WEST VIRGINIA LEGISLATURE
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ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 532

(SENATORS PALUMBO, FOSTER AND MINARD, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]
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AN ACT to amend and reenact §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5, §9-7-6 and §9-7-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all relating to the Medicaid Fraud Control Unit of the Department of Health and Human Resources generally; clarifying that the Medicaid Fraud Control Unit is part of the Department of Health and Human Resources; providing authority to investigate financial exploitation; defining terms; authorizing investigation procedures for the Medicaid Fraud Control Unit upon information indicating a violation; providing that the Medicaid Fraud Control Unit may request search warrants and initiate criminal complaints upon probable cause; allowing Medicaid Fraud Control Unit lawyers to assist prosecutors in Medicaid crimes; providing permitted venues for prosecution of crimes committed against Medicaid; and limiting the liability of the Department of Health and Human Resources, its secretary, and its employees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

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

(a) It is the purpose of the Legislature to continue the
Medicaid Fraud Control Unit previously established within
the West Virginia Department of Health and Human Re-
sources and to provide it with the responsibility and author-
ity for investigating and controlling fraud and abuse of the
medical programs of the state Department of Health and
Human Resources 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 reimburse-
ment process.

(b) The Medicaid Fraud Control Unit of the State Depart-
ment of Health and Human Resources 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 pro-
grams of the state including the Medicaid program.

(2) The investigation of abuse, neglect or financial exploi-
tation 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.

§9-7-2. 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) “Board and Care Facility” means a residential setting where two or more unrelated adults receive nursing services or personal care services.

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

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

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

(7) “Medicaid” means that assistance provided under a state plan implemented pursuant to the provisions of
(8) "Person" means any individual, corporation, association, partnership, proprietor, agent, assignee or entity.

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

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

§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 Secretary, or an employee of the unit designated by the Secretary, 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 section twenty nine, article two, chapter sixty one, either before, during, or after an investigation pursuant to this section, the Secretary, or an employee of the unit designated by the Secretary, 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, 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.

§9-7-3a. 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.

§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 of Health and Human Resources.
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(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 Health and Human Resources.

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 Health and Human Resources 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.

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

(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 section two, article four of this chapter, 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 of Health and Human Resources a claim under the medical programs of the Department of Health and Human Resources 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 of Health and Human Resources.
(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.

§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.

§9-7-6. Civil remedies.

(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, herself, itself, or others, obtains or attempts to obtain benefits or payments or allowances under the medical programs of the Department of Health and Human Resources to which he or she or it is not entitled, or, in a greater amount than that to which he or she or it is entitled, shall be liable to the Department of Health and Human Resources 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 of Health and

20 Human Resources by the Attorney General and the Attorney
21 General's assistants or a prosecuting attorney and the
22 prosecuting attorney's assistants or by any attorney in
23 contract with or employed by the Department of Health and
24 Human Resources to provide such representation.

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

1 There shall be no civil liability on the part of, and no cause
2 of action shall arise against the Secretary or the Department
3 of Health and Human Resources or its employees or agents
4 for any action taken by them in good faith and in the lawful
5 performance of their powers and duties under this article.

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

1 The remedies and penalties provided in this article govern-
2 ing the operation of the medical programs of the Department
3 of Health and Human Resources are in addition to those
4 remedies and penalties provided elsewhere by law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within...................... this the ...........

Day of ................................., 2011.

Governor
PRESENTED TO THE GOVERNOR

MARCH 23, 2011

Time 3:45 PM