

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 532**

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

8 _____
9 [Passed March 12, 2011; in effect ninety days from passage.]
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14 AN ACT to amend and reenact §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5,
15 §9-7-6 and §9-7-8 of the Code of West Virginia, 1931, as
16 amended; and to amend said code by adding thereto three new
17 sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all
18 relating to the Medicaid Fraud Control Unit of the Department
19 of Health and Human Resources generally; clarifying that the
20 Medicaid Fraud Control Unit is part of the Department of
21 Health and Human Resources; providing authority to investigate
22 financial exploitation; defining terms; authorizing
23 investigation procedures for the Medicaid Fraud Control Unit
24 upon information indicating a violation; providing that the
25 Medicaid Fraud Control Unit may request search warrants and
26 initiate criminal complaints upon probable cause; allowing
27 Medicaid Fraud Control Unit lawyers to assist prosecutors in
28 Medicaid crimes; providing permitted venues for prosecution of

1 crimes committed against Medicaid; and limiting the liability
2 of the Department of Health and Human Resources, its
3 secretary, and its employees.

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

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

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

11 **§9-7-1. Legislative purpose and findings; powers and duties of**
12 **fraud control unit.**

13 (a) It is the purpose of the Legislature to continue the
14 Medicaid Fraud Control Unit previously established within the West
15 Virginia Department of Health and Human Resources and to provide it
16 with the responsibility and authority for investigating and
17 controlling fraud and abuse of the medical programs of the state
18 Department of Health and Human Resources which have been
19 established pursuant to section two, article four of this chapter.

20 It is the finding of the Legislature that substantial sums of money
21 have been lost to the state and federal government in the operation
22 of the medical programs of the state due to the overpayment of
23 moneys to medical providers. Such overpayments have been the
24 result of both the abuse of and fraud in the reimbursement process.

25 (b) The Medicaid Fraud Control Unit of the State Department of
26 Health and Human Resources shall be continued and shall have the
27 following powers and duties:

28 (1) The investigation and referral for prosecution of all

1 violations of applicable state and federal laws pertaining to the
2 provision of goods or services under the medical programs of the
3 state including the Medicaid program.

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

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

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

16 **§9-7-2. Definitions.**

17 For the purposes of this article:

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

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

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

1 (4) "Claim" means an application for payment for goods or
2 services provided under the medical programs of the Department of
3 Health and Human Resources.

4 (5) "Entity" means any corporation, association, partnership,
5 limited liability company, or other legal entity.

6 (6) "Financial Exploitation" means the intentional
7 misappropriation or misuse of funds or assets of another.

8 (7) "Medicaid" means that assistance provided under a state
9 plan implemented pursuant to the provisions of subchapter nineteen,
10 chapter seven, Title 42, United States Code, as that chapter has
11 been and may hereafter be amended.

12 (8) "Person" means any individual, corporation, association,
13 partnership, proprietor, agent, assignee or entity.

14 (9) "Provider" means any individual or entity furnishing goods
15 or services under the medical programs of the Department of Health
16 and Human Resources.

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

19 **§9-7-3. Investigations; procedure.**

20 (a) When the unit has credible information that indicates a
21 person has engaged in an act or activity which is subject to
22 prosecution under this article, the unit may make an investigation
23 to determine if the act has been committed and, to the extent
24 necessary for such purpose, the Secretary, or an employee of the
25 unit designated by the Secretary, may administer oaths or
26 affirmations and issue subpoenas for witnesses and documents
27 relevant to the investigation, including information concerning the
28 existence, description, nature, custody, condition and location of

1 any book, record, documents or other tangible thing and the
2 identity and location of persons having knowledge of relevant facts
3 or any matter reasonably calculated to lead to the discovery of
4 admissible evidence.

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

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

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

26 (d) The unit shall not make public the name or identity of a
27 person whose acts or conduct is investigated pursuant to this
28 section or the facts disclosed in such investigation except as the

1 same may be used in any legal action or enforcement proceeding
2 brought pursuant to this article or any other provision of this
3 code.

4 **§9-7-3a. Agency lawyers assisting prosecutors.**

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

8 **§9-7-4. Applications for medical assistance; false statements or
9 representations; criminal penalties.**

10 (a) A person shall not knowingly make or cause to be made a
11 false statement or false representation of any material fact in an
12 application for medical assistance under the medical programs of
13 the Department of Health and Human Resources.

14 (b) A person shall not knowingly make or cause to be made a
15 false statement or false representation of any material fact
16 necessary to determine the rights of any other person to medical
17 assistance under the medical programs of the Department of Health
18 and Human Resources.

19 (c) A person shall not knowingly and intentionally conceal or
20 fail to disclose any fact with the intent to obtain medical
21 assistance under the medical programs of the Department of Health
22 and Human Resources to which the person or any other person is not
23 entitled.

24 (d) Any person found to be in violation of subsection (a), (b)
25 or (c) of this section is guilty of a felony and, upon conviction,
26 shall be imprisoned in a state correctional facility not less than
27 one nor more than ten years, or shall be fined not to exceed
28 \$10,000 or both fined and imprisoned.

1 **§9-7-5. Bribery; false claims; conspiracy; criminal penalties.**

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

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

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

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 conviction,
18 shall be imprisoned in a state correctional facility not less than
19 one nor more than ten years or shall be fined not to exceed
20 \$10,000, or both fined and imprisoned.

21 **§9-7-5a. Venue for criminal offenses.**

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

25 (a) The defendant is conducting business; or

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

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

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

17 (c) A civil action under this section may be prosecuted and
18 maintained on behalf of the Department of Health and Human
19 Resources by the Attorney General and the Attorney General's
20 assistants or a prosecuting attorney and the prosecuting attorney's
21 assistants or by any attorney in contract with or employed by the
22 Department of Health and Human Resources to provide such
23 representation.

24 **§9-7-6a. Liability of employees of the Department of Health and**
25 **Human Resources.**

26 There shall be no civil liability on the part of, and no cause
27 of action shall arise against the Secretary or the Department of

1 Health and Human Resources or its employees or agents for any
2 action taken by them in good faith and in the lawful performance of
3 their powers and duties under this article.

4 **§9-7-8. Remedies and penalties not exclusive.**

5 The remedies and penalties provided in this article governing
6 the operation of the medical programs of the Department of Health
7 and Human Resources are in addition to those remedies and penalties
8 provided elsewhere by law.