

SECOND REGULAR SESSION

SENATE BILL NO. 639

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Pre-filed December 1, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

3471S.011

AN ACT

To repeal sections 191.900, 191.907, and 191.910, RSMo, and to enact in lieu thereof three new sections relating to MO HealthNet fraud, with penalty provisions.

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

Section A. Sections 191.900, 191.907, and 191.910, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 191.900,
3 191.907, and 191.910, to read as follows:

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

3 (1) "Abuse", the infliction of physical, sexual or emotional harm or
4 injury. "Abuse" includes the taking, obtaining, using, transferring, concealing,
5 appropriating or taking possession of property of another person without such
6 person's consent;

7 (2) "Claim", any attempt to cause a health care payer to make a health
8 care payment;

9 (3) "False", wholly or partially untrue. A false statement or false
10 representation of a material fact means the failure to reveal material facts in a
11 manner which is intended to deceive a health care payer with respect to a claim;

12 (4) "Health care", any service, assistance, care, product, device or thing
13 provided pursuant to a medical assistance program, or for which payment is
14 requested or received, in whole or part, pursuant to a medical assistance
15 program;

16 (5) "Health care payer", a medical assistance program, or any person
17 reviewing, adjusting, approving or otherwise handling claims for health care on
18 behalf of or in connection with a medical assistance program;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (6) "Health care payment", a payment made, or the right under a medical
20 assistance program to have a payment made, by a health care payer for a health
21 care service;

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

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

28 (a) Has actual knowledge of the information;

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

30 or

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

32 [Use of the terms knowing or knowingly shall be construed to include the term
33 "intentionally", which means that a person, with respect to information, intended
34 to act in violation of the law] **No proof of specific intent to defraud is
35 required;**

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

44 (10) "Person", a natural person, corporation, partnership, association or
45 any legal entity.

191.907. 1. [Any person who is the original source of the information used
2 by the attorney general to bring an action under subsection 14 of section 191.905
3 shall receive ten percent of any recovery by the attorney general. As used in this
4 section, "original source of information" means information no part of which has
5 been previously disclosed to or known by the government or public. If the court
6 finds that the person who was the original source of the information used by the
7 attorney general to bring an action under subsection 14 of section 191.905
8 planned, initiated, or participated in the conduct upon which the action is
9 brought, such person shall not be entitled to any percentage of the recovery

10 obtained in such action.

11 2. Any person who is the original source of information about the willful
12 violation by any person of section 36.460, RSMo, shall receive ten percent of the
13 amount of compensation that would have been paid the employee forfeiting his
14 or her position under section 36.460, RSMo, if the employee was found to have
15 acted fraudulently in connection with the state medical assistance program.] **Any**
16 **person may bring a civil action in the name of the state to recover**
17 **losses that the state suffers from a violation of sections 191.900 to**
18 **191.910. In an action brought under this section, a person who violates**
19 **subsections 1 to 3 of section 191.905 is liable as provided by subsection**
20 **10 of section 191.905. The amount of any civil penalty assessed by the**
21 **court under this section shall be reduced by the amount of any civil**
22 **monetary penalty which the person establishes that he or she has paid**
23 **under the laws of the United States for a violation of 31 U.S.C. section**
24 **3729, et seq., as long as such violation is based on the same underlying**
25 **facts upon which the state action was brought. At the time of filing the**
26 **complaint, the person shall deliver a copy of the complaint and written**
27 **disclosure of all material evidence and information the person**
28 **possesses to the state attorney general. The complaint shall be filed in**
29 **camera, shall remain under seal for at least sixty days, and shall not be**
30 **served upon the defendant until the court so orders. The attorney**
31 **general may elect to intervene and proceed with the action within sixty**
32 **days after it receives both the complaint and the material evidence and**
33 **information.**

34 2. The attorney general may, for good cause shown, move the
35 court for an extension of the time during which the complaint remains
36 under seal, as provided by subsection 1 of this section. Any such
37 motion may be supported by affidavits or other submissions in camera.

38 3. Before the expiration of the sixty day period or any extensions
39 obtained under subsection 2 of this section, the attorney general shall:

40 (1) Notify the court and the person initiating the action that it
41 will proceed with the action, in which case the action shall be
42 conducted by the attorney general; or

43 (2) Notify the court that it declines to take over the action, in
44 which case the person bringing the action shall have the right to
45 proceed with the action. If the attorney general so requests, it shall be
46 served with copies of all pleadings filed in the action and shall be

47 supplied with copies of all deposition transcripts at the attorney
48 general's expense. When a person proceeds with the action, the court,
49 without limiting the status and rights of the person initiating the
50 action, may nevertheless permit the attorney general to intervene at a
51 later date upon a showing of good cause.

52 4. When a person files an action under this section, no person
53 other than the attorney general shall intervene or bring a related
54 action based on the facts underlying the pending action.

55 5. If the attorney general elects to proceed with the action, he or
56 she shall have the primary responsibility for conducting the action, and
57 shall not be bound by any act of the person initiating the action. Such
58 person shall have the right to continue as a party to the action, subject
59 to the limitations set forth in subsection 8 of this section.

60 6. The attorney general may voluntarily dismiss the action
61 notwithstanding the objections of the person initiating the action, but
62 only if that person has been notified of and offered the opportunity to
63 participate in a hearing on the motion to dismiss.

64 7. The attorney general may settle the action, notwithstanding
65 the objections of the person initiating the action, but only if that
66 person has been notified of and offered the opportunity to participate
67 in a hearing on the settlement, and if the court determines that the
68 settlement is fair, adequate, and reasonable under the circumstances.

69 8. Upon a showing by the attorney general that unrestricted
70 participation during the course of the litigation by the person initiating
71 the action would interfere with or unduly delay the attorney general's
72 prosecution of the case, or would be repetitious, irrelevant, or unduly
73 harassing, the court may, in its discretion, impose limitations on the
74 person's participation, such as:

- 75 (1) Limiting the number of witnesses the person may call;
76 (2) Limiting the length of the testimony of witnesses;
77 (3) Limiting the person's cross-examination of witnesses; or
78 (4) Otherwise limiting the participation by the person in the
79 litigation.

80 Upon a showing by the defendant that unrestricted participation
81 during the course of the litigation by the person initiating the action
82 would be unduly harassing, or would cause the defendant undue
83 burden or unnecessary expense, the court may limit the participation

84 by the person in the litigation.

85 9. Upon a showing, conducted in camera, that actions of the
86 person initiating the action during discovery would interfere with the
87 attorney general's investigation or prosecution of a criminal or civil
88 matter, the court may stay the discovery by the person initiating the
89 action for not more than sixty days. The court may extend the stay
90 upon a further showing that the attorney general is pursuing the
91 investigation or proceeding with reasonable diligence and the
92 discovery would interfere with the ongoing investigation or proceeding.

93 10. As an alternative to an action authorized by this section, the
94 attorney general may pursue a violation of sections 191.900 to 191.910
95 through any alternate proceeding available to this state. If the
96 attorney general pursues an alternate proceeding, a person who
97 initiated an action under this section shall have equivalent rights in
98 that proceeding to the rights that the person would have had if the
99 action had continued under this section. Findings of fact and
100 conclusions of law that become final in an alternative proceeding shall
101 become conclusive on the parties to an action under this section. For
102 the purposes of this subsection, a finding or conclusion is final if it has
103 been finally determined on appeal to the appropriate court, if the time
104 for filing an appeal with respect to the finding or conclusion has
105 expired, or if the finding or conclusion is not subject to judicial review.

106 11. If the parties to an action filed under this section prevail in
107 the action, the court shall award the person who initiated such action
108 necessary expenses, costs, and, based on the amount of effort involved,
109 the court shall award such person at least fifteen percent of the
110 monetary proceeds resulting from the action or any settlement of the
111 claim. If the attorney general does not proceed with an action, the
112 person who initiates the action receives at least twenty-five percent of
113 the proceeds. A person receiving a payment under this subsection shall
114 also be entitled to receive from the defendant an amount for reasonable
115 expenses, reasonable attorney's fees and costs that the court find to be
116 necessarily incurred. The court's determination of expenses shall only
117 be made after the defendant has been found liable in the action.

118 12. If the court finds an action under this section to be based
119 primarily on disclosure of specific information that was not provided
120 by the person initiating the action, such as information from a criminal,

121 civil, or administrative hearing in a state or federal department or
122 agency, a legislative report, hearing, audit, or investigation, or the
123 news media, and the attorney general proceeds with the action, the
124 court shall award the person initiating the action no more than fifteen
125 percent of the monetary recovery in addition to reasonable attorney's
126 fees, necessary expenses, and costs.

127 13. If the court finds that the person initiating an action under
128 this section planned, initiated, or participated in the conduct upon
129 which the action is brought, the court may reduce or eliminate, as it
130 considers appropriate, the share of the proceeds of the action that the
131 person would otherwise be entitled to receive. A person who pleads
132 guilty to or is found guilty of criminal conduct arising from a violation
133 of sections 191.900 to 191.910 shall not initiate or remain a party to an
134 action under this section and is not entitled to share in the monetary
135 proceeds resulting from the action or any settlement under this section.

136 14. A person other than the attorney general shall not bring an
137 action under this section that is based on allegations or transactions
138 that are already the subject of a civil suit, criminal investigation or
139 prosecution, or an administrative investigation or proceeding to which
140 the state or the federal government is already a party. The court shall
141 dismiss an action brought in violation of this subsection.

142 15. Unless the person is the original source of the information,
143 a person, other than the attorney general, shall not initiate an action
144 under this section based on the public disclosure of allegations or
145 transactions in a criminal, civil, or administrative hearing in a state or
146 federal department or agency, a legislative report, hearing, audit, or
147 investigation, or the news media. The person is the original source if
148 he or she had direct and independent knowledge of the information on
149 which the allegations are based and voluntarily provided the
150 information to the attorney general as part of the filing of an action
151 based on that information under this section.

152 16. The attorney general shall not be liable for any expenses,
153 costs, or attorney's fees that a person incurs in bringing an action
154 under this section. Any amount awarded to a person initiating an
155 action to enforce sections 191.900 to 191.910 is payable solely from the
156 proceeds of the action or settlement.

157 17. If the attorney general initiates an action for a violation of

158 sections 191.900 to 191.910, or assumes control of an action initiated by
159 a person under this section, the attorney general shall be awarded its
160 reasonable attorney's fees, expenses, and costs.

161 18. An action brought under this section shall not be brought
162 more than six years after the date on which the violation was
163 committed, or three years after the date when facts material to the
164 cause of action are known or reasonably known by the attorney
165 general's office or the department of social services, whichever occurs
166 last.

167 19. In any action brought under this section, the state or the
168 person initiating the action shall be required to prove all essential
169 elements of the cause of action, including damages, by a preponderance
170 of the evidence.

191.910. 1. The attorney general shall have authority to investigate
2 alleged or suspected violations of sections 191.900 to 191.910, and shall have all
3 powers provided by sections 407.040 to 407.090, RSMo, in connection with
4 investigations of alleged or suspected violations of sections 191.900 to 191.910,
5 as if the acts enumerated in subsections 1 to 3 of section 191.905 are unlawful
6 acts proscribed by chapter 407, RSMo, provided that if the attorney general
7 exercises such powers, the provisions of section 407.070, RSMo, shall also be
8 applicable; and may exercise all of the powers provided by subsections 1 and 2 of
9 section 578.387, RSMo, in connection with investigations of alleged or suspected
10 violations of sections 191.900 to 191.910, as if the acts enumerated in subsections
11 1 to 3 of section 191.905 involve "public assistance" as defined by section 578.375,
12 RSMo. The attorney general and his or her authorized investigators shall be
13 authorized to serve all subpoenas and civil process related to the enforcement of
14 sections 191.900 to 191.910 and chapter 407, RSMo. In order for the attorney
15 general to commence a state prosecution for violations of sections 191.900 to
16 191.910, the attorney general shall prepare and forward a report of the violations
17 to the appropriate prosecuting attorney. Upon receiving a referral, the
18 prosecuting attorney shall either commence a prosecution based on the report by
19 the filing of a complaint, information, or indictment within sixty days of receipt
20 of said report or shall file a written statement with the attorney general
21 explaining why criminal charges should not be brought. This time period may be
22 extended by the prosecuting attorney with the agreement of the attorney general
23 for an additional sixty days. If the prosecuting attorney commences a criminal

24 prosecution, the attorney general or his designee shall be permitted by the court
25 to participate as a special assistant prosecuting attorney in settlement
26 negotiations and all court proceedings, subject to the authority of the prosecuting
27 attorney, for the purpose of providing such assistance as may be necessary. If the
28 prosecuting attorney fails to commence a prosecution and fails to file a written
29 statement listing the reasons why criminal charges should not be brought within
30 the appropriate time period, or declines to prosecute on the basis of inadequate
31 office resources, the attorney general shall have authority to commence
32 prosecutions for violations of sections 191.900 to 191.910. In cases where a
33 defendant pursuant to a common scheme or plan has committed acts which
34 constitute or would constitute violations of sections 191.900 to 191.910 in more
35 than one state, the attorney general shall have the authority to represent the
36 state of Missouri in any plea agreement which resolves all criminal prosecutions
37 within and without the state, and such agreement shall be binding on all state
38 prosecutors.

39 2. In any investigation, hearing or other proceeding pursuant to sections
40 191.900 to 191.910, any record in the possession or control of a health care
41 provider, or in the possession or control of another person on behalf of a health
42 care provider, including but not limited to any record relating to patient care,
43 business or accounting records, payroll records and tax records, whether written
44 or in an electronic format, shall be made available by the health care provider to
45 the attorney general or the court, and shall be admissible into evidence,
46 regardless of any statutory or common law privilege which such health care
47 provider, record custodian or patient might otherwise invoke or assert. The
48 provisions of section 326.151, RSMo, shall not apply to actions brought pursuant
49 to sections 191.900 to 191.910. The attorney general shall not disclose any record
50 obtained pursuant to this section, other than in connection with a proceeding
51 instituted or pending in any court or administrative agency. The access,
52 provision, use, and disclosure of records or material subject to the provisions of
53 42 U.S.C. Section 290dd-2 shall be subject to said section, as may be amended
54 from time to time, and to regulations promulgated pursuant to said section.

55 3. No person shall knowingly[, with the intent to defraud the medical
56 assistance program,] destroy or conceal such records as are necessary to fully
57 disclose the nature of the health care for which a claim was submitted or payment
58 was received under a medical assistance program, or such records as are
59 necessary to fully disclose all income and expenditures upon which rates of

60 payment were based under a medical assistance program. Upon submitting a
61 claim for or upon receiving payment for health care under a medical assistance
62 program, a person shall not destroy or conceal any records for five years after the
63 date on which payment was received, if payment was received, or for five years
64 after the date on which the claim was submitted, if payment was not
65 received. Any provider who knowingly destroys or conceals such records is guilty
66 of a class A misdemeanor.

67 4. Sections 191.900 to 191.910 shall not be construed to prohibit or limit
68 any other criminal or civil action against a health care provider for the violation
69 of any other law. Any complaint, investigation or report received or completed
70 pursuant to sections 198.070 and 198.090, RSMo, subsection 2 of section 205.967,
71 RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or sections
72 660.300 and 660.305, RSMo, which indicates a violation of sections 191.900 to
73 191.910, shall be referred to the attorney general. A referral to the attorney
74 general pursuant to this subsection shall not preclude the agencies charged with
75 enforcing the foregoing sections from conducting investigations, providing
76 protective services or taking administrative action regarding the complaint,
77 investigation or report referred to the attorney general, as may be provided by
78 such sections; provided that all material developed by the attorney general in the
79 course of an investigation pursuant to sections 191.900 to 191.910 shall not be
80 subject to subpoena, discovery, or other legal or administrative process in the
81 course of any such administrative action. Sections 191.900 to 191.910 take
82 precedence over the provisions of sections 198.070 and 198.090, RSMo, subsection
83 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387,
84 RSMo, and sections 660.300 and 660.305, RSMo, to the extent such provisions are
85 inconsistent or overlap.

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