

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 318

SENATORS TRUMP, RUCKER, CLINE, ROBERTS, SYPOLT,

TARR, HAMILTON, AND AZINGER, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 23, 2019]

1 A BILL to amend and reenact §9-7-1, §9-7-3, §9-7-6, and §9-7-6a of the Code of West Virginia,
2 1931, as amended, all relating to transferring the Medicaid Fraud Control Unit to the Office
3 of the Attorney General; establishing an effective date Medicaid Fraud Control Unit will
4 transfer to the Office of the Attorney General; establishing the Legislative Auditor to deliver
5 a report on the performance of the Medicaid Fraud Control Unit; establishing investigation
6 powers with the Attorney General; establishing the Secretary of the Department of Health
7 and Human Resources may share documents with the Attorney General; establishing
8 persons able to maintain a civil action; and establishing liability limits for employees acting
9 in good faith.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-7-1. Legislative purpose and findings; powers and duties of fraud control unit; transfer to the Office of the Attorney General; legislative report.

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 §9-4-2 of this code: Provided, That effective October 1, 2019, the
6 Medicaid Fraud Control Unit shall be transferred to the Office of the Attorney General pursuant to
7 subsection (c) of this section. It is the finding of the Legislature that substantial sums of money
8 have been lost to the state and federal government in the operation of the medical programs of
9 the state due to the overpayment of moneys to medical providers. Such overpayments have been
10 the result of both the abuse of and fraud in the reimbursement process.

11 (b) ~~The Medicaid Fraud Control Unit of the State Department of Health and Human~~
12 ~~Resources shall be continued 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.

24 (c) Effective October 1, 2019, the Medicaid Fraud Control Unit shall be transferred to the
25 Office of the Attorney General. All rights, responsibilities, powers, and duties of the unit shall be
26 transferred to the Office of the Attorney General, including the administration and authority of the
27 Medicaid Fraud Control Fund. All employees of the Medicaid Fraud Control Unit shall be
28 transferred to and become employees of the Office of the Attorney General at their existing hourly
29 rate or salary and with all accrued benefits. The Medicaid Fraud Control Unit's authorities, powers,
30 and duties shall remain unchanged by this subsection.

31 (d) On or before December 31, 2022, the Legislative Auditor shall study and report to the
32 Joint Committee on Government and Finance on the performance of the Medicaid Fraud Control
33 Unit within the Office of the Attorney General during the previous three years compared to the
34 performance of the unit while it was established within the Department of Health and Human
35 Resources.

§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 §61-2-29 of this code, either before,
12 during, or after an investigation pursuant to this section, the ~~Secretary~~ Attorney General, or an
13 employee of the unit designated by the ~~Secretary~~ Attorney General, may request search warrants
14 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~~ the documents shall be made available by the person or entity within the
17 jurisdiction of the state having control over ~~such~~ the documents either at a convenient location
18 within the state or, upon payment of reasonable and necessary expenses to the unit for
19 transportation and inspection, at the place outside the state where ~~such~~ the documents are
20 maintained.

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

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

29 (e) Beginning on October 1, 2019, the secretary and the Department of Health and Human
30 Resources shall fully cooperate with the Office of the Attorney General on any investigation,
31 prosecution, or civil action conducted pursuant to this article. The secretary shall promptly provide
32 the Attorney General with any information or document requested for the purposes of carrying out
33 this article, to the extent permitted under federal law.

34 (f) Prior to October 1, 2019, the secretary and the Department of Health and Human
35 Resources shall fully cooperate with and assist the Office of the Attorney General in any efforts
36 to seek, acquire, continue, and maintain any ongoing work within the Medicaid Fraud Control Unit.

§9-7-6. Civil remedies; statute of limitations.

1 (a) Any person, firm, corporation, or other entity which makes or attempts to make, or
2 causes to be made, a claim for benefits, payments, or allowances under the medical programs of
3 the Department of Health and Human Resources, when ~~such~~ the person, firm, corporation, or
4 entity knows, or reasonably should have known, such claim to be false, fictitious, or fraudulent, or
5 fails to maintain such records as are necessary shall be liable to the Department of Health and
6 Human Resources in an amount equal to three times the amount of such benefits, payments, or
7 allowances to which he or she or it is not entitled, and shall be liable for the payment of reasonable
8 attorney fees and all other fees and costs of litigation.

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

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

18 (d) Any civil action brought under this section shall be brought within five years from the
19 time the false, fraudulent, or fictitious claim was made. Claims will be judged based on the
20 Medicaid or program rules in existence at the time of the claim submission.

**§9-7-6a. Liability of employees of the Department of Health and Human Resources; Office
of the Attorney General.**

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