

SECOND REGULAR SESSION

HOUSE BILL NO. 2226

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE APPELBAUM.

4827H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 191.905, RSMo, and to enact in lieu thereof one new section relating to the MO HealthNet fraud reimbursement fund.

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

Section A. Section 191.905, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 191.905, to read as follows:

191.905. 1. No health care provider shall knowingly make or cause to be made a false statement or false representation of a material fact in order to receive a health care payment, including but not limited to:

(1) Knowingly presenting to a health care payer a claim for a health care payment that falsely represents that the health care for which the health care payment is claimed was medically necessary, if in fact it was not;

(2) Knowingly concealing the occurrence of any event affecting an initial or continued right under a medical assistance program to have a health care payment made by a health care payer for providing health care;

(3) Knowingly concealing or failing to disclose any information with the intent to obtain a health care payment to which the health care provider or any other health care provider is not entitled, or to obtain a health care payment in an amount greater than that which the health care provider or any other health care provider is entitled;

(4) Knowingly presenting a claim to a health care payer that falsely indicates that any particular health care was provided to a person or persons, if in fact health care of lesser value than that described in the claim was provided.

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.

17 2. No person shall knowingly solicit or receive any remuneration, including any
18 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind in
19 return for:

20 (1) Referring another person to a health care provider for the furnishing or arranging
21 for the furnishing of any health care; or

22 (2) Purchasing, leasing, ordering or arranging for or recommending purchasing,
23 leasing or ordering any health care.

24 3. No person shall knowingly offer or pay any remuneration, including any kickback,
25 bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to
26 induce such person to refer another person to a health care provider for the furnishing or
27 arranging for the furnishing of any health care.

28 4. Subsections 2 and 3 of this section shall not apply to a discount or other reduction
29 in price obtained by a health care provider if the reduction in price is properly disclosed and
30 appropriately reflected in the claim made by the health care provider to the health care payer,
31 or any amount paid by an employer to an employee for employment in the provision of health
32 care.

33 5. Exceptions to the provisions of subsections 2 and 3 of this section shall be provided
34 for as authorized in 42 U.S.C. Section 1320a-7b(3)(E), as may be from time to time amended,
35 and regulations promulgated pursuant thereto.

36 6. No person shall knowingly abuse a person receiving health care.

37 7. A person who violates subsections 1 to 3 of this section is guilty of a class D felony
38 upon his or her first conviction, and shall be guilty of a class B felony upon his or her second
39 and subsequent convictions. Any person who has been convicted of such violations shall be
40 referred to the Office of Inspector General within the United States Department of Health and
41 Human Services. The person so referred shall be subject to the penalties provided for under
42 42 U.S.C. Chapter 7, Subchapter XI, Section 1320a-7. A prior conviction shall be pleaded
43 and proven as provided by section 558.021. A person who violates subsection 6 of this
44 section shall be guilty of a class D felony, unless the act involves no physical, sexual or
45 emotional harm or injury and the value of the property involved is less than five hundred
46 dollars, in which event a violation of subsection 6 of this section is a class A misdemeanor.

47 8. Any natural person who willfully prevents, obstructs, misleads, delays, or attempts
48 to prevent, obstruct, mislead, or delay the communication of information or records relating to
49 a violation of sections 191.900 to 191.910 is guilty of a class E felony.

50 9. Each separate false statement or false representation of a material fact proscribed
51 by subsection 1 of this section or act proscribed by subsection 2 or 3 of this section shall
52 constitute a separate offense and a separate violation of this section, whether or not made at

53 the same or different times, as part of the same or separate episodes, as part of the same
54 scheme or course of conduct, or as part of the same claim.

55 10. In a prosecution pursuant to subsection 1 of this section, circumstantial evidence
56 may be presented to demonstrate that a false statement or claim was knowingly made. Such
57 evidence of knowledge may include but shall not be limited to the following:

58 (1) A claim for a health care payment submitted with the health care provider's actual,
59 facsimile, stamped, typewritten or similar signature on the claim for health care payment;

60 (2) A claim for a health care payment submitted by means of computer billing tapes
61 or other electronic means;

62 (3) A course of conduct involving other false claims submitted to this or any other
63 health care payer.

64 11. Any person convicted of a violation of this section, in addition to any fines,
65 penalties or sentences imposed by law, shall be required to make restitution to the federal and
66 state governments, in an amount at least equal to that unlawfully paid to or by the person, and
67 shall be required to reimburse the reasonable costs attributable to the investigation and
68 prosecution pursuant to sections 191.900 to 191.910. All of such restitution shall be paid and
69 deposited to the credit of the "MO HealthNet Fraud Reimbursement Fund", which is hereby
70 established in the state treasury. Moneys in the MO HealthNet fraud reimbursement fund
71 shall be divided and appropriated to the federal government and affected state agencies in
72 order to refund moneys falsely obtained from the federal and state governments. All of such
73 cost reimbursements attributable to the investigation and prosecution shall be paid and
74 deposited to the credit of the "MO HealthNet Fraud Prosecution Revolving Fund", which is
75 hereby established in the state treasury. Moneys in the MO HealthNet fraud prosecution
76 revolving fund may be appropriated to the attorney general, or to any prosecuting or circuit
77 attorney who has successfully prosecuted an action for a violation of sections 191.900 to
78 191.910 and been awarded such costs of prosecution, in order to defray the costs of the
79 attorney general and any such prosecuting or circuit attorney in connection with their duties
80 provided by sections 191.900 to 191.910. No moneys shall be paid into the MO HealthNet
81 fraud ~~protection~~ **prosecution** revolving fund pursuant to this subsection unless the attorney
82 general or appropriate prosecuting or circuit attorney shall have commenced a prosecution
83 pursuant to this section, and the court finds in its discretion that payment of attorneys' fees
84 and investigative costs is appropriate under all the circumstances, and the attorney general
85 and prosecuting or circuit attorney shall prove to the court those expenses which were
86 reasonable and necessary to the investigation and prosecution of such case, and the court
87 approves such expenses as being reasonable and necessary. Any moneys remaining in the
88 MO HealthNet fraud reimbursement fund after division and appropriation to the federal
89 government and affected state agencies shall be used to increase MO HealthNet provider

90 reimbursement until it is at least one hundred percent of the Medicare provider
91 reimbursement rate for comparable services **or for the employment of additional full-**
92 **time employees for the department of social services.** The provisions of section 33.080
93 notwithstanding, moneys in the MO HealthNet fraud prosecution revolving fund shall not
94 lapse at the end of the biennium.

95 12. A person who violates subsections 1 to 3 of this section shall be liable for a civil
96 penalty of not less than five thousand dollars and not more than ten thousand dollars for each
97 separate act in violation of such subsections, plus three times the amount of damages which
98 the state and federal government sustained because of the act of that person, except that the
99 court may assess not more than two times the amount of damages which the state and federal
100 government sustained because of the act of the person, if the court finds:

101 (1) The person committing the violation of this section furnished personnel employed
102 by the attorney general and responsible for investigating violations of sections 191.900 to
103 191.910 with all information known to such person about the violation within thirty days after
104 the date on which the defendant first obtained the information;

105 (2) Such person fully cooperated with any government investigation of such
106 violation; and

107 (3) At the time such person furnished the personnel ~~[of]~~ **employed by** the attorney
108 general with the information about the violation, no criminal prosecution, civil action, or
109 administrative action had commenced with respect to such violation, and the person did not
110 have actual knowledge of the existence of an investigation into such violation.

111 13. Upon conviction pursuant to this section, the prosecution authority shall provide
112 written notification of the conviction to all regulatory or disciplinary agencies with authority
113 over the conduct of the defendant health care provider.

114 14. The attorney general may bring a civil action against any person who shall receive
115 a health care payment as a result of a false statement or false representation of a material fact
116 made or caused to be made by that person. The person shall be liable for up to double the
117 amount of all payments received by that person based upon the false statement or false
118 representation of a material fact, and the reasonable costs attributable to the prosecution of the
119 civil action. All such restitution shall be paid and deposited to the credit of the MO HealthNet
120 fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to
121 the credit of the MO HealthNet fraud prosecution revolving fund. No reimbursement of such
122 costs attributable to the prosecution of the civil action shall be made or allowed except with
123 the approval of the court having jurisdiction of the civil action. No civil action provided by
124 this subsection shall be brought if restitution and civil penalties provided by subsections 11
125 and 12 of this section have been previously ordered against the person for the same cause of
126 action.

127 15. Any person who discovers a violation by himself or herself or such person's
128 organization and who reports such information voluntarily before such information is public
129 or known to the attorney general shall not be prosecuted for a criminal violation.

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