

4815--A

2013-2014 Regular Sessions

I N S E N A T E

April 24, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- 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:

1 Section 1. Legislative findings. (a) Fraud, waste, abuse and improper
2 payments are pervasive, and often on the rise, in many government
3 programs.
4 (1) According to the Centers for Medicare and Medicaid Services (CMS),
5 the 2011 Medicaid improper payment rate was 8.1%;
6 (2) According the the Government Accountability Office (GAO), over \$70
7 billion in improper payments are made each year in Medicaid and Medi-
8 care;
9 (3) According to the U.S. Department of Labor, the 2011 unemployment
10 insurance payment error rate was 11.2%, resulting in \$5.7 billion of
11 improper payments;
12 (4) According to the Internal Revenue Service (IRS), the tax gap for
13 federal income tax is at least \$270 billion per year;
14 (5) In the 2012 filing season, IRS estimated losses due to identity
15 theft alone at \$5 billion, and detected an additional \$12 billion.
16 (b) Entities involved in perpetrating fraud and abuse of government
17 programs are becoming increasingly more sophisticated in their schemes
18 and tactics, and often work in organized and collusive fraud rings or
19 networks to attack any and all government programs. The fraud schemes
20 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.

LBD10412-04-4

1 (1) October 2010: 73 defendants, \$163 million in false
2 Medicare/Medicaid billings, Armenian-American fraud ring;
3 (2) February 2011: 20 defendants, \$200 million in false
4 Medicare/Medicaid billings, Florida;
5 (3) February 2011: 111 defendants, \$225 million in false
6 Medicare/Medicaid billings, 7 cities;
7 (4) April 2011: 3 defendants, \$3.9 million in food stamp 47 fraud,
8 Texas;
9 (5) September 2011: 91 defendants, \$295 million in false
10 Medicare/Medicaid billings, 8 cities;
11 (6) October 2012: 91 defendants, \$430 million in false
12 Medicare/Medicaid billings, 7 cities.

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

16 (d) The state constitution requires the state comptroller to, among
17 other things, audit all vouchers before payment and all official
18 accounts and, in such respect, the legislature shall define the powers
19 and duties of the office and may assign to the state comptroller admin-
20 istrative duties incidental to the performance of these functions and
21 the state comptroller has the constitutional authority to supervise the
22 accounts of public corporations commonly referred to as public authori-
23 ties. Statutorily, the state comptroller has the duty to superintend
24 the fiscal concerns of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (C) EVALUATE POTENTIAL SAVINGS RESULTING FROM SUCH EFFORTS.

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

39 S 3. Section 2803 of the public authorities law, as added by chapter
40 327 of the laws of 1958 and as renumbered by chapter 838 of the laws of
41 1983, is amended to read as follows:

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

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

1 SYSTEM TO STATE AUTHORITIES, SUCH AUTHORITIES SHALL FULLY SUPPORT AND
2 COOPERATE BY PROVIDING THE STATE COMPTROLLER WITH ACCESS TO DATA OF THE
3 AUTHORITY AS REQUESTED BY THE STATE COMPTROLLER TO ALLOW SUCH DATA TO BE
4 INTEGRATED INTO SUCH ANALYTIC EFFORTS AS THE STATE COMPTROLLER MAY DEEM
5 NECESSARY. FOR PURPOSES OF THIS SECTION, THE TERM "STATE AUTHORITY"
6 SHALL HAVE THE SAME MEANING AS IN SECTION TWO OF THIS CHAPTER.
7 S 4. This act shall take effect immediately.