

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 500

BY SENATORS TRUMP, BOLEY, CLEMENTS, CLINE, FERNS,
MAYNARD, RUCKER, WELD, TAKUBO, MARONEY AND
SMITH

[Introduced March 2, 2017; Referred
to the Committee on Government Organization; and
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §9-7-1, §9-7-3 and §9-7-6 of the Code of West Virginia, 1931, as
2 amended, all relating to Medicaid fraud and abuse; and continuing the fraud control unit
3 in the Medicaid Fraud Control Unit of the Attorney General’s office after July 1, 2017.

Be it enacted by the Legislature of West Virginia:

1 That §9-7-1, §9-7-3 and §9-7-6 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted 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 Medicaid Fraud Control Unit
2 previously established within the West Virginia Department of Health and Human Resources and
3 to provide it with the responsibility and authority for investigating and controlling fraud and abuse
4 of the medical programs of the state Department of Health and Human Resources which have
5 been established pursuant to section two, article four of this chapter. It is the finding of the
6 Legislature that substantial sums of money have been lost to the state and federal government in
7 the operation of the medical programs of the state due to the overpayment of moneys to medical
8 providers. Such overpayments have been the result of both the abuse of and fraud in the
9 reimbursement process.

10 (b) The Medicaid Fraud Control Unit of the State Department of Health and Human
11 Resources shall, after July 1, 2017, be continued, in the Medicaid Fraud Control Unit of the
12 Attorney General’s office and shall have the following powers and duties:

13 (1) The investigation and referral for prosecution of all violations of applicable state and
14 federal laws pertaining to the provision of goods or services under the medical programs of the
15 state including the Medicaid program.

16 (2) The investigation of abuse, neglect or financial exploitation of residents in board and
17 care facilities and patients in health care facilities which receive payments under the medical
18 programs of the state.

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

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

§9-7-3. Investigations; procedure.

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

10 When the unit has probable cause to believe that a person has engaged in an act or
11 activity which is subject to prosecution under this article, or section twenty-nine, article two,
12 chapter sixty-one, either before, during, or after an investigation pursuant to this section, the
13 ~~Secretary~~ Attorney General, or an employee of the unit designated by the ~~Secretary~~ Attorney
14 General, may request search warrants and present and swear or affirm criminal complaints.

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

20 (c) Upon failure of a person to comply with a subpoena or subpoena duces tecum or failure

21 of a person to give testimony without lawful excuse and upon reasonable notice to all persons
22 affected thereby, the unit may apply to the circuit court of the county in which compliance is sought
23 for appropriate orders to compel obedience with the provisions of this section.

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

§9-7-6. Civil remedies.

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

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

12 (c) A civil action under this section may be prosecuted and maintained on behalf of the
13 Department of Health and Human Resources by the Attorney General and the Attorney General's
14 assistants or, by any attorney in contract with or employed with the Attorney General to provide
15 such representation. If the Attorney General declines to do so, the civil action shall be maintained
16 either by a prosecuting attorney and the prosecuting attorney's assistants or by any attorney in
17 contract with or employed by the Department of Health and Human Resources to provide such
18 representation.

NOTE: The purpose of this bill is to add language to the West Virginia Code providing clarity in the representation of cases relating to Medicaid fraud and abuse and continuing the fraud control unit in the Medicaid Fraud Control Unit of the Attorney General's office after July 1, 2017.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.