

SENATE BILL NO. 1687

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCCREERY.

6990S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 208.215, RSMo, and to enact in lieu thereof one new section relating to MO HealthNet third party liability.

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Section A. Section 208.215, RSMo, is repealed and one new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

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

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

18 the participant may be entitled. Any health benefit plan as
19 defined in section 376.1350, third-party administrator,
20 administrative service organization, and pharmacy benefits
21 manager shall process and pay all properly submitted medical
22 assistance subrogation claims or MO HealthNet subrogation
23 claims using standard electronic transactions or paper claim
24 forms:

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

27 (a) **Shall respond to any inquiry by the state**
28 **regarding a claim for payment for any health care item or**
29 **service not later than sixty days after receiving any such**
30 **inquiry;**

31 (b) Shall not be required to reimburse for items or
32 services which are not covered under MO HealthNet;

33 [(b)] (c) Shall not deny a claim submitted by the
34 state solely on the basis of the date of submission of the
35 claim, the type or format of the claim form, failure to
36 present proper documentation of coverage at the point of
37 sale, or failure to provide prior authorization **for the item**
38 **or service for which the claim is being submitted, except**
39 **that such shall not apply to the original Medicare fee-for-**
40 **service program under Parts A and B of Subchapter XVIII of**
41 **42 U.S.C. Chapter 7, a Medicare Advantage plan offered by a**
42 **Medicare Advantage organization under Part C of such**
43 **subchapter, a reasonable cost reimbursement plan under 42**
44 **U.S.C. 1395mm, a health care prepayment plan under 42 U.S.C.**
45 **1395l, or a prescription drug plan offered by a PDP sponsor**
46 **under Part D of Subchapter XVIII of 42 U.S.C. Chapter 7 with**
47 **regards to prior authorizations;**

48 [(c)] (d) Shall not be required to reimburse for items
49 or services for which a claim was previously submitted to

50 the health benefit plan, third-party administrator,
51 administrative service organization, or pharmacy benefits
52 manager by the health care provider or the participant and
53 the claim was properly denied by the health benefit plan,
54 third-party administrator, administrative service
55 organization, or pharmacy benefits manager for procedural
56 reasons, except for timely filing, type or format of the
57 claim form, failure to present proper documentation of
58 coverage at the point of sale, or failure to obtain prior
59 authorization;

60 **(e) Shall accept authorization provided by the state**
61 **that the item or service is covered under the state plan or**
62 **waiver of such plan for such individual, as if such**
63 **authorization were the prior authorization made by the third**
64 **party for such item or service, except that such shall not**
65 **apply to the original Medicare fee-for-service program under**
66 **Parts A and B of Subchapter XVIII of 42 U.S.C. Chapter 7, a**
67 **Medicare Advantage plan offered by a Medicare Advantage**
68 **organization under Part C of such subchapter, a reasonable**
69 **cost reimbursement plan under 42 U.S.C. 1395mm, a health**
70 **care prepayment plan under 42 U.S.C. 1395l, or a**
71 **prescription drug plan offered by a PDP sponsor under Part D**
72 **of Subchapter XVIII of 42 U.S.C. Chapter 7;**

73 **[(d)] (f)** Shall not be required to reimburse for items
74 or services which are not covered under or were not covered
75 under the plan offered by the entity against which a claim
76 for subrogation has been filed; and

77 **[(e)] (g)** Shall reimburse for items or services to the
78 same extent that the entity would have been liable as if it
79 had been properly billed at the point of sale, and the
80 amount due is limited to what the entity would have paid as
81 if it had been properly billed at the point of sale; and

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

85 2. The department of social services, MO HealthNet
86 division, or its contractor may maintain an appropriate
87 action to recover funds paid by the department of social
88 services or MO HealthNet division or its contractor that are
89 due under this section in the name of the state of Missouri
90 against the person, corporation, institution, public agency,
91 or private agency liable to the participant, minor or estate.

92 3. Any participant, minor, guardian, conservator,
93 personal representative, estate, including persons entitled
94 under section 537.080 to bring an action for wrongful death
95 who pursues legal rights against a person, corporation,
96 institution, public agency, or private agency liable to that
97 participant or minor for injuries, disease or disability or
98 benefits arising from a health insurance plan to which the
99 participant may be entitled as outlined in subsection 1 of
100 this section shall upon actual knowledge that the department
101 of social services or MO HealthNet division has paid MO
102 HealthNet benefits as defined by this chapter promptly
103 notify the MO HealthNet division as to the pursuit of such
104 legal rights.

105 4. Every applicant or participant by application
106 assigns his right to the department of social services or MO
107 HealthNet division of any funds recovered or expected to be
108 recovered to the extent provided for in this section. All
109 applicants and participants, including a person authorized
110 by the probate code, shall cooperate with the department of
111 social services, MO HealthNet division in identifying and
112 providing information to assist the state in pursuing any
113 third party who may be liable to pay for care and services

114 available under the state's plan for MO HealthNet benefits
115 as provided in sections 208.151 to 208.159 and sections
116 208.162 and 208.204. All applicants and participants shall
117 cooperate with the agency in obtaining third-party resources
118 due to the applicant, participant, or child for whom
119 assistance is claimed. Failure to cooperate without good
120 cause as determined by the department of social services, MO
121 HealthNet division in accordance with federally prescribed
122 standards shall render the applicant or participant
123 ineligible for MO HealthNet benefits under sections 208.151
124 to 208.159 and sections 208.162 and 208.204. A participant
125 who has notice or who has actual knowledge of the
126 department's rights to third-party benefits who receives any
127 third-party benefit or proceeds for a covered illness or
128 injury is either required to pay the division within sixty
129 days after receipt of settlement proceeds the full amount of
130 the third-party benefits up to the total MO HealthNet
131 benefits provided or to place the full amount of the third-
132 party benefits in a trust account for the benefit of the
133 division pending judicial or administrative determination of
134 the division's right to third-party benefits.

135 5. Every person, corporation or partnership who acts
136 for or on behalf of a person who is or was eligible for MO
137 HealthNet benefits under sections 208.151 to 208.159 and
138 sections 208.162 and 208.204 for purposes of pursuing the
139 applicant's or participant's claim which accrued as a result
140 of a nonoccupational or nonwork-related incident or
141 occurrence resulting in the payment of MO HealthNet benefits
142 shall notify the MO HealthNet division upon agreeing to
143 assist such person and further shall notify the MO HealthNet
144 division of any institution of a proceeding, settlement or
145 the results of the pursuit of the claim and give thirty

146 days' notice before any judgment, award, or settlement may
147 be satisfied in any action or any claim by the applicant or
148 participant to recover damages for such injuries, disease,
149 or disability, or benefits arising from a health insurance
150 program to which the participant may be entitled.

151 6. Every participant, minor, guardian, conservator,
152 personal representative, estate, including persons entitled
153 under section 537.080 to bring an action for wrongful death,
154 or his attorney or legal representative shall promptly
155 notify the MO HealthNet division of any recovery from a
156 third party and shall immediately reimburse the department
157 of social services, MO HealthNet division, or its contractor
158 from the proceeds of any settlement, judgment, or other
159 recovery in any action or claim initiated against any such
160 third party. A judgment, award, or settlement in an action
161 by a participant to recover damages for injuries or other
162 third-party benefits in which the division has an interest
163 may not be satisfied without first giving the division
164 notice and a reasonable opportunity to file and satisfy the
165 claim or proceed with any action as otherwise permitted by
166 law.

167 7. The department of social services, MO HealthNet
168 division or its contractor shall have a right to recover the
169 amount of payments made to a provider under this chapter
170 because of an injury, disease, or disability, or benefits
171 arising from a health insurance plan to which the
172 participant may be entitled for which a third party is or
173 may be liable in contract, tort or otherwise under law or
174 equity. Upon request by the MO HealthNet division, all
175 third-party payers shall provide the MO HealthNet division
176 with information contained in a 270/271 Health Care
177 Eligibility Benefits Inquiry and Response standard

178 transaction mandated under the federal Health Insurance
179 Portability and Accountability Act, except that third-party
180 payers shall not include accident-only, specified disease,
181 disability income, hospital indemnity, or other fixed
182 indemnity insurance policies.

183 8. The department of social services or MO HealthNet
184 division shall have a lien upon any moneys to be paid by any
185 insurance company or similar business enterprise, person,
186 corporation, institution, public agency or private agency in
187 settlement or satisfaction of a judgment on any claim for
188 injuries or disability or disease benefits arising from a
189 health insurance program to which the participant may be
190 entitled which resulted in medical expenses for which the
191 department or MO HealthNet division made payment. This lien
192 shall also be applicable to any moneys which may come into
193 the possession of any attorney who is handling the claim for
194 injuries, or disability or disease or benefits arising from
195 a health insurance plan to which the participant may be
196 entitled which resulted in payments made by the department
197 or MO HealthNet division. In each case, a lien notice shall
198 be served by certified mail or registered mail, upon the
199 party or parties against whom the applicant or participant
200 has a claim, demand or cause of action. The lien shall
201 claim the charge and describe the interest the department or
202 MO HealthNet division has in the claim, demand or cause of
203 action. The lien shall attach to any verdict or judgment
204 entered and to any money or property which may be recovered
205 on account of such claim, demand, cause of action or suit
206 from and after the time of the service of the notice.

207 9. On petition filed by the department, or by the
208 participant, or by the defendant, the court, on written
209 notice of all interested parties, may adjudicate the rights

210 of the parties and enforce the charge. The court may
211 approve the settlement of any claim, demand or cause of
212 action either before or after a verdict, and nothing in this
213 section shall be construed as requiring the actual trial or
214 final adjudication of any claim, demand or cause of action
215 upon which the department has charge. The court may
216 determine what portion of the recovery shall be paid to the
217 department against the recovery. In making this
218 determination the court shall conduct an evidentiary hearing
219 and shall consider competent evidence pertaining to the
220 following matters:

221 (1) The amount of the charge sought to be enforced
222 against the recovery when expressed as a percentage of the
223 gross amount of the recovery; the amount of the charge
224 sought to be enforced against the recovery when expressed as
225 a percentage of the amount obtained by subtracting from the
226 gross amount of the recovery the total attorney's fees and
227 other costs incurred by the participant incident to the
228 recovery; and whether the department should, as a matter of
229 fairness and equity, bear its proportionate share of the
230 fees and costs incurred to generate the recovery from which
231 the charge is sought to be satisfied;

232 (2) The amount, if any, of the attorney's fees and
233 other costs incurred by the participant incident to the
234 recovery and paid by the participant up to the time of
235 recovery, and the amount of such fees and costs remaining
236 unpaid at the time of recovery;

237 (3) The total hospital, doctor and other medical
238 expenses incurred for care and treatment of the injury to
239 the date of recovery therefor, the portion of such expenses
240 theretofore paid by the participant, by insurance provided
241 by the participant, and by the department, and the amount of

242 such previously incurred expenses which remain unpaid at the
243 time of recovery and by whom such incurred, unpaid expenses
244 are to be paid;

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

252 (5) The age of the participant and of persons
253 dependent for support upon the participant, the nature and
254 permanency of the participant's injuries as they affect not
255 only the future employability and education of the
256 participant but also the reasonably necessary and
257 foreseeable future material, maintenance, medical
258 rehabilitative and training needs of the participant, the
259 cost of such reasonably necessary and foreseeable future
260 needs, and the resources available to meet such needs and
261 pay such costs;

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

266 10. The burden of producing evidence sufficient to
267 support the exercise by the court of its discretion to
268 reduce the amount of a proven charge sought to be enforced
269 against the recovery shall rest with the party seeking such
270 reduction. The computerized records of the MO HealthNet
271 division, certified by the director or his or her designee,
272 shall be prima facie evidence of proof of moneys expended
273 and the amount of the debt due the state.

274 11. The court may reduce and apportion the
275 department's or MO HealthNet division's lien proportionate
276 to the recovery of the claimant. The court may consider the
277 nature and extent of the injury, economic and noneconomic
278 loss, settlement offers, comparative negligence as it
279 applies to the case at hand, hospital costs, physician
280 costs, and all other appropriate costs. The department or
281 MO HealthNet division shall pay its pro rata share of the
282 attorney's fees based on the department's or MO HealthNet
283 division's lien as it compares to the total settlement
284 agreed upon. This section shall not affect the priority of
285 an attorney's lien under section 484.140. The charges of
286 the department or MO HealthNet division or contractor
287 described in this section, however, shall take priority over
288 all other liens and charges existing under the laws of the
289 state of Missouri with the exception of the attorney's lien
290 under such statute.

291 12. Whenever the department of social services or MO
292 HealthNet division has a statutory charge under this section
293 against a recovery for damages incurred by a participant
294 because of its advancement of any assistance, such charge
295 shall not be satisfied out of any recovery until the
296 attorney's claim for fees is satisfied, regardless of
297 whether an action based on participant's claim has been
298 filed in court. Nothing herein shall prohibit the director
299 from entering into a compromise agreement with any
300 participant, after consideration of the factors in
301 subsections 9 to 13 of this section.

302 13. This section shall be inapplicable to any claim,
303 demand or cause of action arising under the workers'
304 compensation act, chapter 287. From funds recovered
305 pursuant to this section the federal government shall be

306 paid a portion thereof equal to the proportionate part
307 originally provided by the federal government to pay for MO
308 HealthNet benefits to the participant or minor involved.
309 The department or MO HealthNet division shall enforce TEFRA
310 liens, 42 U.S.C. Section 1396p, as authorized by federal law
311 and regulation on permanently institutionalized
312 individuals. The department or MO HealthNet division shall
313 have the right to enforce TEFRA liens, 42 U.S.C. Section
314 1396p, as authorized by federal law and regulation on all
315 other institutionalized individuals. For the purposes of
316 this subsection, "permanently institutionalized individuals"
317 includes those people who the department or MO HealthNet
318 division determines cannot reasonably be expected to be
319 discharged and return home, and "property" includes the
320 homestead and all other personal and real property in which
321 the participant has sole legal interest or a legal interest
322 based upon co-ownership of the property which is the result
323 of a transfer of property for less than the fair market
324 value within thirty months prior to the participant's
325 entering the nursing facility. The following provisions
326 shall apply to such liens:

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

331 (2) The MO HealthNet division shall file for record,
332 with the recorder of deeds of the county in which any real
333 property of the participant is situated, a written notice of
334 the lien. The notice of lien shall contain the name of the
335 participant and a description of the real estate. The
336 recorder shall note the time of receiving such notice, and
337 shall record and index the notice of lien in the same manner

338 as deeds of real estate are required to be recorded and
339 indexed. The director or the director's designee may
340 release or discharge all or part of the lien and notice of
341 the release shall also be filed with the recorder. The
342 department of social services, MO HealthNet division, shall
343 provide payment to the recorder of deeds the fees set for
344 similar filings in connection with the filing of a lien and
345 any other necessary documents;

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

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

350 a. Who is an inpatient in a nursing facility,
351 intermediate care facility for the intellectually disabled,
352 or other medical institution, if such individual is
353 required, as a condition of receiving services in such
354 institution, to spend for costs of medical care all but a
355 minimal amount of his or her income required for personal
356 needs; and

357 b. With respect to whom the director of the MO
358 HealthNet division or the director's designee determines,
359 after notice and opportunity for hearing, that he cannot
360 reasonably be expected to be discharged from the medical
361 institution and to return home. The hearing, if requested,
362 shall proceed under the provisions of chapter 536 before a
363 hearing officer designated by the director of the MO
364 HealthNet division; or

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

367 (4) No lien may be imposed under paragraph (b) of
368 subdivision (3) of this subsection on such individual's home

369 if one or more of the following persons is lawfully residing
370 in such home:

371 (a) The spouse of such individual;

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

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

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

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

388 15. Application for and acceptance of MO HealthNet
389 benefits under this chapter shall constitute an assignment
390 to the department of social services or MO HealthNet
391 division of any rights to support for the purpose of medical
392 care as determined by a court or administrative order and of
393 any other rights to payment for medical care.

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

400 provided by the family support division or MO HealthNet
401 division.

402 17. If a person fails to comply with the provision of
403 any judicial or administrative decree or temporary order
404 requiring that person to maintain medical insurance on or be
405 responsible for medical expenses for a dependent child,
406 spouse, or ex-spouse, in addition to other remedies
407 available, that person shall be liable to the state for the
408 entire cost of the medical care provided pursuant to
409 eligibility under any public assistance program on behalf of
410 that dependent child, spouse, or ex-spouse during the period
411 for which the required medical care was provided. Where a
412 duty of support exists and no judicial or administrative
413 decree or temporary order for support has been entered, the
414 person owing the duty of support shall be liable to the
415 state for the entire cost of the medical care provided on
416 behalf of the dependent child or spouse to whom the duty of
417 support is owed.

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

428 (1) Actual and legal issues of liability as may exist
429 between the participant and the liable party;

430 (2) Total funds available for settlement; and

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

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