

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2759

By Delegates Summers, Tully, Forsht, Miller, Heckert,

Petitto and Reynolds

[Originating in the Committee on Finance; February

16, 2023]

1 A BILL to amend and reenact §11-27-39 of the Code of West Virginia, 1931, as amended, relating
2 to updating the rate of a certain health care provider tax and expand the practitioners
3 eligible for payment fee schedules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-39. Contingent increase of tax rate on certain eligible acute care hospitals to increase practitioner payment fee schedules.

1 (a) In addition to the rate of the tax imposed by §11-27-9, §11-27-15, and §11-27-38 of this
2 code on providers of inpatient and outpatient hospital services, there shall be imposed on certain
3 eligible acute care hospitals an additional tax of 0.13 percent on the gross receipts received or
4 receivable by an eligible acute care hospital that provides inpatient or outpatient hospital services
5 in this state.

6 (b) Beginning July 1, 2023, the tax rate shall be increased as needed, to provide non-
7 federal share funding for practitioner payments, as described in subsection (d) of this section, to
8 the maximum amount allowed by the Centers for Medicare and Medicaid Services (CMS). The
9 CMS allowable tax rate and maximum payment amount shall be calculated by the West Virginia
10 Bureau for Medical Services (BMS) pursuant to CMS-approved methodology. Using the certified
11 calculations from the West Virginia Bureau for Medical Services, the Tax Commissioner shall
12 publish by Administrative Notice, 30 days prior to implementation, the rates to be applicable.

13 ~~(b)~~ (c) For purposes of this section, the term "eligible acute care hospital" means any
14 inpatient or outpatient hospital conducting operations in this state that is not:

- 15 (1) A state-owned or designated facility;
- 16 (2) A critical access hospital designated as a critical access hospital after meeting all
17 federal eligibility criteria;
- 18 (3) A licensed free-standing psychiatric or medical rehabilitation hospital;
- 19 (4) A licensed long-term acute care hospital; or

20 (5) A facility designated pursuant to §16-5B-14 of this code.

21 ~~(e)~~ (d) The provisions of this section are intended to maximize federal funding to increase
22 practitioner payment fee schedules for practitioners employed by eligible acute care hospitals as
23 described in this section. For the purposes of this section, the term "practitioner" means a
24 physician licensed pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code;
25 Provided, That upon the first rate increase permitted pursuant to subsection (b) of this section, the
26 term "practitioner" shall include a physician contracted with billing and collection responsibility by
27 an eligible acute care hospital.

28 ~~(d)~~ (e) The taxes imposed by this section may not be imposed or collected until the
29 occurrence of each of the following:

30 (1) The West Virginia Bureau for Medical Services incorporates the payment methodology
31 into the appropriate contracts and agreements; and

32 (2) The West Virginia Bureau for Medical Services receives the necessary approvals from
33 the Centers for Medicare and Medicaid Services.

34 ~~(e)~~ (f) There is ~~hereby created~~ continued a special fund known as the Acute Care Clearing
35 Fund. The amount of taxes collected under this section and under §11-27-38 of this code,
36 including any interest, additions to tax, and penalties collected under §11-10-1 *et seq.* of this code,
37 less the amount of allowable refunds, the amount of any interest payable with respect to such
38 refunds, and costs of administration and collection, shall be deposited into the Acute Care
39 Clearing Fund created by this section. The Tax Commissioner shall ~~establish and~~ maintain the
40 funds collected under this section and then periodically distribute the same by the fifth day of the
41 month following the end of the calendar quarter in which the taxes were collected; Provided, that
42 notwithstanding any provision of the code to the contrary, the portion attributable to the taxes, any
43 interest, additions to tax, and penalties associated with the tax imposed under §11-27-38 of this
44 code shall be distributed into the Eligible Acute Care Provider Enhancement Account ~~created~~
45 ~~under that section~~ and the portion attributable to the taxes, any interest, additions to tax, and

46 penalties associated with the tax imposed under this section shall be distributed into a new
47 account to be created under the Medicaid State Share Fund to be designated as the Eligible Acute
48 Care Practitioner Enhancement Account. Disbursements from the Eligible Acute Care Practitioner
49 Enhancement Account within the Medicaid State Share Fund may be used only to support
50 increasing practitioner payment fee schedules for practitioners employed by eligible acute care
51 hospitals.

52 ~~(f)~~ (g) The imposition and collection of taxes imposed by this section shall be suspended
53 immediately upon the occurrence of any of the following:

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

57 (2) The effective date of any decision, enactment, or other determination by the Legislature
58 or by any court, officer, department, agency, or office of the state or federal government that
59 disqualifies the tax from counting towards state Medicaid funds available to determine federal
60 financial participation for Medicaid matching funds or creates for any reason a failure of the state to
61 use the assessment of the Medicaid program as described in this section; and

62 (3) If the tax payments remitted by the eligible acute care hospitals are not used to
63 effectuate the provisions of this section.

64 ~~(g)~~ (h) Any funds remaining in the Eligible Acute Care Practitioner Enhancement Account,
65 upon the occurrence of any of the events described in subsection ~~(f)~~ (g) of this section, that cannot
66 be used to match eligible federal Medicaid funds for this program, shall be transferred to the West
67 Virginia Medical Services Fund. These funds shall be used during the state fiscal year in which
68 they were transferred at the discretion of the West Virginia Bureau for Medical Services.

69 ~~(h) The amendments to this section enacted in the regular session of the Legislature, 2021,~~
70 ~~are effective beginning July 1, 2021.~~