

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4209

(BY ELLINGTON, SUMMERS, HOUSEHOLDER, ROHRBACH,
STANSBURY, CAMPBELL AND FLEISCHAUER)

[Originating in the Committee on Finance, February 12, 2016.]

1 A BILL to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating
2 generally to health care provider taxes; changing rate of tax imposed on certain eligible
3 acute care hospitals for the fiscal year 2017; specifying purposes for which funds collected
4 may be expended; providing for distribution of remaining funds at the end of fiscal year;
5 and extending expiration date for tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

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

1 (a) In addition to the rate of the tax imposed by sections nine and fifteen of this article on
2 providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute
3 care hospitals an additional tax of ~~seventy-two one hundredths of one percent~~ seventy-four one
4 hundredths of one percent on the gross receipts received or receivable by eligible acute care
5 hospitals that provide inpatient or outpatient hospital services in this state through a Medicaid
6 upper payment limit program.

7 (b) For purposes of this section, the term “eligible acute care hospital” means any inpatient
8 or outpatient hospital conducting business in this state that is not:

- 9 (1) A state-owned or -designated facility;
- 10 (2) A nonstate, but government-owned facility such as a county or city hospital;
- 11 (3) A critical access hospital, designated as a critical access hospital after meeting all
12 federal eligibility criteria;
- 13 (4) A licensed free-standing psychiatric or medical rehabilitation hospital; or
- 14 (5) A licensed long-term acute care hospital.

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

17 (1) A state plan amendment is developed by the Bureau for Medical Services, as
18 authorized by the Secretary of the Department of Health and Human Resources;

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

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

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

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

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

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

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

31 (e) There is continued a special revenue account in the State Treasury designated the
32 Medicaid State Share Fund. The amount of taxes collected under this section, including any
33 interest, additions to tax and penalties collected under article ten of this chapter, less the amount
34 of allowable refunds, the amount of any interest payable with respect to such refunds and costs
35 of administration and collection, shall be deposited into the Special Revenue Fund and may not
36 revert to general revenue. The Tax Commissioner shall establish and maintain a separate account
37 and accounting for the funds collected under this section in an account to be designated as the
38 Eligible Acute Care Provider Enhancement Account. The amounts collected shall be deposited,
39 within fifteen days after receipt by the Tax Commissioner, into the Eligible Acute Care Provider
40 Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement
41 Account within the Medicaid State Share Fund may only be used ~~as~~ to support West Virginia
42 Medicaid and the hospital Medicaid upper payment limit program and as otherwise set forth in
43 this section.

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

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

49 (2) The effective date of any decision, enactment or other determination by the Legislature
50 or by any court, officer, department, agency or office of state or federal government that has the
51 effect of disqualifying the tax from counting toward state Medicaid funds available to be used to
52 determine federal financial participation for Medicaid matching funds or creating for any reason a
53 failure of the state to use the assessment of the Medicaid program as described in this section;
54 and

55 (3) The effective date of an appropriation for any state fiscal year for hospital payments
56 under the state Medicaid program that is less than the amount ~~appropriate~~ appropriated for state
57 fiscal year ending June 30, 2011.

58 (g) Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement
59 Account as of June 30, ~~2015, 2016,~~ shall be transferred to the West Virginia Medical Services
60 Fund. This transfer shall occur no later than September 30, ~~2015 2016.~~ These funds shall be used
61 during state fiscal year ~~2016~~ 2017 at the discretion of the Bureau for Medical Services. The
62 remaining fifty percent of any funds in the Eligible Acute Care Provider Enhancement Account as
63 of June 30, ~~2015, 2016,~~ shall remain in the Eligible Acute Care Provider Enhancement Account
64 and shall be used in state fiscal year ~~2016~~ 2017. If the program expires on June 30, ~~2016, 2017,~~
65 as set forth in subsection ~~(h)~~ (i) of this section, fifty percent of any funds remaining as of June 30,
66 ~~2017, 2018,~~ shall be transferred on that date to the West Virginia Medical Services Fund. This
67 transfer shall occur only after state fiscal year ~~2016~~ 2017 fourth quarter tax collections and
68 program payments. The remaining fifty percent of the funds shall be distributed to the eligible
69 acute care providers no later than June 30, ~~2017~~ 2018. The distribution of funds to the eligible

70 acute care providers shall be made in the same proportion as the taxes paid by the eligible acute
71 care providers into the Eligible Acute Care Provider Enhancement Fund during state fiscal year
72 ~~2016~~ 2017.

73 ~~(g)~~(h)The changes to the tax rate in this section enacted in the ~~2015~~ 2016 Regular Session
74 are effective July 1, ~~2015~~, 2016, upon the approval of the state plan amendment.

75 ~~(h)~~(i)The tax imposed by this section expires on and after June 30, ~~2016~~, 2017, unless
76 otherwise extended by the Legislature.