

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 492**

4 (By Senators Kessler (Acting President), Stollings, McCabe,  
5 Foster, Hall, Jenkins, Prezioso, Unger, Plymale, Wells, Klempa,  
6 Yost and Minard)

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8 [Originating in the Committee on Health and Human Resources;  
9 reported February 18, 2011.]  
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12  
13 A BILL to amend the Code of West Virginia, 1931, as amended, by  
14 adding thereto a new section, designated §11-27-38, relating  
15 to health care provider taxes; maximizing federal funding for  
16 the state Medicaid program; increasing the health care  
17 provider tax imposed on gross receipts of providers of certain  
18 eligible acute care hospitals contingent upon federal approval  
19 of a Medicaid state plan amendment; providing for the  
20 collection and administration of the increased health care  
21 provider tax on certain eligible acute care hospitals; and  
22 providing effective date and expiration date.

23 *Be it enacted by the Legislature of West Virginia:*

24 That the Code of West Virginia, 1931, as amended, be amended  
25 by adding thereto a new section, designated §11-27-38, to read as

1 follows:

2 **ARTICLE 27. HEALTH CARE PROVIDER TAXES.**

3 **§11-27-38. Contingent increase of tax rate on certain eligible**  
4 **acute care hospitals.**

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

21 (b) The provisions of this section are intended to maximize  
22 federal funding for the purpose of implementing a hospital Medicaid  
23 upper payment limit program as described in this section. The  
24 taxes imposed by this section may not be imposed or collected until  
25 all of the following have occurred: (1) A state plan amendment is

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

17 (c) The amount of taxes collected under this section,  
18 including any interest, additions to tax and penalties collected  
19 under article ten of this chapter, less the amount of allowable  
20 refunds, the amount of any interest payable with respect to such  
21 refunds, and costs of administration and collection, shall be  
22 deposited into the special revenue fund created in the state  
23 Treasurer's office and known as the Medicaid State Share Fund.  
24 The Tax Commissioner shall establish and maintain a separate  
25 account and accounting for the funds collected under this section,

1 in an account to be designated as the "Eligible Acute Care Provider  
2 Enhancement Account." The amounts collected shall be deposited,  
3 within fifteen days after receipt by the tax commissioner, into the  
4 Eligible Acute Care Provider Enhancement Account. Disbursements  
5 from the Eligible Acute Care Provider Enhancement Account within  
6 the Medicaid State Share Fund may be used only to support the  
7 hospital Medicaid upper payment limit program described in this  
8 section.

9 (d) The imposition and collection of taxes imposed by this  
10 section shall be suspended immediately upon the occurrence of any  
11 of the following: (1) The effective date of any action by  
12 Congress that would disqualify the taxes imposed by this section  
13 from counting towards state Medicaid funds available to be used  
14 to determine the federal financial participation; (2) the  
15 effective date of any decision, enactment or other determination  
16 by the Legislature or by any court, officer, department, agency  
17 of office of state or federal government that has the effect of  
18 disqualifying the tax from counting towards state Medicaid funds  
19 available to be used to determine federal financial participation  
20 for Medicaid matching funds, or creating for any reason a failure  
21 of the state to use the assessment of the Medicaid program as  
22 described in this section; and (3) the effective date of an  
23 appropriation for any state fiscal year for hospital payments  
24 under the state Medicaid program that is less than the amount  
25 appropriate for state fiscal year ending June 30, 2011. Any

1 funds remaining in the eligible acute care provider enhancement  
2 fund upon the occurrence of any of the events described in this  
3 subsection that cannot be used to match eligible federal Medicaid  
4 funds, shall be refunded to eligible acute care providers in  
5 proportion to the amount paid by each eligible acute care  
6 provider into the fund.

7 (e) The provisions of this section are retroactive and apply  
8 on and after January 1, 2011.

9 (f) The tax imposed by this section shall expire on and  
10 after June 30, 2013, unless otherwise extended by the  
11 Legislature.

NOTE: The purpose of this bill is to maximize federal funding for Medicaid by establishing a hospital Medicaid upper payment level program for a two-year plus period. The bill increases the health care provider tax imposed on gross receipts of providers of certain eligible acute care hospitals. Imposition and collection of taxes under the bill is contingent upon federal approval of a state plan amendment establishing an appropriate hospital Medicaid upper payment level program that meets the requirements set forth in the bill. Imposition and collection of the taxes terminates prior to the end of the two-year term of the program upon the occurrence of certain events.

This section is new, therefore, strike-throughs and underscoring have been omitted.