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

6988--A

2013-2014 Regular Sessions

I N A S S E M B L Y

April 29, 2013

Introduced by M. of A. HEVESI, MONTESANO -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law and the public authorities law, in relation to authorizing an enterprise approach to the detection and prevention of fraud, waste and abuse in state government and the detection and prevention of improper payments of public moneys

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

Section 1. Legislative findings. (a) Fraud, waste, abuse and improper payments are pervasive, and often on the rise, in many government programs.

(1) According to the Centers for Medicare and Medicaid Services (CMS), the 2011 Medicaid improper payment rate was 8.1%;

(2) According the the Government Accountability Office (GAO), over $70 billion in improper payments are made each year in Medicaid and Medicare;

(3) According to the U.S. Department of Labor, the 2011 unemployment insurance payment error rate was 11.2%, resulting in $5.7 billion of improper payments;

(4) According to the Internal Revenue Service (IRS), the tax gap for federal income tax is at least $270 billion per year;

(5) In the 2012 filing season, IRS estimated losses due to identity theft alone at $5 billion, and detected an additional $12 billion.

(b) Entities involved in perpetrating fraud and abuse of government programs are becoming increasingly more sophisticated in their schemes and tactics, and often work in organized and collusive fraud rings or networks to attack any and all government programs. The fraud schemes can be massive, as illustrated in the following recent cases:

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

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(1) October 2010: 73 defendants, $163 million in false Medicare/Medicaid billings, Armenian-American fraud ring;

(2) February 2011: 20 defendants, $200 million in false Medicare/Medicaid billings, Florida;

(3) February 2011: 111 defendants, $225 million in false Medicare/Medicaid billings, 7 cities;

(4) April 2011: 3 defendants, $3.9 million in food stamp 47 fraud, Texas;

(5) September 2011: 91 defendants, $295 million in false Medicare/Medicaid billings, 8 cities;

(6) October 2012: 91 defendants, $430 million in false Medicare/Medicaid billings, 7 cities.

(c) Fraud, waste, abuse and improper payments can adversely affect the state budget, impede economic development, and deplete benefits intended for citizens in need.

(d) The state constitution requires the state comptroller to, among other things, audit all vouchers before payment and all official accounts and, in such respect, the legislature shall define the powers and duties of the office and may assign to the state comptroller administrative duties incidental to the performance of these functions and the state comptroller has the constitutional authority to supervise the accounts of public corporations commonly referred to as public authorities. Statutorily, the state comptroller has the duty to superintend the fiscal concerns of the state.

(d-1) In the performance of the state comptroller's constitutional and statutory functions, duties and responsibilities, the state's citizens expect state agencies to utilize modern techniques and technology to prevent tax dollars from being spent on fraudulent or improper payments.

(e) Identifying possible waste, fraud, abuse and the improper payments of public moneys at the earliest point possible will reduce losses and possibly prevent erroneous payments from being made, thus providing potentially millions of dollars in cost-savings to the state.

(f) State-supported citizen and employee benefits programs, workers' compensation, Medicaid, unemployment insurance, tax compliance, and discretionary grants to community-based programs are areas where it is important for the state to identify and prevent waste, fraud, abuse and improper payments.

(g) Modern technologies and best practices exist, and have been deployed successfully in the commercial sector for many years, that can greatly reduce the losses associated with fraud, waste, abuse and improper payments.

(h) An enterprise approach to reducing waste, fraud, abuse, and improper payments coordinates efforts with more than one agency and incorporates data from multiple data sources within an agency and between two or more agencies. This type of approach allows state government to utilize its rich data assets across agencies and programs to better detect improper behaviors, and to leverage economies of scale to reduce overall costs for fraud detection and prevention across all state government programs and functions.

S 2. The state finance law is amended by adding a new section 8-c to read as follows:

S 8-C. ENTERPRISE FRAUD PREVENTION AND DETECTION SYSTEM. 1. IN FURTHERANCE OF THE COMPTROLLER'S CONSTITUTIONAL AND STATUTORY FUNCTIONS, DUTIES AND RESPONSIBILITIES, THE COMPTROLLER MAY, WITHIN HIS OR HER DISCRETION, ESTABLISH, IMPLEMENT AND UPDATE AS NECESSARY AN ELECTRONIC DATA ANALYTICAL ENTERPRISE FRAUD PREVENTION AND DETECTION SYSTEM FOR THE

PREVENTION OF FRAUD, WASTE AND ABUSE IN STATE GOVERNMENT AND THE DETECTION AND PREVENTION OF IMPROPER PAYMENTS OF PUBLIC MONEYS.

2. IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW, STATE AGENCIES SHALL FULLY SUPPORT AND COOPERATE BY PROVIDING THE STATE COMPTROLLER WITH ACCESS TO DATA AS REQUESTED BY THE STATE COMPTROLLER TO ALLOW SUCH DATA TO BE INTEGRATED INTO SUCH ANALYTIC EFFORTS AS THE STATE COMPTROLLER MAY DEEM NECESSARY. FOR THIS PURPOSE, THE TERM "STATE AGENCY" SHALL MEAN ANY STATE DEPARTMENT, STATE UNIVERSITY OF NEW YORK, CITY UNIVERSITY OF NEW YORK, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, COUNCIL, OR OFFICE PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE.

3. IN SUPPORT OF THE ENTERPRISE FRAUD PREVENTION AND DETECTION SYSTEM, THE STATE COMPTROLLER SHALL:

(A) ESTABLISH PROTOCOLS FOR DATA SHARING, SECURE FILE TRANSFERS OR OTHER METHODS TO OBTAIN REAL-TIME, REGULAR AND/OR PERIODIC DATA FROM STATE AGENCIES;

(B) ESTABLISH PROTOCOLS TO ENSURE THE SAFETY, SECURITY, INTEGRITY AND PRIVACY OF ALL DATA SHARED WITH HIS OR HER OFFICE IN ACCORDANCE WITH THE SYSTEM; AND

(C) ESTABLISH PROTOCOLS FOR THE RETENTION AND DELETION OF DATA OBTAINED FROM STATE AGENCIES.

4. IN CONNECTION WITH SUCH SYSTEM, THE STATE COMPTROLLER, IN HIS OR HER DISCRETION, MAY:

(A) DEVELOP A LONG-RANGE PLAN FOR PREVENTING OR DETECTING IMPROPER PAYMENTS OF PUBLIC MONEYS, AND THE PREVENTION AND DETECTION OF WASTE, FRAUD AND ABUSE IN GOVERNMENT OPERATIONS;

(B) ACQUIRE TECHNOLOGY INCLUDING, BUT NOT LIMITED TO, SOFTWARE THAT ENHANCES THE FOLLOWING CAPABILITIES: (I) AUTOMATED DETECTION AND ALERTING; (II) CONTINUOUS MONITORING OF PROGRAM TRANSACTIONS AND ACTIVITY, TO DETECT FRAUD AND IMPROPER PAYMENTS BOTH PROSPECTIVELY (BEFORE THE PAYMENT IS MADE) AND RETROSPECTIVELY (AFTER PAYMENTS ARE MADE); (III) DETECTION OF NON-TRANSACTIONAL FRAUD SUCH AS PROGRAM ELIGIBILITY ISSUES AND IDENTIFY THEFT; AND

(C) EVALUATE POTENTIAL SAVINGS RESULTING FROM SUCH EFFORTS.

5. THE STATE COMPTROLLER SHALL REPORT ANNUALLY TO THE LEGISLATURE NO LATER THAN THE FIRST DAY OF SEPTEMBER, TWO THOUSAND FIFTEEN AND ANNUALLY THEREAFTER ON THE PROGRESS, STATUS AND RESULTS OF THE SYSTEM CREATED PURSUANT TO THIS SECTION.

S 3. Section 2803 of the public authorities law, as added by chapter 327 of the laws of 1958 and as renumbered by chapter 838 of the laws of 1983, is amended to read as follows:

S 2803. Examination of the books and accounts of public authorities by the state comptroller. 1. Notwithstanding any other provision of this chapter, the state comptroller shall, from time to time but not less than once in every five years, examine the books and accounts of every authority or commission heretofore or hereafter continued or created by this chapter, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing. In lieu of such an examination, the state comptroller is hereby authorized to accept from every such authority or commission an external examination of its books and accounts made at the request of such authority or commission.

2. THE STATE COMPTROLLER MAY, IN HIS OR HER SOLE DISCRETION, APPLY TO STATE AUTHORITIES THE ELECTRONIC DATA ANALYTICAL ENTERPRISE FRAUD PREVENTION AND DETECTION SYSTEM AS PROVIDED FOR IN SECTION EIGHT-C OF THE STATE FINANCE LAW. TO THE EXTENT THE STATE COMPTROLLER APPLIES SUCH

SYSTEM TO STATE AUTHORITIES, SUCH AUTHORITIES SHALL FULLY SUPPORT AND COOPERATE BY PROVIDING THE STATE COMPTROLLER WITH ACCESS TO DATA OF THE AUTHORITY AS REQUESTED BY THE STATE COMPTROLLER TO ALLOW SUCH DATA TO BE INTEGRATED INTO SUCH ANALYTIC EFFORTS AS THE STATE COMPTROLLER MAY DEEM NECESSARY. FOR PURPOSES OF THIS SECTION, THE TERM "STATE AUTHORITY" SHALL HAVE THE SAME MEANING AS IN SECTION TWO OF THIS CHAPTER.

S 4. This act shall take effect immediately.