WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015

ENROLLED

Senate Bill No. 398
(BY SENATORS FERNS, D. HALL AND STOLLINGS)

[PASSED FEBRUARY 27, 2015; IN EFFECT JULY 1, 2015.]
AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating generally to health care provider taxes; modifying expiration date for tax rate on eligible acute care hospitals; changing tax rate on eligible acute care hospitals; and providing for disbursement of any funds remaining in the Eligible Acute Care Provider Enhancement Account.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

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

1 (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 is imposed on certain eligible acute care hospitals an additional tax of seventy-two 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.

(b) 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.

(c) 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 for 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 Services.
(d) 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 secretary.

(e) There is continued a special revenue account in the State Treasury designated the Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under 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 may 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 only be used as set forth in this section.
(f) The imposition and collection of taxes imposed by this section is suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting toward state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment or other determination by the Legislature or by any court, officer, department, agency of office of state or federal government that has the effect of disqualifying the tax from counting toward state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) 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. Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement Account as of June 30, 2015, shall be transferred to the West Virginia Medical Services Fund. This transfer shall occur no later than September 30, 2015. These funds shall be used during state fiscal year 2016 at the discretion of the Bureau for Medical Services. The remaining fifty percent of any funds in the Eligible Acute Care Provider Enhancement Account as of June 30, 2015, shall remain in the Eligible Acute Care Provider Enhancement Account and shall be used in state fiscal year 2016. If the program expires on June 30, 2016, as set forth in subsection (h) of this section, fifty percent of any funds remaining as of June 30, 2017, shall be transferred on that date to the West Virginia Medical Services
Fund. This transfer shall occur only after state fiscal year 2016 fourth quarter tax collections and program payments. The remaining fifty percent of the funds shall be distributed to the eligible acute care providers no later than June 30, 2017. The distribution of funds to the eligible acute care providers shall be made in the same proportion as the taxes paid by the eligible acute care providers into the Eligible Acute Care Provider Enhancement Fund during state fiscal year 2016.

(g) The changes to the tax rate in this section enacted in the 2015 Regular Session are effective July 1, 2015, upon the approval of the state plan amendment.

(h) The tax imposed by this section expires on and after June 30, 2016, unless otherwise extended by the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mark R. Magruder
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect July 1, 2015.

Mark D. Baker
Clerk of the Senate

Clerk of the House of Delegates

Milton D. Duvall
President of the Senate

Paul S. Zirkin
Speaker of the House of Delegates

The within ............ approved ............ this the 56th Day of ............, 2015.

Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

MAR 03 2015

Time 3:00 pm