

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 5**

BY SENATORS TRUMP, CLINE, WOELFEL, AND TAKUBO

[Introduced January 10, 2018; Referred  
to the Committee on Health and Human Resources; and  
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §9-7-1, §9-7-3, §9-7-6, and §9-7-6a of the Code of West Virginia,  
2 1931, as amended, all relating to Medicaid fraud and abuse; Medicaid Fraud Control Unit;  
3 transferring the Medicaid Fraud Control Unit, all powers and duties of the unit and  
4 employees of the unit from the Department of Health and Human Resources to the  
5 Attorney General effective October 1, 2018; requiring, on or before December 31, 2021,  
6 that the Legislative Auditor study and report to the Joint Committee on Government and  
7 Finance on the performance of the Medicaid Fraud Control Unit within the Office of the  
8 Attorney General compared to the performance of the unit while established within the  
9 Department of Health and Human Resources; requiring the Department of Health and  
10 Human Resources cooperate with and provide information to the Attorney General on  
11 Medicaid fraud and abuse investigations, prosecutions or civil actions; providing that a  
12 civil action related to Medicaid fraud and abuse may be prosecuted and maintained on  
13 behalf of the Department of Health and Human Resources by the Attorney General or by  
14 an attorney in contract with or employed by the Attorney General; providing that a civil  
15 action related to Medicaid fraud and abuse may be prosecuted and maintained by a  
16 prosecuting attorney and the prosecuting attorney's assistants or by any attorney  
17 contracted with or employed by the Department of Health and Human Resources if the  
18 Attorney General declines to prosecute and maintain such action; and exempting the  
19 Attorney General and employees or agents from civil liability for certain good faith actions.

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

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

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

1 (a) It is the purpose of the Legislature to continue the Medicaid Fraud Control Unit  
2 previously established within the West Virginia Department of Health and Human Resources and  
3 to provide it with the responsibility and authority for investigating and controlling fraud and abuse

4 of the medical programs of the State Department of Health and Human Resources which have  
5 been established pursuant to section two, article four of this chapter: Provided, That effective  
6 October 1, 2018, the Medicaid Fraud Control Unit shall be transferred to the Office of the Attorney  
7 General pursuant to subsection (c) of this section. It is the finding of the Legislature that  
8 substantial sums of money have been lost to the state and federal government in the operation  
9 of the medical programs of the state due to the overpayment of moneys to medical providers.  
10 Such overpayments have been the result of both the abuse of and fraud in the reimbursement  
11 process.

12 (b) ~~The Medicaid Fraud Control Unit of the State Department of Health and Human~~  
13 ~~Resources shall be continued and~~ shall have the following powers and duties:

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

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

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

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

25 (c) Effective October 1, 2018, the Medicaid Fraud Control Unit previously established  
26 within the Department of Health and Human Resources shall be transferred to the Office of the  
27 Attorney General. All rights, responsibilities, powers and duties of the unit shall be transferred to  
28 the Office of the Attorney General, including the administration and authority of the Medicaid  
29 Fraud Control Fund. All employees of the Medicaid Fraud Control Unit shall be transferred to and

30 become employees of the Attorney General at their existing hourly rate or salary and with all  
31 accrued benefits. The Medicaid Fraud Control Unit's authorities, powers, and duties shall remain  
32 unchanged by this subsection.

33 (d) On or before December 31, 2021, the Legislative Auditor shall study and report to the  
34 Joint Committee on Government and Finance on the performance of the Medicaid Fraud Control  
35 Unit within the Office of the Attorney General during the previous three years compared to the  
36 performance of the unit while it was established within the Department of Health and Human  
37 Resources.

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

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

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

15 (b) If documents necessary to an investigation of the unit shall appear to be located outside  
16 the state, such documents shall be made available by the person or entity within the jurisdiction  
17 of the state having control over such documents either at a convenient location within the state

18 or, upon payment of reasonable and necessary expenses to the unit for transportation and  
19 inspection, at the place outside the state where such documents are maintained.

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

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

28 (e) Beginning on October 1, 2018, the secretary and the Department of Health and Human  
29 Resources shall fully cooperate with the Attorney General on any investigation, prosecution or  
30 civil action conducted pursuant to this article. The secretary shall promptly provide the Attorney  
31 General with any information or document requested for the purposes of carrying out this article,  
32 to the extent permitted under federal law.

**§9-7-6. Civil remedies.**

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

10 (b) No criminal action or indictment need be brought against any person, firm, corporation,

11 or other entity as a condition for establishing civil liability hereunder.

12 (c) A civil action under this section may be prosecuted and maintained on behalf of the  
 13 Department of Health and Human Resources by the Attorney General, ~~and~~ the Attorney General's  
 14 assistants, or by any attorney in contract with or employed with the Attorney General to provide  
 15 such representation. If the Attorney General declines to do so, the civil action shall be maintained  
 16 either by a prosecuting attorney and the prosecuting attorney's assistants or by any attorney in  
 17 contract with or employed by the Department of Health and Human Resources to provide such  
 18 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 of action shall arise against,  
 2 the ~~Secretary of the~~ Department of Health and Human Resources, the Attorney General, or its  
 3 employees or agents of the aforementioned for any action taken by them in good faith and in the  
 4 lawful performance of their powers and duties under this article.

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NOTE: The purpose of this bill is to add language to the West Virginia Code providing clarity in the representation of cases relating to Medicaid fraud and abuse and continuing the fraud control unit in the Medicaid Fraud Control Unit of the Attorney General's office after October 1, 2018.

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