WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5647

By Delegates Criss and Rohrbach

[Introduced February 13, 2024; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §11-27-10a of the Code of West Virginia, 1931, as amended, relating
2 to increasing and maintaining the bracketed tax rates on the privilege of establishing or
3 operating a health maintenance organization; specifying effective dates; and providing a
4 process for rates to be certified to the tax commissioner and notice to be provided.

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.

1 (a) *Imposition of tax*. — For the privilege of holding a certificate of authority within this state
2 to establish or operate a "health maintenance organization" pursuant to §33-25A-4 of this code
3 (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*. — (i) Prior to July 1, 2022, the tax imposed by this section
6 shall be based on the following rates applied to each taxable health plan's total Medicaid member
7 months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V:

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

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

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

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

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

13 (ii) On and after July 1, 2022 <u>through June 30, 2024</u>, the tax imposed by this section shall
14 be based on the following rates applied to each taxable health plan's total Medicaid member
15 months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V:

16 (1) Tier I — $36.26 for each Medicaid member month under 250,000;

17 (2) Tier II — $20.72 for each Medicaid member month between 250,000 and 500,000;

18 (3) Tier III — $1.036 for each Medicaid member month greater than 500,000;

19 (4) Tier IV — 25.9 cents for each non-Medicaid member month under 150,000; and

20 (5) Tier V — 10.36 cents for each non-Medicaid member month of 150,000 or more.

21 (iii) On July 1, 2023, and every July 1 thereafter, the tax rates for each tier will be increased
22 by the greater of either 0.0% or the average West Virginia Medicaid Managed Care capitation rate
23 change from the two preceding fiscal years ending on June 30: *Provided*, That any increase shall
24 meet the requirements in 42 C.F.R.§ 433.68.

25 (1) The average West Virginia Medicaid Managed Care capitation rate change will be
26 calculated by the West Virginia Bureau for Medical Services from the initial SFY rate certifications
27 as follows:

28 (A) The monthly membership weights by rate cell and month will be determined based on
29 the projected member months by rate cell from the most recent initial SFY rate certification.

30 (B) For each of the two preceding fiscal years, to determine the total projected premium
31 payments for each year, the West Virginia Bureau for Medical Services will multiply the initial SFY
32 certified capitation rates net of directed payments by the monthly membership weights by rate cell
33 and month as determined in §11-27-10a(b)(iii)(1)(A).

34 (C) For each of the two preceding fiscal years, the West Virginia Bureau for Medical
35 Services will divide the total projected premium payments as determined in §11-27-
36 10a(b)(iii)(1)(B) by the total enrollment to determine the average premium payment for each fiscal
37 year.

38 (D) To determine the average West Virginia Medicaid Managed Care capitation rate
39 change from the preceding two fiscal years, the West Virginia Bureau for Medical Services will
40 divide the most recent fiscal year's average premium payment by the earlier fiscal year's average
41 premium payment and subtract 1.

42 (2) Before July 1, 2023, and every July 1 thereafter, the West Virginia Bureau for Medical
43 Services will certify to the Tax Commissioner the capitation rate change from the preceding two
44 fiscal years, the calculation used in making that determination, and whether the increase meets
45 the requirements of federal and state law for permissible health care-related taxes.

46 (3) Using the certified calculations from the West Virginia Bureau for Medical Services, the
47 Tax Commissioner will publish, by Administrative Notice, before July 1 of each year the rates for
48 the next tax year applicable to each taxable health plan's total Medicaid member months within
49 tiers I, II, and III, and to non-Medicaid member months within tiers IV and V.

50 On July 1, 2024, through June 30, 2025, the tax imposed by this section shall be based on
51 the following rates applied to each taxable health plan’s total Medicaid member months within tiers
52 I, II, and III, and to non-Medicaid member months within tiers IV and V:

53 (A) Tier I — $66.5 for each Medicaid member month under 250,000;

54 (B) Tier II — $38.0 for each Medicaid member month between 250,000 and 500,000;

55 (C) Tier III — $1.9 for each Medicaid member month greater than 500,000;

56 (D) Tier IV — 48.0 cents for each non-Medicaid member month under 150,000; and

57 (E) Tier V — 19.0 cents for each non-Medicaid member month of 150,000 or more.

58 (iv) On July 1, 2025, and every July 1 thereafter, the rates for each of the following tiers will
59 be maintained by applying a uniform multiple to each bracketed rate necessary to equal six
60 percent of the cost of care as permitted by 42 C.F.R.§ 433.68:

61 (1) Tier I — per each Medicaid member month under 250,000;

62 (2) Tier II — per each Medicaid member month between 250,000 and 500,000;

63 (3) Tier III — per each Medicaid member month greater than 500,000;

64 (4) Tier IV — per each non-Medicaid member month under 150,000; and

65 (5) Tier V — per each non-Medicaid member month of 150,000 or more.

66 (A) Before June 1, 2025, and before every June 1 thereafter, the Commissioner of the
67 West Virginia Bureau for Medical Services will certify to the Tax Commissioner the adjusted tax
68 rates for the corresponding tiers necessary to maintain revenue at six percent of the cost of care
69 and ensure compliance with 42 C.F.R. § 433.68.

70 (B) Using the certified rates provided by the Commissioner of the West Virginia Bureau for
71 Medical Services, the Tax Commissioner will publish, by Administrative Notice, before July 1 of

72 each year the rates for the next tax year applicable to each taxable health plan's total Medicaid
73 member months within tiers I, II, and III, and to non-Medicaid member months within tiers IV and V.
74 (c) *Definitions*. —
75 (1) "Managed care organization" or "MCO" means a certified HMO that provides health
76 care services to Medicaid members pursuant to an agreement or contract with the department.
77 (2) "Managed care plan" means an agreement or contract between the secretary and an
78 MCO under which the MCO agrees to provide health care services to Medicaid members.
79 (3) "Medicaid member" means an individual enrolled in a taxable health plan who is a
80 Medicaid beneficiary on whose behalf the department directly pays the health plan a capitated
81 payment.
82 (4) "Medicaid member months" means the number of Medicaid members in a taxable
83 health plan in each month or part of a month over the course of the tax year.
84 (5) "Non-Medicaid enrollee" means an individual who is an "enrollee", "subscriber", or
85 "member", as those terms are defined in §33-25A-2(8) of this code, in a taxable health plan who is
86 not a Medicaid member: *Provided*, That this definition does not include Public Employees
87 Retirement Agency members or Medicare Advantage members.
88 (6) "Non-Medicaid member months" means the number of non-Medicaid enrollees in a
89 taxable health plan in each month or part of a month over the course of the tax year, but does not
90 include persons enrolled in either a health plan issued by the West Virginia Public Employees
91 Insurance Agency or a plan issued pursuant to the Federal Employees Health Benefits Act of 1959
92 (Public Law 86-382) to the extent the imposition of the tax under this section is preempted
93 pursuant to 5 U.S.C. § 8909(f).
94 (7) "Taxable health plan" means: (i) An agreement or contract under which a certified HMO
95 agrees to provide health care services to a non-Medicaid member in accordance with §33-25A-1
96 *et seq.* of this code; and (ii) a managed care plan.
97 (8) "Tax year" means the fiscal year beginning on July 1 and ending on June 30.

98 (9) "Rate cell" means a set of mutually exclusive categories of enrollees that is defined by
99 one or more characteristics for the purpose of determining the capitation rate and making
100 a capitation payment; such characteristics may include age, gender, eligibility category, and
101 region or geographic area.

102 (10) "Initial SFY rate certification" means the MHT and MHP actuarial certifications as
103 submitted to the Centers for Medicare and Medicaid Services prior to the start of the state fiscal
104 year and prior to any mid-year or other rate amendments.

105 (d) *Effective date*. —

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

113 (ii) The tax imposed by this section shall be administered in accordance with the provisions
114 of this article and the Tax Administration and Procedures act in §11-10-1 *et seq.* of this code:
115 *Provided*, That the tax imposed by this section shall be automatically void if the Centers for
116 Medicare and Medicaid Services determines that it is no longer a permissible health care-related
117 tax that is eligible for federal financial participation.

118 (e) *Time for paying tax*. — Notwithstanding the provisions of §11-27-25 of this code, no
119 taxes may be collected under this article until the department receives written notice that the
120 federal Centers for Medicare and Medicaid Services has approved proposed Medicaid rates as
121 actuarially sound for the taxable year in which the tax will be imposed.

NOTE: The purpose of this bill is to increase and maintain the bracketed tax rates on the privilege of establishing or operating a health maintenance organization, specify effective

dates, and provide a process for rates to be certified to the tax commissioner and require notice to be provided.

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