

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2405**

BY DELEGATES ELLINGTON, SUMMERS, PACK, ATKINSON,

HOLLEN, ROHRBACH, PUSHKIN, WALKER AND

FLEISCHAUER

[Passed March 6, 2019; in effect ninety days from

passage.]



1 AN ACT to repeal §11-26-1, §11-26-2, §11-26-3, §11-26-4, §11-26-5, §11-26-6, §11-26-7, §11-  
2 26-8, §11-26-9, §11-26-10, §11-26-11, §11-26-12, §11-26-13, §11-26-14, §11-26-15, §11-  
3 26-16, §11-26-17, §11-26-19 and §11-26-20 of the Code of West Virginia, 1931, as  
4 amended; to amend and reenact §11-27-3 of said code; and to amend said code by adding  
5 thereto a new section, designated §11-27-10a, all relating to imposing a health care  
6 related provider tax on certain health care organizations; repealing an outdated tax;  
7 defining terms; establishing tax rates; requiring federal approval of tax; setting effective  
8 date; and setting a termination date.

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

**ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.**

**§11-26-1. Legislative findings.**

1 [Repealed]

**§11-26-2. Short title; arrangement and classification.**

1 [Repealed]

**§11-26-3. Definitions.**

1 [Repealed]

**§11-26-4. Imposition of excise tax; rate and application of tax.**

1 [Repealed]

**§11-26-5. Administration.**

1 [Repealed]

**§11-26-6. Accounting periods and methods of accounting.**

1 [Repealed]

**§11-26-7. Tax return and payment.**

1 [Repealed]

**§11-26-8. Extension of time for filing returns.**

1 [Repealed]

**§11-26-9. Extension of time for paying tax.**

1           [Repealed]

**§11-26-10. Place for filing returns or other documents.**

1           [Repealed]

**§11-26-11. Signing of returns and other documents.**

1           [Repealed]

**§11-26-12. Records.**

1           [Repealed]

**§11-26-13. Refunds and credits.**

1           [Repealed]

**§11-26-14. Cancellation of Medicaid certification for failure to pay delinquent tax.**

1           [Repealed]

**§11-26-15. General procedure and administration.**

1           [Repealed]

**§11-26-16. Crimes and penalties.**

1           [Repealed]

**§11-26-17. Effective dates.**

1           [Repealed]

**§11-26-19. Severability.**

1           [Repealed]

**§11-26-20. Transition rules; penalties; effective date.**

1           [Repealed]

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

**§11-27-3. Definitions.**

1           (a) *General.* — When used in this article, words defined in subsection (b) of this section  
2 have the meaning ascribed to them in this section, except in those instances where a different

3 meaning is distinctly expressed or the context in which the word is used clearly indicates that a  
4 different meaning is intended.

5 (b) *Definitions.* —

6 “Business” includes all health care activities engaged in, or caused to be engaged in, with  
7 the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not  
8 for profit, or by a governmental entity. “Business” does not include services rendered by an  
9 employee within the scope of his or her contract of employment. Employee services, services by  
10 a partner on behalf of his or her partnership, and services by a member of any other business  
11 entity on behalf of that entity, are the business of the employer, or partnership, or other business  
12 entity, as the case may be, and reportable as such for purposes of the taxes imposed by this  
13 article.

14 “Broad-based health care related tax” means a broad-based health care related tax as  
15 defined in Section 1903 of the Social Security Act, including a health-care related tax for which a  
16 waiver from the broad-based or uniformity requirements has been granted and is in effect by the  
17 federal Centers for Medicare and Medicaid Services pursuant to the provisions of Section 1903  
18 of the Social Security Act and implementing regulations.

19 “Corporation” includes associations, joint-stock companies and insurance companies. It  
20 also includes governmental entities when and to the extent such governmental entities engaged  
21 in activities taxable under this article.

22 “Department” means the West Virginia Department of Health and Human Resources.

23 “Includes” and “including” when used in a definition contained in this article shall not be  
24 deemed to exclude other things otherwise within the meaning of the term being defined.

25 “Partner” includes a member in a “partnership”, as defined in this section.

26 “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated  
27 organization through or by means of which any privilege taxable under this article is exercised,  
28 and which is not within the meaning of this article a trust or estate or corporation. It includes a

29 limited liability company when such company is treated as a partnership for federal income tax  
30 purposes.

31 "Person" means any individual, partnership, association, company, corporation or other  
32 entity engaging in a privilege taxed under this article.

33 "Secretary" means the Secretary of West Virginia Department of Health and Human  
34 Resources.

35 "Social Security Act" means the Social Security Act of the United States, as amended by  
36 Public Law 109-171, and codified in Title 42, Section 1396b of the United States Code.

37 "Tax" means any tax imposed by this article and, for purposes of administration and  
38 collection of such tax, includes any interest, additions to tax or penalties imposed with respect  
39 thereto under article 10 of this chapter.

40 "Taxable year" means the calendar year, or the fiscal year ending during such calendar  
41 year, upon the basis of which the tax imposed by this article is computed. In the case of a return  
42 made under this article, or regulations of the Tax Commissioner, for a fractional part of a year,  
43 the term "taxable year" means the period for which such return is made.

44 "Taxpayer" means any person subject to any tax imposed by this article.

45 "This code" means the Code of West Virginia, 1931, as amended.

46 "This state" means the State of West Virginia.

**§11-27-10a. Imposition of tax on managed care organizations.**

1 (a) *Imposition of tax.* — For the privilege of holding a certificate of authority within this  
2 state to establish or operate a "health maintenance organization" pursuant to §33-25A-4 of this  
3 code (hereinafter "certified HMO"), there is hereby levied and shall be collected from every such  
4 certified HMO an annual broad-based health-care related tax.

5 (b) *Rate and measure of tax.* — The tax imposed by this section shall be based on the  
6 following rates applied to each taxable health plan's total Medicaid member months within tiers I,  
7 II and III, and to non-Medicaid member months within tiers IV and V:

- 8           (1) Tier I — \$17.00 for each Medicaid member month under 250,000;
- 9           (2) Tier II — \$15.00 for each Medicaid member month between 250,000 and 500,000;
- 10          (3) Tier III — \$7.00 for each Medicaid member month greater than 500,000;
- 11          (4) Tier IV — \$0.25 for each non-Medicaid member month under 150,000; and
- 12          (5) Tier V — \$0.10 for each non-Medicaid member month of 150,000 or more.

13          (c) Definitions.

14           (1) “Managed care organization” or “MCO” means a certified HMO that provides health  
15 care services to Medicaid members pursuant to an agreement or contract with the department.

16           (2) “Managed care plan” means an agreement or contract between the secretary and an  
17 MCO under which the MCO agrees to provide health care services to Medicaid members.

18           (3) “Medicaid member” means an individual enrolled in a taxable health plan who is a  
19 Medicaid beneficiary on whose behalf the department directly pays the health plan a capitated  
20 payment.

21           (4) “Medicaid member months” means the number of Medicaid members in a taxable  
22 health plan in each month or part of a month over the course of the tax year.

23           (5) “Non-Medicaid enrollee” means an individual who is an “enrollee”, “subscriber”, or  
24 “member”, as those terms are defined in §33-25A-2(8) of this code, in a taxable health plan who  
25 is not a Medicaid member: *Provided*, That this definition does not include Public Employees  
26 Retirement Agency members or Medicare Advantage members.

27           (6) “Non-Medicaid member months” means the number of non-Medicaid enrollees in a  
28 taxable health plan in each month or part of a month over the course of the tax year, but does not  
29 include persons enrolled in either a health plan issued by the West Virginia Public Employees  
30 Insurance Agency or a plan issued pursuant to the Federal Employees Health Benefits Act of  
31 1959 (Public Law 86-382) to the extent the imposition of the tax under this section is preempted  
32 pursuant to Section 8909(f) of Title 5 of the United States Code.

33           (7) "Taxable health plan" means: (i) An agreement or contract under which a certified HMO  
34     agrees to provide health care services to a non-Medicaid member in accordance with §33-25A-1  
35     *et seq.* of this code and (ii) a managed care plan.

36           (d) *Effective date.* —

37           (i) Subject to an earlier termination pursuant to the terms of paragraph (ii), the tax imposed  
38     by this section shall be effective for three years beginning on the first day of the state fiscal year  
39     following a 30-day period after the secretary has posted notice on the department Internet website  
40     that approval had been received from the federal Centers for Medicare and Medicaid Services  
41     that the tax imposed by this section is a permissible health care related tax in accordance with  
42     Section 433.68 of Title 42 of the Code of Federal Regulations and is therefore eligible for federal  
43     financial participation.

44           (ii) The tax imposed by this section shall be administered in accordance with the provisions  
45     of this article and the tax administration and procedures act in §11-10-1 *et seq.*: *Provided*, That  
46     the tax imposed by this section shall be automatically void if the Centers for Medicare and  
47     Medicaid Services determines that it is no longer a permissible health care related tax that is  
48     eligible for federal financial participation. Subject to the terms of this paragraph, the tax imposed  
49     by this section shall remain in effect only until June 30, 2022, and as of June 30, 2022, is repealed.

50           (e) *Time for Paying Tax.* — Notwithstanding the provisions of §11-27-25 of this code no  
51     taxes may be collected under this article until the department receives written notice that the  
52     federal Centers for Medicare and Medicaid Services has approved proposed Medicaid rates as  
53     actuarially sound for the taxable year in which the tax will be imposed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

The within ..... this the .....  
day of ..... , 2019.

.....  
*Governor*