

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NOS. 2626 & 1918

102ND GENERAL ASSEMBLY

5464H.02P

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal section 208.152, RSMo, and to enact in lieu thereof one new section relating to MO HealthNet coverage of hearing-related devices.

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

Section A. Section 208.152, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 208.152, to read as follows:

208.152. 1. MO HealthNet payments shall be made on behalf of those eligible needy persons as described in section 208.151 who are unable to provide for it in whole or in part, with any payments to be made on the basis of the reasonable cost of the care or reasonable charge for the services as defined and determined by the MO HealthNet division, unless otherwise hereinafter provided, for the following:

(1) Inpatient hospital services, except to persons in an institution for mental diseases who are under the age of sixty-five years and over the age of twenty-one years; provided that the MO HealthNet division shall provide through rule and regulation an exception process for coverage of inpatient costs in those cases requiring treatment beyond the seventy-fifth percentile professional activities study (PAS) or the MO HealthNet children's diagnosis length-of-stay schedule; and provided further that the MO HealthNet division shall take into account through its payment system for hospital services the situation of hospitals which serve a disproportionate number of low-income patients;

(2) All outpatient hospital services, payments therefor to be in amounts which represent no more than eighty percent of the lesser of reasonable costs or customary charges for such services, determined in accordance with the principles set forth in Title XVIII A and B, Public Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. Section

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.

18 301, et seq.), but the MO HealthNet division may evaluate outpatient hospital services  
19 rendered under this section and deny payment for services which are determined by the MO  
20 HealthNet division not to be medically necessary, in accordance with federal law and  
21 regulations;

22 (3) Laboratory and X-ray services;

23 (4) Nursing home services for participants, except to persons with more than five  
24 hundred thousand dollars equity in their home or except for persons in an institution for  
25 mental diseases who are under the age of sixty-five years, when residing in a hospital licensed  
26 by the department of health and senior services or a nursing home licensed by the department  
27 of health and senior services or appropriate licensing authority of other states or government-  
28 owned and -operated institutions which are determined to conform to standards equivalent to  
29 licensing requirements in Title XIX of the federal Social Security Act (42 U.S.C. Section  
30 ~~301,~~ **1396** et seq.), as amended, for nursing facilities. The MO HealthNet division may  
31 recognize through its payment methodology for nursing facilities those nursing facilities  
32 which serve a high volume of MO HealthNet patients. The MO HealthNet division when  
33 determining the amount of the benefit payments to be made on behalf of persons under the  
34 age of twenty-one in a nursing facility may consider nursing facilities furnishing care to  
35 persons under the age of twenty-one as a classification separate from other nursing facilities;

36 (5) Nursing home costs for participants receiving benefit payments under subdivision  
37 (4) of this subsection for those days, which shall not exceed twelve per any period of six  
38 consecutive months, during which the participant is on a temporary leave of absence from the  
39 hospital or nursing home, provided that no such participant shall be allowed a temporary  
40 leave of absence unless it is specifically provided for in his plan of care. As used in this  
41 subdivision, the term "temporary leave of absence" shall include all periods of time during  
42 which a participant is away from the hospital or nursing home overnight because he is visiting  
43 a friend or relative;

44 (6) Physicians' services, whether furnished in the office, home, hospital, nursing  
45 home, or elsewhere;

46 (7) Subject to appropriation, up to twenty visits per year for services limited to  
47 examinations, diagnoses, adjustments, and manipulations and treatments of malpositioned  
48 articulations and structures of the body provided by licensed chiropractic physicians  
49 practicing within their scope of practice. Nothing in this subdivision shall be interpreted to  
50 otherwise expand MO HealthNet services;

51 (8) Drugs and medicines when prescribed by a licensed physician, dentist, podiatrist,  
52 or an advanced practice registered nurse; except that no payment for drugs and medicines  
53 prescribed on and after January 1, 2006, by a licensed physician, dentist, podiatrist, or an

54 advanced practice registered nurse may be made on behalf of any person who qualifies for  
55 prescription drug coverage under the provisions of P.L. 108-173;

56 (9) Emergency ambulance services and, effective January 1, 1990, medically  
57 necessary transportation to scheduled, physician-prescribed nonelective treatments;

58 (10) Early and periodic screening and diagnosis of individuals who are under the age  
59 of twenty-one to ascertain their physical or mental defects, and health care, treatment, and  
60 other measures to correct or ameliorate defects and chronic conditions discovered thereby.  
61 Such services shall be provided in accordance with the provisions of Section 6403 of P.L.  
62 101-239 and federal regulations promulgated thereunder;

63 (11) Home health care services;

64 (12) Family planning as defined by federal rules and regulations; provided, however,  
65 that such family planning services shall not include abortions or any abortifacient drug or  
66 device that is used for the purpose of inducing an abortion unless such abortions are certified  
67 in writing by a physician to the MO HealthNet agency that, in the physician's professional  
68 judgment, the life of the mother would be endangered if the fetus were carried to term;

69 (13) Inpatient psychiatric hospital services for individuals under age twenty-one as  
70 defined in Title XIX of the federal Social Security Act (42 U.S.C. Section 1396d, et seq.);

71 (14) Outpatient surgical procedures, including presurgical diagnostic services  
72 performed in ambulatory surgical facilities which are licensed by the department of health  
73 and senior services of the state of Missouri; except, that such outpatient surgical services shall  
74 not include persons who are eligible for coverage under Part B of Title XVIII, Public Law 89-  
75 97, 1965 amendments to the federal Social Security Act, as amended, if exclusion of such  
76 persons is permitted under Title XIX, Public Law 89-97, 1965 amendments to the federal  
77 Social Security Act, as amended;

78 (15) Personal care services which are medically oriented tasks having to do with a  
79 person's physical requirements, as opposed to housekeeping requirements, which enable a  
80 person to be treated by his or her physician on an outpatient rather than on an inpatient or  
81 residential basis in a hospital, intermediate care facility, or skilled nursing facility. Personal  
82 care services shall be rendered by an individual not a member of the participant's family who  
83 is qualified to provide such services where the services are prescribed by a physician in  
84 accordance with a plan of treatment and are supervised by a licensed nurse. Persons eligible  
85 to receive personal care services shall be those persons who would otherwise require  
86 placement in a hospital, intermediate care facility, or skilled nursing facility. Benefits payable  
87 for personal care services shall not exceed for any one participant one hundred percent of the  
88 average statewide charge for care and treatment in an intermediate care facility for a  
89 comparable period of time. Such services, when delivered in a residential care facility or  
90 assisted living facility licensed under chapter 198 shall be authorized on a tier level based on

91 the services the resident requires and the frequency of the services. A resident of such facility  
92 who qualifies for assistance under section 208.030 shall, at a minimum, if prescribed by a  
93 physician, qualify for the tier level with the fewest services. The rate paid to providers for  
94 each tier of service shall be set subject to appropriations. Subject to appropriations, each  
95 resident of such facility who qualifies for assistance under section 208.030 and meets the  
96 level of care required in this section shall, at a minimum, if prescribed by a physician, be  
97 authorized up to one hour of personal care services per day. Authorized units of personal care  
98 services shall not be reduced or tier level lowered unless an order approving such reduction or  
99 lowering is obtained from the resident's personal physician. Such authorized units of personal  
100 care services or tier level shall be transferred with such resident if he or she transfers to  
101 another such facility. Such provision shall terminate upon receipt of relevant waivers from  
102 the federal Department of Health and Human Services. If the Centers for Medicare and  
103 Medicaid Services determines that such provision does not comply with the state plan, this  
104 provision shall be null and void. The MO HealthNet division shall notify the revisor of  
105 statutes as to whether the relevant waivers are approved or a determination of noncompliance  
106 is made;

107 (16) Mental health services. The state plan for providing medical assistance under  
108 Title XIX of the Social Security Act, 42 U.S.C. Section ~~[304]~~ **1396 et seq.**, as amended, shall  
109 include the following mental health services when such services are provided by community  
110 mental health facilities operated by the department of mental health or designated by the  
111 department of mental health as a community mental health facility or as an alcohol and drug  
112 abuse facility or as a child-serving agency within the comprehensive children's mental health  
113 service system established in section 630.097. The department of mental health shall  
114 establish by administrative rule the definition and criteria for designation as a community  
115 mental health facility and for designation as an alcohol and drug abuse facility. Such mental  
116 health services shall include:

117 (a) Outpatient mental health services including preventive, diagnostic, therapeutic,  
118 rehabilitative, and palliative interventions rendered to individuals in an individual or group  
119 setting by a mental health professional in accordance with a plan of treatment appropriately  
120 established, implemented, monitored, and revised under the auspices of a therapeutic team as  
121 a part of client services management;

122 (b) Clinic mental health services including preventive, diagnostic, therapeutic,  
123 rehabilitative, and palliative interventions rendered to individuals in an individual or group  
124 setting by a mental health professional in accordance with a plan of treatment appropriately  
125 established, implemented, monitored, and revised under the auspices of a therapeutic team as  
126 a part of client services management;

127 (c) Rehabilitative mental health and alcohol and drug abuse services including home  
128 and community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative  
129 interventions rendered to individuals in an individual or group setting by a mental health  
130 or alcohol and drug abuse professional in accordance with a plan of treatment appropriately  
131 established, implemented, monitored, and revised under the auspices of a therapeutic team as  
132 a part of client services management. As used in this section, mental health professional and  
133 alcohol and drug abuse professional shall be defined by the department of mental health  
134 pursuant to duly promulgated rules. With respect to services established by this subdivision,  
135 the department of social services, MO HealthNet division, shall enter into an agreement with  
136 the department of mental health. Matching funds for outpatient mental health services, clinic  
137 mental health services, and rehabilitation services for mental health and alcohol and drug  
138 abuse shall be certified by the department of mental health to the MO HealthNet division.  
139 The agreement shall establish a mechanism for the joint implementation of the provisions of  
140 this subdivision. In addition, the agreement shall establish a mechanism by which rates for  
141 services may be jointly developed;

142 (17) Such additional services as defined by the MO HealthNet division to be  
143 furnished under waivers of federal statutory requirements as provided for and authorized by  
144 the federal Social Security Act (42 U.S.C. Section 301, et seq.) subject to appropriation by the  
145 general assembly;

146 (18) The services of an advanced practice registered nurse with a collaborative  
147 practice agreement to the extent that such services are provided in accordance with chapters  
148 334 and 335, and regulations promulgated thereunder;

149 (19) Nursing home costs for participants receiving benefit payments under  
150 subdivision (4) of this subsection to reserve a bed for the participant in the nursing home  
151 during the time that the participant is absent due to admission to a hospital for services which  
152 cannot be performed on an outpatient basis, subject to the provisions of this subdivision:

153 (a) The provisions of this subdivision shall apply only if:

154 a. The occupancy rate of the nursing home is at or above ninety-seven percent of MO  
155 HealthNet certified licensed beds, according to the most recent quarterly census provided to  
156 the department of health and senior services which was taken prior to when the participant is  
157 admitted to the hospital; and

158 b. The patient is admitted to a hospital for a medical condition with an anticipated  
159 stay of three days or less;

160 (b) The payment to be made under this subdivision shall be provided for a maximum  
161 of three days per hospital stay;

162 (c) For each day that nursing home costs are paid on behalf of a participant under this  
163 subdivision during any period of six consecutive months such participant shall, during the

164 same period of six consecutive months, be ineligible for payment of nursing home costs of  
165 two otherwise available temporary leave of absence days provided under subdivision (5) of  
166 this subsection; and

167 (d) The provisions of this subdivision shall not apply unless the nursing home  
168 receives notice from the participant or the participant's responsible party that the participant  
169 intends to return to the nursing home following the hospital stay. If the nursing home receives  
170 such notification and all other provisions of this subsection have been satisfied, the nursing  
171 home shall provide notice to the participant or the participant's responsible party prior to  
172 release of the reserved bed;

173 (20) Prescribed medically necessary durable medical equipment. An electronic web-  
174 based prior authorization system using best medical evidence and care and treatment  
175 guidelines consistent with national standards shall be used to verify medical need;

176 (21) Hospice care. As used in this subdivision, the term "hospice care" means a  
177 coordinated program of active professional medical attention within a home, outpatient and  
178 inpatient care which treats the terminally ill patient and family as a unit, employing a  
179 medically directed interdisciplinary team. The program provides relief of severe pain or other  
180 physical symptoms and supportive care to meet the special needs arising out of physical,  
181 psychological, spiritual, social, and economic stresses which are experienced during the final  
182 stages of illness, and during dying and bereavement and meets the Medicare requirements for  
183 participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement  
184 paid by the MO HealthNet division to the hospice provider for room and board furnished by a  
185 nursing home to an eligible hospice patient shall not be less than ninety-five percent of the  
186 rate of reimbursement which would have been paid for facility services in that nursing home  
187 facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239  
188 (Omnibus Budget Reconciliation Act of 1989);

189 (22) Prescribed medically necessary dental services. Such services shall be subject to  
190 appropriations. An electronic web-based prior authorization system using best medical  
191 evidence and care and treatment guidelines consistent with national standards shall be used to  
192 verify medical need;

193 (23) Prescribed medically necessary optometric services. Such services shall be  
194 subject to appropriations. An electronic web-based prior authorization system using best  
195 medical evidence and care and treatment guidelines consistent with national standards shall  
196 be used to verify medical need;

197 (24) Blood clotting products-related services. For persons diagnosed with a bleeding  
198 disorder, as defined in section 338.400, reliant on blood clotting products, as defined in  
199 section 338.400, such services include:

200 (a) Home delivery of blood clotting products and ancillary infusion equipment and  
201 supplies, including the emergency deliveries of the product when medically necessary;

202 (b) Medically necessary ancillary infusion equipment and supplies required to  
203 administer the blood clotting products; and

204 (c) Assessments conducted in the participant's home by a pharmacist, nurse, or local  
205 home health care agency trained in bleeding disorders when deemed necessary by the  
206 participant's treating physician;

207 **(25) Medically necessary cochlear implants and hearing instruments, as defined**  
208 **in section 345.015, that are:**

209 **(a) Prescribed by an audiologist, as defined in section 345.015; or**

210 **(b) Dispensed by a hearing instrument specialist, as defined in section 346.010;**

211 **(26)** The MO HealthNet division shall, by January 1, 2008, and annually thereafter,  
212 report the status of MO HealthNet provider reimbursement rates as compared to one hundred  
213 percent of the Medicare reimbursement rates and compared to the average dental  
214 reimbursement rates paid by third-party payors licensed by the state. The MO HealthNet  
215 division shall, by July 1, 2008, provide to the general assembly a four-year plan to achieve  
216 parity with Medicare reimbursement rates and for third-party payor average dental  
217 reimbursement rates. Such plan shall be subject to appropriation and the division shall  
218 include in its annual budget request to the governor the necessary funding needed to complete  
219 the four-year plan developed under this subdivision.

220 2. Additional benefit payments for medical assistance shall be made on behalf of  
221 those eligible needy children, pregnant women and blind persons with any payments to be  
222 made on the basis of the reasonable cost of the care or reasonable charge for the services as  
223 defined and determined by the MO HealthNet division, unless otherwise hereinafter provided,  
224 for the following:

225 (1) Dental services;

226 (2) Services of podiatrists as defined in section 330.010;

227 (3) Optometric services as described in section 336.010;

228 (4) Orthopedic devices or other prosthetics, including eye glasses, dentures, [~~hearing~~  
229 ~~aids,~~] and wheelchairs;

230 (5) Hospice care. As used in this subdivision, the term "hospice care" means a  
231 coordinated program of active professional medical attention within a home, outpatient and  
232 inpatient care which treats the terminally ill patient and family as a unit, employing a  
233 medically directed interdisciplinary team. The program provides relief of severe pain or other  
234 physical symptoms and supportive care to meet the special needs arising out of physical,  
235 psychological, spiritual, social, and economic stresses which are experienced during the final  
236 stages of illness, and during dying and bereavement and meets the Medicare requirements for

237 participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement  
238 paid by the MO HealthNet division to the hospice provider for room and board furnished by a  
239 nursing home to an eligible hospice patient shall not be less than ninety-five percent of the  
240 rate of reimbursement which would have been paid for facility services in that nursing home  
241 facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239  
242 (Omnibus Budget Reconciliation Act of 1989);

243 (6) Comprehensive day rehabilitation services beginning early posttrauma as part of a  
244 coordinated system of care for individuals with disabling impairments. Rehabilitation  
245 services must be based on an individualized, goal-oriented, comprehensive and coordinated  
246 treatment plan developed, implemented, and monitored through an interdisciplinary  
247 assessment designed to restore an individual to optimal level of physical, cognitive, and  
248 behavioral function. The MO HealthNet division shall establish by administrative rule the  
249 definition and criteria for designation of a comprehensive day rehabilitation service facility,  
250 benefit limitations and payment mechanism. Any rule or portion of a rule, as that term is  
251 defined in section 536.010, that is created under the authority delegated in this subdivision  
252 shall become effective only if it complies with and is subject to all of the provisions of  
253 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are  
254 nonseverable and if any of the powers vested with the general assembly pursuant to chapter  
255 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently  
256 held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
257 adopted after August 28, 2005, shall be invalid and void.

258 3. The MO HealthNet division may require any participant receiving MO HealthNet  
259 benefits to pay part of the charge or cost until July 1, 2008, and an additional payment after  
260 July 1, 2008, as defined by rule duly promulgated by the MO HealthNet division, for all  
261 covered services except for those services covered under subdivisions (15) and (16) of  
262 subsection 1 of this section and sections 208.631 to 208.657 to the extent and in the manner  
263 authorized by Title XIX of the federal Social Security Act (42 U.S.C. Section 1396, et seq.)  
264 and regulations thereunder. When substitution of a generic drug is permitted by the prescriber  
265 according to section 338.056, and a generic drug is substituted for a name-brand drug, the  
266 MO HealthNet division may not lower or delete the requirement to make a co-payment  
267 pursuant to regulations of Title XIX of the federal Social Security Act. A provider of goods  
268 or services described under this section must collect from all participants the additional  
269 payment that may be required by the MO HealthNet division under authority granted herein,  
270 if the division exercises that authority, to remain eligible as a provider. Any payments made  
271 by participants under this section shall be in addition to and not in lieu of payments made by  
272 the state for goods or services described herein except the participant portion of the pharmacy  
273 professional dispensing fee shall be in addition to and not in lieu of payments to pharmacists.



274 A provider may collect the co-payment at the time a service is provided or at a later date. A  
275 provider shall not refuse to provide a service if a participant is unable to pay a required  
276 payment. If it is the routine business practice of a provider to terminate future services to an  
277 individual with an unclaimed debt, the provider may include uncollected co-payments under  
278 this practice. Providers who elect not to undertake the provision of services based on a  
279 history of bad debt shall give participants advance notice and a reasonable opportunity for  
280 payment. A provider, representative, employee, independent contractor, or agent of a  
281 pharmaceutical manufacturer shall not make co-payment for a participant. This subsection  
282 shall not apply to other qualified children, pregnant women, or blind persons. If the Centers  
283 for Medicare and Medicaid Services does not approve the MO HealthNet state plan  
284 amendment submitted by the department of social services that would allow a provider to  
285 deny future services to an individual with uncollected co-payments, the denial of services  
286 shall not be allowed. The department of social services shall inform providers regarding the  
287 acceptability of denying services as the result of unpaid co-payments.

288 4. The MO HealthNet division shall have the right to collect medication samples from  
289 participants in order to maintain program integrity.

290 5. Reimbursement for obstetrical and pediatric services under subdivision (6) of  
291 subsection 1 of this section shall be timely and sufficient to enlist enough health care  
292 providers so that care and services are available under the state plan for MO HealthNet  
293 benefits at least to the extent that such care and services are available to the general  
294 population in the geographic area, as required under subparagraph (a)(30)(A) of 42 U.S.C.  
295 Section 1396a and federal regulations promulgated thereunder.

296 6. Beginning July 1, 1990, reimbursement for services rendered in federally funded  
297 health centers shall be in accordance with the provisions of subsection 6402(c) and Section  
298 6404 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989) and federal regulations  
299 promulgated thereunder.

300 7. Beginning July 1, 1990, the department of social services shall provide notification  
301 and referral of children below age five, and pregnant, breast-feeding, or postpartum women  
302 who are determined to be eligible for MO HealthNet benefits under section 208.151 to the  
303 special supplemental food programs for women, infants and children administered by the  
304 department of health and senior services. Such notification and referral shall conform to the  
305 requirements of Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

306 8. Providers of long-term care services shall be reimbursed for their costs in  
307 accordance with the provisions of Section 1902 (a)(13)(A) of the Social Security Act, 42  
308 U.S.C. Section 1396a, as amended, and regulations promulgated thereunder.

309 9. Reimbursement rates to long-term care providers with respect to a total change in  
310 ownership, at arm's length, for any facility previously licensed and certified for participation

311 in the MO HealthNet program shall not increase payments in excess of the increase that  
312 would result from the application of Section 1902 (a)(13)(C) of the Social Security Act, 42  
313 U.S.C. Section 1396a (a)(13)(C).

314 10. The MO HealthNet division may enroll qualified residential care facilities and  
315 assisted living facilities, as defined in chapter 198, as MO HealthNet personal care providers.

316 11. Any income earned by individuals eligible for certified extended employment at a  
317 sheltered workshop under chapter 178 shall not be considered as income for purposes of  
318 determining eligibility under this section.

319 12. If the Missouri Medicaid audit and compliance unit changes any interpretation or  
320 application of the requirements for reimbursement for MO HealthNet services from the  
321 interpretation or application that has been applied previously by the state in any audit of a MO  
322 HealthNet provider, the Missouri Medicaid audit and compliance unit shall notify all affected  
323 MO HealthNet providers five business days before such change shall take effect. Failure of  
324 the Missouri Medicaid audit and compliance unit to notify a provider of such change shall  
325 entitle the provider to continue to receive and retain reimbursement until such notification is  
326 provided and shall waive any liability of such provider for recoupment or other loss of any  
327 payments previously made prior to the five business days after such notice has been sent.  
328 Each provider shall provide the Missouri Medicaid audit and compliance unit a valid email  
329 address and shall agree to receive communications electronically. The notification required  
330 under this section shall be delivered in writing by the United States Postal Service or  
331 electronic mail to each provider.

332 13. Nothing in this section shall be construed to abrogate or limit the department's  
333 statutory requirement to promulgate rules under chapter 536.

334 14. Beginning July 1, 2016, and subject to appropriations, providers of behavioral,  
335 social, and psychophysiological services for the prevention, treatment, or management of  
336 physical health problems shall be reimbursed utilizing the behavior assessment and  
337 intervention reimbursement codes 96150 to 96154 or their successor codes under the  
338 Current Procedural Terminology (CPT) coding system. Providers eligible for such  
339 reimbursement shall include psychologists.

340 15. There shall be no payments made under this section for gender transition  
341 surgeries, cross-sex hormones, or puberty-blocking drugs, as such terms are defined in section  
342 191.1720, for the purpose of a gender transition.

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