

ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 532

(SENATORS PALUMBO, FOSTER AND MINARD, *original sponsors*)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5, §9-7-6 and §9-7-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all relating to the Medicaid Fraud Control Unit of the Department of Health and Human Resources generally; clarifying that the Medicaid Fraud Control Unit is part of the Department of Health and Human Resources; providing authority to investigate financial exploitation; defining terms; authorizing investigation procedures for the Medicaid Fraud Control Unit upon information indicating a violation; providing that the Medicaid Fraud Control Unit may request search warrants and initiate criminal complaints upon probable cause; allowing Medicaid Fraud Control Unit lawyers to assist prosecutors in Medicaid crimes; providing permitted venues for prosecution of crimes committed against Medicaid; and limiting the liability of the Department of Health and Human Resources, its secretary, and its employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

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

1 (a) It is the purpose of the Legislature to continue the
2 Medicaid Fraud Control Unit previously established within
3 the West Virginia Department of Health and Human Re-
4 sources and to provide it with the responsibility and author-
5 ity for investigating and controlling fraud and abuse of the
6 medical programs of the state Department of Health and
7 Human Resources which have been established pursuant to
8 section two, article four of this chapter. It is the finding of
9 the Legislature that substantial sums of money have been
10 lost to the state and federal government in the operation of
11 the medical programs of the state due to the overpayment of
12 moneys to medical providers. Such overpayments have been
13 the result of both the abuse of and fraud in the reimburse-
14 ment process.

15 (b) The Medicaid Fraud Control Unit of the State Depart-
16 ment of Health and Human Resources shall be continued and
17 shall have the following powers and duties:

18 (1) The investigation and referral for prosecution of all
19 violations of applicable state and federal laws pertaining to
20 the provision of goods or services under the medical pro-
21 grams of the state including the Medicaid program.

22 (2) The investigation of abuse, neglect or financial exploi-
23 tation of residents in board and care facilities and patients
24 in health care facilities which receive payments under the
25 medical programs of the state.

26 (3) To cooperate with the federal government in all pro-
27 grams designed to detect and deter fraud and abuse in the
28 medical programs of the state.

29 (4) To employ and train personnel to achieve the purposes
30 of this article and to employ legal counsel, investigators,
31 Auditors and clerical support personnel and such other
32 personnel as are deemed necessary from time to time to
33 accomplish the purposes herein.

§9-7-2. Definitions.

1 For the purposes of this article:

2 (1) "Assistance" means money payments, medical care,
3 transportation and other goods and services necessary for the
4 health or welfare of individuals, including guidance, coun-
5 seling and other welfare services and shall include all items
6 of any nature contained within the definition of "welfare
7 assistance" in section two, article one of this chapter.

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

10 (3) "Board and Care Facility" means a residential setting
11 where two or more unrelated adults receive nursing services
12 or personal care services.

13 (4) "Claim" means an application for payment for goods or
14 services provided under the medical programs of the Depart-
15 ment of Health and Human Resources.

16 (5) "Entity" means any corporation, association, partner-
17 ship, limited liability company, or other legal entity.

18 (6) "Financial Exploitation" means the intentional misap-
19 propriation or misuse of funds or assets of another.

20 (7) "Medicaid" means that assistance provided under a
21 state plan implemented pursuant to the provisions of

22 subchapter nineteen, chapter seven, Title 42, United States
23 Code, as that chapter has been and may hereafter be
24 amended.

25 (8) "Person" means any individual, corporation, associa-
26 tion, partnership, proprietor, agent, assignee or entity.

27 (9) "Provider" means any individual or entity furnishing
28 goods or services under the medical programs of the Depart-
29 ment of Health and Human Resources.

30 (10) "Unit" means the Medicaid Fraud Control Unit
31 established under section one of this article.

§9-7-3. Investigations; procedure.

1 (a) When the unit has credible information that indicates
2 a person has engaged in an act or activity which is subject to
3 prosecution under this article, the unit may make an investi-
4 gation to determine if the act has been committed and, to the
5 extent necessary for such purpose, the Secretary, or an
6 employee of the unit designated by the Secretary, may
7 administer oaths or affirmations and issue subpoenas for
8 witnesses and documents relevant to the investigation,
9 including information concerning the existence, description,
10 nature, custody, condition and location of any book, record,
11 documents or other tangible thing and the identity and
12 location of persons having knowledge of relevant facts or any
13 matter reasonably calculated to lead to the discovery of
14 admissible evidence.

15 When the unit has probable cause to believe that a person
16 has engaged in an act or activity which is subject to prosecu-
17 tion under this article, or section twenty nine, article two,
18 chapter sixty one, either before, during, or after an investiga-
19 tion pursuant to this section, the Secretary, or an employee
20 of the unit designated by the Secretary, may request search
21 warrants and present and swear or affirm criminal com-
22 plaints.

23 (b) If documents necessary to an investigation of the unit
24 shall appear to be located outside the state, such documents
25 shall be made available by the person or entity within the
26 jurisdiction of the state having control over such documents
27 either at a convenient location within the state or, upon
28 payment of reasonable and necessary expenses to the unit for
29 transportation and inspection, at the place outside the state
30 where such documents are maintained.

31 (c) Upon failure of a person to comply with a subpoena or
32 subpoena duces tecum or failure of a person to give testi-
33 mony without lawful excuse and upon reasonable notice to
34 all persons affected thereby, the unit may apply to the circuit
35 court of the county in which compliance is sought for
36 appropriate orders to compel obedience with the provisions
37 of this section.

38 (d) The unit shall not make public the name or identity of
39 a person whose acts or conduct is investigated pursuant to
40 this section or the facts disclosed in such investigation
41 except as the same may be used in any legal action or
42 enforcement proceeding brought pursuant to this article or
43 any other provision of this code.

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

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

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

1 (a) A person shall not knowingly make or cause to be made
2 a false statement or false representation of any material fact
3 in an application for medical assistance under the medical
4 programs of the Department of Health and Human Re-
5 sources.

6 (b) A person shall not knowingly make or cause to be made
7 a false statement or false representation of any material fact
8 necessary to determine the rights of any other person to
9 medical assistance under the medical programs of the
10 Department of Health and Human Resources.

11 (c) A person shall not knowingly and intentionally conceal
12 or fail to disclose any fact with the intent to obtain medical
13 assistance under the medical programs of the Department of
14 Health and Human Resources to which the person or any
15 other person is not entitled.

16 (d) Any person found to be in violation of subsection (a), (b)
17 or (c) of this section is guilty of a felony and, upon convic-
18 tion, shall be imprisoned in a state correctional facility not
19 less than one nor more than ten years, or shall be fined not
20 to exceed \$10,000 or both fined and imprisoned.

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

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

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

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

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

§9-7-5a. Venue for criminal offenses.

1 In addition to other venues permitted by state law, a
2 criminal prosecution under section five of this article may be
3 commenced in the circuit court of Kanawha County or of any
4 county in which:

5 (a) The defendant is conducting business; or

6 (b) Any of the conduct constituting a violation of any
7 provision of this article has occurred.

§9-7-6. Civil remedies.

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

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

18 (c) A civil action under this section may be prosecuted and
19 maintained on behalf of the Department of Health and

20 Human Resources by the Attorney General and the Attorney
21 General's assistants or a prosecuting attorney and the
22 prosecuting attorney's assistants or by any attorney in
23 contract with or employed by the Department of Health and
24 Human Resources to provide such representation.

**§9-7-6a. Liability of employees of the Department of Health and
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
3 of Health and Human Resources or its employees or agents
4 for any action taken by them in good faith and in the lawful
5 performance of their powers and duties under this article.

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

1 The remedies and penalties provided in this article govern-
2 ing the operation of the medical programs of the Department
3 of Health and Human Resources are in addition to those
4 remedies and penalties provided elsewhere by law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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Acting President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2011.

.....
Governor