

SECOND REGULAR SESSION

SENATE BILL NO. 1030

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Read 1st time February 4, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6353S.011

AN ACT

To repeal sections 208.215 and 287.266, RSMo, and to enact in lieu thereof two new sections relating to MO HealthNet compensation for medical expenses.

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

Section A. Sections 208.215 and 287.266, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 208.215 and 287.266, to
3 read as follows:

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

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

19 transactions or paper claim forms:

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

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

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

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

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

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

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

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

52 3. Any participant, minor, guardian, conservator, personal representative,
53 estate, including persons entitled under section 537.080 to bring an action for
54 wrongful death who pursues legal rights against a person, corporation,

55 institution, public agency, or private agency liable to that participant or minor
56 for injuries, disease, or disability or benefits arising from a health insurance plan
57 to which the participant may be entitled as outlined in subsection 1 of this section
58 shall upon actual knowledge that the department of social services or MO
59 HealthNet division has paid MO HealthNet benefits as defined by this chapter
60 promptly notify the MO HealthNet division as to the pursuit of such legal rights.

61 4. Every applicant or participant by application **for MO HealthNet**
62 **benefits automatically assigns to the department of social services or**
63 **MO HealthNet division** his right to [the department of social services or MO
64 HealthNet division of] any funds recovered or expected to be recovered **as**
65 **compensation for medical expenses** to the extent provided for in this section.
66 All applicants and participants, including a person authorized by the probate
67 code, shall cooperate with the department of social services, MO HealthNet
68 division in identifying and providing information to assist the state in pursuing
69 any third party who may be liable to pay for care and services available under the
70 state's plan for MO HealthNet benefits as provided in sections 208.151 to 208.159
71 and sections 208.162 and 208.204. All applicants and participants shall cooperate
72 with the agency in obtaining third-party resources due to the applicant,
73 participant, or child for whom assistance is claimed. Failure to cooperate without
74 good cause as determined by the department of social services, MO HealthNet
75 division in accordance with federally prescribed standards shall render the
76 applicant or participant ineligible for MO HealthNet benefits under sections
77 208.151 to 208.159 and sections 208.162 and 208.204. A participant who has
78 notice or who has actual knowledge of the department's rights to third-party
79 benefits who receives any third-party benefit or proceeds for a covered illness or
80 injury is either required to pay the division within sixty days after receipt of
81 settlement proceeds the full amount of the third-party benefits **for medical**
82 **expenses** up to the total MO HealthNet benefits provided or to place the full
83 amount of the third-party benefits in a trust account for the benefit of the
84 division pending judicial or administrative determination of the division's right
85 to third-party benefits.

86 5. Every person, corporation, or partnership who acts for or on behalf of
87 a person who is or was eligible for MO HealthNet benefits under sections 208.151
88 to 208.159 and sections 208.162 and 208.204 for purposes of pursuing the
89 applicant's or participant's claim which accrued as a result of a nonoccupational
90 or nonwork-related incident or occurrence resulting in the payment of MO

91 HealthNet benefits shall notify the MO HealthNet division upon agreeing to
92 assist such person and further shall notify the MO HealthNet division of any
93 institution of a proceeding, settlement, or the results of the pursuit of the claim
94 and give thirty days' notice before any judgment, award, or settlement may be
95 satisfied in any action or any claim by the applicant or participant to recover
96 damages for such injuries, disease, or disability, or benefits arising from a health
97 insurance program to which the participant may be entitled.

98 6. Every participant, minor, guardian, conservator, personal
99 representative, estate, including persons entitled under section 537.080 to bring
100 an action for wrongful death, or his attorney or legal representative shall
101 promptly notify the MO HealthNet division of any recovery **for medical**
102 **expenses** from a third party and shall immediately reimburse the department
103 of social services, MO HealthNet division, or its contractor from **that portion of**
104 the proceeds of any settlement, judgment, or other recovery in any action or claim
105 initiated against any such third party **that represents recovery for medical**
106 **expenses**. A judgment, award, or settlement in an action by a participant to
107 recover damages for **medical expenses**, injuries, or other third-party benefits
108 in which the division has an interest may not be satisfied without first giving the
109 division notice and a reasonable opportunity to file and satisfy the claim or
110 proceed with any action as otherwise permitted by law.

111 7. The department of social services, MO HealthNet division or its
112 contractor shall have a right to recover the amount of payments made to a
113 provider under this chapter because of an injury, disease, or disability, or benefits
114 arising from a health insurance plan to which the participant may be entitled for
115 which a third party is or may be liable **to pay for a participant's medical**
116 **expenses** in contract, tort, or otherwise under law or equity. Upon request by
117 the MO HealthNet division, all third-party payers shall provide the MO
118 HealthNet division with information contained in a 270/271 Health Care
119 Eligibility Benefits Inquiry and Response standard transaction mandated under
120 the federal Health Insurance Portability and Accountability Act, except that
121 third-party payers shall not include accident-only, specified disease, disability
122 income, hospital indemnity, or other fixed indemnity insurance policies.

123 8. The department of social services or MO HealthNet division shall have
124 a lien upon any moneys **for medical expenses paid to or** to be paid by any
125 insurance company or similar business enterprise, person, corporation,
126 institution, public agency, or private agency in settlement or satisfaction of a

127 judgment [on any], claim, or cause of action for injuries or disability or disease
128 or benefits arising from a health insurance program to which the participant may
129 be entitled which resulted in medical expenses for which the department or MO
130 HealthNet division made payment. **The lien shall only attach to**
131 **compensation for medical expenses related to the participant's**
132 **underlying claim against the liable or potentially liable third**
133 **party.** This lien shall also be applicable to any moneys which may come into the
134 possession of any attorney who is handling the claim for injuries, or disability or
135 disease or benefits arising from a health insurance plan to which the participant
136 may be entitled which resulted in payments made by the department or MO
137 HealthNet division. In each case, a lien notice shall be served by certified mail
138 or registered mail, upon the party or parties against whom the applicant or
139 participant has a claim, demand or cause of action. The lien shall claim the
140 charge and describe the interest the department or MO HealthNet division has
141 in the claim, demand or cause of action. The lien shall attach to any verdict or
142 judgment entered and to any money or property which may be recovered as
143 **compensation for medical expenses** on account of such claim, demand, cause
144 of action or suit from and after the time of the service of the notice.

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

155 (1) The amount of the charge sought to be enforced against the recovery
156 when expressed as a percentage of the gross amount of the recovery; the amount
157 of the charge sought to be enforced against the recovery when expressed as a
158 percentage of the amount obtained by subtracting from the gross amount of the
159 recovery the total attorney's fees and other costs incurred by the participant
160 incident to the recovery; and whether the department should, as a matter of
161 fairness and equity, bear its proportionate share of the fees and costs incurred to
162 generate the recovery from which the charge is sought to be satisfied;

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

167 (3) The total hospital, doctor and other medical expenses incurred for care
168 and treatment of the injury to the date of recovery [therefor], the portion of such
169 expenses theretofore paid by the participant, by insurance provided by the
170 participant, and by the department, and the amount of such previously incurred
171 expenses which remain unpaid at the time of recovery and by whom such
172 incurred, unpaid expenses are to be paid;

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

178 (5) The age of the participant and of persons dependent for support upon
179 the participant, the nature and permanency of the participant's injuries as they
180 affect not only the future employability and education of the participant but also
181 the reasonably necessary and foreseeable future material, maintenance, medical
182 rehabilitative and training needs of the participant, the cost of such reasonably
183 necessary and foreseeable future needs, and the resources available to meet such
184 needs and pay such costs;

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

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

194 11. The court may reduce and apportion the department's or MO
195 HealthNet division's lien proportionate to the recovery of the claimant. The court
196 may consider the nature and extent of the injury, economic and noneconomic loss,
197 settlement offers, comparative negligence as it applies to the case at hand,
198 hospital costs, physician costs, and all other appropriate costs. The department

199 or MO HealthNet division shall pay its pro rata share of the attorney's fees based
200 on the department's or MO HealthNet division's lien as it compares to the total
201 settlement agreed upon. This section shall not affect the priority of an attorney's
202 lien under section 484.140. The charges of the department or MO HealthNet
203 division or contractor described in this section, however, shall take priority over
204 all other liens and charges existing under the laws of the state of Missouri with
205 the exception of the attorney's lien under such statute.

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

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

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

235 (2) The MO HealthNet division shall file for record, with the recorder of
236 deeds of the county in which any real property of the participant is situated, a
237 written notice of the lien. The notice of lien shall contain the name of the
238 participant and a description of the real estate. The recorder shall note the time
239 of receiving such notice, and shall record and index the notice of lien in the same
240 manner as deeds of real estate are required to be recorded and indexed. The
241 director or the director's designee may release or discharge all or part of the lien
242 and notice of the release shall also be filed with the recorder. The department
243 of social services, MO HealthNet division, shall provide payment to the recorder
244 of deeds the fees set for similar filings in connection with the filing of a lien and
245 any other necessary documents;

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

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

249 a. Who is an inpatient in a nursing facility, intermediate care facility for
250 the intellectually disabled, or other medical institution, if such individual is
251 required, as a condition of receiving services in such institution, to spend for costs
252 of medical care all but a minimal amount of his or her income required for
253 personal needs; and

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

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

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

265 (a) The spouse of such individual;

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

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

271 institution;

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

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

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

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

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

302 18. The department director or the director's designee may compromise,
303 settle, or waive any such claim in whole or in part in the interest of the MO
304 HealthNet program. Notwithstanding any provision in this section to the
305 contrary, the department of social services, MO HealthNet division is not required
306 to seek reimbursement from a liable third party on claims for which the amount

307 it reasonably expects to recover will be less than the cost of recovery or for which
308 recovery efforts will not be cost-effective. Cost-effectiveness is determined based
309 on the following:

- 310 (1) Actual and legal issues of liability as may exist between the
311 participant and the liable party;
- 312 (2) Total funds available for settlement; and
- 313 (3) An estimate of the cost to the division of pursuing its claim.

287.266. 1. As used in this section, the following terms mean:

2 (1) "Provider", any individual, corporation, public or private entity that
3 has entered into an agreement with the state to provide any service set out in
4 section 208.152 and subsequent amendments;

5 (2) "Person eligible for public assistance", any individual who is or was
6 eligible for medical assistance under the laws of this state.

7 2. Payments made to or on behalf of a person eligible for public assistance
8 as the result of any compensable injury, occupational disease, or disability as
9 defined by this chapter shall be a debt due the state, and recovery of same shall
10 be a recognized action pursuant to this chapter.

11 3. The state shall have a lien upon any funds owed **for medical**
12 **expenses** by any employer that are or might be due under any insurance
13 agreement or self-insurance authority in effect at the time the medical expense
14 or any portion thereof was paid by the department of social services or its
15 designated division.

16 4. The state shall have a right of subrogation to any funds **representing**
17 **medical expenses** owed to or received by the employee or any person,
18 corporation, public agency, or private agency acting on his behalf notwithstanding
19 any other provisions of this chapter.

20 5. The department of social services or its designated division may
21 maintain an appropriate action to recover funds due under this section pursuant
22 to the workers' compensation law or the second injury fund, which includes the
23 exercise of all appeal rights afforded by the laws of this state.

24 6. The department shall have a right to recover the full amount of its
25 payments when payments are made to a provider under this chapter if the
26 payments were made on behalf of a person eligible for public assistance for an
27 injury, occupational disease, or disability which is compensable under this
28 chapter.

29 7. This debt due the state shall be subordinate only to the fee rights of the

30 injured employee's attorney pursuant to this chapter, and the state shall not be
31 required to pay any portion of the fees or costs incurred by the employee or the
32 employer.

33 8. Application for and acceptance of public assistance made to or on behalf
34 of the injured employee shall constitute an assignment of rights to the
35 department of social services for reimbursement of funds expended by the
36 department of social services in the treatment of a compensable injury.

37 9. The attorney shall notify the department of social services upon
38 representation of each client who was eligible for public assistance as provided
39 by sections 208.151 to 208.159 and section 208.162 prior to, during, or subsequent
40 to the date of injury, that the attorney was retained to pursue the client's legal
41 rights related to the compensable injury.

42 10. The administrative law judge, pursuant to authority granted under
43 section 287.610, shall apportion the debt due the state between the injured
44 worker and the injured worker's employer or their designated representatives
45 when an agreement cannot be reached regarding the respective liability for money
46 expended by the department of social services on behalf of the injured employee,
47 but in no case shall the debt due the state be reduced.

✓

Copy