

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1650
95TH GENERAL ASSEMBLY

3682L.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof two new sections relating to the state legal expense fund and SAFE CARE providers.

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

Section A. Section 105.711, RSMo, is repealed and two new sections enacted in lieu
2 thereof, to be known as sections 105.711 and 334.950, to read as follows:

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist
2 of moneys appropriated to the fund by the general assembly and moneys otherwise credited to
3 such fund pursuant to section 105.716.

4 2. Moneys in the state legal expense fund shall be available for the payment of any claim
5 or any amount required by any final judgment rendered by a court of competent jurisdiction
6 against:

7 (1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or
8 536.087, RSMo, or section 537.600, RSMo;

9 (2) Any officer or employee of the state of Missouri or any agency of the state, including,
10 without limitation, elected officials, appointees, members of state boards or commissions, and
11 members of the Missouri national guard upon conduct of such officer or employee arising out
12 of and performed in connection with his or her official duties on behalf of the state, or any
13 agency of the state, provided that moneys in this fund shall not be available for payment of
14 claims made under chapter 287, RSMo;

15 (3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health
16 care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335,
17 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state
18 under formal contract to conduct disability reviews on behalf of the department of elementary

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.

19 and secondary education or provide services to patients or inmates of state correctional facilities
20 on a part-time basis, and any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or
21 other health care provider licensed to practice in Missouri under the provisions of chapter 330,
22 332, 334, 335, 336, 337, or 338, RSMo, who is under formal contract to provide services to
23 patients or inmates at a county jail on a part-time basis;

24 (b) Any physician licensed to practice medicine in Missouri under the provisions of
25 chapter 334, RSMo, and [his] **such physician's** professional corporation organized pursuant to
26 chapter 356, RSMo, who is employed by or under contract with a city or county health
27 department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health
28 department operating under a city charter, or a combined city-county health department to
29 provide services to patients for medical care caused by pregnancy, delivery, and child care, if
30 such medical services are provided by the physician pursuant to the contract without
31 compensation or the physician is paid from no other source than a governmental agency except
32 for patient co-payments required by federal or state law or local ordinance;

33 (c) Any physician licensed to practice medicine in Missouri under the provisions of
34 chapter 334, RSMo, who is employed by or under contract with a federally funded community
35 health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42
36 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery,
37 and child care, if such medical services are provided by the physician pursuant to the contract
38 or employment agreement without compensation or the physician is paid from no other source
39 than a governmental agency or such a federally funded community health center except for
40 patient co-payments required by federal or state law or local ordinance. In the case of any claim
41 or judgment that arises under this paragraph, the aggregate of payments from the state legal
42 expense fund shall be limited to a maximum of one million dollars for all claims arising out of
43 and judgments based upon the same act or acts alleged in a single cause against any such
44 physician, and shall not exceed one million dollars for any one claimant;

45 (d) Any physician licensed pursuant to chapter 334, RSMo, who is affiliated with and
46 receives no compensation from a nonprofit entity qualified as exempt from federal taxation under
47 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health
48 screening in any setting or any physician, nurse, physician assistant, dental hygienist, dentist,
49 **chiropractor**, or other health care professional licensed or registered under chapter 330, 331,
50 332, 334, 335, 336, 337, or 338, RSMo, who provides health care services within the scope of
51 his or her license or registration at a city or county health department organized under chapter
52 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or
53 a combined city-county health department, or a nonprofit community health center qualified as
54 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as

55 amended, if such services are restricted to primary care, **health care services provided by a**
56 **specialist**, and preventive health services, provided that such services shall not include the
57 performance of an abortion, and if such health services are provided by the health care
58 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338,
59 RSMo, without compensation. MO HealthNet or Medicare payments for primary care, **health**
60 **care services provided by a specialist**, and preventive health services provided by **a specialist**
61 **or** a health care professional licensed or registered under chapter 330, 331, 332, 334, 335, 336,
62 337, or 338, RSMo, who volunteers at a free health clinic is not compensation for the purpose
63 of this section if the total payment is assigned to the free health clinic. For the purposes of the
64 section, "free health clinic" means a nonprofit community health center qualified as exempt from
65 federal taxation under Section 501 (c)(3) of the Internal Revenue Code of 1987, as amended, that
66 provides primary care, **health care services provided by a specialist**, and preventive health
67 services to people without health insurance coverage for the services provided without charge.
68 In the case of any claim or judgment that arises under this paragraph, the aggregate of payments
69 from the state legal expense fund shall be limited to a maximum of five hundred thousand
70 dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a
71 single cause and shall not exceed five hundred thousand dollars for any one claimant, and
72 insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to
73 five hundred thousand dollars. Liability or malpractice insurance obtained and maintained in
74 force by or on behalf of any **specialist or** health care professional licensed or registered under
75 chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, shall not be considered available to
76 pay that portion of a judgment or claim for which the state legal expense fund is liable under this
77 paragraph;

78 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or
79 registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental
80 hygienist in Missouri under the provisions of chapter 332, 334, or 335, RSMo, or lawfully
81 practicing, who provides medical, nursing, or dental treatment within the scope of his **or her**
82 license or registration to students of a school whether a public, private, or parochial elementary
83 or secondary school or summer camp, if such physician's treatment is restricted to primary care
84 and preventive health services and if such medical, dental, or nursing services are provided by
85 the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In
86 the case of any claim or judgment that arises under this paragraph, the aggregate of payments
87 from the state legal expense fund shall be limited to a maximum of five hundred thousand
88 dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a
89 single cause and shall not exceed five hundred thousand dollars for any one claimant, and

90 insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to
91 five hundred thousand dollars; [or]

92 (f) Any physician licensed under chapter 334, RSMo, **and such physician's**
93 **professional corporation organized under chapter 356, or hospital when the physician is**
94 **directly employed by a hospital,** or dentist licensed under chapter 332, RSMo, **and any**
95 **licensed health care professional under the direction of a licensed physician or dentist**
96 providing medical care without compensation to an individual referred to his or her care by a city
97 or county health department organized under chapter 192 or 205, RSMo, a city health department
98 operating under a city charter, or a combined city-county health department, or nonprofit health
99 center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue
100 Code of 1986, as amended, or a federally funded community health center organized under
101 Section 315, 329, 330, or 340 of the Public Health Services Act, 42 U.S.C. Section 216, 254c,
102 **or a charitable health care referral network qualified as exempt from federal taxation**
103 **under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;** provided that
104 such treatment shall not include the performance of an abortion. In the case of any claim or
105 judgment that arises under this paragraph, the aggregate of payments from the state legal expense
106 fund shall be limited to a maximum of one million dollars for all claims arising out of and
107 judgments based upon the same act or acts alleged in a single cause and shall not exceed one
108 million dollars for any one claimant, and insurance policies purchased under the provisions of
109 section 105.721 shall be limited to one million dollars. Liability or malpractice insurance
110 obtained and maintained in force by or on behalf of any physician licensed under chapter 334,
111 RSMo, or any dentist licensed under chapter 332, RSMo, shall not be considered available to pay
112 that portion of a judgment or claim for which the state legal expense fund is liable under this
113 paragraph;

114 (g) Any SAFE CARE provider, as defined in section 334.950, who provides medical
115 diagnosis and treatment within the scope of his or her license under section 334.950 and
116 as set forth in paragraphs (a) to (f) of this subdivision; or

117 (h) Free health clinics defined as a nonprofit health center qualified as exempt from
118 federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,
119 or a charitable health care referral network qualified as exempt from federal taxation
120 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and any social
121 welfare board created under section 205.770;

122 (4) Staff employed by the juvenile division of any judicial circuit;

123 (5) Any attorney licensed to practice law in the state of Missouri who practices law at
124 or through a nonprofit community social services center qualified as exempt from federal
125 taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through

126 any agency of any federal, state, or local government, if such legal practice is provided by the
127 attorney without compensation. In the case of any claim or judgment that arises under this
128 subdivision, the aggregate of payments from the state legal expense fund shall be limited to a
129 maximum of five hundred thousand dollars for all claims arising out of and judgments based
130 upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand
131 dollars for any one claimant, and insurance policies purchased pursuant to the provisions of
132 section 105.721 shall be limited to five hundred thousand dollars; or

133 (6) Any social welfare board created under section 205.770, RSMo, and the members
134 and officers thereof upon conduct of such officer or employee while acting in his or her capacity
135 as a board member or officer, and any physician, nurse, physician assistant, dental hygienist,
136 dentist, or other health care professional licensed or registered under chapter 330, 331, 332, 334,
137 335, 336, 337, or 338, RSMo, who is referred to provide medical care without compensation by
138 the board and who provides health care services within the scope of his or her license or
139 registration as prescribed by the board.

140 3. The department of health and senior services shall promulgate rules regarding contract
141 procedures and the documentation of care provided under paragraphs (b), (c), (d), (e), [and] (f),
142 **and (g)** of subdivision (3) of subsection 2 of this section. The limitation on payments from the
143 state legal expense fund or any policy of insurance procured pursuant to the provisions of section
144 105.721, provided in subsection 7 of this section, shall not apply to any claim or judgment
145 arising under paragraph (a), (b), (c), (d), (e), [or] (f), **or (g)** of subdivision (3) of subsection 2 of
146 this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), (e), [or] (f), **or (g)**
147 of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or
148 any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed
149 under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and
150 maintained in force by any health care professional licensed or registered under chapter 330, 331,
151 332, 334, 335, 336, 337, or 338, RSMo, for coverage concerning his or her private practice and
152 assets shall not be considered available under subsection 7 of this section to pay that portion of
153 a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c),
154 (d), (e), [or] (f), **or (g)** of subdivision (3) of subsection 2 of this section. However, a health care
155 professional licensed or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338,
156 RSMo, may purchase liability or malpractice insurance for coverage of liability claims or
157 judgments based upon care rendered under paragraphs (c), (d), (e), [and] (f), **and (g)** of
158 subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage
159 provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c),
160 (d), (e), [or] (f), **or (g)** of subdivision (3) of subsection 2 of this section is repealed or modified,
161 the state legal expense fund shall be available for damages which occur while the pertinent

162 paragraph (a), (b), (c), (d), (e), [or] (f), **or (g)** of subdivision (3) of subsection 2 of this section
163 is in effect.

164 4. The attorney general shall promulgate rules regarding contract procedures and the
165 documentation of legal practice provided under subdivision (5) of subsection 2 of this section.
166 The limitation on payments from the state legal expense fund or any policy of insurance
167 procured pursuant to section 105.721 as provided in subsection 7 of this section shall not apply
168 to any claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim
169 or judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state
170 legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent
171 damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice
172 insurance otherwise obtained and maintained in force shall not be considered available under
173 subsection 7 of this section to pay that portion of a judgment or claim for which the state legal
174 expense fund is liable under subdivision (5) of subsection 2 of this section. However, an
175 attorney may obtain liability or malpractice insurance for coverage of liability claims or
176 judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this
177 section that exceed the amount of liability coverage provided by the state legal expense fund
178 under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of
179 this section is repealed or amended, the state legal expense fund shall be available for damages
180 that occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

181 5. All payments shall be made from the state legal expense fund by the commissioner
182 of administration with the approval of the attorney general. Payment from the state legal expense
183 fund of a claim or final judgment award against a health care professional licensed or registered
184 under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo, described in paragraph (a), (b),
185 (c), (d), (e), [or] (f), **or (g)** of subdivision (3) of subsection 2 of this section, or against an
186 attorney in subdivision (5) of subsection 2 of this section, shall only be made for services
187 rendered in accordance with the conditions of such paragraphs. In the case of any claim or
188 judgment against an officer or employee of the state or any agency of the state based upon
189 conduct of such officer or employee arising out of and performed in connection with his or her
190 official duties on behalf of the state or any agency of the state that would give rise to a cause of
191 action under section 537.600, RSMo, the state legal expense fund shall be liable, excluding
192 punitive damages, for:

193 (1) Economic damages to any one claimant; and

194 (2) Up to three hundred fifty thousand dollars for noneconomic damages. The state legal
195 expense fund shall be the exclusive remedy and shall preclude any other civil actions or
196 proceedings for money damages arising out of or relating to the same subject matter against the
197 state officer or employee, or the officer's or employee's estate. No officer or employee of the

state or any agency of the state shall be individually liable in his or her personal capacity for conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state. The provisions of this subsection shall not apply to any defendant who is not an officer or employee of the state or any agency of the state in any proceeding against an officer or employee of the state or any agency of the state. Nothing in this subsection shall limit the rights and remedies otherwise available to a claimant under state law or common law in proceedings where one or more defendants is not an officer or employee of the state or any agency of the state.

6. The limitation on awards for noneconomic damages provided for in this subsection shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, financial institutions and professional registration, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.

7. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted.

8. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to the credit of the state legal expense fund at the end of an appropriation period shall not be transferred to general revenue.

9. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

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

(1) "Child abuse medical resource centers", medical institutions affiliated with accredited children's hospitals or recognized institutions of higher education with accredited medical school programs that provide training, support, mentoring, and peer review to SAFE CARE providers in Missouri;

(2) "SAFE CARE provider", a physician, advanced practice nurse, or physician's assistant licensed in this state who provides medical diagnosis and treatment to children suspected of being victims of abuse and who receives:

(a) Missouri-based initial intensive training regarding child maltreatment from the SAFE CARE network;

(b) Ongoing update training on child maltreatment from the SAFE CARE network;

(c) Peer review and new provider mentoring regarding the forensic evaluation of children suspected of being victims of abuse from the SAFE CARE network;

(3) "Sexual assault forensic examination child abuse resource education network" or "SAFE CARE network", a network of SAFE CARE providers and child abuse medical resource centers that collaborate to provide forensic evaluations, medical training, support, mentoring, and peer review for SAFE CARE providers for the medical evaluation of child abuse victims in this state to improve outcomes for children who are victims of or at risk for child maltreatment by enhancing the skills and role of the medical provider in a multidisciplinary context.

2. Child abuse medical resource centers may collaborate directly or through the use of technology with SAFE CARE providers to promote improved services to children who are suspected victims of abuse that will need to have a forensic medical evaluation conducted by providing specialized training for forensic medical evaluations for children conducted in a hospital, child advocacy center, or by a private health care professional without the need for a collaborative agreement between the child abuse medical resource center and a SAFE CARE provider.

3. SAFE CARE providers who are a part of the SAFE CARE network in Missouri may collaborate directly or through the use of technology with other SAFE CARE providers and child abuse medical resource centers to promote improved services to children who are suspected victims of abuse that will need to have a forensic medical evaluation conducted by providing specialized training for forensic medical evaluations for children conducted in a hospital, child advocacy center, or by a private health care professional without the need for a collaborative agreement between the child abuse medical resource center and a SAFE CARE provider.

37 **4. The SAFE CARE network shall develop recommendations concerning medically**
38 **based screening processes and forensic evidence collection for children who may be in need**
39 **of an emergency examination following an alleged sexual assault. Such recommendations**
40 **shall be provided to the SAFE CARE providers, child advocacy centers, hospitals and**
41 **licensed practitioners that provide emergency examinations for children suspected of being**
42 **victims of abuse.**

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