

SENATE BILL No. 18

January 16, 2013, Introduced by Senator KAHN and referred to the Committee on Appropriations.

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
(MCL 400.1 to 400.119b) by adding sections 104, 104a, 104b, 104c,
and 104d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 104. AS USED IN THIS SECTION AND SECTIONS 104A TO 104D:

2 (A) "ABUSE" MEANS PRACTICES THAT ARE INCONSISTENT WITH SOUND
3 FISCAL, BUSINESS, OR MEDICAL PRACTICES OR VIOLATE DEPARTMENT
4 POLICIES AND PROCEDURES AND THAT RESULT IN UNNECESSARY COSTS TO
5 MEDICAID, RESULT IN REIMBURSEMENT FOR SERVICES THAT ARE NOT
6 MEDICALLY NECESSARY OR FAIL TO MEET PROFESSIONALLY RECOGNIZED
7 STANDARDS FOR HEALTH CARE, OR RESULT IN WASTE.

8 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES.

9 (C) "DEPARTMENT DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT
10 OF HUMAN SERVICES.

1 (D) "FRAUD" MEANS ANY DECEPTION OR MISREPRESENTATION MADE BY
2 ANY PERSON WHO KNOWS OR SHOULD HAVE KNOWN THAT THE DECEPTION COULD
3 RESULT IN UNNECESSARY OR INAPPROPRIATE COST TO THE MEDICAID
4 PROGRAM, INCLUDING ANY ACT THAT CONSTITUTES FRAUD OR SUBMISSION OF
5 A FALSE CLAIM UNDER APPLICABLE FEDERAL OR STATE LAW.

6 (E) "INSPECTOR" MEANS THE MEDICAID INSPECTOR GENERAL CREATED
7 IN SECTION 104A.

8 (F) "INVESTIGATION" MEANS THE THOROUGH AND SYSTEMATIC INQUIRY
9 INTO POTENTIAL FRAUD, ABUSE, INAPPROPRIATE BILLING OR USE OF
10 SERVICES, POLICY OR CONTRACTUAL VIOLATIONS, OR ILLEGAL ACTS
11 COMMITTED BY ANY MEDICAID FUNDS RECIPIENT.

12 (G) "MEDICAID" AND "MEDICAID PROGRAM" MEAN THE PROGRAM FOR
13 MEDICAL ASSISTANCE FOR THE MEDICALLY INDIGENT PROVIDED UNDER THIS
14 ACT, THAT INCLUDES THE PROGRAM FOR MEDICAL ASSISTANCE ESTABLISHED
15 UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, 42 USC 1396 TO 1396W-5,
16 AND ADMINISTERED ACCORDING TO THE STATE PLAN.

17 (H) "MEDICAID FRAUD CONTROL UNIT" MEANS THE CERTIFIED MEDICAID
18 FRAUD CONTROL UNIT IN THE OFFICE OF THE ATTORNEY GENERAL.

19 (I) "MEDICAID FUNDS RECIPIENT" MEANS ANY PERSON OR ENTITY,
20 PUBLIC OR PRIVATE, THAT PROVIDES MEDICAL CARE, SERVICES, OR
21 SUPPLIES PAID FOR, DIRECTLY OR INDIRECTLY, BY MEDICAID OR THAT
22 RECEIVES OR ADMINISTERS MEDICAID FUNDS PAID OUT UNDER THE STATE
23 PLAN. MEDICAID FUNDS RECIPIENT INCLUDES, BUT IS NOT LIMITED TO,
24 GOVERNMENTAL UNITS, PROVIDERS, CONTRACTORS, SUPPLIERS, AND MEDICAID
25 MANAGED CARE ORGANIZATIONS, AND THEIR SUBCONTRACTORS.

26 (J) "OFFICE" MEANS THE OFFICE OF MEDICAID INSPECTOR GENERAL
27 CREATED IN SECTION 104A.

1 SEC. 104A. (1) THE OFFICE OF MEDICAID INSPECTOR GENERAL IS
2 CREATED AS AN AGENCY WITHIN THE DEPARTMENT. THE DEPARTMENT IS THE
3 SINGLE STATE AGENCY FOR DETERMINING ELIGIBILITY FOR THE MEDICAL
4 ASSISTANCE PROGRAM IN MICHIGAN. THE OFFICE OF MEDICAID INSPECTOR
5 GENERAL SHALL ASSUME, EXERCISE, AND BE RESPONSIBLE FOR THE
6 DEPARTMENT'S DUTIES WITH RESPECT TO ALL OF THE FOLLOWING:

7 (A) PREVENTION, DETECTION, AND INVESTIGATION OF FRAUD AND
8 ABUSE WITHIN THE MEDICAID PROGRAM, INCLUDING FRAUD OR ABUSE WITHIN
9 THE DEPARTMENT OR BY A MEDICAID FUNDS RECIPIENT.

10 (B) REFERRAL OF APPROPRIATE CASES FOR CRIMINAL PROSECUTION AND
11 CIVIL ACTIONS.

12 (C) INTERNAL AND EXTERNAL ADMINISTRATIVE ENFORCEMENT, AUDIT,
13 QUALITY REVIEW, AND COMPLIANCE.

14 (D) OVERSIGHT AND CONTROL OF INFORMATION TECHNOLOGY RELATING
15 TO MEDICAID PROGRAM FRAUD AND ABUSE.

16 (E) INVESTIGATION, OVERSIGHT, AND ENFORCEMENT OF FRAUD AND
17 ABUSE CONTROL AND AUDITING, INCLUDING OVERSIGHT OF REPORTING AND
18 DATA SUBMISSIONS FROM MANAGED CARE ORGANIZATIONS.

19 (2) THE HEAD OF THE OFFICE SHALL BE THE MEDICAID INSPECTOR
20 GENERAL, WHO SHALL BE APPOINTED BY THE GOVERNOR. THE INSPECTOR
21 SHALL REPORT DIRECTLY TO THE GOVERNOR. A VACANCY IN THE POSITION
22 SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

23 (3) THE INSPECTOR SHALL BE SELECTED WITHOUT REGARD TO
24 POLITICAL AFFILIATION AND ON THE BASIS OF CAPACITY FOR EFFECTIVELY
25 CARRYING OUT THE DUTIES OF THE OFFICE. THE INSPECTOR SHALL POSSESS
26 DEMONSTRATED KNOWLEDGE, SKILLS, ABILITIES, AND EXPERIENCE IN
27 DETECTING AND COMBATING MEDICAID FRAUD AND ABUSE AND SHALL BE

1 FAMILIAR WITH THE MEDICAID PROGRAM.

2 (4) THE INSPECTOR SHALL EXERCISE HIS OR HER PRESCRIBED POWERS,
3 DUTIES, RESPONSIBILITIES, AND FUNCTIONS INDEPENDENTLY OF THE
4 DEPARTMENT DIRECTOR.

5 SEC. 104B. (1) THE MEDICAID PROGRAM AUDIT, FRAUD, AND ABUSE
6 PREVENTION FUNCTIONS OF THE DEPARTMENT SHALL BE IMMEDIATELY
7 TRANSFERRED TO THE OFFICE OF MEDICAID INSPECTOR GENERAL. OFFICERS
8 AND EMPLOYEES SUBSTANTIALLY ENGAGED IN THE PERFORMANCE OF THE
9 FUNCTIONS TO BE TRANSFERRED TO THE OFFICE SHALL BE TRANSFERRED,
10 ALONG WITH ANY EQUIPMENT, OFFICE SPACE, DOCUMENTS, RECORDS, AND
11 RESOURCES NECESSARY AND RELATED TO THE TRANSFER OF THOSE FUNCTIONS.
12 THE DIRECTOR AND THE INSPECTOR SHALL CONFER TO DETERMINE THE
13 OFFICERS AND EMPLOYEES WHO ARE SUBSTANTIALLY ENGAGED IN THE
14 MEDICAID PROGRAM AUDIT-, FRAUD-, AND ABUSE-RELATED FUNCTIONS TO BE
15 TRANSFERRED AND TO EXPEDITE ESTABLISHMENT OF THE OFFICE. THE
16 EMPLOYEES SHALL BE TRANSFERRED WITHOUT FURTHER EXAMINATION OR
17 QUALIFICATION TO THE SAME OR SIMILAR TITLES AND SHALL RETAIN THEIR
18 RESPECTIVE CIVIL SERVICE CLASSIFICATION. ALL OFFICE EMPLOYEES SHALL
19 BE COLOCATED, TO THE GREATEST EXTENT PRACTICABLE. THE INSPECTOR HAS
20 SOLE RESPONSIBILITY FOR ESTABLISHING METHODS OF ADMINISTRATION FOR
21 THE OFFICE.

22 (2) STATE DEPARTMENTS, AGENCIES, AND STATE OFFICERS SHALL
23 FULLY AND ACTIVELY COOPERATE WITH THE OFFICE OF THE MEDICAID
24 INSPECTOR GENERAL.

25 SEC. 104C. THE INSPECTOR SHALL FUNCTION AS AN AUTONOMOUS
26 ENTITY WITHIN THE DEPARTMENT TO SERVE AS A POINT OF LEADERSHIP AND
27 RESPONSIBILITY FOR MANAGING AND DIRECTING MEDICAL ASSISTANCE

1 PROGRAM EFFORTS TO CONTROL MEDICAID FRAUD AND ABUSE. THE POWERS AND
2 DUTIES OF THE INSPECTOR SHALL INCLUDE, BUT NOT BE LIMITED TO, ALL
3 OF THE FOLLOWING:

4 (A) TO APPOINT DEPUTIES, DIRECTORS, ASSISTANTS, AND OTHER
5 EMPLOYEES AS NEEDED FOR THE OFFICE TO MEET ITS RESPONSIBILITIES AND
6 TO PRESCRIBE THEIR DUTIES AND FIX THEIR COMPENSATION IN ACCORDANCE
7 WITH STATE LAW AND WITHIN THE AMOUNTS APPROPRIATED.

8 (B) TO CONDUCT AND SUPERVISE ALL ADMINISTRATIVE ACTIVITIES
9 CURRENTLY VESTED IN THE DEPARTMENT RELATING TO MEDICAID PROGRAM
10 INTEGRITY, FRAUD, AND ABUSE, INCLUDING, BUT NOT LIMITED TO, AUDITS,
11 SURVEILLANCE, UTILIZATION REVIEW, INFORMATION SYSTEMS, DATABASE
12 QUERIES, AND ALL ACTIVITIES RELATED TO MONITORING AND ANALYZING
13 PAYMENTS MADE TO ANY MEDICAID FUNDS RECIPIENT.

14 (C) TO SOLICIT, RECEIVE, AND INVESTIGATE COMPLAINTS AND TAKE
15 ALL APPROPRIATE ACTION TO PREVENT, DETECT, INVESTIGATE, AND
16 PROSECUTE FRAUD AND ABUSE IN THE MEDICAID PROGRAM COMMITTED BY THE
17 DEPARTMENT OR BY ANY MEDICAID FUNDS RECIPIENT.

18 (D) TO MAKE INVESTIGATIONS RELATING TO THE ADMINISTRATION OF
19 THE PROGRAMS AND OPERATIONS OF THE MEDICAID PROGRAM AS ARE IN THE
20 JUDGMENT OF THE INSPECTOR NECESSARY OR DESIRABLE AND CONSISTENT
21 WITH THE DEPARTMENT'S OBLIGATIONS UNDER THE LAW, THE STATE PLAN,
22 AND THE MEMORANDUM OF UNDERSTANDING WITH THE ATTORNEY GENERAL
23 REGARDING JURISDICTION OF THE MEDICAID FRAUD CONTROL UNIT.

24 (E) TO PROMPTLY REFER AND PROVIDE ALL INFORMATION AND EVIDENCE
25 RELATING TO SUSPECTED CRIMINAL ACTS AND POTENTIAL CIVIL LIABILITY
26 INVOLVING MEDICAID FUNDS TO THE MEDICAID FRAUD CONTROL UNIT,
27 ACCORDING TO THE REQUIREMENTS OF FEDERAL LAW, AND TO PROVIDE

1 ASSISTANCE TO THE MEDICAID FRAUD CONTROL UNIT TO DEVELOP CRIMINAL
2 INVESTIGATIONS, PROSECUTIONS, CIVIL ACTIONS, AND FINANCIAL
3 RECOVERIES.

4 (F) TO IDENTIFY PRACTICES THAT INCREASE THE RISK OF FRAUD OR
5 ABUSE RELATING TO MEDICAID FUNDS AND MAKE APPROPRIATE
6 RECOMMENDATIONS TO PREVENT AND DETECT FRAUD AND FINANCIAL ABUSE.

7 (G) TO OVERSEE AND RECOMMEND POLICIES AND PROCEDURES RELATING
8 TO MEDICAID PROGRAM INTEGRITY AND MONITOR THE IMPLEMENTATION OF
9 RECOMMENDATIONS MADE BY THE INSPECTOR TO THE DEPARTMENT OR TO OTHER
10 OFFICES, AGENCIES, OR ENTITIES INVOLVED IN ADMINISTRATION OF THE
11 MEDICAID PROGRAM.

12 (H) TO CALL ON ANY DEPARTMENT, AGENCY, OFFICE, COMMISSION, OR
13 COMMITTEE OF STATE OR LOCAL GOVERNMENT AND ANY MEDICAID FUND
14 RECIPIENT TO PROVIDE FULL AND UNRESTRICTED ACCESS TO ALL NON-LAW-
15 ENFORCEMENT RECORDS, REPORTS, AUDITS, REVIEWS, DOCUMENTS, PAPERS,
16 DATA, FINANCIAL STATEMENTS, RECOMMENDATIONS, OR OTHER MATERIAL
17 PREPARED, MAINTAINED, OR HELD BY OR AVAILABLE TO THAT ENTITY AND TO
18 PROVIDE OTHER ASSISTANCE AS THE INSPECTOR CONSIDERS NECESSARY TO
19 DISCHARGE THE DUTIES AND FUNCTIONS AND TO FULFILL THE
20 RESPONSIBILITIES OF THE OFFICE. EACH ENTITY SHALL, CONSISTENT WITH
21 FEDERAL OR STATE LAW, COOPERATE WITH THE INSPECTOR AND FURNISH THE
22 OFFICE WITH THE ITEMS AND ASSISTANCE NECESSARY, PROVIDED THAT THE
23 INFORMATION IS AFFORDED PATIENT CONFIDENTIALITY PROTECTION REQUIRED
24 UNDER STATE AND FEDERAL LAW.

25 (I) TO SUBPOENA AND ENFORCE THE ATTENDANCE OF WITNESSES,
26 ADMINISTER OATHS OR AFFIRMATIONS, EXAMINE WITNESSES UNDER OATH, AND
27 TAKE TESTIMONY AS THE INSPECTOR CONSIDERS RELEVANT OR MATERIAL TO

1 AN INVESTIGATION, EXAMINATION, OR REVIEW. A PERSON SUMMONED TO
2 APPEAR BEFORE THE INSPECTOR MAY BE EXAMINED WITH REFERENCE TO ANY
3 MATTER WITHIN THE SCOPE OF THE INQUIRY OR INVESTIGATION BEING
4 CONDUCTED BY THE OFFICE AND BE COMPELLED TO PRODUCE ANY BOOKS,
5 RECORDS, OR PAPERS DEMANDED BY THE INSPECTOR. IF A PERSON TO WHOM A
6 SUBPOENA IS ISSUED FAILS TO APPEAR OR, HAVING APPEARED, REFUSES TO
7 GIVE TESTIMONY, OR FAILS TO PRODUCE THE BOOKS, PAPERS, OR OTHER
8 DOCUMENTS REQUIRED, THE INSPECTOR MAY IMPOSE APPROPRIATE
9 ADMINISTRATIVE SANCTIONS AND MAY APPLY TO THE CIRCUIT COURT FOR THE
10 THIRTIETH JUDICIAL CIRCUIT FOR AN ORDER FOR THE PERSON TO APPEAR
11 AND GIVE TESTIMONY AND PRODUCE BOOKS, PAPERS, OR OTHER DOCUMENTS. A
12 PERSON FAILING TO OBEY AN ORDER ISSUED UNDER THIS SUBDIVISION MAY
13 BE PUNISHED BY THE COURT FOR CONTEMPT.

14 (J) TO PERFORM ON-SITE INSPECTIONS AND AUDITS OF ANY OFFICE OR
15 FACILITY WHERE BUSINESS RECORDS ARE KEPT BY ANY MEDICAID FUNDS
16 RECIPIENT.

17 (K) TO PURSUE ADMINISTRATIVE ENFORCEMENT ACTIONS AGAINST ANY
18 INDIVIDUAL OR ENTITY THAT ENGAGES IN FRAUD, ABUSE, OR ILLEGAL OR
19 IMPROPER ACTS OR UNACCEPTABLE PRACTICES REGARDING THE MEDICAID
20 PROGRAM OR MEDICAID FUNDS AND TO IMPOSE ADMINISTRATIVE SANCTIONS,
21 INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

22 (i) REFERRING INFORMATION AND EVIDENCE TO REGULATORY AGENCIES
23 AND LICENSURE BOARDS.

24 (ii) WITHHOLDING OR ADJUSTING PAYMENT OF MEDICAID FUNDS IN
25 ACCORDANCE WITH STATE AND FEDERAL LAWS AND REGULATIONS.

26 (iii) EXCLUDING A MEDICAID FUNDS RECIPIENT FROM PARTICIPATION IN
27 THE MEDICAID PROGRAM.

1 (iv) IMPOSING OTHER ADMINISTRATIVE SANCTIONS AND PENALTIES IN
2 ACCORDANCE WITH STATE AND FEDERAL LAWS AND REGULATIONS.

3 (v) RECOVERY OF IMPROPERLY EXPENDED MEDICAID FUNDS FROM THOSE
4 WHO ENGAGE IN FRAUD OR FINANCIAL ABUSE.

5 (l) TO DEVELOP AND IMPLEMENT PROTOCOLS AND PROCEDURES TO
6 COLLECT OVERPAYMENTS, RESTITUTION AMOUNTS, AND SETTLEMENT PROCEEDS.

7 (m) TO RECOMMEND RULES AND REGULATIONS RELATING TO THE
8 PREVENTION, DETECTION, INVESTIGATION, AND REFERRAL OF FRAUD AND
9 ABUSE WITHIN THE MEDICAID PROGRAM AND RECOVERY OF RELATED FUNDS.

10 (n) TO TAKE APPROPRIATE ACTIONS TO ENSURE THAT THE MEDICAID
11 PROGRAM IS THE PAYOR OF LAST RESORT, INCLUDING DEVELOPMENT OF AN
12 EFFECTIVE THIRD-PARTY LIABILITY PROGRAM TO ENSURE THAT ALL PRIVATE
13 OR OTHER GOVERNMENTAL PROGRAM RESOURCES HAVE BEEN EXHAUSTED BEFORE
14 A CLAIM IS PAID AND TO SEEK REIMBURSEMENT WHEN A LIABLE THIRD PARTY
15 IS DISCOVERED AFTER PAYMENT OF A CLAIM.

16 (o) TO OVERSEE, AUDIT, AND APPROVE CONTRACTS PERTAINING TO ANY
17 ASPECT OF THE MEDICAID PROGRAM, INCLUDING, BUT NOT LIMITED TO,
18 AUDIT CONTRACTS, COST REPORTS, CLAIMS, BILLS, AND ANY CONTRACT FOR
19 EXPENDITURE OF MEDICAID FUNDS, TO DETERMINE COMPLIANCE WITH
20 APPLICABLE FEDERAL AND STATE LAWS, REGULATIONS, GUIDELINES,
21 STANDARDS, AND POLICIES AND TO ENHANCE THE MEDICAID PROGRAM
22 INTEGRITY.

23 (p) TO OVERSEE AND APPROVE ALL MEDICAID MANAGED CARE CONTRACTS
24 AND SERVICE ARRANGEMENTS TO MINIMIZE THE RISK OF FRAUD AND ABUSE
25 AND ENSURE COMPLIANCE WITH CONTRACT PROVISIONS AND MEDICAID
26 POLICIES AND PROCEDURES AND TO MONITOR BILLING, ENCOUNTER DATA, AND
27 SUBCONTRACTING ARRANGEMENTS TO DETECT FRAUD AND ABUSE BY MEDICAID

1 MANAGED CARE ORGANIZATIONS OR ENTITIES OR INDIVIDUALS PROVIDING
2 GOODS OR SERVICES TO BENEFICIARIES THROUGH, OR TO, MANAGED CARE
3 ORGANIZATIONS.

4 (Q) TO SERVE AS THE CENTRAL POINT OF CONTACT FOR THE
5 DEPARTMENT WITH ENTITIES HAVING CONTRACTS OR GRANTS WITH THE
6 DEPARTMENT TO AUDIT, MONITOR, INVESTIGATE, OR REPORT MEDICAID
7 PROGRAM FRAUD OR ABUSE.

8 (R) TO APPLY FOR AND RECEIVE FEDERAL GRANTS AND MONEY AS THE
9 INSPECTOR REQUIRES FROM THE DEPARTMENT CONSISTENT WITH THE STATE
10 PLAN AND TO PARTICIPATE IN ANY APPROPRIATE FEDERAL PILOT PROGRAMS
11 OR DEMONSTRATION PROJECTS.

12 (S) TO PREPARE AN ANNUAL REPORT FOR THE GOVERNOR AND THE
13 DEPARTMENT ON THE PROGRESS OF IMPLEMENTING THE OFFICE, FRAUD
14 CONTROL INITIATIVES, RESULTS, AND RECOMMENDATIONS.

15 (T) TO ACT AS THE LIAISON BETWEEN THE DEPARTMENT AND THE
16 FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES, UNITED STATES
17 HEALTH AND HUMAN SERVICES DEPARTMENT, WITH RESPECT TO MATTERS
18 PERTAINING TO MEDICAID PROGRAM FRAUD OR ABUSE, AUDITS AND
19 INVESTIGATIONS, COMPLIANCE PROGRAMS, AND PROGRAM FISCAL INTEGRITY
20 ISSUES.

21 (U) TO PERFORM ANY OTHER FUNCTIONS NECESSARY OR APPROPRIATE IN
22 FURTHERANCE OF THE MISSION OF THE OFFICE.

23 SEC. 104D. ANY SUIT, ACTION, OR OTHER PROCEEDING LAWFULLY
24 COMMENCED BY, AGAINST, OR BEFORE ANY ENTITY AFFECTED BY SECTIONS
25 104 TO 104C SHALL NOT ABATE BY REASON OF SECTIONS 104 TO 104C
26 TAKING EFFECT.

27 Enacting section 1. This amendatory act takes effect March 1,

1 2014.