

FIRST REGULAR SESSION

SENATE BILL NO. 338

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time February 4, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1673S.02I

AN ACT

To repeal section 208.152, RSMo, and to enact in lieu thereof one new section relating to emergency contraception coverage for MO HealthNet participants.

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Section A. Section 208.152, RSMo, is repealed and one new section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 described in section 208.151 who are unable to provide
3 for 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 for coverage 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. Section 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. Section 301, et seq.), as amended, for nursing facilities. The MO
35 HealthNet division may recognize through its payment methodology for nursing
36 facilities 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) Subject to appropriation, up to twenty visits per year for services
53 limited to examinations, diagnoses, adjustments, and manipulations and
54 treatments of malpositioned articulations and structures of the body provided by
55 licensed chiropractic physicians practicing within their scope of practice. Nothing
56 in this subdivision shall be interpreted to otherwise expand MO HealthNet

57 services;

58 (8) Drugs and medicines when prescribed by a licensed physician, dentist,
59 podiatrist, or an advanced practice registered nurse; except that no payment for
60 drugs and medicines prescribed on and after January 1, 2006, by a licensed
61 physician, dentist, podiatrist, or an advanced practice registered nurse may be
62 made on behalf of any person who qualifies for prescription drug coverage under
63 the provisions of P.L. 108-173;

64 (9) Emergency ambulance services and, effective January 1, 1990,
65 medically necessary transportation to scheduled, physician-prescribed nonelective
66 treatments;

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

73 (11) Home health care services;

74 (12) Family planning as defined by federal rules and regulations;
75 provided, however, that such family planning services shall not include:

76 (a) Abortions unless such abortions are certified in writing by a physician
77 to the MO HealthNet agency that, in the physician's professional judgment, the
78 life of the mother would be endangered if the fetus were carried to term; **and**

79 (b) **Emergency contraception unless a physician determines it to**
80 **be necessary to protect the life of the mother. As used in this**
81 **subdivision, "emergency contraception" shall include any drug or device**
82 **approved by the federal Food and Drug Administration that may cause**
83 **the destruction of a human embryo;**

84 (13) Inpatient psychiatric hospital services for individuals under age
85 twenty-one as defined in Title XIX of the federal Social Security Act (42 U.S.C.
86 Section 1396d, et seq.);

87 (14) Outpatient surgical procedures, including presurgical diagnostic
88 services performed in ambulatory surgical facilities which are licensed by the
89 department of health and senior services of the state of Missouri; except, that
90 such outpatient surgical services shall not include persons who are eligible for
91 coverage under Part B of Title XVIII, Public Law 89-97, 1965 amendments to the
92 federal Social Security Act, as amended, if exclusion of such persons is permitted

93 under Title XIX, Public Law 89-97, 1965 amendments to the federal Social
94 Security Act, as amended;

95 (15) Personal care services which are medically oriented tasks having to
96 do with a person's physical requirements, as opposed to housekeeping
97 requirements, which enable a person to be treated by his or her physician on an
98 outpatient rather than on an inpatient or residential basis in a hospital,
99 intermediate care facility, or skilled nursing facility. Personal care services shall
100 be rendered by an individual not a member of the participant's family who is
101 qualified to provide such services where the services are prescribed by a physician
102 in accordance with a plan of treatment and are supervised by a licensed
103 nurse. Persons eligible to receive personal care services shall be those persons
104 who would otherwise require placement in a hospital, intermediate care facility,
105 or skilled nursing facility. Benefits payable for personal care services shall not
106 exceed for any one participant one hundred percent of the average statewide
107 charge for care and treatment in an intermediate care facility for a comparable
108 period of time. Such services, when delivered in a residential care facility or
109 assisted living facility licensed under chapter 198 shall be authorized on a tier
110 level based on the services the resident requires and the frequency of the services.
111 A resident of such facility who qualifies for assistance under section 208.030
112 shall, at a minimum, if prescribed by a physician, qualify for the tier level with
113 the fewest services. The rate paid to providers for each tier of service shall be set
114 subject to appropriations. Subject to appropriations, each resident of such facility
115 who qualifies for assistance under section 208.030 and meets the level of care
116 required in this section shall, at a minimum, if prescribed by a physician, be
117 authorized up to one hour of personal care services per day. Authorized units of
118 personal care services shall not be reduced or tier level lowered unless an order
119 approving such reduction or lowering is obtained from the resident's personal
120 physician. Such authorized units of personal care services or tier level shall be
121 transferred with such resident if he or she transfers to another such
122 facility. Such provision shall terminate upon receipt of relevant waivers from the
123 federal Department of Health and Human Services. If the Centers for Medicare
124 and Medicaid Services determines that such provision does not comply with the
125 state plan, this provision shall be null and void. The MO HealthNet division
126 shall notify the revisor of statutes as to whether the relevant waivers are
127 approved or a determination of noncompliance is made;

128 (16) Mental health services. The state plan for providing medical

129 assistance under Title XIX of the Social Security Act, 42 U.S.C. Section 301, as
130 amended, shall include the following mental health services when such services
131 are provided by community mental health facilities operated by the department
132 of mental health or designated by the department of mental health as a
133 community mental health facility or as an alcohol and drug abuse facility or as
134 a child-serving agency within the comprehensive children's mental health service
135 system established in section 630.097. The department of mental health shall
136 establish by administrative rule the definition and criteria for designation as a
137 community mental health facility and for designation as an alcohol and drug
138 abuse facility. Such mental health services shall include:

139 (a) Outpatient mental health services including preventive, diagnostic,
140 therapeutic, rehabilitative, and palliative interventions rendered to individuals
141 in an individual or group setting by a mental health professional in accordance
142 with a plan of treatment appropriately established, implemented, monitored, and
143 revised under the auspices of a therapeutic team as a part of client services
144 management;

145 (b) Clinic mental health services including preventive, diagnostic,
146 therapeutic, rehabilitative, and palliative interventions rendered to individuals
147 in an individual or group setting by a mental health professional in accordance
148 with a plan of treatment appropriately established, implemented, monitored, and
149 revised under the auspices of a therapeutic team as a part of client services
150 management;

151 (c) Rehabilitative mental health and alcohol and drug abuse services
152 including home and community-based preventive, diagnostic, therapeutic,
153 rehabilitative, and palliative interventions rendered to individuals in an
154 individual or group setting by a mental health or alcohol and drug abuse
155 professional in accordance with a plan of treatment appropriately established,
156 implemented, monitored, and revised under the auspices of a therapeutic team
157 as a part of client services management. As used in this section, mental health
158 professional and alcohol and drug abuse professional shall be defined by the
159 department of mental health pursuant to duly promulgated rules. With respect
160 to services established by this subdivision, the department of social services, MO
161 HealthNet division, shall enter into an agreement with the department of mental
162 health. Matching funds for outpatient mental health services, clinic mental
163 health services, and rehabilitation services for mental health and alcohol and
164 drug abuse shall be certified by the department of mental health to the MO

165 HealthNet division. The agreement shall establish a mechanism for the joint
166 implementation of the provisions of this subdivision. In addition, the agreement
167 shall establish a mechanism by which rates for services may be jointly developed;

168 (17) Such additional services as defined by the MO HealthNet division to
169 be furnished under waivers of federal statutory requirements as provided for and
170 authorized by the federal Social Security Act (42 U.S.C. Section 301, et seq.)
171 subject to appropriation by the general assembly;

172 (18) The services of an advanced practice registered nurse with a
173 collaborative practice agreement to the extent that such services are provided in
174 accordance with chapters 334 and 335, and regulations promulgated thereunder;

175 (19) Nursing home costs for participants receiving benefit payments under
176 subdivision (4) of this subsection to reserve a bed for the participant in the
177 nursing home during the time that the participant is absent due to admission to
178 a hospital for services which cannot be performed on an outpatient basis, subject
179 to the provisions of this subdivision:

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

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

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

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

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

194 (d) The provisions of this subdivision shall not apply unless the nursing
195 home receives notice from the participant or the participant's responsible party
196 that the participant intends to return to the nursing home following the hospital
197 stay. If the nursing home receives such notification and all other provisions of
198 this subsection have been satisfied, the nursing home shall provide notice to the
199 participant or the participant's responsible party prior to release of the reserved
200 bed;

201 (20) Prescribed medically necessary durable medical equipment. An
202 electronic web-based prior authorization system using best medical evidence and
203 care and treatment guidelines consistent with national standards shall be used
204 to verify medical need;

205 (21) Hospice care. As used in this subdivision, the term "hospice care"
206 means a coordinated program of active professional medical attention within a
207 home, outpatient and inpatient care which treats the terminally ill patient and
208 family as a unit, employing a medically directed interdisciplinary team. The
209 program provides relief of severe pain or other physical symptoms and supportive
210 care to meet the special needs arising out of physical, psychological, spiritual,
211 social, and economic stresses which are experienced during the final stages of
212 illness, and during dying and bereavement and meets the Medicare requirements
213 for participation as a hospice as are provided in 42 CFR Part 418. The rate of
214 reimbursement paid by the MO HealthNet division to the hospice provider for
215 room and board furnished by a nursing home to an eligible hospice patient shall
216 not be less than ninety-five percent of the rate of reimbursement which would
217 have been paid for facility services in that nursing home facility for that patient,
218 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus
219 Budget Reconciliation Act of 1989);

220 (22) Prescribed medically necessary dental services. Such services shall
221 be subject to appropriations. An electronic web-based prior authorization system
222 using best medical evidence and care and treatment guidelines consistent with
223 national standards shall be used to verify medical need;

224 (23) Prescribed medically necessary optometric services. Such services
225 shall be subject to appropriations. An electronic web-based prior authorization
226 system using best medical evidence and care and treatment guidelines consistent
227 with national standards shall be used to verify medical need;

228 (24) Blood clotting products-related services. For persons diagnosed with
229 a bleeding disorder, as defined in section 338.400, reliant on blood clotting
230 products, as defined in section 338.400, such services include:

231 (a) Home delivery of blood clotting products and ancillary infusion
232 equipment and supplies, including the emergency deliveries of the product when
233 medically necessary;

234 (b) Medically necessary ancillary infusion equipment and supplies
235 required to administer the blood clotting products; and

236 (c) Assessments conducted in the participant's home by a pharmacist,

237 nurse, or local home health care agency trained in bleeding disorders when
238 deemed necessary by the participant's treating physician;

239 (25) The MO HealthNet division shall, by January 1, 2008, and annually
240 thereafter, report the status of MO HealthNet provider reimbursement rates as
241 compared to one hundred percent of the Medicare reimbursement rates and
242 compared to the average dental reimbursement rates paid by third-party payors
243 licensed by the state. The MO HealthNet division shall, by July 1, 2008, provide
244 to the general assembly a four-year plan to achieve parity with Medicare
245 reimbursement rates and for third-party payor average dental reimbursement
246 rates. Such plan shall be subject to appropriation and the division shall include
247 in its annual budget request to the governor the necessary funding needed to
248 complete the four-year plan developed under this subdivision.

249 2. Additional benefit payments for medical assistance shall be made on
250 behalf of those eligible needy children, pregnant women and blind persons with
251 any payments to be made on the basis of the reasonable cost of the care or
252 reasonable charge for the services as defined and determined by the MO
253 HealthNet division, unless otherwise hereinafter provided, for the following:

254 (1) Dental services;

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

256 (3) Optometric services as described in section 336.010;

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

259 (5) Hospice care. As used in this subdivision, the term "hospice care"
260 means a coordinated program of active professional medical attention within a
261 home, outpatient and inpatient care which treats the terminally ill patient and
262 family as a unit, employing a medically directed interdisciplinary team. The
263 program provides relief of severe pain or other physical symptoms and supportive
264 care to meet the special needs arising out of physical, psychological, spiritual,
265 social, and economic stresses which are experienced during the final stages of
266 illness, and during dying and bereavement and meets the Medicare requirements
267 for participation as a hospice as are provided in 42 CFR Part 418. The rate of
268 reimbursement paid by the MO HealthNet division to the hospice provider for
269 room and board furnished by a nursing home to an eligible hospice patient shall
270 not be less than ninety-five percent of the rate of reimbursement which would
271 have been paid for facility services in that nursing home facility for that patient,
272 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus

273 Budget Reconciliation Act of 1989);

274 (6) Comprehensive day rehabilitation services beginning early posttrauma
275 as part of a coordinated system of care for individuals with disabling
276 impairments. Rehabilitation services must be based on an individualized,
277 goal-oriented, comprehensive and coordinated treatment plan developed,
278 implemented, and monitored through an interdisciplinary assessment designed
279 to restore an individual to optimal level of physical, cognitive, and behavioral
280 function. The MO HealthNet division shall establish by administrative rule the
281 definition and criteria for designation of a comprehensive day rehabilitation
282 service facility, benefit limitations and payment mechanism. Any rule or portion
283 of a rule, as that term is defined in section 536.010, that is created under the
284 authority delegated in this subdivision shall become effective only if it complies
285 with and is subject to all of the provisions of chapter 536 and, if applicable,
286 section 536.028. This section and chapter 536 are nonseverable and if any of the
287 powers vested with the general assembly pursuant to chapter 536 to review, to
288 delay the effective date, or to disapprove and annul a rule are subsequently held
289 unconstitutional, then the grant of rulemaking authority and any rule proposed
290 or adopted after August 28, 2005, shall be invalid and void.

291 3. The MO HealthNet division may require any participant receiving MO
292 HealthNet benefits to pay part of the charge or cost until July 1, 2008, and an
293 additional payment after July 1, 2008, as defined by rule duly promulgated by the
294 MO HealthNet division, for all covered services except for those services covered
295 under subdivisions (15) and (16) of subsection 1 of this section and sections
296 208.631 to 208.657 to the extent and in the manner authorized by Title XIX of the
297 federal Social Security Act (42 U.S.C. Section 1396, et seq.) and regulations
298 thereunder. When substitution of a generic drug is permitted by the prescriber
299 according to section 338.056, and a generic drug is substituted for a name-brand
300 drug, the MO HealthNet division may not lower or delete the requirement to
301 make a co-payment pursuant to regulations of Title XIX of the federal Social
302 Security Act. A provider of goods or services described under this section must
303 collect from all participants the additional payment that may be required by the
304 MO HealthNet division under authority granted herein, if the division exercises
305 that authority, to remain eligible as a provider. Any payments made by
306 participants under this section shall be in addition to and not in lieu of payments
307 made by the state for goods or services described herein except the participant
308 portion of the pharmacy professional dispensing fee shall be in addition to and

309 not in lieu of payments to pharmacists. A provider may collect the co-payment
310 at the time a service is provided or at a later date. A provider shall not refuse
311 to provide a service if a participant is unable to pay a required payment. If it is
312 the routine business practice of a provider to terminate future services to an
313 individual with an unclaimed debt, the provider may include uncollected
314 co-payments under this practice. Providers who elect not to undertake the
315 provision of services based on a history of bad debt shall give participants
316 advance notice and a reasonable opportunity for payment. A provider,
317 representative, employee, independent contractor, or agent of a pharmaceutical
318 manufacturer shall not make co-payment for a participant. This subsection shall
319 not apply to other qualified children, pregnant women, or blind persons. If the
320 Centers for Medicare and Medicaid Services does not approve the MO HealthNet
321 state plan amendment submitted by the department of social services that would
322 allow a provider to deny future services to an individual with uncollected
323 co-payments, the denial of services shall not be allowed. The department of social
324 services shall inform providers regarding the acceptability of denying services as
325 the result of unpaid co-payments.

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

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

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

339 7. Beginning July 1, 1990, the department of social services shall provide
340 notification and referral of children below age five, and pregnant, breast-feeding,
341 or postpartum women who are determined to be eligible for MO HealthNet
342 benefits under section 208.151 to the special supplemental food programs for
343 women, infants and children administered by the department of health and senior
344 services. Such notification and referral shall conform to the requirements of

345 Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

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

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

356 10. The MO HealthNet division may enroll qualified residential care
357 facilities and assisted living facilities, as defined in chapter 198, as MO
358 HealthNet personal care providers.

359 11. Any income earned by individuals eligible for certified extended
360 employment at a sheltered workshop under chapter 178 shall not be considered
361 as income for purposes of determining eligibility under this section.

362 12. If the Missouri Medicaid audit and compliance unit changes any
363 interpretation or application of the requirements for reimbursement for MO
364 HealthNet services from the interpretation or application that has been applied
365 previously by the state in any audit of a MO HealthNet provider, the Missouri
366 Medicaid audit and compliance unit shall notify all affected MO HealthNet
367 providers five business days before such change shall take effect. Failure of the
368 Missouri Medicaid audit and compliance unit to notify a provider of such change
369 shall entitle the provider to continue to receive and retain reimbursement until
370 such notification is provided and shall waive any liability of such provider for
371 recoupment or other loss of any payments previously made prior to the five
372 business days after such notice has been sent. Each provider shall provide the
373 Missouri Medicaid audit and compliance unit a valid email address and shall
374 agree to receive communications electronically. The notification required under
375 this section shall be delivered in writing by the United States Postal Service or
376 electronic mail to each provider.

377 13. Nothing in this section shall be construed to abrogate or limit the
378 department's statutory requirement to promulgate rules under chapter 536.

379 14. Beginning July 1, 2016, and subject to appropriations, providers of
380 behavioral, social, and psychophysiological services for the prevention, treatment,

381 or management of physical health problems shall be reimbursed utilizing the
382 behavior assessment and intervention reimbursement codes 96150 to 96154 or
383 their successor codes under the Current Procedural Terminology (CPT) coding
384 system. Providers eligible for such reimbursement shall include psychologists.

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