

HOUSE BILL No. 5542

October 22, 2009, Introduced by Reps. Genetski, Denby, Kurtz, Pearce, Wayne Schmidt, Green, Bolger, Calley, Haveman, Ball, Walsh, Rick Jones, Lund, Hildenbrand, Agema, Knollenberg, Marleau, Elsenheimer, Kowall, Crawford, Horn, Proos, Rocca, Daley, Pavlov, DeShazor, Lori, Tyler, Meltzer, Moss, Haines, Caul, Hansen, Stamas, Rogers, Schuitmaker and Booher and referred to the Committee on Judiciary.

A bill to create the office of medicaid inspector general; to prescribe the manner of appointment and qualifications of the medicaid inspector general; to prescribe the powers, functions, and duties of the office of medicaid inspector general; to transfer and assign staff and other resources to the office of medicaid inspector general; to allow for appointment of deputies, assistants, and other officers and employees as may be needed to perform the duties and responsibilities of the office of medicaid inspector general; to allow for the office of medicaid inspector general to enter into contracts; to provide access to information pertaining to the responsibilities of the medicaid inspector general; to authorize investigation into the administration of programs and operations of the Michigan medicaid system; to authorize the medicaid inspector general to review and approve

contracts, policies, and procedures pertaining to medicaid; and to mandate assistance and cooperation from state and local entities and to prescribe the powers and duties of certain state departments and agencies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan medicaid inspector general act".

3 Sec. 2. As used in this act:

4 (a) "Abuse" means practices that are inconsistent with sound
5 fiscal, business, or medical practices or violate department
6 policies and procedures and that result in unnecessary costs to
7 medicaid, result in reimbursement for services that are not
8 medically necessary or fail to meet professionally recognized
9 standards for health care, or result in waste.

10 (b) "Department" means the department of community health.

11 (c) "Director" means the director of the department.

12 (d) "Fraud" means any deception or misrepresentation made by
13 any person who knows or should have known that the deception could
14 result in unnecessary or inappropriate cost to the medicaid
15 program, including any act that constitutes fraud or submission of
16 a false claim under applicable federal or state law.

17 (e) "Inspector" means the medicaid inspector general created
18 in section 3.

19 (f) "Investigation" means the thorough and systematic inquiry
20 into potential fraud, abuse, inappropriate billing or use of
21 services, policy or contractual violations, or illegal acts
22 committed by any medicaid funds recipient.

1 (g) "Medicaid" and "medicaid program" mean the program for
2 medical assistance for the medically indigent provided in
3 accordance with the social welfare act, 1939 PA 280, MCL 400.1 to
4 400.119b, that includes the program for medical assistance
5 established under title XIX of the federal social security act, 42
6 USC 1396 to 1396v, and administered according to the state plan.

7 (h) "Medicaid fraud control unit" means the certified medicaid
8 fraud control unit in the office of the attorney general.

9 (i) "Medicaid funds recipient" means any person or entity,
10 public or private, that provides medical care, services, or
11 supplies paid for, directly or indirectly, by medicaid or that
12 receives or administers medicaid funds paid out under the state
13 plan. Medicaid funds recipient includes, but is not limited to,
14 governmental units, providers, contractors, suppliers, and medicaid
15 managed care organizations, and their subcontractors.

16 (j) "Office" means the office of medicaid inspector general
17 created in section 3.

18 Sec. 3. (1) The office of medicaid inspector general is
19 created as an agency within the department. The department is the
20 single state agency for the administration of the medical
21 assistance program in Michigan. The office of medicaid inspector
22 general shall assume, exercise, and be responsible for the
23 department's duties as the single state agency with respect to all
24 of the following:

25 (a) Prevention, detection, and investigation of fraud and
26 abuse within the medicaid program, including fraud or abuse within
27 the department or by a medicaid funds recipient.

1 (b) Referral of appropriate cases for criminal prosecution and
2 civil actions.

3 (c) Internal and external administrative enforcement, audit,
4 quality review, and compliance.

5 (d) Oversight and control of information technology relating
6 to medicaid program fraud and abuse.

7 (e) Investigation, oversight, and enforcement of fraud and
8 abuse control and auditing, including oversight of reporting and
9 data submissions from managed care organizations.

10 (2) The head of the office shall be the inspector, who shall
11 be appointed by the governor. The inspector shall report directly
12 to the governor. A vacancy in the position shall be filled in the
13 same manner as the original appointment.

14 (3) The inspector shall be selected without regard to
15 political affiliation and on the basis of capacity for effectively
16 carrying out the duties of the office. The inspector shall possess
17 demonstrated knowledge, skills, abilities, and experience in
18 detecting and combating medicaid fraud and abuse and shall be
19 familiar with the medicaid program.

20 (4) The inspector shall exercise his or her prescribed powers,
21 duties, responsibilities, and functions independently of the
22 department director.

23 Sec. 4. (1) The medicaid program audit, fraud, and abuse
24 prevention functions of the department shall be immediately
25 transferred to the office of medicaid inspector general. Officers
26 and employees substantially engaged in the performance of the
27 functions to be transferred to the office shall be transferred,

1 along with any equipment, office space, documents, records, and
2 resources necessary and related to the transfer of those functions.
3 The director and the inspector shall confer to determine the
4 officers and employees who are substantially engaged in the
5 medicaid program audit-, fraud-, and abuse-related functions to be
6 transferred and to expedite establishment of the office. The
7 employees shall be transferred without further examination or
8 qualification to the same or similar titles and shall retain their
9 respective civil service classification. All office employees shall
10 be colocated, to the greatest extent practicable. The inspector has
11 sole responsibility for establishing methods of administration for
12 the office.

13 (2) State departments, agencies, and state officers shall
14 fully and actively cooperate with the office of the inspector
15 general in the implementation of this act.

16 Sec. 5. The inspector shall function as an autonomous entity
17 within the department to serve as a single point of leadership and
18 responsibility for managing and directing medicaid program efforts
19 to control medicaid fraud and abuse. The powers and duties of the
20 inspector shall include, but not be limited to, the following
21 responsibilities:

22 (a) To appoint deputies, directors, assistants, and other
23 employees as may be needed for the office to meet its
24 responsibilities and to prescribe their duties and fix their
25 compensation in accordance with state law and within the amounts
26 appropriated.

27 (b) To conduct and supervise all administrative activities

1 currently vested in the department relating to medicaid program
2 integrity, fraud, and abuse, including, but not limited to, audits,
3 surveillance, utilization review, information systems, database
4 queries, and all activities related to monitoring and analyzing
5 payments made to any medicaid funds recipient.

6 (c) To solicit, receive, and investigate complaints and take
7 all appropriate action to prevent, detect, investigate, and
8 prosecute fraud and abuse in the medicaid program committed by the
9 department or by any medicaid funds recipient.

10 (d) To make investigations relating to the administration of
11 the programs and operations of the medicaid program as are in the
12 judgment of the inspector necessary or desirable and consistent
13 with the department's obligations under the law, the state plan,
14 and the memorandum of understanding with the attorney general
15 regarding jurisdiction of the medicaid fraud control unit.

16 (e) To promptly refer and provide all information and evidence
17 relating to suspected criminal acts and potential civil liability
18 involving medicaid funds to the medicaid fraud control unit,
19 according to the requirements of federal law, and to provide
20 assistance to the medicaid fraud control unit to develop criminal
21 investigations, prosecutions, civil actions, and financial
22 recoveries.

23 (f) To identify practices that increase the risk of fraud or
24 abuse relating to medicaid program funds and make appropriate
25 recommendations to prevent and detect fraud and financial abuse.

26 (g) To oversee and recommend policies and procedures relating
27 to medicaid program integrity and monitor the implementation of

1 recommendations made by the inspector to the department or to other
2 offices, agencies, or entities involved in administration of the
3 medicaid program.

4 (h) To call on any department, agency, office, commission, or
5 committee of state or local government and any medicaid fund
6 recipient to provide full and unrestricted access to all non-law-
7 enforcement records, reports, audits, reviews, documents, papers,
8 data, financial statements, recommendations, or other material
9 prepared, maintained, or held by or available to that entity and to
10 provide other assistance as the medicaid inspector general
11 considers necessary to discharge the duties and functions and to
12 fulfill the responsibilities of the inspector under this act. Each
13 entity shall, consistent with federal or state law, cooperate with
14 the medicaid inspector general and furnish the office with the
15 items and assistance necessary, provided that the information is
16 afforded patient confidentiality protection required under state
17 and federal law.

18 (i) To subpoena and enforce the attendance of witnesses,
19 administer oaths or affirmations, examine witnesses under oath, and
20 take testimony as the inspector considers relevant or material to
21 an investigation, examination, or review. A person summoned to
22 appear before the inspector may be examined with reference to any
23 matter within the scope of the inquiry or investigation being
24 conducted by the office and be compelled to produce any books,
25 records, or papers demanded by the inspector. If a person to whom a
26 subpoena is issued fails to appear or, having appeared, refuses to
27 give testimony, or fails to produce the books, papers, or other

1 documents required, the inspector may impose appropriate
2 administrative sanctions and may apply to the circuit court for the
3 thirtieth judicial circuit for an order for the person to appear
4 and give testimony and produce books, papers, or other documents. A
5 person failing to obey an order issued under this subdivision may
6 be punished by the court for contempt.

7 (j) To perform on-site inspections and audits of any office or
8 facility where business records are kept by any medicaid fund
9 recipient.

10 (k) To pursue administrative enforcement actions against any
11 individual or entity that engages in fraud, abuse, or illegal or
12 improper acts or unacceptable practices regarding the medicaid
13 program or medicaid funds and to impose administrative sanctions,
14 including, but not limited to, 1 or more of the following:

15 (i) Referring information and evidence to regulatory agencies
16 and licensure boards.

17 (ii) Withholding or adjusting payment of medical assistance
18 funds in accordance with state and federal laws and regulations.

19 (iii) Excluding a medicaid funds recipient from participation in
20 the medicaid program.

21 (iv) Imposing other administrative sanctions and penalties in
22 accordance with state and federal laws and regulations.

23 (v) Recovery of improperly expended medicaid program funds
24 from those who engage in fraud or financial abuse.

25 (l) To develop and implement protocols and procedures to
26 collect overpayments, restitution amounts, and settlement proceeds.

27 (m) To recommend rules and regulations relating to the

1 prevention, detection, investigation, and referral of fraud and
2 abuse within the medicaid program and recovery of related funds.

3 (n) To take appropriate actions to ensure that the medicaid
4 program is the payor of last resort, including development of an
5 effective third-party liability program to assure that all private
6 or other governmental program resources have been exhausted before
7 a claim is paid and to seek reimbursement when a liable third party
8 is discovered after payment of a claim.

9 (o) To oversee, audit, and approve contracts pertaining to any
10 aspect of the medicaid program, including, but not limited to,
11 audit contracts, cost reports, claims, bills, and any contract for
12 expenditure of medicaid program funds, to determine compliance with
13 applicable federal and state laws, regulations, guidelines,
14 standards, and policies and to enhance program integrity.

15 (p) To oversee and approve all medicaid managed care contracts
16 and service arrangements to minimize the risk of fraud and abuse
17 and assure compliance with contract provisions and medicaid
18 policies and procedures and to monitor billing, encounter data, and
19 subcontracting arrangements to detect fraud and abuse by medicaid
20 managed care organizations or entities or individuals providing
21 goods or services to beneficiaries through, or to, managed care
22 organizations.

23 (q) To serve as the central point of contact for the
24 department with entities having contracts or grants with the
25 department to audit, monitor, investigate, or report medicaid
26 program fraud or abuse.

27 (r) To apply for and receive federal grants and money as the

1 inspector requires from the department consistent with the state
2 plan and to participate in any appropriate federal pilot programs
3 or demonstration projects.

4 (s) To prepare an annual report for the governor and the
5 department on the progress of implementing the office of medicaid
6 inspector general, fraud control initiatives, results, and
7 recommendations.

8 (t) To act as the liaison between the department and the
9 federal centers for medicare and medicaid services, United States
10 health and human services department, with respect to all matters
11 pertaining to medicaid program fraud or abuse, audits and
12 investigations, compliance programs, and program fiscal integrity
13 issues.

14 (u) To perform any other functions necessary or appropriate in
15 furtherance of the mission of the office.

16 Sec. 6. Any suit, action, or other proceeding lawfully
17 commenced by, against, or before any entity affected by this act
18 shall not abate by reason of this act taking effect.

19 Enacting section 1. This act takes effect March 1, 2010.