WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1993

ENROLLED

Committee Substitute for

SENATE BILL NO. 2

(By Senator [Signature], President, and [Signature], By Request of the Executive)

PASSED May 24, 1993

In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 2
(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed May 26, 1993; in effect from passage.]

AN ACT to repeal sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine, ten and twelve, article four-c of said chapter; to repeal sections twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code; to repeal section eighteen, article twenty-six of said chapter; to amend and reenact section thirteen, article fifteen, chapter seven of said code; to amend article two, chapter nine of said code by adding thereto three new sections, designated sections nine, ten and eleven; to amend and reenact sections two and three, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact sections one, two and four, article four-b of said chapter; to amend and reenact sections one, two, five and seven, article four-c of said chapter; to amend and reenact section eleven, article five of said chapter; to further
amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and seventeen; to amend and reenact section eighteen-a, article ten, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section eighteen-b; to amend and reenact sections three and six, article twelve-b of said chapter; to amend and reenact sections one, two, three, seven, eight, nine, ten, nineteen and twenty, article thirteen-a of said chapter; to further amend said article by adding thereto six new sections, designated sections three-a, three-b, three-c, nine-a, twenty-a and twenty-five; to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty; to further amend said chapter by adding thereto a new article, designated article twenty-seven; to amend article six, chapter twelve of said code by adding thereto a new section, designated section nine-e; to amend and reenact section fifteen-a, article one, chapter sixteen of said code; and to amend and reenact section five, article two-d of said chapter; all relating generally to this state's medicaid program and taxes funding that program; repealing the physician provider medicaid enhancement fund; repealing physician providers' hold harmless provision; repealing abrogation provisions of physician provider medicaid act; repealing other provider medicaid enhancement funds; repealing other providers' hold harmless provision; repealing abrogation provisions of health care provider medicaid act; repealing provisions of severance tax relating to credit for coking facilities, credit for payment of consumers sales and use taxes, rules for filing returns and paying tax and obsolete requirement to file information returns; repealing abrogation rules of the medicaid enhancement tax; requiring county ambulance authorities to pay privilege tax on emergency ambulance services; requiring development of medicaid monitoring and case management systems and implementation of other reforms; limiting use of funds for abortion; requiring providers to collect copayments and providing for reports and civil penalties; eliminating requirement for pro rata reimbursement from medicaid uncompensated care fund; creating
a medical services trust fund; identifying source of funds and permitted expenditures with respect to said fund; changing criteria for disproportionate share hospitals; requiring department of health and human resources to file state medicaid plan amendment; defining terms used in physician/medical practitioner provider medicaid act; amending powers and duties of physician/medical practitioner provider board; defining terms used in health care provider medicaid act; changing composition of general provider medicaid enhancement board; replacing outpatient hospital provider medicaid enhancement board with the facility providers’ medicaid enhancement board; amending powers and duties of certain boards; requiring that department of health and human resources be fully subrogated to the rights of recipients of medical assistance; clarifying rules as to effect of subrogation; providing for notice of actions or claims by medical assistance recipients or the department of health and human resources; providing for release of information related to right of subrogation and requiring insurance commissioner to establish guidelines therefor; requiring nonprofit organizations receiving medicaid reimbursement payments to provide annual accounting of receipts and disbursements; limiting application of current addition to tax for failure to pay estimated tax to the income and business franchise taxes and conforming annualization of income rules for individuals to federal law; imposing a new addition to tax for failure to make required installment payments of other taxes; making technical corrections in the imposition of minimum severance tax; requiring monthly remittance of estimated minimum severance tax; changing name of the “Severance Tax Act” to the “Severance and Business Privilege Tax Act of 1993”; defining terms; extending tax to providers of certain health care services; moving tax on privilege of severing natural gas or oil into a new section; moving tax on privilege of severing timber into a new section; moving tax on privilege of severing certain other natural resources into a new section; providing for accounting periods and methods of accounting, filing of annual returns and other docu-
ments, and rules for payment of taxes in periodic installment payments; specifying time for paying tax; providing for allowance of annual tax credit; providing rules on extensions of time for filing returns and other documents or paying tax; providing for administration, collection and enforcement of tax and application of criminal penalties; specifying effective dates; dedicating tax collected from health care providers to the medicaid program and requiring deposit of such tax into a special revenue fund created in state treasurer's office; requiring tax commissioner to account separately for amount of tax collected from each class of health care provider; providing transition rules for termination of medicaid enhancement tax; requiring providers to pay tax on estimated medicaid reimbursement payments for services rendered before the first day of June, one thousand nine hundred ninety-three, regardless of whether payment for such services is received prior to that date; imposing civil penalty on health care providers who owe delinquent medicaid enhancement tax after specified date; creating the "West Virginia Health Care Provider Tax Act of 1993"; making legislative findings; providing short title and rules regarding arrangement and classification; defining terms; imposing broad-based health care related taxes on specified providers of health care items or services, at various rates of tax, based on the respective classifications of such providers; specifying the measure of tax for each classification; permitting temporary increase in rates of providers of inpatient hospital services effective upon filing of claim for temporary relief with health care cost review authority and providing requirements and procedures; permitting hospitals which provide nursing facility services to adjust nursing facility rates to compensate for the tax without first obtaining approval from the health care cost review authority and providing limitations; prohibiting double taxation; providing for filing of returns and other documents and payment of estimated tax in installment payments; specifying time and place for filing returns and paying tax; providing rules regarding extensions of time and the signing of returns and other documents; requiring taxpayers to keep
records adequate to verify their liability for tax; making administration, collection and enforcement of these taxes subject to the West Virginia tax procedure and administration act; making the West Virginia crimes and penalties act applicable to these taxes; dedicating taxes collected to funding of medicaid program; requiring taxes collected to be deposited into special revenue fund created in state treasurer’s office; requiring tax commissioner to keep records which account separately for the amount of tax paid by each class of health care provider; allowing tax commissioner certain costs of administration and collection; providing rules for abrogation and severability; specifying effective dates; specifying various effective dates throughout the bill; providing legislative findings regarding need for and source of loan from consolidated fund for medicaid; authorizing loan from consolidated fund for prompt medicaid payments; establishing rate of interest on said loan; requiring the repayment of loan from collections of tax on state share of medicaid reimbursements and any civil penalties collected for nonpayment of tax; creating a “Medicaid Prompt Payment Fund” and requiring the deposit of loan proceeds and repayments into said fund; requiring board of investments to manage said fund; requiring board of investments to transfer loan proceeds to medical services fund upon request of the governor; providing for transfers by intergovernmental transfer from hospital services revenue account to medical services trust fund; and permitting approval by health care cost review authority of up to sixty beds for a demonstration project providing nursing services to patients with alzheimer’s disease and providing requirements and limitations.

Be it enacted by the Legislature of West Virginia:

That sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine, ten and twelve, article four-c of said chapter be repealed; that sections twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code be repealed; that section eighteen, article twenty-six of said
chapter be repealed; that section thirteen, article fifteen, chapter seven of said code be amended and reenacted; that article two, chapter nine of said code be amended by adding thereto three new sections, designated sections nine, ten and eleven; that sections two and three, article four-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-a; that sections one, two and four, article four-b of said chapter be amended and reenacted; that sections one, two, five and seven, article four-c of said chapter be amended and reenacted; that section eleven, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections eleven-a, eleven-b and seventeen; that section eighteen-a, article ten, chapter eleven of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eighteen-b; that sections three and six, article twelve-b of said chapter be amended and reenacted; that sections one, two, three, seven, eight, nine, ten, nineteen and twenty, article thirteen-a of said chapter be amended and reenacted; that said article be further amended by adding thereto six new sections, designated sections three-a, three-b, three-c, nine-a, twenty-a and twenty-five; that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty; that said chapter be further amended by adding thereto a new article, designated article twenty-seven; that article six, chapter twelve of said code be amended by adding thereto a new section, designated section nine-e; that section fifteen-a, article one, chapter sixteen of said code be amended and reenacted; and that section five, article two-d of said chapter be amended and reenacted, all to read as follows:

CHAPTER 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.

It is hereby found, determined and declared that the creation of any authority and the carrying out of its purposes is in all respects for the benefit of the people of this state in general and of the participating governments in particular and is a public purpose; and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the provisions of this article. Accordingly, each authority and, without limitation, its revenues, properties, operations and activities shall be exempt from the payment of any taxes or fees to the state or any of its political subdivisions: 

Provided, That this exemption shall not apply to the tax imposed by section seven, article twenty-seven, chapter eleven of this code on gross receipts derived from transporting patients. Interest on obligations and all evidences of indebtedness of any such authority shall be exempt from taxation, except inheritance and transfer taxes.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-9. Secretary to develop medicaid monitoring and case management.

(a) On or before the first day of January, one thousand nine hundred ninety-four, the secretary of the department of health and human resources shall:

(1) Develop a managed care system to monitor the services provided by the medicaid program to individual clients;

(2) Develop an independent referral service, including the review of individual cases for abuses of the program; and

(3) Develop a schedule for implementation of the managed care and independent referral system. The managed care system shall focus on, but not be limited to, the behavioral health and mental health services.
(b) In addition thereto, and in accordance with applicable federal medicaid laws, the secretary shall prepare recommendations, to be submitted to the joint committee on government and finance on or before the first day of January, one thousand nine hundred ninety-four. In developing recommendations the secretary shall consider as options the following:

(1) Review of medicaid services which are optional under federal medicaid law and identification of services to be retained, reduced or eliminated;

(2) The elimination, reduction or phase-out of: (i) Services which are not generally available to West Virginia citizens not covered under the state's medicaid program; or (ii) services which are not generally covered under group policies of insurance made available to employees of employers within the state;

(3) The elimination or reduction of services, or reduction of provider reimbursement rates, for identified services of marginal utility;

(4) Higher reimbursement rates for primary and preventive care;

(5) Changes in fee structure, which may include a system of prospective payments, and may include establishment of global fees for identified services or diagnoses including maternity care;

(6) Utilization caps for certain health care procedures;

(7) Restriction of coverage for cosmetic procedures;

(8) Identification of excessive use of certain health care procedures by individuals and a policy to restrict excessive use;

(9) Identification of services which reduce the need for more costly options for necessary care and retention or expansion of those programs;

(10) Identification of services for which preauthorization should be requirement for medicaid reimbursement;

(11) Recommendations relating to the development
of a demonstration project on long-term care, which demonstration project may be limited to patients with alzheimer's disease;

(12) A policy concerning the department's procedures for compliance, monitoring and inspection; and

(13) Such other options as may be developed.

(c) The secretary shall utilize in-state health care facilities for inpatient treatment when such facilities are available. Prior authorization, consistent with applicable federal law, shall be required for out-of-state inpatient treatment.

(d) The secretary shall report to the joint committee on government and finance on the development and implementation of medicaid programs that provide incentives to working persons. The secretary shall consider: Subsidies for low income working persons; individual or small employer buy-ins to the state medicaid fund; prospective payment systems for primary care physicians in underserved areas; and a system to improve monitoring of collections, expenditures, service delivery and utilization.

(e) The secretary shall report quarterly to the joint committee on government and finance regarding provider and facility compliance with federal and state medicaid laws, including, but not limited to, the following: The number of inspections conducted during the previous quarter; description of programs, services and facilities reviewed; findings; and recommendations for corrections.

§9-2-10. Collection of copayments by health care providers; penalties.

(a) The secretary is directed to institute a program by the first day of January, one thousand nine hundred ninety-four, which requires the payment and collection of copayments. Such program shall conform with Section 447.53, Chapter 42 of the Code of Federal Regulations, and the amount of such copayments shall be determined in accordance with the provisions of Sections 447.54 and 447.55, Chapter 42, of the Code of
Federal Regulations. The secretary shall complete all federal requirements necessary to implement this section, including the submission of any amendment to the state medicaid plan, immediately following the effective date of this section.

(b) Any individual or entity receiving reimbursement from this state under the medical assistance program of the Social Security Act is required to collect such copayments: Provided, That in accordance with Section 447.15, Chapter 42 of the Code of Federal Regulations, no such individual or entity shall refuse care or services to any medicaid-eligible individual because that individual is unable to pay such copayment. The amount of copayments collected shall be reported to the secretary.

(c) After the first day of February, one thousand nine hundred ninety-four, any person, firm, corporation or other entity who willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, fails to attempt to collect copayments as required by this section, shall be liable for payment to the department of health and human resources of a civil money penalty in the amount of one hundred dollars for each occurrence of willful failure to collect a required copayment.

(d) If it comes to the attention of the secretary that a person or other entity is failing to attempt to collect copayments as mandated, the matter shall be referred to the medicaid fraud control unit for investigation and referral for prosecution pursuant to the provisions of article seven of this chapter.

§9-2-11. Limitation on use of funds.

(a) No funds from the medicaid program accounts may be used to pay for the performance of an abortion by surgical or chemical means unless:

(1) On the basis of the physician’s best clinical judgment, there is:
(i) A medical emergency that so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a delay will create grave peril of irreversible loss of major bodily function or an equivalent injury to the mother: Provided, That an independent physician concurs with the physician's clinical judgment; or

(ii) Clear clinical medical evidence that the fetus has severe congenital defects or terminal disease or is not expected to be delivered; or

(2) The individual is a victim of incest or the individual is a victim of rape when the rape is reported to a law-enforcement agency.

(b) The Legislature intends that the state's medicaid program not provide coverage for abortion on demand and that abortion services be provided only as express-ly provided for in this section.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.


(a) There is hereby created in the state treasury a special revolving fund known as the medicaid uncompensated care fund. All moneys deposited or accrued in this fund shall be used exclusively:

(1) To provide the state's share of the federal medicaid program funds in order to improve inpatient payments to disproportionate share hospitals; and

(2) To cover administrative cost incurred by the department of health and human resources and associated with the medicaid program and this fund: Provided, That no expenditures may be made to cover said administrative costs for any fiscal year after one thousand nine hundred ninety-two, except as approp-riated by the Legislature.

(b) Moneys from the following sources may be placed into the fund:

(1) All public funds transferred by any public agency to the department of health and human resources
medicaid program for deposit in the fund as contemplated or permitted by applicable federal medicaid laws;

(2) All private funds contributed, donated or bequeathed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal medicaid laws;

(3) Interest which accrued on amounts in the fund from sources identified in subdivisions (1) and (2) of this subsection; and

(4) Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

(c) Any balance remaining in the medicaid uncompensated care fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

(d) Moneys received into the fund shall not be counted or credited as part of the legislative general appropriation to the state medicaid program.

(e) The fund shall be administered by the department of health and human resources. Moneys shall be disbursed from the fund on a quarterly basis. The secretary of the department shall implement the provisions of this article prior to the receipt of any transfer, contribution, donation or bequest from any public or private source.

(f) All moneys expended from the fund after receipt of federal financial participation shall be allocated to reimbursement of inpatient charges and fees of eligible disproportionate share hospitals. Except for the payment of administrative costs as provided for in this section, appropriation from this fund for any other purposes is void.

§9-4A-2a. Medical services trust fund.

(a) The Legislature finds and declares that certain
(b) There is hereby created a special account within the department of health and human resources, which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, designated the medical services trust fund. Funds paid into the account shall be derived from the following sources:

(1) Transfers, by intergovernmental transfer, from the hospital services revenue account provided for in section fifteen-a, article one, chapter sixteen of this code;

(2) All interest or return on investment accruing to the fund;

(3) Any gifts, grants, bequests, transfers or donations which may be received from any governmental entity or unit or any person, firm, foundation or corporation; and

(4) Any appropriations by the Legislature which may be made for this purpose.

(c) Expenditures from the fund are limited to the following:

(1) Payment of backlogged billings from providers of medicaid services when cash-flow problems within the medical services fund do not permit payment of providers within federally required time limits; and

(2) Funding for services to future federally mandated population groups in conjunction with federal health care reform: Provided, That other medicaid funds have been exhausted for the federally mandated expansion: Provided, however, That new optional services for which a state medicaid plan amendment is submitted after the first day of May, one thousand nine hundred ninety-three, which are not cost effective for the state, are eliminated prior to expenditure
of any moneys from this fund for medicaid expansion.

(d) Expenditures from the fund solely for the purposes set forth in subsection (c) of this section shall be authorized in writing by the governor, who shall determine in his or her discretion whether any expenditure shall be made, based on the best interests of the state as a whole and its citizens, and shall designate the purpose of the expenditure. Upon authorization signed by the governor, funds may be transferred to the medical services fund: Provided,

That all expenditures from the medical services trust fund shall be reported forthwith to the joint committee on government and finance.

(e) Notwithstanding the provision of section two, article two, chapter twelve of this code, moneys within the medical services trust fund may not be redesignated for any purpose other than those set forth in subsection (c) of this section, except that, upon elimination of the medicaid program in conjunction with federal health care reform, moneys within the fund may be redesignated for the purpose of providing health care coverage or services in coordination with federal reform.

§9-4A-3. Disproportionate share hospitals.

(a) Unless otherwise noted, all disproportionate share hospitals must meet the following criteria in order to be eligible for reimbursement from the medicaid uncompensated care fund:

(1) The hospital must be licensed by the department of health and human resources and participate in the medicaid program; and

(2) The hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services by the approved state medicaid plan. In the case of a hospital located in a rural area, the term "obstetrician" includes any physician with staff privileges at the hospital who performs nonemergency obstetric procedures. The requirements of this subsec-
tion do not apply to hospitals who did not offer routine obstetrical services to the general public as of the twenty-first day of December, one thousand nine hundred eighty-seven. Notwithstanding the provisions of this section, should federal requirements outlined in this subsection change, the department is to comply with federal law.

(b) Additionally, all disproportionate share hospitals must meet one of the following criteria:

(1) The hospital provided in excess of three thousand medicaid inpatient days of service during the most recent fiscal year of the hospital;

(2) For the same time period, the sum of the following factors must exceed eight percent:

(i) Total medicaid inpatient days divided by total inpatient days; and

(ii) Total medicare supplemental security insurance inpatient days divided by total medicare inpatient days; and

(iii) Total days of care provided to eligible medicaid patients whose care was not paid by West Virginia medicaid divided by total inpatient medicaid days;

(3) The hospital is a psychiatric, rehabilitation or acute care hospital owned and operated by the state of West Virginia, which hospital shall be exempt from the requirements of subdivision (1), subsection (a) of this section.

(c) The dollar value of contributions, bequests or donations made by any hospital to the fund shall not be included as a reimbursable cost in the medicaid cost report of that hospital.

(d) Immediately following the effective date of this section, and in no event later than the thirtieth day of June, one thousand nine hundred ninety-three, the department of health and human resources shall submit to the federal health care finance administration a state medicaid plan amendment in order to effectuate the purposes of subdivision (3), subsection
ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PROVIDER
MEDICAID ACT.

§9-4B-1. Definitions.

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

(a) "Board" means the physician/medical practitioner provider medicaid enhancement board created to develop, review and recommend the physician/medical practitioner provider fee schedule.

(b) "Physician provider" means an allopathic or osteopathic physician, rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(c) "Nurse practitioner" means a registered nurse qualified by virtue of his or her education and credentials and approved by the West Virginia board of examiners for registered professional nurses to practice as an advanced practice nurse independently or in a collaborative relationship with a physician.

(d) "Nurse-midwife" means a qualified professional nurse registered with the West Virginia board of examiners for registered professional nurses who by virtue of additional training is specifically qualified to practice nurse-midwifery according to the statement of standards for the practice of nurse-midwifery as set forth by the American college of nurse-midwives.

(e) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master's degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician.
§9-4B-2. Physician/medical practitioner provider medicaid enhancement board; creation and composition.

There is hereby created the West Virginia physician/medical practitioner provider medicaid enhancement board to consist of eleven members. The board shall consist of ten members, appointed by the governor, and the secretary, or his or her designee, who shall serve as an ex officio, nonvoting member. The members appointed by the governor shall include five allopathic physicians, one osteopathic physician, one nurse practitioner, one nurse-midwife, one physician assistant and one lay person. The governor shall select four allopathic physician board members from a list of eight recommendations submitted to the governor by the state medical association, one allopathic physician board member from a list of three recommendations submitted to the governor by the state academy of family physicians, the osteopathic physician board member from three recommendations submitted to the governor by the state osteopathic society, the nurse practitioner from three recommendations submitted to the governor by the advanced nursing practice conference group of the West Virginia nurses association, the nurse-midwife from three recommendations submitted to the governor by the the West Virginia chapter of the American college of nurse midwives, the physician assistant from three recommendations submitted to the governor by the state physician assistant association and the lay board member, at his or her discretion. The respective associations shall submit their recommendations to the governor within five days of the effective date of this article. The governor shall make all appointments within fifteen days from the receipt of all recommendations. After the initial appointment of the board, any appointment to fill a vacancy shall be for the unex-
35 pired term only, made in the same manner as the
36 initial appointment, and the terms of all members
37 expire on the first day of July, one thousand nine
38 hundred ninety-four. The board shall select a member
39 to act as chairperson. The chairperson shall be the
40 chief administrative officer and shall preside over
41 official transactions of the board.


(a) The board shall:

(1) Develop and recommend a reasonable physician/
medical practitioner provider fee schedule that con-
forms with federal medicaid laws and remains within
the limits of annual funding available to the single
state agency for the medicaid program. In developing
the fee schedule, the board may refer to a nationally
published regional specific fee schedule selected by the
secretary of the department of health and human
resources. The board may consider identified health
care priorities in developing its fee schedule to the
extent permitted by applicable federal medicaid laws
and may recommend higher reimbursement rates for
basic primary and preventive health care services
than for other services. In identifying basic primary
and preventive health care services and in accordance
with applicable federal medicaid laws, the board may
consider factors, including, but not limited to, services
defined and prioritized by the basic services task force
of the health care planning commission in its report
issued in December of the year one thousand nine
hundred ninety-two; and minimum benefits and
coverages for policies of insurance as set forth in
section fifteen, article fifteen, chapter thirty-three of
this code and section four, article sixteen-c of said
chapter and rules of the insurance commissioner
promulgated thereunder. If the single state agency
approves the fee schedule, it shall implement the
physician/medical practitioner provider fee schedule;

(2) Review the fee schedule on a quarterly basis and
recommend to the single state agency any adjustments
it considers necessary. If the single state agency
approves any of the board's recommendations, it shall immediately implement those adjustments and shall report the same to the joint committee on government and finance on a quarterly basis;

(3) Meet and confer with representatives from each medical specialty area so that equity in reimbursement increases or decreases be achieved to the greatest extent possible;

(4) Assist and enhance communications between participating physician and medical practitioner providers and the department of health and human resources; and

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

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

(c) Nothing in this section gives the board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's medicaid plan are met and shall report the same to the joint committee on government and finance on a quarterly basis. The purpose of the board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the medicaid provider community and the agency.

(d) On a quarterly basis, the single state agency and the board shall report to the joint committee on government and finance the status of the fund, any adjustments to the fee schedule and the fee schedule for each health care provider group identified in
ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ACT.

§9-4C-1. Definitions.

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

(a) "Ambulance service provider" means a person rendering ambulance services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(b) "General health care provider" means an audiologist, a behavioral health center, a chiropractor, a community care center, an independent laboratory, an independent X-ray service, an occupational therapist, an optician, an optometrist, a physical therapist, a podiatrist, a private duty nurse, a psychologist, a rehabilitative specialist, a respiratory therapist and a speech therapist rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(c) "Inpatient hospital services provider" means a provider of inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

(d) "Intermediate care facility for the mentally retarded services provider" means a provider of intermediate care facility services for the mentally retarded for purposes of Section 1903(w) of the Social Security Act.

(e) "Nursing facility services provider" means a provider of nursing facility services for purposes of Section 1903(w) of the Social Security Act.

(f) "Outpatient hospital service provider" means a hospital providing preventative, diagnostic, therapeutic, rehabilitative or palliative services that are furnished to outpatients.
(g) "Secretary" means the secretary of the department of health and human resources.

(h) "Single state agency" means the single state agency for medicaid in this state.

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

(a) The general medicaid enhancement board created by this section is hereby continued in all respects, except as otherwise provided in this section. Current members of the board who represent groups not represented on the board on and after the effective date of this act shall not serve on the board after such date. The governor shall appoint new members to the board to represent groups not previously represented on the board within thirty days after the effective date of this act.

(b) This board shall consist of eighteen members appointed by the governor, including two lay persons and one representative from each of the following sixteen groups: Audiologists, behavioral health centers, chiropractors, community care centers, independent laboratory services, independent X-ray services, occupational therapists, opticians, optometrists, physical therapists, podiatrists, private duty nurses, psychologists, rehabilitative specialists, respiratory therapists and speech therapists. In addition to the members appointed by the governor, the secretary, or his or her designee, shall serve as an ex officio, nonvoting member of the board.

(c) After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only and shall be made in the same manner as the initial appointment.

(d) The terms of all members expire on the first day of July, one thousand nine hundred ninety-four.

§9-4C-5. Facility providers' medicaid enhancement board.

(a) The outpatient hospital medicaid enhancement board created by this section shall cease to exist on the effective date of this act.
(b) There is hereby created the facility providers' medicaid enhancement board to consist of seven members. In order to carry out the purpose of this article, the board shall represent ambulatory surgical centers, inpatient hospital service providers, outpatient hospital service providers, nursing facility service providers and intermediate care facility for the mentally retarded service providers.

(c) The board shall consist of one representative from each of the aforementioned classes of health care providers, one lay person and the secretary, or his or her designee, who shall serve as an ex officio, nonvoting member. The governor shall make all appointments within thirty days after the effective date of this act.

(d) After initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, shall be made in the same manner as the initial appointment, and the terms of all members shall expire on the first day of July, one thousand nine hundred ninety-four.

§9-4C-7. Powers and duties.

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

(1) Develop, recommend and review reimbursement methodology where applicable, and develop and recommend a reasonable provider fee schedule, in relation to its respective provider groups, so that the schedule conforms with federal medicaid laws and remains within the limits of annual funding available to the single state agency for the medicaid program. In developing the fee schedule the board may refer to a nationally published regional specific fee schedule, if available, as selected by the secretary in accordance with section eight of this article. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal medicaid laws, and may recommend higher reimbursement rates for basic primary and preventative health care services than for other services. In identifying basic primary and preventative health care
services, the board may consider factors, including, but
not limited to, services defined and prioritized by the
basic services task force of the health care planning
commission in its report issued in December of the
year one thousand nine hundred ninety-two; and
minimum benefits and coverages for policies of insur-
ance as set forth in section fifteen, article fifteen,
chapter thirty-three of this code and section four,
article sixteen-c of said chapter and rules of the
insurance commissioner promulgated thereunder. If
the single state agency approves the adjustments to
the fee schedule, it shall implement the provider fee
schedule;

(2) Review its respective provider fee schedule on a
quarterly basis and recommend to the single state
agency any adjustments it considers necessary. If the
single state agency approves any of the board's recom-
mendations, it shall immediately implement those
adjustments and shall report the same to the joint
committee on government and finance on a quarterly
basis;

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

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

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

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

(c) Nothing in this section gives any board the
authority to interfere with the discretion and judg-
ment given to the single state agency that administers
the state's medicaid program. If the single state agency
disapproves the recommendations or adjustments to
the fee schedule, it is expressly authorized to make
any modifications to fee schedules as are necessary to
ensure that total financial requirements of the agency
for the current fiscal year with respect to the state's
medicaid plan are met and shall report such modifications
to the joint committee on government and
finance on a quarterly basis. The purpose of each
board is to assist and enhance the role of the single
state agency in carrying out its mandate by acting as
a means of communication between the health care
provider community and the agency.

(d) In addition to the duties specified in subsection
(a) of this section, the ambulance service provider
medicaid board shall work with the health care cost
review authority to develop a method for regulating
rates charged by ambulance services. The health care
cost review authority shall report its findings to the
Legislature by the first day of January, one thousand
nine hundred ninety-four. The costs of the report shall
be paid by the health care cost review authority. In
this capacity only, the chairperson of the health care
cost review authority shall serve as an ex officio,
nonvoting member of the board.

(e) On a quarterly basis, the single state agency and
the board shall report the status of the fund, any
adjustments to the fee schedule and the fee schedule
for each health care provider identified in section two
of this article to the joint committee on government
and finance.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Right of subrogation by department of health and
human resources to the rights of recipients
of medical assistance; rules as to effect of
subrogation.

(a) If medical assistance is paid or will be paid to a
provider of medical care on behalf of a recipient of
medical assistance because of any sickness, injury,
disease or disability, and another person is legally
liable for such expense, either pursuant to contract,
negligence or otherwise, the department of health and
human resources shall have a right to recover full reimbursement from any award or settlement for such medical assistance from such other person, or from the recipient of such assistance if he has been reimbursed by the other person. The department shall be legally subrogated to the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the sickness, injury, disease or disability for which the recipient has received damages. When an action or claim is brought by a medical assistance recipient or by someone on his or her behalf against a third party who may be liable for the injury, disease, disability or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the department of health and human resources for reimbursement of an amount sufficient to reimburse the department the full amount of benefits paid on behalf of the recipient under the medical assistance program for the injury, disease, disability or death of the medical assistance recipient. The subrogation claim of the department of health and human resources shall not exceed the amount of medical expenses for the injury, disease, disability or death of the recipient paid by the department on behalf of the recipient. The right of subrogation created in this section includes all portions of the cause of action, by either settlement, compromise, judgment or award, notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to subrogation. Any settlement, compromise, judgment or award that excludes or limits the cost of medical services or care shall not preclude the department of health and human resources from enforcing its rights under this section. The secretary may compromise, settle and execute a release of any such claim in whole or in part.

(b) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by him against any other person and from including therein,
as part of the compensatory damages sought to be
recovered, the amount or amounts of his medical
expenses, even though such person received medical
assistance in the payment of such medical expenses, in
whole or in part.

If the action be tried by a jury, the jury shall not be
informed as to the interest of the department of health
and human resources, if any, and such fact shall not
be disclosed to the jury at any time. The trial judge
shall, upon the entry of judgment on the verdict,
direct that an amount equal to the amount of medical
assistance given be withheld and paid over to the
department of health and human resources. Irrespec-
tive of whether the case be terminated by judgment or
by settlement without trial, from the amount required
to be paid to the department of health and human
resources there shall be deducted the attorney fees
attributable to such amount in accordance with and in
proportion to the fee arrangement made between the
recipient and his attorney of record so that the
department shall bear the pro rata portion of such
attorney fees. Nothing in this section shall preclude
any person who has received medical assistance from
settling any cause of action which he may have against
another person and delivering to the department of
health and human resources, from the proceeds of
such settlement, the sums received by him from the
department or paid by the department for his medical
assistance. Any release given by a person who has
received medical assistance to another person releas-
ing such other person of liability with respect to any
cause of action shall be binding upon the department
of health and human resources if the person for whose
benefit the release inures is unaware of, or has not
been informed of, the interest of the department
therein. If such other person is aware of or has been
informed of the interest of the department of health
and human resources in the matter, it shall be the
duty of the person to whose benefit the release inures
to withhold so much of the settlement as may be
necessary to reimburse the department to the extent
of its interest in the settlement. No judgment, award
of or settlement in any action or claim by a medical assistance recipient to recover damages for injuries, disease or disability, in which the department of health and human resources has interest, shall be satisfied without first giving the department notice and reasonable opportunity to establish its interest. If, after being notified in writing of a subrogation claim and possible liability of the recipient, guardian, attorney or personal representative for failure to subrogate the department, a recipient, his or her guardian, attorney or personal representative disposes of the funds representing the judgment, settlement or award, without the written approval of the department, that person shall be liable to the department for any amount that, as a result of the disposition of the funds, is not recoverable by the department. In the event that a controversy arises concerning the subrogation claims by the department, an attorney shall interplead, pursuant to rule twenty-two of the rules of civil procedure, the portion of the recipient's settlement that will satisfy the department exclusive of attorneys fees and costs regardless of any contractual arrangement between the client and the attorney.

§9-5-11a. Notice of action or claim.

If either the medical assistance recipient or the department of health and human resources brings an action or claim against a third person, the recipient, his attorney or such department shall, within thirty days of filing the action, give to the other written notice of the action or claim by certified mail. This notice shall contain the name of the third person and the court in which the action is brought. If the department of health and human resources institutes said action, the notice shall advise the recipient of their right to bring such action in their own name, in which they may include as a part of their claim the sums claimed by such department. Proof of such notice shall be filed in said action. If an action or claim is brought by either the recipient or the department of health and human resources, the other may, at any time before trial, become a party to the action, or shall
consolidate his action or claim with the other if
brought independently: Provided, That this consolida-
tion or entry as a party does not delay the proceedings.


1 (a) All recipients of medical assistance under the
2 medicaid program shall be deemed to have authorized
3 all third parties including, but not limited to, insur-
4 ance companies and providers of medical care, to
5 release to the department of health and human
6 resources information needed by the department to
7 secure or enforce its rights as assignee under this
8 chapter.

9 (b) Every insurer and provider of medical care shall
10 furnish records or information pertaining to the
11 coverage of any individual or the medical benefits paid
12 or claims made under a policy or obligation, if the
13 department of health and human resources:
14 (1) Requests the information in writing; and
15 (2) Certifies that the individual is an applicant for or
16 recipient of medical assistance or is an individual who
17 is legally responsible for an applicant or recipient. The
18 department of health and human resources may
19 request only the records or information necessary to
determine if insurance benefits have been or should
20 have been claimed or paid with respect to items of
21 medical care and services that were received by a
22 particular individual and or which medical assistance
23 coverage would otherwise be available.
24 (c) The insurance commissioner shall establish
25 guidelines for information requests pursuant to this
26 section.

§9-5-17. Nonprofit agency or facility, in receipt of medicaid
moneys, shall provide annual accounting of
gross receipts and disbursements including
salaries.

1 Any nonprofit health care agency or facility which
2 receives medicaid moneys shall, as a condition of the
3 receipt of same, provide an annual accounting of that
facility's or provider's receipts and disbursements, including the total salaries of all employees and administrators, with one copy of same to be submitted to the joint committee on government and finance and one copy submitted to health care cost review authority on or before the fifteenth day of the first month of the year, for the preceding year.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

(a) Additions to tax. — Except as otherwise provided in this section, in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under article twenty-one, twenty-three or twenty-four of this chapter, an amount determined by applying the rate established under section seventeen or seventeen-a of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(b) Amount of underpayment. — For purposes of subsection (a), the amount of the underpayment shall be the excess of the amount determined under subdivision (1) of this subsection over the amount determined under subdivision (2) of this subsection.

(1) The amount of the installment required to be paid on or before the due date for the installment, if the estimated tax due for the taxable year were an amount equal to ninety percent of the tax shown on the annual return for the taxable year divided by the number of installments taxpayer was required to make for the taxable year, or, if no return was filed, ninety percent of the tax for such year divided by the number of installment payments taxpayer was required to make for the taxable year.

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment of that installment.
(c) Period of underpayment. — The period of underpayment of an installment shall run from the date the installment was required to be paid (due date) to whichever of the following dates is the earlier:

1. The due date of the annual return following the close of the taxable year for which the installment was due (determined without regard to any extension of time for filing such annual return); or
2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) Exception. — Notwithstanding the provisions of the preceding subsections, the additions to tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser:

1. Prior year's tax. — One hundred percent of the tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months;
2. Annualized tax. — In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection and under subsection (b) of this section, then the amount of such required installment shall be the annualized income installment. For purposes of this subdivision, there shall be four required installments for each taxable year and the "annualized income installment" is the difference (if any) determined by subtracting the amount determined under paragraph
69 (B) of this subdivision from the amount determined
70 under the appropriate clause of paragraph (A) of this
71 subdivision. When making these computations, the
72 rules in paragraph (C) of this subdivision shall be
73 followed:
74
75 (A) (i) Corporations. — An amount equal to the
76 applicable percentage of the tax of a corporation for
77 the taxable year computed by placing on an annual-
78 ized basis its taxable income:
79
80 (I) For the first three months of the taxable year, in
81 the case of the first installment;
82
83 (II) For the first three months of or the first five
84 months of the taxable year, in the case of the second
85 installment;
86
87 (III) For the first six months or the first eight
88 months of the taxable year, in the case of the third
89 installment; and
90
91 (IV) For the first nine months or for the first eleven
92 months of the taxable year, in the case of the fourth
93 installment.
94
95 (ii) Individuals. — An amount equal to the applica-
96 ble percentage of the tax of an individual for the
97 taxable year computed by placing on an annualized
98 basis the taxable income of the individual for months
99 in the taxable year ending before the due date for the
100 installment.
101
102 (B) The aggregate amount of any prior required
103 installments for the taxable year.
104
105 (C) Special rules. — For purposes of this subdivision:
106
107 (i) Annualization. — Taxpayer's taxable income shall
108 be placed on an annualized basis in the same manner
109 that taxable income is annualized for federal income
110 tax purposes for the taxable year.
111
112 (ii) Applicable percentage. — The applicable percent-
113 age shall be determined from the following table:
In the case of the following required installments:

<table>
<thead>
<tr>
<th>Installment</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>22.5</td>
</tr>
<tr>
<td>2nd</td>
<td>45</td>
</tr>
<tr>
<td>3rd</td>
<td>67.5</td>
</tr>
<tr>
<td>4th</td>
<td>90</td>
</tr>
</tbody>
</table>

(e) Additional exceptions. —

(1) Where tax amount is small. — No addition to tax shall be imposed under subsection (a) of this section for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable for withheld tax, is less than two hundred fifty dollars.

(2) Where individual has no personal income tax liability for preceding taxable year. — No addition to tax shall be imposed under subsection (a) of this section for any taxable year if:

(A) The individual's preceding taxable year was a taxable year of twelve months;
(B) The individual did not have any West Virginia personal income tax liability for the preceding taxable year;
(C) The individual was a citizen or resident of the United States throughout the preceding taxable year; and
(D) The individual's West Virginia personal income tax liability for the current taxable year is less than five thousand dollars.

(3) Waiver in certain cases. — No addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment if and to the extent the tax commissioner determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(f) Tax computed after application of credits against tax. — For purposes of this section, the term "tax" means the amount of any annual tax or fee adminis-
tered under this article that is generally payable in
two or more installment payments during the taxable
year, minus the amount of credits allowable against
such tax or fee, other than taxes withheld from the
taxpayer under section seventy-one or seventy-one-a,
article twenty-one of this chapter (relating to taxes
withheld on wages, or from distributions of pass-
through income to nonresident partners, S corporation
shareholders or beneficiaries of an estate or trust).

(g) Application of section in case of personal income
tax withheld on wages. —

(1) In general. — For purposes of applying this
section, the amount of the credit allowed under section
seventy-one, article twenty-one of this chapter, for the
taxable year shall be deemed a payment of estimated
tax, and an equal part of such amount shall be deemed
to have been paid on each installment payment due
date for such taxable year, unless the taxpayer estab-
ishes the specific dates on which all amounts were
actually withheld, in which case the amounts so
withheld shall be deemed payments of estimated tax
on the dates on which such amounts were actually
withheld.

(2) Separate application. — The taxpayer may apply
subdivision (1) of this subsection separately with
respect to:

(A) Wage withholding; and

(B) All other amounts withheld for which credit is
allowed under section seventy-one, article twenty-one
of this chapter.

(h) Application of section in case of income tax
withheld by pass-through entities from distributions to
nonresidents. — For purposes of applying this section,
the amount of credit allowed under section seventy-
one-a, article twenty-one of this chapter to a nonres-
ident distributee of a pass-through entity, shall be
deemed to be a payment of estimated income tax for
the taxable year of the nonresident distributee, and an
equal part of such amount shall be deemed (only for
purposes of this section) to have been paid on each installment due date for the taxable year of the distributee, unless the distributee establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(i) Special rule where personal income tax return filed on or before the thirty-first day of January. — If on or before the last day of the first month following the end of the taxable year, the taxpayer files his or her annual personal income tax return for that taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment of the fourth required installment for that taxable year.

(j) Special rules for farmers. — For purposes of this section, if an individual is a farmer for any taxable year:

(1) There is only one required installment for that taxable year;

(2) The due date for such installment is the fifteenth day of January of the following taxable year;

(3) The amount of such installment shall be equal to the required annual payment determined under subsection (b) of this section by substituting "sixty-six and two-thirds percent" for "ninety percent"; and

(4) Subsection (h) of this section shall be applied:

(A) By substituting "the first day of March" for the phrase "the thirty-first day of January"; and

(B) By treating the required installment described in subdivision (1) of this subsection as the fourth required installment.

(k) Fiscal years and short years. —

(1) Fiscal years. — In applying this section to a taxable year beginning on any date other than the first
day of January, there shall be substituted, for the
months specified in this section, the months of the
fiscal year that correspond thereto.

(2) Short taxable year. — The application of this
section to taxable years of less than twelve months
shall be in accordance with regulations prescribed by
the tax commissioner.

(l) Reserved. —

(m) Estates and trusts. —

(1) In general. — Except as otherwise provided in
this subsection, this section shall apply to any estate or
trust.

(2) Exception for certain estates and certain trusts.
— With respect to any taxable year ending before the
date two years after the date of the decedent's death,
this section shall not apply to:

(A) The estate of such decedent; or

(B) Any trust all of which was treated for federal
income tax purposes as owned by the decedent and to
which the residue of the decedent's estate will pass
under his or her will (or, if no will is admitted to
probate, which is the trust primarily responsible for
paying debts, taxes and expenses of administration).

(3) Special rule for annualizations. — In the case of
any estate or trust to which this section applies,
paragraph (A), subdivision (2), subsection (d) of this
section shall be applied by substituting “ending before
the date one month before the due date of the install-
ment” for the phrase “ending before the due date for
the installment”.

(n) Regulations. — The tax commissioner may
prescribe such regulations as the commissioner deems
necessary to carry out the purpose of this section. This
includes, but is not limited to, equitable regulations
allowing payment of adjusted seasonal installments in
lieu of annualized income installments when the
commissioner determines, based on known facts and
circumstances, that payment of the annualized income
installment will result in significant hardship to the
taxpayer due to the seasonal nature of taxpayer's
business, and equitable regulations for payment of
estimated personal income tax by an individual who is:
(1) An employee; (2) employed in another state for
some portion or all of the taxable year; and (3)
required to pay personal income taxes to such other
state on (or measured by) wages earned in that state,
for which credit is allowed under section twenty,
article twenty-one of this chapter.

(o) Effective date. —
(1) This section as amended in the year one thou-
sand nine hundred ninety-two, shall apply to taxable
years beginning after the thirtieth day of June, one
thousand nine hundred ninety-two, and this section as
in effect on the first day of January, one thousand
nine hundred ninety-two, is preserved and shall apply
to taxable years beginning before the first day of July,
one thousand nine hundred ninety-two.

(2) This section as amended in the year one thou-
sand nine hundred ninety-three, shall apply to taxable
years ending after the thirtieth day of June, one
thousand nine hundred ninety-three. For taxable
years ending on or before such dates, the provisions of
this section as in effect for such years is fully preserved.

§11-10-18b. Additions to tax for failure to pay any other
estimated tax.

(a) General rule. — If a person required to make
monthly or quarterly installment payments of any
annual tax administered under this article, except the
taxes imposed by article twenty-one, twenty-three or
twenty-four of this chapter fails to timely remit any
installment payment of such tax or remits less than
the amount of the required installment payment of
such tax, there shall be added to the tax due for the
taxable year an amount determined by applying the
rate established under section seventeen or seventeen-
a of this article, as appropriate for the taxable year, to
the amount of the underpayment of estimated tax, for
the period of the underpayment.
Quarterly installment payments. — If a person required to make quarterly installment payments of estimated tax timely pays estimated tax during the taxable year equal to seventy-five percent or more of such person's actual liability for such tax for that taxable year, no additions to tax shall be imposed under this section with respect to such payments. Estimated tax is paid timely if at least one fourth of the tax due for the taxable year is paid by the due date of each installment for that year.

Monthly installment payments. — If a person required to make monthly installment payments of estimated tax timely pays estimated tax during the taxable year equal to at least eleven twelfths of such person's actual liability for such tax for that taxable year, no additions to tax shall be imposed under this section with respect to such payments. Estimated tax is paid timely if at least one twelfth of the tax due for the taxable year is paid by the due date of each installment for that year.

(b) Amount of underpayment. — For purposes of subsection (a) of this section, the amount of the underpayment shall be the excess of the amount that should have been paid by the due date of the required installment payment over the amount taxpayer remitted by the due date of the required installment payment.

(c) Period of underpayment. — The period of underpayment of any installment shall run from the date the installment was required to be paid (due date) to whichever of the following dates is the earlier:

(1) The due date of the annual return following the close of the taxable year for which the installment was due (determined without regard to any extension of time for filing such annual return); or

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be
(d) Waiver in certain cases. — No addition to tax shall be imposed under this section with respect to any underpayment of estimated tax if and to the extent the tax commissioner determines that:

(1) By reason of casualty, disaster or other unusual circumstances the imposition of such addition would be against equity and good conscience; or

(2) The amount of the installment payment remitted was determined using the statutory measure of the particular tax, as received or accrued under taxpayer's method of accounting during the period to which the installment payment relates, and the applicable rate of tax.

(e) Burden of proof. — The tax commissioner shall make his or her determination under subsection (d) of this section based upon relevant facts and circumstances established by the taxpayer through such proof or proofs as the tax commissioner may require.

(f) Short tax years. — This section shall apply to short tax years under rules promulgated by the tax commissioner.

(g) Effective date. — This section shall apply to taxable years ending after the thirtieth day of June, one thousand nine hundred ninety-three.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-3. Imposition of tax, credit.

(a) Imposition of tax. — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use there is hereby imposed an annual minimum severance tax equal to fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use during the taxable year: Provided, That for taxable years ending after the thirty-first day of May, one thousand nine hundred ninety-three, the minimum severance tax imposed on coal produced by the taxpayer for sale,
profit or commercial use during such taxable year shall be seventy-five cents per ton, with such rate increase to apply only to tons of coal produced after the thirty-first day of May, one thousand nine hundred ninety-three.

(b) **Credit against article 13A tax.** — A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on the privilege of producing coal by section three, article thirteen-a of this chapter, but not including the additional severance tax on coal imposed by section six of said article. The amount of credit allowed shall be equal to the liability of the taxpayer for the taxable year for payment of the minimum severance tax on coal imposed by this article: Provided, That the amount of credit allowed by this section shall not exceed the severance tax liability of the taxpayer for the taxable year determined under section three of said article exclusive of the additional tax on coal imposed by section six of said article after application of all credits to which the taxpayer may be entitled except any credit allowed pursuant to chapter five-e of this code, any credit for installment payments of estimated tax paid pursuant to section six of this article during the taxable year and any credit for overpayment of article thirteen-a tax. Notwithstanding anything herein to the contrary, in no event shall the credit allowed under chapter five-e of this code be allowed as a credit against the minimum severance tax imposed by this article.

§11-12B-6. Periodic installment payments of estimated tax.

(a) **General rule.** — The annual tax levied under this article shall be due and payable in monthly installments during the taxable year. Installment payments shall be due and payable on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subsection on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year.
(b) Remittance form. — Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, in the form prescribed by the tax commissioner, sign the same and mail it together with a remittance of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this section on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June.

(c) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he or she 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 prescribed in said subsection.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAXES.

§11-13A-1. Short title; arrangement and classification.

This article may be cited as the "Severance and Business Privilege 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 or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection, subdivision or paragraph of this article.


(a) General rule. — When used in this article, or in the administration of this article, the terms defined in subsection (b), (c) or (d) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used, or by specific definition.

(b) General terms defined. — Definitions in this subsection apply to all persons subject to the taxes imposed by this article.
(1) "Business" includes all activities engaged in, or
causes 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: Provided, That "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.

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

(3) "Delegate" in the phrase "or his delegate", when
used in reference to the tax commissioner, means any
officer or employee of the state tax division of the
department of tax and revenue duly authorized by the
tax commissioner directly, or indirectly by one or
more redelegations of authority, to perform the
function mentioned or described in this article or
regulations promulgated thereunder.

(4) "Fiduciary" means and includes, a guardian,
trustee, executor, administrator, receiver, conservator
or any person acting in any fiduciary capacity for any
person.

(5) "Gross proceeds" means the value, whether in
money or other property, actually proceeding from the
sale or lease of tangible personal property, or from the
rendering of services, without any deduction for the
cost of property sold or leased or expenses of any kind.

(6) "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.
(7) "Partner" includes a member of a syndicate, group, pool, joint venture or other organization which is a "partnership" as defined in this section.

(8) "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. "Partnership" includes a limited liability company which is treated as a partnership for federal income tax purposes.

(9) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or other entity, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(10) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof. "Sale" includes a lease of property, whether the transaction be characterized as a rental, lease, hire, bailment or license to use. "Sale" also includes rendering services for a consideration, whether direct or indirect.

(11) "Service" includes all activities engaged in by a person for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property: Provided, That "service" does not include: (A) Services rendered by an employee to his or her employer under a contract of employment; (B) contracting; or (C) severing or processing natural resources.

(12) "Tax" means any tax imposed by this article and, for purposes of administration and collection of such tax, it includes any interest, additions to tax or penalties imposed with respect thereto under article ten of this chapter.
(13) "Tax commissioner" or "commissioner" means the tax commissioner of the state of West Virginia, or his or her delegate.

(14) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which a tax liability is computed under this article. 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.

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

(16) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(17) "This state" means the state of West Virginia.

(18) "Withholding agent" means any person required by law to deduct and withhold any tax imposed by this article or under regulations promulgated by the tax commissioner.

(c) Specific definitions for producers of natural resources.—

(1) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by Section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(3) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold.

(4) "Gross value" in the case of natural resources means the market value of the natural resource
product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

(B) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and sale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of
processed natural resources of similar grade and quality reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the amount of any federal energy tax imposed upon the taxpayer after the first day of June, one thousand nine hundred ninety-three, but shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(H) For limestone or sandstone quarried or mined, gross value is the value of such stone immediately upon severance from the earth.

(5) "Mining" includes not merely the extraction of ores or minerals from the ground but also those treatment processes necessary or incidental thereto.

(6) "Natural resources" means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state, and includes standing timber.

(7) "Processed" or "processing" as applied to:

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(8) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural
resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(9) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from earth: Provided, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(10) "Stock" includes shares in an association, joint-stock company or corporation.

(11) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource immediately after its severance or has an economic interest therein is the taxpayer.

(d) Specific definitions for persons providing health care items or services. —

(1) "Behavioral health services" means health care
related services provided by a behavioral health center
as defined in section one, article two-a, chapter
twenty-seven of this code or section one, article nine
of said chapter.

(2) "Community care services" means home and
community care services furnished by a provider
pursuant to an individual plan of care, which also
includes senior citizens groups that provide such
services, but does not include services of home health
agencies.

§11-13A-3. Imposition of tax on privilege of severing coal,
limestone or sandstone, or furnishing certain
health care services; effective dates therefor.

(a) Imposition of tax. — Upon every person exercis-
ing the privilege of engaging or continuing within this
state in the business of severing, extracting, reducing
to possession and producing for sale, profit or commer-
cial use coal, limestone or sandstone, or in the business
of furnishing certain health care services, there is
hereby levied and shall be collected from every person
exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in
subsection (a) of this section shall be five percent of
the gross value of the natural resource produced or
the health care service provided, as shown by the
gross income derived from the sale or furnishing
thereof by the producer or the provider of the health
care service, except as otherwise provided in this
article. In the case of coal, this five percent rate of tax
includes the thirty-five one hundredths of one percent
additional severance tax on coal imposed by the state
for the benefit of counties and municipalities as
provided in section six of this article.

(c) "Certain health care services" defined. — For
purposes of this section, the term "certain health care
services" means, and is limited to, behavioral health
services and community care services.

(d) Tax in addition to other taxes. — The tax
imposed by this section, shall apply to all persons
27 severing or processing (or both severing and processing) in this state natural resources enumerated in subsection (a) of this section, and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section, and shall be in addition to all other taxes imposed by law.

(e) Effective date. — This section, as amended in the year one thousand nine hundred ninety-three, shall apply to gross proceeds derived after the thirty-first day of May of such year. The language of this section, as in effect on the first day of January of such year, shall apply to gross proceeds derived prior to the first day of June of such year and, with respect to such gross proceeds, shall be fully and completely preserved.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceed derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d) Effective date. — This section, as enacted in the year one thousand nine hundred ninety-three, shall apply to gross proceeds derived after the thirty-first day of May of such year. The language of section three of this article, as in effect on the first day of January of such year, shall apply to gross proceeds derived prior to the first day of June of such year and, with
§11-13A-3b. Imposition of tax on privilege of severing timber.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be three and twenty-two hundredth percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing timber in this state, and shall be in addition to all other taxes imposed by law.

(d) Effective date. — This section, as amended in the year one thousand nine hundred ninety-three, shall apply to gross proceeds derived after the thirty-first day of May of such year. The language of section three of this article, as in effect on the first day of January of such year, shall apply to gross proceeds derived prior to the first day of June of such year and, with respect to such gross income, shall be fully and completely preserved.

§11-13A-3c. Imposition of tax on privilege of severing other natural resources.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any other natural resource product or product not taxed under section three, three-a, three-b or four of this article, there is hereby levied and shall be collected from every person exercising this privilege and annual
(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be four percent of the gross value of the natural resource produced, as shown by the gross proceeds derived from the sale thereof by producer, except as otherwise provided in this article: Provided, That beginning the first day of July, one thousand nine hundred ninety-three, the tax imposed by this section shall be levied and collected at the rate of four and one-half percent, and beginning the first day of July, one thousand nine hundred ninety-four, the tax imposed by this section shall be levied and collected at the rate of five percent.

(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing other natural resources in this state, and shall be in addition to all other taxes imposed by law.

(d) Effective date. — This section, as amended in the year one thousand nine hundred ninety-three, shall apply to gross proceeds derived after the thirty-first day of May of such year. The language of section three of this article, as in effect on the first day of January of such year, shall apply to gross proceeds derived prior to the first day of June of such year and, with respect to such gross proceeds shall be fully and completely preserved.


(a) General rule. — For purposes of the taxes imposed by this article, a taxpayer's taxable year shall be the same as the 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 provide a copy of the authorization for such change from the
Internal Revenue Service, with taxpayer's annual return for the taxable year filed under this article.

(c) **Methods of accounting same as federal.** —

(1) **Same as federal.** — A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used, unless the tax commissioner, in writing, consents to the use of another method. Accrual basis taxpayers may deduct bad debts only in the year to which they relate, and accrual basis health care providers may not deduct bad debts attributable to services rendered before the first day of June, one thousand nine hundred ninety-three.

(2) **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.

(d) **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.

§11-13A-8. **Time for filing annual returns and other documents.**

On or before the expiration of one month after the end of the taxable year, every taxpayer subject to a tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and computing the amount of taxes due under this
article for the taxable year. 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.

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article.

(a) General rule. — Taxes levied under section three-a, three-b or three-c of this article shall be due and payable in periodic installments as follows:

(1) If a person's annual tax liability under this article is reasonably expected to be fifty dollars or less per month, no installment payments of tax are required under this section during that taxable year.

(2) Tax of more than one thousand dollars per month. — For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subdivision on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June, beginning the fifteenth day of June, one thousand nine hundred eighty-eight:

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June, beginning the fifteenth day of June, one thousand nine hundred eighty-eight.
(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for such year.

(3) **Tax of one thousand dollars per month or less.** — For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year, and one fourth of any annual exemption allowed for such year.

(b) **Exception.** — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in said subsection.

§11-13A-9a. **Periodic installment payments of tax imposed by section three of this article.**

(a) **General rule.** — Taxes levied under section three of this article shall be due and payable in periodic installments as follows:

(1) If a person's annual liability under this article can reasonably be expected to be fifty dollars or less per month, no installment payments of tax are required under this section during that taxable year.
(2) If a person's annual tax liability under section three of this article can reasonably be expected to exceed fifty dollars per month, the tax imposed by said section shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June, beginning the fifteenth day of June, one thousand nine hundred eighty-eight.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year and one twelfth of any annual exemption allowed for such year.

(b) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in said subsection.

§11-13A-10. Paying tax; annual tax credit.

Every taxpayer subject to any tax imposed under this article shall be allowed one annual credit of five hundred dollars against the taxes due under this article, to be applied at the rate of forty-one dollars and sixty-seven cents per month for each month the taxpayer was engaged in business in this state during
the taxable year exercising a privilege taxable under this article. Persons providing health care items or services who become subject to the tax imposed by section three of this article beginning the first day of June, one thousand nine hundred ninety-three, shall be allowed a proportional credit under this section based on the number of months in their tax year that begin on or after the first day of June, one thousand nine hundred ninety-three.


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


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

§11-13A-20a. Dedication of tax.

(a) The amount of taxes collected under this article from providers of health care items or services, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the special revenue fund created in the state treasurer’s office and known as the medicaid state share fund. Said fund shall have separate accounting for those health care providers as set forth in articles four-b and four-c, chapter nine of this code.

(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 taxes collected from providers of health care items or services are authorized except in accordance with appropriations by the Legislature.

(c) The amount of taxes collected under this article from all other persons, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the general revenue fund.

§11-13A-25. Effective date.

Amendments to this article made by this act of the Legislature shall take effect the first day of June, one thousand nine hundred ninety-three.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.

§11-26-20. Transition rules; penalties; effective date.

(a) The tax imposed by this article shall not apply to medicaid reimbursement payments received by health care providers after the thirty-first day of May, one thousand nine hundred ninety-three, as amended.

(b) All persons subject to the tax imposed by this article prior to the first day of June, one thousand nine hundred ninety-three, shall make and file a final return with the tax commissioner, on or before the fifteenth day of June, one thousand nine hundred ninety-three, reporting such information as the tax commissioner may require. This return shall be in lieu of the return otherwise due under this article on the fifteenth day of June, one thousand nine hundred ninety-three. With this return, the provider shall remit the balance of tax due under this article with respect to medicaid services rendered before the said first day of June.

(c) For purposes of subsection (b) of this section, and notwithstanding any provision of this article to the contrary, the balance of tax due under this article shall be the sum of the following components: (1) The tax due on the state share of medicaid reimbursement
payments received by the provider before the said first day of June and upon which tax was not previously paid by the provider; and (2) the tax due on the state share of medicaid reimbursement payments for services rendered before the said first day of June that will be received on or after that date either because the charges for such service were not being billed to the department of health and human resources before the said first day of June, or the bill for such services was not paid by that department before the said first day of June. Providers who keep their records on a cash basis for federal income tax purposes and who are required by this subsection to pay tax on medicaid reimbursement payments they did not receive before the said first day of June, may deduct the amount of such reimbursement payments, when they are actually received, when determining their tax liability under article thirteen-a or twenty-seven of this chapter after said first day of June.

(d) Any medicaid tax owed to the tax commissioner which is not remitted by the fifteenth day of June, one thousand nine hundred ninety-three, becomes delinquent as of the sixteenth day of June, one thousand nine hundred ninety-three, notwithstanding any provision of this article or article ten of this chapter to the contrary.

(e) Any person required to pay medicaid tax under this article who fails to pay the amount due by the twentieth day of June, one thousand nine hundred ninety-three, shall be subject to a civil penalty equal to two hundred percent of the delinquent medicaid tax owed by such person. Such penalty shall be assessed and collected as provided in article ten of this chapter. The amount of penalty collected shall be deposited into the state share fund established in the treasurer's office.

(f) The provisions of this section shall take effect on the first day of June, one thousand nine hundred ninety-three.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.
§11-27-1. 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 of health care provid-
6 ers rendering medicaid services is a barrier to indigent
7 persons obtaining access to health care services.

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

12 (d) While participation by a state in the medicaid
13 program created by Title XIX of the Social Security
14 Act is voluntary, the reality is that states, and partic-
15 ularly this state, have no choice but to participate. The
16 alternative is to deprive indigent citizens and particu-
17 larly the children of indigent families of basic medical
18 services.

19 (e) The federal government sets the criteria for
20 eligibility to obtain medicaid services. The federal
21 government also requires that certain services be
22 provided as part of a state’s medicaid program.

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

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

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

1 This article may be cited as the “West Virginia
2 Health Care Provider Tax Act of 1993”. No inference,
3 implication or presumption of legislative construction
4 shall be drawn or made by reason of the location or
5 grouping of any particular section, provision or portion
6 of this article. No legal effect shall be given to any

(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. —

(1) "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: Provided, That "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.

(2) "Broad-based health care related tax" means a broad-based health care related tax as defined in Section 1903 of the Social Security Act.

(3) "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.

(4) "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.

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

(6) "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.

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

(8) "Social Security Act" means the Social Security Act of the United States, as amended by Public Law 102-234, and codified in Title 42, Section 1396b of the United States Code.

(9) "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 ten of this chapter.

(10) "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.

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

(12) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(13) "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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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.(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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 the thirty-first day of May, one thou-
sand nine hundred ninety-three.

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

1 (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: Provided, That a hospital which meets all the requirements of section twenty-one, article twenty-nine-b, chapter sixteen of this code and regulations thereunder may change or amend its schedule of rates to the extent necessary to compensate for the tax in accordance with the following procedures:

(1) The health care cost review authority shall allow a temporary change in a hospital's rates which may be effective immediately upon filing and in advance of review procedures when a hospital files a verified claim that such temporary rate changes are in the public interest, and are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to relieve undue financial hardship. The verified claim shall state the facts supporting the hospital's position, the amount of increase in rates required to alleviate the situation and shall summarize the overall effect of the rate increase. The claim shall be verified by either the chairman of the hospital's governing body or by the chief executive officer of the hospital.

(2) Following receipt of the verified claim for temporary relief, the health care cost review authority shall review the claim through its usual procedures and standards; however, this power of review does not affect the hospital's ability to place the temporary rate increase into effect immediately. The review of the hospital's claim shall be for a permanent rate increase and the health care cost review authority may include such other factual information in the review as may be necessary for a permanent rate increase review. As
a result of its findings from the permanent review, the
health care cost review authority may allow the
temporary rate increase to become permanent, to
deny any increase at all, to allow a lesser increase, or
to allow a greater increase.

(3) When any change affecting an increase in rates
goes into effect before a final order is entered in the
proceedings, for whatever reasons, where it deems it
necessary and practicable, the health care cost review
authority may order the hospital to keep a detailed
and accurate account of all amounts received by
reason of the increase in rates and the purchasers and
third-party payors from whom such amounts were
received. At the conclusion of any hearing, appeal or
other proceeding, the health care cost review author-
ity may order the hospital to refund with interest to
each affected purchaser and/or third-party payor any
part of the increase in rates that may be held to be
excessive or unreasonable. In the event a refund is not
practicable, the hospital shall, under appropriate terms
and conditions determined by the health care cost
review authority, charge over and amortize by means
of a temporary decrease in rates whatever income is
realized from that portion of the increase in rates
which was subsequently held to be excessive or
unreasonable.

(4) The health care cost review authority, upon a
determination that a hospital has overcharged pur-
chasers or charged purchasers at rates not approved
by the health care cost review authority or charged
rates which were subsequently held to be excessive or
unreasonable, may prescribe rebates to purchasers and
third-party payors in effect by the aggregate total of
the overcharge.

(5) The rate adjustment provided for in this section
is limited to a single adjustment during the initial year
of the imposition of the tax provided for in this
section.

(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.

(d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-10. Imposition of tax on providers of intermediate care facility services for the mentally retarded.

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

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 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) "Intermediate care facility services for the mentally retarded" means those services that are intermediate care facility services for the mentally retarded for purposes of Section 1903(w) of the Social Security Act.

Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.

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 the mentally
5 retarded, there is hereby levied and shall be collected
6 from every person rendering such service an annual
7 broad-based health care related tax: Provided, That
8 hospitals which provide nursing facility services may
9 adjust nursing facility rates to the extent necessary to
10 compensate for the tax without first obtaining appro-
11 val from the health care cost review authority: Provid-
12 ed, however, That the rate adjustment is limited to a
13 single adjustment during the initial year of the
14 imposition of the tax which adjustment shall be
15 exempt from prospective review by the health care
16 cost review authority and further which is limited to
17 an amount not to exceed the amount of the tax which
18 is levied against the hospital for the provision of
19 nursing facility services pursuant to this section. The
20 health care cost review authority shall retroactively
21 review the rate increases implemented by the hospi-
22 tals under this section during the regular rate review
23 process. A hospital which fails to meet the criteria
24 established by this section for a rate increase exempt
25 from prospective review shall be subject to the
26 penalties imposed under article twenty-nine-b, chapter
27 sixteen of the code.
28 (b) Rate and measure of tax. — The tax imposed in
29 subsection (a) of this section shall be five and one-half
30 percent of the gross receipts derived by the taxpayer
31 from furnishing nursing facility services in this state,
32 other than services of intermediate care facilities for
33 the mentally retarded.
34 (c) Definitions. —
35 (1) “Gross receipts” means the amount received or
36 receivable, whether in cash or in kind, from patients,
37 third-party payors and others for nursing facility
38 services furnished by the provider, including retroac-
39 tive adjustments under reimbursement agreements
40 with third-party payors, without any deduction for
41 any expenses of any kind: Provided, That accrual basis
42 providers shall be allowed to reduce gross receipts by
43 their bad debts, to the extent the amount of such bad
44 debts was previously included in gross receipts upon
45 which the tax imposed by this section was paid.
(2) "Nursing facility services" means those services that are nursing facility 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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 the thirty-first day of May, one thou-
sand nine hundred ninety-three.

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

1. (a) **Imposition of tax.** — For the privilege of engag-
ing 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.

2. (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.

3. (c) **Definitions.** —

4. (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 previous-
ly included in gross receipts upon which the tax
imposed by this section was paid.

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

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

37  (d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.


1  (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.

7  (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.

12  (c) Definitions. —

13  (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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 those services that are physicians' 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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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
(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 the thirty-first day of May, one thousand nine hundred ninety-three.

§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 the thirty-first day of May, one thousand nine hundred ninety-three.


1 (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.


1 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.


1 (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.


(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

(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 fifty dollars 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 commission-
er, 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 satisfac-
tion 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 negli-
gence, to intentional disregard of rules or regulations,
or to fraud.


1 Tax returns, statements or other documents, or
2 copies thereof, required by this article or by rules shall
3 be filed with the tax commissioner by delivery, in
4 person or by mail, postage prepaid, to the tax commis-
5 sioner's office in Charleston, West Virginia: Provided,
6 That the tax commissioner may, by rule, prescribe the
7 place for filing such returns, statements or other
8 documents, or copies thereof, at one or more other
9 locations.

(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.


(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.


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 of health and human
resources, or any successor agency thereto, may, by
written agreement, provide for the exchange of
information from their respective files, data bases, or
audits of health care providers, which the tax commis-
ioner deems relevant to determining provider com-
pliance 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 informa-
tion under this section.


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.

§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 two hundred thousand dollars 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.


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 contro-
versy in which such judgment shall have been ren-
dered, and the applicability of such provision to other
persons or circumstances shall not be affected thereby.

§11-27-35. Effective date.

1 This act of the Legislature shall take effect upon its
2 passage in the year one thousand nine hundred
3 ninety-three: Provided, That the taxes imposed by this
4 article shall not be levied on gross receipts received or
5 accrued before the first day of June, one thousand
6 nine hundred ninety-three, and shall be levied on
7 gross receipts received or accrued on or after that
date.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9e. Legislative findings; loans for the prompt payment
of medicaid reimbursements; administration
of funds; conditions for repayment; creation
of special account in state treasury.

1 (a) The Legislature hereby finds and declares that
2 there is a large amount of investable funds in the
3 consolidated fund established in subsection (b), section
4 eight of this article; that loans made under commer-
5 cially reasonable terms to promptly reimburse persons
6 who have provided medicaid services to the citizens of
7 this state and to eradicate the back log of accounts
8 payable to providers of medicaid services is in the best
9 interest of this state; and that loans from the consol-
10 idated fund will assist in financing the need to prompt-
11 ly reimburse medicaid services providers at the end of
12 the fiscal year ending the thirtieth day of June, one
13 thousand nine hundred ninety-three, without in any
14 way impairing the solvency or financial soundness of
15 the consolidated fund. The Legislature further specif-
16 ically finds that in no event may any of the funds
17 borrowed pursuant to the provisions of this section be
18 utilized for any purpose other than those specified
19 within this section. This section is enacted in view of
20 these findings.

(b) On or before the thirty-first day of May, one
twenty-nine hundred ninety-three, the state board of investments shall transfer moneys, as a loan, from the consolidated fund to the special sinking fund account created in the state treasury by subsection (d) of this section, in an amount not to exceed thirty million dollars to meet payments for services rendered by medicaid providers prior to the first day of June, one thousand nine hundred ninety-three, and to reduce the backlog in reimbursements that exists in accounts payable related to that time period. On the date the loan is transferred to the special sinking fund created in said subsection, interest shall accrue at the current interest rate of the fund from which the loan originated, plus one fourth of one percent and the current interest rate shall be recalculated daily.

(c) Notwithstanding any provision of any prior enactments of articles four-b and four-c, chapter nine of this code, repayment of moneys transferred, with interest, shall be made to the board of investments not later than the thirtieth day of August, one thousand nine hundred ninety-three, from the proceeds of the tax on the state share of medicaid reimbursement imposed by article twenty-six, chapter eleven of this code and from any civil penalties imposed pursuant to section twenty, article twenty-six, chapter eleven of this code to the full extent necessary to insure repayment of the loan by the due date: Provided, That, immediately following the effective date of this section, funds from the proceeds of the tax on the state share of medicaid reimbursement may first be used for the purpose of maximizing the receipt of federal matching funds during fiscal year one thousand nine hundred ninety-three.

(d) There is hereby created in the state treasury a special account, designated the "Medicaid Prompt Payment Fund", which is a sinking fund for the deposit, withdrawal and repayment of moneys transferred pursuant to this section. Management of such fund shall be a responsibility of the board of investments.

(e) Upon the written request of the governor, the
board of investments shall transfer to the medical
services fund created pursuant to section two, article
four, chapter nine of this code, from the funds avail-
able in the medicaid prompt payment fund, those
funds necessary for the timely payment of medicaid
reimbursements and accounts payable in the medicaid
program for services rendered prior to the first day of
June, one thousand nine hundred ninety-three.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-15a. Hospital services revenue account; health facili-
ties long-range plans.

(a) Subject to the provisions set forth in section two,
article two, chapter twelve of this code, there is
continued in the state treasury a separate account
which shall be designated the "hospital services
revenue account". The secretary of the department of
health and human resources shall deposit promptly
into the account any fees received by a facility owned
and operated by the department of health and human
resources from whatever source including the federal
government, state government or other third-party
payer or personal payment.

(b) A five-year health facilities long-range plan shall
be developed by the secretary and shall be adopted as
regulation in accordance with this chapter and chapter
twenty-nine-a of this code. The health facilities long-
range plan shall be updated and revised at least every
two years.

(c) The secretary is authorized to expend the mon-
ey deposited in the hospital services revenue account
in accordance with federal laws and regulations and
with the laws of this state as is necessary for the
development of the five-year health facilities long-
range plan and subsequent revisions.

The secretary is authorized to expend the moneys
deposited in the hospital services revenue account as
provided for in the health facilities long-range plan at
such times and in such amounts as the secretary
determines to be necessary for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility:

Provided, That all disproportionate share hospital funds received into the account shall be transferred by intergovernmental transfer to the medical services trust fund created in section two-a, article four-a, chapter nine of this code, except for funds appropriated by the Legislature for other purposes within the annual budget bill: Provided, however, That during any fiscal year in which the secretary anticipates spending any money from such account, he or she shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill, his or her recommended capital investments, recommended priorities and estimated costs, as well as requests of appropriations for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility in such amounts as the secretary determines to be necessary for the development of, and as provided for in, the five-year health facilities long-range plan and subsequent revisions.

The secretary shall make an annual report to the Legislature on the status of the health services revenue account, including the previous year's expenditures and projected expenditures for the next year.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state agency.

(a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

(b) The state agency shall cooperate with the health care planning commission in developing rules and regulations for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such
reviews.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of such services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.

(g) No hospital, nursing home or other health care facility shall add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or
skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a and subsection (i), section five of this article may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, no certificate of need shall be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section must incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. No extensions shall be granted beyond the twelve-month period: Provided, however, That a maximum of sixty beds may be approved, as a demonstration project, by the state agency for a unit to provide nursing services to patients with alzheimer's disease if: (1) The unit is located in an existing facility which was formerly owned and operated by the state of West Virginia and is presently owned by a county of the state of West Virginia; (2) the facility has provided health care services, including personal care services, within one year prior to the effective date of this section; (3) the facility demonstrates that awarding the certificate of need and operating the facility will be cost effective for the state; and (4) that any applicable lease, lease-purchase or contract for operating the facility was awarded through a process of competitive bidding consistent with state purchasing practices and procedures: Provided further, That an application for said demonstration project shall be filed with the state agency on or before the twenty-first day of October, one thousand nine hundred ninety-three.

(h) No additional intermediate care facility for the mentally retarded (ICF/MR) beds shall be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County circuit court order of the third day of August,
(i) Notwithstanding the provisions of subsection (g), section five of this article and, further notwithstanding the provisions of subsection (d), section three of this article, an existing acute care hospital may apply to the health care cost review authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are medicare certified only: Provided, however, That any hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement for any beds so converted. In converting beds, the hospital must convert a minimum of one acute care bed into one medicare certified only skilled nursing bed. The health care cost review authority may require a hospital to convert up to and including three acute care beds for each medicare certified only skilled nursing bed. The health care cost review authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (d), section three of this article for which purposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ee), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital must demonstrate a need for the
project.

(4) The hospital must use existing space for the medicare certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.

(5) The hospital must notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(j) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the health care cost review authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan shall not be applicable to projects submitted under this subsection. The health care cost review authority shall adopt rules to implement this subsection which shall include:

(1) A requirement that the one hundred eighty beds are to be distributed on a statewide basis;

(2) There shall be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(3) The unit developed by the retirement life care center shall meet all federal and state licensing certification and operational requirements applicable to nursing homes;

(4) The retirement center must demonstrate a need for the project;

(5) The retirement center must offer personal
care, home health services and other lower levels of care to its residents; and

(6) The retirement center must demonstrate both short and long-term financial feasibility.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(k) The provisions of this article are severable and if any provision, section or part thereby shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the ___ day of June, 1993.

Governor