

FIRST REGULAR SESSION

# HOUSE BILL NO. 209

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WIEMANN.

0589H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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

Section A. Section 208.152, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 208.152, to read as follows:

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

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

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

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

21 (3) Laboratory and X-ray services;

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

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

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

44 (7) **Licensed chiropractic physicians practicing within their scope of practice, as**  
45 **described in chapter 331, may treat and be reimbursed for conditions currently**  
46 **reimbursed under MO HealthNet. Nothing in this subdivision shall expand MO HealthNet**  
47 **or the conditions currently covered under section 208.151;**

48 (8) Drugs and medicines when prescribed by a licensed physician, dentist, podiatrist, or  
49 an advanced practice registered nurse; except that no payment for drugs and medicines  
50 prescribed on and after January 1, 2006, by a licensed physician, dentist, podiatrist, or an  
51 advanced practice registered nurse may be made on behalf of any person who qualifies for  
52 prescription drug coverage under the provisions of P.L. 108-173;

53           ~~[(8)]~~ **(9)** Emergency ambulance services and, effective January 1, 1990, medically  
54 necessary transportation to scheduled, physician-prescribed nonelective treatments;

55           ~~[(9)]~~ **(10)** Early and periodic screening and diagnosis of individuals who are under the  
56 age of twenty-one to ascertain their physical or mental defects, and health care, treatment, and  
57 other measures to correct or ameliorate defects and chronic conditions discovered thereby. Such  
58 services shall be provided in accordance with the provisions of Section 6403 of P.L. 101-239 and  
59 federal regulations promulgated thereunder;

60           ~~[(10)]~~ **(11)** Home health care services;

61           ~~[(11)]~~ **(12)** Family planning as defined by federal rules and regulations; provided,  
62 however, that such family planning services shall not include abortions unless such abortions are  
63 certified in writing by a physician to the MO HealthNet agency that, in the physician's  
64 professional judgment, the life of the mother would be endangered if the fetus were carried to  
65 term;

66           ~~[(12)]~~ **(13)** Inpatient psychiatric hospital services for individuals under age twenty-one  
67 as defined in Title XIX of the federal Social Security Act (42 U.S.C. Section 1396d, et seq.);

68           ~~[(13)]~~ **(14)** Outpatient surgical procedures, including presurgical diagnostic services  
69 performed in ambulatory surgical facilities which are licensed by the department of health and  
70 senior services of the state of Missouri; except, that such outpatient surgical services shall not  
71 include persons who are eligible for coverage under Part B of Title XVIII, Public Law 89-97,  
72 1965 amendments to the federal Social Security Act, as amended, if exclusion of such persons  
73 is permitted under Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security  
74 Act, as amended;

75           ~~[(14)]~~ **(15)** Personal care services which are medically oriented tasks having to do with  
76 a person's physical requirements, as opposed to housekeeping requirements, which enable a  
77 person to be treated by his or her physician on an outpatient rather than on an inpatient or  
78 residential basis in a hospital, intermediate care facility, or skilled nursing facility. Personal care  
79 services shall be rendered by an individual not a member of the participant's family who is  
80 qualified to provide such services where the services are prescribed by a physician in accordance  
81 with a plan of treatment and are supervised by a licensed nurse. Persons eligible to receive  
82 personal care services shall be those persons who would otherwise require placement in a  
83 hospital, intermediate care facility, or skilled nursing facility. Benefits payable for personal care  
84 services shall not exceed for any one participant one hundred percent of the average statewide  
85 charge for care and treatment in an intermediate care facility for a comparable period of time.  
86 Such services, when delivered in a residential care facility or assisted living facility licensed  
87 under chapter 198 shall be authorized on a tier level based on the services the resident requires  
88 and the frequency of the services. A resident of such facility who qualifies for assistance under

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

103 ~~[(15)]~~ **(16)** Mental health services. The state plan for providing medical assistance under  
104 Title XIX of the Social Security Act, 42 U.S.C. Section 301, as amended, shall include the  
105 following mental health services when such services are provided by community mental health  
106 facilities operated by the department of mental health or designated by the department of mental  
107 health as a community mental health facility or as an alcohol and drug abuse facility or as a  
108 child-serving agency within the comprehensive children's mental health service system  
109 established in section 630.097. The department of mental health shall establish by administrative  
110 rule the definition and criteria for designation as a community mental health facility and for  
111 designation as an alcohol and drug abuse facility. Such mental health services shall include:

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

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

122 (c) Rehabilitative mental health and alcohol and drug abuse services including home and  
123 community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions  
124 rendered to individuals in an individual or group setting by a mental health or alcohol and drug

125 abuse professional in accordance with a plan of treatment appropriately established,  
126 implemented, monitored, and revised under the auspices of a therapeutic team as a part of client  
127 services management. As used in this section, mental health professional and alcohol and drug  
128 abuse professional shall be defined by the department of mental health pursuant to duly  
129 promulgated rules. With respect to services established by this subdivision, the department of  
130 social services, MO HealthNet division, shall enter into an agreement with the department of  
131 mental health. Matching funds for outpatient mental health services, clinic mental health  
132 services, and rehabilitation services for mental health and alcohol and drug abuse shall be  
133 certified by the department of mental health to the MO HealthNet division. The agreement shall  
134 establish a mechanism for the joint implementation of the provisions of this subdivision. In  
135 addition, the agreement shall establish a mechanism by which rates for services may be jointly  
136 developed;

137 ~~[(16)]~~ **(17)** Such additional services as defined by the MO HealthNet division to be  
138 furnished under waivers of federal statutory requirements as provided for and authorized by the  
139 federal Social Security Act (42 U.S.C. Section 301, et seq.) subject to appropriation by the  
140 general assembly;

141 ~~[(17)]~~ **(18)** The services of an advanced practice registered nurse with a collaborative  
142 practice agreement to the extent that such services are provided in accordance with chapters 334  
143 and 335, and regulations promulgated thereunder;

144 ~~[(18)]~~ **(19)** Nursing home costs for participants receiving benefit payments under  
145 subdivision (4) of this subsection to reserve a bed for the participant in the nursing home during  
146 the time that the participant is absent due to admission to a hospital for services which cannot  
147 be performed on an outpatient basis, subject to the provisions of this subdivision:

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

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

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

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

157 (c) For each day that nursing home costs are paid on behalf of a participant under this  
158 subdivision during any period of six consecutive months such participant shall, during the same  
159 period of six consecutive months, be ineligible for payment of nursing home costs of two

160 otherwise available temporary leave of absence days provided under subdivision (5) of this  
161 subsection; and

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

168 ~~[(19)]~~ **(20)** Prescribed medically necessary durable medical equipment. An electronic  
169 web-based prior authorization system using best medical evidence and care and treatment  
170 guidelines consistent with national standards shall be used to verify medical need;

171 ~~[(20)]~~ **(21)** Hospice care. As used in this subdivision, the term "hospice care" means a  
172 coordinated program of active professional medical attention within a home, outpatient and  
173 inpatient care which treats the terminally ill patient and family as a unit, employing a medically  
174 directed interdisciplinary team. The program provides relief of severe pain or other physical  
175 symptoms and supportive care to meet the special needs arising out of physical, psychological,  
176 spiritual, social, and economic stresses which are experienced during the final stages of illness,  
177 and during dying and bereavement and meets the Medicare requirements for participation as a  
178 hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO  
179 HealthNet division to the hospice provider for room and board furnished by a nursing home to  
180 an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement  
181 which would have been paid for facility services in that nursing home facility for that patient,  
182 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget  
183 Reconciliation Act of 1989);

184 ~~[(21)]~~ **(22)** Prescribed medically necessary dental services. Such services shall be subject  
185 to appropriations. An electronic web-based prior authorization system using best medical  
186 evidence and care and treatment guidelines consistent with national standards shall be used to  
187 verify medical need;

188 ~~[(22)]~~ **(23)** Prescribed medically necessary optometric services. Such services shall be  
189 subject to appropriations. An electronic web-based prior authorization system using best medical  
190 evidence and care and treatment guidelines consistent with national standards shall be used to  
191 verify medical need;

192 ~~[(23)]~~ **(24)** Blood clotting products-related services. For persons diagnosed with a  
193 bleeding disorder, as defined in section 338.400, reliant on blood clotting products, as defined  
194 in section 338.400, such services include:

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

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

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

202 ~~[(24)]~~ **(25)** The MO HealthNet division shall, by January 1, 2008, and annually  
203 thereafter, report the status of MO HealthNet provider reimbursement rates as compared to one  
204 hundred percent of the Medicare reimbursement rates and compared to the average dental  
205 reimbursement rates paid by third-party payors licensed by the state. The MO HealthNet division  
206 shall, by July 1, 2008, provide to the general assembly a four-year plan to achieve parity with  
207 Medicare reimbursement rates and for third-party payor average dental reimbursement rates.  
208 Such plan shall be subject to appropriation and the division shall include in its annual budget  
209 request to the governor the necessary funding needed to complete the four-year plan developed  
210 under this subdivision.

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

216 (1) Dental services;

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

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

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

221 (5) Hospice care. As used in this subdivision, the term "hospice care" means a  
222 coordinated program of active professional medical attention within a home, outpatient and  
223 inpatient care which treats the terminally ill patient and family as a unit, employing a medically  
224 directed interdisciplinary team. The program provides relief of severe pain or other physical  
225 symptoms and supportive care to meet the special needs arising out of physical, psychological,  
226 spiritual, social, and economic stresses which are experienced during the final stages of illness,  
227 and during dying and bereavement and meets the Medicare requirements for participation as a  
228 hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO  
229 HealthNet division to the hospice provider for room and board furnished by a nursing home to  
230 an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement

231 which would have been paid for facility services in that nursing home facility for that patient,  
232 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget  
233 Reconciliation Act of 1989);

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

248 3. The MO HealthNet division may require any participant receiving MO HealthNet  
249 benefits to pay part of the charge or cost until July 1, 2008, and an additional payment after July  
250 1, 2008, as defined by rule duly promulgated by the MO HealthNet division, for all covered  
251 services except for those services covered under subdivisions ~~[(14)]~~ (15) and ~~[(15)]~~ (16) of  
252 subsection 1 of this section and sections 208.631 to 208.657 to the extent and in the manner  
253 authorized by Title XIX of the federal Social Security Act (42 U.S.C. Section 1396, et seq.) and  
254 regulations thereunder. When substitution of a generic drug is permitted by the prescriber  
255 according to section 338.056, and a generic drug is substituted for a name-brand drug, the MO  
256 HealthNet division may not lower or delete the requirement to make a co-payment pursuant to  
257 regulations of Title XIX of the federal Social Security Act. A provider of goods or services  
258 described under this section must collect from all participants the additional payment that may  
259 be required by the MO HealthNet division under authority granted herein, if the division  
260 exercises that authority, to remain eligible as a provider. Any payments made by participants  
261 under this section shall be in addition to and not in lieu of payments made by the state for goods  
262 or services described herein except the participant portion of the pharmacy professional  
263 dispensing fee shall be in addition to and not in lieu of payments to pharmacists. A provider may  
264 collect the co-payment at the time a service is provided or at a later date. A provider shall not  
265 refuse to provide a service if a participant is unable to pay a required payment. If it is the routine  
266 business practice of a provider to terminate future services to an individual with an unclaimed

267 debt, the provider may include uncollected co-payments under this practice. Providers who elect  
268 not to undertake the provision of services based on a history of bad debt shall give participants  
269 advance notice and a reasonable opportunity for payment. A provider, representative, employee,  
270 independent contractor, or agent of a pharmaceutical manufacturer shall not make co-payment  
271 for a participant. This subsection shall not apply to other qualified children, pregnant women,  
272 or blind persons. If the Centers for Medicare and Medicaid Services does not approve the MO  
273 HealthNet state plan amendment submitted by the department of social services that would allow  
274 a provider to deny future services to an individual with uncollected co-payments, the denial of  
275 services shall not be allowed. The department of social services shall inform providers regarding  
276 the acceptability of denying services as the result of unpaid co-payments.

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

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

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

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

295 8. Providers of long-term care services shall be reimbursed for their costs in accordance  
296 with the provisions of Section 1902 (a)(13)(A) of the Social Security Act, 42 U.S.C. Section  
297 1396a, as amended, and regulations promulgated thereunder.

298 9. Reimbursement rates to long-term care providers with respect to a total change in  
299 ownership, at arm's length, for any facility previously licensed and certified for participation in  
300 the MO HealthNet program shall not increase payments in excess of the increase that would  
301 result from the application of Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C.  
302 Section 1396a (a)(13)(C).

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

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

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

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

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

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