



February 1, 2013

SENATE BILL No. 559

DIGEST OF SB 559 (Updated January 30, 2013 1:48 pm - DI 104)

Citations Affected: IC 7.1-2; IC 12-7; IC 12-13; IC 12-15; IC 20-26.

Synopsis: Fraud. Requires the state excise police to investigate allegations of electronic benefit transfer (EBT) fraud. 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. 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 lunch school program applications to ensure that applicants meet the requirements to participate in the program.

Effective: July 1, 2013.

Hershman, Mishler, Charbonneau

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.

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February 1, 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.

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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:

- 1 SECTION 1. IC 7.1-2-2-9.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2013]: **Sec. 9.5. The state excise police may investigate fraud**
4 **within the electronic benefits transfer program, as set forth in**
5 **IC 12-13-14-14.**
- 6 SECTION 2. IC 12-7-2-137, AS AMENDED BY P.L.145-2006,
7 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2013]: Sec. 137. (a) "Person", except as provided in
9 subsections (b) ~~and (c)~~; **through (d)**, means an association, a
10 corporation, a limited liability company, a governmental entity, an
11 individual, or a partnership.
- 12 (b) "Person", for purposes of IC 12-13-14, has the meaning set forth
13 in IC 12-13-14-1.
- 14 (c) "Person", for purposes of IC 12-17.2, means an individual who
15 is at least twenty-one (21) years of age, a corporation, a partnership, a
16 voluntary association, or other entity.
- 17 (d) **"Person", for purposes of IC 12-15-2-20, means an**

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1 **individual who is:**

- 2 **(1) at least twenty-one (21) years of age; and**
 3 **(2) applying for or receiving Medicaid assistance.**

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

- 9 **(1) Applicants.**
 10 **(2) Recipients.**
 11 **(3) Retailers that participate in the EBT program.**
 12 **(4) Individuals who sell or purchase access to cash assistance**
 13 **benefits in violation of any federal or state law or regulation.**

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

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

25 SECTION 5. IC 12-15-1-22 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2013]: **Sec. 22. (a) The office shall visit a Medicaid provider's**
 28 **office, entity, or facility if the provider's Medicaid claims have**
 29 **increased by at least fifty percent (50%) over a six (6) month**
 30 **period.**

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

34 SECTION 6. IC 12-15-2-20 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 20. (a) This section**
 36 **does not apply to a provider (as defined in IC 12-7-2-149.1(2)).**

37 ~~(b)~~ **(a) A person convicted of an offense under: ~~IC 35-43-5-7.1~~**

- 38 **(1) IC 35-43-5; or**
 39 **(2) IC 35-43-10;**

40 **related to the application for or receipt of Medicaid assistance is**
 41 **ineligible to receive Medicaid assistance under this article for the**
 42 **following time:**

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- 1 **(1) One (1) year if the conviction is for the person's first**
- 2 **offense.**
- 3 **(2) Two (2) years if the conviction is for the person's second**
- 4 **offense.**
- 5 **(3) Ten (10) years after if the conviction is for the person's third**
- 6 **or subsequent offense.**
- 7 **(b) A person's ineligibility period for Medicaid assistance**
- 8 **described in subsection (a) begins either:**
- 9 **(1) on the date the person is sentenced, if the person's sentence**
- 10 **does not include incarceration; or**
- 11 **(2) on the date the individual is released from incarceration.**
- 12 **(c) Upon receipt of substantiated evidence that a person has**
- 13 **committed fraud concerning the application for or receipt of**
- 14 **Medicaid assistance, the office may remove the person from**
- 15 **receiving Medicaid assistance for one (1) year. If the office**
- 16 **determines that a person receiving Medicaid assistance is to be**
- 17 **removed from receiving Medicaid assistance under this subsection,**
- 18 **the person may appeal the determination. An appeal under this**
- 19 **subsection is subject to IC 4-21.5.**
- 20 **(d) The office may adopt rules under IC 4-22-2 to implement**
- 21 **this section.**
- 22 **SECTION 7. IC 12-15-11-2.5 IS ADDED TO THE INDIANA**
- 23 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
- 24 **[EFFECTIVE JULY 1, 2013]: Sec. 2.5. (a) As used in this section,**
- 25 **"transportation provider" means a person:**
- 26 **(1) that is a common carrier, including a person that provides**
- 27 **transportation by a taxi;**
- 28 **(2) that:**
- 29 **(A) is enrolled; or**
- 30 **(B) applies for enrollment;**
- 31 **in the Medicaid program as a Medicaid provider to render**
- 32 **transportation services to Medicaid recipients; and**
- 33 **(3) that is not a nonprofit organization exempt from taxation**
- 34 **under Section 501(c)(3) of the Internal Revenue Code.**
- 35 **(b) A transportation provider that applies for enrollment as a**
- 36 **Medicaid provider:**
- 37 **(1) as a new applicant;**
- 38 **(2) due to a change in ownership of a transportation provider**
- 39 **currently enrolled; or**
- 40 **(3) due to a purchase or transfer of the assets of a**
- 41 **transportation provider currently enrolled;**
- 42 **shall, at the time the transportation provider files a provider**

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1 agreement with the office, submit to the office a surety bond that
 2 meets the requirements of subsection (d) and is issued by a surety
 3 that is authorized by the office of the secretary.

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

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

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

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

17 (3) The surety bond must name the:

18 (A) transportation provider as the principal;

19 (B) office as the obligee; and

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

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

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

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

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

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

40 (7) The surety bond must provide that if the transportation
 41 provider's provider agreement is not renewed or is
 42 terminated, the surety bond submitted by the transportation

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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.

(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

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1 desiring to participate in the Medicaid program by providing physician
 2 services as a managed care provider must enter into a provider
 3 agreement with the office or the contractor under IC 12-15-30 to
 4 provide Medicaid services.

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

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

16 (b) The accounts and records shall:

- 17 (1) be available for inspection and audit at all times by authorized
- 18 officials; and
- 19 (2) be preserved for at least five (5) years, as the state
- 20 superintendent may prescribe.

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

- 25 (1) Determine whether agreements with the governing body and
- 26 rules under this chapter are being complied with.
- 27 (2) Ensure that a school lunch program is effectively
- 28 administered.
- 29 **(3) Ensure that participants meet all requirements to**
 30 **participate in the school lunch program.**

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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

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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

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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.



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(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

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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.

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