

Journal of the Senate

FIRST REGULAR SESSION

FORTY-NINTH DAY—WEDNESDAY, APRIL 4, 2007

The Senate met pursuant to adjournment.

Senator Rupp in the Chair.

Reverend Carl Gauck offered the following prayer:

“Man stands to revere, he kneels to pray.” (Henry David Thoreau, 1841)

We began this morning in prayer and fellowship and ask that we might be known as a people of prayer. Give us strength to kneel before You this day, O God, and help us to carry out our duties through the burdens we face and offer ourselves in service to You and our fellow citizens. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

A quorum being established, the Senate proceeded with its business.

The Journal of the previous day was read and approved.

Senator Shields announced that photographers from KOMU-TV and KRCG-TV were given permission to take pictures in the Senate Chamber today.

The following Senators were present during the day’s proceedings:

Present—Senators

Barnitz	Bartle	Bray	Callahan
Champion	Clemens	Coleman	Crowell

Days	Engler	Gibbons	Goodman
Graham	Green	Griesheimer	Gross
Justus	Kennedy	Koster	Lager
Loudon	Mayer	McKenna	Nodler
Purgason	Ridgeway	Rupp	Scott
Shields	Shoemyer	Smith	Stouffer
Vogel	Wilson—34		

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

The Lieutenant Governor was present.

RESOLUTIONS

Senator Barnitz offered Senate Resolution No. 787, regarding Lucas Showalter, Rolla, which was adopted.

Senator Smith offered Senate Resolution No. 788, regarding Mr. and Mrs. Aaron Gordon, Miami, Florida, which was adopted.

Senator Scott offered Senate Resolution No. 789, regarding Jeri Lynn Smith Short, Buffalo, which was adopted.

Senator Scott offered Senate Resolution No. 790, regarding Bill Hadlow, which was adopted.

Senator Crowell offered Senate Resolution No. 791, regarding Karen C. Hendrickson, EdD, RN, CNA, BC, Cape Girardeau, which was adopted.

Senator Gibbons offered Senate Resolution No. 792, regarding the American Heart Association Heartland Affiliate, Jefferson City, which was adopted.

Senator Stouffer offered Senate Resolution No. 793, regarding Shirley Marie Coplin Maier, Boonville, which was adopted.

Senator Engler offered Senate Resolution No. 794, regarding Derek Moellering, Viburnum, which was adopted.

Senator Purgason offered Senate Resolution No. 795, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Ron White, Willow Springs, which was adopted.

Senator Purgason offered Senate Resolution No. 796, regarding the Sixtieth Wedding Anniversary of Mr. and Mrs. Bud McMahan, which was adopted.

SENATE BILLS FOR PERFECTION

Senator Shields moved that **SB 577**, with **SCS**, **SS** for **SCS** and **SA 12** (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SA 12 was again taken up.

Senator Shoemyer offered **SSA 1** for **SA 12**, which was read:

SENATE SUBSTITUTE AMENDMENT NO. 1 FOR SENATE AMENDMENT NO. 12

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 79, Section 208.955, Line 13 of said page, by inserting after “(10)” the following: **“One member from an association or organization with expertise in Alzheimer's disease or related dementia;**

(11)”; and further amend said section by renumbering the remaining subdivisions accordingly.

Senator Shoemyer moved that the above substitute amendment be adopted.

Senator Shields offered **SA 1** to **SSA 1** for **SA 12**, which was read:

SENATE AMENDMENT NO. 1 TO SENATE SUBSTITUTE AMENDMENT NO. 1 FOR SENATE AMENDMENT NO. 12

Amend Senate Substitute Amendment No. 1 for Senate Amendment No. 12 to Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 1, Section 208.955, Line 5 of said amendment, by inserting after “(11)” the following: **“One member from a county developmental disability board, designated by the governor;**

(12)”.

Senator Shields moved that the above amendment be adopted, which motion prevailed.

SSA 1 for **SA 12**, as amended, was again taken up.

Senator Shoemyer moved that the above substitute amendment be adopted, which motion prevailed.

Senator Loudon offered **SA 13**:

SENATE AMENDMENT NO. 13

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 39, Section 208.215, Lines 9-13, by striking all of said lines and inserting in lieu thereof the following:

“may be entitled. Any health benefit plan as defined in section 376.1350, third party administrator, administrative services organization, and pharmacy benefit manager, shall process and pay all properly submitted medical assistance subrogation claims or MO

HealthNet subrogation claims for a period of three years from the date the services were provided or rendered, regardless of any other timely filing requirement otherwise imposed by such entity and the entity shall not deny such claims on the basis of the type or format of the claim form, or a failure to present proper documentation of coverage at the point of sale.”; and

Further amend said bill and section, page 42, line 20, by inserting after “Act” the following: “, **except that third party payers shall not include accident-only, specified disease, disability income, hospital indemnity, or other fixed indemnity insurance policies”;** and

Further amend said bill and section, page 43, lines 15-20, by striking all of said lines and inserting in lieu thereof the following:

“suit from and after the time of the service of the notice. **If the third party and its liability insurer, if any, receives notice or knows that the individual is eligible for MO HealthNet benefits prior to release or satisfaction then no release or satisfaction of any cause of action, suit, claim, counterclaim, demand, judgment, settlement, or settlement agreement shall be valid or effectual as against a claim created under this chapter unless the division joins in the release or satisfaction or executes a release of its claim.”**

Senator Loudon moved that the above amendment be adopted, which motion prevailed.

Senator Callahan offered SA 14, which was read:

SENATE AMENDMENT NO. 14

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 84, Section 473.398, Line 9, by inserting immediately after all of said line the following:

“**Section 1. Notwithstanding any other provision of this act to the contrary, no request for proposal for an administrative services**

organization plan, as established in section 208.950, RSMo, shall be permitted or no contract for an administrative services organization plan shall be awarded prior to August 28, 2007. Any request for proposal or contract for an administrative services organization plan shall be limited to the portions of the state which are not covered by a Medicaid managed care program.”; and

Further amend the title and enacting clause accordingly.

Senator Callahan moved that the above amendment be adopted.

At the request of Senator Callahan, SA 14 was withdrawn.

Senator Callahan offered SA 15:

SENATE AMENDMENT NO. 15

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 84, Section 473.398, Line 9, by inserting immediately after all of said line the following:

“**Section 1. Notwithstanding any other provision of this act to the contrary, no request for proposal for an administrative services organization plan, as established in section 208.950, RSMo, shall be permitted or no contract for an administrative services organization plan shall be awarded prior to August 28, 2007. Any request for proposal or contract for an administrative services organization plan shall be limited to the portions of the state which are not covered by a Medicaid managed care program. For purposes of a request for proposal for health improvement plans, as defined in section 208.950, RSMo, there shall be a request for proposal for at least six regions in the state, however in no case shall there be a single provider for the state. Counties with a risk bearing care coordination plan as of July 1, 2007, shall continue as risk bearing care coordination plans for the categories of aid in**

such program as of July 1, 2007.”; and

Further amend the title and enacting clause accordingly.

Senator Callahan moved that the above amendment be adopted, which motion prevailed.

At the request of Senator Shields, **SB 577**, with **SCS** and **SS** for **SCS**, as amended (pending), was placed on the Informal Calendar.

MESSAGES FROM THE HOUSE

The following messages were received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and passed **HCS** for **HB 796**, entitled:

An Act to repeal section 301.142, RSMo, and to enact in lieu thereof one new section relating to disabled license plates, with penalty provisions.

In which the concurrence of the Senate is respectfully requested.

Read 1st time.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **HCR 16**.

HOUSE CONCURRENT RESOLUTION NO. 16

Whereas, Section 21.760 of the Missouri Revised Statutes provides that during the regular legislative session which convenes in an odd-numbered year, the General Assembly shall, by concurrent resolution, employ an independent certified public accountant or certified public accounting firm to conduct an audit examination of the accounts, functions, programs, and management of the State Auditor's office:

Now, therefore, be it resolved that the members of the House of Representatives of the Ninety-fourth General Assembly, First Regular Session, the Senate concurring therein, hereby authorize the employment of an independent certified public accountant or certified public accounting firm pursuant to the aforesaid provisions of Section 21.760; and

Be it further resolved that the audit examination be made in

accordance with generally accepted auditing standards, including such reviews and inspections of books, records and other underlying data and documents as are necessary to enable the independent certified public accountant performing the audit to reach an informed opinion on the condition and performance of the accounts, functions, programs, and management of the State Auditor's Office; and

Be it further resolved that upon completion of the audit, the independent certified public accountant make a written report of his or her findings and conclusions, and supply each member of the General Assembly, the Governor, and the State Auditor with a copy of the report; and

Be it further resolved that the cost of the audit and report be paid out of the joint contingent fund of the General Assembly; and

Be it further resolved that the Commissioner of Administration bid these services, at the direction of the General Assembly, pursuant to state purchasing laws; and

Be it further resolved that the Chief Clerk of the Missouri House of Representatives be instructed to prepare a properly inscribed copy of this resolution for the Commissioner of Administration.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **HCR 17**.

HOUSE CONCURRENT RESOLUTION NO. 17

Whereas, the western part of Missouri is a growing, vital part of Missouri's commerce and economic development; and

Whereas, U.S. Highway 71 is an important link for communities, companies, and citizens along this corridor; and

Whereas, the Missouri I-49 Coalition is a nonprofit organization consisting of concerned citizens, organizations, and communities organized for the sole purpose of improving U.S. Highway 71 to interstate standards and designating it as part of Interstate 49; and

Whereas, designation of U.S. Highway 71 as a part of I-49 will provide western Missouri with the shortest direct route into international commerce by way of the Gulf of Mexico at New Orleans:

Now, therefore, be it resolved that the members of the House of Representatives of the Ninety-fourth General Assembly, First Regular Session, the Senate concurring therein, hereby:

(1) Recognize the Missouri I-49 Coalition as the official organization for this project in the State of Missouri;

(2) Recognize the importance of I-49 to the State of Missouri;

(3) Support the upgrading of U.S. Highway 71 to interstate standards;

(4) Encourage the Missouri Department of Transportation to support conceptually the idea of an I-49 corridor;

(5) Encourage the Missouri Congressional Delegation to pursue federal funds to assist with this project; and

(6) Urge the United States Department of Transportation to support the designation of U.S. Highway 71 in Missouri as a part of Interstate 49; and

Be it further resolved that the Chief Clerk of the Missouri House of Representatives be instructed to prepare properly inscribed copies of this resolution for Mary E. Peters, the Secretary of the United States Department of Transportation, Pete Rahn, the Director of the Missouri Department of Transportation, each member of the Missouri Highways and Transportation Commission, and each member of the Missouri Congressional Delegation.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **HCR 8**.

HOUSE CONCURRENT RESOLUTION NO. 8

Whereas, Chamois, Missouri, is a community located along the Missouri River in northern Osage County which has no means to cross the river except by way of bridges located approximately 45 miles to the west and 30 miles to the east; and

Whereas, the people who live in Chamois incur increasingly high costs using present routes in order to reach destinations on the north side of the Missouri River for employment, recreation, and business; and

Whereas, people who live on the north side of the Missouri River are equally restricted from accessing destinations on the south side of the Missouri River, respectively; and

Whereas, locating a ferryboat on the Missouri River at Chamois would allow residents on both sides to cross the River, reducing travel times and travel costs, provide a safer route, and conserve fuel; and

Whereas, locating a ferryboat at Chamois would establish the only reported ferry on the Missouri River and would thereby promote tourism on both sides of the River by attracting more visitors to the area and creating a driving destination for tourists visiting such communities as Hermann, Fulton, and Jefferson City; and

Whereas, locating a ferryboat at Chamois would likewise give residents on the south side of the River access to the Katy Trail

located on the north side of the River; and

Whereas, numerous organizations have endorsed the ferryboat at Chamois, including but not limited to the Hermann Area Chamber of Commerce, the Fulton Area Chamber of Commerce, the county commissions for Osage and Callaway counties, the City of Mokane, the City of Chamois, and the Missouri Division of Tourism; and

Whereas, the promoters of the ferryboat at Chamois have requested federal and state funding for the project:

Now, therefore, be it resolved that the members of the House of Representatives of the Ninety-fourth General Assembly, First Regular Session, the Senate concurring therein, hereby express support for the Chamois ferryboat and urge the Missouri Department of Economic Development and the Missouri Department of Transportation, along with other state agencies and the Missouri Congressional Delegation, to assist in securing moneys for locating and construction of the ferryboat; and

Be it further resolved that the Chief Clerk of the Missouri House of Representatives be instructed to prepare properly inscribed copies of this resolution for Governor Matt Blunt, Gregory A. Steinhoff, the Director of the Department of Economic Development, Peter Rahn, the Director of the Missouri Department of Transportation, and each member of the Missouri Congressional Delegation.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **HCR 30**.

HOUSE CONCURRENT RESOLUTION NO. 30

WHEREAS, there are 45 global or U.S. headquarters and over 120 companies involved in the animal health industry including four of the 10 largest global animal health companies and one of the five largest animal nutrition companies located in Missouri and Kansas; and

WHEREAS, leading veterinary colleges and animal research centers are located in Missouri and Kansas including the University of Missouri College of Veterinary Medicine, the University of Missouri's \$60 million Life Sciences Center and Swine Research Center, the Kansas State University College of Veterinary Medicine, and the Kansas State University's \$54 million Biosecurity Research Institute; and

WHEREAS, Missouri is 2nd and Kansas is 7th in cattle and calf inventory in the United States; and

WHEREAS, there are nationally-recognized publishers within the animal health industry located in Missouri and Kansas; and

WHEREAS, Missouri and Kansas have historical roots in the livestock industry and are home to many prominent national and international associations within the animal health industry; and

WHEREAS, retaining and growing existing animal health companies, attracting new animal health companies, increasing animal health research capacity, and developing commercialization infrastructure will create quality jobs and wealth for the states of Missouri and Kansas:

NOW THEREFORE BE IT RESOLVED that the members of the Missouri House of Representatives, Ninety-Fourth General Assembly, First Regular Session, the Senate concurring therein, hereby recognize the region from Manhattan, Kansas, to Columbia, Missouri, including the metropolitan Kansas City area and St. Joseph, Missouri, as the "KC Animal Health Corridor"; and

BE IT FURTHER RESOLVED that the Missouri General Assembly recognizes the KC Animal Health Corridor as the national center of the animal health industry based on the unmatched concentration of animal health and nutrition businesses, and educational, and research assets; and

BE IT FURTHER RESOLVED that the Missouri General Assembly resolves to establish a favorable business environment and support animal health research to foster the continued growth of the animal health industry for the benefit of the economy, universities, businesses, and young people hoping to pursue an animal health career in the KC Animal Health Corridor; and

BE IT FURTHER RESOLVED that the chief clerk of the Missouri House of Representatives be instructed to prepare properly inscribed copies of this resolution for the Governors of Missouri and Kansas.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **HCR 11**.

HOUSE CONCURRENT RESOLUTION NO. 11

Whereas, Missouri is pleased to be home to the six-state regional Taipei Economic and Cultural Office in Kansas City; and

Whereas, Missouri has demonstrated its commitment to trade with Taiwan by maintaining a Trade Office in Taipei since 1990; and

Whereas, trade between Taiwan and the United States has increased significantly during the past decades, with the United States being Taiwan's second-largest source of imports, and Taiwan being the eighth-largest trading partner of the United States; and

Whereas, Taiwan ranks the fifth-largest overseas markets for United States agricultural products in general, including the third-

largest buyer of United States beef and corn products, the fifth-largest buyer of United States soybean products, the eighth-largest buyer of United States wheat, and the second-largest customer of United States agricultural products worldwide in terms of per capita consumption; and

Whereas, the United States International Trade Commission found that, with a Taiwan-United States free trade agreement in place, United States exports to Taiwan would increase by 16%, or roughly \$3.4 billion annually, and the broader interests of the United States in the Asia-Pacific region would be served:

Now, therefore, be it resolved that the members of the House of Representatives of the Ninety-fourth General Assembly, First Regular Session, the Senate concurring therein, hereby support the negotiations of a Taiwan-United States free trade agreement; and

Be it further resolved that the Chief Clerk of the Missouri House of Representatives be instructed to prepare properly inscribed copies of this resolution for George W. Bush, President of the United States; Condoleezza Rice, United States Secretary of State; Carlos M. Gutierrez, United States Secretary of Commerce; Ambassador Susan C. Schwab, the United States Trade Representative, each member of the Missouri Congressional delegation, and the Taipei Economic and Cultural Office in Kansas City.

In which the concurrence of the Senate is respectfully requested.

Also,

Mr. President: I am instructed by the House of Representatives to inform the Senate that the House has taken up and adopted **HCR 24**.

HOUSE CONCURRENT RESOLUTION NO. 24

Whereas, the federal No Child Left Behind (NCLB) Act requires states to assess all students in their state's assessment program; and

Whereas, the Act provides for a limited number of students with disabilities to be assessed with an alternate assessment, but only 1% of a school district's tested population may be counted as proficient or above using the alternate assessment; and

Whereas, this limitation results in some special needs students being included in the regular state assessment system when, in fact, their cognitive disabilities are such that they should not be assessed with their age or grade-level peers; and

Whereas, a more appropriate assessment for them might be a test that was developed for use in some grade-level below the grade in which they are classified, but the United States Department of Education regulations governing the implementation of the NCLB Act prohibit this "out of grade-level" testing; and

Whereas, the United States Department of Education has

recently allowed for the inclusion of an additional 2% of students with disabilities to be assessed with a modified grade-level assessment, but this additional flexibility still prohibits “out of grade-level” testing; and

Whereas, the Individuals with Disabilities Education Improvement Act (IDEA), which predates the NCLB Act, contains requirements for assessment that must be included in the student’s individualized educational program (IEP), which may not meet the requirements of the NCLB Act for assessment and thus may place the IEP team at odds with the overall NCLB assessment process and may create confusion for parents; and

Whereas, certain accommodations written into an IEP, such as reading out loud or paraphrasing, are currently not acceptable for certain assessments under NCLB procedures, thus making the student’s performance on the assessment not count for NCLB purposes and denying the student an accommodation that the IEP team has documented as necessary to the child’s best chances for a proficient performance; and

Whereas, Secretary Margaret Spellings has shown an admirable flexibility in permitting experimentation with alternative approaches to the NCLB Act while keeping the focus on accountability:

Now, therefore, be it resolved by the members of the House of Representatives of the Ninety-fourth General Assembly, First Regular Session, the Senate concurring therein, that the interests of the special needs students of the state would best be served by reviewing the assessment provisions of IDEA and the NCLB Act together to eliminate contradictory objectives, so that accommodations that are appropriate to a student with an IEP do not invalidate the student’s assessment results for the purposes of No Child Left Behind assessments; and

Be it further resolved that the Chief Clerk of the Missouri House of Representatives be instructed to prepare properly inscribed copies of this resolution for Margaret Spellings, Secretary of the United States Department of Education and each member of the Missouri Congressional delegation.

In which the concurrence of the Senate is respectfully requested.

HOUSE BILLS ON SECOND READING

The following Bills were read the 2nd time and referred to the Committees indicated:

HB 933—Transportation.

HB 1014—Financial and Governmental Organizations and Elections.

HB 41—Economic Development, Tourism

and Local Government.

HB 428—Agriculture, Conservation, Parks and Natural Resources.

HCS for HB 616—Economic Development, Tourism and Local Government.

HB 684—Economic Development, Tourism and Local Government.

HB 740—Economic Development, Tourism and Local Government.

HB 941—Education.

On motion of Senator Shields, the Senate recessed until 3:00 p.m.

RECESS

The time of recess having expired, the Senate was called to order by President Kinder.

RESOLUTIONS

Senator Lager offered Senate Resolution No. 797, regarding David Tolen, Gallatin, which was adopted.

Senator Lager offered Senate Resolution No. 798, regarding the Seventieth Wedding Anniversary of Mr. and Mrs. Gerald Puls, Bethany, which was adopted.

Senator Lager offered Senate Resolution No. 799, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Jack Miller, Trenton, which was adopted.

Senator Coleman offered Senate Resolution No. 800, regarding the Jamison 21st Century After-School Enrichment Program, which was adopted.

Senator McKenna offered Senate Resolution No. 801, regarding Marshall Faulk, Saint Louis, which was adopted.

Senator McKenna offered Senate Resolution No. 802, regarding James Edward Chellew,

Imperial, which was adopted.

SENATE BILLS FOR PERFECTION

Senator Shields moved that **SB 577**, with **SCS** and **SS** for **SCS**, as amended (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

Senator Kennedy offered **SA 16**:

SENATE AMENDMENT NO. 16

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 55, Section 208.631, Line 4 of said page, by inserting immediately after said line the following:

“208.659. The division of medical services shall revise the eligibility requirements for the uninsured women's health program, as established in 13 C.S.R. Section 70-4.090, to include women who are at least eighteen years of age and with a net family income of at or below one hundred eighty-five percent of the federal poverty level. Such change in eligibility requirements shall not result in any change in services provided under the program.”; and

Further amend the title and enacting clause accordingly.

Senator Kennedy moved that the above amendment be adopted.

Senator Shields offered **SSA 1** for **SA 16**, which was read:

SENATE SUBSTITUTE AMENDMENT NO. 1 FOR SENATE AMENDMENT NO. 16

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 55, Section 208.631, Line 4, by inserting immediately after said line the following:

“208.659. The division of medical services shall revise the eligibility requirements for the uninsured women's health program, as established in 13 C.S.R. Section 70-4.090, to include women who are at least eighteen years

of age and with a net family income of at or below one hundred eighty-five percent of the federal poverty level. In order to be eligible for such program, the applicant shall not have assets in excess of two hundred and fifty thousand dollars, nor shall the applicant have access to employer-sponsored health insurance. Such change in eligibility requirements shall not result in any change in services provided under the program.”; and

Further amend the title and enacting clause accordingly.

Senator Shields moved that the above substitute amendment be adopted, which motion prevailed.

Senator Callahan offered **SA 17**:

SENATE AMENDMENT NO. 17

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 3, Section 191.411, Line 18 of said page, by inserting after all of said line the following:

“191.900. 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;

(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;**

Proof of specific intent to defraud is not required;

(9) “Medical assistance program”, **MO HealthNet**, or 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.

191.907. 1. A person may bring a civil

action for a violation of subsections 1 to 4 of section 191.905 on behalf of the person and the state. The action shall be brought in the name of the person and of the state.

2. In an action brought under this section, a person who violates subsection 1 to 4 of section 191.905 is liable as provided by subsection 11 of section 191.905.

3. Contemporaneous with the filing of the action, a person bringing an action under this section shall deliver a copy of the petition upon the attorney general and shall disclose, in writing, all material evidence and information in the person's possession to the attorney general.

4. The petition shall be filed in camera and, except as provided by subsection 5 or 6 of this section, shall remain under seal until at least sixty days following the date the petition is filed, or until the date the state elects to intervene, whichever occurs first. The petition shall not be served upon the defendant until ordered by the court.

5. The attorney general, on behalf of the state, may elect to intervene and proceed with the action not later than the sixtieth day following the date the petition is filed. The attorney general may, for good cause shown, move the court to extend this deadline, and may support such motion by affidavits or other submissions in camera.

6. Contemporaneous with the decision to intervene, the attorney general may move the court to keep the petition under seal for an extended period of time.

7. An action brought under this section may be dismissed before the end of the period during which the petition remains under seal if the court and the attorney general consent in writing to the dismissal, and state in writing the reasons for consenting.

8. A defendant in any action brought under

this section shall not be required to file an answer to the petition until thirty days following the date the petition is served on the defendant.

9. Not later than the last day of the period prescribed by subsection 4 of this section, or an extension of that period granted by the court under subsection 5 of this section, the state shall:

- (1) Proceed with the action; or
- (2) Notify the court that the state declines to intervene in the action.

10. If the state elects not to intervene in the action, the person who initiated the action shall be entitled to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed and shall be supplied with copies of all deposition transcripts at the state's expense. If the state chooses not to intervene within the period prescribed by subsection 4 of this section, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

11. A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this section.

12. If the state elects to intervene in the action, it shall have the primary responsibility for conducting the action and shall not be bound by any act of the person who initiated the action. The person who initiated the action shall have the right to continue as a party in the proceeding, subject to the limitations set forth in this section.

13. The state may dismiss any action brought under this section notwithstanding an objection by the person who initiated the action, but only if:

- (1) The attorney general has notified the

person who initiated the action that the state has filed a motion to dismiss; and

(2) The court provides the person with an opportunity for a hearing on the motion.

14. The state may settle the action with the defendant, notwithstanding an objection by the person who initiated the action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable, considering all relevant circumstances. Upon a showing of good cause, the hearing may be held in camera.

15. Upon a showing by the state that unrestricted participation during the course of litigation by the person who initiated the action would cause harassment of the defendant, or would interfere with or unduly delay the state's investigation or prosecution of the case, or would be repetitious or irrelevant, the court may impose limitations on the person's participation, including:

- (1) Limiting the number of witnesses the person may call;
- (2) Limiting the length of the testimony of witnesses called by the person;
- (3) Limiting the person's cross-examination of witnesses; or
- (4) Any other limitation on participation that the court deems necessary or appropriate.

16. Upon a showing by the defendant that unrestricted participation during the course of litigation by the person bringing the action would be for the purposes of harassment, or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

17. Upon a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the

court may stay the discovery for a period not to exceed sixty days. The court shall hear a motion to stay discovery under this subsection in camera.

18. The court may extend the stay of discovery prescribed by subsection 17 of this section upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action would interfere with the ongoing investigation or proceedings.

19. Notwithstanding subsection 1 of this section, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person who initiated the action shall have the same rights in the other proceeding as the person would have had if the action brought under this section had continued. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action brought under this section. For the purposes of this subsection, a finding or conclusion is final if the finding or conclusion has been finally determined on appeal to the appropriate court of jurisdiction, if no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired, or if the finding or conclusion is not subject to judicial review.

20. If the state proceeds with an action under this section, the person bringing the action shall be entitled, except as provided by subsection 21 of this section, to receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action. Except as provided by subsection 21 of this

section, if the person who initiated an action under this section conducts the action without state intervention, the court shall award the person at least twenty-five but no more than thirty percent of the proceeds of the action. If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than ten percent of the proceeds of the action, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. A payment to a person under this subsection shall be made from the proceeds of the action or proceeds of a settlement of the action. A person receiving a payment under this subsection shall also be entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. The court's determination of expenses, fees, and costs to be awarded under this subsection shall be made only after the defendant has been found liable in the action. In addition, the defendant shall be required to reimburse the reasonable costs attributable to the attorney general's investigation and prosecution of the action. The office of the attorney general may retain a reasonable portion of recoveries under this section for the enforcement of sections 191.900 to 191.910.

21. If the court finds that the action was brought by a person who planned and initiated the violation of subsections 1 to 4 of section 191.905 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive

under subsection 20 of this section, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of subsections 1 to 4 of section 191.905, the court shall dismiss the person from the action, and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action.

22. If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

23. A person may not bring an action under this section that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

24. A person may not bring an action under this section that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this section that is based on the information.

25. The state shall not be liable for expenses that a person incurs in bringing an action under this section.

26. A person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms of employment by the person's employer because of a lawful act taken by the person in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to reinstatement with the same seniority status the person would have had but for the discrimination, not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. A person may bring an action in the appropriate circuit court for the relief provided in this subsection.

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

28. In any action brought under this section, the state or the person initiating the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence."; and

Further amend the title and enacting clause accordingly.

Senator Callahan moved that the above amendment be adopted.

Senator Ridgeway raised the point of order that SA 17 is out of order as it is not germane, is outside the title and beyond the scope of the underlying bill.

The point of order was referred to the President Pro Tem who ruled it not well taken.

SA 17 was again taken up.

Senator Engler assumed the Chair.

Senator Ridgeway offered SSA 1 for SA 17:
SENATE SUBSTITUTE AMENDMENT NO. 1
FOR SENATE AMENDMENT NO. 17

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 3, Section 191.411, Line 18 of said page, by inserting after all of said line the following:

“191.900. 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 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”, MO HealthNet, or 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.

7. A person who violates subsections 1 to [4] 3 of this section is guilty of a class [D] C felony upon his **or her** first conviction, and shall be guilty of a class [C] 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.** A prior conviction shall be pleaded and proven as provided by section 558.021, RSMo. 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, and, upon conviction, forever shall be excluded from participation as a provider for the medical assistance program.

[8.] 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.

[9.] **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, typewritten 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.

[10.] **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 “[Medicaid] **MO HealthNet** Fraud Reimbursement Fund”, which is hereby established in the state treasury. Moneys in the [Medicaid] **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 “[Medicaid] **MO HealthNet** Fraud Prosecution Revolving Fund”, which is hereby established in the state treasury. Moneys in the [Medicaid] **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 [Medicaid] **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. The provisions of section 33.080, RSMo, notwithstanding, moneys in the [Medicaid] **MO HealthNet** fraud prosecution revolving fund shall not lapse at the end of the biennium.

[11.] **12.** A person who violates subsections 1 to [4] **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.

[12.] **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.

[13.] **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 [Medicaid] **MO HealthNet** fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to the credit of the [Medicaid] **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 10 and 11 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. 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, RSMo, 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, RSMo, if the employee was found to have acted fraudulently in connection with the state medical assistance program.

191.908. 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.

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

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

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

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

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

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

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

An annual financial audit of the MO HealthNet fraud unit within the attorney general's office

shall be conducted and completed by the state auditor in order to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office.

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

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

(2) Number of MO HealthNet long-term care facility reviews;

(3) Number of MO HealthNet provider and recipient utilization reviews;

(4) The number of referrals sent by the department to the attorney general's office;

(5) The total amount of overpayments identified as the result of completed investigations, reviews, or audits;

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

(7) The total amount of monetary recovery as the result of completed investigation, reviews, or audits;

(8) The number of administrative sanctions against MO HealthNet providers, including the number of providers excluded from the program.

An annual financial audit of the program integrity unit within the department of social

services shall be conducted and completed by the state auditor in order to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office.

191.910. 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, RSMo, 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, RSMo, provided that if the attorney general exercises such powers, the provisions of section 407.070, RSMo, shall also be applicable; and may exercise all of the powers provided by subsections 1 and 2 of section 578.387, RSMo, 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, RSMo. 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, RSMo. 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, RSMo, 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 knowingly with the intent to defraud the medical assistance program shall 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, RSMo, subsection 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or sections 660.300 and 660.305, RSMo, 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, RSMo, subsection 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, and sections 660.300 and 660.305, 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 violation of sections 191.900 to 191.910 is guilty of a class A misdemeanor. Any person who previously has been convicted of making a false report or claim under this section and who is subsequently convicted of making a false report or claim under this section is guilty of 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.”; and

Further amend said bill, page 84, section 473.398, line 9 of said page, by inserting after all of said line the following:

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

following:

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

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

No more than three members from each house shall be of the same political party. The directors of the department of social services, the department of health and senior services, and the department of mental health or the directors' designees shall serve as ex officio members of the advisory working group.

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

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

4. The advisory working group shall meet as necessary.

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

Further amend the title and enacting clause accordingly.

Senator Ridgeway moved that the above substitute amendment be adopted, which motion prevailed.

Senator Justus offered SA 18:

SENATE AMENDMENT NO. 18

Amend Senate Substitute for Senate

Committee Substitute for Senate Bill No. 577, Page 5, Section 208.151, Line 10 of said page, by inserting immediately after “208.040.” the following: “. **Participants under this subdivision who are participating in drug court, as defined in section 478.001, RSMo, shall have their eligibility automatically extended sixty days from the time the dependent child or children are removed from the custody of the participant**”.

Senator Justus moved that the above amendment be adopted, which motion prevailed.

Senator Bray offered SA 19:

SENATE AMENDMENT NO. 19

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 18, Section 208.152, Line 11 of said page, by inserting after “(7)” the following: “**Dental services;**

(8) **Services of podiatrists as defined in section 330.010, RSMo;**

(9)”; and

Further amend said bill and section, Page 23, Line 22 of said page, by inserting after all of said line the following:

“(20) **Comprehensive day rehabilitation services beginning early posttrauma as part of a coordinated system of care for individuals with disabling impairments. Rehabilitation services must be based on an individualized, goal-oriented, comprehensive and coordinated treatment plan developed, implemented, and monitored through an interdisciplinary assessment designed to restore an individual to optimal level of physical, cognitive and behavioral function. The division of medical services shall establish by administrative rule the definition and criteria for designation of a comprehensive day rehabilitation service facility, benefit limitations and payment mechanism;**

(21) **Hospice care.** As used in this subsection, the term “hospice care” means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. Beginning July 1, 1990, the rate of reimbursement paid by the division of medical services to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989);

(22) Subject to appropriations, the department of social services shall conduct demonstration projects for nonemergency, physician-prescribed transportation for pregnant women who are recipients of medical assistance under this chapter in counties selected by the director of the division of medical services. The funds appropriated pursuant to this subdivision shall be used for the purposes of this subdivision and for no other purpose. The department shall not fund such demonstration projects with revenues received for any other purpose. This subdivision shall not authorize transportation of a pregnant woman in active labor. The division of medical services shall notify recipients of nonemergency transportation services under this subdivision of such other transportation services which may

be appropriate during active labor or other medical emergency;” and further amend said section, by renumbering the subdivisions accordingly.

Senator Bray moved that the above amendment be adopted.

Senator Shields offered **SSA 1 for SA 19:**

SENATE SUBSTITUTE AMENDMENT NO. 1
FOR SENATE AMENDMENT NO. 19

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 23, Section 208.152, Line 22, by inserting immediately after the word “need” the following:

“;

(20) **Hospice care.** As used in this subsection, the term “hospice care” means a coordinated program of active professional medical attention within a home, outpatient and inpatient care which treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses which are experienced during the final stages of illness, and during dying and bereavement and meets the Medicare requirements for participation as a hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the Mo HealthNet division to the hospice provider for room and board furnished by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement which would have been paid for facility services in that nursing home facility for that patient, in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989)”.

Senator Shields moved that the above substitute amendment be adopted, which motion

prevailed.

Senator Ridgeway offered **SA 20**:

SENATE AMENDMENT NO. 20

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 4, Section 208.001, Line 10, by inserting immediately after all of said line the following:

“4. When construing the provisions of the “Missouri Health Improvement Act of 2007” and any rules promulgated thereunder, the department shall ensure that any rules are promulgated consistent with the principles of transparency, personal responsibility, prevention and wellness, performance-based assessments, and achievement of improved health outcomes and cost-effective delivery through the use of technology and coordination of care.”; and

Further renumber the remaining subsection accordingly.

Senator Ridgeway moved that the above amendment be adopted, which motion prevailed.

Senator Shoemyer offered **SA 21**:

SENATE AMENDMENT NO. 21

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 84, Section 473.398, Line 9, by inserting immediately after said line the following:

“Section 1. Centers for independent living, as defined in section 178.651, RSMo, that assist eligible MO HealthNet participants in the refurbishing of prescribed, medically necessary durable medical equipment, in place of purchasing new durable medical equipment shall receive twenty percent of the savings generated by such actions.”; and

Further amend the title and enacting clause accordingly.

Senator Shoemyer moved that the above amendment be adopted, which motion prevailed.

Senator Kennedy offered **SA 22**, which was read:

SENATE AMENDMENT NO. 22

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 23, Section 208.152, Line 22, by inserting immediately after “need” the following: “;

(20) Services providing counseling on medication usage and delivery systems”.

Senator Kennedy moved that the above amendment be adopted.

At the request of Senator Kennedy, **SA 22** was withdrawn.

Senator Coleman offered **SA 23**:

SENATE AMENDMENT NO. 23

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 29, Section 208.152, Line 8, by inserting immediately after said line the following:

“12. (1) Notwithstanding any other provision of law, eligibility requirements in the state Medicaid program shall be no more restrictive than those in effect on January 1, 2005; except that, for Medicaid eligibility for custodial parents, noncustodial parents, extended transitional medical assistance, and extended women's health services, the eligibility requirements shall be no more restrictive than the January 1, 2002, eligibility requirements; and

(2) Notwithstanding any other provision of law, state Medicaid services, cost-sharing, including co-payments and premiums, long-term care services criteria, and MC+ for kids affordability standards shall be no more restrictive than the state Medicaid program requirements in effect on January 1, 2005.”.

Senator Coleman moved that the above amendment be adopted and requested a roll call

vote be taken. She was joined in her request by Senators Barnitz, Bray, Days and Graham.

Senator Bartle assumed the Chair.

SA 23 failed of adoption by the following vote:

YEAS—Senators

Barnitz	Bray	Callahan	Coleman
Crowell	Days	Engler	Graham
Green	Justus	Kennedy	Mayer
McKenna	Shoemyer	Smith	Wilson—16

NAYS—Senators

Bartle	Champion	Clemens	Gibbons
Goodman	Griesheimer	Gross	Koster
Lager	Loudon	Nodler	Purgason
Ridgeway	Rupp	Scott	Shields
Stouffer	Vogel—18		

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—None

Senator Graham offered **SA 24**, which was read:

SENATE AMENDMENT NO. 24

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 577, Page 69, Section 208.950, Line 28 of said page, by striking the word “spend” and inserting in lieu thereof the following: “**allocate**”; and

Further amend said bill and section, page 70, line 3 of said page, by striking the word “spend” and inserting in lieu thereof the following: “**allocate**”; and further amend line 16 of said page, by inserting at the end of said line the following: “**If members do not participate in the wellness programs, the risk-bearing care coordination plan shall not be financially penalized.**”

Senator Graham moved that the above

amendment be adopted, which motion failed.

Senator Shields moved that **SS** for **SCS** for **SB 577**, as amended, be adopted, which motion prevailed.

On motion of Senator Shields, **SS** for **SCS** for **SB 577**, as amended, was declared perfected and ordered printed.

MESSAGES FROM THE GOVERNOR

The following messages were received from the Governor, reading of which was waived:

OFFICE OF THE GOVERNOR
 State of Missouri
 Jefferson City
 65101
 April 4, 2007

TO THE SENATE OF THE 94th GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment:

Kimberley J. Mathis, 5322 Tamm Avenue, Saint Louis, Saint Louis City, Missouri 63109, as a member of the Children’s Trust Fund Board, for a term ending September 15, 2009, and until her successor is duly appointed and qualified; vice, Linda Reed term expired.

Respectfully submitted,
 MATT BLUNT

Also,

OFFICE OF THE GOVERNOR
 State of Missouri
 Jefferson City
 65101
 April 4, 2007

TO THE SENATE OF THE 94th GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment:

Betty A. Knight, 22 Gates Drive, Platte City, Platte County, Missouri 64079, as a member of the Advisory Committee for 911 Service Oversight, for a term ending April 9, 2009, and until her successor is duly appointed and qualified; vice, Gregory S. Ballentine, term expired.

Respectfully submitted,
 MATT BLUNT

Also,

OFFICE OF THE GOVERNOR

State of Missouri
Jefferson City
65101

March 22, 2007

TO THE SENATE OF THE 94th GENERAL ASSEMBLY OF
THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment:

Robert C. Kramer, Democrat, 9545 Dana Avenue, Saint Louis, Saint Louis County, Missouri 63123, as a member of the Environmental Improvement and Energy Resources Authority, for a term ending December 29, 2008, and until his successor is duly appointed and qualified; vice, William Worley, term expired.

Respectfully submitted,

MATT BLUNT

Also,

OFFICE OF THE GOVERNOR

State of Missouri
Jefferson City
65101

April 4, 2007

TO THE SENATE OF THE 94th GENERAL ASSEMBLY OF
THE STATE OF MISSOURI:

I have the honor to transmit to you herewith for your advice and consent the following appointment:

Christina L. Bruning, 9227 Lemona Drive, Saint Louis, Saint Louis City, Missouri 63123, as a member of the Missouri Advisory Commission for Physicians Assistants, for a term ending March 27, 2009, and until her successor is duly appointed and qualified; vice, Lynn Catrett, term expired.

Respectfully submitted,

MATT BLUNT

Also,

OFFICE OF THE GOVERNOR

State of Missouri
Jefferson City
65101

April 4, 2007

TO THE SENATE OF THE 94th GENERAL ASSEMBLY OF
THE STATE OF MISSOURI:

The following addendum should be made to the commission of Lori A. Clark to the Organ Donation Advisory Committee, submitted February 1, 2005. Line 1 should be amended as follows: "Lori A. Hodges, 2022 Stadium Boulevard, Jefferson City, Cole County, Missouri"

Respectfully submitted,

MATT BLUNT

President Pro Tem Gibbons referred the above appointments and addendum to the Committee on Gubernatorial Appointments.

RESOLUTIONS

Senator Shoemyer offered Senate Resolution No. 803, regarding Sam Gunter, Edina, which was adopted.

INTRODUCTIONS OF GUESTS

Senator Nodler introduced to the Senate, Zack Shawver, Granby.

Senator Shields introduced to the Senate, Thom McNamara and members of Cornerstone of Care, Kansas City.

Senator Purgason introduced to the Senate, members of Missouri Hospice and Palliative Care Association.

Senator Champion introduced to the Senate, Reverend Edgar McElhannon and Anna Davis, Springfield; and Regina and Jeffrey Lang, Benton, Louisiana.

Senator Barnitz introduced to the Senate, Mr. Petrie, Billy Rawlins, Fred Simmens, John Money and students Randa, Madonna, Renee, Thomas, Christian and Stanley from Boys and Girls Town of Missouri, St. James.

Senator Coleman introduced to the Senate, representatives of Boys and Girls Clubs of Missouri.

Senator Champion introduced to the Senate, members of Community Hospice of Springfield.

Senator Wilson introduced to the Senate, David A. Smith, President, Boys and Girls Clubs of Greater Kansas City.

Senator Loudon introduced to the Senate, his father, Bob Loudon and Art Morey, Ballwin.

Senator Green introduced to the Senate, former State Representative John Kauffman, Excello.

Senator Gibbons introduced to the Senate, Cathy Schwegmann and her children, Kate, Elizabeth, Emily and Karl, Kirkwood; and Kate, Elizabeth and Emily were made honorary pages.

Senator Gibbons introduced to the Senate, Darrel St. Aubin, Laura Hoffman, Brenda Ryan and children from Edgewood Children’s Center,

St. Louis; and Evan Hester, Scott Harris and Zack Allen were made honorary pages.

Senator Shoemyer introduced to the Senate, Wayne Hatfield and Todd Caraway of Rural Advocates for Independent Living.

On motion of Senator Shields, the Senate adjourned under the rules.

SENATE CALENDAR

FIFTIETH DAY—THURSDAY, APRIL 5, 2007

FORMAL CALENDAR

HOUSE BILLS ON SECOND READING

HCS for HB 796

SENATE BILLS FOR PERFECTION

- | | |
|---|-----------------------------------|
| 1. SB 668-Loudon, with SCS | 10. SB 521-Lager, et al, with SCS |
| 2. SB 496-Koster and Bartle, with SCS | 11. SB 611-Goodman, with SCS |
| 3. SBs 660, 553, 557, 167, 258, 114 & 378-Mayer, with SCS | 12. SB 537-Lager |
| 4. SBs 555 & 38-Gibbons, with SCS | 13. SB 523-Scott, with SCS |
| 5. SB 499-Engler and Clemens, with SCS | 14. SB 542-Scott, with SCS |
| 6. SB 572-Vogel | 15. SB 592-Scott, with SCS |
| 7. SB 627-Ridgeway | 16. SB 664-Scott, with SCS |
| 8. SB 599-Engler, with SCS | 17. SB 212-Goodman |
| 9. SB 205-Stouffer and Gibbons, with SCS | 18. SB 654-Kennedy |
| | 19. SB 563-Lager, with SCS |

HOUSE BILLS ON THIRD READING

HCS for HB 453 (Mayer)
HJR 7-Nieves, with SCS (Engler)

HCS for HB 327, with SCS (Griesheimer)

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SB 2-Gibbons, with SCS

SB 5-Loudon, with SCS

SB 17-Shields, with SCS	SB 300-Bartle
SB 20-Griesheimer, with SCS	SB 303-Loudon, et al
SB 21-Griesheimer, with SCS	SB 313-Scott, with SCS
SB 27-Bartle and Koster	SB 341-Goodman, with SCS
SB 31-Nodler	SB 363-Bartle
SB 40-Ridgeway, with SS (pending)	SB 364-Koster, with SCS, SS for SCS, SA 1 & SSA 1 for SA 1 (pending)
SB 53-Koster and Engler, with SCS	SB 368-Barnitz, et al, with SCS
SB 75-Coleman, et al, with SCS	SBs 370, 375 & 432-Scott and Koster, with SCS & SA 3 (pending)
SB 85-Champion and Koster, with SCS	SB 385-Gibbons, with SCS
SB 86-Champion, with SCS	SB 389-Nodler, et al, with SCS & SS#4 for SCS (pending)
SB 101-Mayer	SB 391-Days, with SCS
SB 131-Rupp	SB 400-Crowell, et al
SB 153-Engler, et al, with SCS	SB 428-Purgason, with SCS
SB 155-Engler, with SCS	SB 429-Gibbons, with SCS
SB 160-Rupp, with SCS	SB 430-Shields, et al, with SCS, SS#2 for SCS, SA 4 & SSA 3 for SA 4 (pending)
SB 168-Mayer and Crowell, with SCS	SB 433-Callahan and Rupp
SB 169-Rupp, with SCS, SS for SCS & SA 3 (pending)	SB 444-Goodman
SB 204-Stouffer, with SCS & SS for SCS (pending)	SB 453-Scott, with SCS
SB 213-McKenna	SB 458-Gibbons
SB 242-Nodler, with SCS	SB 476-Crowell
SB 250-Ridgeway and Vogel	SB 480-Ridgeway, et al, with SCS
SB 252-Ridgeway and McKenna	SB 492-Crowell
SB 254-Nodler, et al, with SCS	SB 511-Scott, with SCS
SBs 260 & 71-Koster, et al, with SCS	SB 531-Gibbons, with SCS
SB 274-Shields	SB 534-Nodler
SB 282-Griesheimer, with SCS & SS for SCS (pending)	SB 570-Clemens
SB 287-Crowell and Vogel	SB 698-Ridgeway, et al, with SCS
SB 292-Mayer	
SB 297-Loudon, with SCS	

CONSENT CALENDAR

Senate Bills

Reported 2/8

SB 211-Goodman

Reported 2/15

SB 8-Kennedy

Reported 3/8

SB 185-Green

RESOLUTIONS

To be Referred

HCR 16-Deeken
HCR 17-Fisher, et al
HCR 8-Loehner, et al

HCR 30-Pratt, et al
HCR 11-Ervin, et al
HCR 24-Wilson (130), et al

Unofficial

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