

SECOND REGULAR SESSION

# HOUSE BILL NO. 2057

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE STREAM.

4971L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 208.215, RSMo, and to enact in lieu thereof one new section relating to the MO HealthNet division's authority to collect from third-party payors.

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

Section A. Section 208.215, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 208.215, to read as follows:

208.215. 1. MO HealthNet is payer of last resort unless otherwise specified by law. When any person, corporation, institution, public agency or private agency is liable, either pursuant to contract or otherwise, to a participant receiving public assistance on account of personal injury to or disability or disease or benefits arising from a health insurance plan to which the participant may be entitled, payments made by the department of social services or MO HealthNet division shall be a debt due the state and recoverable from the liable party or participant for all payments made [in] **on** behalf of the participant and the debt due the state shall not exceed the payments made from MO HealthNet benefits provided under sections 208.151 to 208.158 and section 208.162 and section 208.204 on behalf of the participant, minor or estate for payments on account of the injury, disease, or disability or benefits arising from a health insurance program to which the participant may be entitled. **Any health benefit plan as defined in section 376.1350, third party administrator, administrative service organization, and pharmacy benefits manager, shall process and pay all properly submitted medical assistance subrogation claims or MO HealthNet subrogation claims:**

**(1) For a period of three years from the date services were provided or rendered, regardless of any other timely filing requirement otherwise imposed by such entity, and the entity shall not deny such claims on the basis of the type or format of the claim form,**

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 **failure to present proper documentation of coverage at the point of sale, or failure to obtain**  
19 **prior authorization; and**

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

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

27 3. Any participant, minor, guardian, conservator, personal representative, estate,  
28 including persons entitled under section 537.080, RSMo, to bring an action for wrongful death  
29 who pursues legal rights against a person, corporation, institution, public agency, or private  
30 agency liable to that participant or minor for injuries, disease or disability or benefits arising  
31 from a health insurance plan to which the participant may be entitled as outlined in subsection  
32 1 of this section shall upon actual knowledge that the department of social services or MO  
33 HealthNet division has paid MO HealthNet benefits as defined by this chapter promptly notify  
34 the MO HealthNet division as to the pursuit of such legal rights.

35 4. Every applicant or participant by application assigns his right to the department of  
36 social services or MO HealthNet division of any funds recovered or expected to be recovered to  
37 the extent provided for in this section. All applicants and participants, including a person  
38 authorized by the probate code, shall cooperate with the department of social services, MO  
39 HealthNet division in identifying and providing information to assist the state in pursuing any  
40 third party who may be liable to pay for care and services available under the state's plan for MO  
41 HealthNet benefits as provided in sections 208.151 to 208.159 and sections 208.162 and  
42 208.204. All applicants and participants shall cooperate with the agency in obtaining third-party  
43 resources due to the applicant, participant, or child for whom assistance is claimed. Failure to  
44 cooperate without good cause as determined by the department of social services, MO HealthNet  
45 division in accordance with federally prescribed standards shall render the applicant or  
46 participant ineligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections  
47 208.162 and 208.204. A [recipient] **participant** who has notice or who has actual knowledge  
48 of the department's rights to third-party benefits who receives any third-party benefit or proceeds  
49 for a covered illness or injury is either required to pay the division within sixty days after receipt  
50 of settlement proceeds the full amount of the third-party benefits up to the total MO HealthNet  
51 benefits provided or to place the full amount of the third-party benefits in a trust account for the  
52 benefit of the division pending judicial or administrative determination of the division's right to  
53 third-party benefits.

54           5. Every person, corporation or partnership who acts for or on behalf of a person who  
55 is or was eligible for MO HealthNet benefits under sections 208.151 to 208.159 and sections  
56 208.162 and 208.204 for purposes of pursuing the applicant's or participant's claim which  
57 accrued as a result of a nonoccupational or nonwork-related incident or occurrence resulting in  
58 the payment of MO HealthNet benefits shall notify the MO HealthNet division upon agreeing  
59 to assist such person and further shall notify the MO HealthNet division of any institution of a  
60 proceeding, settlement or the results of the pursuit of the claim and give thirty days' notice before  
61 any judgment, award, or settlement may be satisfied in any action or any claim by the applicant  
62 or participant to recover damages for such injuries, disease, or disability, or benefits arising from  
63 a health insurance program to which the participant may be entitled.

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

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

84           8. The department of social services or MO HealthNet division shall have a lien upon  
85 any moneys to be paid by any insurance company or similar business enterprise, person,  
86 corporation, institution, public agency or private agency in settlement or satisfaction of a  
87 judgment on any claim for injuries or disability or disease benefits arising from a health  
88 insurance program to which the participant may be entitled which resulted in medical expenses  
89 for which the department or MO HealthNet division made payment. This lien shall also be

90 applicable to any moneys which may come into the possession of any attorney who is handling  
91 the claim for injuries, or disability or disease or benefits arising from a health insurance plan to  
92 which the participant may be entitled which resulted in payments made by the department or MO  
93 HealthNet division. In each case, a lien notice shall be served by certified mail or registered  
94 mail, upon the party or parties against whom the applicant or participant has a claim, demand or  
95 cause of action. The lien shall claim the charge and describe the interest the department or MO  
96 HealthNet division has in the claim, demand or cause of action. The lien shall attach to any  
97 verdict or judgment entered and to any money or property which may be recovered on account  
98 of such claim, demand, cause of action or suit from and after the time of the service of the notice.

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

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

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

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

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

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

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

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

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

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

156 13. This section shall be inapplicable to any claim, demand or cause of action arising  
157 under the workers' compensation act, chapter 287, RSMo. From funds recovered pursuant to this  
158 section the federal government shall be paid a portion thereof equal to the proportionate part  
159 originally provided by the federal government to pay for MO HealthNet benefits to the  
160 participant or minor involved. The department or MO HealthNet division shall enforce TEFRA  
161 liens, 42 U.S.C. 1396p, as authorized by federal law and regulation on permanently

162 institutionalized individuals. The department or MO HealthNet division shall have the right to  
163 enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal law and regulation on all other  
164 institutionalized individuals. For the purposes of this subsection, "permanently institutionalized  
165 individuals" includes those people who the department or MO HealthNet division determines  
166 cannot reasonably be expected to be discharged and return home, and "property" includes the  
167 homestead and all other personal and real property in which the participant has sole legal interest  
168 or a legal interest based upon co-ownership of the property which is the result of a transfer of  
169 property for less than the fair market value within thirty months prior to the participant's entering  
170 the nursing facility. The following provisions shall apply to such liens:

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

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

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

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

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

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

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

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

199 (a) The spouse of such individual;

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

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

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

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

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

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

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

230 18. The department director or the director's designee may compromise, settle or waive  
231 any such claim in whole or in part in the interest of the MO HealthNet program.  
232 Notwithstanding any provision in this section to the contrary, the department of social services,

233 MO HealthNet division is not required to seek reimbursement from a liable third party on claims  
234 for which the amount it reasonably expects to recover will be less than the cost of recovery or  
235 for which recovery efforts will not be cost-effective. Cost-effectiveness is determined based on  
236 the following:

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

239 (2) Total funds available for settlement; and

240 (3) An estimate of the cost to the division of pursuing its claim.

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