

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 195**

5 (SENATORS STOLLINGS, JENKINS, KIRKENDOLL, LAIRD, MILLER, PALUMBO, PLYMALE,
6 PREZIOSO, TUCKER, YOST, BOLEY, M. HALL AND BEACH, *original sponsors*)

7 _____
8 [Passed April 12, 2013; to take effect July 1, 2013.]
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11 AN ACT to amend and reenact §11-27-38 of the Code of West Virginia,
12 1931, as amended, relating generally to health care provider
13 taxes; modifying the expiration date for tax rate on eligible
14 acute care hospitals; changing the tax rate on eligible acute
15 care hospitals; and providing for disbursement of any funds
16 remaining in the Eligible Acute Care Provider Enhancement
17 Account.

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

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

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

22 **§11-27-38. Contingent increase of tax rate on certain eligible**
23 **acute care hospitals.**

24 (a) In addition to the rate of the tax imposed by sections

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

16 (b) The taxes imposed by this section may not be imposed or
17 collected until all of the following have occurred: (1) A state
18 plan amendment is developed by the Bureau of Medical Services, as
19 authorized by the Secretary of the Department of Health and Human
20 Resources; (2) the state plan amendment is reviewed by the Medical
21 Fund Services Advisory Council; (3) a comment period of not less
22 than thirty days for public comment on the state plan amendment
23 shall have passed; and (4) the state plan amendment is approved by
24 the Centers for Medicare and Medicaid Services. The state plan

1 amendment shall include all of the following: (1) The provisions of
2 the proposed upper payment limit program or programs; (2) a state
3 maintenance of effort to maintain adequate Medicaid funding; and
4 (3) a provision that any other state Medicaid program will not
5 negatively impact the hospital upper payment limit payments. The
6 taxes imposed and collected may be imposed and collected beginning
7 on the earliest date permissible under applicable federal law under
8 the upper payment limit program, as determined by the West Virginia
9 Secretary of Health and Human Resources.

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

1 the Medicaid State Share Fund may only be used as set forth in this
2 section.

3 (d) The imposition and collection of taxes imposed by this
4 section shall be suspended immediately upon the occurrence of any
5 of the following: (1) The effective date of any action by Congress
6 that would disqualify the taxes imposed by this section from
7 counting towards state Medicaid funds available to be used to
8 determine the federal financial participation; (2) the effective
9 date of any decision, enactment or other determination by the
10 Legislature or by any court, officer, department, agency of office
11 of state or federal government that has the effect of disqualifying
12 the tax from counting towards state Medicaid funds available to be
13 used to determine federal financial participation for Medicaid
14 matching funds, or creating for any reason a failure of the state
15 to use the assessment of the Medicaid program as described in this
16 section; and (3) the effective date of an appropriation for any
17 state fiscal year for hospital payments under the state Medicaid
18 program that is less than the amount appropriate for state fiscal
19 year ending June 30, 2011. Fifty percent of any funds remaining in
20 the Eligible Acute Care Provider Enhancement Account as of June 30,
21 2013, shall be transferred to the West Virginia Medical Services
22 Fund. This transfer shall occur no later than September 30, 2013.
23 These funds shall be used during state fiscal year 2014 at the
24 discretion of the Bureau of Medical Services. The remaining fifty

1 percent of any funds in the Eligible Acute Care Provider
2 Enhancement Account as of June 30, 2013, shall remain in the
3 Eligible Acute Care Provider Enhancement Account, and shall be used
4 in state fiscal year 2014. If the program expires on June 30,
5 2014, as set forth in subsection (f), fifty percent of any funds
6 remaining as of June 30, 2015, shall be transferred on that date to
7 the West Virginia Medical Services Fund. This transfer shall occur
8 only after state fiscal year 2014 fourth quarter tax collections
9 and program payments. The remaining fifty percent of the funds
10 shall be distributed to the eligible acute care providers no later
11 than June 30, 2015. The distribution of funds to the eligible
12 acute care providers shall be made in the same proportion as the
13 taxes paid by the eligible acute care providers into the Eligible
14 Acute Care Provider Enhancement Fund during state fiscal year 2014.

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

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