

SECOND REGULAR SESSION

# HOUSE BILL NO. 2601

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LEWIS (6).

5456H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 191.900, 191.905, 565.184, and 630.155, RSMo, and to enact in lieu thereof four new sections relating to vulnerable persons, with penalty provisions.

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

Section A. Sections 191.900, 191.905, 565.184, and 630.155, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 191.900, 191.905,  
3 565.184, and 630.155, to read as follows:

191.900. As used in sections 191.900 to 191.910, the following terms mean:

- 2 (1) "Abuse", the infliction of physical, sexual or emotional harm or injury. "Abuse"  
3 includes the taking, obtaining, using, transferring, concealing, appropriating or taking  
4 possession of property of another person without such person's consent;
- 5 (2) "Claim", any attempt to cause a health care payer to make a health care payment;
- 6 (3) "False", wholly or partially untrue. A false statement or false representation of a  
7 material fact means the failure to reveal material facts in a manner which is intended to  
8 deceive a health care payer with respect to a claim;
- 9 (4) "Health care", any service, assistance, care, product, device or thing provided  
10 pursuant to a medical assistance program, or for which payment is requested or received, in  
11 whole or part, pursuant to a medical assistance program;
- 12 (5) "Health care payer", a medical assistance program, or any person reviewing,  
13 adjusting, approving or otherwise handling claims for health care on behalf of or in  
14 connection with a medical assistance program;
- 15 (6) "Health care payment", a payment made, or the right under a medical assistance  
16 program to have a payment made, by a health care payer for a health care service;

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 (7) "Health care provider", any person delivering, or purporting to deliver, any health  
18 care, and including any employee, agent or other representative of such a person, and further  
19 including any employee, representative, or subcontractor of the state of Missouri delivering,  
20 purporting to deliver, or arranging for the delivery of any health care;

21 (8) "Knowing" and "knowingly", that a person, with respect to information:

22 (a) Has actual knowledge of the information;

23 (b) Acts in deliberate ignorance of the truth or falsity of the information; or

24 (c) Acts in reckless disregard of the truth or falsity of the information.

25

26 Use of the terms knowing or knowingly shall be construed to include the term "intentionally",  
27 which means that a person, with respect to information, intended to act in violation of the law;

28 (9) "Medical assistance program", MO HealthNet, or any program to provide or  
29 finance health care to participants which is established pursuant to title 42 of the United States  
30 Code, any successor federal health insurance program, or a waiver granted thereunder. A  
31 medical assistance program may be funded either solely by state funds or by state and federal  
32 funds jointly. The term "medical assistance program" shall include the medical assistance  
33 program provided by section 208.151, et seq., and any state agency or agencies administering  
34 all or any part of such a program;

35 (10) **"Neglect", the failure to provide to a person receiving health care the care,**  
36 **goods, or services that are reasonable and necessary to maintain the physical and mental**  
37 **health of such person when such failure presents either an imminent danger to the**  
38 **health, safety, or welfare of the person or a substantial probability that death or serious**  
39 **physical harm would result;**

40 (11) "Person", a natural person, corporation, partnership, association or any legal  
41 entity.

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

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

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

10 (3) Knowingly concealing or failing to disclose any information with the intent to  
11 obtain a health care payment to which the health care provider or any other health care

12 provider is not entitled, or to obtain a health care payment in an amount greater than that  
13 which the health care provider or any other health care provider is entitled;

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

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 **or neglect** 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 revolving fund pursuant to this subsection unless the attorney general or  
82 appropriate prosecuting or circuit attorney shall have commenced a prosecution pursuant to  
83 this section, and the court finds in its discretion that payment of attorneys' fees and

84 investigative costs is appropriate under all the circumstances, and the attorney general and  
85 prosecuting or circuit attorney shall prove to the court those expenses which were reasonable  
86 and necessary to the investigation and prosecution of such case, and the court approves such  
87 expenses as being reasonable and necessary. Any moneys remaining in the MO HealthNet  
88 fraud reimbursement fund after division and appropriation to the federal government and  
89 affected state agencies shall be used to increase MO HealthNet provider reimbursement until  
90 it is at least one hundred percent of the Medicare provider reimbursement rate for comparable  
91 services. The provisions of section 33.080 notwithstanding, moneys in the MO HealthNet  
92 fraud prosecution revolving fund shall not lapse at the end of the biennium.

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

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

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

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

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

112 14. The attorney general may bring a civil action against any person who shall receive  
113 a health care payment as a result of a false statement or false representation of a material fact  
114 made or caused to be made by that person. The person shall be liable for up to double the  
115 amount of all payments received by that person based upon the false statement or false  
116 representation of a material fact, and the reasonable costs attributable to the prosecution of the  
117 civil action. All such restitution shall be paid and deposited to the credit of the MO HealthNet  
118 fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to  
119 the credit of the MO HealthNet fraud prosecution revolving fund. No reimbursement of such  
120 costs attributable to the prosecution of the civil action shall be made or allowed except with

121 the approval of the court having jurisdiction of the civil action. No civil action provided by  
122 this subsection shall be brought if restitution and civil penalties provided by subsections 11  
123 and 12 of this section have been previously ordered against the person for the same cause of  
124 action.

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

565.184. 1. A person commits the offense of abuse of an elderly person, a person  
2 with a disability, or a vulnerable person if he or she:

3 (1) Purposely engages in conduct involving more than one incident that causes  
4 emotional distress to an elderly person, a person with a disability, or a vulnerable person. The  
5 course of conduct shall be such as would cause a reasonable elderly person, person with a  
6 disability, or vulnerable person to suffer substantial emotional distress; or

7 (2) Intentionally fails to provide care, goods or services to an elderly person, a person  
8 with a disability, or a vulnerable person. The result of the conduct shall be such as would  
9 cause a reasonable elderly person, person with a disability, or vulnerable person to suffer  
10 physical or emotional distress; or

11 (3) Knowingly acts or knowingly fails to act in a manner which results in a  
12 substantial risk to the life, body or health of an elderly person, a person with a disability, or a  
13 vulnerable person.

14 2. The offense of abuse of an elderly person, a person with a disability, or a  
15 vulnerable person is a class [~~A misdemeanor~~] **D felony**. Nothing in this section shall be  
16 construed to mean that an elderly person, a person with a disability, or a vulnerable person is  
17 abused solely because such person chooses to rely on spiritual means through prayer, in lieu  
18 of medical care, for his or her health care, as evidence by such person's explicit consent,  
19 advance directive for health care, or practice.

630.155. 1. A person commits the offense of patient, resident or client abuse or  
2 neglect against any person admitted on a voluntary or involuntary basis to any mental health  
3 facility or mental health program in which people may be civilly detained pursuant to chapter  
4 632, or any patient, resident or client of any residential facility, day program or specialized  
5 service operated, funded or licensed by the department if he knowingly does any of the  
6 following:

7 (1) Beats, strikes or injures any person, patient, resident or client;

8 (2) Mistreats or maltreats, handles or treats any such person, patient, resident or client  
9 in a brutal or inhuman manner;

10 (3) Uses any more force than is reasonably necessary for the proper control, treatment  
11 or management of such person, patient, resident or client;

12           (4) Fails to provide services which are reasonable and necessary to maintain the  
13 physical and mental health of any person, patient, resident or client when such failure presents  
14 either an imminent danger to the health, safety or welfare of the person, patient, resident or  
15 client, or a substantial probability that death or serious physical harm will result.

16           2. Patient, resident or client abuse or neglect is a class A misdemeanor unless  
17 committed under subdivision (2) or (4) of subsection 1 of this section in which case such  
18 abuse or neglect shall be a class ~~E~~ **D** felony.

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