

By: Janek

S.B. No. 563

Substitute the following for S.B. No. 563:

By: Solis

C.S.S.B. No. 563

A BILL TO BE ENTITLED

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 defraud is not  
4 required in a civil or administrative proceeding to show that a  
5 person acted "knowingly" with respect to information under this  
6 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  
3 an obligation to pay or transmit money or property to this state  
4 under 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  
27 an obligation to pay or transmit money or property to this state

1 under 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. Subsection (d), Section 41.002, Civil Practice  
14 and Remedies Code, is amended to read as follows:

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

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

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

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

25 (4) an action brought under Chapter 21, Insurance  
26 Code.

27 SECTION 18. Section 36.131, Human Resources Code, is

1 repealed.

2           SECTION 19. (a) This Act applies only to conduct that  
3 occurs on or after the effective date of this Act. Conduct that  
4 occurs before the effective date of this Act is governed by the law  
5 in effect at the time the conduct occurred, and that law is  
6 continued in effect for that purpose.

7           (b) For purposes of this section, conduct constituting an  
8 offense under the penal law of this state occurred before the  
9 effective date of this Act if any element of the offense occurred  
10 before that date.

11           SECTION 20. This Act takes effect September 1, 2005.