

Senate Bill No. 532

(By Senators Palumbo, Foster and Minard)

[Introduced February 16, 2011; referred to the Committee on
Health and Human Resources; and then to the Committee on the
Judiciary.]

11 A BILL to amend and reenact §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5,
12 §9-7-6 and §9-7-8 of the Code of West Virginia, 1931, as
13 amended; and to amend said code by adding thereto three new
14 sections, designated §9-7-3a, §9-7-5a and §9-7-6a, all
15 relating to human services; the Department of Health and Human
16 Resources; fraud and abuse in the Medicaid program; powers and
17 duties of the Medicaid Fraud Control Unit; definitions under
18 said article; investigation procedures for the Medicaid Fraud
19 Control Unit; prosecution of crimes in Medicaid; criminal
20 forfeiture of assets and the costs associated with criminal
21 forfeiture; venue for crimes committed against Medicaid;
22 limiting the liability of employees of the Department of
23 Health and Human Resources under article nine, chapter seven
24 of this code; and other remedies and criminal penalties.

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

26 That §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5, §9-7-6 and §9-7-8

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

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

6 **§9-7-1. Legislative purpose and findings; powers and duties of**
7 **fraud control unit.**

8 (a) It is the purpose of the Legislature to continue the
9 Medicaid Fraud Control Unit previously established within the West
10 Virginia Department of ~~Welfare~~ Health and Human Resources and to
11 provide it with the responsibility and authority for investigating
12 and controlling fraud and abuse of the medical programs of the
13 state Department of ~~welfare~~ Health and Human Resources which have
14 been established pursuant to section two, article four of this
15 chapter. It is the finding of the Legislature that substantial
16 sums of money have been lost to the state and federal government in
17 the operation of the medical programs of the state due to the
18 overpayment of moneys to medical providers. Such overpayments have
19 been the result of both the abuse of and fraud in the reimbursement
20 process.

21 (b) The Medicaid fraud control unit of the state Department of
22 ~~welfare~~ Health and Human Resources shall be continued and shall
23 have the following powers and duties:

24 (1) The investigation and referral for prosecution of all
25 violations of applicable state and federal laws pertaining to the
26 provision of goods or services under the medical programs of the

1 state including the Medicaid program and the program known as
2 handicapped children's services.

3 (2) The investigation of ~~complaints alleging~~ abuse, or neglect
4 or financial exploitation of patients in health care facilities
5 which receive payments under the medical programs of the state.

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

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

14 **§9-7-2. Definitions.**

15 For the purposes of this article:

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

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

24 (3) "Claim" means an application for payment for goods or
25 services provided under the medical programs of the Department of
26 ~~welfare~~ Health and Human Resources.

1 (4) "Direct Care Worker" means any care worker who is in
2 contact with a patient receiving health care services.

3 (5) "Entity" means any corporation, association or
4 partnership.

5 (6) "Kickback" means any money, fee, commission, credit, gift,
6 gratuity, thing of value, or compensation of any kind which is
7 provided, directly or indirectly, to any provider, manufacturer,
8 seller, buyer, distributor, health worker or government employee
9 for the purpose of improperly obtaining or rewarding favorable
10 treatment in connection with a state healthcare plan.

11 ~~(4)~~ (7) "Medicaid" means that assistance provided under a
12 state plan implemented pursuant to the provisions of subchapter
13 nineteen, chapter seven, Title 42, United States Code, as that
14 chapter has been and may hereafter be amended.

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

17 ~~(5)~~ (9) "Provider" means any individual or entity furnishing
18 goods or services under the medical programs of the Department of
19 welfare Health and Human Resources.

20 ~~(6)~~ (10) "Unit" means the Medicaid Fraud Control Unit
21 established under section one of this article.

22 **§9-7-3. Investigations; procedure.**

23 (a) When the unit has ~~probable cause to believe that~~
24 information that indicates a person has engaged in an act or
25 activity which is subject to prosecution under this article, the
26 unit shall make an investigation to determine if the act has been

1 committed and, to the extent necessary for such purpose, the
2 ~~commissioner~~ Secretary, or an employee of the unit designated by
3 the ~~commissioner~~ Secretary, ~~shall have the power to~~ may administer
4 oaths or affirmations, present and swear or affirm criminal
5 complaints, request search warrants and issue subpoenas for
6 witnesses and documents relevant to the investigation, including
7 information concerning the existence, description, nature, custody,
8 condition and location of any book, record, documents or other
9 tangible thing and the identity and location of persons having
10 knowledge of relevant facts or any matter reasonably calculated to
11 lead to the discovery of admissible evidence.

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

1 person whose acts or conduct is investigated pursuant to this
2 section or the facts disclosed in such investigation except as the
3 same may be used in any legal action or enforcement proceeding
4 brought pursuant to this article or any other provision of this
5 code.

6 **§9-7-3a. Investigations; procedure.**

7 When the prosecuting attorney of the county in which a crime
8 lawfully investigated by the unit determines that the office of
9 prosecutor is unable to take appropriate action, the prosecutor may
10 petition the circuit court for the appointment of a special
11 prosecutor or special assistant prosecutor from the West Virginia
12 Prosecuting Attorney Institute pursuant to the provisions of
13 section six, article four, chapter seven of this code.
14 Notwithstanding the provisions of that section, attorneys employed
15 and assigned to the Medicaid Fraud Control Unit created by the
16 provisions of section one of this article may prosecute or assist
17 in the prosecution of violations of the criminal laws of this state
18 as described in this section and may act as special prosecutors or
19 special assistant prosecutors in those cases if assistance is
20 sought by the prosecuting attorney or special prosecutor assigned
21 by the Institute to prosecute those matters.

22 **§9-7-4. Applications for medical assistance; false statements or**
23 **representations; criminal penalties.**

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

1 the Department of ~~welfare~~ Health and Human Resources.

2 (b) A person shall not knowingly make or cause to be made a
3 false statement or false representation of any material fact
4 necessary to determine the rights of any other person to medical
5 assistance under the medical programs of the Department of ~~welfare~~
6 Health and Human Resources.

7 (c) A person shall not knowingly and intentionally conceal or
8 fail to disclose any fact with the intent to obtain medical
9 assistance under the medical programs of the Department of ~~welfare~~
10 Health and Human Resources to which the person or any other person
11 is not entitled.

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

18 **§9-7-5. Bribery; false claims; conspiracy; criminal penalties.**

19 (a) A person shall not solicit, offer or receive any
20 remuneration, including any kickback, rebate or bribe, directly or
21 indirectly, with the intent of causing an expenditure of moneys
22 from the medical services fund established pursuant to section two,
23 article four of this chapter. ~~which expenditure is not authorized~~
24 ~~by applicable laws or rules and regulations governing said medical~~
25 ~~services fund.~~

26 (b) A person shall not make or present or cause to be made or

1 presented to the Department of ~~welfare~~ Health and Human Resources
2 a claim under the medical programs of the Department of ~~welfare~~
3 Health and Human Resources knowing the claim to be false,
4 fraudulent or fictitious.

5 (c) A person shall not enter into an agreement, combination or
6 conspiracy to obtain or aid another to obtain the payment or
7 allowance of a false, fraudulent or fictitious claim under the
8 medical programs of the Department of ~~welfare~~ Health and Human
9 Resources.

10 (d) Any person found to be in violation of subsection (a), (b)
11 or (c) of this section ~~shall be~~ guilty of a felony and, upon
12 conviction, shall be ~~confined in the penitentiary~~ imprisoned in a
13 state correctional facility not less than one nor more than ten
14 years or shall be fined not to exceed ten thousand dollars, or both
15 fined and imprisoned. ~~as provided.~~

16 (e) The court, in imposing sentence on a person convicted of
17 an offense under subsection (a), (b) or (c) of this section, shall
18 order the person to forfeit property, real or personal, that
19 constitutes or is derived, directly or indirectly, from gross
20 proceeds traceable to the commission of the offense. Any person
21 convicted under this section shall be responsible for payment of
22 the costs of asset forfeiture. For purposes of this section,
23 payment of the costs of asset forfeiture includes: (i) Seizure,
24 detention, maintaining, advertising, selling or disposal of
25 property, or of any other necessary expenses incident to the
26 seizure, detention, forfeiture or disposal of the property

1 including liens, mortgages and taxes; (ii) the compromise and
 2 payment of valid liens and mortgages against property that has been
 3 forfeited to determine the validity of the lien or mortgage and the
 4 amount of payment to be made, and the use of or employment of
 5 professional realtors as necessary; and (iii) the payment of state
 6 and local property taxes on forfeited real property that accrued
 7 between the date of the violation giving rise to the forfeiture and
 8 the date of the forfeiture order.

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

10 A criminal prosecution under this article may be commenced in
 11 the circuit court of any county in which:

12 (a) The defendant is conducting business; or

13 (b) Any of the conduct constituting a violation of any
 14 provision of this article shall have occurred; or

15 (c) Any application, claim, representation, statement,
 16 writing, electronic communication, warrant, payment, check, or fund
 17 transfer, was prepared, mailed, transmitted, received, relied upon,
 18 or acted upon.

19 **§9-7-6. Civil remedies.**

20 (a) Any person, firm, corporation or other entity which
 21 willfully, by means of a false statement or representation, or by
 22 concealment of any material fact, or by other fraudulent scheme,
 23 devise or artifice on behalf of himself, herself, itself, or
 24 others, obtains or attempts to obtain benefits or payments or
 25 allowances under the medical programs of the Department of ~~welfare~~
 26 Health and Human Resources to which he or she or it is not

1 entitled, or, in a greater amount than that to which he or she or
2 it is entitled, shall be liable to the Department of ~~welfare~~ Health
3 and Human Resources in an amount equal to three times the amount of
4 such benefits, payments or allowances to which he or she or it is
5 not entitled, and shall be liable for the payment of reasonable
6 attorney fees and all other fees and costs of litigation.

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

10 (c) A civil action under this section may be prosecuted and
11 maintained on behalf of the Department of ~~welfare~~ Health and Human
12 Resources by the Attorney General and ~~his~~ the Attorney General's
13 assistants or a prosecuting attorney and ~~his~~ the prosecuting
14 attorney's assistants or by any attorney in contract with or
15 employed by the Department of ~~welfare~~ Health and Human Resources to
16 provide such representation.

17 **§9-7-6a. Liability of Employees of the Department of Health and**
18 **Human Resources.**

19 There shall be no liability on the part of, and no cause of
20 action shall arise against the Secretary or the Department of
21 Health and Human Resources or its employees or agents for any
22 action taken by them in the lawful performance of their powers and
23 duties under this article.

24 **§9-7-8. Remedies and penalties not exclusive.**

25 The remedies and penalties provided in this article governing
26 the operation of the medical programs of the Department of ~~welfare~~
27 Health and Human Resources.

NOTE: The purpose of this bill is to amend sections of the article relating to human services, the Department of Health and Human Resources and fraud and abuse in the Medicaid program. It amends powers and duties of the Medicaid Fraud Control Unit and definitions under article seven. It adds investigation procedures for the Medicaid fraud control unit. It deals with the prosecution of crimes in Medicaid, criminal forfeiture of assets and the costs associated with criminal forfeiture together with the venue for crimes committed against Medicaid and their penalties. The bill limits the liability of employees of the Department of Health and Human Resources under article nine, chapter seven of this code.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§9-7-3a, §9-7-5a and §9-7-6a are new; therefore, strike-throughs and underscoring have been omitted.