SECOND REGULAR SESSION

SENATE BILL NO. 1443

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCCREERY.

5740S.01I KRISTINA MARTIN, Secretary

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.

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Section A. Section 208.152, RSMo, is repealed and one new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

208.152. 1. MO HealthNet payments shall be made on
2 behalf of those eligible needy persons as described in
3 section 208.151 who are unable to provide for it in whole or
4 in part, with any payments to be made on the basis of the
5 reasonable cost of the care or reasonable charge for the
6 services as defined and determined by the MO HealthNet
7 division, unless otherwise hereinafter provided, for the
8 following:
9 (1) Inpatient hospital services, except to persons in
10 an institution for mental diseases who are under the age of
11 sixty-five years and over the age of twenty-one years;
12 provided that the MO HealthNet division shall provide
13 through rule and regulation an exception process for
14 coverage of inpatient costs in those cases requiring
15 treatment beyond the seventy-fifth percentile professional
16 activities study (PAS) or the MO HealthNet children's
17 diagnosis length-of-stay schedule; and provided further that
18 the MO HealthNet division shall take into account through

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 its payment system for hospital services the situation of
20 hospitals which serve a disproportionate number of low-
21 income patients;
22 (2) All outpatient hospital services, payments
23 therefor to be in amounts which represent no more than
24 eighty percent of the lesser of reasonable costs or
25 customary charges for such services, determined in
26 accordance with the principles set forth in Title XVIII A
27 and B, Public Law 89-97, 1965 amendments to the federal
28 Social Security Act (42 U.S.C. Section 301, et seq.), but
29 the MO HealthNet division may evaluate outpatient hospital
30 services rendered under this section and deny payment for
31 services which are determined by the MO HealthNet division
32 not to be medically necessary, in accordance with federal
33 law and regulations;
34 (3) Laboratory and X-ray services;
35 (4) Nursing home services for participants, except to
36 persons with more than five hundred thousand dollars equity
37 in their home or except for persons in an institution for
38 mental diseases who are under the age of sixty-five years,
39 when residing in a hospital licensed by the department of
40 health and senior services or a nursing home licensed by the
41 department of health and senior services or appropriate
42 licensing authority of other states or government-owned and -
43 operated institutions which are determined to conform to
44 standards equivalent to licensing requirements in Title XIX
45 of the federal Social Security Act (42 U.S.C. Section **[**301,**]**
46 **1396** et seq.), as amended, for nursing facilities. The MO
47 HealthNet division may recognize through its payment
48 methodology for nursing facilities those nursing facilities
49 which serve a high volume of MO HealthNet patients. The MO
50 HealthNet division when determining the amount of the

51 benefit payments to be made on behalf of persons under the
52 age of twenty-one in a nursing facility may consider nursing
53 facilities furnishing care to persons under the age of
54 twenty-one as a classification separate from other nursing
55 facilities;
56 (5) Nursing home costs for participants receiving
57 benefit payments under subdivision (4) of this subsection
58 for those days, which shall not exceed twelve per any period
59 of six consecutive months, during which the participant is
60 on a temporary leave of absence from the hospital or nursing
61 home, provided that no such participant shall be allowed a
62 temporary leave of absence unless it is specifically
63 provided for in his plan of care. As used in this
64 subdivision, the term "temporary leave of absence" shall
65 include all periods of time during which a participant is
66 away from the hospital or nursing home overnight because he
67 is visiting a friend or relative;
68 (6) Physicians' services, whether furnished in the
69 office, home, hospital, nursing home, or elsewhere;
70 (7) Subject to appropriation, up to twenty visits per
71 year for services limited to examinations, diagnoses,
72 adjustments, and manipulations and treatments of
73 malpositioned articulations and structures of the body
74 provided by licensed chiropractic physicians practicing
75 within their scope of practice. Nothing in this subdivision
76 shall be interpreted to otherwise expand MO HealthNet
77 services;
78 (8) Drugs and medicines when prescribed by a licensed
79 physician, dentist, podiatrist, or an advanced practice
80 registered nurse; except that no payment for drugs and
81 medicines prescribed on and after January 1, 2006, by a
82 licensed physician, dentist, podiatrist, or an advanced

83 practice registered nurse may be made on behalf of any
84 person who qualifies for prescription drug coverage under
85 the provisions of P.L. 108-173;
86 (9) Emergency ambulance services and, effective
87 January 1, 1990, medically necessary transportation to
88 scheduled, physician-prescribed nonelective treatments;
89 (10) Early and periodic screening and diagnosis of
90 individuals who are under the age of twenty-one to ascertain
91 their physical or mental defects, and health care,
92 treatment, and other measures to correct or ameliorate
93 defects and chronic conditions discovered thereby. Such
94 services shall be provided in accordance with the provisions
95 of Section 6403 of P.L. 101-239 and federal regulations
96 promulgated thereunder;
97 (11) Home health care services;
98 (12) Family planning as defined by federal rules and
99 regulations; provided, however, that such family planning
100 services shall not include abortions or any abortifacient
101 drug or device that is used for the purpose of inducing an
102 abortion unless such abortions are certified in writing by a
103 physician to the MO HealthNet agency that, in the
104 physician's professional judgment, the life of the mother
105 would be endangered if the fetus were carried to term;
106 (13) Inpatient psychiatric hospital services for
107 individuals under age twenty-one as defined in Title XIX of
108 the federal Social Security Act (42 U.S.C. Section 1396d, et
109 seq.);
110 (14) Outpatient surgical procedures, including
111 presurgical diagnostic services performed in ambulatory
112 surgical facilities which are licensed by the department of
113 health and senior services of the state of Missouri; except,
114 that such outpatient surgical services shall not include

115 persons who are eligible for coverage under Part B of Title
116 XVIII, Public Law 89-97, 1965 amendments to the federal
117 Social Security Act, as amended, if exclusion of such
118 persons is permitted under Title XIX, Public Law 89-97, 1965
119 amendments to the federal Social Security Act, as amended;
120 (15) Personal care services which are medically
121 oriented tasks having to do with a person's physical
122 requirements, as opposed to housekeeping requirements, which
123 enable a person to be treated by his or her physician on an
124 outpatient rather than on an inpatient or residential basis
125 in a hospital, intermediate care facility, or skilled
126 nursing facility. Personal care services shall be rendered
127 by an individual not a member of the participant's family
128 who is qualified to provide such services where the services
129 are prescribed by a physician in accordance with a plan of
130 treatment and are supervised by a licensed nurse. Persons
131 eligible to receive personal care services shall be those
132 persons who would otherwise require placement in a hospital,
133 intermediate care facility, or skilled nursing facility.
134 Benefits payable for personal care services shall not exceed
135 for any one participant one hundred percent of the average
136 statewide charge for care and treatment in an intermediate
137 care facility for a comparable period of time. Such
138 services, when delivered in a residential care facility or
139 assisted living facility licensed under chapter 198 shall be
140 authorized on a tier level based on the services the
141 resident requires and the frequency of the services. A
142 resident of such facility who qualifies for assistance under
143 section 208.030 shall, at a minimum, if prescribed by a
144 physician, qualify for the tier level with the fewest
145 services. The rate paid to providers for each tier of
146 service shall be set subject to appropriations. Subject to

147 appropriations, each resident of such facility who qualifies
148 for assistance under section 208.030 and meets the level of
149 care required in this section shall, at a minimum, if
150 prescribed by a physician, be authorized up to one hour of
151 personal care services per day. Authorized units of
152 personal care services shall not be reduced or tier level
153 lowered unless an order approving such reduction or lowering
154 is obtained from the resident's personal physician. Such
155 authorized units of personal care services or tier level
156 shall be transferred with such resident if he or she
157 transfers to another such facility. Such provision shall
158 terminate upon receipt of relevant waivers from the federal
159 Department of Health and Human Services. If the Centers for
160 Medicare and Medicaid Services determines that such
161 provision does not comply with the state plan, this
162 provision shall be null and void. The MO HealthNet division
163 shall notify the revisor of statutes as to whether the
164 relevant waivers are approved or a determination of
165 noncompliance is made;
166 (16) Mental health services. The state plan for
167 providing medical assistance under Title XIX of the Social
168 Security Act, 42 U.S.C. Section **[**301**] 1396 et seq.**, as
169 amended, shall include the following mental health services
170 when such services are provided by community mental health
171 facilities operated by the department of mental health or
172 designated by the department of mental health as a community
173 mental health facility or as an alcohol and drug abuse
174 facility or as a child-serving agency within the
175 comprehensive children's mental health service system
176 established in section 630.097. The department of mental
177 health shall establish by administrative rule the definition
178 and criteria for designation as a community mental health

179 facility and for designation as an alcohol and drug abuse
180 facility. Such mental health services shall include:
181 (a) Outpatient mental health services including
182 preventive, diagnostic, therapeutic, rehabilitative, and
183 palliative interventions rendered to individuals in an
184 individual or group setting by a mental health professional
185 in accordance with a plan of treatment appropriately
186 established, implemented, monitored, and revised under the
187 auspices of a therapeutic team as a part of client services
188 management;
189 (b) Clinic mental health services including
190 preventive, diagnostic, therapeutic, rehabilitative, and
191 palliative interventions rendered to individuals in an
192 individual or group setting by a mental health professional
193 in accordance with a plan of treatment appropriately
194 established, implemented, monitored, and revised under the
195 auspices of a therapeutic team as a part of client services
196 management;
197 (c) Rehabilitative mental health and alcohol and drug
198 abuse services including home and community-based
199 preventive, diagnostic, therapeutic, rehabilitative, and
200 palliative interventions rendered to individuals in an
201 individual or group setting by a mental health or alcohol
202 and drug abuse professional in accordance with a plan of
203 treatment appropriately established, implemented, monitored,
204 and revised under the auspices of a therapeutic team as a
205 part of client services management. As used in this
206 section, mental health professional and alcohol and drug
207 abuse professional shall be defined by the department of
208 mental health pursuant to duly promulgated rules. With
209 respect to services established by this subdivision, the
210 department of social services, MO HealthNet division, shall

211 enter into an agreement with the department of mental
212 health. Matching funds for outpatient mental health
213 services, clinic mental health services, and rehabilitation
214 services for mental health and alcohol and drug abuse shall
215 be certified by the department of mental health to the MO
216 HealthNet division. The agreement shall establish a
217 mechanism for the joint implementation of the provisions of
218 this subdivision. In addition, the agreement shall
219 establish a mechanism by which rates for services may be
220 jointly developed;
221 (17) Such additional services as defined by the MO
222 HealthNet division to be furnished under waivers of federal
223 statutory requirements as provided for and authorized by the
224 federal Social Security Act (42 U.S.C. Section 301, et seq.)
225 subject to appropriation by the general assembly;
226 (18) The services of an advanced practice registered
227 nurse with a collaborative practice agreement to the extent
228 that such services are provided in accordance with chapters
229 334 and 335, and regulations promulgated thereunder;
230 (19) Nursing home costs for participants receiving
231 benefit payments under subdivision (4) of this subsection to
232 reserve a bed for the participant in the nursing home during
233 the time that the participant is absent due to admission to
234 a hospital for services which cannot be performed on an
235 outpatient basis, subject to the provisions of this
236 subdivision:
237 (a) The provisions of this subdivision shall apply
238 only if:
239 a. The occupancy rate of the nursing home is at or
240 above ninety-seven percent of MO HealthNet certified
241 licensed beds, according to the most recent quarterly census
242 provided to the department of health and senior services

243 which was taken prior to when the participant is admitted to
244 the hospital; and
245 b. The patient is admitted to a hospital for a medical
246 condition with an anticipated stay of three days or less;
247 (b) The payment to be made under this subdivision
248 shall be provided for a maximum of three days per hospital
249 stay;
250 (c) For each day that nursing home costs are paid on
251 behalf of a participant under this subdivision during any
252 period of six consecutive months such participant shall,
253 during the same period of six consecutive months, be
254 ineligible for payment of nursing home costs of two
255 otherwise available temporary leave of absence days provided
256 under subdivision (5) of this subsection; and
257 (d) The provisions of this subdivision shall not apply
258 unless the nursing home receives notice from the participant
259 or the participant's responsible party that the participant
260 intends to return to the nursing home following the hospital
261 stay. If the nursing home receives such notification and
262 all other provisions of this subsection have been satisfied,
263 the nursing home shall provide notice to the participant or
264 the participant's responsible party prior to release of the
265 reserved bed;
266 (20) Prescribed medically necessary durable medical
267 equipment. An electronic web-based prior authorization
268 system using best medical evidence and care and treatment
269 guidelines consistent with national standards shall be used
270 to verify medical need;
271 (21) Hospice care. As used in this subdivision, the
272 term "hospice care" means a coordinated program of active
273 professional medical attention within a home, outpatient and
274 inpatient care which treats the terminally ill patient and

275 family as a unit, employing a medically directed
276 interdisciplinary team. The program provides relief of
277 severe pain or other physical symptoms and supportive care
278 to meet the special needs arising out of physical,
279 psychological, spiritual, social, and economic stresses
280 which are experienced during the final stages of illness,
281 and during dying and bereavement and meets the Medicare
282 requirements for participation as a hospice as are provided
283 in 42 CFR Part 418. The rate of reimbursement paid by the
284 MO HealthNet division to the hospice provider for room and
285 board furnished by a nursing home to an eligible hospice
286 patient shall not be less than ninety-five percent of the
287 rate of reimbursement which would have been paid for
288 facility services in that nursing home facility for that
289 patient, in accordance with subsection (c) of Section 6408
290 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);
291 (22) Prescribed medically necessary dental services.
292 Such services shall be subject to appropriations. An
293 electronic web-based prior authorization system using best
294 medical evidence and care and treatment guidelines
295 consistent with national standards shall be used to verify
296 medical need;
297 (23) Prescribed medically necessary optometric
298 services. Such services shall be subject to
299 appropriations. An electronic web-based prior authorization
300 system using best medical evidence and care and treatment
301 guidelines consistent with national standards shall be used
302 to verify medical need;
303 (24) Blood clotting products-related services. For
304 persons diagnosed with a bleeding disorder, as defined in
305 section 338.400, reliant on blood clotting products, as
306 defined in section 338.400, such services include:

307 (a) Home delivery of blood clotting products and
308 ancillary infusion equipment and supplies, including the
309 emergency deliveries of the product when medically necessary;
310 (b) Medically necessary ancillary infusion equipment
311 and supplies required to administer the blood clotting
312 products; and
313 (c) Assessments conducted in the participant's home by
314 a pharmacist, nurse, or local home health care agency
315 trained in bleeding disorders when deemed necessary by the
316 participant's treating physician;
317 (25) **Medically necessary cochlear implants and hearing**
318 **instruments, as defined in section 345.015**;
319 **(26)** The MO HealthNet division shall, by January 1,
320 2008, and annually thereafter, report the status of MO
321 HealthNet provider reimbursement rates as compared to one
322 hundred percent of the Medicare reimbursement rates and
323 compared to the average dental reimbursement rates paid by
324 third-party payors licensed by the state. The MO HealthNet
325 division shall, by July 1, 2008, provide to the general
326 assembly a four-year plan to achieve parity with Medicare
327 reimbursement rates and for third-party payor average dental
328 reimbursement rates. Such plan shall be subject to
329 appropriation and the division shall include in its annual
330 budget request to the governor the necessary funding needed
331 to complete the four-year plan developed under this
332 subdivision.
333 2. Additional benefit payments for medical assistance
334 shall be made on behalf of those eligible needy children,
335 pregnant women and blind persons with any payments to be
336 made on the basis of the reasonable cost of the care or
337 reasonable charge for the services as defined and determined

338 by the MO HealthNet division, unless otherwise hereinafter
339 provided, for the following:
340 (1) Dental services;
341 (2) Services of podiatrists as defined in section
342 330.010;
343 (3) Optometric services as described in section
344 336.010;
345 (4) Orthopedic devices or other prosthetics, including
346 eye glasses, dentures, **[**hearing aids,**]** and wheelchairs;
347 (5) Hospice care. As used in this subdivision, the
348 term "hospice care" means a coordinated program of active
349 professional medical attention within a home, outpatient and
350 inpatient care which treats the terminally ill patient and
351 family as a unit, employing a medically directed
352 interdisciplinary team. The program provides relief of
353 severe pain or other physical symptoms and supportive care
354 to meet the special needs arising out of physical,
355 psychological, spiritual, social, and economic stresses
356 which are experienced during the final stages of illness,
357 and during dying and bereavement and meets the Medicare
358 requirements for participation as a hospice as are provided
359 in 42 CFR Part 418. The rate of reimbursement paid by the
360 MO HealthNet division to the hospice provider for room and
361 board furnished by a nursing home to an eligible hospice
362 patient shall not be less than ninety-five percent of the
363 rate of reimbursement which would have been paid for
364 facility services in that nursing home facility for that
365 patient, in accordance with subsection (c) of Section 6408
366 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);
367 (6) Comprehensive day rehabilitation services
368 beginning early posttrauma as part of a coordinated system
369 of care for individuals with disabling impairments.

370 Rehabilitation services must be based on an individualized,
371 goal-oriented, comprehensive and coordinated treatment plan
372 developed, implemented, and monitored through an
373 interdisciplinary assessment designed to restore an
374 individual to optimal level of physical, cognitive, and
375 behavioral function. The MO HealthNet division shall
376 establish by administrative rule the definition and criteria
377 for designation of a comprehensive day rehabilitation
378 service facility, benefit limitations and payment
379 mechanism. Any rule or portion of a rule, as that term is
380 defined in section 536.010, that is created under the
381 authority delegated in this subdivision shall become
382 effective only if it complies with and is subject to all of
383 the provisions of chapter 536 and, if applicable, section
384 536.028. This section and chapter 536 are nonseverable and
385 if any of the powers vested with the general assembly
386 pursuant to chapter 536 to review, to delay the effective
387 date, or to disapprove and annul a rule are subsequently
388 held unconstitutional, then the grant of rulemaking
389 authority and any rule proposed or adopted after August 28,
390 2005, shall be invalid and void.
391 3. The MO HealthNet division may require any
392 participant receiving MO HealthNet benefits to pay part of
393 the charge or cost until July 1, 2008, and an additional
394 payment after July 1, 2008, as defined by rule duly
395 promulgated by the MO HealthNet division, for all covered
396 services except for those services covered under
397 subdivisions (15) and (16) of subsection 1 of this section
398 and sections 208.631 to 208.657 to the extent and in the
399 manner authorized by Title XIX of the federal Social
400 Security Act (42 U.S.C. Section 1396, et seq.) and
401 regulations thereunder. When substitution of a generic drug

402 is permitted by the prescriber according to section 338.056,
403 and a generic drug is substituted for a name-brand drug, the
404 MO HealthNet division may not lower or delete the
405 requirement to make a co-payment pursuant to regulations of
406 Title XIX of the federal Social Security Act. A provider of
407 goods or services described under this section must collect
408 from all participants the additional payment that may be
409 required by the MO HealthNet division under authority
410 granted herein, if the division exercises that authority, to
411 remain eligible as a provider. Any payments made by
412 participants under this section shall be in addition to and
413 not in lieu of payments made by the state for goods or
414 services described herein except the participant portion of
415 the pharmacy professional dispensing fee shall be in
416 addition to and not in lieu of payments to pharmacists. A
417 provider may collect the co-payment at the time a service is
418 provided or at a later date. A provider shall not refuse to
419 provide a service if a participant is unable to pay a
420 required payment. If it is the routine business practice of
421 a provider to terminate future services to an individual
422 with an unclaimed debt, the provider may include uncollected
423 co-payments under this practice. Providers who elect not to
424 undertake the provision of services based on a history of
425 bad debt shall give participants advance notice and a
426 reasonable opportunity for payment. A provider,
427 representative, employee, independent contractor, or agent
428 of a pharmaceutical manufacturer shall not make co-payment
429 for a participant. This subsection shall not apply to other
430 qualified children, pregnant women, or blind persons. If
431 the Centers for Medicare and Medicaid Services does not
432 approve the MO HealthNet state plan amendment submitted by
433 the department of social services that would allow a

434 provider to deny future services to an individual with
435 uncollected co-payments, the denial of services shall not be
436 allowed. The department of social services shall inform
437 providers regarding the acceptability of denying services as
438 the result of unpaid co-payments.
439 4. The MO HealthNet division shall have the right to
440 collect medication samples from participants in order to
441 maintain program integrity.
442 5. Reimbursement for obstetrical and pediatric
443 services under subdivision (6) of subsection 1 of this
444 section shall be timely and sufficient to enlist enough
445 health care providers so that care and services are
446 available under the state plan for MO HealthNet benefits at
447 least to the extent that such care and services are
448 available to the general population in the geographic area,
449 as required under subparagraph (a)(30)(A) of 42 U.S.C.
450 Section 1396a and federal regulations promulgated thereunder.
451 6. Beginning July 1, 1990, reimbursement for services
452 rendered in federally funded health centers shall be in
453 accordance with the provisions of subsection 6402(c) and
454 Section 6404 of P.L. 101-239 (Omnibus Budget Reconciliation
455 Act of 1989) and federal regulations promulgated thereunder.
456 7. Beginning July 1, 1990, the department of social
457 services shall provide notification and referral of children
458 below age five, and pregnant, breast-feeding, or postpartum
459 women who are determined to be eligible for MO HealthNet
460 benefits under section 208.151 to the special supplemental
461 food programs for women, infants and children administered
462 by the department of health and senior services. Such
463 notification and referral shall conform to the requirements
464 of Section 6406 of P.L. 101-239 and regulations promulgated
465 thereunder.

466 8. Providers of long-term care services shall be
467 reimbursed for their costs in accordance with the provisions
468 of Section 1902 (a)(13)(A) of the Social Security Act, 42
469 U.S.C. Section 1396a, as amended, and regulations
470 promulgated thereunder.
471 9. Reimbursement rates to long-term care providers
472 with respect to a total change in ownership, at arm's
473 length, for any facility previously licensed and certified
474 for participation in the MO HealthNet program shall not
475 increase payments in excess of the increase that would
476 result from the application of Section 1902 (a)(13)(C) of
477 the Social Security Act, 42 U.S.C. Section 1396a (a)(13)(C).
478 10. The MO HealthNet division may enroll qualified
479 residential care facilities and assisted living facilities,
480 as defined in chapter 198, as MO HealthNet personal care
481 providers.
482 11. Any income earned by individuals eligible for
483 certified extended employment at a sheltered workshop under
484 chapter 178 shall not be considered as income for purposes
485 of determining eligibility under this section.
486 12. If the Missouri Medicaid audit and compliance unit
487 changes any interpretation or application of the
488 requirements for reimbursement for MO HealthNet services
489 from the interpretation or application that has been applied
490 previously by the state in any audit of a MO HealthNet
491 provider, the Missouri Medicaid audit and compliance unit
492 shall notify all affected MO HealthNet providers five
493 business days before such change shall take effect. Failure
494 of the Missouri Medicaid audit and compliance unit to notify
495 a provider of such change shall entitle the provider to
496 continue to receive and retain reimbursement until such
497 notification is provided and shall waive any liability of

498 such provider for recoupment or other loss of any payments
499 previously made prior to the five business days after such
500 notice has been sent. Each provider shall provide the
501 Missouri Medicaid audit and compliance unit a valid email
502 address and shall agree to receive communications
503 electronically. The notification required under this
504 section shall be delivered in writing by the United States
505 Postal Service or electronic mail to each provider.

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

509 14. Beginning July 1, 2016, and subject to
510 appropriations, providers of behavioral, social, and
511 psychophysiological services for the prevention, treatment,
512 or management of physical health problems shall be
513 reimbursed utilizing the behavior assessment and
514 intervention reimbursement codes 96150 to 96154 or their
515 successor codes under the Current Procedural Terminology
516 (CPT) coding system. Providers eligible for such
517 reimbursement shall include psychologists.

518 15. There shall be no payments made under this section
519 for gender transition surgeries, cross-sex hormones, or
520 puberty-blocking drugs, as such terms are defined in section
521 191.1720, for the purpose of a gender transition.

✔