

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time _____

No: 627

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

Committee Substitute for
SENATE BILL NO. 627

(By Mr. *Proctor*)



PASSED *April 11* 1981

In Effect *ninty days from* Passage

OFFICE
SECY. OF STATE

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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
- 2 medicaid fraud control unit previously established within the
- 3 West Virginia department of welfare and to provide it with

4 the responsibility and authority for investigating and
5 controlling fraud and abuse of the medical programs of the
6 state department of welfare which have been established
7 pursuant to section two, article four of this chapter. It is the
8 finding of the Legislature that substantial sums of money
9 have been lost to the state and federal government in the
10 operation of the medical programs of the state due to the
11 overpayment of moneys to medical providers. Such
12 overpayments have been the result of both the abuse of and
13 fraud in the reimbursement process.

14 (b) The medicaid fraud control unit of the state
15 department of welfare shall be continued and shall have the
16 following powers and duties:

17 (1) The investigation and referral for prosecution of all
18 violations of applicable state and federal laws pertaining to
19 the provision of goods or services under the medical
20 programs of the state including the medicaid program and
21 the program known as handicapped children's services.

22 (2) The investigation of complaints alleging abuse or
23 neglect of patients in health care facilities which receive
24 payments under the medical programs of the state.

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

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

§9-6-2. Definitions.

1 For the purposes of this article:

2 (1) "Assistance" means money payments, medical care,
3 transportation and other goods and services necessary for the
4 health or welfare of individuals, including guidance,
5 counseling and other welfare services and shall include all
6 items of any nature contained within the definition of "welfare
7 assistance" in section two, article one of this chapter.

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

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

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

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

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

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

1 (a) When the unit has probable cause to believe that a
2 person has engaged in an act or activity which is subject to
3 prosecution under this article, the unit shall make an
4 investigation to determine if the act has been committed and,
5 to the extent necessary for such purpose, the commissioner
6 or an employee of the unit designated by the commissioner,
7 shall have the power to administer oaths or affirmations, and
8 issue subpoenas for witnesses and documents relevant to the
9 investigation, including information concerning the
10 existence, description, nature, custody, condition and
11 location of any book, record, documents or other tangible
12 thing and the identity and location of persons having
13 knowledge of relevant facts or any matter reasonably
14 calculated to lead to the discovery of admissible evidence.

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

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

30 (d) The unit shall not make public the name or identity of
31 a person whose acts or conduct is investigated pursuant to

32 this section or the facts disclosed in such investigation except
33 as the same may be used in any legal action or enforcement
34 proceeding brought pursuant to this article or any other
35 provision of this code.

§9-6-4. Applications for medical assistance; false statements or representations; criminal penalties.

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

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

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

15 (d) Any person found to be in violation of subsection (a),
16 (b) or (c) of this section shall be guilty of a felony and, upon
17 conviction, shall be confined in the penitentiary not less than
18 one nor more than ten years, or shall be fined not to exceed
19 ten thousand dollars or both fined and imprisoned as
20 provided.

§9-6-5. Bribery; false claims; conspiracy; criminal penalties.

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

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

13 (c) A person shall not enter into an agreement,
14 combination or conspiracy to obtain or aid another to obtain

15 the payment or allowance of a false, fraudulent or fictitious
16 claim under the medical programs of the department of
17 welfare.

18 (d) Any person found to be in violation of subsection (a),
19 (b) or (c) of this section shall be guilty of a felony and, upon
20 conviction, shall be confined in the penitentiary not less than
21 one nor more than ten years or shall be fined not to exceed ten
22 thousand dollars, or both fined and imprisoned as provided.

§9-6-6. Civil remedies; triple damages; legal services.

1 (a) Any person, firm, corporation or other entity which
2 willfully, by means of a false statement or representation, or
3 by concealment of any material fact, or by other fraudulent
4 scheme, devise or artifice on behalf of himself, itself, or
5 others, obtains or attempts to obtain benefits or payments or
6 allowances under the medical programs of the department of
7 welfare to which he or it is not entitled, or, in a greater amount
8 than that to which he or it is entitled, shall be liable to the
9 department of welfare in an amount equal to three times the
10 amount of such benefits, payments or allowances to which he
11 or it is not entitled, and shall be liable for the payment of
12 reasonable attorney fees and all other fees and costs of
13 litigation.

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

17 (c) A civil action under this section may be prosecuted and
18 maintained on behalf of the department of welfare by the
19 attorney general and his assistants or a prosecuting attorney
20 and his assistants or by any attorney in contract with or
21 employed by the department of welfare to provide such
22 representation.

§9-6-7. Licensing of vehicles for use by the medicaid fraud control unit.

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

§9-6-8. Remedies and penalties not exclusive.

1 The remedies and penalties provided in this article
2 governing the operation of the medical programs of the

3 department of welfare are in addition to those remedies and
4 penalties provided elsewhere by law.

§9-6-9. Severability.

1 If any provision of this article be found by a court of
2 competent jurisdiction to be unenforceable under the
3 constitution of this state or the laws and constitution of the
4 United States, the remaining provisions of this article shall be
5 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.

R. P. Baylor
Chairman Senate Committee

Tommy E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Wilkins
Clerk of the Senate

Ch Blankenship
Clerk of the House of Delegates

Mark Moran
President of the Senate

Chas. M. See, Jr.
Speaker House of Delegates

The within *is approved* this the *29*

day of *April*, 1981.

John P. Rhyne
Governor

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