

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 842, 799 & 809
95TH GENERAL ASSEMBLY

4653L.05C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 208.215, RSMo, and to enact in lieu thereof two new sections relating to the MO HealthNet program.

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

Section A. Section 208.215, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 208.198 and 208.215, to read as follows:

208.198. Subject to appropriations, the department of social services shall establish a rate for the reimbursement of physicians and optometrists for services rendered to patients under the MO HealthNet program which provides equal reimbursement for the same or similar services rendered.

208.215. 1. MO HealthNet is payer of last resort unless otherwise specified by law. When any person, corporation, institution, public agency or private agency is liable, either pursuant to contract or otherwise, to a participant receiving public assistance on account of personal injury to or disability or disease or benefits arising from a health insurance plan to which the participant may be entitled, payments made by the department of social services or MO HealthNet division shall be a debt due the state and recoverable from the liable party or participant for all payments made [in] on behalf of the participant and the debt due the state shall not exceed the payments made from MO HealthNet benefits provided under sections 208.151 to 208.158 and section 208.162 and section 208.204 on behalf of the participant, minor or estate for payments on account of the injury, disease, or disability or benefits arising from a health insurance program to which the participant may be entitled. **Any health benefit plan as defined in section 376.1350, third party administrator, administrative service organization, and pharmacy benefits manager, shall process and pay all properly submitted medical**

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.

14 assistance subrogation claims or MO HealthNet subrogation claims using standard
15 electronic transactions or paper claim forms:

16 (1) For a period of three years from the date services were provided or rendered;
17 however, an entity:

18 (a) Shall not be required to reimburse for items or services which are not covered
19 under MO HealthNet;

20 (b) Shall not deny a claim submitted by the state solely on the basis of the date of
21 submission of the claim, the type or format of the claim form, failure to present proper
22 documentation of coverage at the point of sale, or failure to provide prior authorization;

23 (c) Shall not be required to reimburse for items or services for which a claim was
24 previously submitted to the health benefit plan, third party administrator, administrative
25 service organization, or pharmacy benefits manager by the health care provider or the
26 participant and the claim was properly denied by the health benefit plan, third party
27 administrator, administrative service organization, or pharmacy benefits manager for
28 procedural reasons, except for timely filing, type or format of the claim form, failure to
29 present proper documentation of coverage at the point of sale, or failure to obtain prior
30 authorization;

31 (d) Shall not be required to reimburse for items or services which are not covered
32 under or were not covered under the plan offered by the entity against which a claim for
33 subrogation has been filed; and

34 (e) Shall reimburse for items or services to the same extent that the entity would
35 have been liable as if it had been properly billed at the point of sale, and the amount due
36 is limited to what the entity would have paid as if it had been properly billed at the point
37 of sale; and

38 (2) If any action by the state to enforce its rights with respect to such claim is
39 commenced within six years of the state's submission of such claim.

40 2. The department of social services, MO HealthNet division, or its contractor may
41 maintain an appropriate action to recover funds paid by the department of social services or MO
42 HealthNet division or its contractor that are due under this section in the name of the state of
43 Missouri against the person, corporation, institution, public agency, or private agency liable to
44 the participant, minor or estate.

45 3. Any participant, minor, guardian, conservator, personal representative, estate,
46 including persons entitled under section 537.080, RSMo, to bring an action for wrongful death
47 who pursues legal rights against a person, corporation, institution, public agency, or private
48 agency liable to that participant or minor for injuries, disease or disability or benefits arising
49 from a health insurance plan to which the participant may be entitled as outlined in subsection

50 1 of this section shall upon actual knowledge that the department of social services or MO
51 HealthNet division has paid MO HealthNet benefits as defined by this chapter promptly notify
52 the MO HealthNet division as to the pursuit of such legal rights.

53 4. Every applicant or participant by application assigns his right to the department of
54 social services or MO HealthNet division of any funds recovered or expected to be recovered to
55 the extent provided for in this section. All applicants and participants, including a person
56 authorized by the probate code, shall cooperate with the department of social services, MO
57 HealthNet division in identifying and providing information to assist the state in pursuing any
58 third party who may be liable to pay for care and services available under the state's plan for MO
59 HealthNet benefits as provided in sections 208.151 to 208.159 and sections 208.162 and
60 208.204. All applicants and participants shall cooperate with the agency in obtaining third-party
61 resources due to the applicant, participant, or child for whom assistance is claimed. Failure to
62 cooperate without good cause as determined by the department of social services, MO HealthNet
63 division in accordance with federally prescribed standards shall render the applicant or
64 participant ineligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections
65 208.162 and 208.204. A [recipient] **participant** who has notice or who has actual knowledge
66 of the department's rights to third-party benefits who receives any third-party benefit or proceeds
67 for a covered illness or injury is either required to pay the division within sixty days after receipt
68 of settlement proceeds the full amount of the third-party benefits up to the total MO HealthNet
69 benefits provided or to place the full amount of the third-party benefits in a trust account for the
70 benefit of the division pending judicial or administrative determination of the division's right to
71 third-party benefits.

72 5. Every person, corporation or partnership who acts for or on behalf of a person who
73 is or was eligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections
74 208.162 and 208.204 for purposes of pursuing the applicant's or participant's claim which
75 accrued as a result of a nonoccupational or nonwork-related incident or occurrence resulting in
76 the payment of MO HealthNet benefits shall notify the MO HealthNet division upon agreeing
77 to assist such person and further shall notify the MO HealthNet division of any institution of a
78 proceeding, settlement or the results of the pursuit of the claim and give thirty days' notice before
79 any judgment, award, or settlement may be satisfied in any action or any claim by the applicant
80 or participant to recover damages for such injuries, disease, or disability, or benefits arising from
81 a health insurance program to which the participant may be entitled.

82 6. Every participant, minor, guardian, conservator, personal representative, estate,
83 including persons entitled under section 537.080, RSMo, to bring an action for wrongful death,
84 or his attorney or legal representative shall promptly notify the MO HealthNet division of any
85 recovery from a third party and shall immediately reimburse the department of social services,

86 MO HealthNet division, or its contractor from the proceeds of any settlement, judgment, or other
87 recovery in any action or claim initiated against any such third party. A judgment, award, or
88 settlement in an action by a [recipient] **participant** to recover damages for injuries or other
89 third-party benefits in which the division has an interest may not be satisfied without first giving
90 the division notice and a reasonable opportunity to file and satisfy the claim or proceed with any
91 action as otherwise permitted by law.

92 7. The department of social services, MO HealthNet division or its contractor shall have
93 a right to recover the amount of payments made to a provider under this chapter because of an
94 injury, disease, or disability, or benefits arising from a health insurance plan to which the
95 participant may be entitled for which a third party is or may be liable in contract, tort or
96 otherwise under law or equity. Upon request by the MO HealthNet division, all third-party
97 payers shall provide the MO HealthNet division with information contained in a 270/271 Health
98 Care Eligibility Benefits Inquiry and Response standard transaction mandated under the federal
99 Health Insurance Portability and Accountability Act, except that third-party payers shall not
100 include accident-only, specified disease, disability income, hospital indemnity, or other fixed
101 indemnity insurance policies.

102 8. The department of social services or MO HealthNet division shall have a lien upon
103 any moneys to be paid by any insurance company or similar business enterprise, person,
104 corporation, institution, public agency or private agency in settlement or satisfaction of a
105 judgment on any claim for injuries or disability or disease benefits arising from a health
106 insurance program to which the participant may be entitled which resulted in medical expenses
107 for which the department or MO HealthNet division made payment. This lien shall also be
108 applicable to any moneys which may come into the possession of any attorney who is handling
109 the claim for injuries, or disability or disease or benefits arising from a health insurance plan to
110 which the participant may be entitled which resulted in payments made by the department or MO
111 HealthNet division. In each case, a lien notice shall be served by certified mail or registered
112 mail, upon the party or parties against whom the applicant or participant has a claim, demand or
113 cause of action. The lien shall claim the charge and describe the interest the department or MO
114 HealthNet division has in the claim, demand or cause of action. The lien shall attach to any
115 verdict or judgment entered and to any money or property which may be recovered on account
116 of such claim, demand, cause of action or suit from and after the time of the service of the notice.

117 9. On petition filed by the department, or by the participant, or by the defendant, the
118 court, on written notice of all interested parties, may adjudicate the rights of the parties and
119 enforce the charge. The court may approve the settlement of any claim, demand or cause of
120 action either before or after a verdict, and nothing in this section shall be construed as requiring
121 the actual trial or final adjudication of any claim, demand or cause of action upon which the

122 department has charge. The court may determine what portion of the recovery shall be paid to
123 the department against the recovery. In making this determination the court shall conduct an
124 evidentiary hearing and shall consider competent evidence pertaining to the following matters:

125 (1) The amount of the charge sought to be enforced against the recovery when expressed
126 as a percentage of the gross amount of the recovery; the amount of the charge sought to be
127 enforced against the recovery when expressed as a percentage of the amount obtained by
128 subtracting from the gross amount of the recovery the total attorney's fees and other costs
129 incurred by the participant incident to the recovery; and whether the department should, as a
130 matter of fairness and equity, bear its proportionate share of the fees and costs incurred to
131 generate the recovery from which the charge is sought to be satisfied;

132 (2) The amount, if any, of the attorney's fees and other costs incurred by the participant
133 incident to the recovery and paid by the participant up to the time of recovery, and the amount
134 of such fees and costs remaining unpaid at the time of recovery;

135 (3) The total hospital, doctor and other medical expenses incurred for care and treatment
136 of the injury to the date of recovery therefor, the portion of such expenses theretofore paid by the
137 participant, by insurance provided by the participant, and by the department, and the amount of
138 such previously incurred expenses which remain unpaid at the time of recovery and by whom
139 such incurred, unpaid expenses are to be paid;

140 (4) Whether the recovery represents less than substantially full recompense for the injury
141 and the hospital, doctor and other medical expenses incurred to the date of recovery for the care
142 and treatment of the injury, so that reduction of the charge sought to be enforced against the
143 recovery would not likely result in a double recovery or unjust enrichment to the participant;

144 (5) The age of the participant and of persons dependent for support upon the participant,
145 the nature and permanency of the participant's injuries as they affect not only the future
146 employability and education of the participant but also the reasonably necessary and foreseeable
147 future material, maintenance, medical rehabilitative and training needs of the participant, the cost
148 of such reasonably necessary and foreseeable future needs, and the resources available to meet
149 such needs and pay such costs;

150 (6) The realistic ability of the participant to repay in whole or in part the charge sought
151 to be enforced against the recovery when judged in light of the factors enumerated above.

152 10. The burden of producing evidence sufficient to support the exercise by the court of
153 its discretion to reduce the amount of a proven charge sought to be enforced against the recovery
154 shall rest with the party seeking such reduction. **The computerized records of the MO
155 HealthNet division, certified by the director or his designee, shall be prima facie evidence
156 of proof of moneys expended and the amount of the debt due the state.**

157 11. The court may reduce and apportion the department's or MO HealthNet division's
158 lien proportionate to the recovery of the claimant. The court may consider the nature and extent
159 of the injury, economic and noneconomic loss, settlement offers, comparative negligence as it
160 applies to the case at hand, hospital costs, physician costs, and all other appropriate costs. The
161 department or MO HealthNet division shall pay its pro rata share of the attorney's fees based on
162 the department's or MO HealthNet division's lien as it compares to the total settlement agreed
163 upon. This section shall not affect the priority of an attorney's lien under section 484.140,
164 RSMo. The charges of the department or MO HealthNet division or contractor described in this
165 section, however, shall take priority over all other liens and charges existing under the laws of
166 the state of Missouri with the exception of the attorney's lien under such statute.

167 12. Whenever the department of social services or MO HealthNet division has a statutory
168 charge under this section against a recovery for damages incurred by a participant because of its
169 advancement of any assistance, such charge shall not be satisfied out of any recovery until the
170 attorney's claim for fees is satisfied, [irrespective] **regardless** of whether [or not] an action based
171 on participant's claim has been filed in court. Nothing herein shall prohibit the director from
172 entering into a compromise agreement with any participant, after consideration of the factors in
173 subsections 9 to 13 of this section.

174 13. This section shall be inapplicable to any claim, demand or cause of action arising
175 under the workers' compensation act, chapter 287, RSMo. From funds recovered pursuant to this
176 section the federal government shall be paid a portion thereof equal to the proportionate part
177 originally provided by the federal government to pay for MO HealthNet benefits to the
178 participant or minor involved. The department or MO HealthNet division shall enforce TEFRA
179 liens, 42 U.S.C. 1396p, as authorized by federal law and regulation on permanently
180 institutionalized individuals. The department or MO HealthNet division shall have the right to
181 enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal law and regulation on all other
182 institutionalized individuals. For the purposes of this subsection, "permanently institutionalized
183 individuals" includes those people who the department or MO HealthNet division determines
184 cannot reasonably be expected to be discharged and return home, and "property" includes the
185 homestead and all other personal and real property in which the participant has sole legal interest
186 or a legal interest based upon co-ownership of the property which is the result of a transfer of
187 property for less than the fair market value within thirty months prior to the participant's entering
188 the nursing facility. The following provisions shall apply to such liens:

189 (1) The lien shall be for the debt due the state for MO HealthNet benefits paid or to be
190 paid on behalf of a participant. The amount of the lien shall be for the full amount due the state
191 at the time the lien is enforced;

192 (2) The MO HealthNet division shall file for record, with the recorder of deeds of the
193 county in which any real property of the participant is situated, a written notice of the lien. The
194 notice of lien shall contain the name of the participant and a description of the real estate. The
195 recorder shall note the time of receiving such notice, and shall record and index the notice of lien
196 in the same manner as deeds of real estate are required to be recorded and indexed. The director
197 or the director's designee may release or discharge all or part of the lien and notice of the release
198 shall also be filed with the recorder. The department of social services, MO HealthNet division,
199 shall provide payment to the recorder of deeds the fees set for similar filings in connection with
200 the filing of a lien and any other necessary documents;

201 (3) No such lien may be imposed against the property of any individual prior to the
202 individual's death on account of MO HealthNet benefits paid except:

203 (a) In the case of the real property of an individual:

204 a. Who is an inpatient in a nursing facility, intermediate care facility for the mentally
205 retarded, or other medical institution, if such individual is required, as a condition of receiving
206 services in such institution, to spend for costs of medical care all but a minimal amount of his
207 or her income required for personal needs; and

208 b. With respect to whom the director of the MO HealthNet division or the director's
209 designee determines, after notice and opportunity for hearing, that he cannot reasonably be
210 expected to be discharged from the medical institution and to return home. The hearing, if
211 requested, shall proceed under the provisions of chapter 536, RSMo, before a hearing officer
212 designated by the director of the MO HealthNet division; or

213 (b) Pursuant to the judgment of a court on account of benefits incorrectly paid on behalf
214 of such individual;

215 (4) No lien may be imposed under paragraph (b) of subdivision (3) of this subsection on
216 such individual's home if one or more of the following persons is lawfully residing in such home:

217 (a) The spouse of such individual;

218 (b) Such individual's child who is under twenty-one years of age, or is blind or
219 permanently and totally disabled; or

220 (c) A sibling of such individual who has an equity interest in such home and who was
221 residing in such individual's home for a period of at least one year immediately before the date
222 of the individual's admission to the medical institution;

223 (5) Any lien imposed with respect to an individual pursuant to subparagraph b of
224 paragraph (a) of subdivision (3) of this subsection shall dissolve upon that individual's discharge
225 from the medical institution and return home.

226 14. The debt due the state provided by this section is subordinate to the lien provided by
227 section 484.130, RSMo, or section 484.140, RSMo, relating to an attorney's lien and to the
228 participant's expenses of the claim against the third party.

229 15. Application for and acceptance of MO HealthNet benefits under this chapter shall
230 constitute an assignment to the department of social services or MO HealthNet division of any
231 rights to support for the purpose of medical care as determined by a court or administrative order
232 and of any other rights to payment for medical care.

233 16. All participants receiving benefits as defined in this chapter shall cooperate with the
234 state by reporting to the family support division or the MO HealthNet division, within thirty
235 days, any occurrences where an injury to their persons or to a member of a household who
236 receives MO HealthNet benefits is sustained, on such form or forms as provided by the family
237 support division or MO HealthNet division.

238 17. If a person fails to comply with the provision of any judicial or administrative decree
239 or temporary order requiring that person to maintain medical insurance on or be responsible for
240 medical expenses for a dependent child, spouse, or ex-spouse, in addition to other remedies
241 available, that person shall be liable to the state for the entire cost of the medical care provided
242 pursuant to eligibility under any public assistance program on behalf of that dependent child,
243 spouse, or ex-spouse during the period for which the required medical care was provided. Where
244 a duty of support exists and no judicial or administrative decree or temporary order for support
245 has been entered, the person owing the duty of support shall be liable to the state for the entire
246 cost of the medical care provided on behalf of the dependent child or spouse to whom the duty
247 of support is owed.

248 18. The department director or the director's designee may compromise, settle or waive
249 any such claim in whole or in part in the interest of the MO HealthNet program.
250 Notwithstanding any provision in this section to the contrary, the department of social services,
251 MO HealthNet division is not required to seek reimbursement from a liable third party on claims
252 for which the amount it reasonably expects to recover will be less than the cost of recovery or
253 for which recovery efforts will not be cost-effective. Cost-effectiveness is determined based on
254 the following:

255 (1) Actual and legal issues of liability as may exist between the [recipient] **participant**
256 and the liable party;

257 (2) Total funds available for settlement; and

258 (3) An estimate of the cost to the division of pursuing its claim.

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