## WEST VIRGINIA LEGISLATURE

## **2024 REGULAR SESSION**

**Committee Substitute** 

for

## House Bill 5157

By Delegates Rohrbach, Criss, Worrell, Akers,

Chiarelli, Summers, Tully, Dittman, Forsht,

Fehrenbacher, and Hornbuckle

[Originating in the Committee on Finance; Reported

on January 29, 2024]

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A BILL to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating
 to increasing the tax rate imposed on certain hospitals up to the maximum amount allowed
 by the Centers for Medicare and Medicaid Services (CMS).

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

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

(a) In addition to the rate of the tax imposed by §11-27-9 and §11-27-15 of this code on
providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute
care hospitals an additional tax of 75 one-hundredths of one percent on the gross receipts
received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital
services in this state through a directed payment program, or its successor, in accordance with 42
C.F.R. 438.6.

(b) The tax rate shall be increased on eligible hospitals, as needed, to provide non-federal 7 8 share funding as described in subsection (d) of this section, up to the maximum amount allowed by 9 the Centers for Medicare and Medicaid Services (CMS). The CMS allowable tax rate and 10 maximum payment shall be calculated by the West Virginia Bureau for Medical Services (BMS) 11 pursuant to CMS approved methodology. The Tax Commissioner, using the certified calculations 12 from the West Virginia Bureau for Medical Services, shall publish the rates to be applicable by 13 Administrative Notice at least 30 days prior to implementation on the first day of the next calendar 14 quarter following publication. 15 (b) (c) For purposes of this section, prior to approval by CMS of the state plan amendment

16 <u>made pursuant to amendment and reenactment of this section in 2024,</u> the term "eligible acute 17 care hospital" means any inpatient or outpatient hospital conducting business in this state that is 18 not:

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

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20 (2) A critical access hospital, designated as a critical access hospital after meeting all
 21 federal eligibility criteria;

22 (3) A licensed free-standing psychiatric or medical rehabilitation hospital;

23 (4) A licensed long-term acute care hospital; or

24 (5) A facility designated pursuant to §16-5B-14 of this code.

Every 25 For purposes of this section, on and after approval by CMS of the state plan amendment 26 made pursuant to amendment to this section in 2024, the term "eligible hospital" means any 27 inpatient or outpatient hospital conducting business in this state that is not a state-owned or state-

28 designated facility.

29 (c) (d) There is continued a special revenue account in the State Treasury designated the 30 Medicaid State Share Fund. The amount of taxes collected under this section, including any 31 interest, additions to tax and penalties collected under §11-10-1 et seq. of this code, less the 32 amount of allowable refunds, the amount of any interest payable with respect to such refunds, and 33 costs of administration and collection, shall be deposited into the special revenue fund and do not 34 revert to General Revenue. The Tax Commissioner shall establish and maintain a separate 35 account and accounting for the funds collected under this section in an account to be designated 36 as the Eligible Acute Care Provider Enhancement Account Eligible Facility Directed Payment 37 Program Enhancement Account. The amounts collected shall be deposited, within 15 days after 38 receipt by the Tax Commissioner, into the Eligible Acute Care Provider Enhancement Account 39 Eligible Facility Directed Payment Program Enhancement Account. Disbursements from the 40 Eligible Acute Care Provider Enhancement Account Eligible Facility Directed Payment Program 41 Enhancement Account within the Medicaid State Share Fund may only be used to support West 42 Virginia Medicaid and the directed payment program, or its successor, in accordance with 43 42 C.F.R. 438.6 and as otherwise set forth in this section.

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

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46 (1) The effective date of any action by Congress that would disqualify the taxes imposed by
47 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

(3) If the tax payments remitted by the eligible acute care hospitals are not used to
effectuate the provisions of this article.

(e) (f) Any funds remaining in the Eligible Acute Care Provider Enhancement Account Eligible Facility Directed Payment Program Enhancement Account as of June 30, 2021 2024, and on June 30 of each year thereafter, shall be transferred to the West Virginia Medical Services Fund after that June 30 but no later than the next ensuing September 30. These funds shall be used during the state fiscal year in which they were transferred at the discretion of the Bureau for Medical Services.

63 (f) (g) The changes to the tax rate in this section enacted in the regular session of the
64 Legislature, 2021 2024, are effective July 1, 2021 upon approval by CMS of the state plan
65 amendment.

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