

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1534

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FLANIGAN.

4977H.01P

D. ADAM CRUMBLISS, Chief Clerk

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:

Section A. Sections 190.839, 198.439, 208.437, 208.480, 338.550, and 633.401, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 190.839, 198.439, 208.437, 208.480, 338.550, and 633.401, to read as follows:

190.839. Sections 190.800 to 190.839 shall expire on September 30, [2016] **2018**.

198.439. Sections 198.401 to 198.436 shall expire on September 30, [2016] **2018**.

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

2. Except as otherwise provided in this section, if any reimbursement allowance imposed under the provisions of sections 208.431 to 208.437 is unpaid and delinquent, the department of social services may compel the payment of such reimbursement allowance in the circuit court having jurisdiction in the county where the main offices of the Medicaid managed care organization are located. In addition, the director of the department of social services or the

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.

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.

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, [2016] **2018**.

208.480. Notwithstanding the provisions of section 208.471 to the contrary, sections
2 208.453 to 208.480 shall expire on September 30, [2016] **2018**.

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, [2016] **2018**.

10

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, [2016] **2018**.

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 intellectually disabled", a private or department of
5 mental health facility which admits persons who are intellectually disabled 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 intellectually
8 disabled 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 intellectually disabled" shall include, without limitation, all moneys received on account of
12 such 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 intellectually disabled" has the same
17 meaning as the term "services of intermediate care facilities for the mentally retarded", as used
18 in Title 42 United States Code, Section 1396b(w)(7)(A)(iv), as amended, and as such qualifies
19 as a class of health care services recognized in federal Public Law 102-234, the Medicaid
20 Voluntary Contribution and Provider Specific Tax Amendment of 1991.

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

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

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

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

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

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

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

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

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

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

71 12. In the event a provider objects to the estimate described in subsection 11 of this
72 section, or any other decision of the department of mental health related to this section, the
73 provider of services may request a hearing. If a hearing is requested, the director of the
74 department of mental health shall provide the provider of services an opportunity to be heard and

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

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

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

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

97 16. The provisions of this section shall expire on September 30, [2016] **2018**.

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