

Amend CSHB 2292 as follows:

(1) On page 11, strike lines 4-6 and substitute the following:

(2) the office of inspector general to conduct audits and perform fraud and abuse investigation and enforcement functions as provided by Subchapter C and other law;

(2) On page 48, line 21, strike "and".

(3) On page 48, line 23, immediately following the semicolon, insert "and".

(4) On page 48, between lines 23 and 24, insert the following:

(D) the Texas Department of Human Services office of inspector general;

(5) On page 50, between lines 19 and 20, insert the following:

(f) All powers, duties, functions, programs, and activities relating to audits, including internal audits, transferred to the Health and Human Services Commission under Subsection (a)(1) of this section, and all powers, duties, functions, programs, and activities relating to the Texas Department of Human Services office of inspector general transferred to the Health and Human Services Commission under Subsection (a)(2)(D) of this section, shall be assumed by the commission's office of inspector general. Notwithstanding any other provision of law, a reference in law to the Texas Department of Human Services office of inspector general means the commission's office of inspector general.

(6) Add the following appropriately numbered sections to Article 2 of the bill:

SECTION _____. The heading to Subchapter C, Chapter 531, Government Code, is amended to read as follows:

SUBCHAPTER C. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES

~~[WELFARE]~~ FRAUD, ABUSE, OR OVERCHARGES

SECTION _____. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.1011 to read as follows:

Sec. 531.1011. DEFINITIONS. For purposes of this subchapter:

(1) "Fraud" means an intentional deception or

misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person, including any act that constitutes fraud under applicable federal or state law.

(2) "Hold on payment" means the temporary denial of reimbursement under the Medicaid program for items or services furnished by a specified provider.

(3) "Practitioner" means a physician or other individual licensed under state law to practice the individual's profession.

(4) "Program exclusion" means the suspension of a provider from being authorized under the Medicaid program to request reimbursement for items or services furnished by that specific provider.

(5) "Provider" means a person, firm, partnership, corporation, agency, association, institution, or other entity that was or is approved by the commission to:

(A) provide medical assistance under contract or provider agreement with the commission; or

(B) provide third-party billing vendor services under a contract or provider agreement with the commission.

(7) Strike SECTION 2.15 of the bill (page 74, line 13, through page 75, line 15) and substitute the following appropriately numbered section:

SECTION _____. (a) Section 531.102, Government Code, is amended to read as follows:

Sec. 531.102. [~~INVESTIGATIONS AND ENFORCEMENT~~] OFFICE OF INSPECTOR GENERAL. (a) The commission, through the commission's office of inspector general [~~investigations and enforcement~~], is responsible for the investigation of fraud and abuse in the provision of health and human services and the enforcement of state law relating to the provision of those services. The commission may obtain any information or technology necessary to enable the office to meet its responsibilities under this subchapter or other law.

(a-1) The governor shall appoint an inspector general to serve as director of the office. The inspector general serves a one-year term that expires on February 1.

(b) The commission, in consultation with the inspector general, shall set clear objectives, priorities, and performance standards for the office that emphasize:

(1) coordinating investigative efforts to aggressively recover money;

(2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and

(3) maximizing opportunities for referral of cases to the office of the attorney general in accordance with Section 531.103.

(c) The commission shall train office staff to enable the staff to pursue priority Medicaid and other health and human services [~~welfare~~] fraud and abuse cases as necessary.

(d) The commission may require employees of health and human services agencies to provide assistance to the office [~~commission~~] in connection with the office's [~~commission's~~] duties relating to the investigation of fraud and abuse in the provision of health and human services. The office is entitled to access to any information maintained by a health and human services agency, including internal records, relevant to the functions of the office.

(e) The commission, in consultation with the inspector general, by rule shall set specific claims criteria that, when met, require the office to begin an investigation.

(f)(1) If the commission receives a complaint of Medicaid fraud or abuse from any source, the office must conduct an integrity review to determine whether there is sufficient basis to warrant a full investigation. An integrity review must begin not later than the 30th day after the date the commission receives a complaint or has reason to believe that fraud or abuse has occurred. An integrity review shall be completed not later than the 90th day after it began.

(2) If the findings of an integrity review give the office reason to believe that an incident of fraud or abuse involving possible criminal conduct has occurred in the Medicaid program, the office must take the following action, as appropriate, not later than the 30th day after the completion of the integrity

review:

(A) if a provider is suspected of fraud or abuse involving criminal conduct, the office must refer the case to the state's Medicaid fraud control unit, provided that the criminal referral does not preclude the office from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions; or

(B) if there is reason to believe that a recipient has defrauded the Medicaid program, the office may conduct a full investigation of the suspected fraud.

(g)(1) In addition to other instances authorized under state or federal law, the office shall impose without prior notice a hold on payment of claims for reimbursement submitted by a provider to compel production of records or when requested by the state's Medicaid fraud control unit, as applicable. The office must notify the provider of the hold on payment not later than the fifth working day after the date the payment hold is imposed.

(2) The office shall, in consultation with the state's Medicaid fraud control unit, establish guidelines under which holds on payment or program exclusions:

(A) may permissively be imposed on a provider; or

(B) shall automatically be imposed on a provider.

(3) Whenever the office learns or has reason to suspect that a provider's records are being withheld, concealed, destroyed, fabricated, or in any way falsified, the office shall immediately refer the case to the state's Medicaid fraud control unit. However, the criminal referral does not preclude the office from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions.

(h) In addition to performing functions and duties otherwise provided by law, the office may:

(1) assess administrative penalties otherwise authorized by law on behalf of the commission or a health and human services agency;

(2) request that the attorney general obtain an injunction to prevent a person from disposing of an asset

identified by the office as potentially subject to recovery by the office due to the person's fraud or abuse;

(3) provide for coordination between the office and special investigative units formed by managed care organizations under Section 531.113 or entities with which managed care organizations contract under that section;

(4) audit the use and effectiveness of state or federal funds, including contract and grant funds, administered by a person or state agency receiving the funds from a health and human services agency;

(5) conduct investigations relating to the funds described by Subdivision (4); and

(6) recommend policies promoting economical and efficient administration of funds described by Subdivision (4) and the prevention and detection of fraud and abuse in administration of those funds.

(i) Notwithstanding any other provision of law, a reference in law or rule to the commission's office of investigations and enforcement means the office of inspector general established under this section.

(b) As soon as possible after the effective date of this section, the governor shall appoint a person to serve as inspector general in accordance with Section 531.102, Government Code, as amended by this section. The initial term of the person appointed in accordance with this subsection expires February 1, 2005.

(8) Strike page 75, line 18, through page 76, line 10, and substitute the following:

Sec. 531.1021. SUBPOENAS. (a) The office of inspector general may request that the commissioner or the commissioner's designee approve the issuance by the office of a subpoena in connection with an investigation conducted by the office. If the request is approved, the office may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the office,

acting through the attorney general, may file suit to enforce the subpoena in a district court in this state.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The office shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the office may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103.

(g) All information and materials subpoenaed or compiled by the office in connection with an investigation are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or its employees or agents involved in the investigation conducted by the office, except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

(9) Strike SECTION 2.17 of the bill (page 76, line 11, through page 79, line 27) and substitute the following appropriately numbered section:

SECTION _____. (a) Section 531.103, Government Code, is amended to read as follows:

Sec. 531.103. INTERAGENCY COORDINATION. (a) The commission, acting through the commission's office of inspector general, and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse, as those terms are defined by state or federal law, or other violations of state or federal law under the state Medicaid program or other program administered by the commission or a health and human services agency, including the financial assistance program under Chapter 31, Human Resources Code, a nutritional assistance program under Chapter 33, Human Resources Code, and the child health plan program. The memorandum of understanding shall

require:

(1) the office of inspector general [~~commission~~] and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation, prosecution, or other disposition to enhance deterrence of fraud, waste, [~~or~~] abuse, or other violations of state or federal law, including a violation of Chapter 102, Occupations Code, in the programs [~~program~~] and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;

(1-a) the office of inspector general to refer each case of suspected provider fraud, waste, or abuse to the office of the attorney general not later than the 10th business day after the date the office of inspector general determines that the existence of fraud, waste, or abuse is reasonably indicated;

(1-b) the office of the attorney general to take appropriate action in response to each case referred to the attorney general, which action may include direct initiation of prosecution or civil litigation or referral to an appropriate United States attorney, a district attorney, a county attorney, or a collections agency for initiation of prosecution, civil litigation, or other appropriate action;

(2) the office of inspector general [~~commission~~] to keep detailed records for cases processed by that office [~~the commission~~] or the office of the attorney general, including information on the total number of cases processed and, for each case:

(A) the agency and division to which the case is referred for investigation;

(B) the date on which the case is referred; and

(C) the nature of the suspected fraud, waste, or abuse;

(3) the office of inspector general [~~commission~~] to notify each appropriate division of the office of the attorney general of each case referred by the office of inspector general [~~commission~~];

(4) the office of the attorney general to ensure that

information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;

(5) the office of the attorney general to notify the office of inspector general [~~commission~~] of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the office of inspector general [~~commission~~] and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; and

(7) the office of inspector general [~~commission~~] and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection.

(b) An exchange of information under this section between the office of the attorney general and the commission, the office of inspector general, or a health and human services agency does not affect whether the information is subject to disclosure under Chapter 552.

(c) The commission and the office of the attorney general shall jointly prepare and submit a semiannual report to the governor, lieutenant governor, [~~and~~] speaker of the house of representatives, and comptroller concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under the state Medicaid program or other program administered by the commission or a health and human services agency. The report may be consolidated with any other report relating to the same subject matter the commission or office of the attorney general is required to submit under other law.

(d) The commission and the office of the attorney general may not assess or collect investigation and attorney's fees on behalf of any state agency unless the office of the attorney general or other state agency collects a penalty, restitution, or other reimbursement payment to the state.

(e) In addition to the provisions required by Subsection (a), the memorandum of understanding required by this section must also ensure that no barriers to direct fraud referrals to the office

of the attorney general's Medicaid fraud control unit or unreasonable impediments to communication between Medicaid agency employees and the Medicaid fraud control unit are imposed, and must include procedures to facilitate the referral of cases directly to the office of the attorney general. ~~[The commission shall refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate district attorney, county attorney, city attorney, or private collection agency if the attorney general fails to act within 30 days of referral of the case to the office of the attorney general. A failure by the attorney general to act within 30 days constitutes approval by the attorney general under Section 2107.003.]~~

(f) A ~~[The]~~ district attorney, county attorney, city attorney, or private collection agency may collect and retain costs associated with a a ~~[the]~~ case referred to the attorney or agency in accordance with procedures adopted under this section and 20 percent of the amount of the penalty, restitution, or other reimbursement payment collected.

(b) Not later than December 1, 2003, the office of the attorney general and the Health and Human Services Commission shall amend the memorandum of understanding required by Section 531.103, Government Code, as necessary to comply with that section, as amended by this section.

(10) Add the following appropriately numbered section to Article 2 of the bill:

SECTION _____. Section 531.104(b), Government Code, is amended to read as follows:

(b) The memorandum of understanding must specify the type, scope, and format of the investigative support provided to the attorney general under this section ~~[provide that the commission is not required to provide investigative support in more than 100 open investigations in a fiscal year]~~.

(11) Add the following appropriately numbered section to Article 2 of the bill:

SECTION _____. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.116 to read as follows:

Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING

SOLICITATION. A provider who furnishes services under the Medicaid program or child health plan program is subject to Chapter 102, Occupations Code, and the provider's compliance with that chapter is a condition of the provider's eligibility to participate as a provider under those programs.

(12) On page 83, line 8, strike "investigations and enforcement" and substitute "inspector general".

(13) On page 83, line 15, strike "investigations and enforcement" and substitute "inspector general".

(14) On page 84, line 10, strike "investigations and enforcement" and substitute "inspector general".

(15) On page 84, lines 18 and 19, strike "investigations and enforcement" and substitute "inspector general".

(16) On page 136, line 8, strike "an irregularity" and substitute "a pattern of suspected fraud or abuse involving criminal conduct".

(17) Add the following appropriately numbered sections to Article 2 of the bill:

SECTION _____. Section 31.03, Penal Code, is amended by adding Subsection (j) to read as follows:

(j) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION _____. Section 32.45, Penal Code, is amended by adding Subsection (d) to read as follows:

(d) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION _____. Section 32.46, Penal Code, is amended by adding Subsection (e) to read as follows:

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an

offense under this section that involves the state Medicaid program.

SECTION _____. Section 37.10, Penal Code, is amended by adding Subsection (i) to read as follows:

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(18) Renumber existing sections of the bill appropriately.