

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 29

AN ACT

To repeal sections 190.839, 198.439, 208.437, 208.480, 338.550, and 633.401, RSMo, and to enact in lieu thereof six new sections relating to reimbursement allowance taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 190.839, 198.439, 208.437, 208.480,
2 338.550, and 633.401, RSMo, are repealed and six new sections
3 enacted in lieu thereof, to be known as sections 190.839,
4 198.439, 208.437, 208.480, 338.550, and 633.401, to read as
5 follows:

6 190.839. Sections 190.800 to 190.839 shall expire on
7 September 30, [2019] 2020.

8 198.439. Sections 198.401 to 198.436 shall expire on
9 September 30, [2019] 2020.

10 208.437. 1. A Medicaid managed care organization
11 reimbursement allowance period as provided in sections 208.431 to
12 208.437 shall be from the first day of July to the thirtieth day
13 of June. The department shall notify each Medicaid managed care
14 organization with a balance due on the thirtieth day of June of
15 each year the amount of such balance due. If any managed care
16 organization fails to pay its managed care organization

1 reimbursement allowance within thirty days of such notice, the
2 reimbursement allowance shall be delinquent. The reimbursement
3 allowance may remain unpaid during an appeal.

4 2. Except as otherwise provided in this section, if any
5 reimbursement allowance imposed under the provisions of sections
6 208.431 to 208.437 is unpaid and delinquent, the department of
7 social services may compel the payment of such reimbursement
8 allowance in the circuit court having jurisdiction in the county
9 where the main offices of the Medicaid managed care organization
10 are located. In addition, the director of the department of
11 social services or the director's designee may cancel or refuse
12 to issue, extend or reinstate a Medicaid contract agreement to
13 any Medicaid managed care organization which fails to pay such
14 delinquent reimbursement allowance required by sections 208.431
15 to 208.437 unless under appeal.

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

27 4. Nothing in sections 208.431 to 208.437 shall be deemed
28 to effect or in any way limit the tax-exempt or nonprofit status

1 of any Medicaid managed care organization with a contract under
2 42 U.S.C. Section 1396b(m) granted by state law.

3 5. Sections 208.431 to 208.437 shall expire on September
4 30, [2019] 2020.

5 208.480. Notwithstanding the provisions of section 208.471
6 to the contrary, sections 208.453 to 208.480 shall expire on
7 September 30, [2019] 2020.

8 338.550. 1. The pharmacy tax required by sections 338.500
9 to 338.550 shall expire ninety days after any one or more of the
10 following conditions are met:

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

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

19 (3) September 30, [2019] 2020.

20
21 The director of the department of social services shall notify
22 the revisor of statutes of the expiration date as provided in
23 this subsection. The provisions of sections 338.500 to 338.550
24 shall not apply to pharmacies domiciled or headquartered outside
25 this state which are engaged in prescription drug sales that are
26 delivered directly to patients within this state via common
27 carrier, mail or a carrier service.

28 2. Sections 338.500 to 338.550 shall expire on September

1 30, [2019] 2020.

2 633.401. 1. For purposes of this section, the following
3 terms mean:

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

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

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

24 (4) "Services of intermediate care facilities for the
25 intellectually disabled" has the same meaning as the term
26 services of intermediate care facilities for the mentally
27 retarded, as used in Title 42 United States Code, Section
28 1396b(w) (7) (A) (iv), as amended, and as such qualifies as a class

1 of health care services recognized in federal Public Law 102-234,
2 the Medicaid Voluntary Contribution and Provider Specific Tax
3 Amendments of 1991.

4 2. Beginning July 1, 2008, each provider of services of
5 intermediate care facilities for the intellectually disabled
6 shall, in addition to all other fees and taxes now required or
7 paid, pay assessments on their net operating revenues for the
8 privilege of engaging in the business of providing services of
9 the intermediate care facilities for the intellectually disabled
10 or developmentally disabled in this state.

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

14 4. For purposes of determining rates of payment under the
15 medical assistance program for providers of services of
16 intermediate care facilities for the intellectually disabled, the
17 assessment imposed pursuant to this section on net operating
18 revenues shall be a reimbursable cost to be reflected as timely
19 as practicable in rates of payment applicable within the
20 assessment period, contingent, for payments by governmental
21 agencies, on all federal approvals necessary by federal law and
22 regulation for federal financial participation in payments made
23 for beneficiaries eligible for medical assistance under Title XIX
24 of the federal Social Security Act.

25 5. Assessments shall be submitted by or on behalf of each
26 provider of services of intermediate care facilities for the
27 intellectually disabled on a monthly basis to the director of the
28 department of mental health or his or her designee and shall be

1 made payable to the director of the department of revenue.

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

6 7. Assessment payments shall be deposited in the state
7 treasury to the credit of the "Intermediate Care Facility
8 Intellectually Disabled Reimbursement Allowance Fund", which is
9 hereby created in the state treasury. All investment earnings of
10 this fund shall be credited to the fund. Notwithstanding the
11 provisions of section 33.080 to the contrary, any unexpended
12 balance in the intermediate care facility intellectually disabled
13 reimbursement allowance fund at the end of the biennium shall not
14 revert to the general revenue fund but shall accumulate from year
15 to year. The state treasurer shall maintain records that show
16 the amount of money in the fund at any time and the amount of any
17 investment earnings on that amount.

18 8. Each provider of services of intermediate care
19 facilities for the intellectually disabled shall keep such
20 records as may be necessary to determine the amount of the
21 assessment for which it is liable under this section. On or
22 before the forty-fifth day after the end of each month commencing
23 July 1, 2008, each provider of services of intermediate care
24 facilities for the intellectually disabled shall submit to the
25 department of social services a report on a cash basis that
26 reflects such information as is necessary to determine the amount
27 of the assessment payable for that month.

28 9. Every provider of services of intermediate care

1 facilities for the intellectually disabled shall submit a
2 certified annual report of net operating revenues from the
3 furnishing of services of intermediate care facilities for the
4 intellectually disabled. The reports shall be in such form as
5 may be prescribed by rule by the director of the department of
6 mental health. Final payments of the assessment for each year
7 shall be due for all providers of services of intermediate care
8 facilities for the intellectually disabled upon the due date for
9 submission of the certified annual report.

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

13 11. Upon receipt of notification from the director of the
14 department of mental health of a provider's delinquency in paying
15 assessments required under this section, the director of the
16 department of social services shall withhold, and shall remit to
17 the director of the department of revenue, an assessment amount
18 estimated by the director of the department of mental health from
19 any payment to be made by the state to the provider.

20 12. In the event a provider objects to the estimate
21 described in subsection 11 of this section, or any other decision
22 of the department of mental health related to this section, the
23 provider of services may request a hearing. If a hearing is
24 requested, the director of the department of mental health shall
25 provide the provider of services an opportunity to be heard and
26 to present evidence bearing on the amount due for an assessment
27 or other issue related to this section within thirty days after
28 collection of an amount due or receipt of a request for a

1 hearing, whichever is later. The director shall issue a final
2 decision within forty-five days of the completion of the hearing.
3 After reconsideration of the assessment determination and a final
4 decision by the director of the department of mental health, an
5 intermediate care facility for the intellectually disabled
6 provider's appeal of the director's final decision shall be to
7 the administrative hearing commission in accordance with sections
8 208.156 and 621.055.

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

14 14. Nothing in this section shall be deemed to affect or in
15 any way limit the tax-exempt or nonprofit status of any
16 intermediate care facility for the intellectually disabled
17 granted by state law.

18 15. The director of the department of mental health shall
19 promulgate rules and regulations to implement this section. Any
20 rule or portion of a rule, as that term is defined in section
21 536.010, that is created under the authority delegated in this
22 section shall become effective only if it complies with and is
23 subject to all of the provisions of chapter 536 and, if
24 applicable, section 536.028. This section and chapter 536 are
25 nonseverable and if any of the powers vested with the general
26 assembly pursuant to chapter 536 to review, to delay the
27 effective date, or to disapprove and annul a rule are
28 subsequently held unconstitutional, then the grant of rulemaking

1 authority and any rule proposed or adopted after August 28, 2008,
2 shall be invalid and void.

3 16. The provisions of this section shall expire on
4 September 30, [~~2019~~] 2020.