

FIRST REGULAR SESSION

SENATE BILL NO. 126

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time January 18, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0605S.011

AN ACT

To repeal section 208.152, RSMo, and to enact in lieu thereof one new section relating to counseling services under the MO HealthNet program.

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

Section A. Section 208.152, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 208.152, to read as follows:

208.152. 1. MO HealthNet payments shall be made on behalf of those
2 eligible needy persons as defined in section 208.151 who are unable to provide for
3 it in whole or in part, with any payments to be made on the basis of the
4 reasonable cost of the care or reasonable charge for the services as defined and
5 determined by the MO HealthNet division, unless otherwise hereinafter provided,
6 for the following:

7 (1) Inpatient hospital services, except to persons in an institution for
8 mental diseases who are under the age of sixty-five years and over the age of
9 twenty-one years; provided that the MO HealthNet division shall provide through
10 rule and regulation an exception process of inpatient costs in those
11 cases requiring treatment beyond the seventy-fifth percentile professional
12 activities study (PAS) or the MO HealthNet children's diagnosis length-of-stay
13 schedule; and provided further that the MO HealthNet division shall take into
14 account through its payment system for hospital services the situation of
15 hospitals which serve a disproportionate number of low-income patients;

16 (2) All outpatient hospital services, payments therefor to be in amounts
17 which represent no more than eighty percent of the lesser of reasonable costs or
18 customary charges for such services, determined in accordance with the principles
19 set forth in Title XVIII A and B, Public Law 89-97, 1965 amendments to the
20 federal Social Security Act (42 U.S.C. 301, et seq.), but the MO HealthNet

21 division may evaluate outpatient hospital services rendered under this section
22 and deny payment for services which are determined by the MO HealthNet
23 division not to be medically necessary, in accordance with federal law and
24 regulations;

25 (3) Laboratory and X-ray services;

26 (4) Nursing home services for participants, except to persons with more
27 than five hundred thousand dollars equity in their home or except for persons in
28 an institution for mental diseases who are under the age of sixty-five years, when
29 residing in a hospital licensed by the department of health and senior services or
30 a nursing home licensed by the department of health and senior services or
31 appropriate licensing authority of other states or government-owned and
32 -operated institutions which are determined to conform to standards equivalent
33 to licensing requirements in Title XIX of the federal Social Security Act (42
34 U.S.C. 301, et seq.), as amended, for nursing facilities. The MO HealthNet
35 division may recognize through its payment methodology for nursing facilities
36 those nursing facilities which serve a high volume of MO HealthNet
37 patients. The MO HealthNet division when determining the amount of the
38 benefit payments to be made on behalf of persons under the age of twenty-one in
39 a nursing facility may consider nursing facilities furnishing care to persons under
40 the age of twenty-one as a classification separate from other nursing facilities;

41 (5) Nursing home costs for participants receiving benefit payments under
42 subdivision (4) of this subsection for those days, which shall not exceed twelve per
43 any period of six consecutive months, during which the participant is on a
44 temporary leave of absence from the hospital or nursing home, provided that no
45 such participant shall be allowed a temporary leave of absence unless it is
46 specifically provided for in his plan of care. As used in this subdivision, the term
47 "temporary leave of absence" shall include all periods of time during which a
48 participant is away from the hospital or nursing home overnight because he is
49 visiting a friend or relative;

50 (6) Physicians' services, whether furnished in the office, home, hospital,
51 nursing home, or elsewhere;

52 (7) Drugs and medicines when prescribed by a licensed physician, dentist,
53 or podiatrist; except that no payment for drugs and medicines prescribed on and
54 after January 1, 2006, by a licensed physician, dentist, or podiatrist may be made
55 on behalf of any person who qualifies for prescription drug coverage under the

56 provisions of P.L. 108-173;

57 (8) Emergency ambulance services and, effective January 1, 1990,
58 medically necessary transportation to scheduled, physician-prescribed nonelective
59 treatments;

60 (9) Early and periodic screening and diagnosis of individuals who are
61 under the age of twenty-one to ascertain their physical or mental defects, and
62 health care, treatment, and other measures to correct or ameliorate defects and
63 chronic conditions discovered thereby. Such services shall be provided in
64 accordance with the provisions of Section 6403 of P.L. 101-239 and federal
65 regulations promulgated thereunder;

66 (10) Home health care services;

67 (11) Family planning as defined by federal rules and regulations;
68 provided, however, that such family planning services shall not include abortions
69 unless such abortions are certified in writing by a physician to the MO HealthNet
70 agency that, in his professional judgment, the life of the mother would be
71 endangered if the fetus were carried to term;

72 (12) Inpatient psychiatric hospital services for individuals under age
73 twenty-one as defined in Title XIX of the federal Social Security Act (42 U.S.C.
74 1396d, et seq.);

75 (13) Outpatient surgical procedures, including presurgical diagnostic
76 services performed in ambulatory surgical facilities which are licensed by the
77 department of health and senior services of the state of Missouri; except, that
78 such outpatient surgical services shall not include persons who are eligible for
79 coverage under Part B of Title XVIII, Public Law 89-97, 1965 amendments to the
80 federal Social Security Act, as amended, if exclusion of such persons is permitted
81 under Title XIX, Public Law 89-97, 1965 amendments to the federal Social
82 Security Act, as amended;

83 (14) Personal care services which are medically oriented tasks having to
84 do with a person's physical requirements, as opposed to housekeeping
85 requirements, which enable a person to be treated by his physician on an
86 outpatient rather than on an inpatient or residential basis in a hospital,
87 intermediate care facility, or skilled nursing facility. Personal care services shall
88 be rendered by an individual not a member of the participant's family who is
89 qualified to provide such services where the services are prescribed by a physician
90 in accordance with a plan of treatment and are supervised by a licensed

91 nurse. Persons eligible to receive personal care services shall be those persons
92 who would otherwise require placement in a hospital, intermediate care facility,
93 or skilled nursing facility. Benefits payable for personal care services shall not
94 exceed for any one participant one hundred percent of the average statewide
95 charge for care and treatment in an intermediate care facility for a comparable
96 period of time. Such services, when delivered in a residential care facility or
97 assisted living facility licensed under chapter 198 shall be authorized on a tier
98 level based on the services the resident requires and the frequency of the services.
99 A resident of such facility who qualifies for assistance under section 208.030
100 shall, at a minimum, if prescribed by a physician, qualify for the tier level with
101 the fewest services. The rate paid to providers for each tier of service shall be set
102 subject to appropriations. Subject to appropriations, each resident of such facility
103 who qualifies for assistance under section 208.030 and meets the level of care
104 required in this section shall, at a minimum, if prescribed by a physician, be
105 authorized up to one hour of personal care services per day. Authorized units of
106 personal care services shall not be reduced or tier level lowered unless an order
107 approving such reduction or lowering is obtained from the resident's personal
108 physician. Such authorized units of personal care services or tier level shall be
109 transferred with such resident if her or she transfers to another such
110 facility. Such provision shall terminate upon receipt of relevant waivers from the
111 federal Department of Health and Human Services. If the Centers for Medicare
112 and Medicaid Services determines that such provision does not comply with the
113 state plan, this provision shall be null and void. The MO HealthNet division
114 shall notify the revisor of statutes as to whether the relevant waivers are
115 approved or a determination of noncompliance is made;

116 (15) Mental health services. The state plan for providing medical
117 assistance under Title XIX of the Social Security Act, 42 U.S.C. 301, as amended,
118 shall include the following mental health services when such services are
119 provided by community mental health facilities operated by the department of
120 mental health or designated by the department of mental health as a community
121 mental health facility or as an alcohol and drug abuse facility or as a
122 child-serving agency within the comprehensive children's mental health service
123 system established in section 630.097. The department of mental health shall
124 establish by administrative rule the definition and criteria for designation as a
125 community mental health facility and for designation as an alcohol and drug

126 abuse facility. Such mental health services shall include:

127 (a) Outpatient mental health services including preventive, diagnostic,
128 therapeutic, rehabilitative, and palliative interventions rendered to individuals
129 in an individual or group setting by a mental health professional in accordance
130 with a plan of treatment appropriately established, implemented, monitored, and
131 revised under the auspices of a therapeutic team as a part of client services
132 management;

133 (b) Clinic mental health services including preventive, diagnostic,
134 therapeutic, rehabilitative, and palliative interventions rendered to individuals
135 in an individual or group setting by a mental health professional in accordance
136 with a plan of treatment appropriately established, implemented, monitored, and
137 revised under the auspices of a therapeutic team as a part of client services
138 management;

139 (c) Rehabilitative mental health and alcohol and drug abuse services
140 including home and community-based preventive, diagnostic, therapeutic,
141 rehabilitative, and palliative interventions rendered to individuals in an
142 individual or group setting by a mental health or alcohol and drug abuse
143 professional in accordance with a plan of treatment appropriately established,
144 implemented, monitored, and revised under the auspices of a therapeutic team
145 as a part of client services management. As used in this section, mental health
146 professional and alcohol and drug abuse professional shall be defined by the
147 department of mental health pursuant to duly promulgated rules. With respect
148 to services established by this subdivision, the department of social services, MO
149 HealthNet division, shall enter into an agreement with the department of mental
150 health. Matching funds for outpatient mental health services, clinic mental
151 health services, and rehabilitation services for mental health and alcohol and
152 drug abuse shall be certified by the department of mental health to the MO
153 HealthNet division. The agreement shall establish a mechanism for the joint
154 implementation of the provisions of this subdivision. In addition, the agreement
155 shall establish a mechanism by which rates for services may be jointly developed;

156 (16) Such additional services as defined by the MO HealthNet division to
157 be furnished under waivers of federal statutory requirements as provided for and
158 authorized by the federal Social Security Act (42 U.S.C. 301, et seq.) subject to
159 appropriation by the general assembly;

160 (17) Beginning July 1, 1990, the services of a certified pediatric or family

161 nursing practitioner with a collaborative practice agreement to the extent that
162 such services are provided in accordance with chapters 334 and 335 and
163 regulations promulgated thereunder;

164 (18) Nursing home costs for participants receiving benefit payments under
165 subdivision (4) of this subsection to reserve a bed for the participant in the
166 nursing home during the time that the participant is absent due to admission to
167 a hospital for services which cannot be performed on an outpatient basis, subject
168 to the provisions of this subdivision:

169 (a) The provisions of this subdivision shall apply only if:

170 a. The occupancy rate of the nursing home is at or above ninety-seven
171 percent of MO HealthNet certified licensed beds, according to the most recent
172 quarterly census provided to the department of health and senior services which
173 was taken prior to when the participant is admitted to the hospital; and

174 b. The patient is admitted to a hospital for a medical condition with an
175 anticipated stay of three days or less;

176 (b) The payment to be made under this subdivision shall be provided for
177 a maximum of three days per hospital stay;

178 (c) For each day that nursing home costs are paid on behalf of a
179 participant under this subdivision during any period of six consecutive months
180 such participant shall, during the same period of six consecutive months, be
181 ineligible for payment of nursing home costs of two otherwise available temporary
182 leave of absence days provided under subdivision (5) of this subsection; and

183 (d) The provisions of this subdivision shall not apply unless the nursing
184 home receives notice from the participant or the participant's responsible party
185 that the participant intends to return to the nursing home following the hospital
186 stay. If the nursing home receives such notification and all other provisions of
187 this subsection have been satisfied, the nursing home shall provide notice to the
188 participant or the participant's responsible party prior to release of the reserved
189 bed;

190 (19) Prescribed medically necessary durable medical equipment. An
191 electronic web-based prior authorization system using best medical evidence and
192 care and treatment guidelines consistent with national standards shall be used
193 to verify medical need;

194 (20) Hospice care. As used in this subsection, the term "hospice care"
195 means a coordinated program of active professional medical attention within a

196 home, outpatient and inpatient care which treats the terminally ill patient and
197 family as a unit, employing a medically directed interdisciplinary team. The
198 program provides relief of severe pain or other physical symptoms and supportive
199 care to meet the special needs arising out of physical, psychological, spiritual,
200 social, and economic stresses which are experienced during the final stages of
201 illness, and during dying and bereavement and meets the Medicare requirements
202 for participation as a hospice as are provided in 42 CFR Part 418. The rate of
203 reimbursement paid by the MO HealthNet division to the hospice provider for
204 room and board furnished by a nursing home to an eligible hospice patient shall
205 not be less than ninety-five percent of the rate of reimbursement which would
206 have been paid for facility services in that nursing home facility for that patient,
207 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus
208 Budget Reconciliation Act of 1989);

209 (21) Prescribed medically necessary dental services. Such services shall
210 be subject to appropriations. An electronic web-based prior authorization system
211 using best medical evidence and care and treatment guidelines consistent with
212 national standards shall be used to verify medical need;

213 (22) Prescribed medically necessary optometric services. Such services
214 shall be subject to appropriations. An electronic web-based prior authorization
215 system using best medical evidence and care and treatment guidelines consistent
216 with national standards shall be used to verify medical need;

217 (23) The MO HealthNet division shall, by January 1, 2008, and annually
218 thereafter, report the status of MO HealthNet provider reimbursement rates as
219 compared to one hundred percent of the Medicare reimbursement rates and
220 compared to the average dental reimbursement rates paid by third-party payors
221 licensed by the state. The MO HealthNet division shall, by July 1, 2008, provide
222 to the general assembly a four-year plan to achieve parity with Medicare
223 reimbursement rates and for third-party payor average dental reimbursement
224 rates. Such plan shall be subject to appropriation and the division shall include
225 in its annual budget request to the governor the necessary funding needed to
226 complete the four-year plan developed under this subdivision.

227 2. Additional benefit payments for medical assistance shall be made on
228 behalf of those eligible needy children, pregnant women and blind persons with
229 any payments to be made on the basis of the reasonable cost of the care or
230 reasonable charge for the services as defined and determined by the division of

231 medical services, unless otherwise hereinafter provided, for the following:

232 (1) Dental services;

233 (2) Services of podiatrists as defined in section 330.010;

234 (3) Optometric services as defined in section 336.010;

235 (4) Orthopedic devices or other prosthetics, including eye glasses,
236 dentures, hearing aids, and wheelchairs;

237 (5) Hospice care. As used in this subsection, the term "hospice care"
238 means a coordinated program of active professional medical attention within a
239 home, outpatient and inpatient care which treats the terminally ill patient and
240 family as a unit, employing a medically directed interdisciplinary team. The
241 program provides relief of severe pain or other physical symptoms and supportive
242 care to meet the special needs arising out of physical, psychological, spiritual,
243 social, and economic stresses which are experienced during the final stages of
244 illness, and during dying and bereavement and meets the Medicare requirements
245 for participation as a hospice as are provided in 42 CFR Part 418. The rate of
246 reimbursement paid by the MO HealthNet division to the hospice provider for
247 room and board furnished by a nursing home to an eligible hospice patient shall
248 not be less than ninety-five percent of the rate of reimbursement which would
249 have been paid for facility services in that nursing home facility for that patient,
250 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus
251 Budget Reconciliation Act of 1989);

252 (6) Comprehensive day rehabilitation services beginning early posttrauma
253 as part of a coordinated system of care for individuals with disabling
254 impairments. Rehabilitation services must be based on an individualized,
255 goal-oriented, comprehensive and coordinated treatment plan developed,
256 implemented, and monitored through an interdisciplinary assessment designed
257 to restore an individual to optimal level of physical, cognitive, and behavioral
258 function. The MO HealthNet division shall establish by administrative rule the
259 definition and criteria for designation of a comprehensive day rehabilitation
260 service facility, benefit limitations and payment mechanism. Any rule or portion
261 of a rule, as that term is defined in section 536.010, that is created under the
262 authority delegated in this subdivision shall become effective only if it complies
263 with and is subject to all of the provisions of chapter 536 and, if applicable,
264 section 536.028. This section and chapter 536 are nonseverable and if any of the
265 powers vested with the general assembly pursuant to chapter 536 to review, to

266 delay the effective date, or to disapprove and annul a rule are subsequently held
267 unconstitutional, then the grant of rulemaking authority and any rule proposed
268 or adopted after August 28, 2005, shall be invalid and void.

269 3. The MO HealthNet division may require any participant receiving MO
270 HealthNet benefits to pay part of the charge or cost until July 1, 2008, and an
271 additional payment after July 1, 2008, as defined by rule duly promulgated by the
272 MO HealthNet division, for all covered services except for those services covered
273 under subdivisions (14) and (15) of subsection 1 of this section and sections
274 208.631 to 208.657 to the extent and in the manner authorized by Title XIX of the
275 federal Social Security Act (42 U.S.C. 1396, et seq.) and regulations
276 thereunder. When substitution of a generic drug is permitted by the prescriber
277 according to section 338.056, and a generic drug is substituted for a name-brand
278 drug, the MO HealthNet division may not lower or delete the requirement to
279 make a co-payment pursuant to regulations of Title XIX of the federal Social
280 Security Act. A provider of goods or services described under this section must
281 collect from all participants the additional payment that may be required by the
282 MO HealthNet division under authority granted herein, if the division exercises
283 that authority, to remain eligible as a provider. Any payments made by
284 participants under this section shall be in addition to and not in lieu of payments
285 made by the state for goods or services described herein except the participant
286 portion of the pharmacy professional dispensing fee shall be in addition to and
287 not in lieu of payments to pharmacists. A provider may collect the co-payment
288 at the time a service is provided or at a later date. A provider shall not refuse
289 to provide a service if a participant is unable to pay a required payment. If it is
290 the routine business practice of a provider to terminate future services to an
291 individual with an unclaimed debt, the provider may include uncollected
292 co-payments under this practice. Providers who elect not to undertake the
293 provision of services based on a history of bad debt shall give participants
294 advance notice and a reasonable opportunity for payment. A provider,
295 representative, employee, independent contractor, or agent of a pharmaceutical
296 manufacturer shall not make co-payment for a participant. This subsection shall
297 not apply to other qualified children, pregnant women, or blind persons. If the
298 Centers for Medicare and Medicaid Services does not approve the Missouri MO
299 HealthNet state plan amendment submitted by the department of social services
300 that would allow a provider to deny future services to an individual with

301 uncollected co-payments, the denial of services shall not be allowed. The
302 department of social services shall inform providers regarding the acceptability
303 of denying services as the result of unpaid co-payments.

304 4. The MO HealthNet division shall have the right to collect medication
305 samples from participants in order to maintain program integrity.

306 5. Reimbursement for obstetrical and pediatric services under subdivision
307 (6) of subsection 1 of this section shall be timely and sufficient to enlist enough
308 health care providers so that care and services are available under the state plan
309 for MO HealthNet benefits at least to the extent that such care and services are
310 available to the general population in the geographic area, as required under
311 subparagraph (a)(30)(A) of 42 U.S.C. 1396a and federal regulations promulgated
312 thereunder.

313 6. Beginning July 1, 1990, reimbursement for services rendered in
314 federally funded health centers shall be in accordance with the provisions of
315 subsection 6402(c) and Section 6404 of P.L. 101-239 (Omnibus Budget
316 Reconciliation Act of 1989) and federal regulations promulgated thereunder.

317 7. Beginning July 1, 1990, the department of social services shall provide
318 notification and referral of children below age five, and pregnant, breast-feeding,
319 or postpartum women who are determined to be eligible for MO HealthNet
320 benefits under section 208.151 to the special supplemental food programs for
321 women, infants and children administered by the department of health and senior
322 services. Such notification and referral shall conform to the requirements of
323 Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

324 8. Providers of long-term care services shall be reimbursed for their costs
325 in accordance with the provisions of Section 1902 (a)(13)(A) of the Social Security
326 Act, 42 U.S.C. 1396a, as amended, and regulations promulgated thereunder.

327 9. Reimbursement rates to long-term care providers with respect to a total
328 change in ownership, at arm's length, for any facility previously licensed and
329 certified for participation in the MO HealthNet program shall not increase
330 payments in excess of the increase that would result from the application of
331 Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C. 1396a (a)(13)(C).

332 10. The MO HealthNet division may enroll qualified residential care
333 facilities and assisted living facilities, as defined in chapter 198, as MO
334 HealthNet personal care providers.

335 11. Any income earned by individuals eligible for certified extended

336 employment at a sheltered workshop under chapter 178 shall not be considered
337 as income for purposes of determining eligibility under this section.

338 **12. The Mo HealthNet division shall not discriminate between**
339 **persons licensed under sections 337.700 to 337.739 and sections 337.500**
340 **to 337.540 when promulgating rules or when requiring or**
341 **recommending services that legally may be performed by persons**
342 **licensed under sections 337.700 to 337.739 and by persons licensed**
343 **under sections 337.500 to 337.540.**

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Bill

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