

CHAPTER NO. 1010

HOUSE BILL NO. 4019

By Representatives McMillan, Armstrong, Coleman

Substituted for: Senate Bill No. 3905

By Senator Kyle

AN ACT to amend Tennessee Code Annotated, Title 71, chapter 5, parts 25 and 26, relative to the detection and investigation of fraud and abuse in TennCare, and the recovery of money lost through such fraud and abuse.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, Part 25, shall be amended by adding new appropriately numbered sections, as follows:

Section _____. The general assembly recognizes that data mining is an important tool that should be used for the detection of fraud and abuse in the TennCare program. Therefore it is the intention of the general assembly that:

(1) The office of inspector general shall engage in data mining relating to the receipt of medical assistance and any assistance paid for by TennCare on behalf of recipients, for the purpose of detecting fraud or abuse by recipients;

(2) The inspector general shall have prompt, continuing, and effective access to all such data in a manner that will permit effective data mining for these purposes without imposing unduly burdensome or oppressive requirements on persons or entities that provide medical assistance or any assistance paid for by TennCare; and

(3) Data mining by the office of the inspector general is not intended to alter the requirements under title XIX of the federal Social Security Act, including but not limited to the requirements that the single state agency designated to administer the Medicaid program must have methods and criteria for identifying suspected fraud cases, must have a method for verifying whether services billed were received, and must cooperate with the state's medicaid fraud control unit.

Section _____. As used in this part, unless the context other wise requires:

(1) "Access" means the ability to extract intelligible information through automated means, and to store, retrieve, use, and otherwise manipulate that information in a way that can lead to meaningful analysis with the aid of commonly available computer software and hardware;

(2) "Data" means representations of information, knowledge, facts, concepts, or instructions which are being prepared or have been prepared in a formalized manner, and are intended to be stored or processed, or are being

stored or processed, or have been stored or processed in a computer, computer system, computer network or other electronic medium;

(3) "Data mining" means the automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies which might otherwise escape detection, the advanced statistical analysis and modeling of such data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze such data;

(4) "Single state agency" means the agency of the State of Tennessee that is designated pursuant to 42 C.F.R. § 431.10(b) to administer or supervise the administration of the medicaid program under title XIX of the Social Security Act; and,

(5) "TennCare related data" means all data that relates to medical assistance or any assistance to TennCare recipients, applicants, or enrollees as defined in this part. Such data includes data evidencing identity and eligibility of recipients and the receipt by recipients of medical assistance or any assistance paid for by TennCare.

Section __. All persons and entities under contract with the TennCare bureau or its agent or designee, including but not limited to all managed care organizations, benefit managers, and other managed care contractors, shall promptly provide to the office of inspector general, on request:

(1) A copy of, or access to, the same data regularly provided to the bureau in the normal course of business, and in the same format, unless otherwise agreed by the inspector general in writing; and

(2) Access to such additional TennCare related data or records as may be requested by the inspector general, provided that if such data is not easily separated from non-TennCare related data then all such data shall be provided as necessary to provide meaningful access to the TennCare related data.

Section ____.

(a) All records obtained pursuant to this chapter shall be treated as confidential investigative records of the office of inspector general and shall not be open to public inspection; provided, however, that nothing in this part shall be construed to affect the obligation of the single state agency under federal law to provide the medicaid fraud control unit with access to, and free copies of, all records or information or computerized data kept or stored by the agency pursuant to 42 C.F.R. § 455.21(a).

(b) Notwithstanding any other law to the contrary, no person shall be subject to any civil or criminal liability for providing the office of inspector general with access to data as required by this chapter.

(c) Nothing in this chapter shall be construed to require any person or entity to create new records or data that did not exist at the time of the request;

provided that no person or entity may destroy existing data after having been put on notice that access to the data is required pursuant to this section.

Section ____.

(a) The office of inspector general is authorized to require periodic provision of specific categories, types, or collations of data without the necessity of issuing a new request at the commencement of each period.

(b) Compliance with a request by the office of inspector general is not dependent on approval by the bureau of TennCare, and it shall not be a defense to an action for enforcement or sanctions under this part that the bureau of TennCare does not require copies of or access to the requested data.

(c) Data kept in the regular course of business in electronic format shall on request be provided to the office of inspector general in the same electronic format. Such data must be provided in a manner that permits meaningful analysis with the aid of commonly available computer software and hardware. To this end, access to data must be accompanied by access to any existing record layout, field definitions, or other guides or directions associated with the data.

(d) Notwithstanding any law to the contrary, access to data required pursuant to this act shall be provided to the office of inspector general without charge.

(e) The office of information resources shall assist the office of inspector general by providing sufficient dedicated storage space and access to software on the state's computer network to permit the office of inspector general to accomplish the data mining contemplated by this chapter.

(f) Nothing in this part shall be construed to prevent the bureau of TennCare or any other subdivision of the single state agency from conducting data mining, identifying suspected fraud cases, and referring suspected provider fraud to the medicaid fraud control unit pursuant to 42 C.F.R. § 455. Nothing in this part shall be construed to affect the obligation of the single state medicaid agency or any of its subdivisions to refer to the medicaid fraud control unit, pursuant to 42 C.F.R. § 455, all cases in which the agency has reason to believe, after a preliminary investigation, that an incident of provider fraud or abuse has occurred in the TennCare program.

Section ____.

The inspector general shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act compiled in title 4, chapter 5, as are necessary to implement the provisions of this part. Such rules shall be promulgated as public necessity rules. The inspector general is designated as the agency person to review initial orders and issue final agency orders pursuant to the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

Section ____.

(a) A person or entity requested to provide access to data pursuant to this section may object to providing all or part of such access by filing a written petition with the inspector general within thirty days of receipt of notice of the request to which objection is made. Such petition shall be treated as a contested case pursuant to the Uniform Administrative Procedures Act.

(b) In the event a person or entity requested to provide data pursuant to this section fails to do so or to file a timely petition objecting to provision of such data, the office of inspector general has the authority to petition the chancery court of Davidson County through the attorney general and reporter, or by special appointment or delegation from the attorney general and reporter as provided by law, for enforcement of the obligations imposed by this chapter, and for recovery of costs, attorneys' fees, and any applicable civil penalties.

(1) Upon filing of a petition for enforcement by the inspector general, the court shall order the person or entity named in the petition to show cause why they should not be held in contempt for failure to comply with the request.

(2) In ruling on the petition, the court shall be authorized to:

(A) Order the person or entity, on pain of contempt, to comply with the request, and to punish each day of failure to comply with such order as a separate contempt of court; and

(B) Award to the attorney general and reporter and, if applicable, the office of inspector general, reasonable costs and attorneys fees incurred in enforcing the requirement, if the state prevails.

(c) Willful failure to provide data, or access to data, as required by this chapter, shall be subject to the same civil penalty established by law for willful failure to report recipient fraud to the inspector general.

(1) A person or entity that has been assessed a civil penalty by the office of inspector general may object to the penalty by filing a written petition with the inspector general within thirty days of receipt of notice of the assessment. Such petition shall be treated as a contested case pursuant to the Uniform Administrative Procedures Act.

(2) In the event that a person or entity that has been assessed a civil penalty by the office of inspector general has failed to pay the penalty or file a timely objection, the office of inspector general has the authority to file a petition in the chancery court of Davidson County through the attorney general and reporter, or by delegation from the attorney general and reporter as provided by law, for the collection of such penalty, and for enforcement of the request to provide access to data as provided above.

Section __.

(a) All funds collected as civil penalties, attorneys fees, costs, or costs of investigation by the inspector general pursuant to this part or part 26 shall be deposited by the state treasurer in a separate account exclusively for the use of that office to defray the expenses of continued operations involving recipient fraud and abuse, including but not limited to data mining, litigation, criminal investigation and prosecution, civil and administrative recovery, undercover operations involving recipient fraud, and training and equipment for employees; provided, no part of such funds shall be used to supplement salaries of any public employee or law enforcement officer.

(b) Funds collected pursuant to this act may not supplant other state funds or appropriations. Any fund balance remaining unexpended at the end of a fiscal year in the account shall be carried forward into the subsequent fiscal year. No part of the fund shall be diverted to the general fund or any other public fund.

Section _____. The office of inspector general shall include in its annual report information on the progress of its data mining efforts, including any difficulties encountered in obtaining access to data from either private or government entities, and suggestions for legislative or other solutions.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 5, part 26, is amended by adding a new appropriately numbered section, as follows:

Section _____.

(a) Without regard to any other civil or criminal liability that might attach, by operation of this section or any other law, the office of inspector general shall have an administrative remedy against an enrollee, recipient, applicant, or person purporting to be an enrollee, recipient, or applicant, who improperly obtains medical assistance benefits or any assistance from the TennCare program, to which such person is not entitled. The office of inspector general shall also have an administrative remedy against any person who assists any enrollee, recipient, or applicant, or purported enrollee, recipient, or applicant in improperly obtaining such benefits or assistance.

(b) The administrative remedy established by this section shall be for the recovery of the amount of:

(1) Any medical assistance benefits or any assistance improperly paid for by TennCare as a result of any misrepresentation or omission made by such person, to the extent that such amount has not otherwise been recovered by the TennCare bureau.

(2) Any unpaid or underpaid premiums which were assessed at a lower monthly amount than would have been set if not for the misrepresentation or omission by such person, to the extent that such amount has not otherwise been recovered by the TennCare bureau. All such persons shall be jointly and severally liable to the state of Tennessee.

(c) The office of inspector general shall also have a right to recover the reasonable costs of proceedings pursuant to this section, including professional fees of court reporters and hearing officers or administrative judges, the reasonable costs of investigating claims arising under this section, reasonable attorneys' fees, as well as interest on the amount owed by the person, calculated from the date that the medical assistance or any assistance was improperly received, or from the date the correct premiums should have been paid.

(d) All costs of medical assistance, or any assistance, or unpaid premiums recouped pursuant to this section, and any interest thereon, shall be paid to the TennCare bureau. All costs of proceedings, investigative costs, and attorneys' fees pursuant to this section shall be paid to the office of inspector general, except as otherwise provided.

(e) Notwithstanding any other provision of law to the contrary, administrative actions pursuant to this section shall be commenced within four (4) years after the date of discovery by the state of the acts of misrepresentation or omission.

(f) The office of inspector general may invoke the remedy established by this section by initiating a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In an administrative action under this subsection, the office of the inspector general shall show that the amount sought to be recovered was paid in the form of medical assistance benefits or any assistance as a result of material misrepresentation or omission. The office of inspector general need not show that such misrepresentation or omission was intentional or fraudulent.

(g) The inspector general shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act compiled in title 4, chapter 5, as are necessary to implement the provisions of this part. Such rules shall be promulgated as public necessity rules. For purposes of rendering a final order pursuant to the Uniform Administrative Procedures Act compiled in title 4, chapter 5, the inspector general is designated the agency person to review initial orders and issue final agency decisions. Orders issued by the inspector general shall have the effect of a final order pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(h)

(1) Whenever an order issued by the inspector general pursuant to this part has become final, a notarized copy of the order may be filed in the office of the clerk of the chancery court of Davidson County.

(2) When filed in accordance with the provisions of this section, a final order shall be considered as a judgment by consent of the parties on the same terms and condition as those recited therein. Such judgment shall be promptly entered by the court. Except as otherwise provided in this section, the procedure for entry of judgment and the effect thereof shall be the same as provided in title 26, chapter 6.

(3) A judgment entered pursuant to this section shall become final on the date of entry.

(4) A final judgment under this subsection has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other judgment of a court of record of this state.

SECTION 3. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 25, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of June 2006


PHIL BREDESEN, GOVERNOR