

SECOND REGULAR SESSION

SENATE BILL NO. 952

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time February 26, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

6229S.011

AN ACT

To repeal section 191.905, RSMo, and to enact in lieu thereof one new section relating to MO HealthNet fraud, with existing penalty provisions.

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Section A. Section 191.905, RSMo, is repealed and one new section
2 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
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 2. No person shall knowingly solicit or receive any remuneration,
19 including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,
20 in cash or in kind in return for:

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

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

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

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

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

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

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

50 8. Any natural person who willfully prevents, obstructs, misleads, delays,
51 or attempts to prevent, obstruct, mislead, or delay the communication of
52 information or records relating to a violation of sections 191.900 to 191.910 is
53 guilty of a class D felony.

54 9. Each separate false statement or false representation of a material fact
55 proscribed by subsection 1 of this section or act proscribed by subsection 2 or 3
56 of this section shall constitute a separate offense and a separate violation of this

57 section, whether or not made at the same or different times, as part of the same
58 or separate episodes, as part of the same scheme or course of conduct, or as part
59 of the same claim.

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

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

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

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

71 11. Any person convicted of a violation of this section, in addition to any
72 fines, penalties or sentences imposed by law, shall be required to make restitution
73 to the federal and state governments, in an amount at least equal to that
74 unlawfully paid to or by the person, and shall be required to reimburse the
75 reasonable costs attributable to the investigation and prosecution pursuant to
76 sections 191.900 to 191.910. All of such restitution shall be paid and deposited
77 to the credit of the "MO HealthNet Fraud Reimbursement Fund", which is hereby
78 established in the state treasury. Moneys in the MO HealthNet fraud
79 reimbursement fund shall be divided and appropriated to the federal government
80 and affected state agencies in order to refund moneys falsely obtained from the
81 federal and state governments. All of such cost reimbursements attributable to
82 the investigation and prosecution shall be paid and deposited to the credit of the
83 "MO HealthNet Fraud Prosecution Revolving Fund", which is hereby established
84 in the state treasury. Moneys in the MO HealthNet fraud prosecution revolving
85 fund may be appropriated to the attorney general, or to any prosecuting or circuit
86 attorney who has successfully prosecuted an action for a violation of sections
87 191.900 to 191.910 and been awarded such costs of prosecution, in order to defray
88 the costs of the attorney general and any such prosecuting or circuit attorney in
89 connection with their duties provided by sections 191.900 to 191.910. No moneys
90 shall be paid into the MO HealthNet fraud protection revolving fund pursuant to
91 this subsection unless the attorney general or appropriate prosecuting or circuit
92 attorney shall have commenced a prosecution pursuant to this section, and the

93 court finds in its discretion that payment of attorneys' fees and investigative costs
94 is appropriate under all the circumstances, and the attorney general and
95 prosecuting or circuit attorney shall prove to the court those expenses which were
96 reasonable and necessary to the investigation and prosecution of such case, and
97 the court approves such expenses as being reasonable and necessary. Any
98 moneys remaining in the MO HealthNet fraud reimbursement fund after division
99 and appropriation to the federal government and affected state agencies shall be
100 used to increase MO HealthNet provider reimbursement until it is at least one
101 hundred percent of the Medicare provider reimbursement rate for comparable
102 services. The provisions of section 33.080 notwithstanding, moneys in the MO
103 HealthNet fraud prosecution revolving fund shall not lapse at the end of the
104 biennium.

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

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

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

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

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

127 14. The attorney general may bring a civil action against any person who
128 shall receive a health care payment as a result of a false statement or false

129 representation of a material fact made or caused to be made by that person. The
130 person shall be liable for up to double the amount of all payments received by
131 that person based upon the false statement or false representation of a material
132 fact, and the reasonable costs attributable to the prosecution of the civil action.
133 All such restitution shall be paid and deposited to the credit of the MO HealthNet
134 fraud reimbursement fund, and all such cost reimbursements shall be paid and
135 deposited to the credit of the MO HealthNet fraud prosecution revolving fund. No
136 reimbursement of such costs attributable to the prosecution of the civil action
137 shall be made or allowed except with the approval of the court having jurisdiction
138 of the civil action. No civil action provided by this subsection shall be brought if
139 restitution and civil penalties provided by subsections 11 and 12 of this section
140 have been previously ordered against the person for the same cause of action.

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

145 **16. Section 516.390 shall not apply to actions brought pursuant**
146 **to sections 191.900 to 191.914.**

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