

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1017
95TH GENERAL ASSEMBLY

Reported from the Committee on Health, Mental Health, Seniors and Families, April 1, 2010, with recommendation that the Senate Committee Substitute do pass.

5260S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 198.439, 208.437, 208.453, 338.550, 633.401, and 633.410, RSMo, and to enact in lieu thereof six new sections relating to certain provider taxes, with expiration dates.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 198.439, 208.437, 208.453, 338.550, 633.401, and
2 633.410, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 198.439, 208.437, 208.453, 338.550, 633.401, and 633.410, to
4 read as follows:

198.439. Sections 198.401 to 198.436 shall expire on September 30, [2011]
2 **2015**.

208.437. 1. A Medicaid managed care organization reimbursement
2 allowance period as provided in sections 208.431 to 208.437 shall be from the first
3 day of July to the thirtieth day of June. The department shall notify each
4 Medicaid managed care organization with a balance due on the thirtieth day of
5 June of each year the amount of such balance due. If any managed care
6 organization fails to pay its managed care organization reimbursement allowance
7 within thirty days of such notice, the reimbursement allowance shall be
8 delinquent. The reimbursement allowance may remain unpaid during an appeal.

9 2. Except as otherwise provided in this section, if any reimbursement
10 allowance imposed under the provisions of sections 208.431 to 208.437 is unpaid
11 and delinquent, the department of social services may compel the payment of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 such reimbursement allowance in the circuit court having jurisdiction in the
13 county where the main offices of the Medicaid managed care organization are
14 located. In addition, the director of the department of social services or the
15 director's designee may cancel or refuse to issue, extend or reinstate a Medicaid
16 contract agreement to any Medicaid managed care organization which fails to pay
17 such delinquent reimbursement allowance required by sections 208.431 to 208.437
18 unless under appeal.

19 3. Except as otherwise provided in this section, failure to pay a delinquent
20 reimbursement allowance imposed under sections 208.431 to 208.437 shall be
21 grounds for denial, suspension or revocation of a license granted by the
22 department of insurance, financial institutions and professional registration. The
23 director of the department of insurance, financial institutions and professional
24 registration may deny, suspend or revoke the license of a Medicaid managed care
25 organization with a contract under 42 U.S.C. Section 1396b(m) which fails to pay
26 a managed care organization's delinquent reimbursement allowance unless under
27 appeal.

28 4. Nothing in sections 208.431 to 208.437 shall be deemed to effect or in
29 any way limit the tax-exempt or nonprofit status of any Medicaid managed care
30 organization with a contract under 42 U.S.C. Section 1396b(m) granted by state
31 law.

32 5. Sections 208.431 to 208.437 shall expire on September 30, [2011] **2015**.

208.453. Every hospital as defined by section 197.020, RSMo, except
2 [public hospitals which are operated primarily for the care and treatment of
3 mental disorders and] any hospital operated by the department of health and
4 senior services, shall, in addition to all other fees and taxes now required or paid,
5 pay a federal reimbursement allowance for the privilege of engaging in the
6 business of providing inpatient health care in this state. For the purpose of this
7 section, the phrase "engaging in the business of providing inpatient health care
8 in this state" shall mean accepting payment for inpatient services rendered. The
9 federal reimbursement allowance to be paid by a hospital which has an
10 unsponsored care ratio that exceeds sixty-five percent or hospitals owned or
11 operated by the board of curators, as defined in chapter 172, RSMo, may be
12 eliminated by the director of the department of social services. The unsponsored
13 care ratio shall be calculated by the department of social services.

338.550. 1. The pharmacy tax required by sections 338.500 to 338.550
2 shall expire ninety days after any one or more of the following conditions are met:

3 (1) The aggregate dispensing fee as appropriated by the general assembly
4 paid to pharmacists per prescription is less than the fiscal year 2003 dispensing
5 fees reimbursement amount; or

6 (2) The formula used to calculate the reimbursement as appropriated by
7 the general assembly for products dispensed by pharmacies is changed resulting
8 in lower reimbursement to the pharmacist in the aggregate than provided in
9 fiscal year 2003; or

10 (3) September 30, [2011] **2015**. The director of the department of social
11 services shall notify the revisor of statutes of the expiration date as provided in
12 this subsection. The provisions of sections 338.500 to 338.550 shall not apply to
13 pharmacies domiciled or headquartered outside this state which are engaged in
14 prescription drug sales that are delivered directly to patients within this state via
15 common carrier, mail or a carrier service.

16 2. Sections 338.500 to 338.550 shall expire on September 30, [2011] **2015**.

633.401. 1. For purposes of this section, the following terms mean:

2 (1) "Engaging in the business of providing health benefit services",
3 accepting payment for health benefit services;

4 (2) "Intermediate care facility for the mentally retarded", a private or
5 department of mental health facility which admits persons who are mentally
6 retarded or developmentally disabled for residential habilitation and other
7 services pursuant to chapter 630, RSMo. Such term shall include habilitation
8 centers and private or public intermediate care facilities for the mentally retarded
9 that have been certified to meet the conditions of participation under 42 CFR,
10 Section 483, Subpart 1;

11 (3) "Net operating revenues from providing services of intermediate care
12 facilities for the mentally retarded" shall include, without limitation, all moneys
13 received on account of such services pursuant to rates of reimbursement
14 established and paid by the department of social services, but shall not include
15 charitable contributions, grants, donations, bequests and income from nonservice
16 related fund-raising activities and government deficit financing, contractual
17 allowance, discounts or bad debt;

18 (4) "Services of intermediate care facilities for the mentally retarded" has
19 the same meaning as the term used in Title 42 United States Code, Section
20 1396b(w)(7)(A)(iv), as amended, and as such qualifies as a class of health care
21 services recognized in federal Public Law 102-234, the Medicaid Voluntary
22 Contribution and Provider Specific Tax Amendment of 1991.

23 2. Beginning July 1, 2008, each provider of services of intermediate care
24 facilities for the mentally retarded shall, in addition to all other fees and taxes
25 now required or paid, pay assessments on their net operating revenues for the
26 privilege of engaging in the business of providing services of the intermediate
27 care facilities for the mentally retarded or developmentally disabled in this state.

28 3. Each facility's assessment shall be based on a formula set forth in rules
29 and regulations promulgated by the department of mental health.

30 4. For purposes of determining rates of payment under the medical
31 assistance program for providers of services of intermediate care facilities for the
32 mentally retarded, the assessment imposed pursuant to this section on net
33 operating revenues shall be a reimbursable cost to be reflected as timely as
34 practicable in rates of payment applicable within the assessment period,
35 contingent, for payments by governmental agencies, on all federal approvals
36 necessary by federal law and regulation for federal financial participation in
37 payments made for beneficiaries eligible for medical assistance under Title XIX
38 of the federal Social Security Act.

39 5. Assessments shall be submitted by or on behalf of each provider of
40 services of intermediate care facilities for the mentally retarded on a monthly
41 basis to the director of the department of mental health or his or her designee
42 and shall be made payable to the director of the department of revenue.

43 6. In the alternative, a provider may direct that the director of the
44 department of social services offset, from the amount of any payment to be made
45 by the state to the provider, the amount of the assessment payment owed for any
46 month.

47 7. Assessment payments shall be deposited in the state treasury to the
48 credit of the "Intermediate Care Facility Mentally Retarded Reimbursement
49 Allowance Fund", which is hereby created in the state treasury. All investment
50 earnings of this fund shall be credited to the fund. Notwithstanding the
51 provisions of section 33.080, RSMo, to the contrary, any unexpended balance in
52 the intermediate care facility mentally retarded reimbursement allowance fund
53 at the end of the biennium shall not revert to the general revenue fund but shall
54 accumulate from year to year. The state treasurer shall maintain records that
55 show the amount of money in the fund at any time and the amount of any
56 investment earnings on that amount.

57 8. Each provider of services of intermediate care facilities for the mentally
58 retarded shall keep such records as may be necessary to determine the amount

59 of the assessment for which it is liable under this section. On or before the
60 forty-fifth day after the end of each month commencing July 1, 2008, each
61 provider of services of intermediate care facilities for the mentally retarded shall
62 submit to the department of social services a report on a cash basis that reflects
63 such information as is necessary to determine the amount of the assessment
64 payable for that month.

65 9. Every provider of services of intermediate care facilities for the
66 mentally retarded shall submit a certified annual report of net operating
67 revenues from the furnishing of services of intermediate care facilities for the
68 mentally retarded. The reports shall be in such form as may be prescribed by
69 rule by the director of the department of mental health. Final payments of the
70 assessment for each year shall be due for all providers of services of intermediate
71 care facilities for the mentally retarded upon the due date for submission of the
72 certified annual report.

73 10. The director of the department of mental health shall prescribe by
74 rule the form and content of any document required to be filed pursuant to the
75 provisions of this section.

76 11. Upon receipt of notification from the director of the department of
77 mental health of a provider's delinquency in paying assessments required under
78 this section, the director of the department of social services shall withhold, and
79 shall remit to the director of the department of revenue, an assessment amount
80 estimated by the director of the department of mental health from any payment
81 to be made by the state to the provider.

82 12. In the event a provider objects to the estimate described in subsection
83 11 of this section, or any other decision of the department of mental health
84 related to this section, the provider of services may request a hearing. If a
85 hearing is requested, the director of the department of mental health shall
86 provide the provider of services an opportunity to be heard and to present
87 evidence bearing on the amount due for an assessment or other issue related to
88 this section within thirty days after collection of an amount due or receipt of a
89 request for a hearing, whichever is later. The director shall issue a final decision
90 within forty-five days of the completion of the hearing. After reconsideration of
91 the assessment determination and a final decision by the director of the
92 department of mental health, an intermediate care facility for the mentally
93 retarded provider's appeal of the director's final decision shall be to the
94 administrative hearing commission in accordance with sections 208.156 and

95 621.055, RSMo.

96 13. Notwithstanding any other provision of law to the contrary, appeals
97 regarding this assessment shall be to the circuit court of Cole County or the
98 circuit court in the county in which the facility is located. The circuit court shall
99 hear the matter as the court of original jurisdiction.

100 14. Nothing in this section shall be deemed to affect or in any way limit
101 the tax-exempt or nonprofit status of any intermediate care facility for the
102 mentally retarded granted by state law.

103 15. The director of the department of mental health shall promulgate
104 rules and regulations to implement this section. Any rule or portion of a rule, as
105 that term is defined in section 536.010, RSMo, that is created under the authority
106 delegated in this section shall become effective only if it complies with and is
107 subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
108 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any
109 of the powers vested with the general assembly pursuant to chapter 536, RSMo,
110 to review, to delay the effective date, or to disapprove and annul a rule are
111 subsequently held unconstitutional, then the grant of rulemaking authority and
112 any rule proposed or adopted after August 28, 2008, shall be invalid and void.

113 16. The provisions of this section shall expire on September 30, [2011]
114 **2015.**

633.410. 1. For purposes of this section, the following terms mean:

2 (1) "Certification fee", a fee to be paid by providers of health benefit
3 services, which in the aggregate for all providers shall not exceed the overall cost
4 of the department of mental health's operation of its certification programs for
5 residential habilitation, individualized supported living, and day habilitation
6 services provided to developmentally disabled individuals;

7 (2) "Home and community-based waiver services for persons with
8 developmental disabilities", a department of mental health program which admits
9 persons who are developmentally disabled for residential habilitation,
10 individualized supported living, or day habilitation services under chapter 630,
11 RSMo;

12 (3) "Provider of health benefit services", publicly and privately operated
13 programs providing residential habilitation, individualized supported living, or
14 day habilitation services to developmentally disabled individuals that have been
15 certified to meet department of mental health certification standards.

16 2. Beginning July 1, 2009, each provider of health benefit services

17 accepting payment shall pay a certification fee.

18 3. Each provider's fee shall be based on a formula set forth in rules and
19 regulations promulgated by the department of mental health.

20 4. The fee imposed under this section shall be determined based on the
21 reasonable costs incurred by the department of mental health in its programs of
22 certification of providers of health benefit services. Imposition of the fee shall be
23 contingent upon receipt of all necessary federal approvals under federal law and
24 regulation to assure that the collection of the fee will not adversely affect the
25 receipt of federal financial participation in medical assistance under Title XIX of
26 the federal Social Security Act.

27 5. Fees shall be determined annually and prorated monthly by the
28 director of the department of mental health or his or her designee and shall be
29 made payable to the director of the department of revenue.

30 6. In the alternative, a provider may direct that the director of the
31 department of social services offset, from the amount of any payment to be made
32 by the state to the provider, the amount of the fee payment owed for any month.

33 7. Fee payments shall be deposited in the state treasury to the credit of
34 the "Home and Community-Based Developmental Disabilities Waiver
35 Reimbursement Allowance Fund", which is hereby created in the state treasury.
36 All investment earnings of this fund shall be credited to the fund. The state
37 treasurer shall be custodian and may approve disbursement. Notwithstanding
38 the provisions of section 33.080, RSMo, to the contrary, any unexpended balance
39 in the home and community-based developmental disabilities waiver
40 reimbursement allowance fund at the end of the biennium shall not revert to the
41 general revenue fund but shall accumulate from year to year. The state treasurer
42 shall maintain records that show the amount of money in the fund at any time
43 and the amount of any investment earnings on that amount.

44 8. Every provider of residential habilitation, individualized supported
45 living, and day habilitation services to developmentally disabled individuals shall
46 submit annually an acknowledgment of certification for the purpose of paying its
47 certification fee. The report shall be in such form as may be prescribed by rule
48 by the director of the department of mental health.

49 9. The director of the department of mental health shall prescribe by rule
50 the form and content of any document required to be filed under the provisions
51 of this section.

52 10. Upon receipt of notification from the director of the department of

53 mental health of a provider's delinquency in paying fees required under this
54 section, the director of the department of social services shall withhold, and shall
55 remit to the director of the department of revenue, the fee amount estimated by
56 the director of the department of mental health from any payment to be made by
57 the state to the provider.

58 11. In the event a provider objects to the estimate described in subsection
59 10 of this section, or any other decision of the department of mental health
60 related to this section, the provider of services may request a hearing. If a
61 hearing is requested, the director of the department of mental health shall
62 provide the provider of services an opportunity to be heard and to present
63 evidence bearing on the amount due for an assessment or other issue related to
64 this section within thirty days after collection of an amount due or receipt of a
65 request for a hearing, whichever is later. The director of the department of
66 mental health shall issue a final decision within forty-five days of the completion
67 of the hearing. After reconsideration of the fee determination and a final decision
68 by the director of the department of mental health, a residential habilitation,
69 individualized supported living, and day habilitation services to developmentally
70 disabled individuals provider's appeal of the director of the department of mental
71 health's final decision shall be to the administrative hearing commission in
72 accordance with section 208.156, RSMo, and section 621.055, RSMo.

73 12. Notwithstanding any other provision of law to the contrary, appeals
74 regarding this assessment shall be to the circuit court of Cole County or the
75 circuit court in the county in which the provider is located. The circuit court
76 shall hear the matter as the court of original jurisdiction.

77 13. Nothing in this section shall be deemed to affect or in any way limit
78 the tax-exempt or nonprofit status of any provider of residential habilitation,
79 individualized supported living, and day habilitation services to developmentally
80 disabled individuals granted by state law.

81 14. The director of the department of mental health shall promulgate
82 rules and regulations to implement this section. Any rule or portion of a rule, as
83 that term is defined in section 536.010, RSMo, that is created under the authority
84 delegated in this section shall become effective only if it complies with and is
85 subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
86 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any
87 of the powers vested with the general assembly pursuant to chapter 536, RSMo,
88 to review, to delay the effective date, or to disapprove and annul a rule are

89 subsequently held unconstitutional, then the grant of rulemaking authority and
90 any rule proposed or adopted after August 28, 2009, shall be invalid and void.

91 15. The provisions of this section shall expire on September 30, [2011]

92 **2015.**

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