

COMMITTEE SUBSTITUTE

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Senate Bill No. 532

(By Senators Palumbo, Foster and Minard)

[Originating in the Committee on the Judiciary;
reported February 25, 2011.]

A BILL 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 ~~Welfare~~ Health and Human
- 4 Resources and to provide it with the responsibility and

5 authority for investigating and controlling fraud and abuse
6 of the medical programs of the state Department of ~~welfare~~
7 Health and Human Resources which have been established
8 pursuant to section two, article four of this chapter. It is the
9 finding of the Legislature that substantial sums of money
10 have been lost to the state and federal government in the
11 operation of the medical programs of the state due to the
12 overpayment of moneys to medical providers. Such
13 overpayments have been the result of both the abuse of and
14 fraud in the reimbursement process.

15 (b) The Medicaid Fraud Control Unit of the State Depart-
16 ment of ~~welfare~~ Health and Human Resources shall be
17 continued and 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 and the
22 program known as handicapped children's services.

23 (2) The investigation of ~~complaints alleging~~ abuse, ~~or~~
24 neglect or financial exploitation of patients in health care
25 facilities which receive payments under the medical pro-
26 grams of the state.

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

30 (4) To employ and train personnel to achieve the purposes
31 of this article and to employ legal counsel, investigators,
32 Auditors and clerical support personnel and such other
33 personnel as are deemed necessary from time to time to
34 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) "Claim" means an application for payment for goods or
11 services provided under the medical programs of the Depart-
12 ment of ~~welfare~~ Health and Human Resources.

13 ~~(4)~~ “Entity” means any corporation, association, partner-
14 ship, limited liability company, or other legal entity.

15 ~~(5)~~ “Financial Exploitation” means the intentional misap-
16 propriation or misuse of funds or assets of another.

17 ~~(4)~~ ~~(6)~~ “Medicaid” means that assistance provided under a
18 state plan implemented pursuant to the provisions of
19 subchapter nineteen, chapter seven, Title 42, United States
20 Code, as that chapter has been and may hereafter be
21 amended.

22 ~~(7)~~ “Person” means any individual, corporation, associa-
23 tion, partnership, proprietor, agent, assignee or entity.

24 ~~(5)~~ ~~(8)~~ “Provider” means any individual or entity furnish-
25 ing goods or services under the medical programs of the
26 Department of ~~welfare~~ Health and Human Resources.

27 ~~(6)~~ ~~(9)~~ “Unit” means the Medicaid Fraud Control Unit
28 established under section one of this article.

§9-7-3. Investigations; procedure.

1 (a) When the unit has ~~probable cause to believe that~~
2 information that indicates a person has engaged in an act or
3 activity which is subject to prosecution under this article, the
4 unit shall make an investigation to determine if the act has
5 been committed and, to the extent necessary for such

6 purpose, the ~~commissioner~~ Secretary, or an employee of the
7 unit designated by the ~~commissioner~~ Secretary, ~~shall have~~
8 ~~the power to~~ may administer oaths or affirmations and issue
9 subpoenas for witnesses and documents relevant to the
10 investigation, including information concerning the exist-
11 tence, description, nature, custody, condition and location of
12 any book, record, documents or other tangible thing and the
13 identity and location of persons having knowledge of
14 relevant facts or any matter reasonably calculated to lead to
15 the discovery of admissible evidence.

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

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 ~~welfare~~ Health and Human
5 Resources.

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 ~~welfare~~ 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 ~~welfare~~ Health and Human Resources to which the person or
15 any other person is not entitled.

16 (d) Any person found to be in violation of subsection (a), (b)
17 or (c) of this section ~~shall be~~ is guilty of a felony and, upon
18 conviction, shall be ~~confined in the penitentiary~~ imprisoned
19 in a state correctional facility not less than one nor more

20 than ten years, or shall be fined not to exceed \$10,000 or
21 both fined and imprisoned. ~~as provided.~~

§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,
3 directly or indirectly, with the intent of causing an expendi-
4 ture of moneys from the medical services fund established
5 pursuant to section two, article four of this chapter, which
6 ~~expenditure~~ is not authorized by applicable laws or rules and
7 regulations. ~~governing said medical services fund.~~

8 (b) A person shall not make or present or cause to be made
9 or presented to the Department of ~~welfare~~ Health and
10 Human Resources a claim under the medical programs of the
11 Department of ~~welfare~~ Health and Human Resources
12 knowing the 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 ~~welfare~~ Health
17 and Human 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
21 in a state correctional facility not less than one nor more
22 than ten years or shall be fined not to exceed \$10,000, or
23 both fined and imprisoned. ~~as provided.~~

§9-7-5a. Venue for criminal offenses.

1 A criminal prosecution under this article may be com-
2 menced in the circuit court of Kanawha County or of any
3 county in which:

4 (a) The defendant is conducting business; or

5 (b) Any of the conduct constituting a violation of any
6 provision of this article shall have 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 ~~welfare~~ Health and Human Resources to which he or she
8 or it is not entitled, or, in a greater amount than that to
9 which he or she or it is entitled, shall be liable to the Depart-
10 ment of ~~welfare~~ Health and Human Resources in an amount

11 equal to three times the amount of such benefits, payments
12 or allowances to which he or she or it is not entitled, and
13 shall be liable for the payment of reasonable attorney fees
14 and all other fees 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 ~~welfare~~ Health
20 and Human Resources by the Attorney General and ~~his~~ the
21 Attorney General's assistants or a prosecuting attorney and
22 ~~his~~ the prosecuting attorney's assistants or by any attorney
23 in contract with or employed by the Department of ~~welfare~~
24 Health and 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 ~~welfare~~ Health and Human Resources are in addition to
4 those remedies and 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.)