

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 95
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Health Insurance April 11, 2007 with recommendation that House Committee Substitute for House Bill No. 95 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0421L.05C

AN ACT

To repeal section 208.215, RSMo, and to enact in lieu thereof two new sections relating to public assistance.

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

Section A. Section 208.215, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as section 208.215 and 208.735, to read as follows:

208.215. 1. Medicaid is payer of last resort unless otherwise specified by law. When any person, corporation, institution, public agency or private agency is liable, either pursuant to contract or otherwise, to a recipient of public assistance on account of personal injury to or disability or disease or benefits arising from a health insurance plan to which the recipient may be entitled, payments made by the department of social services shall be a debt due the state and recoverable from the liable party or recipient for all payments made in behalf of the recipient and the debt due the state shall not exceed the payments made from medical assistance provided under sections 208.151 to 208.158 and section 208.162 and section 208.204 on behalf of the recipient, minor or estate for payments on account of the injury, disease, or disability or benefits arising from a health insurance program to which the recipient may be entitled. **Any health benefit plan as defined in section 376.1350, RSMo, third-party administrator, administrative services organization, and pharmacy benefit manager shall process and pay all properly submitted medical assistance subrogation claims or MO HealthNet subrogation claims for a period of three years from the date the services were provided or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 **rendered, regardless of any other timely filing requirement otherwise imposed by such**
16 **entity and the entity shall not deny such claims on the basis of the type or format of the**
17 **claim for, or a failure to present proper documentation of coverage at the point of sale.**

18 2. The department of social services may maintain an appropriate action to recover funds
19 due under this section in the name of the state of Missouri against the person, corporation,
20 institution, public agency, or private agency liable to the recipient, minor or estate.

21 3. Any recipient, minor, guardian, conservator, personal representative, estate, including
22 persons entitled under section 537.080, RSMo, to bring an action for wrongful death who
23 pursues legal rights against a person, corporation, institution, public agency, or private agency
24 liable to that recipient or minor for injuries, disease or disability or benefits arising from a health
25 insurance plan to which the recipient may be entitled as outlined in subsection 1 of this section
26 shall upon actual knowledge that the department of social services has paid medical assistance
27 benefits as defined by this chapter, promptly notify the department as to the pursuit of such legal
28 rights.

29 4. Every applicant or recipient by application assigns his **or her** right to the department
30 of any funds recovered or expected to be recovered to the extent provided for in this section. All
31 applicants and recipients, including a person authorized by the probate code, shall cooperate with
32 the department of social services in identifying and providing information to assist the state in
33 pursuing any third party who may be liable to pay for care and services available under the state's
34 plan for medical assistance as provided in sections 208.151 to 208.159 and sections 208.162 and
35 208.204. All applicants and recipients shall cooperate with the agency in obtaining third-party
36 resources due to the applicant, recipient, or child for whom assistance is claimed. Failure to
37 cooperate without good cause as determined by the department of social services in accordance
38 with federally prescribed standards shall render the applicant or recipient ineligible for medical
39 assistance under sections 208.151 to 208.159 and sections 208.162 and 208.204.

40 5. Every person, corporation or partnership who acts for or on behalf of a person who
41 is or was eligible for medical assistance under sections 208.151 to 208.159 and sections 208.162
42 and 208.204 for purposes of pursuing the applicant's or recipient's claim which accrued as a
43 result of a nonoccupational or nonwork-related incident or occurrence resulting in the payment
44 of medical assistance benefits shall notify the department upon agreeing to assist such person and
45 further shall notify the department of any institution of a proceeding, settlement or the results of
46 the pursuit of the claim and give thirty days' notice before any judgment, award, or settlement
47 may be satisfied in any action or any claim by the applicant or recipient to recover damages for
48 such injuries, disease, or disability, or benefits arising from a health insurance program to which
49 the recipient may be entitled.

50 6. Every recipient, minor, guardian, conservator, personal representative, estate,
51 including persons entitled under section 537.080, RSMo, to bring an action for wrongful death,
52 or his **or her** attorney or legal representative shall promptly notify the department of any
53 recovery from a third party and shall immediately reimburse the department from the proceeds
54 of any settlement, judgment, or other recovery in any action or claim initiated against any such
55 third party.

56 7. The department director shall have a right to recover the amount of payments made
57 to a provider under this chapter because of an injury, disease, or disability, or benefits arising
58 from a health insurance plan to which the recipient may be entitled for which a third party is or
59 may be liable in contract, tort or otherwise under law or equity. **Upon request by the division
60 of medical services, all third-party payers shall provide the division with information
61 contained in a 270/271 Health Care Eligibility Benefit Inquiry and Response standard
62 transaction mandated under the federal Health Insurance Portability and Accountability
63 Act of 1996, as amended; except that third-party payers shall not include accident-only,
64 specified disease, disability income, hospital indemnity, or other fixed indemnity insurance
65 policies.**

66 8. The department of social services shall have a lien upon any moneys to be paid by any
67 insurance company or similar business enterprise, person, corporation, institution, public agency
68 or private agency in settlement or satisfaction of a judgment on any claim for injuries or
69 disability or disease benefits arising from a health insurance program to which the recipient may
70 be entitled which resulted in medical expenses for which the department made payment. This
71 lien shall also be applicable to any moneys which may come into the possession of any attorney
72 who is handling the claim for injuries, or disability or disease or benefits arising from a health
73 insurance plan to which the recipient may be entitled which resulted in payments made by the
74 department. In each case, a lien notice shall be served by certified mail or registered mail, upon
75 the party or parties against whom the applicant or recipient has a claim, demand or cause of
76 action. The lien shall claim the charge and describe the interest the department has in the claim,
77 demand or cause of action. The lien shall attach to any verdict or judgment entered and to any
78 money or property which may be recovered on account of such claim, demand, cause of action
79 or suit from and after the time of the service of the notice. **If the third party and its liability
80 insurer, if any, receives notice or knows that the individual is eligible for MO HealthNet
81 benefits prior to release or satisfaction, no release or satisfaction of any cause of action,
82 suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement shall be
83 valid or effectual as against a claim created under this chapter unless the division joins in
84 the release or satisfaction or executes a release of its claim.**

85 9. On petition filed by the department, or by the recipient, or by the defendant, the court,
86 on written notice of all interested parties, may adjudicate the rights of the parties and enforce the
87 charge. The court may approve the settlement of any claim, demand or cause of action either
88 before or after a verdict, and nothing in this section shall be construed as requiring the actual trial
89 or final adjudication of any claim, demand or cause of action upon which the department has
90 charge. The court may determine what portion of the recovery shall be paid to the department
91 against the recovery. In making this determination the court shall conduct an evidentiary hearing
92 and shall consider competent evidence pertaining to the following matters:

93 (1) The amount of the charge sought to be enforced against the recovery when expressed
94 as a percentage of the gross amount of the recovery; the amount of the charge sought to be
95 enforced against the recovery when expressed as a percentage of the amount obtained by
96 subtracting from the gross amount of the recovery the total attorney's fees and other costs
97 incurred by the recipient incident to the recovery; and whether the department should, as a matter
98 of fairness and equity, bear its proportionate share of the fees and costs incurred to generate the
99 recovery from which the charge is sought to be satisfied;

100 (2) The amount, if any, of the attorney's fees and other costs incurred by the recipient
101 incident to the recovery and paid by the recipient up to the time of recovery, and the amount of
102 such fees and costs remaining unpaid at the time of recovery;

103 (3) The total hospital, doctor and other medical expenses incurred for care and treatment
104 of the injury to the date of recovery therefor, the portion of such expenses theretofore paid by the
105 recipient, by insurance provided by the recipient, and by the department, and the amount of such
106 previously incurred expenses which remain unpaid at the time of recovery and by whom such
107 incurred, unpaid expenses are to be paid;

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

112 (5) The age of the recipient and of persons dependent for support upon the recipient, the
113 nature and permanency of the recipient's injuries as they affect not only the future employability
114 and education of the recipient but also the reasonably necessary and foreseeable future material,
115 maintenance, medical rehabilitative and training needs of the recipient, the cost of such
116 reasonably necessary and foreseeable future needs, and the resources available to meet such
117 needs and pay such costs;

118 (6) The realistic ability of the recipient to repay in whole or in part the charge sought to
119 be enforced against the recovery when judged in light of the factors enumerated above.

120 10. The burden of producing evidence sufficient to support the exercise by the court of
121 its discretion to reduce the amount of a proven charge sought to be enforced against the recovery
122 shall rest with the party seeking such reduction.

123 11. The court may reduce and apportion the department's lien proportionate to the
124 recovery of the claimant. The court may consider the nature and extent of the injury, economic
125 and noneconomic loss, settlement offers, comparative negligence as it applies to the case at hand,
126 hospital costs, physician costs, and all other appropriate costs. The department shall pay its pro
127 rata share of the attorney's fees based on the department's lien as it compares to the total
128 settlement agreed upon. This section shall not affect the priority of an attorney's lien under
129 section 484.140, RSMo. The charges of the department described in this section, however, shall
130 take priority over all other liens and charges existing under the laws of the state of Missouri with
131 the exception of the attorney's lien under such statute.

132 12. Whenever the department of social services has a statutory charge under this section
133 against a recovery for damages incurred by a recipient because of its advancement of any
134 assistance, such charge shall not be satisfied out of any recovery until the attorney's claim for fees
135 is satisfied, irrespective of whether or not an action based on recipient's claim has been filed in
136 court. Nothing herein shall prohibit the director from entering into a compromise agreement
137 with any recipient, after consideration of the factors in subsections 9 to 13 of this section.

138 13. This section shall be inapplicable to any claim, demand or cause of action arising
139 under the workers' compensation act, chapter 287, RSMo. From funds recovered pursuant to this
140 section the federal government shall be paid a portion thereof equal to the proportionate part
141 originally provided by the federal government to pay for medical assistance to the recipient or
142 minor involved. The department shall enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by
143 federal law and regulation on permanently institutionalized individuals. The department shall
144 have the right to enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal law and
145 regulation on all other institutionalized individuals. For the purposes of this subsection,
146 "permanently institutionalized individuals" includes those people who the department determines
147 cannot reasonably be expected to be discharged and return home, and "property" includes the
148 homestead and all other personal and real property in which the recipient has sole legal interest
149 or a legal interest based upon co-ownership of the property which is the result of a transfer of
150 property for less than the fair market value within thirty months prior to the recipient's entering
151 the nursing facility. The following provisions shall apply to such liens:

152 (1) The lien shall be for the debt due the state for medical assistance paid or to be paid
153 on behalf of a recipient. The amount of the lien shall be for the full amount due the state at the
154 time the lien is enforced;

(2) The director of the department or the director's designee shall file for record, with the recorder of deeds of the county in which any real property of the recipient is situated, a written notice of the lien. The notice of lien shall contain the name of the recipient and a description of the real estate. The recorder shall note the time of receiving such notice, and shall record and index the notice of lien in the same manner as deeds of real estate are required to be recorded and indexed. The director or the director's designee may release or discharge all or part of the lien and notice of the release shall also be filed with the recorder;

(3) No such lien may be imposed against the property of any individual prior to his death on account of medical assistance paid except:

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

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

b. With respect to whom the director of the department of social services or the director's designee determines, after notice and opportunity for hearing, that he cannot reasonably be expected to be discharged from the medical institution and to return home. The hearing, if requested, shall proceed under the provisions of chapter 536, RSMo, before a hearing officer designated by the director of the department of social services; or

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

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

(a) The spouse of such individual;

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

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

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

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

190 15. Application for and acceptance of medical assistance under this chapter shall
191 constitute an assignment to the department of social services of any rights to support for the
192 purpose of medical care as determined by a court or administrative order and of any other rights
193 to payment for medical care.

194 16. All recipients of benefits as defined in this chapter shall cooperate with the state by
195 reporting to the division of family services or the division of medical services, within thirty days,
196 any occurrences where an injury to their persons or to a member of a household who receives
197 medical assistance is sustained, on such form or forms as provided by the division of family
198 services or the division of medical services.

199 17. If a person fails to comply with the provision of any judicial or administrative decree
200 or temporary order requiring that person to maintain medical insurance on or be responsible for
201 medical expenses for a dependent child, spouse, or ex-spouse, in addition to other remedies
202 available, that person shall be liable to the state for the entire cost of the medical care provided
203 pursuant to eligibility under any public assistance program on behalf of that dependent child,
204 spouse, or ex-spouse during the period for which the required medical care was provided. Where
205 a duty of support exists and no judicial or administrative decree or temporary order for support
206 has been entered, the person owing the duty of support shall be liable to the state for the entire
207 cost of the medical care provided on behalf of the dependent child or spouse to whom the duty
208 of support is owed.

209 18. The department director or [his] **the director's** designee may compromise, settle or
210 waive any such claim in whole or in part in the interest of the medical assistance program.

**208.735. 1. Recognizing that many Missourians do not have health care benefits
2 or health care coverage, that many small businesses cannot afford to provide health care
3 benefits to their employees, and that, under federal law, barriers exist to providing
4 Medicaid benefits to the uninsured, the Missouri legislature hereby authorizes
5 demonstration projects to lower the number of uninsured, assist businesses in their ability
6 to afford health care benefits and coverage for their employees, and eliminate barriers to
7 providing health coverage to eligible enrollees under federal law, subject to appropriation.**

**8 2. The division of medical services shall apply for a waiver or waivers to the
9 Centers for Medicaid and Medicare Services (CMS) to accomplish the purpose outlined
10 in subsection 1 of this section. The division shall negotiate with CMS to include in such
11 waiver authority provisions to:**

12 (1) Increase access to health care in Missouri;

**13 (2) Reform the Missouri Medicaid program to promote personal responsibility for
14 health care services and appropriate utilization of health care benefits through the use of
15 public-private cost sharing;**

16 (3) Enable small employers and employed uninsured adults with or without
17 children to purchase employer-sponsored state-approved private or state-sponsored health
18 care coverage through a state premium assistance payment plan; and

19 (4) Develop flexible health care benefit packages based upon patient need and cost.

20 3. The division may phase in any waiver or waivers it receives based upon available
21 funding.

22 4. The division is authorized to develop and implement a demonstration premium
23 assistance plan to assist small businesses and their eligible employees to purchase
24 employer-sponsored insurance or buy in to a state-sponsored benefit plan, subject to
25 appropriation.

26 5. (1) There is hereby created in the state treasury the "Health Employee and
27 Economy Improvement Revolving Fund", which shall consist of money received pursuant
28 to this section. The state treasurer shall be custodian of the fund and shall disburse
29 moneys from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon
30 appropriation, money in the fund shall be used solely for the administration of this section.

31 (2) Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any
32 moneys remaining in the fund at the end of the biennium shall not revert to the credit of
33 the general revenue fund.

34 (3) The state treasurer shall invest moneys in the fund in the same manner as other
35 funds are invested. Any interest and moneys earned on such investments shall be credited
36 to the fund.

37 6. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

38 (1) The provisions of the new program authorized under this section shall
39 automatically sunset six years after the effective date of this section unless reauthorized by
40 an act of the general assembly; and

41 (2) If such program is reauthorized, the program authorized under this section
42 shall automatically sunset twelve years after the effective date of the reauthorization of this
43 section; and

44 (3) This section shall terminate on September first of the calendar year immediately
45 following the calendar year in which the program authorized under this section is sunset.

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