

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 353

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHAAF (Sponsor), JETTON, RICHARD, PAGE, COOPER (155), THRELKELD, ONDER, SWINGER, JONES (89), PORTWOOD, NANCE, DEEKEN, WALLACE, MUNZLINGER, VIEBROCK, SELF, SANDER, TILLEY, FLOOK, KINGERY, WETER, HUNTER, SCHARNHORST, DAVIS, COX, RUZICKA, FARES, BIVINS, SCHOELLER, BRANDOM, MOORE, JONES (117), FISHER, BRUNS, STREAM, FRANZ, ROORDA, SCHAD, DUSENBERG, DAY, NIEVES, SILVEY, DIXON, PARSON, WHORTON, BEARDEN, BROWN (50), MARSH, ST. ONGE, GUEST, MAY, CUNNINGHAM (145), SCHNEIDER, ICET, HOBBS, SMITH (150), ROBB, DEMPSEY, McGHEE, EMERY, CUNNINGHAM (86), HUBBARD, BAKER (123), WILSON (130), ERVIN, WOOD, WILSON (119), DENISON, QUINN (7), KELLY, WELLS, WASSON, DOUGHERTY, NOLTE, COOPER (158), MEINERS, THOMSON, SATER, WRIGHT, LEMBKE, LIPKE, STEVENSON, SPRENG, SCHLOTTACH, RUESTMAN AND MUSCHANY (Co-sponsors).

Read 1st time January 11, 2007 and copies ordered printed.

Read 2nd time January 16, 2007, and referred to the Special Committee on Healthcare Facilities January 24, 2007.

Reported from the Special Committee on Healthcare Facilities January 31, 2007, with recommendation that the bill Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules February 1, 2007 with recommendation that the bill Do Pass with a two hour time limit for debate on Perfection.

Taken up for Perfection February 6, 2007. Bill ordered Perfected and printed, as amended.

D. ADAM CRUMBLISS, Chief Clerk

1169L.01P

AN ACT

To repeal sections 191.900, 191.905, and 191.910, RSMo, and to enact in lieu thereof nine new sections relating to Medicaid 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- Section A. Sections 191.900, 191.905, and 191.910, RSMo, are repealed and nine new
- 2 sections enacted in lieu thereof, to be known as sections 191.900, 191.905, 191.907, 191.908,
- 3 191.909, 191.910, 191.914, 1, and 2, to read as follows:

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

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.

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

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

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

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

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

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

(7) "Health care provider", any person delivering, or purporting to deliver, any health care, and including any employee, agent or other representative of such a person[:], **and further including any employee, representative or subcontractor of the State of Missouri delivering, purporting to deliver or arranging for the delivery of any health care;**

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

(a) Has actual knowledge of the information;

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

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

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

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

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

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.

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

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

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

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

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

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

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

36 7. A person who violates subsections 1 to [4] **3** of this section is guilty of a class [D] **C**
37 felony upon his **or her** first conviction, and shall be guilty of a class [C] **B** felony upon his **or**
38 **her** second and subsequent convictions. **Any person who has been convicted of such**
39 **violations shall be referred to the Office of Inspector General within the United States**
40 **Department of Health and Human Services.** A prior conviction shall be pleaded and proven
41 as provided by section 558.021, RSMo. A person who violates subsection 6 of this section shall
42 be guilty of a class C felony, unless the act involves no physical, sexual or emotional harm or
43 injury and the value of the property involved is less than five hundred dollars, in which event a
44 violation of subsection 6 of this section is a class A misdemeanor.

45 **8. Any natural person who willfully prevents, obstructs, misleads, delays, or**
46 **attempts to prevent, obstruct, mislead, or delay the communication of information or**
47 **records relating to a violation of sections 191.900 to 191.910 is guilty of a class D felony,**
48 **and, upon conviction, forever shall be excluded from participation as a provider for the**
49 **medical assistance program.**

50 [8.] **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 the
53 same or different times, as part of the same or separate episodes, as part of the same scheme or
54 course of conduct, or as part of the same claim.

55 [9.] **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 or
61 other electronic means;

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

64 [10.] **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 "Medicaid Fraud Reimbursement Fund", which is hereby
70 established in the state treasury. Moneys in the Medicaid fraud reimbursement fund shall be
71 divided and appropriated to the federal government and affected state agencies in order to refund

72 moneys falsely obtained from the federal and state governments. All of such cost
73 reimbursements attributable to the investigation and prosecution shall be paid and deposited to
74 the credit of the "Medicaid Fraud Prosecution Revolving Fund", which is hereby established in
75 the state treasury. Moneys in the Medicaid fraud prosecution revolving fund may be
76 appropriated to the attorney general, or to any prosecuting or circuit attorney who has
77 successfully prosecuted an action for a violation of sections 191.900 to 191.910 and been
78 awarded such costs of prosecution, in order to defray the costs of the attorney general and any
79 such prosecuting or circuit attorney in connection with their duties provided by sections 191.900
80 to 191.910. No moneys shall be paid into the Medicaid fraud protection revolving fund pursuant
81 to this subsection unless the attorney general or appropriate prosecuting or circuit attorney shall
82 have commenced a prosecution pursuant to this section, and the court finds in its discretion that
83 payment of attorneys' fees and investigative costs is appropriate under all the circumstances, and
84 the attorney general and prosecuting or circuit attorney shall prove to the court those expenses
85 which were reasonable and necessary to the investigation and prosecution of such case, and the
86 court approves such expenses as being reasonable and necessary. The provisions of section
87 33.080, RSMo, notwithstanding, moneys in the Medicaid fraud prosecution revolving fund shall
88 not lapse at the end of the biennium.

89 [11.] **12.** A person who violates subsections 1 to [4] **3** of this section shall be liable for
90 a civil penalty of not less than five thousand dollars and not more than ten thousand dollars for
91 each separate act in violation of such subsections, plus three times the amount of damages which
92 the state and federal government sustained because of the act of that person, except that the court
93 may assess not more than two times the amount of damages which the state and federal
94 government sustained because of the act of the person, if the court finds:

95 (1) The person committing the violation of this section furnished personnel employed
96 by the attorney general and responsible for investigating violations of sections 191.900 to
97 191.910 with all information known to such person about the violation within thirty days after
98 the date on which the defendant first obtained the information;

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

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

105 [12.] **13.** Upon conviction pursuant to this section, the prosecution authority shall
106 provide written notification of the conviction to all regulatory or disciplinary agencies with
107 authority over the conduct of the defendant health care provider.

108 [13.] **14.** The attorney general may bring a civil action against any person who shall
109 receive a health care payment as a result of a false statement or false representation of a material
110 fact made or caused to be made by that person. The person shall be liable for up to double the
111 amount of all payments received by that person based upon the false statement or false
112 representation of a material fact, and the reasonable costs attributable to the prosecution of the
113 civil action. All such restitution shall be paid and deposited to the credit of the Medicaid fraud
114 reimbursement fund, and all such cost reimbursements shall be paid and deposited to the credit
115 of the Medicaid fraud prosecution revolving fund. No reimbursement of such costs attributable
116 to the prosecution of the civil action shall be made or allowed except with the approval of the
117 court having jurisdiction of the civil action. No civil action provided by this subsection shall be
118 brought if restitution and civil penalties provided by subsections 10 and 11 of this section have
119 been previously ordered against the person for the same cause of action.

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

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

10 **2.** Any person who is the original source of information about the willful violation
11 by any person of section 36.460, RSMo, shall receive ten percent of the amount of
12 compensation that would have been paid the employee forfeiting his or her position under
13 section 36.460, RSMo, if the employee was found to have acted fraudulently in connection
14 with the state medical assistance program.

191.908. 1. An employer shall not discharge, demote, suspend, threaten, harass, or
2 otherwise discriminate against an employee in the terms and conditions of employment
3 because the employee initiates, assists in, or participates in a proceeding or court action
4 under sections 191.900 to 191.910. Such prohibition shall not apply to an employment
5 action against an employee who:

6 **(1)** The court finds brought a frivolous or clearly vexatious claim;

7 (2) The court finds to have planned, initiated, or participated in the conduct upon
8 which the action is brought; or

9 (3) Is convicted of criminal conduct arising from a violation of sections 191.900 to
10 191.910.

11 2. An employer who violates this section is liable to the employee for all of the
12 following:

13 (1) Reinstatement to the employee's position without loss of seniority;

14 (2) Two times the amount of lost back pay;

15 (3) Interest on the back pay.

 191.909. 1. By January 1, 2008, and annually thereafter, the attorney general's
2 office shall report to the general assembly and the governor the following:

3 (1) The number of provider investigations due to allegations of violations under
4 sections 191.900 to 191.910 conducted by the attorney general's office and completed within
5 the reporting year, including the age and type of cases;

6 (2) The number of referrals due to allegations of violations under sections 191.900
7 to 191.910 received by the attorney general's office;

8 (3) The total amount of overpayments identified as the result of completed
9 investigations;

10 (4) The amount of fines and restitutions ordered to be reimbursed, with a
11 delineation between amounts the provider has been ordered to repay, including whether
12 or not such repayment will be completed in a lump sum payment or installment payments,
13 and any adjustments or deductions ordered to future provider payments;

14 (5) The total amount of monetary recovery as the result of completed investigations;

15 (6) The total number of arrests, indictments, and convictions as the result of
16 completed investigations.

17

18 An annual financial audit of the Medicaid fraud unit within the attorney general's office
19 shall be conducted and completed by the state auditor in order to quantitatively determine
20 the amount of money invested in the unit and the amount of money actually recovered by
21 such office.

22 2. By January 1, 2008, and annually thereafter, the department of social services
23 shall report to the general assembly and the governor the following:

24 (1) The number of medicaid provider and recipient investigations and audits
25 relating to allegations of violations under sections 191.900 to 191.910 completed within the
26 reporting year, including the age and type of cases;

27 (2) Number of medicaid long-term care facility reviews;

- 28 **(3) Number of medicaid provider and recipient utilization reviews;**
29 **(4) The number of referrals sent by the department to the attorney general's office;**
30 **(5) The total amount of overpayments identified as the result of completed**
31 **investigations, reviews, or audits;**
32 **(6) The amount of fines and restitutions ordered to be reimbursed, with a**
33 **delineation between amounts the provider has been ordered to repay, including whether**
34 **or not such repayment will be completed in a lump sum payment or installment payments,**
35 **and any adjustments or deductions ordered to future provider payments;**
36 **(7) The total amount of monetary recovery as the result of completed investigation,**
37 **reviews, or audits;**
38 **(8) The number of administrative sanctions against medicaid providers, including**
39 **the number of providers excluded from the program.**
40
41 **An annual financial audit of the program integrity unit within the department of social**
42 **services shall be conducted and completed by the state auditor in order to quantitatively**
43 **determine the amount of money invested in the unit and the amount of money actually**
44 **recovered by such office.**

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

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

32 2. In any investigation, hearing or other proceeding pursuant to sections 191.900 to
33 191.910, any record in the possession or control of a health care provider, or in the possession
34 or control of another person on behalf of a health care provider, including but not limited to any
35 record relating to patient care, business or accounting records, payroll records and tax records,
36 whether written or in an electronic format, shall be made available by the health care provider
37 to the attorney general or the court, and shall be admissible into evidence, regardless of any
38 statutory or common law privilege which such health care provider, record custodian or patient
39 might otherwise invoke or assert. The provisions of section 326.151, RSMo, shall not apply to
40 actions brought pursuant to sections 191.900 to 191.910. The attorney general shall not disclose
41 any record obtained pursuant to this section, other than in connection with a proceeding instituted
42 or pending in any court or administrative agency. The access, provision, use, and disclosure of
43 records or material subject to the provisions of 42 U.S.C. section 290dd-2 shall be subject to said
44 section, as may be amended from time to time, and to regulations promulgated pursuant to said
45 section.

46 3. **No person knowingly with the intent to defraud the medical assistance program**
47 **shall destroy or conceal such records as are necessary to fully disclose the nature of the**
48 **health care for which a claim was submitted or payment was received under a medical**
49 **assistance program, or such records as are necessary to fully disclose all income and**
50 **expenditures upon which rates of payment were based under a medical assistance**
51 **program. Upon submitting a claim for or upon receiving payment for health care under**
52 **a medical assistance program, a person shall not destroy or conceal any records for five**
53 **years after the date on which payment was received, if payment was received, or for five**
54 **years after the date on which the claim was submitted, if payment was not received. Any**
55 **provider who knowingly destroys or conceals such records is guilty of a class A**
56 **misdemeanor.**

57 **4.** Sections 191.900 to 191.910 shall not be construed to prohibit or limit any other
58 criminal or civil action against a health care provider for the violation of any other law. Any
59 complaint, investigation or report received or completed pursuant to sections 198.070 and
60 198.090, RSMo, subsection 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo,
61 section 578.387, RSMo, or sections 660.300 and 660.305, RSMo, which indicates a violation
62 of sections 191.900 to 191.910, shall be referred to the attorney general. A referral to the
63 attorney general pursuant to this subsection shall not preclude the agencies charged with
64 enforcing the foregoing sections from conducting investigations, providing protective services
65 or taking administrative action regarding the complaint, investigation or report referred to the
66 attorney general, as may be provided by such sections; provided that all material developed by
67 the attorney general in the course of an investigation pursuant to sections 191.900 to 191.910
68 shall not be subject to subpoena, discovery, or other legal or administrative process in the course
69 of any such administrative action. Sections 191.900 to 191.910 take precedence over the
70 provisions of sections 198.070 and 198.090, RSMo, subsection 2 of section 205.967, RSMo,
71 sections 375.991 to 375.994, RSMo, section 578.387, RSMo, and sections 660.300 and 660.305,
72 RSMo, to the extent such provisions are inconsistent or overlap.

191.914. 1. Any person who intentionally files a false report or claim alleging a
2 **violation of sections 191.900 to 191.910 is guilty of a class A misdemeanor. Any person who**
3 **previously has been convicted of making a false report or claim under this section and who**
4 **is subsequently convicted of making a false report or claim under this section is guilty of**
5 **a class D felony and shall be punished as provided by law.**

6 **2. Any person who receives any compensation in exchange for knowingly failing**
7 **to report any violation of subsections 1 to 3 of section 191.905 is guilty of a class D felony.**

Section 1. 1. Beginning September 1, 2007, an advisory working group is hereby
2 **created for the purpose of conducting a study to determine whether an office of inspector**
3 **general shall be established. Such office would be responsible for oversight, auditing,**
4 **investigation, and performance review to provide increased accountability, integrity, and**
5 **oversight of state medical assistance programs, to assist in improving agency and program**
6 **operations, and to deter and identify fraud, abuse, and illegal acts. The working group**
7 **shall review the experience of all states that have created a similar office to determine the**
8 **impact of creating a similar office in this state. The advisory working group shall consist**
9 **of the following:**

10 **(1) Five members of the house of representatives appointed by the speaker; and**

11 **(2) Five members of the senate appointed by the pro tem.**

12

13 **No more than three members from each house shall be of the same political party. The**
14 **directors of the department of social services, the department of health and senior services,**

15 and the department of mental health or the directors' designees shall serve as ex officio
16 members of the advisory working group.

17 2. Members of the advisory working group shall be reimbursed for the actual and
18 necessary expenses incurred in the discharge of the member's official duties.

19 3. A chair of the advisory working group shall be selected by the members of the
20 advisory working group.

21 4. The advisory working group shall meet as necessary.

Section 2. Any funds remaining after the appropriation of funds to the attorney
2 general or the prosecuting or circuit attorney pursuant to 191.905.11, which have been
3 appropriated to the state agency responsible for administering the medical assistance
4 program, shall be used to increase Medicaid provider reimbursement until the average
5 Medicaid provider reimbursement equals the average Medicare provider reimbursement
6 for comparable services.

✓