

FIRST REGULAR SESSION

HOUSE BILL NO. 433

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE APPELBAUM.

0633H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 191.905, RSMo, and to enact in lieu thereof one new section relating to the MO HealthNet fraud reimbursement fund.

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Section A. Section 191.905, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 191.905, to read as follows: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 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.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

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

46 8. Any natural person who willfully prevents, obstructs, misleads, delays, or attempts to
47 prevent, obstruct, mislead, or delay the communication of information or records relating to a
48 violation of sections 191.900 to 191.910 is guilty of a class E felony.

49 9. Each separate false statement or false representation of a material fact proscribed by
50 subsection 1 of this section or act proscribed by subsection 2 or 3 of this section shall constitute
51 a separate offense and a separate violation of this section, whether or not made at the same or

52 different times, as part of the same or separate episodes, as part of the same scheme or course
53 of conduct, or as part of the same claim.

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

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

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

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

63 11. Any person convicted of a violation of this section, in addition to any fines, penalties
64 or sentences imposed by law, shall be required to make restitution to the federal and state
65 governments, in an amount at least equal to that unlawfully paid to or by the person, and shall
66 be required to reimburse the reasonable costs attributable to the investigation and prosecution
67 pursuant to sections 191.900 to 191.910. All of such restitution shall be paid and deposited to
68 the credit of the "MO HealthNet Fraud Reimbursement Fund", which is hereby established in
69 the state treasury. Moneys in the MO HealthNet fraud reimbursement fund shall be divided and
70 appropriated to the federal government and affected state agencies in order to refund moneys
71 falsely obtained from the federal and state governments. All of such cost reimbursements
72 attributable to the investigation and prosecution shall be paid and deposited to the credit of the
73 "MO HealthNet Fraud Prosecution Revolving Fund", which is hereby established in the state
74 treasury. Moneys in the MO HealthNet fraud prosecution revolving fund may be appropriated
75 to the attorney general, or to any prosecuting or circuit attorney who has successfully prosecuted
76 an action for a violation of sections 191.900 to 191.910 and been awarded such costs of
77 prosecution, in order to defray the costs of the attorney general and any such prosecuting or
78 circuit attorney in connection with their duties provided by sections 191.900 to 191.910. No
79 moneys shall be paid into the MO HealthNet fraud ~~[protection]~~ **prosecution** revolving fund
80 pursuant to this subsection unless the attorney general or appropriate prosecuting or circuit
81 attorney shall have commenced a prosecution pursuant to this section, and the court finds in its
82 discretion that payment of attorneys' fees and investigative costs is appropriate under all the
83 circumstances, and the attorney general and prosecuting or circuit attorney shall prove to the
84 court those expenses which were reasonable and necessary to the investigation and prosecution
85 of such case, and the court approves such expenses as being reasonable and necessary. Any
86 moneys remaining in the MO HealthNet fraud reimbursement fund after division and
87 appropriation to the federal government and affected state agencies shall be used to increase MO

88 HealthNet provider reimbursement until it is at least one hundred percent of the Medicare
89 provider reimbursement rate for comparable services **or for the employment of additional full-**
90 **time employees for the department of social services.** The provisions of section 33.080
91 notwithstanding, moneys in the MO HealthNet fraud prosecution revolving fund shall not lapse
92 at the end of the biennium.

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

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

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

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

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

112 14. The attorney general may bring a civil action against any person who shall receive
113 a health care payment as a result of a false statement or false representation of a material fact
114 made or caused to be made by that person. The person shall be liable for up to double the
115 amount of all payments received by that person based upon the false statement or false
116 representation of a material fact, and the reasonable costs attributable to the prosecution of the
117 civil action. All such restitution shall be paid and deposited to the credit of the MO HealthNet
118 fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to the
119 credit of the MO HealthNet fraud prosecution revolving fund. No reimbursement of such costs
120 attributable to the prosecution of the civil action shall be made or allowed except with the
121 approval of the court having jurisdiction of the civil action. No civil action provided by this
122 subsection shall be brought if restitution and civil penalties provided by subsections 11 and 12
123 of this section have been previously ordered against the person for the same cause of action.

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

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