

BILL ANALYSIS

Senate Research Center

S.B. 563
By: Janek
Health & Human Services
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Human Resources Code, Chapter 36 (Texas Medicaid Fraud Prevention Act, or TMFPA), provides a mechanism for private person plaintiffs (relators) who have knowledge of actions taken by companies or individuals to defraud the Texas Medicaid program to file against the wrongdoer under seal and turn over evidence to the attorney general. The attorney general may investigate, and, if he find the allegations are meritorious, may intervene in the lawsuit.

S.B. 563 clarifies the "unlawful acts" provisions of the statute and clarifies that the cap on exemplary damages in Chapter 41, Civil Practice and Remedies Code does not apply to actions under TMFPA, among other provisions.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the board of a state agency that operates part of the Medicaid program is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 6 (Section 36.005, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.001(9), Human Resources Code, to redefine "provider."

SECTION 2. Amends Subchapter A, Chapter 36, Human Resources Code, by adding Section 36.0011, as follows:

Sec. 36.0011. CULPABLE MENTAL STATE. (a) Defines "knowingly."

(b) Provides that proof of the person's specific intent to commit an unlawful act under Section 36.002 is not required in a civil or administrative proceeding to show that a person acted "knowingly" with respect to information under this chapter.

SECTION 3. Amends Section 36.002, Human Resources Code, to provide that an individual commits an unlawful act if the person knowingly, rather than knowingly or intentionally, makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized, or knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program, that is not authorized or that is greater than the benefit or payment that is authorized. Deletes existing text pertaining to Medicaid application or eligibility, and pertaining to the initial or continued right to a Medicaid program. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 36.003(b), Human Resources Code, to include a political subdivision of this state and a person authorized by the attorney general as entities eligible to receive documentary material from the office of the attorney general described under this subsection.

SECTION 5. Amends Section 36.004, Human Resources Code, to make conforming changes.

SECTION 6. Amends Sections 36.005, Human Resources Code, by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2), as follows:

(a) Sets forth certain requirements and authorizations relating to a health and human services agency, as defined by Section 531.001 (Definitions), Government Code. Deletes existing text making provisions of this subsection applicable to certain entities.

(b) Prohibits a provider found liable under Section 36.052 for an unlawful act from, for a period of 10 years, providing or arranging to provide health care services under the Medicaid program or supply or sell, directly or indirectly, a product to or under the Medicaid program. Authorizes the executive commissioner of the Health and Human Services Commission, rather than the board of a state agency that operates part of the Medicaid program, by rule to take certain actions relating to periods of ineligibility and the granting of an exemption from ineligibility to a provider under certain circumstances. Makes conforming and nonsubstantive changes.

(b-1) Created from existing text. Makes a conforming change.

(b-2) Created from existing text. Makes conforming changes.

SECTION 7. Amends Sections 36.052(a) and (c), Human Resources Code, as follows:

(a) Provides that except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for the amount, rather than value, of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party; interest on said amount or value for the period from the day the payment or benefit was received or paid to the date that the state recovers the amount of the payment or value of the benefit; and certain civil penalty. Makes conforming changes.

(c) Makes conforming changes.

SECTION 8. Amends Section 36.053, Human Resources Code, by adding Subsections (c)-(f), as follows:

(c) Prohibits the office of the attorney general from releasing or disclosing information that is obtained under Subsection (b)(1) (authorizing the attorney general to require a person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general) or Subsection (b)(2) (authorizing the attorney general to examine under oath a person in connection with the alleged unlawful act) or any documentary material or other record except under certain circumstances.

(d) Authorizes the attorney general to use documentary material derived from information obtained under Subsection (b)(1) or (b)(2), or copies of that material, as necessary in the enforcement of this chapter (Medicaid Fraud Prevention), including presentation before a court.

(e) Authorizes the attorney general, if a person fails to meet certain requirements, to file in a district court of Travis County a petition for an order to compel the person to meet the requirements. Provides that failure to comply with an order entered under this subsection is punishable by contempt.

(f) Provides that an order issued by a district court under this section is subject to appeal to the supreme court.

SECTION 9. Amends Section 36.054, Human Resources Code, by amending Subsection (e) and adding Subsection (e-1), as follows:

(e) Prohibits the office of the attorney general, rather than except as ordered by a court for good cause shown, from producing for inspection or copying or otherwise disclosing the contents of documentary material under this section, except under certain circumstances, rather than except to a person other than an authorized employee of the

attorney general without the consent of the person who produced the documentary material.

(e-1) Created from text of existing Subsection (e).

SECTION 10. Amends Section 36.102, Human Resources Code, by amending Subsections (b), (c), (d), and (e) and adding Subsection (c-1), as follows:

(b) Requires the petition to be filed in camera and, except as provided by Subsection (c-1) or (d), to remain under seal until at least the 180th, rather than 60th, day after the date the petition is filed or the date on which the state elects to intervene, whichever is earlier.

(c) Makes a conforming change.

(c-1) Authorizes the attorney general, at the time the state intervenes, to file a motion with the court requesting that the petition remain under seal for an extended period.

(d) Authorizes the state, for good cause shown, to move the court to extend the 180-day deadline, rather than the time during which the petition remains under seal, under Subsection (b) or (c).

(e) Authorizes an action under this subchapter to be dismissed before the end of the period during which the petition remains under seal, rather than during the period as prescribed by Subsection (b) as extended as provided by Subsection (d), as applicable, only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

SECTION 11. Amends Section 36.103, Human Resources Code, to provide that a defendant is not required to file in accordance with the Texas Rules of Civil Procedure an answer to a petition filed under this subchapter (Actions by Private Persons) until the petition is unsealed and served on the defendant. Deletes existing text pertaining to the 20th day after filing.

SECTION 12 Amends Section 36.104(a), Human Resources Code, to require, not later than the last day of the period prescribed by Section 36.102(c) or an extension of that period as provided by Section 36.102(d), the state to take certain steps.

SECTION 13. Amends Section 36.110(c), Human Resources Code, to include that a person receiving a payment under this section (Award to Private Plaintiff) is also entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. Requires the court's determination of expenses, fees, and costs to be awarded to be made only after the defendant has been found liable in the action.

SECTION 14. Amends the heading of Subchapter D, Chapter 36, Human Resources Code, to read as follows:

SUBCHAPTER D. REVOCATION OF CERTAIN OCCUPATIONAL LICENSES

SECTION 15. Amends Section 36.132(b), Human Resources Code, to require a licensing authority to revoke a license issued by the authority to a person if the person is convicted of a felony under Section 35A.02, Penal Code, rather than 36.131 (Criminal Offense).

SECTION 16. Amends Title 7, Penal Code, by adding Chapter 35A, as follows:

CHAPTER 35A. MEDICAID FRAUD

Sec. 35A.01. DEFINITIONS. Defines "claim," "fiscal agent," "health care practitioner," "managed care organization," "Medicaid program," "Medicaid recipient," "physician," "provider," and "service."

Sec. 35A.02. MEDICAID FRAUD. (a) Provides that an individual commits an offense by engaging in certain activities.

(b) Classifies the offenses under this section.

(c) Provides that if conduct constituting a offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision.

(d) Authorizes, when multiple payments or monetary or in-kind benefits are provided under the Medicaid program as a result of one scheme or continuing course of conduct, the conduct to be considered as one offense and the amount of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

SECTION 17. (a) Amends Section 531.1063, Government Code, by amending Subsection (g) and adding Subsections (h) and (i), as follows:

(g) Requires the Health and Human Services Commission (HHSC) to implement the program statewide as provided by Subsection (h) if the commission determines that statewide implementation would be cost-effective. Makes conforming changes.

(h) Requires HHSC to adopt a plan to implement the program statewide in phases and to terminate the statewide implementation at any stage of the process if the commission determines that statewide implementation would not be cost-effective. Requires the plan to include certain information for each phase.

(i) Requires HHSC, in developing the plan required by Subsection (h), to seek comments from recipients, providers, and other stakeholders in the state Medicaid program.

(b) Requires HHSC, before implementing a phase of the Medicaid fraud reduction pilot program required by Section 531.1063, Government Code, as amended by this section, that requires mandatory participation by Medicaid recipients or health care providers, to submit a report regarding the phase to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the senate and house of representatives having jurisdiction over the state Medicaid program. Requires the report to include a description of each component of the plan for that phase, as required by Section 531.1063(h), Government Code, as added by this section.

(c) Requires HHSC to report, in addition to the report required by Section 2.23(c), Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, not later than December 1, 2006, on the status and progress of the Medicaid fraud reduction pilot program required by Section 531.1063, Government Code, as amended by this section, to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the senate and house of representatives having jurisdiction over the state Medicaid program. Requires the report to include certain information.

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

SECTION 18. Amends Section 41.002(d), Civil Practice and Remedies Code, to include that this chapter (Damages) does not apply to an action brought under Chapter 36, Human Resources Code.

SECTION 19. Repealer: Section 36.131 (Criminal Offense), Human Resources Code.

SECTION 20. Makes application of this act prospective.

SECTION 21. Effective date: September 1, 2005.