

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4417

BY DELEGATES ELLINGTON, FOSTER, HOUSEHOLDER,

ROHRBACH, AND SYPOLT

[Introduced February 2, 2018; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §9-7-2, §9-7-5, and §9-7-6 of said code; to amend said code by adding thereto
3 a new article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8,
4 §9-8-9, §9-8-10, §9-8-11, §9-8-12, and §9-8-13; and to amend and reenact §61-3-54 of
5 said code, all relating to investigations, inspections, evaluations, and review conducted by
6 the Department of Health and Human Resources to prevent fraud and abuse; dis-enrolling
7 providers who commit fraud and requiring repayment; defining fraud as it relates to
8 Medicaid; authorizing penalties against providers for failure to keep medical records for a
9 specific time period; authorizing a civil cause of action for fraud when a person or entity
10 knew or should have known a claim to be false; enlarging the statute of limitations to file
11 health care fraud civil actions; defining terms relating to public assistance fraud; providing
12 for an asset test for SNAP benefits which authorizes the access of information of various
13 federal, state, and miscellaneous sources; requiring cooperation with the Bureau for Child
14 Support Enforcement; requiring a design or establishment of a computerized income,
15 asset, and identity verification system for each public assistance program administered by
16 the Department of Health and Human Resources; allowing for contracting with a third-
17 party vendor; setting out required contract terms; requiring accessing information of
18 various federal, state, and miscellaneous sources for eligibility verification; requiring
19 identity authentication as a condition to receive public assistance; authorizing the
20 department to study the feasibility of requiring photos on EBT cards; prohibiting payment
21 of public assistance benefits in specified instances; setting forth notice requirements and
22 right to a hearing; requiring referrals for fraud, misrepresentation, and inadequate
23 documentation; authorizing referrals of suspected cases of fraud for criminal prosecution;
24 requiring report to the Governor and Legislature; setting forth prohibitions on the use of an
25 electronic benefit transfer card; tracking out-of-state spending of SNAP and TANF

26 benefits; providing for rulemaking; and providing a penalty for taking the identity of another
 27 person for the purpose of gaining employment.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES, AND RESPONSIBILITIES GENERALLY.

§9-2-6. Powers of secretary.

1 Within limits of state appropriations and federal grants and subject to provisions of state
 2 and federal laws and regulations, the secretary, in addition to all other powers, duties, and
 3 responsibilities granted and assigned to that office in this chapter and elsewhere by law, is
 4 authorized to:

5 (1) Promulgate, amend, revise, and rescind department rules respecting the organization
 6 and government of the department and the execution and administration of those powers, duties,
 7 and responsibilities granted and assigned by this chapter and elsewhere by law to the department
 8 and the secretary.

9 (2) Promulgate, amend, revise, and rescind department rules and regulations respecting
 10 qualifications for receiving the different classes of welfare assistance consistent with or permitted
 11 by federal laws, rules, and policies, but not inconsistent with state law: *Provided*, That rules and
 12 policies respecting qualifications shall permit the expenditure of state funds to pay for care
 13 rendered in any birthing center licensed under the provisions of §16-2E-1 *et seq.* article of this
 14 code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-1 of this code
 15 and which care is within the scope of duties for such licensed nurse midwife or midwife as
 16 permitted by the provisions of §30-15-7 of this code.

17 (3) Obtain by purchase or lease grounds, buildings, office, or other space, equipment,
 18 facilities, and services as may be necessary for the execution and administration of those powers,

19 duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the
20 department and the secretary.

21 (4) Sign and execute in the name of the state by the State Department of Health and
22 Human Resources any contract or agreement with the federal government or its agencies, other
23 states, political subdivisions of this state, corporations, associations, partnerships, or individuals:
24 *Provided*, That the provisions of §5A-3-1 *et seq.* are followed.

25 (5) Sign and execute a contract to implement professional health care, managed care,
26 actuarial, and health care-related monitoring, quality review/utilization, claims processing, and
27 independent professional consultant contracts for the Medicaid program: *Provided*, That the
28 provisions of §5A-3-1 *et seq.* of this code are followed: *Provided, however*, That a contract
29 awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains
30 in full force and effect and the secretary retains sole authority to review, approve, and issue
31 changes to contracts issued under the former purchasing process, and is responsible for
32 challenges, disputes, protests, and legal actions related to such contracts.

33 (6) Establish such special funds as may be required by the federal Social Security Act, as
34 amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of
35 the benefits and provisions thereof relating to the federal-state assistance and federal assistance
36 programs administered by the department and to make payments into and disbursements out of
37 any such special fund or funds in accordance with the requirements of the federal Social Security
38 Act, as amended, or any other act or Acts of Congress, and in accordance with applicable state
39 law and the objects and purposes of this chapter. In addition, the State Department of Health and
40 Human Resources, through the secretary, is hereby authorized to accept any and all gifts or
41 grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys,
42 shall be placed in a separate fund and expended solely for the purpose of public assistance
43 programs. No part of this special fund shall revert to the General Revenue Funds of this state. No
44 expenses incurred pursuant to this special fund shall be a charge against the general funds of

45 this state.

46 (7) Establish within the department an office of inspector general for the purpose of
47 conducting and supervising investigations, performing inspections, evaluations, and review, and
48 ~~for the purpose of~~ providing quality control for the programs of the department. The office of
49 inspector general shall be headed by the inspector general who shall report directly to the
50 secretary. Neither the secretary nor any employee of the department may prevent, inhibit, or
51 prohibit the inspector general or his or her employees from initiating, carrying out, or completing
52 any investigation, ~~quality control~~ inspection, evaluation, review, or other activity oversight of public
53 integrity by the office of the inspector general. The secretary shall place within the office of
54 inspector general any function he or she deems necessary. Qualification, compensation, and
55 personnel practice relating to the employees of the office of the inspector general, including that
56 of the position of inspector general, shall be governed by the classified service provisions of §29-
57 6-1 of this code and rules promulgated thereunder. The inspector general shall supervise all
58 personnel of the office of inspector general.

59 (8) Provide at department expense a program of continuing professional, technical, and
60 specialized instruction for the personnel of the department.

61 (9) Pay from available funds all or part of the reasonable expenses incurred by a person
62 newly employed by the department in moving his household furniture, effects, and immediate
63 family from his or her place of residence in this state to his or her place of employment in this
64 state; and to pay from available funds all or part of the reasonable expenses incurred by a
65 department employee in moving his or her household furniture, effects, and immediate family as
66 a result of a reassignment of the employee which is considered desirable, advantageous to, and
67 in the best interests of the state, but no part of the moving expenses of any one such employee
68 shall be paid more frequently than once in 12 months or for any movement other than from one
69 place of employment in this state to another place of employment in this state.

70 (10) Establish a program to provide reimbursement to employees of the department whose

71 items of personal property, as defined by the department by policy, are damaged during the
72 course of employment or other work-related activity as a result of aggressive behavior by a client
73 or patient receiving services from the department: *Provided*, That such reimbursement is limited
74 to a maximum amount of \$250.00 per claim.

75 (11) Establish and maintain such institutions as are necessary for the temporary care,
76 maintenance, and training of children and other persons.

77 (12) Prepare and submit state plans which will meet the requirements of federal laws,
78 rules governing federal-state assistance and federal assistance, and which are not inconsistent
79 with state law.

80 (13) Organize within the department a board of review, consisting of a chairman appointed
81 by the secretary and as many assistants or employees of the department as may be determined
82 by the secretary and as may be required by federal laws and rules respecting state assistance,
83 federal-state assistance, and federal assistance, such board of review to have such powers of a
84 review nature and such additional powers as may be granted to it by the secretary and as may
85 be required by federal laws and rules respecting federal-state assistance and federal assistance.

86 (14) Provide by rules review and appeal procedures within the Department of Health and
87 Human Resources as may be required by applicable federal laws and rules respecting state
88 assistance, federal-state assistance and federal assistance, and as will provide applicants for,
89 and recipients of all, classes of welfare assistance an opportunity to be heard by the Board of
90 Review, a member thereof or individuals designated by the board, upon claims involving denial,
91 reduction, closure, delay, or other action or inaction pertaining to public assistance.

92 (15) Provide by rules, consistent with requirements of applicable federal laws and rules,
93 application forms and application procedures for the various classes of public assistance.

94 (16) Provide locations for making applications for the various classes of public assistance.

95 (17) Provide a citizen or group of citizens an opportunity to file objections and to be heard
96 upon objections to the grant of any class of public assistance.

97 (18) Delegate to the personnel of the department all powers and duties vested in the
98 secretary, except the power and authority to sign contracts and agreements.

99 (19) Make such reports in such form and containing such information as may be required
100 by applicable federal laws and rules respecting federal-state assistance and federal assistance.

101 (20) Invoke any legal, equitable, or special remedies for the enforcement of the provisions
102 of this chapter.

103 (21) Require a provider, subgrantee, or other entity performing services on behalf of the
104 department to comply with all applicable laws, rules, and written policies pertaining to the program
105 for which the entity is providing or coordinating services, including, but not limited to, policy
106 manuals, statements of work, program instructions, or other similar agreements. When submitting
107 a claim for payment, the entity shall certify that it has complied with all material conditions for
108 payment. Submitting a claim or billing for services performed in violation of any law, rule, policy,
109 or other written agreement shall constitute fraud and the agreement for provision of services shall
110 terminate. The entity shall be required to repay the department for any payment under the
111 program for which the provider was not entitled, regardless of whether the incorrect payment was
112 the result of department error, fraud, or other cause. A demand for repayment shall be subject to
113 due process procedures pursuant to §29A-5-1 et seq. of this code.

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-7-2. Definitions.

1 For the purposes of this article:

2 (1) "Assistance" means money payments, medical care, transportation, and other goods
3 and services necessary for the health or welfare of individuals, including guidance, counseling,
4 and other welfare services and shall include all items of any nature contained within the definition
5 of "welfare assistance" in §9-1-2 of this code.

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

7 (3) "Board and Care Facility" means a residential setting where two or more unrelated

8 adults receive nursing services or personal care services.

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

11 (5) "Entity" means any corporation, association, partnership, limited liability company, or
12 other legal entity.

13 (6) "Financial Exploitation" means the intentional misappropriation or misuse of funds or
14 assets of another.

15 (7) "Fraud" means a knowing misrepresentation, knowing concealment, or reckless
16 statement of a material fact.

17 ~~(7)~~ (8) "Medicaid" means that assistance provided under a state plan implemented
18 pursuant to the provisions of 42 U.S.C. § 1396 *et seq.* as that code has been and may hereafter
19 be amended.

20 ~~(8)~~ (9) "Person" means any individual, corporation, association, partnership, proprietor,
21 agent, assignee, or entity.

22 ~~(9)~~ (10) "Provider" means any individual or entity furnishing goods or services under the
23 medical programs of the Department of Health and Human Resources.

24 ~~(10)~~ (11) "Unit" means the Medicaid Fraud Control Unit established under §9-7-1 of this
25 code.

§9-7-5. Bribery; false claims; conspiracy; criminal penalties; failure to maintain records.

1 (a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including
2 any kickback, rebate, or bribe, directly or indirectly, with the intent of causing an expenditure of
3 moneys from the medical services fund established pursuant to §9-4-2 of this code, which is not
4 authorized by applicable laws or rules and regulations.

5 (b) A person shall not make or present or cause to be made or presented to the
6 Department of Health and Human Resources a claim under the medical programs of the

7 Department of Health and Human Resources knowing the claim to be false, fraudulent, or
8 fictitious.

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

12 (d) Any person found to be in violation of §9-7-5(a), (b) or (c) of this code is guilty of a
13 felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one
14 nor more than 10 years or shall be fined not to exceed \$10,000, or both fined and ~~imprisoned~~
15 confined.

16 (e) Any person who, having submitted a claim for or received a benefit, payment, or
17 allowance under the medical programs of the Department of Health and Human Resources,
18 knowingly fails to maintain such records as are necessary to disclose fully the nature of a good
19 or a service for which a claim was submitted or benefit, payment, or allowance was received, or
20 such records as are necessary to disclose fully all income and expenditures upon which rates of
21 payment were based, for a period of at least five years following the date on which payment was
22 received, shall be guilty of a misdemeanor and, upon conviction, may be confined in a state
23 correctional facility not to exceed one year or may be fined up to \$1,000, or both fined and
24 confined. Any person who knowingly destroys such records within five years from the date the
25 benefit, payment, or allowance was received, shall be guilty of a felony, and may be imprisoned
26 in a state correctional facility not less than one nor more than 10 years or may be fined not to
27 exceed \$10,000, or both fined and imprisoned.

§9-7-6. Civil remedies; statute of limitations.

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~~ makes or attempts to make, or causes to be made, a claim
7 for benefits, payments, or allowances under the medical programs of the Department of Health
8 and Human Resources, when such person, firm, corporation, or entity knows, or reasonably
9 should have known, such claim to be false, fictitious, or fraudulent, or fails to maintain such
10 records as are necessary, shall be liable to the Department of Health and Human Resources in
11 an amount equal to three times the amount of such benefits, payments, or allowances to which
12 he or she or it is not entitled, and shall be liable for the payment of reasonable attorney fees and
13 all other fees and costs of litigation.

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

16 (c) A civil action under this section may be prosecuted and maintained on behalf of the
17 Department of Health and Human Resources by the attorney general and the attorney general's
18 assistants or a prosecuting attorney and the prosecuting attorney's assistants or by any attorney
19 in contract with or employed by the Department of Health and Human Resources to provide such
20 representation.

21 (d) Any civil action brought under this section shall be brought within five years from the
22 time the Medicaid Fraud Control Unit is made aware of the existence of the false, fraudulent, or
23 fictitious claim from which a cause of action may arise.

ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.

§9-8-1. Definitions.

1 The following words have the following meanings:

2 (1) "Asset" or "asset test" means, for the purposes of this article, all assets of the members
3 of the applicant's household, including:

4 (A) All bank accounts, excluding retirement accounts of members of the household;

5 (B) All cash, excluding the first \$2,000 of members of the household;

6 (C) All lottery and gambling income of the household, whether received as a lump sum or
7 installment payments;

8 (D) All real estate, excluding the primary household residence and surrounding lot; and

9 (E) All other personal property, excluding personal belongings, household goods, and one
10 vehicle.

11 (2) "Applicant" or "recipient" means a person who is applying for, or currently receiving,
12 public assistance in the State of West Virginia from the department.

13 (3) "Department" means the West Virginia Department of Health and Human Resources.

14 (4) "Electronic benefit transfer" or "EBT" means any electronic system which allows the
15 department to issue and track benefits via a magnetically encoded payment card.

16 (5) "Household" means the same as that term is defined in 7 CFR § 273.1(a) and (b).

17 (6) "Public assistance" means government benefits provided to qualifying individuals on
18 the basis of need to provide basic necessities to individuals and their families. These shall include,
19 but are not limited to, the following:

20 (A) Supplemental Nutrition Assistance Program or SNAP;

21 (B) Medicaid; and

22 (C) Temporary Assistance to Needy Families or TANF.

23 (7) "Secretary" means the Secretary of the West Virginia Department of Health and Human
24 Resources.

§9-8-2. Asset test.

1 (a) For the purposes of determining eligibility for receipt of SNAP benefits, the department
2 shall conduct an asset test on all members of the applicant's household. The allowable financial
3 resources for eligibility for SNAP shall be those specified in 7 USC § 2014(g)(1).

4 (b) Prior to determining eligibility for SNAP benefits, the department shall access
5 information for every member of the applicant's household from, at a minimum, the following
6 federal, state, and miscellaneous sources:

- 7 (1) Federal sources:
- 8 (A) The Internal Revenue Service for earned and unearned income information;
- 9 (B) The United States Social Security Administration for:
- 10 (i) Earned income information;
- 11 (ii) Death register information;
- 12 (iii) Prisoner information or incarceration status;
- 13 (iv) Beneficiary records and earnings information maintained in the Beneficiary and
- 14 Earnings Data Exchange database;
- 15 (v) Earnings and pension information maintained in the Beneficiary Earnings Exchange
- 16 Record System database; and
- 17 (vi) Supplemental security income information maintained in the SSI State Data Exchange
- 18 database; and
- 19 (C) The United States Department of Health and Human Services for:
- 20 (i) Income and employment information maintained in its National Directory of New Hires
- 21 database;
- 22 (ii) Federal data sources maintained by the Office of Child Support Enforcement; and
- 23 (iii) Veterans' benefits information in coordination with the department and the West
- 24 Virginia Department of Veterans' Assistance in the federal Public Assistance Reporting
- 25 Information System database.
- 26 (2) States sources:
- 27 (A) Department of Health and Human Resources databases, including, but not limited to:
- 28 (i) Bureau for Child Support Enforcement for income and employment information;
- 29 (ii) Bureau for Children and Families for child care services information; and
- 30 (iii) Enrollment status in other public assistance programs;
- 31 (B) West Virginia Division of Labor for:
- 32 (i) Employment information;

33 (ii) Employer weekly, monthly, or quarterly reports of income and unemployment insurance
34 payments; and

35 (iii) Utility payments information maintained by the state under the Low Income Home
36 Energy Assistance Program;

37 (C) West Virginia Low Income Assistance Program for emergency utility payment
38 information; and

39 (D) West Virginia Consolidated Public Retirement Board for earnings and pension
40 information.

41 (3) Miscellaneous sources:

42 (i) Any existing real-time database of persons currently receiving benefits in other states,
43 such as the National Accuracy Clearinghouse; and

44 (ii) Any databases maintained by the West Virginia Lottery Commission.

45 (c) Prior to determining eligibility, the department shall access information for every
46 member of the applicant's household from the following public records:

47 (1) A nationwide public records data source of physical asset ownership. This may include,
48 but is not limited to, real property, automobiles, watercraft, aircraft, and luxury vehicles, or any
49 other vehicle owned by the applicant and recipient of assistance; and

50 (2) National and local financial institutions in order to locate undisclosed depository
51 accounts or verify account balances of disclosed accounts.

52 (d) If every member of the household receives supplemental security income, the
53 provisions of this article do not apply.

§9-8-3. Cooperation in child support enforcement.

1 Any applicant for SNAP benefits who is greater than six months in arrears in a child
2 support obligation entered pursuant to the provisions of §48-11-1 et seq. of this code shall be
3 required to cooperate with the West Virginia Bureau for Child Support Enforcement as a condition
4 of eligibility as set forth in 7 CFR § 273.11(o) and (p).

§9-8-4. Income and identity verification.

1 (a) By December 31, 2018, the department shall redesign an existing system or establish
2 a new computerized income, asset, and identity eligibility verification system or contract with a
3 third-party vendor to verify eligibility, eliminate the duplication of assistance, and deter waste,
4 fraud, and abuse in each public assistance program that it administers.

5 (b) The department may contract with a third-party vendor to develop a system to provide
6 a service or verify income, assets, and identity eligibility of applicants to prevent fraud,
7 misrepresentation, and inadequate documentation when determining eligibility for public
8 assistance. This system or service shall be accessed prior to determining eligibility, periodically
9 between eligibility redeterminations, and during eligibility redeterminations and reviews. The
10 department may contract with a vendor to provide information to facilitate reviews of recipient
11 eligibility conducted by the department.

12 (c) Nothing in this article precludes the department from continuing to conduct additional
13 eligibility verification processes currently in practice.

§9-8-5. Eligibility verification.

1 All applications for benefits must be processed through a system as set forth in this article.
2 Complete applications shall be processed within 10 days of receipt or the minimum period
3 required by federal law. Prior to determining eligibility, the department shall access information
4 for every applicant from the following federal, state, and other sources:

5 (1) Federal sources:

6 (A) The Internal Revenue Service for earned and unearned income information;

7 (B) The United States Social Security Administration for:

8 (i) Earned income information;

9 (ii) Death register information;

10 (iii) Prisoner information;

11 (iv) Beneficiary records and earnings information maintained in the beneficiary and

12 Earnings Data Exchange database;
13 (v) Earnings and pension information maintained in the Beneficiary Earnings Exchange
14 Record System database; and
15 (vi) Supplemental security income information maintained in the SSI State Data Exchange
16 database;
17 (C) The United States Department of Health and Human Services for:
18 (i) Income and employment information maintained in its National Directory of New Hires
19 database;
20 (ii) Federal data sources maintained by the Office of Child Support Enforcement; and
21 (iii) Veterans' benefits information in coordination with the department and the West
22 Virginia Department of Veterans' Assistance in the federal Public Assistance Reporting
23 Information System database;
24 (D) United States Citizenship and Immigration Services for status information;
25 (E) United States Department of Housing and Urban Development Public Housing and
26 Section 8 Housing Assistance for payment information; and
27 (F) United States Federal Bureau of Investigation for national fleeing felon information.
28 (2) States sources:
29 (A) Department of Health and Human Resources databases, including, but not limited to:
30 (i) Bureau for Child Support Enforcement for income and employment information;
31 (ii) Bureau for Children and Families for child care services information;
32 (B) West Virginia Division of Labor for:
33 (i) Employment information;
34 (ii) Employer weekly, monthly, or quarterly reports of income and unemployment insurance
35 payments; and
36 (iii) Utility payments information maintained by the state under the Low Income Home
37 Energy Assistance Program;

38 (C) West Virginia Low Income Assistance Program for emergency utility payment
39 information; and

40 (D) West Virginia Consolidated Public Retirement Board for earnings and pension
41 information.

42 (3) Other sources:

43 (i) Any existing real-time database of persons currently receiving benefits in other states,
44 such as the National Accuracy Clearinghouse;

45 (ii) An available database of persons who currently hold a license, permit, or certificate
46 from any state agency, the cost of which exceeds \$500;

47 (iii) Wage reporting and similar information maintained by states contiguous to West
48 Virginia; and

49 (iv) A database which is substantially similar to, or a successor of, a database established
50 in this article.

51 (G) Prior to determining eligibility, the department shall access information for every
52 applicant from, at a minimum, the following public records:

53 (1) A nationwide public records data source of physical asset ownership. This may include,
54 but is not limited to, real property, automobiles, watercraft, aircraft, and luxury vehicles, or any
55 other vehicle owned by the applicant and recipient of assistance;

56 (2) A nationwide public records data source of incarcerated individuals;

57 (3) A nationwide best address and driver's license data source to verify that individuals
58 are residents of the state;

59 (4) A comprehensive public records database from which the department can identify
60 potential identity fraud or identity theft that can closely associate name, social security number,
61 date of birth, phone, and address information;

62 (5) National and local financial institutions in order to locate undisclosed depository
63 accounts or verify account balances of disclosed accounts; and

64 (6) Outstanding default or arrest warrant information maintained by the Criminal History
65 Systems Board, the Criminal Justice Information System, and the Warrant Management System.

§9-8-6. Identity authentication.

1 (a) Prior to awarding public assistance, applicants for benefits must complete a
2 computerized identity authentication process to confirm the identity of the applicant. This shall be
3 done with a knowledge-based questionnaire consisting of financial and or personal questions, or
4 both. The questionnaire must provide support for persons without a bank account, or those who
5 have poor access to financial and banking services, or who do not have an established credit
6 history. The questionnaire may be submitted online, in-person or via telephone.

7 (b) The department may study the feasibility of implementing the photo EBT card option
8 under 7 U.S.C. § 2016(h)(9). The study shall address certain operational issues to ensure that
9 state implementation would be consistent with all federal requirements, and that program access
10 is protected for participating households.

§9-8-7. Case review.

1 (a) If the information obtained from the review provided in this article does not result in the
2 department finding a discrepancy or change in an applicant's or recipient's circumstances
3 affecting eligibility, the department shall take no further action.

4 (b) If the review results in a discrepancy, the department shall promptly re-determine
5 eligibility.

6 (c) Public assistance shall not be granted to a household if any member of the household
7 has been found guilty of fraudulent activity directly related to any public assistance program.

8 (d) Any applicant for public assistance benefits who is greater than six months in arrears
9 in a child support obligation entered pursuant to the provisions of §48-11-1 et seq. of this code is
10 not eligible for public assistance benefits until such time as he or she enters into a payment
11 arrangement with the West Virginia Bureau for Child Support Enforcement or is found by said
12 bureau to have no ability to pay his or her child support obligation.

§9-8-8. Notice and right to be heard.

1 (a) An applicant shall be given written notice and the opportunity to explain any issues
2 with the application or redetermination as set forth in §9-8-7 of this code. Self-declarations by
3 applicants or recipients shall not be accepted as verification of categorical and financial eligibility
4 during eligibility evaluations, reviews, and redeterminations.

5 (b) The notice given to the applicant or recipient is required to describe the circumstances
6 of the issue, the manner in which the applicant or recipient may respond, and the consequences
7 of failing to take action. The applicant or recipient shall have 10 days to respond. If the applicant
8 does not respond, the department shall take appropriate action. The department may request
9 additional information as it finds necessary to reach a decision.

10 (c) If an applicant or recipient responds, he or she shall respond in writing and may:

11 (1) Disagree with the findings of the department. The department shall reinvestigate the
12 matter if the applicant or recipient disagrees. If the department finds that there has been an error,
13 the department shall take immediate action to correct it. If the department determines that there
14 is no error, the department shall determine the effect on the applicant's or recipient's case and
15 take appropriate action. Written notice of the department's action shall be given to the applicant
16 or recipient; or

17 (2) Agree with the findings of the department. The department shall determine the effect
18 on the applicant's or recipient's case and take appropriate action. Written notice of the
19 department's action shall be given to the applicant or recipient.

20 (d) If the applicant fails to respond to the notice, the department shall deny or discontinue
21 assistance for failure to cooperate. The applicant shall be given notice of intent to deny or
22 discontinue assistance. Eligibility for assistance may not be established or reestablished until the
23 issue has been resolved.

§9-8-9. Referrals for fraud, misrepresentation, or inadequate documentation.

1 (a) After the case review as set forth in §9-8-7 of this code, the department may refer

2 cases of suspected fraud to the office of Inspector General within the department. That office shall
3 take appropriate action, including civil penalties or referral to an appropriate prosecuting attorney
4 for criminal prosecution.

5 (b) In cases of substantiated fraud, upon conviction, the state shall review all appropriate
6 legal options. These may include, but are not limited to, removal from other public assistance
7 programs and garnishment of wages or state income tax refunds until the department recovers
8 an equal amount of benefits fraudulently claimed.

9 (c) The department may refer suspected cases of fraud, misrepresentation, or inadequate
10 documentation to appropriate agencies, divisions, or departments for review of eligibility issues in
11 other public assistance programs. This should also include cases in which an individual is
12 determined to be no longer eligible for the original program.

§9-8-10. Reporting to the Governor and Legislature.

1 The department shall prepare an annual report by December 31 each year to the Governor
2 and Legislative Oversight Commission on Health and Human Resources Accountability. The
3 report shall contain information on the effectiveness and general findings of the eligibility
4 verification system, including the number of cases reviewed, the number of case closures, the
5 number of referrals for criminal prosecution, recovery of improper payment, collection of civil
6 penalties, the outcomes of cases referred to the office of inspector general, and any savings that
7 have resulted from the system.

§9-8-11. Prohibitions on use of electronic benefit transfer cards.

1 (a) To ensure that public assistance program funds are used for their intended purposes,
2 funds available on electronic benefit transfer cards may not be used to purchase alcohol, liquor
3 or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos,
4 travel services provided by a travel agent, money transmission to locations abroad, sexually
5 oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets
6 for other entertainment events intended for the general public.

7 (b) Electronic benefit transfer card transactions are prohibited at all casinos, gaming
8 establishments, tattoo parlors, massage parlors, body piercing parlors, spas, nail salons, lingerie
9 shops, vapor cigarette stores, psychic or fortune-telling businesses, bail bond companies, video
10 arcades, movie theaters, swimming pools, cruise ships, theme parks, dog or horse racing
11 facilities, pari-mutuel facilities, sexually oriented businesses, retail establishments which provide
12 adult-oriented entertainment in which performers disrobe or perform in an unclothed state for
13 entertainment, and businesses or retail establishments where minors under age 18 are not
14 permitted.

15 (c) Upon enrollment, the department shall provide all applicants with an itemized list of
16 prohibited purchases, including those specified in this section, and make such list available on
17 the department's website.

18 (d) If a recipient is found to have violated the provisions of this section, the department
19 shall issue a warning in writing to the recipient. The recipient shall be subject to disqualification of
20 benefits for up to three months following the first offense, for up to one year following the second
21 offense, and a permanent termination of benefits following the third offense, unless expressly
22 prohibited by federal law.

§9-8-12. Tracking out-of-state spending.

1 (a) The department shall post on its web sites and provide to the Joint Committee on
2 Government and Finance a report of Supplemental Nutrition Assistance Program and Temporary
3 Assistance for Needy Families benefit spending on or before January 15 of each year.

4 (b) The report required by this section shall include:

5 (1) The dollar amount and number of transactions of Supplemental Nutrition Assistance
6 Program benefits that are accessed or spent out-of-state, by state;

7 (2) The dollar amount and number of transactions of Temporary Assistance for Needy
8 Families benefits that are accessed or spent out-of-state, by state;

9 (3) The dollar amount, number of transactions, and times of transactions of Supplemental

10 Nutrition Assistance Program benefits that are accessed or spent in-state, by retailer, institution,
 11 or location; and

12 (4) The dollar amount, number of transactions, and time of Temporary Assistance for
 13 Needy Families transactions of benefits that are accessed or spent in-state, disaggregated by
 14 retailer, institution, or location.

15 (c) The report required pursuant to this section shall not identify individual recipients.

§9-8-13. Rulemaking.

1 The secretary may promulgate rules for legislative approval in accordance with the
 2 provisions of §29A-3-1 et seq. of this code which he or she finds necessary to effectuate the
 3 provisions of this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-54. Taking identity of another person; penalty.

1 Any person who knowingly takes the name, birth date, Social Security number, or other
 2 identifying information of another person, without the consent of that other person, with the intent
 3 to fraudulently represent that he or she is the other person for the purpose of making financial or
 4 credit transactions in the other person's name, or for the purpose of gaining employment, is guilty
 5 of a felony and, upon conviction, shall be punished by ~~confinement~~ imprisonment in the
 6 penitentiary not more than five years, or fined not more than \$1,000, or both: *Provided*, That the
 7 provisions of this section do not apply to any person who obtains another person's driver's license
 8 or other form of identification for the sole purpose of misrepresenting his or her age.

NOTE: The purpose of this bill is to prevent fraud and abuse through investigations, inspections, evaluations, and review conducted by the Department of Health and Human Resources; dis-enrolling providers who commit fraud and requiring repayment; defining fraud as it relates to Medicaid; authorizing penalties against providers for failure to keep medical records for a specific time period; authorizing a civil cause of action for fraud when a person or entity knew or should have known a claim to be false; enlarging the statute of limitations to file health care fraud civil actions; defining terms relating to public assistance fraud; providing for an asset test for SNAP benefits which authorizes the access of information of various federal, state and miscellaneous sources; requiring cooperation with

the Bureau for Child Support Enforcement; requiring a design or establishment of a computerized income, asset, and identity verification system for each public assistance program administered by the department; allowing for contracting with a third-party vendor; setting out required contract terms; requiring accessing information of various federal, state, and miscellaneous sources for eligibility verification; requiring identity authentication as a condition to receive public assistance; authorizing the department to study the feasibility of requiring photos on EBT cards; prohibiting payment of public assistance benefits in specified instances; setting forth notice requirements and right to a hearing; requiring referrals for fraud, misrepresentation, and inadequate documentation; requiring report to the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit transfer card; tracking out-of-state spending of SNAP and TANF benefits; providing for rulemaking; and providing a penalty for taking the identity of another person for the purpose of gaining employment.

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