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REPORTS: No

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RWH 4-23-08

Title 30.
Chapter 4D.
Article V - Office
of Medical
Inspector General.
§§1-11,13 -
C.30:4D-53 to
30:4D-64
§14 - Approp. &
Note to §11
§15 - Note to
§§1,2,6 through
13.

P.L. 2007, CHAPTER 58, *approved March 16, 2007*
Senate, No. 1852 (*Third Reprint*)

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

4

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

7

8 1. (New section) This act shall be known and may be cited as
9 the "Medicaid Program Integrity and Protection Act."

10

11 2. (New section) The Legislature finds and declares that:

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

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

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

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

25 e. The current system for controlling Medicaid fraud, waste, and
26 abuse is based largely on formal and informal agreements among
27 the Department of Human Services, the Medicaid Fraud Control
28 Unit of the Department of Law and Public Safety, the Department
29 of Health and Senior Services, and other local, State, and federal

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 12, 2006.

²Assembly AAP committee amendments adopted December 4, 2006.

³Senate amendments adopted in accordance with Governor's recommendations February 5, 2007.

1 agencies whose clients are served by the Medicaid program or who
2 are otherwise responsible for the control of Medicaid fraud, waste,
3 and abuse;

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

9 g. The current efforts to control Medicaid fraud, waste, and
10 abuse in New Jersey range from investigating providers before they
11 enroll in the Medicaid program ²], to removing providers from the
12 program when it is determined that there are clear patient safety
13 issues, and ²] to identifying fraud, waste, and abuse on the part of
14 both providers and recipients;

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

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

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

33

34 3. (New section) As used in this act:

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

41 "Department" means the Department of Human Services.

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

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

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

7 "Medicaid Fraud Control Unit" means the Medicaid Fraud
8 Control Unit in the Department of Law and Public Safety.

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

11
12 4. (New section) a. (1) There is established the Office of
13 Medicaid Inspector General in the ³[Executive Branch of the State
14 Government. For the purposes of complying with Article V,
15 Section IV, paragraph 1 of the New Jersey Constitution, the office
16 is allocated within the Department of Human Services; however,
17 notwithstanding the allocation, the office shall be independent of
18 any supervision or control by the department, or a division, office
19 or officer thereof, in the performance of its duties] Office of the
20 Inspector General established pursuant to P.L.2005, c.119
21 (C.52:15B-1 et seq.)³.

22 (2) The office shall ¹[undertake and be responsible for the
23 duties of the department as the lead State agency] be ³[the
24 ²[single]² State office¹ for] devoted to³ Medicaid program
25 integrity¹ ³[,] through means³ including, but not limited to: the
26 detection, prevention, and investigation of fraud and abuse; the
27 recovery of improperly expended Medicaid funds; enforcement;
28 audit; quality review; compliance; referral of criminal prosecutions;
29 investigation; ¹and the oversight of¹ information ¹[and]¹
30 technology ¹relating to Medicaid fraud and abuse¹.

31 (3) Consistent with the provisions of this act, the department
32 shall serve as the designated ²[single]² State agency for the general
33 administration of Medicaid, and the setting of policies for and the
34 oversight of the operation of Medicaid. The department shall serve
35 as the primary point of contact for the federal government regarding
36 Medicaid and shall conduct activities, including, but not limited to,
37 establishing the policy direction with respect to Medicaid,
38 promulgating policies and rules for the administration of Medicaid,
39 issuing programmatic guidance, and establishing reimbursement
40 rates.

41 b. The office shall be administered by the Medicaid Inspector
42 General, who shall be an attorney, licensed to practice law in a
43 jurisdiction in the United States, and shall be selected without
44 regard to political affiliation and on the basis of capacity for
45 effectively carrying out the duties of the office. The Medicaid
46 Inspector General shall possess demonstrated knowledge, skills,
47 abilities, and experience in conducting audits and investigations,

1 and shall be familiar with the programs subject to oversight by the
2 office. No former or current executive or manager of any program
3 or agency subject to oversight by the office may be appointed
4 Medicaid Inspector General within two years of that individual's
5 period of service with such program or agency.

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

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

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

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

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

25 (6) The Medicaid Inspector General shall function independently
26 within the ³**[department]** Office of the Inspector General³ with
27 respect to the operations of the office, including the performance of
28 investigations and issuance of findings and recommendations.

29
30 5. (New section) a. The Medicaid Inspector General shall have
31 the following general functions, duties, powers, and responsibilities:

32 (1) To appoint such deputies, directors, assistants, and other
33 officers and employees as may be needed for the office to meet its
34 responsibilities, and to prescribe their duties and fix their
35 compensation in accordance with State law and within the amounts
36 appropriated ²[therefore¹, which appointments may include,
37 notwithstanding any other law to the contrary, the appointment and
38 employment of a general counsel, and such other attorneys or
39 counsel as the Medicaid Inspector General may require, to provide
40 legal advice on such matters as the Medicaid Inspector General may
41 from time to time require; to attend to and deal with all litigation,
42 controversies, and legal matters in which the Medicaid Inspector
43 General or the Office of the Medicaid Inspector General may be a
44 party or in which its rights and interests may be involved; and, in
45 consultation with the Attorney General, to represent the Medicaid
46 Inspector General or the Office of the Medicaid Inspector General
47 in all proceedings or actions of any kind which may be brought for
48 or against them in any court of this State¹] therefor²;

- 1 (2) To conduct and supervise all State government activities¹,
2 except those of the Medicaid Fraud Control Unit in the Department
3 of Law and Public Safety,¹ relating to Medicaid integrity, fraud,
4 and abuse;
- 5 (3) To call upon any department, office, division, or agency of
6 State government to provide such information, resources, or other
7 assistance as the Medicaid Inspector General deems necessary to
8 discharge the duties and functions and to fulfill the responsibilities
9 of the Medicaid Inspector General under this act. Each department,
10 office, division, and agency of this State shall cooperate with the
11 Medicaid Inspector General and furnish the office with the
12 assistance necessary to accomplish the purposes of this act;
- 13 (4) To coordinate activities to prevent, detect, and investigate
14 Medicaid fraud and abuse among the following: the Departments of
15 Human Services, Health and Senior Services, Education, ¹and¹
16 Treasury ¹[, and Military and Veterans Affairs]¹ ²;² the fiscal
17 agent employed to operate the Medicaid management information
18 system; local governments and entities]²; the ¹[Medicaid Fraud
19 Control Unit] Office of the Attorney General¹; and the special
20 investigative unit maintained by each health insurer providing a
21 Medicaid managed care plan within the State;
- 22 (5) To apply for and receive federal grants and monies ¹with all
23 necessary assistance as the Medicaid Inspector General shall require
24 from the department¹;
- 25 (6) To enter into ¹any¹ applicable federal pilot programs and
26 demonstration projects and ¹coordinate with the department in order
27 for the department to¹ apply ¹as requested by the Medicaid
28 Inspector General,¹ for necessary federal waivers;
- 29 ¹[(7) To adopt rules and regulations relating to Medicaid
30 integrity, fraud, and abuse pursuant to the “Administrative
31 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.);
32 (8)] ¹(7)¹ To recommend and implement policies relating to
33 Medicaid integrity, fraud, and abuse, and monitor the
34 implementation of any recommendations made by the office to
35 other agencies or entities responsible for the administration of
36 Medicaid;
- 37 ¹[(9)] ¹(8)¹ To perform any other functions that are necessary or
38 appropriate in furtherance of the mission of the office; and
- 39 ¹[(10)] ¹(9)¹ To direct all public or private Medicaid service
40 providers or recipients to cooperate with the office and provide such
41 information or assistance as shall be reasonably required by the
42 office.
- 43 b. As it relates to ensuring compliance with applicable Medicaid
44 standards and requirements, identifying and reducing fraud and
45 abuse, and improving the efficiency and effectiveness of Medicaid,

1 the functions, duties, powers, and responsibilities of the Medicaid
2 Inspector General shall include, but not be limited to, the following:

3 (1) To establish, in consultation with the ¹**【Medicaid Fraud**
4 **Unit】** department and the Attorney General¹, guidelines under
5 which the withholding of payments or exclusion from Medicaid
6 may be imposed on a provider or shall automatically be imposed on
7 a provider;

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

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

16 (4) To ¹**【work with the fiscal agent employed to operate】**
17 consult with the department to¹ optimize the Medicaid management
18 information system ¹**【to optimize the system】**¹ in furtherance of the
19 mission of the office¹. The department shall consult with the
20 Medicaid Inspector General on matters that concern the operation,
21 upgrade and implementation of the Medicaid management
22 information system¹;

23 (5) To coordinate the implementation of information technology
24 relating to Medicaid integrity, fraud, and abuse; ¹and¹

25 (6) To conduct educational programs for Medicaid providers,
26 vendors, contractors, and recipients designed to limit Medicaid
27 fraud and abuse¹ **【**; and

28 (7) To compel the fiscal agent employed by the State to operate
29 the Medicaid management information system to cross-reference
30 eligibility information for all programs for which Medicaid funds
31 are expended with the federal list of fugitive felons¹ **】**¹.

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

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

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

41 (3) To coordinate the investigations of the office with the
42 ¹**【Medicaid Fraud Control Unit】** Attorney General¹, the State
43 Inspector General, law enforcement authorities, and any prosecutor
44 of competent jurisdiction, and endeavor to develop these
45 investigations in a manner that expedites and facilitates criminal
46 prosecutions and the recovery of improperly expended Medicaid
47 funds, including:

- 1 (a) keeping detailed records for cases processed by the State
2 Inspector General and the Attorney General 'and county
3 prosecutors¹. The records shall include: information on the total
4 number of cases processed and, for each case, the agency and
5 division to which the case is referred for investigation; the date on
6 which the case is referred; and the nature of the suspected fraud,
7 waste, or abuse; and
- 8 (b) receiving notice from the Attorney General of each case that
9 the Attorney General declines to prosecute or prosecutes
10 unsuccessfully;
- 11 (4) To make information and evidence relating to suspected
12 criminal acts which the Medicaid Inspector General may obtain in
13 carrying out his duties available to the Medicaid Fraud Control Unit
14 pursuant to the requirements of federal law, as well as to other law
15 enforcement officials when appropriate, and consult with the
16 Attorney General '[,] and county¹ prosecutors '[,] and local district
17 attorneys¹ in order to coordinate criminal investigations and
18 prosecutions;
- 19 (5) To refer complaints alleging criminal conduct to the
20 Attorney General or other appropriate prosecutorial authority. If
21 the Attorney General or other appropriate prosecutorial authority
22 decides not to investigate or prosecute the matter, the Attorney
23 General or other appropriate prosecutorial authority shall promptly
24 notify the Medicaid Inspector General. The Attorney General or the
25 prosecutorial authority shall inform the Medicaid Inspector General
26 as to whether an investigation is ongoing with regard to any matter
27 so referred. The Medicaid Inspector General shall preserve the
28 confidentiality of the existence of any ongoing criminal
29 investigation.
- 30 (a) If the Attorney General or the prosecutorial authority decides
31 not to investigate or act upon the matter referred, the Inspector
32 General is authorized to continue an investigation after the receipt
33 of such a notice.
- 34 (b) Upon the completion of an investigation or, in a case in
35 which the investigation leads to prosecution, upon completion of
36 the prosecution, the Attorney General or the prosecutorial authority
37 shall report promptly the findings and results to the Medicaid
38 Inspector General. In the course of informing the Medicaid
39 Inspector General, the Attorney General or prosecutorial authority
40 shall give full consideration to the authority, duties, functions, and
41 responsibilities of the Medicaid Inspector General, the public
42 interest in disclosure, and the need for protecting the confidentiality
43 of complainants and informants.
- 44 (c) The Medicaid Inspector General shall maintain a record of
45 all matters referred and the responses received and shall be
46 authorized to disclose information received as appropriate and as
47 may be necessary to resolve the matter referred, to the extent
48 consistent with the public interest in disclosure and the need for

1 protecting the confidentiality of complainants and informants and
2 preserving the confidentiality of ongoing criminal investigations.

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

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

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

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

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

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

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

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

37 d. As it relates to recovering improperly expended Medicaid
38 funds, imposing administrative sanctions, damages or penalties,
39 negotiating settlements ¹,¹ and developing an effective third-party
40 liability program ¹to assure that all private or other governmental
41 medical resources have been exhausted before a claim is paid by
42 Medicaid or that reimbursement is sought when there is discovered
43 a liable third party after payment of a claim ¹, the functions, duties,
44 powers, and responsibilities of the Medicaid Inspector General shall
45 include, but not be limited to, the following:

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

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

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

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

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

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

28
29 6. (New section) a. In addition to the authority otherwise
30 provided by this act, the Medicaid Inspector General is authorized
31 to request, and shall be entitled to receive, such information,
32 assistance, and cooperation from any federal, State, or local
33 government department, board, bureau, commission, or other
34 agency or unit thereof, as may be necessary to carry out his duties
35 and responsibilities pursuant to this act.

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

42
43 7. (New section) a. The Medicaid audit, program integrity,
44 fraud and abuse prevention and recovery functions, all officers and
45 employees that the Medicaid Inspector General deems qualified and
46 substantially engaged therein, and any documents and records that
47 the Medicaid Inspector General deems necessary and related to the
48 transfer of such functions and personnel, shall be transferred to the

1 Office of the Medicaid Inspector General from the Medicaid Office
2 of Program Integrity Unit ¹and the Third Party Liability Unit¹ in the
3 Division of Medical Assistance and Health Services, the Division of
4 Disability Services, the Division of Developmental Disabilities, the
5 Division of Mental Health Services, the Division of Youth and
6 Family Services, the Division of Child Behavioral Health Services,
7 ¹the Department of Health and Senior Services¹ and the Department
8 of the Treasury. The Medicaid Inspector General shall consult with
9 the head of each department or agency from which such function is
10 to be transferred to determine the officers and employees to be
11 transferred.

12 b. The Medicaid Inspector General shall have general
13 managerial control over the office and shall establish the
14 organizational structure of the office as the ³~~he~~ Medicaid
15 Inspector General³ deems appropriate to carry out the
16 responsibilities and functions of the office. Within the limits of
17 funds appropriated therefor, the Medicaid Inspector General may
18 hire such employees in the unclassified service as are necessary to
19 administer the office. These employees shall serve at the pleasure
20 of the Medicaid Inspector General. Subject to the availability of
21 appropriations, the Medicaid Inspector General may obtain the
22 services of certified public accountants, qualified management
23 consultants, professional auditors, or other professionals necessary
24 to independently perform the functions of the office.

25
26 8. (New section) a. The Medicaid Inspector General shall
27 report the findings of audits, investigations, and reviews performed
28 by the office, and issue recommendations for corrective or remedial
29 action, to the Governor, the President of the Senate and the Speaker
30 of the General Assembly, and the entity at issue. The Medicaid
31 Inspector General shall monitor the implementation of those
32 recommendations.

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

37
38 9. (New section) a. The Medicaid Inspector General shall not
39 publicly disclose information that is specifically prohibited from
40 disclosure by any provision of federal or State law.

41 b. Whenever a person requests access to a government record
42 that the Medicaid Inspector General obtained from another public
43 agency during the course of an investigation, which record was
44 open for public inspection, examination or copying before the
45 investigation commenced, the public agency from which the
46 Medicaid Inspector General obtained the record shall comply with
47 the request if made pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.)
48 and P.L.2001, c.404 (C.47:1A-5 et al.), provided that the request

1 does not in any way identify the record sought by means of a
2 reference to the Medicaid Inspector General's investigation or to an
3 investigation by any other public agency, including, but not limited
4 to, a reference to a subpoena issued pursuant to such investigation.
5

6 10. (New section) a. There is established the "Medicaid Fraud
7 Control Fund" as a nonlapsing, revolving fund in the Department of
8 the Treasury. The fund shall be comprised of monies credited or
9 accruing to the fund pursuant to this ~~'[subsection]~~ section¹.

10 b. ~~'[The]~~ Beginning with the fiscal year commencing July 1,
11 2007, the¹ State Treasurer shall deposit 25% of the 'State share of'
12 monies recovered pursuant to subsection d. of section 5 of this act
13 into the fund, to be used solely for the purposes of subsection c. of
14 this section. Monies credited to the fund may be invested in the
15 same manner as assets of the General Fund, and any investment
16 earnings on the fund shall accrue to the fund and shall be available
17 subject to the same terms and conditions as other monies in the
18 fund.

19 c. In addition to the annual appropriation provided pursuant to
20 section ~~'[12]~~ 13¹ of this act, the monies deposited into the
21 "Medicaid Fraud Control Fund" shall be utilized by the Medicaid
22 Inspector General and the Medicaid Fraud Control Unit for the
23 exclusive purpose of investigating and prosecuting Medicaid fraud
24 claims.
25

26 '11. (New section) The Medicaid Inspector General may adopt
27 rules and regulations, pursuant to the "Administrative Procedure
28 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to accomplish
29 the objectives and carry out the duties prescribed by this act.¹
30

31 ~~'[11.]~~ 12.¹ Section 1 of P.L.1999, c.162 (C.2C:21-22.1) is
32 amended to read as follows:

33 1. a. As used in this section:

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

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

44 "Runner" means a person who, for a pecuniary benefit, procures
45 or attempts to procure a client, patient or customer at the direction
46 of, request of or in cooperation with a provider whose purpose is to
47 seek to obtain benefits under a contract of insurance or assert a

1 claim against an insured or an insurance carrier for providing
2 services to the client, patient or customer, or to obtain benefits
3 under or assert a claim against a State or federal health care benefits
4 program or prescription drug assistance program. "Runner" shall
5 not include a person who procures or attempts to procure clients,
6 patients or customers for a provider through public media or a
7 person who refers clients, patients or customers to a provider as
8 otherwise authorized by law.

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

12 c. Notwithstanding the provisions of subsection e. of
13 N.J.S.2C:44-1, the court shall deal with a person who has been
14 convicted of a violation of this section by imposing a sentence of
15 imprisonment unless, having regard to the character and condition
16 of the person, the court is of the opinion that imprisonment would
17 be a serious injustice which overrides the need to deter such
18 conduct by others. If the court imposes a noncustodial or
19 probationary sentence, such sentence shall not become final for 10
20 days in order to permit the appeal of such sentence by the
21 prosecution. Nothing in this section shall preclude an indictment
22 and conviction for any other offense defined by the laws of this
23 State.

24 (cf: P.L.1999, c.162, s.1)

25
26 ¹~~12.~~ 13.¹ (New section) ¹~~There is appropriated \$3,000,000~~
27 ~~from the General Fund to the Office of the Medicaid Inspector~~
28 ~~General to effectuate the purposes of this act. In the~~ For each¹
29 fiscal year ¹~~next following~~ beginning after¹ the fiscal year in
30 which this act takes effect, ¹~~and in each succeeding fiscal year,~~¹
31 the Governor shall recommend and the Legislature shall appropriate
32 at least \$3,000,000 from the General Fund to the Office of the
33 Medicaid Inspector General to effectuate the purposes of this act.

34
35 ¹14. a. The Medicaid Inspector General or the designated
36 nominee therefore shall prepare and submit to the Director of the
37 Division of Budget and Accounting in the Department of the
38 Treasury a written plan, prepared in consultation with the
39 Commissioners of the Departments of Human Services and Health
40 and Senior Services, setting forth the transition and operation plan
41 for the Office of the Medicaid Inspector General.

42 b. There is appropriated from the General Fund an amount not to
43 exceed \$3,000,000, subject to the approval by the Director of the
44 Division of Budget and Accounting, to the Office of the Medicaid
45 Inspector General in the ³~~Department of Human Services~~ Office
46 of the Inspector General³, for deposit in the Medicaid Fraud Control

1 Fund, after submission of the written plan for the Office of the
2 Medicaid Inspector General.¹

3

4 ¹~~[13.]~~ 15.¹ This act shall take effect immediately ²provided
5 however that sections 1 and 2 and sections 6 through 13 shall
6 remain inoperative until the earlier of the date of the approval of the
7 transition and operation plan submitted pursuant to subsection a. of
8 section 14 of this act or June 30, 2007².

9

10

11

12

13 “Medicaid Program Integrity and Protection Act”; establishes
14 Office of Medicaid Inspector General; appropriates \$3 million.

SENATE, No. 1852

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED MAY 11, 2006

Sponsored by:

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

Senator LEONARD LANCE

District 23 (Warren and Hunterdon)

SYNOPSIS

“Medicaid Program Integrity and Protection Act”; establishes Office of Medicaid Inspector General; appropriates \$3 million.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing an Office of the Medicaid Inspector General,
2 supplementing Title 30 of the Revised Statutes, amending
3 P.L.1999, c.162, and making an appropriation.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) This act shall be known and may be cited as
9 the “Medicaid Program Integrity and Protection Act.”
10

11 2. (New section) The Legislature finds and declares that:

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

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

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

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

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

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

38 g. The current efforts to control Medicaid fraud, waste, and
39 abuse in New Jersey range from investigating providers before they
40 enroll in the Medicaid program, to removing providers from the
41 program when it is determined that there are clear patient safety
42 issues, and to identifying fraud, waste, and abuse on the part of both
43 providers and recipients;

44 h. Changes in federal and State law, as well as in the health care
45 industry and in available technology, suggest that it is time for a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 comprehensive review of the Medicaid fraud, waste, and abuse
2 control infrastructure in this State;

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

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

17

18 3. (New section) As used in this act:

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

25 "Department" means the Department of Human Services.

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

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

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

37 "Medicaid Fraud Control Unit" means the Medicaid Fraud
38 Control Unit in the Department of Law and Public Safety.

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

41

42 4. (New section) a. (1) There is established the Office of
43 Medicaid Inspector General in the Executive Branch of the State
44 Government. For the purposes of complying with Article V,
45 Section IV, paragraph 1 of the New Jersey Constitution, the office
46 is allocated within the Department of Human Services; however,
47 notwithstanding the allocation, the office shall be independent of

1 any supervision or control by the department, or a division, office
2 or officer thereof, in the performance of its duties.

3 (2) The office shall undertake and be responsible for the duties
4 of the department as the lead State agency for Medicaid program
5 integrity, including, but not limited to: the detection, prevention,
6 and investigation of fraud and abuse; the recovery of improperly
7 expended Medicaid funds; enforcement; audit; quality review;
8 compliance; referral of criminal prosecutions; investigation; and
9 technology.

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

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

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

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

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

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

47 (5) A vacancy in the position of Medicaid Inspector General due
48 to a cause other than the expiration of the term shall be filled for the

1 unexpired term only in the same manner as the original
2 appointment.

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

7

8 5. (New section) a. The Medicaid Inspector General shall have
9 the following general functions, duties, powers, and responsibilities:

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

15 (2) To conduct and supervise all State government activities
16 relating to Medicaid integrity, fraud, and abuse;

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

25 (4) To coordinate activities to prevent, detect, and investigate
26 Medicaid fraud and abuse among the following: the Departments of
27 Human Services, Health and Senior Services, Education, Treasury,
28 and Military and Veterans Affairs; the fiscal agent employed to
29 operate the Medicaid management information system; local
30 governments and entities; the Medicaid Fraud Control Unit; and the
31 special investigative unit maintained by each health insurer
32 providing a Medicaid managed care plan within the State;

33 (5) To apply for and receive federal grants and monies;

34 (6) To enter into applicable federal pilot programs and
35 demonstration projects and apply for necessary federal waivers;

36 (7) To adopt rules and regulations relating to Medicaid integrity,
37 fraud, and abuse pursuant to the "Administrative Procedure Act,"
38 P.L.1968, c.410 (C.52:14B-1 et seq.);

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

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

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

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

6 (1) To establish, in consultation with the Medicaid Fraud Unit,
7 guidelines under which the withholding of payments or exclusion
8 from Medicaid may be imposed on a provider or shall automatically
9 be imposed on a provider;

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

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

18 (4) To work with the fiscal agent employed to operate the
19 Medicaid management information system to optimize the system
20 in furtherance of the mission of the office;

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

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

26 (7) To compel the fiscal agent employed by the State to operate
27 the Medicaid management information system to cross-reference
28 eligibility information for all programs for which Medicaid funds
29 are expended with the federal list of fugitive felons.

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

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

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

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

45 (a) keeping detailed records for cases processed by the State
46 Inspector General and the Attorney General. The records shall
47 include: information on the total number of cases processed and,
48 for each case, the agency and division to which the case is referred

1 for investigation; the date on which the case is referred; and the
2 nature of the suspected fraud, waste, or abuse; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 d. As it relates to recovering improperly expended Medicaid
33 funds, imposing administrative sanctions, damages or penalties,
34 negotiating settlements and developing an effective third-party
35 liability program, the functions, duties, powers, and responsibilities
36 of the Medicaid Inspector General shall include, but not be limited
37 to, the following:

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

41 (2) To pursue civil and administrative enforcement actions
42 against those who engage in fraud, abuse, or illegal acts perpetrated
43 within Medicaid, including providers, contractors, agents,
44 recipients, individuals, or other entities involved directly or
45 indirectly with the provision of Medicaid care, services, and
46 supplies. These civil and administrative enforcement actions shall
47 include the imposition of administrative sanctions, penalties,
48 suspension of fraudulent, abusive, or illegal payments, and actions

1 for civil recovery and seizure of property or other assets connected
2 with such payments;

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

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

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

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

20

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

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

34

35 7. (New section) a. The Medicaid audit, program integrity,
36 fraud and abuse prevention and recovery functions, all officers and
37 employees that the Medicaid Inspector General deems qualified and
38 substantially engaged therein, and any documents and records that
39 the Medicaid Inspector General deems necessary and related to the
40 transfer of such functions and personnel, shall be transferred to the
41 Office of the Medicaid Inspector General from the Medicaid Office
42 of Program Integrity Unit in the Division of Medical Assistance and
43 Health Services, the Division of Disability Services, the Division of
44 Developmental Disabilities, the Division of Mental Health Services,
45 the Division of Youth and Family Services, the Division of Child
46 Behavioral Health Services, and the Department of the Treasury.
47 The Medicaid Inspector General shall consult with the head of each

1 department or agency from which such function is to be transferred
2 to determine the officers and employees to be transferred.

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

16

17 8. (New section) a. The Medicaid Inspector General shall
18 report the findings of audits, investigations, and reviews performed
19 by the office, and issue recommendations for corrective or remedial
20 action, to the Governor, the President of the Senate and the Speaker
21 of the General Assembly, and the entity at issue. The Medicaid
22 Inspector General shall monitor the implementation of those
23 recommendations.

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

28

29 9. (New section) a. The Medicaid Inspector General shall not
30 publicly disclose information that is specifically prohibited from
31 disclosure by any provision of federal or State law.

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

44

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

1 b. The State Treasurer shall deposit 25% of the monies
2 recovered pursuant to subsection d. of section 5 of this act into the
3 fund, to be used solely for the purposes of subsection c. of this
4 section. Monies credited to the fund may be invested in the same
5 manner as assets of the General Fund, and any investment earnings
6 on the fund shall accrue to the fund and shall be available subject to
7 the same terms and conditions as other monies in the fund.

8 c. In addition to the annual appropriation provided pursuant to
9 section 12 of this act, the monies deposited into the "Medicaid
10 Fraud Control Fund" shall be utilized by the Medicaid Inspector
11 General and the Medicaid Fraud Control Unit for the exclusive
12 purpose of investigating and prosecuting Medicaid fraud claims.

13
14 11. Section 1 of P.L.1999, c.162 (C.2C:21-22.1) is amended to
15 read as follows:

16 1. a. As used in this section:

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

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

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

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

42 c. Notwithstanding the provisions of subsection e. of
43 N.J.S.2C:44-1, the court shall deal with a person who has been
44 convicted of a violation of this section by imposing a sentence of
45 imprisonment unless, having regard to the character and condition
46 of the person, the court is of the opinion that imprisonment would
47 be a serious injustice which overrides the need to deter such
48 conduct by others. If the court imposes a noncustodial or

1 probationary sentence, such sentence shall not become final for 10
2 days in order to permit the appeal of such sentence by the
3 prosecution. Nothing in this section shall preclude an indictment
4 and conviction for any other offense defined by the laws of this
5 State.

6 (cf: P.L.1999, c.162, s.1)

7
8 12. (New section) There is appropriated \$3,000,000 from the
9 General Fund to the Office of the Medicaid Inspector General to
10 effectuate the purposes of this act. In the fiscal year next following
11 the fiscal year in which this act takes effect, and in each succeeding
12 fiscal year, the Governor shall recommend and the Legislature shall
13 appropriate at least \$3,000,000 from the General Fund to the Office
14 of the Medicaid Inspector General to effectuate the purposes of this
15 act.

16
17 13. This act shall take effect immediately.

18
19
20 STATEMENT

21
22 This bill, which is designated the "Medicaid Program Integrity
23 and Protection Act," establishes the Office of Medicaid Inspector
24 General in the Executive Branch of the State Government. For the
25 purposes of complying with Article V, Section IV, paragraph 1 of
26 the New Jersey Constitution, the office is allocated within the
27 Department of Human Services (DHS); however, notwithstanding
28 the allocation, the office is to be independent of any supervision or
29 control by DHS, or a division, office or officer thereof, in the
30 performance of its duties.

31 The bill provides specifically as follows:

- 32 • The office is to undertake and be responsible for the duties of
33 DHS as the lead State agency for Medicaid program integrity,
34 including, but not limited to: the detection, prevention, and
35 investigation of fraud and abuse; the recovery of improperly
36 expended Medicaid funds; enforcement; audit; quality review;
37 compliance; referral of criminal prosecutions; investigation; and
38 technology.
- 39 • The office is to be administered by the Medicaid Inspector
40 General, who is to be an attorney, licensed to practice law in a
41 jurisdiction in the United States, and to be selected without regard
42 to political affiliation and on the basis of capacity for effectively
43 carrying out the duties of the office.

44 -- No former or current executive or manager of any program or
45 agency subject to oversight by the office may be appointed
46 Medicaid Inspector General within two years of that individual's
47 period of service with such program or agency.

1 -- The Medicaid Inspector General is to be appointed by the
2 Governor with the advice and consent of the Senate and is to serve
3 for a term of five years and until a successor is appointed and
4 assumes the position.

5 -- The Medicaid Inspector General is to appoint a First Assistant
6 Medicaid Inspector General to assist in the performance of the
7 duties of the office.

8 -- The Medicaid Inspector General is to function independently
9 within DHS with respect to the operations of the office, including
10 the performance of investigations and issuance of findings and
11 recommendations.

12 • The Medicaid Inspector General is generally authorized to:

13 -- conduct and supervise all State government activities relating
14 to Medicaid integrity, fraud, and abuse;

15 -- call upon any department, office, division, or agency of State
16 government to provide such information, resources, or other
17 assistance as the Medicaid Inspector General deems necessary to
18 discharge the duties and functions and to fulfill the responsibilities
19 of the Medicaid Inspector General;

20 -- coordinate activities to prevent, detect, and investigate
21 Medicaid fraud and abuse among the following: DHS; the
22 Departments of Health and Senior Services, Education, Treasury,
23 and Military and Veterans Affairs; the fiscal agent employed to
24 operate the Medicaid management information system; local
25 governments and entities; the Medicaid Fraud Control Unit; and the
26 special investigative unit maintained by each health insurer
27 providing a Medicaid managed care plan within the State; and

28 -- recommend and implement policies relating to Medicaid
29 integrity, fraud, and abuse, and monitor the implementation of any
30 recommendations made by the office to other agencies or entities
31 responsible for the administration of Medicaid.

32 • The Medicaid Inspector General is accorded specific powers and
33 responsibilities that are enumerated under the bill for the purposes
34 of:

35 -- ensuring compliance with applicable Medicaid standards and
36 requirements, identifying and reducing fraud and abuse, and
37 improving the efficiency and effectiveness of Medicaid;

38 -- investigating allegations of Medicaid fraud and abuse and
39 enforcing applicable laws, rules, regulations, and standards; and

40 -- recovering improperly expended Medicaid funds, imposing
41 administrative sanctions, damages or penalties, negotiating
42 settlements and developing an effective third-party liability
43 program.

44 • In addition to the authority otherwise provided by the bill, the
45 Medicaid Inspector General is authorized to request, and is
46 entitled to receive, such information, assistance, and cooperation
47 from any federal, State, or local government department, board,
48 bureau, commission, or other agency or unit thereof, as may be

- 1 necessary to carry out the duties and responsibilities of the
2 Medicaid Inspector General.
- 3 • The Medicaid audit, program integrity, fraud and abuse
4 prevention and recovery functions, all officers and employees that
5 the Medicaid Inspector General deems qualified and substantially
6 engaged therein, and any documents and records that the
7 Medicaid Inspector General deems necessary and related to the
8 transfer of such functions and personnel, are to be transferred to
9 the Office of the Medicaid Inspector General from the Medicaid
10 Office of Program Integrity Unit in the Division of Medical
11 Assistance and Health Services, the Division of Disability
12 Services, the Division of Developmental Disabilities, the Division
13 of Mental Health Services, the Division of Youth and Family
14 Services, the Division of Child Behavioral Health Services, and
15 the Department of the Treasury.
 - 16 • The Medicaid Inspector General is to have general managerial
17 control over the office and establish the organizational structure
18 of the office as he deems appropriate to carry out the
19 responsibilities and functions of the office.
 - 20 • The Medicaid Inspector General is to:
 - 21 -- report the findings of audits, investigations, and reviews
22 performed by the office, and issue recommendations for corrective
23 or remedial action, to the Governor, the President of the Senate and
24 the Speaker of the General Assembly, and the entity at issue; and
 - 25 -- provide periodic reports to the Governor and the Legislature,
26 which are to be available to the public.
 - 27 • The bill establishes a “Medicaid Fraud Control Fund” as a
28 nonlapsing, revolving fund in the Department of the Treasury and
29 directs the State Treasurer to deposit 25% of the monies
30 recovered pursuant to the bill into the fund, which are to be
31 utilized by the Medicaid Inspector General and the Medicaid
32 Fraud Unit for the exclusive purpose of investigating and
33 prosecuting Medicaid fraud claims.
 - 34 • The bill appropriates \$3 million from the General Fund to the
35 Office of the Medicaid Inspector General to effectuate the
36 purposes of the bill and provides that, in each succeeding fiscal
37 year, at least \$3 million is to be appropriated from the General
38 Fund to the office for that purpose.
 - 39 • Finally, the bill amends N.J.S.A.2C:21-22.1 to expand the
40 definition of “runner” in that statute to include “a person who, for
41 a pecuniary benefit, procures or attempts to procure a client,
42 patient or customer at the direction of, request of or in
43 cooperation with a provider whose purpose is to seek to obtain
44 benefits under . . . or assert a claim against a State or federal
45 health care benefits program or prescription drug assistance
46 program.” The statute makes it a crime of the third degree
47 (punishable by imprisonment for a term of three to five years or a
48 fine of up to \$15,000, or both) for a person to knowingly act as a

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15

1 runner or use, solicit, direct, hire, or employ another to act as a
2 runner.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1852

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2006

The Assembly Appropriations Committee reports favorably Senate Bill No. 1852 (1R), with committee amendments.

This bill, as amended, is designated the “Medicaid Program Integrity and Protection Act” and establishes the Office of Medicaid Inspector General in the Executive Branch of the State Government. For the purposes of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution, the office is allocated within the Department of Human Services (DHS); however, notwithstanding the allocation, the office is to be independent of any supervision or control by DHS, or a division, office or officer thereof, in the performance of its duties.

The bill provides specifically as follows:

- The office is to undertake and be responsible for the duties of DHS as the State office for Medicaid program integrity, 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; and oversight of information technology relating to Medicaid fraud and abuse.
- The office is to be administered by the Medicaid Inspector General, who is to be an attorney, licensed to practice law in a jurisdiction in the United States, and to be selected without regard to political affiliation and on the basis of capacity for effectively carrying out the duties of 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.

-- The Medicaid Inspector General is to be appointed by the Governor with the advice and consent of the Senate and is to serve for a term of five years and until a successor is appointed and assumes the position.

-- The Medicaid Inspector General is to appoint a First Assistant Medicaid Inspector General to assist in the performance of the duties of the office.

-- The Medicaid Inspector General is to function independently within DHS with respect to the operations of the office, including the performance of investigations and issuance of findings and recommendations.

- The Medicaid Inspector General is generally authorized to:

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

- 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;

- coordinate activities to prevent, detect, and investigate Medicaid fraud and abuse among the following: DHS; the Departments of 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; and

- 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.

- The Medicaid Inspector General is accorded specific powers and responsibilities that are enumerated under the bill for the purposes of:

- ensuring compliance with applicable Medicaid standards and requirements, identifying and reducing fraud and abuse, and improving the efficiency and effectiveness of Medicaid;

- investigating allegations of Medicaid fraud and abuse and enforcing applicable laws, rules, regulations, and standards; and

- recovering improperly expended Medicaid funds, imposing administrative sanctions, damages or penalties, negotiating settlements and developing an effective third-party liability program.

- In addition to the authority otherwise provided by the bill, the Medicaid Inspector General is authorized to request, and is 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 the duties and responsibilities of the Medicaid Inspector General.

- 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, are to 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 is to have general managerial control over the office and establish the organizational structure of the office as he deems appropriate to carry out the responsibilities and functions of the office.
- The Medicaid Inspector General is to:
 - 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; and
 - provide periodic reports to the Governor and the Legislature, which are to be available to the public.
- The bill establishes a “Medicaid Fraud Control Fund” as a nonlapsing, revolving fund in the Department of the Treasury and directs the State Treasurer to deposit 25% of the state share of monies recovered pursuant to the bill into the fund, which are to be utilized by the Medicaid Inspector General and the Medicaid Fraud Unit for the exclusive purpose of investigating and prosecuting Medicaid fraud claims.
- The bill appropriates an amount not to exceed up to \$3 million from the General Fund to the Office of the Medicaid Inspector General, after the filing of a written transition plan for the office, to effectuate the purposes of the bill and provides that, in each succeeding fiscal year, at least \$3 million is to be appropriated from the General Fund to the office for that purpose.
- Finally, the bill amends N.J.S.A.2C:21-22.1 to expand the definition of “runner” in that statute to include “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 . . . or assert a claim against a State or federal health care benefits program or prescription drug assistance program.” The statute makes it a crime of the third degree (punishable by imprisonment for a term of three to five years or a fine of up to \$15,000, or both) for a person to knowingly act as a runner or use, solicit, direct, hire, or employ another to act as a runner.

As amended and reported, this bill is identical to Assembly Bill No. 3381, as also amended and reported by the committee.

FISCAL IMPACT:

The bill makes a contingent appropriation from the General Fund of an amount not to exceed \$3 million subject to the approval of the Director of the Division of Budget and Accounting after the filing of a written transition and operation plan for the office.

COMMITTEE AMENDMENTS:

The amendments delete language that would have interfered with the designation of the Department of Human Services as the “single state agency” for Medicaid administration, which is required by federal law.

The amendments delete certain information technology oversight powers of the Medicaid Inspector General, to allow the department to continue information technology contract administration.

The amendments delete language that might otherwise have interfered with the authority of the Office of the Attorney General.

The amendments change the effective date provisions of the bill, in the interests of allowing an orderly transition to the Office of Medicaid Inspector General, by delaying the implementation of the administrative provisions of the bill until the later of: 1) the approval of the Medicaid Inspector General’s transition and operation plan, or 2) June 30, 2007.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1852

with Committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2006

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1852, with committee amendments.

This bill, which is designated the “Medicaid Program Integrity and Protection Act,” establishes the Office of Medicaid Inspector General in the Executive Branch of the State Government. For the purposes of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution, the office is allocated within the Department of Human Services (DHS); however, notwithstanding the allocation, the office is to be independent of any supervision or control by DHS, or a division, office or officer thereof, in the performance of its duties.

The bill provides specifically as follows:

- The office is to undertake and be responsible for the duties of DHS as the single State office for Medicaid program integrity, 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; and oversight of information technology relating to Medicaid fraud and abuse.
- The office is to be administered by the Medicaid Inspector General, who is to be an attorney, licensed to practice law in a jurisdiction in the United States, and to be selected without regard to political affiliation and on the basis of capacity for effectively carrying out the duties of 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.

-- The Medicaid Inspector General is to be appointed by the Governor with the advice and consent of the Senate and is to serve for a term of five years and until a successor is appointed and assumes the position.

-- The Medicaid Inspector General is to appoint a First Assistant Medicaid Inspector General to assist in the performance of the duties of the office.

-- The Medicaid Inspector General is to function independently within DHS with respect to the operations of the office, including the performance of investigations and issuance of findings and recommendations.

- The Medicaid Inspector General is generally authorized to:

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

- 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;

- coordinate activities to prevent, detect, and investigate Medicaid fraud and abuse among the following: DHS; the Departments of Health and Senior Services, Education, and Treasury, the fiscal agent employed to operate the Medicaid management information system; local governments and entities; 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; and

- 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.

- The Medicaid Inspector General is accorded specific powers and responsibilities that are enumerated under the bill for the purposes of:

- ensuring compliance with applicable Medicaid standards and requirements, identifying and reducing fraud and abuse, and improving the efficiency and effectiveness of Medicaid;

- investigating allegations of Medicaid fraud and abuse and enforcing applicable laws, rules, regulations, and standards; and

- recovering improperly expended Medicaid funds, imposing administrative sanctions, damages or penalties, negotiating settlements and developing an effective third-party liability program.

- In addition to the authority otherwise provided by the bill, the Medicaid Inspector General is authorized to request, and is 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 the duties and responsibilities of the Medicaid Inspector General.

- 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, are to 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 is to have general managerial control over the office and establish the organizational structure of the office as he deems appropriate to carry out the responsibilities and functions of the office.
- The Medicaid Inspector General is to:
 - 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; and
 - provide periodic reports to the Governor and the Legislature, which are to be available to the public.
- The bill establishes a “Medicaid Fraud Control Fund” as a nonlapsing, revolving fund in the Department of the Treasury and directs the State Treasurer to deposit 25% of the state share of monies recovered pursuant to the bill into the fund, which are to be utilized by the Medicaid Inspector General and the Medicaid Fraud Unit for the exclusive purpose of investigating and prosecuting Medicaid fraud claims.
- The bill appropriates an amount not to exceed up to \$3 million from the General Fund to the Office of the Medicaid Inspector General, after the filing of a written transition plan for the office, to effectuate the purposes of the bill and provides that, in each succeeding fiscal year, at least \$3 million is to be appropriated from the General Fund to the office for that purpose.
- Finally, the bill amends N.J.S.A.2C:21-22.1 to expand the definition of “runner” in that statute to include “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 . . . or assert a claim against a State or federal health care benefits program or prescription drug assistance program.” The statute makes it a crime of the third degree (punishable by imprisonment for a term of three to five years or a fine of up to \$15,000, or both) for a person to knowingly act as a runner or use, solicit, direct, hire, or employ another to act as a runner.

COMMITTEE AMENDMENTS:

The committee amendments include provisions that set forth how the Office of Medicaid Inspector General will coordinate

responsibilities with the departments administering the Medicaid program and with the Attorney General. The amendments also authorize the Medicaid Inspector General to appoint and employ a general counsel, and other attorneys or counsel as the Medicaid Inspector General may require. The amendments also require the Medicaid Inspector General in exercising the functions of the office to develop 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 when there is discovered a liable third party after payment of a claim, that reimbursement is sought. The amendments also make the \$3 million appropriation for the office a contingent appropriation of up to \$3 million subject to the approval of the Director of the Division of Budget and Accounting after the filing of a written transition and operation plan for the office.

FISCAL IMPACT:

The bill makes a contingent appropriation from the General Fund of an amount not to exceed \$3 million subject to the approval of the Director of the Division of Budget and Accounting after the filing of a written transition and operation plan for the office.

ASSEMBLY, No. 3381

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 26, 2006

Sponsored by:

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblyman JOSEPH CRYAN

District 20 (Union)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

“Medicaid Program Integrity and Protection Act”; establishes Office of Medicaid Inspector General; appropriates \$3 million.

CURRENT VERSION OF TEXT

As introduced.



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

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) This act shall be known and may be cited as
9 the “Medicaid Program Integrity and Protection Act.”

10
11 2. (New section) The Legislature finds and declares that:

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

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

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

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

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

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

38 g. The current efforts to control Medicaid fraud, waste, and
39 abuse in New Jersey range from investigating providers before they
40 enroll in the Medicaid program, to removing providers from the
41 program when it is determined that there are clear patient safety
42 issues, and to identifying fraud, waste, and abuse on the part of both
43 providers and recipients;

44 h. Changes in federal and State law, as well as in the health
45 care industry and in available technology, suggest that it is time for

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 a comprehensive review of the Medicaid fraud, waste, and abuse
2 control infrastructure in this State;

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

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

17

18 3. (New section) As used in this act:

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

25 "Department" means the Department of Human Services.

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

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

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

37 "Medicaid Fraud Control Unit" means the Medicaid Fraud
38 Control Unit in the Department of Law and Public Safety.

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

41

42 4. (New section) a. (1) There is established the Office of
43 Medicaid Inspector General in the Executive Branch of the State
44 Government. For the purposes of complying with Article V,
45 Section IV, paragraph 1 of the New Jersey Constitution, the office
46 is allocated within the Department of Human Services; however,
47 notwithstanding the allocation, the office shall be independent of

1 any supervision or control by the department, or a division, office
2 or officer thereof, in the performance of its duties.

3 (2) The office shall be the single State office for Medicaid
4 program integrity, including, but not limited to: the detection,
5 prevention, and investigation of fraud and abuse; the recovery of
6 improperly expended Medicaid funds; enforcement; audit; quality
7 review; compliance; referral of criminal prosecutions; investigation;
8 and the oversight of information technology relating to Medicaid
9 fraud and abuse.

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

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

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

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

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

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

47 (5) A vacancy in the position of Medicaid Inspector General due
48 to a cause other than the expiration of the term shall be filled for the

1 unexpired term only in the same manner as the original
2 appointment.

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

7

8 5. (New section) a. The Medicaid Inspector General shall
9 have the following general functions, duties, powers, and
10 responsibilities:

11 (1) To appoint such deputies, directors, assistants, and other
12 officers and employees as may be needed for the office to meet its
13 responsibilities, and to prescribe their duties and fix their
14 compensation in accordance with State law and within the amounts
15 appropriated therefore, which appointments may include,
16 notwithstanding any other law to the contrary, the appointment and
17 employment of a general counsel, and such other attorneys or
18 counsel as the Medicaid Inspector General may require, to provide
19 legal advice on such matters as the Medicaid Inspector General may
20 from time to time require; to attend to and deal with all litigation,
21 controversies, and legal matters in which the Medicaid Inspector
22 General or the Office of the Medicaid Inspector General may be a
23 party or in which its rights and interests may be involved; and, in
24 consultation with the Attorney General, to represent the Medicaid
25 Inspector General or the Office of the Medicaid Inspector General
26 in all proceedings or actions of any kind which may be brought for
27 or against them in any court of this State;

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

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

40 (4) To coordinate activities to prevent, detect, and investigate
41 Medicaid fraud and abuse among the following: the Departments of
42 Human Services, Health and Senior Services, Education, and
43 Treasury, the fiscal agent employed to operate the Medicaid
44 management information system; local governments and entities;
45 the Office of the Attorney General; and the special investigative
46 unit maintained by each health insurer providing a Medicaid
47 managed care plan within the State;

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

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

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

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

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

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

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

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

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

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

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

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

46 c. As it relates to investigating allegations of Medicaid fraud
47 and abuse and enforcing applicable laws, rules, regulations, and
48 standards, the functions, duties, powers, and responsibilities of the

1 Medicaid Inspector General shall include, but not be limited to, the
2 following:

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

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

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

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

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

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

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

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

44 (b) Upon the completion of an investigation or, in a case in
45 which the investigation leads to prosecution, upon completion of
46 the prosecution, the Attorney General or the prosecutorial authority
47 shall report promptly the findings and results to the Medicaid
48 Inspector General. In the course of informing the Medicaid

1 Inspector General, the Attorney General or prosecutorial authority
2 shall give full consideration to the authority, duties, functions, and
3 responsibilities of the Medicaid Inspector General, the public
4 interest in disclosure, and the need for protecting the confidentiality
5 of complainants and informants.

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

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

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

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

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

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

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

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

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

47 d. As it relates to recovering improperly expended Medicaid
48 funds, imposing administrative sanctions, damages or penalties,

1 negotiating settlements, and developing an effective third-party
2 liability program to assure that all private or other governmental
3 medical resources have been exhausted before a claim is paid by
4 Medicaid or that reimbursement is sought when there is discovered
5 a liable third party after payment of a claim, the functions, duties,
6 powers, and responsibilities of the Medicaid Inspector General shall
7 include, but not be limited to, the following:

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

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

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

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

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

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

38
39 6. (New section) a. In addition to the authority otherwise
40 provided by this act, the Medicaid Inspector General is authorized
41 to request, and shall be entitled to receive, such information,
42 assistance, and cooperation from any federal, State, or local
43 government department, board, bureau, commission, or other
44 agency or unit thereof, as may be necessary to carry out his duties
45 and responsibilities pursuant to this act.

46 b. Upon the request of a prosecutor of competent jurisdiction,
47 the office, department, any other State or local government entity,
48 and the Medicaid Fraud Control Unit shall provide the prosecutor

1 with information, data, assistance, staff, and other resources as shall
2 be necessary, appropriate and available to aid and facilitate the
3 investigation and prosecution of Medicaid fraud.

4
5 7. (New section) a. The Medicaid audit, program integrity,
6 fraud and abuse prevention and recovery functions, all officers and
7 employees that the Medicaid Inspector General deems qualified and
8 substantially engaged therein, and any documents and records that
9 the Medicaid Inspector General deems necessary and related to the
10 transfer of such functions and personnel, shall be transferred to the
11 Office of the Medicaid Inspector General from the Medicaid Office
12 of Program Integrity Unit and the Third Party Liability Unit in the
13 Division of Medical Assistance and Health Services, the Division of
14 Disability Services, the Division of Developmental Disabilities, the
15 Division of Mental Health Services, the Division of Youth and
16 Family Services, the Division of Child Behavioral Health Services,
17 the Department of Health and Senior Services and the Department
18 of the Treasury. The Medicaid Inspector General shall consult with
19 the head of each department or agency from which such function is
20 to be transferred to determine the officers and employees to be
21 transferred.

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

35
36 8. (New section) a. The Medicaid Inspector General shall
37 report the findings of audits, investigations, and reviews performed
38 by the office, and issue recommendations for corrective or remedial
39 action, to the Governor, the President of the Senate and the Speaker
40 of the General Assembly, and the entity at issue. The Medicaid
41 Inspector General shall monitor the implementation of those
42 recommendations.

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

1 9. (New section) a. The Medicaid Inspector General shall not
2 publicly disclose information that is specifically prohibited from
3 disclosure by any provision of federal or State law.

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

16
17 10. (New section) a. There is established the "Medicaid Fraud
18 Control Fund" as a nonlapsing, revolving fund in the Department of
19 the Treasury. The fund shall be comprised of monies credited or
20 accruing to the fund pursuant to this section.

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

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

34
35 11. (New section) The Medicaid Inspector General may adopt
36 rules and regulations, pursuant to the "Administrative Procedure
37 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to accomplish
38 the objectives and carry out the duties prescribed by this act.

39
40 12. Section 1 of P.L.1999, c.162 (C.2C:21-22.1) is amended to
41 read as follows:

42 1. a. As used in this section:

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

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

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

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

21 c. Notwithstanding the provisions of subsection e. of
22 N.J.S.2C:44-1, the court shall deal with a person who has been
23 convicted of a violation of this section by imposing a sentence of
24 imprisonment unless, having regard to the character and condition
25 of the person, the court is of the opinion that imprisonment would
26 be a serious injustice which overrides the need to deter such
27 conduct by others. If the court imposes a noncustodial or
28 probationary sentence, such sentence shall not become final for 10
29 days in order to permit the appeal of such sentence by the
30 prosecution. Nothing in this section shall preclude an indictment
31 and conviction for any other offense defined by the laws of this
32 State.

33 (cf: P.L.1999, c.162, s.1)

34
35 13. (New section) For each fiscal year beginning after the fiscal
36 year in which this act takes effect, the Governor shall recommend
37 and the Legislature shall appropriate at least \$3,000,000 from the
38 General Fund to the Office of the Medicaid Inspector General to
39 effectuate the purposes of this act.

40
41 14. a. The Medicaid Inspector General or the designated
42 nominee therefore shall prepare and submit to the Director of the
43 Division of Budget and Accounting in the Department of the
44 Treasury a written plan, prepared in consultation with the
45 Commissioners of the Departments of Human Services and Health
46 and Senior Services, setting forth the transition and operation plan
47 for the Office of the Medicaid Inspector General.

- 1 the performance of investigations and issuance of findings and
2 recommendations.
- 3 • The Medicaid Inspector General is generally authorized to:
 - 4 -- conduct and supervise all State government activities relating
 - 5 to Medicaid integrity, fraud, and abuse except activities of the
 - 6 Medicaid Fraud Control Unit in the Department of Law and Public
 - 7 Safety;
 - 8 -- call upon any department, office, division, or agency of State
 - 9 government to provide such information, resources, or other
 - 10 assistance as the Medicaid Inspector General deems necessary to
 - 11 discharge the duties and functions and to fulfill the responsibilities
 - 12 of the Medicaid Inspector General;
 - 13 -- coordinate activities to prevent, detect, and investigate
 - 14 Medicaid fraud and abuse among the following: DHS; the
 - 15 Departments of Health and Senior Services, Education, and
 - 16 Treasury, the fiscal agent employed to operate the Medicaid
 - 17 management information system; local governments and entities;
 - 18 the Office of the Attorney General and the special investigative unit
 - 19 maintained by each health insurer providing a Medicaid managed
 - 20 care plan within the State; and
 - 21 -- recommend and implement policies relating to Medicaid
 - 22 integrity, fraud, and abuse, and monitor the implementation of any
 - 23 recommendations made by the office to other agencies or entities
 - 24 responsible for the administration of Medicaid.
 - 25 • The Medicaid Inspector General is accorded specific powers and
 - 26 responsibilities that are enumerated under the bill for the purposes
 - 27 of:
 - 28 -- ensuring compliance with applicable Medicaid standards and
 - 29 requirements, identifying and reducing fraud and abuse, and
 - 30 improving the efficiency and effectiveness of Medicaid;
 - 31 -- investigating allegations of Medicaid fraud and abuse and
 - 32 enforcing applicable laws, rules, regulations, and standards; and
 - 33 -- recovering improperly expended Medicaid funds, imposing
 - 34 administrative sanctions, damages or penalties, negotiating
 - 35 settlements and developing an effective third-party liability
 - 36 program.
 - 37 • In addition to the authority otherwise provided by the bill, the
 - 38 Medicaid Inspector General is authorized to request, and is
 - 39 entitled to receive, such information, assistance, and cooperation
 - 40 from any federal, State, or local government department, board,
 - 41 bureau, commission, or other agency or unit thereof, as may be
 - 42 necessary to carry out the duties and responsibilities of the
 - 43 Medicaid Inspector General.
 - 44 • The Medicaid audit, program integrity, fraud and abuse
 - 45 prevention and recovery functions, all officers and employees that
 - 46 the Medicaid Inspector General deems qualified and substantially
 - 47 engaged therein, and any documents and records that the
 - 48 Medicaid Inspector General deems necessary and related to the

- 1 transfer of such functions and personnel, are to be transferred to
2 the Office of the Medicaid Inspector General from the Medicaid
3 Office of Program Integrity Unit and the Third Party Liability
4 Unit in the Division of Medical Assistance and Health Services,
5 the Division of Disability Services, the Division of
6 Developmental Disabilities, the Division of Mental Health
7 Services, the Division of Youth and Family Services, the Division
8 of Child Behavioral Health Services, the Department of Health
9 and Senior Services and the Department of the Treasury.
- 10 • The Medicaid Inspector General is to have general managerial
11 control over the office and establish the organizational structure
12 of the office as he deems appropriate to carry out the
13 responsibilities and functions of the office.
 - 14 • The Medicaid Inspector General is to:
 - 15 -- report the findings of audits, investigations, and reviews
16 performed by the office, and issue recommendations for corrective
17 or remedial action, to the Governor, the President of the Senate and
18 the Speaker of the General Assembly, and the entity at issue; and
 - 19 -- provide periodic reports to the Governor and the Legislature,
20 which are to be available to the public.
 - 21 • The bill establishes a “Medicaid Fraud Control Fund” as a
22 nonlapsing, revolving fund in the Department of the Treasury and
23 directs the State Treasurer to deposit 25% of the state share of
24 monies recovered pursuant to the bill into the fund, which are to
25 be utilized by the Medicaid Inspector General and the Medicaid
26 Fraud Unit for the exclusive purpose of investigating and
27 prosecuting Medicaid fraud claims.
 - 28 • The bill appropriates an amount not to exceed up to \$3 million
29 from the General Fund to the Office of the Medicaid Inspector
30 General, after the filing of a written transition plan for the office,
31 to effectuate the purposes of the bill and provides that, in each
32 succeeding fiscal year, at least \$3 million is to be appropriated
33 from the General Fund to the office for that purpose.
 - 34 • Finally, the bill amends N.J.S.A.2C:21-22.1 to expand the
35 definition of “runner” in that statute to include “a person who, for
36 a pecuniary benefit, procures or attempts to procure a client,
37 patient or customer at the direction of, request of or in
38 cooperation with a provider whose purpose is to seek to obtain
39 benefits under . . . or assert a claim against a State or federal
40 health care benefits program or prescription drug assistance
41 program.” The statute makes it a crime of the third degree
42 (punishable by imprisonment for a term of three to five years or a
43 fine of up to \$15,000, or both) for a person to knowingly act as a
44 runner or use, solicit, direct, hire, or employ another to act as a
45 runner.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3381

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2006

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3381, with committee amendments.

This bill, as amended, is designated the "Medicaid Program Integrity and Protection Act" and establishes the Office of Medicaid Inspector General in the Executive Branch of the State Government. For the purposes of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution, the office is allocated within the Department of Human Services (DHS); however, notwithstanding the allocation, the office is to be independent of any supervision or control by DHS, or a division, office or officer thereof, in the performance of its duties.

The bill provides specifically as follows:

- The office is to undertake and be responsible for the duties of DHS as the State office for Medicaid program integrity, 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; and oversight of information technology relating to Medicaid fraud and abuse.
- The office is to be administered by the Medicaid Inspector General, who is to be an attorney, licensed to practice law in a jurisdiction in the United States, and to be selected without regard to political affiliation and on the basis of capacity for effectively carrying out the duties of 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.

-- The Medicaid Inspector General is to be appointed by the Governor with the advice and consent of the Senate and is to serve for a term of five years and until a successor is appointed and assumes the position.

-- The Medicaid Inspector General is to appoint a First Assistant Medicaid Inspector General to assist in the performance of the duties of the office.

-- The Medicaid Inspector General is to function independently within DHS with respect to the operations of the office, including the performance of investigations and issuance of findings and recommendations.

- The Medicaid Inspector General is generally authorized to:

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

- 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;

- coordinate activities to prevent, detect, and investigate Medicaid fraud and abuse among the following: DHS; the Departments of 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; and

- 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.

- The Medicaid Inspector General is accorded specific powers and responsibilities that are enumerated under the bill for the purposes of:

- ensuring compliance with applicable Medicaid standards and requirements, identifying and reducing fraud and abuse, and improving the efficiency and effectiveness of Medicaid;

- investigating allegations of Medicaid fraud and abuse and enforcing applicable laws, rules, regulations, and standards; and

- recovering improperly expended Medicaid funds, imposing administrative sanctions, damages or penalties, negotiating settlements and developing an effective third-party liability program.

- In addition to the authority otherwise provided by the bill, the Medicaid Inspector General is authorized to request, and is 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 the duties and responsibilities of the Medicaid Inspector General.

- 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, are to 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 is to have general managerial control over the office and establish the organizational structure of the office as he deems appropriate to carry out the responsibilities and functions of the office.
- The Medicaid Inspector General is to:
 - 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; and
 - provide periodic reports to the Governor and the Legislature, which are to be available to the public.
- The bill establishes a “Medicaid Fraud Control Fund” as a nonlapsing, revolving fund in the Department of the Treasury and directs the State Treasurer to deposit 25% of the state share of monies recovered pursuant to the bill into the fund, which are to be utilized by the Medicaid Inspector General and the Medicaid Fraud Unit for the exclusive purpose of investigating and prosecuting Medicaid fraud claims.
- The bill appropriates an amount not to exceed up to \$3 million from the General Fund to the Office of the Medicaid Inspector General, after the filing of a written transition plan for the office, to effectuate the purposes of the bill and provides that, in each succeeding fiscal year, at least \$3 million is to be appropriated from the General Fund to the office for that purpose.
- Finally, the bill amends N.J.S.A.2C:21-22.1 to expand the definition of “runner” in that statute to include “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 . . . or assert a claim against a State or federal health care benefits program or prescription drug assistance program.” The statute makes it a crime of the third degree (punishable by imprisonment for a term of three to five years or a fine of up to \$15,000, or both) for a person to knowingly act as a runner or use, solicit, direct, hire, or employ another to act as a runner.

As amended and reported, this bill is identical to Senate Bill No. 1852 (1R), as also amended and reported by the committee.

FISCAL IMPACT:

The bill makes a contingent appropriation from the General Fund of an amount not to exceed \$3 million subject to the approval of the Director of the Division of Budget and Accounting after the filing of a written transition and operation plan for the office.

COMMITTEE AMENDMENTS:

The amendments delete language that would have interfered with the designation of the Department of Human Services as the “single state agency” for Medicaid administration, which is required by federal law.

The amendments delete certain information technology oversight powers of the Medicaid Inspector General, to allow the department to continue information technology contract administration.

The amendments delete language that might otherwise have interfered with the authority of the Office of the Attorney General.

The amendments change the effective date provisions of the bill, in the interests of allowing an orderly transition to the Office of Medicaid Inspector General, by delaying the implementation of the administrative provisions of the bill until the later of: 1) the approval of the Medicaid Inspector General’s transition and operation plan, or 2) June 30, 2007.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3381
STATE OF NEW JERSEY
212th LEGISLATURE

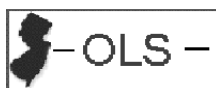
DATED: DECEMBER 18, 2006

SUMMARY

- Synopsis:** “Medicaid Program Integrity and Protection Act”; establishes Office of the Medicaid Inspector General; appropriates \$3 million.
- Type of Impact:** Unable to determine, although it is noted that:
- State and federal administrative expenditures related to Medicaid fraud and abuse activities will increase, and
 - Future Medicaid recoveries will increase, which would reduce the amount of State funds needed to support Medicaid.
- Agencies Affected:** Departments of Children and Families, Health and Senior Services, Human Services and Law and Public Safety. The Administrative Office of the Courts. County welfare agencies.

Office of Legislative Services Estimate

Fiscal Impact	Years 1 – 3
State Cost	Existing State programs involved in Medicaid fraud and abuse activities, and related funding, would be transferred to the Office of Medicaid Inspector General (Office). The legislation also appropriates an amount not to exceed \$3 million in State funds to the Office subject to the submission of a written plan for the Office and approval of the plan by the Division of Budget and Accounting, and requires the Governor to recommend at least \$3 million annually in subsequent years for the Office. A \$3 million State appropriation would generate at least \$3 million in federal funds annually. Thus, at least \$6 million would be available to the Office for administrative operations. Finally, beginning July 1, 2007, (State FY 2008), the Office would retain 25 percent of any Medicaid recoveries to support program operations.
State Revenue	While it is anticipated that the Office will eventually increase recoveries of incorrect or fraudulent payments and reduce health care expenditures through greater cost avoidance, it is not possible to estimate how much additional recoveries and how much additional cost avoidance will be realized, as such increases will involve legal and regulatory actions that may take years to effectuate. As noted above, 25 percent of any Medicaid recoveries would be retained by the Office to support administrative operations.



- As various existing administrative entities involved in Medicaid fraud (and their related funding) are to be transferred to the Office, a \$3.0 million State appropriation, which now draws down up to \$3.0 million in federal Medicaid funds, may be excessive, particularly as it is not known what additional administrative resources the Office may require.
- Though not specifically mentioned in the legislation, it is assumed that the health care expenditures in the NJ FamilyCare and the General Assistance Medical Services programs would be subject to the jurisdiction of the Office.

BILL DESCRIPTION

Assembly Bill No. 3381 of 2006, designated the “Medicaid Program Integrity and Protection Act,” establishes the Office of the Medicaid Inspector General (Office). Though the Office is to be part of the Department of Human Services, the Office is to be independent of any supervision or control by the Department of Human Services.

The Office would be authorized to:

- Conduct and supervise all State government activities relating to Medicaid integrity, fraud and abuse;
- Call upon any agency of State government to provide such information, resources, or other assistance as deemed necessary;
- Coordinate activities to prevent, detect and investigate Medicaid fraud and abuse of all State and local governments involved in the program and the activities of managed care agencies providing services to the Medicaid program; and
- Recommend and implement policies relating to Medicaid integrity, fraud and abuse, and monitor the implementation of any recommendations made by the office by agencies that administer the Medicaid program.

Various existing administrative entities in several departments that are currently involved in Medicaid audits, program integrity, fraud and abuse prevention, and recovery efforts are to be transferred to the Office.

The bill establishes a “Medicaid Fraud Control Fund” in the Department of the Treasury in which 25 percent of the Medicaid monies recovered are to be deposited, beginning July 1, 2007 (State FY 2008). These monies are to be used exclusively for the purpose of investigating and prosecuting Medicaid fraud claims.

The bill appropriates an amount not to exceed \$3.0 million from the General Fund subject to the submission of a written plan for the Office and approval of the plan by the Director of the Division of Budget and Accounting. The bill directs that the Governor recommend, and the Legislature appropriate at least \$3.0 million annually from the General Fund for the Office.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The purpose for establishing the Office is to provide a focal point in the State's efforts to control fraud and abuse in the Medicaid program and to increase recoveries of funds incorrectly expended by the Medicaid program and related health care programs.

The Office of Legislative Services is not able to determine the administrative costs of the Office as it is not known what existing administrative entities will be transferred to the new office or what additional administrative funds will be required to operate the Office.

The Office of Legislative Services is also unable to determine whether an Office would increase Medicaid recoveries and, if so, by how much.

Administrative Costs The bill appropriates an amount not to exceed \$3.0 million to the Office subject to the submission of a written plan and the approval of the plan by the Director of Budget and Accounting, and directs that existing administrative functions related to Medicaid fraud and abuse currently undertaken by various State agencies, and related funding, be transferred to the new Office.

As it is not known what administrative functions would be transferred to the new Office, or the dollar value of the administrative functions to be transferred, the adequacy of the \$3.0 million State appropriation cannot be determined.

Until the Medicaid Inspector General has an opportunity to review the adequacy of the administrative resources being transferred and develop an overall administrative plan regarding the Office's requirements, it may be premature to appropriate \$3.0 million. Also, a \$3.0 million State appropriation may generate up to an additional \$3.0 million in federal Medicaid reimbursements for administrative operations, making up to \$6.0 million available for administration, in addition to the funding from the other administrative units that are transferred to the Office.

Recoveries By centralizing program integrity and fraud and abuse activities in an Office, it is anticipated that Medicaid recoveries will increase and that there will be an increase in "cost avoidance."

Cost Avoidance Though the specific amount the Medicaid program saves through "cost avoidance" is not readily available, the Medicaid program currently saves tens of millions of dollars annually through cost avoidance techniques. Whether the Office can increase the amount Medicaid saves through "cost avoidance" cannot be determined.

Recoveries The State currently reports various types of cost recoveries. Third Party Liability; Probate; Fraud and Abuse; and Other - - to the federal government on a quarterly basis

During federal fiscal years 2003 – 2005, \$37.6 million, \$70.0 million and \$110.4 million, respectively, were reported to the federal government. Preliminary federal FY 2006 data indicate that annualized recoveries will total about \$129.1 million.

Whether the Office is able to increase these type of recoveries from current levels is uncertain; many fraud and abuse cases take years to develop and settle, and many providers go out of business or file for bankruptcy protection to avoid repayment.

Medicaid Fraud Control Account Under the terms of the legislation, beginning July 1, 2007, a Medicaid Fraud Control Account is to be established, and 25 percent of any Medicaid recoveries would be deposited into the account to be used by the Office to enhance and expand administrative operations. It is assumed that the 25 percent figure refers to actual cash recovered and only the State share of recoveries since the State cannot retain the federal share of recoveries.

Because the amount of monies recovered fluctuates widely from year to year, the amount of recoveries the Office may retain cannot be determined. However, if the Office were currently

operational and estimated recoveries totaled \$129.1 million in federal FY 2006 (as noted above), the Office would be entitled to retain approximately \$16.1 million.

Section: Human Services

*Analyst: Jay Hershberg
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

SENATE BILL NO. 1852
(SECOND REPRINT)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1852 (Second Reprint) with my recommendations for reconsideration.

This bill seeks to establish the Office of Medicaid Inspector General within the Department of Human Services. Notwithstanding such placement, however, the Office of Medicaid Inspector General would be independent of any supervision or control by the Department of Human Services or any division or officer thereof in the performance of its duties. That Office would be designated as "the State Office for Medicaid program integrity." The bill would accord the Office of the Medicaid Inspector General significant powers and responsibilities. The Office would be broadly charged with ensuring compliance with applicable Medicaid standards and requirements and identifying and reducing fraud and abuse in order to improve the efficiency and effectiveness of Medicaid in New Jersey. Notwithstanding the allocation of these responsibilities to the Office of Medicaid Inspector General, the Department of Human Services would continue to be the designated State agency for the general administration of and setting of policies for Medicaid.

I agree that this bill is necessary. The detection of Medicaid fraud and abuse and the recovery of improperly expended dollars are critically important functions that must be robustly implemented and funded. For these reasons, I commend the sponsors of this bill for their

efforts to focus responsibility for the detection of Medicaid fraud and abuse in a single agency. Nonetheless, I have a structural concern that can be easily remedied. The existing Office of Inspector General has broad authority and responsibility for detecting waste, fraud and abuse throughout State government. In my view, the functions of the Office of Medicaid Inspector General should be aligned with the Inspector General and subsequently with an Office of State Comptroller, should that legislation receive legislative approval.

In addition, I have a concern that one portion of the bill may inadvertently raise questions regarding the federal requirement that a single State agency be designated for the administration and supervision of the State Medicaid plan. I therefore recommend a technical correction to the bill that will clarify that the Department of Human Services will continue to be that agency, while also affirming that the Office of the Medicaid Inspector General will have full authority to discharge the duties set out in the bill.

As a result, I recommend that this bill be amended to locate the Office of Medicaid Inspector General within the existing Office of the Inspector General, and that a technical correction be made to ensure compliance with federal law. Accordingly, I herewith return Senate Bill No. 1852 (Second Reprint) and recommend that it be amended as follows:

Page 3, Section 4, Line 45
to Page 4, Section 4, Line 3:

Delete "Executive Branch of the State Government. For the purposes of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution, the office is allocated within the Department of Human Services; however, notwithstanding the allocation, the office shall be independent of any supervision or control by the department, or a division, office or officer thereof, in the performance of its duties" and insert "Office of the Inspector General established pursuant to P.L.2005, c.119 (C.52:15B-1 et seq.)"

Page 4, Section 4, Line 5:

After "be" delete "the" and insert "devoted to"

Page 4, Section 4, Line 6:

Delete "State office for"

Page 4, Section 4, Line 6:

After "integrity" delete "," and insert "through means"

Page 5, Section 4, Line 9:

Delete "department" and insert "Office of the Inspector General"

Page 10, Section 7, Line 47:

After "as the" delete "he" and insert "Medicaid Inspector General"

Page 13, Section 14, Line 29:

Delete "Department of Human Services" and insert "Office of the Inspector General"

Respectfully,
/s/ Jon S. Corzine
Governor

[seal]

Attest:

/s/ Kenneth H. Zimmerman
Chief Counsel to the Governor