

Amendment No. 65

Assembly Amendment to Assembly Bill No. 56	(BDR 18-119)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

DP/KEL



Date: 4/15/2011

A.B. No. 56—Grants subpoena power to the Attorney General, acting through the Medicaid Fraud Control Unit, to obtain certain documents, records or materials. (BDR 18-119)



ASSEMBLY BILL NO. 56—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Judiciary

SUMMARY—Grants subpoena power to the Attorney General, acting through the Medicaid Fraud Control Unit, to obtain certain documents, records or materials. (BDR 18-119)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the Office of the Attorney General; authorizing the Attorney General, acting through the Medicaid Fraud Control Unit, to issue a subpoena to obtain certain documents, records or materials; authorizing the Attorney General to recover and retain certain costs and expenses that are incurred pursuant to an investigation or prosecution by the Unit; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Medicaid Fraud Control Unit within the Office of the Attorney General as the agency responsible for the investigation and prosecution of violations or offenses relating to the State Plan for Medicaid. (NRS 228.410) ~~[This bill authorizes the Attorney General, acting through the Medicaid Fraud Control Unit, to issue a subpoena to obtain certain documents, records or materials that are relevant to investigations or prosecutions by the Unit. Additionally, a person who willfully fails or refuses to comply with such a subpoena is guilty of a misdemeanor.]~~

~~This bill also~~ Section 2 of this bill authorizes the Attorney General to take appropriate legal action to recover any reasonable costs or expenses that are incurred pursuant to an investigation or prosecution by the Unit. ~~[This bill]~~ Section 2 further authorizes the Attorney General to retain a certain amount of the costs and expenses that are recovered, and requires the Attorney General to place any amount recovered in excess of that which the Attorney General is authorized to retain in the State General Fund for the State Plan for Medicaid.

Section 1 of this bill authorizes the Attorney General, acting through the chief executive of the Medicaid Fraud Control Unit, to issue a subpoena to obtain certain documents, records or materials relevant to an investigation or prosecution by the Unit in a civil action to recover the reasonable costs or expenses incurred pursuant to the investigation or prosecution. Additionally, a person who willfully fails or refuses to comply with such a subpoena is guilty of a misdemeanor.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 228 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In carrying out the duties and responsibilities under NRS 228.410, the Attorney General, acting through the chief executive of the Medicaid Fraud Control Unit or his or her designee, may issue a subpoena for documents, records or materials.

2. The Attorney General may use any documents, records or materials produced pursuant to a subpoena issued under this section in the course of a civil action brought pursuant to NRS 228.410.

3. Any person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor.

4. A subpoena issued pursuant to this section must include a copy of the provisions of subsections 1, 2 and 3.

~~Section 1.~~ **Sec. 2.** NRS 228.410 is hereby amended to read as follows:

228.410 1. The Attorney General has primary jurisdiction to investigate and prosecute violations of NRS 422.540 to 422.570, inclusive, and any fraud in the administration of the Plan or in the provision of medical assistance pursuant to the Plan. The provisions of this section notwithstanding, the Department of Health and Human Services and the Division of Health Care Financing and Policy of the Department of Health and Human Services shall enforce the Plan and any regulations adopted pursuant thereto.

2. For this purpose, the Attorney General shall establish within his or her office the Medicaid Fraud Control Unit. The Unit must consist of a group of qualified persons, including, without limitation, an attorney, an auditor and an investigator who, to the extent practicable, have expertise in nursing, medicine and the administration of medical facilities.

3. The Attorney General, acting through the Medicaid Fraud Control Unit:

(a) Is the single state agency responsible for the investigation and prosecution of violations of NRS 422.540 to 422.570, inclusive;

(b) **May conduct any investigation or prosecution authorized pursuant to 42 U.S.C. § 1396b(q);**

(c) Shall review reports of abuse or criminal neglect of patients in medical facilities which receive payments under the Plan and, when appropriate, investigate and prosecute the persons responsible;

~~(d)~~ (d) May review and investigate reports of misappropriation of money from the personal resources of patients in medical facilities that receive payments under the Plan and, when appropriate, shall prosecute the persons responsible;

~~(e)~~ (e) Shall cooperate with federal investigators and prosecutors in coordinating state and federal investigations and prosecutions involving fraud in the provision or administration of medical assistance pursuant to the Plan, and provide those federal officers with any information in his or her possession regarding such an investigation or prosecution; and

~~(f)~~ (f) Shall protect the privacy of patients and establish procedures to prevent the misuse of information obtained in carrying out the provisions of this section. **and section 1 of this act.**

4. When acting pursuant to **this section or** NRS 228.175, ~~for this section,~~ the Attorney General may commence an investigation and file a criminal action without leave of court, and has exclusive charge of the conduct of the prosecution.

~~5. If the Attorney General has reasonable cause to believe that a person is in possession, custody or control of any documents, records or other materials relevant to an investigation or prosecution conducted pursuant to this section, the Attorney General, acting through the Medicaid Fraud Control Unit, may issue a subpoena for the documents, records or materials. A subpoena issued pursuant to this subsection must:~~

~~— (a) Be served upon the person in the manner required by law;~~

~~— (b) Describe the documents, records or materials to be produced with sufficient definiteness so that the documents, records or materials are reasonably identifiable;~~

~~— (c) Be limited to documents, records or materials that are relevant to an investigation or prosecution conducted pursuant to this section;~~

~~— (d) Specify a reasonable time within which the person must produce the documents, records or materials; and~~

~~— (e) Specify a place for the production of the documents, records or materials.~~

~~6.~~ The Attorney General may, by appropriate legal action, recover any reasonable costs or expenses incurred in conducting an investigation or prosecution pursuant to this section ~~or~~ **or section 1 of this act.** The Attorney General may retain the costs and expenses recovered pursuant to this subsection up to an amount not exceeding, in the aggregate, three times the amount of any money paid by this State which matches federal grant money for the Medicaid Fraud Control Unit. Costs and expenses recovered by the Attorney General in excess of the amount retained by the Attorney General must be deposited in the State General Fund for credit to the appropriate account for the Plan.

~~7. Any person who willfully fails or refuses to comply with a subpoena issued pursuant to subsection 5 is guilty of a misdemeanor.~~

~~8.~~ **6.** As used in this section:

(a) "Medical facility" has the meaning ascribed to it in NRS 449.0151.

(b) "Plan" means the State Plan for Medicaid established pursuant to NRS 422.271.

~~Sec. 2.~~ **Sec. 3.** This act becomes effective on July 1, 2011.