

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5157

BY DELEGATES ROHRBACH, CRISS, WORRELL, AKERS,
CHIARELLI, SUMMERS, TULLY, DITTMAN, FORSHT,
FEHRENBACHER, AND HORNBUCKLE

[Passed February 14, 2024; in effect from passage.]

1 AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended,
2 relating to increasing the tax rate imposed on certain hospitals up to the maximum amount
3 allowed by the Centers for Medicare and Medicaid Services (CMS).

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible hospitals.

1 (a) In addition to the rate of the tax imposed by §11-27-9 and §11-27-15 of this code on
2 providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute
3 care hospitals an additional tax of 75 one-hundredths of one percent on the gross receipts
4 received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital
5 services in this state through a directed payment program, or its successor, in accordance with
6 42 C.F.R. 438.6.

7 (b) The tax rate shall be increased on eligible hospitals, as needed, to provide non-federal
8 share funding as described in subsection (d) of this section, up to the maximum amount allowed
9 by the Centers for Medicare and Medicaid Services (CMS). The CMS allowable tax rate and
10 maximum payment shall be calculated by the West Virginia Bureau for Medical Services (BMS)
11 pursuant to CMS approved methodology. The Tax Commissioner, using the certified calculations
12 from the West Virginia Bureau for Medical Services, shall publish the rates to be applicable by
13 Administrative Notice at least 30 days prior to implementation on the first day of the next calendar
14 quarter following publication.

15 (c) For purposes of this section, prior to approval by CMS of the state plan amendment
16 made pursuant to amendment and reenactment of this section in 2024, the term "eligible acute
17 care hospital" means any inpatient or outpatient hospital conducting business in this state that is
18 not:

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

20 (2) A critical access hospital, designated as a critical access hospital after meeting all

21 federal eligibility criteria;

22 (3) A licensed free-standing psychiatric or medical rehabilitation hospital;

23 (4) A licensed long-term acute care hospital; or

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

25 For purposes of this section, on and after approval by CMS of the state plan amendment
26 made pursuant to amendment to this section in 2024, the term "eligible hospital" means any
27 inpatient or outpatient hospital conducting business in this state that is not a state-owned or state-
28 designated facility.

29 (d) There is continued a special revenue account in the State Treasury designated the
30 Medicaid State Share Fund. The amount of taxes collected under this section, including any
31 interest, additions to tax and penalties collected under §11-10-1 *et seq.* of this code, less the
32 amount of allowable refunds, the amount of any interest payable with respect to such refunds,
33 and costs of administration and collection, shall be deposited into the special revenue fund and
34 do not revert to General Revenue. The Tax Commissioner shall establish and maintain a separate
35 account and accounting for the funds collected under this section in an account to be designated
36 as the Eligible Facility Directed Payment Program Enhancement Account. The amounts collected
37 shall be deposited, within 15 days after receipt by the Tax Commissioner, into the Eligible Facility
38 Directed Payment Program Enhancement Account. Disbursements from the Eligible Facility
39 Directed Payment Program Enhancement Account within the Medicaid State Share Fund may
40 only be used to support West Virginia Medicaid and the directed payment program, or its
41 successor, in accordance with 42 C.F.R. 438.6 and as otherwise set forth in this section.

42 (e) The imposition and collection of taxes imposed by this section is suspended
43 immediately upon the occurrence of any of the following:

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

47 (2) The effective date of any decision, enactment, or other determination by the Legislature
48 or by any court, officer, department, agency, or office of state or federal government that has the
49 effect of disqualifying the tax from counting toward state Medicaid funds available to be used to
50 determine federal financial participation for Medicaid matching funds or creating for any reason a
51 failure of the state to use the assessment of the Medicaid program as described in this section;
52 and

53 (3) If the tax payments remitted by the eligible hospitals are not used to effectuate the
54 provisions of this article.

55 (f) Any funds remaining in the Eligible Facility Directed Payment Program Enhancement
56 Account as of June 30, 2024, and on June 30 of each year thereafter, shall be transferred to the
57 West Virginia Medical Services Fund after that June 30 but no later than the next ensuing
58 September 30. These funds shall be used during the state fiscal year in which they were
59 transferred at the discretion of the Bureau for Medical Services.

60 (g) The changes in this section enacted in the regular session of the Legislature, 2024,
61 are effective upon approval by CMS of the state plan amendment.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2024.

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Governor