

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 532**

4 (By Senators Palumbo, Foster and Minard)

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6 [Originating in the Committee on Health and Human Resources;
7 reported February 24, 2011.]
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12 A BILL to amend and reenact §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5,
13 §9-7-6 and §9-7-8 of the Code of West Virginia, 1931, as
14 amended; and to amend said code by adding thereto three new
15 sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all
16 relating to the Department of Health and Human Resources;
17 fraud and abuse in the Medicaid program; powers and duties of
18 the Medicaid Fraud Control Unit; definitions under said
19 article; investigation procedures for the Medicaid Fraud
20 Control Unit; Medicaid Fraud Unit lawyers assisting
21 prosecutors in Medicaid crimes; Medicaid crimes and criminal
22 penalties; venue for crimes committed against Medicaid;
23 limiting the liability of employees of the Department of
24 Health and Human Resources; and other remedies and criminal
25 penalties.

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

27 That §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5, §9-7-6 and §9-7-8
28 of the Code of West Virginia, 1931, as amended, be amended and

1 reenacted; and that said code be amended by adding thereto three
2 new sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all to read
3 as follows:

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

5 **§9-7-1. Legislative purpose and findings; powers and duties of**
6 **fraud control unit.**

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

20 (b) The Medicaid fraud control unit of the state Department of
21 ~~welfare~~ Health and Human Resources shall be continued and shall
22 have the following powers and duties:

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

28 (2) The investigation of complaints alleging abuse, ~~or~~ neglect

1 or financial exploitation of patients in health care facilities
2 which receive payments under the medical programs of the state.

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

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

11 **§9-7-2. Definitions.**

12 For the purposes of this article:

13 (1) "Assistance" means money payments, medical care,
14 transportation and other goods and services necessary for the
15 health or welfare of individuals, including guidance, counseling
16 and other welfare services and shall include all items of any
17 nature contained within the definition of "welfare assistance" in
18 section two, article one of this chapter.

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

21 (3) "Claim" means an application for payment for goods or
22 services provided under the medical programs of the Department of
23 ~~welfare~~ Health and Human Resources.

24 (4) "Entity" means any corporation, association or
25 partnership.

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

28 ~~(4)~~ (6) "Medicaid" means that assistance provided under a

1 state plan implemented pursuant to the provisions of subchapter
2 nineteen, chapter seven, Title 42, United States Code, as that
3 chapter has been and may hereafter be amended.

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

6 ~~(5)~~ (8) "Provider" means any individual or entity furnishing
7 goods or services under the medical programs of the Department of
8 ~~welfare~~ Health and Human Resources.

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

11 **§9-7-3. Investigations; procedure.**

12 (a) When the unit has probable cause to believe that
13 information that indicates a person has engaged in an act or
14 activity which is subject to prosecution under this article, the
15 unit shall make an investigation to determine if the act has been
16 committed and, to the extent necessary for such purpose, the
17 ~~commissioner~~ Secretary, or an employee of the unit designated by
18 the ~~commissioner~~ Secretary, ~~shall have the power to~~ may administer
19 oaths or affirmations, present and swear or affirm criminal
20 complaints, request search warrants and issue subpoenas for
21 witnesses and documents relevant to the investigation, including
22 information concerning the existence, description, nature, custody,
23 condition and location of any book, record, documents or other
24 tangible thing and the identity and location of persons having
25 knowledge of relevant facts or any matter reasonably calculated to
26 lead to the discovery of admissible evidence.

27 (b) If documents necessary to an investigation of the unit
28 shall appear to be located outside the state, such documents shall

1 be made available by the person or entity within the jurisdiction
2 of the state having control over such documents either at a
3 convenient location within the state or, upon payment of reasonable
4 and necessary expenses to the unit for transportation and
5 inspection, at the place outside the state where such documents are
6 maintained.

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

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

19 **§9-7-3a. Agency lawyers assisting prosecutors.**

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

23 **§9-7-4. Applications for medical assistance; false statements or
24 representations; criminal penalties.**

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

1 (b) A person shall not knowingly make or cause to be made a
2 false statement or false representation of any material fact
3 necessary to determine the rights of any other person to medical
4 assistance under the medical programs of the Department of ~~welfare~~
5 Health and Human Resources.

6 (c) A person shall not knowingly and intentionally conceal or
7 fail to disclose any fact with the intent to obtain medical
8 assistance under the medical programs of the Department of ~~welfare~~
9 Health and Human Resources to which the person or any other person
10 is not entitled.

11 (d) Any person found to be in violation of subsection (a), (b)
12 or (c) of this section ~~shall be~~ is guilty of a felony and, upon
13 conviction, shall be ~~confined in the penitentiary~~ imprisoned in a
14 state correctional facility not less than one nor more than ten
15 years, or shall be fined not to exceed ten thousand dollars or both
16 fined and imprisoned. ~~as provided.~~

17 **§9-7-5. Bribery; false claims; conspiracy; criminal penalties.**

18 (a) A person shall not knowingly and willfully solicit, offer,
19 pay or receive any remuneration to induce referrals of items or
20 services covered by the medical services fund established pursuant
21 to section two, article four of this chapter, which is not
22 otherwise authorized by applicable laws or rules and regulations.
23 governing said medical services fund.

24 (b) A person shall not make or present or cause to be made or
25 presented to the Department of ~~welfare~~ Health and Human Resources
26 a claim under the medical programs of the Department of ~~welfare~~
27 Health and Human Resources knowing the claim to be false,
28 fraudulent or fictitious.

1 (c) A person shall not enter into an agreement, combination or
2 conspiracy to obtain or aid another to obtain the payment or
3 allowance of a false, fraudulent or fictitious claim under the
4 medical programs of the Department of ~~welfare~~ Health and Human
5 Resources.

6 (d) Any person found to be in violation of subsection (a), (b)
7 or (c) of this section ~~shall be~~ guilty of a felony and, upon
8 conviction, shall be ~~confined in the penitentiary~~ imprisoned in a
9 state correctional facility not less than one nor more than ten
10 years or shall be fined not to exceed ten thousand dollars, or both
11 fined and imprisoned. ~~as provided.~~

12 **§9-7-5a. Venue for criminal offenses.**

13 A criminal prosecution under this article may be commenced in
14 the circuit court of any county in which:

15 (a) The defendant is conducting business; or

16 (b) Any of the conduct constituting a violation of any
17 provision of this article shall have occurred.

18 **§9-7-6. Civil remedies.**

19 (a) Any person, firm, corporation or other entity which
20 willfully, by means of a false statement or representation, or by
21 concealment of any material fact, or by other fraudulent scheme,
22 devise or artifice on behalf of himself, herself, itself, or
23 others, obtains or attempts to obtain benefits or payments or
24 allowances under the medical programs of the Department of ~~welfare~~
25 Health and Human Resources to which he or she or it is not
26 entitled, or, in a greater amount than that to which he or she or
27 it is entitled, shall be liable to the Department of ~~welfare~~ Health
28 and Human Resources in an amount equal to three times the amount of

1 such benefits, payments or allowances to which he or she or it is
2 not entitled, and shall be liable for the payment of reasonable
3 attorney fees and all other fees and costs of litigation.

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

7 (c) A civil action under this section may be prosecuted and
8 maintained on behalf of the Department of ~~welfare~~ Health and Human
9 Resources by the Attorney General and ~~his~~ the Attorney General's
10 assistants or a prosecuting attorney and ~~his~~ the prosecuting
11 attorney's assistants or by any attorney in contract with or
12 employed by the Department of ~~welfare~~ Health and Human Resources to
13 provide such representation.

14 **§9-7-6a. Liability of Employees of the Department of Health and**
15 **Human Resources.**

16 There shall be no civil liability on the part of, and no cause
17 of action shall arise against the Secretary or the Department of
18 Health and Human Resources or its employees or agents for any
19 action taken by them in the lawful performance of their powers and
20 duties under this article.

21 **§9-7-8. Remedies and penalties not exclusive.**

22 The remedies and penalties provided in this article governing
23 the operation of the medical programs of the Department of ~~welfare~~
24 Health and Human Resources.

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, strikeouts and underscoring have been omitted.