

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Senate Bill 397

BY SENATOR MARONEY

[Passed April 7, 2021; in effect from passage]

1 AN ACT to amend and reenact §11-27-39 of the Code of West Virginia, 1931, as amended,
2 relating to certain health care provider taxes; modifying definition of “eligible acute care
3 hospital” for purposes of certain tax; modifying effective date; and removing expiration
4 date for the tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

**§11-27-39. Contingent increase of tax rate on certain eligible acute care hospitals to
increase practitioner payment fee schedules.**

1 (a) In addition to the rate of the tax imposed by §11-27-9, §11-27-15, and §11-27-38 of
2 this code on providers of inpatient and outpatient hospital services, there shall be imposed on
3 certain eligible acute care hospitals an additional tax of 0.13 percent on the gross receipts
4 received or receivable by an eligible acute care hospital that provides inpatient or outpatient
5 hospital services in this state.

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

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

9 (2) A critical access hospital designated as a critical access hospital after meeting all
10 federal eligibility criteria;

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

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

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

14 (c) The provisions of this section are intended to maximize federal funding to increase
15 practitioner payment fee schedules for practitioners employed by eligible acute care hospitals as
16 described in this section. For the purposes of this section, the term “practitioner” means a
17 physician licensed pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code.

18 (d) The taxes imposed by this section may not be imposed or collected until the occurrence
19 of each of the following:

20 (1) The West Virginia Bureau for Medical Services incorporates the payment methodology
21 into the appropriate contracts and agreements; and

22 (2) The West Virginia Bureau for Medical Services receives the necessary approvals from
23 the Centers for Medicare and Medicaid Services.

24 (e) There is hereby created a special fund known as the Acute Care Clearing Fund. The
25 amount of taxes collected under this section and under §11-27-38 of this code, including any
26 interest, additions to tax, and penalties collected under §11-10-1 *et seq.* of this code, less the
27 amount of allowable refunds, the amount of any interest payable with respect to such refunds,
28 and costs of administration and collection, shall be deposited into the Acute Care Clearing Fund
29 created by this section. The Tax Commissioner shall establish and maintain the funds collected
30 under this section and then periodically distribute the same by the fifth day of the month following
31 the end of the calendar quarter in which the taxes were collected. Provided, that notwithstanding
32 any provision of the code to the contrary, the portion attributable to the taxes, any interest,
33 additions to tax, and penalties associated with the tax imposed under §11-27-38 of this code shall
34 be distributed into the Eligible Acute Care Provider Enhancement Account created under that
35 section and the portion attributable to the taxes, any interest, additions to tax, and penalties
36 associated with the tax imposed under this section shall be distributed into a new account to be
37 created under the Medicaid State Share Fund to be designated as the Eligible Acute Care
38 Practitioner Enhancement Account. Disbursements from the Eligible Acute Care Practitioner
39 Enhancement Account within the Medicaid State Share Fund may be used only to support
40 increasing practitioner payment fee schedules for practitioners employed by eligible acute care
41 hospitals.

42 (f) The imposition and collection of taxes imposed by this section shall be suspended
43 immediately upon the occurrence of any of the following:

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

47 (2) The effective date of any decision, enactment, or other determination by the Legislature
48 or by any court, officer, department, agency, or office of the state or federal government that
49 disqualifies the tax from counting towards state Medicaid funds available to determine federal
50 financial participation for Medicaid matching funds or creates for any reason a failure of the state
51 to use the assessment of the Medicaid program as described in this section; and

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

54 (g) Any funds remaining in the Eligible Acute Care Practitioner Enhancement Account,
55 upon the occurrence of any of the events described in subsection (f) of this section, that cannot
56 be used to match eligible federal Medicaid funds for this program, shall be transferred to the West
57 Virginia Medical Services Fund. These funds shall be used during the state fiscal year in which
58 they were transferred at the discretion of the West Virginia Bureau for Medical Services.

59 (h) The amendments to this section enacted in the regular session of the Legislature,
60 2021, are effective beginning July 1, 2021.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2021.

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Governor