

SECOND REGULAR SESSION

SENATE BILL NO. 842

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Read 1st time January 27, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4653S.011

AN ACT

To repeal section 208.215, RSMo, and to enact in lieu thereof one new section relating to the MO HealthNet division's authority to collect from third-party payors.

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

Section A. Section 208.215, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 208.215, to read as follows:

208.215. 1. MO HealthNet is payer of last resort unless otherwise
2 specified by law. When any person, corporation, institution, public agency or
3 private agency is liable, either pursuant to contract or otherwise, to a participant
4 receiving public assistance on account of personal injury to or disability or disease
5 or benefits arising from a health insurance plan to which the participant may be
6 entitled, payments made by the department of social services or MO HealthNet
7 division shall be a debt due the state and recoverable from the liable party or
8 participant for all payments made [in] **on** behalf of the participant and the debt
9 due the state shall not exceed the payments made from MO HealthNet benefits
10 provided under sections 208.151 to 208.158 and section 208.162 and section
11 208.204 on behalf of the participant, minor or estate for payments on account of
12 the injury, disease, or disability or benefits arising from a health insurance
13 program to which the participant may be entitled. **Any health benefit plan as**
14 **defined in section 376.1350, third party administrator, administrative**
15 **service organization, and pharmacy benefits manager, shall process and**
16 **pay all properly submitted medical assistance subrogation claims or**
17 **MO HealthNet subrogation claims:**

18 (1) **For a period of three years from the date services were**
19 **provided or rendered, regardless of any other timely filing requirement**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 otherwise imposed by such entity, and the entity shall not deny such
21 claims on the basis of the type or format of the claim form, failure to
22 present proper documentation of coverage at the point of sale, or
23 failure to obtain prior authorization; and

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

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

33 3. Any participant, minor, guardian, conservator, personal representative,
34 estate, including persons entitled under section 537.080, RSMo, to bring an action
35 for wrongful death who pursues legal rights against a person, corporation,
36 institution, public agency, or private agency liable to that participant or minor
37 for injuries, disease or disability or benefits arising from a health insurance plan
38 to which the participant may be entitled as outlined in subsection 1 of this section
39 shall upon actual knowledge that the department of social services or MO
40 HealthNet division has paid MO HealthNet benefits as defined by this chapter
41 promptly notify the MO HealthNet division as to the pursuit of such legal rights.

42 4. Every applicant or participant by application assigns his right to the
43 department of social services or MO HealthNet division of any funds recovered
44 or expected to be recovered to the extent provided for in this section. All
45 applicants and participants, including a person authorized by the probate code,
46 shall cooperate with the department of social services, MO HealthNet division in
47 identifying and providing information to assist the state in pursuing any third
48 party who may be liable to pay for care and services available under the state's
49 plan for MO HealthNet benefits as provided in sections 208.151 to 208.159 and
50 sections 208.162 and 208.204. All applicants and participants shall cooperate
51 with the agency in obtaining third-party resources due to the applicant,
52 participant, or child for whom assistance is claimed. Failure to cooperate without
53 good cause as determined by the department of social services, MO HealthNet
54 division in accordance with federally prescribed standards shall render the
55 applicant or participant ineligible for MO HealthNet benefits under sections

56 208.151 to 208.159 and sections 208.162 and 208.204. A **[recipient] participant**
57 who has notice or who has actual knowledge of the department's rights to
58 third-party benefits who receives any third-party benefit or proceeds for a covered
59 illness or injury is either required to pay the division within sixty days after
60 receipt of settlement proceeds the full amount of the third-party benefits up to
61 the total MO HealthNet benefits provided or to place the full amount of the
62 third-party benefits in a trust account for the benefit of the division pending
63 judicial or administrative determination of the division's right to third-party
64 benefits.

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

77 6. Every participant, minor, guardian, conservator, personal
78 representative, estate, including persons entitled under section 537.080, RSMo,
79 to bring an action for wrongful death, or his attorney or legal representative shall
80 promptly notify the MO HealthNet division of any recovery from a third party and
81 shall immediately reimburse the department of social services, MO HealthNet
82 division, or its contractor from the proceeds of any settlement, judgment, or other
83 recovery in any action or claim initiated against any such third party. A
84 judgment, award, or settlement in an action by a **[recipient] participant** to
85 recover damages for injuries or other third-party benefits in which the division
86 has an interest may not be satisfied without first giving the division notice and
87 a reasonable opportunity to file and satisfy the claim or proceed with any action
88 as otherwise permitted by law.

89 7. The department of social services, MO HealthNet division or its
90 contractor shall have a right to recover the amount of payments made to a
91 provider under this chapter because of an injury, disease, or disability, or benefits

92 arising from a health insurance plan to which the participant may be entitled for
93 which a third party is or may be liable in contract, tort or otherwise under law
94 or equity. Upon request by the MO HealthNet division, all third-party payers
95 shall provide the MO HealthNet division with information contained in a 270/271
96 Health Care Eligibility Benefits Inquiry and Response standard transaction
97 mandated under the federal Health Insurance Portability and Accountability Act,
98 except that third-party payers shall not include accident-only, specified disease,
99 disability income, hospital indemnity, or other fixed indemnity insurance policies.

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

118 **(1) The lien shall not be satisfied until a release is received from**
119 **the MO HealthNet division evidencing payments of all MO HealthNet**
120 **benefits, premiums, or other such costs due from the verdict, judgment**
121 **or settlement, unless waived by the MO HealthNet division.**

122 **(2) Interest shall be allowed on all money due upon any judgment**
123 **or order of any court from the date of judgment is entered by the court**
124 **until full satisfaction. All such judgments and orders for money shall**
125 **bear a per annum interest rate of nine percent until full satisfaction is**
126 **made. The judgment shall state the applicable interest rate, which**
127 **shall not vary once entered. In tort actions, if a claimant has made a**

128 **demand for payment of a claim or an offer of settlement of a claim to**
129 **the party, parties or their representatives, and to such party's liability**
130 **insurer if known to the claimant, and the amount of the judgment or**
131 **order exceeds the demand for payment or offer of settlement, then**
132 **prejudgment interest of nine percent shall be awarded, calculated from**
133 **a date ninety days after the demand or offer was received, as shown by**
134 **the certified mail return receipt, or from the date the demand or offer**
135 **was rejected without counter offer, whichever is earlier.**

136 9. On petition filed by the department, or by the participant, or by the
137 defendant, the court, on written notice of all interested parties, may adjudicate
138 the rights of the parties and enforce the charge. The court may approve the
139 settlement of any claim, demand or cause of action either before or after a verdict,
140 and nothing in this section shall be construed as requiring the actual trial or final
141 adjudication of any claim, demand or cause of action upon which the department
142 has charge. The court may determine what portion of the recovery shall be paid
143 to the department against the recovery. In making this determination the court
144 shall conduct an evidentiary hearing and shall consider competent evidence
145 pertaining to the following matters:

146 (1) The amount of the charge sought to be enforced against the recovery
147 when expressed as a percentage of the gross amount of the recovery; the amount
148 of the charge sought to be enforced against the recovery when expressed as a
149 percentage of the amount obtained by subtracting from the gross amount of the
150 recovery the total attorney's fees and other costs incurred by the participant
151 incident to the recovery; and whether the department should, as a matter of
152 fairness and equity, bear its proportionate share of the fees and costs incurred to
153 generate the recovery from which the charge is sought to be satisfied;

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

158 (3) The total hospital, doctor and other medical expenses incurred for care
159 and treatment of the injury to the date of recovery therefor, the portion of such
160 expenses theretofore paid by the participant, by insurance provided by the
161 participant, and by the department, and the amount of such previously incurred
162 expenses which remain unpaid at the time of recovery and by whom such
163 incurred, unpaid expenses are to be paid;

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

169 (5) The age of the participant and of persons dependent for support upon
170 the participant, the nature and permanency of the participant's injuries as they
171 affect not only the future employability and education of the participant but also
172 the reasonably necessary and foreseeable future material, maintenance, medical
173 rehabilitative and training needs of the participant, the cost of such reasonably
174 necessary and foreseeable future needs, and the resources available to meet such
175 needs and pay such costs;

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

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

185 11. The court may reduce and apportion the department's or MO
186 HealthNet division's lien proportionate to the recovery of the claimant. The court
187 may consider the nature and extent of the injury, economic and noneconomic loss,
188 settlement offers, comparative negligence as it applies to the case at hand,
189 hospital costs, physician costs, and all other appropriate costs. The department
190 or MO HealthNet division shall pay its pro rata share of the attorney's fees based
191 on the department's or MO HealthNet division's lien as it compares to the total
192 settlement agreed upon. This section shall not affect the priority of an attorney's
193 lien under section 484.140, RSMo. The charges of the department or MO
194 HealthNet division or contractor described in this section, however, shall take
195 priority over all other liens and charges existing under the laws of the state of
196 Missouri with the exception of the attorney's lien under such statute.

197 12. Whenever the department of social services or MO HealthNet division
198 has a statutory charge under this section against a recovery for damages incurred
199 by a participant because of its advancement of any assistance, such charge shall

200 not be satisfied out of any recovery until the attorney's claim for fees is satisfied,
201 [irrespective] **regardless** of whether [or not] an action based on participant's
202 claim has been filed in court. Nothing herein shall prohibit the director from
203 entering into a compromise agreement with any participant, after consideration
204 of the factors in subsections 9 to 13 of this section.

205 13. This section shall be inapplicable to any claim, demand or cause of
206 action arising under the workers' compensation act, chapter 287, RSMo. From
207 funds recovered pursuant to this section the federal government shall be paid a
208 portion thereof equal to the proportionate part originally provided by the federal
209 government to pay for MO HealthNet benefits to the participant or minor
210 involved. The department or MO HealthNet division shall enforce TEFRA liens,
211 42 U.S.C. 1396p, as authorized by federal law and regulation on permanently
212 institutionalized individuals. The department or MO HealthNet division shall
213 have the right to enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal
214 law and regulation on all other institutionalized individuals. For the purposes
215 of this subsection, "permanently institutionalized individuals" includes those
216 people who the department or MO HealthNet division determines cannot
217 reasonably be expected to be discharged and return home, and "property" includes
218 the homestead and all other personal and real property in which the participant
219 has sole legal interest or a legal interest based upon co-ownership of the property
220 which is the result of a transfer of property for less than the fair market value
221 within thirty months prior to the participant's entering the nursing facility. The
222 following provisions shall apply to such liens:

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

226 (2) The MO HealthNet division shall file for record, with the recorder of
227 deeds of the county in which any real property of the participant is situated, a
228 written notice of the lien. The notice of lien shall contain the name of the
229 participant and a description of the real estate. The recorder shall note the time
230 of receiving such notice, and shall record and index the notice of lien in the same
231 manner as deeds of real estate are required to be recorded and indexed. The
232 director or the director's designee may release or discharge all or part of the lien
233 and notice of the release shall also be filed with the recorder. The department
234 of social services, MO HealthNet division, shall provide payment to the recorder
235 of deeds the fees set for similar filings in connection with the filing of a lien and

236 any other necessary documents;

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

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

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

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

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

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

256 (a) The spouse of such individual;

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

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

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

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

271 15. Application for and acceptance of MO HealthNet benefits under this

272 chapter shall constitute an assignment to the department of social services or MO
273 HealthNet division of any rights to support for the purpose of medical care as
274 determined by a court or administrative order and of any other rights to payment
275 for medical care.

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

282 17. If a person fails to comply with the provision of any judicial or
283 administrative decree or temporary order requiring that person to maintain
284 medical insurance on or be responsible for medical expenses for a dependent
285 child, spouse, or ex-spouse, in addition to other remedies available, that person
286 shall be liable to the state for the entire cost of the medical care provided
287 pursuant to eligibility under any public assistance program on behalf of that
288 dependent child, spouse, or ex-spouse during the period for which the required
289 medical care was provided. Where a duty of support exists and no judicial or
290 administrative decree or temporary order for support has been entered, the
291 person owing the duty of support shall be liable to the state for the entire cost of
292 the medical care provided on behalf of the dependent child or spouse to whom the
293 duty of support is owed.

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

- 302 (1) Actual and legal issues of liability as may exist between the [recipient]
303 **participant** and the liable party;
- 304 (2) Total funds available for settlement; and
- 305 (3) An estimate of the cost to the division of pursuing its claim.