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FOR

Senate Bill No. 492

(SENATORS KESSLER (ACTING PRESIDENT), STOLLINGS,
McCABE, FOSTER, HALL, JENKINS, PREZIOSO, UNGER,
PLYMALE, WELLS, KLEMPA, YOST AND MINARD, *original sponsors*)

[Passed March 10, 2011; to take effect July 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-27-38, relating to health care provider taxes; maximizing federal funding for the state Medicaid program; increasing the health care provider tax imposed on gross receipts of providers of certain eligible acute care hospitals contingent upon federal approval of a Medicaid state plan amendment; defining terms; providing for the collection and administration of the increased health care provider tax on certain eligible acute care hospitals; and providing effective date and expiration date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-27-38, to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

1 (a) In addition to the rate of the tax imposed by sections
2 nine and fifteen of this article on providers of inpatient and
3 outpatient hospital services, there shall be imposed on
4 certain eligible acute care hospitals an additional tax of
5 eighty-eight one hundredths of one percent on the gross
6 receipts received or receivable by eligible acute care hospi-
7 tals that provide inpatient or outpatient hospital services in
8 this state through a Medicaid upper payment limit program.
9 For purposes of this section, the term “eligible acute care
10 hospital” means any inpatient or outpatient hospital con-
11 ducting business in this state that is not: (1) A state owned or
12 designated facility; (2) a nonstate, but government owned
13 facility such as a county or city hospital; (3) a critical access
14 hospital, designated as a critical access hospital after
15 meeting all federal eligibility criteria; (4) a licensed
16 free-standing psychiatric or medical rehabilitation hospital;
17 or (5) a licensed long-term acute care hospital.

18 (b) The provisions of this section are intended to maximize
19 federal funding for the purpose of implementing a hospital
20 Medicaid upper payment limit program as described in this
21 section. The taxes imposed by this section may not be
22 imposed or collected until all of the following have occurred:
23 (1) A state plan amendment is developed by the bureau of
24 medical services, as authorized by the Secretary of the
25 Department of Health and Human Resources; (2) the state
26 plan amendment is reviewed by the Medical Fund Services
27 Advisory Council; (3) a comment period of not less than
28 thirty days for public comment on the state plan amendment
29 shall have passed; and (4) the state plan amendment is
30 approved by the Centers for Medicare and Medicaid Ser-

31 vices. The state plan amendment shall include all of the
32 following: (1) The provisions of the proposed upper payment
33 limit program or programs; (2) a state maintenance of effort
34 to maintain adequate Medicaid funding; and (3) a provision
35 that any other state Medicaid program will not negatively
36 impact the hospital upper payment limit payments. The taxes
37 imposed and collected may be imposed and collected begin-
38 ning on the earliest date permissible under applicable federal
39 law under the upper payment limit program, as determined
40 by the West Virginia Secretary of Health and Human
41 Resources.

42 (c) There is hereby created a special revenue account in
43 the State Treasury, designated the "Medicaid State Share
44 Fund". The amount of taxes collected under this section,
45 including any interest, additions to tax and penalties
46 collected under article ten of this chapter, less the amount of
47 allowable refunds, the amount of any interest payable with
48 respect to such refunds, and costs of administration and
49 collection, shall be deposited into the special revenue fund
50 and shall not revert to general revenue. The Tax Commis-
51 sioner shall establish and maintain a separate account and
52 accounting for the funds collected under this section, in an
53 account to be designated as the "Eligible Acute Care Pro-
54 vider Enhancement Account." The amounts collected shall
55 be deposited, within fifteen days after receipt by the tax
56 commissioner, into the Eligible Acute Care Provider En-
57 hancement Account. Disbursements from the Eligible Acute
58 Care Provider Enhancement Account within the Medicaid
59 State Share Fund may be used only to support the hospital
60 Medicaid upper payment limit program described in this
61 section.

62 (d) The imposition and collection of taxes imposed by this
63 section shall be suspended immediately upon the occurrence
64 of any of the following: (1) The effective date of any action by
65 Congress that would disqualify the taxes imposed by this
66 section from counting towards state Medicaid funds avail-
67 able to be used to determine the federal financial participa-
68 tion; (2) the effective date of any decision, enactment or other

69 determination by the Legislature or by any court, officer,
70 department, agency or office of state or federal government
71 that has the effect of disqualifying the tax from counting
72 towards state Medicaid funds available to be used to deter-
73 mine federal financial participation for Medicaid matching
74 funds, or creating for any reason a failure of the state to use
75 the assessment of the Medicaid program as described in this
76 section; and (3) the effective date of an appropriation for any
77 state fiscal year for hospital payments under the state
78 Medicaid program that is less than the amount appropriate
79 for state fiscal year ending June 30, 2011. Any funds remain-
80 ing in the eligible acute care provider enhancement fund
81 upon the occurrence of any of the events described in this
82 subsection that cannot be used to match eligible federal
83 Medicaid funds, shall be refunded to eligible acute care
84 providers in proportion to the amount paid by each eligible
85 acute care provider into the fund.

86 (e) The provisions of this section are retroactive and shall
87 become effective on the first day of the quarter in which the
88 state plan amendment is submitted.

89 (f) The tax imposed by this section shall expire on and after
90 June 30, 2013, unless otherwise extended by the Legislature.

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.

To take effect July 1, 2011.

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Clerk of the Senate

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Clerk of the House of Delegates

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Acting President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2011.

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Governor