

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 492**

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

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

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

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

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

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

5 **§11-27-38. Contingent increase of tax rate on certain eligible**  
6 **acute care hospitals.**

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

23           (b) The provisions of this section are intended to maximize  
24 federal funding for the purpose of implementing a hospital Medicaid  
25 upper payment limit program as described in this section. The

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

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

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

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

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

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

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

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(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.)