

By: Nelson

S.B. No. 1694

A BILL TO BE ENTITLED

AN ACT

relating to fraud investigations and criminal offenses involving the Medicaid program; providing criminal penalties.

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

SECTION 1. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.1031 to read as follows:

Sec. 531.1031. DUTY TO EXCHANGE INFORMATION REGARDING ALLEGATIONS OF MEDICAID FRAUD OR ABUSE. (a) In this section:

(1) "Health care professional" means a person issued a license, registration, or certification to engage in a health care profession.

(2) "Participating agency" means:

(A) the Medicaid fraud enforcement divisions of the office of the attorney general; and

(B) each board or agency with authority to license, register, regulate, or certify a health care professional or managed care organization that may participate in the state Medicaid program.

(b) This section applies only to information held by a participating agency that relates to a health care professional or 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) A participating agency may submit a written request for

1 information regarding a health care professional or managed care
2 organization that is the subject of an investigation by the
3 participating agency to any other participating agency. The
4 participating agency that receives the request shall provide the
5 requesting agency with the information regarding the health care
6 professional or managed care organization unless:

7 (1) the release of the information would jeopardize an
8 ongoing investigation or prosecution by the participating agency
9 with possession of the information; or

10 (2) the release of the information is prohibited by
11 other law.

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

17 (e) Not later than the 30th day after the date the agency
18 receives a request for information under Subsection (c), a
19 participating agency that determines the agency is prohibited from
20 releasing the requested information shall inform the agency
21 requesting the information of that determination in writing.

22 (f) Confidential information shared under this section
23 remains subject to the same confidentiality requirements and legal
24 restrictions on access to the information that are imposed by law on
25 the participating agency that originally obtained or collected the
26 information. The sharing of information under this section does
27 not affect whether the information is subject to disclosure under

1 Chapter 552.

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

6 (h) This section does not affect the participating
7 agencies' authority to exchange information under other law.

8 SECTION 2. Subsection (b), Section 32.039, Human Resources
9 Code, is amended to read as follows:

10 (b) A person commits a violation if the person:

11 (1) presents or causes to be presented to the
12 department a claim that contains a statement or representation the
13 person knows or should know to be false;

14 (1-a) engages in conduct that violates Section
15 102.001, Occupations Code;

16 (1-b) solicits or receives, directly or indirectly,
17 overtly or covertly any remuneration, including any kickback,
18 bribe, or rebate, in cash or in kind for referring an individual to
19 a person for the furnishing of, or for arranging the furnishing of,
20 any item or service for which payment may be made, in whole or in
21 part, under the medical assistance program, provided that this
22 subdivision does not prohibit the referral of a patient to another
23 practitioner within a multispecialty group or university medical
24 services research and development plan (practice plan) for
25 medically necessary services;

26 (1-c) solicits or receives, directly or indirectly,
27 overtly or covertly any remuneration, including any kickback,

1 bribe, or rebate, in cash or in kind for purchasing, leasing, or
2 ordering, or arranging for or recommending the purchasing, leasing,
3 or ordering of, any good, facility, service, or item for which
4 payment may be made, in whole or in part, under the medical
5 assistance program;

6 (1-d) offers or pays, directly or indirectly, overtly
7 or covertly any remuneration, including any kickback, bribe, or
8 rebate, in cash or in kind to induce a person to refer an individual
9 to another person for the furnishing of, or for arranging the
10 furnishing of, any item or service for which payment may be made, in
11 whole or in part, under the medical assistance program, provided
12 that this subdivision does not prohibit the referral of a patient to
13 another practitioner within a multispecialty group or university
14 medical services research and development plan (practice plan) for
15 medically necessary services;

16 (1-e) offers or pays, directly or indirectly, overtly
17 or covertly any remuneration, including any kickback, bribe, or
18 rebate, in cash or in kind to induce a person to purchase, lease, or
19 order, or arrange for or recommend the purchase, lease, or order of,
20 any good, facility, service, or item for which payment may be made,
21 in whole or in part, under the medical assistance program;

22 (1-f) provides, ~~or~~ offers, or receives an inducement
23 in a manner or for a purpose not otherwise prohibited by this
24 section or Section 102.001, Occupations Code, to or from a person
25 ~~[an individual]~~, including a recipient, provider, ~~or~~ employee or
26 agent of a provider, third-party vendor, or public servant, for the
27 purpose of influencing or being influenced in a decision regarding:

1 (A) selection of a provider or receipt of a good
2 or service under the medical assistance program;

3 (B) [~~or for the purpose of otherwise influencing~~
4 ~~a decision regarding~~] the use of goods or services provided under
5 the medical assistance program; or

6 (C) the inclusion or exclusion of goods or
7 services available under the medical assistance program; or

8 (2) is a managed care organization that contracts with
9 the department to provide or arrange to provide health care
10 benefits or services to individuals eligible for medical assistance
11 and:

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

15 (B) fails to provide to the department
16 information required to be provided by law, department rule, or
17 contractual provision;

18 (C) engages in a fraudulent activity in
19 connection with the enrollment in the organization's managed care
20 plan of an individual eligible for medical assistance or in
21 connection with marketing the organization's services to an
22 individual eligible for medical assistance; or

23 (D) engages in actions that indicate a pattern
24 of:

25 (i) wrongful denial of payment for a health
26 care benefit or service that the organization is required to
27 provide under the contract with the department; or

1 (ii) wrongful delay of at least 45 days or a
2 longer period specified in the contract with the department, not to
3 exceed 60 days, in making payment for a health care benefit or
4 service that the organization is required to provide under the
5 contract with the department.

6 SECTION 3. Subsection (a), Section 32.0391, Human Resources
7 Code, is amended to read as follows:

8 (a) A person commits an offense if the person intentionally
9 or knowingly commits a violation under Section 32.039(b)(1-b),
10 (1-c), (1-d), ~~[or]~~ (1-e), or (1-f).

11 SECTION 4. Subsection (c-1), Section 32.46, Penal Code, is
12 amended to read as follows:

13 (c-1) An offense described for purposes of punishment by
14 Subsections (b)(1)-(6) and (c) is increased to the next higher
15 category of offense if it is shown on the trial of the offense that
16 the offense was committed against an elderly individual as defined
17 by Section 22.04 or involves the state Medicaid program.

18 SECTION 5. Subsections (a) and (b), Section 35A.02, Penal
19 Code, are amended to read as follows:

20 (a) A person commits an offense if the person:

21 (1) knowingly makes or causes to be made a false
22 statement or misrepresentation of a material fact to permit a
23 person to receive a benefit or payment under the Medicaid program
24 that is not authorized or that is greater than the benefit or
25 payment that is authorized;

26 (2) knowingly conceals or fails to disclose
27 information that permits a person to receive a benefit or payment

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

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

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

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

14 (i) a hospital;

15 (ii) a nursing facility or skilled nursing
16 facility;

17 (iii) a hospice;

18 (iv) an intermediate care facility for the
19 mentally retarded;

20 (v) an assisted living facility; or

21 (vi) a home health agency; or

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

25 (5) except as authorized under the Medicaid program,
26 knowingly pays, charges, solicits, accepts, or receives, in
27 addition to an amount paid under the Medicaid program, a gift,

1 money, a donation, or other consideration as a condition to the
2 provision of a service or product or the continued provision of a
3 service or product if the cost of the service or product is paid
4 for, in whole or in part, under the Medicaid program;

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

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

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

11 (7) knowingly makes a claim under the Medicaid program
12 for:

13 (A) a service or product that has not been
14 approved or acquiesced in by a treating physician or health care
15 practitioner;

16 (B) a service or product that is substantially
17 inadequate or inappropriate when compared to generally recognized
18 standards within the particular discipline or within the health
19 care industry; or

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

22 (8) makes a claim under the Medicaid program and
23 knowingly fails to indicate the type of license and the
24 identification number of the licensed health care provider who
25 actually provided the service;

26 (9) knowingly enters into an agreement, combination,
27 or conspiracy to defraud the state by obtaining or aiding another

1 person in obtaining an unauthorized payment or benefit from the
2 Medicaid program or a fiscal agent;

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

7 (A) fails to provide to an individual a health
8 care benefit or service that the organization is required to
9 provide under the contract;

10 (B) fails to provide to the commission or
11 appropriate state agency information required to be provided by
12 law, commission or agency rule, or contractual provision; or

13 (C) engages in a fraudulent activity in
14 connection with the enrollment of an individual eligible under the
15 Medicaid program in the organization's managed care plan or in
16 connection with marketing the organization's services to an
17 individual eligible under the Medicaid program;

18 (11) knowingly obstructs an investigation by the
19 attorney general of an alleged unlawful act under this section or
20 under Section 32.039, 32.0391, or 36.002, Human Resources Code; or

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

25 (b) An offense under this section is:

26 (1) a Class C misdemeanor if the amount of any payment
27 or the value of any monetary or in-kind benefit provided or claim

1 for payment made under the Medicaid program, directly or
2 indirectly, as a result of the conduct is less than \$50;

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

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

13 (4) a state jail felony if:

14 (A) the amount of any payment or the value of any
15 monetary or in-kind benefit provided or claim for payment made
16 under the Medicaid program, directly or indirectly, as a result of
17 the conduct is \$1,500 or more but less than \$20,000;

18 (B) the offense is committed under Subsection
19 (a)(11); or

20 (C) it is shown on the trial of the offense that
21 the amount of the payment or value of the benefit described by this
22 subsection cannot be reasonably ascertained;

23 (5) a felony of the third degree if the amount of any
24 payment or the value of any monetary or in-kind benefit provided or
25 claim for payment made under the Medicaid program, directly or
26 indirectly, as a result of the conduct is \$20,000 or more but less
27 than \$100,000;

1 (6) a felony of the second degree if the amount of any
2 payment or the value of any monetary or in-kind benefit provided or
3 claim for payment made under the Medicaid program, directly or
4 indirectly, as a result of the conduct is \$100,000 or more but less
5 than \$200,000; or

6 (7) a felony of the first degree if the amount of any
7 payment or the value of any monetary or in-kind benefit provided or
8 claim for payment made under the Medicaid program, directly or
9 indirectly, as a result of the conduct is \$200,000 or more.

10 SECTION 6. Subdivision (2), Article 59.01, Code of Criminal
11 Procedure, is amended to read as follows:

12 (2) "Contraband" means property of any nature,
13 including real, personal, tangible, or intangible, that is:

14 (A) used in the commission of:

15 (i) any first or second degree felony under
16 the Penal Code;

17 (ii) any felony under Section 15.031(b),
18 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
19 31, 32, 33, 33A, or 35, Penal Code;

20 (iii) any felony under The Securities Act
21 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

22 (iv) any offense under Chapter 49, Penal
23 Code, that is punishable as a felony of the third degree or state
24 jail felony, if the defendant has been previously convicted three
25 times of an offense under that chapter;

26 (B) used or intended to be used in the commission
27 of:

1 (i) any felony under Chapter 481, Health
2 and Safety Code (Texas Controlled Substances Act);

3 (ii) any felony under Chapter 483, Health
4 and Safety Code;

5 (iii) a felony under Chapter 153, Finance
6 Code;

7 (iv) any felony under Chapter 34, Penal
8 Code;

9 (v) a Class A misdemeanor under Subchapter
10 B, Chapter 365, Health and Safety Code, if the defendant has been
11 previously convicted twice of an offense under that subchapter;

12 (vi) any felony under Chapter 152, Finance
13 Code;

14 (vii) any felony under Chapter 32, Human
15 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
16 involves the state Medicaid program~~[, or any felony under Chapter~~
17 ~~36, Human Resources Code]~~; or

18 (viii) a Class B misdemeanor under Section
19 35.60, Business & Commerce Code;

20 (C) the proceeds gained from the commission of a
21 felony listed in Paragraph (A) or (B) of this subdivision, a
22 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a
23 crime of violence;

24 (D) acquired with proceeds gained from the
25 commission of a felony listed in Paragraph (A) or (B) of this
26 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this
27 subdivision, or a crime of violence; or

1 (E) used to facilitate or intended to be used to
2 facilitate the commission of a felony under Section 15.031 or
3 43.25, Penal Code.

4 SECTION 7. (a) The change in law made by this Act applies
5 only to an offense or violation committed on or after the effective
6 date of this Act.

7 (b) An offense or violation committed before the effective
8 date of this Act is governed by the law in effect when the offense or
9 violation was committed, and the former law is continued in effect
10 for that purpose. For purposes of this section, an offense or
11 violation was committed before the effective date of this Act if any
12 element of the offense or violation was committed before that date.

13 SECTION 8. (a) Section 531.1031, Government Code, as added
14 by this Act, applies only to an investigation of an act committed on
15 or after the effective date of this Act.

16 (b) An investigation of an act committed before the
17 effective date of this Act is governed by the law in effect on the
18 date the act was committed, and the former law is continued in
19 effect for that purpose.

20 SECTION 9. This Act takes effect September 1, 2007.