

1-1 By: Janek S.B. No. 563
1-2 (In the Senate-Filed February 16, 2005; February 28, 2005,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 17, 2005, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; March 17, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the prevention of Medicaid fraud; providing penalties.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subdivision (9), Section 36.001, Human Resources
1-11 Code, is amended to read as follows:

1-12 (9) "Provider" means a person who participates in or
1-13 who has applied to participate in the Medicaid program as a supplier
1-14 of a product or service and includes:

1-15 (A) a management company that manages, operates,
1-16 or controls another provider;

1-17 (B) a person, including a medical vendor, that
1-18 provides a product or service to a provider or to a fiscal agent;

1-19 (C) an employee of a provider; ~~and~~

1-20 (D) a managed care organization; and

1-21 (E) a manufacturer or distributor of a product

1-22 for which the Medicaid program provides reimbursement.

1-23 SECTION 2. Subchapter A, Chapter 36, Human Resources Code,
1-24 is amended by adding Section 36.0011 to read as follows:

1-25 Sec. 36.0011. CULPABLE MENTAL STATE. (a) For purposes of
1-26 this chapter, a person acts "knowingly" with respect to information
1-27 if the person:

1-28 (1) has knowledge of the information;

1-29 (2) acts with conscious indifference to the truth or
1-30 falsity of the information; or

1-31 (3) acts in reckless disregard of the truth or falsity
1-32 of the information.

1-33 (b) Proof of the person's specific intent to defraud is not
1-34 required in a civil or administrative proceeding to show that a
1-35 person acted "knowingly" with respect to information under this
1-36 chapter.

1-37 SECTION 3. Section 36.002, Human Resources Code, is amended
1-38 to read as follows:

1-39 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
1-40 act if the person:

1-41 (1) knowingly ~~[or intentionally]~~ makes or causes to be
1-42 made a false statement or misrepresentation of a material fact to
1-43 permit a person to receive a benefit or payment under the Medicaid
1-44 program that is not authorized or that is greater than the benefit
1-45 or payment that is authorized~~;~~

1-46 ~~[(A) on an application for a contract, benefit,~~
1-47 ~~or payment under the Medicaid program; or~~

1-48 ~~[(B) that is intended to be used to determine a~~
1-49 ~~person's eligibility for a benefit or payment under the Medicaid~~
1-50 ~~program];~~

1-51 (2) knowingly ~~[or intentionally]~~ conceals or fails to
1-52 disclose information that permits ~~[an event:~~

1-53 ~~[(A) that the person knows affects the initial or~~
1-54 ~~continued right to a benefit or payment under the Medicaid program~~
1-55 ~~of:~~

1-56 ~~[(i) the person; or~~

1-57 ~~[(ii) another person on whose behalf the~~
1-58 ~~person has applied for a benefit or payment or is receiving a~~
1-59 ~~benefit or payment; and~~

1-60 ~~[(B) to permit]~~ a person to receive a benefit or
1-61 payment under the Medicaid program that is not authorized or that is
1-62 greater than the benefit or payment ~~[or benefit]~~ that is
1-63 authorized;

1-64 (3) knowingly ~~[or intentionally]~~ applies for and

2-1 receives a benefit or payment on behalf of another person under the
 2-2 Medicaid program and converts any part of the benefit or payment to
 2-3 a use other than for the benefit of the person on whose behalf it was
 2-4 received;

2-5 (4) knowingly [~~or intentionally~~] makes, causes to be
 2-6 made, induces, or seeks to induce the making of a false statement or
 2-7 misrepresentation of material fact concerning:

2-8 (A) the conditions or operation of a facility in
 2-9 order that the facility may qualify for certification or
 2-10 recertification required by the Medicaid program, including
 2-11 certification or recertification as:

2-12 (i) a hospital;
 2-13 (ii) a nursing facility or skilled nursing
 2-14 facility;

2-15 (iii) a hospice;
 2-16 (iv) an intermediate care facility for the
 2-17 mentally retarded;

2-18 (v) an assisted living facility; or
 2-19 (vi) a home health agency; or

2-20 (B) information required to be provided by a
 2-21 federal or state law, rule, regulation, or provider agreement
 2-22 pertaining to the Medicaid program;

2-23 (5) except as authorized under the Medicaid program,
 2-24 knowingly pays, [~~or intentionally~~] charges, solicits, accepts, or
 2-25 receives, in addition to an amount paid under the Medicaid program,
 2-26 a gift, money, a donation, or other consideration as a condition to
 2-27 the provision of a service or product or the continued provision of
 2-28 a service or product [~~to a Medicaid recipient~~] if the cost of the
 2-29 service or product [~~provided to the Medicaid recipient~~] is paid
 2-30 for, in whole or in part, under the Medicaid program;

2-31 (6) knowingly [~~or intentionally~~] presents or causes to
 2-32 be presented a claim for payment under the Medicaid program for a
 2-33 product provided or a service rendered by a person who:

2-34 (A) is not licensed to provide the product or
 2-35 render the service, if a license is required; or

2-36 (B) is not licensed in the manner claimed;

2-37 (7) knowingly [~~or intentionally~~] makes a claim under
 2-38 the Medicaid program for:

2-39 (A) a service or product that has not been
 2-40 approved or acquiesced in by a treating physician or health care
 2-41 practitioner;

2-42 (B) a service or product that is substantially
 2-43 inadequate or inappropriate when compared to generally recognized
 2-44 standards within the particular discipline or within the health
 2-45 care industry; or

2-46 (C) a product that has been adulterated, debased,
 2-47 mislabeled, or that is otherwise inappropriate;

2-48 (8) makes a claim under the Medicaid program and
 2-49 knowingly [~~or intentionally~~] fails to indicate the type of license
 2-50 and the identification number of the licensed health care provider
 2-51 who actually provided the service;

2-52 (9) knowingly [~~or intentionally~~] enters into an
 2-53 agreement, combination, or conspiracy to defraud the state by
 2-54 obtaining or aiding another person in obtaining an unauthorized
 2-55 payment or benefit from the Medicaid program or a fiscal agent; [~~or~~]

2-56 (10) is a managed care organization that contracts
 2-57 with the Health and Human Services Commission or other state agency
 2-58 to provide or arrange to provide health care benefits or services to
 2-59 individuals eligible under the Medicaid program and knowingly [~~or~~
 2-60 ~~intentionally~~]:

2-61 (A) fails to provide to an individual a health
 2-62 care benefit or service that the organization is required to
 2-63 provide under the contract;

2-64 (B) fails to provide to the commission or
 2-65 appropriate state agency information required to be provided by
 2-66 law, commission or agency rule, or contractual provision; or

2-67 (C) engages in a fraudulent activity in
 2-68 connection with the enrollment of an individual eligible under the
 2-69 Medicaid program in the organization's managed care plan or in

3-1 connection with marketing the organization's services to an
3-2 individual eligible under the Medicaid program; or

3-3 (11) knowingly [~~D~~] obstructs an investigation by
3-4 the attorney general of an alleged unlawful act under this section.

3-5 SECTION 4. Subsection (b), Section 36.003, Human Resources
3-6 Code, is amended to read as follows:

3-7 (b) Except as ordered by a court for good cause shown, the
3-8 office of the attorney general may not produce for inspection or
3-9 copying or otherwise disclose the contents of documentary material
3-10 obtained under this section to a person other than:

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

3-21 SECTION 5. Section 36.004, Human Resources Code, is amended
3-22 to read as follows:

3-23 Sec. 36.004. IMMUNITY. Notwithstanding any other law, a
3-24 person is not civilly or criminally liable for providing access to
3-25 documentary material under this chapter to:

- 3-26 (1) an ~~[authorized]~~ employee of the attorney general;
3-27 (2) an agency of this state, the United States, or
3-28 another state;
3-29 (3) a criminal district attorney, district attorney,
3-30 or county attorney of this state;
3-31 (4) the United States attorney general; ~~[or]~~
3-32 (5) a state or federal grand jury;
3-33 (6) a political subdivision of this state; or
3-34 (7) a person authorized by the attorney general to
3-35 receive the information.

3-36 SECTION 6. Subsection (b), Section 36.005, Human Resources
3-37 Code, is amended to read as follows:

3-38 (b) A provider [person] found liable under Section 36.052
3-39 for an unlawful act may not, for a period of 10 years, provide or
3-40 arrange to provide health care services under the Medicaid program
3-41 or supply or sell, directly or indirectly, a product to or under the
3-42 Medicaid program [for a period of 10 years]. The executive
3-43 commissioner of the Health and Human Services Commission [board of
3-44 a state agency that operates part of the Medicaid program] may by
3-45 rule provide for a period of ineligibility longer than 10 years.
3-46 The period of ineligibility begins on the date on which the
3-47 determination that the provider [person] is liable becomes final.
3-48 This subsection does not apply to a provider [person] who operates a
3-49 nursing facility or an ICF-MR facility.

3-50 SECTION 7. Subsections (a) and (c), Section 36.052, Human
3-51 Resources Code, are amended to read as follows:

3-52 (a) Except as provided by Subsection (c), a person who
3-53 commits an unlawful act is liable to the state for:

- 3-54 (1) ~~[restitution of]~~ the amount [value] of any payment
3-55 or the value of any monetary or in-kind benefit provided under the
3-56 Medicaid program, directly or indirectly, as a result of the
3-57 unlawful act, including any payment made to a third party;
3-58 (2) interest on the amount [value] of the payment or
3-59 the value of the benefit described by Subdivision (1) at the
3-60 prejudgment interest rate in effect on the day the payment or
3-61 benefit was received or paid, for the period from the date the
3-62 benefit was received or paid to the date that [restitution is paid
3-63 to] the state recovers the amount of the payment or value of the
3-64 benefit;

3-65 (3) a civil penalty of:
3-66 (A) not less than \$5,000 or more than \$15,000 for
3-67 each unlawful act committed by the person that results in injury to
3-68 an elderly person, as defined by Section 48.002(a)(1) [~~48.002(1)~~],
3-69 a disabled person, as defined by Section 48.002(a)(8)(A)

4-1 [48.002(8)(A)], or a person younger than 18 years of age; or
 4-2 (B) not less than \$1,000 or more than \$10,000 for
 4-3 each unlawful act committed by the person that does not result in
 4-4 injury to a person described by Paragraph (A); and

4-5 (4) two times the amount [value] of the payment or the
 4-6 value of the benefit described by Subdivision (1).

4-7 (c) The trier of fact may assess a total of not more than two
 4-8 times the amount [value] of a payment or the value of a benefit
 4-9 described by Subsection (a)(1) if the trier of fact finds that:

4-10 (1) the person furnished the attorney general with all
 4-11 information known to the person about the unlawful act not later
 4-12 than the 30th day after the date on which the person first obtained
 4-13 the information; and

4-14 (2) at the time the person furnished all the
 4-15 information to the attorney general, the attorney general had not
 4-16 yet begun an investigation under this chapter.

4-17 SECTION 8. Section 36.053, Human Resources Code, is amended
 4-18 by adding Subsections (c) through (f) to read as follows:

4-19 (c) The office of the attorney general may not release or
 4-20 disclose information that is obtained under Subsection (b)(1) or
 4-21 (2) or any documentary material or other record derived from the
 4-22 information except:

4-23 (1) by court order for good cause shown;

4-24 (2) with the consent of the person who provided the
 4-25 information;

4-26 (3) to an employee of the attorney general;

4-27 (4) to an agency of this state, the United States, or
 4-28 another state;

4-29 (5) to any attorney representing the state under
 4-30 Section 36.055 or in a civil action brought under Subchapter C;

4-31 (6) to a political subdivision of this state; or

4-32 (7) to a person authorized by the attorney general to
 4-33 receive the information.

4-34 (d) The attorney general may use documentary material
 4-35 derived from information obtained under Subsection (b)(1) or (2),
 4-36 or copies of that material, as the attorney general determines
 4-37 necessary in the enforcement of this chapter, including
 4-38 presentation before a court.

4-39 (e) If a person fails to file a statement as required by
 4-40 Subsection (b)(1) or fails to submit to an examination as required
 4-41 by Subsection (b)(2), the attorney general may file in a district
 4-42 court of Travis County a petition for an order to compel the person
 4-43 to file the statement or submit to the examination within a period
 4-44 stated by court order. Failure to comply with an order entered
 4-45 under this subsection is punishable as contempt.

4-46 (f) An order issued by a district court under this section
 4-47 is subject to appeal to the supreme court.

4-48 SECTION 9. Section 36.054, Human Resources Code, is amended
 4-49 by amending Subsection (e) and adding Subsection (e-1) to read as
 4-50 follows:

4-51 (e) The [Except as ordered by a court for good cause shown,
 4-52 the] office of the attorney general may not produce for inspection
 4-53 or copying or otherwise disclose the contents of documentary
 4-54 material obtained under this section except:

4-55 (1) by court order for good cause shown;

4-56 (2) with the consent of the person who produced the
 4-57 information;

4-58 (3) to an employee of the attorney general;

4-59 (4) to an agency of this state, the United States, or
 4-60 another state;

4-61 (5) to any attorney representing the state under
 4-62 Section 36.055 or in a civil action brought under Subchapter C;

4-63 (6) to a political subdivision of this state; or

4-64 (7) to a person authorized by the attorney general to
 4-65 receive the information [to a person other than an authorized
 4-66 employee of the attorney general without the consent of the person
 4-67 who produced the documentary material].

4-68 (e-1) The attorney general shall prescribe reasonable terms
 4-69 and conditions allowing the documentary material to be available

5-1 for inspection and copying by the person who produced the material
 5-2 or by an authorized representative of that person. The attorney
 5-3 general may use the documentary material or copies of it as the
 5-4 attorney general determines necessary in the enforcement of this
 5-5 chapter, including presentation before a court.

5-6 SECTION 10. Section 36.102, Human Resources Code, is
 5-7 amended by amending Subsections (b) through (e) and adding
 5-8 Subsection (c-1) to read as follows:

5-9 (b) The petition shall be filed in camera and, except as
 5-10 provided by Subsection (c-1) or (d), shall remain under seal until
 5-11 at least the 180th [60th] day after the date the petition is filed
 5-12 or the date on which the state elects to intervene, whichever is
 5-13 earlier. The petition may not be served on the defendant until the
 5-14 court orders service on the defendant.

5-15 (c) The state may elect to intervene and proceed with the
 5-16 action not later than the 180th [60th] day after the date the
 5-17 attorney general receives the petition and the material evidence
 5-18 and information.

5-19 (c-1) At the time the state intervenes, the attorney general
 5-20 may file a motion with the court requesting that the petition remain
 5-21 under seal for an extended period.

5-22 (d) The state may, for good cause shown, move the court to
 5-23 extend the 180-day deadline [~~time during which the petition remains~~
 5-24 ~~under seal~~] under Subsection (b) or (c). A motion under this
 5-25 subsection may be supported by affidavits or other submissions in
 5-26 camera.

5-27 (e) An action under this subchapter may be dismissed before
 5-28 the end of the period during which the petition remains under seal
 5-29 [prescribed by Subsection (b), as extended as provided by
 5-30 Subsection (d), if applicable,] only if the court and the attorney
 5-31 general consent in writing to the dismissal and state their reasons
 5-32 for consenting.

5-33 SECTION 11. Section 36.103, Human Resources Code, is
 5-34 amended to read as follows:

5-35 Sec. 36.103. ANSWER BY DEFENDANT. A defendant is not
 5-36 required to file in accordance with the Texas Rules of Civil
 5-37 Procedure an answer to a petition filed under this subchapter until
 5-38 [the 20th day after the date] the petition is unsealed and served on
 5-39 the defendant [in compliance with the Texas Rules of Civil
 5-40 Procedure].

5-41 SECTION 12. Subsection (a), Section 36.104, Human Resources
 5-42 Code, is amended to read as follows:

5-43 (a) Not later than the last day of the period prescribed by
 5-44 Section 36.102(c) or an extension of that period as provided by
 5-45 Section 36.102(d), the state shall:

- 5-46 (1) proceed with the action; or
 5-47 (2) notify the court that the state declines to take
 5-48 over the action.

5-49 SECTION 13. Subsection (c), Section 36.110, Human Resources
 5-50 Code, is amended to read as follows:

5-51 (c) A payment to a person under this section shall be made
 5-52 from the proceeds of the action. A person receiving a payment under
 5-53 this section is also entitled to receive from the defendant an
 5-54 amount for reasonable expenses, reasonable attorney's fees, and
 5-55 costs that the court finds to have been necessarily incurred. The
 5-56 court's determination of expenses, fees, and costs to be awarded
 5-57 under this subsection shall be made only after the defendant has
 5-58 been found liable in the action[~~, plus reasonable attorney's fees~~
 5-59 ~~and costs. Expenses, fees, and costs shall be awarded against the~~
 5-60 ~~defendant].~~

5-61 SECTION 14. The heading of Subchapter D, Chapter 36, Human
 5-62 Resources Code, is amended to read as follows:

5-63 SUBCHAPTER D. [~~CRIMINAL PENALTIES AND~~] REVOCATION OF CERTAIN
 5-64 OCCUPATIONAL LICENSES

5-65 SECTION 15. Subsection (b), Section 36.132, Human Resources
 5-66 Code, is amended to read as follows:

5-67 (b) A licensing authority shall revoke a license issued by
 5-68 the authority to a person if the person is convicted of a felony
 5-69 under Section 35A.02, Penal Code [~~36.131~~]. In revoking the

6-1 license, the licensing authority shall comply with all procedures
 6-2 generally applicable to the licensing authority in revoking
 6-3 licenses.

6-4 SECTION 16. Title 7, Penal Code, is amended by adding
 6-5 Chapter 35A to read as follows:

6-6 CHAPTER 35A. MEDICAID FRAUD

6-7 Sec. 35A.01. DEFINITIONS. In this chapter:

6-8 (1) "Claim" has the meaning assigned by Section
 6-9 36.001, Human Resources Code.

6-10 (2) "Fiscal agent" has the meaning assigned by Section
 6-11 36.001, Human Resources Code.

6-12 (3) "Health care practitioner" has the meaning
 6-13 assigned by Section 36.001, Human Resources Code.

6-14 (4) "Managed care organization" has the meaning
 6-15 assigned by Section 36.001, Human Resources Code.

6-16 (5) "Medicaid program" has the meaning assigned by
 6-17 Section 36.001, Human Resources Code.

6-18 (6) "Medicaid recipient" has the meaning assigned by
 6-19 Section 36.001, Human Resources Code.

6-20 (7) "Physician" has the meaning assigned by Section
 6-21 36.001, Human Resources Code.

6-22 (8) "Provider" has the meaning assigned by Section
 6-23 36.001, Human Resources Code.

6-24 (9) "Service" has the meaning assigned by Section
 6-25 36.001, Human Resources Code.

6-26 Sec. 35A.02. MEDICAID FRAUD. (a) A person commits an
 6-27 offense if the person:

6-28 (1) knowingly makes or causes to be made a false
 6-29 statement or misrepresentation of a material fact to permit a
 6-30 person to receive a benefit or payment under the Medicaid program
 6-31 that is not authorized or that is greater than the benefit or
 6-32 payment that is authorized;

6-33 (2) knowingly conceals or fails to disclose
 6-34 information that permits a person to receive a benefit or payment
 6-35 under the Medicaid program that is not authorized or that is greater
 6-36 than the benefit or payment that is authorized;

6-37 (3) knowingly applies for and receives a benefit or
 6-38 payment on behalf of another person under the Medicaid program and
 6-39 converts any part of the benefit or payment to a use other than for
 6-40 the benefit of the person on whose behalf it was received;

6-41 (4) knowingly makes, causes to be made, induces, or
 6-42 seeks to induce the making of a false statement or
 6-43 misrepresentation of material fact concerning:

6-44 (A) the conditions or operation of a facility in
 6-45 order that the facility may qualify for certification or
 6-46 recertification required by the Medicaid program, including
 6-47 certification or recertification as:

6-48 (i) a hospital;
 6-49 (ii) a nursing facility or skilled nursing

6-50 facility;
 6-51 (iii) a hospice;

6-52 (iv) an intermediate care facility for the
 6-53 mentally retarded;

6-54 (v) an assisted living facility; or
 6-55 (vi) a home health agency; or

6-56 (B) information required to be provided by a
 6-57 federal or state law, rule, regulation, or provider agreement
 6-58 pertaining to the Medicaid program;

6-59 (5) except as authorized under the Medicaid program,
 6-60 knowingly pays, charges, solicits, accepts, or receives, in
 6-61 addition to an amount paid under the Medicaid program, a gift,
 6-62 money, a donation, or other consideration as a condition to the
 6-63 provision of a service or product or the continued provision of a
 6-64 service or product if the cost of the service or product is paid
 6-65 for, in whole or in part, under the Medicaid program;

6-66 (6) knowingly presents or causes to be presented a
 6-67 claim for payment under the Medicaid program for a product provided
 6-68 or a service rendered by a person who:

6-69 (A) is not licensed to provide the product or

7-1 render the service, if a license is required; or
7-2 (B) is not licensed in the manner claimed;
7-3 (7) knowingly makes a claim under the Medicaid program
7-4 for:
7-5 (A) a service or product that has not been
7-6 approved or acquiesced in by a treating physician or health care
7-7 practitioner;
7-8 (B) a service or product that is substantially
7-9 inadequate or inappropriate when compared to generally recognized
7-10 standards within the particular discipline or within the health
7-11 care industry; or
7-12 (C) a product that has been adulterated, debased,
7-13 mislabeled, or that is otherwise inappropriate;
7-14 (8) makes a claim under the Medicaid program and
7-15 knowingly fails to indicate the type of license and the
7-16 identification number of the licensed health care provider who
7-17 actually provided the service;
7-18 (9) knowingly enters into an agreement, combination,
7-19 or conspiracy to defraud the state by obtaining or aiding another
7-20 person in obtaining an unauthorized payment or benefit from the
7-21 Medicaid program or a fiscal agent;
7-22 (10) is a managed care organization that contracts
7-23 with the Health and Human Services Commission or other state agency
7-24 to provide or arrange to provide health care benefits or services to
7-25 individuals eligible under the Medicaid program and knowingly:
7-26 (A) fails to provide to an individual a health
7-27 care benefit or service that the organization is required to
7-28 provide under the contract;
7-29 (B) fails to provide to the commission or
7-30 appropriate state agency information required to be provided by
7-31 law, commission or agency rule, or contractual provision; or
7-32 (C) engages in a fraudulent activity in
7-33 connection with the enrollment of an individual eligible under the
7-34 Medicaid program in the organization's managed care plan or in
7-35 connection with marketing the organization's services to an
7-36 individual eligible under the Medicaid program; or
7-37 (11) knowingly obstructs an investigation by the
7-38 attorney general of an alleged unlawful act under Section 36.002,
7-39 Human Resources Code.
7-40 (b) An offense under this section is:
7-41 (1) a Class C misdemeanor if the amount of any payment
7-42 or the value of any monetary or in-kind benefit provided under the
7-43 Medicaid program, directly or indirectly, as a result of the
7-44 conduct is less than \$50;
7-45 (2) a Class B misdemeanor if the amount of any payment
7-46 or the value of any monetary or in-kind benefit provided under the
7-47 Medicaid program, directly or indirectly, as a result of the
7-48 conduct is \$50 or more but less than \$500;
7-49 (3) a Class A misdemeanor if the amount of any payment
7-50 or the value of any monetary or in-kind benefit provided under the
7-51 Medicaid program, directly or indirectly, as a result of the
7-52 conduct is \$500 or more but less than \$1,500;
7-53 (4) a state jail felony if the amount of any payment or
7-54 the value of any monetary or in-kind benefit provided under the
7-55 Medicaid program, directly or indirectly, as a result of the
7-56 conduct is \$1,500 or more but less than \$20,000;
7-57 (5) a felony of the third degree if the amount of any
7-58 payment or the value of any monetary or in-kind benefit provided
7-59 under the Medicaid program, directly or indirectly, as a result of
7-60 the conduct is \$20,000 or more but less than \$100,000;
7-61 (6) a felony of the second degree if the amount of any
7-62 payment or the value of any monetary or in-kind benefit provided
7-63 under the Medicaid program, directly or indirectly, as a result of
7-64 the conduct is \$100,000 or more but less than \$200,000; or
7-65 (7) a felony of the first degree if the amount of any
7-66 payment or the value of any monetary or in-kind benefit provided
7-67 under the Medicaid program, directly or indirectly, as a result of
7-68 the conduct is \$200,000 or more.
7-69 (c) If conduct constituting an offense under this section

8-1 also constitutes an offense under another section of this code or
8-2 another provision of law, the actor may be prosecuted under either
8-3 this section or the other section or provision.

8-4 (d) When multiple payments or monetary or in-kind benefits
8-5 are provided under the Medicaid program as a result of one scheme or
8-6 continuing course of conduct, the conduct may be considered as one
8-7 offense and the amounts of the payments or monetary or in-kind
8-8 benefits aggregated in determining the grade of the offense.

8-9 SECTION 17. Subsection (d), Section 41.002, Civil Practice
8-10 and Remedies Code, is amended to read as follows:

8-11 (d) Notwithstanding any provision to the contrary, this
8-12 chapter does not apply to:

8-13 (1) Section 15.21, Business & Commerce Code (Texas
8-14 Free Enterprise and Antitrust Act of 1983);

8-15 (2) [] an action brought under the Deceptive Trade
8-16 Practices-Consumer Protection Act (Subchapter E, Chapter 17,
8-17 Business & Commerce Code) except as specifically provided in
8-18 Section 17.50 of that Act;

8-19 (3) an action brought under Chapter 36, Human
8-20 Resources Code; [] or

8-21 (4) an action brought under Chapter 21, Insurance
8-22 Code.

8-23 SECTION 18. Section 36.131, Human Resources Code, is
8-24 repealed.

8-25 SECTION 19. (a) This Act applies only to conduct that
8-26 occurs on or after the effective date of this Act. Conduct that
8-27 occurs before the effective date of this Act is governed by the law
8-28 in effect at the time the conduct occurred, and that law is
8-29 continued in effect for that purpose.

8-30 (b) For purposes of this section, conduct constituting an
8-31 offense under the penal law of this state occurred before the
8-32 effective date of this Act if any element of the offense occurred
8-33 before that date.

8-34 SECTION 20. This Act takes effect September 1, 2005.

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