

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 195**

(By Senators Stollings, Jenkins, Kirkendoll,  
Laird, Miller, Palumbo, Plymale, Prezioso,  
Tucker, Yost, Boley, M. Hall and Beach)

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[Originating in the Committee on Health and Human Resources;  
reported March 15, 2013.]

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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; modifying the expiration date for tax rate on eligible acute care hospitals; changing the tax rate on eligible acute care hospitals; and providing for disbursement of any funds remaining in the Eligible Acute Care Provider Enhancement Account.

*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.**

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 certain  
4 eligible acute care hospitals an additional tax of ~~eighty-eight~~  
5 forty-five one hundredths of one percent on the gross receipts  
6 received or receivable by eligible acute care hospitals that  
7 provide inpatient or outpatient hospital services in this state  
8 through a Medicaid upper payment limit program. For  
9 purposes of this section, the term “eligible acute care  
10 hospital” means any inpatient or outpatient hospital  
11 conducting business in this state that is not: (1) A state-  
12 owned or -designated facility; (2) a nonstate, but  
13 government-owned facility such as a county or city hospital;  
14 (3) a critical access hospital, designated as a critical access

15 hospital after meeting all federal eligibility criteria; (4) a  
16 licensed free-standing psychiatric or medical rehabilitation  
17 hospital; or (5) a licensed long-term acute care hospital.

18 (b) ~~The provisions of this section are intended to~~  
19 ~~maximize federal funding for the purpose of implementing a~~  
20 ~~hospital Medicaid upper payment limit program as described~~  
21 ~~in this 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  
31 Services. 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  
38 beginning on the earliest date permissible under applicable  
39 federal law under the upper payment limit program, as  
40 determined by the West Virginia Secretary of Health and  
41 Human 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 collected  
46 under article ten of this chapter, less the amount of allowable  
47 refunds, the amount of any interest payable with respect to  
48 such refunds, and costs of administration and collection, shall  
49 be deposited into the Special Revenue Fund and shall not  
50 revert to general revenue. The Tax Commissioner shall  
51 establish and maintain a separate account and accounting for  
52 the funds collected under this section, in an account to be

53 designated as the Eligible Acute Care Provider Enhancement  
54 Account. The amounts collected shall be deposited, within  
55 fifteen days after receipt by the Tax Commissioner, into the  
56 Eligible Acute Care Provider Enhancement Account.  
57 Disbursements from the Eligible Acute Care Provider  
58 Enhancement Account within the Medicaid State Share Fund  
59 ~~may be used only to support the hospital Medicaid upper~~  
60 ~~payment limit program described in this section~~ may only be  
61 used as set forth in this section.

62 (d) The imposition and collection of taxes imposed by  
63 this section shall be suspended immediately upon the  
64 occurrence of any of the following: (1) The effective date of  
65 any action by Congress that would disqualify the taxes  
66 imposed by this section from counting towards state  
67 Medicaid funds available to be used to determine the federal  
68 financial participation; (2) the effective date of any decision,  
69 enactment or other determination by the Legislature or by  
70 any court, officer, department, agency or office of state or  
71 federal government that has the effect of disqualifying the tax

72 from counting towards state Medicaid funds available to be  
73 used to determine federal financial participation for Medicaid  
74 matching funds, or creating for any reason a failure of the  
75 state to use the assessment of the Medicaid program as  
76 described in this section; and (3) the effective date of an  
77 appropriation for any state fiscal year for hospital payments  
78 under the state Medicaid program that is less than the amount  
79 appropriate for state fiscal year ending June 30, 2011. ~~Any~~  
80 ~~funds remaining in the eligible acute care provider~~  
81 ~~enhancement fund upon the occurrence of any of the events~~  
82 ~~described in this subsection that cannot be used to match~~  
83 ~~eligible federal Medicaid funds, shall be refunded to eligible~~  
84 ~~acute care providers in proportion to the amount paid by each~~  
85 ~~eligible acute care provider into the fund~~ Fifty percent of any  
86 funds remaining in the Eligible Acute Care Provider  
87 Enhancement Account as of June 30, 2013, shall be  
88 transferred to the West Virginia Medical Services Fund. This  
89 transfer shall occur no later than September 30, 2013. These  
90 funds shall be used during state fiscal year 2014 at the  
91 discretion of the Bureau of Medical Services. The remaining

92 fifty percent of any funds in the Eligible Acute Care Provider  
93 Enhancement Account as of June 30, 2013, shall remain in  
94 the Eligible Acute Care Provider Enhancement Account, and  
95 shall be used in state fiscal year 2014. If the program expires  
96 on June 30, 2014, as set forth in subsection (f), fifty percent  
97 of any funds remaining as of June 30, 2015, shall be  
98 transferred on that date to the West Virginia Medical  
99 Services Fund. This transfer shall occur only after state fiscal  
100 year 2014 fourth quarter tax collections and program  
101 payments. The remaining fifty percent of the funds shall be  
102 distributed to the eligible acute care providers no later than  
103 June 30, 2015. The distribution of funds to the eligible acute  
104 care providers shall be made in the same proportion as the  
105 taxes paid by the eligible acute care providers into the  
106 Eligible Acute Care Provider Enhancement Fund during state  
107 fiscal year 2014.

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

111 (f) The tax imposed by this section shall expire on and  
112 after June 30, ~~2013~~ 2014, unless otherwise extended by the  
113 Legislature.