

RECEIVED
1031 NOV -5 PM 12 33
OFFICE OF THE CLERK
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1991

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL NO. 210

(By Delegate Mr. Speaker, Mr. Chambers)
[By Request of the Executive]

— ● —

Passed October 18, 1991

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 210

(By MR. SPEAKER, MR. CHAMBERS)
(By Request of the Executive)

[Passed October 18, 1991; in effect from passage.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated articles four-b and four-c; and to amend chapter eleven of said code by adding thereto a new article, designated article twenty-six, all relating to medicaid enhancement; definitions; creating physician provider medicaid enhancement board, general medicaid enhancement board, dentist provider medicaid enhancement board, ambulance service provider medicaid enhancement board and outpatient hospital medicaid enhancement board; expenses for board members; powers and duties of boards; participation and report by health care cost review authority with respect to regulation and rates of ambulance services; creating special revenue accounts for purposes of medicaid enhancement; effective date; termination date of boards; allowing for enhanced reimbursement to providers; abrogation; duties of the secretary of the department of health and human resources; legislative findings; levying a health care provider medicaid enhancement tax assessed against medicaid reimbursements of health care providers; procedures for collecting and administering tax; crimes

and penalties; and dedicating proceeds of tax for purposes of medicaid enhancement.

Be it enacted by the Legislature of West Virginia:

That chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated articles four-b and four-c; and that chapter eleven of said code be amended by adding thereto a new article, designated article twenty-six, all to read as follows:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4B. PHYSICIAN PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4B-1. Definitions.

1 The following words when used in this article have
2 meanings ascribed to them in this section, except in
3 those instances where the context clearly indicates a
4 different meaning:

5 (a) "Board" means the physician provider medicaid
6 enhancement board created to develop, review, and
7 recommend the physician provider fee schedule.

8 (b) "Cost-based services" means any service delivered
9 by a physician provider reimbursed under the medical
10 assistance program of this state solely on the basis of
11 costs reported to the single state agency, whether or not
12 the provider operates on a profit or not for profit basis.

13 (c) "Fund" means the physician provider medicaid
14 enhancement fund established to receive moneys col-
15 lected from physician providers, individuals and
16 corporations which will be matched with federal
17 medicaid funds pursuant to Title XIX of the United
18 States Social Security Act and expended in accordance
19 with the provisions of this article.

20 (d) "Physician provider" means an allopathic or
21 osteopathic physician, physician assistant, nurse-
22 midwife, nurse anesthetist or advanced practice nurse,
23 regardless of location, enrolled with the single state
24 agency, rendering services within or without this state
25 and receiving reimbursement, directly as an individual

26 provider or indirectly as an employee or agent of a
 27 medical clinic, partnership or other business entity,
 28 from this state under the medical assistance program of
 29 the Social Security Act: *Provided*, That this definition
 30 does not include a physician provider to the extent that
 31 such person renders cost-based services.

32 (e) "Secretary" means the secretary of the department
 33 of human resources.

34 (f) "Single state agency" means the single state agency
 35 for medicaid in this state.

**§9-4B-2. Physician provider medicaid enhancement
 board; creation and composition.**

1 There is hereby created the West Virginia physician
 2 provider medicaid enhancement board to consist of
 3 seven members. The board shall consist of six members,
 4 appointed by the governor, and the secretary, or his or
 5 her designee who shall serve as an ex officio, nonvoting
 6 member. The members appointed by the governor shall
 7 include four allopathic physicians, one osteopathic
 8 physician and one lay person. The governor shall select
 9 the allopathic physician members from a list of eight
 10 recommendations submitted to the governor by the state
 11 medical association, the osteopathic physician board
 12 member from three recommendations submitted to the
 13 governor by the state osteopathic society, and the lay
 14 board member, at his or her discretion. The respective
 15 associations shall submit their recommendations to the
 16 governor within five days of the effective date of this
 17 article. The governor shall make all appointments
 18 within fifteen days from the receipt of all recommenda-
 19 tions. After the initial appointment of the board, any
 20 appointment to fill a vacancy shall be for the unexpired
 21 term only, made in the same manner as the initial
 22 appointment, and the terms of all members expire on
 23 the first day of July, one thousand nine hundred ninety-
 24 four. The board shall select a member to act as
 25 chairperson. The chairperson shall be the chief adminis-
 26 trative officer and shall preside over official transac-
 27 tions of the board.

§9-4B-3. Expenses for citizen members.

1 Each appointed board member shall serve without
2 compensation but shall be reimbursed for the cost of
3 reasonable and necessary expenses actually incurred in
4 the performance of his or her duties.

§9-4B-4. Powers and duties.

1 (a) The board shall:

2 (1) Develop and recommend a reasonable physician
3 provider fee schedule so that the schedule conforms to
4 the greatest extent possible to usual and customary
5 charges in accordance with federal medicaid laws. In
6 developing the fee schedule, the board shall refer to a
7 nationally published fee schedule selected by the
8 secretary of the department of health and human
9 resources. Upon approval by the single state agency, the
10 single state agency shall implement the physician
11 provider fee schedule. If the single state agency does not
12 approve of the fee schedule as developed by the board,
13 then the board may submit a report to the Legislature
14 including its recommendations and any other informa-
15 tion necessary;

16 (2) Review the fee schedule on a quarterly basis and
17 recommend to the single state agency any adjustments
18 it considers necessary. The single state agency may
19 approve the board's recommendations and implement
20 the adjustments;

21 (3) Meet and confer with representatives from each
22 medical specialty area so that equity in reimbursement
23 increases may be achieved to the greatest extent
24 possible;

25 (4) Assist and enhance communications between
26 participating physician providers and the department of
27 health and human resources; and

28 (5) Review reimbursements in relation to those
29 physician providers who provide early and periodic
30 screening diagnosis and treatment.

31 (b) The board may receive and transmit to the fund,
32 private funds contributed, donated or bequeathed by
33 corporations, individuals or other entities as contem-

34 plated and permitted by applicable federal medicaid
35 laws.

36 (c) The board may carry out any other powers and
37 duties as prescribed for it by the secretary.

38 (d) Nothing in this section gives the board the
39 authority to interfere with the discretion and judgment
40 given to the single state agency that administers the
41 state's medicaid program. The purpose of the board is
42 to assist and enhance the role of the single state agency
43 in carrying out its mandate by acting as a means of
44 communication between the medicaid provider com-
45 munity and the agency.

**§9-4B-5. Physician provider medicaid enhancement
fund.**

1 (a) There is hereby created in the state treasury a
2 special revenue account, which shall be an interest
3 bearing account, known as the physician provider
4 medicaid enhancement fund. All taxes, additions to tax,
5 penalties and interest collected from physician providers
6 in accordance with article twenty-six, chapter eleven of
7 this code, all donations and contributions received by the
8 board in accordance with section four of this article, and
9 all interest earned by reason of investment of fund
10 money deposited in the fund, shall be deposited into the
11 fund and shall be used exclusively for the following
12 purposes:

13 (1) To increase physician provider medicaid reimbur-
14 sement adopted by the single state agency through
15 recommendations by the board;

16 (2) To cover the costs of increased utilization due to
17 program growth; and

18 (3) To cover administrative costs.

19 (b) Any balance remaining in the fund at the end of
20 any state fiscal year shall not revert to the general
21 revenue fund but shall remain in the fund and shall be
22 used solely in a manner consistent with this article.

23 (c) Moneys received into the fund shall not be credited
24 as part of the general appropriation by the Legislature

25 on behalf of the state medicaid program.

§9-4B-6. Amount and remittance of reimbursement.

1 Any physician provider required to pay a tax in
2 accordance with article twenty-six, chapter eleven of
3 this code, is entitled to receive enhanced medicaid
4 reimbursements in an amount which, at a minimum, is
5 equal to the amount of the tax paid by the individual
6 taxpayer for the taxable year (exclusive of additions to
7 tax, penalties or interest), plus three percent.

§9-4B-7. Effective date.

1 The physician provider fee schedule, as adopted by the
2 single state agency through recommendations by the
3 board, becomes effective on the first day of January, one
4 thousand nine hundred ninety-two.

§9-4B-8. Abrogation.

1 (a) This article abrogates and is of no further force
2 and effect, without any further action required by the
3 Legislature, upon the earliest of the following dates:

4 (1) The date upon which an act of Congress becomes
5 effective prohibiting the inclusion of revenue from
6 provider taxes when determining the amount of state
7 expenditures that are claimable as medical assistance
8 for purposes of obtaining federal matching dollars:
9 *Provided*, That if such act specifies a later date on which
10 such prohibition takes effect, that later effective date
11 controls;

12 (2) The date upon which a judgment or order of a
13 court of competent jurisdiction becomes final prohibit-
14 ing the inclusion of revenue from provider taxes when
15 determining the amount of state expenditures that are
16 claimable as medical assistance for purposes of obtain-
17 ing federal matching dollars: *Provided*, That if such
18 judgment or order specifies a later date on which the
19 prohibition takes effect, that later effective date
20 controls;

21 (3) The date upon which the Legislature appropriates
22 the proceeds from the tax levied under article twenty-
23 six, chapter eleven of this code, for any purpose not in

24 conformity with this article;

25 (4) The date upon which any federal administrative
26 rule or regulation promulgated in conformity with
27 federal law becomes effective which negates the effect
28 or purpose of this article: *Provided*, That if such federal
29 rule or regulation specifies a later date on which the
30 prohibition takes effect, that later effective date
31 controls; or

32 (5) The first day of July, one thousand nine hundred
33 ninety-four.

34 (b) Upon abrogation of this article, the single state
35 agency shall use the moneys remaining in the fund to
36 maintain, to the greatest extent possible, the increased
37 fee schedule as determined by the single state agency.
38 Thereafter, the single state agency shall distribute any
39 moneys insufficient to maintain the increased fee
40 schedule on a proportional basis among all participating
41 providers, from the fund, as determined by the secre-
42 tary.

43 (c) Upon abrogation, the medicaid reimbursement
44 levels shall return to those amounts in existence on the
45 thirty-first day of December, one thousand nine hundred
46 ninety-one.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCE- MENT ACT.

§9-4C-1. Definitions.

1 The following words when used in this article have the
2 meanings ascribed to them in this section, except in
3 those instances where the context clearly indicates a
4 different meaning:

5 (a) "Ambulance service provider" means a person,
6 regardless of location, enrolled with the single state
7 agency, rendering ambulance services within or without
8 this state and receiving reimbursement, directly as an
9 individual provider or indirectly as an employee or
10 agent of a medical clinic, partnership or other business
11 entity, from this state under the medical assistance
12 program of the Social Security Act: *Provided*, That this
13 definition does not include an ambulance service

14 provider to the extent that such person renders cost-
15 based services.

16 (b) "Cost-based service" means any service reimbursed
17 under the medical assistance program of this state solely
18 on the basis of costs reported to the single state agency,
19 whether or not such service is rendered on a profit or
20 not for profit basis.

21 (c) "Dentist provider" means a dentist, regardless of
22 location, enrolled with the single state agency, rendering
23 services within or without this state, and receiving
24 reimbursement, directly as an individual provider or
25 indirectly as an employee or agent of a medical clinic,
26 partnership or other business entity, from this state
27 under the medical assistance program of the Social
28 Security Act: *Provided*, That this definition does not
29 include a dentist provider to the extent that such person
30 renders cost-based services.

31 (d) "General health care provider" means an optome-
32 trist, an optician, an audiologist, a podiatrist, a chiro-
33 practor, a psychologist, a person providing medical
34 equipment and supply services, a person providing
35 laboratory services, a person providing radiology
36 services, a speech therapist, an occupational therapist,
37 a physical therapist, a behavioral health center, or a
38 local health department, regardless of location, enrolled
39 with the single state agency, rendering services within
40 or without this state and receiving reimbursement,
41 directly as an individual provider or indirectly as an
42 employee or agent of a medical clinic, partnership or
43 other business entity, from this state under the medical
44 assistance program of the Social Security Act: *Provided*,
45 That this definition does not include a general health
46 care provider to the extent that such person renders
47 cost-based services.

48 (e) "Outpatient hospital service provider" means a
49 person, regardless of location, enrolled with the single
50 state agency, rendering outpatient hospital services
51 within or without this state and receiving reimburse-
52 ment, directly as an individual provider or indirectly as
53 an employee or agent of a medical clinic, partnership

54 or other business entity, from this state under the
55 medical assistance program of the Social Security Act:
56 *Provided*, That this definition does not include an
57 outpatient hospital service provider to the extent that
58 such person renders cost-based services.

59 (f) "Secretary" means the secretary of the department
60 of health and human resources.

61 (g) "Single state agency" means the single state
62 agency for medicaid in this state.

§9-4C-2. General medicaid enhancement board.

1 There is hereby created the general medicaid en-
2 hancement board to consist of seventeen members.
3 Sixteen members shall be appointed by the governor,
4 including two lay persons and one representative from
5 each of the following fourteen groups: Chiropractors,
6 optometrists, opticians, audiologists, podiatrists, psy-
7 chologists, medical equipment and supply services,
8 laboratory services, radiology services, speech thera-
9 pists, occupational therapists, physical therapists,
10 behavioral health centers and local health departments.
11 In addition to the sixteen members appointed by the
12 governor, the secretary, or his or her designee, shall
13 serve as an ex officio, nonvoting member of the board.
14 The governor shall make all appointments within
15 twenty days from the effective date of this article. After
16 the initial appointment of the board, any appointment
17 to fill a vacancy shall be for the unexpired term only,
18 shall be made in the same manner as the initial
19 appointment, and the terms of all members expire on
20 the first day of July, one thousand nine hundred ninety-
21 four.

§9-4C-3. Dentist provider medicaid enhancement board.

1 There is hereby created the dentist provider medicaid
2 enhancement board to consist of five members. In order
3 to carry out the purposes of this article, the dentist
4 provider medicaid enhancement board shall represent
5 dentist providers. The board shall consist of three
6 dentists, one lay person and the secretary, or his or her
7 designee who shall serve as an ex officio, nonvoting

8 member. The governor shall select the dentist members
9 from six recommendations submitted to the governor by
10 the state dental association and the lay board member
11 at his or her discretion. The state dental association shall
12 submit all recommendations to the governor within five
13 days of the effective date of this article. The governor
14 shall make all appointments within fifteen days of
15 receipt of all recommendations. After the initial
16 appointment of the board, any appointment to fill a
17 vacancy shall be for the unexpired term only, shall be
18 made in the same manner as the initial appointment,
19 and the terms of all members shall expire on the first
20 day of July, one thousand nine hundred ninety-four.

§9-4C-4. Ambulance service provider medicaid enhancement board.

1 There is hereby created the ambulance service
2 provider medicaid enhancement board to consist of
3 seven members. In order to carry out the purpose of this
4 article, this board shall represent ambulance service
5 providers. The board shall consist of five ambulance
6 service providers, one lay person and the secretary, or
7 his or her designee as an ex officio, nonvoting member.
8 The governor shall make all appointments within
9 twenty days of the effective date of this article. After
10 the initial appointment of the board, any appointment
11 to fill a vacancy shall be for the unexpired term only,
12 and the terms of all members shall expire on the first
13 day of July, one thousand nine hundred ninety-four.

§9-4C-5. Outpatient hospital medicaid enhancement board.

1 There is hereby created the outpatient hospital
2 medicaid enhancement board to consist of seven
3 members. In order to carry out the purpose of this
4 article, the board shall represent outpatient hospital
5 service providers. The board shall consist of five
6 representatives of outpatient hospital service providers,
7 one lay person and the secretary, or his or her designee
8 who shall serve as an ex officio, nonvoting member. The
9 secretary shall select the outpatient hospital service
10 provider members from ten recommendations submit-

11 ted by the West Virginia hospital association and the lay
 12 person at his or her discretion. The West Virginia
 13 hospital association shall submit all recommendations to
 14 the secretary within five days of the effective date of this
 15 article and the secretary shall make all appointments
 16 within fifteen days of receipt of all recommendations.
 17 After the initial appointment of the board, any appoint-
 18 ment to fill a vacancy shall be for the unexpired term
 19 only, shall be made in the same manner as the initial
 20 appointment, and the terms of all members shall expire
 21 on the first day of July, one thousand nine hundred
 22 ninety-four.

§9-4C-6. Expenses for citizen members.

1 Each appointed board member for each board created
 2 pursuant to this article shall serve without compensation
 3 but shall be reimbursed for the cost of reasonable and
 4 necessary expenses actually incurred in the perform-
 5 ance of his or her duties.

§9-4C-7. Powers and duties.

1 (a) Each board created pursuant to this article shall:

2 (1) Develop and recommend a reasonable provider fee
 3 schedules, in relation to its respective provider group,
 4 so that the schedule conforms, to the greatest extent
 5 possible, to usual and customary charges in accordance
 6 with federal medicaid laws. In developing the fee
 7 schedule the board shall refer to a nationally published
 8 fee schedule, if available, as selected by the secretary in
 9 accordance with section eight of this article. Upon
 10 approval by the single state agency, the single state
 11 agency shall implement the provider fee schedule. If the
 12 single state agency does not approve of the fee schedule
 13 as developed by the board, then the board may submit
 14 a report to the Legislature along with its recommenda-
 15 tions and any other information necessary;

16 (2) Review its respective provider fee schedule on a
 17 quarterly basis and recommend to the single state
 18 agency any adjustments it considers necessary. The
 19 single state agency may approve a board's recommen-
 20 dations and implement the adjustments;

21 (3) Assist and enhance communications between
22 participating providers and the department of health
23 and human resources;

24 (4) Meet and confer with representatives from each
25 specialty area within its respective provider group so
26 that equity in reimbursement increases may be achieved
27 to the greatest extent possible and when appropriate to
28 meet and confer with other provider boards; and

29 (5) Appoint a chairperson to preside over all official
30 transactions of the board.

31 (b) Each board may receive and transmit to its
32 respective fund, private moneys contributed, donated or
33 bequeathed by corporations, individuals or other entities
34 as contemplated and permitted by applicable federal
35 medicaid laws.

36 (c) Each board may carry out any other powers and
37 duties as prescribed to it by the secretary.

38 (d) Nothing in this section gives any board the
39 authority to interfere with the discretion and judgment
40 given to the single state agency that administers the
41 state's medicaid program. The purpose of each board is
42 to assist and enhance the role of the single state agency
43 in carrying out its mandate by acting as a means of
44 communication between the health care provider
45 community and the agency.

46 (e) In addition to the duties specified in subsection (a)
47 of this section, the ambulance service provider medicaid
48 enhancement board shall work with the health care cost
49 review authority to develop a method for regulating
50 rates charged by ambulance services. The health care
51 cost review authority shall report its findings to the
52 Legislature by the first day of January, one thousand
53 nine hundred ninety-three. The costs of the report shall
54 be paid by the health care cost review authority. In this
55 capacity only, the chairperson of the health care cost
56 review authority shall serve as an ex officio, nonvoting
57 member of the board.

**§9-4C-8. Duties of secretary of department of health and
human resources.**

1 (a) The secretary, or his or her designee, shall serve
2 on each board created pursuant to this article as an ex
3 officio, nonvoting member and shall keep and maintain
4 records for each board.

5 (b) In relation to outpatient hospital services, the
6 secretary shall cooperate with the health care cost
7 review authority to furnish information needed for
8 reporting purposes. This information includes, but is not
9 limited to, the following:

10 (1) For each hospital, the amount of payments and
11 related billed charges for hospital outpatient services
12 each month;

13 (2) The percentage of the state's share of medicaid
14 program financial obligation from time to time as
15 necessary; and

16 (3) Any other financial and statistical information
17 necessary for the health care cost review authority to
18 determine the net effect of any cost shift.

19 (c) The secretary shall determine an appropriate
20 resolution for conflicts arising between the various
21 boards.

22 (d) The secretary shall purchase nationally published
23 fee schedules to be used, if available, as a reference by
24 the medicaid enhancement boards in developing fee
schedules.

§9-4C-9. Provider medicaid enhancement funds.

1 (a) There are hereby created in the state treasury
2 special revenue accounts, which shall be interest
3 bearing accounts, designated as the following:

4 (1) *General medicaid enhancement fund.* — All taxes,
5 additions to tax, penalties and interest collected in
6 accordance with article twenty-six, chapter eleven of
7 this code, from general health care providers, all
8 donations and contributions received by the general
9 medicaid enhancement board in accordance with section
10 seven of this article, and all interest earned from the
11 investment of moneys deposited into the fund, shall be
12 deposited into this fund;

13 (2) *The outpatient hospital medicaid enhancement fund.*
14 — All taxes, additions to tax, penalties and interest
15 collected from outpatient hospital providers in accord-
16 ance with article twenty-six, chapter eleven of this code,
17 all donations and contributions received by the outpa-
18 tient hospital medicaid enhancement board in accord-
19 dance with section seven of this article, and all interest
20 earned from the investment of moneys deposited into the
21 fund, shall be deposited into this fund;

22 (3) *The dentist provider medicaid enhancement fund.* —
23 All taxes, additions to tax, penalties and interest
24 collected from dentist providers in accordance with
25 article twenty-six, chapter eleven of this code, all
26 donations and contributions received by the dentist
27 provider medicaid enhancement board in accordance
28 with section seven of this article, and all interest earned
29 from the investment of moneys deposited into the fund,
30 shall be deposited into this fund; and

31 (4) *The ambulance service provider medicaid enhance-*
32 *ment fund.* — All taxes, additions to tax, penalties and
33 interest collected from ambulance service providers in
34 accordance with article twenty-six, chapter eleven of
35 this code, all donations and contributions received by the
36 ambulance service provider medicaid enhancement
37 board in accordance with section seven of this article,
38 and all interest earned from the investment of moneys
39 deposited into the fund, shall be deposited into this fund.

40 (b) All proceeds from the medicaid enhancement
41 funds shall be used exclusively for the following
42 purposes:

43 (1) To increase health care provider medicaid reim-
44 bursement adopted by the single state agency through
45 recommendations by the boards;

46 (2) To cover the costs of increased utilization due to
47 program growth; and

48 (3) To cover administrative costs.

49 (c) Any balance remaining in the funds at the end of
50 any state fiscal year shall not revert to the general
51 revenue fund but shall remain in the funds and shall be

52 used solely in a manner consistent with this article.

§9-4C-10. Amount and remittance of reimbursement.

1 Any general health care provider, dentist provider,
2 ambulance service provider, or outpatient hospital
3 service provider required to pay tax in accordance with
4 article twenty-six, chapter eleven of this code, is entitled
5 to receive enhanced medicaid reimbursements in an
6 amount which, at a minimum, is equal to the tax paid
7 by the individual taxpayer for the taxable year (exclu-
8 sive of additions to tax, penalties or interest), plus three
9 percent.

§9-4C-11. Effective date.

1 The provider fee schedules as adopted by the single
2 state agency through recommendations by each board
3 become effective on the first day of January, one
4 thousand nine hundred ninety-two: *Provided*, That those
5 fee schedules based upon fees that require prior
6 approval of the health care financing administration are
7 effective on the effective date approved by the health
8 care financing administration: *Provided, however*, That
9 for those fees subject to an established medicare upper
10 limit, the effective date is the first day of the month
11 immediately succeeding the date the fees can be raised
12 sufficiently to comply with section ten of this article.

§9-4C-12. Abrogation.

1 (a) This article abrogates and is of no further force
2 and effect, without any further action by the Legisla-
3 ture, upon the earliest of the following dates:

4 (1) The date upon which an act of Congress becomes
5 effective prohibiting the inclusion of revenue from
6 provider taxes when determining the amount of state
7 expenditures that are claimable as medical assistance
8 for purposes of obtaining federal matching dollars:
9 *Provided*, That if such act specifies a later date on which
10 such prohibition takes effect, that later effective date
11 controls;

12 (2) The date upon which a judgment or order of a
13 court of competent jurisdiction becomes final prohibit-

14 ing the inclusion of revenue from provider taxes when
15 determining the amount of state expenditures that are
16 claimable as medical assistance for the purpose of
17 obtaining federal matching dollars: *Provided*, That if
18 such judgment or order specifies a later date on which
19 the prohibition takes effect, that later effective date
20 controls;

21 (3) The date upon which the Legislature appropriates
22 the proceeds from the tax levied under article twenty-
23 six, chapter eleven of this code, for any purpose not in
24 conformity with this article;

25 (4) The date upon which any federal administrative
26 rule or regulation promulgated in conformity with
27 federal law becomes effective which negates the effect
28 or purpose of this article: *Provided*, That if such federal
29 rule or regulation specifies a later date on which the
30 prohibition takes effect, that later effective date
31 controls: *Provided, however*, That if any rule or regula-
32 tion prohibits the inclusion of revenue from taxes
33 collected from a specific provider group defined in
34 section one of this article when determining the amount
35 of state expenditures that are claimable as medical
36 assistance for purposes of obtaining federal matching
37 dollars, such rule or regulation shall not affect, impair
38 or invalidate the application of this article to the
39 remaining health care providers, but shall be confined
40 in its operation to the provider group specifically
41 excluded by such rule or regulation; or

42 (5) The first day of July, one thousand nine hundred
43 ninety-four.

44 (b) Upon abrogation of this article, the single state
45 agency shall use the moneys remaining in the funds to
46 maintain, to the greatest extent possible, the increased
47 fee schedules as determined by the boards. Thereafter,
48 the single state agency shall distribute any moneys
49 insufficient to maintain the increased fee schedules
50 distributed on a proportional basis among all participat-
51 ing health care providers, from their respective funds,
52 as determined by the secretary.

53 (c) Upon abrogation, the medicaid reimbursement

54 levels shall return to those amounts in existence on the
55 thirty-first day of December, one thousand nine hundred
56 ninety-one.

CHAPTER 11. TAXATION.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT TAX.

§11-26-1. Legislative findings.

1 The Legislature finds and declares that:

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

5 (b) Inadequate compensation for health care providers
6 rendering medicaid services is a barrier to indigent
7 persons seeking access to health care services;

8 (c) Health care providers in this state are providing
9 care, without compensation, to many citizens who are
10 not medicaid eligible;

11 (d) Many health care providers are leaving this state
12 due to economic conditions;

13 (e) Without adequate compensation this state cannot
14 attract or retain a sufficient number of health care
15 providers necessary to serve our indigent population;

16 (f) Without additional medicaid funding this state
17 cannot adequately compensate health care providers for
18 the health care services rendered to indigent patients;

19 (g) The Tenth Amendment of the United States
20 Constitution guarantees to the states the power to tax;

21 (h) The Congress of the United States has enacted
22 Section 4701 of the Omnibus Budget Reconciliation Act
23 of 1990, P.L. 101-508, amending Section 1902 of the
24 Social Security Act and authorizes state medicaid
25 agencies to attribute taxes imposed on medicaid
26 providers as part of the state share;

27 (i) By levying a tax on the medicaid reimbursements
28 of health care providers for the purpose of meeting state
29 fund matching requirements pursuant to Title XIX of

30 the Social Security Act, federal matching funds will be
31 increased;

32 (j) By dedicating such additional revenue to the
33 medicaid program, health care provider fees may
34 conform as closely as possible to usual and customary
35 charges;

36 (k) Moneys generated in accordance with this article
37 are supplementary only and shall not be used to reduce
38 the general financial obligations of the state's medical
39 assistance program as appropriated by the Legislature;

40 (l) These funds shall not be used for any purpose other
41 than those purposes stated in this article and articles
42 four-b and four-c, chapter nine of this code; and

43 (m) The medicaid enhancement boards and medicaid
44 enhancement funds created pursuant to articles four-b
45 and four-c, chapter nine of this code are created to carry
46 out the purposes of this article.

§11-26-2. Short title; arrangement and classification.

1 This article may be cited as the "West Virginia Health
2 Care Provider Medicaid Enhancement Tax Act of 1991."
3 No inference, implication or presumption of legislative
4 construction shall be drawn or made by reason of the
5 location or grouping of any particular section or
6 provision or portion of this article, and no legal effect
7 shall be given to any descriptive matter or heading
8 relating to any part, section, subdivision or paragraph
9 of this article.

§11-26-3. Definitions.

1 The following words when used in this article have the
2 meaning ascribed to them in this section, except in those
3 instances where a different meaning is distinctly
4 expressed or the context in which the word is used
5 clearly indicates a different meaning is intended:

6 (a) "Cost-based service" means any service delivered
7 by a health care provider reimbursed under the medical
8 assistance program of this state solely on the basis of
9 costs reported to the single state agency, whether or not
10 the provider is operating on a profit or not for profit

11 basis.

12 (b) "Department" means the West Virginia depart-
 13 ment of health and human resources. The term "secre-
 14 tary" means the secretary of the West Virginia depart-
 15 ment of health and human resources, or his or her
 16 designee.

17 (c) "Gross receipts" or "gross proceeds" means all
 18 payments received by a health care provider enrolled in
 19 this state's medical assistance program for services
 20 delivered pursuant to Title XIX of the United States
 21 Social Security Act, as amended, and means any and all
 22 medicaid reimbursement payments made by the West
 23 Virginia department of health and human resources, or
 24 a division thereof, within the limitations set forth in this
 25 subsection, to such health care provider: *Provided*, That
 26 this definition does not include payments received for
 27 medicare co-insurance and deductibles as defined in
 28 Title XVIII of the Social Security Act, and does not
 29 include reimbursements made for cost-based services.

30 (d) "Health care provider" or "provider" includes
 31 physician providers as defined in section one, article
 32 four-b, chapter nine of this code; ambulance service
 33 providers, dentist providers, general health care
 34 providers, and outpatient hospital service providers as
 35 defined in section one, article four-c, chapter nine of this
 36 code, and any other person directly receiving enhanced
 37 medicaid reimbursement payments pursuant to article
 38 four-b or four-c, chapter nine of this code.

39 (e) "Single state agency" means the single state agency
 40 for medicaid in this state.

41 (f) "Taxpayer" means a health care provider required
 42 to pay the medicaid enhancement tax imposed by this
 43 article and entitled to receive the increased reimburse-
 44 ment in accordance with articles four-b or four-c,
 45 chapter nine of this code.

**§11-26-4. Imposition of excise tax; rate and application of
 tax.**

1 (a) There is hereby levied and imposed an excise tax
 2 on the gross receipts or gross proceeds derived by health

3 care providers enrolled in this state's medical assistance
4 program. The amount of the tax shall be equal to one
5 hundred percent of that portion of gross receipts paid
6 to the health care provider by the single state agency
7 from state revenues for all services delivered pursuant
8 to Title XIX of the United States Social Security Act,
9 to individuals who, at the time such services were
10 delivered, were enrolled with the single state agency
11 and eligible to receive medicaid services, whether such
12 health care provider is located within or without this
13 state or such service is delivered within or without this
14 state: *Provided*, That the following are not subject to the
15 tax imposed in this article:

16 (1) Gross receipts or gross proceeds derived by a
17 health care provider from delivering cost-based services;

18 (2) That portion of a health care provider's reimbur-
19 sement when the secretary certifies the state share so
20 that the medicaid reimbursement consists solely of
21 federal financial participation, except that any gross
22 receipts or gross proceeds derived by a health care
23 provider from delivering medicaid services that are not
24 reimbursed on a certified match basis, are taxable
25 under this article: *Provided*, That nothing in this section
26 prohibits the department from removing a service, or
27 provider group, from the certified match program and
28 placing that service, or provider group, under full
29 medicaid payments subject to the tax imposed by this
30 article; and

31 (3) Employees or agents of a health care provider
32 when that employee or agent does not directly receive
33 the medicaid reimbursement payment.

34 (b) The tax imposed by this section applies solely and
35 exclusively to that portion of the medicaid reimburse-
36 ment payment made from state revenue for services
37 delivered by the health care provider pursuant to Title
38 XIX of the United States Social Security Act, as
39 amended, which amount shall be determined as pro-
40 vided in subdivision (c) of this section.

41 (c) From time to time, as is necessary, the secretary
42 shall notify the tax commissioner in writing of the

portion, stated as a uniform percentage, of each medicaid reimbursement payment taxable under this article that constitutes the state's share of medicaid program financial obligations in order to determine and tax only the state revenue share of that medicaid reimbursement payment. After receipt of such notice, the tax commissioner shall immediately cause to be published in the state register notice of that percentage and its effective date for purposes of calculating the tax imposed by this article. Beginning the first day of January, one thousand nine hundred ninety-two, and continuing until a notice of change in this percentage takes effect, the state revenue share of a medicaid reimbursement is twenty-two and thirty-two hundredths percent, except as otherwise provided in this article.

§11-26-5. Administration.

(a) The tax commissioner shall collect the tax imposed by this article. After consultation with the secretary, the tax commissioner may establish procedures and prescribe forms necessary to implement and enforce this article. The tax commissioner shall account for all collections of the tax imposed by this article and for all collections of additions to tax, penalties and interest imposed with respect to this tax under article ten of this chapter. The amount collected shall be deposited, within fifteen days after its receipt by the tax commissioner, into the special revenue funds created in the state treasury by articles four-b and four-c, chapter nine of this code, as follows:

(1) *The physician provider medicaid enhancement fund.* — All taxes, additions to tax, penalties and interest collected in accordance with this article from those health care providers represented by the physician medicaid enhancement board and all donations and contributions received by the board in accordance with section five, article four-b, chapter nine of this code shall be deposited into the physician provider medicaid enhancement fund;

(2) *General medicaid enhancement fund.* — All taxes, additions to tax, penalties and interest collected in

25 accordance with this article from those health care
26 providers represented by the general medicaid enhance-
27 ment board and all donations and contributions received
28 by the board in accordance with section seven, article
29 four-c, chapter nine of this code shall be deposited into
30 the general medicaid enhancement fund;

31 (3) *The outpatient hospital medicaid enhancement fund.*
32 — All taxes, additions to tax, penalties and interest
33 collected in accordance with this article from outpatient
34 hospital providers represented by the outpatient hospital
35 provider medicaid enhancement board and all donations
36 and contributions received by the board in accordance
37 with section seven, article four-c, chapter nine of this
38 code shall be deposited into the outpatient hospital
39 medicaid enhancement fund;

40 (4) *The dentist provider medicaid enhancement fund.* —
41 All taxes, additions to tax, penalties and interest
42 collected in accordance with this article from dentist
43 providers represented by the dentist provider medicaid
44 enhancement board and all donations and contributions
45 received by the board in accordance with section seven,
46 article four-c, chapter nine of this code shall be
47 deposited into the dentist provider medicaid enhance-
48 ment fund; and

49 (5) *The ambulance services provider medicaid enhance-*
50 *ment fund.* — All taxes, additions to tax, penalties and
51 interest collected in accordance with this article from
52 ambulance service providers represented by the ambu-
53 lance service provider medicaid enhancement board and
54 all donations and contributions received by the board in
55 accordance with section seven, article four-c, chapter
56 nine of this code shall be deposited into the ambulance
57 services provider medicaid enhancement fund.

58 (b) If a health care provider is represented by two or
59 more boards, the tax paid by that provider shall be
60 categorized and identified so that the tax commissioner
61 may deposit the tax collected into the proper fund or
62 funds.

63 (c) The department shall provide the tax commis-
64 sioner with any information in its possession that the tax

65 commissioner considers necessary for proper enforce-
 66 ment of this article. Notwithstanding any provision in
 67 this code to the contrary, the tax commissioner may
 68 enter into a written exchange of information agreement
 69 with the secretary to disclose return information
 70 pertaining to the tax imposed by this article for the
 71 purpose of facilitating administration of this state's
 72 medical assistance program. Any confidential informa-
 73 tion disclosed under this agreement shall remain
 74 confidential in the hands of the receiving agency as
 75 provided in section five-d, article ten of this chapter.

76 (d) For fiscal year one thousand nine hundred ninety-
 77 two, not more than two hundred thousand dollars from
 78 the several medicaid enhancement funds shall be used
 79 for administrative purposes with respect to this article
 80 and articles four-b and four-c, chapter nine of this code;
 81 of this amount, not more than one hundred twenty-five
 82 thousand dollars shall be transferred to a special
 83 revenue account in the treasury for use by the
 84 department of tax and revenue and not more than
 85 seventy-five thousand dollars shall be transferred to a
 86 special revenue account in the treasury for use by the
 87 department of health and human resources.

88 (e) The secretary shall cause the remainder of all
 89 moneys deposited in the several medicaid enhancement
 90 funds, after administrative expenses, to be transferred
 91 to the West Virginia medical services fund.

92 (f) Notwithstanding the provisions of subsections (d)
 93 and (e) of this section, for fiscal year one thousand nine
 94 hundred ninety-three and for each succeeding fiscal
 95 year, no expenditures from any of the several medicaid
 96 enhancement funds are authorized except in accordance
 97 with appropriations by the Legislature.

§11-26-6. Accounting periods and methods of accounting.

1 (a) *General rule.* — For purposes of the tax imposed
 2 by this article, a taxpayer's taxable year shall be the
 3 same as the taxpayer's taxable year for federal income
 4 tax purposes.

5 (b) *Change of taxable year.* — If a taxpayer's taxable

6 year is changed for federal income tax purposes, the
7 taxpayer's taxable year for purposes of this article shall
8 be similarly changed. The taxpayer shall provide a copy
9 of the authorization for such change from the Internal
10 Revenue Service, with its annual return for the taxable
11 year filed under this article.

12 (c) *Cash methods of accounting required.* — A taxpay-
13 er's method of accounting under this article shall be the
14 cash method of accounting, whether or not taxpayer uses
15 the cash method of accounting for federal income tax
16 purposes.

§11-26-7. Tax return and payment.

1 (a) The annual tax levied by this article is due and
2 payable in monthly installments, on or before the
3 fifteenth day of the month succeeding the month in
4 which the taxable gross receipts were received, except
5 that the tax levied for the last month of the taxable year
6 is due and payable on or before the last day of the first
7 month of the next succeeding taxable year.

8 (b) The taxpayer shall, on or before the fifteenth day
9 of each month, except for the last month of the taxable
10 year, complete and mail to the tax commissioner a
11 return for the preceding month, in the form prescribed
12 by the tax commissioner, showing:

13 (1) The total gross receipts or gross proceeds received
14 for services delivered pursuant to Title XIX of the Social
15 Security Act, as amended, for that particular month;

16 (2) the gross proceeds upon which the tax is based;

17 (3) the amount of the tax for which the taxpayer is
18 liable; and

19 (4) any other information necessary in the computa-
20 tion and collection of the tax which the tax commis-
21 sioner may require. The taxpayer shall include with the
22 return a remittance for the amount of the tax for the
23 period covered by the return.

24 (c) On or before the last day of the first month after
25 the end of the taxable year, every taxpayer subject to
26 the tax imposed by this article shall make and file an

27 annual return for the entire taxable year showing such
28 information as the tax commissioner may require and
29 computing the amount of taxes due under this article
30 for the entire taxable year. The tax commissioner shall
31 allow a credit against this annual tax liability for the
32 amount of tax imposed by this article (exclusive of any
33 addition to tax, penalties or interest paid with respect
34 thereto) previously paid by the taxpayer on gross
35 receipts included in the annual return. The taxpayer
36 shall submit with the annual return a remittance for the
37 net amount of tax shown to be due.

§11-26-8. Extension of time for filing returns.

1 The tax commissioner may, upon written request
2 received on or prior to the due date of the annual return
3 or any periodic estimate, grant a reasonable extension
4 of time for filing any return or other document required
5 by this article, upon such terms as he or she may by rule
6 prescribe, or by contract require, if good cause satisfac-
7 tory to the tax commissioner is provided by the
8 taxpayer.

§11-26-9. Extension of time for paying tax.

1 (a) *Amount determined on return.* — The tax commis-
2 sioner may extend the time for payment of the amount
3 of the tax shown, or required to be shown, on any return
4 required by this article (or any periodic installment
5 payments), for a reasonable period not to exceed six
6 months from the date fixed for payment thereof.

7 (b) *Amount determined as deficiency.* — Under rules
8 prescribed by the tax commissioner, he or she may
9 extend the time for the payment of the amount deter-
10 mined as a deficiency of the taxes imposed by this
11 article for a period not to exceed eighteen months from
12 the date fixed for payment of the deficiency. In
13 exceptional cases, a further period of time not to exceed
14 twelve months may be granted. The tax commissioner
15 may grant an extension under this subsection only
16 where it is shown to his or her satisfaction that payment
17 of a deficiency upon the date fixed for the payment
18 thereof will result in undue hardship to the taxpayer.

19 (c) *No extension for certain deficiencies.* — The tax
20 commissioner may not grant an extension under this
21 section for any deficiency if the deficiency is due to
22 negligence, to intentional disregard of rules and
23 regulations, or to fraud with intent to evade tax.

§11-26-10. Place for filing returns or other documents.

1 Tax returns, statements, or other documents, or copies
2 thereof, required by this article or by rules shall be filed
3 with the tax commissioner by delivery, in person or by
4 mail, to his or her office in Charleston, West Virginia:
5 *Provided,* That the tax commissioner may, by rule,
6 prescribe the place for filing such returns, statements,
7 or other documents, or copies thereof.

§11-26-11. Signing of returns and other documents.

1 (a) *General.* — Any return, statement or other
2 document required to be made under the provisions of
3 this article shall be signed in accordance with instruc-
4 tions or regulations prescribed by the tax commissioner.

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

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

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

24 (e) *Verification of returns.* — Except as otherwise

25 provided by the tax commissioner, any return, declara-
26 tion or other document required to be made under this
27 article shall contain or be verified by a written
28 declaration that it is made under the penalties of
29 perjury.

§11-26-12. Records.

1 (a) Every health care provider liable for reporting or
2 paying tax under this article shall keep such records,
3 receipts, invoices, and other pertinent papers in such
4 forms as the tax commissioner may require.

5 (b) Every taxpayer shall keep such records for not less
6 than three years after the annual return is filed as
7 required under this article, unless the tax commissioner
8 in writing authorizes their earlier destruction. An
9 extension of time for making an assessment shall
10 automatically extend the time period for keeping the
11 records for all years subject to audit covered in the
12 agreement for extension of time.

§11-26-13. Refunds and credits.

1 (a) *General rule.* — In the case of erroneous payment
2 of the tax imposed by this article, or the erroneous
3 payment of additions to tax, penalties or interest
4 imposed, pursuant to article ten of this chapter, with
5 respect to the tax imposed by this article, the tax
6 commissioner shall, subject to the provisions of this
7 section, refund to the taxpayer the amount of the
8 erroneous payment or, if the taxpayer so elects, apply
9 the same as a credit against the taxpayer's liability for
10 this tax for other periods. The amount refunded or
11 credited shall include any interest due the taxpayer
12 under the provisions of section seventeen, article ten of
13 this chapter.

14 (b) *Claim for refund or credit.* — No refund or credit
15 shall be made unless the taxpayer filed a timely claim
16 for refund or credit with the tax commissioner setting
17 forth the amount to be refunded along with the reason
18 or reasons why the taxpayer believes the amount should
19 be refunded, or credited to taxpayer's account, and a
20 copy of any papers supporting the taxpayer's claim. A

21 person against whom an assessment, or an administra-
22 tive decision, has become final with respect to this tax
23 is not entitled to pay the amount thereof and then file
24 a claim for refund or credit of the amount paid. The tax
25 commissioner shall determine the validity of taxpayer's
26 claim and notify the taxpayer in writing of his or her
27 determination.

28 (c) *Petition for refund or credit; hearing.* — If the
29 taxpayer is not satisfied with the tax commissioner's
30 determination of his or her claim for refund or credit,
31 or if the tax commissioner has not determined the
32 taxpayer's claim within ninety days after the claim was
33 filed, the taxpayer may file with the tax commissioner,
34 either by personal service or by certified mail, a petition
35 for refund or credit: *Provided*, That no petition for
36 refund or credit may be filed more than sixty days after
37 the taxpayer is served with a notice of the denial of his
38 or her claim. The petition for refund or credit shall be
39 in writing, verified under oath by the taxpayer or his
40 or her duly authorized agent having knowledge of the
41 facts, and shall set forth with particularity the items of
42 the determination objected to, together with the reasons
43 for the objections. When a petition for refund or credit
44 is properly filed, the procedures for hearing and for
45 decision prescribed in section nine, article ten of this
46 chapter shall be followed.

47 (d) *Appeal.* — An appeal from the tax commissioner's
48 decision upon the petition for refund or credit may be
49 taken by the taxpayer in the same manner and under
50 the same procedure as that set forth in section eleven
51 of article ten of this chapter relating to an appeal from
52 the tax commissioner's decision on a petition for
53 assessment, but no bond shall be required of the
54 taxpayer.

55 (e) *Decision of the court.* — Whenever an appeal is to
56 review an administrative decision on a petition for
57 refund or credit, the court may determine the legal
58 rights of the parties but in no event shall it enter a
59 judgment for money.

60 (f) *Refund made or credit established.* — The tax

61 commissioner shall promptly issue his or her requisition
 62 on the treasury or establish a credit, as requested by the
 63 taxpayer, for any amount finally administratively or
 64 judicially determined to be an erroneous payment of any
 65 tax administered under this article. The auditor shall
 66 issue his or her warrant on the treasurer for any refund
 67 requisitioned under this subsection payable to the
 68 taxpayer entitled to the refund, and the treasurer shall
 69 pay such warrant out of the fund into which the amount
 70 so refunded was originally paid.

71 (g) *Forms for claim for refund or credit.* — The tax
 72 commissioner may prescribe by rule or regulation the
 73 forms for claims for refund or credit.

74 (h) *Remedy exclusive.* — The procedure provided by
 75 this section constitutes the sole method of obtaining any
 76 refund or any credit, it being the intent of this section
 77 that the procedure set forth in this article is in lieu of
 78 the procedure set forth in section fourteen, article ten
 79 of this chapter, and in lieu of any other remedy,
 80 including the uniform declaratory judgments act
 81 embodied in article thirteen, chapter fifty-five of this
 82 code and the provisions of section two-a, article one of
 83 this chapter.

84 (i) *Erroneous refund made or credit established.* — If
 85 the tax commissioner believes that an erroneous refund
 86 has been made or an erroneous credit has been estab-
 87 lished, he or she may proceed to investigate and may
 88 make an assessment to recover the amount of such
 89 refund or credit within two years after the date the
 90 refund was paid or the credit was established, unless a
 91 fraudulent claim was filed. In that event, the two
 92 statutes of limitations shall be six years.

93 (j) *Limitation on claim for refund or credit.* —

94 (1) *General rule.* — Whenever a taxpayer claims to be
 95 entitled to a refund or credit for erroneous payment of
 96 any tax, additions to tax, penalties or interest paid into
 97 the treasury of this state, the taxpayer shall, except as
 98 provided in subsection (d) of this section, file his or her
 99 claim within three years after the due date of the return
 100 in respect of which the tax was imposed or within two

101 years from the date the tax was paid, whichever of such
102 periods expires later, or if no return was filed by the
103 taxpayer, within two years from the time the tax was
104 paid, and not thereafter.

105 (2) *Extension of time for filing claim by agreement.* —
106 The tax commissioner and the taxpayer may enter into
107 written agreement to extend the period within which
108 the taxpayer may file a claim for refund or credit, which
109 period shall not exceed two years. The period agreed
110 upon may be extended for additional periods not in
111 excess of two years each by subsequent agreements in
112 writing made before the expiration of the period
113 previously agreed upon.

114 (3) *Special rule where agreement to extend time for*
115 *making an assessment.* — Notwithstanding subdivisions
116 (1) and (2) of this subsection, if an agreement is made
117 under the provisions of section fifteen of this article
118 extending the time period in which an assessment of a
119 tax can be made, then the time period for filing a claim
120 for refund or credit for an erroneous payment of the
121 same tax made during the periods subject to assessment
122 under the erroneous payment of this tax made during
123 the periods subject to assessment under the extension
124 agreement shall also be extended for the period of the
125 extension agreement plus ninety days.

126 (k) *"Erroneous payment" defined.* — The term errone-
127 ous payment means a payment of the tax imposed by
128 this article or the additions to tax, penalties or interest
129 imposed with respect to this tax pursuant to article ten
130 of this chapter, when such payment is due to a mathem-
131 atical or clerical error or when such payment is
132 collected after the period of limitation properly appli-
133 cable thereto.

**§11-26-14. Cancellation of medicaid certification for
failure to pay delinquent tax.**

1 The secretary may cancel or refuse to issue, extend,
2 or reinstate a medicaid enrollment to any provider who
3 has failed to pay any tax that is delinquent under this
4 article.

§11-26-15. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter applies, except as expressly provided
4 in this article, to the tax imposed by this article with
5 like effect as if the act were applicable only to the tax
6 imposed by this article and were set forth in extenso in
7 this article.

§11-26-16. Crimes and penalties.

1 Each and every provision of the "West Virginia Tax
2 Crimes and Penalties Act" set forth in article nine of
3 this chapter applies to the tax imposed by this article
4 with like effect as if the act were applicable only to the
5 tax imposed by this article and were set forth in extenso
6 in this article.

§11-26-17. Effective dates.

1 (a) The tax imposed by this article takes effect on the
2 first day of January, one thousand nine hundred ninety-
3 two, and applies to gross receipts received on or after
4 that date: *Provided*, That the tax with respect to
5 providers whose fee schedules require prior approval of
6 the health care financing administration is effective on
7 the effective date approved by the health care financing
8 administration: *Provided, however*, That the tax with
9 respect to those providers whose fees are subject to an
10 established medicare upper limit, the effective date is
11 the first day of the month immediately succeeding the
12 date the fees can be raised sufficiently to comply with
13 section ten, article four-c, chapter nine of this code.

14 (b) Any change in the percentage of medicaid reim-
15 bursement that constitutes state revenue for purposes of
16 calculating this tax, published as provided in subsection
17 (c), section three of this article, applies first to gross
18 receipts received during any calendar month that begins
19 not less than thirty days after notice of a change in the
20 percentage is filed in the state register, or the first day
21 of any later calendar month specified in the notice. The
22 percentage remains in effect until a subsequent change
23 in the percentage takes effect and applies to taxable

24 gross receipts received during the period during which
25 the percentage was in effect, whether or not the
26 medicaid services were furnished, supplied, or rendered
27 during that period.

§11-26-18. Abrogation.

1 (a) This tax abrogates and is of no further force and
2 effect, without any further action by the Legislature,
3 upon the earliest of the following dates:

4 (1) The date upon which an act of Congress becomes
5 effective prohibiting the inclusion of revenue from
6 provider taxes when determining the amount of state
7 expenditures that are claimable as medical assistance
8 for purposes of obtaining federal matching dollars:
9 *Provided*, That if such act specifies a later date on which
10 such prohibition takes effect, that later effective date
11 controls;

12 (2) The date upon which a judgment or order of a
13 court of competent jurisdiction becomes final prohibit-
14 ing the inclusion of revenue from provider taxes when
15 determining the amount of state expenditures that are
16 claimable as medical assistance for purposes of obtain-
17 ing federal matching dollars: *Provided*, That if such
18 judgment or order specifies a later date on which the
19 prohibition takes effect, that later effective date
20 controls;

21 (3) The date upon which the Legislature appropriates
22 the proceeds from this tax for any purpose not in
23 conformity with this article;

24 (4) The date upon which any federal administrative
25 rule or regulation promulgated in conformity with
26 federal law becomes effective which negates the effect
27 or purpose of this article: *Provided*, That if such federal
28 rule or regulation specifies a later date on which the
29 prohibition takes effect, that later effective date
30 controls: *Provided, however*, That if any rule or regula-
31 tion prohibits the inclusion of revenue from taxes
32 collected from a specific provider group defined in
33 section three of this article, when determining the
34 amount of state expenditures that are claimable as

35 medical assistance for purposes of obtaining federal
 36 matching dollars, such rule or regulation shall not
 37 affect, impair or invalidate the application of this article
 38 to the remaining health care providers, but shall be
 39 confined in its operation to the provider group specif-
 40 ically excluded by such rule or regulation; or

41 (5) The first day of July, one thousand nine hundred
 42 ninety-four.

43 (b) If this article is abrogated as provided in subsec-
 44 tion (a), abrogation applies only with respect to gross
 45 receipts received by the health care provider on or after
 46 the effective date of the abrogation. With respect to
 47 gross receipts received by the health care provider prior
 48 to such date, the tax imposed by this article remains in
 49 effect and all rights of this state and of the taxpayer
 50 with respect to such tax are fully and completely
 51 preserved as if this tax had not abrogated.

52 (c) Upon abrogation of this article, moneys remaining
 53 in the funds shall be used to maintain, to the greatest
 54 extent possible, the increased fee schedules as adopted
 55 by the single state agency through recommendations by
 56 the boards. Thereafter, any moneys insufficient to
 57 maintain the increased fee schedules shall be distributed
 58 on a proportional basis among all participating provid-
 59 ers, from their respective funds, as determined by the
 60 secretary.

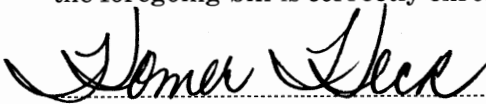
61 (d) Upon abrogation, medicaid reimbursement levels
 62 shall return to the amounts in existence on the thirty-
 63 first day of December, one thousand nine hundred
 64 ninety-one.

§11-26-19. Severability.

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

Enr. Com. Sub. for H. B. 210] 34

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



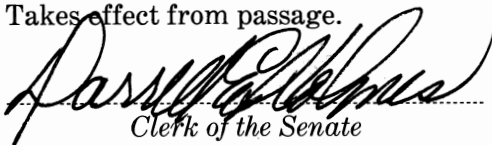
Chairman Senate Committee



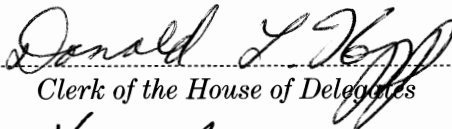
Chairman House Committee

Originating in the House.

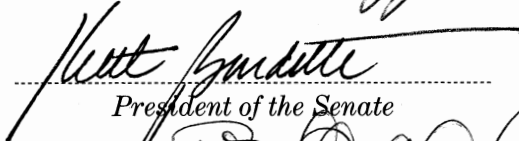
Takes effect from passage.



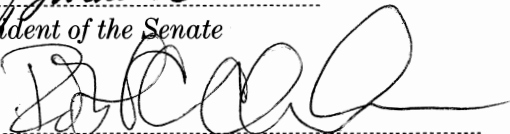
Clerk of the Senate



Clerk of the House of Delegates

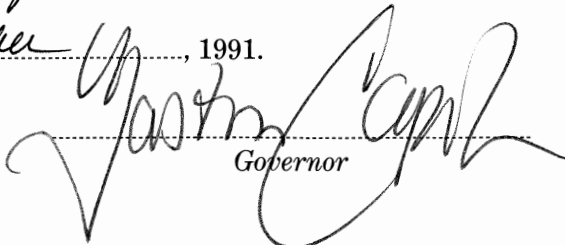


President of the Senate



Speaker of the House of Delegates

The within *is approved* this the *4th*
day of *November*, 1991.



Governor

PRESENTED TO THE

GOVERNOR

Date

10/28/91

Time

3:51 pm