

4339

2009-2010 Regular Sessions

I N S E N A T E

April 22, 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 the appointment of a special prosecutor for criminal medical care fraud and providing for such prosecutor's functions, powers and duties

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

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that criminal fraud, waste and abuse in the health care indus-
3 try in this state costs the government, taxpayers, and insurers billions
4 of dollars each year and causes incalculable damage to the quality of
5 our health care system. Estimates of criminal fraud, scams and abuse in
6 the health-care industry indicate the cost to this state alone could
7 reach between fifty and eighty billion dollars a year.
8 Such criminal frauds, waste, abuses and crimes committed by health
9 care professionals and others strike at those least able to protect
10 themselves. The sick, especially the terminally ill, elderly and the
11 infirmed seeking medical treatment are the unwitting victims of unneces-
12 sary tests, surgeries, x-rays, prescriptions, supplies and other
13 services which not only defraud government and insurance carriers but
14 also expose these patients to unwarranted dangers.
15 For every dollar wasted, beneficiaries risk potential reductions in
16 program coverage, increased out-of-pocket expenses and increased health
17 insurance premiums.
18 The need to control health care costs which have spiraled out of
19 control and to develop a system that facilitates the detection of fraud
20 is of paramount importance and necessitates the enactment of this act.
21 S 2. The executive law is amended by adding a new section 62-a to read
22 as follows:
23 S 62-A. SPECIAL PROSECUTOR FOR CRIMINAL MEDICAL CARE FRAUD. 1. THE
24 GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE AND ASSEMBLY,

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

LBD02192-01-9

1 SHALL WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION APPOINT A
2 SPECIAL PROSECUTOR FOR CRIMINAL MEDICAL CARE FRAUD. THE SPECIAL PROSECU-
3 TOR SHALL SERVE FOR A TERM OF TEN YEARS UNLESS REMOVED BY THE GOVERNOR,
4 AFTER NOTICE AND AN OPPORTUNITY FOR A HEARING, AND THEN ONLY FOR ONE OR
5 MORE OF THE FOLLOWING REASONS: PERMANENT DISABILITY WHICH RENDERES THE
6 SPECIAL PROSECUTOR INCAPABLE OF PERFORMING THE DUTIES OF HIS/HER OFFICE;
7 GROSS INEFFICIENCY, TYPIFIED BY A LACK OF ABILITY TO PROPERLY CONDUCT
8 INVESTIGATIONS AND PROSECUTIONS; NEGLECT OF DUTY, INCLUDING AN UNWILL-
9 INGNESS TO PURSUE CLAIMS OF CRIMINAL FRAUD, ABUSE OR CORRUPTION; MALFEA-
10 SANCE; CONVICTION OF A FELONY; OR CONDUCT INVOLVING MORAL TURPITUDE. A
11 SPECIAL PROSECUTOR REMOVED FROM OFFICE UNDER THIS SUBDIVISION MAY NOT BE
12 REAPPOINTED. SUCH SPECIAL PROSECUTOR SHALL RECEIVE AN ANNUAL SALARY TO
13 BE FIXED BY LAW FROM WITHIN THE AMOUNTS APPROPRIATED THEREFOR. SUCH
14 SPECIAL PROSECUTOR SHALL POSSESS ALL OF THE POWERS OF AN ASSISTANT
15 ATTORNEY GENERAL OTHERWISE AUTHORIZED BY THIS ARTICLE PROVIDED, HOWEVER
16 THAT SUCH SPECIAL PROSECUTOR SHALL DEVOTE HIS OR HER FULL TIME AND
17 EFFORT EXCLUSIVELY TO INVESTIGATIONS AND PROSECUTIONS OF ACTIONS AND
18 PROCEEDINGS RELATING TO CRIMINAL MEDICAL CARE FRAUD AND CRIMINAL FRAUD
19 INVOLVING THE STATE'S MEDICAL CARE PROVIDER AND REIMBURSEMENT SYSTEM.

20 2. THE SPECIAL PROSECUTOR MAY APPOINT SUCH OTHER DEPUTIES, DIRECTORS,
21 ASSISTANTS, AND OTHER EMPLOYEES TO SERVE AT THE SPECIAL PROSECUTOR'S
22 PLEASURE AND DISCRETION AS MAY BE NEEDED FOR THE PERFORMANCE OF DUTIES
23 AND MAY PRESCRIBE THEIR POWERS AND FIX THEIR COMPENSATION WITHIN THE
24 AMOUNTS APPROPRIATED THEREFOR.

25 3. THE SPECIAL PROSECUTOR SHALL HAVE THE FOLLOWING SPECIAL FUNCTIONS,
26 POWERS AND DUTIES:

27 (A) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS AS MORE PARTIC-
28 ULARLY ENUMERATED IN PARAGRAPHS (B) THROUGH (N) OF THIS SUBDIVISION
29 WHENEVER SUCH SPECIAL PROSECUTOR REASONABLY CONCLUDES THAT THE ACTIVITY
30 ALLEGED MAY CONSTITUTE A CRIME.

31 (B) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS FROM THE PUBLIC
32 OR ANY OTHER SOURCE CONCERNING ALLEGED ABUSES, SUSPECTED CRIMINAL
33 FRAUDS, AND OTHER VIOLATIONS OF THE MEDICAL CARE PROVIDER AND REIMBURSE-
34 MENT SYSTEM WHICH SHALL BE DEEMED TO INCLUDE CRIMINAL FRAUD OR ABUSE BY
35 A MEDICAL CARE PROVIDER, A MEDICAL CARE RECIPIENT, THIRD PARTY PAYORS OR
36 ANY OTHER PERSON OR BUSINESS ENTITY CONNECTED THEREWITH.

37 (C) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS OF ALLEGED FAIL-
38 URES TO ENFORCE THE STATE'S LAWS AND PERTINENT RULES AND REGULATIONS
39 REGARDING THE MEDICAL CARE PROVIDER AND REIMBURSEMENT SYSTEM, AND TO
40 INVESTIGATE AND PROSECUTE THE SAME.

41 (D) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS OF ALLEGED FAIL-
42 URES OF LOCAL OFFICIALS AND EMPLOYEES AND PRIVATE INDIVIDUALS TO COMPLY
43 WITH STATE LAWS AND RULES AND REGULATIONS REGARDING THE MEDICAL CARE
44 PROVIDER AND REIMBURSEMENT SYSTEM AND TO INVESTIGATE AND PROSECUTE THE
45 SAME.

46 (E) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS FROM THE PUBLIC
47 OR ANY OTHER SOURCE CONCERNING PRICING OF MEDICAL SUPPLIES AND MATERI-
48 ALS.

49 (F) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS FROM THE PUBLIC
50 OR ANY OTHER SOURCE CONCERNING THE PROVISION OF UNNECESSARY MEDICAL
51 TESTS AND SERVICES INCLUDING FALSE DIAGNOSIS WHICH MAY INVOLVE PATIENT
52 COMPLICITY.

53 (G) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS FROM THE PUBLIC
54 OR ANY OTHER SOURCE CONCERNING ALLEGED FALSE BILLINGS AND CLAIMS.

55 (H) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS FROM THE PUBLIC
56 OR ANY OTHER SOURCE CONCERNING ALLEGED SOLICITATION FOR REMUNERATION

1 DIRECTLY OR INDIRECTLY, OVERTLY OR COVERTLY, IN CASH OR IN KIND, IN
2 RETURN FOR REFERRING AN INDIVIDUAL TO A HEALTH CARE PROVIDER FOR THE
3 FURNISHING OR ARRANGING FOR THE FURNISHING OF ANY TEST, SERVICE, ITEM OR
4 CARE OR IN RETURN FOR PURCHASING, LEASING, ORDERING OR ARRANGING FOR OR
5 RECOMMENDING, PURCHASING, LEASING OR ORDERING ANY TEST, SERVICE, ITEM OR
6 CARE.

7 (I) TO RECEIVE, INVESTIGATE AND PROSECUTE COMPLAINTS FROM THE PUBLIC
8 OR ANY OTHER SOURCE CONCERNING ALLEGED OFFERS OF REMUNERATION OR
9 PAYMENTS DIRECTLY OR INDIRECTLY, OVERTLY OR COVERTLY, IN CASH OR IN KIND
10 TO ANY PERSON TO INDUCE SUCH PERSON TO REFER AN INDIVIDUAL TO A HEALTH
11 CARE PROVIDER FOR THE FURNISHING OR ARRANGING FOR THE FURNISHING OF ANY
12 TEST, SERVICE, ITEM OR CARE OR TO PURCHASE, LEASE, ORDER OR ARRANGE FOR
13 OR RECOMMEND PURCHASING, LEASING OR ORDERING ANY TEST, SERVICE, ITEM OR
14 CARE.

15 (J) TO CONDUCT ANY INQUIRY PERTINENT OR MATERIAL TO THE DISCHARGE OF
16 THE FUNCTIONS, POWERS AND DUTIES IMPOSED BY LAW; AND THROUGH DESIGNATED
17 MEMBERS OF THE STAFF, TO SUBPOENA AND ENFORCE THE ATTENDANCE OF
18 WITNESSES, ADMINISTER OATHS, TAKE TESTIMONY AND COMPEL THE PRODUCTION OF
19 SUCH BOOKS, PAPERS, RECORDS AND DOCUMENTS AS MAY BE RELEVANT TO ANY SUCH
20 INQUIRY AND INVESTIGATION.

21 (K) TO ESTABLISH A STATEWIDE TOLL FREE TELEPHONE HOTLINE FOR REPORTING
22 OF ALLEGED CRIMINAL FRAUD AND ABUSE.

23 (L) TO REQUEST FROM ANY DEPARTMENT, BOARD, BUREAU, COMMISSION OR OTHER
24 AGENCY OF THE STATE AND ITS POLITICAL SUBDIVISIONS, AND THE SAME ARE
25 AUTHORIZED AND DIRECTED TO PROVIDE, SUCH COOPERATION AND ASSISTANCE,
26 SERVICES AND DATA AS WILL ENABLE HIM OR HER PROPERLY TO CARRY OUT HIS OR
27 HER FUNCTIONS, POWERS AND DUTIES AND IN PARTICULAR TO WORK IN CONCERT
28 WITH THE INSURANCE DEPARTMENT, THE HEALTH DEPARTMENT AND THE EDUCATION
29 DEPARTMENT TO EFFECTUATE THE PROVISIONS OF THIS SECTION.

30 (M) TO MAKE AN ANNUAL REPORT TO THE GOVERNOR, THE ATTORNEY GENERAL,
31 THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY
32 CONCERNING SUCH WORK DURING THE PRECEDING YEAR, AND TO MAKE SUCH FURTHER
33 INTERIM REPORTS TO THEM AS THEY OR ANY OF THEM SHALL DEEM ADVISABLE OR
34 REQUIRE.

35 (N) TO DEVELOP AND IMPLEMENT GUIDELINES AND PROCEDURES FOR THE CONDUCT
36 OF INVESTIGATIONS AND TO DEVELOP TRAINING PROGRAMS FOR INVESTIGATORS AND
37 OTHER MEMBERS OF THE STAFF.

38 (O) TO DO ALL THINGS NECESSARY OR CONVENIENT TO CARRY OUT THE FUNC-
39 TIONS, POWERS AND DUTIES SET FORTH IN THIS SECTION.

40 4. ANY ORGANIZATION, INSTITUTION, INSURANCE COMPANY OR OTHER PERSON
41 WHO REPORTS OR PROVIDES INFORMATION TO THE SPECIAL PROSECUTOR IN GOOD
42 FAITH, AND WITHOUT MALICE, SHALL NOT BE SUBJECT TO AN ACTION FOR CIVIL
43 DAMAGES OR OTHER RELIEF AS THE RESULT OF SUCH COMMUNICATION. ANY SUCH
44 COMMUNICATION SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE DISCLOSED
45 UNLESS CONSENTED TO OR UNLESS ORDERED BY THE COURT.

46 5. FOR ANY VIOLATION INVOLVING CRIMINAL MEDICAL CARE FRAUD, IN ADDI-
47 TION TO CRIMINALLY PROSECUTING ANY PERSON SO CHARGED THE SPECIAL PROSE-
48 CUTOR SHALL HAVE A CIVIL RIGHT OF ACTION TO RECOVER DAMAGES EQUAL TO
49 THREE TIMES THE AMOUNT FRAUDULENTLY OBTAINED. AMOUNTS COLLECTED PURSUANT
50 TO THE AUTHORITY OF THIS SUBDIVISION SHALL BE DEPOSITED IN THE GENERAL
51 FUND TO THE CREDIT OF THE SPECIAL PROSECUTOR TO OFFSET THE EXPENSES OF
52 THE OFFICE HEREIN CREATED.

53 S 3. This act shall take effect on the sixtieth day after it shall
54 have become a law.