

SECOND REGULAR SESSION

SENATE BILL NO. 952

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOLL.

Read 1st time February 2, 2000, and 1,000 copies ordered printed.

4325S.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 191.900 and 191.910, RSMo 1994, relating to health care payment fraud and abuse, and to enact in lieu thereof two new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.900 and 191.910, RSMo 1994, are repealed and two new sections enacted in lieu thereof, to be known as sections 191.900 and 191.910, to read as follows:

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;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(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) "Medical assistance program", [any program to provide or finance health care to recipients which is established pursuant to title 42 of the United States Code, any successor federal health insurance program, or a waiver granted thereunder. A medical assistance program may be funded either solely by state funds or by state and federal funds jointly] **any federal health care program, as defined in 42 U.S.C. Section 1320a-7b(f)**. The term "medical assistance program" shall include the medical assistance program provided by [section 208.151, RSMo, et seq.] **chapter 208, RSMo**, and any state agency or agencies administering all or any part of such a program;

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

191.910. 1. The attorney general shall have authority to investigate alleged or suspected violations of sections 191.900 to 191.910, and **section 198.070, RSMo**.

2. In an investigation of alleged or suspected violations of sections 191.900 to 191.910, or section 198.070, RSMo, the attorney general 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] **sections 191.905 and 198.070, RSMo**, 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 **or section 198.070, RSMo**, as if the acts enumerated in [subsections 1 to 3 of section 191.905] **such sections** involve "public assistance" as defined by section 578.375, RSMo. The attorney general and [his] **the attorney general's** authorized investigators shall be authorized to serve all subpoenas and civil process related to the enforcement of sections 191.900 to 191.910, **section 198.070, RSMo**, and chapter 407, RSMo. In order for the attorney general to commence a state prosecution for violations of sections 191.900 to 191.910 **or section 198.070, RSMo**, 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] **the attorney general's** 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 **or section 198.070, RSMo.** 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 **or section 198.070, RSMo,** 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.] **3.** In any investigation, hearing or other proceeding pursuant to sections 191.900 to 191.910 **or section 198.070, RSMo,** 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 **or section 198.070, RSMo.** 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.] **4.** Sections 191.900 to 191.910 **and section 198.070, RSMo,** 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] **section 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 **or section 198.070, RSMo,** 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 **or section 198.070, RSMo,** 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 **and section 198.070, RSMo**, take precedence over the provisions of [sections 198.070 and] **section** 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.

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