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HOUSE BILL NO. 232

Offered January 12, 2022

Prefiled January 10, 2022

A BILL to amend and reenact § 32.1-320 of the Code of Virginia, relating to Medicaid Fraud Control Unit; recovery of fraudulent payments; report.

Patron—Orrock

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-320 of the Code of Virginia is amended and reenacted as follows:****§ 32.1-320. Duties of Attorney General; medical services providers audit and investigation unit.**

A. There shall be established within the Office of the Attorney General a unit to audit and investigate providers of services furnished under the State Medical Assistance Plan. The Department of Medical Assistance Services shall cooperate with the Office of the Attorney General in conducting such audits and investigations and shall provide such information for these purposes as may be requested by the Attorney General or his authorized representative.

B. The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of providers of medical and other services furnished under medical assistance. Such investigations shall include investigation of complaints alleging abuse or neglect of persons in the care or custody of others who receive payments for providing health care services under the state plan for medical assistance, regardless of whether the patient who is the subject of the complaint is a recipient of medical assistance. The relevant board within the Department of Health Professions shall serve in an advisory capacity to the Attorney General in the conduct of audits or investigations of health care providers licensed by the respective regulatory boards. In the conduct of such audits or investigations, the Attorney General may examine (i) those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the Department of Medical Assistance Services under the Plan for Medical Assistance, and (ii) in cases involving a complaint alleging abuse or neglect of a person in the care or custody of others who receive payments for medical assistance, those records or portions thereof, including patient records, that are relevant to the investigation of the complaint, notwithstanding the provisions of Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2 or of any other statute which may make or purport to make such records privileged or confidential. No original patient records shall be removed from the premises of the health care provider, except in accordance with Rule 4:9 of the Rules of the Supreme Court of Virginia. The disclosure of any records or information by the Attorney General is prohibited, unless such disclosure is directly connected to the official purpose for which the records or information was obtained. The disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained. The Attorney General shall cause all copies of patient medical records in his possession or that of his designee to be destroyed upon completion of the audit, investigation or proceedings, including appeals;

2. Issue subpoenas, propound interrogatories, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony relevant to such investigation. If a person in attendance before the Attorney General or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance, upon affidavit, for an order returnable in not less than two nor more than five days, directing such person to show cause why he should not produce such records. Upon the hearing of such order, if the court shall determine that such person, without reasonable cause, has refused to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith assess all costs and reasonable attorney fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order, the court may make such orders as are provided for in the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees

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59 and mileage paid as allowed in civil cases in the circuit courts of this Commonwealth. Subpoenas issued
60 under this section are expressly excluded and excepted from the provisions of subsection H of §
61 32.1-127.1:03. All records, information, reports, documents, memoranda, and communications created or
62 developed during the course of a civil investigation under this section or pursuant to § 32.1-312 shall be
63 considered sensitive and confidential and may be considered attorney work product or privileged
64 investigative files.

65 *C. The Attorney General shall report annually by October 1 to the Governor and the Chairmen of*
66 *the Senate Committees on Education and Health and Finance and Appropriations and the House*
67 *Committees on Appropriations and Health, Welfare and Institutions (i) the number of investigations*
68 *conducted pursuant to this chapter of providers of medical assistance services under the state plan for*
69 *medical assistance alleged to have fraudulently obtained or attempted to obtain payments; (ii) the*
70 *number of cases in which it is determined that a provider has fraudulently obtained or attempted to*
71 *obtain payments and the total amount of any payments obtained or sought to be obtained; (iii) the*
72 *number of cases in which the Attorney General sought to recover payments fraudulently obtained by a*
73 *provider and the total amount of payments determined to have been made in such cases; (iv) the number*
74 *of cases in which recovery of payments fraudulently obtained by a provider was not sought and the total*
75 *amount of payments determined to have been made in such cases; and (v) for each case in which*
76 *recovery of payments fraudulently obtained by a provider is sought, the total amount of such payments*
77 *and the amount of such payments actually recovered. Such report shall also be made available to the*
78 *public on a website maintained by the Office of the Attorney General.*