

## **Missouri Health Care Payment Fraud and Abuse Act\***

(Mo. Rev. Stat. §§ 191.900 to .914)<sup>1</sup>

*\* Statute provides for awards, but does not permit qui tam actions*

### **§ 191.900. Definitions**

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

(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 sub-contractor 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", MO HealthNet, or any program to provide or finance health care to participants 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*, et seq., and any state agency or agencies administering all or any part of such a program;

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

### **§ 191.905. False statement to receive health care payment prohibited -- kickback, bribe, purpose, prohibited, exceptions -- abuse prohibited -- penalty -- prosecution, procedure -- Medicaid fraud reimbursement fund created -- restitution -- civil penalty -- notification to disciplinary agencies -- civil action authorized**

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.

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

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

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

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

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

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

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

11. Any person convicted of a violation of this section, in addition to any fines, penalties or sentences imposed by law, shall be required to make restitution to the federal and state governments, in an amount at least equal to that unlawfully paid to or by the person, and shall be required to reimburse the reasonable costs attributable to the investigation and prosecution pursuant to *sections 191.900 to 191.910*. All of such restitution shall be paid and deposited to the credit of the "MO HealthNet Fraud Reimbursement Fund", which is hereby established in the state treasury. Moneys in the MO HealthNet fraud reimbursement fund shall be divided and appropriated to the federal government and affected state agencies in order to refund moneys falsely obtained from the federal and state governments. All of such cost reimbursements attributable to the investigation and prosecution shall be paid and deposited to the credit of the "MO HealthNet Fraud Prosecution Revolving Fund", which is hereby established in the state treasury. Moneys in the MO HealthNet fraud prosecution revolving fund may be appropriated to the attorney general, or to any prosecuting or circuit attorney who has successfully prosecuted an action for a violation of *sections 191.900 to 191.910* and been awarded such costs of prosecution, in order to defray the costs of the attorney general and any such prosecuting or circuit attorney in connection with their duties provided by *sections 191.900 to 191.910*. No moneys shall be paid into the MO HealthNet fraud protection revolving fund pursuant to this subsection unless the attorney general or appropriate prosecuting or circuit attorney shall have commenced a prosecution pursuant to this section, and the court finds in its discretion that payment of attorneys' fees and investigative costs is appropriate under all the circumstances, and the attorney general and prosecuting or circuit attorney shall prove to the court those expenses which were reasonable and necessary to the investigation and prosecution of such case, and the court approves such expenses as being reasonable and necessary. Any moneys remaining in the MO HealthNet fraud reimbursement fund after division and appropriation to the federal government and affected state agencies shall be used to increase MO HealthNet provider reimbursement until it is at least one hundred percent of the Medicare provider reimbursement rate for comparable services. The provisions of *section 33.080* notwithstanding, moneys in the MO HealthNet fraud prosecution revolving fund shall not lapse at the end of the biennium.

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

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

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

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

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

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

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

**§ 191.907. Original source of information to receive a portion of any recovery**

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

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

**§ 191.908. Whistleblower protections -- violations, penalty**

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

- (1) The court finds brought a frivolous or clearly vexatious claim;
- (2) The court finds to have planned, initiated, or participated in the conduct upon which the action is brought; or
- (3) Is convicted of criminal conduct arising from a violation of *sections 191.900 to 191.910*.

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

- (1) Reinstatement to the employee's position without loss of seniority;
- (2) Two times the amount of lost back pay;
- (3) Interest on the back pay at the rate of one percent over the prime rate.

**§ 191.909. Reports required, contents [Repealed]**

**§ 191.910. Attorney general may investigate violations, powers -- service authorized -- prosecuting attorney, report, prosecution -- provision of records -- no limitation of other actions**

1. The attorney general shall have authority to investigate alleged or suspected violations of *sections 191.900 to 191.910*, and shall have all powers provided by *sections 407.040 to 407.090* in connection with investigations of alleged or suspected violations of *sections 191.900 to 191.910*, as if the acts enumerated in subsections 1 to 3 of *section 191.905* are unlawful acts proscribed by chapter 407, provided that if the attorney general exercises such powers, the provisions of *section 407.070* shall also be applicable; and may exercise all of the powers provided by subsections 1 and 2 of *section 578.387* in connection with investigations of alleged or suspected violations of *sections 191.900 to 191.910*, as if the acts enumerated in subsections 1 to 3 of *section 191.905* involve "public assistance" as defined by *section 578.375*. The attorney general and his or her authorized investigators shall be authorized to serve all subpoenas and civil process related to the enforcement of *sections 191.900 to 191.910* and chapter 407. In order for the attorney general to commence a state prosecution for violations of *sections 191.900 to 191.910*, the attorney general shall prepare and forward a report of the violations to the appropriate prosecuting attorney. Upon receiving a referral, the prosecuting attorney shall either commence a prosecution based on the report by the filing of a complaint, information, or indictment within sixty days of

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

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

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

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

#### **§ 191.914. False report or claim, penalty**

1. Any person who intentionally files a false report or claim alleging a violation of *sections 191.900 to 191.910* is guilty of a class A misdemeanor. Any second or subsequent violation of this section is a class D felony and shall be punished as provided by law.

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

---

<sup>i</sup> Last updated June 26, 2014.