

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 639
95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 15, 2010, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3471S.03C

AN ACT

To repeal sections 191.900, 191.905, 191.907, and 191.910, RSMo, and to enact in lieu thereof four 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, 191.905, 191.907, and 191.910, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 191.900, 191.905, 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

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

17 reviewing, adjusting, approving or otherwise handling claims for health care on
18 behalf of or in connection with a medical assistance program;

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
28 information:

29 (a) Has actual knowledge of the information;

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

31 or

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

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

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

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

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

7 (2) Knowingly concealing the occurrence of any event affecting an initial

8 or continued right under a medical assistance program to have a health care
9 payment made by a health care payer for providing health care;

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

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

18 **No person shall:**

19 (1) **Knowingly present or cause to be presented a false or**
20 **fraudulent claim for payment or approval to a medical assistance**
21 **program;**

22 (2) **Knowingly make, use, or cause to be made or used, a false**
23 **record or statement to get a false or fraudulent claim paid or approved**
24 **by a medical assistance program;**

25 (3) **Conspire to defraud a medical assistance program by getting**
26 **a false or fraudulent claim paid; or**

27 (4) **Knowingly make, use, or cause to be made or used a false**
28 **record or statement to prevent, obstruct, mislead, delay, conceal, avoid,**
29 **decrease, or attempt to prevent, obstruct, mislead, delay, conceal,**
30 **avoid, or decrease any obligation to pay or transmit money or property**
31 **to a medical assistance program.**

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

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

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

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

43 4. Subsections 2 and 3 of this section shall not apply to a discount or

44 other reduction in price obtained by a health care provider if the reduction in
45 price is properly disclosed and appropriately reflected in the claim made by the
46 health care provider to the health care payer, or any amount paid by an employer
47 to an employee for employment in the provision of health care.

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

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

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

64 8. Any natural person who willfully [prevents, obstructs, misleads, delays,
65 or attempts to prevent, obstruct, mislead, or delay the communication of
66 information or records] **violates subdivision (4) of subsection 1 of this**
67 **section** relating to a violation of sections 191.900 to 191.910 is guilty of a class
68 D felony.

69 9. Each separate false statement or false representation of a material fact
70 proscribed by subsection 1 of this section or act proscribed by subsection 2 or 3
71 of this section shall constitute a separate offense and a separate violation of this
72 section, whether or not made at the same or different times, as part of the same
73 or separate episodes, as part of the same scheme or course of conduct, or as part
74 of the same claim.

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

79 (1) A claim for a health care payment submitted with the health care

80 provider's actual, facsimile, stamped, typewritten or similar signature on the
81 claim for health care payment;

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

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

86 11. Any person convicted of a violation of this section, in addition to any
87 fines, penalties or sentences imposed by law, shall be required to make restitution
88 to the federal and state governments, in an amount at least equal to that
89 unlawfully paid to or by the person, and shall be required to reimburse the
90 reasonable costs attributable to the investigation and prosecution pursuant to
91 sections 191.900 to 191.910. All of such restitution shall be paid and deposited
92 to the credit of the "MO HealthNet Fraud Reimbursement Fund", which is hereby
93 established in the state treasury. Moneys in the MO HealthNet fraud
94 reimbursement fund shall be divided and appropriated to the federal government
95 and affected state agencies in order to refund moneys falsely obtained from the
96 federal and state governments. All of such cost reimbursements attributable to
97 the investigation and prosecution shall be paid and deposited to the credit of the
98 "MO HealthNet Fraud Prosecution Revolving Fund", which is hereby established
99 in the state treasury. Moneys in the MO HealthNet fraud prosecution revolving
100 fund may be appropriated to the attorney general, or to any prosecuting or circuit
101 attorney who has successfully prosecuted an action for a violation of sections
102 191.900 to 191.910 and been awarded such costs of prosecution, in order to defray
103 the costs of the attorney general and any such prosecuting or circuit attorney in
104 connection with their duties provided by sections 191.900 to 191.910. No moneys
105 shall be paid into the MO HealthNet fraud protection revolving fund pursuant to
106 this subsection unless the attorney general or appropriate prosecuting or circuit
107 attorney shall have commenced a prosecution pursuant to this section, and the
108 court finds in its discretion that payment of attorneys' fees and investigative costs
109 is appropriate under all the circumstances, and the attorney general and
110 prosecuting or circuit attorney shall prove to the court those expenses which were
111 reasonable and necessary to the investigation and prosecution of such case, and
112 the court approves such expenses as being reasonable and necessary. Any
113 moneys remaining in the MO HealthNet fraud reimbursement fund after division
114 and appropriation to the federal government and affected state agencies shall be
115 used to increase MO HealthNet provider reimbursement until it is at least one

116 hundred percent of the Medicare provider reimbursement rate for comparable
117 services. The provisions of section 33.080, RSMo, notwithstanding, moneys in the
118 MO HealthNet fraud prosecution revolving fund shall not lapse at the end of the
119 biennium.

120 12. A person who [violates] **pleads guilty to or is found guilty of**
121 subsections 1 to 3 of this section shall be liable for a civil penalty of not less than
122 five thousand dollars and not more than ten thousand dollars for each separate
123 act in violation of such subsections, plus three times the amount of damages
124 which the state and federal government sustained because of the act of that
125 person, except that the court may assess not more than two times the amount of
126 damages which the state and federal government sustained because of the act of
127 the person, if the court finds:

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

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

135 (3) At the time such person furnished the personnel of the attorney
136 general with the information about the violation, no criminal prosecution, civil
137 action, or administrative action had commenced with respect to such violation,
138 and the person did not have actual knowledge of the existence of an investigation
139 into such violation.

140 **The state shall not be entitled to damages or civil penalties under this**
141 **section if it has already obtained damages for civil penalties under**
142 **section 191.907 for the same conduct; however, this subsection shall not**
143 **be construed to limit the ability of the state to obtain criminal**
144 **penalties under this section.**

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

148 [14. The attorney general may bring a civil action against any person who
149 shall receive a health care payment as a result of a false statement or false
150 representation of a material fact made or caused to be made by that person. The
151 person shall be liable for up to double the amount of all payments received by

152 that person based upon the false statement or false representation of a material
153 fact, and the reasonable costs attributable to the prosecution of the civil action.
154 All such restitution shall be paid and deposited to the credit of the MO HealthNet
155 fraud reimbursement fund, and all such cost reimbursements shall be paid and
156 deposited to the credit of the MO HealthNet fraud prosecution revolving fund. No
157 reimbursement of such costs attributable to the prosecution of the civil action
158 shall be made or allowed except with the approval of the court having jurisdiction
159 of the civil action. No civil action provided by this subsection shall be brought if
160 restitution and civil penalties provided by subsections 11 and 12 of this section
161 have been previously ordered against the person for the same cause of action.

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

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.] **The**
16 **attorney general shall diligently investigate a violation under this**
17 **section and subsections 1 to 3 and subsection 6 of section 191.905. If**
18 **the attorney general finds that a person violated or is violating the**
19 **above mentioned provisions, the attorney general may bring a civil**
20 **action under this section against the person.**

21 2. (1) **A person is liable to the state for a civil penalty not less**
22 **than five thousand dollars and not more than ten thousand dollars, plus**

23 three times the amount of damages which the state sustains because the
24 act of that person, for each separate act in violation of this section for:

25 (a) Knowingly presenting or causing to be presented a false or
26 fraudulent claim for payment or approval to a medical assistance
27 program;

28 (b) Knowingly making, using, or causing to be made or used, a
29 false record or statement to get a false or fraudulent claim paid or
30 approved by a medical assistance program;

31 (c) Conspiring to defraud a medical assistance program by
32 getting a false or fraudulent claim paid; or

33 (d) Knowingly making, using, or causing to be made or used a
34 false record or statement to prevent, obstruct, mislead, delay, conceal,
35 avoid, decrease, or attempt to prevent, obstruct, mislead, delay,
36 conceal, avoid, or decrease any obligation to pay or transmit money or
37 property to a medical assistance program.

38 A person violating this subsection shall also be liable to the state for all
39 costs of a civil action brought to recover any such penalty or
40 damages. The state shall not be entitled to damages or civil penalties
41 under this section if it has already obtained damages for civil penalties
42 under section 191.905 for the same conduct; however, this subsection
43 shall not be construed to limit the ability of the state to obtain criminal
44 penalties under section 191.905.

45 (2) Except, if the court finds the violations were committed as
46 described under this subdivision, the court may assess not less than
47 two times the amount of damages which the state sustains because of
48 the act of the person. Such conditions for this exception are as follows:

49 (a) The person committing the violation of this section furnished
50 personnel employed by the attorney general and responsible for
51 investigating violations of section 191.900 to 191.910 with all
52 information known to such person about the violation within thirty
53 days after the date on which the defendant first obtained the
54 information;

55 (b) Such person fully cooperated with any government
56 investigation of such violation; and

57 (c) At the time such person furnished the personnel of the
58 attorney general with the information about the violation, no criminal

59 prosecution, civil action, or administrative action had commenced with
60 respect to such violation, and the person did not have actual knowledge
61 of the existence of an investigation into such violation.

62 3. (1) Any person may bring a civil action in the name of the
63 state to recover losses that the state suffers from a violation of sections
64 191.900 to 191.910. The amount of any civil penalty assessed by the
65 court under this section shall be reduced by the amount of any civil
66 monetary penalty which the person establishes that he or she has paid
67 under the laws of the United States for a violation of 31 U.S.C. section
68 3729, et seq., as long as such violation is based on the same underlying
69 facts upon which the state action was brought.

70 (2) At the time of filing the complaint, the person shall deliver
71 a copy of the complaint and written disclosure of all material evidence
72 and information the person possesses to the state attorney general
73 pursuant to the Missouri rules of civil procedure. The complaint shall
74 be filed in camera, shall remain under seal for at least sixty days, and
75 shall not be served upon the defendant until the court so orders. The
76 attorney general may elect to intervene and proceed with the action
77 within sixty days after it receives both the complaint and the material
78 evidence and information.

79 (3) The attorney general may, for good cause shown, move the
80 court for an extension of the time during which the complaint remains
81 under seal, as provided by subdivision (2) of subsection 3 of this
82 section. Any such motion may be supported by affidavits or other
83 submissions in camera.

84 (4) Before the expiration of the sixty day period or any
85 extensions obtained under subdivision (2) of subsection 3 of this
86 section, the attorney general shall:

87 (a) Notify the court and the person initiating the action that it
88 will proceed with the action, in which case the action shall be
89 conducted by the attorney general; or

90 (b) Notify the court that it declines to take over the action, in
91 which case the person bringing the action shall have the right to
92 proceed with the action.

93 (5) When a person files an action under this section, no person
94 other than the attorney general shall intervene or bring a related

95 action based on the facts underlying the pending action.

96 4. (1) (a) If the attorney general elects to proceed with the
97 action, he or she shall have the primary responsibility for conducting
98 the action, and shall not be bound by any act of the person initiating
99 the action. Such person shall have the right to continue as a party to
100 the action, subject to the limitations set forth in paragraph (d) of this
101 subdivision.

102 (b) The attorney general may voluntarily dismiss the action
103 notwithstanding the objections of the person initiating the action, but
104 only if that person has been notified of and offered the opportunity to
105 participate in a hearing on the motion to dismiss.

106 (c) The attorney general may settle the action, notwithstanding
107 the objections of the person initiating the action, but only if that
108 person has been notified of and offered the opportunity to participate
109 in a hearing on the settlement, and if the court determines that the
110 settlement is fair, adequate, and reasonable under the circumstances.

111 (d) Upon a showing by the attorney general that unrestricted
112 participation during the course of the litigation by the person initiating
113 the action would interfere with or unduly delay the attorney general's
114 prosecution of the case, or would be repetitious, irrelevant, or unduly
115 harassing, the court may, in its discretion, impose limitations on the
116 person's participation, such as:

117 a. Limiting the number of witnesses the person may call;

118 b. Limiting the length of the testimony of witnesses;

119 c. Limiting the person's cross-examination of witnesses; or

120 d. Otherwise limiting the participation by the person in the
121 litigation.

122 (e) Upon a showing by the defendant that unrestricted
123 participation during the course of the litigation by the person initiating
124 the action would be unduly harassing, or would cause the defendant
125 undue burden or unnecessary expense, the court may limit the
126 participation by the person in the litigation.

127 (2) If the state elects not to proceed with the action, the person
128 who initiated the action shall have the right to conduct the action. If
129 the attorney general so requests, it shall be served with copies of all
130 pleadings filed in the action and shall be supplied with copies of all

131 deposition transcripts at the attorney general's expense. When a
132 person proceeds with the action, the court, without limiting the status
133 and rights of the person initiating the action, may nevertheless permit
134 the attorney general to intervene at a later date upon a showing of
135 good cause.

136 (3) Upon a showing, conducted in camera, that actions of the
137 person initiating the action during discovery would interfere with the
138 attorney general's investigation or prosecution of a criminal or civil
139 matter, the court may stay the discovery by the person initiating the
140 action for not more than sixty days. The court may extend the stay
141 upon a further showing that the attorney general is pursuing the
142 investigation or proceeding with reasonable diligence and the
143 discovery would interfere with the ongoing investigation or proceeding.

144 (4) As an alternative to an action authorized by this section, the
145 attorney general may pursue a violation of sections 191.900 to 191.910
146 through any alternate proceeding available to this state. If the
147 attorney general pursues an alternate proceeding, a person who
148 initiated an action under this section shall have equivalent rights in
149 that proceeding to the rights that the person would have had if the
150 action had continued under this section. Findings of fact and
151 conclusions of law that become final in an alternative proceeding shall
152 become conclusive on the parties to an action under this section. For
153 the purposes of this subsection, a finding or conclusion is final if it has
154 been finally determined on appeal to the appropriate court, if the time
155 for filing an appeal with respect to the finding or conclusion has
156 expired, or if the finding or conclusion is not subject to judicial review.

157 5. (1) (a) If the parties to an action filed under this section
158 prevail in the action, the court shall award the person who initiated
159 such action necessary expenses, costs, and, based on the amount of
160 effort involved, the court shall award such person at least fifteen
161 percent of the monetary proceeds resulting from the action or any
162 settlement of the claim.

163 (b) If the court finds an action under this section to be based
164 primarily on disclosure of specific information that was not provided
165 by the person initiating the action, such as information from a criminal,
166 civil, or administrative hearing in a state or federal department or

167 agency, a legislative report, hearing, audit, or investigation, or the
168 news media, and the attorney general proceeds with the action, the
169 court shall award the person initiating the action no more than fifteen
170 percent of the monetary recovery in addition to reasonable attorney's
171 fees, necessary expenses, and costs.

172 (2) If the attorney general does not proceed with an action, the
173 person who initiates the action receives at least twenty-five percent of
174 the proceeds. A person receiving a payment under this subsection shall
175 also be entitled to receive from the defendant an amount for reasonable
176 expenses, reasonable attorney's fees and costs that the court finds to be
177 necessarily incurred. The court's determination of expenses shall only
178 be made after the defendant has been found liable in the action.

179 (3) If the court finds that the person initiating an action under
180 this section planned, initiated, or participated in the conduct upon
181 which the action is brought, the court may reduce or eliminate, as it
182 considers appropriate, the share of the proceeds of the action that the
183 person would otherwise be entitled to receive. A person who pleads
184 guilty to or is found guilty of criminal conduct arising from a violation
185 of sections 191.900 to 191.910 shall not initiate or remain a party to an
186 action under this section and is not entitled to share in the monetary
187 proceeds resulting from the action or any settlement under this section.

188 6. The person who initiates the action shall have the protections
189 found under section 191.908.

190 7. (1) A person other than the attorney general shall not bring
191 an action under this section that is based on allegations or transactions
192 that are already the subject of a civil suit, criminal investigation or
193 prosecution, or an administrative investigation or proceeding to which
194 the state or the federal government is already a party. The court shall
195 dismiss an action brought in violation of this subsection.

196 (2) Unless the person is the original source of the information,
197 a person, other than the attorney general, shall not initiate an action
198 under this section based on the public disclosure of allegations or
199 transactions in a criminal, civil, or administrative hearing in a state or
200 federal department or agency, a legislative report, hearing, audit, or
201 investigation, or the news media. The person is the original source if
202 he or she had direct and independent knowledge of the information on

203 which the allegations are based and voluntarily provided the
204 information to the attorney general as part of the filing of an action
205 based on that information under this section.

206 8. The attorney general shall not be liable for any expenses,
207 costs, or attorney's fees that a person incurs in bringing an action
208 under this section. Any amount awarded to a person initiating an
209 action to enforce sections 191.900 to 191.910 is payable solely from the
210 proceeds of the action or settlement.

211 9. If the attorney general initiates an action for a violation of
212 sections 191.900 to 191.910, or assumes control of an action initiated by
213 a person under this section, the attorney general shall be awarded its
214 reasonable attorney's fees, expenses, and costs.

215 10. An action brought under this section shall not be brought
216 more than six years after the date on which the violation was
217 committed, or three years after the date when facts material to the
218 cause of action are known or reasonably known by the attorney
219 general's office or the department of social services, whichever occurs
220 last.

221 11. In any action brought under this section, the state or the
222 person initiating the action shall be required to prove all essential
223 elements of the cause of action, including damages, by a preponderance
224 of the evidence.

225 12. For purposes of this section, "knowing" and "knowingly", shall
226 mean that a person, with respect to information:

227 (1) Has actual knowledge of the information;

228 (2) Acts in deliberate ignorance of the truth or falsity of the
229 information; or

230 (3) Acts in reckless disregard of the truth or falsity of the
231 information. No proof of specific intent to defraud is required.

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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