

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 532**

6 (By Senators Palumbo, Foster and Minard)

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8 [Originating in the Committee on the Judiciary;
9 reported February 25, 2011.]
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14 A BILL to amend and reenact §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5,
15 §9-7-6 and §9-7-8 of the Code of West Virginia, 1931, as
16 amended; and to amend said code by adding thereto three new
17 sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all
18 relating to the Medicaid Fraud Control Unit of the Department
19 of Health and Human Resources generally; clarifying that the
20 Medicaid Fraud Control Unit is part of the Department of
21 Health and Human Resources; providing authority to investigate
22 financial exploitation; defining terms; authorizing
23 investigation procedures for the Medicaid Fraud Control Unit
24 upon information indicating a violation; providing that the
25 Medicaid Fraud Control Unit may request search warrants and
26 initiate criminal complaints upon probable cause; allowing
27 Medicaid Fraud Control Unit lawyers to assist prosecutors in
28 Medicaid crimes; providing permitted venues for prosecution of

1 crimes committed against Medicaid; and limiting the liability
2 of the Department of Health and Human Resources, its
3 secretary, and its employees.

4 *Be it enacted by the Legislature of West Virginia:*

5 That §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5, §9-7-6 and §9-7-8
6 of the Code of West Virginia, 1931, as amended, be amended and
7 reenacted; and that said code be amended by adding thereto three
8 new sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all to read
9 as follows:

10 **ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.**

11 **§9-7-1. Legislative purpose and findings; powers and duties of**
12 **fraud control unit.**

13 (a) It is the purpose of the Legislature to continue the
14 Medicaid Fraud Control Unit previously established within the West
15 Virginia Department of ~~Welfare~~ Health and Human Resources and to
16 provide it with the responsibility and authority for investigating
17 and controlling fraud and abuse of the medical programs of the
18 state Department of ~~welfare~~ Health and Human Resources which have
19 been established pursuant to section two, article four of this
20 chapter. It is the finding of the Legislature that substantial
21 sums of money have been lost to the state and federal government in
22 the operation of the medical programs of the state due to the
23 overpayment of moneys to medical providers. Such overpayments have
24 been the result of both the abuse of and fraud in the reimbursement
25 process.

26 (b) The Medicaid Fraud Control Unit of the State Department of
27 ~~welfare~~ Health and Human Resources shall be continued and shall
28 have the following powers and duties:

1 (1) The investigation and referral for prosecution of all
2 violations of applicable state and federal laws pertaining to the
3 provision of goods or services under the medical programs of the
4 state including the Medicaid program and the program known as
5 handicapped children's services.

6 (2) The investigation of complaints alleging abuse, ~~or~~ neglect
7 or financial exploitation of patients in health care facilities
8 which receive payments under the medical programs of the state.

9 (3) To cooperate with the federal government in all programs
10 designed to detect and deter fraud and abuse in the medical
11 programs of the state.

12 (4) To employ and train personnel to achieve the purposes of
13 this article and to employ legal counsel, investigators, Auditors
14 and clerical support personnel and such other personnel as are
15 deemed necessary from time to time to accomplish the purposes
16 herein.

17 **§9-7-2. Definitions.**

18 For the purposes of this article:

19 (1) "Assistance" means money payments, medical care,
20 transportation and other goods and services necessary for the
21 health or welfare of individuals, including guidance, counseling
22 and other welfare services and shall include all items of any
23 nature contained within the definition of "welfare assistance" in
24 section two, article one of this chapter.

25 (2) "Benefits" means money payments, goods, services, or any
26 other thing of value.

27 (3) "Claim" means an application for payment for goods or
28 services provided under the medical programs of the Department of

1 ~~welfare~~ Health and Human Resources.

2 (4) "Entity" means any corporation, association, partnership,
3 limited liability company, or other legal entity.

4 (5) "Financial Exploitation" means the intentional
5 misappropriation or misuse of funds or assets of another.

6 ~~(4)~~ (6) "Medicaid" means that assistance provided under a
7 state plan implemented pursuant to the provisions of subchapter
8 nineteen, chapter seven, Title 42, United States Code, as that
9 chapter has been and may hereafter be amended.

10 (7) "Person" means any individual, corporation, association,
11 partnership, proprietor, agent, assignee or entity.

12 ~~(5)~~ (8) "Provider" means any individual or entity furnishing
13 goods or services under the medical programs of the Department of
14 ~~welfare~~ Health and Human Resources.

15 ~~(6)~~ (9) "Unit" means the Medicaid Fraud Control Unit
16 established under section one of this article.

17 **§9-7-3. Investigations; procedure.**

18 (a) When the unit has probable cause to believe that
19 information that indicates a person has engaged in an act or
20 activity which is subject to prosecution under this article, the
21 unit shall make an investigation to determine if the act has been
22 committed and, to the extent necessary for such purpose, the
23 ~~commissioner~~ Secretary, or an employee of the unit designated by
24 the ~~commissioner~~ Secretary, ~~shall have the power to~~ may administer
25 oaths or affirmations and issue subpoenas for witnesses and
26 documents relevant to the investigation, including information
27 concerning the existence, description, nature, custody, condition
28 and location of any book, record, documents or other tangible thing

1 and the identity and location of persons having knowledge of
2 relevant facts or any matter reasonably calculated to lead to the
3 discovery of admissible evidence.

4 When the unit has probable cause to believe that a person has
5 engaged in an act or activity which is subject to prosecution under
6 this article, either before, during, or after an investigation
7 pursuant to this section, the Secretary, or an employee of the unit
8 designated by the Secretary, may request search warrants and
9 present and swear or affirm criminal complaints.

10 (b) If documents necessary to an investigation of the unit
11 shall appear to be located outside the state, such documents shall
12 be made available by the person or entity within the jurisdiction
13 of the state having control over such documents either at a
14 convenient location within the state or, upon payment of reasonable
15 and necessary expenses to the unit for transportation and
16 inspection, at the place outside the state where such documents are
17 maintained.

18 (c) Upon failure of a person to comply with a subpoena or
19 subpoena duces tecum or failure of a person to give testimony
20 without lawful excuse and upon reasonable notice to all persons
21 affected thereby, the unit may apply to the circuit court of the
22 county in which compliance is sought for appropriate orders to
23 compel obedience with the provisions of this section.

24 (d) The unit shall not make public the name or identity of a
25 person whose acts or conduct is investigated pursuant to this
26 section or the facts disclosed in such investigation except as the
27 same may be used in any legal action or enforcement proceeding
28 brought pursuant to this article or any other provision of this

1 code.

2 **§9-7-3a. Agency lawyers assisting prosecutors.**

3 Attorneys employed and assigned to the Medicaid Fraud Control
4 Unit created by the provisions of section one of this article may
5 assist in the prosecution of criminal violations of this article.

6 **§9-7-4. Applications for medical assistance; false statements or
7 representations; criminal penalties.**

8 (a) A person shall not knowingly make or cause to be made a
9 false statement or false representation of any material fact in an
10 application for medical assistance under the medical programs of
11 the Department of ~~welfare~~ Health and Human Resources.

12 (b) A person shall not knowingly make or cause to be made a
13 false statement or false representation of any material fact
14 necessary to determine the rights of any other person to medical
15 assistance under the medical programs of the Department of ~~welfare~~
16 Health and Human Resources.

17 (c) A person shall not knowingly and intentionally conceal or
18 fail to disclose any fact with the intent to obtain medical
19 assistance under the medical programs of the Department of ~~welfare~~
20 Health and Human Resources to which the person or any other person
21 is not entitled.

22 (d) Any person found to be in violation of subsection (a), (b)
23 or (c) of this section ~~shall be~~ is guilty of a felony and, upon
24 conviction, shall be ~~confined in the penitentiary~~ imprisoned in a
25 state correctional facility not less than one nor more than ten
26 years, or shall be fined not to exceed \$10,000 or both fined and
27 imprisoned. ~~as provided.~~

28 **§9-7-5. Bribery; false claims; conspiracy; criminal penalties.**

1 (a) A person shall not solicit, offer, pay, or receive any
2 remuneration, including any kickback, rebate or bribe, directly or
3 indirectly, with the intent of causing an expenditure of moneys
4 from the medical services fund established pursuant to section two,
5 article four of this chapter, which ~~expenditure~~ is not authorized
6 by applicable laws or rules and regulations. ~~governing said medical~~
7 ~~services fund.~~

8 (b) A person shall not make or present or cause to be made or
9 presented to the Department of ~~welfare~~ Health and Human Resources
10 a claim under the medical programs of the Department of ~~welfare~~
11 Health and Human Resources knowing the claim to be false,
12 fraudulent or fictitious.

13 (c) A person shall not enter into an agreement, combination or
14 conspiracy to obtain or aid another to obtain the payment or
15 allowance of a false, fraudulent or fictitious claim under the
16 medical programs of the Department of ~~welfare~~ Health and Human
17 Resources.

18 (d) Any person found to be in violation of subsection (a), (b)
19 or (c) of this section ~~shall be~~ is guilty of a felony and, upon
20 conviction, shall be ~~confined in the penitentiary~~ imprisoned in a
21 state correctional facility not less than one nor more than ten
22 years or shall be fined not to exceed \$10,000, or both fined and
23 imprisoned. ~~as provided.~~

24 **§9-7-5a. Venue for criminal offenses.**

25 A criminal prosecution under this article may be commenced in
26 the circuit court of Kanawha County or of any county in which:

27 (a) The defendant is conducting business; or

28 (b) Any of the conduct constituting a violation of any

1 provision of this article shall have occurred.

2 **§9-7-6. Civil remedies.**

3 (a) Any person, firm, corporation or other entity which
4 willfully, by means of a false statement or representation, or by
5 concealment of any material fact, or by other fraudulent scheme,
6 devise or artifice on behalf of himself, herself, itself, or
7 others, obtains or attempts to obtain benefits or payments or
8 allowances under the medical programs of the Department of ~~welfare~~
9 Health and Human Resources to which he or she or it is not
10 entitled, or, in a greater amount than that to which he or she or
11 it is entitled, shall be liable to the Department of ~~welfare~~ Health
12 and Human Resources in an amount equal to three times the amount of
13 such benefits, payments or allowances to which he or she or it is
14 not entitled, and shall be liable for the payment of reasonable
15 attorney fees and all other fees and costs of litigation.

16 (b) No criminal action or indictment need be brought against
17 any person, firm, corporation or other entity as a condition for
18 establishing civil liability hereunder.

19 (c) A civil action under this section may be prosecuted and
20 maintained on behalf of the Department of ~~welfare~~ Health and Human
21 Resources by the Attorney General and ~~his~~ the Attorney General's
22 assistants or a prosecuting attorney and ~~his~~ the prosecuting
23 attorney's assistants or by any attorney in contract with or
24 employed by the Department of ~~welfare~~ Health and Human Resources to
25 provide such representation.

26 **§9-7-6a. Liability of employees of the Department of Health and**
27 **Human Resources.**

1 There shall be no civil liability on the part of, and no cause
2 of action shall arise against the Secretary or the Department of
3 Health and Human Resources or its employees or agents for any
4 action taken by them in good faith and in the lawful performance of
5 their powers and duties under this article.

6 **§9-7-8. Remedies and penalties not exclusive.**

7 The remedies and penalties provided in this article governing
8 the operation of the medical programs of the Department of ~~welfare~~
9 Health and Human Resources are in addition to those remedies and
10 penalties provided elsewhere by law.

(NOTE: Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)

§9-7-3a, §9-7-5a and §9-7-6a are new; therefore, strike-throughs and underscoring have been omitted.)