

## CHAPTER 58

AN ACT establishing an Office of the Medicaid Inspector General, supplementing Title 30 of the Revised Statutes, amending P.L.1999, c.162, and making an appropriation.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.30:4D-53 Short title.

1. This act shall be known and may be cited as the “Medicaid Program Integrity and Protection Act.”

C.30:4D-54 Findings, declarations relative to the Office of Medicaid Inspector General.

2. The Legislature finds and declares that:

a. The State of New Jersey expends more than \$9 billion in taxpayer funds to fund the Medicaid program each year;

b. The State has a continuing responsibility to ensure that funds expended under the Medicaid program are used appropriately and efficiently to promote the public health;

c. Fraud, waste, and abuse by providers and recipients in the Medicaid program reduces the ability of the State to properly fund the program and results in harm to the health of the citizens of this State;

d. Controlling fraud, waste, and abuse in the Medicaid program includes preventing, detecting, and investigating such fraud, waste, and abuse, and referring it for civil or criminal action when appropriate;

e. The current system for controlling Medicaid fraud, waste, and abuse is based largely on formal and informal agreements among the Department of Human Services, the Medicaid Fraud Control Unit of the Department of Law and Public Safety, the Department of Health and Senior Services, and other local, State, and federal agencies whose clients are served by the Medicaid program or who are otherwise responsible for the control of Medicaid fraud, waste, and abuse;

f. Centralizing fraud recovery efforts and establishing an independent Office of the Medicaid Inspector General by statute to prevent, detect, and investigate fraud and abuse and coordinate the anti-fraud efforts of all State agencies funded by Medicaid will enhance the efforts of the State to control Medicaid costs;

g. The current efforts to control Medicaid fraud, waste, and abuse in New Jersey range from investigating providers before they enroll in the Medicaid program to identifying fraud, waste, and abuse on the part of both providers and recipients;

h. Changes in federal and State law, as well as in the health care industry and in available technology, suggest that it is time for a comprehensive review of the Medicaid fraud, waste, and abuse control infrastructure in this State;

i. Toward that end, the Governor has appointed the New Jersey Commission on Government Efficiency and Reform to evaluate the budget, structure, and organization of government in New Jersey, including State agencies, instrumentalities and independent authorities, local and county government and school districts, and advise the Governor on governmental restructuring, effectiveness, best practices, efficiencies, cost-saving measures, and how best to achieve economies of scale in the delivery of services and programs, at the lowest possible cost, consistent with mission and quality; and

j. While the State examines and prepares to implement such fundamental, long-term structural changes, the immediate coordination of State efforts to control Medicaid fraud, waste, and abuse at all levels of government is essential.

C.30:4D-55 Definitions relative to the Office of the Medicaid Inspector General.

3. As used in this act:

“Abuse” means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to Medicaid or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. The term also includes recipient practices that result in unnecessary costs to Medicaid.

“Department” means the Department of Human Services.

"Fraud" means an intentional deception or misrepresentation made by any person with the knowledge that the deception could result in some unauthorized benefit to that person or another person, including any act that constitutes fraud under applicable federal or State law.

"Investigation" means an investigation of fraud, waste, abuse, or illegal acts perpetrated within Medicaid by providers or recipients of Medicaid care, services, and supplies.

“Medicaid” means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and the NJ FamilyCare Program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).

“Medicaid Fraud Control Unit” means the Medicaid Fraud Control Unit in the Department of Law and Public Safety.

"Office" means the Office of the Medicaid Inspector General created by this act.

C.30:4D-56 Office of the Medicaid Inspector General.

4. a. (1) There is established the Office of the Medicaid Inspector General in the Office of the Inspector General established pursuant to P.L.2005, c.119 (C.52:15B-1 et seq.).

(2) The office shall be State office devoted to Medicaid program integrity through means including, but not limited to: the detection, prevention, and investigation of fraud and abuse; the recovery of improperly expended Medicaid funds; enforcement; audit; quality review; compliance; referral of criminal prosecutions; investigation; and the oversight of information technology relating to Medicaid fraud and abuse.

(3) Consistent with the provisions of this act, the department shall serve as the designated State agency for the general administration of Medicaid, and the setting of policies for and the oversight of the operation of Medicaid. The department shall serve as the primary point of contact for the federal government regarding Medicaid and shall conduct activities, including, but not limited to, establishing the policy direction with respect to Medicaid, promulgating policies and rules for the administration of Medicaid, issuing programmatic guidance, and establishing reimbursement rates.

b. The office shall be administered by the Medicaid Inspector General, who shall be an attorney, licensed to practice law in a jurisdiction in the United States, and shall be selected without regard to political affiliation and on the basis of capacity for effectively carrying out the duties of the office. The Medicaid Inspector General shall possess demonstrated knowledge, skills, abilities, and experience in conducting audits and investigations, and shall be familiar with the programs subject to oversight by the office. No former or current executive or manager of any program or agency subject to oversight by the office may be appointed Medicaid Inspector General within two years of that individual's period of service with such program or agency.

c. (1) The Medicaid Inspector General shall be appointed by the Governor with the advice and consent of the Senate and shall serve for a term of five years and until a successor is appointed and assumes the position.

(2) The Medicaid Inspector General shall devote full time to the duties and responsibilities of the office and shall receive a salary as shall be provided pursuant to law.

(3) The Medicaid Inspector General shall appoint a First Assistant Medicaid Inspector General to assist in the performance of the duties of the office. The first assistant Medicaid Inspector General shall have the same qualifications as are set forth in subsection b. of this section.

(4) During the term set forth in paragraph (1) of this subsection, the Medicaid Inspector General may be removed by the Governor only for cause upon notice and opportunity to be heard.

(5) A vacancy in the position of Medicaid Inspector General due to a cause other than the expiration of the term shall be filled for the unexpired term only in the same manner as the original appointment.

(6) The Medicaid Inspector General shall function independently within the Office of the Inspector General with respect to the operations of the office, including the performance of investigations and issuance of findings and recommendations.

C.30:4D-57 Functions, powers, duties, responsibilities of Medicaid Inspector General.

5. a. The Medicaid Inspector General shall have the following general functions, duties, powers, and responsibilities:

(1) To appoint such deputies, directors, assistants, and other officers and employees as may be needed for the office to meet its responsibilities, and to prescribe their duties and fix their compensation in accordance with State law and within the amounts appropriated therefor;

(2) To conduct and supervise all State government activities, except those of the Medicaid Fraud Control Unit in the Department of Law and Public Safety, relating to Medicaid integrity, fraud, and abuse;

(3) To call upon any department, office, division, or agency of State government to provide such information, resources, or other assistance as the Medicaid Inspector General deems necessary to discharge the duties and functions and to fulfill the responsibilities of the Medicaid Inspector General under this act. Each department, office, division, and agency of this State shall cooperate with the Medicaid Inspector General and furnish the office with the assistance necessary to accomplish the purposes of this act;

(4) To coordinate activities to prevent, detect, and investigate Medicaid fraud and abuse among the following: the Departments of Human Services, Health and Senior Services, Education, and Treasury; the Office of the Attorney General; and the special investigative unit maintained by each health insurer providing a Medicaid managed care plan within the State;

(5) To apply for and receive federal grants and monies with all necessary assistance as the Medicaid Inspector General shall require from the department;

(6) To enter into any applicable federal pilot programs and demonstration projects and coordinate with the department in order for the department to apply as requested by the Medicaid Inspector General, for necessary federal waivers;

(7) To recommend and implement policies relating to Medicaid integrity, fraud, and abuse, and monitor the implementation of any recommendations made by the office to other agencies or entities responsible for the administration of Medicaid;

(8) To perform any other functions that are necessary or appropriate in furtherance of the mission of the office; and

(9) To direct all public or private Medicaid service providers or recipients to cooperate with the office and provide such information or assistance as shall be reasonably required by the office.

b. As it relates to ensuring compliance with applicable Medicaid standards and requirements, identifying and reducing fraud and abuse, and improving the efficiency and effectiveness of Medicaid, the functions, duties, powers, and responsibilities of the Medicaid Inspector General shall include, but not be limited to, the following:

(1) To establish, in consultation with the department and the Attorney General, guidelines under which the withholding of payments or exclusion from Medicaid may be imposed on a provider or shall automatically be imposed on a provider;

(2) To review the utilization of Medicaid services to ensure that Medicaid funds, regardless of which agency administers the service, are appropriately spent to improve the health of Medicaid recipients;

(3) To review and audit contracts, cost reports, claims, bills, and all other expenditures of Medicaid funds to determine compliance with applicable laws, regulations, guidelines, and standards, and enhance program integrity;

(4) To consult with the department to optimize the Medicaid management information system in furtherance of the mission of the office. The department shall consult with the Medicaid Inspector General on matters that concern the operation, upgrade and implementation of the Medicaid management information system;

(5) To coordinate the implementation of information technology relating to Medicaid integrity, fraud, and abuse; and

(6) To conduct educational programs for Medicaid providers, vendors, contractors, and recipients designed to limit Medicaid fraud and abuse.

c. As it relates to investigating allegations of Medicaid fraud and abuse and enforcing applicable laws, rules, regulations, and standards, the functions, duties, powers, and responsibilities of the Medicaid Inspector General shall include, but not be limited to, the following:

(1) To conduct investigations concerning any acts of misconduct within Medicaid;

(2) To refer information and evidence to regulatory agencies and professional and occupational licensing boards;

(3) To coordinate the investigations of the office with the Attorney General, the State Inspector General, law enforcement authorities, and any prosecutor of competent jurisdiction, and endeavor to develop these investigations in a manner that expedites and facilitates criminal prosecutions and the recovery of improperly expended Medicaid funds, including:

(a) keeping detailed records for cases processed by the State Inspector General and the Attorney General and county prosecutors. The records shall include: information on the total number of cases processed and, for each case, the agency and division to which the case is referred for investigation; the date on which the case is referred; and the nature of the suspected fraud, waste, or abuse; and

(b) receiving notice from the Attorney General of each case that the Attorney General declines to prosecute or prosecutes unsuccessfully;

(4) To make information and evidence relating to suspected criminal acts which the Medicaid Inspector General may obtain in carrying out his duties available to the Medicaid Fraud Control Unit pursuant to the requirements of federal law, as well as to other law enforcement officials when appropriate, and consult with the Attorney General and county prosecutors in order to coordinate criminal investigations and prosecutions;

(5) To refer complaints alleging criminal conduct to the Attorney General or other appropriate prosecutorial authority. If the Attorney General or other appropriate prosecutorial authority decides not to investigate or prosecute the matter, the Attorney General or other appropriate prosecutorial authority shall promptly notify the Medicaid Inspector General. The Attorney General or the prosecutorial authority shall inform the Medicaid Inspector General as to whether an investigation is ongoing with regard to any matter so referred. The Medicaid Inspector General shall preserve the confidentiality of the existence of any ongoing criminal investigation.

(a) If the Attorney General or the prosecutorial authority decides not to investigate or act upon the matter referred, the Inspector General is authorized to continue an investigation after the receipt of such a notice.

(b) Upon the completion of an investigation or, in a case in which the investigation leads to prosecution, upon completion of the prosecution, the Attorney General or the prosecutorial authority shall report promptly the findings and results to the Medicaid Inspector General. In the course of informing the Medicaid Inspector General, the Attorney General or prosecutorial authority shall give full consideration to the authority, duties, functions, and responsibilities of the Medicaid Inspector General, the public interest in disclosure, and the need for protecting the confidentiality of complainants and informants.

(c) The Medicaid Inspector General shall maintain a record of all matters referred and the responses received and shall be authorized to disclose information received as appropriate and as may be necessary to resolve the matter referred, to the extent consistent with the public interest in disclosure and the need for protecting the confidentiality of complainants and informants and preserving the confidentiality of ongoing criminal investigations.

(d) Notwithstanding any referral made pursuant to this subsection, the Medicaid Inspector General may pursue any administrative or civil remedy under the law;

(6) In furtherance of an investigation, to compel at a specific time and place, by subpoena, the appearance and sworn testimony of any person whom the Medicaid Inspector General reasonably believes may be able to give information relating to a matter under investigation;

(a) For this purpose, the Medicaid Inspector General is empowered to administer oaths and examine witnesses under oath, and compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence that the Medicaid Inspector General reasonably believes may relate to a matter under investigation.

(b) If any person to whom a subpoena is issued fails to appear or, having appeared, refuses to give testimony, or fails to produce the books, papers or other documents required, the Medicaid Inspector General may apply to the Superior Court and the court may order the person to appear and give testimony or produce the books, papers or other documents, as applicable. Any person failing to obey that order may be punished by the court as for contempt;

(7) Subject to applicable State and federal law, to have full and unrestricted access to all records, reports, audits, reviews, documents, papers, data, recommendations, or other material available to State and local departments of health and human services, other State and local government agencies, and Medicaid service providers relating to programs and operations with respect to which the office has responsibilities under this act;

(8) To solicit, receive, and investigate complaints related to Medicaid integrity, fraud, and abuse;

(9) To prepare cases, provide expert testimony, and support administrative hearings and other legal proceedings; and

(10) Upon reasonable belief of the commission of a fraudulent or abusive act, to conduct on-site facility inspections.

d. As it relates to recovering improperly expended Medicaid funds, imposing administrative sanctions, damages or penalties, negotiating settlements, and developing an effective third-party liability program to assure that all private or other governmental medical resources have been exhausted before a claim is paid by Medicaid or that reimbursement is sought when there is discovered a liable third party after payment of a claim, the functions, duties, powers, and responsibilities of the Medicaid Inspector General shall include, but not be limited to, the following:

(1) On behalf of the department, to collect all overpayments for reimbursable services that are self-disclosed by providers pursuant to current law;

(2) To pursue civil and administrative enforcement actions against those who engage in fraud, abuse, or illegal acts perpetrated within Medicaid, including providers, contractors, agents, recipients, individuals, or other entities involved directly or indirectly with the provision of Medicaid care, services, and supplies. These civil and administrative enforcement actions shall include the imposition of administrative sanctions, penalties, suspension of fraudulent, abusive, or illegal payments, and actions for civil recovery and seizure of property or other assets connected with such payments;

(3) To initiate civil suits consistent with the provisions of this act, maintain actions for civil recovery on behalf of the State, and enter into civil settlements;

(4) To withhold payments to any provider for Medicaid services if the provider unreasonably fails to produce complete and accurate records related to an investigation that is initiated by the office with reasonable cause;

(5) To ensure that Medicaid is the payor of last resort, and to provide for the coordination of benefits with each health insurer operating in the State and the recoupment of any duplicate reimbursement paid by the State. Every such health insurer shall be required to provide such information and reports as may be deemed necessary by the Medicaid Inspector General for the coordination of benefits and shall maintain files in a manner and format approved by the department; and

(6) To monitor and pursue the recoupment of Medicaid overpayments, damages, penalties, and sanctions.

#### C.30:4D-58 Additional authority of the Medicaid Inspector General.

6. a. In addition to the authority otherwise provided by this act, the Medicaid Inspector General is authorized to request, and shall be entitled to receive, such information, assistance, and cooperation from any federal, State, or local government department, board, bureau, commission, or other agency or unit thereof, as may be necessary to carry out his duties and responsibilities pursuant to this act.

b. Upon the request of a prosecutor of competent jurisdiction, the office, department, any other State or local government entity, and the Medicaid Fraud Control Unit shall provide the prosecutor with information, data, assistance, staff, and other resources as shall be necessary, appropriate and available to aid and facilitate the investigation and prosecution of Medicaid fraud.

#### C.30:4D-59 Transfer of functions, powers, employees to the Office of the Medicaid Inspector General; managerial control.

7. a. The Medicaid audit, program integrity, fraud and abuse prevention and recovery functions, all officers and employees that the Medicaid Inspector General deems qualified and substantially engaged therein, and any documents and records that the Medicaid Inspector General deems necessary and related to the transfer of such functions and personnel, shall be transferred to the Office of the Medicaid Inspector General from the Medicaid Office of Program Integrity Unit and the Third Party Liability Unit in the Division of Medical Assistance and Health Services, the Division of Disability Services, the Division of Developmental Disabilities, the Division of Mental Health Services, the Division of Youth and Family Services, the Division of Child Behavioral Health Services, the Department of Health and Senior Services and the Department of the Treasury. The Medicaid Inspector General shall consult with the head of each department or agency from which such function is to be transferred to determine the officers and employees to be transferred.

b. The Medicaid Inspector General shall have general managerial control over the office and shall establish the organizational structure of the office as the Medicaid Inspector General deems appropriate to carry out the responsibilities and functions of the office. Within the limits of funds appropriated therefor, the Medicaid Inspector General may hire such employees in the unclassified service as are necessary to administer the office. These employees shall serve at the pleasure of the Medicaid Inspector General. Subject to the availability of appropriations, the Medicaid Inspector General may obtain the services of certified public accountants, qualified management consultants, professional auditors, or other professionals necessary to independently perform the functions of the office.

#### C.30:4D-60 Reports, recommendations.

8. a. The Medicaid Inspector General shall report the findings of audits, investigations, and reviews performed by the office, and issue recommendations for corrective or remedial action, to the Governor, the President of the Senate and the Speaker of the General Assembly, and the entity at issue. The Medicaid Inspector General shall monitor the implementation of those recommendations.

b. The Medicaid Inspector General shall provide periodic reports to the Governor, and shall issue an annual report to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), which shall be available to the public.

#### C.30:4D-61 Confidentiality of information.

9. a. The Medicaid Inspector General shall not publicly disclose information that is specifically prohibited from disclosure by any provision of federal or State law.

b. Whenever a person requests access to a government record that the Medicaid Inspector General obtained from another public agency during the course of an investigation, which record was open for public inspection, examination or copying before the investigation commenced, the public agency from which the Medicaid Inspector General obtained the record shall comply with the request if made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), provided that the request does not in any way identify the record sought by means of a reference to the Medicaid Inspector General's investigation or to an investigation by any other public agency, including, but not limited to, a reference to a subpoena issued pursuant to such investigation.

#### C.30:4D-62 "Medicaid Fraud Control Fund"; use.

10. a. There is established the "Medicaid Fraud Control Fund" as a nonlapsing, revolving fund in the Department of the Treasury. The fund shall be comprised of monies credited or accruing to the fund pursuant to this section.

b. Beginning with the fiscal year commencing July 1, 2007, the State Treasurer shall deposit 25% of the State share of monies recovered pursuant to subsection d. of section 5 of this act into the fund, to be used solely for the purposes of subsection c. of this section. Monies credited to the fund may be invested in the same manner as assets of the General Fund, and any investment earnings on the fund shall accrue to the fund and shall be available subject to the same terms and conditions as other monies in the fund.

c. In addition to the annual appropriation provided pursuant to section 13 of this act, the monies deposited into the "Medicaid Fraud Control Fund" shall be utilized by the Medicaid Inspector General and the Medicaid Fraud Control Unit for the exclusive purpose of investigating and prosecuting Medicaid fraud claims.

C.30:4D-63 Rules, regulations.

11. The Medicaid Inspector General may adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to accomplish the objectives and carry out the duties prescribed by this act.

12. Section 1 of P.L.1999, c.162 (C.2C:21-22.1) is amended to read as follows:

C.2C:21-22.1 Definitions relative to use of runners; crime; sentencing.

1. a. As used in this section:

"Provider" means an attorney, a health care professional, an owner or operator of a health care practice or facility, any person who creates the impression that he or his practice or facility can provide legal or health care services, or any person employed or acting on behalf of any of the aforementioned persons.

"Public media" means telephone directories, professional directories, newspapers and other periodicals, radio and television, billboards and mailed or electronically transmitted written communications that do not involve in-person contact with a specific prospective client, patient or customer.

"Runner" means a person who, for a pecuniary benefit, procures or attempts to procure a client, patient or customer at the direction of, request of or in cooperation with a provider whose purpose is to seek to obtain benefits under a contract of insurance or assert a claim against an insured or an insurance carrier for providing services to the client, patient or customer, or to obtain benefits under or assert a claim against a State or federal health care benefits program or prescription drug assistance program. "Runner" shall not include a person who procures or attempts to procure clients, patients or customers for a provider through public media or a person who refers clients, patients or customers to a provider as otherwise authorized by law.

b. A person is guilty of a crime of the third degree if that person knowingly acts as a runner or uses, solicits, directs, hires or employs another to act as a runner.

c. Notwithstanding the provisions of subsection e. of N.J.S.2C:44-1, the court shall deal with a person who has been convicted of a violation of this section by imposing a sentence of imprisonment unless, having regard to the character and condition of the person, the court is of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. If the court imposes a noncustodial or probationary sentence, such sentence shall not become final for 10 days in order to permit the appeal of such



sentence by the prosecution. Nothing in this section shall preclude an indictment and conviction for any other offense defined by the laws of this State.

C.30:4D-64 Annual appropriation, minimum required.

13. For each fiscal year beginning after the fiscal year in which this act takes effect, the Governor shall recommend and the Legislature shall appropriate at least \$3,000,000 from the General Fund to the Office of the Medicaid Inspector General to effectuate the purposes of this act.

14. a. The Medicaid Inspector General or the designated nominee therefor shall prepare and submit to the Director of the Division of Budget and Accounting in the Department of the Treasury a written plan, prepared in consultation with the Commissioners of the Departments of Human Services and Health and Senior Services, setting forth the transition and operation plan for the Office of the Medicaid Inspector General.

b. There is appropriated from the General Fund an amount not to exceed \$3,000,000, subject to the approval by the Director of the Division of Budget and Accounting, to the Office of the Medicaid Inspector General in the Office of the Inspector General, for deposit in the Medicaid Fraud Control Fund, after submission of the written plan for the Office of the Medicaid Inspector General.

15. This act shall take effect immediately provided however that sections 1 and 2 and sections 6 through 13 shall remain inoperative until the earlier of the date of the approval of the transition and operation plan submitted pursuant to subsection a. of section 14 of this act or June 30, 2007.

Approved March 16, 2007.