Reprinted
April 12, 2013

ENGROSSED
SENATE BILL No. 559

DIGEST OF SB 559 (Updated April 11, 2013 6:25 pm - DI 44)

Citations Affected: IC 5-11; IC 6-8.1; IC 7.1-2; IC 12-7; IC 12-13; IC 12-15; IC 20-26; noncode.

Synopsis: Fraud. Establishes procedures for filing a civil action on behalf of the state to recover money owed to the state, plus civil penalties and damages, due to the filing of a false claim under the Medicaid program. Provides that the attorney general and the inspector general have concurrent jurisdiction to investigate such false claims. Permits an individual to file a civil action concerning false Medicaid claims on behalf of the individual and the state, and specifies the amounts an individual is entitled to receive if the state prevails in the

(Continued next page)

Effective: July 1, 2013.

Hershman, Mishler, Charbonneau, Holdman, Miller Patricia
(HOUSE SPONSORS — TURNER, TRUITT)

January 14, 2013, read first time and referred to Committee on Health and Provider Services.
January 31, 2013, amended; reassigned to Committee on Tax and Fiscal Policy.
February 21, 2013, amended, reported favorably — Do Pass.
February 25, 2013, read second time, ordered engrossed. Engrossed.
February 26, 2013, read third time, passed. Yeas 43, nays 7.

HOUSE ACTION

March 12, 2013, read first time and referred to Committee on Ways and Means.
April 4, 2013, amended, reported — Do Pass.
April 9, 2013, read second time, call withdrawn.
April 11, 2013, re-read second time, amended, ordered engrossed.

C o p y

action. Under certain conditions, allows the attorney general or the inspector general to intervene in an action filed by an individual or to seek dismissal of that action. Provides enhanced relief for a whistleblower who has been retaliated against by an employer for assisting in an investigation concerning a false Medicaid claim. Specifies that all state agencies shall cooperate with the department of state revenue (department) in tax administration by providing, at no charge to the department, relevant information that the department requests, including monthly reports identifying the use of a fraudulent identity. Requires the department of correction to annually provide to the department an electronic file listing the name and Social Security number of each individual under the jurisdiction of the department of correction. Requires the state department of health to annually provide to the department an electronic file listing the name of each individual for whom an Indiana death certificate was issued during the last year. Requires the state excise police to investigate allegations of electronic benefit transfer (EBT) fraud. Requires an owner, vendor, or third party processor of an automated teller machine or point of sale terminal to disable access to electronic cash assistance benefits in specified prohibited locations. Requires the division of family resources to assist owners, vendors, and third party processors in carrying out this provision. Makes it a Class B infraction for a person to violate these provisions. Requires the division of family resources to establish a process for certain recipients to follow in order to receive a replacement EBT card. Sets forth the Medicaid ineligibility time frame for a person who is convicted of forgery, fraud, legend drug deception, and other deceptions related to the application for or receipt of Medicaid assistance. Requires a transportation provider that applies to enroll in the Medicaid program to file with the office of Medicaid policy and planning a surety bond to be used for specified purposes. Provides certain exceptions. Specifies that Medicaid services include pharmacist services. Requires the office of Medicaid policy and planning to visit certain Medicaid providers and provider applicants if certain conditions are met. Requires a national criminal history background check on certain Medicaid provider applicants at the cost of the applicant. Allows an audit and inspection of completed school lunch program applications to ensure that applicants meet the requirements to participate in the program.

C o p y

Reprinted
April 12, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 559

A BILL FOR AN ACT to amend the Indiana Code concerning fraud.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-11-5.7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 5.7. Medicaid False Claims and Whistleblower Protection

Sec. 1. (a) This chapter applies only to claims, requests, demands, statements, records, acts, and omissions made or submitted in relation to the Medicaid program described in IC 12-15.

(b) The following definitions apply throughout this chapter:

(1) "Claim" means a request or demand for money or property, whether under a contract or otherwise, and whether or not the state has title to the money or property, that:

(A) is presented to an officer, employee, or agent of the state; or

(B) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's

behalf or to advance a state program or interest, and if the state:

(i) provides or has provided any part of the money or property that is requested or demanded; or

(ii) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.

(2) "Documentary material" means:

(A) the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document;

(B) a data compilation stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations; and

(C) a product of discovery.

(3) "Investigation" means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.

(4) "Knowing", "knowingly", or "known" means that a person, regarding information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information;

and requires no proof of specific intent to defraud.

(5) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(6) "Obligation" means an established duty, whether or not the duty is fixed, arising from:

(A) an express or implied contractual relationship;

(B) a grantor-grantee relationship;

(C) a licensor-licensee relationship;

(D) a fee-based or similar relationship;

(E) a statute;

(F) a rule or regulation; or

(G) the retention of an overpayment.

(7) "Person" includes a natural person, a corporation, a firm, an association, an organization, a partnership, a limited liability company, a business, or a trust.

C o p y

(8) "Product of discovery" means the original or duplicate of:
(A) a deposition;
(B) an interrogatory;
(C) a document;
(D) a thing;
(E) a result of the inspection of land or other property; or
(F) an examination or admission;
that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision.
(9) "State" means Indiana or any agency of state government. The term does not include a political subdivision.

Sec. 2. (a) This section does not apply to a claim, record, or statement concerning income tax (IC 6-3).

(b) A person who:
(1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
(2) knowingly makes, uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim;
(3) has possession, custody, or control of property or money used, or to be used, by the state, and knowingly delivers, or causes to be delivered, less than all of the money or property;
(4) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;
(5) knowingly buys or receives, as a pledge of an obligation or debt, public property from an employee who is not lawfully authorized to sell or pledge the property;
(6) knowingly:
(A) makes, uses, or causes to be made or used, a false record or statement concerning an obligation to pay or transmit money or property to the state; or
(B) conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state;
(7) conspires with another person to perform an act described in subdivisions (1) through (6); or
(8) causes or induces another person to perform an act

C o p y

described in subdivisions (1) through (6);

is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand five hundred dollars ($5,500) and not more than eleven thousand dollars ($11,000), as adjusted by the federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, Public Law 101-410), and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(c) If the factfinder determines that the person who violated this section:

(1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;

(2) fully cooperated with the investigation of the violation; and

(3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials;

the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

Sec. 3. (a) The:

(1) attorney general; and

(2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

C o p y

(e) If the attorney general:

(1) is disqualified from investigating a possible violation of section 2 of this chapter;

(2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;

(3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;

(4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or

(5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

(1) bring a civil action concerning a possible violation of section 2 of this chapter; or

(2) intervene in a case under section 4 of this chapter.

(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

(1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or

(2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

(h) A civil action brought under section 4 of this chapter may be filed in:

(1) a circuit or superior court in Marion County; or

(2) a circuit or superior court in the county in which a defendant or plaintiff resides.

(i) The state is not required to file a bond under this chapter.

Sec. 4. (a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

(1) must be brought in the name of the state; and

(2) may be filed in a circuit or superior court in:

(A) the county in which the person resides;

C o p y

(B) the county in which a defendant resides; or

(C) Marion County.

(b) Except as provided in section 5 of this chapter, an action brought under this section may be dismissed only if:

(1) the attorney general or the inspector general, if applicable, files a written motion to dismiss explaining why dismissal is appropriate; and

(2) the court issues an order:

(A) granting the motion; and

(B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

(1) a copy of the complaint; and

(2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least sixty (60) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than sixty (60) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:

(1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or

(2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

C o p y

(1) intervene; or

(2) bring another action based on the same facts.

(h) If the person who initially filed the complaint:

(1) planned and initiated the violation of section 2 of this chapter; or

(2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

Sec. 5. (a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may do the following:

(1) File a complaint.

(2) Amend the complaint of a person who has brought an action under section 4 of this chapter, to:

(A) clarify or add detail to the claims in which the state is intervening; or

(B) add additional claims to which the state contends the state is entitled to relief.

(3) Move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes.

For statute of limitation purposes, a pleading filed by the attorney general or the inspector general relates back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the original filed complaint. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.

(b) With the approval of the court, the attorney general or the inspector general may dismiss the action after:

(1) notifying the person who initially filed the complaint; and

(2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.

The court may consider a request by the attorney general or the inspector general to dismiss the action but is not bound by the

C o p y

request. Additionally, the court may permit the attorney general or inspector general to be dismissed from the case and may permit the person who initially filed the complaint to continue to prosecute the action.

(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:

(1) conduct the settlement hearing in camera; or

(2) lift all or part of the seal to facilitate the investigative process or settlement.

The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.

(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:

(1) will interfere with or unduly delay the prosecution of the case by the attorney general or the inspector general;

(2) will involve the presentation of repetitious or irrelevant evidence, or evidence introduced for purposes of harassment; or

(3) will cause the defendant to suffer undue burden or unnecessary expense;

the court may impose reasonable limitations on the person's participation, including a limit on the number of witnesses that the person may call, a limit to the length of testimony that the person's witness may present, a limit to the person's cross-examination of a witness, or otherwise limit the participation by the person in the litigation.

(e) If the attorney general or the inspector general elects not to intervene in the action, the person who initially filed the complaint has the right to prosecute the action. Upon request, the attorney general or the inspector general shall be served with copies of all documents filed in the action and may obtain a copy of depositions and other transcripts at the state's expense.

(f) If the attorney general and the inspector general have elected not to intervene in an action in accordance with section 4 of this chapter, upon a showing of good cause, a court may permit either the attorney general or the inspector general to intervene at a later time. The attorney general may move to intervene at any time. If the attorney general has not moved to intervene, the inspector

C o p y

general may move to intervene by providing written notice to the attorney general of the inspector general's intent to intervene. If the attorney general does not move to intervene earlier than fifteen (15) days after receipt of the notice of intent to intervene, the inspector general may move to intervene. If the attorney general or the inspector general intervenes under this subsection, the attorney general or the inspector general is responsible for prosecuting the action as if the attorney general or the inspector general had intervened in accordance with section 4 of this chapter.

(g) If the attorney general or inspector general shows that a specific discovery action by the person who initially filed the complaint will interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, the court may, following a hearing in camera, stay discovery for not more than sixty (60) days. After the court has granted a sixty (60) day stay, the court may extend the stay, following a hearing in camera, if it determines that the state has pursued the civil or criminal investigation with reasonable diligence and that a specific discovery action by the person who initially filed the complaint will interfere with the state's investigation or prosecution of the civil or criminal matter.

(h) A court may dismiss an action brought under this chapter to permit the attorney general or the inspector general to pursue its claim through an alternative proceeding, including an administrative proceeding or a proceeding brought in another jurisdiction. The person who initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an appeal or review of the determination made in the alternative proceeding has elapsed.

Sec. 6. (a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the

C o p y

action.

(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information, other than information provided by the person bringing the action, contained in:

(A) a transcript of a criminal, a civil, or an administrative hearing;

(B) a legislative, an administrative, or another public report, hearing, audit, or investigation; or

(C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

(A) planned and initiated the violation of section 2 of this chapter; or

(B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

(1) the attorney general or the inspector general did not intervene in the action; and

(2) the defendant prevails;

the court may award the defendant reasonable attorney's fees plus

C o p y

an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous, vexatious, or brought primarily for purposes of harassment.

(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

Sec. 7. (a) This section does not apply to an action brought by:

(1) the attorney general;

(2) the inspector general;

(3) a prosecuting attorney; or

(4) a state employee in the employee's official capacity.

(b) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.

(c) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information known to the state at the time the action was brought.

(d) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.

(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:

(1) a transcript of a criminal, a civil, or an administrative hearing in which the state or the state's agent is a party;

(2) a legislative, an administrative, or another public state report, hearing, audit, or investigation; or

(3) a news media report;

unless the person bringing the action either, before a public disclosure under this section voluntarily discloses to the state the information on which the allegations or transactions in a claim are based, or has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and the person bringing the action has voluntarily provided this information to the state before an action is filed under section 4 of this chapter.

(f) In determining whether a prior public disclosure bars a court from exercising jurisdiction over an action brought under section 4 of this chapter, the court shall consider, but is not bound by, any

C o p y

objection brought by the attorney general or the inspector general.

Sec. 8. (a) An employee, contractor, or agent who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others to:

(1) object to or otherwise stop an act or omission described in section 2 of this chapter; or

(2) initiate, testify, assist, or participate in an investigation, an action, or a hearing under this chapter;

is entitled to all relief necessary to make the employee, contractor, or agent whole.

(b) Relief under this section must include:

(1) reinstatement with the same seniority status the employee, contractor, or agent would have had but for the act described in subsection (a);

(2) two (2) times the amount of back pay;

(3) interest on the back pay; and

(4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee may bring an action for the relief provided in this section in any court with jurisdiction.

(d) A civil action under this section may not be brought more than three (3) years after the date the retaliation occurred.

Sec. 9. (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in Indiana.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

(1) not later than six (6) years after the date on which the violation is committed; or

(2) not later than three (3) years after the date when facts material to the cause of action are known or reasonably should have been known by a state officer or employee who is responsible for addressing the false claim. However, an action is barred unless it is commenced not later than ten (10) years after the date on which the violation is committed.

(c) In a civil action brought under this chapter, the state is required to establish:

(1) the essential elements of the offense; and

(2) damages;

C o p y

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

Sec. 10. (a) Whenever the attorney general, the inspector general, or the designee of the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to an investigation under this chapter involving a false claim, the attorney general, the inspector general, or the designee of the attorney general or inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

(1) Produce the documentary material for inspection and copying.

(2) Answer an interrogatory in writing concerning the documentary material or information.

(3) Give oral testimony concerning the documentary material or information.

(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:

(1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and

(2) notify the person to whom the civil investigative demand is issued of the date of service.

Sec. 11. (a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.

(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:

(1) describe each class of documentary material to be produced with sufficient specificity to permit the material to be fairly identified;

(2) prescribe a return date for each class of documentary material that provides a reasonable period of time to assemble and make the material available for inspection and copying; and

C o p y

(3) identify the official to whom the material must be made available.

(c) If a civil investigative demand is for answers to written interrogatories, the civil investigative demand must:

(1) set forth with specificity the written interrogatories to be answered;

(2) prescribe the date by which answers to the written interrogatories must be submitted; and

(3) identify the official to whom the answers must be submitted.

(d) If a civil investigative demand requires oral testimony, the civil investigative demand must:

(1) prescribe a date, time, and place at which oral testimony will be given;

(2) identify the official who will conduct the examination and the custodian to whom the transcript of the examination will be submitted;

(3) specifically state that attendance and testimony are necessary to the conduct of the investigation;

(4) notify the person receiving the demand that the person has the right to be accompanied by an attorney and any other representative; and

(5) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry.

(e) A civil investigative demand that is a specific demand for a product of discovery may not be returned until at least twenty-one (21) days after a copy of the civil investigative demand has been served on the person from whom the discovery was obtained.

(f) The date prescribed for the giving of oral testimony under a civil investigative demand issued under this chapter must be a date that is not less than seven (7) days after the date on which the demand is received, unless the official issuing the demand determines that exceptional circumstances are present that require an earlier date.

(g) The official who issues a civil investigative demand may not issue more than one (1) civil investigative demand for oral testimony by the same person, unless:

(1) the person requests otherwise; or

(2) the official who issues a civil investigative demand, after conducting an investigation, notifies the person in writing that an additional civil investigative demand for oral testimony is

C o p y

necessary.

Sec. 12. (a) A civil investigative demand issued under this chapter may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under the standards applicable:

(1) to a subpoena or subpoena duces tecum issued by a court to aid in a grand jury investigation; or

(2) to a discovery request under the rules of trial procedure; to the extent that the application of these standards to a civil investigative demand is consistent with the purposes of this chapter.

(b) A civil investigative demand that is a specific demand for a product of discovery supersedes any contrary order, rule, or statutory provision, other than this section, that prevents or restricts disclosure of the product of discovery. Disclosure of a product of discovery under a specific demand does not constitute a waiver of a right or privilege that the person making the disclosure may be otherwise entitled to invoke to object to discovery of trial preparation materials.

Sec. 13. (a) A civil investigative demand issued under this chapter may be served by an investigator or by any other person authorized to serve process.

(b) A civil investigative demand shall be served in accordance with the rules of trial procedure. A court having jurisdiction over a person not located in Indiana has the same authority to enforce compliance with this chapter as the court has over a person located in Indiana.

Sec. 14. (a) The production of documentary material in response to a civil investigative demand served under this chapter shall be made in accordance with Trial Rule 34.

(b) Each interrogatory in a civil investigative demand served under this chapter shall be answered in accordance with Trial Rule 33.

(c) The examination of a person under a civil investigative demand for oral testimony served under this chapter shall be conducted in accordance with Trial Rule 30.

Sec. 15. (a) The official who issued the civil investigative demand is the custodian of the documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter.

C o p y

(b) An investigator who receives documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the official who issued the civil investigative demand. The official shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material.

(c) The official who issued the civil investigative demand may make copies of documentary material, answers to interrogatories, or transcripts of oral testimony as required for official use by the attorney general, the inspector general, or the state police. The material, answers, or transcripts may be used in connection with the taking of oral testimony under this chapter.

(d) Except as provided in subsection (e), documentary material, answers to interrogatories, or transcripts of oral testimony, while in the possession of the official who issued the civil investigative demand, may not be made available for examination to any person other than:

(1) the attorney general or designated personnel of the attorney general's office;

(2) the inspector general or designated personnel of the inspector general's office; or

(3) an officer of the state police who has been authorized by the official who issued the civil investigative demand.

(e) The restricted availability of documentary material, answers to interrogatories, or transcripts of oral testimony does not apply:

(1) if the person who provided:

(A) the documentary material, answers to interrogatories, or oral testimony; or

(B) a product of discovery that includes documentary material, answers to interrogatories, or oral testimony;

consents to disclosure;

(2) to the general assembly or a committee or subcommittee of the general assembly; or

(3) to a state agency that requires the information to carry out its statutory responsibility.

Documentary material, answers to interrogatories, or transcripts of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.

(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to

C o p y

interrogatories, or transcripts of oral testimony shall be made available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand may impose reasonable conditions upon the examination or use of the documentary material, answers to interrogatories, or transcripts of oral testimony.

(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in connection with a proceeding before a grand jury, a court, or an agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.

(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:

(1) a proceeding before a grand jury, a court, or an agency involving the documentary material has been completed; or

(2) a proceeding before a grand jury, a court, or an agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation.

The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, a court, or an agency.

Sec. 16. (a) A person who has failed to comply with a civil investigative demand is subject to sanctions under Trial Rule 37 to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued under this chapter may seek a protective order in accordance with Trial Rule 26(C).

Sec. 17. Documentary material, answers to written interrogatories, or oral testimony provided in response to a civil investigative demand issued under this chapter is confidential.

Sec. 18. Proceedings under this chapter are governed by the

C o p y

Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial Procedure are inconsistent with this chapter.

SECTION 2. IC 6-8.1-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) The department may enter into reciprocal agreements with the taxing officials of the United States government or with the taxing officials of other state governments to furnish and receive information relevant to the administration and enforcement of the listed taxes. However, the department may not furnish information obtained from federal returns or schedules to officials of other state governments.

(b) All agencies of the state of Indiana shall cooperate with the department in the administration of the listed taxes and shall, **upon request and at no charge to the department,** furnish to the department any information relevant to the administration and collection of the listed taxes that the department requests. **In addition, a state agency that encounters the use of a fraudulent identity shall notify the department and provide in electronic format identifying information as specified by the department for the department's use in preventing tax fraud. If a state agency encounters the use of fraudulent identities on a regular basis, the state agency shall provide to the department a monthly electronic report furnishing the identifying information specified by the department.**

(c) Before December 1 each year:

(1) the department of correction shall provide to the department an electronic file listing the name and Social Security number of each individual under the jurisdiction of the department of correction as of November 1 of that year; and

(2) the state department of health shall provide to the department an electronic file listing the name of each individual for whom an Indiana death certificate was issued during the immediately preceding twelve (12) months.

SECTION 3. IC 7.1-2-2-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 9.5. The state excise police may investigate fraud within the electronic benefits transfer program, as set forth in IC 12-13-14-14.**

SECTION 4. IC 12-7-2-74.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 74.3. "EBT card", for purposes of IC 12-13-14-15, has the meaning set forth in IC 12-13-14-15(a).**

SECTION 5. IC 12-7-2-137, AS AMENDED BY P.L.145-2006,

C o p y

SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 137. (a) "Person", except as provided in subsections (b) ~~and (c),~~ **through (d),** means an association, a corporation, a limited liability company, a governmental entity, an individual, or a partnership.

(b) "Person", for purposes of IC 12-13-14, has the meaning set forth in IC 12-13-14-1.

(c) "Person", for purposes of IC 12-17.2, means an individual who is at least twenty-one (21) years of age, a corporation, a partnership, a voluntary association, or other entity.

(d) "Person", for purposes of IC 12-15-2-20, means an individual who is:

(1) at least twenty-one (21) years of age; and

(2) applying for or receiving Medicaid assistance.

SECTION 6. IC 12-13-14-4.5, AS AMENDED BY P.L.3-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.5. (a) Except as provided in this section, the division may distribute cash assistance benefits to a person who is eligible for assistance under the Title IV-A assistance program though an automated teller machine or a point of sale terminal that is connected to the EBT system.

(b) The following establishments shall post a sign next to each automated teller machine or point of sale terminal located on the premises informing a potential user that the automated teller machine or point of sale terminal may not be used to receive cash assistance benefits under the Title IV-A assistance program:

(1) A horse racing establishment:

(A) where the pari-mutuel system of wagering is authorized; and

(B) for which a permit is required under IC 4-31-5.

(2) A satellite facility:

(A) where wagering on horse racing is conducted; and

(B) for which a license is required under IC 4-31-5.5.

(3) An allowable event required to be licensed by the Indiana gaming commission under IC 4-32.2.

(4) A riverboat or other facility required to be licensed by the Indiana gaming commission under IC 4-33.

(5) A store or other establishment:

(A) where the primary business is the sale of firearms (as defined in IC 35-47-1-5); and

(B) that sells handguns for which a license to sell handguns is required under IC 35-47-2.

C o p y

(6) A store or other establishment where the primary business is the sale of alcoholic beverages for which a permit is required under IC 7.1-3.

(7) An adult entertainment establishment.

(c) An:

(1) establishment that does not post the sign required under subsection (b); or

(2) individual who attempts to use an automated teller machine or point of sale terminal with a sign posted as required under subsection (b) to access cash assistance benefits under the Title IV-A assistance program in violation of subsection (b);

commits a Class C misdemeanor.

(d) The owner, vendor, or third party processor of an automated teller machine or point of sale terminal shall disable or have disabled access to electronic cash assistance benefits in a location described in subsection (b) unless the location has been approved by the federal Food and Nutrition Services. The division shall provide assistance to an owner, vendor, or third party processor under this subsection. A person that violates this subsection commits a Class B infraction.

~~(d)~~ **(e)** The division shall adopt rules under IC 4-22-2 to carry out this section.

SECTION 7. IC 12-13-14-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 14. The state excise police may investigate allegations of fraud within the EBT program, including investigations of the following persons:**

(1) Applicants.

(2) Recipients.

(3) Retailers that participate in the EBT program.

(4) Individuals who sell or purchase access to cash assistance benefits in violation of any federal or state law or regulation.

SECTION 8. IC 12-13-14-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 15. (a) As used in this section, "EBT card" has the meaning set forth in 470 IAC 6-0.5-1.**

(b) The replacement process established under this section applies until federal rules are adopted establishing a replacement EBT card process that supersedes or nullifies the process established by the division.

(c) The division shall establish a process for a recipient to follow in order to receive a replacement EBT card. The process must

C o p y

include contact with the division for replacement if the individual requesting replacement of the EBT card has previously requested a replacement EBT card at least four (4) times in the preceding twelve (12) month period.

(d) The division may hold replacement of an EBT card if the recipient seeking replacement of the EBT card does not follow the procedure established by the division under subsection (b).

SECTION 9. IC 12-15-1-22 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 22. (a) The office shall visit a Medicaid provider's office, entity, or facility if:**

(1) the provider is categorized as high risk to the Medicaid program under 42 U.S.C. 1395cc(j)(2)(B) and 42 CFR 455.450; and

(2) the provider's Medicaid claims have increased by at least fifty percent (50%) over a six (6) month period.

(b) The office shall adopt rules under IC 4-22-2 or issue a Medicaid provider bulletin setting forth procedures and standards for the visit required under this section.

SECTION 10. IC 12-15-2-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 20. ~~(a) This section does not apply to a provider (as defined in IC 12-7-2-149.1(2)).~~

~~(b)~~ **(a)** A person convicted of an offense under ~~IC 35-43-5-7.1~~ **IC 35-43-5 or IC 35-43-10 related to the application for or receipt of Medicaid assistance** is ineligible to receive Medicaid assistance under this article for **the following time:**

(1) One (1) year if the conviction is for the person's first offense.

(2) Two (2) years if the conviction is for the person's second offense.

(3) Ten (10) years ~~after~~ **if** the conviction **is for the person's third or subsequent offense.**

(b) A person's ineligibility period for Medicaid assistance described in subsection (a) begins either:

(1) on the date the person is sentenced, if the person's sentence does not include incarceration; or

(2) on the date the individual is released from incarceration.

(c) Upon receipt of substantiated evidence that a person has committed fraud concerning the application for or receipt of Medicaid assistance, the office may remove the person from receiving Medicaid assistance for one (1) year. If the office determines that a person receiving Medicaid assistance is to be

C o p y

removed from receiving Medicaid assistance under this subsection, the person may appeal the determination. An appeal under this subsection is subject to IC 4-21.5.

(d) The office may adopt rules under IC 4-22-2 to implement this section.

SECTION 11. IC 12-15-11-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 2.5. (a) As used in this section, "transportation provider" means a person:**

(1) that is a common carrier, including a person that provides transportation by a taxi; and

(2) that:

(A) is enrolled; or

(B) applies for enrollment;

in the Medicaid program as a Medicaid provider to render transportation services to Medicaid recipients.

(b) This section does not apply to a transportation provider that is:

(1) exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code;

(2) at the discretion of the secretary, granted a waiver of the bond requirement under subsection (c) to provide transportation services in a federal or state designated underserved area;

(3) at the discretion of the secretary, granted a waiver of the bond requirement under subsection (c) based on the determination that the provider does not pose a significant risk of submitting fraudulent or false Medicaid claims;

(4) owned or controlled by a person that is licensed or certified by a board listed in IC 25-1-9-1;

(5) owned or controlled by a pharmacy that has a permit issued under IC 25-26-13;

(6) owned or controlled by a hospital licensed under IC 16-21; or

(7) required under federal law to obtain a surety bond to cover Medicaid overpayments and false Medicaid claims and has obtained a bond that complies with the applicable federal law.

(c) A transportation provider that applies for enrollment as a Medicaid provider:

(1) as a new applicant;

(2) due to a change in ownership of a transportation provider

C o p y

currently enrolled; or

(3) due to a purchase or transfer of the assets of a transportation provider currently enrolled;

shall, at the time the transportation provider files a provider agreement with the office, submit to the office a surety bond that meets the requirements of subsection (d) and is issued by a surety that is authorized by the office of the secretary.

(d) The following apply to a surety bond filed with the office under this section:

(1) The surety bond must be continuously in effect for at least three (3) years after the application is made as described in subsection (c).

(2) The surety bond must provide coverage for liability of at least fifty thousand dollars ($50,000).

(3) The surety bond must name the:

(A) transportation provider as the principal;

(B) office as the obligee; and

(C) person that issues the surety bond, including the person's heirs, executors, administrators, successors, and assignees, jointly and severally, as surety.

(4) The surety bond must provide the surety's name, street address or post office box number, city, state, and ZIP code.

(5) The surety bond must provide that the surety is liable under the surety bond for a duplicate, erroneous, or false Medicaid claim paid by the office or its fiscal agent to the transportation provider during the term of the surety bond.

(6) The surety bond must provide that the bond may not be void on a first recovery, but that suits may be instituted until the penalty is exhausted.

(7) The surety bond must guarantee that the surety will, not later than thirty (30) days after the surety receives written notice from the office containing sufficient evidence to establish the surety's liability under the surety bond as described in subdivision (5), pay to the office the following amounts, not to exceed the full amount of the surety bond:

(A) The amount of the duplicate, erroneous, or false claim that was previously paid by the office or its fiscal agent to the transportation provider, plus accrued interest.

(B) An assessment imposed under IC 12-15-22 by the office on the transportation provider.

(8) The surety bond must provide that if the transportation provider's provider agreement is not renewed or is

C o p y

terminated, the surety bond submitted by the transportation provider remains in effect until the last day of the surety bond coverage period and the surety remains liable for a duplicate, erroneous, or false claim paid by the office or its fiscal agent to the transportation provider during the term of the surety bond.

(9) The surety bond must provide that actions under the surety bond may be brought by the office or the attorney general.

(e) The office may revoke or deny a provider agreement for a transportation provider's failure to comply with this section.

(f) The office may revoke a provider agreement if a transportation provider cancels a surety bond required by this section.

(g) The office or its designee may, at any time, require a transportation provider to demonstrate compliance with this section.

(h) If:

(1) a surety has paid the office for a liability incurred under a surety bond under this section; and

(2) the transportation provider is subsequently successful in appealing the determination of liability;

the office shall, upon completion of the appellate process, refund the surety or the transportation provider the full amount paid for the liability.

SECTION 12. IC 12-15-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. A provider agreement must do the following:

(1) Include information that the office determines necessary to facilitate carrying out of IC 12-15.

(2) Prohibit the provider from requiring payment from a recipient of Medicaid, except where a copayment is required by law.

(3) For providers categorized as high risk to the Medicaid program under 42 U.S.C. 1395cc(j)(2)(B) and 42 CFR 455.450, require the submission of necessary information, forms, or consents for the office to obtain a national criminal history background check through the state police department under IC 10-13-3-39 of any person who:

(A) holds at least a five percent (5%) ownership interest in a facility or entity; or

(B) is a member of the board of directors of a nonprofit facility or entity;

C o p y

in which the provider applicant plans to provide Medicaid services under the provider agreement. The provider applicant is responsible for the cost of the national criminal history background check.

SECTION 13. IC 12-15-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. **(a)** A provider desiring to participate in the Medicaid program by providing physician services as a managed care provider must enter into a provider agreement with the office or the contractor under IC 12-15-30 to provide Medicaid services.

(b) Before the office may approve a provider agreement, the office shall conduct a pre-enrollment site visit for provider applicants that are designated as moderate or high categorical risks to the Medicaid program under 42 U.S.C. 1395cc(j)(2)(B) and 42 CFR 455.450.

SECTION 14. IC 12-15-29-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 0.5. As used in this chapter, "insurer" includes a pharmacy benefit manager.**

SECTION 15. IC 20-26-9-10, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) The state superintendent shall prescribe rules for keeping accounts and records and making reports by or under the supervision of a governing body.

(b) The accounts and records shall:

(1) be available for inspection and audit at all times by authorized officials; and

(2) be preserved for at least five (5) years, as the state superintendent may prescribe.

(c) The state superintendent shall conduct or cause to be conducted any audits, inspections, and administrative reviews of **completed applications,** acts, records, and operations of a school lunch program necessary to do the following:

(1) Determine whether agreements with the governing body and rules under this chapter are being complied with.

(2) Ensure that a school lunch program is effectively administered.

(3) Ensure that participants meet all requirements to participate in the school lunch program.

SECTION 16. [EFFECTIVE JULY 1, 2013] **(a) As used in this SECTION, "commission" refers to the health finance commission established by IC 2-5-23-3.**

C o p y

(b) During the 2013 legislative interim, the commission shall study issues concerning the Medicaid false claims and whistleblower protection act (IC 5-11-5.7, as added by this act). The study must include:

(1) additional changes that may be necessary to address federal compliance issues identified by the Office of Inspector General of the U.S. Department of Health and Human Services;

(2) the impact of the Medicaid false claims and whistleblower protection act on the rights of whistleblowers and persons initiating actions under the act;

(3) appropriate protections for providers and entities that may be alleged to have submitted false claims to ensure sufficient due process safeguards and avoidance of unreasonable interference with regular practice operations, undue burdens, or unnecessary expenses;

(4) whether the act includes effective and efficient tools for the state to address instances of false claims and fraud against the Medicaid program; and

(5) any other matters that the commission considers relevant for the review of the Medicaid false claims and whistleblower protection act.

(c) This SECTION expires December 31, 2013.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 559, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 7.1-2-2-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 9.5. The state excise police may investigate fraud within the electronic benefits transfer program, as set forth in IC 12-13-14-14.**".

Page 1, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 3. IC 12-13-14-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 14. The state excise police may investigate allegations of fraud within the EBT program, including investigations of the following persons:**

(1) Applicants.

(2) Recipients.

(3) Retailers that participate in the EBT program.

(4) Individuals who sell or purchase access to cash assistance benefits in violation of any federal or state law or regulation.

SECTION 4. IC 12-13-14-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 15. (a) The division shall establish a process for a recipient to follow in order to receive a replacement EBT card. The process must include a written request for replacement if the individual requesting replacement of the EBT card has previously requested a replacement EBT card at least three (3) times in the preceding twelve (12) month period.**

(b) The division may deny replacement of an EBT card if the recipient seeking replacement of the EBT card does not follow the procedure established by the division under subsection (a).

SECTION 5. IC 12-15-1-22 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 22. (a) The office shall visit a Medicaid provider's office, entity, or facility if the provider's Medicaid claims have increased by at least fifty percent (50%) over a six (6) month period.**

(b) The office shall adopt rules under IC 4-22-2 or issue a

C o p y

Medicaid provider bulletin setting forth procedures and standards for the visit required under this section.".

Page 2, line 22, delete "." and insert "**for one (1) year. If the office determines that a person receiving Medicaid assistance is to be removed from receiving Medicaid assistance under this subsection, the person may appeal the determination. An appeal under this subsection is subject to IC 4-21.5.**".

Page 2, after line 24, begin a new paragraph and insert:

"SECTION 7. IC 12-15-11-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 2.5. (a) As used in this section, "transportation provider" means a person:**

(1) that is a common carrier, including a person that provides transportation by a taxi;

(2) that:

(A) is enrolled; or

(B) applies for enrollment;

in the Medicaid program as a Medicaid provider to render transportation services to Medicaid recipients; and

(3) that is not a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(b) A transportation provider that applies for enrollment as a Medicaid provider:

(1) as a new applicant;

(2) due to a change in ownership of a transportation provider currently enrolled; or

(3) due to a purchase or transfer of the assets of a transportation provider currently enrolled;

shall, at the time the transportation provider files a provider agreement with the office, submit to the office a surety bond that meets the requirements of subsection (d) and is issued by a surety that is authorized by the office of the secretary.

(c) The secretary may waive the surety bond requirement of subsection (b) for a transportation provider if, in the secretary's sole discretion, the secretary determines that the transportation provider renders or will render transportation services in an underserved area, as classified by applicable federal or state designations.

(d) The following apply to a surety bond filed with the office under this section:

(1) The surety bond must be continuously in effect for at least three (3) years after the application is made as described in

C o p y

subsection (b).

(2) The surety bond must provide coverage for liability of at least fifty thousand dollars ($50,000).

(3) The surety bond must name the:

(A) transportation provider as the principal;

(B) office as the obligee; and

(C) person that issues the surety bond, including the person's heirs, executors, administrators, successors, and assignees, jointly and severally, as surety.

(4) The surety bond must provide the surety's name, street address or post office box number, city, state, and ZIP code.

(5) The surety bond must provide that the surety is liable under the surety bond for a duplicate, erroneous, or false Medicaid claim paid by the office or its fiscal agent to the transportation provider during the term of the surety bond.

(6) The surety bond must guarantee that the surety will, not later than thirty (30) days after the surety receives written notice from the office containing sufficient evidence to establish the surety's liability under the surety bond as described in subdivision (5), pay to the office the following amounts, not to exceed the full amount of the surety bond:

(A) The amount of the duplicate, erroneous, or false claim that was previously paid by the office or its fiscal agent to the transportation provider, plus accrued interest.

(B) An assessment imposed under IC 12-15-22 by the office on the transportation provider.

(7) The surety bond must provide that if the transportation provider's provider agreement is not renewed or is terminated, the surety bond submitted by the transportation provider remains in effect until the last day of the surety bond coverage period and the surety remains liable for a duplicate, erroneous, or false claim paid by the office or its fiscal agent to the transportation provider during the term of the surety bond.

(8) The surety bond must provide that actions under the surety bond may be brought by the office or the attorney general.

(e) The office may revoke or deny a provider agreement for a transportation provider's failure to comply with this section.

(f) The office may revoke a provider agreement if a transportation provider cancels a surety bond required by this section.

C o p y

(g) The office or its designee may, at any time, require a transportation provider to demonstrate compliance with this section.

(h) If:

(1) a surety has paid the office for a liability incurred under a surety bond under this section; and

(2) the transportation provider is subsequently successful in appealing the determination of liability;

the office shall, upon completion of the appellate process, refund the surety or the transportation provider the full amount paid for the liability.

SECTION 8. IC 12-15-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. A provider agreement must do the following:

(1) Include information that the office determines necessary to facilitate carrying out of IC 12-15.

(2) Prohibit the provider from requiring payment from a recipient of Medicaid, except where a copayment is required by law.

(3) Require the submission of necessary information, forms, or consents for the office to obtain a national criminal history background check through the state police department under IC 10-13-3-39 of any person who holds at least a five percent (5%) ownership interest in a facility or entity in which the provider applicant plans to provide Medicaid services under the provider agreement. The provider applicant is responsible for the cost of the national criminal history background check.

SECTION 9. IC 12-15-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. **(a)** A provider desiring to participate in the Medicaid program by providing physician services as a managed care provider must enter into a provider agreement with the office or the contractor under IC 12-15-30 to provide Medicaid services.

(b) Before the office may approve a provider agreement, the office shall visit the facility or entity in which the provider applicant plans to provide Medicaid services under a provider agreement. The office shall adopt rules under IC 4-22-2 or issue a Medicaid provider bulletin setting forth procedures and standards for the visit required under this subsection.

SECTION 10. IC 20-26-9-10, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) The state superintendent shall prescribe

C o p y

rules for keeping accounts and records and making reports by or under the supervision of a governing body.

(b) The accounts and records shall:

(1) be available for inspection and audit at all times by authorized officials; and

(2) be preserved for at least five (5) years, as the state superintendent may prescribe.

(c) The state superintendent shall conduct or cause to be conducted any audits, inspections, and administrative reviews of **completed applications,** acts, records, and operations of a school lunch program necessary to do the following:

(1) Determine whether agreements with the governing body and rules under this chapter are being complied with.

(2) Ensure that a school lunch program is effectively administered.

(3) Ensure that participants meet all requirements to participate in the school lunch program.".

Renumber all SECTIONS consecutively.

and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 559 as introduced.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 559, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-8.1-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) The department may enter into reciprocal agreements with the taxing officials of the United States government or with the taxing officials of other state governments to furnish and receive information relevant to the administration and enforcement of the listed taxes. However, the department may not furnish information obtained from federal returns

C o p y

or schedules to officials of other state governments.

(b) All agencies of the state of Indiana shall cooperate with the department in the administration of the listed taxes and shall, **upon request and at no charge to the department,** furnish to the department any information relevant to the administration and collection of the listed taxes that the department requests. **In addition, a state agency that encounters the use of a fraudulent identity shall notify the department and provide in electronic format identifying information as specified by the department for the department's use in preventing tax fraud. If a state agency encounters the use of fraudulent identities on a regular basis, the state agency shall provide to the department a monthly electronic report furnishing the identifying information specified by the department.**

(c) Before December 1 each year:

(1) the department of correction shall provide to the department an electronic file listing the name and Social Security number of each individual under the jurisdiction of the department of correction as of November 1 of that year; and

(2) the state department of health shall provide to the department an electronic file listing the name of each individual for whom an Indiana death certificate was issued during the immediately preceding twelve (12) months.".

Page 2, line 16, after "(a)" insert "**This section is effective until federal rules are promulgated that establish a replacement EBT card process.**

(b)".

Page 2, line 18, delete "a written request" and insert "**contact with the division's local office**".

Page 2, line 21, delete "three (3)" and insert "**four (4)**".

Page 2, line 22, delete "(b)" and insert "**(c)**".

Page 2, line 24, delete "(a)." and insert "**(b).**".

Page 2, line 28, after "if" insert "**:**

(1) the provider is categorized as high risk to the Medicaid program under 42 U.S.C. 1395cc(j)(2)(B) and 42 CFR 455.450; and

(2)".

Page 2, line 37, delete ":".

Page 2, line 38, delete "(1) IC 35-43-5;" and insert "**IC 35-43-5**".

Page 2, line 39, delete "(2) IC 35-43-10;" and insert "**IC 35-43-10**".

Page 2, run in lines 37 through 40.

Page 3, line 27, after "taxi;" insert "**and**".

C o p y

Page 3, line 32, delete "; and" and insert "**.**".

Page 3, delete lines 33 through 34.

Page 3, line 35, after "(b)" insert " **This section does not apply to a transportation provider that is:**

(1) exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code;

(2) at the discretion of the secretary, granted a waiver of the bond requirement under subsection (c) to provide transportation services in a federal or state designated underserved area;

(3) at the discretion of the secretary, granted a waiver of the bond requirement under subsection (c) based on the determination that the provider does not pose a significant risk of submitting fraudulent or false Medicaid claims;

(4) owned or controlled by a person that is licensed or certified by a board listed in IC 25-1-9-1;

(5) owned or controlled by a pharmacy that has a permit issued under IC 25-26-13;

(6) owned or controlled by a hospital licensed under IC 16-21; or

(7) required under federal law to obtain a surety bond to cover Medicaid overpayments and false Medicaid claims and has obtained a bond that complies with the applicable federal law.

(c)".

Page 4, delete lines 4 through 9.

Page 4, line 14, delete "(b)." and insert "**(c).**".

Page 4, line 29, after "(6)" insert "**The surety bond must provide that the bond may not be void on a first recovery, but that suits may be instituted until the penalty is exhausted.**

(7)".

Page 4, line 40, delete "(7)" and insert "**(8)**".

Page 5, line 6, delete "(8)" and insert "**(9)**".

Page 5, line 32, delete "Require" and insert "**For providers categorized as high risk to the Medicaid program under 42 U.S.C. 1395cc(j)(2)(B) and 42 CFR 455.450, require**".

Page 5, line 35, after "who" insert "**:**

(A)".

Page 5, line 36, after "entity" insert "**; or**

(B) is a member of the board of directors of a nonprofit facility or entity;".

Page 5, line 36, beginning with "in which" begin a new line block

C o p y

indented.

Page 6, delete lines 5 through 10, begin a new paragraph and insert:

"**(b) Before the office may approve a provider agreement, the office shall conduct a pre-enrollment site visit for provider applicants that are designated as moderate or high categorical risks to the Medicaid program under 42 U.S.C. 1395cc(j)(2)(B) and 42 CFR 455.450.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 559 as printed February 1, 2013.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 559, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 3. IC 12-7-2-74.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 74.3. "EBT card", for purposes of IC 12-13-14-15, has the meaning set forth in IC 12-13-14-15(a).**".

Page 2, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 4. IC 12-13-14-4.5, AS AMENDED BY P.L.3-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.5. (a) Except as provided in this section, the division may distribute cash assistance benefits to a person who is eligible for assistance under the Title IV-A assistance program though an automated teller machine or a point of sale terminal that is connected to the EBT system.

(b) The following establishments shall post a sign next to each automated teller machine or point of sale terminal located on the premises informing a potential user that the automated teller machine or point of sale terminal may not be used to receive cash assistance benefits under the Title IV-A assistance program:

(1) A horse racing establishment:

(A) where the pari-mutuel system of wagering is authorized;

C o p y

and

(B) for which a permit is required under IC 4-31-5.

(2) A satellite facility:

(A) where wagering on horse racing is conducted; and

(B) for which a license is required under IC 4-31-5.5.

(3) An allowable event required to be licensed by the Indiana gaming commission under IC 4-32.2.

(4) A riverboat or other facility required to be licensed by the Indiana gaming commission under IC 4-33.

(5) A store or other establishment:

(A) where the primary business is the sale of firearms (as defined in IC 35-47-1-5); and

(B) that sells handguns for which a license to sell handguns is required under IC 35-47-2.

(6) A store or other establishment where the primary business is the sale of alcoholic beverages for which a permit is required under IC 7.1-3.

(7) An adult entertainment establishment.

(c) An:

(1) establishment that does not post the sign required under subsection (b); or

(2) individual who attempts to use an automated teller machine or point of sale terminal with a sign posted as required under subsection (b) to access cash assistance benefits under the Title IV-A assistance program in violation of subsection (b);

commits a Class C misdemeanor.

(d) The owner, vendor, or third party processor of an automated teller machine or point of sale terminal shall disable or have disabled access to electronic cash assistance benefits in a location described in subsection (b) unless the location has been approved by the federal Food and Nutrition Services. The division shall provide assistance to an owner, vendor, or third party processor under this subsection. A person that violates this subsection commits a Class B infraction.

~~(d)~~ **(e)** The division shall adopt rules under IC 4-22-2 to carry out this section.".

Page 3, line 4, delete "This section is effective" and insert "**As used in this section, "EBT card" has the meaning set forth in 470 IAC 6-0.5-1.**

(b) The replacement process established under this section applies until federal rules are adopted establishing a replacement EBT card process that supersedes or nullifies the process

C o p y

established by the division.".

Page 3, delete lines 5 through 6.

Page 3, line 7, delete "(b)" and insert "**(c)**".

Page 3, line 9, delete "division's local office" and insert "**division**".

Page 3, line 13, delete "(c)" and insert "**(d)**".

Page 3, line 13, delete "deny" and insert "**hold**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 559 as printed February 22, 2013.)

BROWN T, Chair

Committee Vote: yes 17, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 559 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert the following:

"SECTION 1. IC 5-11-5.7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 5.7. Medicaid False Claims and Whistleblower Protection

Sec. 1. (a) This chapter applies only to claims, requests, demands, statements, records, acts, and omissions made or submitted in relation to the Medicaid program described in IC 12-15.

(b) The following definitions apply throughout this chapter:

(1) "Claim" means a request or demand for money or property, whether under a contract or otherwise, and whether or not the state has title to the money or property, that:

(A) is presented to an officer, employee, or agent of the state; or

(B) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:

(i) provides or has provided any part of the money or property that is requested or demanded; or

copy

(ii) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.

(2) "Documentary material" means:

(A) the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document;

(B) a data compilation stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations; and

(C) a product of discovery.

(3) "Investigation" means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.

(4) "Knowing", "knowingly", or "known" means that a person, regarding information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information;

and requires no proof of specific intent to defraud.

(5) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(6) "Obligation" means an established duty, whether or not the duty is fixed, arising from:

(A) an express or implied contractual relationship;

(B) a grantor-grantee relationship;

(C) a licensor-licensee relationship;

(D) a fee-based or similar relationship;

(E) a statute;

(F) a rule or regulation; or

(G) the retention of an overpayment.

(7) "Person" includes a natural person, a corporation, a firm, an association, an organization, a partnership, a limited liability company, a business, or a trust.

(8) "Product of discovery" means the original or duplicate of:

(A) a deposition;

(B) an interrogatory;

(C) a document;

C o p y

(D) a thing;

(E) a result of the inspection of land or other property; or

(F) an examination or admission;

that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision.

(9) "State" means Indiana or any agency of state government. The term does not include a political subdivision.

Sec. 2. (a) This section does not apply to a claim, record, or statement concerning income tax (IC 6-3).

(b) A person who:

(1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim;

(3) has possession, custody, or control of property or money used, or to be used, by the state, and knowingly delivers, or causes to be delivered, less than all of the money or property;

(4) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;

(5) knowingly buys or receives, as a pledge of an obligation or debt, public property from an employee who is not lawfully authorized to sell or pledge the property;

(6) knowingly:

(A) makes, uses, or causes to be made or used, a false record or statement concerning an obligation to pay or transmit money or property to the state; or

(B) conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state;

(7) conspires with another person to perform an act described in subdivisions (1) through (6); or

(8) causes or induces another person to perform an act described in subdivisions (1) through (6);

is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand five hundred dollars ($5,500) and not more than eleven thousand dollars ($11,000), as adjusted by the

C o p y

federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, Public Law 101-410), and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(c) If the factfinder determines that the person who violated this section:

(1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;

(2) fully cooperated with the investigation of the violation; and

(3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials;

the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

Sec. 3. (a) The:

(1) attorney general; and

(2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

(e) If the attorney general:

(1) is disqualified from investigating a possible violation of section 2 of this chapter;

(2) is disqualified from bringing a civil action concerning a

C o p y

possible violation of section 2 of this chapter;

(3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;

(4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or

(5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

(1) bring a civil action concerning a possible violation of section 2 of this chapter; or

(2) intervene in a case under section 4 of this chapter.

(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

(1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or

(2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

(h) A civil action brought under section 4 of this chapter may be filed in:

(1) a circuit or superior court in Marion County; or

(2) a circuit or superior court in the county in which a defendant or plaintiff resides.

(i) The state is not required to file a bond under this chapter.

Sec. 4. (a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

(1) must be brought in the name of the state; and

(2) may be filed in a circuit or superior court in:

(A) the county in which the person resides;

(B) the county in which a defendant resides; or

(C) Marion County.

(b) Except as provided in section 5 of this chapter, an action brought under this section may be dismissed only if:

C o p y

(1) the attorney general or the inspector general, if applicable, files a written motion to dismiss explaining why dismissal is appropriate; and

(2) the court issues an order:

(A) granting the motion; and

(B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

(1) a copy of the complaint; and

(2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least sixty (60) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than sixty (60) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:

(1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or

(2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

(1) intervene; or

(2) bring another action based on the same facts.

(h) If the person who initially filed the complaint:

(1) planned and initiated the violation of section 2 of this

C o p y

chapter; or

(2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

Sec. 5. (a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may do the following:

(1) File a complaint.

(2) Amend the complaint of a person who has brought an action under section 4 of this chapter, to:

(A) clarify or add detail to the claims in which the state is intervening; or

(B) add additional claims to which the state contends the state is entitled to relief.

(3) Move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes.

For statute of limitation purposes, a pleading filed by the attorney general or the inspector general relates back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the original filed complaint. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.

(b) With the approval of the court, the attorney general or the inspector general may dismiss the action after:

(1) notifying the person who initially filed the complaint; and

(2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.

The court may consider a request by the attorney general or the inspector general to dismiss the action but is not bound by the request. Additionally, the court may permit the attorney general or inspector general to be dismissed from the case and may permit the person who initially filed the complaint to continue to prosecute the action.

C o p y

(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:

(1) conduct the settlement hearing in camera; or

(2) lift all or part of the seal to facilitate the investigative process or settlement.

The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.

(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:

(1) will interfere with or unduly delay the prosecution of the case by the attorney general or the inspector general;

(2) will involve the presentation of repetitious or irrelevant evidence, or evidence introduced for purposes of harassment; or

(3) will cause the defendant to suffer undue burden or unnecessary expense;

the court may impose reasonable limitations on the person's participation, including a limit on the number of witnesses that the person may call, a limit to the length of testimony that the person's witness may present, a limit to the person's cross-examination of a witness, or otherwise limit the participation by the person in the litigation.

(e) If the attorney general or the inspector general elects not to intervene in the action, the person who initially filed the complaint has the right to prosecute the action. Upon request, the attorney general or the inspector general shall be served with copies of all documents filed in the action and may obtain a copy of depositions and other transcripts at the state's expense.

(f) If the attorney general and the inspector general have elected not to intervene in an action in accordance with section 4 of this chapter, upon a showing of good cause, a court may permit either the attorney general or the inspector general to intervene at a later time. The attorney general may move to intervene at any time. If the attorney general has not moved to intervene, the inspector general may move to intervene by providing written notice to the attorney general of the inspector general's intent to intervene. If the attorney general does not move to intervene earlier than fifteen (15) days after receipt of the notice of intent to intervene, the

C o p y

inspector general may move to intervene. If the attorney general or the inspector general intervenes under this subsection, the attorney general or the inspector general is responsible for prosecuting the action as if the attorney general or the inspector general had intervened in accordance with section 4 of this chapter.

(g) If the attorney general or inspector general shows that a specific discovery action by the person who initially filed the complaint will interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, the court may, following a hearing in camera, stay discovery for not more than sixty (60) days. After the court has granted a sixty (60) day stay, the court may extend the stay, following a hearing in camera, if it determines that the state has pursued the civil or criminal investigation with reasonable diligence and that a specific discovery action by the person who initially filed the complaint will interfere with the state's investigation or prosecution of the civil or criminal matter.

(h) A court may dismiss an action brought under this chapter to permit the attorney general or the inspector general to pursue its claim through an alternative proceeding, including an administrative proceeding or a proceeding brought in another jurisdiction. The person who initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an appeal or review of the determination made in the alternative proceeding has elapsed.

Sec. 6. (a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific

C o p y

information, other than information provided by the person bringing the action, contained in:

(A) a transcript of a criminal, a civil, or an administrative hearing;

(B) a legislative, an administrative, or another public report, hearing, audit, or investigation; or

(C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

(A) planned and initiated the violation of section 2 of this chapter; or

(B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

(1) the attorney general or the inspector general did not intervene in the action; and

(2) the defendant prevails;

the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous, vexatious, or brought primarily for purposes of harassment.

(c) The state is not liable for the expenses, costs, or attorney's

C o p y

fees of a party to an action brought under this chapter.

Sec. 7. (a) This section does not apply to an action brought by:

(1) the attorney general;

(2) the inspector general;

(3) a prosecuting attorney; or

(4) a state employee in the employee's official capacity.

(b) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.

(c) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information known to the state at the time the action was brought.

(d) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.

(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:

(1) a transcript of a criminal, a civil, or an administrative hearing in which the state or the state's agent is a party;

(2) a legislative, an administrative, or another public state report, hearing, audit, or investigation; or

(3) a news media report;

unless the person bringing the action either, before a public disclosure under this section voluntarily discloses to the state the information on which the allegations or transactions in a claim are based, or has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and the person bringing the action has voluntarily provided this information to the state before an action is filed under section 4 of this chapter.

(f) In determining whether a prior public disclosure bars a court from exercising jurisdiction over an action brought under section 4 of this chapter, the court shall consider, but is not bound by, any objection brought by the attorney general or the inspector general.

Sec. 8. (a) An employee, contractor, or agent who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of

C o p y

employment because of lawful acts done by the employee, contractor, agent, or associated others to:

(1) object to or otherwise stop an act or omission described in section 2 of this chapter; or

(2) initiate, testify, assist, or participate in an investigation, an action, or a hearing under this chapter;

is entitled to all relief necessary to make the employee, contractor, or agent whole.

(b) Relief under this section must include:

(1) reinstatement with the same seniority status the employee, contractor, or agent would have had but for the act described in subsection (a);

(2) two (2) times the amount of back pay;

(3) interest on the back pay; and

(4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee may bring an action for the relief provided in this section in any court with jurisdiction.

(d) A civil action under this section may not be brought more than three (3) years after the date the retaliation occurred.

Sec. 9. (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in Indiana.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

(1) not later than six (6) years after the date on which the violation is committed; or

(2) not later than three (3) years after the date when facts material to the cause of action are known or reasonably should have been known by a state officer or employee who is responsible for addressing the false claim. However, an action is barred unless it is commenced not later than ten (10) years after the date on which the violation is committed.

(c) In a civil action brought under this chapter, the state is required to establish:

(1) the essential elements of the offense; and

(2) damages;

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense

C o p y

in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

Sec. 10. (a) Whenever the attorney general, the inspector general, or the designee of the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to an investigation under this chapter involving a false claim, the attorney general, the inspector general, or the designee of the attorney general or inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

(1) Produce the documentary material for inspection and copying.

(2) Answer an interrogatory in writing concerning the documentary material or information.

(3) Give oral testimony concerning the documentary material or information.

(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:

(1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and

(2) notify the person to whom the civil investigative demand is issued of the date of service.

Sec. 11. (a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.

(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:

(1) describe each class of documentary material to be produced with sufficient specificity to permit the material to be fairly identified;

(2) prescribe a return date for each class of documentary material that provides a reasonable period of time to assemble and make the material available for inspection and copying; and

(3) identify the official to whom the material must be made available.

(c) If a civil investigative demand is for answers to written interrogatories, the civil investigative demand must:

C o p y

(1) set forth with specificity the written interrogatories to be answered;

(2) prescribe the date by which answers to the written interrogatories must be submitted; and

(3) identify the official to whom the answers must be submitted.

(d) If a civil investigative demand requires oral testimony, the civil investigative demand must:

(1) prescribe a date, time, and place at which oral testimony will be given;

(2) identify the official who will conduct the examination and the custodian to whom the transcript of the examination will be submitted;

(3) specifically state that attendance and testimony are necessary to the conduct of the investigation;

(4) notify the person receiving the demand that the person has the right to be accompanied by an attorney and any other representative; and

(5) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry.

(e) A civil investigative demand that is a specific demand for a product of discovery may not be returned until at least twenty-one (21) days after a copy of the civil investigative demand has been served on the person from whom the discovery was obtained.

(f) The date prescribed for the giving of oral testimony under a civil investigative demand issued under this chapter must be a date that is not less than seven (7) days after the date on which the demand is received, unless the official issuing the demand determines that exceptional circumstances are present that require an earlier date.

(g) The official who issues a civil investigative demand may not issue more than one (1) civil investigative demand for oral testimony by the same person, unless:

(1) the person requests otherwise; or

(2) the official who issues a civil investigative demand, after conducting an investigation, notifies the person in writing that an additional civil investigative demand for oral testimony is necessary.

Sec. 12. (a) A civil investigative demand issued under this chapter may not require the production of any documentary material, the submission of any answers to written interrogatories,

C o p y

or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under the standards applicable:

(1) to a subpoena or subpoena duces tecum issued by a court to aid in a grand jury investigation; or

(2) to a discovery request under the rules of trial procedure;

to the extent that the application of these standards to a civil investigative demand is consistent with the purposes of this chapter.

(b) A civil investigative demand that is a specific demand for a product of discovery supersedes any contrary order, rule, or statutory provision, other than this section, that prevents or restricts disclosure of the product of discovery. Disclosure of a product of discovery under a specific demand does not constitute a waiver of a right or privilege that the person making the disclosure may be otherwise entitled to invoke to object to discovery of trial preparation materials.

Sec. 13. (a) A civil investigative demand issued under this chapter may be served by an investigator or by any other person authorized to serve process.

(b) A civil investigative demand shall be served in accordance with the rules of trial procedure. A court having jurisdiction over a person not located in Indiana has the same authority to enforce compliance with this chapter as the court has over a person located in Indiana.

Sec. 14. (a) The production of documentary material in response to a civil investigative demand served under this chapter shall be made in accordance with Trial Rule 34.

(b) Each interrogatory in a civil investigative demand served under this chapter shall be answered in accordance with Trial Rule 33.

(c) The examination of a person under a civil investigative demand for oral testimony served under this chapter shall be conducted in accordance with Trial Rule 30.

Sec. 15. (a) The official who issued the civil investigative demand is the custodian of the documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter.

(b) An investigator who receives documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the official who issued the civil investigative demand. The official shall take physical possession of

C o p y

the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material.

(c) The official who issued the civil investigative demand may make copies of documentary material, answers to interrogatories, or transcripts of oral testimony as required for official use by the attorney general, the inspector general, or the state police. The material, answers, or transcripts may be used in connection with the taking of oral testimony under this chapter.

(d) Except as provided in subsection (e), documentary material, answers to interrogatories, or transcripts of oral testimony, while in the possession of the official who issued the civil investigative demand, may not be made available for examination to any person other than:

(1) the attorney general or designated personnel of the attorney general's office;

(2) the inspector general or designated personnel of the inspector general's office; or

(3) an officer of the state police who has been authorized by the official who issued the civil investigative demand.

(e) The restricted availability of documentary material, answers to interrogatories, or transcripts of oral testimony does not apply:

(1) if the person who provided:

(A) the documentary material, answers to interrogatories, or oral testimony; or

(B) a product of discovery that includes documentary material, answers to interrogatories, or oral testimony;

consents to disclosure;

(2) to the general assembly or a committee or subcommittee of the general assembly; or

(3) to a state agency that requires the information to carry out its statutory responsibility.

Documentary material, answers to interrogatories, or transcripts of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.

(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to interrogatories, or transcripts of oral testimony shall be made available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand

C o p y

may impose reasonable conditions upon the examination or use of the documentary material, answers to interrogatories, or transcripts of oral testimony.

(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in connection with a proceeding before a grand jury, a court, or an agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.

(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:

(1) a proceeding before a grand jury, a court, or an agency involving the documentary material has been completed; or

(2) a proceeding before a grand jury, a court, or an agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation.

The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, a court, or an agency.

Sec. 16. (a) A person who has failed to comply with a civil investigative demand is subject to sanctions under Trial Rule 37 to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued under this chapter may seek a protective order in accordance with Trial Rule 26(C).

Sec. 17. Documentary material, answers to written interrogatories, or oral testimony provided in response to a civil investigative demand issued under this chapter is confidential.

Sec. 18. Proceedings under this chapter are governed by the Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial Procedure are inconsistent with this chapter.".

Page 9, after line 16, begin a new paragraph and insert:

"SECTION 15. [EFFECTIVE JULY 1, 2013] **(a) As used in this**

C o p y

SECTION, "commission" refers to the health finance commission established by IC 2-5-23-3.

(b) During the 2013 legislative interim, the commission shall study issues concerning the Medicaid false claims and whistleblower protection act (IC 5-11-5.7, as added by this act). The study must include:

(1) additional changes that may be necessary to address federal compliance issues identified by the Office of Inspector General of the U.S. Department of Health and Human Services;

(2) the impact of the Medicaid false claims and whistleblower protection act on the rights of whistleblowers and persons initiating actions under the act;

(3) appropriate protections for providers and entities that may be alleged to have submitted false claims to ensure sufficient due process safeguards and avoidance of unreasonable interference with regular practice operations, undue burdens, or unnecessary expenses;

(4) whether the act includes effective and efficient tools for the state to address instances of false claims and fraud against the Medicaid program; and

(5) any other matters that the commission considers relevant for the review of the Medicaid false claims and whistleblower protection act.

(c) This SECTION expires December 31, 2013.".

Renumber all SECTIONS consecutively.

(Reference is to ESB 559 as printed April 5, 2013.)

DELANEY

C o p y

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 559 be amended to read as follows:

Page 8, between lines 38 and 39, begin a new paragraph and insert:

"SECTION 13. IC 12-15-29-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 0.5. As used in this chapter, "insurer" includes a pharmacy benefit manager.**".

Renumber all SECTIONS consecutively.

(Reference is to ESB 559 as printed April 5, 2013.)

DAVISSON

Copy