

By: Kolkhorst, et al.
(Noble)

S.B. No. 745

A BILL TO BE ENTITLED

AN ACT

relating to fraud prevention under certain health care programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 39.026(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program [~~has the meaning assigned by Section 36.001, Human Resources Code~~].

SECTION 2. The heading to Chapter 36, Human Resources Code, is amended to read as follows:

CHAPTER 36. HEALTH CARE PROGRAM [~~MEDICAID~~] FRAUD PREVENTION

SECTION 3. Section 36.001, Human Resources Code, is amended by amending Subdivisions (1), (2), (3), (5), (9), and (10) and adding Subdivisions (1-a), (4-a), (4-b), and (4-c) to read as follows:

(1) "Child health plan program" means the child health plan program established under Chapters 62 and 63, Health and Safety Code.

(1-a) "Claim" means a written or electronically submitted request or demand that:

(A) is signed by a provider or a fiscal agent and that identifies a product or service provided or purported to have

1 been provided to a health care [~~Medicaid~~] recipient as reimbursable
2 under a health care [~~the Medicaid~~] program, without regard to
3 whether the money that is requested or demanded is paid; or

4 (B) states the income earned or expense incurred
5 by a provider in providing a product or a service and that is used to
6 determine a rate of payment under a health care [~~the Medicaid~~]
7 program.

8 (2) "Documentary material" means a record, document,
9 or other tangible item of any form, including:

10 (A) a medical document or X ray prepared by a
11 person in relation to the provision or purported provision of a
12 product or service to a health care [~~Medicaid~~] recipient;

13 (B) a medical, professional, or business record
14 relating to:

15 (i) the provision of a product or service to
16 a health care [~~Medicaid~~] recipient; or

17 (ii) a rate or amount paid or claimed for a
18 product or service, including a record relating to a product or
19 service provided to a person other than a health care [~~Medicaid~~]
20 recipient as needed to verify the rate or amount;

21 (C) a record required to be kept by an agency that
22 regulates health care providers; or

23 (D) a record necessary to disclose the extent of
24 services a provider furnishes to health care [~~Medicaid~~] recipients.

25 (3) "Fiscal agent" means:

26 (A) a person who, through a contractual
27 relationship with a state agency, receives, processes, and pays a

1 claim under a health care [~~the Medicaid~~] program; or

2 (B) the designated agent of a person described by
3 Paragraph (A).

4 (4-a) "Health care program" means:

5 (A) the Medicaid program;

6 (B) the child health plan program; and

7 (C) the Healthy Texas Women program.

8 (4-b) "Health care recipient" means an individual on
9 whose behalf a person claims or receives a payment from a health
10 care program or a fiscal agent, without regard to whether the
11 individual was eligible for benefits under the health care program.

12 (4-c) "Healthy Texas Women program" means a program
13 operated by the commission that is substantially similar to the
14 demonstration project operated under former Section 32.0248 and
15 that is intended to expand access to preventive health and family
16 planning services for women in this state.

17 (5) "Managed care organization" means a person who is
18 authorized or otherwise permitted by law to arrange for or provide a
19 managed care plan [~~has the meaning assigned by Section 32.039(a)~~].

20 (9) "Provider" means a person who participates in or
21 who has applied to participate in a health care [~~the Medicaid~~]
22 program as a supplier of a product or service and includes:

23 (A) a management company that manages, operates,
24 or controls another provider;

25 (B) a person, including a medical vendor, that
26 provides a product or service to a provider or to a fiscal agent;

27 (C) an employee of a provider;

1 (D) a managed care organization; and

2 (E) a manufacturer or distributor of a product
3 for which a health care [~~the Medicaid~~] program provides
4 reimbursement.

5 (10) "Service" includes care or treatment of a health
6 care [~~Medicaid~~] recipient.

7 SECTION 4. Section 36.002, Human Resources Code, is amended
8 to read as follows:

9 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
10 act if the person:

11 (1) knowingly makes or causes to be made a false
12 statement or misrepresentation of a material fact to permit a
13 person to receive a benefit or payment under a health care [~~the~~
14 ~~Medicaid~~] program that is not authorized or that is greater than the
15 benefit or payment that is authorized;

16 (2) knowingly conceals or fails to disclose
17 information that permits a person to receive a benefit or payment
18 under a health care [~~the Medicaid~~] program that is not authorized or
19 that is greater than the benefit or payment that is authorized;

20 (3) knowingly applies for and receives a benefit or
21 payment on behalf of another person under a health care [~~the~~
22 ~~Medicaid~~] program and converts any part of the benefit or payment to
23 a use other than for the benefit of the person on whose behalf it was
24 received;

25 (4) knowingly makes, causes to be made, induces, or
26 seeks to induce the making of a false statement or
27 misrepresentation of material fact concerning:

1 (A) the conditions or operation of a facility in
2 order that the facility may qualify for certification or
3 recertification required by a health care [~~the Medicaid~~] program,
4 including certification or recertification as:

5 (i) a hospital;

6 (ii) a nursing facility or skilled nursing
7 facility;

8 (iii) a hospice;

9 (iv) an ICF-IID;

10 (v) an assisted living facility; or

11 (vi) a home health agency; or

12 (B) information required to be provided by a
13 federal or state law, rule, regulation, or provider agreement
14 pertaining to a health care [~~the Medicaid~~] program;

15 (5) except as authorized under a health care [~~the~~
16 ~~Medicaid~~] program, knowingly pays, charges, solicits, accepts, or
17 receives, in addition to an amount paid under the [~~Medicaid~~]
18 program, a gift, money, a donation, or other consideration as a
19 condition to the provision of a service or product or the continued
20 provision of a service or product if the cost of the service or
21 product is paid for, in whole or in part, under the [~~Medicaid~~]
22 program;

23 (6) knowingly presents or causes to be presented a
24 claim for payment under a health care [~~the Medicaid~~] program for a
25 product provided or a service rendered by a person who:

26 (A) is not licensed to provide the product or
27 render the service, if a license is required; or

1 (B) is not licensed in the manner claimed;

2 (7) knowingly makes or causes to be made a claim under
3 a health care [~~the Medicaid~~] program for:

4 (A) a service or product that has not been
5 approved or acquiesced in by a treating physician or health care
6 practitioner;

7 (B) a service or product that is substantially
8 inadequate or inappropriate when compared to generally recognized
9 standards within the particular discipline or within the health
10 care industry; or

11 (C) a product that has been adulterated, debased,
12 mislabeled, or that is otherwise inappropriate;

13 (8) makes a claim under a health care [~~the Medicaid~~]
14 program and knowingly fails to indicate the type of license and the
15 identification number of the licensed health care provider who
16 actually provided the service;

17 (9) conspires to commit a violation of Subdivision
18 (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

19 (10) is a managed care organization that contracts
20 with the commission or other state agency to provide or arrange to
21 provide health care benefits or services to individuals eligible
22 under a health care [~~the Medicaid~~] program and knowingly:

23 (A) fails to provide to an individual a health
24 care benefit or service that the organization is required to
25 provide under the contract;

26 (B) fails to provide to the commission or
27 appropriate state agency information required to be provided by

1 law, commission or agency rule, or contractual provision; or

2 (C) engages in a fraudulent activity in
3 connection with the enrollment of an individual eligible under the
4 ~~Medicaid~~ program in the organization's managed care plan or in
5 connection with marketing the organization's services to an
6 individual eligible under the ~~Medicaid~~ program;

7 (11) knowingly obstructs an investigation by the
8 attorney general of an alleged unlawful act under this section;

9 (12) knowingly makes, uses, or causes the making or
10 use of a false record or statement material to an obligation to pay
11 or transmit money or property to this state under a health care ~~the~~
12 ~~Medicaid~~ program, or knowingly conceals or knowingly and
13 improperly avoids or decreases an obligation to pay or transmit
14 money or property to this state under a health care ~~the Medicaid~~
15 program; or

16 (13) knowingly engages in conduct that constitutes a
17 violation under Section 32.039(b).

18 SECTION 5. Section 36.003(a), Human Resources Code, is
19 amended to read as follows:

20 (a) A state agency, including the commission, the
21 Department of State Health Services, the Department of Aging and
22 Disability Services, and the Department of Family and Protective
23 Services, shall provide the attorney general access to all
24 documentary materials of persons and health care ~~Medicaid~~
25 recipients under a health care ~~the Medicaid~~ program to which that
26 agency has access. Documentary material provided under this
27 subsection is provided to permit investigation of an alleged

1 unlawful act or for use or potential use in an administrative or
2 judicial proceeding.

3 SECTION 6. Section 36.005(b), Human Resources Code, is
4 amended to read as follows:

5 (b) A provider found liable under Section 36.052 for an
6 unlawful act may not, for a period of 10 years, provide or arrange
7 to provide health care services under a health care [~~the Medicaid~~]
8 program or supply or sell, directly or indirectly, a product to or
9 under a health care [~~the Medicaid~~] program. The executive
10 commissioner may by rule:

11 (1) provide for a period of ineligibility longer than
12 10 years; or

13 (2) grant a provider a full or partial exemption from
14 the period of ineligibility required by this subsection if the
15 executive commissioner finds that enforcement of the full period of
16 ineligibility is harmful to the [~~Medicaid~~] program or a beneficiary
17 of the program.

18 SECTION 7. Section 36.008, Human Resources Code, is amended
19 to read as follows:

20 Sec. 36.008. USE OF MONEY RECOVERED. The legislature, in
21 appropriating money recovered under this chapter, shall consider
22 the requirements of the attorney general and other affected state
23 agencies in investigating health care program [~~Medicaid~~] fraud and
24 enforcing this chapter.

25 SECTION 8. Section 36.052(a), Human Resources Code, is
26 amended to read as follows:

27 (a) Except as provided by Subsection (c), a person who

1 commits an unlawful act is liable to the state for:

2 (1) the amount of any payment or the value of any
3 monetary or in-kind benefit provided under a health care [~~the~~
4 ~~Medicaid~~] program, directly or indirectly, as a result of the
5 unlawful act, including any payment made to a third party;

6 (2) interest on the amount of the payment or the value
7 of the benefit described by Subdivision (1) at the prejudgment
8 interest rate in effect on the day the payment or benefit was
9 received or paid, for the period from the date the benefit was
10 received or paid to the date that the state recovers the amount of
11 the payment or value of the benefit;

12 (3) a civil penalty of:

13 (A) not less than \$5,500 or the minimum amount
14 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
15 exceeds \$5,500, and not more than \$15,000 or the maximum amount
16 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
17 exceeds \$15,000, for each unlawful act committed by the person that
18 results in injury to an elderly person, as defined by Section
19 48.002(a)(1), a person with a disability, as defined by Section
20 48.002(a)(8)(A), or a person younger than 18 years of age; or

21 (B) not less than \$5,500 or the minimum amount
22 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
23 exceeds \$5,500, and not more than \$11,000 or the maximum amount
24 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
25 exceeds \$11,000, for each unlawful act committed by the person that
26 does not result in injury to a person described by Paragraph (A);
27 and

1 (4) two times the amount of the payment or the value of
2 the benefit described by Subdivision (1).

3 SECTION 9. Section 36.054(h), Human Resources Code, is
4 amended to read as follows:

5 (h) A person who has committed an unlawful act in relation
6 to a health care [~~the Medicaid~~] program in this state has submitted
7 to the jurisdiction of this state and personal service of an
8 investigative demand under this section may be made on the person
9 outside of this state.

10 SECTION 10. Section 36.055, Human Resources Code, is
11 amended to read as follows:

12 Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION.
13 To the extent permitted by 31 U.S.C. Sections 3729-3733, the
14 attorney general may bring an action as relator under 31 U.S.C.
15 Section 3730 with respect to an act in connection with a health care
16 [~~the Medicaid~~] program for which a person may be held liable under
17 31 U.S.C. Section 3729. The attorney general may contract with a
18 private attorney to represent the state under this section.

19 SECTION 11. Section 36.132(a)(2), Human Resources Code, is
20 amended to read as follows:

- 21 (2) "Licensing authority" means:
- 22 (A) the Texas Medical Board;
 - 23 (B) the State Board of Dental Examiners;
 - 24 (C) the Texas Behavioral Health Executive
25 Council;
 - 26 (D) the Texas Board of Nursing;
 - 27 (E) the Texas Board of Physical Therapy

1 Examiners;

2 (F) the Texas Board of Occupational Therapy
3 Examiners; or

4 (G) another state agency authorized to regulate a
5 provider who receives or is eligible to receive payment for a health
6 care service under a health care [~~the Medicaid~~] program.

7 SECTION 12. Sections 36.001(6) and (7), Human Resources
8 Code, are repealed.

9 SECTION 13. The changes in law made by this Act apply only
10 to an unlawful act described by Section 36.002, Human Resources
11 Code, as amended by this Act, that is committed on or after the
12 effective date of this Act.

13 SECTION 14. If before implementing any provision of this
14 Act a state agency determines that a waiver or authorization from a
15 federal agency is necessary for implementation of that provision,
16 the agency affected by the provision shall request the waiver or
17 authorization and may delay implementing that provision until the
18 waiver or authorization is granted.

19 SECTION 15. This Act takes effect September 1, 2023.