

FIRST REGULAR SESSION

# HOUSE BILL NO. 54

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SATER.

Pre-filed December 4, 2006 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0079L.011

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### AN ACT

To repeal section 208.215, RSMo, and to enact in lieu thereof one new section relating to Medicaid.

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

Section A. Section 208.215, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 208.215, to read as follows:

208.215. 1. Medicaid is payer of last resort unless otherwise specified by law. When any person, corporation, institution, public agency or private agency is liable, either pursuant to contract or otherwise, to a recipient of public assistance on account of personal injury to or disability or disease or benefits arising from a health insurance plan to which the recipient may be entitled, payments made by the department of social services shall be a debt due the state and recoverable from the liable party or recipient for all payments made in behalf of the recipient and the debt due the state shall not exceed the payments made from medical assistance provided under sections 208.151 to 208.158 and section 208.162 and section 208.204 on behalf of the recipient, minor or estate for payments on account of the injury, disease, or disability or benefits arising from a health insurance program to which the recipient may be entitled. **All entities, as defined in section 208.217, shall process and pay all properly submitted Medicaid subrogation claims for a period of two years from the date the service was provided or rendered, regardless of any other timely filing requirement otherwise imposed by such entity.**

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.

15           2. The department of social services may maintain an appropriate action to recover funds  
16 due under this section in the name of the state of Missouri against the person, corporation,  
17 institution, public agency, or private agency liable to the recipient, minor or estate.

18           3. Any recipient, minor, guardian, conservator, personal representative, estate, including  
19 persons entitled under section 537.080, RSMo, to bring an action for wrongful death who  
20 pursues legal rights against a person, corporation, institution, public agency, or private agency  
21 liable to that recipient or minor for injuries, disease or disability or benefits arising from a health  
22 insurance plan to which the recipient may be entitled as outlined in subsection 1 of this section  
23 shall upon actual knowledge that the department of social services has paid medical assistance  
24 benefits as defined by this chapter, promptly notify the department as to the pursuit of such legal  
25 rights.

26           4. Every applicant or recipient by application assigns his **or her** right to the department  
27 of any funds recovered or expected to be recovered to the extent provided for in this section. All  
28 applicants and recipients, including a person authorized by the probate code, shall cooperate with  
29 the department of social services in identifying and providing information to assist the state in  
30 pursuing any third party who may be liable to pay for care and services available under the state's  
31 plan for medical assistance as provided in sections 208.151 to 208.159 and sections 208.162 and  
32 208.204. All applicants and recipients shall cooperate with the agency in obtaining third-party  
33 resources due to the applicant, recipient, or child for whom assistance is claimed. Failure to  
34 cooperate without good cause as determined by the department of social services in accordance  
35 with federally prescribed standards shall render the applicant or recipient ineligible for medical  
36 assistance under sections 208.151 to 208.159 and sections 208.162 and 208.204.

37           5. Every person, corporation or partnership who acts for or on behalf of a person who  
38 is or was eligible for medical assistance under sections 208.151 to 208.159 and sections 208.162  
39 and 208.204 for purposes of pursuing the applicant's or recipient's claim which accrued as a  
40 result of a nonoccupational or nonwork-related incident or occurrence resulting in the payment  
41 of medical assistance benefits shall notify the department upon agreeing to assist such person and  
42 further shall notify the department of any institution of a proceeding, settlement or the results of  
43 the pursuit of the claim and give thirty days' notice before any judgment, award, or settlement  
44 may be satisfied in any action or any claim by the applicant or recipient to recover damages for  
45 such injuries, disease, or disability, or benefits arising from a health insurance program to which  
46 the recipient may be entitled.

47           6. Every recipient, minor, guardian, conservator, personal representative, estate,  
48 including persons entitled under section 537.080, RSMo, to bring an action for wrongful death,  
49 or his **or her** attorney or legal representative shall promptly notify the department of any  
50 recovery from a third party and shall immediately reimburse the department from the proceeds

51 of any settlement, judgment, or other recovery in any action or claim initiated against any such  
52 third party.

53 7. The department director shall have a right to recover the amount of payments made  
54 to a provider under this chapter because of an injury, disease, or disability, or benefits arising  
55 from a health insurance plan to which the recipient may be entitled for which a third party is or  
56 may be liable in contract, tort or otherwise under law or equity. **Upon request by the division  
57 of medical services, all third-party payers shall provide the division with information  
58 contained in a 270/271 Health Care Eligibility Benefit Inquiry and Response standard  
59 transaction mandated under the federal Health Insurance Portability and Accountability  
60 Act of 1996, as amended.**

61 8. The department of social services shall have a lien upon any moneys to be paid by any  
62 insurance company or similar business enterprise, person, corporation, institution, public agency  
63 or private agency in settlement or satisfaction of a judgment on any claim for injuries or  
64 disability or disease benefits arising from a health insurance program to which the recipient may  
65 be entitled which resulted in medical expenses for which the department made payment. This  
66 lien shall also be applicable to any moneys which may come into the possession of any attorney  
67 who is handling the claim for injuries, or disability or disease or benefits arising from a health  
68 insurance plan to which the recipient may be entitled which resulted in payments made by the  
69 department. In each case, a lien notice shall be served by certified mail or registered mail, upon  
70 the party or parties against whom the applicant or recipient has a claim, demand or cause of  
71 action. The lien shall claim the charge and describe the interest the department has in the claim,  
72 demand or cause of action. The lien shall attach to any verdict or judgment entered and to any  
73 money or property which may be recovered on account of such claim, demand, cause of action  
74 or suit from and after the time of the service of the notice.

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

83 (1) The amount of the charge sought to be enforced against the recovery when expressed  
84 as a percentage of the gross amount of the recovery; the amount of the charge sought to be  
85 enforced against the recovery when expressed as a percentage of the amount obtained by  
86 subtracting from the gross amount of the recovery the total attorney's fees and other costs

87 incurred by the recipient incident to the recovery; and whether the department should, as a matter  
88 of fairness and equity, bear its proportionate share of the fees and costs incurred to generate the  
89 recovery from which the charge is sought to be satisfied;

90 (2) The amount, if any, of the attorney's fees and other costs incurred by the recipient  
91 incident to the recovery and paid by the recipient up to the time of recovery, and the amount of  
92 such fees and costs remaining unpaid at the time of recovery;

93 (3) The total hospital, doctor and other medical expenses incurred for care and treatment  
94 of the injury to the date of recovery therefor, the portion of such expenses theretofore paid by the  
95 recipient, by insurance provided by the recipient, and by the department, and the amount of such  
96 previously incurred expenses which remain unpaid at the time of recovery and by whom such  
97 incurred, unpaid expenses are to be paid;

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

102 (5) The age of the recipient and of persons dependent for support upon the recipient, the  
103 nature and permanency of the recipient's injuries as they affect not only the future employability  
104 and education of the recipient but also the reasonably necessary and foreseeable future material,  
105 maintenance, medical rehabilitative and training needs of the recipient, the cost of such  
106 reasonably necessary and foreseeable future needs, and the resources available to meet such  
107 needs and pay such costs;

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

110 10. The burden of producing evidence sufficient to support the exercise by the court of  
111 its discretion to reduce the amount of a proven charge sought to be enforced against the recovery  
112 shall rest with the party seeking such reduction.

113 11. The court may reduce and apportion the department's lien proportionate to the  
114 recovery of the claimant. The court may consider the nature and extent of the injury, economic  
115 and noneconomic loss, settlement offers, comparative negligence as it applies to the case at hand,  
116 hospital costs, physician costs, and all other appropriate costs. The department shall pay its pro  
117 rata share of the attorney's fees based on the department's lien as it compares to the total  
118 settlement agreed upon. This section shall not affect the priority of an attorney's lien under  
119 section 484.140, RSMo. The charges of the department described in this section, however, shall  
120 take priority over all other liens and charges existing under the laws of the state of Missouri with  
121 the exception of the attorney's lien under such statute.

122           12. Whenever the department of social services has a statutory charge under this section  
123 against a recovery for damages incurred by a recipient because of its advancement of any  
124 assistance, such charge shall not be satisfied out of any recovery until the attorney's claim for fees  
125 is satisfied, irrespective of whether or not an action based on recipient's claim has been filed in  
126 court. Nothing herein shall prohibit the director from entering into a compromise agreement  
127 with any recipient, after consideration of the factors in subsections 9 to 13 of this section.

128           13. This section shall be inapplicable to any claim, demand or cause of action arising  
129 under the workers' compensation act, chapter 287, RSMo. From funds recovered pursuant to this  
130 section the federal government shall be paid a portion thereof equal to the proportionate part  
131 originally provided by the federal government to pay for medical assistance to the recipient or  
132 minor involved. The department shall enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by  
133 federal law and regulation on permanently institutionalized individuals. The department shall  
134 have the right to enforce TEFRA liens, 42 U.S.C. 1396p, as authorized by federal law and  
135 regulation on all other institutionalized individuals. For the purposes of this subsection,  
136 "permanently institutionalized individuals" includes those people who the department determines  
137 cannot reasonably be expected to be discharged and return home, and "property" includes the  
138 homestead and all other personal and real property in which the recipient has sole legal interest  
139 or a legal interest based upon co-ownership of the property which is the result of a transfer of  
140 property for less than the fair market value within thirty months prior to the recipient's entering  
141 the nursing facility. The following provisions shall apply to such liens:

142           (1) The lien shall be for the debt due the state for medical assistance paid or to be paid  
143 on behalf of a recipient. The amount of the lien shall be for the full amount due the state at the  
144 time the lien is enforced;

145           (2) The director of the department or the director's designee shall file for record, with the  
146 recorder of deeds of the county in which any real property of the recipient is situated, a written  
147 notice of the lien. The notice of lien shall contain the name of the recipient and a description of  
148 the real estate. The recorder shall note the time of receiving such notice, and shall record and  
149 index the notice of lien in the same manner as deeds of real estate are required to be recorded and  
150 indexed. The director or the director's designee may release or discharge all or part of the lien  
151 and notice of the release shall also be filed with the recorder;

152           (3) No such lien may be imposed against the property of any individual prior to his death  
153 on account of medical assistance paid except:

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

155           a. Who is an inpatient in a nursing facility, intermediate care facility for the mentally  
156 retarded, or other medical institution, if such individual is required, as a condition of receiving

157 services in such institution, to spend for costs of medical care all but a minimal amount of his  
158 **or her** income required for personal needs; and

159 b. With respect to whom the director of the department of social services or the director's  
160 designee determines, after notice and opportunity for hearing, that he cannot reasonably be  
161 expected to be discharged from the medical institution and to return home. The hearing, if  
162 requested, shall proceed under the provisions of chapter 536, RSMo, before a hearing officer  
163 designated by the director of the department of social services; or

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

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

168 (a) The spouse of such individual;

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

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

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

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

180 15. Application for and acceptance of medical assistance under this chapter shall  
181 constitute an assignment to the department of social services of any rights to support for the  
182 purpose of medical care as determined by a court or administrative order and of any other rights  
183 to payment for medical care.

184 16. All recipients of benefits as defined in this chapter shall cooperate with the state by  
185 reporting to the division of family services or the division of medical services, within thirty days,  
186 any occurrences where an injury to their persons or to a member of a household who receives  
187 medical assistance is sustained, on such form or forms as provided by the division of family  
188 services or the division of medical services.

189 17. If a person fails to comply with the provision of any judicial or administrative decree  
190 or temporary order requiring that person to maintain medical insurance on or be responsible for  
191 medical expenses for a dependent child, spouse, or ex-spouse, in addition to other remedies  
192 available, that person shall be liable to the state for the entire cost of the medical care provided

193 pursuant to eligibility under any public assistance program on behalf of that dependent child,  
194 spouse, or ex-spouse during the period for which the required medical care was provided. Where  
195 a duty of support exists and no judicial or administrative decree or temporary order for support  
196 has been entered, the person owing the duty of support shall be liable to the state for the entire  
197 cost of the medical care provided on behalf of the dependent child or spouse to whom the duty  
198 of support is owed.

199           18. The department director or [his] **the director's** designee may compromise, settle or  
200 waive any such claim in whole or in part in the interest of the medical assistance program.

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