

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 740

95TH GENERAL ASSEMBLY

1918S.04T

2009

AN ACT

To repeal sections 208.437, 208.480, 338.535, 338.550, and 633.401, RSMo, and to enact in lieu thereof fourteen new sections relating to federal reimbursement allowances, with an emergency clause and an expiration date for certain sections.

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

Section A. Sections 208.437, 208.480, 338.535, 338.550, and 633.401, RSMo, are
2 repealed and fourteen new sections enacted in lieu thereof, to be known as sections 208.437,
3 208.480, 338.535, 338.550, 633.401, 660.425, 660.430, 660.435, 660.440, 660.445, 660.450,
4 660.455, 660.460, and 660.465, to read as follows:

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

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 [affect] **effect** or in any
24 way limit the tax-exempt or nonprofit status of any Medicaid managed care organization with
25 a contract under 42 U.S.C. Section 1396b(m) granted by state law.

26 5. Sections 208.431 to 208.437 shall expire on [June 30, 2009] **September 30, 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**.

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

660.425. 1. In addition to all other fees and taxes required or paid, a tax is hereby imposed upon in-home services providers for the privilege of providing in-home services under chapter 208, RSMo. The tax is imposed upon payments received by an in-home services provider for the provision of in-home services under chapter 208, RSMo.

2. For purposes of sections 660.425 to 660.465, the following terms shall mean:

(1) "Engaging in the business of providing in-home services", all payments received by an in-home services provider for the provision of in-home services under chapter 208, RSMo;

(2) "In-home services", homemaker services, personal care services, chore services, respite services, consumer-directed services, and services, when provided in the individual's home and under a plan of care created by a physician, necessary to keep children out of hospitals. "In-home services" shall not include home health services as defined by federal and state law;

(3) "In-home services provider", any provider or vendor, as defined in section 208.900, RSMo, of compensated in-home services under chapter 208, RSMo, and under a provider agreement or contracted with the department of social services or the department of health and senior services.

660.430. 1. Each in-home services provider in this state providing in-home services under chapter 208, RSMo, shall, in addition to all other fees and taxes now required or paid, pay an in-home services gross receipts tax, not to exceed six and one-half percent of gross receipts, for the privilege of engaging in the business of providing in-home services in this state.

2. Each in-home services provider's tax shall be based on a formula set forth in rules promulgated by the department of social services. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.

3. The director of the department of social services or the director's designee may prescribe the form and contents of any forms or other documents required by sections 660.425 to 660.465.

19 **4. Notwithstanding any other provision of law to the contrary, appeals regarding**
20 **the promulgation of rules under this section shall be made to the circuit court of Cole**
21 **County. The circuit court of Cole County shall hear the matter as the court of original**
22 **jurisdiction.**

660.435. 1. For purposes of assessing the tax under sections 660.425 to 660.465, the
2 **department of health and senior services shall make available to the department of social**
3 **services a list of all providers and vendors under this section.**

4 **2. Each in-home services provider subject to sections 660.425 to 660.465 shall keep**
5 **such records as may be necessary to determine the total payments received for the**
6 **provision of in-home services under chapter 208, RSMo, by the in-home services provider.**
7 **Every in-home services provider shall submit to the department of social services a**
8 **statement that accurately reflects such information as is necessary to determine such in-**
9 **home services provider's tax due.**

10 **3. The director of the department of social services may prescribe the form and**
11 **contents of any forms or other documents required by this section.**

12 **4. Each in-home services provider shall report the total payments received for the**
13 **provision of in-home services under chapter 208, RSMo, to the department of social**
14 **services.**

660.440. 1. The tax imposed by sections 660.425 to 660.465 shall become effective
2 **upon authorization by the federal Centers for Medicare & Medicaid Services for a gross**
3 **receipts tax for in-home services.**

4 **2. If the federal Centers for Medicare & Medicaid Services determines that their**
5 **authorization is not necessary for the tax imposed under sections 660.425 to 660.465, the**
6 **tax shall become effective sixty days after the date of such determination.**

660.445. 1. The determination of the amount of tax due shall be the total amount
2 **of payments reported to the department multiplied by the tax rate established by rule by**
3 **the department of social services.**

4 **2. The department of social services shall notify each in-home services provider of**
5 **the amount of tax due. Such amount may be paid in increments over the balance of the**
6 **assessment period.**

7 **3. The department of social services may adjust the tax due quarterly on a**
8 **prospective basis. The department of social services may adjust the tax due more**
9 **frequently for individual providers if there is a substantial and statistically significant**
10 **change in the in-home services provided or in the payments received for such services**
11 **provided under chapter 208, RSMo. The department of social services may define such**
12 **adjustment criteria by rule.**

660.450. The director of the department of social services may offset the tax owed by an in-home services provider against any Missouri Medicaid payment due such in-home services provider, if the in-home services provider requests such an offset. The amounts to be offset shall result, so far as practicable, in withholding from the in-home services provider an amount substantially equal to the assessment due from the in-home services provider. The office of administration and the state treasurer may make any fund transfers necessary to execute the offset.

660.455. 1. The in-home services tax owed or, if an offset has been made, the balance after such offset, if any, shall be remitted by the in-home services provider to the department of social services. The remittance shall be made payable to the director of the department of social services and shall be deposited in the state treasury to the credit of the "In-home Services Gross Receipts Tax Fund" which is hereby created to provide payments for in-home services provided under chapter 208, RSMo. All investment earnings of the fund shall be credited to the fund.

2. An offset authorized by section 660.450 or a payment to the in-home services gross receipts tax fund shall be accepted as payment of the obligation set forth in section 660.425.

3. The state treasurer shall maintain records showing the amount of money in the in-home services gross receipts tax fund at any time and the amount of investment earnings on such amount.

4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any unexpended balance in the in-home services gross receipts tax fund at the end of the biennium shall not revert to the credit of the general revenue fund.

660.460. 1. The department of social services shall notify each in-home services provider with a tax due of more than ninety days of the amount of such balance. If any in-home services provider fails to pay its in-home services tax within thirty days of such notice, the in-home services tax shall be delinquent.

2. If any tax imposed under sections 660.425 to 660.465 is unpaid and delinquent, the department of social services may proceed to enforce the state's lien against the property of the in-home services provider and compel the payment of such assessment in the circuit court having jurisdiction in the county where the in-home services provider is located. In addition, the department of social services may cancel or refuse to issue, extend, or reinstate a Medicaid provider agreement to any in-home services provider that fails to pay the tax imposed by section 660.425.

3. Failure to pay the tax imposed under section 660.425 shall be grounds for failure to renew a provider agreement for services under chapter 208, RSMo, or failure to renew

14 a provider contract. The department of social services may revoke the provider agreement
15 of any in-home services provider that fails to pay such tax, or notify the department of
16 health and senior services to revoke the provider contract.

660.465. 1. The in-home services tax required by sections 660.425 to 660.465 shall
2 expire:

3 (1) Ninety days after any one or more of the following conditions are met:

4 (a) The aggregate in-home services fee as appropriated by the general assembly
5 paid to in-home services providers for in-home services provided under chapter 208,
6 RSMo, is less than the fiscal year 2010 in-home services fees reimbursement amount; or

7 (b) The formula used to calculate the reimbursement as appropriated by the
8 general assembly for in-home services provided is changed resulting in lower
9 reimbursement to in-home services providers in the aggregate than provided in fiscal year
10 2010; or

11 (2) September 1, 2011. The director of the department of social services shall notify
12 the revisor of statutes of the expiration date as provided in this subsection.

13 2. Sections 660.425 to 660.465 shall expire on September 1, 2011.

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

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Speaker of the House

President Pro Tem of the Senate

Governor