

SECOND REGULAR SESSION

HOUSE BILL NO. 1746

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WOOD.

5550H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 208.215 and 287.266, RSMo, and to enact in lieu thereof two new sections relating to MO HealthNet liens.

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

Section A. Sections 208.215 and 287.266, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 208.215 and 287.266, to read as follows:

208.215. 1. MO HealthNet is **the** payer of last resort unless otherwise specified by law. When any person, corporation, institution, public agency, or private agency **[is] may be liable for medical expenses to a MO HealthNet participant**, 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 **by the MO HealthNet division** from the liable party or participant for all payments made 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:

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.

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

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

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

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

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

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

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

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

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

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

73 5. Every person, corporation or partnership who acts for or on behalf of a person who
74 is or was eligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections
75 208.162 and 208.204 for purposes of pursuing the applicant's or participant's claim which
76 accrued as a result of a nonoccupational or nonwork-related incident or occurrence resulting in
77 the payment of MO HealthNet benefits shall notify the MO HealthNet division upon agreeing
78 to assist such person and further shall notify the MO HealthNet division of any institution of a
79 proceeding, settlement or the results of the pursuit of the claim and give thirty days' notice before
80 any judgment, award, or settlement may be satisfied in any action or any claim by the applicant
81 or participant to recover damages for such injuries, disease, or disability, or benefits arising from
82 a health insurance program to which the participant may be entitled.

83 6. Every participant, minor, guardian, conservator, personal representative, estate,
84 including persons entitled under section 537.080 to bring an action for wrongful death, or his
85 attorney or legal representative shall promptly notify the MO HealthNet division of any recovery
86 **for medical expenses** from a third party and shall immediately reimburse the department of
87 social services, MO HealthNet division, or its contractor from **that portion of** the proceeds of

88 any settlement, judgment, or other recovery in any action or claim initiated against any such third
89 party **that represents recovery for medical expenses**. A judgment, award, or settlement in an
90 action by a participant to recover damages for **medical expenses**, injuries, or other third-party
91 benefits in which the division has an interest ~~[may]~~ **shall** not be satisfied without first giving the
92 division notice and a reasonable opportunity to file and satisfy the claim or proceed with any
93 action as otherwise permitted by law.

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

104 8. The department of social services or MO HealthNet division shall have a lien upon
105 any moneys **for medical expenses paid or** to be paid by any insurance company or similar
106 business enterprise, person, corporation, institution, public agency, or private agency in
107 settlement or satisfaction of a judgment ~~[on any claim]~~ **, claim, or cause of action** for injuries
108 or disability or disease **or** benefits arising from a health insurance program to which the
109 participant may be entitled which resulted in medical expenses for which the department or MO
110 HealthNet division made payment. **The lien shall only attach compensation for medical**
111 **expenses related to the participant's underlying claim against the liable or potentially liable**
112 **third party**. This lien shall also be applicable to any moneys which may come into the
113 possession of any attorney who is handling the claim for injuries, or disability or disease or
114 benefits arising from a health insurance plan to which the participant may be entitled which
115 resulted in payments made by the department or MO HealthNet division. In each case, a lien
116 notice shall be served by certified mail or registered mail, upon the party or parties against whom
117 the applicant or participant has a claim, demand or cause of action. The lien shall claim the
118 charge and describe the interest the department or MO HealthNet division has in the claim,
119 demand or cause of action. The lien shall attach to any verdict or judgment entered and to any
120 money or property which may be recovered **as compensation for medical expenses** on account
121 of such claim, demand, cause of action or suit from and after the time of the service of the notice.

122 9. On petition filed by the department, or by the participant, or by the defendant, the
123 court, on written notice of all interested parties, may adjudicate the rights of the parties and

enforce the charge. The court may approve the settlement of any claim, demand or cause of action either before or after a verdict, and nothing in this section shall be construed as requiring the actual trial or final adjudication of any claim, demand or cause of action upon which the department has charge. The court may determine what portion of the recovery shall be paid to the department against the recovery. In making this determination the court shall conduct an evidentiary hearing and shall consider competent evidence pertaining to the following matters:

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

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

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

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

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

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

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

160 division, certified by the director or his or her designee, shall be prima facie evidence of proof
161 of moneys expended and the amount of the debt due the state.

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

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

179 13. This section shall be inapplicable to any claim, demand or cause of action arising
180 under the workers' compensation act, chapter 287. From funds recovered pursuant to this section
181 the federal government shall be paid a portion thereof equal to the proportionate part originally
182 provided by the federal government to pay for MO HealthNet benefits to the participant or minor
183 involved. The department or MO HealthNet division shall enforce TEFRA liens, 42 U.S.C.
184 Section 1396p, as authorized by federal law and regulation on permanently institutionalized
185 individuals. The department or MO HealthNet division shall have the right to enforce TEFRA
186 liens, 42 U.S.C. Section 1396p, as authorized by federal law and regulation on all other
187 institutionalized individuals. For the purposes of this subsection, "permanently institutionalized
188 individuals" includes those people who the department or MO HealthNet division determines
189 cannot reasonably be expected to be discharged and return home, and "property" includes the
190 homestead and all other personal and real property in which the participant has sole legal interest
191 or a legal interest based upon co-ownership of the property which is the result of a transfer of
192 property for less than the fair market value within thirty months prior to the participant's entering
193 the nursing facility. The following provisions shall apply to such liens:

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

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

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

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

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

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

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

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

222 (a) The spouse of such individual;

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

225 (c) A sibling of such individual who has an equity interest in such home and who was
226 residing in such individual's home for a period of at least one year immediately before the date
227 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 or section 484.140, relating to an attorney's lien and to the participant's expenses of the claim against the third party.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 7. This debt due the state shall be subordinate only to the fee rights of the injured
27 employee's attorney pursuant to this chapter, and the state shall not be required to pay any portion
28 of the fees or costs incurred by the employee or the employer.

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

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

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

✓