WEST VIRGINIA LEGISLATURE
Regular Session 2004

ENROLLED

SENATE BILL NO. 719

(By Senator HERRICK, et al)

PASSED March 13, 2004

In Effect 90 Days From Passage
ENROLLED

Senate Bill No. 719

(By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Dempsey, Boley, Minear, Guills and Sprouse)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §11-27-11 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-27-37, all relating to increasing the health care provider tax imposed on gross receipts of providers of nursing facility services and establishing a contingent provider tax increase if certain conditions occur; specifying condition precedent to tax increase; study panel, and setting forth effective date.

Be it enacted by the Legislature of West Virginia:

That §11-27-11 of the code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto a new section, designated §11-27-37, all to read as follows:

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

(a) Imposition of tax. – For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care facilities for 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: Provided, That hospitals which provide nursing facility services may adjust nursing facility rates to the extent necessary to compensate for the tax without first obtaining approval from the health care authority: Provided, however, That the rate adjustment is limited to a single adjustment during the initial year of the imposition of the tax which adjustment shall be exempt from prospective review by the health care authority and further which is limited to an amount not to exceed the amount of the tax which is levied against the hospital for the provision of nursing facility services pursuant to this section. The health care authority shall retroactively review the rate increases implemented by the hospitals under this section during the regular rate review process. A hospital which fails to meet the criteria established by this section for a rate increase exempt from prospective review shall be subject to the penalties imposed under article twenty-nine-b, chapter sixteen of the code.

(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 nursing facility services in this state, other than services of intermediate care facilities for the mentally retarded. This rate shall be increased to five and ninety-five one hundredths percent of the gross receipts received or receivable by providers of nursing facility services after the thirtieth day of June, two thousand four.

(c) Definitions. –
(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their 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) "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.

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

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

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

(2) The rate of the tax imposed by section nine of this article on providers of inpatient hospital services shall be three and thirty-eight hundredths percent of the gross receipts received or receivable by providers on and after the first day of the calendar month as provided in subsection (b) of this section;
Enr. S. B. No. 719] 4

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

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

27 (b) Effective date. – This section shall take effect as
28 provided in article six, section thirty of the constitution of
29 this state: Provided, That this section does not apply to
30 any taxpayer unless and until all of the following have
31 occurred: (1) The governor makes a determination that
32 both estimated general revenue fund collections and the
33 funds available to fund this state’s Medicaid program as
34 set forth in the annual budget bill enacted by the Legisla-
35 ture will both be less in the next fiscal year than those
36 funds are estimated to be in the current fiscal year, with
37 this decrease being a result of changes, or anticipated
38 changes, in the Medicaid program at the federal level or a
39 result of federal administrative actions with respect to this
40 state’s Medicaid program; (2) the governor notifies the
41 president of the Senate and the speaker of the House of
42 Delegates of this determination; (3) the governor issues an
43 executive order convening a panel to study and examine
44 possible alternative means of addressing and resolving the
45 anticipated Medicaid program budget shortfall, which
46 panel shall include, but may not be limited to, one or more
47 representatives of each group of providers upon which the
48 provider tax increases contemplated by this section may
49 be imposed; (4) this panel is afforded not less than seventy-
50 five days in which to conduct its study and provide a
51 report and recommendations to the governor, the president
of the Senate and the speaker of the House of Delegates;
and (5) the Legislature adopts a resolution authorizing
imposition of the rate increases described in this section.
If, and only if, no other solution than the tax increase set
forth herein is implemented by either administrative or
legislative action in response to the report and recommenda-
tions of the study panel to the anticipated Medicaid
budget shortfall, and upon adoption of a resolution of the
Legislature, the provisions of this section shall become
effective on the date specified by the Legislature in the
resolution.
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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............. approved this the Day of ..........April.............., 2004.

Governor
PRESENTED TO THE
GOVERNOR
DATE 3-31-01
TIME 10:45 AM