

FIRST REGULAR SESSION

SENATE BILL NO. 42

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHAPPELLE-NADAL.

Pre-filed December 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

0182S.01I

AN ACT

To repeal sections 208.010 and 208.174, RSMo, and to enact in lieu thereof two new sections relating to eligibility for medical assistance.

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

Section A. Sections 208.010 and 208.174, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 208.010 and 208.174, to
3 read as follows:

208.010. 1. In determining the eligibility of a claimant for public
2 assistance pursuant to this law, it shall be the duty of the division of family
3 services to consider and take into account all facts and circumstances
4 surrounding the claimant, including his or her living conditions, earning capacity,
5 income and resources, from whatever source received, and if from all the facts and
6 circumstances the claimant is not found to be in need, assistance shall be denied.
7 In determining the need of a claimant, the costs of providing medical treatment
8 which may be furnished pursuant to sections 208.151 to 208.158 and 208.162
9 shall be disregarded. The amount of benefits, when added to all other income,
10 resources, support, and maintenance shall provide such persons with reasonable
11 subsistence compatible with decency and health in accordance with the standards
12 developed by the division of family services; provided, when a husband and wife
13 are living together, the combined income and resources of both shall be
14 considered in determining the eligibility of either or both. "Living together" for
15 the purpose of this chapter is defined as including a husband and wife separated
16 for the purpose of obtaining medical care or nursing home care, except that the
17 income of a husband or wife separated for such purpose shall be considered in
18 determining the eligibility of his or her spouse, only to the extent that such
19 income exceeds the amount necessary to meet the needs (as defined by rule or

20 regulation of the division) of such husband or wife living separately. In
21 determining the need of a claimant in federally aided programs there shall be
22 disregarded such amounts per month of earned income in making such
23 determination as shall be required for federal participation by the provisions of
24 the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments
25 thereto. When federal law or regulations require the exemption of other income
26 or resources, the division of family services may provide by rule or regulation the
27 amount of income or resources to be disregarded.

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

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

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

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

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

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

56 (2) The provisions of subdivision (1) of this subsection shall not apply to
57 a transfer, other than a transfer to claimant's spouse, made prior to March 26,
58 1981, when the claimant furnishes convincing evidence that the uncompensated
59 value of the disposed of resource or any part thereof is no longer possessed or
60 owned by the person to whom the resource was transferred;

61 (3) Has received, or whose spouse with whom he or she is living has
62 received, benefits to which he or she was not entitled through misrepresentation
63 or nondisclosure of material facts or failure to report any change in status or
64 correct information with respect to property or income as required by section
65 208.210. A claimant ineligible pursuant to this subsection shall be ineligible for
66 such period of time from the date of discovery as the division of family services
67 may deem proper; or in the case of overpayment of benefits, future benefits may
68 be decreased, suspended or entirely withdrawn for such period of time as the
69 division may deem proper;

70 (4) Owns or possesses resources in the sum of one thousand dollars or
71 more, **except that for eligibility for medical assistance, the resource**
72 **limit shall be two thousand five hundred dollars or more**; provided,
73 however, that if such person is married and living with spouse, he or she, or they,
74 individually or jointly, may own resources not to exceed two thousand dollars,
75 **except that for eligibility for medical assistance, the resource limit**
76 **shall be five thousand dollars or more**; and provided further, that in the
77 case of a temporary assistance for needy families claimant, the provision of this
78 subsection shall not apply;

79 (5) Prior to October 1, 1989, owns or possesses property of any kind or
80 character, excluding amounts placed in an irrevocable prearranged funeral or
81 burial contract under chapter 436, or has an interest in property, of which he or
82 she is the record or beneficial owner, the value of such property, as determined
83 by the division of family services, less encumbrances of record, exceeds
84 twenty-nine thousand dollars, or if married and actually living together with
85 husband or wife, if the value of his or her property, or the value of his or her
86 interest in property, together with that of such husband and wife, exceeds such
87 amount;

88 (6) In the case of temporary assistance for needy families, if the parent,
89 stepparent, and child or children in the home owns or possesses property of any
90 kind or character, or has an interest in property for which he or she is a record
91 or beneficial owner, the value of such property, as determined by the division of

92 family services and as allowed by federal law or regulation, less encumbrances
93 of record, exceeds one thousand dollars, excluding the home occupied by the
94 claimant, amounts placed in an irrevocable prearranged funeral or burial contract
95 under chapter 436, one automobile which shall not exceed a value set forth by
96 federal law or regulation and for a period not to exceed six months, such other
97 real property which the family is making a good-faith effort to sell, if the family
98 agrees in writing with the division of family services to sell such property and
99 from the net proceeds of the sale repay the amount of assistance received during
100 such period. If the property has not been sold within six months, or if eligibility
101 terminates for any other reason, the entire amount of assistance paid during such
102 period shall be a debt due the state;

103 (7) Is an inmate of a public institution, except as a patient in a public
104 medical institution.

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

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

128 consideration for an irrevocable prearranged funeral contract under chapter 436,
129 shall not be taken into account or considered an asset of the beneficiary of the
130 irrevocable prearranged funeral contract.

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

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

139 (2) The spouse of a claimant or person for whom benefits are claimed with
140 whom he or she is living. If the value of such policies exceeds one thousand five
141 hundred dollars, then the total value of such policies may be considered in
142 determining resources; except that, in the case of temporary assistance for needy
143 families, there shall be disregarded any prearranged funeral or burial contract,
144 or any two or more contracts, which provides for the payment of one thousand five
145 hundred dollars or less per family member.

146 6. Beginning September 30, 1989, when determining the eligibility of
147 institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical
148 assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections
149 1396a, et seq., the division of family services shall comply with the provisions of
150 the federal statutes and regulations. As necessary, the division shall by rule or
151 regulation implement the federal law and regulations which shall include but not
152 be limited to the establishment of income and resource standards and
153 limitations. The division shall require:

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

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

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

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

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

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

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

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

181 9. Beginning October 1, 1989, when determining eligibility for assistance
182 pursuant to this chapter there shall be disregarded unless otherwise provided by
183 federal or state statutes the home of the applicant or recipient when the home is
184 providing shelter to the applicant or recipient, or his or her spouse or dependent
185 child. The division of family services shall establish by rule or regulation in
186 conformance with applicable federal statutes and regulations a definition of the
187 home and when the home shall be considered a resource that shall be considered
188 in determining eligibility.

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

196 11. A "community spouse" is defined as being the noninstitutionalized
197 spouse.

198 12. An institutionalized spouse applying for Medicaid and having a spouse
199 living in the community shall be required, to the maximum extent permitted by

200 law, to divert income to such community spouse to raise the community spouse's
201 income to the level of the minimum monthly needs allowance, as described in 42
202 U.S.C. Section 1396r-5. Such diversion of income shall occur before the
203 community spouse is allowed to retain assets in excess of the community spouse
204 protected amount described in 42 U.S.C. Section 1396r-5.

208.174. 1. Within thirty days of August 28, 1992, the director of the
2 department of social services shall apply to the United States Secretary of Health
3 and Human Services for an amendment of the waiver of comparability of services
4 for persons under section 42 U.S.C. 1396a (a)(10)(A)(ii)(VI) to include medical
5 assistance benefits for persons who are defined in 42 U.S.C. 1396 r-5.

6 2. Upon receipt of an amended waiver received pursuant to subsection 1
7 of this section, the director of the department of social services shall, subject to
8 appropriations made for such purpose, promulgate rules and regulations to
9 extend eligibility for medical assistance benefits by applying institutional status
10 to individuals who are at risk of placement in an intermediate care facility or
11 skilled nursing facility licensed pursuant to chapter 198 but who, with the
12 provision of home and community based services, may be cared for at home.

13 3. No rule or portion of a rule promulgated under the authority of this
14 chapter shall become effective unless it has been promulgated pursuant to the
15 provisions of section 536.024.

16 **4. Within thirty days of August 28, 2011, the director of the**
17 **department of social services shall apply to the United States Secretary**
18 **of Health and Human Services for an amendment to the home and**
19 **community-based waiver to extend medical assistance benefits under**
20 **such waiver to persons with incomes up to three hundred percent of**
21 **the federal poverty level. Upon receipt of an amended waiver received**
22 **under this subsection, the director shall, subject to appropriations**
23 **made for such purpose, promulgate rules to extend eligibility for**
24 **medical assistance benefits under the home and community-based**
25 **waiver to persons with incomes up to three hundred percent of the**
26 **federal poverty level.**

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