

Senate Bill No. 492

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

[Introduced February 11, 2011; referred to the Committee on
Health and Human Resources; and then to the Committee on
Finance.]

A BILL 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; providing for the
collection and administration of the increased health care
provider tax on certain eligible acute care hospitals; and
providing an 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

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

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

18 (c) All taxes, additions to tax, penalties and interest
19 collected in accordance with this section shall be deposited into
20 a dedicated eligible acute care provider enhancement fund, to be
21 administered in accordance with the provisions of section five,
22 article twenty-six of this chapter. Disbursements from the
23 eligible acute care provider enhancement fund may be used only to
24 support the hospital Medicaid upper payment limit program described

1 in this section.

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

24 (e) The provisions of this section are retroactive and apply

1 on and after January 1, 2011.

2 (f) This section shall expire on and after June 30, 2013,
3 unless otherwise extended by the 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.