

SB 719

FILED

2004 APR -1 P 2:23

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

*Regular Session, 2004*

**ENROLLED**

SENATE BILL NO. 719

(By Senator HELVICK, ET AL)

PASSED March 13, 2004

In Effect 90 Days From Passage

FILED

2004 APR -7 P 2:25

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**Senate Bill No. 719**

(BY SENATORS HELMICK, SHARPE, CHAFIN, PLYMALE, PREZIOSO,  
EDGELL, LOVE, BAILEY, BOWMAN, MCCABE, UNGER, DEMPSEY,  
BOLEY, MINEAR, GUILLS AND SPROUSE)

---

[Passed March 13, 2004; in effect ninety days from passage.]

---

AN ACT to amend and reenact §11-27-11 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-27-37, all relating to increasing the health care provider tax imposed on gross receipts of providers of nursing facility services and establishing a contingent provider tax increase if certain conditions occur; specifying condition precedent to tax increase; study panel, and setting forth effective date.

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

That §11-27-11 of the code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto a new section, designated §11-27-37, all to read as follows:

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

**§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.**

1       (a) *Imposition of tax.* – For the privilege of engaging or  
2 continuing within this state in the business of providing  
3 nursing facility services, other than those services of  
4 intermediate care facilities for the mentally retarded, there  
5 is hereby levied and shall be collected from every person  
6 rendering such service an annual broad-based health care-  
7 related tax: *Provided*, That hospitals which provide  
8 nursing facility services may adjust nursing facility rates  
9 to the extent necessary to compensate for the tax without  
10 first obtaining approval from the health care authority:  
11 *Provided, however*, That the rate adjustment is limited to  
12 a single adjustment during the initial year of the imposi-  
13 tion of the tax which adjustment shall be exempt from  
14 prospective review by the health care authority and  
15 further which is limited to an amount not to exceed the  
16 amount of the tax which is levied against the hospital for  
17 the provision of nursing facility services pursuant to this  
18 section. The health care authority shall retroactively  
19 review the rate increases implemented by the hospitals  
20 under this section during the regular rate review process.  
21 A hospital which fails to meet the criteria established by  
22 this section for a rate increase exempt from prospective  
23 review shall be subject to the penalties imposed under  
24 article twenty-nine-b, chapter sixteen of the code.

25       (b) *Rate and measure of tax.* – The tax imposed in  
26 subsection (a) of this section shall be five and one-half  
27 percent of the gross receipts derived by the taxpayer from  
28 furnishing nursing facility services in this state, other than  
29 services of intermediate care facilities for the mentally  
30 retarded. This rate shall be increased to five and ninety-  
31 five one hundredths percent of the gross receipts received  
32 or receivable by providers of nursing facility services after  
33 the thirtieth day of June, two thousand four.

34       (c) *Definitions.* –

35 (1) "Gross receipts" means the amount received or  
36 receivable, whether in cash or in kind, from patients,  
37 third-party payors and others for nursing facility services  
38 furnished by the provider, including retroactive adjust-  
39 ments under reimbursement agreements with third-party  
40 payors, without any deduction for any expenses of any  
41 kind: *Provided*, That accrual basis providers shall be  
42 allowed to reduce gross receipts by their bad debts, to the  
43 extent the amount of such bad debts was previously  
44 included in gross receipts upon which the tax imposed by  
45 this section was paid.

46 (2) "Nursing facility services" means those services that  
47 are nursing facility services for purposes of Section  
48 1903(w) of the Social Security Act.

49 (d) *Effective date.* – The tax imposed by this section shall  
50 apply to gross receipts received or receivable by providers  
51 after the thirty-first day of May, one thousand nine  
52 hundred ninety-three.

**§11-27-37. Contingent increase in rates of certain health care  
provider taxes.**

1 (a) *Increase in rates of certain provider taxes.* – Not-  
2 withstanding any provision of this code to the contrary:

3 (1) The rate of the tax imposed by section four of this  
4 article on providers of ambulatory surgical centers shall be  
5 two and thirty-six hundredths percent of the gross receipts  
6 received or receivable by providers on and after the first  
7 day of the calendar month as provided in subsection (b) of  
8 this section;

9 (2) The rate of the tax imposed by section nine of this  
10 article on providers of inpatient hospital services shall be  
11 three and thirty-eight hundredths percent of the gross  
12 receipts received or receivable by providers on and after  
13 the first day of the calendar month as provided in subsec-  
14 tion (b) of this section;

15 (3) The rate of tax imposed by section ten of this article  
16 on providers of intermediate care facility services shall be  
17 five and ninety-five hundredths percent of the gross  
18 receipts received or receivable by providers on and after  
19 the first day of the calendar month as provided in subsec-  
20 tion (b) of this section; and

21 (4) The rate of the tax imposed by section fifteen of this  
22 article on providers of outpatient hospital services shall be  
23 three and thirty-eight hundredths percent of the gross  
24 receipts received or receivable by providers on and after  
25 the first day of the calendar month as provided in subsec-  
26 tion (b) of this section.

27 (b) *Effective date.* – This section shall take effect as  
28 provided in article six, section thirty of the constitution of  
29 this state: *Provided*, That this section does not apply to  
30 any taxpayer unless and until all of the following have  
31 occurred: (1) The governor makes a determination that  
32 both estimated general revenue fund collections and the  
33 funds available to fund this state's Medicaid program as  
34 set forth in the annual budget bill enacted by the Legisla-  
35 ture will both be less in the next fiscal year than those  
36 funds are estimated to be in the current fiscal year, with  
37 this decrease being a result of changes, or anticipated  
38 changes, in the Medicaid program at the federal level or a  
39 result of federal administrative actions with respect to this  
40 state's Medicaid program; (2) the governor notifies the  
41 president of the Senate and the speaker of the House of  
42 Delegates of this determination; (3) the governor issues an  
43 executive order convening a panel to study and examine  
44 possible alternative means of addressing and resolving the  
45 anticipated Medicaid program budget shortfall, which  
46 panel shall include, but may not be limited to, one or more  
47 representatives of each group of providers upon which the  
48 provider tax increases contemplated by this section may  
49 be imposed; (4) this panel is afforded not less than seventy-  
50 five days in which to conduct its study and provide a  
51 report and recommendations to the governor, the president

52 of the Senate and the speaker of the House of Delegates;  
53 and (5) the Legislature adopts a resolution authorizing  
54 imposition of the rate increases described in this section.  
55 If, and only if, no other solution than the tax increase set  
56 forth herein is implemented by either administrative or  
57 legislative action in response to the report and recommen-  
58 dations of the study panel to the anticipated Medicaid  
59 budget shortfall, and upon adoption of a resolution of the  
60 Legislature, the provisions of this section shall become  
61 effective on the date specified by the Legislature in the  
62 resolution.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *7<sup>th</sup>* .....  
Day of *April* ....., 2004.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 3-31-01

TIME 10:45 AM