

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE SUBSTITUTE

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FOR

HOUSE BILL NO. 395

AN ACT

To repeal sections 198.074, 198.075, 198.096, 198.525, 198.527, 208.437, 208.480, 208.819, 338.535, 338.550, and 633.401, RSMo, and to enact in lieu thereof fifteen new sections relating to health care services, with an emergency clause.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 198.074, 198.075, 198.096, 198.525,
2 198.527, 208.437, 208.480, 208.819, 338.535, 338.550, and 633.401,
3 RSMo, are repealed and fifteen new sections enacted in lieu
4 thereof, to be known as sections 198.074, 198.075, 198.096,
5 198.187, 198.525, 198.527, 198.545, 208.016, 208.437, 208.480,
6 208.819, 338.535, 338.550, 633.401, and 1, to read as follows:
7 198.074. 1. Effective August 28, 2007, all new facilities
8 licensed under this chapter on or after August 28, 2007, or any
9 [facilities completing a] section of a facility licensed under this
10 chapter in which a major renovation [to the facility] has been
11 completed on or after August 28, 2007, as defined and approved by
12 the department, [and which are licensed under this chapter] shall
13 install and maintain an approved sprinkler system in accordance
14 with National Fire Protection Association (NFPA) 13.

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

6 3. Multi-level assisted living facilities that accept or
7 retain any individual with a physical, cognitive, or other
8 impairment that prevents the individual from safely evacuating the
9 facility with minimal assistance shall install and maintain an
10 approved sprinkler system in accordance with NFPA 13. Single-story
11 assisted living facilities that accept or retain any individual
12 with a physical, cognitive, or other impairment that prevents the
13 individual from safely evacuating the facility with minimal
14 assistance shall install and maintain an approved sprinkler system
15 in accordance with NFPA 13R.

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

26 5. All skilled nursing and intermediate care facilities not
27 required prior to August 28, 2007, to install and maintain an
28 approved sprinkler system shall install and maintain an approved
29 sprinkler system in accordance with NFPA 13 by December 31, 2012,

1 unless the facility receives an exemption from the department and
2 presents evidence in writing from a certified sprinkler system
3 representative or licensed engineer that the facility is unable to
4 install an approved National Fire Protection Association 13 system
5 due to the unavailability of water supply requirements associated
6 with this system [or the facility meets the safety requirements of
7 Chapter 33 of existing residential board and care occupancies of
8 NFPA 101 life safety code].

9 6. Facilities that take a substantial step, as specified in
10 [subsection 7] subsections 4 and 5 of this section, to install an
11 approved NFPA 13R or 13 system prior to December 31, 2012, may
12 apply to the [department] state treasurer's office for a loan in
13 accordance with section 198.075 to install such system. However,
14 such loan shall not be available if by December 31, 2009, the
15 average total reimbursement for the care of persons eligible for
16 Medicaid public assistance in an assisted living facility and
17 residential care facility is equal to or exceeds fifty-two dollars
18 per day. The average total reimbursement includes room, board, and
19 care delivered by the facility, but shall not include payments to
20 the facility for care or services not provided by the facility. If
21 a facility under this subsection does not have an approved
22 sprinkler system installed by December 31, 2012, such facility
23 shall be required to install and maintain an approved sprinkler
24 system in accordance with NFPA 13 by December 31, 2013. Such loans
25 received under this subsection and in accordance with section
26 198.075, shall be paid in full as follows:

27 (1) Ten years for those facilities approved for the loan and
28 whose average total reimbursement rate for the care of persons
29 eligible for Medicaid public assistance is equal to forty-eight and

1 no more than forty-nine dollars per day;

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

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

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

14 7. (1) All facilities licensed under this chapter shall be
15 equipped with a complete fire alarm system in compliance with NFPA
16 101, Life Safety Code for Detection, Alarm, and Communication
17 Systems [as referenced in NFPA 72], or shall maintain a system that
18 was approved by the department when such facility was constructed
19 so long as such system is a complete fire alarm system. A complete
20 fire alarm system shall include, but not be limited to,
21 interconnected smoke detectors [throughout the facility], automatic
22 transmission to the fire department, dispatching agency, or central
23 monitoring company, manual pull stations at each required exit and
24 attendant's station, heat detectors, and audible and visual alarm
25 indicators. If a facility submits a plan of compliance for
26 installation of a sprinkler system required by this chapter, such
27 facility shall install a complete fire alarm system that complies
28 with NFPA 72 upon installation of the sprinkler system. Until such
29 time that the sprinkler system is installed in the facility which

1 has submitted a plan of compliance, each resident room or any room
2 designated for sleeping in the facility shall be equipped with at
3 least one battery-powered smoke alarm installed, tested, and
4 maintained in accordance with NFPA 72. In addition, any such
5 facility shall be equipped with heat detectors interconnected to
6 the fire alarm system which are installed, tested, and maintained
7 in accordance with NFPA 72 in all areas subject to nuisance alarms,
8 including but not limited to, kitchens, laundries, bathrooms,
9 mechanical air handling rooms, and attic spaces.

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

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

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

27 9. Fire safety inspections of skilled nursing and
28 intermediate care facilities licensed under this chapter for
29 compliance with this section shall be conducted annually by the

1 [state fire marshal if such inspections are not available to be
2 conducted by local fire protection districts or fire departments]
3 department. All department inspectors who inspect facilities for
4 compliance under this section shall complete a fire inspector
5 course, as developed by the division of fire safety within the
6 department of public safety, by December 31, 2012. Fire safety
7 inspections of residential care and assisted living facilities
8 licensed under this chapter for compliance with this section shall
9 be conducted annually by the state fire marshal. The provisions of
10 this section shall be enforced by the department or the state fire
11 marshal [or by the local fire protection district or fire
12 department], depending on which entity conducted the inspection.

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

16 198.075. 1. There is hereby created in the state treasury
17 the "Fire Safety Standards Loan Fund", for implementing the
18 provisions of [subsection 3] subsections 4 and 5 of section
19 198.074. Moneys deposited in the fund shall be considered state
20 funds under article IV, section 15 of the Missouri Constitution.
21 The state treasurer shall be custodian of the fund and may disburse
22 moneys from the fund in accordance with sections 30.170 and 30.180,
23 RSMo. Any moneys remaining in the fund at the end of the biennium
24 shall revert to the credit of the general revenue fund. The state
25 treasurer shall invest moneys in the fund in the same manner as
26 other funds are invested. Any interest and moneys earned on such
27 investments shall be credited to the fund.

28 2. Qualifying facilities shall make an application to the
29 [department of health and senior services] state treasurer's office

1 upon forms provided by the [department] state treasurer's office.
2 Upon receipt of an application for a loan, the [department] state
3 treasurer's office shall review the application [and advise the
4 governor] before state funds are allocated for a loan. For
5 purposes of this section, a "qualifying facility" shall mean a
6 facility licensed under this chapter that is in substantial
7 compliance. "Substantial compliance" shall mean a facility that
8 has no uncorrected deficiencies and is in compliance with
9 department of health and senior services rules and regulations
10 governing such facility.

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

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

15 198.096. 1. The operator of any facility who holds in trust
16 personal funds of residents as provided in section 198.090 shall
17 obtain and file with the department a bond in a form approved by
18 the department in an amount equal to one and one-half times the
19 average monthly balance or average total of the monthly balances,
20 rounded to the nearest one thousand dollars, in the residents'
21 personal funds account or accounts kept pursuant to subdivision (3)
22 of subsection 1 of section 198.090 for the preceding [calendar
23 year] twelve months. In the case of a new facility or of an
24 operator not previously holding in trust the personal funds of
25 residents, the department shall determine the amount of bond to be
26 required, taking into consideration the size and type of facility,
27 the number of residents, and the experience of comparable
28 facilities.

29 2. The required bond shall be conditioned to secure to every

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

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

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

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

23 198.187. Any long-term care facility licensed under this
24 chapter may request criminal background checks under chapter 43,
25 RSMo, of a resident in such facility.

26 198.525. 1. Except as otherwise provided pursuant to section
27 198.526, in order to comply with sections 198.012 and 198.022, the
28 department of health and senior services shall inspect residential
29 care facilities, assisted living facilities, intermediate care

1 facilities, and skilled nursing, including those facilities
2 attached to acute care hospitals at least twice a year.

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

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

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

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

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

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

26 5. The information called for in this section shall be a
27 public record under the provisions of subdivision (6) of section
28 610.010, RSMo.

29 6. Any person may notify the department if facts exist that

1 would lead a reasonable person to conclude that any inspector or
2 surveyor has any personal or business affiliation that would result
3 in a conflict of interest in conducting an inspection or survey for
4 a facility. Upon receiving that notice, the department, when
5 assigning an inspector or surveyor to inspect or survey a facility,
6 for any purpose, shall take steps to verify the information and, if
7 the department has probable cause to believe that it is correct,
8 shall not assign the inspector or surveyor to the facility or any
9 facility within its organization so as to avoid an appearance of
10 prejudice or favor to the facility or bias on the part of the
11 inspector or surveyor.

12 198.527. To ensure uniformity of application of regulation
13 standards in long-term care facilities throughout the state, the
14 department of [social] health and senior services shall:

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

18 Based on the evaluation, the department shall develop and implement
19 additional training and knowledge standards for inspectors and
20 surveyors;

21 (2) Periodically evaluate the performance of the inspectors
22 or surveyors regionally and statewide to identify any deviations or
23 inconsistencies in regulation application. At a minimum, the
24 Missouri on-site surveyor evaluation process, and the number and
25 type of actions overturned by the informal dispute resolution
26 process under section 198.545 and formal appeal shall be used [in]
27 as part of the evaluation. Based on such evaluation, the
28 department shall develop standards and a retraining process for the
29 region, state, or individual inspector or surveyor, as needed;

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

8 198.545. 1. This section shall be known and may be cited as
9 the "Missouri Informal Dispute Resolution Act".

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

11 (1) "Deficiency", a facility's failure to meet a
12 participation requirement or standard, whether state or federal,
13 supported by evidence gathered from observation, interview, or
14 record review;

15 (2) "Department", the department of health and senior
16 services;

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

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

21 (5) "Independent third party", the federally designated
22 Medicare Quality Improvement Organization in this state;

23 (6) "Plan of correction", a facility's response to
24 deficiencies which explains how corrective action will be
25 accomplished, how the facility will identify other residents who
26 may be affected by the deficiency practice, what measures will be
27 used or systemic changes made to ensure that the deficient practice
28 will not reoccur, and how the facility will monitor to ensure that
29 solutions are sustained;

1 (7) "QIO", the federally designated Medicare Quality
2 Improvement Organization in this state.

3 3. The department of health and senior services shall
4 contract with an independent third party to conduct informal
5 dispute resolution (IDR) for facilities licensed under this
6 chapter. The IDR process, including conferences, shall constitute
7 an informal administrative process and shall not be construed to be
8 a formal evidentiary hearing. Use of IDR under this section shall
9 not waive the facility's right to pursue further or additional
10 legal actions.

11 4. The department shall establish an IDR process to determine
12 whether a cited deficiency as evidenced by a statement of
13 deficiencies against a facility shall be upheld. The department
14 shall promulgate rules to incorporate by reference the provisions
15 of 42 CFR 488.331 regarding the IDR process and to include the
16 following minimum requirements for the IDR process:

17 (1) Within ten working days of the end of the survey, the
18 department shall by certified mail transmit to the facility a
19 statement of deficiencies committed by the facility. Notification
20 of the availability of an IDR and IDR process shall be included in
21 the transmittal;

22 (2) Within ten calendar days of receipt of the statement of
23 deficiencies, the facility shall return a plan of correction to the
24 department. Within such ten-day period, the facility may request
25 in writing an IDR conference to refute the deficiencies cited in
26 the statement of deficiencies;

27 (3) Within ten working days of receipt for an IDR conference
28 made by a facility, the QIO shall hold an IDR conference unless
29 otherwise requested by the facility. The IDR conference shall

1 provide the facility with an opportunity to provide additional
2 information or clarification in support of the facility's
3 contention that the deficiencies were erroneously cited. The
4 facility may be accompanied by counsel during the IDR conference.
5 The type of IDR held shall be at the discretion of the facility,
6 but shall be limited to:

7 (a) A desk review of written information submitted by the
8 facility; or

9 (b) A telephonic conference; or

10 (c) A face-to-face conference held at the headquarters of the
11 QIO or at the facility at the request of the facility.

12
13 If the QIO determines the need for additional information,
14 clarification, or discussion after conclusion of the IDR
15 conference, the department and the facility shall be present.

16 5. Within ten days of the IDR conference described in
17 subsection 4 of this section, the QIO shall make a determination,
18 based upon the facts and findings presented, and shall transmit the
19 decision and rationale for the outcome in writing to the facility
20 and the department.

21 6. If the department disagrees with such determination, the
22 department shall transmit the department's decision and rationale
23 for the reversal of the QIO's decision to the facility within ten
24 calendar days of receiving the QIO's decision.

25 7. If the QIO determines that the original statement of
26 deficiencies should be changed as a result of the IDR conference,
27 the department shall transmit a revised statement of deficiencies
28 to the facility with the notification of the determination within
29 ten calendar days of the decision to change the statement of

1 deficiencies.

2 8. Within ten calendar days of receipt of the determination
3 made by the QIO and the revised statement of deficiencies, the
4 facility shall submit a plan of correction to the department.

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

11 10. Any rule or portion of a rule, as that term is defined in
12 section 536.010, RSMo, that is created under the authority
13 delegated in this section shall become effective only if it
14 complies with and is subject to all of the provisions of chapter
15 536, RSMo, and, if applicable, section 536.028, RSMo. This section
16 and chapter 536, RSMo, are nonseverable and if any of the powers
17 vested with the general assembly pursuant to chapter 536, RSMo, to
18 review, to delay the effective date, or to disapprove and annul a
19 rule are subsequently held unconstitutional, then the grant of
20 rulemaking authority and any rule proposed or adopted after August
21 28, 2009, shall be invalid and void.

22 208.016. In determining the amount of an institutionalized MO
23 HealthNet individual's income that is to be applied to payment for
24 the costs of care in the institution, there shall be deducted a
25 personal needs allowance of no less than thirty dollars per month
26 or the minimum amount required by 42 U.S.C. 1396a(q) (2) if more
27 than thirty dollars. Beginning January 1, 2010, the personal needs
28 allowance shall be increased by an amount equal to the product of
29 the percentage of the Social Security benefit cost of living

1 adjustment and the average amount that MO HealthNet participants
2 are required to contribute to the cost of institutionalized care.
3 The annual increase in the personal needs allowance shall be
4 rounded to the nearest whole dollar and shall not exceed five
5 dollars in any year. Once the personal needs allowance reaches
6 fifty dollars, there shall be no further increases unless
7 authorized by annual appropriation.

8 208.437. 1. A Medicaid managed care organization
9 reimbursement allowance period as provided in sections 208.431 to
10 208.437 shall be from the first day of July to the thirtieth day of
11 June. The department shall notify each Medicaid managed care
12 organization with a balance due on the thirtieth day of June of
13 each year the amount of such balance due. If any managed care
14 organization fails to pay its managed care organization
15 reimbursement allowance within thirty days of such notice, the
16 reimbursement allowance shall be delinquent. The reimbursement
17 allowance may remain unpaid during an appeal.

18 2. Except as otherwise provided in this section, if any
19 reimbursement allowance imposed under the provisions of sections
20 208.431 to 208.437 is unpaid and delinquent, the department of
21 social services may compel the payment of such reimbursement
22 allowance in the circuit court having jurisdiction in the county
23 where the main offices of the Medicaid managed care organization
24 are located. In addition, the director of the department of social
25 services or the director's designee may cancel or refuse to issue,
26 extend or reinstate a Medicaid contract agreement to any Medicaid
27 managed care organization which fails to pay such delinquent
28 reimbursement allowance required by sections 208.431 to 208.437
29 unless under appeal.

1 3. Except as otherwise provided in this section, failure to
2 pay a delinquent reimbursement allowance imposed under sections
3 208.431 to 208.437 shall be grounds for denial, suspension or
4 revocation of a license granted by the department of insurance,
5 financial institutions and professional registration. The director
6 of the department of insurance, financial institutions and
7 professional registration may deny, suspend or revoke the license
8 of a Medicaid managed care organization with a contract under 42
9 U.S.C. Section 1396b(m) which fails to pay a managed care
10 organization's delinquent reimbursement allowance unless under
11 appeal.

12 4. Nothing in sections 208.431 to 208.437 shall be deemed to
13 affect or in any way limit the tax-exempt or nonprofit status of
14 any Medicaid managed care organization with a contract under 42
15 U.S.C. Section 1396b(m) granted by state law.

16 5. Sections 208.431 to 208.437 shall expire on [June]
17 September 30, [2009] 2011.

18 208.480. Notwithstanding the provisions of section 208.471 to
19 the contrary, sections 208.453 to 208.480 shall expire on September
20 30, [2009] 2011.

21 208.819. 1. Subject to appropriations, persons
22 institutionalized in nursing homes who are [Medicaid] MO HealthNet
23 eligible and who wish to move back into the community shall be
24 eligible for a one-time [Missouri] transition [to independence]
25 grant. The [Missouri] transition [to independence] grant shall be
26 limited to up to [fifteen] twenty-four hundred dollars to offset
27 the initial down payments [and], setup costs, and other
28 expenditures associated with housing a senior or person with
29 disabilities needing home and community-based services as such

1 person moves out of a nursing home. Such grants shall be
2 established and administered by the division of [vocational
3 rehabilitation] senior and disability services in consultation with
4 the department of social services. The division of [vocational
5 rehabilitation] senior and disability services and the department
6 of social services shall cooperate in actively seeking federal and
7 private grant moneys to further fund this program; except that,
8 such federal and private grant moneys shall not limit the general
9 assembly's ability to appropriate moneys for the [Missouri]
10 transition [to independence] grants.

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

1 rulemaking authority and any rule proposed or adopted after August
2 28, 2009, shall be invalid and void.

3 338.535. 1. The pharmacy tax owed or, if an offset has been
4 made, the balance after such offset, if any, shall be remitted by
5 the pharmacy or the pharmacy's designee to the department of social
6 services. The remittance shall be made payable to the director of
7 the department of revenue and shall be deposited in the state
8 treasury to the credit of the "Pharmacy Reimbursement Allowance
9 Fund" which is hereby created to provide payments for services
10 related to the Medicaid pharmacy program. All investment earnings
11 of the fund shall be credited to the fund.

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

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

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

22 338.550. 1. The pharmacy tax required by sections 338.500 to
23 338.550 shall expire ninety days after any one or more of the
24 following conditions are met:

25 (1) The aggregate dispensing fee as appropriated by the
26 general assembly paid to pharmacists per prescription is less than
27 the fiscal year 2003 dispensing fees reimbursement amount; or

28 (2) The formula used to calculate the reimbursement as
29 appropriated by the general assembly for products dispensed by

1 pharmacies is changed resulting in lower reimbursement to the
2 pharmacist in the aggregate than provided in fiscal year 2003; or

3 (3) [June] September 30, [2009] 2011.

4
5 The director of the department of social services shall notify the
6 revisor of statutes of the expiration date as provided in this
7 subsection. The provisions of sections 338.500 to 338.550 shall
8 not apply to pharmacies domiciled or headquartered outside this
9 state which are engaged in prescription drug sales that are
10 delivered directly to patients within this state via common
11 carrier, mail or a carrier service.

12 2. Sections 338.500 to 338.550 shall expire on [June]
13 September 30, [2009] 2011."; and

14 633.401. 1. For purposes of this section, the following
15 terms mean:

16 (1) "Engaging in the business of providing health benefit
17 services", accepting payment for health benefit services;

18 (2) "Intermediate care facility for the mentally retarded", a
19 private or department of mental health facility which admits
20 persons who are mentally retarded or developmentally disabled for
21 residential habilitation and other services pursuant to chapter
22 630, RSMo. Such term shall include habilitation centers and
23 private or public intermediate care facilities for the mentally
24 retarded that have been certified to meet the conditions of
25 participation under 42 CFR, Section 483, Subpart 1;

26 (3) "Net operating revenues from providing services of
27 intermediate care facilities for the mentally retarded" shall
28 include, without limitation, all moneys received on account of such
29 services pursuant to rates of reimbursement established and paid by

1 the department of social services, but shall not include charitable
2 contributions, grants, donations, bequests and income from
3 nonservice related fund-raising activities and government deficit
4 financing, contractual allowance, discounts or bad debt;

5 (4) "Services of intermediate care facilities for the
6 mentally retarded" has the same meaning as the term used in Title
7 42 United States Code, Section 1396b(w) (7) (A) (iv), as amended, and
8 as such qualifies as a class of health care services recognized in
9 federal Public Law 102-234, the Medicaid Voluntary Contribution and
10 Provider Specific Tax Amendment of 1991.

11 2. Beginning July 1, 2008, each provider of services of
12 intermediate care facilities for the mentally retarded shall, in
13 addition to all other fees and taxes now required or paid, pay
14 assessments on their net operating revenues for the privilege of
15 engaging in the business of providing services of the intermediate
16 care facilities for the mentally retarded or developmentally
17 disabled in this state.

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

21 4. For purposes of determining rates of payment under the
22 medical assistance program for providers of services of
23 intermediate care facilities for the mentally retarded, the
24 assessment imposed pursuant to this section on net operating
25 revenues shall be a reimbursable cost to be reflected as timely as
26 practicable in rates of payment applicable within the assessment
27 period, contingent, for payments by governmental agencies, on all
28 federal approvals necessary by federal law and regulation for
29 federal financial participation in payments made for beneficiaries

1 eligible for medical assistance under Title XIX of the federal
2 Social Security Act.

3 5. Assessments shall be submitted by or on behalf of each
4 provider of services of intermediate care facilities for the
5 mentally retarded on a monthly basis to the director of the
6 department of mental health or his or her designee and shall be
7 made payable to the director of the department of revenue.

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

12 7. Assessment payments shall be deposited in the state
13 treasury to the credit of the "Intermediate Care Facility Mentally
14 Retarded Reimbursement Allowance Fund", which is hereby created in
15 the state treasury. All investment earnings of this fund shall be
16 credited to the fund. Notwithstanding the provisions of section
17 33.080, RSMo, to the contrary, any unexpended balance in the
18 intermediate care facility mentally retarded reimbursement
19 allowance fund at the end of the biennium shall not revert to the
20 general revenue fund but shall accumulate from year to year. The
21 state treasurer shall maintain records that show the amount of
22 money in the fund at any time and the amount of any investment
23 earnings on that amount.

24 8. Each provider of services of intermediate care facilities
25 for the mentally retarded shall keep such records as may be
26 necessary to determine the amount of the assessment for which it is
27 liable under this section. On or before the forty-fifth day after
28 the end of each month commencing July 1, 2008, each provider of
29 services of intermediate care facilities for the mentally retarded

1 shall submit to the department of social services a report on a
2 cash basis that reflects such information as is necessary to
3 determine the amount of the assessment payable for that month.

4 9. Every provider of services of intermediate care facilities
5 for the mentally retarded shall submit a certified annual report of
6 net operating revenues from the furnishing of services of
7 intermediate care facilities for the mentally retarded. The
8 reports shall be in such form as may be prescribed by rule by the
9 director of the department of mental health. Final payments of the
10 assessment for each year shall be due for all providers of services
11 of intermediate care facilities for the mentally retarded upon the
12 due date for submission of the certified annual report.

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

16 11. Upon receipt of notification from the director of the
17 department of mental health of a provider's delinquency in paying
18 assessments required under this section, the director of the
19 department of social services shall withhold, and shall remit to
20 the director of the department of revenue, an assessment amount
21 estimated by the director of the department of mental health from
22 any payment to be made by the state to the provider.

23 12. In the event a provider objects to the estimate described
24 in subsection 11 of this section, or any other decision of the
25 department of mental health related to this section, the provider
26 of services may request a hearing. If a hearing is requested, the
27 director of the department of mental health shall provide the
28 provider of services an opportunity to be heard and to present
29 evidence bearing on the amount due for an assessment or other issue

1 related to this section within thirty days after collection of an
2 amount due or receipt of a request for a hearing, whichever is
3 later. The director shall issue a final decision within forty-five
4 days of the completion of the hearing. After reconsideration of
5 the assessment determination and a final decision by the director
6 of the department of mental health, an intermediate care facility
7 for the mentally retarded provider's appeal of the director's final
8 decision shall be to the administrative hearing commission in
9 accordance with sections 208.156 and 621.055, RSMo.

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

15 14. Nothing in this section shall be deemed to affect or in
16 any way limit the tax-exempt or nonprofit status of any
17 intermediate care facility for the mentally retarded granted by
18 state law.

19 15. The director of the department of mental health shall
20 promulgate rules and regulations to implement this section. Any
21 rule or portion of a rule, as that term is defined in section
22 536.010, RSMo, that is created under the authority delegated in
23 this section shall become effective only if it complies with and is
24 subject to all of the provisions of chapter 536, RSMo, and, if
25 applicable, section 536.028, RSMo. This section and chapter 536,
26 RSMo, are nonseverable and if any of the powers vested with the
27 general assembly pursuant to chapter 536, RSMo, to review, to delay
28 the effective date, or to disapprove and annul a rule are
29 subsequently held unconstitutional, then the grant of rulemaking

1 authority and any rule proposed or adopted after August 28, 2008,
2 shall be invalid and void.

3 16. The provisions of this section shall expire on [June]
4 September 30, [~~2009~~] 2011.

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

9 (1) Review the recommendations regarding services and process
10 the referral within fifteen business days;

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

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

18 (4) Reimburse the in-home provider for one nurse visit to
19 conduct an assessment and recommendation for a care plan, and where
20 necessary based on case circumstances, a second nurse visit may be
21 authorized to gather additional information or documentation
22 necessary to constitute a completed referral;

23 (5) Notify the referring entity upon the authorization of MO
24 HealthNet eligibility and provide MO HealthNet reimbursement for
25 personal care benefits effective the date of the assessment or
26 physician's order, and MO HealthNet reimbursement for waiver
27 services effective the date the state reviews and approves the care
28 plan;

29 (6) Notify the referring entity within five business days of

1 receiving the referral if additional information is required to
2 process the referral; and

3 (7) Inform the provider and contact the individual when
4 information is insufficient or the proposed care plan requires
5 additional evaluation by state staff that is not obtained from the
6 referring entity to schedule an in-home assessment to be conducted
7 by the state staff within thirty days.

8 Section B. Because of the need for continued imposition and
9 collection of certain provider taxes, the repeal and reenactment of
10 sections 208.437, 208.480, 338.535, 338.550, and 633,401 of this
11 act is deemed necessary for the immediate preservation of the
12 public health, welfare, peace and safety, and is hereby declared to
13 be an emergency act within the meaning of the constitution, and the
14 repeal and reenactment of sections 208.437, 208.480, 338.535,
15 338.550, and 633,401 of this act shall be in full force and effect
16 upon its passage and approval.

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Bob Nance

Bill Stouffer