

SECOND REGULAR SESSION

HOUSE BILL NO. 2098

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARRIS (23) (Sponsor), OXFORD, ROORDA, LeVOTA,
WITTE, HARRIS (110), WHORTON, WILDBERGER, SANDERS BROOKS, CORCORAN,
YOUNG AND BAKER (25) (Co-sponsors).

Read 1st time March 30, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5623L.02I

AN ACT

To repeal sections 191.900, 191.905, 198.006, and 198.067, RSMo, and to enact in lieu thereof
four new sections relating to Medicaid fraud and abuse, with penalty provisions.

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

Section A. Sections 191.900, 191.905, 198.006, 198.067, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 191.900, 191.905, 198.006, and
3 198.067, to read as follows:

191.900. As used in sections 191.900 to [191.910] **191.914**, the following terms mean:

- 2 (1) "Abuse", the infliction of physical, sexual or emotional harm or injury, **including**
3 **financial exploitation by any person, firm, or corporation**. "Abuse" includes the taking,
4 obtaining, using, transferring, concealing, appropriating or taking possession of property of
5 another person without such person's consent;
- 6 (2) "Claim", any attempt to cause a health care payer to make a health care payment;
- 7 (3) "False", wholly or partially untrue. A false statement or false representation of a
8 material fact means the failure to reveal material facts in a manner which is intended to deceive
9 a health care payer with respect to a claim;
- 10 (4) "Health care", any service, assistance, care, product, device or thing provided
11 pursuant to a medical assistance program, or for which payment is requested or received, in
12 whole or part, pursuant to a medical assistance program;

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

13 (5) "Health care payer", a medical assistance program, or any person reviewing,
14 adjusting, approving or otherwise handling claims for health care on behalf of or in connection
15 with a medical assistance program;

16 (6) "Health care payment", a payment made, or the right under a medical assistance
17 program to have a payment made, by a health care payer for a health care service;

18 (7) "Health care provider", any person delivering, or purporting to deliver, any health
19 care, and including any employee, agent or other representative of such a person;

20 (8) "Medical assistance program", any program to provide or finance health care to
21 recipients which is established pursuant to title 42 of the United States Code, any successor
22 federal health insurance program, or a waiver granted thereunder. A medical assistance program
23 may be funded either solely by state funds or by state and federal funds jointly. The term
24 "medical assistance program" shall include the medical assistance program provided by section
25 208.151, RSMo, et seq., and any state agency or agencies administering all or any part of such
26 a program;

(9) "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
2 statement or false representation of a material fact in order to receive a health care payment,
3 including but not limited to:

4 (1) Knowingly presenting to a health care payer a claim for a health care payment that
5 falsely represents that the health care for which the health care payment is claimed was medically
6 necessary, if in fact it was not;

7 (2) Knowingly concealing the occurrence of any event affecting an initial or continued
8 right under a medical assistance program to have a health care payment made by a health care
9 payer for providing health care;

10 (3) Knowingly concealing or failing to disclose any information with the intent to obtain
11 a health care payment to which the health care provider or any other health care provider is not
12 entitled, or to obtain a health care payment in an amount greater than that which the health care
13 provider or any other health care provider is entitled;

14 (4) Knowingly presenting a claim to a health care payer that falsely indicates that any
15 particular health care was provided to a person or persons, if in fact health care of lesser value
16 than that described in the claim was provided.

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

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

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

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

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

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

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

36 7. **No person shall intentionally fail to cooperate with, obstruct, or make a false**
37 **statement or misrepresentation of a material fact during an investigation conducted in**
38 **accordance with section 191.910.**

39 8. A person who violates subsections 1 to 4 of this section is guilty of a class D felony
40 upon his **or her** first conviction, and [shall be] **is** guilty of a class C felony upon his **or her**
41 second and subsequent convictions. A prior conviction shall be pleaded and proven as provided
42 by section 558.021, RSMo. A person who violates subsection 6 of this section [shall be] **is** guilty
43 of a class C felony, unless the act involves no physical, sexual or emotional harm or injury and
44 the value of the property involved is less than five hundred dollars, in which event a violation
45 of subsection 6 of this section is a class A misdemeanor. **A person who violates subsection 7**
46 **of this section is guilty of a class A misdemeanor and any second or subsequent violation**
47 **of subsection 7 of this section is a class D felony.**

48 [8.] 9. Each separate false statement or false representation of a material fact proscribed
49 by subsection 1 of this section or act proscribed by subsection 2 or 3 of this section shall
50 constitute a separate offense and a separate violation of this section, whether or not made at the
51 same or different times, as part of the same or separate episodes, as part of the same scheme or
52 course of conduct, or as part of the same claim.

53 [9.] 10. In a prosecution pursuant to subsection 1 of this section, circumstantial evidence
54 may be presented to demonstrate that a false statement or claim was knowingly made. Such
55 evidence of knowledge may include but shall not be limited to the following:

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

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

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

62 [10.] **11.** Any person convicted of a violation of this section, in addition to any fines,
63 penalties or sentences imposed by law, shall be required to make restitution to the federal and
64 state governments, in an amount at least equal to that unlawfully paid to or by the person, and
65 shall be required to reimburse the reasonable costs attributable to the investigation and
66 prosecution pursuant to sections 191.900 to [191.910] **191.914**. All of such restitution shall be
67 paid and deposited to the credit of the "Medicaid Fraud Reimbursement Fund", which is hereby
68 established in the state treasury. Moneys in the Medicaid fraud reimbursement fund shall be
69 divided and appropriated to the federal government and affected state agencies in order to refund
70 moneys falsely obtained from the federal and state governments. All of such cost
71 reimbursements attributable to the investigation and prosecution shall be paid and deposited to
72 the credit of the "Medicaid Fraud Prosecution Revolving Fund", which is hereby established in
73 the state treasury. Moneys in the Medicaid fraud prosecution revolving fund may be
74 appropriated to the attorney general, or to any prosecuting or circuit attorney who has
75 successfully prosecuted an action for a violation of sections 191.900 to 191.910 and been
76 awarded such costs of prosecution, in order to defray the costs of the attorney general and any
77 such prosecuting or circuit attorney in connection with their duties provided by sections 191.900
78 to 191.910. No moneys shall be paid into the Medicaid fraud protection revolving fund pursuant
79 to this subsection unless the attorney general or appropriate prosecuting or circuit attorney shall
80 have commenced a prosecution pursuant to this section, and the court finds in its discretion that
81 payment of attorneys' fees and investigative costs is appropriate under all the circumstances, and
82 the attorney general and prosecuting or circuit attorney shall prove to the court those expenses
83 which were reasonable and necessary to the investigation and prosecution of such case, and the
84 court approves such expenses as being reasonable and necessary. The provisions of section
85 33.080, RSMo, notwithstanding, moneys in the Medicaid fraud prosecution revolving fund shall
86 not lapse at the end of the biennium.

87 [11.] **12.** A person who violates subsections 1 to 4 of this section shall be liable for a
88 civil penalty of not less than five thousand dollars and not more than ten thousand dollars for
89 each separate act in violation of such subsections, plus three times the amount of damages which
90 the state and federal government sustained because of the act of that person, except that the court
91 may assess not more than two times the amount of damages which the state and federal
92 government sustained because of the act of the person, if the court finds:

93 (1) The person committing the violation of this section furnished personnel employed
94 by the attorney general and responsible for investigating violations of sections 191.900 to
95 191.910 with all information known to such person about the violation within thirty days after
96 the date on which the defendant first obtained the information;

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

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

103 [12.] **13.** Upon conviction pursuant to this section, the prosecution authority shall
104 provide written notification of the conviction to all regulatory or disciplinary agencies with
105 authority over the conduct of the defendant health care provider.

106 [13.] **14.** The attorney general may bring a civil action against any person who shall
107 receive a health care payment as a result of a false statement or false representation of a material
108 fact made or caused to be made by that person. The person shall be liable for up to double the
109 amount of all payments received by that person based upon the false statement or false
110 representation of a material fact, and the reasonable costs attributable to the prosecution of the
111 civil action. All such restitution shall be paid and deposited to the credit of the Medicaid fraud
112 reimbursement fund, and all such cost reimbursements shall be paid and deposited to the credit
113 of the Medicaid fraud prosecution revolving fund. No reimbursement of such costs attributable
114 to the prosecution of the civil action shall be made or allowed except with the approval of the
115 court having jurisdiction of the civil action. No civil action provided by this subsection shall be
116 brought if restitution and civil penalties provided by subsections [10 and] 11 **and 12** of this
117 section have been previously ordered against the person for the same cause of action.

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates
2 otherwise, the following terms mean:

3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm, **including**
4 **financial exploitation by any person, firm, or corporation;**

5 (2) "Administrator", the person who is in general administrative charge of a facility;

6 (3) "Affiliate":

7 (a) With respect to a partnership, each partner thereof;

8 (b) With respect to a limited partnership, the general partner and each limited partner
9 with an interest of five percent or more in the limited partnership;

10 (c) With respect to a corporation, each person who owns, holds or has the power to vote
11 five percent or more of any class of securities issued by the corporation, and each officer and
12 director;

13 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

14 (4) "Department", the Missouri department of health and senior services;

15 (5) "Emergency", a situation, physical condition or one or more practices, methods or
16 operations which presents imminent danger of death or serious physical or mental harm to
17 residents of a facility;

18 (6) "Facility", any residential care facility I, residential care facility II, immediate care
19 facility, or skilled nursing facility;

20 (7) "Health care provider", any person providing health care services or goods to
21 residents and who receives funds in payment for such goods or services under Medicaid;

22 (8) "Intermediate care facility", any premises, other than a residential care facility I,
23 residential care facility II, or skilled nursing facility, which is utilized by its owner, operator, or
24 manager to provide twenty-four hour accommodation, board, personal care, and basic health and
25 nursing care services under the daily supervision of a licensed nurse and under the direction of
26 a licensed physician to three or more residents dependent for care and supervision and who are
27 not related within the fourth degree of consanguinity or affinity to the owner, operator or
28 manager of the facility;

29 (9) "Manager", any person other than the administrator of a facility who contracts or
30 otherwise agrees with an owner or operator to supervise the general operation of a facility,
31 providing such services as hiring and training personnel, purchasing supplies, keeping financial
32 records, and making reports;

33 (10) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in
34 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42
35 U.S.C. 301 et seq.), as amended;

36 (11) "Neglect", the failure to provide, by those responsible for the care, custody, and
37 control of a resident in a facility, the services which are reasonable and necessary to maintain the
38 physical and mental health of the resident, when such failure presents either an imminent danger
39 to the health, safety or welfare of the resident or a substantial probability that death or serious
40 physical harm would result;

41 (12) "Operator", any person licensed or required to be licensed under the provisions of
42 sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

43 (13) "Owner", any person who owns an interest of five percent or more in:

44 (a) The land on which any facility is located;

45 (b) The structure or structures in which any facility is located;

46 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by
47 the land or structure in or on which a facility is located; or

48 (d) Any lease or sublease of the land or structure in or on which a facility is located.

49

50 "Owner" does not include a holder of a debenture or bond purchased at public issue nor does it
51 include any regulated lender unless the entity or person directly or through a subsidiary operates
52 a facility;

53 (14) "Protective oversight", an awareness twenty-four hours a day of the location of a
54 resident, the ability to intervene on behalf of the resident, the supervision of nutrition,
55 medication, or actual provisions of care, and the responsibility for the welfare of the resident,
56 except where the resident is on voluntary leave;

57 (15) "Resident", a person who by reason of aging, illness, disease, or physical or mental
58 infirmity receives or requires care and services furnished by a facility and who resides or boards
59 in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding
60 twenty-four consecutive hours;

61 (16) "Residential care facility I", any premises, other than a residential care facility II,
62 intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or
63 manager to provide twenty-four hour care to three or more residents, who are not related within
64 the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility
65 and who need or are provided with shelter, board, and with protective oversight, which may
66 include storage and distribution or administration of medications and care during short-term
67 illness or recuperation;

68 (17) "Residential care facility II", any premises, other than a residential care facility I,
69 an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator
70 or manager to provide twenty-four hour accommodation, board, and care to three or more
71 residents who are not related within the fourth degree of consanguinity or affinity to the owner,
72 operator, or manager of the facility, and who need or are provided with supervision of diets,
73 assistance in personal care, storage and distribution or administration of medications, supervision
74 of health care under the direction of a licensed physician, and protective oversight, including care
75 during short-term illness or recuperation;

76 (18) "Skilled nursing facility", any premises, other than a residential care facility I, a
77 residential care facility II, or an intermediate care facility, which is utilized by its owner, operator
78 or manager to provide for twenty-four hour accommodation, board and skilled nursing care and
79 treatment services to at least three residents who are not related within the fourth degree of
80 consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care
81 and treatment services are those services commonly performed by or under the supervision of

82 a registered professional nurse for individuals requiring twenty-four hours a day care by licensed
83 nursing personnel including acts of observation, care and counsel of the aged, ill, injured or
84 infirm, the administration of medications and treatments as prescribed by a licensed physician
85 or dentist, and other nursing functions requiring substantial specialized judgment and skill;

86 (19) "Vendor", any person selling goods or services to a health care provider;

87 (20) "Voluntary leave", an off-premise leave initiated by:

88 (a) A resident that has not been declared mentally incompetent or incapacitated by a
89 court; or

90 (b) A legal guardian of a resident that has been declared mentally incompetent or
91 incapacitated by a court.

198.067. 1. An action may be brought by the department, or by the attorney general on
2 his or her own volition or at the request of the department or any other appropriate state agency,
3 to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096,
4 to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to
5 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action
6 brought pursuant to the provisions of this section shall be placed at the head of the docket by the
7 court, and the court shall hold a hearing on any action brought pursuant to the provisions of this
8 section no less than fifteen days after the filing of the action.

9 2. The department may bring an action in circuit court to recover a civil penalty against
10 the licensed operator of the facility as provided by this section. Such action shall be brought in
11 the circuit court for the county in which the facility is located. The circuit court shall determine
12 the amount of penalty to be assessed within the limits set out in this section. Appeals may be
13 taken from the judgment of the circuit court as in other civil cases.

14 3. The operator of any facility which has been cited with a violation of sections 198.003
15 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of
16 Section 1396r of Title 42 of the United States Code or the regulations established pursuant
17 thereto, is liable to the state for civil penalties of up to twenty-five thousand dollars for each day
18 that the violations existed or continue to exist. Violations shall be presumed to continue to exist
19 from the time they are found until the time the department of health and senior services finds
20 them to have been corrected. When applicable, the amount of the penalty shall be determined
21 as follows:

22 (1) For each violation of a class I standard when applicable pursuant to subdivision (6)
23 of this subsection, not less than one thousand dollars nor more than ten thousand dollars;

24 (2) For each violation of a class II standard, not less than two hundred fifty dollars nor
25 more than one thousand dollars;

26 (3) For each violation of a class III standard, not less than fifty dollars nor more than two
27 hundred fifty dollars;

28 (4) For each violation of a federal standard which does not also constitute a violation of
29 a state law or regulation, not less than two hundred fifty dollars nor more than five hundred
30 dollars;

31 (5) For each specific class I violation by the same operator at a particular facility which
32 has been previously cited within the past twenty-four months and for each specific class II or III
33 violation by the same operator at a particular facility which has been previously cited within the
34 past twelve months, double the amount last imposed;

35 (6) In accordance with the provisions of this section, if the department imposes a civil
36 monetary penalty for a class I **or** II violation, the liability for such penalty shall be incurred
37 immediately upon the imposition of the penalty for the violation regardless of any subsequent
38 correction of the violation by the facility. For class [II or] III violations, if the department
39 imposes a civil monetary penalty, the liability for such penalty shall be incurred if a breach of
40 a specific state or federal standard or statute remains uncorrected and not in accord with the
41 accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3
42 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code.

43

44 A judgment rendered against the operator of a facility pursuant to this subsection shall bear
45 interest as provided in subsection 1 of section 408.040, RSMo.

46 4. Any individual who willfully and knowingly certifies pursuant to subsection
47 (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement
48 in a resident assessment is subject to a civil penalty of not more than one thousand dollars with
49 respect to each assessment. Any individual who willfully and knowingly causes another
50 individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United
51 States Code a material and false statement in a resident assessment is subject to a civil penalty
52 of not more than five thousand dollars with respect to each assessment.

53 5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not
54 bar the imposition of any other remedy.

55 6. Twenty-five percent of the penalties collected pursuant to this section shall be
56 deposited in the elderly home-delivered meals trust fund as established in section 143.1002,
57 RSMo. Twenty-five percent of the penalties collected pursuant to this section shall be deposited
58 in the nursing facility quality of care fund established in section 198.418 to be used for the sole
59 purpose of supporting quality care improvement projects within the office of state ombudsman
60 for long-term care facility residents, established pursuant to section 660.603, RSMo. The
61 remaining fifty percent of the penalties collected pursuant to this section shall be deposited into

62 the nursing facility quality of care fund to be used by the department for the sole purpose of
63 developing a program to assist qualified nursing facilities to improve the quality of service to
64 their residents. The director of the department shall, by rule, develop a definition of qualified
65 facilities and shall establish procedures for the selection of qualified facilities. Any rule or
66 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the
67 authority delegated in this section shall become effective only if it complies with and is subject
68 to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
69 section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the
70 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to
71 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking
72 authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.
73 Such penalties shall not be considered a charitable contribution for tax purposes.

74 7. To recover any civil penalty, the moving party shall prove by clear and convincing
75 evidence that the violation occurred.

76 8. The licensed operator of a facility against whom an action to recover a civil penalty
77 is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo,
78 at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount
79 of the civil penalty recommended by the moving party in its petition shall be reduced by
80 twenty-five percent and the confessed judgment shall be entered by the circuit court at the
81 reduced amount.

82 9. The amount of any civil penalty assessed by the circuit court pursuant to this section
83 shall be reduced by the amount of any civil monetary penalty which the licensed operator of the
84 facility may establish it has paid pursuant to the laws of the United States for the breach of the
85 same federal standards for which the state action is brought.

86 10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this
87 section, any facility which is cited with a violation of a class I standard pursuant to subsection
88 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual
89 nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be
90 liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds
91 licensed to the facility, up to a maximum of ten thousand dollars pursuant to subsections 1 and
92 2 of this section. The liability of the facility for civil penalties pursuant to this section shall be
93 incurred immediately upon the citation of the violation and shall not be affected by any
94 subsequent correction of the violation. For the purposes of this section, "serious physical injury"
95 means physical injury that creates a substantial risk of death or that causes serious disfigurement
96 or protracted loss or impairment of the function of any part of the body.

97 11. The department shall not impose a fine for self-reporting class [II and class] III
98 violations so long as each violation is corrected within a specified period of time as determined
99 by the department and there is no reoccurrence of the particular violation for twelve months
100 following the date of the first self-reporting.

101 12. If a facility is sold or changes its operator, any civil penalty assessed shall not be
102 sold, transferred, or otherwise assigned to the successor operator but shall remain the sole
103 liability of the operator at the time of the violation.

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