WEST VIRGINIA CODE CHAPTER 9 ARTICLE 7

WV Legislature

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

(a) The Medicaid Fraud Control Unit shall have the following powers and duties:

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

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

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

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

(b) The Medicaid Fraud Control Unit shall be within the Office of the Attorney General. All rights, responsibilities, powers, and duties of the unit shall be transferred to the Office of the Attorney General, including the administration and authority of the Medicaid Fraud Control Fund.

WV Legislature

§9-7-2. Definitions.

For the purposes of this article:

"Assistance" means money payments, medical care, transportation and other goods and services necessary for the health or welfare of individuals, including guidance, counseling, and other welfare services and shall include all items of any nature contained within the definition of "welfare assistance" in §9-1-2 of this code.

"Benefits" means money payments, goods, services, or any other thing of value.

"Board and Care Facility" means a residential setting where two or more unrelated adults receive nursing services or personal care services.

"Claim" means an application for payment for goods or services provided under the medical programs of the Department of Human Services.

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

"Financial Exploitation" means the intentional misappropriation or misuse of funds or assets of another.

"Fraud" means a knowing misrepresentation, knowing concealment, or reckless statement of a material fact.

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

"Person" means any individual, corporation, association, partnership, proprietor, agent, assignee, or entity.

"Provider" means any individual or entity furnishing goods or services under the medical programs of the Department of Human Services.

"Unit" means the Medicaid Fraud Control Unit established under §9-7-1 of this code.

WV Legislature

§9-7-3. Investigations; procedure.

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

When the unit has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution under this article, or §61-2-29 of this code, either before, during, or after an investigation pursuant to this section, the Attorney General, or an employee of the unit designated by the Attorney General, may request search warrants and present and swear or affirm criminal complaints.

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

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

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

(e) The Secretary Department of Human Services shall fully cooperate with the Office of the Attorney General on any investigation, prosecution, or civil action conducted pursuant to this article. The secretary shall promptly provide the Attorney General with any information or document requested for the purposes of carrying out this article, to the extent permitted under federal law.

WV Legislature

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

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

WV Legislature

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

(a) A person shall not knowingly make or cause to be made a false statement or false representation of any material fact in an application for medical assistance under the medical programs of the department.

(b) A person shall not knowingly make or cause to be made a false statement or false representation of any material fact necessary to determine the rights of any other person to medical assistance under the medical programs of the department.

(c) A person shall not knowingly and intentionally conceal or fail to disclose any fact with the intent to obtain medical assistance under the medical programs of the department to which the person or any other person is not entitled.

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

WV Legislature

§9-7-5. Bribery; false claims; conspiracy; criminal penalties; failure to maintain records.

(a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from the medical services fund established pursuant to §9-4-2 of this code, which is not authorized by applicable laws or rules and regulations.

(b) A person shall not make or present or cause to be made or presented to the department a claim under the medical programs of the department knowing the claim to be false, fraudulent, or fictitious.

(c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the medical programs of the department.

(d) Any person found to be in violation of §9-7-5(a), §9-7-5(b) or §9-7-5(c) of this code is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than 10 years or shall be fined not to exceed $10,000, or both fined and imprisoned.

(e) Any provider who, having submitted a claim for or received a benefit, payment, or allowance under the medical programs of the department, knowingly fails to maintain such records as are necessary to disclose fully the nature of a good or service for which a claim was submitted or benefit, payment, or allowance was received, or such records as are necessary to disclose fully all income and expenditures upon which rate of payment were based, for a period of at least five years following the date on which payment was received, shall be guilty of a misdemeanor and, upon conviction, may be imprisoned in a state correctional facility not to exceed one year or may be fined up to $1,000, or both fined and imprisoned. Any person who knowingly destroys such records within five years from the date the benefit, payment, or allowance was received, shall be guilty of a felony, and may be imprisoned in a state correctional facility not less than one nor more than 10 years or may be fined not to exceed $10,000, or both fined and imprisoned.

WV Legislature

§9-7-5a. Venue for criminal offenses.

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

(a) The defendant is conducting business; or

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

WV Legislature

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

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

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

(c) A civil action under this section may be prosecuted and maintained on behalf of the department by the Attorney General, the Attorney General's assistants, or by any attorney in contract with or employed with the Office of the Attorney General to provide such representation. If the Attorney General declines to do so, the civil action shall be maintained either by a prosecuting attorney and the prosecuting attorney's assistants or by any attorney in contract with or employed by the department to provide such representation.

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

WV Legislature

§9-7-6a. Liability of employees of the department; Office of the Attorney General.

There shall be no civil liability on the part of, and no cause of action shall arise against the department, the Office of the Attorney General, or employees or agents of the aforementioned for any action taken by them in good faith and in the lawful performance of their powers and duties under this article.

WV Legislature

§9-7-7. Licensing of vehicles for use by the Medicaid fraud control unit.

For purposes of the responsibilities assigned the unit pursuant to this article, personnel of the unit shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates.

WV Legislature

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

The remedies and penalties provided in this article governing the operation of the medical programs of the department are in addition to those remedies and penalties provided elsewhere by law.

WV Legislature

§9-7-9. Severability.

If any provision of this article be found by a court of competent jurisdiction to be unenforceable under the Constitution of this state or the laws and Constitution of the United States, the remaining provisions of this article shall be deemed severable and shall continue in full force and effect.

WV Legislature