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ACLU OF RI POSITION: OPPOSE

SENATE TESTIMONY ON 25-H 5076, ARTICLE 3, SECTION 12 – THE OFFICE OF INTERNAL AUDIT March 4, 2025

Article 3, Section 12 amends R.I.G.L. § 35-7.1-2 and appears to provide new authority to the newly named Office of Internal Audit and Program Integrity (OIAPI) to

investigate reports of any person who, either prior to, at the time of, or subsequent to the application for public assistance willfully makes a false statement or misrepresentation; impersonates someone else; willfully fails to disclose a material fact regarding eligibility or other fraudulent means; or secures, aids or abets or attempts to secure, aid, or abet others in securing public assistance (including Supplemental Nutrition Assistance Program (SNAP) or Medicaid) through fraudulent actions.

The proposed budget provides six new FTEs allocated between OIAPI and the EOHHS Office of Program Integrity to support ferreting out and prosecuting fraud. There are several issues that must be addressed regarding the efficient detection and prosecution of fraud. Ultimately, the ACLU of Rhode Island is deeply concerned about this budget provision's singular focus on alleged public assistance fraud by applicants and beneficiaries and fails to specifically address the fraud of other actors that we believe is much more prevalent.

First, it is important to distinguish between applicant/beneficiary error and fraud. Unfortunately, a common trope has been that SNAP and other public benefit programs are rife with beneficiary fraud. But the truth is very different.

Relatively few SNAP errors represent dishonesty or fraud on the part of recipients, such as lying to eligibility workers to get benefits. Given its nature, the exact extent of fraud is difficult to pinpoint, but it is clear that the overwhelming majority of SNAP errors result from honest mistakes by recipients, eligibility workers, data entry clerks, or computer programmers. USDA reports that about half of overpayments and 80 percent of underpayments in fiscal year 2019 were states' fault; most others resulted from simple errors by households, not intentional fraud. Individual households must pay back overpayments — even when due to the state agency's error — and the state issues corrections for underpayments.

<https://www.cbpp.org/research/food-assistance/snap-includes-extensive-payment-accuracy-system>

Regarding the Medicaid Program, a State Medicaid Directors (SMD) letter issued by the Centers for Medicare and Medicaid Services (CMS) addresses the distinctions and remedies for applicant/beneficiary error, fraud and abuse. <https://www.medicaid.gov/federal-policy-guidance/downloads/smd24005.pdf>

The SMD clarifies that inaccurate determinations that may be due to error by the beneficiary or the state agency may occur even when determinations have been conducted according to state and federal law. The remedy is to determine whether the individual may be eligible based on any Medicaid category and if not, to send notice of Medicaid termination and right to a hearing.

CMS distinguishes between fraud – “an intentional deception or misrepresentation made by a person with knowledge that the deception could result in unauthorized benefit to himself or some other person” – and abuse which includes “beneficiary practices that result in unnecessary cost to the Medicaid program.” Instances of beneficiary fraud are required to be reported to an appropriate law enforcement agency. The Medicaid agency is required to have reasonable criteria to determine when a beneficiary’s actions rise to the level of abuse – determining on a case-by-case basis whether there was a reasonable explanation for the beneficiary failure to meet the state standards. Examples of reasonable explanation include: a beneficiary did not know to report any change in circumstances because the Medicaid agency failed to provide the required communication advising of the requirement or failed to communicate in a clear and accessible manner, an individual was unable to report by phone because the agency does not provide this modality. (During the COVID pandemic, the state was foreclosed from acting on changes of circumstances that otherwise might have resulted in termination of eligibility for recipients – except for changes due to death, move out of state or voluntary withdrawal. Misunderstanding about eligibility during this period may lead some people to erroneously think that beneficiaries were fraudulently receiving benefits.)

Second, because both the EOHHS Office of Program Integrity as well as the OIAPI have the authority and responsibility to investigate fraud in public benefit programs, we think it is important for these offices to provide the General Assembly and the public with a clear delineation of responsibilities. Director Brian Daniels stated at the House Finance Committee hearing on the proposed language that OIAPI already has authority to investigate instances of applicant and beneficiary fraud and has conducted such investigations. A link on the DHS website, <https://dhs.ri.gov/general-resources-and-support/report-fraud> provides a form for a reporter to complete which directs allegations to OIAPI. The committee should request a report of the number of investigations that OIAPI has conducted over the past five years, specifying the programs in which fraud has been alleged, whether the fraud was alleged to have been committed by a beneficiary or other actor, the outcome of such investigations, how much money has been recovered, and how much went back to the state coffers vs. payments to federal agencies.

Director Daniels described an example of the work that OIAPI did that resulted in recovery of several million dollars from errors in the Medicaid program. As he emphasized, this was not fraud, but rather resulted from the failure of EOHHS and DHS to correctly implement the state-funded Cover all Kids Program, resulting in some children enrolled in the state-only program when they should have been enrolled in the Medicaid program where the state could claim federal match. This type of oversight of program administration seems appropriate for the OIAPI, but it is

certainly not (nor did Director Daniels imply that it was) fraud by either a beneficiary or the state agency.

In addition to requesting a delineation of the responsibilities between OIAPI and the EOHHS Office of Program Integrity, the committee should request clarification of the responsibilities of the new FTE at OIAPI and EOHHS as well as clarification of the anticipated cost-savings. Since we know that alleged applicant/beneficiary fraud is relatively minor compared to provider and third-party fraud, it is unlikely that the expected “savings” will result from additional investigation of beneficiaries – yet this is the group “called out” in the proposed language.

Third, because of the long-standing trope about beneficiaries of public benefit programs committing fraud, and because of the Trump administration’s “rooting out fraud, waste and abuse” constant refrain, we urge OAIPI, the EOHHS Office of Program Integrity and DHS to issue clear guidance to DHS eligibility staff and to the general public (through posting on agency websites, for example) that Rhode Island is committed to protecting applicants’ and beneficiaries’ rights to public benefit programs. At the same time, the state could encourage beneficiaries’ and the public’s cooperation in calling out provider and third-party fraud – which is the largest volume of fraud as well as providing the biggest opportunity for recoupment of illegally spent funds.

However, this budget article appears to play into the “pervasive welfare fraud” trope and inappropriately and unnecessarily singles out the poorest members of our state for special scrutiny. Too often, we fear, people will be unnecessarily subjected to increased investigations over errors that do not constitute fraud because of the emphasis this budget proposal points to.

Since OAIPI already has the power to investigate public benefits fraud, we urge the deletion of the new language being proposed in section 2 of this chapter as unnecessary and as likely, however unintentionally, to lead to intrusive investigations into innocuous conduct of residents.

Thank you for your consideration of these comments.

Submitted by: Linda Katz, Esq.
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