

HOUSE BILL No. 5048

October 6, 2011, Introduced by Reps. Genetski, Franz, Zorn, Price, Nesbitt, Horn, Lori, Agema, MacGregor, Damrow, Haugh and McMillin and referred to the Committee on Health Policy.

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) "FRAUD" MEANS ANY DECEPTION OR MISREPRESENTATION MADE BY**
10 **ANY PERSON WHO KNOWS OR SHOULD HAVE KNOWN THAT THE DECEPTION COULD**

1 RESULT IN UNNECESSARY OR INAPPROPRIATE COST TO THE MEDICAID
2 PROGRAM, INCLUDING ANY ACT THAT CONSTITUTES FRAUD OR SUBMISSION OF
3 A FALSE CLAIM UNDER APPLICABLE FEDERAL OR STATE LAW.

4 (D) "INSPECTOR" MEANS THE MEDICAID INSPECTOR GENERAL CREATED
5 IN SECTION 104A.

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

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

15 (G) "MEDICAID FRAUD CONTROL UNIT" MEANS THE CERTIFIED MEDICAID
16 FRAUD CONTROL UNIT IN THE OFFICE OF THE ATTORNEY GENERAL.

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

24 (I) "OFFICE" MEANS THE OFFICE OF MEDICAID INSPECTOR GENERAL
25 CREATED IN SECTION 104A.

26 SEC. 104A. (1) THE OFFICE OF MEDICAID INSPECTOR GENERAL IS
27 CREATED AS AN AGENCY WITHIN THE DEPARTMENT. THE DEPARTMENT IS THE

1 SINGLE STATE AGENCY FOR DETERMINING ELIGIBILITY FOR THE MEDICAL
2 ASSISTANCE PROGRAM IN MICHIGAN. THE OFFICE OF MEDICAID INSPECTOR
3 GENERAL SHALL ASSUME, EXERCISE, AND BE RESPONSIBLE FOR THE
4 DEPARTMENT'S DUTIES WITH RESPECT TO ALL OF THE FOLLOWING:

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

8 (B) REFERRAL OF APPROPRIATE CASES FOR CRIMINAL PROSECUTION AND
9 CIVIL ACTIONS.

10 (C) INTERNAL AND EXTERNAL ADMINISTRATIVE ENFORCEMENT, AUDIT,
11 QUALITY REVIEW, AND COMPLIANCE.

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

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

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

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

27 (4) THE INSPECTOR SHALL EXERCISE HIS OR HER PRESCRIBED POWERS,

1 DUTIES, RESPONSIBILITIES, AND FUNCTIONS INDEPENDENTLY OF THE
2 DEPARTMENT DIRECTOR.

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

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

23 SEC. 104C. THE INSPECTOR SHALL FUNCTION AS AN AUTONOMOUS
24 ENTITY WITHIN THE DEPARTMENT TO SERVE AS A POINT OF LEADERSHIP AND
25 RESPONSIBILITY FOR MANAGING AND DIRECTING MEDICAL ASSISTANCE
26 PROGRAM EFFORTS TO CONTROL MEDICAID FRAUD AND ABUSE. THE POWERS AND
27 DUTIES OF THE INSPECTOR SHALL INCLUDE, BUT NOT BE LIMITED TO, ALL

1 OF THE FOLLOWING:

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

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

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

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

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

1 RECOVERIES.

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

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

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

23 (I) TO SUBPOENA AND ENFORCE THE ATTENDANCE OF WITNESSES,
24 ADMINISTER OATHS OR AFFIRMATIONS, EXAMINE WITNESSES UNDER OATH, AND
25 TAKE TESTIMONY AS THE INSPECTOR CONSIDERS RELEVANT OR MATERIAL TO
26 AN INVESTIGATION, EXAMINATION, OR REVIEW. A PERSON SUMMONED TO
27 APPEAR BEFORE THE INSPECTOR MAY BE EXAMINED WITH REFERENCE TO ANY

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

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

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

20 (i) REFERRING INFORMATION AND EVIDENCE TO REGULATORY AGENCIES
21 AND LICENSURE BOARDS.

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

24 (iii) EXCLUDING A MEDICAID FUNDS RECIPIENT FROM PARTICIPATION IN
25 THE MEDICAID PROGRAM.

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

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

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

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

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

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

21 (p) TO OVERSEE AND APPROVE ALL MEDICAID MANAGED CARE CONTRACTS
22 AND SERVICE ARRANGEMENTS TO MINIMIZE THE RISK OF FRAUD AND ABUSE
23 AND ENSURE COMPLIANCE WITH CONTRACT PROVISIONS AND MEDICAID
24 POLICIES AND PROCEDURES AND TO MONITOR BILLING, ENCOUNTER DATA, AND
25 SUBCONTRACTING ARRANGEMENTS TO DETECT FRAUD AND ABUSE BY MEDICAID
26 MANAGED CARE ORGANIZATIONS OR ENTITIES OR INDIVIDUALS PROVIDING
27 GOODS OR SERVICES TO BENEFICIARIES THROUGH, OR TO, MANAGED CARE

1 ORGANIZATIONS.

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

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

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

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

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

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

25 Enacting section 1. This amendatory act takes effect March 1,
26 2012.