

FIRST REGULAR SESSION

# SENATE BILL NO. 322

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 23, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1743S.011

## 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 certain provider taxes.

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2 633.401, RSMo, are repealed and six new sections enacted in lieu thereof, to be  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

190.839. Sections 190.800 to 190.839 shall expire on September 30, [2011]  
2 **2016.**

198.439. Sections 198.401 to 198.436 shall expire on September 30, [2011]  
2 **2016.**

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  
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

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

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

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] **2016**.

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

16 or a carrier service.

17 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",  
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. Such term shall include habilitation centers  
8 and private or public intermediate care facilities for the mentally retarded that  
9 have been certified to meet the conditions of participation under 42 CFR, Section  
10 483, 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 to the contrary, any unexpended balance in the  
52 intermediate care facility mentally retarded reimbursement allowance fund at the  
53 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.

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, 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 and, if applicable, section  
108 536.028. This section and chapter 536 are nonseverable and if any of the powers  
109 vested with the general assembly pursuant to chapter 536 to review, to delay the  
110 effective date, or to disapprove and annul a rule are subsequently held  
111 unconstitutional, then the grant of rulemaking authority and any rule proposed  
112 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 **2016.**

✓  
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