

BILL ANALYSIS

S.B. 1694
By: Nelson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Instances where Medicaid fraud and abuse take place are not commonplace, yet they do happen. The Attorney General can have difficulty in prosecuting these types of cases for a variety of reasons, such as the inability of state agencies to share information and ambiguity in the law regarding kickbacks to healthcare professionals. SB 1694 will give the Office of the Attorney General more tools to prosecute Medicaid abuse by health care professionals by increasing penalties for abuse, allowing state agencies to better communicate with one another, and adds an anti-kickback provision. These changes will help the Office of the Attorney General more effectively prosecute violators of the Medicaid program.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.1031, as follows:

Sec. 531.1031. DUTY TO EXCHANGE INFORMATION REGARDING ALLEGATIONS OF MEDICAID FRAUD OR ABUSE. (a) Defines "health care professional" and "participating agency."

(b) Provides that this section applies only to information held by a participating agency that relates to a health care professional or a managed care organization that is the subject of an investigation by a participating agency for alleged fraud or abuse under the state Medicaid program.

(c) Authorizes a participating agency to submit a written request for information regarding a health care professional or managed care organization that is the subject of an investigation by the participating agency to any other participating agency. Requires the participating agency that receives the request to provide the requesting agency with the information regarding the investigated entity unless the release of that information would jeopardize an ongoing investigation or prosecution by the participating agency with possession of the information or is prohibited by other law.

(d) Authorizes a participating agency that discovers information that may indicate fraud or abuse by a health care professional or managed care organization to provide that information to any other participating agency unless the release of the information is prohibited by other law.

(e) Requires a participating agency that determines that the release of requested information under Subsection (c) is prohibited to inform the requesting agency of that determination in writing not later than the 30th day after the date the agency receives the request.

(f) Provides that confidential information shared under this section remains subject to the same confidentiality requirements and legal restrictions on access to the information that are imposed by law on the participating agency that originally

obtained or collected the information. Provides that the sharing of information under this section does not affect whether the information is subject to disclosure under Chapter 552 (Public Information), Government Code.

(g) Provides that a participating agency that receives information from another participating agency under this section must obtain written permission from the agency that shared the information before using the information in a licensure or enforcement action.

(h) Provides that this section does not affect the participating agencies' authority to exchange information under other law.

SECTION 2. Amends Section 32.039(b), Human Resources Code, as follows:

(b) Provides that a person commits a violation if the person provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by Section 32.039 (Damages and Penalties), Human Resources Code, or by Section 102.001 (Soliciting Patients; Offense), Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding: selection of a provider or receipt of a good or service under the medical assistance program; the use of goods or services provided under the medical assistance program; or the inclusion or exclusion of goods or services available under the medical assistance program.

SECTION 3. Amends Section 32.0391(a), Human Resources Code, to include Section 32.039(b)(1-f) (regarding the violation of influencing or being influenced in a decision regarding the inclusion or exclusion of goods or services available under the medical assistance program as a result of an inducement as an offense) as a section the violation of which constitutes an offense.

SECTION 4. Amends Section 32.46(c-1), Penal Code, to provide that an offense that is described for purposes of punishment by Subsections (b)(1)-(6) and (c) (regarding punishments for the offenses involving the securing of the execution of documents by deception) is increased to the next higher category if the offense involves the state Medicaid program.

SECTION 5. Amends Sections 35A.02(a) and (b), Penal Code, as follows:

(a) Includes the a person knowingly obstructing an investigation by the attorney general of an alleged unlawful act under Section 35A (Medicaid Fraud) or under Sections 32.039, 32.0391 (Criminal Offense) or 36.002 (Unlawful Acts), Human Resources Code, as an offense.

(b) Provides that an offense under this section is a certain class of misdemeanor relative to the amount of the claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct (claim for payment made). Provides that an offense under this section is a state jail felony if the amount of the claim for payment made is \$1,500 or more but less than \$20,000, if the offense is committed under Subsection (a)(11) (regarding the knowing obstruction of an alleged unlawful act), or if it is shown on the trial of the offense that the amount of the payment or value of the benefit described by the subsection cannot be reasonably ascertained. Makes conforming changes.

SECTION 6. Amends Article 59.01(2), Code of Criminal Procedure, to redefine "contraband."

SECTION 7. (a) Makes application the change in law made by this Act prospective.

(b) Makes application of this Act prospective. Provides that, for the purpose of this section, an offense or violation was committed before the effective date of this Act if any element of the offense or violation was committed before that date.

SECTION 8. Makes application of Section 531.1031, Government Code, as added by this Act, prospective.

EFFECTIVE DATE

September 1, 2007.