

## **BILL ANALYSIS**

H.B. 4385  
By: Vaught  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, the Penal Code does not include as fraud offenses against certain practitioners for misconduct relating to payment for or settlement of the practitioner's services. This bill addresses the problem of failure of payment for practitioner services. By listing each specific practitioner and the degree of the offense with each level of failure of payment, the bill allows for effective prosecution for nonpayment through the attorney general's office. This bill also allows for the disruption of continuing courses of conduct related to inaccuracies in payment for services rendered, helps to monitor health care costs, and helps to ensure the ability of these practitioners to charge fair rates for their services. This bill specifies each area, occupation, and form of health and welfare practice that falls under the term "practitioner," providing grounds for the criminal prosecution of individuals who commit offenses related to fraud against a practitioner.

H.B. 4385 creates the offense of fraud against practitioners for a person who with the intent to diminish or deny payment for services of specified practitioners, misrepresents a material fact, utilizes methodologies that misstate practitioner fees, or utilizes a database in the settlement or payment that the person knew or should have known contains inaccuracies. The bill details the degree of the offense, from a Class C misdemeanor to a first degree felony, based on the monetary value assigned in the false transaction. The bill authorizes the attorney general to prosecute these offenses, allows for the technical assistance of the attorney general's office, and authorizes the attorney general to conduct action through county district courts.

### **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**

H.B. 4385 amends the Penal Code to create the offense of fraud against practitioners for a person who is a fiduciary or who is under a contractual duty to settle claims for another person and who, with intent to diminish or deny payment for a service provided by a practitioner, misrepresents a material fact, utilizes methodologies that misstate practitioner fees, or utilizes a database in the settlement or payment for practitioner services the person knew or should have known contains inaccuracies. Penalties for the offense range from a Class C misdemeanor to a first-degree felony depending on the value of the charge and on whether an act committed in connection with the offense places a person at risk of death or serious bodily injury.

H.B. 4385 authorizes conduct constituting a fraud against a practitioner offense, when separate claims are settled or paid in violation of the offense pursuant to one scheme or continuing course of conduct, to be considered as one offense and authorizes the value of the claims to be aggregated in determining the offense classification. The bill authorizes the attorney general to offer to an attorney representing the state in the prosecution of such an offense the investigative, technical, and litigation assistance of the attorney general's office; to prosecute or to assist in the prosecution of such an offense on the request of the attorney representing the state; and to

institute and conduct an action or prosecution in a district court of Travis County or of a county in which any part of the offense occurs.

H.B. 4385 defines "practitioner" to include the following:

- an individual licensed to practice acupuncture by the Texas State Board of Acupuncture Examiners;
- an individual licensed by the Texas Board of Nursing as a registered nurse or recognized by that board as an advanced practice nurse;
- an individual licensed to practice audiology by the State Board of Examiners for Speech-Language Pathology and Audiology;
- an individual licensed by the Texas Commission on Alcohol and Drug Abuse;
- an individual licensed by the Texas Board of Chiropractic Examiners;
- an individual licensed to practice dentistry by the State Board of Dental Examiners;
- an individual licensed by the Texas State Board of Examiners of Dietitians;
- an individual licensed by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
- an individual licensed by the Texas State Board of Social Worker Examiners as a licensed clinical social worker;
- an individual licensed by the Texas State Board of Examiners of Professional Counselors;
- an individual licensed by the Texas State Board of Examiners of Marriage and Family Therapists;
- an individual licensed as an occupational therapist by the Texas Board of Occupational Therapy Examiners;
- an individual licensed to practice optometry by the Texas Optometry Board;
- an individual licensed as a physical therapist by the Texas Board of Physical Therapy Examiners;
- an individual licensed to practice medicine by the Texas Medical Board;
- an individual licensed by the Texas State Board of Physician Assistant Examiners;
- an individual licensed to practice podiatry by the Texas State Board of Podiatric Medical Examiners;
- an individual licensed as a psychological associate by the Texas State Board of Examiners of Psychologists who practices solely under the supervision of a licensed psychologist;
- an individual licensed as a psychologist by the Texas State Board of Examiners of Psychologists;
- an individual licensed to practice speech-language pathology by the State Board of Examiners for Speech-Language Pathology and Audiology;
- an individual licensed as a surgical assistant by the Texas State Board of Medical Examiners; and
- a facility licensed as a hospital.

**EFFECTIVE DATE**

September 1, 2009.