

By: Delisi

H.B. No. 1743

A BILL TO BE ENTITLED

AN ACT

relating to prevention of fraud and abuse under the medical assistance program; creating an offense.

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

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0291 to read as follows:

Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

(a) Notwithstanding any other law, the department may:

(1) perform a prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse; and

(2) as necessary to perform that review, withhold payment of the claim for not more than five working days without notice to the person submitting the claim.

(b) Notwithstanding any other law, the department may impose a postpayment hold on payment of future claims submitted by a provider if the department has reliable evidence that the provider has committed fraud or wilful misrepresentation regarding a claim for reimbursement under the medical assistance program. The department must notify the provider of the postpayment hold not later than the fifth working day after the date the hold is imposed.

SECTION 2. Section 32.032, Human Resources Code, is amended to read as follows:

Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.

1 The department shall adopt reasonable rules for minimizing the
2 opportunity for fraud and abuse, for establishing and maintaining
3 methods for detecting and identifying situations in which a
4 question of fraud or abuse in the program may exist, and for
5 referring cases where fraud or abuse appears to exist to the
6 appropriate law enforcement agencies for prosecution.

7 SECTION 3. Section 32.0321(a), Human Resources Code, is
8 amended to read as follows:

9 (a) The department by rule may require each provider of
10 medical assistance in a provider type that has demonstrated
11 significant potential for fraud or abuse to file with the
12 department a surety bond in a reasonable amount. The department by
13 rule shall require a provider of medical assistance to file with the
14 department a surety bond in a reasonable amount if the department
15 identifies an irregularity relating to the provider's services
16 under the medical assistance program that indicates the need for
17 protection against potential future acts of fraud or abuse.

18 SECTION 4. Section 32.039(a), Human Resources Code, is
19 amended by adding Subdivision (1-a) to read as follows:

20 (1-a) "Inducement" includes a service, cash in any
21 amount, entertainment, or any item of value.

22 SECTION 5. Section 32.039, Human Resources Code, is amended
23 by amending Subsections (b), (u), and (v) and adding Subsections
24 (w) and (x) to read as follows:

25 (b) A person commits a violation if the person:

26 (1) presents or causes to be presented to the
27 department a claim that contains a statement or representation the

1 person knows or should know to be false;

2 (1-a) engages in conduct that violates Section
3 102.001, Occupations Code;

4 (1-b) solicits or receives, directly or indirectly,
5 overtly or covertly any remuneration, including any kickback,
6 bribe, or rebate, in cash or in kind for referring an individual to
7 a person for the furnishing of, or for arranging the furnishing of,
8 any item or service for which payment may be made, in whole or in
9 part, under the medical assistance program;

10 (1-c) solicits or receives, directly or indirectly,
11 overtly or covertly any remuneration, including any kickback,
12 bribe, or rebate, in cash or in kind for purchasing, leasing, or
13 ordering, or arranging for or recommending the purchasing, leasing,
14 or ordering of any good, facility, service, or item for which
15 payment may be made, in whole or in part, under the medical
16 assistance program;

17 (1-d) offers or pays, directly or indirectly, overtly
18 or covertly any remuneration, including any kickback, bribe, or
19 rebate, in cash or in kind to induce a person to refer an individual
20 to another person for the furnishing of, or for arranging the
21 furnishing of, any item or service for which payment made be made,
22 in whole or in part, under the medical assistance program;

23 (1-e) offers or pays, directly or indirectly, overtly
24 or covertly any remuneration, including any kickback, bribe, or
25 rebate, in cash or in kind to induce a person to purchase, lease, or
26 order or arrange for or recommend the purchase, lease, or order of
27 any good, facility, service, or item for which payment may be made,

1 in whole or in part, under the medical assistance program;

2 (1-f) provides or offers an inducement in a manner or
3 for a purpose not otherwise prohibited by this section or Section
4 102.001, Occupations Code, to an individual, including a recipient,
5 provider, or employee of a provider, for the purpose of influencing
6 a decision regarding selection of a provider or receipt of a good
7 or service under the medical assistance program or for the purpose
8 of otherwise influencing a decision regarding the use of goods or
9 services provided under the medical assistance program; or

10 (2) is a managed care organization that contracts with
11 the department to provide or arrange to provide health care
12 benefits or services to individuals eligible for medical assistance
13 and:

14 (A) fails to provide to an individual a health
15 care benefit or service that the organization is required to
16 provide under the contract with the department;

17 (B) fails to provide to the department
18 information required to be provided by law, department rule, or
19 contractual provision;

20 (C) engages in a fraudulent activity in
21 connection with the enrollment in the organization's managed care
22 plan of an individual eligible for medical assistance or in
23 connection with marketing the organization's services to an
24 individual eligible for medical assistance; or

25 (D) engages in actions that indicate a pattern
26 of:

27 (i) wrongful denial of payment for a health

1 care benefit or service that the organization is required to
2 provide under the contract with the department; or

3 (ii) wrongful delay of at least 45 days or a
4 longer period specified in the contract with the department, not to
5 exceed 60 days, in making payment for a health care benefit or
6 service that the organization is required to provide under the
7 contract with the department.

8 (u) Except as provided by Subsection (w), a [A] person found
9 liable for a violation under Subsection (c) that resulted in injury
10 to an elderly person, as defined by Section 48.002(a)(1)
11 [~~48.002(1)~~], a disabled person, as defined by Section
12 48.002(a)(8)(A) [~~48.002(8)(A)~~], or a person younger than 18 years
13 of age may not provide or arrange to provide health care services
14 under the medical assistance program for a period of 10 years. The
15 department by rule may provide for a period of ineligibility longer
16 than 10 years. The period of ineligibility begins on the date on
17 which the determination that the person is liable becomes final.
18 [~~This subsection does not apply to a person who operates a nursing~~
19 ~~facility or an ICF-MR facility.~~]

20 (v) Except as provided by Subsection (w), a [A] person found
21 liable for a violation under Subsection (c) that did not result in
22 injury to an elderly person, as defined by Section 48.002(a)(1)
23 [~~48.002(1)~~], a disabled person, as defined by Section
24 48.002(a)(8)(A) [~~48.002(8)(A)~~], or a person younger than 18 years
25 of age may not provide or arrange to provide health care services
26 under the medical assistance program for a period of three years.
27 The department by rule may provide for a period of ineligibility

1 longer than three years. The period of ineligibility begins on the
2 date on which the determination that the person is liable becomes
3 final[~~. This subsection does not apply to a person who operates a~~
4 ~~nursing facility or an ICF-MR facility].~~

5 (w) The department by rule may prescribe criteria under
6 which a person described by Subsection (u) or (v) is not prohibited
7 from providing or arranging to provide health care services under
8 the medical assistance program. The criteria may include
9 consideration of:

10 (1) the person's knowledge of the violation;

11 (2) the likelihood that education provided to the
12 person would be sufficient to prevent future violations;

13 (3) the potential impact on availability of services
14 in the community served by the person; and

15 (4) any other reasonable factor identified by the
16 department.

17 (x) Subsections (b)(1-b) through (1-f) do not prohibit a
18 person from engaging in:

19 (1) generally accepted business practices, as
20 determined by department rule, including:

21 (A) conducting a marketing campaign;

22 (B) providing token items of minimal value that
23 advertise the person's trade name; and

24 (C) providing complimentary refreshments at an
25 informational meeting promoting the person's goods or services; or

26 (2) conduct specifically authorized by law.

27 SECTION 6. Subchapter B, Chapter 32, Human Resources Code,

1 is amended by adding Section 32.0391 to read as follows:

2 Sec. 32.0391. CRIMINAL OFFENSE. (a) A person commits an
3 offense if the person commits a violation under Section
4 32.039(b)(1-b), (1-c), (1-d), or (1-e).

5 (b) An offense under this section is a state jail felony.

6 (c) If conduct constituting an offense under this section
7 also constitutes an offense under another provision of law,
8 including a provision in the Penal Code, the person may be
9 prosecuted under either this section or the other provision.

10 SECTION 7. Subchapter B, Chapter 32, Human Resources Code,
11 is amended by adding Section 32.060 to read as follows:

12 Sec. 32.060. THIRD-PARTY BILLING VENDORS. (a) A
13 third-party billing vendor may not submit a claim with the
14 department for reimbursement on behalf of a provider of medical
15 services under the medical assistance program unless the vendor has
16 entered into a contract with the department authorizing that
17 activity.

18 (b) To the extent practical, the contract shall contain
19 provisions comparable to the provisions contained in contracts
20 between the department and providers of medical services, with an
21 emphasis on provisions designed to prevent fraud or abuse under the
22 medical assistance program. At a minimum, the contract must
23 require the third-party billing vendor to:

24 (1) provide documentation of the vendor's authority to
25 bill on behalf of each provider for whom the vendor submits claims;

26 (2) submit a claim in a manner that permits the
27 department to identify and verify the vendor, any computer or

1 telephone line used in submitting the claim, any relevant user
2 password used in submitting the claim, and any provider number
3 referenced in the claim; and

4 (3) subject to any confidentiality requirements
5 imposed by federal law, provide the department, the office of the
6 attorney general, or authorized representatives with:

7 (A) access to any records maintained by the
8 vendor, including original records and records maintained by the
9 vendor on behalf of a provider, relevant to an audit or
10 investigation of the vendor's services or another function of the
11 department or office of attorney general relating to the vendor;
12 and

13 (B) if requested, copies of any records described
14 by Paragraph (A) at no charge to the department, the office of the
15 attorney general, or authorized representatives.

16 (c) On receipt of a claim submitted by a third-party billing
17 vendor, the department shall send a remittance notice directly to
18 the provider referenced in the claim. The notice must:

19 (1) include detailed information regarding the claim
20 submitted on behalf of the provider; and

21 (2) require the provider to review the claim for
22 accuracy and notify the department promptly regarding any errors.

23 (d) The department shall take all action necessary,
24 including any modifications of the department's claims processing
25 system, to enable the department to identify and verify a
26 third-party billing vendor submitting a claim for reimbursement
27 under the medical assistance program, including identification and

1 verification of any computer or telephone line used in submitting
2 the claim, any relevant user password used in submitting the claim,
3 and any provider number referenced in the claim.

4 SECTION 8. Section 531.102, Government Code, is amended by
5 amending Subsections (a) and (d) and adding Subsections (f) and (g)
6 to read as follows:

7 (a) The commission, through the commission's office of
8 investigations and enforcement, is responsible for the
9 investigation of fraud and abuse in the provision of health and
10 human services and the enforcement of state law relating to the
11 provision of those services.

12 (d) The commission may require employees of health and human
13 services agencies to provide assistance to the commission in
14 connection with the commission's duties relating to the
15 investigation of fraud and abuse in the provision of health and
16 human services.

17 (f) Notwithstanding any other law, for purposes of
18 obtaining information relevant to the office's duties from a law
19 enforcement agency, prosecutor, or governmental entity, the office
20 is considered to be a law enforcement agency and may obtain the
21 information in the same manner as another law enforcement agency.
22 Information obtained by the office under this subsection that deals
23 with the detection, investigation, or prosecution of crime is
24 excepted from the requirements of Section 552.021 in the manner
25 provided by Section 552.108.

26 (g) In connection with the investigation of fraud and abuse
27 in the provision of health and human services, the office may issue

1 a subpoena throughout this state to compel the attendance and
2 testimony of a witness or production of records. The subpoena may
3 compel attendance or production at the office or at another place
4 designated in the subpoena.

5 SECTION 9. Subchapter C, Chapter 531, Government Code, is
6 amended by adding Section 531.1021 to read as follows:

7 Sec. 531.1021. SEIZURE OF ASSETS. (a) The commission,
8 through the commission's office of investigations and enforcement,
9 may seize assets owned by a person if:

10 (1) the commission determines through an
11 investigation that there is a substantial likelihood that the
12 person has engaged in conduct that constitutes fraud or abuse under
13 the medical assistance program; and

14 (2) the seizure of assets is necessary to protect the
15 commission's ability to recover amounts wrongfully obtained by the
16 person and associated damages and penalties to which the commission
17 may otherwise be entitled by law.

18 (b) The commission shall provide a person whose assets are
19 seized with an opportunity for a hearing at which the person may
20 contest the seizure.

21 (c) The commission may not dispose of seized assets until:

22 (1) the person is determined to have engaged in
23 conduct that constitutes fraud or abuse under the medical
24 assistance program; and

25 (2) the commission's entitlement to the assets is
26 confirmed in accordance with due process.

27 SECTION 10. Section 531.103, Government Code, is amended by

1 adding Subsections (c-1) and (e-1) and amending Subsection (e) to
2 read as follows:

3 (c-1) In addition to the report required by Subsection (c),
4 the office of the attorney general, not later than November 1 of
5 each year, shall prepare and submit to the governor, the
6 legislature, and the comptroller a report that specifically
7 addresses the activities of the attorney general's Medicaid fraud
8 control unit and civil Medicaid fraud section. The attorney
9 general shall consult with the comptroller regarding the format of
10 the report and make reasonable efforts to provide the report in the
11 format requested by the comptroller. The report must specify, for
12 the Medicaid fraud control unit and the civil Medicaid fraud
13 section, respectively, the following information:

- 14 (1) total agency expenditures;
15 (2) caseloads;
16 (3) the length of time required to complete each case
17 through each phase of activity;
18 (4) recoveries and penalties arising from each case;
19 (5) difficulties in operations; and
20 (6) any other information considered relevant by the
21 attorney general to an analysis of the effectiveness of the unit and
22 section.

23 (e) The commission shall refer a case of suspected fraud,
24 waste, or abuse under the state Medicaid program to the appropriate
25 United States attorney, district attorney, county attorney, city
26 attorney, or private collection agency if the attorney general
27 fails to act within 30 days of referral of the case to the office of

1 the attorney general. A failure by the attorney general to act
2 within 30 days constitutes approval by the attorney general under
3 Section 2107.003.

4 (e-1) In addition to the provisions required by Subsection
5 (a), the memorandum of understanding required by this section must
6 identify circumstances under which the commission may refer a case
7 of suspected fraud, waste, or abuse under the state Medicaid
8 program directly to the appropriate United States attorney,
9 district attorney, county attorney, city attorney, or private
10 collection agency. A case referred in accordance with this
11 subsection is considered approved by the attorney general under
12 Section 2107.003.

13 SECTION 11. Section 531.107(b), Government Code, is amended
14 to read as follows:

15 (b) The task force is composed of a representative of the:

16 (1) attorney general's office, appointed by the
17 attorney general;

18 (2) comptroller's office, appointed by the
19 comptroller;

20 (3) Department of Public Safety, appointed by the
21 public safety director;

22 (4) state auditor's office, appointed by the state
23 auditor;

24 (5) commission, appointed by the commissioner of
25 health and human services;

26 (6) Texas Department of Human Services, appointed by
27 the commissioner of human services; ~~and~~

1 (7) Texas Department of Insurance, appointed by the
2 commissioner of insurance; and

3 (8) Texas Department of Health, appointed by the
4 commissioner of public health.

5 SECTION 12. (a) The Medicaid and Public Assistance Fraud
6 Oversight Task Force, with the participation of the Texas
7 Department of Health's Bureau of Vital Statistics and other
8 agencies designated by the comptroller, shall study procedures and
9 documentation requirements used by the state in confirming a
10 person's identity for purposes of establishing entitlement to
11 Medicaid and other benefits provided through health and human
12 services programs.

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

22 SECTION 13. Not later than December 1, 2003, the Office of
23 the Attorney General and the Health and Human Services Commission
24 shall amend the memorandum of understanding required by Section
25 531.103, Government Code, as necessary to comply with Section
26 531.103(e-1), Government Code, as added by this Act.

27 SECTION 14. The changes in law made by this Act through

1 amending Section 32.039(b), Human Resources Code, and adding
2 Section 32.0391, Human Resources Code, apply only to a violation
3 committed on or after the effective date of this Act. For purposes
4 of this section, a violation is committed on or after the effective
5 date of this Act only if each element of the violation occurs on or
6 after that date. A violation committed before the effective date of
7 this Act is covered by the law in effect when the violation was
8 committed, and the former law is continued in effect for that
9 purpose.

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

16 SECTION 16. (a) Except as otherwise provided by Subsection
17 (b) of this section, this Act takes effect September 1, 2003.

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