

BILL ANALYSIS

H.B. 1743

By: Delisi

State Health Care Expenditures, Select
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas has three divisions in two separate state agencies: the Health and Human Services Commission's (HHSC) Office of Investigations and Enforcement, or OIE; the Attorney General's Medicaid Fraud Control Unit, and the Attorney General's (AG) Civil Medicaid Fraud Section. Created in 1997, the OIE has been extremely effective in identifying and recovering millions in savings for the state. The OIE also boasts an efficient ratio of returning \$11.50 for every dollar spent in investigation. The Attorney General's contributions are also significant; in fiscal 1999, the Attorney General's divisions recovered about \$6 million in Medicaid funds, the 3rd largest recovery amount in the nation that year.

HB 1743 clarifies the authority of the OIE so that it may cover both Medicaid fraud and abuse, bringing it in line with federal regulation and avoid legal challenges. The bill also increases the size of the AG's Medicaid Fraud Control Unit and Civil Medicaid Fraud Section. This will allow these divisions to pursue more cases and dedicate more resources to collection of overpayments.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Health and Human Services in SECTION 3 (Section 32.0321, Human Resources Code) and SECTION 5 (Section 32.039, Human Resources Code) of this bill.

ANALYSIS

HB 1743 provides for statutory changes that streamline and redefine the means by which fraud, abuse and overpayments are dealt with in statutory law.

HB 1743 adds Section 32.0291 to the Human Resources Code. This section allows for a prepayment review process of not more than five days to determine if the claim involves fraud or abuse. The new section also allows for a post-payment hold to be placed on payments of future claims by a provider if the department has reliable evidence that the provider has committed fraud regarding a claim.

The bill also amends section 32.0321 of the Human Resources Code to provide rule making authority to establish surety bonds if there has been a prior conviction of a medical assistance provider.

HB 1743 adds Subdivision (1-a) through (1-f) and subsections (w) and (x) to Section 32.039. Subdivisions (1-a) through (1-f) are amended to add the definition of inducement and to provide under what conditions a person commits a violation in regards to receiving or providing, either directly or indirectly kickbacks, bribes or rebates for referring, inducing a person to refer, purchasing or inducing a person to purchase items or services that are paid for in whole or in part under the medical assistance program.

The bill amends Chapter 32 of the Human Resources Code by adding Section 32.060. This section states that a third-party billing vendor must have a contract with the department in order to submit a claim on behalf of a provider of medical services under the medical assistance program. This section goes on to state what requirements that contract must contain.

HB 1743 goes on to amend Section 531.102, Government code to establish the open records rules that are relevant to the office's investigations. The bill provides that the Office of Investigation and Enforcement is to be considered a law enforcement agency and may obtain information in the same manner as another law enforcement agency.

HB 1743 amends the Government code by adding Section 531.1021. This section grants authority to the commission's office of investigation and enforcement to seize assets of persons suspected of fraud and abuse under the medical assistance program. The section goes on to determine how those assets may be seized.

HB 1743 amends Section 531.103, Government Code by requiring a report by the Office of the Attorney General which will be submitted to the governor, legislature and the comptroller that addresses the activities of the attorney general's Medicaid Fraud Control Unit and Civil Medicaid Fraud section. The report must also describe in which circumstances the commission may refer a case to the United States Attorney. Lastly the section adds an appointee of the Texas Department of Public Health to the Medicaid and Public Assistance Fraud Oversight Task Force.

EFFECTIVE DATE

(a) Except as otherwise provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Section 32.060, Human Resources Code, as added by this Act, takes effect January 1, 2004.