

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 486**

BY SENATORS TAKUBO AND STOLLINGS

[Originating in the Committee on Finance; reported on

March 21, 2017]



1 A BILL to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating  
2 to health care provider taxes; making conforming amendments consistent with federal law;  
3 changing the rate of tax on eligible acute care hospitals for fiscal year 2018; specifying  
4 purposes for which funds may be collected; providing for distribution of remaining funds  
5 at the end of fiscal year; providing for an effective date; and extending the expiration date  
6 for the 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-four~~ seventy-five one-hundredths of one percent on  
4 the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or  
5 outpatient hospital services in this state through a ~~Medicaid upper payment limit program~~ directed  
6 payment program, or its successor, in accordance with 42 C. F. R. 438.6.

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)~~ (2) A critical access hospital, designated as a critical access hospital after meeting all  
12 federal eligibility criteria;
- 13 ~~(4)~~ (3) A licensed free-standing psychiatric or medical rehabilitation hospital; or
- 14 ~~(5)~~ (4) 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) (c)~~ 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 to support West Virginia  
42 Medicaid and the ~~hospital Medicaid upper payment limit program~~ directed payment program, or  
43 its successor, in accordance with 42 C. F. R. 438.6 and as otherwise set forth in this section.

44 (f) ~~(d)~~ 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 appropriated for state fiscal year~~  
57 ~~ending June 30, 2014~~ If the tax payments remitted by the eligible acute care hospitals are not  
58 used to effectuate the provisions of this article.

59 ~~(g) (e) Fifty percent of any~~ Any funds remaining in the Eligible Acute Care Provider  
60 Enhancement Account as of June 30, ~~2016~~ 2017, shall be transferred to the West Virginia Medical  
61 Services Fund. This transfer shall occur no later than September 30, ~~2016~~ 2017. These funds  
62 shall be used during state fiscal year ~~2017~~ 2018 at the discretion of the Bureau for Medical  
63 Services. ~~The remaining fifty percent of any funds in the Eligible Acute Care Provider~~  
64 ~~Enhancement Account as of June 30, 2016, shall remain in the Eligible Acute Care Provider~~  
65 ~~Enhancement Account and shall be used in state fiscal year 2017. If the program expires on June~~  
66 ~~30, 2017, as set forth in subsection (i) of this section, fifty percent of any funds remaining as of~~

67 ~~June 30, 2018, shall be transferred on that date to the West Virginia Medical Services Fund. This~~  
68 ~~transfer shall occur only after state fiscal year 2017 fourth quarter tax collections and program~~  
69 ~~payments. The remaining fifty percent of the funds shall be distributed to the eligible acute care~~  
70 ~~providers no later than June 30, 2018. The distribution of funds to the eligible acute care providers~~  
71 ~~shall be made in the same proportion as the taxes paid by the eligible acute care providers into~~  
72 ~~the Eligible Acute Care Provider Enhancement Fund during state fiscal year 2017~~

73       ~~(h)~~ (f) The changes to the tax rate in this section enacted in the ~~2016~~ 2017 regular session  
74 are effective July 1, ~~2016~~ upon the approval of the state plan amendment. 2017.

75       ~~(i)~~ (g) The tax imposed by this section expires on and after June 30, ~~2017~~ 2018, unless  
76 otherwise extended by the Legislature.

NOTE: The purpose of this bill is to change the rate of tax on eligible acute care hospitals for fiscal year 2018; specify purposes for which funds may be collected, provide for distribution of remaining funds at the end of fiscal year and extend the expiration date for the tax.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.