

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2759

BY DELEGATES SUMMERS, TULLY, FORSHT, MILLER,

HECKERT, PETITTO AND REYNOLDS

[Passed March 8, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §11-27-39 of the Code of West Virginia, 1931, as amended,
2 relating to updating the rate of a certain health care provider tax and expand the
3 practitioners eligible for payment fee schedules.

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) Beginning July 1, 2023, the tax rate shall be increased as needed, to provide
7 non-federal share funding for practitioner payments, as described in subsection (d) of this
8 section, to the maximum amount allowed by the Centers for Medicare and Medicaid Services
9 (CMS). The CMS allowable tax rate and maximum payment amount shall be calculated by the
10 West Virginia Bureau for Medical Services (BMS) pursuant to CMS-approved methodology. Using
11 the certified calculations from the West Virginia Bureau for Medical Services, the Tax
12 Commissioner shall publish by Administrative Notice, 30 days prior to implementation, the rates
13 to be applicable.

14 (c) For purposes of this section, the term "eligible acute care hospital" means any inpatient
15 or outpatient hospital conducting operations in this state that is not:

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

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

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

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

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

22 (d) The provisions of this section are intended to maximize federal funding to increase
23 practitioner payment fee schedules for practitioners employed by eligible acute care hospitals as
24 described in this section. For the purposes of this section, the term "practitioner" means a
25 physician licensed pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code:
26 *Provided*, That upon the first rate increase permitted pursuant to subsection (b) of this section,
27 the term "practitioner" shall include a physician contracted with billing and collection responsibility
28 by an eligible acute care hospital.

29 (e) The taxes imposed by this section may not be imposed or collected until the occurrence
30 of each of the following:

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

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

35 (f) There is continued a special fund known as the Acute Care Clearing Fund. The amount
36 of taxes collected under this section and under §11-27-38 of this code, including any interest,
37 additions to tax, and penalties collected under §11-10-1 *et seq.* of this code, less the amount of
38 allowable refunds, the amount of any interest payable with respect to such refunds, and costs of
39 administration and collection, shall be deposited into the Acute Care Clearing Fund created by
40 this section. The Tax Commissioner shall maintain the funds collected under this section and then
41 periodically distribute the same by the fifth day of the month following the end of the calendar
42 quarter in which the taxes were collected: *Provided*, that notwithstanding any provision of the
43 code to the contrary, the portion attributable to the taxes, any interest, additions to tax, and
44 penalties associated with the tax imposed under §11-27-38 of this code shall be distributed into
45 the Eligible Acute Care Provider Enhancement Account and the portion attributable to the taxes,

46 any interest, additions to tax, and penalties associated with the tax imposed under this section
47 shall be distributed into a new account to be created under the Medicaid State Share Fund to be
48 designated as the Eligible Acute Care Practitioner Enhancement Account. Disbursements from
49 the Eligible Acute Care Practitioner Enhancement Account within the Medicaid State Share Fund
50 may be used only to support increasing practitioner payment fee schedules for practitioners
51 employed by eligible acute care hospitals.

52 (g) The imposition and collection of taxes imposed by this section shall be suspended
53 immediately upon the occurrence of any of the following:

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

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

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

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2023.

.....
Governor