

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_\_

Offered By \_\_\_\_\_

AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 583,  
Page 1, Section A, Line 9, by inserting after all of said line the following:

“208.215. 1. MO HealthNet 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 participant receiving public assistance on account of  
personal injury to or disability or disease or benefits arising from a health insurance plan to which  
the participant may be entitled, payments made by the department of social services or MO  
HealthNet division shall be a debt due the state and recoverable from the liable party or  
participant for all payments made [in] on behalf of the participant and the debt due the state shall  
not exceed the payments made from MO HealthNet benefits provided under sections 208.151 to  
208.158 and section 208.162 and section 208.204 on behalf of the participant, minor or estate for  
payments on account of the injury, disease, or disability or benefits arising from a health insurance  
program to which the participant may be entitled. Any health benefit plan as defined in section  
376.1350, third party administrator, administrative service organization, and pharmacy benefits  
manager, shall process and pay all properly submitted medical assistance subrogation claims or  
MO HealthNet subrogation claims using standard electronic transactions or paper claim forms:

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

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

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

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

(d) Shall not be required to reimburse for items or services which are not covered under or

1 were not covered under the plan offered by the entity against which a claim for subrogation has  
2 been filed; and

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

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

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

13 3. Any participant, minor, guardian, conservator, personal representative, estate, including  
14 persons entitled under section 537.080, RSMo, to bring an action for wrongful death who pursues  
15 legal rights against a person, corporation, institution, public agency, or private agency liable to  
16 that participant or minor for injuries, disease or disability or benefits arising from a health  
17 insurance plan to which the participant may be entitled as outlined in subsection 1 of this section  
18 shall upon actual knowledge that the department of social services or MO HealthNet division has  
19 paid MO HealthNet benefits as defined by this chapter promptly notify the MO HealthNet  
20 division as to the pursuit of such legal rights.

21 4. Every applicant or participant by application assigns his right to the department of  
22 social services or MO HealthNet division of any funds recovered or expected to be recovered to  
23 the extent provided for in this section. All applicants and participants, including a person  
24 authorized by the probate code, shall cooperate with the department of social services, MO  
25 HealthNet division in identifying and providing information to assist the state in pursuing any  
26 third party who may be liable to pay for care and services available under the state's plan for MO  
27 HealthNet benefits as provided in sections 208.151 to 208.159 and sections 208.162 and 208.204.  
28 All applicants and participants shall cooperate with the agency in obtaining third-party resources  
29 due to the applicant, participant, or child for whom assistance is claimed. Failure to cooperate  
30 without good cause as determined by the department of social services, MO HealthNet division in  
31 accordance with federally prescribed standards shall render the applicant or participant ineligible  
32 for MO HealthNet benefits under sections 208.151 to 208.159 and sections 208.162 and 208.204.  
33 A [recipient] participant who has notice or who has actual knowledge of the department's rights to  
34 third-party benefits who receives any third-party benefit or proceeds for a covered illness or injury  
35 is either required to pay the division within sixty days after receipt of settlement proceeds the full  
36 amount of the third-party benefits up to the total MO HealthNet benefits provided or to place the  
37 full amount of the third-party benefits in a trust account for the benefit of the division pending  
38 judicial or administrative determination of the division's right to third-party benefits.

39 5. Every person, corporation or partnership who acts for or on behalf of a person who is or

1 was eligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections 208.162  
2 and 208.204 for purposes of pursuing the applicant's or participant's claim which accrued as a  
3 result of a nonoccupational or nonwork-related incident or occurrence resulting in the payment of  
4 MO HealthNet benefits shall notify the MO HealthNet division upon agreeing to assist such  
5 person and further shall notify the MO HealthNet division of any institution of a proceeding,  
6 settlement or the results of the pursuit of the claim and give thirty days' notice before any  
7 judgment, award, or settlement may be satisfied in any action or any claim by the applicant or  
8 participant to recover damages for such injuries, disease, or disability, or benefits arising from a  
9 health insurance program to which the participant may be entitled.

10 6. Every participant, minor, guardian, conservator, personal representative, estate,  
11 including persons entitled under section 537.080, RSMo, to bring an action for wrongful death, or  
12 his attorney or legal representative shall promptly notify the MO HealthNet division of any  
13 recovery from a third party and shall immediately reimburse the department of social services,  
14 MO HealthNet division, or its contractor from the proceeds of any settlement, judgment, or other  
15 recovery in any action or claim initiated against any such third party. A judgment, award, or  
16 settlement in an action by a [recipient] participant to recover damages for injuries or other  
17 third-party benefits in which the division has an interest may not be satisfied without first giving  
18 the division notice and a reasonable opportunity to file and satisfy the claim or proceed with any  
19 action as otherwise permitted by law.

20 7. The department of social services, MO HealthNet division or its contractor shall have a  
21 right to recover the amount of payments made to a provider under this chapter because of an  
22 injury, disease, or disability, or benefits arising from a health insurance plan to which the  
23 participant may be entitled for which a third party is or may be liable in contract, tort or otherwise  
24 under law or equity. Upon request by the MO HealthNet division, all third-party payers shall  
25 provide the MO HealthNet division with information contained in a 270/271 Health Care  
26 Eligibility Benefits Inquiry and Response standard transaction mandated under the federal Health  
27 Insurance Portability and Accountability Act, except that third-party payers shall not include  
28 accident-only, specified disease, disability income, hospital indemnity, or other fixed indemnity  
29 insurance policies.

30 8. The department of social services or MO HealthNet division shall have a lien upon any  
31 moneys to be paid by any insurance company or similar business enterprise, person, corporation,  
32 institution, public agency or private agency in settlement or satisfaction of a judgment on any  
33 claim for injuries or disability or disease benefits arising from a health insurance program to  
34 which the participant may be entitled which resulted in medical expenses for which the  
35 department or MO HealthNet division made payment. This lien shall also be applicable to any  
36 moneys which may come into the possession of any attorney who is handling the claim for  
37 injuries, or disability or disease or benefits arising from a health insurance plan to which the  
38 participant may be entitled which resulted in payments made by the department or MO HealthNet  
39 division. In each case, a lien notice shall be served by certified mail or registered mail, upon the

1 party or parties against whom the applicant or participant has a claim, demand or cause of action.  
2 The lien shall claim the charge and describe the interest the department or MO HealthNet division  
3 has in the claim, demand or cause of action. The lien shall attach to any verdict or judgment  
4 entered and to any money or property which may be recovered on account of such claim, demand,  
5 cause of action or suit from and after the time of the service of the notice.

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

14 (1) The amount of the charge sought to be enforced against the recovery when expressed  
15 as a percentage of the gross amount of the recovery; the amount of the charge sought to be  
16 enforced against the recovery when expressed as a percentage of the amount obtained by  
17 subtracting from the gross amount of the recovery the total attorney's fees and other costs incurred  
18 by the participant incident to the recovery; and whether the department should, as a matter of  
19 fairness and equity, bear its proportionate share of the fees and costs incurred to generate the  
20 recovery from which the charge is sought to be satisfied;

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

24 (3) The total hospital, doctor and other medical expenses incurred for care and treatment  
25 of the injury to the date of recovery therefor, the portion of such expenses theretofore paid by the  
26 participant, by insurance provided by the participant, and by the department, and the amount of  
27 such previously incurred expenses which remain unpaid at the time of recovery and by whom such  
28 incurred, unpaid expenses are to be paid;

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

33 (5) The age of the participant and of persons dependent for support upon the participant,  
34 the nature and permanency of the participant's injuries as they affect not only the future  
35 employability and education of the participant but also the reasonably necessary and foreseeable  
36 future material, maintenance, medical rehabilitative and training needs of the participant, the cost  
37 of such reasonably necessary and foreseeable future needs, and the resources available to meet  
38 such needs and pay such costs;

39 (6) The realistic ability of the participant to repay in whole or in part the charge sought to

1 be enforced against the recovery when judged in light of the factors enumerated above.

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

7 11. The court may reduce and apportion the department's or MO HealthNet division's lien  
8 proportionate to the recovery of the claimant. The court may consider the nature and extent of the  
9 injury, economic and noneconomic loss, settlement offers, comparative negligence as it applies to  
10 the case at hand, hospital costs, physician costs, and all other appropriate costs. The department  
11 or MO HealthNet division shall pay its pro rata share of the attorney's fees based on the  
12 department's or MO HealthNet division's lien as it compares to the total settlement agreed upon.  
13 This section shall not affect the priority of an attorney's lien under section 484.140, RSMo. The  
14 charges of the department or MO HealthNet division or contractor described in this section,  
15 however, shall take priority over all other liens and charges existing under the laws of the state of  
16 Missouri with the exception of the attorney's lien under such statute.

17 12. Whenever the department of social services or MO HealthNet division has a statutory  
18 charge under this section against a recovery for damages incurred by a participant because of its  
19 advancement of any assistance, such charge shall not be satisfied out of any recovery until the  
20 attorney's claim for fees is satisfied, [irrespective] regardless of whether [or not] an action based  
21 on participant's claim has been filed in court. Nothing herein shall prohibit the director from  
22 entering into a compromise agreement with any participant, after consideration of the factors in  
23 subsections 9 to 13 of this section.

24 13. This section shall be inapplicable to any claim, demand or cause of action arising  
25 under the workers' compensation act, chapter 287, RSMo. From funds recovered pursuant to this  
26 section the federal government shall be paid a portion thereof equal to the proportionate part  
27 originally provided by the federal government to pay for MO HealthNet benefits to the participant  
28 or minor involved. The department or MO HealthNet division shall enforce TEFRA liens, 42  
29 U.S.C. 1396p, as authorized by federal law and regulation on permanently institutionalized  
30 individuals. The department or MO HealthNet division shall have the right to enforce TEFRA  
31 liens, 42 U.S.C. 1396p, as authorized by federal law and regulation on all other institutionalized  
32 individuals. For the purposes of this subsection, "permanently institutionalized individuals"  
33 includes those people who the department or MO HealthNet division determines cannot  
34 reasonably be expected to be discharged and return home, and "property" includes the homestead  
35 and all other personal and real property in which the participant has sole legal interest or a legal  
36 interest based upon co-ownership of the property which is the result of a transfer of property for  
37 less than the fair market value within thirty months prior to the participant's entering the nursing  
38 facility. The following provisions shall apply to such liens:

39 (1) The lien shall be for the debt due the state for MO HealthNet benefits paid or to be

1 paid on behalf of a participant. The amount of the lien shall be for the full amount due the state at  
2 the time the lien is enforced;

3 (2) The MO HealthNet division shall file for record, with the recorder of deeds of the  
4 county in which any real property of the participant is situated, a written notice of the lien. The  
5 notice of lien shall contain the name of the participant and a description of the real estate. The  
6 recorder shall note the time of receiving such notice, and shall record and index the notice of lien  
7 in the same manner as deeds of real estate are required to be recorded and indexed. The director  
8 or the director's designee may release or discharge all or part of the lien and notice of the release  
9 shall also be filed with the recorder. The department of social services, MO HealthNet division,  
10 shall provide payment to the recorder of deeds the fees set for similar filings in connection with  
11 the filing of a lien and any other necessary documents;

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

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

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

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

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

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

28 (a) The spouse of such individual;

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

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

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

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

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

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

10           17. If a person fails to comply with the provision of any judicial or administrative decree  
11 or temporary order requiring that person to maintain medical insurance on or be responsible for  
12 medical expenses for a dependent child, spouse, or ex-spouse, in addition to other remedies  
13 available, that person shall be liable to the state for the entire cost of the medical care provided  
14 pursuant to eligibility under any public assistance program on behalf of that dependent child,  
15 spouse, or ex-spouse during the period for which the required medical care was provided. Where  
16 a duty of support exists and no judicial or administrative decree or temporary order for support  
17 has been entered, the person owing the duty of support shall be liable to the state for the entire  
18 cost of the medical care provided on behalf of the dependent child or spouse to whom the duty of  
19 support is owed.

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

27           (1) Actual and legal issues of liability as may exist between the [recipient] participant and  
28 the liable party;

29           (2) Total funds available for settlement; and

30           (3) An estimate of the cost to the division of pursuing its claim.”; and

31 Further amend said bill by amending the title, enacting clause, and intersectional references  
32 accordingly.