

By: Kolkhorst, et al.

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 (4-a) and (4-b) to read as follows:

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

(B) states the income earned or expense incurred

1 by a provider in providing a product or a service and that is used to
2 determine a rate of payment under a health care [~~the Medicaid~~]
3 program.

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

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

9 (B) a medical, professional, or business record
10 relating to:

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

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

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

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

21 (3) "Fiscal agent" means:

22 (A) a person who, through a contractual
23 relationship with a state agency, receives, processes, and pays a
24 claim under a health care [~~the Medicaid~~] program; or

25 (B) the designated agent of a person described by
26 Paragraph (A).

27 (4-a) "Health care program" has the meaning assigned

1 by Section 35A.01, Penal Code.

2 (4-b) "Health care recipient" means an individual on
3 whose behalf a person claims or receives a payment from a health
4 care program or a fiscal agent, without regard to whether the
5 individual was eligible for benefits under the health care program.

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

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

12 (A) a management company that manages, operates,
13 or controls another provider;

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

16 (C) an employee of a provider;

17 (D) a managed care organization; and

18 (E) a manufacturer or distributor of a product
19 for which a health care [~~the Medicaid~~] program provides
20 reimbursement.

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

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

25 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
26 act if the person:

27 (1) knowingly makes or causes to be made a false

1 statement or misrepresentation of a material fact to permit a
2 person to receive a benefit or payment under a health care [~~the~~
3 ~~Medicaid~~] program that is not authorized or that is greater than the
4 benefit or payment that is authorized;

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

9 (3) knowingly applies for and receives a benefit or
10 payment on behalf of another person under a health care [~~the~~
11 ~~Medicaid~~] program and converts any part of the benefit or payment to
12 a use other than for the benefit of the person on whose behalf it was
13 received;

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

17 (A) the conditions or operation of a facility in
18 order that the facility may qualify for certification or
19 recertification required by a health care [~~the Medicaid~~] program,
20 including certification or recertification as:

- 21 (i) a hospital;
- 22 (ii) a nursing facility or skilled nursing
23 facility;
- 24 (iii) a hospice;
- 25 (iv) an ICF-IID;
- 26 (v) an assisted living facility; or
- 27 (vi) a home health agency; or

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

4 (5) except as authorized under a health care [~~the~~
5 ~~Medicaid~~] program, knowingly pays, charges, solicits, accepts, or
6 receives, in addition to an amount paid under the [~~Medicaid~~]
7 program, a gift, money, a donation, or other consideration as a
8 condition to the provision of a service or product or the continued
9 provision of a service or product if the cost of the service or
10 product is paid for, in whole or in part, under the [~~Medicaid~~]
11 program;

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

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

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

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

20 (A) a service or product that has not been
21 approved or acquiesced in by a treating physician or health care
22 practitioner;

23 (B) a service or product that is substantially
24 inadequate or inappropriate when compared to generally recognized
25 standards within the particular discipline or within the health
26 care industry; or

27 (C) a product that has been adulterated, debased,

1 mislabeled, or that is otherwise inappropriate;

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

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

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

12 (A) fails to provide to an individual a health
13 care benefit or service that the organization is required to
14 provide under the contract;

15 (B) fails to provide to the commission or
16 appropriate state agency information required to be provided by
17 law, commission or agency rule, or contractual provision; or

18 (C) engages in a fraudulent activity in
19 connection with the enrollment of an individual eligible under the
20 [~~Medicaid~~] program in the organization's managed care plan or in
21 connection with marketing the organization's services to an
22 individual eligible under the [~~Medicaid~~] program;

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

25 (12) knowingly makes, uses, or causes the making or
26 use of a false record or statement material to an obligation to pay
27 or transmit money or property to this state under a health care [~~the~~

1 ~~Medicaid~~] program, or knowingly conceals or knowingly and
2 improperly avoids or decreases an obligation to pay or transmit
3 money or property to this state under a health care [~~the Medicaid~~]
4 program; ~~or~~]

5 (13) knowingly engages in conduct that constitutes a
6 violation under Section 32.039(b); or

7 (14) otherwise engages in conduct that constitutes an
8 offense under Section 35A.02(a), Penal Code.

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

11 (a) A state agency, including the commission, the
12 Department of State Health Services, the Department of Aging and
13 Disability Services, and the Department of Family and Protective
14 Services, shall provide the attorney general access to all
15 documentary materials of persons and health care [~~Medicaid~~]
16 recipients under a health care [~~the Medicaid~~] program to which that
17 agency has access. Documentary material provided under this
18 subsection is provided to permit investigation of an alleged
19 unlawful act or for use or potential use in an administrative or
20 judicial proceeding.

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

23 (b) A provider found liable under Section 36.052 for an
24 unlawful act may not, for a period of 10 years, provide or arrange
25 to provide health care services under a health care [~~the Medicaid~~]
26 program or supply or sell, directly or indirectly, a product to or
27 under a health care [~~the Medicaid~~] program. The executive

1 commissioner may by rule:

2 (1) provide for a period of ineligibility longer than
3 10 years; or

4 (2) grant a provider a full or partial exemption from
5 the period of ineligibility required by this subsection if the
6 executive commissioner finds that enforcement of the full period of
7 ineligibility is harmful to the [~~Medicaid~~] program or a beneficiary
8 of the program.

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

11 Sec. 36.008. USE OF MONEY RECOVERED. The legislature, in
12 appropriating money recovered under this chapter, shall consider
13 the requirements of the attorney general and other affected state
14 agencies in investigating health care program [~~Medicaid~~] fraud and
15 enforcing this chapter.

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

18 (a) Except as provided by Subsection (c), a person who
19 commits an unlawful act is liable to the state for:

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

24 (2) interest on the amount of the payment or the value
25 of the benefit described by Subdivision (1) at the prejudgment
26 interest rate in effect on the day the payment or benefit was
27 received or paid, for the period from the date the benefit was

1 received or paid to the date that the state recovers the amount of
2 the payment or value of the benefit;

3 (3) a civil penalty of:

4 (A) not less than \$5,500 or the minimum amount
5 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
6 exceeds \$5,500, and not more than \$15,000 or the maximum amount
7 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
8 exceeds \$15,000, for each unlawful act committed by the person that
9 results in injury to an elderly person, as defined by Section
10 48.002(a)(1), a person with a disability, as defined by Section
11 48.002(a)(8)(A), or a person younger than 18 years of age; or

12 (B) not less than \$5,500 or the minimum amount
13 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
14 exceeds \$5,500, and not more than \$11,000 or the maximum amount
15 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
16 exceeds \$11,000, for each unlawful act committed by the person that
17 does not result in injury to a person described by Paragraph (A);
18 and

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

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

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

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

3 Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION.
4 To the extent permitted by 31 U.S.C. Sections 3729-3733, the
5 attorney general may bring an action as relator under 31 U.S.C.
6 Section 3730 with respect to an act in connection with a health care
7 [~~the Medicaid~~] program for which a person may be held liable under
8 31 U.S.C. Section 3729. The attorney general may contract with a
9 private attorney to represent the state under this section.

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

- 12 (2) "Licensing authority" means:
- 13 (A) the Texas Medical Board;
 - 14 (B) the State Board of Dental Examiners;
 - 15 (C) the Texas Behavioral Health Executive
16 Council;
 - 17 (D) the Texas Board of Nursing;
 - 18 (E) the Texas Board of Physical Therapy
19 Examiners;
 - 20 (F) the Texas Board of Occupational Therapy
21 Examiners; or
 - 22 (G) another state agency authorized to regulate a
23 provider who receives or is eligible to receive payment for a health
24 care service under a health care [~~the Medicaid~~] program.

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

27 SECTION 13. The changes in law made by this Act apply only

1 to an unlawful act described by Section 36.002, Human Resources
2 Code, as amended by this Act, that is committed on or after the
3 effective date of this Act.

4 SECTION 14. If before implementing any provision of this
5 Act a state agency determines that a waiver or authorization from a
6 federal agency is necessary for implementation of that provision,
7 the agency affected by the provision shall request the waiver or
8 authorization and may delay implementing that provision until the
9 waiver or authorization is granted.

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