

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 518

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO THE MEDICAID FRAUD CONTROL UNIT; AMENDING SECTION 56-226, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING THE AUTHORITY AND RESPONSIBILITY
3 OF THE MEDICAID FRAUD CONTROL UNIT; AMENDING SECTION 56-227A, IDAHO
4 CODE, TO REVISE PROVISIONS REGARDING PENALTIES FOR PROVIDER FRAUD;
5 AMENDING SECTION 56-227C, IDAHO CODE, TO REVISE PROVISIONS REGARDING
6 SUBPOENA POWER; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
7 DATE.
8

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

10 SECTION 1. That Section 56-226, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 56-226. MEDICAID FRAUD CONTROL UNIT. (1) There is hereby established
13 in the office of the attorney general the medicaid fraud control unit which
14 shall have the authority and responsibilities as set forth in this section.

15 (2) Notwithstanding the authority and responsibility granted to the
16 director of the department to provide for fraud control in other aspects of
17 public assistance and public health programs, the medicaid fraud control
18 unit shall have the authority and responsibility to conduct a statewide pro-
19 gram for the investigation and prosecution of violations of all applicable
20 Idaho laws pertaining to fraud in the administration of the medicaid pro-
21 gram, the provision of medical assistance and in the activities of providers
22 of medical assistance and services under the state plan. Further, upon ap-
23 proval of the inspector general of the relevant federal agency, the office of
24 the attorney general shall have the authority and responsibility to inves-
25 tigate and to prosecute violations of any aspect of the provision of health
26 care services and activities of providers of such services under any federal
27 health care program as defined in 42 U.S.C. section 1320(a)-7b(f)1, if the
28 suspected fraud or violation of law in such investigation or prosecution is
29 substantially related to the state plan. The medicaid fraud control unit
30 shall be under the exclusive control of the attorney general and be separate
31 and distinct from the department. No official from the department shall
32 have authority to review or override the prosecutorial decisions made by the
33 medicaid fraud control unit.

34 (3) The medicaid fraud control unit shall also:

35 (a) Review complaints of abuse or neglect of medicaid recipients in
36 health care facilities which receive payment pursuant to the state plan
37 and may review complaints of the misappropriation of patients' private
38 funds in such facilities; ~~and~~

39 (b) Review complaints of abuse or neglect of medicaid recipients resid-
40 ing in a board and care facility-; and

1 (c) Review complaints of abuse or neglect of medicaid recipients or the
2 misappropriation of medicaid recipients' private funds in other set-
3 tings in which the provision of medicaid services is involved.

4 (4) The medicaid fraud control unit shall attempt to collect or refer
5 to the department for collection overpayments that are made to providers of
6 facilities under the state plan or under any federal health care program to
7 health care facilities that are the result of fraudulent acts and that are
8 discovered by the medicaid fraud control unit in carrying out its responsi-
9 bilities under this section. Notwithstanding any other provision of Idaho
10 Code, all funds collected by the medicaid fraud control unit in accordance
11 with this subsection (4) shall be deposited into the state general fund.

12 (5) The office of the attorney general shall employ such auditors, at-
13 torneys, investigators and other personnel as are necessary to carry out the
14 responsibilities of the medicaid fraud control unit as set forth under this
15 section.

16 (6) The office of the attorney general shall submit to the secretary of
17 the federal department of health and human services applications and reports
18 containing such information as is determined by the secretary by regulation
19 to be necessary to meet the requirements of subchapter XIX, chapter 7, title
20 42, U.S.C.

21 (7) In carrying out its duties and responsibilities under this section,
22 the medicaid fraud control unit may:

23 (a) Request and receive the assistance of any prosecutor or law en-
24 forcement agency in the investigation and prosecution of any violation
25 of any applicable Idaho laws pertaining to fraud in the administration
26 of the medicaid program, the provision of medical assistance and in the
27 activities of providers of medical assistance and services under the
28 state plan;

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

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

33 (ii) Investigate alleged abuse or neglect of medicaid recipients;
34 or

35 (iii) Investigate alleged misappropriation of patients' private
36 funds. The accounts or records of a nonmedicaid recipient may not
37 be reviewed by, or turned over to the medicaid fraud control unit
38 without the patient's written consent or a court order; and

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

43 (i) Existence of civil violations or criminal offenses under this
44 chapter or related offenses;

45 (ii) Existence of medicaid recipient abuse, mistreatment or ne-
46 glect; or

47 (iii) Theft of medicaid recipient funds.

48 No person holding such records shall refuse to provide the medicaid
49 fraud control unit access to such records for the purposes described in
50 this section on the basis that release would violate the medicaid recip-

1 ient's right of privacy or privilege against disclosure or use or any
2 professional or other privilege or right.

3 (8) The medicaid fraud control unit shall safeguard the privacy rights
4 of medicaid recipients to avoid unnecessary disclosure of personal informa-
5 tion concerning named medicaid recipients. The medicaid fraud control unit
6 may transmit such information that it deems appropriate to the department
7 and to other agencies concerned with the regulation of health care facili-
8 ties or health professionals.

9 (9) The medicaid fraud control unit shall be permitted to seek
10 court-ordered restitution as reimbursement for the cost of investigation
11 from those individuals successfully prosecuted for violations of any appli-
12 cable Idaho laws pertaining to fraud in the administration of the medicaid
13 program, the provision of medical assistance, or the activities of providers
14 of medical assistance and services under the state plan. Any restitution
15 payments received pursuant to this section shall be deposited in the state
16 general fund.

17 ~~(9)~~ (10) The attorney general shall have the authority to adopt rules
18 necessary to implement the duties and responsibilities assigned to the med-
19 icaid fraud control unit under this section.

20 ~~(10)~~ (11) As used in this section:

21 (a) "Board and care facility" means a provider of medicaid services in a
22 residential setting which receives payment from or on behalf of two (2)
23 or more unrelated adults who reside in such facility, and for whom one
24 (1) or more of the following is provided:

25 (i) Nursing care services provided by, or under the supervision
26 of, a registered nurse, licensed practical nurse or certified
27 nurses aide; or

28 (ii) A substantial amount of personal care services that assist
29 residents with the activities of daily living, including per-
30 sonal hygiene, dressing, bathing, eating, toileting, ambulation,
31 transfer of positions, self-medication, body care, travel to med-
32 ical services, essential shopping, meal preparation, laundry and
33 housework.

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

35 (c) "Director" means the director of the Idaho department of health and
36 welfare.

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

38 (e) "Provider" means any individual, partnership, association, corpo-
39 ration or organization, public or private, which provides residential
40 or assisted living services, certified family home services, nursing
41 facility services or services offered pursuant to medical assistance.

42 (f) "Recipient" means an individual determined eligible by the direc-
43 tor for the services provided in the state plan for medicaid.

44 (g) "State plan" means the Idaho state plan pursuant to subchapter XIX,
45 chapter 7, title 42 U.S.C.

46 SECTION 2. That Section 56-227A, Idaho Code, be, and the same is hereby
47 amended to read as follows:

48 56-227A. PROVIDER FRAUD -- CRIMINAL PENALTY. It shall be unlawful for
49 any provider or person, knowingly, with intent to defraud another, by means

1 of a ~~wilfully~~ false statement or representation or by deliberate concealment
2 of any material fact, or any other fraudulent scheme or device, to:

3 (a) ~~present~~ Present or cause to be presented for allowance or payment
4 any false or fraudulent claim for furnishing services or supplies; ~~or~~

5 (b) ~~attempt~~ Attempt to obtain or to obtain authorization for furnishing
6 services or supplies; or

7 (c) ~~attempt~~ Attempt to obtain or to obtain compensation from public
8 funds greater than that to which he is legally entitled for services or sup-
9 plies furnished or purportedly furnished.

10 Any provider or person who violates the provisions of this section shall
11 be guilty of a felony. ~~Nothing~~ and shall be subject to a term of imprisonment
12 not to exceed fifteen (15) years, or a fine not to exceed fifteen thousand
13 dollars (\$15,000), or both, and shall be ordered to make restitution to the
14 department or any other person for any financial loss sustained as a result
15 of a violation of this section. Each instance of violation shall be consid-
16 ered a separate offense, and nothing in this section shall prohibit or pre-
17 clude a provider or person from being prosecuted under any other provision of
18 the criminal code.

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

21 56-227C. SUBPOENA POWER. (1) The director, of the Idaho department of
22 health and welfare or his authorized representative, and the director of the
23 Idaho state police or his authorized representative, or the attorney general
24 or his authorized representative, for the purposes contemplated by this act,
25 have power to issue subpoenas, compel the attendance of witnesses, admin-
26 ister oaths, certify to official acts, take depositions within and without
27 the state of Idaho, as now provided by law, compel the production of perti-
28 nent books, payrolls, accounts, papers, records, documents and testimony.
29 If a person in attendance before such director or his authorized represen-
30 tative refuses, without reasonable cause, to be examined or to answer a le-
31 gal and pertinent question, or to produce a book or paper or other evidence
32 when ordered so to do by the director or his authorized representative, said
33 director or his authorized representative may apply to the judge of the dis-
34 trict court of the county where such person is in attendance, upon affidavit
35 for an order returnable in not less than two (2) or more than five (5) days,
36 directing such person to show cause before such judge, or any other judge of
37 such district, why he should not be punished for contempt; upon the hear-
38 ing of such order, if the judge shall determine that such person has refused,
39 without reasonable cause or legal excuse, to be examined or to answer a le-
40 gal or pertinent question, or to produce a book or paper which he was ordered
41 to bring or produce, he may forthwith punish the offender as for contempt of
42 court.

43 (a) If any person asks to be excused from attending or testifying or
44 from producing any books, payrolls, accounts, papers, records, docu-
45 ments or other evidence in connection with any investigation or inquiry
46 or upon any hearing before any officer so authorized pursuant to this
47 subsection (1), or in any proceeding or action before any court upon a
48 charge or violation of this subsection (1), on the ground that the tes-
49 timony or evidence required of him may tend to incriminate him or sub-

1 ject him to penalty or forfeiture, and if such person, notwithstanding
2 such request, is directed to give such testimony or produce such evi-
3 dence, the person must, if so directed by the director or his authorized
4 representative, comply with such direction.

5 (b) After complying, and if, but for this subsection (1), the person
6 would have been privileged to withhold the answer given or the evidence
7 produced by him, then the answer, the evidence and any information di-
8 rectly or indirectly derived from the answer or evidence, may not be
9 used against the compelled person in any manner in a criminal case,
10 except that the person may nevertheless be prosecuted or subjected to
11 penalty or forfeiture for any perjury, false swearing or contempt com-
12 mitted in answering or failing to answer or in producing or failing to
13 produce evidence in accordance with the order. Such evidence may be
14 used in the refusal, suspension or revocation of any license, permis-
15 sion or authority conferred, or to be conferred, pursuant to Idaho Code.

16 (2) The attorney general or any prosecuting attorney or the designated
17 agent of either shall have the authority to issue subpoenas to an enrolled or
18 formerly enrolled provider of services pursuant to the medicaid program to
19 compel production of any books, payrolls, accounts, papers, records or doc-
20 uments that are required to be maintained under the medicaid provider agree-
21 ment executed by such provider or formerly enrolled provider as may be rel-
22 evant to an investigation of fraud or other crime directly related to the
23 use of medicaid program funds or services provided through the medicaid pro-
24 gram that are not already in the possession of the director of the depart-
25 ment of health and welfare or his designated agent. The attorney general
26 or any prosecuting attorney or the designated agent of either may also com-
27 pel testimony by the custodian of the items subpoenaed concerning the pro-
28 duction and authenticity of those items. ~~Subpoenas for records or informa-~~
29 ~~tion which are not required to be maintained under a provider agreement shall~~
30 ~~only be issued through subpoena powers in judicial proceedings.~~ A subpoena
31 under this subsection (2) shall describe the items required to be produced
32 with particularity and prescribe a return date of a reasonable period of time
33 within which the items can be assembled and made available to the attorney
34 general or any prosecuting attorney or the designated agent of either.

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

38 (4) Investigators employed by the attorney general for the investiga-
39 tion and prosecution of providers of services pursuant to the medicaid pro-
40 gram shall have all the authority given by statute to peace officers of the
41 state of Idaho, including, but not limited to, authority to obtain, serve and
42 execute warrants of arrest and warrants of search and seizure.

43 SECTION 4. An emergency existing therefor, which emergency is hereby
44 declared to exist, this act shall be in full force and effect on and after
45 July 1, 2024.