

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 492**

7 (SENATORS KESSLER (ACTING PRESIDENT), STOLLINGS, McCABE, FOSTER, HALL,
8 JENKINS, PREZIOSO, UNGER, PLYMALE, WELLS, KLEMPA, YOST AND MINARD, *original*
9 *sponsors*)

10 _____
11 [Originating in the Committee on Finance;
12 reported February 28, 2011.]

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16 AN ACT to amend the Code of West Virginia, 1931, as amended, by
17 adding thereto a new section, designated §11-27-38, relating
18 to health care provider taxes; maximizing federal funding for
19 the state Medicaid program; increasing the health care
20 provider tax imposed on gross receipts of providers of certain
21 eligible acute care hospitals contingent upon federal approval
22 of a Medicaid state plan amendment; defining terms; providing
23 for the collection and administration of the increased health
24 care provider tax on certain eligible acute care hospitals;
25 and providing effective date and expiration date.

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

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new section, designated §11-27-38, to read as
4 follows:

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

6 **§11-27-38. Contingent increase of tax rate on certain eligible**
7 **acute care hospitals.**

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

24 (b) The provisions of this section are intended to maximize
25 federal funding for the purpose of implementing a hospital Medicaid

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

20 (c) There is hereby created a special revenue account in the
21 State Treasury, designated the "Medicaid State Share Fund". The
22 amount of taxes collected under this section, including any
23 interest, additions to tax and penalties collected under article
24 ten of this chapter, less the amount of allowable refunds, the
25 amount of any interest payable with respect to such refunds, and

1 costs of administration and collection, shall be deposited into the
2 special revenue fund and shall not revert to general revenue. The
3 Tax Commissioner shall establish and maintain a separate account
4 and accounting for the funds collected under this section, in an
5 account to be designated as the "Eligible Acute Care Provider
6 Enhancement Account." The amounts collected shall be deposited,
7 within fifteen days after receipt by the tax commissioner, into the
8 Eligible Acute Care Provider Enhancement Account. Disbursements
9 from the Eligible Acute Care Provider Enhancement Account within
10 the Medicaid State Share Fund may be used only to support the
11 hospital Medicaid upper payment limit program described in this
12 section.

13 (d) The imposition and collection of taxes imposed by this
14 section shall be suspended immediately upon the occurrence of any
15 of the following: (1) The effective date of any action by Congress
16 that would disqualify the taxes imposed by this section from
17 counting towards state Medicaid funds available to be used to
18 determine the federal financial participation; (2) the effective
19 date of any decision, enactment or other determination by the
20 Legislature or by any court, officer, department, agency or office
21 of state or federal government that has the effect of disqualifying
22 the tax from counting towards state Medicaid funds available to be
23 used to determine federal financial participation for Medicaid
24 matching funds, or creating for any reason a failure of the state
25 to use the assessment of the Medicaid program as described in this

1 section; and (3) the effective date of an appropriation for any
2 state fiscal year for hospital payments under the state Medicaid
3 program that is less than the amount appropriate for state fiscal
4 year ending June 30, 2011. Any funds remaining in the eligible
5 acute care provider enhancement fund upon the occurrence of any of
6 the events described in this subsection that cannot be used to
7 match eligible federal Medicaid funds, shall be refunded to
8 eligible acute care providers in proportion to the amount paid by
9 each eligible acute care provider into the fund.

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

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