

SECOND REGULAR SESSION

# HOUSE BILL NO. 1837

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GREEN.

4334H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal section 208.010, RSMo, and to enact in lieu thereof two new sections relating to MO HealthNet coverage for incarcerated individuals.

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

Section A. Section 208.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 208.010 and 208.1310, to read as follows:

208.010. 1. In determining the eligibility of a claimant for public assistance pursuant to this law, it shall be the duty of the family support division to consider and take into account all facts and circumstances surrounding the claimant, including his or her living conditions, earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the claimant is not found to be in need, assistance shall be denied. In determining the need of a claimant, the costs of providing medical treatment which may be furnished pursuant to sections 208.151 to 208.158 shall be disregarded. The amount of benefits, when added to all other income, resources, support, and maintenance shall provide such persons with reasonable subsistence compatible with decency and health in accordance with the standards developed by the family support division; provided, when a husband and wife are living together, the combined income and resources of both shall be considered in determining the eligibility of either or both. "Living together" for the purpose of this chapter is defined as including a husband and wife separated for the purpose of obtaining medical care or nursing home care, except that the income of a husband or wife separated for such purpose shall be considered in determining the eligibility of his or her spouse, only to the extent that such income exceeds the amount necessary to meet the needs (as defined by rule or regulation of the division) of such husband or wife living separately. In determining the need of a claimant in federally aided programs there

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.

18 shall be disregarded such amounts per month of earned income in making such determination  
19 as shall be required for federal participation by the provisions of the federal Social Security Act  
20 (42 U.S.C.A. Section 301, et seq.), or any amendments thereto. When federal law or regulations  
21 require the exemption of other income or resources, the family support division may provide by  
22 rule or regulation the amount of income or resources to be disregarded.

23 2. Benefits shall not be payable to any claimant who:

24 (1) Has or whose spouse with whom he or she is living has, prior to July 1, 1989, given  
25 away or sold a resource within the time and in the manner specified in this subdivision. In  
26 determining the resources of an individual, unless prohibited by federal statutes or regulations,  
27 there shall be included (but subject to the exclusions pursuant to subdivisions (4) and (5) of this  
28 subsection, and subsection 5 of this section) any resource or interest therein owned by such  
29 individual or spouse within the twenty-four months preceding the initial investigation, or at any  
30 time during which benefits are being drawn, if such individual or spouse gave away or sold such  
31 resource or interest within such period of time at less than fair market value of such resource or  
32 interest for the purpose of establishing eligibility for benefits, including but not limited to  
33 benefits based on December, 1973, eligibility requirements, as follows:

34 (a) Any transaction described in this subdivision shall be presumed to have been for the  
35 purpose of establishing eligibility for benefits or assistance pursuant to this chapter unless such  
36 individual furnishes convincing evidence to establish that the transaction was exclusively for  
37 some other purpose;

38 (b) The resource shall be considered in determining eligibility from the date of the  
39 transfer for the number of months the uncompensated value of the disposed of resource is  
40 divisible by the average monthly grant paid or average Medicaid payment in the state at the time  
41 of the investigation to an individual or on his or her behalf under the program for which benefits  
42 are claimed, provided that:

43 a. When the uncompensated value is twelve thousand dollars or less, the resource shall  
44 not be used in determining eligibility for more than twenty-four months; or

45 b. When the uncompensated value exceeds twelve thousand dollars, the resource shall  
46 not be used in determining eligibility for more than sixty months;

47 (2) The provisions of subdivision (1) of this subsection shall not apply to a transfer, other  
48 than a transfer to claimant's spouse, made prior to March 26, 1981, when the claimant furnishes  
49 convincing evidence that the uncompensated value of the disposed of resource or any part thereof  
50 is no longer possessed or owned by the person to whom the resource was transferred;

51 (3) Has received, or whose spouse with whom he or she is living has received, benefits  
52 to which he or she was not entitled through misrepresentation or nondisclosure of material facts  
53 or failure to report any change in status or correct information with respect to property or income

54 as required by section 208.210. A claimant ineligible pursuant to this subsection shall be  
55 ineligible for such period of time from the date of discovery as the family support division may  
56 deem proper; or in the case of overpayment of benefits, future benefits may be decreased,  
57 suspended or entirely withdrawn for such period of time as the division may deem proper;

58 (4) Owns or possesses resources in the sum of one thousand dollars or more; provided,  
59 however, that if such person is married and living with spouse, he or she, or they, individually  
60 or jointly, may own resources not to exceed two thousand dollars; and provided further, that in  
61 the case of a temporary assistance for needy families claimant, a MO HealthNet blind claimant,  
62 a MO HealthNet aged claimant, or a MO HealthNet permanent and total disability claimant, the  
63 provision of this subsection shall not apply;

64 (5) Prior to October 1, 1989, owns or possesses property of any kind or character,  
65 excluding amounts placed in an irrevocable prearranged funeral or burial contract under chapter  
66 436, or has an interest in property, of which he or she is the record or beneficial owner, the value  
67 of such property, as determined by the family support division, less encumbrances of record,  
68 exceeds twenty-nine thousand dollars, or if married and actually living together with husband  
69 or wife, if the value of his or her property, or the value of his or her interest in property, together  
70 with that of such husband and wife, exceeds such amount;

71 (6) In the case of temporary assistance for needy families, if the parent, stepparent, and  
72 child or children in the home owns or possesses property of any kind or character, or has an  
73 interest in property for which he or she is a record or beneficial owner, the value of such  
74 property, as determined by the family support division and as allowed by federal law or  
75 regulation, less encumbrances of record, exceeds one thousand dollars, excluding the home  
76 occupied by the claimant, amounts placed in an irrevocable prearranged funeral or burial contract  
77 under chapter 436, one automobile which shall not exceed a value set forth by federal law or  
78 regulation and for a period not to exceed six months, such other real property which the family  
79 is making a good-faith effort to sell, if the family agrees in writing with the family support  
80 division to sell such property and from the net proceeds of the sale repay the amount of  
81 assistance received during such period. If the property has not been sold within six months, or  
82 if eligibility terminates for any other reason, the entire amount of assistance paid during such  
83 period shall be a debt due the state;

84 (7) In the case of MO HealthNet blind claimants, MO HealthNet aged claimants, and  
85 MO HealthNet permanent and total disability claimants, starting in fiscal year 2018, owns or  
86 possesses resources not to exceed two thousand dollars; provided, however, that if such person  
87 is married and living with spouse, he or she, or they, individually or jointly, may own resources  
88 not to exceed four thousand dollars except for medical savings accounts and independent living  
89 accounts as defined and limited under subsection 3 of section 208.146. These resource limits

90 shall be increased annually by one thousand dollars and two thousand dollars respectively until  
91 the sum of resources reach the amount of five thousand dollars and ten thousand dollars  
92 respectively by fiscal year 2021. Beginning in fiscal year 2022 and each successive fiscal year  
93 thereafter, the division shall measure the cost-of-living percentage increase, if any, as of the  
94 preceding July over the level as of July of the immediately preceding year of the Consumer Price  
95 Index for All Urban Consumers or successor index published by the U.S. Department of Labor  
96 or its successor agency, and the sum of resources allowed under this subdivision shall be  
97 modified accordingly to reflect any increases in the cost-of-living, with the amount of the  
98 resource limit rounded to the nearest five cents;

99 (8) Is an inmate of a public institution, except as a patient in a public medical institution  
100 **and as provided in section 208.1310.**

101 3. In determining eligibility and the amount of benefits to be granted pursuant to  
102 federally aided programs, the income and resources of a relative or other person living in the  
103 home shall be taken into account to the extent the income, resources, support and maintenance  
104 are allowed by federal law or regulation to be considered.

105 4. In determining eligibility and the amount of benefits to be granted pursuant to  
106 federally aided programs, the value of burial lots or any amounts placed in an irrevocable  
107 prearranged funeral or burial contract under chapter 436 shall not be taken into account or  
108 considered an asset of the burial lot owner or the beneficiary of an irrevocable prearranged  
109 funeral or funeral contract. For purposes of this section, "burial lots" means any burial space as  
110 defined in section 214.270 and any memorial, monument, marker, tombstone or letter marking  
111 a burial space. If the beneficiary, as defined in chapter 436, of an irrevocable prearranged funeral  
112 or burial contract receives any public assistance benefits pursuant to this chapter and if the  
113 purchaser of such contract or his or her successors in interest transfer, amend, or take any other  
114 such actions regarding the contract so that any person will be entitled to a refund, such refund  
115 shall be paid to the state of Missouri with any amount in excess of the public assistance benefits  
116 provided under this chapter to be refunded by the state of Missouri to the purchaser or his or her  
117 successors. In determining eligibility and the amount of benefits to be granted under federally  
118 aided programs, the value of any life insurance policy where a seller or provider is made the  
119 beneficiary or where the life insurance policy is assigned to a seller or provider, either being in  
120 consideration for an irrevocable prearranged funeral contract under chapter 436, shall not be  
121 taken into account or considered an asset of the beneficiary of the irrevocable prearranged funeral  
122 contract. In addition, the value of any funds, up to nine thousand nine hundred ninety-nine  
123 dollars, placed into an irrevocable personal funeral trust account, where the trustee of the  
124 irrevocable personal funeral trust account is a state or federally chartered financial institution  
125 authorized to exercise trust powers in the state of Missouri, shall not be taken into account or

126 considered an asset of the person whose funds are so deposited if such funds are restricted to be  
127 used only for the burial, funeral, preparation of the body, or other final disposition of the person  
128 whose funds were deposited into said personal funeral trust account. No person or entity shall  
129 charge more than ten percent of the total amount deposited into a personal funeral trust in order  
130 to create or set up said personal funeral trust, and any fees charged for the maintenance of such  
131 a personal funeral trust shall not exceed three percent of the trust assets annually. Trustees may  
132 commingle funds from two or more such personal funeral trust accounts so long as accurate  
133 books and records are kept as to the value, deposits, and disbursements of each individual  
134 depositor's funds and trustees are to use the prudent investor standard as to the investment of any  
135 funds placed into a personal funeral trust. If the person whose funds are deposited into the  
136 personal funeral trust account receives any public assistance benefits pursuant to this chapter and  
137 any funds in the personal funeral trust account are, for any reason, not spent on the burial,  
138 funeral, preparation of the body, or other final disposition of the person whose funds were  
139 deposited into the trust account, such funds shall be paid to the state of Missouri with any  
140 amount in excess of the public assistance benefits provided under this chapter to be refunded by  
141 the state of Missouri to the person who received public assistance benefits or his or her  
142 successors. No contract with any cemetery, funeral establishment, or any provider or seller shall  
143 be required in regards to funds placed into a personal funeral trust account as set out in this  
144 subsection.

145           5. In determining the total property owned pursuant to subdivision (5) of subsection 2  
146 of this section, or resources, of any person claiming or for whom public assistance is claimed,  
147 there shall be disregarded any life insurance policy, or prearranged funeral or burial contract, or  
148 any two or more policies or contracts, or any combination of policies and contracts, which  
149 provides for the payment of one thousand five hundred dollars or less upon the death of any of  
150 the following:

151           (1) A claimant or person for whom benefits are claimed; or

152           (2) The spouse of a claimant or person for whom benefits are claimed with whom he or  
153 she is living.

154

155 If the value of such policies exceeds one thousand five hundred dollars, then the total value of  
156 such policies may be considered in determining resources; except that, in the case of temporary  
157 assistance for needy families, there shall be disregarded any prearranged funeral or burial  
158 contract, or any two or more contracts, which provides for the payment of one thousand five  
159 hundred dollars or less per family member.

160           6. Beginning September 30, 1989, when determining the eligibility of institutionalized  
161 spouses, as defined in 42 U.S.C. Section 1396r-5, for medical assistance benefits as provided for

162 in section 208.151 and 42 U.S.C. Sections 1396a, et seq., the family support division shall  
163 comply with the provisions of the federal statutes and regulations. As necessary, the division  
164 shall by rule or regulation implement the federal law and regulations which shall include but not  
165 be limited to the establishment of income and resource standards and limitations. The division  
166 shall require:

167 (1) That at the beginning of a period of continuous institutionalization that is expected  
168 to last for thirty days or more, the institutionalized spouse, or the community spouse, may request  
169 an assessment by the family support division of total countable resources owned by either or both  
170 spouses;

171 (2) That the assessed resources of the institutionalized spouse and the community spouse  
172 may be allocated so that each receives an equal share;

173 (3) That upon an initial eligibility determination, if the community spouse's share does  
174 not equal at least twelve thousand dollars, the institutionalized spouse may transfer to the  
175 community spouse a resource allowance to increase the community spouse's share to twelve  
176 thousand dollars;

177 (4) That in the determination of initial eligibility of the institutionalized spouse, no  
178 resources attributed to the community spouse shall be used in determining the eligibility of the  
179 institutionalized spouse, except to the extent that the resources attributed to the community  
180 spouse do exceed the community spouse's resource allowance as defined in 42 U.S.C. Section  
181 1396r-5;

182 (5) That beginning in January, 1990, the amount specified in subdivision (3) of this  
183 subsection shall be increased by the percentage increase in the Consumer Price Index for All  
184 Urban Consumers between September, 1988, and the September before the calendar year  
185 involved; and

186 (6) That beginning the month after initial eligibility for the institutionalized spouse is  
187 determined, the resources of the community spouse shall not be considered available to the  
188 institutionalized spouse during that continuous period of institutionalization.

189 7. Beginning July 1, 1989, institutionalized individuals shall be ineligible for the periods  
190 required and for the reasons specified in 42 U.S.C. Section 1396p.

191 8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted pursuant to  
192 the provisions of section 208.080.

193 9. Beginning October 1, 1989, when determining eligibility for assistance pursuant to  
194 this chapter there shall be disregarded unless otherwise provided by federal or state statutes the  
195 home of the applicant or recipient when the home is providing shelter to the applicant or  
196 recipient, or his or her spouse or dependent child. The family support division shall establish by  
197 rule or regulation in conformance with applicable federal statutes and regulations a definition of

198 the home and when the home shall be considered a resource that shall be considered in  
199 determining eligibility.

200           10. Reimbursement for services provided by an enrolled Medicaid provider to a recipient  
201 who is duly entitled to Title XIX Medicaid and Title XVIII Medicare Part B, Supplementary  
202 Medical Insurance (SMI) shall include payment in full of deductible and coinsurance amounts  
203 as determined due pursuant to the applicable provisions of federal regulations pertaining to Title  
204 XVIII Medicare Part B, except for hospital outpatient services or the applicable Title XIX cost  
205 sharing.

206           11. A “community spouse” is defined as being the noninstitutionalized spouse.

207           12. An institutionalized spouse applying for Medicaid and having a spouse living in the  
208 community shall be required, to the maximum extent permitted by law, to divert income to such  
209 community spouse to raise the community spouse’s income to the level of the minimum monthly  
210 needs allowance, as described in 42 U.S.C. Section 1396r-5. Such diversion of income shall  
211 occur before the community spouse is allowed to retain assets in excess of the community spouse  
212 protected amount described in 42 U.S.C. Section 1396r-5.

**208.1310. 1. A person incarcerated in a public institution in this state who is  
2 receiving MO HealthNet benefits at the time of his or her incarceration shall have their  
3 benefits temporarily suspended for the duration of the incarceration. Upon release, his or  
4 her benefits shall be restored.**

**5           2. The director of the department of corrections may promulgate rules and  
6 regulations to assist in the implementation of this section. Any rule or portion of a rule,  
7 as that term is defined in section 536.010, that is created under the authority delegated in  
8 this section shall become effective only if it complies with and is subject to all of the  
9 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536  
10 are nonseverable, and if any of the powers vested with the general assembly pursuant to  
11 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are  
12 subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
13 proposed or adopted after August 28, 2020, shall be invalid and void.**

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