

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 195**

4 (By Senators Stollings, Jenkins, Kirkendoll, Laird, Miller,
5 Palumbo, Plymale, Prezioso, Tucker, Yost, Boley, M. Hall and
6 Beach)

7 _____
8 [Originating in the Committee on Health and Human Resources;
9 reported March 15, 2013.]
10 _____

11
12 A BILL to amend and reenact §11-27-38 of the Code of West Virginia,
13 1931, as amended, relating generally to health care provider
14 taxes; modifying the expiration date for tax rate on eligible
15 acute care hospitals; changing the tax rate on eligible acute
16 care hospitals; and providing for disbursement of any funds
17 remaining in the Eligible Acute Care Provider Enhancement
18 Account.

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

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

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

23 **§11-27-38. Contingent increase of tax rate on certain eligible**
24 **acute care hospitals.**

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

17 (b) ~~The provisions of this section are intended to maximize~~
18 ~~federal funding for the purpose of implementing a hospital Medicaid~~
19 ~~upper payment limit program as described in this section.~~ The
20 taxes imposed by this section may not be imposed or collected until
21 all of the following have occurred: (1) A state plan amendment is
22 developed by the Bureau of Medical Services, as authorized by the
23 Secretary of the Department of Health and Human Resources; (2) the
24 state plan amendment is reviewed by the Medical Fund Services

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

14 (c) There is hereby created a special revenue account in the
15 State Treasury, designated the Medicaid State Share Fund. The
16 amount of taxes collected under this section, including any
17 interest, additions to tax and penalties collected under article
18 ten of this chapter, less the amount of allowable refunds, the
19 amount of any interest payable with respect to such refunds, and
20 costs of administration and collection, shall be deposited into the
21 Special Revenue Fund and shall not revert to general revenue. The
22 Tax Commissioner shall establish and maintain a separate account
23 and accounting for the funds collected under this section, in an
24 account to be designated as the Eligible Acute Care Provider

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

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

1 ~~acute care provider enhancement fund upon the occurrence of any of~~
2 ~~the events described in this subsection that cannot be used to~~
3 ~~match eligible federal Medicaid funds, shall be refunded to~~
4 ~~eligible acute care providers in proportion to the amount paid by~~
5 ~~each eligible acute care provider into the fund Fifty percent of~~
6 ~~any funds remaining in the Eligible Acute Care Provider Enhancement~~
7 ~~Account as of June 30, 2013, shall be transferred to the West~~
8 ~~Virginia Medical Services Fund. This transfer shall occur no later~~
9 ~~than September 30, 2013. These funds shall be used during state~~
10 ~~fiscal year 2014 at the discretion of the Bureau of Medical~~
11 ~~Services. The remaining fifty percent of any funds in the Eligible~~
12 ~~Acute Care Provider Enhancement Account as of June 30, 2013, shall~~
13 ~~remain in the Eligible Acute Care Provider Enhancement Account, and~~
14 ~~shall be used in state fiscal year 2014. If the program expires on~~
15 ~~June 30, 2014, as set forth in subsection (f), fifty percent of any~~
16 ~~funds remaining as of June 30, 2015, shall be transferred on that~~
17 ~~date to the West Virginia Medical Services Fund. This transfer~~
18 ~~shall occur only after state fiscal year 2014 fourth quarter tax~~
19 ~~collections and program payments. The remaining fifty percent of~~
20 ~~the funds shall be distributed to the eligible acute care providers~~
21 ~~no later than June 30, 2015. The distribution of funds to the~~
22 ~~eligible acute care providers shall be made in the same proportion~~
23 ~~as the taxes paid by the eligible acute care providers into the~~
24 ~~Eligible Acute Care Provider Enhancement Fund during state fiscal~~

1 year 2014.

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

5 (f) The tax imposed by this section shall expire on and after
6 June 30, ~~2013~~ 2014, unless otherwise extended by the Legislature.