

By: Nichols

S.B. No. 1432

A BILL TO BE ENTITLED

AN ACT

relating to the investigation, prosecution, and punishment of criminal Medicaid fraud and certain other offenses related to Medicaid fraud; providing penalties.

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

SECTION 1. Subdivision (4), Section 242.002, Health and Safety Code, is amended to read as follows:

(4) "Department" means the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services.

SECTION 2. Subsections (a-1), (b), (d), (f), and (g), Section 22.04, Penal Code, are amended to read as follows:

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury;

or

(3) bodily injury~~[, or~~

~~[(4) exploitation]~~.

(b) An omission that causes a condition described by

1 Subsection (a)(1), (2), or (3) or (a-1)(1), (2), or (3) [~~or (4)~~] is
2 conduct constituting an offense under this section if:

- 3 (1) the actor has a legal or statutory duty to act; or
4 (2) the actor has assumed care, custody, or control of
5 a child, elderly individual, or disabled individual.

6 (d) For purposes of an omission that causes a condition
7 described by Subsection (a)(1), (2), or (3), the actor has assumed
8 care, custody, or control if he has by act, words, or course of
9 conduct acted so as to cause a reasonable person to conclude that he
10 has accepted responsibility for protection, food, shelter, and
11 medical care for a child, elderly individual, or disabled
12 individual. For purposes of an omission that causes a condition
13 described by Subsection (a-1)(1), (2), or (3), [~~or (4)~~], the actor
14 acting during the actor's capacity as owner, operator, or employee
15 of a group home or facility described by Subsection (a-1) is
16 considered to have accepted responsibility for protection, food,
17 shelter, and medical care for the child, elderly individual, or
18 disabled individual who is a resident of the group home or facility.

19 (f) An offense under Subsection (a)(3) or (a-1)(3) [~~or (4)~~]
20 is a felony of the third degree when the conduct is committed
21 intentionally or knowingly. When the conduct is engaged in
22 recklessly, the offense is a state jail felony.

23 (g) An offense under Subsection (a) is a state jail felony
24 when the person acts with criminal negligence. An offense under
25 Subsection (a-1) is a state jail felony when the person, with
26 criminal negligence and by omission, causes a condition described
27 by Subsection (a-1)(1), (2), or (3) [~~or (4)~~].

1 SECTION 3. Subsection (d), Section 32.46, Penal Code, is
2 amended to read as follows:

3 (d) In this section:

4 (1) "Deception"~~[,—"deception"]~~ has the meaning
5 assigned by Section 31.01.

6 (2) "Document" includes electronically stored data or
7 other information that is retrievable in a readable, perceivable
8 form.

9 SECTION 4. Subchapter D, Chapter 32, Penal Code, is amended
10 by adding Section 32.53 to read as follows:

11 Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR
12 DISABLED INDIVIDUAL. (a) In this section:

13 (1) "Child," "elderly individual," and "disabled
14 individual" have the meanings assigned by Section 22.04.

15 (2) "Exploitation" means the illegal or improper use
16 of an individual or of the resources of the individual for monetary
17 or personal benefit, profit, or gain.

18 (b) A person commits an offense if the person intentionally,
19 knowingly, or recklessly causes the exploitation of a child,
20 elderly individual, or disabled individual.

21 (c) An offense under this section is a felony of the third
22 degree.

23 (d) A person who is subject to prosecution under both this
24 section and another section of this code may be prosecuted under
25 either or both sections. Section 3.04 does not apply to criminal
26 episodes prosecuted under both this section and another section of
27 this code. If a criminal episode is prosecuted under both this

1 section and another section of this code and sentences are assessed
2 for convictions under both sections, the sentences shall run
3 concurrently.

4 SECTION 5. Section 35A.01, Penal Code, is amended by adding
5 Subdivision (10) to read as follows:

6 (10) "High managerial agent" means a director,
7 officer, or employee who is authorized to act on behalf of a
8 provider and has duties of such responsibility that the conduct of
9 the director, officer, or employee reasonably may be assumed to
10 represent the policy or intent of the provider.

11 SECTION 6. Section 35A.02, Penal Code, is amended by
12 amending Subsection (c) and adding Subsection (e) to read as
13 follows:

14 (c) If conduct constituting an offense under this section
15 also constitutes an offense under another section of this code or
16 another provision of law, the actor may be prosecuted under either
17 this section or the other section or provision or both this section
18 and the other section or provision.

19 (e) The punishment prescribed for an offense under this
20 section is increased to the punishment prescribed for the next
21 highest category of offense if it is shown beyond a reasonable doubt
22 on the trial of the offense that the actor was a provider or high
23 managerial agent at the time of the offense.

24 SECTION 7. Subsection (a), Section 71.02, Penal Code, is
25 amended to read as follows:

26 (a) A person commits an offense if, with the intent to
27 establish, maintain, or participate in a combination or in the

1 profits of a combination or as a member of a criminal street gang,
2 he commits or conspires to commit one or more of the following:

3 (1) murder, capital murder, arson, aggravated
4 robbery, robbery, burglary, theft, aggravated kidnapping,
5 kidnapping, aggravated assault, aggravated sexual assault, sexual
6 assault, forgery, deadly conduct, assault punishable as a Class A
7 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
8 motor vehicle;

9 (2) any gambling offense punishable as a Class A
10 misdemeanor;

11 (3) promotion of prostitution, aggravated promotion
12 of prostitution, or compelling prostitution;

13 (4) unlawful manufacture, transportation, repair, or
14 sale of firearms or prohibited weapons;

15 (5) unlawful manufacture, delivery, dispensation, or
16 distribution of a controlled substance or dangerous drug, or
17 unlawful possession of a controlled substance or dangerous drug
18 through forgery, fraud, misrepresentation, or deception;

19 (6) any unlawful wholesale promotion or possession of
20 any obscene material or obscene device with the intent to wholesale
21 promote the same;

22 (7) any offense under Subchapter B, Chapter 43,
23 depicting or involving conduct by or directed toward a child
24 younger than 18 years of age;

25 (8) any felony offense under Chapter 32;

26 (9) any offense under Chapter 36;

27 (10) any offense under Chapter 34, ~~or~~ 35, or 35A;

- 1 (11) any offense under Section 37.11(a);
- 2 (12) any offense under Chapter 20A; or
- 3 (13) any offense under Section 37.10.

4 SECTION 8. Subdivision (4), Subsection (c), Section 22.04,
5 Penal Code, is repealed.

6 SECTION 9. The change in law made by this Act applies only
7 to an offense committed on or after the effective date of this Act.
8 An offense committed before the effective date of this Act is
9 covered by the law in effect when the offense was committed, and the
10 former law is continued in effect for that purpose. For purposes of
11 this section, an offense was committed before the effective date of
12 this Act if any element of the offense occurred before that date.

13 SECTION 10. This Act takes effect September 1, 2009.