

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4393

BY DELEGATES ROHRBACH, REED, WORRELL, BATES,

MILLER, AND CRISS

[Introduced January 25, 2022; Referred to the
Committee on Health and Human Resources then
Finance]

1 A BILL to amend and reenact §11-27-10a of the Code of West Virginia, 1931, as amended,
2 relating to a tax on managed care organizations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§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 — \$35 for each Medicaid member month under 250,000;

9 (2) Tier II — \$20 for each Medicaid member month between 250,000 and 500,000;

10 (3) Tier III — \$1 for each Medicaid member month greater than 500,000;

11 (4) Tier IV — 25 cents for each non-Medicaid member month under 150,000; and

12 (5) Tier V — 10 cents 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 5 U.S.C. §8909(f).

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 subdivision (ii) of this
38 subsection, the tax imposed by this section shall be effective for three years beginning on the first
39 day of the state fiscal year following a 30-day period after the secretary has posted notice on the
40 department Internet website that approval had been received from the federal Centers for
41 Medicare and Medicaid Services that the tax imposed by this section is a permissible health care-
42 related tax in accordance with 42 C.F.R. §433.68 and is therefore eligible for federal financial
43 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.* of this code:
46 *Provided*, That the tax imposed by this section shall be automatically void if the Centers for
47 Medicare and Medicaid Services determines that it is no longer a permissible health care-related

48 tax that is eligible for federal financial participation. If the MCO is granted a rate increase the tax
49 shall adjust by the rate of the increase. Subject to the terms of this subdivision, the tax imposed
50 by this section shall remain in effect until June 30, ~~2023~~ 2024 and as of June 30, ~~2023~~ 2024, is
51 repealed.

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

NOTE: The purpose of this bill is to increase the managed care tax if the managed care organization receives a rate increase.

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