

AN ACT

relating to the prevention of Medicaid fraud; providing penalties.

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

SECTION 1. Subdivision (9), Section 36.001, Human Resources Code, is amended to read as follows:

(9) "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;

(C) an employee of a provider; ~~and~~

(D) a managed care organization; and

(E) a manufacturer or distributor of a product for which the Medicaid program provides reimbursement.

SECTION 2. Subchapter A, Chapter 36, Human Resources Code, is amended by adding Section 36.0011 to read as follows:

Sec. 36.0011. CULPABLE MENTAL STATE. (a) For purposes of this chapter, a person acts "knowingly" with respect to information if the person:

(1) has knowledge of the information;

(2) acts with conscious indifference to the truth or falsity of the information; or

1 (3) acts in reckless disregard of the truth or falsity
2 of the information.

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

7 SECTION 3. Section 36.002, Human Resources Code, is amended
8 to read as follows:

9 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
10 act if the person:

11 (1) knowingly [~~or intentionally~~] makes or causes to be
12 made a false statement or misrepresentation of a material fact to
13 permit a person to receive a benefit or payment under the Medicaid
14 program that is not authorized or that is greater than the benefit
15 or payment that is authorized[+]

16 [~~(A) on an application for a contract, benefit,~~
17 ~~or payment under the Medicaid program; or~~

18 [~~(B) that is intended to be used to determine a~~
19 ~~person's eligibility for a benefit or payment under the Medicaid~~
20 ~~program];~~

21 (2) knowingly [~~or intentionally~~] conceals or fails to
22 disclose information that permits [~~an event~~+

23 [~~(A) that the person knows affects the initial or~~
24 ~~continued right to a benefit or payment under the Medicaid program~~
25 ~~of~~+

26 [~~(i) the person; or~~

27 [~~(ii) another person on whose behalf the~~

1 ~~person has applied for a benefit or payment or is receiving a~~
2 ~~benefit or payment; and~~

3 [~~(B) to permit~~] a person to receive a benefit or
4 payment under the Medicaid program that is not authorized or that is
5 greater than the benefit or payment [~~or benefit~~] that is
6 authorized;

7 (3) knowingly [~~or intentionally~~] applies for and
8 receives a benefit or payment on behalf of another person under the
9 Medicaid program and converts any part of the benefit or payment to
10 a use other than for the benefit of the person on whose behalf it was
11 received;

12 (4) knowingly [~~or intentionally~~] makes, causes to be
13 made, induces, or seeks to induce the making of a false statement or
14 misrepresentation of material fact concerning:

15 (A) the conditions or operation of a facility in
16 order that the facility may qualify for certification or
17 recertification required by the Medicaid program, including
18 certification or recertification as:

- 19 (i) a hospital;
- 20 (ii) a nursing facility or skilled nursing
21 facility;
- 22 (iii) a hospice;
- 23 (iv) an intermediate care facility for the
24 mentally retarded;

- 25 (v) an assisted living facility; or
- 26 (vi) a home health agency; or

27 (B) information required to be provided by a

1 federal or state law, rule, regulation, or provider agreement
2 pertaining to the Medicaid program;

3 (5) except as authorized under the Medicaid program,
4 knowingly pays, [~~or intentionally~~] charges, solicits, accepts, or
5 receives, in addition to an amount paid under the Medicaid program,
6 a gift, money, a donation, or other consideration as a condition to
7 the provision of a service or product or the continued provision of
8 a service or product [~~to a Medicaid recipient~~] if the cost of the
9 service or product [~~provided to the Medicaid recipient~~] is paid
10 for, in whole or in part, under the Medicaid program;

11 (6) knowingly [~~or intentionally~~] presents or causes to
12 be presented a claim for payment under the Medicaid program for a
13 product provided or a service rendered by a person who:

14 (A) is not licensed to provide the product or
15 render the service, if a license is required; or

16 (B) is not licensed in the manner claimed;

17 (7) knowingly [~~or intentionally~~] makes a claim under
18 the Medicaid program for:

19 (A) a service or product that has not been
20 approved or acquiesced in by a treating physician or health care
21 practitioner;

22 (B) a service or product that is substantially
23 inadequate or inappropriate when compared to generally recognized
24 standards within the particular discipline or within the health
25 care industry; or

26 (C) a product that has been adulterated, debased,
27 mislabeled, or that is otherwise inappropriate;

1 (8) makes a claim under the Medicaid program and
2 knowingly [~~or intentionally~~] fails to indicate the type of license
3 and the identification number of the licensed health care provider
4 who actually provided the service;

5 (9) knowingly [~~or intentionally~~] enters into an
6 agreement, combination, or conspiracy to defraud the state by
7 obtaining or aiding another person in obtaining an unauthorized
8 payment or benefit from the Medicaid program or a fiscal agent; [~~or~~]

9 (10) is a managed care organization that contracts
10 with the Health and Human Services Commission or other state agency
11 to provide or arrange to provide health care benefits or services to
12 individuals eligible under the Medicaid program and knowingly [~~or~~
13 ~~intentionally~~]:

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;

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

20 (C) engages in a fraudulent activity in
21 connection with the enrollment of an individual eligible under the
22 Medicaid program in the organization's managed care plan or in
23 connection with marketing the organization's services to an
24 individual eligible under the Medicaid program; [~~or~~]

25 (11) knowingly [~~(D)~~] obstructs an investigation by
26 the attorney general of an alleged unlawful act under this section;
27 or

1 (12) knowingly makes, uses, or causes the making or
2 use of a false record or statement to conceal, avoid, or decrease an
3 obligation to pay or transmit money or property to this state under
4 the Medicaid program.

5 SECTION 4. Subsection (b), Section 36.003, Human Resources
6 Code, is amended to read as follows:

7 (b) Except as ordered by a court for good cause shown, the
8 office of the attorney general may not produce for inspection or
9 copying or otherwise disclose the contents of documentary material
10 obtained under this section to a person other than:

- 11 (1) an [~~authorized~~] employee of the attorney general;
12 (2) an agency of this state, the United States, or
13 another state;
14 (3) a criminal district attorney, district attorney,
15 or county attorney of this state;
16 (4) the United States attorney general; [~~or~~]
17 (5) a state or federal grand jury;
18 (6) a political subdivision of this state; or
19 (7) a person authorized by the attorney general to
20 receive the information.

21 SECTION 5. Section 36.004, Human Resources Code, is amended
22 to read as follows:

23 Sec. 36.004. IMMUNITY. Notwithstanding any other law, a
24 person is not civilly or criminally liable for providing access to
25 documentary material under this chapter to:

- 26 (1) an [~~authorized~~] employee of the attorney general;
27 (2) an agency of this state, the United States, or

1 another state;

2 (3) a criminal district attorney, district attorney,
3 or county attorney of this state;

4 (4) the United States attorney general; ~~or~~

5 (5) a state or federal grand jury;

6 (6) a political subdivision of this state; or

7 (7) a person authorized by the attorney general to
8 receive the information.

9 SECTION 6. Section 36.005, Human Resources Code, is amended
10 by amending Subsections (a) and (b) and adding Subsections (b-1)
11 and (b-2) to read as follows:

12 (a) A health and human services agency, as defined by
13 Section 531.001, Government Code [~~The commissioner of human~~
14 ~~services, the commissioner of public health, the commissioner of~~
15 ~~mental health and mental retardation, the executive director of the~~
16 ~~Department of Protective and Regulatory Services, or the executive~~
17 ~~director of another state health care regulatory agency]:~~

18 (1) shall suspend or revoke:

19 (A) a provider agreement between the [~~department~~
20 ~~or~~] agency and a person, other than a person who operates a nursing
21 facility or an ICF-MR facility, found liable under Section 36.052;
22 and

23 (B) a permit, license, or certification granted
24 by the [~~department or~~] agency to a person, other than a person who
25 operates a nursing facility or an ICF-MR facility, found liable
26 under Section 36.052; and

27 (2) may suspend or revoke:

1 (A) a provider agreement between the [~~department~~
2 ~~or~~] agency and a person who operates a nursing facility or an ICF-MR
3 facility and who is found liable under Section 36.052; or

4 (B) a permit, license, or certification granted
5 by the [~~department or~~] agency to a person who operates a nursing
6 facility or an ICF-MR facility and who is found liable under Section
7 36.052.

8 (b) A provider [~~person~~] found liable under Section 36.052
9 for an unlawful act may not, for a period of 10 years, provide or
10 arrange to provide health care services under the Medicaid program
11 or supply or sell, directly or indirectly, a product to or under the
12 Medicaid program [~~for a period of 10 years~~]. The executive
13 commissioner of the Health and Human Services Commission [~~board of~~
14 ~~a state agency that operates part of the Medicaid program~~] may by
15 rule:

16 (1) provide for a period of ineligibility longer than
17 10 years; or

18 (2) grant a provider a full or partial exemption from
19 the period of ineligibility required by this subsection if the
20 executive commissioner finds that enforcement of the full period of
21 ineligibility is harmful to the Medicaid program or a beneficiary
22 of the program.

23 (b-1) The period of ineligibility begins on the date on
24 which the determination that the provider [~~person~~] is liable
25 becomes final.

26 (b-2) Subsections (b) and (b-1) do [~~This subsection does~~]
27 not apply to a provider [~~person~~] who operates a nursing facility or

1 an ICF-MR facility.

2 SECTION 7. Subsections (a) and (c), Section 36.052, Human
3 Resources Code, are amended to read as follows:

4 (a) Except as provided by Subsection (c), a person who
5 commits an unlawful act is liable to the state for:

6 (1) [~~restitution of~~] the amount [~~value~~] of any payment
7 or the value of any monetary or in-kind benefit provided under the
8 Medicaid program, directly or indirectly, as a result of the
9 unlawful act, including any payment made to a third party;

10 (2) interest on the amount [~~value~~] of the payment or
11 the value of the benefit described by Subdivision (1) at the
12 prejudgment interest rate in effect on the day the payment or
13 benefit was received or paid, for the period from the date the
14 benefit was received or paid to the date that [~~restitution is paid~~
15 ~~to~~] the state recovers the amount of the payment or value of the
16 benefit;

17 (3) a civil penalty of:

18 (A) not less than \$5,000 or more than \$15,000 for
19 each unlawful act committed by the person that results in injury to
20 an elderly person, as defined by Section 48.002(a)(1) [~~48.002(1)~~],
21 a disabled person, as defined by Section 48.002(a)(8)(A)
22 [~~48.002(8)(A)~~], or a person younger than 18 years of age; or

23 (B) not less than \$1,000 or more than \$10,000 for
24 each unlawful act committed by the person that does not result in
25 injury to a person described by Paragraph (A); and

26 (4) two times the amount [~~value~~] of the payment or the
27 value of the benefit described by Subdivision (1).

1 (c) The trier of fact may assess a total of not more than two
2 times the amount [~~value~~] of a payment or the value of a benefit
3 described by Subsection (a)(1) if the trier of fact finds that:

4 (1) the person furnished the attorney general with all
5 information known to the person about the unlawful act not later
6 than the 30th day after the date on which the person first obtained
7 the information; and

8 (2) at the time the person furnished all the
9 information to the attorney general, the attorney general had not
10 yet begun an investigation under this chapter.

11 SECTION 8. Section 36.053, Human Resources Code, is amended
12 by adding Subsections (c) through (f) to read as follows:

13 (c) The office of the attorney general may not release or
14 disclose information that is obtained under Subsection (b)(1) or
15 (2) or any documentary material or other record derived from the
16 information except:

17 (1) by court order for good cause shown;

18 (2) with the consent of the person who provided the
19 information;

20 (3) to an employee of the attorney general;

21 (4) to an agency of this state, the United States, or
22 another state;

23 (5) to any attorney representing the state under
24 Section 36.055 or in a civil action brought under Subchapter C;

25 (6) to a political subdivision of this state; or

26 (7) to a person authorized by the attorney general to
27 receive the information.

1 (d) The attorney general may use documentary material
2 derived from information obtained under Subsection (b)(1) or (2),
3 or copies of that material, as the attorney general determines
4 necessary in the enforcement of this chapter, including
5 presentation before a court.

6 (e) If a person fails to file a statement as required by
7 Subsection (b)(1) or fails to submit to an examination as required
8 by Subsection (b)(2), the attorney general may file in a district
9 court of Travis County a petition for an order to compel the person
10 to file the statement or submit to the examination within a period
11 stated by court order. Failure to comply with an order entered
12 under this subsection is punishable as contempt.

13 (f) An order issued by a district court under this section
14 is subject to appeal to the supreme court.

15 SECTION 9. Section 36.054, Human Resources Code, is amended
16 by amending Subsection (e) and adding Subsection (e-1) to read as
17 follows:

18 (e) The [~~Except as ordered by a court for good cause shown,~~
19 ~~the~~] office of the attorney general may not produce for inspection
20 or copying or otherwise disclose the contents of documentary
21 material obtained under this section except:

- 22 (1) by court order for good cause shown;
23 (2) with the consent of the person who produced the
24 information;
25 (3) to an employee of the attorney general;
26 (4) to an agency of this state, the United States, or
27 another state;

1 (5) to any attorney representing the state under
2 Section 36.055 or in a civil action brought under Subchapter C;

3 (6) to a political subdivision of this state; or

4 (7) to a person authorized by the attorney general to
5 receive the information [~~to a person other than an authorized~~
6 ~~employee of the attorney general without the consent of the person~~
7 ~~who produced the documentary material~~].

8 (e-1) The attorney general shall prescribe reasonable terms
9 and conditions allowing the documentary material to be available
10 for inspection and copying by the person who produced the material
11 or by an authorized representative of that person. The attorney
12 general may use the documentary material or copies of it as the
13 attorney general determines necessary in the enforcement of this
14 chapter, including presentation before a court.

15 SECTION 10. Section 36.102, Human Resources Code, is
16 amended by amending Subsections (b) through (e) and adding
17 Subsection (c-1) to read as follows:

18 (b) The petition shall be filed in camera and, except as
19 provided by Subsection (c-1) or (d), shall remain under seal until
20 at least the 180th [~~60th~~] day after the date the petition is filed
21 or the date on which the state elects to intervene, whichever is
22 earlier. The petition may not be served on the defendant until the
23 court orders service on the defendant.

24 (c) The state may elect to intervene and proceed with the
25 action not later than the 180th [~~60th~~] day after the date the
26 attorney general receives the petition and the material evidence
27 and information.

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

4 (d) The state may, for good cause shown, move the court to
5 extend the 180-day deadline [~~time during which the petition remains~~
6 ~~under seal~~] under Subsection (b) or (c). A motion under this
7 subsection may be supported by affidavits or other submissions in
8 camera.

9 (e) An action under this subchapter may be dismissed before
10 the end of the period during which the petition remains under seal
11 [~~prescribed by Subsection (b), as extended as provided by~~
12 ~~Subsection (d), if applicable,~~] only if the court and the attorney
13 general consent in writing to the dismissal and state their reasons
14 for consenting.

15 SECTION 11. Section 36.103, Human Resources Code, is
16 amended to read as follows:

17 Sec. 36.103. ANSWER BY DEFENDANT. A defendant is not
18 required to file in accordance with the Texas Rules of Civil
19 Procedure an answer to a petition filed under this subchapter until
20 [~~the 20th day after the date~~] the petition is unsealed and served on
21 the defendant [~~in compliance with the Texas Rules of Civil~~
22 ~~Procedure~~].

23 SECTION 12. Subsection (a), Section 36.104, Human Resources
24 Code, is amended to read as follows:

25 (a) Not later than the last day of the period prescribed by
26 Section 36.102(c) or an extension of that period as provided by
27 Section 36.102(d), the state shall:

- 1 (1) proceed with the action; or
- 2 (2) notify the court that the state declines to take
- 3 over the action.

4 SECTION 13. Subsection (c), Section 36.110, Human Resources
5 Code, is amended to read as follows:

6 (c) A payment to a person under this section shall be made
7 from the proceeds of the action. A person receiving a payment under
8 this section is also entitled to receive from the defendant an
9 amount for reasonable expenses, reasonable attorney's fees, and
10 costs that the court finds to have been necessarily incurred. The
11 court's determination of expenses, fees, and costs to be awarded
12 under this subsection shall be made only after the defendant has
13 been found liable in the action~~[, plus reasonable attorney's fees~~
14 ~~and costs. Expenses, fees, and costs shall be awarded against the~~
15 ~~defendant]~~.

16 SECTION 14. The heading of Subchapter D, Chapter 36, Human
17 Resources Code, is amended to read as follows:

18 SUBCHAPTER D. [~~CRIMINAL PENALTIES AND~~] REVOCATION OF CERTAIN
19 OCCUPATIONAL LICENSES

20 SECTION 15. Subsection (b), Section 36.132, Human Resources
21 Code, is amended to read as follows:

22 (b) A licensing authority shall revoke a license issued by
23 the authority to a person if the person is convicted of a felony
24 under Section 35A.02, Penal Code [~~36.131~~]. In revoking the
25 license, the licensing authority shall comply with all procedures
26 generally applicable to the licensing authority in revoking
27 licenses.

1 SECTION 16. Title 7, Penal Code, is amended by adding
2 Chapter 35A to read as follows:

3 CHAPTER 35A. MEDICAID FRAUD

4 Sec. 35A.01. DEFINITIONS. In this chapter:

5 (1) "Claim" has the meaning assigned by Section
6 36.001, Human Resources Code.

7 (2) "Fiscal agent" has the meaning assigned by Section
8 36.001, Human Resources Code.

9 (3) "Health care practitioner" has the meaning
10 assigned by Section 36.001, Human Resources Code.

11 (4) "Managed care organization" has the meaning
12 assigned by Section 36.001, Human Resources Code.

13 (5) "Medicaid program" has the meaning assigned by
14 Section 36.001, Human Resources Code.

15 (6) "Medicaid recipient" has the meaning assigned by
16 Section 36.001, Human Resources Code.

17 (7) "Physician" has the meaning assigned by Section
18 36.001, Human Resources Code.

19 (8) "Provider" has the meaning assigned by Section
20 36.001, Human Resources Code.

21 (9) "Service" has the meaning assigned by Section
22 36.001, Human Resources Code.

23 Sec. 35A.02. MEDICAID FRAUD. (a) A person commits an
24 offense if the person:

25 (1) knowingly makes or causes to be made a false
26 statement or misrepresentation of a material fact to permit a
27 person to receive a benefit or payment under the Medicaid program

1 that is not authorized or that is greater than the benefit or
2 payment that is authorized;

3 (2) knowingly conceals or fails to disclose
4 information that permits a person to receive a benefit or payment
5 under the Medicaid program that is not authorized or that is greater
6 than the benefit or payment that is authorized;

7 (3) knowingly applies for and receives a benefit or
8 payment on behalf of another person under the Medicaid program and
9 converts any part of the benefit or payment to a use other than for
10 the benefit of the person on whose behalf it was received;

11 (4) knowingly makes, causes to be made, induces, or
12 seeks to induce the making of a false statement or
13 misrepresentation of material fact concerning:

14 (A) the conditions or operation of a facility in
15 order that the facility may qualify for certification or
16 recertification required by the Medicaid program, including
17 certification or recertification as:

18 (i) a hospital;

19 (ii) a nursing facility or skilled nursing
20 facility;

21 (iii) a hospice;

22 (iv) an intermediate care facility for the
23 mentally retarded;

24 (v) an assisted living facility; or

25 (vi) a home health agency; or

26 (B) information required to be provided by a
27 federal or state law, rule, regulation, or provider agreement

1 pertaining to the Medicaid program;

2 (5) except as authorized under the Medicaid program,
3 knowingly pays, charges, solicits, accepts, or receives, in
4 addition to an amount paid under the Medicaid program, a gift,
5 money, a donation, or other consideration as a condition to the
6 provision of a service or product or the continued provision of a
7 service or product if the cost of the service or product is paid
8 for, in whole or in part, under the Medicaid program;

9 (6) knowingly presents or causes to be presented a
10 claim for payment under the Medicaid program for a product provided
11 or a service rendered by a person who:

12 (A) is not licensed to provide the product or
13 render the service, if a license is required; or

14 (B) is not licensed in the manner claimed;

15 (7) knowingly makes a claim under the Medicaid program
16 for:

17 (A) a service or product that has not been
18 approved or acquiesced in by a treating physician or health care
19 practitioner;

20 (B) a service or product that is substantially
21 inadequate or inappropriate when compared to generally recognized
22 standards within the particular discipline or within the health
23 care industry; or

24 (C) a product that has been adulterated, debased,
25 mislabeled, or that is otherwise inappropriate;

26 (8) makes a claim under the Medicaid program and
27 knowingly fails to indicate the type of license and the

1 identification number of the licensed health care provider who
2 actually provided the service;

3 (9) knowingly enters into an agreement, combination,
4 or conspiracy to defraud the state by obtaining or aiding another
5 person in obtaining an unauthorized payment or benefit from the
6 Medicaid program or a fiscal agent;

7 (10) is a managed care organization that contracts
8 with the Health and Human Services Commission or other state agency
9 to provide or arrange to provide health care benefits or services to
10 individuals eligible under the Medicaid program and knowingly:

11 (A) fails to provide to an individual a health
12 care benefit or service that the organization is required to
13 provide under the contract;

14 (B) fails to provide to the commission or
15 appropriate state agency information required to be provided by
16 law, commission or agency rule, or contractual provision; or

17 (C) engages in a fraudulent activity in
18 connection with the enrollment of an individual eligible under the
19 Medicaid program in the organization's managed care plan or in
20 connection with marketing the organization's services to an
21 individual eligible under the Medicaid program;

22 (11) knowingly obstructs an investigation by the
23 attorney general of an alleged unlawful act under Section 36.002,
24 Human Resources Code; or

25 (12) knowingly makes, uses, or causes the making or
26 use of a false record or statement to conceal, avoid, or decrease an
27 obligation to pay or transmit money or property to this state under

1 the Medicaid program.

2 (b) An offense under this section is:

3 (1) a Class C misdemeanor if the amount of any payment
4 or the value of any monetary or in-kind benefit provided under the
5 Medicaid program, directly or indirectly, as a result of the
6 conduct is less than \$50;

7 (2) a Class B misdemeanor if the amount of any payment
8 or the value of any monetary or in-kind benefit provided under the
9 Medicaid program, directly or indirectly, as a result of the
10 conduct is \$50 or more but less than \$500;

11 (3) a Class A misdemeanor if the amount of any payment
12 or the value of any monetary or in-kind benefit provided under the
13 Medicaid program, directly or indirectly, as a result of the
14 conduct is \$500 or more but less than \$1,500;

15 (4) a state jail felony if the amount of any payment or
16 the value of any monetary or in-kind benefit provided under the
17 Medicaid program, directly or indirectly, as a result of the
18 conduct is \$1,500 or more but less than \$20,000;

19 (5) a felony of the third degree if the amount of any
20 payment or the value of any monetary or in-kind benefit provided
21 under the Medicaid program, directly or indirectly, as a result of
22 the conduct is \$20,000 or more but less than \$100,000;

23 (6) a felony of the second degree if the amount of any
24 payment or the value of any monetary or in-kind benefit provided
25 under the Medicaid program, directly or indirectly, as a result of
26 the conduct is \$100,000 or more but less than \$200,000; or

27 (7) a felony of the first degree if the amount of any

1 payment or the value of any monetary or in-kind benefit provided
2 under the Medicaid program, directly or indirectly, as a result of
3 the conduct is \$200,000 or more.

4 (c) If conduct constituting an offense under this section
5 also constitutes an offense under another section of this code or
6 another provision of law, the actor may be prosecuted under either
7 this section or the other section or provision.

8 (d) When multiple payments or monetary or in-kind benefits
9 are provided under the Medicaid program as a result of one scheme or
10 continuing course of conduct, the conduct may be considered as one
11 offense and the amounts of the payments or monetary or in-kind
12 benefits aggregated in determining the grade of the offense.

13 SECTION 17. (a) Section 531.1063, Government Code, is
14 amended by amending Subsection (g) and adding Subsections (h) and
15 (i) to read as follows:

16 (g) The commission shall implement ~~[may extend]~~ the program
17 statewide as provided by Subsection (h) ~~[to additional counties]~~ if
18 the commission determines that statewide implementation
19 ~~[expansion]~~ would be cost-effective.

20 (h) The commission shall adopt a plan to implement the
21 program statewide in phases and shall terminate the statewide
22 implementation at any stage of the process if the commission
23 determines that statewide implementation would not be
24 cost-effective. The plan must include for each phase:

25 (1) a description of the policies and procedures to be
26 tested concerning the handling of lost, forgotten, or stolen cards
27 carrying a fingerprint image or situations in which a fingerprint

1 match cannot be confirmed;

2 (2) a determination of whether the commission will
3 require children or persons who are elderly or disabled to
4 participate in the phase and the reason or reasons for including
5 children or persons who are elderly or disabled in the phase; and

6 (3) a description of the manner and location in which
7 the fingerprint images will be initially collected.

8 (i) In developing the plan required by Subsection (h), the
9 commission shall seek comments from recipients, providers, and
10 other stakeholders in the state Medicaid program.

11 (b) The Health and Human Services Commission, before
12 implementing a phase of the Medicaid fraud reduction pilot program
13 required by Section 531.1063, Government Code, as amended by this
14 section, that requires mandatory participation by Medicaid
15 recipients or health care providers, shall submit a report
16 regarding the phase to the governor, lieutenant governor, speaker
17 of the house of representatives, and presiding officer of each
18 standing committee of the senate and house of representatives
19 having jurisdiction over the state Medicaid program. The report
20 must include a description of each component of the plan for that
21 phase, as required by Subsection (h), Section 531.1063, Government
22 Code, as added by this section.

23 (c) In addition to the report required by Subsection (c),
24 Section 2.23, Chapter 198, Acts of the 78th Legislature, Regular
25 Session, 2003, the Health and Human Services Commission shall
26 report, not later than December 1, 2006, on the status and progress
27 of the Medicaid fraud reduction pilot program required by Section

1 531.1063, Government Code, as amended by this section, to the
2 governor, lieutenant governor, speaker of the house of
3 representatives, and presiding officer of each standing committee
4 of the senate and house of representatives having jurisdiction over
5 the state Medicaid program. The report must include:

6 (1) a continued evaluation of the benefits of the
7 program;

8 (2) an evaluation of the strengths and weaknesses of
9 the policies and procedures tested in each phase required by
10 Subsection (h), Section 531.1063, Government Code, as added by this
11 section;

12 (3) information concerning the cost-effectiveness of
13 the program;

14 (4) if the program has been implemented statewide, any
15 significant problems encountered; and

16 (5) if the Health and Human Services Commission
17 requires participation by children or persons who are elderly or
18 disabled, the reason or reasons for including children or persons
19 who are elderly or disabled in the program.

20 (d) If before implementing any provision of this section a
21 state agency determines that a waiver or authorization from a
22 federal agency is necessary for implementation of that provision,
23 the agency affected by the provision shall request the waiver or
24 authorization and may delay implementing that provision until the
25 waiver or authorization is granted.

26 SECTION 18. Subsection (d), Section 41.002, Civil Practice
27 and Remedies Code, is amended to read as follows:

1 (d) Notwithstanding any provision to the contrary, this
2 chapter does not apply to:

3 (1) Section 15.21, Business & Commerce Code (Texas
4 Free Enterprise and Antitrust Act of 1983);

5 (2) [] an action brought under the Deceptive Trade
6 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
7 Business & Commerce Code) except as specifically provided in
8 Section 17.50 of that Act;

9 (3) an action brought under Chapter 36, Human
10 Resources Code; [] or

11 (4) an action brought under Chapter 21, Insurance
12 Code.

13 SECTION 19. Section 36.131, Human Resources Code, is
14 repealed.

15 SECTION 20. (a) This Act applies only to conduct that
16 occurs on or after the effective date of this Act. Conduct that
17 occurs before the effective date of this Act is governed by the law
18 in effect at the time the conduct occurred, and that law is
19 continued in effect for that purpose.

20 (b) For purposes of this section, conduct constituting an
21 offense under the penal law of this state occurred before the
22 effective date of this Act if any element of the offense occurred
23 before that date.

24 SECTION 21. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 563 passed the Senate on March 31, 2005, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 26, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 563 passed the House, with amendments, on May 23, 2005, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor