

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 538**  
**95TH GENERAL ASSEMBLY**

2254L.04C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 198.074, 198.075, 198.096, 198.525, 198.527, 208.437, 208.480, 208.819, 319.306, 319.321, 338.535, 338.550, and 633.401, RSMo, and to enact in lieu thereof eighteen new sections relating to long-term care facilities and fire marshal regulation, with penalty provisions and an emergency clause for certain sections.

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

Section A. Sections 198.074, 198.075, 198.096, 198.525, 198.527, 208.437, 208.480, 208.819, 319.306, 319.321, 338.535, 338.550, and 633.401, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 198.074, 198.075, 198.089, 198.096, 198.187, 198.525, 198.527, 198.545, 208.016, 208.437, 208.480, 208.819, 319.306, 319.321, 338.535, 338.550, 633.401, and 1, to read as follows:

198.074. 1. Effective August 28, 2007, all new facilities licensed **under this chapter** on or after August 28, 2007, or any [facilities completing a] **section of a facility licensed under this chapter in which a** major renovation [to the facility] **has been completed** on or after August 28, 2007, as defined and approved by the department, [and which are licensed under this chapter] shall install and maintain an approved sprinkler system in accordance with National Fire Protection Association (NFPA) 13.

2. Facilities that were initially licensed and had an approved sprinkler system prior to August 28, 2007, shall continue to meet all laws, rules, and regulations for testing, inspection and maintenance of the sprinkler system that were in effect for such facilities on August 27, 2007.

3. Multi-level assisted living facilities that accept or retain any individual with a physical, cognitive, or other impairment that prevents the individual from safely evacuating the facility with minimal assistance shall install and maintain an approved sprinkler system in

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 accordance with NFPA 13. Single-story assisted living facilities that accept or retain any  
14 individual with a physical, cognitive, or other impairment that prevents the individual from  
15 safely evacuating the facility with minimal assistance shall install and maintain an approved  
16 sprinkler system in accordance with NFPA 13R.

17 4. All residential care and assisted living facilities with more than twenty residents not  
18 included in subsection 3 of this section, which are initially licensed under this chapter prior to  
19 August 28, 2007, and that do not have installed an approved sprinkler system in accordance with  
20 NFPA 13R **or 13** prior to August 28, 2007, shall install and maintain an approved sprinkler  
21 system in accordance with NFPA 13R **or 13** by December 31, 2012, unless the facility meets the  
22 safety requirements of Chapter 33 of existing residential board and care occupancies of NFPA  
23 101 life safety code.

24 5. All skilled nursing and intermediate care facilities not required prior to August 28,  
25 2007, to install and maintain an approved sprinkler system shall install and maintain an approved  
26 sprinkler system in accordance with NFPA 13 by December 31, 2012, unless the facility receives  
27 an exemption from the department and presents evidence in writing from a certified sprinkler  
28 system representative or licensed engineer that the facility is unable to install an approved  
29 National Fire Protection Association 13 system due to the unavailability of water supply  
30 requirements associated with this system [or the facility meets the safety requirements of Chapter  
31 33 of existing residential board and care occupancies of NFPA 101 life safety code].

32 6. Facilities that take a substantial step, as specified in [subsection 7] **subsections 4 and**  
33 **5** of this section, to install an approved NFPA 13R **or 13** system prior to December 31, 2012,  
34 may apply to the [department] **state treasurer's office** for a loan in accordance with section  
35 198.075 to install such system. However, such loan shall not be available if by December 31,  
36 2009, the average total reimbursement for the care of persons eligible for Medicaid public  
37 assistance in an assisted living facility and residential care facility is equal to or exceeds fifty-two  
38 dollars per day. The average total reimbursement includes room, board, and care delivered by  
39 the facility, but shall not include payments to the facility for care or services not provided by the  
40 facility. If a facility under this subsection does not have an approved sprinkler system installed  
41 by December 31, 2012, such facility shall be required to install and maintain an approved  
42 sprinkler system in accordance with NFPA 13 by December 31, 2013. Such loans received under  
43 this subsection and in accordance with section 198.075, shall be paid in full as follows:

44 (1) Ten years for those facilities approved for the loan and whose average total  
45 reimbursement rate for the care of persons eligible for Medicaid public assistance is equal to  
46 forty-eight and no more than forty-nine dollars per day;

47 (2) Eight years for those facilities approved for the loan and whose average total  
48 reimbursement rate for the care of persons eligible for Medicaid public assistance is greater than  
49 forty-nine and no more than fifty-two dollars per day; or

50 (3) Five years for those facilities approved for the loan and whose average total  
51 reimbursement rate for the care of persons eligible for Medicaid public assistance is greater than  
52 fifty-two dollars per day.

53 (4) No payments or interest shall be due until the average total reimbursement rate for  
54 the care of persons eligible for Medicaid public assistance is equal to or greater than forty-eight  
55 dollars.

56 7. (1) All facilities licensed under this chapter shall be equipped with a complete fire  
57 alarm system in compliance with NFPA 101, Life Safety Code for Detection, Alarm, and  
58 Communication Systems [as referenced in NFPA 72], or shall maintain a system that was  
59 approved by the department when such facility was constructed so long as such system is a  
60 complete fire alarm system. A complete fire alarm system shall include, but not be limited to,  
61 interconnected smoke detectors [throughout the facility], automatic transmission to the fire  
62 department, dispatching agency, or central monitoring company, manual pull stations at each  
63 required exit and attendant's station, heat detectors, and audible and visual alarm indicators. **If  
64 a facility submits a plan of compliance for installation of a sprinkler system required by  
65 this chapter, such facility shall install a complete fire alarm system that complies with  
66 NFPA 72 upon installation of the sprinkler system. Until such time that the sprinkler  
67 system is installed in the facility which has submitted a plan of compliance, each resident  
68 room or any room designated for sleeping in the facility shall be equipped with at least one  
69 battery-powered smoke alarm installed, tested, and maintained in accordance with NFPA  
70 72. In addition, any such facility shall be equipped with heat detectors interconnected to  
71 the fire alarm system which are installed, tested, and maintained in accordance with NFPA  
72 72 in all areas subject to nuisance alarms, including but not limited to, kitchens, laundries,  
73 bathrooms, mechanical air handling rooms, and attic spaces.**

74 (2) In addition, each floor accessed by residents shall be divided into at least two smoke  
75 sections by one-hour rated smoke partitions. No smoke section shall exceed one hundred fifty  
76 feet in length. If neither the length nor the width of the floor exceeds seventy-five feet, no  
77 smoke-stop partition shall be required. Facilities with a complete fire alarm system and smoke  
78 sections meeting the requirements of this subsection prior to August 28, 2007, shall continue to  
79 meet such requirements. Facilities initially licensed on or after August 28, 2007, shall comply  
80 with such requirements beginning August 28, 2007, or on the effective date of licensure.

81 (3) Except as otherwise provided in this subsection, the requirements for complete fire  
82 alarm systems and smoke sections shall be enforceable on December 31, 2008.

83           8. The requirements of this section shall be construed to supersede the provisions of  
84 section 198.058 relating to the exemption of facilities from construction standards.

85           9. Fire safety inspections of **skilled nursing and intermediate care** facilities licensed  
86 under this chapter for compliance with this section shall be conducted annually by the [state fire  
87 marshal if such inspections are not available to be conducted by local fire protection districts or  
88 fire departments] **department. All department inspectors who inspect facilities for**  
89 **compliance under this section shall complete a fire inspector course, as developed by the**  
90 **division of fire safety within the department of public safety, by December 31, 2012. Fire**  
91 **safety inspections of residential care and assisted living facilities licensed under this**  
92 **chapter for compliance with this section shall be conducted annually by the state fire**  
93 **marshal.** The provisions of this section shall be enforced by the **department or** state fire  
94 marshal [or by the local fire protection district or fire department], depending on which entity  
95 conducted the inspection.

96           10. By July 1, 2008, all facilities licensed under this chapter shall submit a plan for  
97 compliance with the provisions of this section to the state fire marshal.

          198.075. 1. There is hereby created in the state treasury the "Fire Safety Standards Loan  
2 Fund", for implementing the provisions of [subsection 3] **subsections 4 and 5** of section  
3 198.074. Moneys deposited in the fund shall be considered state funds under article IV, section  
4 15 of the Missouri Constitution. The state treasurer shall be custodian of the fund and may  
5 disburse moneys from the fund in accordance with sections 30.170 and 30.180, RSMo. Any  
6 moneys remaining in the fund at the end of the biennium shall revert to the credit of the general  
7 revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other  
8 funds are invested. Any interest and moneys earned on such investments shall be credited to the  
9 fund.

10           2. Qualifying facilities shall make an application to the [department of health and senior  
11 services] **state treasurer's office** upon forms provided by the [department] **state treasurer's**  
12 **office.** Upon receipt of an application for a loan, the [department] **state treasurer's office** shall  
13 review the application [and advise the governor] before state funds are allocated for a loan. For  
14 purposes of this section, a "qualifying facility" shall mean a facility licensed under this chapter  
15 that is in substantial compliance. "Substantial compliance" shall mean a facility that has no  
16 uncorrected deficiencies and is in compliance with department of health and senior services rules  
17 and regulations governing such facility.

18           3. The fund shall be a loan of which the interest rate shall not exceed two and one-half  
19 percent.

20           4. The fund shall be administered by the [department of health and senior services] **state**  
21 **treasurer's office.**

**198.089. The department of health and senior services shall strongly encourage all long-term care facilities licensed in this state to institute policies that will encourage familial involvement in the well-being and support of residents of long-term care facilities. Such policies for familial involvement shall include, but not be limited to, family conferences and meetings for the purpose of allowing families of residents to share their experiences and to discuss how to provide support to the residents of the facility.**

198.096. 1. The operator of any facility who holds in trust personal funds of residents as provided in section 198.090 shall obtain and file with the department a bond in a form approved by the department in an amount equal to one and one-half times the average monthly balance or average total of the monthly balances, rounded to the nearest one thousand dollars, in the residents' personal funds account or accounts kept pursuant to subdivision (3) of subsection 1 of section 198.090 for the preceding [calendar year] **twelve months**. In the case of a new facility or of an operator not previously holding in trust the personal funds of residents, the department shall determine the amount of bond to be required, taking into consideration the size and type of facility, the number of residents, and the experience of comparable facilities.

2. The required bond shall be conditioned to secure to every resident or former resident, or the estate of a former resident, the return of any moneys held in trust of which the resident has been wrongfully deprived by acts of the operator or any affiliates or employees of the operator. The liability of the surety to any and all persons shall not exceed the stated amount of the bond regardless of the period of time the bond has been in effect.

3. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any such bond is impaired by any recovery against the bond, the director may require the operator to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

4. In the event that any such bond includes a provision allowing the surety to cancel after notice, the bond shall provide for a minimum of sixty days' notice to the department.

5. The operator may, in lieu of a bond, place a cash deposit equal to the amount of the bond required in this section with an insured lending institution pursuant to a noncancelable escrow agreement with the lending institution if the written agreement is submitted to and approved by the department. No escrow agreement shall be approved without verification of cash deposit.

**198.187. Any long-term care facility licensed under this chapter may request criminal background checks under chapter 43, RSMo, of a resident in such facility.**

198.525. 1. Except as otherwise provided pursuant to section 198.526, in order to comply with sections 198.012 and 198.022, the department of health and senior services shall

3 inspect residential care facilities, assisted living facilities, intermediate care facilities, and skilled  
4 nursing, including those facilities attached to acute care hospitals at least twice a year.

5 **2. The department shall not assign an individual to inspect or survey a long-term**  
6 **care facility licensed under this chapter, for any purpose, in which the inspector or**  
7 **surveyor was an employee of such facility within the preceding two years.**

8 **3. For any inspection or survey of a facility licensed under this chapter, regardless**  
9 **of the purpose, the department shall require every newly hired inspector or surveyor at the**  
10 **time of hiring or, with respect to any currently employed inspector or surveyor as of**  
11 **August 28, 2009, to disclose:**

12 **(1) The name of every Missouri licensed long-term care facility in which he or she**  
13 **has been employed; and**

14 **(2) The name of any member of his or her immediate family who has been**  
15 **employed or is currently employed at a Missouri licensed long-term care facility.**

16

17 **The disclosures under this subsection shall be disclosed to the department whenever the**  
18 **event giving rise to disclosure first occurs.**

19 **4. For purposes of this section, the phrase "immediate family member" shall mean**  
20 **husband, wife, natural or adoptive parent, child, sibling, stepparent, stepchild, stepbrother,**  
21 **stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-**  
22 **in-law, grandparent or grandchild.**

23 **5. The information called for in this section shall be a public record under the**  
24 **provisions of subdivision (6) of section 610.010, RSMo.**

25 **6. Any person may notify the department if facts exist that would lead a reasonable**  
26 **person to conclude that any inspector or surveyor has any personal or business affiliation**  
27 **that would result in a conflict of interest in conducting an inspection or survey for a**  
28 **facility. Upon receiving that notice, the department, when assigning an inspector or**  
29 **surveyor to inspect or survey a facility, for any purpose, shall take steps to verify the**  
30 **information and, if the department has probable cause to believe that it is correct, shall not**  
31 **assign the inspector or surveyor to the facility or any facility within its organization so as**  
32 **to avoid an appearance of prejudice or favor to the facility or bias on the part of the**  
33 **inspector or surveyor.**

198.527. To ensure uniformity of application of regulation standards in long-term care  
2 facilities throughout the state, the department of [social] **health and senior** services shall:

3 (1) Evaluate the requirements for inspectors or surveyors of facilities, including the  
4 eligibility, training and testing requirements for the position.

5 Based on the evaluation, the department shall develop and implement additional training and  
6 knowledge standards for inspectors and surveyors;

7 (2) Periodically evaluate the performance of the inspectors or surveyors regionally and  
8 statewide to identify any deviations or inconsistencies in regulation application. At a minimum,  
9 the Missouri on-site surveyor evaluation process, and the number and type of actions overturned  
10 by the informal dispute resolution process **under section 198.545** and formal appeal shall be  
11 used [in] **as part of** the evaluation. Based on such evaluation, the department shall develop  
12 standards and a retraining process for the region, state, or individual inspector or surveyor, as  
13 needed;

14 (3) In addition to the provisions of subdivisions (1) and (2) of this section, the  
15 department shall develop a single uniform comprehensive and mandatory course of instruction  
16 for inspectors/surveyors on the practical application of enforcement of statutes, rules and  
17 regulations. Such course shall also be open to attendance by administrators and staff of facilities  
18 licensed pursuant to this chapter.

**198.545. 1. This section shall be known and may be cited as the "Missouri Informal  
2 Dispute Resolution Act".**

**3 2. As used in this section, the following terms shall mean:**

4 (1) **"Deficiency", a facility's failure to meet a participation requirement or**  
5 **standard, whether state or federal, supported by evidence gathered from observation,**  
6 **interview, or record review;**

7 (2) **"Department", the department of health and senior services;**

8 (3) **"Facility", a long-term care facility licensed under this chapter;**

9 (4) **"IDR", informal dispute resolution as provided for in this section;**

10 (5) **"Independent third party", the federally designated Medicare Quality  
11 Improvement Organization in this state;**

12 (6) **"Plan of correction", a facility's response to deficiencies which explains how  
13 corrective action will be accomplished, how the facility will identify other residents who  
14 may be affected by the deficiency practice, what measures will be used or systemic changes  
15 made to ensure that the deficient practice will not reoccur, and how the facility will  
16 monitor to ensure that solutions are sustained;**

17 (7) **"QIO", the federally designated Medicare Quality Improvement Organization  
18 in this state.**

19 **3. The department of health and senior services shall contract with an independent  
20 third party to conduct informal dispute resolution (IDR) for facilities licensed under this  
21 chapter. The IDR process, including conferences, shall constitute an informal  
22 administrative process and shall not be construed to be a formal evidentiary hearing. Use**

23 of IDR under this section shall not waive the facility's right to pursue further or additional  
24 legal actions.

25 **4. The department shall establish an IDR process to determine whether a cited**  
26 **deficiency as evidenced by a statement of deficiencies against a facility shall be upheld.**  
27 **The department shall promulgate rules to incorporate by reference the provisions of 42**  
28 **CFR 488.331 regarding the IDR process and to include the following minimum**  
29 **requirements for the IDR process:**

30 (1) **Within ten working days of the end of the survey, the department shall by**  
31 **certified mail transmit to the facility a statement of deficiencies committed by the facility.**  
32 **Notification of the availability of an IDR and IDR process shall be included in the**  
33 **transmittal;**

34 (2) **Within ten calendar days of receipt of the statement of deficiencies, the facility**  
35 **shall return a plan of correction to the department. Within such ten-day period, the**  
36 **facility may request in writing an IDR conference to refute the deficiencies cited in the**  
37 **statement of deficiencies;**

38 (3) **Within ten working days of receipt for an IDR conference made by a facility,**  
39 **the QIO shall hold an IDR conference unless otherwise requested by the facility. The IDR**  
40 **conference shall provide the facility with an opportunity to provide additional information**  
41 **or clarification in support of the facility's contention that the deficiencies were erroneously**  
42 **cited. The facility may be accompanied by counsel during the IDR conference. The type**  
43 **of IDR held shall be at the discretion of the facility, but shall be limited to:**

44 (a) **A desk review of written information submitted by the facility; or**

45 (b) **A telephonic conference; or**

46 (c) **A face-to-face conference held at the headquarters of the QIO or at the facility**  
47 **at the request of the facility.**

48

49 **If the QIO determines the need for additional information, clarification, or discussion after**  
50 **conclusion of the IDR conference, the department and the facility shall be present.**

51 **5. Within ten days of the IDR conference described in subsection 4 of this section,**  
52 **the QIO shall make a determination, based upon the facts and findings presented, and**  
53 **shall transmit the decision and rationale for the outcome in writing to the facility and the**  
54 **department.**

55 **6. If the department disagrees with such determination, the department shall**  
56 **transmit the department's decision and rationale for the reversal of the QIO's decision to**  
57 **the facility within ten calendar days of receiving the QIO's decision.**

58           **7. If the QIO determines that the original statement of deficiencies should be**  
59 **changed as a result of the IDR conference, the department shall transmit a revised**  
60 **statement of deficiencies to the facility with the notification of the determination within ten**  
61 **calendar days of the decision to change the statement of deficiencies.**

62           **8. Within ten calendar days of receipt of the determination made by the QIO and**  
63 **the revised statement of deficiencies, the facility shall submit a plan of correction to the**  
64 **department.**

65           **9. The department shall not post on its web site or enter into the Centers for**  
66 **Medicare & Medicaid Services Online Survey, Certification and Reporting System, or**  
67 **report to any other agency, any information about the deficiencies which are in dispute**  
68 **unless the dispute determination is made and the facility has responded with a revised plan**  
69 **of correction, if needed.**

70           **10. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
71 **that is created under the authority delegated in this section shall become effective only if**  
72 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
73 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
74 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**  
75 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**  
76 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
77 **adopted after August 28, 2009, shall be invalid and void.**

**208.016. In determining the amount of an institutionalized MO HealthNet**  
2 **individual's income that is to be applied to payment for the costs of care in the institution,**  
3 **there shall be deducted a personal needs allowance of no less than thirty dollars per month**  
4 **or the minimum amount required by 42 U.S.C. 1396a(q)(2) if more than thirty dollars.**  
5 **Beginning January 1, 2010, the personal needs allowance shall be increased by an amount**  
6 **equal to the product of the percentage of the Social Security benefit cost of living**  
7 **adjustment and the average amount that MO HealthNet participants are required to**  
8 **contribute to the cost of institutionalized care. The annual increase in the personal needs**  
9 **allowance shall be rounded to the nearest whole dollar and shall not exceed five dollars in**  
10 **any year.**

**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.

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 affect 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 [June] **September 30, [2009] 2011.**

208.480. Notwithstanding the provisions of section 208.471 to the contrary, sections  
2 208.453 to 208.480 shall expire on September 30, [2009] **2011.**

208.819. 1. **Subject to appropriations**, persons institutionalized in nursing homes who  
2 are [Medicaid] **MO HealthNet** eligible and who wish to move back into the community shall  
3 be eligible for a one-time [Missouri] transition [to independence] grant. The [Missouri]  
4 transition [to independence] grant shall be limited to up to [fifteen] **twenty-four** hundred dollars  
5 to offset the initial down payments [and] , setup costs, **and other expenditures** associated with  
6 housing a **senior or** person with disabilities **needing home and community-based services** as  
7 such person moves out of a nursing home. Such grants shall be established and administered by  
8 the division of [vocational rehabilitation] **senior and disability services** in consultation with the  
9 department of social services. The division of [vocational rehabilitation] **senior and disability**  
10 **services** and the department of social services shall cooperate in actively seeking federal and  
11 private grant moneys to **further** fund this program; except that, such federal and private grant  
12 moneys shall not limit the general assembly's ability to appropriate moneys for the [Missouri]  
13 transition [to independence] grants.

14           2. The [division of medical services within the department of social services, the]  
15 department of health and senior services and the [division of vocational rehabilitation within the  
16 department of elementary and secondary education] **department of mental health** shall work  
17 together to develop information and training on community-based service options for residents  
18 transitioning into the community[. Representatives of disability-related community  
19 organizations shall complete such training before initiating contact with institutionalized  
20 individuals] **and shall promulgate rules as necessary. Any rule or portion of a rule, as that**  
21 **term is defined in section 536.010, RSMo, that is created under the authority delegated in**  
22 **this section shall become effective only if it complies with and is subject to all of the**  
23 **provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section**  
24 **and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general**  
25 **assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to**  
26 **disapprove and annul a rule are subsequently held unconstitutional, then the grant of**  
27 **rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be**  
28 **invalid and void.**

          319.306. 1. Any individual who uses explosives in Missouri shall obtain a blaster's  
2 license, except those exempted in subsection 18 of this section. A person using explosives shall  
3 not be required to hold a blaster's license, but all blasting on behalf of a person using explosives  
4 shall be performed only by licensed blasters. Applications for a blaster's license or renewal of  
5 a blaster's license shall be on a form designated by the Missouri division of fire safety, and shall  
6 contain the following:

- 7           (1) The applicant's full name;
- 8           (2) The applicant's home address;
- 9           (3) The applicant's date of birth;
- 10          (4) The applicant's sex;
- 11          (5) The applicant's physical description;
- 12          (6) The applicant's driver's license number;
- 13          (7) The applicant's current place of employment;
- 14          (8) A listing of any other blasting license or certification held by the applicant, to include  
15 the name, address, and phone number of the regulatory authority that issued the license or  
16 certification;
- 17          (9) Any other information required to fulfill the obligations of sections 319.300 to  
18 319.345.

19           2. Any individual who has met the qualifications set forth in subsection 4 of this section  
20 may apply for a blaster's license.

21           3. An applicant for a blaster's license shall submit an application fee and two copies of  
22 the applicant's photograph with the application submitted to the division of fire safety. The  
23 amount of such fee shall be established by rule promulgated by the division of fire safety. The  
24 fee established by rule shall be no greater than the cost of administering this section, but shall  
25 not exceed one hundred dollars.

26           4. An applicant for a blaster's license shall:

27           (1) Be at least twenty-one years of age;

28           (2) Not have willfully violated any provisions of sections 319.300 to 319.345;

29           (3) Not have knowingly withheld information or has not made any false or fictitious  
30 statement intended or likely to deceive in connection with the application;

31           (4) Have familiarity and understanding of relevant federal and state laws relating to  
32 explosives materials;

33           (5) Not have been convicted in any court of, or pled guilty to, a felony;

34           (6) Not be a fugitive from justice;

35           (7) Not be an unlawful user of any controlled substance in violation of chapter 195,  
36 RSMo;

37           (8) Except as provided in subsections 11 and 13 of this section, have completed an  
38 approved blaster's training course that meets the requirements of subsection 14 of this section  
39 and [has] **have** successfully passed the licensing examination under the provisions of  
40 subdivisions (1) to (5) of subsection 15 of this section;

41           (9) Have accumulated at least one thousand hours of experience directly relating to the  
42 use of explosives within two years immediately prior to applying for a blaster's license and shall  
43 provide signed documentation from an employer, supervisor, or other responsible party verifying  
44 the applicant's experience;

45           (10) Not have been adjudicated as mentally defective; and

46           (11) Not advocate or knowingly belong to any organization or group that advocates  
47 violent action against any federal, state, or local government, or against any person.

48           5. Any individual holding a blaster's license under the provisions of this section shall  
49 promptly notify the division of fire safety if he or she has had any change of material fact relating  
50 to any qualification for holding a blaster's license.

51           6. If the division of fire safety finds that the requirements for a blaster's license have been  
52 satisfied, a license shall be issued to the applicant.

53           7. A blaster's license shall expire three years from the date of issuance. To qualify for  
54 a renewal of a blaster's license, an individual will be required to provide documentation of  
55 completing eight hours of training in an explosives-related course of instruction that is approved  
56 by the division of fire safety, at least half of which shall have been completed within the year

57 prior to renewal. The remainder of such training for renewal of the license may be acquired at  
58 any time during the three-year period that a license is valid. Additional training beyond an  
59 accumulated eight hours during any three-year period is not valid for more than one subsequent  
60 renewal of the license.

61 8. Each license issued under the provisions of this section shall provide documentation  
62 to the license holder in the form of a letter or letter-sized certificate and a card that is  
63 approximately two inches by three inches in size. Each shall specify a unique license number,  
64 the name of the individual, his or her driver's license number, the individual's photograph, the  
65 blaster's license's effective date and its expiration date, and any other record-keeping information  
66 needed by the division of fire safety. In addition, the card form of the license shall contain a  
67 photographic image of the license holder.

68 9. Each individual required to have a blaster's license shall keep at least one form of  
69 license documentation on his or her person or at the site of blasting and shall provide  
70 documentation that he or she has a currently valid license to a representative of the division of  
71 fire safety upon a written or verbal request. No enforcement action shall be taken against any  
72 individual that cannot comply with such a request so long as the division of fire safety's records  
73 provide documentation that the individual has a valid blaster's license.

74 10. (1) A blaster's license issued under the provisions of this section may be suspended  
75 or revoked by the division of fire safety upon substantial proof that the individual holding the  
76 license has:

77 (a) Knowingly failed to monitor the use of explosives as provided in section 319.309;

78 (b) Negligently or habitually exceeded the limits established under section 319.312;

79 (c) Knowingly or habitually failed to create a record of blasts as required by section  
80 319.315;

81 (d) Had a change in material fact relating to their qualifications for holding a blaster's  
82 license as described in subsection 4 of this section;

83 (e) Failed to advise the division of fire safety of any change of material fact relating to  
84 his or her qualifications for holding a blaster's license; or

85 (f) Knowingly made a material misrepresentation of any information by any means of  
86 false pretense, deception, fraud, misrepresentation, or cheating for the purpose of obtaining  
87 training or otherwise meeting the qualifications of obtaining a license.

88 (2) The division of fire safety shall provide any notice of suspension or revocation, as  
89 provided in subdivision (1) of this subsection, in writing, sent by certified mail to the last known  
90 address of the holder of the license. The notice may also be verbal, but this does not eliminate  
91 the requirement for written notice. Upon receipt of a verbal or written notice of suspension or  
92 revocation from the division of fire safety, the individual holding the license shall immediately

93 surrender all copies of the license to a representative of the division of fire safety and shall  
94 immediately cease all blasting activity.

95 (3) The individual holding the license may appeal any suspension or revocation to the  
96 state blasting safety board established under section 319.324 within forty-five days of the date  
97 written notice was received. The division of fire safety shall immediately notify the chairman  
98 of the board that an appeal has been received and a hearing before the board shall be held. The  
99 board shall consider and make a decision on any appeal received by the division of fire safety  
100 within thirty days of the date the appeal is received by the division of fire safety. The board shall  
101 make a decision on the appeal by majority vote of the board and shall immediately notify the  
102 licensee of its decision in writing. The written statement of the board's decision shall be prepared  
103 by the division of fire safety or its designee and shall be approved by the chairman of the board.  
104 The approved statement of the board's decision shall be sent by certified mail to the last known  
105 address of the holder of the license.

106 11. Any individual whose license has been expired for a period of three years or less  
107 shall be required to successfully pass the examination as provided in subdivisions (1) to (5) of  
108 subsection 15 of this section and attend the eight hours of training required for renewal of a  
109 license as minimum qualifications for submitting an application for reinstatement of the license.  
110 Any individual whose license has been expired for a period of more than three years shall meet  
111 the qualifications set forth in subsection 4 of this section, including completing twenty hours of  
112 training and passing the examination, prior to applying for a blaster's license.

113 12. A license may be granted to applicants who within the last three years have held a  
114 valid license or certification from any other source if all of the qualifications for obtaining the  
115 license or certification meet or exceed the provisions of this section. It is the duty of the division  
116 of fire safety to investigate the qualifications required for obtaining a license or certification from  
117 any other source. Licenses or certification held prior to the effective date of the rule required by  
118 subsection 19 of this section shall be deemed to meet requirements for this subsection, provided  
119 that they meet requirements of the rule.

120 13. A license may be granted upon the application of an individual employed as a blaster  
121 on or before December 31, 2000, and who has accumulated one thousand hours of training or  
122 education pertaining to blasting and experience working for a specific person using explosives  
123 within two years immediately prior to applying for a license. The application shall include a  
124 statement of hours of experience in the form of an affidavit signed by the person using explosives  
125 who has employed or contracted with the blaster for the preceding two years. Such applicant  
126 also shall meet the requirement of subdivisions (1), (2), (3), (4), (5), (6), (7), (10), and (11) of  
127 subsection 4 of this section. Any individual granted a license under this subsection shall be  
128 limited to blasting performed for the person using explosives submitting the affidavit required

129 by this subsection. Such licensee shall meet the requirements for continuing training required  
130 by subsection 7 of this section.

131           14. (1) The division of fire safety or its authorized agent shall offer annually at least two  
132 courses of instruction that fulfill the training requirement of qualifying for a blaster's license and  
133 two courses that fulfill the training requirement for renewal of a blaster's license. In addition,  
134 any person may apply to the division of fire safety for approval of a course of instruction that  
135 meets the training requirement of obtaining a blaster's license or renewal of a blaster's license.  
136 The application shall include a description of the qualifications of the instructor, a description  
137 of instructional materials to be used in the course, and an outline of the subject matter to be  
138 taught, including minimum hours of instruction on each topic. The division of fire safety shall  
139 review the application regarding the knowledge and experience of proposed instructors, the total  
140 hours of training and the adequacy of proposed training in subject matter with regard to the  
141 provisions of sections 319.300 to 319.345. If the division of fire safety determines that training  
142 proposed by the applicant is adequate, a letter of approval shall be issued to the applicant. The  
143 letter of approval shall be effective for a period of three years. If at any time the division of fire  
144 safety determines that an approved training course no longer meets the standards of this section,  
145 the letter of approval may be revoked with written notice. The division of fire safety or any  
146 person providing a course of instruction may charge an appropriate fee to recover the cost of  
147 conducting such instruction.

148           (2) To be approved by the division of fire safety, a blaster's training course shall contain  
149 at least twenty hours of instruction to prepare attendees for obtaining a blaster's license the first  
150 time, or eight hours of instruction to prepare attendees for obtaining a license renewal.

151           (3) Any person providing training in a course of instruction approved by the division of  
152 fire safety shall submit a list of individuals that attended any such course to the division of fire  
153 safety within ten business days after completion of the course.

154           (4) The division of fire safety shall maintain a current list of persons who provide  
155 approved training and shall make this list available by any reasonable means to professional and  
156 trade associations, labor organizations, universities, vocational schools, and others upon request.

157           15. (1) The division of fire safety shall approve a standard examination or examinations  
158 for the purpose of qualifying an individual to obtain a blaster's license. Each individual taking  
159 the examination shall pay a fee to the division of fire safety, or the division's agent, that is  
160 established by rule. Testing fees shall be no greater than what is required to administer the  
161 testing provisions of this section and shall not exceed fifty dollars per test.

162           (2) Except as provided in subsection 11 of this section, no individual shall be allowed  
163 to take an examination for purposes of obtaining a blaster's license unless that individual has  
164 completed a training course approved by the division of fire safety. The individual must have

165 completed an approved course of instruction as provided in subdivision (1) of subsection 14 of  
166 this section no longer than two years prior to taking the examination. The examination may be  
167 administered by any person approved to provide a course of instruction, as provided in  
168 subdivision (1) of subsection 14 of this section, at the site of instruction, provided that any such  
169 examination may, at the discretion of the state fire marshal, be conducted under the supervision  
170 of the division of fire safety. The division of fire safety may also administer such examinations  
171 at other times and locations.

172 (3) Standards for passing the examination shall be set by the division of fire safety by  
173 rule.

174 (4) The division of fire safety or its authorized agent shall provide a written statement  
175 within thirty days to the individual taking the examination as to whether that individual passed  
176 or failed.

177 (5) Any individual failing to pass the examination may retake the examination within  
178 six months without having to complete an additional approved course of instruction. If the  
179 individual fails the second examination, the person must complete another course of instruction  
180 as required in subdivision (1) of subsection 14 of this section before taking the examination  
181 again. No limit will be placed on how many times any individual may take the examination,  
182 subject to the provisions of this subdivision .

183 (6) Individuals having previously taken an approved blaster's training course, and passed  
184 an approved examination, and having taken an approved blaster's renewal training course, or that  
185 have obtained a blaster's license as provided in subsections 12 and 13 of this section are eligible  
186 for renewal of a blaster's license after meeting the requirements of subsection 7 of this section.  
187 The fee for renewal of a license shall be the same as the fee specified in subsection 3 of this  
188 section.

189 16. No individual shall load or fire explosives or direct, order, or otherwise cause any  
190 individual to load or fire explosives in this state unless that individual has a valid blaster's license  
191 or is under the direct supervision and responsibility of an individual having a valid blaster's  
192 license. For purposes of this section, "direct supervision" means the supervisor is physically  
193 present on the same job site as the individual who is loading or firing explosives. An individual  
194 without a blaster's license who is loading or firing explosives while under the direct supervision  
195 and responsibility of someone having a blaster's license shall not be in violation of sections  
196 319.300 to 319.345.

197 17. Persons found guilty of loading or firing explosives, or directing, ordering, or  
198 otherwise causing any individual to load or fire explosives in this state without having a valid  
199 blaster's license, or that loads and fires explosives without being under the direct supervision and  
200 responsibility of an individual holding a blaster's license as provided in sections 319.300 to

201 319.345, [shall be] **is** guilty of a class B misdemeanor for the first offense or a class A  
202 misdemeanor for a second or subsequent offense. Any individual convicted of a class A  
203 misdemeanor under the provisions of sections 319.300 to 319.345 shall be permanently  
204 prohibited from obtaining a blaster's license in this state.

205 18. The requirement for obtaining a blaster's license shall not apply to:

206 (1) Individuals employed by universities, colleges, or trade schools when the use of  
207 explosives is confined to instruction or research;

208 (2) Individuals using explosive materials in the forms prescribed by the official U.S.  
209 Pharmacopoeia or the National Formulary and used in medicines and medicinal agents;

210 (3) Individuals conducting training or emergency operations of any federal, state, or local  
211 government including all departments, agencies, and divisions thereof, provided they are acting  
212 in their official capacity and in the proper performance of their duties or functions;

213 (4) Individuals that are members of the armed forces or any military unit of Missouri or  
214 the United States who are using explosives while on official training exercises or who are on  
215 active duty;

216 (5) Individuals using pyrotechnics, commonly known as fireworks, including signaling  
217 devices such as flares, fuses, and torpedoes;

218 (6) Individuals using small arms ammunition and components thereof which are subject  
219 to the Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder;

220 (7) Any individual performing duties in underground mines regulated by 30 CFR Part  
221 48, Subpart A, 30 CFR Part 57, or performing duties in coal mining regulated by 30 CFR Part  
222 75, and 30 CFR Part 77 of the Code of Federal Regulations, as amended, or using explosives  
223 within an industrial furnace;

224 (8) Any individual having a valid blaster's license or certificate issued under the  
225 provisions of any requirement of the U.S. government in which the requirements for obtaining  
226 the license or certificate meet or exceed the requirements of sections 319.300 to 319.345;

227 (9) Individuals using agricultural fertilizers when used for agricultural or horticultural  
228 purposes;

229 (10) Individuals handling explosives while in the act of transporting them from one  
230 location to another;

231 (11) Individuals assisting or training under the direct supervision of a licensed blaster;

232 (12) Individuals handling explosives while engaged in the process of explosives  
233 manufacturing;

234 (13) Employees, agents, or contractors of rural electric cooperatives organized or  
235 operating under chapter 394, RSMo; [and]

236 (14) Individuals discharging historic firearms and cannon or reproductions of historic  
237 firearms and cannon; **and**

238 (15) **Individuals using explosive materials along with a well screen cleaning device**  
239 **for the purpose of unblocking clogged screens of agricultural irrigation wells.**

240 19. The division of fire safety shall promulgate rules under this section to become  
241 effective no later than July 1, 2008. Any individual loading or firing explosives after the  
242 effective date of such rule shall obtain a license within one hundred eighty days of the effective  
243 date of such rule. Any experience or training prior to the effective date of such rule that meets  
244 the standards established by the rule shall be deemed to comply with this section.

319.321. Sections 319.309, 319.312, 319.315, and 319.318 shall not apply to:

2 (1) Universities, colleges, or trade schools when confined to the purpose of instruction  
3 or research;

4 (2) The use of explosive materials in the forms prescribed by the official U.S.  
5 Pharmacopoeia or the National Formulary and used in medicines and medicinal agents;

6 (3) The training or emergency operations of any federal, state, or local government  
7 including all departments, agencies, and divisions thereof, provided they are acting in their  
8 official capacity and in the proper performance of their duties or functions;

9 (4) The use of explosives by the military or any agency of the United States;

10 (5) The use of pyrotechnics, commonly known as fireworks, including signaling devices  
11 such as flares, fuses, and torpedoes;

12 (6) The use of small arms ammunition and components thereof which are subject to the  
13 Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder. Any  
14 small arms ammunition and components thereof exempted by the Gun Control Act of 1968 and  
15 regulations promulgated thereunder are also exempted from the provisions of sections 319.300  
16 to 319.345;

17 (7) Any person performing duties using explosives within an industrial furnace **or using**  
18 **explosives along with a well screen cleaning device for the purpose of unblocking clogged**  
19 **screens of agricultural irrigation wells;**

20 (8) The use of agricultural fertilizers when used for agricultural or horticultural purposes;

21 (9) The use of explosives for lawful demolition of structures;

22 (10) The use of explosives by employees, agents, or contractors of rural electric  
23 cooperatives organized or operating under chapter 394, RSMo; and

24 (11) Individuals discharging historic firearms and cannon or reproductions of historic  
25 firearms and cannon.

338.535. 1. The pharmacy tax owed or, if an offset has been made, the balance after  
2 such offset, if any, shall be remitted by the pharmacy **or the pharmacy's designee** to the

3 department of social services. The remittance shall be made payable to the director of the  
4 department of revenue and shall be deposited in the state treasury to the credit of the "Pharmacy  
5 Reimbursement Allowance Fund" which is hereby created to provide payments for services  
6 related to the Medicaid pharmacy program. All investment earnings of the fund shall be credited  
7 to the fund.

8         2. An offset authorized by section 338.530 or a payment to the pharmacy reimbursement  
9 allowance fund shall be accepted as payment of the obligation set forth in section 338.500.

10         3. The state treasurer shall maintain records showing the amount of money in the  
11 pharmacy reimbursement allowance fund at any time and the amount of investment earnings on  
12 such amount.

13         4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any  
14 unexpended balance in the pharmacy reimbursement allowance fund at the end of the biennium  
15 shall not revert to the credit of the general revenue fund.

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) [June] **September** 30, [2009] **2011**.

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 [June] **September** 30, [2009] **2011**.

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, RSMo. Such  
7 term shall include habilitation centers and private or public intermediate care facilities for the

8 mentally retarded that have been certified to meet the conditions of participation under 42 CFR,  
9 Section 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, RSMo, to the contrary, any unexpended  
45 balance in the intermediate care facility mentally retarded reimbursement allowance fund at the  
46 end of the biennium shall not revert to the general revenue fund but shall accumulate from year  
47 to year. The state treasurer shall maintain records that show the amount of money in the fund  
48 at any time 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, RSMo.

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, RSMo, 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, RSMo,  
89 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
90 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,  
91 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently  
92 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
93 after August 28, 2008, shall be invalid and void.

94 16. The provisions of this section shall expire on [June] **September 30, [2009] 2011.**

**Section 1. Upon receipt of a properly completed referral for MO HealthNet-funded  
2 home and community-based care containing a nurse assessment or physician's order, the  
3 department of health and senior services shall:**

4 **(1) Review the recommendations regarding services and process the referral within  
5 fifteen business days;**

6 **(2) Issue a prior-authorization for home and community-based services when  
7 information contained in the referral is sufficient to establish eligibility for MO HealthNet-  
8 funded long-term care and determine the level of service need as required under state and  
9 federal regulations;**

10 **(3) Arrange for the provision of services by an in-home provider;**

11 **(4) Reimburse the in-home provider for one authorized nurse visit to complete the  
12 nurse assessment and a minimum of one and no more than two authorized nurse visits to  
13 make a properly completed referral;**

14 **(5) Notify the referring entity upon the authorization of MO HealthNet eligibility  
15 and provide MO HealthNet reimbursement for personal care benefits effective the date of  
16 the assessment or physician's order, and MO HealthNet reimbursement for waiver services  
17 effective the date the state reviews and approves the care plan;**

18 **(6) Notify the referring entity within five business days of receiving the referral if  
19 additional information is required to process the referral; and**

20 **(7) Inform the provider and contact the individual when information is insufficient  
21 or the proposed care plan requires additional evaluation by state staff that is not obtained**

22 **from the referring entity to schedule an in-home assessment to be conducted by the state**  
23 **staff within thirty days.**

Section B. Because of the need for continued imposition and collection of certain  
2 provider taxes, the repeal and reenactment of sections 208.437, 208.480, 338.535, 338.550, and  
3 633.401 of section A of this act is deemed necessary for the immediate preservation of the public  
4 health, welfare, peace and safety, and is hereby declared to be an emergency act within the  
5 meaning of the constitution, and the repeal and reenactment of sections 208.437, 208.480,  
6 338.535, 338.550, and 633.401 section A of this act shall be in full force and effect upon its  
7 passage and approval.

✓