



Sen. Jeffrey M. Schoenberg

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1 AMENDMENT TO SENATE BILL 1353

2 AMENDMENT NO. _____. Amend Senate Bill 1353 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Attorney General Act is amended by adding
5 Section 6.7 as follows:

6 (15 ILCS 205/6.7 new)

7 Sec. 6.7. Medicaid Fraud Control Unit.

8 (a) Transfer of Medicaid Fraud Control Unit.

9 (1) Transfer. Subject to subsection (b), on the
10 effective date of this amendatory Act of the 97th General
11 Assembly, all functions performed by the Medicaid Fraud
12 Control Unit created in accordance with 42 U.S.C. 1396b,
13 together with all of the powers, duties, rights, and
14 responsibilities of the Medicaid Fraud Control Unit
15 relating to those functions, are transferred from the
16 Department of State Police to the Office of the Attorney

1 General.

2 The Department of State Police and the Office of the
3 Attorney General shall cooperate to ensure that the
4 transfer of functions is completed as soon as practical.

5 (2) Effect of transfer. Neither the functions of the
6 Medicaid Fraud Control Unit, nor the powers, duties,
7 rights, and responsibilities relating to those functions,
8 that are transferred from the Department of State Police to
9 the Office of the Attorney General under this Section are
10 affected by this amendatory Act of the 97th General
11 Assembly, except that all such functions, powers, duties,
12 rights, and responsibilities shall be performed or
13 exercised within the Office of the Attorney General on and
14 after the effective date of this amendatory Act of the 97th
15 General Assembly.

16 (3) Personnel transferred. The status and rights of the
17 employees in the Department of State Police engaged in the
18 performance of functions relating to the Medicaid Fraud
19 Control Unit shall not be affected by the transfer of those
20 functions from the Department of State Police to the Office
21 of the Attorney General under this Section. The rights of
22 those employees as derived from the State of Illinois and
23 its agencies under the Personnel Code, the applicable
24 collective bargaining agreements, or any pension,
25 retirement, or annuity plan shall not be affected by this
26 Section. Personnel employed by the Department of State

1 Police who are affected by this Section shall continue
2 their service within the Office of the Attorney General.

3 (4) Books and records transferred. All books, records,
4 papers, documents, contracts, and pending business
5 pertaining to the Medicaid Fraud Control Unit, including
6 but not limited to material in electronic or magnetic
7 format, shall be transferred to the Office of the Attorney
8 General. The transfer of that information shall not,
9 however, violate any applicable confidentiality
10 constraints.

11 (5) Unexpended moneys transferred. All unexpended
12 appropriation balances and other funds otherwise available
13 to the Department of State Police for use in connection
14 with the Medicaid Fraud Control Unit shall be transferred
15 and made available to the Office of the Attorney General
16 for use in connection with the Medicaid Fraud Control Unit.

17 (6) Exercise of transferred powers; savings
18 provisions. The powers, duties, rights, and
19 responsibilities relating to the Medicaid Fraud Control
20 Unit transferred from the Department of State Police to the
21 Office of the Attorney General under this Section are
22 vested in and shall be exercised by the Office of the
23 Attorney General. Each act done in exercise of those
24 powers, duties, rights, and responsibilities shall have
25 the same legal effect as if done by the Department of State
26 Police or its divisions, officers, or employees.

1 (7) Officers and others; duties; penalties. Every
2 employee, agent, or officer of the Office of the Attorney
3 General is subject to the same obligations and duties, and
4 has the same rights, as are prescribed by law in connection
5 with the exercise of any power, duty, right, or
6 responsibility transferred under this Section.

7 Every employee, agent, or officer of the Office of the
8 Attorney General is subject to the same penalty or
9 penalties, civil or criminal, as are prescribed by law for
10 the same offense by any employee, agent, or officer whose
11 powers, duties, rights, or responsibilities are
12 transferred under this Section.

13 (8) Reports, notices, or papers. Whenever reports or
14 notices are required to be made or given or papers or
15 documents furnished or served by any person to or upon the
16 Department of State Police in connection with any of the
17 functions relating to the Medicaid Fraud Control Unit, the
18 same shall be made, given, furnished, or served in the same
19 manner to or upon the Office of the Attorney General.

20 (9) Acts and actions unaffected by transfer. This
21 Section does not affect any act completed, ratified, or
22 canceled, or any right occurring or established, before the
23 effective date of this amendatory Act of the 97th General
24 Assembly in connection with any function transferred under
25 this Section. This Section does not affect any action or
26 proceeding had or commenced before the effective date of

1 this amendatory Act of the 97th General Assembly in an
2 administrative, civil, or criminal cause regarding any
3 function transferred under this Section, but any such
4 action or proceeding may be continued by the Office of the
5 Attorney General.

6 (10) For the purposes of the Successor Agency Act, the
7 Office of the Attorney General is declared to be the
8 successor agency of the Department of State Police, but
9 only with respect to the functions that are transferred to
10 the Office of the Attorney General under this Section.

11 (b) Federal approvals or certifications. Notwithstanding
12 any provision of subsection (a), if any federal approvals or
13 certifications are required before effectuating the transfer
14 described in subsection (a), the transfer is not operative
15 until all required federal approvals and certifications have
16 been secured.

17 Section 10. The Illinois Act on the Aging is amended by
18 changing Section 4.04a as follows:

19 (20 ILCS 105/4.04a)

20 Sec. 4.04a. Illinois Long-Term Care Council.

21 (a) Purpose. The purpose of this Section is to ensure that
22 consumers over the age of 60 residing in facilities licensed or
23 regulated under the Nursing Home Care Act, Skilled Nursing and
24 Intermediate Care Facilities Code, Sheltered Care Facilities

1 Code, and the Illinois Veterans' Homes Code receive high
2 quality long-term care through an effective Illinois Long-Term
3 Care Council.

4 (b) Maintenance and operation of the Illinois Long-Term
5 Care Council.

6 (1) The Department shall develop a fair and impartial
7 process for recruiting and receiving nominations for
8 members for the Illinois Long-Term Care Council from the
9 State Long-Term Care Ombudsman, the area agencies on aging,
10 regional ombudsman programs, provider agencies, and other
11 public agencies, using a nomination form provided by the
12 Department.

13 (2) The Department shall appoint members to the
14 Illinois Long-Term Care Council in a timely manner.

15 (3) The Department shall consider and act in good faith
16 regarding the Illinois Long-Term Care Council's annual
17 report and its recommendations.

18 (4) The Director shall appoint to the Illinois
19 Long-Term Care Council at least 18 but not more than 25
20 members.

21 (c) Responsibilities of the State Long-Term Care
22 Ombudsman, area agencies on aging, regional long-term care
23 ombudsman programs, and provider agencies. The State Long-Term
24 Care Ombudsman and each area agency on aging, regional
25 long-term care ombudsman program, and provider agency shall
26 solicit names and recommend members to the Department for

1 appointment to the Illinois Long-Term Care Council.

2 (d) Powers and duties. The Illinois Long-Term Care Council
3 shall do the following:

4 (1) Make recommendations and comment on issues
5 pertaining to long-term care and the State Long-Term Care
6 Ombudsman Program to the Department.

7 (2) Advise the Department on matters pertaining to the
8 quality of life and quality of care in the continuum of
9 long-term care.

10 (3) Evaluate, comment on reports regarding, and make
11 recommendations on, the quality of life and quality of care
12 in long-term care facilities and on the duties and
13 responsibilities of the State Long-Term Care Ombudsman
14 Program.

15 (4) Prepare and circulate an annual report to the
16 Governor, the General Assembly, and other interested
17 parties concerning the duties and accomplishments of the
18 Illinois Long-Term Care Council and all other related
19 matters pertaining to long-term care and the protection of
20 residents' rights.

21 (5) Provide an opportunity for public input at each
22 scheduled meeting.

23 (6) Make recommendations to the Director, upon his or
24 her request, as to individuals who are capable of serving
25 as the State Long-Term Care Ombudsman and who should make
26 appropriate application for that position should it become

1 vacant.

2 (e) Composition and operation. The Illinois Long-Term Care
3 Council shall be composed of at least 18 but not more than 25
4 members concerned about the quality of life in long-term care
5 facilities and protecting the rights of residents, including
6 members from long-term care facilities. The State Long-Term
7 Care Ombudsman shall be a permanent member of the Long-Term
8 Care Council. Members shall be appointed for a 4-year term with
9 initial appointments staggered with 2-year, 3-year, and 4-year
10 terms. A lottery will determine the terms of office for the
11 members of the first term. Members may be reappointed to a term
12 but no member may be reappointed to more than 2 consecutive
13 terms. The Illinois Long-Term Care Council shall meet a minimum
14 of 3 times per calendar year.

15 (f) Member requirements. All members shall be individuals
16 who have demonstrated concern about the quality of life in
17 long-term care facilities. A minimum of 3 members must be
18 current or former residents of long-term care facilities or the
19 family member of a current or former resident of a long-term
20 care facility. A minimum of 2 members shall represent current
21 or former long-term care facility resident councils or family
22 councils. A minimum of 4 members shall be selected from
23 recommendations by organizations whose members consist of
24 long-term care facilities. A representative of long-term care
25 facility employees must also be included as a member. A minimum
26 of 2 members shall be selected from recommendations of

1 membership-based senior advocacy groups or consumer
2 organizations that engage solely in legal representation on
3 behalf of residents and immediate families. There shall be
4 non-voting State agency members on the Long-Term Care Council
5 from the following agencies: (i) the Department of Veterans'
6 Affairs; (ii) the Department of Human Services; (iii) the
7 Department of Public Health; (iv) the Department on Aging; (v)
8 the Department of Healthcare and Family Services; (vi) the
9 ~~Illinois State Police~~ Medicaid Fraud Control Unit; and (vii)
10 others as appropriate.

11 (Source: P.A. 95-331, eff. 8-21-07.)

12 Section 15. The Illinois Public Aid Code is amended by
13 changing Section 8A-7 and by changing and renumbering Section
14 12-4.40, as added by Public Act 96-1346, as follows:

15 (305 ILCS 5/8A-7) (from Ch. 23, par. 8A-7)

16 Sec. 8A-7. Civil Remedies. (a) A person who receives
17 financial aid by means of a false statement, willful
18 misrepresentation or by his failure to notify the county
19 department or local governmental unit, as the case may be, of a
20 change in his status as required by Sections 11-18 and 11-19,
21 for the purpose of preventing the denial, cancellation or
22 suspension of his grant, or a variation in the amount thereof,
23 or by other fraudulent device, or a person who knowingly aids
24 or abets any person in obtaining financial aid for which he is

1 not eligible, shall be answerable to the county department or
2 the local governmental unit, as the case may be, for refunding
3 the entire amount of aid received. If the refund is not made,
4 it shall be recoverable in a civil action from the person who
5 received the aid, or from anyone who willfully aided such
6 person to obtain the aid. If an act which would be unlawful
7 under Section 8A-2 is proven, the court may as a penalty assess
8 an additional sum of money, not to exceed the entire amount of
9 aid provided, against the recipient or against any person who
10 willfully aided the recipient. If assessed, the penalty shall
11 be included in any judgment entered for the aid received, and
12 paid to the county department or the local governmental unit,
13 as the case may be. Upon entry of the judgment a lien shall
14 attach to all property and assets of such person until the
15 judgment is satisfied.

16 (b) Any person, firm, corporation, association, agency,
17 institution or other legal entity, other than an individual
18 recipient, that willfully, by means of a false statement or
19 representation, or by concealment of any material fact or by
20 other fraudulent scheme or device on behalf of himself or
21 others, obtains or attempts to obtain benefits or payments
22 under this Code to which he or it is not entitled, or in a
23 greater amount than that to which he or it is entitled, shall
24 be liable for repayment of any excess benefits or payments
25 received and, in addition to any other penalties provided by
26 law, civil penalties consisting of (1) the interest on the

1 amount of excess benefits or payments at the maximum legal rate
2 in effect on the date the payment was made to such person,
3 firm, corporation, association, agency, institution or other
4 legal entity for the period from the date upon which payment
5 was made to the date upon which repayment is made to the State,
6 (2) an amount not to exceed 3 times the amount of such excess
7 benefits or payments, and (3) the sum of \$2,000 for each
8 excessive claim for benefits or payments. Upon entry of a
9 judgment for repayment of any excess benefits or payments, or
10 for any civil penalties assessed by the court, a lien shall
11 attach to all property and assets of such person, firm,
12 corporation, association, agency, institution or other legal
13 entity until the judgment is satisfied.

14 (c) Civil recoveries provided for in this Section may be
15 recoverable in court proceedings initiated by the Attorney
16 General or, in actions involving a local governmental unit, by
17 the State's Attorney.

18 (d) Any person who commits the offense of vendor fraud or
19 recipient fraud as defined in Section 8A-2 and Section 8A-3 of
20 this Article shall forfeit, according to the provisions of this
21 subsection, any monies, profits or proceeds, and any interest
22 or property which the sentencing court determines he has
23 acquired or maintained, directly or indirectly, in whole or in
24 part as a result of such offense. Such person shall also
25 forfeit any interest in, securities of, claim against, or
26 contractual right of any kind which affords him a source of

1 influence over, any enterprise which he has established,
2 operated, controlled, conducted, or participated in
3 conducting, where his relationship to or connection with any
4 such thing or activity directly or indirectly, in whole or in
5 part, is traceable to any thing or benefit which he has
6 obtained or acquired through vendor fraud or recipient fraud.

7 Proceedings instituted pursuant to this subsection shall
8 be subject to and conducted in accordance with the following
9 procedures:

10 (1) The sentencing court shall, upon petition by the
11 Attorney General or State's Attorney at any time following
12 sentencing, conduct a hearing to determine whether any property
13 or property interest is subject to forfeiture under this
14 subsection. At the forfeiture hearing the People shall have the
15 burden of establishing, by a preponderance of the evidence,
16 that the property or property interests are subject to such
17 forfeiture.

18 (2) In any action brought by the People of the State of
19 Illinois under this Section, in which any restraining order,
20 injunction or prohibition or any other action in connection
21 with any property or interest subject to forfeiture under this
22 subsection is sought, the circuit court presiding over the
23 trial of the person charged with recipient fraud or vendor
24 fraud as defined in Sections 8A-2 or 8A-3 of this Article shall
25 first determine whether there is probable cause to believe that
26 the person so charged has committed the offense of recipient

1 fraud or vendor fraud and whether the property or interest is
2 subject to forfeiture under this subsection. To make such a
3 determination, prior to entering any such order, the court
4 shall conduct a hearing without a jury, at which the People
5 shall establish that there is (i) probable cause that the
6 person so charged has committed the offense of recipient fraud
7 or vendor fraud and (ii) probable cause that any property or
8 interest may be subject to forfeiture pursuant to this
9 subsection. Such hearing may be conducted simultaneously with a
10 preliminary hearing, if the prosecution is commenced by
11 information or complaint, or by motion of the People at any
12 stage in the proceedings. The court may accept a finding of
13 probable cause at a preliminary hearing following the filing of
14 an information charging the offense of recipient fraud or
15 vendor fraud as defined in Sections 8A-2 or 8A-3 or the return
16 of an indictment by a grand jury charging the offense of
17 recipient fraud or vendor fraud as defined in Sections 8A-2 or
18 8A-3 of this Article as sufficient evidence of probable cause
19 as provided in item (i) above. Upon such a finding, the circuit
20 court shall enter such restraining order, injunction or
21 prohibition, or shall take such other action in connection with
22 any such property or other interest subject to forfeiture under
23 this Act as is necessary to insure that such property is not
24 removed from the jurisdiction of the court, concealed,
25 destroyed or otherwise disposed of by the owner of that
26 property or interest prior to a forfeiture hearing under this

1 subsection. The Attorney General or State's Attorney shall file
2 a certified copy of such restraining order, injunction or other
3 prohibition with the recorder of deeds or registrar of titles
4 of each county where any such property of the defendant may be
5 located. No such injunction, restraining order or other
6 prohibition shall affect the rights of any bonafide purchaser,
7 mortgagee, judgement creditor or other lien holder arising
8 prior to the date of such filing. The court may, at any time,
9 upon verified petition by the defendant, conduct a hearing to
10 determine whether all or portions of any such property or
11 interest which the court previously determined to be subject to
12 forfeiture or subject to any restraining order, injunction, or
13 prohibition or other action, should be released. The court may
14 in its discretion release such property to the defendant for
15 good cause shown.

16 (3) Upon conviction of a person under this Article, the
17 court shall authorize the Director of the Illinois Department
18 of State Police to seize all property or other interest
19 declared forfeited under this subsection upon such terms and
20 conditions as the court shall deem proper.

21 (4) The Director of the Illinois Department of State Police
22 is authorized to sell all property forfeited and seized
23 pursuant to this subsection, unless such property is required
24 by law to be destroyed or is harmful to the public. After the
25 deduction of all requisite expenses of administration and sale,
26 the court shall order the Director to distribute to the

1 Illinois Department an amount from the proceeds of the
2 forfeited property, or monies forfeited or seized, which will
3 satisfy any unsatisfied court order of restitution entered
4 pursuant to a conviction under this Article. If the proceeds
5 are less than the amount necessary to satisfy the order of
6 restitution, the Director shall distribute to the Illinois
7 Department the entire amount of the remaining proceeds. The
8 Director shall distribute any remaining proceeds of such sale,
9 along with any monies forfeited or seized, in accordance with
10 the following schedules:

11 (a) 25% shall be distributed to the unit of local
12 government whose officers or employees conducted the
13 investigation into recipient fraud or vendor fraud and caused
14 the arrest or arrests and prosecution leading to the
15 forfeiture. Amounts distributed to units of local government
16 shall be used solely for enforcement matters relating to
17 detection, investigation or prosecution of recipient fraud or
18 vendor fraud as defined in Section 8A-2 or 8A-3 of this
19 Article. Where the investigation, arrest or arrests leading to
20 the prosecution and forfeiture is undertaken solely by the
21 Illinois Department of State Police, the portion provided
22 hereunder shall be paid into the Medicaid Fraud and Abuse
23 Prevention Fund, which is hereby created in the State treasury.
24 Monies from this fund shall be used by the Department of State
25 Police for the furtherance of enforcement matters relating to
26 detection, investigation or prosecution of recipient fraud or

1 vendor fraud. Monies directed to this fund shall be used in
2 addition to, and not as a substitute for, funds annually
3 appropriated to the Department of State Police for medicaid
4 fraud enforcement.

5 (b) 25% shall be distributed to the county in which the
6 prosecution and petition for forfeiture resulting in the
7 forfeiture was instituted, and deposited in a special fund in
8 the county treasury and appropriated to the State's Attorney
9 for use solely in enforcement matters relating to detection,
10 investigation or prosecution of recipient fraud or vendor
11 fraud; however, if the Attorney General brought the prosecution
12 resulting in the forfeiture, the portion provided hereunder
13 shall be paid into the Medicaid Fraud and Abuse Prevention
14 Fund, to be used by the Medicaid Fraud Control Unit of the
15 Illinois Department of State Police for enforcement matters
16 relating to detection, investigation or prosecution of
17 recipient fraud or vendor fraud. Where the Attorney General and
18 a State's Attorney have jointly participated in any portion of
19 the proceedings, 12.5% shall be distributed to the county in
20 which the prosecution resulting in the forfeiture was
21 instituted, and used as specified herein, and 12.5% shall be
22 paid into the Medicaid Fraud and Abuse Prevention Fund, and
23 used as specified herein.

24 (c) 50% shall be transmitted to the State Treasurer for
25 deposit in the General Revenue Fund.

26 (Source: P.A. 85-707.)

1 (305 ILCS 5/12-4.41)

2 Sec. 12-4.41 ~~12-4.40~~. Public Benefits Fraud Protection
3 Task Force.

4 (a) Purpose. The purpose of the Public Benefits Fraud
5 Protection Task Force is to conduct a thorough review of the
6 nature of public assistance fraud in the State of Illinois; to
7 ascertain the feasibility of implementing a mechanism to
8 determine the pervasiveness and frequency of public assistance
9 fraud; to calculate the detriment of public assistance fraud to
10 the financial status and socio-economic status of public aid
11 recipients specifically and Illinois taxpayers generally; and
12 to determine if more stringent penalties or compassionate
13 procedures are necessary.

14 (b) Definitions. As used in this Section:

15 "Task Force" means the Public Benefits Fraud Protection
16 Task Force.

17 "Public assistance" or "public aid" includes, without
18 limitation, Medicaid, TANF, the Illinois LINK Program, General
19 Assistance, Transitional Assistance, the Supplemental
20 Nutrition Assistance Program, and the Child Care Assistance
21 Program.

22 (c) The Public Benefits Fraud Protection Task Force. The
23 Public Benefits Fraud Protection Task Force is created. The
24 Task Force shall be composed of 17 members appointed as
25 follows:

1 (1) One member of the Illinois Senate appointed by the
2 President of the Senate, who shall be co-chair to the Task
3 Force;

4 (2) One member of the Illinois Senate appointed by the
5 Senate Minority Leader;

6 (3) One member of the Illinois House of Representatives
7 appointed by the Speaker of the House of Representatives,
8 who shall be co-chair to the Task Force;

9 (4) One member of the Illinois House of Representatives
10 appointed by the House Minority Leader;

11 (5) The following persons, or their designees: the
12 Director of Public Health, the Director of Healthcare and
13 Family Services, and the Secretary of Human Services;

14 (6) The Director of the Illinois Department on Aging,
15 or his or her designee;

16 (7) The Executive Inspector General appointed by the
17 Governor, or his or her designee;

18 (8) The Inspector General of the Illinois Department of
19 Human Services, or his or her designee;

20 (9) A representative from the ~~Illinois State Police~~
21 Medicaid Fraud Control Unit;

22 (10) Three persons, who are not currently employed by a
23 State agency, appointed by the Secretary of Human Services,
24 one of whom shall be a person with professional experience
25 in child care issues, one of whom shall be a person with
26 knowledge and experience in legal aid services, and one of

1 whom shall be a person with knowledge and experience in
2 poverty law;

3 (11) The Attorney General, or his or her designee;

4 (12) A representative of a union representing front
5 line State employees who administer public benefits
6 programs; and

7 (13) A representative of a statewide business
8 association.

9 (d) Compensation and qualifications. Members shall serve
10 without compensation and shall be adults and residents of
11 Illinois.

12 (e) Appointments. Appointments shall be made 90 days from
13 the effective date of this amendatory Act of the 96th General
14 Assembly.

15 (f) Hearings. The Task Force shall solicit comments from
16 stakeholders and hold public hearings before filing any report
17 required by this Section. At the public hearings, the Task
18 Force shall allow interested persons to present their views and
19 comments. The Task Force shall submit all reports required by
20 this Section to the Governor and the General Assembly. In
21 addition to the reports required by this Section, the Task
22 Force may provide, at its discretion, interim reports and
23 recommendations. The Department of Human Services shall
24 provide administrative support to the Task Force.

25 (g) Task Force duties. The Task Force shall gather
26 information and make recommendations relating to at least the

1 following topics in relation to public assistance fraud:

2 (1) Reviews of provider billing of public aid claims.

3 (2) Reviews of recipient utilization of public aid.

4 (3) Protocols for investigating recipient public aid
5 fraud.

6 (4) Protocols for investigating provider public aid
7 fraud.

8 (5) Reporting of alleged fraud by private citizens
9 through qui tam actions.

10 (6) Examination of current fraud prevention measures
11 which may hinder legitimate aid claims.

12 (7) Coordination between relevant agencies in fraud
13 investigation.

14 (8) Financial audit of the current costs borne by aid
15 recipients and Illinois government through fraud.

16 (9) Examination of enhanced penalties for fraudulent
17 recipients and providers.

18 (10) Enhanced whistleblower protections.

19 (11) Voluntary assistance from businesses and
20 community groups in efforts to curb fraud.

21 (h) Task Force recommendations. Any of the findings,
22 recommendations, public postings, and other relevant
23 information regarding the Task Force shall be made available on
24 the Department of Human Services' website.

25 (i) Reporting requirements. The Task Force shall submit
26 findings and recommendations to the Governor and the General

1 Assembly by December 31, 2011, including any necessary
2 implementing legislation, and recommendations for changes to
3 policies, rules, or procedures that are not incorporated in the
4 implementing legislation.

5 (j) Dissolution of Task Force. The Task Force shall be
6 dissolved 90 days after its report has been submitted to the
7 Governor's Office and the General Assembly.

8 (Source: P.A. 96-1346, eff. 1-1-11; revised 9-9-10.)

9 Section 99. Effective date. This Act takes effect January
10 1, 2012."