

**Senate Bill No. 398**

(By Senators Ferns, D. Hall and Stollings)

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[Introduced February 3, 2015;  
referred to the Committee on Health and Human Resources;  
and then to the Committee on Finance.]

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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 expiration date for tax rate on eligible acute care hospitals; changing 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 nine and fifteen of this article on  
2 providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute care  
3 hospitals an additional tax of ~~sixty-two~~ seventy-two one hundredths of one percent on the gross  
4 receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient  
5 hospital services in this state through a Medicaid upper payment limit program.

[S. B. NO. 398]

1 (b) For purposes of this section, the term “eligible acute care hospital” means any inpatient  
2 or outpatient hospital conducting business in this state that is not:

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

4 (2) A nonstate, but government-owned facility such as a county or city hospital;

5 (3) A critical access hospital, designated as a critical access hospital after meeting all federal  
6 eligibility criteria;

7 (4) A licensed free-standing psychiatric or medical rehabilitation hospital; or

8 (5) A licensed long-term acute care hospital.

9 (c) The taxes imposed by this section may not be imposed or collected until all of the  
10 following have occurred:

11 (1) A state plan amendment is developed by the Bureau for Medical Services, as authorized  
12 by the Secretary of the Department of Health and Human Resources;

13 (2) The state plan amendment is reviewed by the Medical Fund Services Advisory Council;

14 (3) A comment period of not less than thirty days for public comment on the state plan  
15 amendment shall have passed; and

16 (4) The state plan amendment is approved by the Centers for Medicare and Medicaid  
17 Services.

18 (d) The state plan amendment shall include all of the following:

19 (1) The provisions of the proposed upper payment limit program or programs;

20 (2) A state maintenance of effort to maintain adequate Medicaid funding; and

21 (3) A provision that any other state Medicaid program will not negatively impact the hospital  
22 upper payment limit payments. The taxes imposed and collected may be imposed and collected

[S. B. NO. 398]

1 beginning on the earliest date permissible under applicable federal law under the upper payment limit  
2 program, as determined by the secretary.

3 (e) There is continued a special revenue account in the State Treasury designated the  
4 Medicaid State Share Fund. The amount of taxes collected under this section, including any interest,  
5 additions to tax and penalties collected under article ten of this chapter, less the amount of allowable  
6 refunds, the amount of any interest payable with respect to such refunds and costs of administration  
7 and collection, shall be deposited into the Special Revenue Fund and may not revert to general  
8 revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for  
9 the funds collected under this section in an account to be designated as the Eligible Acute Care  
10 Provider Enhancement Account. The amounts collected shall be deposited, within fifteen days after  
11 receipt by the Tax Commissioner, into the Eligible Acute Care Provider Enhancement Account.  
12 Disbursements from the Eligible Acute Care Provider Enhancement Account within the Medicaid  
13 State Share Fund may only be used as set forth in this section.

14 (f) The imposition and collection of taxes imposed by this section is suspended immediately  
15 upon the occurrence of any of the following:

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

19 (2) The effective date of any decision, enactment or other determination by the Legislature  
20 or by any court, officer, department, agency or office of state or federal government that has the  
21 effect of disqualifying the tax from counting toward state Medicaid funds available to be used to  
22 determine federal financial participation for Medicaid matching funds or creating for any reason a

[S. B. NO. 398]

1 failure of the state to use the assessment of the Medicaid program as described in this section; and

2           (3) The effective date of an appropriation for any state fiscal year for hospital payments under  
3 the state Medicaid program that is less than the amount appropriate for state fiscal year ending June  
4 30, 2011. Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement  
5 Account as of June 30, ~~2014~~ 2015, shall be transferred to the West Virginia Medical Services Fund.  
6 This transfer shall occur no later than September 30, ~~2014~~ 2015. These funds shall be used during  
7 state fiscal year ~~2015~~ 2016 at the discretion of the Bureau for Medical Services. The remaining fifty  
8 percent of any funds in the Eligible Acute Care Provider Enhancement Account as of June 30, ~~2014~~  
9 2015, shall remain in the Eligible Acute Care Provider Enhancement Account and shall be used in  
10 state fiscal year ~~2015~~ 2016. If the program expires on June 30, ~~2015~~ 2016, as set forth in subsection  
11 (h) of this section, fifty percent of any funds remaining as of June 30, ~~2016~~ 2017, shall be transferred  
12 on that date to the West Virginia Medical Services Fund. This transfer shall occur only after state  
13 fiscal year ~~2015~~ 2016 fourth quarter tax collections and program payments. The remaining fifty  
14 percent of the funds shall be distributed to the eligible acute care providers no later than June 30,  
15 ~~2016~~ 2017. The distribution of funds to the eligible acute care providers shall be made in the same  
16 proportion as the taxes paid by the eligible acute care providers into the Eligible Acute Care Provider  
17 Enhancement Fund during state fiscal year ~~2015~~ 2016.

18           (g) The provisions of this section are retroactive and become effective on the first day of the  
19 quarter in which the state plan amendment is submitted.

20           (h) The tax imposed by this section expires on and after June 30, ~~2015~~ 2016, unless otherwise  
21 extended by the Legislature.

**[S. B. No. 398]**

(NOTE: The purpose of this bill is to extend 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.)