

H. B. 2462

(By Delegates Perdue, Perry, Arvon, Eldridge,
Ellington, Ferns, Lawrence, Marshall, Moye,
Pasdon and Poore)

[Introduced February 14, 2013; referred to the
Committee on Health and Human Resources then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-27-38 of the Code of West Virginia,
1931, as amended, relating generally to health care provider
taxes and removing the expiration date for tax rate on
eligible acute care hospitals.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

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

(a) In addition to the rate of the tax imposed by sections
nine and fifteen of this article on providers of inpatient and
outpatient hospital services, there shall be imposed on certain
eligible acute care hospitals an additional tax of eighty-eight one
hundredths of one percent on the gross receipts received or

1 receivable by eligible acute care hospitals that provide inpatient
2 or outpatient hospital services in this state through a Medicaid
3 upper payment limit program. For purposes of this section, the
4 term "eligible acute care hospital" means any inpatient or
5 outpatient hospital conducting business in this state that is not:
6 (1) A state owned or designated facility; (2) a nonstate, but
7 government owned facility such as a county or city hospital; (3) a
8 critical access hospital, designated as a critical access hospital
9 after meeting all federal eligibility criteria; (4) a licensed
10 free-standing psychiatric or medical rehabilitation hospital; or
11 (5) a licensed long-term acute care hospital.

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

1 upper payment limit program or programs; (2) a state maintenance of
2 effort to maintain adequate Medicaid funding; and (3) a provision
3 that any other state Medicaid program will not negatively impact
4 the hospital upper payment limit payments. The taxes imposed and
5 collected may be imposed and collected beginning on the earliest
6 date permissible under applicable federal law under the upper
7 payment limit program, as determined by the West Virginia Secretary
8 of Health and Human Resources.

9 (c) There is hereby created a special revenue account in the
10 State Treasury, designated the "Medicaid State Share Fund". The
11 amount of taxes collected under this section, including any
12 interest, additions to tax and penalties collected under article
13 ten of this chapter, less the amount of allowable refunds, the
14 amount of any interest payable with respect to such refunds, and
15 costs of administration and collection, shall be deposited into the
16 special revenue fund and shall not revert to general revenue. The
17 Tax Commissioner shall establish and maintain a separate account
18 and accounting for the funds collected under this section, in an
19 account to be designated as the "Eligible Acute Care Provider
20 Enhancement Account." The amounts collected shall be deposited,
21 within fifteen days after receipt by the Tax Commissioner, into the
22 Eligible Acute Care Provider Enhancement Account. Disbursements
23 from the Eligible Acute Care Provider Enhancement Account within
24 the Medicaid State Share Fund may be used only to support the

1 hospital Medicaid upper payment limit program described in this
2 section.

3 (d) The imposition and collection of taxes imposed by this
4 section shall be suspended immediately upon the occurrence of any
5 of the following: (1) The effective date of any action by Congress
6 that would disqualify the taxes imposed by this section from
7 counting towards state Medicaid funds available to be used to
8 determine the federal financial participation; (2) the effective
9 date of any decision, enactment or other determination by the
10 Legislature or by any court, officer, department, agency of office
11 of state or federal government that has the effect of disqualifying
12 the tax from counting towards state Medicaid funds available to be
13 used to determine federal financial participation for Medicaid
14 matching funds, or creating for any reason a failure of the state
15 to use the assessment of the Medicaid program as described in this
16 section; and (3) the effective date of an appropriation for any
17 state fiscal year for hospital payments under the state Medicaid
18 program that is less than the amount appropriate for state fiscal
19 year ending June 30, 2011. Any funds remaining in the eligible
20 acute care provider enhancement fund upon the occurrence of any of
21 the events described in this subsection that cannot be used to
22 match eligible federal Medicaid funds, shall be refunded to
23 eligible acute care providers in proportion to the amount paid by
24 each eligible acute care provider into the fund.

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

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

NOTE: The purpose of this bill is to remove the expiration date for the tax rate on eligible acute care hospitals.

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

This bill has been recommended for passage during the 2013 Regular Session by the Joint Committee on Health.