BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1743
By: Delisi (Nelson)
Health & Human Services
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently Texas has three Medicaid fraud investigation divisions in two separate state agencies: the Health and Human Service Commission's Office of Investigations and Enforcement (OIE) and the Attorney General's Medicaid Fraud Control Unit and Civil Medicaid fraud section. C.S.H.B. 1743 clarifies the authority of the OIE so that it may cover both Medicaid fraud and abuse, bringing it in line with federal regulation to avoid legal challenges.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Service Commission in SECTION 1 (Section 32.0291, Human Resources Code), SECTION 2 (Section 32.032, Human Resources Code), SECTION 3 (Section 32.0321(a), Human Resources Code), SECTION 5 (Section 32.039, Human Resources Code), and SECTION 9 (SECTION 531.102, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0291, as follows:

> Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS. (a) Authorizes the Health and Human Services Commission (HHSC), notwithstanding any other law, to perform certain functions.
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> (b) Authorizes HHSC, notwithstanding any other law, to impose a postpayment hold on payment of future claims submitted by a provider if it has reliable evidence that the provider has committed fraud or wilful misrepresentation regarding a claim for reimbursement under the medical assistance program. Requires HHSC to notify the provider of the postpayment hold not later than the fifth working day after the date the hold is imposed.
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> (c) Requires HHSC, on timely written request by a provider subject to a postpayment hold under Subsection (b), to file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold. Requires the provider to request an expedited hearing under this subsection not later than the 10th day after the date the provider receives notice from HHSC under Subsection (b). Requires the administrative law judge to order HHSC to discontinue imposing the hold unless HHSC makes a prima facie showing at the hearing that the evidence relied on by HHSC in imposing the hold is relevant, reliable, credible, and material to the issue of fraud or wilful misrepresentation.
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> (d) Requires HHSC to adopt rules that allow a provider subject to a postpayment hold under Subsection (b) to seek an informal resolution of the issues identified by HHSC in the notice provided under that subsection. Requires a provider to seek an informal resolution under this subsection not later than the deadline prescribed by Subsection (c). Provides that a provider's decision to seek an informal resolution under this subsection does not extend the time by which the provider must request an expedited administrative hearing under Subsection (c).

Authorizes HHSC, however, to request that any hearing initiated under Subsection (c) be stayed until the informal resolution process is completed.

SECTION 2. Amends Section 32.032, Human Resources Code,, as follows:

Sec. 32.032. New heading: PREVENTION AND DETECTION OF FRAUD AND ABUSE. Requires HHSC to adopt reasonable rules for minimizing the opportunity for fraud and abuse, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud or abuse in the program may exist, and for referring cases where fraud or abuse appears to exist to the appropriate law enforcement agencies for prosecution.

SECTION 3. Amends Section 32.0321(a), Human Resources Code, to require HHSC by rule to require a provider of medical assistance to file a surety bond in a reasonable amount if HHSC identifies a pattern of suspected fraud or abuse involving criminal conduct relating to the provider's services under the medical assistance program that indicates the need for protection against potential future acts of fraud or abuse.

SECTION 4. Amends Section 32.039(a), Human Resources Code, by adding Subdivision (1-a) to provide that "inducement" includes a service, cash in any amount, entertainment, or any item of value.

SECTION 5. Amends Section 32.039, Human Resources Code, by amending Subsections (b), (u), and (v) and adding Subsections (w) and (x), as follows:

(b) Provides that a person commits a violation if the person perform certain actions.

(u) Makes a conforming change. Deletes text granting an exception to certain facility operators.

(v) Makes a conforming change. Deletes text granting an exception to certain facility operators.

(w) Authorizes HHSC by rule to prescribe criteria under which a person described by Subsection (u) or (v) is not prohibited from providing or arranging to provide health care services under the medical assistance program. Authorizes the criteria to include consideration of certain information.

(x) Provides that Subsections (b)(1-b) through (1-f) do not prohibit a person from engaging in certain activities.

SECTION 6. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0391, as follows:

Sec. 32.0391. CRIMINAL OFFENSE. (a) Provides that a person commits an offense if the person intentionally or knowingly commits a violation under Section 32.039(b)(1-b), (1-c), (1-d), or (1-e).

(b) Provides that an offense under this section is a state jail felony.

(c) Authorizes the prosecution of a person under either this section or the other provision, if conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code.

(d) Provides that 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.

SECTION 7. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section

32.060, as follows:

Sec. 32.060. THIRD-PARTY BILLING VENDORS. (a) Prohibits a third-party billing vendor from submitting a claim for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with HHSC authorizing that activity.

(b) Requires the contract, to the extent practical, to contain provisions comparable to the provisions contained in contracts between HHSC and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. Requires the contract, at a minimum, to require the third-party billing vendor to perform certain tasks.

(c) Requires HHSC, on receipt of a claim submitted by a third-party billing vendor, to send a remittance notice directly to the provider referenced in the claim. Requires the notice to meet certain conditions.

(d) Requires HHSC to take all action necessary, including any modifications of HHSC's claims processing system, to enable HHSC to identify and verify a third-party billing vendor submitting a claim for reimbursement under the medical assistance program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

SECTION 8. Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.1011, to define "fraud," "furnished," "hold on payment," "practitioner," "program exclusion," and "provider."

SECTION 9. Amends Section 531.102, Government Code, by amending Subsections (a) and (d) and adding Subsections (f) and (g), as follows:

(a) and (d) Makes conforming changes.

(f)(1) Requires HHSC, if HHSC receives a complaint of Medicaid fraud or abuse from any source, to conduct an integrity review to determine whether there is sufficient basis to warrant a full investigation. Requires an integrity review to commence not later than 60 days after HHSC receives a complaint or has reason to believe that fraud or abuse has occurred. Requires an integrity review to be completed not later than 90 days after it has commenced.

(2) Requires HHSC, if the findings of an integrity review give HHSC reason to believe that an incident of fraud or abuse involving possible criminal conduct has occurred in the Medicaid program, to take certain action, as appropriate, not later than 30 days after the completion of the integrity review.

(g)(1) Requires HHSC, whenever HHSC learns or has reason to suspect that a provider's records are being withheld, concealed, destroyed, fabricated, or in any way falsified, to immediately refer the case to the state's Medicaid fraud control unit. Provides that, however, such criminal referral does not preclude HHSC from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions.

(2) Requires HHSC, in addition to other instances authorized under state or federal law, to 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. Requires HHSC to notify the provider of the hold on payment not later than the fifth working day after the date the payment hold is imposed.

(3) Requires HHSC, on timely written request by a provider subject to hold on payment under Subdivision (2), other than a hold requested by the state's Medicaid fraud control unit, to file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold. Requires the provider to request an expedited hearing under this subdivision not later than the 10th day after the date the provider receives notice from HHSC under Subdivision (2).

(4) Requires HHSC to adopt rules that allow a provider subject to a hold on payment under Subdivision (2), other than a hold requested by the state's Medicaid fraud control unit, to seek an informal resolution of the issues identified by HHSC in the notice provided under that subdivision. Requires a provider to seek an informal resolution under this subdivision not later than the deadline prescribed by Subdivision (3). Provides that a provider's decision to seek an informal resolution under this subdivision does not extend the time by which the provider must request an expedited administrative hearing under Subdivision (3). Authorizes HHSC, however, to request that any hearing initiated under Subdivision (3) be stayed until informal resolution process is completed.

(5) Requires HHSC, in consultation with the state's Medicaid fraud control unit, to establish guidelines under which holds on payment or program exclusions may permissively be imposed on a provider or shall automatically be imposed on a provider.

SECTION 10. Amends Section 531.103(f), Government Code, to authorize certain entities to collect and retain costs associated with a case referred to the attorney or agency.

SECTION 11. Amends Section 531.104, Government Code, by adding Subsection (c) to require the memorandum of understanding to ensure that no barriers to direct fraud referrals to the state's Medicaid fraud control unit by Medicaid agencies or unreasonable impediments to communication between Medicaid agency employees and the state's Medicaid fraud control unit will be imposed.

SECTION 12. Amends Section 531.107(b), Government Code, to provide that the the task force is composed of a representative of the Texas Department of Health, appointed by the commissioner of public health.

SECTION 13. Amends Section 31.03, Penal Code, by adding Subsection (j) to provide that 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 14. Amends Section 32.45, Penal Code, by adding Subsection (d) to provide that 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 15. Amends Section 32.46, Penal Code, by adding Subsection (e) to provide that 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 16. Amends Section 37.10, Penal Code, by adding Subsection (i) to provide that 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 17. Amends Articles 59.01(1) and (2), Code of Criminal Procedure, to define "attorney representing the state" and "contraband."

SECTION 18. Amends Article 59.06, Code of Criminal Procedure, by adding Subsection (p) to require the attorney representing the state, notwithstanding Subsection (a), and to the extent necessary to protect HHSC's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which HHSC may otherwise be entitled by law, to transfer to HHSC all forfeited property defined as contraband under Article 59.01(2)(b)(viii). Authorizes the attorney representing the state, if the forfeited property consists of property other than money or negotiable instruments, if approved by HHSC, to sell the property and deliver to HHSC the proceeds from the sale, minus costs attributable to the sale. Requires the sale to be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

SECTION 19. (a) Requires the Medicaid and Public Assistance Fraud Oversight Task Force, with the participation of the Texas Department of Health's Bureau of Vital Statistics and other agencies designated by the comptroller, to study procedures and documentation requirements used by the state in confirming a person's identity for purposes of establishing entitlement to Medicaid and other benefits provided through health and human services programs.

(b) Requires the Medicaid and Public Assistance Fraud Oversight Task Force, not later than December 1, 2004, with assistance from the agencies participating in the study required by Subsection (a) of this section, to submit a report to the legislature containing recommendations for improvements in the procedures and documentation requirements described by Subsection (a) of this section that would strengthen the state's ability to prevent fraud and abuse in the Medicaid program and other health and human services programs.

SECTION 20. Requires the Office of the Attorney General and the Health and Human Services Commission, not later than December 1, 2003, to amend the memorandum of understanding required by Section 531.104, Government Code, as necessary to comply with Section 531.104(c), Government Code, as added by this Act.

SECTION 21. Makes application of the changes in law made by this Act through amending Section 32.039(b), Human Resources Code, and adding Section 32.0391, Human Resources Code, prospective.

SECTION 22. Requires the agency affected by the provision to request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted, if before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision,

SECTION 23. Repealer: Section 531.103(e), Government Code.

SECTION 24. (a) Effective date: September 1, 2003, except as otherwise provided by Subsection (b) of this section.

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