

FIRST REGULAR SESSION

# SENATE BILL NO. 511

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Read 1st time February 25, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2114S.011

## AN ACT

To amend chapter 633, RSMo, by adding thereto one new section relating to a community-based developmental disability provider tax, with an expiration date and an emergency clause.

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

Section A. Chapter 633, RSMo, is amended by adding thereto one new section, to be known as section 633.402, to read as follows:

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

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

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

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

2. Beginning July 1, 2009, each provider of health benefit services accepting payment shall pay a certification fee.

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

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

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

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

38           7. Fee payments shall be deposited in the state treasury to the  
39 credit of the "Home and Community-Based Developmental Disabilities  
40 Waiver Reimbursement Allowance Fund", which is hereby created in  
41 the state treasury. All investment earnings of this fund shall be  
42 credited to the fund. The state treasurer shall be custodian and may  
43 approve disbursement. Notwithstanding the provisions of section  
44 33.080, RSMo, to the contrary, any unexpended balance in the home and  
45 community-based developmental disabilities waiver reimbursement  
46 allowance fund at the end of the biennium shall not revert to the  
47 general revenue fund but shall accumulate from year to year. The state  
48 treasurer shall maintain records that show the amount of money in the  
49 fund at any time and the amount of any investment earnings on that  
50 amount.

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

57           9. The director of the department of mental health shall

58 prescribe by rule the form and content of any document required to be  
59 filed under the provisions of this section.

60 10. Upon receipt of notification from the director of the  
61 department of mental health of a provider's delinquency in paying fees  
62 required under this section, the director of the department of social  
63 services shall withhold, and shall remit to the director of the  
64 department of revenue, the fee amount estimated by the director of the  
65 department of mental health from any payment to be made by the state  
66 to the provider.

67 11. In the event a provider objects to the estimate described in  
68 subsection 10 of this section, or any other decision of the department  
69 of mental health related to this section, the provider of services may  
70 request a hearing. If a hearing is requested, the director of the  
71 department of mental health shall provide the provider of services an  
72 opportunity to be heard and to present evidence bearing on the amount  
73 due for an assessment or other issue related to this section within  
74 thirty days after collection of an amount due or receipt of a request for  
75 a hearing, whichever is later. The director of the department of mental  
76 health shall issue a final decision within forty-five days of the  
77 completion of the hearing. After reconsideration of the fee  
78 determination and a final decision by the director of the department of  
79 mental health, a residential habilitation, individualized supported  
80 living, and day habilitation services to developmentally disabled  
81 individuals provider's appeal of the director of the department of  
82 mental health's final decision shall be to the administrative hearing  
83 commission in accordance with section 208.156, RSMo, and section  
84 621.055, RSMo.

85 12. Notwithstanding any other provision of law to the contrary,  
86 appeals regarding this assessment shall be to the circuit court of Cole  
87 County or the circuit court in the county in which the provider is  
88 located. The circuit court shall hear the matter as the court of original  
89 jurisdiction.

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

95           **14. The director of the department of mental health shall**  
96 **promulgate rules and regulations to implement this section. Any rule**  
97 **or portion of a rule, as that term is defined in section 536.010, RSMo,**  
98 **that is created under the authority delegated in this section shall**  
99 **become effective only if it complies with and is subject to all of the**  
100 **provisions of chapter 536, RSMo, and, if applicable, section 536.028,**  
101 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any**  
102 **of the powers vested with the general assembly pursuant to chapter**  
103 **536, RSMo, to review, to delay the effective date, or to disapprove and**  
104 **annul a rule are subsequently held unconstitutional, then the grant of**  
105 **rulemaking authority and any rule proposed or adopted after August**  
106 **28, 2009, shall be invalid and void.**

107           **15. The provisions of this section shall expire on September 30,**  
108 **2011.**

          Section B. Because of the need to preserve state revenue and promote  
2 safety and quality in mental health community programs, section A of this act is  
3 deemed necessary for the immediate preservation of the public health, welfare,  
4 peace and safety, and is hereby declared to be an emergency act within the  
5 meaning of the constitution, and section A of this act shall be in full force and  
6 effect upon its passage and approval.

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