 1 thereafter, the tax rates for each tier will be increased by the greater of either 0.0% or the average West Virginia Medicaid Managed Care capitation rate change from the two preceding fiscal years ending on June 30: *Provided*, That any increase shall meet the requirements in 42 C.F.R. § 433.68.

(1) The average West Virginia Medicaid Managed Care capitation rate change will be calculated by the West Virginia Bureau for Medical Services from the initial SFY rate certifications as follows:

(A) The monthly membership weights by rate cell and month will be determined based on the projected member months by rate cell from the most recent initial SFY rate certification.

(B) For each of the two preceding fiscal years, to determine the total projected premium payments for each year, the West Virginia Bureau for Medical Services will multiply the initial SFY certified capitation rates net of directed payments by the monthly membership weights by rate cell and month as determined in §11-27-10a(b)(iii)(1)(A).

(C) For each of the two preceding fiscal years, the West Virginia Bureau for Medical Services will divide the total projected premium payments as determined in §11-27-10a(b)(iii)(1)(B) by the total enrollment to determine the average premium payment for each fiscal year.

(D) To determine the average West Virginia Medicaid Managed Care capitation rate change from the preceding two fiscal years, the West Virginia Bureau for Medical Services will divide the most recent fiscal year's average premium payment by the earlier fiscal year's average premium payment and subtract 1.

(2) Before July 1, 2023, and every July 1 thereafter, the West Virginia Bureau for Medical Services will certify to the Tax Commissioner the capitation rate change from the preceding two fiscal years, the calculation used in making that determination, and whether the increase meets the requirements of federal and state law for permissible health care-related taxes.

(3) Using the certified calculations from the West Virginia Bureau for Medical Services, the Tax Commissioner will publish, by Administrative Notice, before July 1 of each year the rates for the next tax year applicable to each taxable health plan's total Medicaid member months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V.

(c) *Definitions.* —

(1) "Managed care organization" or "MCO" means a certified HMO that provides health care services to Medicaid members pursuant to an agreement or contract with the department.

(2) "Managed care plan" means an agreement or contract between the secretary and an MCO under which the MCO agrees to provide health care services to Medicaid members.

(3) "Medicaid member" means an individual enrolled in a taxable health plan who is a Medicaid beneficiary on whose behalf the department directly pays the health plan a capitated payment.

(4) "Medicaid member months" means the number of Medicaid members in a taxable health plan in each month or part of a month over the course of the tax year.

(5) "Non-Medicaid enrollee" means an individual who is an "enrollee", "subscriber", or "member", as those terms are defined in §33-25A-2(8) of this code, in a taxable health plan who is not a Medicaid member: *Provided*, That this definition does not include Public Employees Retirement Agency members or Medicare Advantage members.

(6) "Non-Medicaid member months" means the number of non-Medicaid enrollees in a

taxable health plan in each month or part of a month over the course of the tax year, but does not include persons enrolled in either a health plan issued by the West Virginia Public Employees Insurance Agency or a plan issued pursuant to the Federal Employees Health Benefits Act of 1959 (Public Law 86-382) to the extent the imposition of the tax under this section is preempted pursuant to 5 U.S.C. § 8909(f).

(7) "Taxable health plan" means: (i) An agreement or contract under which a certified HMO agrees to provide health care services to a non-Medicaid member in accordance with §33-25A-1 *et seq.* of this code; and (ii) a managed care plan.

(8) "Tax year" means the fiscal year beginning on July 1 and ending on June 30.

(9) "Rate cell" means a set of mutually exclusive categories of enrollees that is defined by one or more characteristics for the purpose of determining the capitation rate and making a capitation payment; such characteristics may include age, gender, eligibility category, and region or geographic area.

(10) "Initial SFY rate certification" means the MHT and MHP actuarial certifications as submitted to the Centers for Medicare and Medicaid Services prior to the start of the state fiscal year and prior to any mid-year or other rate amendments.

(d) *Effective date.* —

(i) Subject to an earlier termination pursuant to the terms of subdivision (ii) of this subsection, the tax imposed by this section shall be effective for three years beginning on the first day of the state fiscal year following a 30-day period after the secretary has posted notice on the department Internet website that approval had been received from the federal Centers for Medicare and Medicaid Services that the tax imposed by this section is a permissible health care-related tax in accordance with 42 C.F.R. §433.68 and is therefore eligible for federal financial participation.

(ii) The tax imposed by this section shall be administered in accordance with the provisions of this article and the Tax Administration and Procedures act in §11-10-1 *et seq.* of this code: *Provided*, That the tax imposed by this section shall be automatically void if the Centers for Medicare and Medicaid Services determines that it is no longer a permissible health care-related tax that is eligible for federal financial participation.

(e) *Time for paying tax.* — Notwithstanding the provisions of §11-27-25 of this code, no taxes may be collected under this article until the department receives written notice that the federal Centers for Medicare and Medicaid Services has approved proposed Medicaid rates as actuarially sound for the taxable year in which the tax will be imposed.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care facilities for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care-related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section is five and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility services in this state, other than services of intermediate care facilities for individuals with an intellectual disability.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers are allowed to reduce gross receipts by their bad debts, to the extent the amount of those bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Nursing facility services” means those services that are nursing facility services for purposes of §1903(w) of the Social Security Act.

§11-27-12. Imposition of tax on providers of nursing services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing nursing services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing nursing services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Nursing services" means all nursing acts performed by a registered or practical nurse entitled to provide nursing services in this state, including services of nurse-midwives, nurse practitioners and private duty nurses.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-13. Imposition of tax on providers of opticians' services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing opticians' services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing opticians' services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for opticians' services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Optician" means a maker or dealer in optical items or instruments; or a person who grinds and dispenses prescription spectacle lenses but who is not an ophthalmologist or an optometrist.

(4) "Opticians' services" means those services furnished by a person trained and engaged in business as an optician in this state.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-14. Imposition of tax on providers of optometric services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing optometric services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing optometric services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for optometric services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Optometric services" means those services furnished in the practice of optometry by a person entitled to practice optometry in this state.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-15. Imposition of tax on providers of outpatient hospital services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing outpatient hospital services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be two and one-half percent of the gross receipts derived by the taxpayer from furnishing outpatient hospital services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for outpatient hospital services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Outpatient hospital services" means those services that are outpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-16. Imposition of tax on providers of physicians' services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing physicians' services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care-related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be two percent of the gross receipts derived by the taxpayer from furnishing physicians' services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for physicians' services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Physicians' services" means and is limited to those services furnished by a physician within the scope of the practice of medicine or osteopathy, as defined by the laws of this state, whether furnished in the physician's office, the recipient's home, a hospital, a skilled nursing facility or any other location.

(A) The term "physicians' services" includes those professional services directly furnished by a physician in the scope of his or her employment by a hospital. Other services rendered in conjunction with hospital-employed physicians' services, such as the use of hospital facilities, staff, equipment, drugs and supplies ordinarily furnished by a hospital, are not considered physicians' services pursuant to this section: Provided, That hospitals that own and operate freestanding physician offices or primary care clinics in office buildings or other locations separate and apart from a hospital whereby employed physicians provide services ordinarily provided by physicians in a freestanding physician's office may class all revenue from such services as physicians' services. The status of a physician as a hospital employee shall be determined in accordance with criteria established under the United States Internal Revenue Code and United States Treasury regulations issued pursuant thereto.

(B) Any other service provided by a hospital may not be classified as physicians' services, notwithstanding the fact that such services are provided under the direct or indirect supervision of a physician who is not an employee of the hospital or provided or performed

by a physician who holds privileges at the hospital or who works as an independent contractor for the hospital or for any other entity for the provision of health care services.

(C) The amendment to this definition enacted during the 2009 regular legislative session is intended to clarify the intent of the Legislature as to the activities that qualify as physicians' services.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-17. Imposition of tax on providers of podiatry services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing podiatry services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing podiatry services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for podiatry services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Podiatry services" means those services furnished in the practice of podiatry by a person entitled to practice podiatry in this state.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-18. Imposition of tax on providers of psychological services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing psychological services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing psychological services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for psychological services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Psychological services" means those services furnished in the practice of psychology by a person entitled to practice psychology in this state.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-19. Imposition of tax on providers of therapists' services.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing therapists' services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing therapy services in this state.

(c) Definitions. --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for therapy services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Therapy services" includes physical therapy, speech therapy, occupational therapy, respiratory therapy, audiological services and rehabilitative specialist furnished by a person trained to furnish such therapy and, where a license to practice is required by law, such person is entitled to practice such therapy in this state.

(d) Effective date. -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.

§11-27-20. Double taxation prohibited.

(a) No health care provider shall be required to report gross receipts derived from furnishing a health care item or service under more than one section of this article which imposes a tax.

(b) Gross receipts derived from furnishing a health care item or service to a patient shall be taxed only one time under this article.

WV Legislature

§11-27-21. Apportionment of gross receipts.

When a service is rendered partially in this state and partially in another state, gross receipts attributable to such service shall be allocated or apportioned in accordance with uniform rules promulgated by the Tax Commissioner.

WV Legislature

§11-27-22. Accounting periods and methods of accounting.

(a) General rule. -- For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as taxpayer's taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer's taxable year under this article.

(b) Change of taxable year. -- If a taxpayer's taxable year is changed for federal income tax purposes, taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall be provided a copy of the authorization from the Internal Revenue Service for such change with taxpayer's annual return for the taxable year filed under this article.

(c) Method of accounting. -- A taxpayer's method of accounting under this article shall be the same as taxpayer's method of accounting for federal income tax purposes. Accrual basis taxpayers may deduct bad debts only in the year to which they relate.

(d) Change of accounting methods. -- If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service with its annual return for the taxable year filed under this article.

(e) Adjustments. -- In computing a taxpayer's liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Tax Commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

§11-27-23. Time for filing returns and other documents.

(a) Annual return. -- Every person subject to a tax imposed by this article shall file an annual return with the Tax Commissioner. Returns made on the basis of a calendar year shall be filed on or before the thirty-first day of January following the close of the calendar year. Returns made on the basis of a fiscal year shall be filed on or before the last day of the first month following the close of the fiscal year.

(b) Extension of time for filing return. -- The Tax Commissioner may, upon written request received on or before the due date of the annual return or other document, grant a reasonable extension of time for filing any return, declaration or statement, or other document required to be filed by this article or by regulations, upon such terms as the commissioner may by rule prescribe, or by contract require, if good cause satisfactory to the Tax Commissioner is provided by the taxpayer. No such extension shall be for more than six months.

§11-27-24. Payment of estimated tax.

(a) General rule. -- Every person subject to a tax imposed by this article must make estimated tax payments for a taxable year in which such person's tax liability can reasonably be expected to exceed \$50 per month. Eleven twelfths of such person's estimated tax liability must be remitted in monthly installment payments during that tax year. Installment payments are due on the fifteenth day of the second through the twelfth months of the tax year for gross receipts received or receivable during the preceding month. The balance of tax due must be paid by the last day of the first month following the close of taxpayer's tax year.

(b) Remittance form. -- With each installment payment, taxpayer shall file a remittance form executed as provided in section sixteen of this article. This form shall be prescribed by the Tax Commissioner and require such information as the commissioner deems necessary for the efficient administration of this article.

(c) Exception. -- Notwithstanding the provisions of subsection (a) of this section, the Tax Commissioner, if the commissioner deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than that required in said subsection.

§11-27-25. Time for paying tax.

(a) General rule. -- The person required to make an annual return under this article shall, without assessment or notice and demand from the Tax Commissioner, pay such tax at the time and place fixed for filing the annual return, determined without regard to any extension of time for filing such return.

(b) Extension of time for paying tax. -- The Tax Commissioner may extend the time for payment of the amount of tax shown, or required to be shown, on any annual return required by this article (or any periodic installment payment), for a reasonable period not to exceed six months from the date fixed by statute for the payment thereof.

(c) Amount determined as deficiency. -- Under rules prescribed by the Tax Commissioner, the commissioner may extend the time for payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the due date of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. The Tax Commissioner may grant an extension of time under this subsection only where it is shown to the Tax Commissioner's satisfaction that payment of a deficiency upon the date fixed for payment thereof will result in undue hardship to the taxpayer.

(d) No extension in certain circumstances. -- The Tax Commissioner may not grant an extension of time under this section if the failure to timely pay tax, or if the deficiency in payment of tax, is due to negligence, to intentional disregard of rules or regulations, or to fraud.

§11-27-26. Place for filing returns and other documents.

Tax returns, statements or other documents, or copies thereof, required by this article or by rules shall be filed with the Tax Commissioner by delivery, in person or by mail, postage prepaid, to the Tax Commissioner's office in Charleston, West Virginia: Provided, That the Tax Commissioner may, by rule, prescribe the place for filing such returns, statements or other documents, or copies thereof, at one or more other locations.

WV Legislature

§11-27-27. Signing of returns and other documents.

(a) General. -- Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the Tax Commissioner.

(b) Signing of corporation returns. -- The president, vice president, treasurer, assistant treasurer, chief accounting officer or any other duly authorized officer shall sign the return of a corporation. In the case of a return made for a corporation by a fiduciary, the fiduciary shall sign the return. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns. -- Any one of the partners shall sign the return of a partnership. The fact that a partner's name is signed on the return is prima facie evidence that that partner is authorized to sign the return on behalf of the partnership.

(d) Signature presumed authentic. -- The fact that an individual's name is signed to a return, statement or other document is prima facie evidence for all purposes that the return, statement or other document was actually signed by him or her.

(e) Verification of returns. -- Except as otherwise provided by the Tax Commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-27-28. Records.

(a) Every person liable for reporting or paying any tax under this article shall keep such records, receipts, invoices and other pertinent papers in such forms as the Tax Commissioner may require.

(b) Every person liable for reporting or paying any tax under this article shall keep such records for not less than three years after the annual return required under this article is filed, unless the Tax Commissioner, in writing, authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

§11-27-29. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter applies to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

WV Legislature

§11-27-30. Exchange of information to facilitate compliance.

Notwithstanding the provisions of section five-d, article ten of this chapter, or any other provision of this code to the contrary, the Tax Commissioner and the commissioner of the bureau of administration and finance of the department, or any successor agency thereto, may, by written agreement, provide for the exchange of information from their respective files, databases, or audits of health care providers, which the Tax Commissioner deems relevant to determining provider compliance with the provisions of this article, in a cost effective and efficient manner. Such agreement may provide for the sharing, or reimbursement, of costs incurred by either party to gather or provide information under this section.

§11-27-31. Crimes and penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter applies to the taxes imposed by this article with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.

WV Legislature

§11-27-32. Dedication of tax.

(a) The amount of taxes collected under this article, including any interest, additions to tax and penalties collected under article ten of this chapter, 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 special revenue fund created in the State Treasurer's office and known as the Medicaid state share fund. The Tax Commissioner shall have separate accounting for those health care providers as set forth in articles four-b and four-c, chapter nine of this code, except that taxes paid by hospitals may be combined and reported as a single item. The Tax Commissioner shall retain from the taxes collected during each fiscal year the amount of \$200,000 to be used for administration and collection of these taxes.

(b) Notwithstanding the provisions of subsection (a) of this section, for the remainder of fiscal year one thousand nine hundred ninety-three and for each succeeding fiscal year, no expenditures from any of the several health care provider funds are authorized except in accordance with appropriations by the Legislature.

§11-27-33. Abrogation.

This tax abrogates and is of no further force and effect, without any further action by the Legislature, upon the earliest of the following dates:

(a) The date upon which an act of Congress becomes effective which prohibits the inclusion of revenue from these broad-based health care related taxes in state share when obtaining matching federal dollars: Provided, That: (1) If such act specifies a later date on which such prohibition takes effect, that later effective date controls; and (2) if such act prohibits the inclusion revenue from some but not all of the broad-based health care related taxes imposed by this article, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

(b) The date upon which a judgment or order of a court of competent jurisdiction becomes final prohibiting the inclusion of revenue from these broad-based health care related taxes when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars: Provided, That: (1) If such judgment or order specifies a later date on which the prohibition takes effect, that later effective date controls; and (2) if such judgment or order prohibits the inclusion revenue from some but not all of the broad-based health care related taxes imposed by this article, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

(c) The date upon which any federal administrative rule or regulation promulgated in conformity with federal law becomes effective which negates the effect or purposes of this article: Provided, That: (1) If such rule or regulation specifies a later date on which the prohibition takes effect, that later effective date controls; and (2) if such rule or regulation prohibits the inclusion of revenue from some but not all of the broad-based health care related taxes imposed by this article when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

§11-27-34. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

WV Legislature

§11-27-35. Effective date.

This act of the Legislature shall take effect upon its passage in the year 1993: Provided, That the taxes imposed by this article shall not be levied on gross receipts received or accrued before June 1, 1993, and shall be levied on gross receipts received or accrued on or after that date.

WV Legislature

§11-27-36. Phase out and elimination of tax on services of individual practitioners.

(a) Effective July 1, 2001, the rate of the tax imposed under:

- (1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and five hundred seventy-five thousandths percent; and
- (2) Section sixteen of this article is reduced to one and eight-tenths percent; and
- (3) Section seven of this article is reduced to four and ninety-five one hundredths percent.

(b) Effective July 1, 2002, the tax imposed under:

- (1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and four-tenths percent; and
- (2) Section sixteen of this article is reduced to one and six-tenths percent; and
- (3) Section seven of this article is reduced to four and four-tenths percent.

(c) Effective July 1, 2003, the tax imposed under:

- (1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and two hundred twenty-five thousandths percent; and
- (2) Section sixteen of this article is reduced to one and four-tenths percent; and
- (3) Section seven of this article is reduced to three and eighty-five hundredths percent.

(d) Effective July 1, 2004, the tax imposed under:

- (1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and five-hundredths percent; and
- (2) Section sixteen of this article is reduced to one and two tenths percent; and
- (3) Section seven of this article is reduced to three and three-tenths percent.

(e) Effective July 1, 2005, the tax imposed under:

- (1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to eight hundred seventy-five thousandths percent; and
- (2) Section sixteen of this article is reduced to one percent; and
- (3) Section seven of this article is reduced to two and seventy-five hundredths percent.

(f) Effective July 1, 2006, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to seven-tenths percent; and

(2) Section sixteen of this article is reduced to eight-tenths percent; and

(3) Section seven of this article is reduced to two and two-tenths percent.

(g) Effective July 1, 2007, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to five hundred twenty-five thousandths percent; and

(2) Section sixteen of this article is reduced to six-tenths percent; and

(3) Section seven of this article is reduced to one and sixty-five hundredths percent.

(h) Effective July 1, 2008, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to thirty-five hundredths percent; and

(2) Section sixteen of this article is reduced to four-tenths percent; and

(3) Section seven of this article is reduced to one and one-tenth percent.

(i) Effective July 1, 2009, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one hundred seventy-five thousandths percent; and

(2) Section sixteen of this article is reduced to two-tenths percent; and

(3) Section seven of this article is reduced to fifty-five hundredths percent.

(j) Effective July 1, 2010, the tax imposed under sections five, six, seven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen and nineteen of this article is eliminated.

§11-27-37. Contingent increase in rates of certain health care provider taxes.

(a) Increase in rates of certain provider taxes. -- Notwithstanding any provision of this code to the contrary:

(1) The rate of the tax imposed by section four of this article on providers of ambulatory surgical centers shall be two and thirty-six hundredths percent of the gross receipts received or receivable by providers on and after the first day of the calendar month as provided in subsection (b) of this section;

(2) The rate of the tax imposed by section nine of this article on providers of inpatient hospital services shall be three and thirty-eight hundredths percent of the gross receipts received or receivable by providers on and after the first day of the calendar month as provided in subsection (b) of this section;

(3) The rate of tax imposed by section ten of this article on providers of intermediate care facility services shall be five and ninety-five hundredths percent of the gross receipts received or receivable by providers on and after the first day of the calendar month as provided in subsection (b) of this section; and

(4) The rate of the tax imposed by section fifteen of this article on providers of outpatient hospital services shall be three and thirty-eight hundredths percent of the gross receipts received or receivable by providers on and after the first day of the calendar month as provided in subsection (b) of this section.

(b) Effective date. -- This section shall take effect as provided in article six, section thirty of the Constitution of this state: Provided, That this section does not apply to any taxpayer unless and until all of the following have occurred: (1) The Governor makes a determination that both estimated General Revenue Fund collections and the funds available to fund this state's Medicaid program as set forth in the annual budget bill enacted by the Legislature will both be less in the next fiscal year than those funds are estimated to be in the current fiscal year, with this decrease being a result of changes, or anticipated changes, in the Medicaid program at the federal level or a result of federal administrative actions with respect to this state's Medicaid program; (2) the Governor notifies the President of the Senate and the Speaker of the House of Delegates of this determination; (3) the Governor issues an executive order convening a panel to study and examine possible alternative means of addressing and resolving the anticipated Medicaid program budget shortfall, which panel shall include, but may not be limited to, one or more representatives of each group of providers upon which the provider tax increases contemplated by this section may be imposed; (4) this panel is afforded not less than seventy-five days in which to conduct its study and provide a report and recommendations to the Governor, the President of the Senate and the Speaker of the House of Delegates; and (5) the Legislature adopts a resolution authorizing imposition of the rate increases described in this section. If, and only if, no other solution than the tax increase set forth herein is implemented by either administrative or legislative action in response to the report and recommendations of the

study panel to the anticipated Medicaid budget shortfall, and upon adoption of a resolution of the Legislature, the provisions of this section shall become effective on the date specified by the Legislature in the resolution.

WV Legislature

§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 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.

§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:

- (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 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.