WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
Committee Substitute for
SENATE BILL NO. 627

(By Mr. Jackson)

PASSED April 11, 1981
In Effect thirty days from Passage

SECRETARY OF STATE
OFFICE

RECEIVED
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 627
(MR. BOETTNER, original sponsor)

[Passed April 11, 1981; in effect ninety days from passage.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six; providing for purposes and findings of the Legislature; providing for the continuance of the medicaid fraud control unit within the department of welfare; providing definitions; relating to powers and duties of the unit; providing for investigations, subpoenas and confidentiality; relating to false statements or representations on applications; prohibiting bribery, false claims and conspiracy; providing criminal penalties; providing for civil remedies, triple damages and legal services; providing for Class A registration plates for vehicles of the unit; relating to other remedies and penalties and severability of the provision.

Be it enacted by the Legislature of West Virginia:

That chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six, to read as follows:

ARTICLE 6. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-6-1. Medicaid fraud control unit; purpose and findings; powers and duties.

1 (a) It is the purpose of the Legislature to continue the medicaid fraud control unit previously established within the West Virginia department of welfare and to provide it with...
the responsibility and authority for investigating and controlling fraud and abuse of the medical programs of the state department of welfare which have been established pursuant to section two, article four of this chapter. It is the finding of the Legislature that substantial sums of money have been lost to the state and federal government in the operation of the medical programs of the state due to the overpayment of moneys to medical providers. Such overpayments have been the result of both the abuse of and fraud in the reimbursement process.

(b) The medicaid fraud control unit of the state department of welfare shall be continued and 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 and the program known as handicapped children's services.

(2) The investigation of complaints alleging abuse or neglect of 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.

§9-6-2. Definitions.

For the purposes of this article:

(1) "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 section two, article one of this chapter.

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

(3) "Claim" means an application for payment for goods or services provided under the medical programs of the department of welfare.
(4) "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.

(5) "Provider" means any individual or entity furnishing goods or services under the medical programs of the department of welfare.

(6) "Unit" means the medicaid fraud control unit established under section one of this article.

§9-6-3. Investigations; subpoenas; confidentiality.

(a) 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, the unit shall make an investigation to determine if the act has been committed and, to the extent necessary for such purpose, the commissioner or an employee of the unit designated by the commissioner, shall have the power to 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 relevent facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

(b) If documents necessary to an investigation of the unit shall appear to be located outside the state, such documents shall be made available by the person or entity within the jurisdiction of the state having control over such 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 such 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.

§9-6-4. 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 of welfare.
(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 of welfare.
(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 of
welfare 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 shall be guilty of a felony and, upon
conviction, shall be confined in the penitentiary not less than
one nor more than ten years, or shall be fined not to exceed
ten thousand dollars or both fined and imprisoned as
provided.

§9-6-5. Bribery; false claims; conspiracy; criminal penalties.
(a) A person shall not solicit, offer or receive any
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 section two, article four of this
chapter which expenditure is not authorized by applicable
laws or rules and regulations governing said medical services
fund.
(b) A person shall not make or present or cause to be made
or presented to the department of welfare a claim under the
medical programs of the department of welfare 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
§9-6-6. Civil remedies; triple damages; legal services.
(a) Any person, firm, corporation or other entity which willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, devise or artifice on behalf of himself, itself, or others, obtains or attempts to obtain benefits or payments or allowances under the medical programs of the department of welfare to which he or it is not entitled, or, in a greater amount than that to which he or it is entitled, shall be liable to the department of welfare in an amount equal to three times the amount of such benefits, payments or allowances to which he 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 of welfare by the attorney general and his assistants or a prosecuting attorney and his assistants or by any attorney in contract with or employed by the department of welfare to provide such representation.

§9-6-7. 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.

§9-6-8. Remedies and penalties not exclusive.
The remedies and penalties provided in this article governing the operation of the medical programs of the
department of welfare are in addition to those remedies and penalties provided elsewhere by law.

§9-6-9. Severability.
1 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

K. P. Baylor
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Wilk
Clerk of the Senate

Clerk of the House of Delegates

D.W. Blankenship
President of the Senate

Speaker House of Delegates

The within ____________________________ this the 29

day of ____________________________, 1981.

________________________________
Governor