

BILL NO. 33-0095

Thirty-Third Legislature of the Virgin Islands

June 12, 2019

An Act amending title 34 of the Virgin Islands Code by adding a new chapter 18 enacting the “Virgin Islands Medicaid Program Integrity Act”

PROPOSED BY: Senators Novelle E. Francis, Jr., Athneil “Bobby” Thomas
and Donna A. Frett-Gregory

1 *Be it enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 34 of the Virgin Islands Code is amended by adding a new chapter 18
3 to read as follows:

4 **“Chapter 18. The Virgin Islands Medicaid Program Integrity Act**

5 **§ 680. Short title**

6 This chapter may be cited as the “The Virgin Islands Medicaid Program Integrity Act”.

7 **§ 681. Definitions**

8 The following terms have the meaning set forth in this chapter, unless the context requires
9 otherwise:

1 (a) "Claim" means any application for payment made by any provider from the Virgin
2 Islands Medicaid Program, or its fiscal agents, for each good or service purported by the
3 provider to have been provided by the provider to any Medicaid recipient.

4 A claim includes any communication, including written, electronic, or magnetic:

5 (1) which is utilized to identify a good, item, or service as reimbursable pursuant
6 to the Virgin Islands Medicaid Program; or

7 (2) which states income or expense and is or may be used to determine a rate of
8 payment pursuant to the Virgin Islands Medicaid Program.

9 (b) "Fiscal agent" means any individual, firm, corporation, professional association,
10 partnership, organization, or other legal entity which, through a contractual relationship with
11 the Virgin Islands Department of Human Services, receives, processes, and pays claims under
12 the Virgin Islands Medicaid Program.

13 (c) "Medicaid fraud" means the commission of any of the actions described in § 686 of
14 this chapter.

15 (d) "Participant" means any person who has applied to participate or who participates
16 in the Virgin Islands Medicaid Program as a supplier of goods or services.

17 (e) "Person" means an individual or an entity.

18 (f) "Provider" means any participant or any employee of a participant, whether that
19 participant is an individual, individual medical vendor, firm, corporation, professional
20 association, partnership, organization, or other legal entity under the Virgin Islands Medicaid
21 Program; or any individual, individual medical vendor, firm, corporation, professional
22 association, partnership, organization, other legal entity, or any employee thereof who is not a
23 participant under the Virgin Islands Medicaid Program but who provides goods or services to a

1 participant under the Virgin Islands Medicaid Program for which the provider submits claims
2 to the Virgin Islands Medicaid Program or its fiscal agents.

3 (g) "Recipient" means any individual on whose behalf any provider claimed or received
4 any payment or payments from the Virgin Islands Medicaid Program or its fiscal agents, whether
5 or not, any such individual was eligible for benefits under the Virgin Islands Medicaid Program.

6 (h) "Records" means all medical, professional, or business records or documents
7 relating to the treatment or care of any Medicaid recipient, or to goods or services provided to
8 any such recipient, or to rates or amounts paid or claimed for such goods or services including,
9 but not limited to, records of non-Medicaid goods or services to verify rates or amounts; and
10 any provider records required to be kept by the Virgin Islands Department of Human Services.

11 (i) "Sign" means to affix a signature directly or indirectly by means of handwriting,
12 typewriter, signature stamp, computer impulse, or other means recognized by Virgin Islands
13 Law.

14 (j) "Virgin Islands Medicaid Program" means the territorial program administered by
15 the Virgin Islands Department of Human Services pursuant to title XIX of the Social Security
16 Act, which provides for payments for medical goods or services on behalf of indigent families
17 with dependent children and on behalf of aged, blind, or disabled individuals whose income and
18 resources are insufficient to meet the cost of necessary medical services.

19 **§ 682. Medicaid fraud control unit**

20 There is hereby created within the Office of the Attorney General, a Medicaid Fraud
21 Control Unit.

22 (a) The Department of Human Services or its fiscal agents shall refer all cases of
23 suspected Medicaid fraud to the Medicaid Fraud Control Unit for the purpose of investigation,

1 civil action, or criminal action. Nothing contained herein shall prohibit the Department of
2 Human Services from investigating or additionally referring to other proper law enforcement
3 agencies cases of suspected Medicaid fraud, nor the Attorney General from pursuing cases of
4 suspected Medicaid fraud without a referral from the Department of Human Services if there is
5 credible evidence of fraud.

6 (b) (1) The Attorney General shall have all the powers necessary to comply with federal
7 laws and regulations relative to the operation of a Medicaid Fraud Control Unit, including the
8 power to investigate cases of patient abuse; the power to issue or cause to be issued subpoenas
9 or other process in aid of investigations, criminal prosecutions, and civil actions; the power to
10 administer oaths and take sworn statements under penalty of perjury; and the power to serve
11 and execute, in any part of the Territory, search warrants which relate to investigations
12 authorized by this chapter.

13 (2) Subpoenas ad testificandum or duces tecum issued pursuant to this chapter may be
14 served by the Attorney General, any peace officer, or any competent person over eighteen (18)
15 years of age. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify, or
16 produce records at the place and time specified, shall constitute contempt and shall be enforced
17 by the Superior Court of the Virgin Islands as if it was a contempt of that Court. This subsection
18 shall not affect the inherent contempt power of any court.

19 (3) (A) The Attorney General shall have authority to collect all fines, penalties, amounts
20 of restitution, and interest accruing on any amount of restitution to be made and any penalties
21 to be paid from and after default of any payment levied pursuant to the provisions of the Virgin
22 Islands Medicaid Program Integrity Act, or any other charge, cause of action, pre-litigation
23 settlement or other settlement which recovers money wrongfully paid by the Department of

1 Human Services on a claim submitted to the Department of Human Services under the Virgin
2 Islands Medicaid Program.

3 (B) Funds recovered by the Attorney General pursuant to this section shall be
4 deposited as follows:

5 (i) Any restitution recovered, and interest thereon, shall be returned to the
6 Department of Human Services.

7 (ii) Any funds recovered for costs of investigation, litigation, attorney fees,
8 and other expenses expended by the Office of the Attorney General in enforcing the
9 provisions of this chapter, and any fines, penalties, and other funds recovered and
10 interest thereon under this chapter, shall be deposited into the Medicaid Fraud
11 Revolving Fund created under § 683.

12 (iii) The balance in the Medicaid Fraud Revolving Fund shall not exceed an
13 amount equal to 50% of the current-year's budget for operating costs of the
14 Medicaid Fraud Control Unit. Any funds exceeding that amount shall be deposited
15 into the General Fund.

16 (c) The Medicaid Fraud Control Unit shall establish an anonymous hotline to accept
17 calls reporting suspected Medicaid fraud.

18 (d) No potential Medicaid recipient shall be eligible for benefits unless the recipient has
19 authorized, in writing, the Virgin Islands Department of Human Services and the Attorney
20 General to examine all records maintained, as required by the Virgin Islands Medicaid Program,
21 of the recipient, or of those receiving or having received Medicaid benefits through the recipient,
22 regardless of whether the receipt of such benefits would be allowed by the Virgin Islands
23 Medicaid Program.

1 (e) Each application to participate as a provider in the Virgin Islands Medicaid
2 Program, each report stating income or expense upon which rates of payment are or may be
3 based, and each invoice for payment for a good or a service provided to a recipient, shall contain
4 a statement that all matters stated therein are true and accurate, signed by the provider or the
5 provider's agent. Any person who signs this statement or causes another to sign this statement
6 knowing the statement to be false shall be guilty of perjury. For purposes of this subsection, an
7 individual who signs on behalf of a provider shall be presumed to have the authorization of the
8 provider and to be acting at the provider's direction.

9 **§ 683. Medicaid Fraud Revolving Fund**

10 (a) There is hereby established in the General Fund, a revolving fund to be designated
11 as the "Medicaid Fraud Revolving Fund".

12 (b) The Medicaid Fraud Revolving Fund shall be a continuing fund, not subject to fiscal
13 year limitations, and shall consist of any monies deposited under §682(b)(3)(B)(ii), and of
14 monies designated to the fund by law.

15 (c) Monies shall be disbursed from the Medicaid Fraud Revolving Fund by the
16 Commissioner of Finance, upon authorization and direction of the Attorney General, for
17 activities related to the Medicaid Fraud Control Unit established under this Act.

18 (d) The Commissioner of Finance shall maintain a record of all monies deposited into
19 and disbursed from the Medicaid Fraud Revolving Fund.

20 **§ 684. Posting requirements**

21 The Department of Human Services shall be authorized to require providers to display
22 information about how to report providers and recipients suspected of fraudulent activity
23 relating to the Virgin Islands Medicaid Program. The Department of Human Services shall

1 require that signs be posted at all locations where services provided by the Virgin Islands
2 Medicaid Program are delivered to Medicaid recipients. The signs must make reference to the
3 Attorney General's Medicaid Fraud Control Unit's hotline and provide the current phone
4 number for the hotline and shall be placed in a conspicuous location within a provider's office.
5 The sign shall contain notification that all reports to the hotline, may be filed anonymously by
6 persons suspecting fraudulent activity.

7 **§ 685. Recordkeeping**

8 (a) (1) All providers subject to the Virgin Islands Medicaid Program are required to
9 maintain, at their or its principal place of Medicaid business, all records for a minimum of 6
10 years from the date of a claimed provision of any goods or services to a Medicaid recipient.

11 (2) Any provider that fails to comply with the provisions of paragraph (1) shall
12 be guilty of a misdemeanor.

13 (b) The Attorney General shall be allowed access to all records of providers and of
14 recipients under the Virgin Islands Medicaid Program which are held by a provider or by the
15 Virgin Islands Department of Human Services for the purpose of investigating whether any
16 person may have committed the crime of Medicaid fraud, or for use or potential use in any
17 legal, administrative, or judicial proceeding under this chapter.

18 (c) In carrying out the purposes of this Act, the Attorney General may take possession
19 of records held by a provider by subpoena, in which case copies of those records obtained by
20 the Attorney General which are necessary for the provider to continue doing business shall be
21 supplied to the provider, or the Attorney General may elect to require that the provider supply
22 the Medicaid Fraud Control Unit with copies of the records. Upon request, the Attorney General
23 shall be granted access to records, including electronic data, held by the Virgin Islands

1 Department of Human Services for the purpose of investigating whether any person may have
2 committed Medicaid fraud.

3 (d) Records obtained or created by the Department of Human Services or the Attorney
4 General pursuant to the Virgin Islands Medicaid Program Integrity Act shall be classified as
5 confidential information and shall not be subject to the Virgin Islands Open Records Act or to
6 outside review or release by any person except, if authorized by the Attorney General, in relation
7 to a legal, administrative, or judicial proceeding.

8 (e) No person holding records may refuse to provide the Virgin Islands Department of
9 Human Services or the Attorney General with access to the records on the basis that the release
10 would violate a recipient's right to privacy, a recipient's privilege against disclosure or use, or
11 any professional or other privilege or right. The disclosure of patient information as required by
12 this Act shall not subject any physician or other health care services provider to liability for
13 breach of any confidential relationship between a patient and a provider.

14 (f) Notwithstanding the provisions of this section, all requests for medical records and
15 the handling of all medical records under this section shall be consistent with all local and
16 federal medical privacy laws.

17 **§ 686. Medicaid Fraud, penalties**

18 (a) (1) It shall be unlawful for any provider to willfully and knowingly:

19 (A) Make, or cause to be made, a claim, knowing the claim to be false, in
20 whole or in part, whether by commission or omission;

21 (B) Make, or cause to be made, a claim, statement, or representation for use
22 in obtaining or seeking to obtain authorization to provide goods or services,

1 knowing the claim, statement or representation to be false, in whole or in part,
2 whether by commission or omission;

3 (C) Make, or cause to be made a claim, statement, or representation for use
4 by another in obtaining goods or services, under the Virgin Islands Medicaid
5 Program, knowing the claim, statement, or representation to be false, in whole or in
6 part, whether by commission or omission;

7 (D) Make, or cause to be made, a statement or representation for use in
8 qualifying as a provider of goods or services under the Virgin Islands Medicaid
9 Program, knowing the statement or representation to be false, in whole or in part,
10 whether by commission or omission;

11 (E) Charge any recipient, or provider acting on behalf of a recipient, money
12 or other consideration in addition to or in excess of rates of remuneration established
13 under the Virgin Islands Medicaid Program; or

14 (F) Solicit or accept a benefit, pecuniary benefit, or kickback in connection
15 with goods or services paid or claimed by a provider to be payable by the Virgin
16 Islands Medicaid Program.

17 (2) (A) For the purposes of this section, a provider will be deemed to have known
18 that a claim, statement, or representation was false if the provider knew, or by virtue of
19 the provider's position, authority or responsibility, had reason to know, of the falsity of
20 the claim, statement or representation.

21 (B) For the purposes of this section, a provider shall be deemed to have
22 made, or caused to be made, a claim, statement, or representation if the provider:

1 (i) had the authority or responsibility to make the claim, statement,
2 or representation; supervised the person who made the claim, statement, or
3 representation; or authorize the making of the claim, statement, or
4 representation, whether by operation of law, business or professional practice,
5 or office procedure; and

6 (ii) exercised such authority or responsibility, or failed to exercise
7 such authority or responsibility, and as a direct or indirect result, the false
8 statement was made.

9 (3) Penalties

10 (A) Any provider committing any actions delineated in subsection (a) of this
11 section where the aggregate amount of payments illegally claimed or received is
12 less than two thousand five hundred dollars (\$2,500.00) shall be guilty of a
13 misdemeanor, and upon conviction thereof shall pay a fine of not more than three
14 times the amount of payments illegally claimed or received, or one thousand dollars
15 (\$1,000.00), whichever is greater, or be imprisoned for not more than one (1) year,
16 or both;.

17 (B) Any provider committing any actions delineated in subsection (a) of this
18 section where the aggregate amount of payments illegally claimed or received is
19 two thousand five hundred dollars (\$2,500.00) or more, shall be guilty of a felony,
20 and upon conviction thereof shall pay a fine of not more than three times the amount
21 of payments illegally claimed or received, or ten thousand dollars (\$10,000.00),
22 whichever is greater, or be imprisoned for not more than three (3) years, or both.

1 (C) Any provider who receives payment for furnishing goods or services
2 under the Virgin Islands Medicaid Program, which the person is not entitled to
3 receive by reason of commission of any actions delineated in subsection (a) of this
4 section, shall, in addition to any other penalties provided by law, be liable for:

5 (i) Full restitution to the Virgin Islands Department of Human
6 Services of all funds or payments received in violation this chapter;

7 (ii) Payment of interest on the amount of the payment, at the
8 maximum legal rate in effect on the date the payment was made, for the period
9 from the date upon which payment was made to the date upon which the
10 repayment is made to the Department of Human Services; and

11 (iii) The costs of investigation and litigation, and attorney fees.

12 (b) (1) It shall be unlawful for a person to:

13 (A) Obtain or attempt to obtain, or aid, abet or assist any individual to obtain,
14 assistance to which an applicant is not entitled or assistance greater than that to
15 which an applicant is justly entitled by means of a false statement or representation,
16 or by false impersonation, or by a fictitious transfer, conveyance or encumbrance of
17 property or income, or by a knowing and willful failure to report to the Virgin
18 Islands Department of Human Services income, personal property, real property,
19 household members, or other material eligibility factors at the time of application or
20 during the receipt of assistance, or by other fraudulent device; or

21 (B) Knowingly obtain, aid, abet or assist any person to obtain or attempt to
22 obtain assistance to which the person is not entitled by sale, barter, purchase, theft,

1 acquisition, possession or use of any medical identification card or any other device
2 authorizing participation in the Virgin Islands Medicaid Program.

3 (2) Penalties.

4 (A) If the acts in either paragraph (b)(1)(A) or (b)(1)(B) of this section cause
5 the Virgin Islands Department of Human Services to determine that an individual
6 or family is eligible for benefits under the Virgin Islands Medicaid Program, and the
7 aggregate amount of assistance paid on behalf of the individual or individuals is less
8 than five thousand dollars (\$5,000.00), the offense, upon conviction, shall be a
9 misdemeanor punishable by a fine of up to five hundred dollars (\$500.00) or
10 imprisonment for up to three 3 months, or both a fine and imprisonment.
11 Additionally, the court may exercise its discretion by imposing an administrative
12 sanction regarding future Medicaid benefits.

13 (B) If the acts in paragraph (b)(1)(A) or (b)(1)(B) of this section cause the
14 Virgin Islands Department of Human Services to determine an individual or family
15 eligible for benefits under the Virgin Islands Medicaid Program and the aggregate
16 amount of assistance paid on behalf of the individual or individuals is equal to or
17 greater than five thousand dollars (\$5,000.00), the offense, upon conviction, shall
18 be a felony punishable by fine of up to five thousand dollars (\$5,000.00) or
19 imprisonment of not more than 5 years, or both. Additionally, the court may exercise
20 its discretion by imposing an administrative sanction regarding future Medicaid
21 benefits.

22 (c) As used in this section:

1 "Administrative sanction" means the entry of an order making an individual who violates
2 a provision of this section ineligible for Medicaid assistance for a specified period. Such order
3 shall be served upon the Virgin Islands Department of Human Services.

4 (d) In addition to the penalties provided by this chapter, the Department of Human
5 Services may, upon the conviction of any provider wherein Medicaid fraud on the provider's
6 part is involved, suspend the provider agreement between the Department of Human Services
7 and the provider and suspend reimbursement to the provider for goods or services claimed for
8 a period of up to one (1) year from the date of final adjudication of the matter.

9 **§ 687. Annual Report**

10 The Attorney General shall submit an annual report by July 1 of each year, to the Governor
11 detailing the number of Medicaid fraud cases investigated and litigated, and the amount of
12 money collected in the previous fiscal year under this chapter.

13 **Bill Summary**

14 This Bill amends title 34 of the Virgin Islands Code by creating a new chapter 18
15 establishing the Virgin Islands Medicaid Program Integrity Act. Internal §682 establishes the
16 Medicaid Fraud Control Unit within the Office of the Attorney General. Internal § 683
17 establishes the Medicaid Fraud Revolving Fund which consists of any money recovered that
18 was expended by the Office of the Attorney General in enforcing the provisions of this Bill, and
19 all other funds designated to the fund by law. Internal § 684 provides that the Department of
20 Human Services shall require providers to display information about how to report providers
21 and recipients suspected of fraudulent activity relating to the Virgin Islands Medicaid Program.
22 The Department of Human Services is also authorized to suspend the provider agreement for up
23 to one year of any provider convicted of Medicaid fraud. Internal § 685 requires all Medicaid

1 providers to maintain records for at least 6 years. Internal 686 delineates the actions that
2 constitute Medicaid fraud and the penalties for committing such fraud. Internal §687 provides
3 that the Attorney General is required to submit an annual report each year to the Governor
4 detailing the number of Medicaid fraud cases investigated and litigated, and the amount of
5 money collected in the previous fiscal year.

6 **BR19-0127/May 22, 2019/LHM/Reviewed by EEM**