WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 719

SENATORS MARONEY, CLINE, PREZIOSO, RUCKER,

SYPOLT, TAKUBO, TRUMP, CLEMENTS, AND STOLLINGS,

original sponsors

[Originating in the Committee on Health and Human

Resources; reported on February 12, 2020]

A BILL to amend and reenact §11-27-10a of the Code of West Virginia, 1931, as amended, relating to imposing a health care-related provider tax on certain health care organizations; and extending termination date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

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

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

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

(1) Tier I — ~~$17.00~~ $35 for each Medicaid member month under 250,000;

(2) Tier II — ~~$15.00~~ $20 for each Medicaid member month between 250,000 and 500,000;

(3) Tier III — ~~$7.00~~ $1 for each Medicaid member month greater than 500,000;

(4) Tier IV — 25 cents for each non-Medicaid member month under 150,000; and

(5) Tier V — 10 cents for each non-Medicaid member month of 150,000 or more.

(c) *Definitions.* —

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

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

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

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

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

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

(7) “Taxable health plan” means: (i) An agreement or contract under which a certified HMO agrees to provide health care services to a non-Medicaid member in accordance with §33-25A-1 *et seq.* of this code; and (ii) a managed care plan.

(d) *Effective date.* —

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

(ii) The tax imposed by this section shall be administered in accordance with the provisions of this article and the tax administration and procedures act in §11-10-1 *et seq.* of this code: *Provided*, That the tax imposed by this section shall be automatically void if the Centers for

Medicare and Medicaid Services determines that it is no longer a permissible health care-related tax that is eligible for federal financial participation. Subject to the terms of this subdivision, the tax imposed by this section shall remain in effect until ~~June 30, 2022, and as of June 30, 2022~~ June 30, 2023, and as of June 30, 2023, is repealed.

(e) *Time for Paying Tax.* — Notwithstanding the provisions of §11-27-25 of this code, no taxes may be collected under this article until the department receives written notice that the federal Centers for Medicare and Medicaid Services has approved proposed Medicaid rates as 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 and to extend the termination date of the tax.

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