

1 **ENROLLED**

2 **Senate Bill No. 456**

3 (BY SENATOR STOLLINGS)

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5 [Passed March 6, 2014; in effect from passage.]
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10 AN ACT to amend and reenact §11-27-38 of the Code of West Virginia,
11 1931, as amended, relating generally to health care provider
12 taxes; modifying the expiration date for tax rate on eligible
13 acute care hospitals; changing the tax rate on eligible acute
14 care hospitals; and providing for disbursement of any funds
15 remaining in the Eligible Acute Care Provider Enhancement
16 Account.

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

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

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

21 **§11-27-38. Contingent increase of tax rate on certain eligible**
22 **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 is imposed on certain eligible
4 acute care hospitals an additional tax of sixty-two one hundredths
5 of one percent on the gross receipts received or receivable by
6 eligible acute care hospitals that provide inpatient or outpatient
7 hospital services in this state through a Medicaid upper payment
8 limit program.

9 (b) For purposes of this section, the term "eligible acute
10 care hospital" means any inpatient or outpatient hospital
11 conducting business in this state that is not:

12 (1) A state-owned or -designated facility;

13 (2) A nonstate, but government-owned facility such as a county
14 or city hospital;

15 (3) A critical access hospital, designated as a critical
16 access hospital after meeting all federal eligibility criteria;

17 (4) A licensed free-standing psychiatric or medical
18 rehabilitation hospital; or

19 (5) A licensed long-term acute care hospital.

20 (c) The taxes imposed by this section may not be imposed or
21 collected until all of the following have occurred:

22 (1) A state plan amendment is developed by the Bureau of

1 Medical Services, as authorized by the Secretary of the Department
2 of Health and Human Resources;

3 (2) The state plan amendment is reviewed by the Medical Fund
4 Services Advisory Council;

5 (3) A comment period of not less than thirty days for public
6 comment on the state plan amendment shall have passed; and

7 (4) The state plan amendment is approved by the Centers for
8 Medicare and Medicaid Services.

9 (d) The state plan amendment shall include all of the
10 following:

11 (1) The provisions of the proposed upper payment limit program
12 or programs;

13 (2) A state maintenance of effort to maintain adequate
14 Medicaid funding; and

15 (3) A provision that any other state Medicaid program will not
16 negatively impact the hospital upper payment limit payments. The
17 taxes imposed and collected may be imposed and collected beginning
18 on the earliest date permissible under applicable federal law under
19 the upper payment limit program, as determined by the secretary.

20 (e) There is continued 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

1 interest, additions to tax and penalties collected under article
2 ten of this chapter, less the amount of allowable refunds, the
3 amount of any interest payable with respect to such refunds and
4 costs of administration and collection, shall be deposited into the
5 Special Revenue Fund and may not revert to general revenue. The
6 Tax Commissioner shall establish and maintain a separate account
7 and accounting for the funds collected under this section in an
8 account to be designated as the Eligible Acute Care Provider
9 Enhancement Account. The amounts collected shall be deposited,
10 within fifteen days after receipt by the Tax Commissioner, into the
11 Eligible Acute Care Provider Enhancement Account. Disbursements
12 from the Eligible Acute Care Provider Enhancement Account within
13 the Medicaid State Share Fund may only be used as set forth in this
14 section.

15 (f) The imposition and collection of taxes imposed by
16 this section is suspended immediately upon the occurrence of any of
17 the following:

18 (1) The effective date of any action by Congress that would
19 disqualify the taxes imposed by this section from counting toward
20 state Medicaid funds available to be used to determine the federal
21 financial participation;

22 (2) The effective date of any decision, enactment or other

1 determination by the Legislature or by any court, officer,
2 department, agency or office of state or federal government that
3 has the effect of disqualifying the tax from counting toward state
4 Medicaid funds available to be used to determine federal financial
5 participation for Medicaid matching funds, or creating for any
6 reason a failure of the state to use the assessment of the Medicaid
7 program as described in this section; and

8 (3) The effective date of an appropriation for any state
9 fiscal year for hospital payments under the state Medicaid program
10 that is less than the amount appropriate for state fiscal year
11 ending June 30, 2011. Fifty percent of any funds remaining in the
12 Eligible Acute Care Provider Enhancement Account as of June 30,
13 2014, shall be transferred to the West Virginia Medical Services
14 Fund. This transfer shall occur no later than September 30, 2014.
15 These funds shall be used during state fiscal year 2015 at the
16 discretion of the Bureau of Medical Services. The remaining fifty
17 percent of any funds in the Eligible Acute Care Provider
18 Enhancement Account as of June 30, 2014, shall remain in the
19 Eligible Acute Care Provider Enhancement Account and shall be used
20 in state fiscal year 2015. If the program expires on June 30,
21 2015, as set forth in subsection (h) of this section, fifty percent
22 of any funds remaining as of June 30, 2016, shall be transferred on

1 that date to the West Virginia Medical Services Fund. This
2 transfer shall occur only after state fiscal year 2015 fourth
3 quarter tax collections and program payments. The remaining fifty
4 percent of the funds shall be distributed to the eligible acute
5 care providers no later than June 30, 2016. The distribution of
6 funds to the eligible acute care providers shall be made in the
7 same proportion as the taxes paid by the eligible acute care
8 providers into the Eligible Acute Care Provider Enhancement Fund
9 during state fiscal year 2015.

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

13 (h) The tax imposed by this section expires on and after June
14 30, 2015, unless otherwise extended by the Legislature.