

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 190

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 56-209h, IDAHO CODE, TO RE-
2 VISE PROVISIONS REGARDING INVESTIGATIONS AND ADMINISTRATIVE REMEDIES;
3 AMENDING SECTION 56-226, IDAHO CODE, TO PROVIDE FOR A PUBLIC ASSISTANCE
4 FRAUD CONTROL UNIT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
5 56-227, IDAHO CODE, TO REVISE PROVISIONS REGARDING FRAUDULENT ACTS AND
6 PENALTIES; AMENDING SECTION 56-227B, IDAHO CODE, TO REVISE PROVISIONS
7 REGARDING PROVIDER FRAUD AND DAMAGES; AMENDING SECTION 56-227C, IDAHO
8 CODE, TO REVISE PROVISIONS REGARDING SUBPOENA POWER AND OTHER AUTHOR-
9 ITY; AMENDING SECTION 56-227D, IDAHO CODE, TO REVISE PROVISIONS REGARD-
10 ING FOOD STAMPS; AMENDING SECTION 67-1401, IDAHO CODE, TO REVISE PROVI-
11 SIONS REGARDING DUTIES OF THE IDAHO ATTORNEY GENERAL; AND AMENDING SEC-
12 TION 67-2901, IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT OF THE PUB-
13 LIC ASSISTANCE FRAUD CONTROL UNIT IN THE IDAHO STATE POLICE AND TO MAKE
14 TECHNICAL CORRECTIONS.
15

16 Be It Enacted by the Legislature of the State of Idaho:

17 SECTION 1. That Section 56-209h, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 56-209h. INVESTIGATIONS AND ADMINISTRATIVE REMEDIES. (1) Defini-
20 tions. For purposes of this section:

21 (a) "Abuse" or "abusive" means provider practices that are inconsis-
22 tent with sound fiscal, business, child care, or medical practices, and
23 result in an unnecessary cost to a public assistance program, in reim-
24 bursement for services that are not medically necessary or that fail to
25 meet professionally recognized standards for health care, or in physi-
26 cal harm, pain, or mental anguish to a public assistance recipient.

27 (b) "Claim" means any request or demand for payment, or document sub-
28 mitted to initiate payment, for items or services provided under a pub-
29 lic assistance program, whether under a contract or otherwise.

30 (c) "Fraud" or "fraudulent" means an intentional deception or misrep-
31 resentation made by a person with the knowledge that the deception could
32 result in some unauthorized benefit to himself or some other person.

33 (d) "Intentional program violation" means intentionally false or mis-
34 leading action, omission, or statement made in order to qualify as a
35 provider or recipient in a public assistance program.

36 (e) "Knowingly," "known," or "with knowledge" means that a person, with
37 respect to information or an action:

38 (i) Has actual knowledge of the information or action; ~~or~~

39 (ii) Acts in deliberate ignorance of the truth or falsity of the
40 information or the correctness or incorrectness of the action; or

41 (iii) Acts in reckless disregard of the truth or falsity of the in-
42 formation or the correctness or incorrectness of the action.

1 (f) "Managing employee" means a general manager, business manager, ad-
 2 ministrator, director, or other individual who exercises operational
 3 or managerial control over, or who directly or indirectly conducts the
 4 day-to-day operation of, an institution, organization, or agency.

5 (g) ~~"Medicaid fraud control unit" means that medicaid fraud control~~
 6 ~~unit as provided for in section 56-226, Idaho Code.~~

7 ~~(h)~~ "Ownership or control interest" means a person or entity that:

8 (i) Has an ownership interest totaling twenty-five percent (25%)
 9 or more in an entity; ~~or~~

10 (ii) Is an officer or director of an entity that is organized as a
 11 corporation; ~~or~~

12 (iii) Is a partner in an entity that is organized as a partnership;
 13 or

14 (iv) Is a managing member in an entity that is organized as a lim-
 15 ited liability company.

16 ~~(i)~~ "Provider" means an individual, organization, agency, or other
 17 entity providing items or services under a public assistance program.

18 (i) "Public assistance fraud control unit" means the public assistance
 19 fraud control unit established in section 56-226, Idaho Code.

20 (j) "Public assistance program" means assistance for which provision
 21 is made in any federal or state law existing or hereafter enacted by the
 22 state of Idaho or the congress of the United States by which payments are
 23 made from the federal government to the state in aid, or in respect to
 24 payment by the state for welfare purposes to any category of needy per-
 25 son, and any other program of assistance for which provision for federal
 26 or state funds for aid may from time to time be made.

27 (2) The department shall establish and operate an administrative ~~fraud~~
 28 control program to ~~enforce~~ investigate violations ~~of~~ and enforce the provi-
 29 sions of this chapter and of the state plan pursuant to subchapters XIX and
 30 XXI, ~~chapter 7, title 42, U.S.C. 7,~~ that are outside the scope of the duties
 31 of the ~~medicaid~~ public assistance fraud control unit, and to render and re-
 32 ceive referrals from and to said unit.

33 (3) Review of documentation of services. All claims submitted by
 34 providers for payment are subject to prepayment and postpayment review as
 35 designated by rule. Except as otherwise provided by rule, providers shall
 36 generate documentation at the time of service sufficient to support each
 37 claim, and shall retain the documentation for a minimum of five (5) years
 38 from the date the item or service was provided. The department or authorized
 39 agent shall be given immediate access to such documentation upon written
 40 request.

41 (4) Immediate action. In the event that the department identifies a
 42 suspected case of fraud or abuse and the department has reason to believe
 43 that payments made during ~~the~~ an investigation may be difficult or imprac-
 44 tical to recover, the department may suspend or withhold payments to the
 45 provider pending investigation. In the event that the department identifies
 46 a suspected case of fraud or abuse and it determines that it is necessary to
 47 prevent or avoid immediate danger to the public health or safety, the depart-
 48 ment may summarily suspend a provider agreement pending investigation. When
 49 payments have been suspended or withheld or a provider agreement suspended

1 pending investigation, the department shall provide for a hearing within
2 thirty (30) days of receipt of any duly filed notice of appeal.

3 (5) Recovery of payments. Upon referral of a matter from the ~~medicaid~~
4 public assistance fraud control unit, or if it is determined by the depart-
5 ment that any condition of payment contained in rule, regulation, statute,
6 or provider agreement was not met, the department may initiate administra-
7 tive proceedings to recover any payments made for items or services under any
8 public assistance contract or provider agreement the individual or entity
9 has with the department. Interest shall accrue on overpayments at the statu-
10 tory rate set forth in section 28-22-104, Idaho Code, from the date of final
11 determination of the amount owed for items or services until the date of re-
12 covery.

13 (6) Provider status. The department may terminate the provider agree-
14 ment or otherwise deny provider status to any individual or entity who:

15 (a) Submits a claim with knowledge that the claim is incorrect, includ-
16 ing reporting costs as allowable ~~which~~ that were known to be disallowed
17 in a previous audit, unless the provider clearly indicates that the item
18 is being claimed to establish the basis for an appeal and each disputed
19 item and amount is specifically identified; ~~or~~

20 (b) Submits a fraudulent claim; ~~or~~

21 (c) Knowingly makes a false statement or representation of material
22 fact in any document required to be maintained or submitted to the de-
23 partment; ~~or~~

24 (d) Submits a claim for an item or service known to be medically unnec-
25 essary; ~~or~~

26 (e) Fails to provide, upon written request by the department, immediate
27 access to documentation required to be maintained; ~~or~~

28 (f) Fails repeatedly or substantially to comply with the rules and reg-
29 ulations governing medical assistance payments or other public assis-
30 tance program payments; ~~or~~

31 (g) Knowingly violates any material term or condition of its provider
32 agreement; ~~or~~

33 (h) Has failed to repay, or was a "managing employee" or had an
34 "ownership or control interest" in any entity that has failed to repay,
35 any overpayments or claims previously found to have been obtained con-
36 trary to statute, rule, regulation, or provider agreement; ~~or~~

37 (i) Has been found, or was a "managing employee" in any entity that has
38 been found, to have engaged in fraudulent conduct or abusive conduct in
39 connection with the delivery of health care or public assistance items
40 or services; or

41 (j) Fails to meet the qualifications specifically required by rule or
42 by any applicable licensing board.

43 Any individual or entity denied provider status under this section may be
44 precluded from participating as a provider in any public assistance program
45 for up to five (5) years from the date the department's action becomes final.

46 (7) The department must refer all cases of suspected ~~medicaid~~ ~~provider~~
47 fraud to the ~~medicaid~~ public assistance fraud control unit and shall
48 promptly comply with any request from the ~~medicaid~~ public assistance fraud
49 control unit for access to and free copies of any records or information kept
50 by the department or its contractors, computerized data stored by the de-

1 department or its contractors, and any information kept by providers to which
2 the department is authorized access by law.

3 (8) Civil monetary penalties. The department may also assess civil
4 monetary penalties against a provider and any officer, director, owner,
5 and/or managing employee of a provider in the circumstances listed in para-
6 graphs (a) and (b) of this subsection. The penalties provided for in this
7 subsection are intended to be remedial, recovering, at a minimum, costs of
8 investigation and administrative review, and placing the costs associated
9 with noncompliance on the offending provider. The department shall promul-
10 gate rules clarifying the methodology used when computing and assessing a
11 civil monetary penalty.

12 (a) For conduct identified in subsection (6) (a) through (i) of this
13 section, the amount of the penalties shall be up to one thousand dollars
14 (\$1,000) for each item or service improperly claimed, except that in the
15 case of multiple penalties the department may reduce the penalties to
16 not less than ten percent (10%) of the amount of each item or service im-
17 properly claimed if an amount can be readily determined. Each line item
18 of a claim, or cost on a cost report is considered a separate claim.

19 (b) For failing to perform required background checks or failing to
20 meet required timelines for completion of background checks, the amount
21 of the penalty shall be five hundred dollars (\$500) for each month
22 worked for each staff person for whom the background check was not per-
23 formed or not timely performed up to a maximum of five thousand dollars
24 (\$5,000) per month. A partial month is considered a full month for pur-
25 poses of determining the amount of the penalty.

26 (9) Exclusion. Any individual or entity convicted of a criminal of-
27 fense related to the delivery of an item or service under any state or federal
28 program shall be excluded from program participation as a medicaid provider
29 for a period of not less than ten (10) years. Unless otherwise provided in
30 this section or required by federal law, the department may exclude any in-
31 dividual or entity for a period of not less than one (1) year for any conduct
32 for which the secretary of the department of health and human services or de-
33 signee could exclude an individual or entity.

34 (10) Sanction of individuals or entities. The department may sanction
35 individuals or entities by barring them from public assistance programs for
36 intentional program violations where the federal law allows sanctioning in-
37 dividuals from receiving assistance. Individuals or entities who are deter-
38 mined to have committed an intentional program violation will be sanctioned
39 from receiving public assistance for a period of twelve (12) months for the
40 first violation, twenty-four (24) months for the second violation, and per-
41 manently for the third violation.

42 (11) Individuals or entities subject to administrative remedies as de-
43 scribed in subsections (4) through (10) of this section shall be provided the
44 opportunity to appeal pursuant to chapter 52, title 67, Idaho Code, and the
45 department's rules for contested cases.

46 (12) Adoption of rules. The department shall promulgate such rules as
47 are necessary to carry out the policies and purposes of this section.

48 SECTION 2. That Section 56-226, Idaho Code, be, and the same is hereby
49 amended to read as follows:

1 56-226. MEDICAID PUBLIC ASSISTANCE FRAUD CONTROL UNIT. (1) There is
 2 hereby established in the ~~office of the attorney general~~ the medicaid Idaho
 3 state police the public assistance fraud control unit, which shall have the
 4 authority and responsibilities ~~as~~ set forth in this section.

5 (2) ~~Notwithstanding the authority and responsibility granted to the~~
 6 ~~director of the department to provide for fraud control in other aspects~~
 7 ~~of public assistance and public health programs,~~ The medicaid public as-
 8 sistance fraud control unit shall have the authority and responsibility to
 9 conduct a statewide program for the investigation ~~and prosecution~~ of viola-
 10 tions of all applicable Idaho laws pertaining to fraud in the administration
 11 of ~~the medicaid public assistance programs~~, the provision of medical public
 12 assistance, and in the activities of providers of medical assistance and
 13 services under the state plan. Further, upon approval of the inspector
 14 general of the relevant federal agency, ~~the office of the attorney general~~
 15 Idaho state police shall have the authority and responsibility to investi-
 16 gate ~~and to prosecute~~ violations of any aspect of the provision of health
 17 care services and activities of providers of such services under any federal
 18 health care program as defined in 42 U.S.C. ~~section~~ 1320(a)-7b(f)1, if the
 19 suspected fraud or violation of law in such investigation ~~or prosecution~~ is
 20 substantially related to the state plan. The medicaid public assistance
 21 fraud control unit shall be under the exclusive control of ~~the attorney gen-~~
 22 ~~eral~~ Idaho state police and be separate and distinct from the department. No
 23 official from the department shall have authority to review or override ~~the~~
 24 ~~prosecutorial investigatory decisions or referrals for prosecution~~ made by
 25 the medicaid public assistance fraud control unit.

26 (3) The medicaid public assistance fraud control unit shall also:

27 (a) Review complaints of abuse or neglect of medicaid recipients in
 28 health care facilities ~~which~~ that receive payment pursuant to the state
 29 plan and may review complaints of the misappropriation of patients'
 30 private funds in such facilities; and

31 (b) Review complaints of abuse or neglect of medicaid recipients resid-
 32 ing in a board and care facility.

33 (4) The medicaid public assistance fraud control unit shall attempt to
 34 collect or refer to the department for collection overpayments that are made
 35 to providers of facilities under the state plan or under any federal health
 36 care program to health care facilities that are the result of fraudulent
 37 acts and that are discovered by the medicaid public assistance fraud control
 38 unit in carrying out its responsibilities under this section. Notwithstand-
 39 ing any other provision of ~~Idaho Code state law~~, all funds collected by the
 40 medicaid public assistance fraud control unit in accordance with this sub-
 41 section ~~(4)~~ shall be deposited ~~into~~ in the state general fund.

42 (5) ~~the office of the attorney general~~ Idaho state police shall employ
 43 such auditors, attorneys, investigators, and other personnel as are nec-
 44 essary to carry out the responsibilities of the medicaid public assistance
 45 fraud control unit as set forth under this section and other applicable law.

46 (6) ~~the office of the attorney general~~ Idaho state police shall submit
 47 to the secretary of the federal department of health and human services ap-
 48 plications and reports containing such information as is determined by the
 49 secretary by regulation to be necessary to meet the requirements of subchap-
 50 ter XIX, ~~chapter 7~~, title 42, U.S.C. 7.

1 (7) In carrying out its duties and responsibilities ~~under this section,~~
 2 the medicaid public assistance fraud control unit may:

3 (a) Request and receive the assistance of any prosecutor or law en-
 4 forcement agency in the investigation ~~and prosecution~~ of any violation
 5 of any applicable Idaho laws pertaining to fraud in the administration
 6 of ~~the medicaid public assistance programs,~~ the provision of ~~medical~~
 7 public assistance, and in the activities of providers of medical assis-
 8 tance and services under the state plan, and may refer violations for
 9 prosecution, as appropriate, to the Idaho attorney general or another
 10 prosecutor;

11 (b) Enter upon the premises of any provider participating in the medic-
 12 aid program to:

13 (i) Examine all accounts and records that are relevant in deter-
 14 mining the existence of fraud in the medicaid program;

15 (ii) Investigate alleged abuse or neglect of medicaid recipients;
 16 or

17 (iii) Investigate alleged misappropriation of patients' private
 18 funds. The accounts or records of a nonmedicaid recipient may not
 19 be reviewed by, or turned over to the medicaid public assistance
 20 fraud control unit without the patient's written consent or a
 21 court order; and

22 (c) Notwithstanding any other provision of law, upon written request
 23 have full access to all records held by a medicaid provider, or by any
 24 other person on his or her behalf, that are relevant to the determina-
 25 tion of the:

26 (i) Existence of civil violations or criminal offenses under this
 27 chapter or related offenses;

28 (ii) Existence of medicaid recipient abuse, mistreatment, or ne-
 29 glect; or

30 (iii) Theft of medicaid recipient funds.

31 No person holding such records shall refuse to provide the medicaid
 32 public assistance fraud control unit access to such records for the pur-
 33 poses described in this section on the basis that release would violate
 34 the medicaid recipient's right of privacy or privilege against disclo-
 35 sure or use or any professional or other privilege or right.

36 (8) The medicaid public assistance fraud control unit shall safeguard
 37 the privacy rights of medicaid recipients to avoid unnecessary disclosure
 38 of personal information concerning named medicaid recipients. The medicaid
 39 public assistance fraud control unit may transmit such information that it
 40 deems appropriate to the department and to other agencies concerned with the
 41 regulation of health care facilities or health professionals.

42 (9) The ~~attorney general~~ Idaho state police shall have the authority to
 43 adopt rules necessary to implement the duties and responsibilities assigned
 44 to the medicaid public assistance fraud control unit under this section and
 45 other applicable law.

46 (10) As used in this section:

47 (a) "Board and care facility" means a provider of medicaid services in a
 48 residential setting which that receives payment from or on behalf of two

49 (2) or more unrelated adults who reside in such facility, and for whom
 50 one (1) or more of the following is provided:

1 (i) Nursing care services provided by, or under the supervision
2 of, a registered nurse, licensed practical nurse, or certified
3 nurses aide; or

4 (ii) A substantial amount of personal care services that assist
5 residents with the activities of daily living, including per-
6 sonal hygiene, dressing, bathing, eating, toileting, ambulation,
7 transfer of positions, self-medication, body care, travel to med-
8 ical services, essential shopping, meal preparation, laundry, and
9 housework.

10 (b) "Department" means the Idaho department of health and welfare.

11 (c) "Director" means the director of the Idaho department of health and
12 welfare.

13 (d) "Medicaid" means Idaho's medical assistance program.

14 (e) "Provider" means any individual, partnership, association, corpo-
15 ration, or organization, public or private, ~~which~~ that provides res-
16 idential or assisted living services, certified family home services,
17 nursing facility services, or services offered pursuant to medical as-
18 sistance.

19 (f) "Public assistance program" shall have the same meaning as provided
20 in section 56-209h, Idaho Code.

21 (g) "Recipient" means an individual determined eligible by the direc-
22 tor for the services provided in the state plan for medicaid.

23 (~~gh~~) "State plan" means the Idaho state plan pursuant to subchapter
24 XIX, ~~chapter 7, title 42 U.S.C. 7.~~

25 SECTION 3. That Section 56-227, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 56-227. FRAUDULENT ACTS -- PENALTY. (1) Whoever knowingly obtains, or
28 attempts to obtain, or aids or abets any person in obtaining, by means of a
29 willfully false statement or representation, material omission, or fraudu-
30 lent devices, public assistance to which he is not entitled, or in an amount
31 greater than that to which he is justly entitled, shall be punished in the
32 same manner and to the same extent as for larceny or theft of the money or
33 value of the public assistance so obtained or attempted to be so obtained.

34 (2) Whoever sells, conveys, mortgages, or otherwise disposes of his
35 property, real or personal, or conceals his income or resources, for the pur-
36 pose of rendering him eligible for public assistance, theretofore or there-
37 after applied for, to which he would not otherwise be entitled, shall be pun-
38 ished in the same manner and to the same extent as for larceny or theft of the
39 money or value of the public assistance so obtained or so attempted to be ob-
40 tained. Provided however, this provision shall not be construed to be more
41 restrictive than federal or state provisions regarding the transfer of prop-
42 erty for public assistance.

43 (3) Every person who knowingly aids or abets any person in selling,
44 conveying, mortgaging, or otherwise disposing of his property, real or per-
45 sonal, or in concealing his income or resources for the purpose of rendering
46 him eligible for public assistance, theretofore or thereafter applied for
47 and received, to which he would not otherwise be entitled, shall be punished
48 in the same manner and to the same extent as for larceny or theft of the money
49 or value of the public assistance so obtained or attempted to be obtained.

1 Provided however, this provision shall not apply to any person who communi-
 2 cates information or renders advice to another regarding federal or state
 3 provisions regarding the transfer of property for public assistance.

4 (4) For the purpose of this section, public assistance shall include
 5 the specific categories of assistance for which provision is made in any fed-
 6 eral or state law existing or hereafter enacted by the congress of the United
 7 States or the state of Idaho by which payments are made from the federal gov-
 8 ernment to the state in aid or in respect to payment by the state for welfare
 9 purposes to any category of needy person and any other program of assistance
 10 for which provision for federal or state funds for aid may from time to time
 11 be made.

12 ~~The state department of health and welfare shall establish and op-~~
 13 ~~erate a fraud control program to~~ public assistance fraud control unit shall
 14 investigate suspected fraud relating to:

15 (a) ~~Applications for public assistance benefits,~~ and

16 (b) ~~Public assistance benefits received by individuals or entities.~~

17 (6) ~~Such activities shall be those which do not fall under the author-~~
 18 ~~ity of the medicaid fraud control unit as provided in section 56-226, Idaho~~
 19 ~~Code. The department~~ public assistance fraud control unit shall establish
 20 a procedure to coordinate information with prosecuting attorneys to prose-
 21 cute refer for prosecution to the Idaho attorney general or another prosecu-
 22 tor offenders who commit fraudulent acts pursuant to this chapter.

23 SECTION 4. That Section 56-227B, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 56-227B. PROVIDER FRAUD -- DAMAGES. Any provider who knowingly with
 26 intent to defraud by means of false statement or representation, obtains
 27 compensation from public funds greater than that to which he is legally en-
 28 titled for services or supplies furnished or purportedly furnished shall be
 29 liable for civil damages equal to three (3) times the amount by which any fig-
 30 ure is falsely overstated. The director of the department of health and wel-
 31 fare, the director of the Idaho state police, or the attorney general shall
 32 have the right to cause legal action to be taken for the recovery of such dam-
 33 ages when persuaded that a reimbursement claim for payment is falsely over-
 34 stated. The burden of proof for such recovery action shall be that which is
 35 used in other civil actions for the recovery of damages. The remedy provided
 36 by this section shall be in addition to any other remedy provided by law.

37 If any provider of services or supplies is required to refund or repay
 38 all or part of any payment received by said provider under the provisions of
 39 this section, said refund or repayment shall bear interest from the date pay-
 40 ment was made to such provider to the date of said refund or repayment. In-
 41 terest shall accrue at the rate of ten percent (10%) per annum. The prevail-
 42 ing party in an action, under this section shall be awarded costs and reason-
 43 able attorney's fees incurred in bringing or defending the action. Notwith-
 44 standing any other provision of ~~the Idaho Code state law,~~ all costs and at-
 45 torney's fees awarded ~~to the department of health and welfare or the attorney~~
 46 ~~general~~ pursuant to this section shall be deposited into the state general
 47 fund.

1 SECTION 5. That Section 56-227C, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 56-227C. SUBPOENA POWER. (1) The director, ~~or his~~ an authorized repre-
4 sentative, the attorney general or an authorized representative, and the di-
5 rector of the Idaho state police or ~~his~~ an authorized representative, for the
6 purposes contemplated by this ~~act~~ chapter, have power to issue subpoenas,
7 compel the attendance of witnesses, administer oaths, certify to official
8 acts, take depositions within and without the state of Idaho, as now provided
9 by law, compel the production of pertinent books, payrolls, accounts, pa-
10 pers, records, documents, and testimony. If a person in attendance before
11 such director, attorney general, or ~~his~~ authorized representative refuses,
12 without reasonable cause, to be examined or to answer a legal and pertinent
13 question, or to produce a book or paper or other evidence when ordered so to
14 do by ~~the~~ either director, by the attorney general, or ~~his~~ by an authorized
15 representative, said director, attorney general, or ~~his~~ authorized repre-
16 sentative may apply to the judge of the district court of the county where
17 such person is in attendance, upon affidavit for an order returnable in not
18 less than two (2) or more than five (5) days, directing such person to show
19 cause before such judge, or any other judge of such district, why he should
20 not be punished for contempt; upon the hearing of such order, if the judge
21 shall determine that such person has refused, without reasonable cause or
22 legal excuse, to be examined or to answer a legal or pertinent question, or
23 to produce a book or paper which he was ordered to bring or produce, he may
24 forthwith punish the offender as for contempt of court.

25 (a) If any person asks to be excused from attending or testifying or
26 from producing any books, payrolls, accounts, papers, records, docu-
27 ments, or other evidence in connection with any investigation or
28 inquiry or upon any hearing before any officer so authorized pursuant
29 to this subsection ~~(1)~~, or in any proceeding or action before any court
30 upon a charge or violation of this subsection ~~(1)~~, on the ground that
31 the testimony or evidence required of him may tend to incriminate him or
32 subject him to penalty or forfeiture, and if such person, notwithstand-
33 ing such request, is directed to give such testimony or produce such
34 evidence, the person must, if so directed by ~~the~~ either director, by the
35 attorney general, or ~~his~~ by an authorized representative, comply with
36 such direction.

37 (b) After complying, and if, but for this subsection ~~(1)~~, the person
38 would have been privileged to withhold the answer given or the evidence
39 produced by him, then the answer, the evidence, and any information
40 directly or indirectly derived from the answer or evidence, may not
41 be used against the compelled person in any manner in a criminal case,
42 except that the person may nevertheless be prosecuted or subjected to
43 penalty or forfeiture for any perjury, false swearing, or contempt com-
44 mitted in answering or failing to answer or in producing or failing to
45 produce evidence in accordance with the order. Such evidence may be
46 used in the refusal, suspension, or revocation of any license, permis-
47 sion, or authority conferred, or to be conferred, pursuant to ~~Idaho Code~~
48 law.

1 (2) The director of the Idaho state police, the attorney general, or
 2 any prosecuting attorney, or the designated agent of ~~either~~ any such persons
 3 shall have the authority to issue subpoenas to an enrolled or formerly en-
 4 rolled provider of services pursuant to the medicaid program to compel pro-
 5 duction of any books, payrolls, accounts, papers, records, or documents that
 6 are required to be maintained under the medicaid provider agreement executed
 7 by such provider or formerly enrolled provider as may be relevant to an in-
 8 vestigation of fraud or other crime directly related to the use of medicaid
 9 program funds or services provided through the medicaid program that are not
 10 already in the possession of the director of the department of health and
 11 welfare or his designated agent. The director of the Idaho state police,
 12 the attorney general, ~~or~~ any prosecuting attorney, or the designated agent
 13 of ~~either~~ any such persons may also compel testimony by the custodian of the
 14 items subpoenaed concerning the production and authenticity of those items.
 15 Subpoenas for records or information ~~which that~~ are not required to be main-
 16 tained under a provider agreement shall ~~only~~ be issued only through subpoena
 17 powers in judicial proceedings. A subpoena under this subsection ~~(2)~~ shall
 18 describe the items required to be produced with particularity and prescribe
 19 a return date of a reasonable period of time within which the items can be
 20 assembled and made available to the director of the Idaho state police, the
 21 attorney general, ~~or~~ any prosecuting attorney, or the designated agent of
 22 ~~either~~ any such persons.

23 (3) Subpoenas issued pursuant to this section shall be served and wit-
 24 ness fees and mileage paid as allowed in civil cases in the district courts of
 25 this state.

26 (4) Investigators employed by the Idaho state police and the attorney
 27 general for the investigation and prosecution of providers of services pur-
 28 suant to the medicaid program shall have all the authority given by statute
 29 to peace officers of the state of Idaho, including, but not limited to,
 30 authority to obtain, serve, and execute warrants of arrest and warrants of
 31 search and seizure.

32 SECTION 6. That Section 56-227D, Idaho Code, be, and the same is hereby
 33 amended to read as follows:

34 56-227D. FEDERAL FOOD STAMPS, ALSO KNOWN AS SUPPLEMENTAL NUTRITION
 35 ASSISTANCE PROGRAM -- UNAUTHORIZED USE -- EXCEPTION -- DEFINITION. (1) It is
 36 a misdemeanor for any person to buy, receive, sell, give away, dispose of,
 37 exchange, or barter any federal food stamp benefits of a value less than one
 38 hundred dollars (\$100).

39 (2) It is a felony for any person to buy, receive, sell, give away, dis-
 40 pose of, exchange, or barter any federal food stamp benefits of a value of one
 41 hundred dollars (\$100) or more.

42 (3) This section does not apply to any person buying, receiving, sell-
 43 ing, giving away, disposing of, exchanging, or bartering any federal food
 44 stamp benefits subsequent to the redemption of such stamps in the manner pro-
 45 vided by state or federal law.

46 (4) As used in this section, "federal food stamp benefits" refers to
 47 food stamp benefits issued in any form by the United States department of
 48 agriculture or its duly authorized agent for the sole purpose of purchasing
 49 food.

1 (5) This section shall be enforced by the director of the department of
2 health and welfare in cooperation with local law enforcement and prosecuting
3 agencies. Such enforcement shall not be the responsibility of the ~~medicaid~~
4 public assistance fraud control unit as ~~provided~~ established in section
5 56-226, Idaho Code.

6 SECTION 7. That Section 67-1401, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in
9 this chapter, it is the duty of the attorney general:

10 (1) To perform all legal services for the state and to represent the
11 state and all departments, agencies, offices, officers, boards, commis-
12 sions, institutions and other state entities in all courts and before all
13 administrative tribunals or bodies of any nature. Representation shall be
14 provided to those entities exempted pursuant to the provisions of section
15 67-1406, Idaho Code. Whenever required to attend upon any court or adminis-
16 trative tribunal, the attorney general shall be allowed necessary and actual
17 expenses, all claims for which shall be audited by the state board of exam-
18 iners.

19 (2) To advise all departments, agencies, offices, officers, boards,
20 commissions, institutions and other state entities in all matters involving
21 questions of law.

22 (3) After judgment in any of the causes referred to in this chapter, to
23 direct the issuing of such process as may be necessary to carry the same into
24 execution.

25 (4) To account for and pay over to the proper officer all moneys re-
26 ceived which belong to the state.

27 (5) To enforce the Idaho charitable solicitation act, chapter 12, title
28 48, Idaho Code; the Idaho nonprofit hospital sale or conversion act, chap-
29 ter 15, title 48, Idaho Code; to supervise charitable organizations, as such
30 term is defined in section 48-1903(4), Idaho Code; and to enforce whenever
31 necessary any noncompliance or departure from the charitable purpose of such
32 charitable organizations as set forth and provided in chapter 19, title 48,
33 Idaho Code.

34 (6) To give an opinion in writing, without fee, to the legislature or
35 either house thereof, or any senator or representative, and to the gover-
36 nor, secretary of state, treasurer, state controller, and the superinten-
37 dent of public instruction, when requested, upon any question of law relat-
38 ing to their respective offices. The attorney general shall keep a record of
39 all written opinions rendered by the office and such opinions shall be com-
40 piled annually and made available for public inspection. All costs incurred
41 in the preparation of said opinions shall be borne by the office of the attor-
42 ney general. A copy of the opinions shall be furnished to the supreme court
43 and to the state librarian.

44 (7) When required by the public service, to repair to any county in the
45 state and assist the prosecuting attorney thereof in the discharge of du-
46 ties.

47 (8) To bid upon and purchase, when necessary, in the name of the state,
48 and under the direction of the state controller, any property offered for
49 sale under execution issued upon judgments in favor of or for the use of the

1 state, and to enter satisfaction in whole or in part of such judgments as the
2 consideration for such purchases.

3 (9) Whenever the property of a judgment debtor in any judgment men-
4 tioned in subsection (8) of this section has been sold under a prior judg-
5 ment, or is subject to any judgment, lien, or encumbrance, taking precedence
6 of the judgment in favor of the state, under the direction of the state
7 controller, to redeem such property from such prior judgment, lien, or en-
8 cumbrance; and all sums of money necessary for such redemption must, upon the
9 order of the board of examiners, be paid out of any money appropriated for
10 such purposes.

11 (10) When necessary for the collection or enforcement of any judgment
12 hereinbefore mentioned, to institute and prosecute, in behalf of the state,
13 such suits or other proceedings as may be necessary to set aside and annul all
14 conveyances fraudulently made by such judgment debtors; the cost necessary
15 to the prosecution must, when allowed by the board of examiners, be paid out
16 of any appropriations for the prosecution of delinquents.

17 (11) To exercise all the common law power and authority usually apper-
18 taining to the office and to discharge the other duties prescribed by law.

19 (12) To report to the governor, at the time required by this section, the
20 condition of the affairs of the attorney general's office and of the reports
21 received from prosecuting attorneys.

22 (13) To appoint deputy attorneys general and special deputy attorneys
23 general and other necessary staff to assist in the performance of the du-
24 ties of the office. Such deputies and staff shall be nonclassified employees
25 within the meaning of section 67-5302, Idaho Code.

26 (14) ~~To establish a medicaid fraud control unit pursuant to the provi-~~
27 ~~sions of section 56-226, Idaho Code, and to exercise concurrent investiga-~~
28 ~~tive and prosecutorial authority and responsibility with county prosecutors~~
29 ~~to prosecute, upon referral by the public assistance fraud control unit es-~~
30 ~~tablished in section 56-226, Idaho Code, persons for the violation of the~~
31 ~~criminal provisions of chapter 2, title 56, Idaho Code, and for criminal of-~~
32 ~~fenses that are not defined in said chapter 2, title 56, Idaho Code, but that~~
33 ~~involve or are directly related to the use of medicaid public assistance pro-~~
34 ~~gram funds or services provided through the medicaid program.~~

35 (15) To seek injunctive and any other appropriate relief as expedi-
36 tiously as possible to preserve the rights and property of the residents of
37 the state of Idaho, and to defend as necessary the state of Idaho, its offi-
38 cials, employees and agents in the event that any law or regulation violating
39 the public policy set forth in the Idaho health freedom act, chapter 90,
40 title 39, Idaho Code, is enacted by any government, subdivision or agency
41 thereof.

42 (16) To establish an internet crimes against children unit pursuant to
43 the provisions of section 67-1410, Idaho Code, and to exercise concurrent
44 investigative and prosecutorial authority and responsibility with county
45 prosecutors to prosecute persons for the violation of the criminal provi-
46 sions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code, which
47 may also encompass criminal offenses that are not defined in said sections
48 but that involve or are directly related to child pornography and sollicita-
49 tion of minors for pornography, prostitution or sex-related offenses.

1 (17) To respond to allegations of violation of state law by elected
2 county officers, to investigate such claims, to issue appropriate findings
3 and to refer such cases for further investigation and prosecution pursuant
4 to section 31-2002, Idaho Code.

5 (18) To establish a sobriety and drug monitoring program to reduce the
6 number of people on Idaho's highways who drive under the influence of alco-
7 hol or drugs, reduce the number of repeat offenders for certain offenses in
8 which the abuse of alcohol or drugs was a contributing factor, and increase
9 pretrial and posttrial options for prosecutors and judges in responding to
10 repeat DUI offenders and offenders for certain crimes in which the abuse of
11 alcohol or drugs was a contributing factor in the commission of the crime,
12 and to adopt such rules and establish such fees as are necessary for the oper-
13 ation of said program, as set forth by law.

14 SECTION 8. That Section 67-2901, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 67-2901. IDAHO STATE POLICE CREATED -- DIRECTOR -- DIVISIONS -- POW-
17 ERS AND DUTIES -- FAILURE OF PEACE OFFICERS TO OBEY ORDERS, MISDEMEANOR --
18 DEPUTIES -- COMPENSATION AND POWERS. (1) There is hereby created the Idaho
19 state police. The Idaho state police shall, for the purposes of section 20,
20 article IV, of the constitution of the state of Idaho, be an executive de-
21 partment of the state government.

22 (2) The governor, with the advice and consent of the senate, shall ap-
23 point a director of the Idaho state police who shall serve at the pleasure of
24 the governor. The director shall receive such salary as fixed by the gover-
25 nor.

26 (3) The Idaho state police shall be composed of such divisions as may be
27 established by law and other administrative units as may be established by
28 the director for the proper and efficient administration of the powers and
29 duties assigned to the director or the state police. The director shall ap-
30 point, subject to the approval of the governor, an administrator for each di-
31 vision within the state police.

32 (4) The director shall exercise all of the powers and duties necessary
33 to carry out the proper administration of the state police, and may delegate
34 duties to employees and officers of the state police.

35 (5) The Idaho state police shall have power to:

36 (a) Enforce all of the penal and regulatory laws of the state, to pre-
37 serve order, and exercise any and all powers, duties and authority of
38 any sheriff or other peace officer anywhere in the state of Idaho, in
39 the same manner and with like authority as the sheriffs of the counties;
40 said department may employ from time to time, to carry out any of the
41 provisions of this subsection, such deputies or special deputies as may
42 be deemed, by the governor of the state of Idaho, necessary to carry
43 out these duties and powers, and deputies shall have power to deputize
44 other persons as deputies when necessary; said department may call
45 into the police service of the state any and all peace officers of the
46 state, of any city, or of any county, and may deputize private citizens,
47 when deemed necessary by the governor of the state, to preserve order
48 and enforce law in any extraordinary emergency when the governor shall
49 have declared, by order in writing, the existence of such extraordinary

1 emergency; the governor shall designate by order such peace officers or
2 private persons as are to be called into the service of the state, and
3 when such peace officers or deputized citizens are so called into the
4 police service of the state, such officers shall act under the direction
5 of the director of the state police in such manner as may be directed and
6 ordered by the governor; failure on the part of any such peace officer of
7 the state, or person so deputized, to so act and obey such orders shall
8 constitute a misdemeanor; the governor shall fix the compensation of
9 such deputies;

10 (b) Prevent and detect crime and apprehend criminals and maintain or-
11 der;

12 (c) Require all persons using the highways in the state to do so care-
13 fully, safely, and with the exercise of care for the persons, property
14 and safety of others;

15 (d) Safeguard and protect the surface and other physical portions of
16 the state highways and enforce any laws for highway safety;

17 (e) Enforce federal statutes and regulations relating to motor carrier
18 safety and hazardous materials for interstate carriers;

19 (f) Enforce Idaho statutes and rules of the Idaho state police applica-
20 ble to motor carriers;

21 (g) Enforce all of the laws of the state enacted for the identification,
22 inspection and transportation of livestock and all laws of the state de-
23 signed to prevent the theft of livestock;

24 (h) Regulate traffic on all highways and roads in the state, including
25 the authority to temporarily close or restrict the use of any highway or
26 road whenever the closure or restriction of the use is deemed necessary
27 for the safety of the public;

28 (i) Perform all of the duties and exercise all of the powers of peace
29 officers vested in the director of the Idaho state police;

30 (j) Execute and serve any warrant of arrest or search warrant issued by
31 proper authority of the state, according to the tenor thereof, in any
32 part of the state;

33 (k) Arrest without warrant, any person committing or attempting to com-
34 mit in their presence or view a breach of the peace or any other viola-
35 tion of any of the laws of the state;

36 (l) Members of the Idaho state police shall be subject to the call of
37 the governor and are empowered to cooperate with any other department or
38 authority of the state, with counties and municipalities, or with any
39 locality in detecting crime, apprehending criminals and preserving law
40 and order throughout the state; but the Idaho state police shall not be
41 used as a posse in any municipality, except when ordered by the governor
42 to do so; provided nothing herein contained shall be construed to vest
43 direction or control over any sheriff, policeman, marshal or constable
44 in the Idaho state police or any employer or officer thereof;

45 (m) Each member of the Idaho state police shall take and subscribe to an
46 oath of office to support the constitution and laws of the United States
47 and the state of Idaho, and to honestly and faithfully perform the du-
48 ties imposed upon him under the provisions of the laws of Idaho as a mem-
49 ber of the Idaho state police. The oath shall be filed with the direc-
50 tor; and

1 (n) Enter into contractual agreements to reimburse the Idaho state po-
2 lice for services provided to private entities if it is deemed neces-
3 sary to enforce the law or ensure public safety when those services or
4 resources are beyond the usual and customary services provided by the
5 Idaho state police; and

6 (o) Establish the public assistance fraud control unit pursuant to sec-
7 tion 56-226, Idaho Code, to investigate violations of the criminal pro-
8 visions of chapter 2, title 56, Idaho Code, and other criminal offenses
9 that involve or directly relate to the use of public assistance funds or
10 services. Any funding, whether with federal or state moneys, that pre-
11 viously went to other agencies for the duties described in this para-
12 graph will be allocated to the Idaho state police.

13 (6) The director shall operate and supervise a forensic laboratory
14 which will provide to state and local agencies having responsibility for
15 enforcement of the penal laws of this state assistance in the collection,
16 preservation and analysis of evidence in criminal cases. Idaho state po-
17 lice forensic services resources including, but not limited to, equipment,
18 instrumentation, facilities and supplies may be used only by authorized em-
19 ployees or approved subcontractors of Idaho state police forensic services.

20 (7) The director shall provide security and protection for the governor
21 and the governor's immediate family to the extent and in the manner the gov-
22 ernor and the director deem adequate and appropriate.

23 (8) At the written direction of the governor or the director, the di-
24 rector shall provide security and protection for the lieutenant governor and
25 the lieutenant governor's immediate family to the extent and in the manner
26 the lieutenant governor and the director deem adequate and appropriate.

27 (9) The director shall provide security and protection for both houses
28 of the legislature while in session as in the opinion of the speaker of the
29 house of representatives and the president pro tempore of the senate and the
30 director deem necessary.

31 (10) The director shall provide security and protection for the supreme
32 court and the court of appeals while they are in session, and at their places
33 of work, as the chief justice and the director deem necessary.

34 (11) The director may award to an officer, upon retirement, that offi-
35 cer's badge, duty weapon and handcuffs, providing that a committee of three
36 (3) of the officer's peers certifies to the director that the retiring offi-
37 cer has served meritoriously for a minimum of fifteen (15) years and should
38 therefore be so honored.

39 (12) The director, within the limits of any appropriation made avail-
40 able for such purposes, shall for such Idaho state police:

41 (a) Establish such ranks, grades and positions as shall appear advis-
42 able and designate the authority and responsibility in each such rank,
43 grade and position;

44 (b) Appoint such personnel to such rank, grade and position as are
45 deemed by him to be necessary for the efficient operation and adminis-
46 tration of the Idaho state police, and only those applicants shall be
47 appointed or promoted who best meet the prescribed standards and pre-
48 requisites; provided however, that all employees shall be selected in
49 the manner provided for in chapter 53, title 67, Idaho Code, and shall be

1 probationers and on probation for a period of one (1) year from the date
2 of appointment;

3 (c) Formulate and place in effect such rules for the Idaho state police
4 as from time to time appear to him advisable;

5 (d) Prescribe by official order the uniform and equipment of the em-
6 ployees in the Idaho state police;

7 (e) Station employees in such localities as he shall deem advisable for
8 the enforcement of the laws of the state;

9 (f) Have purchased, or otherwise acquired, by the purchasing agent of
10 the state, motor vehicle equipment and all other equipment and commodi-
11 ties deemed by him essential for the efficient performance of the du-
12 ties of the Idaho state police and purchase and install approved mechan-
13 ical devices and equipment for the rapid transmission and broadcasting
14 of information relative to crime, apprehension of criminals and the ad-
15 ministration of the business of the Idaho state police.

16 (13) (a) The director shall issue to every eligible police officer
17 member of the Idaho state police, as defined in section 59-1303(3),
18 Idaho Code, and pursuant to the contract provided for by the personnel
19 group insurance administrator in the department of administration, a
20 term group life insurance certificate in the face amount of fifty thou-
21 sand dollars (\$50,000) on the life of such members. Said insurance
22 certificate shall set forth the name or names of such beneficiary or
23 beneficiaries as the insured may name or designate.

24 (b) Any eligible person entering the employ of the Idaho state police
25 as an active police officer after the effective date of this act shall be
26 insured as other members of the state police immediately upon taking the
27 oath of office.

28 (c) Every member of the Idaho state police, upon termination of active
29 duty or permanent release, may surrender said certificate to the head of
30 the state police, or, at the person's option, may convert the insurance
31 in accordance with the provisions of the contract, and no further premi-
32 ums shall be paid on said policy by the state of Idaho.

33 (d) The director is hereby directed to hereafter include in the budget
34 of the Idaho state police an amount sufficient to pay the annual costs
35 accruing with respect to policies of insurance purchased under the pro-
36 visions of this chapter.

37 (e) The premiums on the insurance herein provided for are to be paid
38 one-half (1/2) by the employee and one-half (1/2) by the state. The di-
39 rector is hereby authorized to make a monthly deduction on the payroll
40 of the amount due from each employee under this chapter.

41 (14) Nothing in this section shall affect the duties of the sheriff as
42 described in section 31-2202, Idaho Code, or the primary duty, described in
43 section 31-2227, Idaho Code, of the sheriff and prosecuting attorney of each
44 of the several counties to enforce all the penal provisions of any and all
45 statutes of this state.