

FIRST REGULAR SESSION

# SENATE BILL NO. 263

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDDLE.

Read 1st time January 9, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1142S.011

## AN ACT

To repeal section 208.152, RSMo, and to enact in lieu thereof one new section relating to MO HealthNet reimbursement of chiropractic services.

*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Section A. Section 208.152, RSMo, is repealed and one new section  
2 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  
2 eligible needy persons as described in section 208.151 who are unable to provide  
3 for it in whole or in part, with any payments to be made on the basis of the  
4 reasonable cost of the care or reasonable charge for the services as defined and  
5 determined by the MO HealthNet division, unless otherwise hereinafter provided,  
6 for the following:

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

16 (2) All outpatient hospital services, payments therefor to be in amounts  
17 which represent no more than eighty percent of the lesser of reasonable costs or  
18 customary charges for such services, determined in accordance with the principles  
19 set forth in Title XVIII A and B, Public Law 89-97, 1965 amendments to the  
20 federal Social Security Act (42 U.S.C. Section 301, et seq.), but the MO HealthNet

21 division may evaluate outpatient hospital services rendered under this section  
22 and deny payment for services which are determined by the MO HealthNet  
23 division not to be medically necessary, in accordance with federal law and  
24 regulations;

25 (3) Laboratory and X-ray services;

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

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

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

52 (7) Drugs and medicines when prescribed by a licensed physician, dentist,  
53 podiatrist, or an advanced practice registered nurse; except that no payment for  
54 drugs and medicines prescribed on and after January 1, 2006, by a licensed  
55 physician, dentist, podiatrist, or an advanced practice registered nurse may be  
56 made on behalf of any person who qualifies for prescription drug coverage under

57 the provisions of P.L. 108-173;

58 (8) Emergency ambulance services and, effective January 1, 1990,  
59 medically necessary transportation to scheduled, physician-prescribed nonelective  
60 treatments;

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

67 (10) Home health care services;

68 (11) Family planning as defined by federal rules and regulations;  
69 provided, however, that such family planning services shall not include abortions  
70 unless such abortions are certified in writing by a physician to the MO HealthNet  
71 agency that, in the physician's professional judgment, the life of the mother would  
72 be endangered if the fetus were carried to term;

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

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

84 (14) Personal care services which are medically oriented tasks having to  
85 do with a person's physical requirements, as opposed to housekeeping  
86 requirements, which enable a person to be treated by his or her physician on an  
87 outpatient rather than on an inpatient or residential basis in a hospital,  
88 intermediate care facility, or skilled nursing facility. Personal care services shall  
89 be rendered by an individual not a member of the participant's family who is  
90 qualified to provide such services where the services are prescribed by a physician  
91 in accordance with a plan of treatment and are supervised by a licensed  
92 nurse. Persons eligible to receive personal care services shall be those persons

93 who would otherwise require placement in a hospital, intermediate care facility,  
94 or skilled nursing facility. Benefits payable for personal care services shall not  
95 exceed for any one participant one hundred percent of the average statewide  
96 charge for care and treatment in an intermediate care facility for a comparable  
97 period of time. Such services, when delivered in a residential care facility or  
98 assisted living facility licensed under chapter 198 shall be authorized on a tier  
99 level based on the services the resident requires and the frequency of the services.  
100 A resident of such facility who qualifies for assistance under section 208.030  
101 shall, at a minimum, if prescribed by a physician, qualify for the tier level with  
102 the fewest services. The rate paid to providers for each tier of service shall be set  
103 subject to appropriations. Subject to appropriations, each resident of such facility  
104 who qualifies for assistance under section 208.030 and meets the level of care  
105 required in this section shall, at a minimum, if prescribed by a physician, be  
106 authorized up to one hour of personal care services per day. Authorized units of  
107 personal care services shall not be reduced or tier level lowered unless an order  
108 approving such reduction or lowering is obtained from the resident's personal  
109 physician. Such authorized units of personal care services or tier level shall be  
110 transferred with such resident if he or she transfers to another such  
111 facility. Such provision shall terminate upon receipt of relevant waivers from the  
112 federal Department of Health and Human Services. If the Centers for Medicare  
113 and Medicaid Services determines that such provision does not comply with the  
114 state plan, this provision shall be null and void. The MO HealthNet division  
115 shall notify the revisor of statutes as to whether the relevant waivers are  
116 approved or a determination of noncompliance is made;

117 (15) Mental health services. The state plan for providing medical  
118 assistance under Title XIX of the Social Security Act, 42 U.S.C. Section 301, as  
119 amended, shall include the following mental health services when such services  
120 are provided by community mental health facilities operated by the department  
121 of mental health or designated by the department of mental health as a  
122 community mental health facility or as an alcohol and drug abuse facility or as  
123 a child-serving agency within the comprehensive children's mental health service  
124 system established in section 630.097. The department of mental health shall  
125 establish by administrative rule the definition and criteria for designation as a  
126 community mental health facility and for designation as an alcohol and drug  
127 abuse facility. Such mental health services shall include:

128 (a) Outpatient mental health services including preventive, diagnostic,

129 therapeutic, rehabilitative, and palliative interventions rendered to individuals  
130 in an individual or group setting by a mental health professional in accordance  
131 with a plan of treatment appropriately established, implemented, monitored, and  
132 revised under the auspices of a therapeutic team as a part of client services  
133 management;

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

140 (c) Rehabilitative mental health and alcohol and drug abuse services  
141 including home and community-based preventive, diagnostic, therapeutic,  
142 rehabilitative, and palliative interventions rendered to individuals in an  
143 individual or group setting by a mental health or alcohol and drug abuse  
144 professional in accordance with a plan of treatment appropriately established,  
145 implemented, monitored, and revised under the auspices of a therapeutic team  
146 as a part of client services management. As used in this section, mental health  
147 professional and alcohol and drug abuse professional shall be defined by the  
148 department of mental health pursuant to duly promulgated rules. With respect  
149 to services established by this subdivision, the department of social services, MO  
150 HealthNet division, shall enter into an agreement with the department of mental  
151 health. Matching funds for outpatient mental health services, clinic mental  
152 health services, and rehabilitation services for mental health and alcohol and  
153 drug abuse shall be certified by the department of mental health to the MO  
154 HealthNet division. The agreement shall establish a mechanism for the joint  
155 implementation of the provisions of this subdivision. In addition, the agreement  
156 shall establish a mechanism by which rates for services may be jointly developed;

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

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

164 (18) Nursing home costs for participants receiving benefit payments under

165 subdivision (4) of this subsection to reserve a bed for the participant in the  
166 nursing home during the time that the participant is absent due to admission to  
167 a hospital for services which cannot be performed on an outpatient basis, subject  
168 to the provisions of this subdivision:

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

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

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

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

178 (c) For each day that nursing home costs are paid on behalf of a  
179 participant under this subdivision during any period of six consecutive months  
180 such participant shall, during the same period of six consecutive months, be  
181 ineligible for payment of nursing home costs of two otherwise available temporary  
182 leave of absence days provided under subdivision (5) of this subsection; and

183 (d) The provisions of this subdivision shall not apply unless the nursing  
184 home receives notice from the participant or the participant's responsible party  
185 that the participant intends to return to the nursing home following the hospital  
186 stay. If the nursing home receives such notification and all other provisions of  
187 this subsection have been satisfied, the nursing home shall provide notice to the  
188 participant or the participant's responsible party prior to release of the reserved  
189 bed;

190 (19) Prescribed medically necessary durable medical equipment. An  
191 electronic web-based prior authorization system using best medical evidence and  
192 care and treatment guidelines consistent with national standards shall be used  
193 to verify medical need;

194 (20) Hospice care. As used in this subdivision, the term "hospice care"  
195 means a coordinated program of active professional medical attention within a  
196 home, outpatient and inpatient care which treats the terminally ill patient and  
197 family as a unit, employing a medically directed interdisciplinary team. The  
198 program provides relief of severe pain or other physical symptoms and supportive  
199 care to meet the special needs arising out of physical, psychological, spiritual,  
200 social, and economic stresses which are experienced during the final stages of

201 illness, and during dying and bereavement and meets the Medicare requirements  
202 for participation as a hospice as are provided in 42 CFR Part 418. The rate of  
203 reimbursement paid by the MO HealthNet division to the hospice provider for  
204 room and board furnished by a nursing home to an eligible hospice patient shall  
205 not be less than ninety-five percent of the rate of reimbursement which would  
206 have been paid for facility services in that nursing home facility for that patient,  
207 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus  
208 Budget Reconciliation Act of 1989);

209 (21) Prescribed medically necessary dental services. Such services shall  
210 be subject to appropriations. An electronic web-based prior authorization system  
211 using best medical evidence and care and treatment guidelines consistent with  
212 national standards shall be used to verify medical need;

213 (22) Prescribed medically necessary optometric services. Such services  
214 shall be subject to appropriations. An electronic web-based prior authorization  
215 system using best medical evidence and care and treatment guidelines consistent  
216 with national standards shall be used to verify medical need;

217 (23) Blood clotting products-related services. For persons diagnosed with  
218 a bleeding disorder, as defined in section 338.400, reliant on blood clotting  
219 products, as defined in section 338.400, such services include:

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

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

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

228 (24) **Services provided by a chiropractic physician licensed under**  
229 **chapter 331 practicing within his or her scope of practice;**

230 (25) The MO HealthNet division shall, by January 1, 2008, and annually  
231 thereafter, report the status of MO HealthNet provider reimbursement rates as  
232 compared to one hundred percent of the Medicare reimbursement rates and  
233 compared to the average dental reimbursement rates paid by third-party payors  
234 licensed by the state. The MO HealthNet division shall, by July 1, 2008, provide  
235 to the general assembly a four-year plan to achieve parity with Medicare  
236 reimbursement rates and for third-party payor average dental reimbursement

237 rates. Such plan shall be subject to appropriation and the division shall include  
238 in its annual budget request to the governor the necessary funding needed to  
239 complete the four-year plan developed under this subdivision.

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

245           (1) Dental services;

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

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

248           (4) Orthopedic devices or other prosthetics, including eye glasses,  
249 dentures, hearing aids, and wheelchairs;

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

265           (6) Comprehensive day rehabilitation services beginning early posttrauma  
266 as part of a coordinated system of care for individuals with disabling  
267 impairments. Rehabilitation services must be based on an individualized,  
268 goal-oriented, comprehensive and coordinated treatment plan developed,  
269 implemented, and monitored through an interdisciplinary assessment designed  
270 to restore an individual to optimal level of physical, cognitive, and behavioral  
271 function. The MO HealthNet division shall establish by administrative rule the  
272 definition and criteria for designation of a comprehensive day rehabilitation



273 service facility, benefit limitations and payment mechanism. Any rule or portion  
274 of a rule, as that term is defined in section 536.010, that is created under the  
275 authority delegated in this subdivision shall become effective only if it complies  
276 with and is subject to all of the provisions of chapter 536 and, if applicable,  
277 section 536.028. This section and chapter 536 are nonseverable and if any of the  
278 powers vested with the general assembly pursuant to chapter 536 to review, to  
279 delay the effective date, or to disapprove and annul a rule are subsequently held  
280 unconstitutional, then the grant of rulemaking authority and any rule proposed  
281 or adopted after August 28, 2005, shall be invalid and void.

282         3. The MO HealthNet division may require any participant receiving MO  
283 HealthNet benefits to pay part of the charge or cost until July 1, 2008, and an  
284 additional payment after July 1, 2008, as defined by rule duly promulgated by the  
285 MO HealthNet division, for all covered services except for those services covered  
286 under subdivisions (14) and (15) of subsection 1 of this section and sections  
287 208.631 to 208.657 to the extent and in the manner authorized by Title XIX of the  
288 federal Social Security Act (42 U.S.C. Section 1396, et seq.) and regulations  
289 thereunder. When substitution of a generic drug is permitted by the prescriber  
290 according to section 338.056, and a generic drug is substituted for a name-brand  
291 drug, the MO HealthNet division may not lower or delete the requirement to  
292 make a co-payment pursuant to regulations of Title XIX of the federal Social  
293 Security Act. A provider of goods or services described under this section must  
294 collect from all participants the additional payment that may be required by the  
295 MO HealthNet division under authority granted herein, if the division exercises  
296 that authority, to remain eligible as a provider. Any payments made by  
297 participants under this section shall be in addition to and not in lieu of payments  
298 made by the state for goods or services described herein except the participant  
299 portion of the pharmacy professional dispensing fee shall be in addition to and  
300 not in lieu of payments to pharmacists. A provider may collect the co-payment  
301 at the time a service is provided or at a later date. A provider shall not refuse  
302 to provide a service if a participant is unable to pay a required payment. If it is  
303 the routine business practice of a provider to terminate future services to an  
304 individual with an unclaimed debt, the provider may include uncollected  
305 co-payments under this practice. Providers who elect not to undertake the  
306 provision of services based on a history of bad debt shall give participants  
307 advance notice and a reasonable opportunity for payment. A provider,  
308 representative, employee, independent contractor, or agent of a pharmaceutical

309 manufacturer shall not make co-payment for a participant. This subsection shall  
310 not apply to other qualified children, pregnant women, or blind persons. If the  
311 Centers for Medicare and Medicaid Services does not approve the MO HealthNet  
312 state plan amendment submitted by the department of social services that would  
313 allow a provider to deny future services to an individual with uncollected  
314 co-payments, the denial of services shall not be allowed. The department of social  
315 services shall inform providers regarding the acceptability of denying services as  
316 the result of unpaid co-payments.

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

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

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

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

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

341 9. Reimbursement rates to long-term care providers with respect to a total  
342 change in ownership, at arm's length, for any facility previously licensed and  
343 certified for participation in the MO HealthNet program shall not increase  
344 payments in excess of the increase that would result from the application of

345 Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C. Section 1396a  
346 (a)(13)(C).

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

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

353 12. If the Missouri Medicaid audit and compliance unit changes any  
354 interpretation or application of the requirements for reimbursement for MO  
355 HealthNet services from the interpretation or application that has been applied  
356 previously by the state in any audit of a MO HealthNet provider, the Missouri  
357 Medicaid audit and compliance unit shall notify all affected MO HealthNet  
358 providers five business days before such change shall take effect. Failure of the  
359 Missouri Medicaid audit and compliance unit to notify a provider of such change  
360 shall entitle the provider to continue to receive and retain reimbursement until  
361 such notification is provided and shall waive any liability of such provider for  
362 recoupment or other loss of any payments previously made prior to the five  
363 business days after such notice has been sent. Each provider shall provide the  
364 Missouri Medicaid audit and compliance unit a valid email address and shall  
365 agree to receive communications electronically. The notification required under  
366 this section shall be delivered in writing by the United States Postal Service or  
367 electronic mail to each provider.

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

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

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