

SECOND REGULAR SESSION

SENATE BILL NO. 972

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SILVEY.

Read 1st time January 25, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4810S.011

AN ACT

To repeal section 208.152, RSMo, and to enact in lieu thereof one new section relating to MO HealthNet reimbursement for behavior assessment and intervention, with an emergency clause.

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Section A. Section 208.152, RSMo, is repealed and one new section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 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
21 HealthNet division may evaluate outpatient hospital services rendered under this
22 section and deny payment for services which are determined by the MO
23 HealthNet division not to be medically necessary, in accordance with federal law
24 and 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) Drugs and medicines when prescribed by a licensed physician, dentist,
53 podiatrist, or an advanced practice registered nurse; except that no payment for
54 drugs and medicines prescribed on and after January 1, 2006, by a licensed
55 physician, dentist, podiatrist, or an advanced practice registered nurse may be

56 made on behalf of any person who qualifies for prescription drug coverage under
57 the provisions of P.L. 108-173;

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

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

67 (10) Home health care services;

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

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

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

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

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

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

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

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

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

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

161 (17) The services of an advanced practice registered nurse with a
162 collaborative practice agreement to the extent that such services are provided in
163 accordance with chapters 334 and 335, and 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 subdivision, 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) Blood clotting products-related services. For persons diagnosed with
218 a bleeding disorder, as defined in section 338.400, reliant on blood clotting
219 products, as defined in section 338.400, such services include:

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

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

225 (c) Assessments conducted in the participant's home by a pharmacist,
226 nurse, or local home health care agency trained in bleeding disorders when
227 deemed necessary by the participant's treating physician;

228 (24) The MO HealthNet division shall, by January 1, 2008, and annually
229 thereafter, report the status of MO HealthNet provider reimbursement rates as
230 compared to one hundred percent of the Medicare reimbursement rates and
231 compared to the average dental reimbursement rates paid by third-party payors
232 licensed by the state. The MO HealthNet division shall, by July 1, 2008, provide
233 to the general assembly a four-year plan to achieve parity with Medicare
234 reimbursement rates and for third-party payor average dental reimbursement
235 rates. Such plan shall be subject to appropriation and the division shall include

236 in its annual budget request to the governor the necessary funding needed to
237 complete the four-year plan developed under this subdivision.

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

243 (1) Dental services;

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

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

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

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

263 (6) Comprehensive day rehabilitation services beginning early posttrauma
264 as part of a coordinated system of care for individuals with disabling
265 impairments. Rehabilitation services must be based on an individualized,
266 goal-oriented, comprehensive and coordinated treatment plan developed,
267 implemented, and monitored through an interdisciplinary assessment designed
268 to restore an individual to optimal level of physical, cognitive, and behavioral
269 function. The MO HealthNet division shall establish by administrative rule the
270 definition and criteria for designation of a comprehensive day rehabilitation
271 service facility, benefit limitations and payment mechanism. Any rule or portion

272 of a rule, as that term is defined in section 536.010, that is created under the
273 authority delegated in this subdivision shall become effective only if it complies
274 with and is subject to all of the provisions of chapter 536 and, if applicable,
275 section 536.028. This section and chapter 536 are nonseverable and if any of the
276 powers vested with the general assembly pursuant to chapter 536 to review, to
277 delay the effective date, or to disapprove and annul a rule are subsequently held
278 unconstitutional, then the grant of rulemaking authority and any rule proposed
279 or adopted after August 28, 2005, shall be invalid and void.

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

308 not apply to other qualified children, pregnant women, or blind persons. If the
309 Centers for Medicare and Medicaid Services does not approve the MO HealthNet
310 state plan amendment submitted by the department of social services that would
311 allow a provider to deny future services to an individual with uncollected
312 co-payments, the denial of services shall not be allowed. The department of social
313 services shall inform providers regarding the acceptability of denying services as
314 the result of unpaid co-payments.

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

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

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

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

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

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

344 (a)(13)(C).

345 10. The MO HealthNet division, may enroll qualified residential care
346 facilities and assisted living facilities, as defined in chapter 198, as MO
347 HealthNet personal care providers.

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

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

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

368 **14. Beginning July 1, 2016, and subject to appropriations,**
369 **providers of behavioral, social, and psychophysiological services for the**
370 **prevention, treatment, or management of physical health problems**
371 **shall be reimbursed utilizing the behavior assessment and intervention**
372 **reimbursement codes 96150 to 96154 or their successor codes under the**
373 **Current Procedural Terminology (CPT) coding system. Providers**
374 **eligible for such reimbursement shall include psychologists.**

Section B. Because immediate action is necessary to ensure adequate
2 provision of behavior assessment and intervention services under the MO
3 HealthNet program, section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and

6 section A of this act shall be in full force and effect July 1, 2016, or upon its
7 passage and approval, whichever later occurs.

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Unofficial

Bill

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