

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 322**  
**96TH GENERAL ASSEMBLY**

1743L.04C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 190.839, 198.439, 208.437, 208.480, 208.798, 338.550, and 633.401, RSMo, and to enact in lieu thereof seven new sections relating to certain provider taxes.

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

Section A. Sections 190.839, 198.439, 208.437, 208.480, 208.798, 338.550, and  
2 633.401, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as  
3 sections 190.839, 198.439, 208.437, 208.480, 208.798, 338.550, and 633.401, to read as follows:

190.839. Sections 190.800 to 190.839 shall expire on September 30, [2011] **2016**.

198.439. Sections 198.401 to 198.436 shall expire on September 30, [2011] **2016**.

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

8 2. Except as otherwise provided in this section, if any reimbursement allowance imposed  
9 under the provisions of sections 208.431 to 208.437 is unpaid and delinquent, the department of  
10 social services may compel the payment of such reimbursement allowance in the circuit court  
11 having jurisdiction in the county where the main offices of the Medicaid managed care  
12 organization are located. In addition, the director of the department of social services or the  
13 director's designee may cancel or refuse to issue, extend or reinstate a Medicaid contract  
14 agreement to any Medicaid managed care organization which fails to pay such delinquent  
15 reimbursement allowance required by sections 208.431 to 208.437 unless under appeal.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

26           5. Sections 208.431 to 208.437 shall expire on September 30, [2011] **2016**.

          208.480. Notwithstanding the provisions of section 208.471 to the contrary, sections  
2 208.453 to 208.480 shall expire on September 30, [2011] **2016**.

          208.798. [1. The provisions of sections 208.550 to 208.568 shall terminate following  
2 notice to the revisor of statutes by the Missouri RX plan advisory commission that the Medicare  
3 Prescription Drug, Improvement and Modernization Act of 2003 has been fully implemented.

4           2.] Pursuant to section 23.253 of the Missouri sunset act, the provisions of the new  
5 program authorized under sections 208.780 to 208.798 shall automatically sunset August 28,  
6 [2011] **2015**, unless reauthorized by an act of the general assembly.

          338.550. 1. The pharmacy tax required by sections 338.500 to 338.550 shall expire  
2 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 paid to  
4 pharmacists per prescription is less than the fiscal year 2003 dispensing fees reimbursement  
5 amount; or

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

9           (3) September 30, [2011] **2016**.

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

16           2. Sections 338.500 to 338.550 shall expire on September 30, [2011] **2016**.

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

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

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

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

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

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

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

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

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

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

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

49           8. Each provider of services of intermediate care facilities for the mentally retarded shall  
50 keep such records as may be necessary to determine the amount of the assessment for which it  
51 is liable under this section. On or before the forty-fifth day after the end of each month  
52 commencing July 1, 2008, each provider of services of intermediate care facilities for the  
53 mentally retarded shall submit to the department of social services a report on a cash basis that  
54 reflects such information as is necessary to determine the amount of the assessment payable for  
55 that month.

56           9. Every provider of services of intermediate care facilities for the mentally retarded shall  
57 submit a certified annual report of net operating revenues from the furnishing of services of  
58 intermediate care facilities for the mentally retarded. The reports shall be in such form as may  
59 be prescribed by rule by the director of the department of mental health. Final payments of the  
60 assessment for each year shall be due for all providers of services of intermediate care facilities  
61 for the mentally retarded upon the due date for submission of the certified annual report.

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

64           11. Upon receipt of notification from the director of the department of mental health of  
65 a provider's delinquency in paying assessments required under this section, the director of the  
66 department of social services shall withhold, and shall remit to the director of the department of  
67 revenue, an assessment amount estimated by the director of the department of mental health from  
68 any payment to be made by the state to the provider.

69           12. In the event a provider objects to the estimate described in subsection 11 of this  
70 section, or any other decision of the department of mental health related to this section, the  
71 provider of services may request a hearing. If a hearing is requested, the director of the  
72 department of mental health shall provide the provider of services an opportunity to be heard and  
73 to present evidence bearing on the amount due for an assessment or other issue related to this

74 section within thirty days after collection of an amount due or receipt of a request for a hearing,  
75 whichever is later. The director shall issue a final decision within forty-five days of the  
76 completion of the hearing. After reconsideration of the assessment determination and a final  
77 decision by the director of the department of mental health, an intermediate care facility for the  
78 mentally retarded provider's appeal of the director's final decision shall be to the administrative  
79 hearing commission in accordance with sections 208.156 and 621.055.

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

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

85 15. The director of the department of mental health shall promulgate rules and  
86 regulations to implement this section. Any rule or portion of a rule, as that term is defined in  
87 section 536.010, that is created under the authority delegated in this section shall become  
88 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if  
89 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the  
90 powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective  
91 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
92 rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid  
93 and void.

94 16. The provisions of this section shall expire on September 30, [2011] **2016**.