S T A T E O F N E W Y O R K

455

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:

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

S 75. EMPIRE BLUE CROSS AND BLUE SHIELD INSPECTOR GENERAL. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

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

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

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

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

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

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

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

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

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

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

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

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

E. TO MAKE INFORMATION AND EVIDENCE RELATING TO CRIMINAL ACTS WHICH HE OR SHE MAY OBTAIN IN CARRYING OUT HIS OR HER DUTIES AVAILABLE TO APPROPRIATE LAW ENFORCEMENT OFFICIALS AND LOCAL DISTRICT ATTORNEYS TO COORDINATE INVESTIGATIONS AND CRIMINAL PROSECUTIONS;

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

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

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

I. TO RECEIVE COMPLAINTS OF ALLEGED FAILURES OF STATE AND LOCAL OFFICIALS TO PREVENT, DETECT AND PROSECUTE FRAUD AND ABUSE.

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

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

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

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

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

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

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

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

(I) A PART OF ANY ONGOING INVESTIGATION; OR

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

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

S 2. This act shall take effect immediately.