

SECOND REGULAR SESSION

SENATE BILL NO. 1244

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time March 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5336S.03I

AN ACT

To amend chapter 191, RSMo, by adding thereto four new sections relating to Medicaid fraud, with penalty provisions.

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

Section A. Chapter 191, RSMo, is amended by adding thereto four new sections, to be known as sections 191.911, 191.912, 191.913, and 191.914, to read as follows:

191.911. 1. Any person may bring a civil action in the name of the state to recover losses that the state suffers from a violation of sections 191.900 to 191.912. At the time of filing the complaint, the person shall deliver a copy of the complaint and a written disclosure of all material evidence and information the person possesses to the state attorney general. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served upon the defendant until the court so orders. The attorney general may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information. During the period in which the complaint is under seal, the attorney general may elect to initiate discussions with the accused provider in an attempt to facilitate a resolution of the claim prior to the commencement of judicial proceedings.

2. An action filed under this section shall not be dismissed by the person initiating such action unless the attorney general has been notified and had an opportunity to appear and oppose the dismissal. The attorney general shall waive the opportunity to oppose the dismissal if it is not exercised within twenty-eight days of receiving notice.

21 3. The attorney general may, for good cause shown, move the
22 court for an extension of the time during which the complaint remains
23 under seal, as provided by subsection 1 of this section. Any such
24 motion may be supported by affidavits or other submissions in camera.

25 4. Before the expiration of the sixty day period or any extensions
26 obtained under subsection 3 of this section, the attorney general shall:

27 (1) Notify the court and the person initiating the action that it
28 will proceed with the action, in which case the action shall be
29 conducted by the attorney general; or

30 (2) Notify the court that it declines to take over the action, in
31 which case the action shall be dismissed, notwithstanding any objection
32 by the person initiating the action.

33 5. When a person files an action under this section, no person
34 other than the attorney general shall intervene or bring a related
35 action based on the facts underlying the pending action.

36 6. If the attorney general elects to proceed with the action, he or
37 she shall have the primary responsibility for conducting the action, and
38 shall not be bound by any act of the person initiating the action. Such
39 person shall have the right to continue as a party to the action, subject
40 to the limitations set forth in subsection 9 of this section.

41 7. The attorney general may voluntarily dismiss the action
42 notwithstanding the objections of the person initiating the action, but
43 only if that person has been notified of and offered the opportunity to
44 participate in a hearing on the motion to dismiss.

45 8. The attorney general may settle the action, notwithstanding
46 the objections of the person initiating the action, but only if that
47 person has been notified of and offered the opportunity to participate
48 in a hearing on the settlement, and if the court determines that the
49 settlement is fair, adequate, and reasonable under the
50 circumstances. Upon a showing of good cause, the settlement hearing
51 may be held in camera.

52 9. Upon a showing by the attorney general that unrestricted
53 participation during the course of the litigation by the person initiating
54 the action would interfere with or unduly delay the attorney general's
55 prosecution of the case, or would be repetitious, irrelevant, or unduly
56 harassing, the court may, in its discretion, impose limitations on the
57 person's participation, such as:

- 58 (1) Limiting the number of witnesses the person may call;
59 (2) Limiting the length of the testimony of witnesses;
60 (3) Limiting the person's cross-examination of witnesses; or
61 (4) Otherwise limiting the participation by the person in the
62 litigation.

63 Upon a showing by the defendant that unrestricted participation
64 during the course of the litigation by the person initiating the action
65 would be unduly harassing, or would cause the defendant undue
66 burden or unnecessary expense, the court may limit the participation
67 by the person in the litigation.

68 10. Upon a showing, conducted in camera, that actions of the
69 person initiating the action during discovery would interfere with the
70 attorney general's investigation or prosecution of a criminal or civil
71 matter, the court may stay the discovery for not more than sixty
72 days. The court may extend the stay upon a further showing that the
73 attorney general is pursuing the investigation or proceeding with
74 reasonable diligence and the discovery would interfere with the
75 ongoing investigation or proceeding.

76 11. As an alternative to an action authorized by this section, the
77 attorney general may pursue a violation of sections 191.900 to 191.913
78 through any alternate remedy available to this state, including an
79 administrative proceeding. If the attorney general pursues an alternate
80 proceeding, a person who initiated an action under this section shall
81 have equivalent rights in that proceeding to the rights that the person
82 would have had if the action had continued under this
83 section. Findings of fact and conclusions of law that become final in an
84 alternative proceeding shall become conclusive on the parties to an
85 action under this section. For the purposes of this subsection, a finding
86 or conclusion is final if it has been finally determined on appeal to the
87 appropriate court, if the time for filing an appeal with respect to the
88 finding or conclusion has expired, or if the finding or conclusion is not
89 subject to judicial review.

90 12. If the parties to an action filed under this section prevail in
91 the action, the court shall award the person who initiated such action
92 necessary expenses, costs, reasonable attorney fees, and, based on the
93 amount of effort involved, the court shall award such person ten to
94 twenty percent of the monetary proceeds resulting from the action or

95 any settlement of the claim.

96 13. If the court finds an action under this section to be based
97 primarily on disclosure of specific information that was not provided
98 by the person initiating the action, such as information from a criminal,
99 civil, or administrative hearing in a state or federal department or
100 agency, a legislative report, hearing, audit, or investigation, or the
101 news media, and the attorney general proceeds with the action, the
102 court shall award the person initiating the action no more than ten
103 percent of the monetary recovery in addition to reasonable attorney's
104 fees, necessary expenses, and costs.

105 14. If the court finds that the person initiating an action under
106 this section planned, initiated, or participated in the conduct upon
107 which the action is brought, the court may reduce or eliminate, as it
108 considers appropriate, the share of the proceeds of the action that the
109 person would otherwise be entitled to receive. A person who is
110 convicted of criminal conduct arising from a violation of sections
111 191.900 to 191.913 shall not initiate or remain a party to an action
112 under this section and is not entitled to share in the monetary proceeds
113 resulting from the action or any settlement under this section.

114 15. A person other than the attorney general shall not bring an
115 action under this section that is based on allegations or transactions
116 that are already the subject of a civil suit, criminal investigation or
117 prosecution, or an administrative investigation or proceeding to which
118 the state or the federal government is already a party. The court shall
119 dismiss an action brought in violation of this subsection.

120 16. Unless the person is the original source of the information,
121 a person, other than the attorney general, shall not initiate an action
122 under this section based on the public disclosure of allegations or
123 transactions in a criminal, civil, or administrative hearing in a state or
124 federal department or agency, a legislative report, hearing, audit, or
125 investigation, or the news media. The person is the original source if
126 he or she had direct and independent knowledge of the information on
127 which the allegations are based and voluntarily provided the
128 information to the attorney general before filing an action based on
129 that information under this section.

130 17. The attorney general shall not be liable for any expenses,
131 costs, or attorney's fees that a person incurs in bringing an action

132 under this section. Any amount awarded to a person initiating an
133 action to enforce sections 191.900 to 191.913 is payable solely from the
134 proceeds of the action or settlement.

135 18. If the attorney general initiates an action for a violation of
136 sections 191.900 to 191.913, or assumes control of an action initiated by
137 a person under this section, the attorney general shall be awarded its
138 reasonable attorney's fees, expenses, and costs.

139 19. Venue for an action brought under this section shall be filed
140 in Cole County.

141 20. An action brought under this section shall not be brought
142 more than five years after the date on which the violation was
143 committed.

144 21. Nothing within this section shall be deemed to alter the
145 statutes of limitations provided in section 516.105, RSMo, or section
146 537.100, RSMo.

147 22. The attorney general shall report to the general assembly by
148 January 1, 2007, and annually thereafter, the following:

149 (1) The number of Medicaid provider and recipient
150 investigations and audits relating to Medicaid fraud completed within
151 the reporting year, including the age and type of cases;

152 (2) Number of Medicaid long-term care facility reviews;

153 (3) Number of Medicaid provider and recipient utilization
154 reviews.

191.912. 1. An employer shall not discharge, demote, suspend,
2 threaten, harass, or otherwise discriminate against an employee in the
3 terms and conditions of employment because the employee initiates,
4 assists in, or participates in a proceeding or court action under section
5 191.900 to 191.912. Such prohibition shall not apply to an employment
6 action against an employee who:

7 (1) The court finds brought a frivolous or clearly vexatious
8 claim;

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

11 (3) Is convicted of criminal conduct arising from a violation of
12 sections 191.900 to 191.912.

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

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

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

18 (3) Interest on the back pay;

19 (4) Compensation for any special damages;

20 (5) Any other relief necessary to make an employee whole.

191.913. 1. By January 1, 2007, and annually thereafter, the
2 attorney general's office shall report to the general assembly and the
3 governor the following:

4 (1) The number of claims filed under sections 191.900 to 191.913;

5 (2) The number of claims filed under this section in which the
6 attorney general elects to intervene;

7 (3) The total amount of monetary recovery as the result of
8 settlement or final adjudication of an action filed under this section;

9 (4) The number of provider investigations relating to Medicaid
10 fraud completed within the reporting year, including the age and type
11 of cases;

12 (5) The number of referrals to other agencies as the result of
13 investigations or reviews;

14 (6) The total amount of overpayments identified as the result of
15 completed investigations, and the amount of fines and restitution
16 ordered to be reimbursed;

17 (7) The total amount of monetary recovery as the result of
18 completed investigations;

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

21 2. By January 1, 2007, and annually thereafter, the Medicaid
22 program integrity unit within the department of social services shall
23 report to the general assembly and the governor the following:

24 (1) The number of referrals to the Medicaid fraud unit within the
25 attorney general's office;

26 (2) The total amount of overpayments identified as the result of
27 completed investigations, reviews, or audits, and the amount of fines
28 and restitution ordered to be reimbursed;

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

31 (4) The number of administrative sanctions against Medicaid

32 providers, including the number of providers excluded from the
33 program.

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

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Bill

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