

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2405

FISCAL  
NOTE

BY DELEGATES ELLINGTON, SUMMERS, PACK, ATKINSON,

HOLLEN, ROHRBACH, PUSHKIN, WALKER AND

FLEISCHAUER

[Introduced January 15, 2019; Referred  
to the Committee on Health and Human Resources  
then Finance.]

1 A BILL to repeal §11-26-1, §11-26-2, §11-26-3, §11-26-4, §11-26-5, §11-26-6, §11-26-7, §11-26-  
 2 8, §11-26-9, §11-26-10, §11-26-11, §11-26-12, §11-26-13, §11-26-14, §11-26-15, §11-  
 3 26-16, §11-26-17, §11-26-19 and §11-26-20 of the Code of West Virginia, 1931, as  
 4 amended; to amend and reenact §11-27-3 of said code; and to amend said code by adding  
 5 thereto a new section, designated §11-27-10a, all relating to imposing a healthcare related  
 6 provider tax on certain health care organizations; repealing outdated tax: adding  
 7 definitions; establishing tax rates; requiring federal approval of tax; and setting effective  
 8 date.

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

**ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.**

**§11-26-1. Legislative findings.**

1 [Repealed]

**§11-26-2. Short title; arrangement and classification.**

2 [Repealed]

**§11-26-3. Definitions.**

3 [Repealed]

**§11-26-4. Imposition of excise tax; rate and application of tax.**

4 [Repealed]

**§11-26-5. Administration.**

5 [Repealed]

**§11-26-6. Accounting periods and methods of accounting.**

6 [Repealed]

**§11-26-7. Tax return and payment.**

7 [Repealed]

**§11-26-8. Extension of time for filing returns.**

8 [Repealed]

**§11-26-9. Extension of time for paying tax.**

9 [Repealed]

**§11-26-10. Place for filing returns or other documents.**

10 [Repealed]

**§11-26-11. Signing of returns and other documents.**

11 [Repealed]

**§11-26-12. Records.**

12 [Repealed]

**§11-26-13. Refunds and credits.**

13 [Repealed]

**§11-26-14. Cancellation of Medicaid certification for failure to pay delinquent tax.**

14 [Repealed]

**§11-26-15. General procedure and administration.**

15 [Repealed]

**§11-26-16. Crimes and penalties.**

16 [Repealed]

**§11-26-17. Effective dates.**

17 [Repealed]

**§11-26-19. Severability.**

18 [Repealed]

**§11-26-20. Transition rules; penalties; effective date.**

19 [Repealed]

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

**§11-27-3. Definitions.**

1 (a) *General.* -- When used in this article, words defined in subsection (b) of this section  
2 have the meaning ascribed to them in this section, except in those instances where a different

3 meaning is distinctly expressed or the context in which the word is used clearly indicates that a  
4 different meaning is intended.

5 (b) *Definitions.* --

6 (1) "Business" includes all health care activities engaged in, or caused to be engaged in,  
7 with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit,  
8 or not for profit, or by a governmental entity: ~~Provided~~ That "business" does not include services  
9 rendered by an employee within the scope of his or her contract of employment. Employee  
10 services, services by a partner on behalf of his or her partnership, and services by a member of  
11 any other business entity on behalf of that entity, are the business of the employer, or partnership,  
12 or other business entity, as the case may be, and reportable as such for purposes of the taxes  
13 imposed by this article.

14 (2) "Broad-based health care related tax" means a broad-based health care related tax as  
15 defined in Section 1903 of the Social Security Act, including a health-care related tax for which a  
16 waiver from the broad-based or uniformity requirements has been granted and is in effect by the  
17 federal Centers for Medicare and Medicaid Services pursuant to the Provisions of Section 1903  
18 of the Social Security Act and implementing regulations.

19 (3) "Department" means the West Virginia Department of Health and Human Resources.

20 ~~(3)~~ (4) "Corporation" includes associations, joint-stock companies and insurance  
21 companies. It also includes governmental entities when and to the extent such governmental  
22 entities engaged in activities taxable under this article.

23 ~~(4)~~ (5) "Includes" and "including" when used in a definition contained in this article shall  
24 not be deemed to exclude other things otherwise within the meaning of the term being defined.

25 ~~(5)~~ (6) "Partner" includes a member in a "partnership", as defined in this section.

26 ~~(6)~~ (7) "Partnership" includes a syndicate, group, pool, joint venture or other  
27 unincorporated organization through or by means of which any privilege taxable under this article  
28 is exercised, and which is not within the meaning of this article a trust or estate or corporation. It

29 includes a limited liability company when such company is treated as a partnership for federal  
30 income tax purposes.

31 ~~(7)~~ (8) "Person" means any individual, partnership, association, company, corporation or  
32 other entity engaging in a privilege taxed under this article.

33 ~~(8)~~ (9) "Social Security Act" means the Social Security Act of the United States, as  
34 amended by ~~Public Law 102-234~~ Public Law 109-171, and codified in Title 42, Section 1396b of  
35 the United States Code.

36 (10) "Secretary" means the West Virginia Department of Health and Human Resources.

37 ~~(9)~~ (11) "Tax" means any tax imposed by this article and, for purposes of administration  
38 and collection of such tax, includes any interest, additions to tax or penalties imposed with respect  
39 thereto under article 10 of this chapter.

40 ~~(10)~~ (12) "Taxable year" means the calendar year, or the fiscal year ending during such  
41 calendar year, upon the basis of which the tax imposed by this article is computed. In the case of  
42 a return made under this article, or regulations of the Tax Commissioner, for a fractional part of a  
43 year, the term "taxable year" means the period for which such return is made.

44 ~~(11)~~ (13) "Taxpayer" means any person subject to any tax imposed by this article.

45 ~~(12)~~ (14) "This code" means the Code of West Virginia, 1931, as amended.

46 ~~(13)~~ (15) "This state" means the State of West Virginia.

**§11-27-10a. Imposition of tax on managed care organizations.**

1 (a) Imposition of tax. — For the Privilege of holding a certificate of authority within this  
2 state to establish or operate a "health maintenance organization" pursuant to §33-25A-4 of this  
3 code (hereinafter "certified HMO"), there is hereby levied and shall be collected from every such  
4 certified HMO an annual broad-based health-care related tax.

5 (b) Rate and measure of tax. — The tax imposed this section shall be based on the  
6 following rates applied to each taxable health plan's total Medicaid member months within tiers I,  
7 II and III, and to non-Medicaid member months within tiers IV and V:

8 (1) Tier I — \$59.00 for each Medicaid member month under 250.000.

9 (2) Tier II — \$49.00 for each Medicaid member month between 250.000 and 500.000:

10 (3) Tier III - \$37.00 for each Medicaid member month greater than 500.000.

11 (4) Tier IV — \$0.25 for each non-Medicaid member month under 150.000: and

12 (5) Tier V — \$0.10 for each non-Medicaid member month of 150.000 or more.

13 (c) Definitions.

14 (1) “Managed care organization” or “MCO” means a certified HMO that provides health  
15 care services to Medicaid members pursuant to an agreement or contract with the department.

16 (2) “Managed care plan” means an agreement or contract between the secretary and an  
17 MCO under which the MCO agrees to provide health care services to Medicaid members.

18 (3) “Medicaid member” means an individual enrolled in a taxable health plan who is a  
19 Medicaid beneficiary on whose behalf the department directly pays the health plan a capitated  
20 payment.

21 (4) “Medicaid member months” means the number of Medicaid members in a taxable  
22 health plan in each month or part of a month over the course of the tax year.

23 (5) “Non-Medicaid enrollee” means an individual who is an “enrollee”, “subscriber”, or  
24 “member”, as those terms are defined in §33-25A-2(8) of this code, in a taxable health plan who  
25 is not a Medicaid member: *Provided*, That this definition does not include Public Employees  
26 Retirement Agency members or Medicare Advantage members.

27 (6) “Non-Medicaid member months” means the number of non-Medicaid enrollees in a  
28 taxable health plan in each month or part of a month over the course of the tax year, but does not  
29 include persons enrolled in either a health plan issued by the West Virginia Public Employees  
30 Insurance Agency or a plan issued pursuant to the Federal Employees Health Benefits Act of  
31 1959 (Public Law 86-382) to the extent the imposition of the tax under this section is preempted  
32 pursuant to Section 8909(f) of Title 5 of the United States Code.

33 (7) “Taxable health plan” means: (i) An agreement or contract under which a certified HMO

34 agrees to provide health care services to a non-Medicaid member in accordance with §33-25A-1  
35 et seq. of this code and (ii) a managed care plan.

36 (d) Effective date. –

37 (i) Subject to an earlier termination pursuant to the terms of paragraph ii, the tax imposed  
38 by this section shall be effective for three years beginning on the first day of the state fiscal year  
39 following a 30-day period after the secretary has posted notice on the department Internet website  
40 that approval had been received from the federal Centers for Medicare and Medicaid Services  
41 that the tax imposed by this section is a permissible health care related tax in accordance with  
42 Section 433.68 of Title 42 of the Code of Federal Regulations and is therefore eligible for federal  
43 financial participation.

44 (ii) The tax imposed by this section shall be administered in accordance with the provisions  
45 of this article and the tax administration and procedures act in article 10 of this chapter: *Provided,*  
46 That the tax imposed by this section shall be automatically void if the Centers for Medicare and  
47 Medicaid Services determines that it is no longer a permissible health care related tax that is  
48 eligible for federal financial participation: *Provided further,* That subject to the terms of this  
49 paragraph, the tax imposed by this section shall remain in effect only until June 30, 2021, and as  
50 of June 30, 2021, is repealed.

51 (e) Time for Paying Tax. -- Notwithstanding the provisions of §11-27-25 of this code no  
52 taxes may be collected under this article until the department receives written notice that the  
53 federal Centers for Medicare and Medicaid Services has approved proposed Medicaid rates as  
54 actuarially sound for the taxable year in which the tax will be imposed.

NOTE: The purpose of this bill is to impose a tiered tax on HMOs in a manner that will permit the maximization of federal matching dollars for use in the state Medicaid program.

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