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April 29, 2014

Sen. Rick Jones, Chair
Judiciary Committee of the Senate
915 Farnum Building
Lansing, MI 48933

Re: SB-843 and 844

Dear Sen. Jones:

The Michigan legislature is considering a law that would give investigators with the Office of the Inspector General in Michigan Department of Human Services authority to carry guns and to arrest suspected welfare cheats without a warrant. These bills do not represent sound public policy.

A former welfare supervisor in Michigan, I have had extensive experience with welfare fraud. I have also been an elder law attorney for over 25 years. I am Secretary of the Elder Law and Disability Rights Section of the State Bar of Michigan and chair of the Allegheny County Bar Association Elder Law Committee. Justice Debra Todd appointed me to a blue ribbon panel where I am working on revisions to Pennsylvania guardianship statutes and rules, the Pennsylvania Supreme Court Elder Law Task Force.

Arming OIG investigators and giving them arrest powers is unnecessary and will result in the arrest of many well-meaning, but mistaken welfare applicants and recipients. Furthermore, this law is wrongfully aimed at the "retail" sector of the welfare industry, not the "distribution end."

The retail sector of the welfare industry is comprised of the welfare applicants and recipients, as opposed to the distribution end: the bodegas, check-cashing shops, grocers and party stores that negotiate the recipients' benefits and the health-care

providers that accept Medicare and Medicaid for the services they provide. Welfare recipients generally get small amounts of aid, that may be augmented by failing to report income, by misrepresenting their living arrangements, or by illegally selling their prescription drugs. They are nonviolent and usually do not reap much by fraud. They do not present a flight risk, since they generally live their entire lives within a few miles of their birthplace. One of the biggest-ticket items is Medicaid for nursing-home residents, but there the usual cause of benefit overissuance is confusion about the rules, not what the Department of Human Services calls "intentional program violation" or IPV.

On the distribution side are the storefronts where food benefits, prescriptions and stolen cash assistance cards are negotiated for cash. The distribution side also includes doctors and other health-care providers who bill Medicaid and Medicare for fictitious services and write unnecessary prescriptions for cash payments. These crooks walk away with millions, but still are generally nonviolent and will obey a grand jury summons or order to appear (usually with high-paid counsel).

Investigators from OIG do not need to be armed to deal with welfare cheats, nor do they need to arrest suspects on the spot. The threat of prosecution for a felony is an extremely heavy hammer to hold over a citizen with a clean record who is living paycheck-to-paycheck. Career miscreants, on the other hand, will not be deterred by armed OIG investigators any more than they are by police officers. The only result of giving OIG investigators arrest powers will be to let them steam-roll those who are totally innocent or who receive overissuances by mistake.

There are thousands of Michigan citizens who are committing welfare fraud but have no idea they are doing so. For example, assume that Harvey Milquetoast's mother, Maudie, is in a nursing home and he applies for Medicaid for her. Many circumstances could make Maudie technically ineligible, particularly concerning her home. Maudie might have signed a quit claim deed or put her home in a trust that could present a problem from a Medicaid standpoint. Harvey might not know about the deed or trust, or might not know that the deed or trust creates a problem.

The Medicaid application asks whether Maudie owns her home, but does not go into detail, so Harvey, just checks the "yes" box and thinks no more about it – even though the house was deeded into a trust. If Harvey was helped in the application by someone in the nursing home financial office, as often happens, there might be very little scrutiny of the application and it could go through without a hitch – despite the fact that Harvey never had any contact with anyone at DHS! After Maudie's death, when Harvey fills out the estate recovery questionnaire, he could find himself in big trouble.

Although one would hope that civil servants would always act fairly, long experience with state agencies has taught me that that is not always true. Police officers and other civil servants whose job performance is measured by the number of their arrests and the amount of revenue generated will try to maximize both.

A son of a deceased Medicaid recipient received a letter from an OIG investigator giving him 10 days to agree to repay Medicaid a high five-figure amount or face prosecution for felony welfare fraud. The investigator was under the impression that the mother's house had been in a trust and accused the son of IPV. Using a wildly inaccurate value from the tax assessment rolls, the investigator assumed that there had been substantial equity in the house.

The son came to me panic-stricken, but it turned out that the house was not in a trust. Furthermore, there had been no equity because the mortgage had exceeded the actual value. Without legal help the investigator might have forced the son to sign a repayment agreement that would have put him debt for the rest of his life. The investigator was very aggressive and was only interested in extracting a repayment agreement.

How would this case have turned out under the proposed law? The investigator would not have mailed the son a letter, he would have gone to his house and arrested him. In jail, the son would not have ready access to counsel and would be very likely to sign a repayment agreement, whether justified or not.

Is a regime where welfare fraud investigators are armed and allowed to arrest suspects without a warrant a good idea? Only if the state wants to force its citizens to pay huge penalties without regard to whether they are justified or not.

The proposed bills are unwarranted because the penny-ante welfare recipients who will be summarily arrested are almost uniformly nonviolent and unlikely to flee the jurisdiction. More importantly, the package is misguided. The funds that would go into training and arming OIG investigators could be better spent investigating the big-money perpetrators who are dealing in food assistance, cash benefit cards, prescription drugs, and Medicaid claims in bulk.

If additional information would be helpful, please contact me. Thank you for your consideration.

Yours truly,

John B. Payne

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* The above graphic representation is a legal signature as defined by the Uniform Electronic Transactions Act, 2000 PA 305, MCLA 450.831 to 450.849.