WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

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FOR
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FOR

Senate Bill No. 492

(Senators Kessler (Acting President), Stollings, McCabe, Foster, Hall, Jenkins, Prezioso, Unger, Plymale, Wells, Klempa, Yost and Minard, original sponsors)

(Passed March 10, 2011; to take effect July 1, 2011.)
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-27-38, relating to health care provider taxes; maximizing federal funding for the state Medicaid program; increasing the health care provider tax imposed on gross receipts of providers of certain eligible acute care hospitals contingent upon federal approval of a Medicaid state plan amendment; defining terms; providing for the collection and administration of the increased health care provider tax on certain eligible acute care hospitals; and providing effective date and expiration date.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-27-38, to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

(a) In addition to the rate of the tax imposed by sections nine and fifteen of this article on providers of inpatient and outpatient hospital services, there shall be imposed on certain eligible acute care hospitals an additional tax of eighty-eight one hundredths of one percent on the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a Medicaid upper payment limit program. For purposes of this section, the term "eligible acute care hospital" means any inpatient or outpatient hospital conducting business in this state that is not: (1) A state owned or designated facility; (2) a nonstate, but government owned facility such as a county or city hospital; (3) a critical access hospital, designated as a critical access hospital after meeting all federal eligibility criteria; (4) a licensed free-standing psychiatric or medical rehabilitation hospital; or (5) a licensed long-term acute care hospital.

(b) The provisions of this section are intended to maximize federal funding for the purpose of implementing a hospital Medicaid upper payment limit program as described in this section. The taxes imposed by this section may not be imposed or collected until all of the following have occurred:

(1) A state plan amendment is developed by the bureau of medical services, as authorized by the Secretary of the Department of Health and Human Resources; (2) the state plan amendment is reviewed by the Medical Fund Services Advisory Council; (3) a comment period of not less than thirty days for public comment on the state plan amendment shall have passed; and (4) the state plan amendment is approved by the Centers for Medicare and Medicaid Ser-
The state plan amendment shall include all of the following: (1) The provisions of the proposed upper payment limit program or programs; (2) a state maintenance of effort to maintain adequate Medicaid funding; and (3) a provision that any other state Medicaid program will not negatively impact the hospital upper payment limit payments. The taxes imposed and collected may be imposed and collected beginning on the earliest date permissible under applicable federal law under the upper payment limit program, as determined by the West Virginia Secretary of Health and Human Resources.

(c) There is hereby created a special revenue account in the State Treasury, designated the “Medicaid State Share Fund”. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under 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 and shall not revert to general revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section, in an account to be designated as the “Eligible Acute Care Provider Enhancement Account.” The amounts collected shall be deposited, within fifteen days after receipt by the tax commissioner, into the Eligible Acute Care Provider Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement Account within the Medicaid State Share Fund may be used only to support the hospital Medicaid upper payment limit program described in this section.

(d) The imposition and collection of taxes imposed by this section shall be suspended immediately upon the occurrence of any of the following: (1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting towards state Medicaid funds available to be used to determine the federal financial participation; (2) the effective date of any decision, enactment or other
determination by the Legislature or by any court, officer, department, agency of office of state or federal government that has the effect of disqualifying the tax from counting towards state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds, or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and (3) the effective date of an appropriation for any state fiscal year for hospital payments under the state Medicaid program that is less than the amount appropriate for state fiscal year ending June 30, 2011. Any funds remaining in the eligible acute care provider enhancement fund upon the occurrence of any of the events described in this subsection that cannot be used to match eligible federal Medicaid funds, shall be refunded to eligible acute care providers in proportion to the amount paid by each eligible acute care provider into the fund.

(e) The provisions of this section are retroactive and shall become effective on the first day of the quarter in which the state plan amendment is submitted.

(f) The tax imposed by this section shall expire on and after June 30, 2013, unless otherwise extended by the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Vice Chairman House Committee

Originated in the Senate.

To take effect July 1, 2011.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within bill approved this the 25th Day of April, 2011.

Governor
PRESENTED TO THE GOVERNOR

MARCH 3 2011

Time 10:50 a.m.