

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to establishing the office of Empire Blue Cross and Blue Shield inspector general

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

1 Section 1. The executive law is amended by adding a new section 75 to
2 read as follows:

3 S 75. EMPIRE BLUE CROSS AND BLUE SHIELD INSPECTOR GENERAL. 1. DEFINI-
4 TIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS
5 SHALL APPLY:

6 A. "INSPECTOR" MEANS THE EMPIRE BLUE CROSS AND BLUE SHIELD INSPECTOR
7 GENERAL CREATED BY THIS SECTION.

8 B. "INVESTIGATION" MEANS, INVESTIGATIONS OF FRAUD, ABUSE, OR ILLEGAL
9 ACTS PERPETRATED WITHIN EMPIRE BLUE CROSS AND BLUE SHIELD.

10 C. "OFFICE" MEANS THE OFFICE OF THE EMPIRE BLUE CROSS AND BLUE SHIELD
11 INSPECTOR GENERAL CREATED BY THIS SECTION.

12 2. OFFICE OF EMPIRE BLUE CROSS AND BLUE SHIELD INSPECTOR GENERAL;
13 CREATION. A. THERE IS HEREBY CREATED IN THE DEPARTMENT OF LAW WITHIN
14 THE OFFICE OF THE DEPUTY ATTORNEY GENERAL FOR MEDICAID FRAUD CONTROL AN
15 OFFICE OF THE EMPIRE BLUE CROSS AND BLUE SHIELD INSPECTOR GENERAL. THE
16 HEAD OF THE OFFICE SHALL BE THE EMPIRE BLUE CROSS AND BLUE SHIELD
17 INSPECTOR GENERAL, WHO SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH
18 THE ADVICE AND CONSENT OF THE SENATE.

19 B. THE INSPECTOR SHALL SERVE FOR A TERM OF FIVE YEARS UNLESS REMOVED
20 BY THE GOVERNOR FOR NEGLIGENCE OR MALFEASANCE IN OFFICE, AND MAY ALSO BE
21 REMOVED FOR NEGLIGENCE OR MALFEASANCE BY THE SENATE UPON A VOTE OF
22 TWO-THIRDS OF ITS MEMBERS. AN INSPECTOR REMOVED FROM OFFICE MAY NOT BE
23 REAPPOINTED TO SUCH OFFICE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 C. THE INSPECTOR MAY NOT BE EMPLOYED WITH THE DEPARTMENT OF INSURANCE
2 DURING HIS OR HER EMPLOYMENT WITH THE OFFICE OR WITHIN TWO YEARS AFTER
3 TERMINATING EMPLOYMENT WITH THE OFFICE.

4 3. FUNCTIONS, DUTIES AND RESPONSIBILITIES. THE INSPECTOR SHALL HAVE
5 THE FOLLOWING FUNCTIONS, DUTIES AND RESPONSIBILITIES:

6 A. TO APPOINT SUCH DEPUTIES, DIRECTORS, ASSISTANTS AND OTHER OFFICERS
7 AND EMPLOYEES AS MAY BE NEEDED FOR THE PERFORMANCE OF HIS OR HER DUTIES
8 AND MAY PRESCRIBE THEIR POWERS AND FIX THEIR COMPENSATION WITHIN THE
9 AMOUNTS APPROPRIATED THEREFOR;

10 B. TO CONDUCT AND SUPERVISE INVESTIGATIONS OF THE ACTIVITIES OF EMPIRE
11 BLUE CROSS AND BLUE SHIELD AND, TO THE GREATEST EXTENT POSSIBLE, TO
12 COORDINATE WITH THE SUPERINTENDENT OF INSURANCE;

13 C. TO KEEP THE GOVERNOR, ATTORNEY GENERAL, STATE COMPTROLLER, THE
14 TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE, THE SPEAKER AND
15 THE MINORITY AND MAJORITY LEADERS OF THE ASSEMBLY, APPRISED OF FRAUD AND
16 ABUSE;

17 D. TO PROSECUTE FRAUD, ABUSE OR ILLEGAL ACTS PERPETRATED WITHIN EMPIRE
18 BLUE CROSS AND BLUE SHIELD;

19 E. TO MAKE INFORMATION AND EVIDENCE RELATING TO CRIMINAL ACTS WHICH HE
20 OR SHE MAY OBTAIN IN CARRYING OUT HIS OR HER DUTIES AVAILABLE TO APPRO-
21 PRIATE LAW ENFORCEMENT OFFICIALS AND LOCAL DISTRICT ATTORNEYS TO COORDI-
22 NATE INVESTIGATIONS AND CRIMINAL PROSECUTIONS;

23 F. TO SUBPOENA WITNESSES, ADMINISTER OATHS OR AFFIRMATIONS, TAKE
24 TESTIMONY AND COMPEL THE PRODUCTION OF SUCH BOOKS, PAPERS, RECORDS AND
25 DOCUMENTS AS HE OR SHE MAY DEEM TO BE RELEVANT TO AN INVESTIGATION
26 UNDERTAKEN PURSUANT TO THIS SECTION;

27 G. TO MONITOR THE IMPLEMENTATION BY THE RELEVANT OFFICE OF HIS OR HER
28 RECOMMENDATIONS AND THOSE OF OTHER INVESTIGATIVE AGENCIES;

29 H. TO RECOMMEND POLICIES RELATING TO THE PREVENTION AND DETECTION OF
30 FRAUD AND ABUSE OR THE IDENTIFICATION AND PROSECUTION OF PARTICIPANTS IN
31 SUCH FRAUD OR ABUSE; AND

32 I. TO RECEIVE COMPLAINTS OF ALLEGED FAILURES OF STATE AND LOCAL OFFI-
33 CIALS TO PREVENT, DETECT AND PROSECUTE FRAUD AND ABUSE.

34 4. COOPERATION OF AGENCY OFFICIALS AND EMPLOYEES. A. IN ADDITION TO
35 THE AUTHORITY OTHERWISE PROVIDED BY THIS SECTION, THE INSPECTOR, IN
36 CARRYING OUT THE PROVISIONS OF THIS SECTION, IS AUTHORIZED:

37 (I) TO HAVE FULL AND UNRESTRICTED ACCESS TO ALL RECORDS, REPORTS,
38 AUDITS, REVIEWS, DOCUMENTS, PAPERS, RECOMMENDATIONS OR OTHER MATERIAL
39 AVAILABLE TO THE DEPARTMENT OF INSURANCE RELATING TO PROGRAMS AND OPER-
40 ATIONS WITH RESPECT TO WHICH THE INSPECTOR HAS RESPONSIBILITIES UNDER
41 THIS SECTION;

42 (II) TO MAKE SUCH INVESTIGATIONS RELATING TO THE ADMINISTRATION OF THE
43 PROGRAMS AND OPERATIONS OF THE DEPARTMENT OF INSURANCE AS ARE, IN THE
44 JUDGMENT OF THE INSPECTOR, NECESSARY OR DESIRABLE; AND

45 (III) TO REQUEST SUCH INFORMATION, ASSISTANCE AND COOPERATION FROM ANY
46 FEDERAL, STATE OR LOCAL GOVERNMENTAL DEPARTMENT, BOARD, BUREAU, COMMIS-
47 SION, OR OTHER AGENCY OR UNIT THEREOF AS MAY BE NECESSARY FOR CARRYING
48 OUT THE DUTIES AND RESPONSIBILITIES ENJOINED UPON HIM OR HER BY THIS
49 SECTION. STATE AND LOCAL AGENCIES OR UNITS THEREOF ARE HEREBY AUTHORIZED
50 AND DIRECTED TO PROVIDE SUCH INFORMATION, ASSISTANCE AND COOPERATION.

51 B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO
52 THE CONTRARY, NO PERSON SHALL PREVENT, SEEK TO PREVENT, INTERFERE WITH,
53 OBSTRUCT OR OTHERWISE HINDER ANY INVESTIGATION BEING CONDUCTED PURSUANT
54 TO THIS SECTION. ANY VIOLATION OF THIS PARAGRAPH SHALL CONSTITUTE CAUSE
55 FOR SUSPENSION OR REMOVAL FROM OFFICE OR EMPLOYMENT.

1 5. ESTABLISHMENT PERIOD. THE GOVERNOR SHALL NOMINATE THE INITIAL
2 INSPECTOR AS SOON AS IS PRACTICABLE BUT IN NO EVENT LATER THAN SIXTY
3 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

4 6. REPORTS REQUIRED OF THE INSPECTOR. THE INSPECTOR SHALL, NO LATER
5 THAN FEBRUARY FIRST OF EACH YEAR, SUBMIT TO THE GOVERNOR, THE STATE
6 COMPTROLLER, THE ATTORNEY GENERAL AND THE LEGISLATURE A REPORT SUMMARIZ-
7 ING THE ACTIVITIES OF THE OFFICE DURING THE PRECEDING CALENDAR YEAR.

8 7. DISCLOSURE OF INFORMATION. A. THE INSPECTOR SHALL NOT PUBLICLY
9 DISCLOSE INFORMATION WHICH IS:

10 (I) A PART OF ANY ONGOING INVESTIGATION; OR

11 (II) SPECIFICALLY PROHIBITED FROM DISCLOSURE BY ANY OTHER PROVISION OF
12 LAW.

13 B. NOTWITHSTANDING PARAGRAPH A OF THIS SUBDIVISION, ANY REPORT UNDER
14 THIS SECTION MAY BE DISCLOSED TO THE PUBLIC IN A FORM WHICH INCLUDES
15 INFORMATION WITH RESPECT TO A PART OF AN ONGOING CRIMINAL INVESTIGATION
16 IF SUCH INFORMATION HAS BEEN INCLUDED IN A PUBLIC RECORD.

17 S 2. This act shall take effect immediately.