

1-1 By: Nichols S.B. No. 1432
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 14, 2009, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 14, 2009, sent to printer.)

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

1-8 relating to the investigation, prosecution, and punishment of
1-9 criminal Medicaid fraud and certain other offenses related to
1-10 Medicaid fraud; providing penalties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subdivision (4), Section 242.002, Health and
1-13 Safety Code, is amended to read as follows:

1-14 (4) "Department" means the [~~Texas~~] Department of Aging
1-15 and Disability [~~Human~~] Services.

1-16 SECTION 2. Subsections (a-1), (b), (d), (f), and (g),
1-17 Section 22.04, Penal Code, are amended to read as follows:

1-18 (a-1) A person commits an offense if the person is an owner,
1-19 operator, or employee of a group home, nursing facility, assisted
1-20 living facility, intermediate care facility for persons with mental
1-21 retardation, or other institutional care facility and the person
1-22 intentionally, knowingly, recklessly, or with criminal negligence
1-23 by omission causes to a child, elderly individual, or disabled
1-24 individual who is a resident of that group home or facility:

1-25 (1) serious bodily injury;

1-26 (2) serious mental deficiency, impairment, or injury;

1-27 or

1-28 (3) bodily injury [~~, or~~

1-29 [~~(4) exploitation~~].

1-30 (b) An omission that causes a condition described by
1-31 Subsection (a)(1), (2), or (3) or (a-1)(1), (2), or (3) [~~, or (4)~~] is
1-32 conduct constituting an offense under this section if:

1-33 (1) the actor has a legal or statutory duty to act; or

1-34 (2) the actor has assumed care, custody, or control of
1-35 a child, elderly individual, or disabled individual.

1-36 (d) For purposes of an omission that causes a condition
1-37 described by Subsection (a)(1), (2), or (3), the actor has assumed
1-38 care, custody, or control if he has by act, words, or course of
1-39 conduct acted so as to cause a reasonable person to conclude that he
1-40 has accepted responsibility for protection, food, shelter, and
1-41 medical care for a child, elderly individual, or disabled
1-42 individual. For purposes of an omission that causes a condition
1-43 described by Subsection (a-1)(1), (2), or (3), [~~or (4)~~], the actor
1-44 acting during the actor's capacity as owner, operator, or employee
1-45 of a group home or facility described by Subsection (a-1) is
1-46 considered to have accepted responsibility for protection, food,
1-47 shelter, and medical care for the child, elderly individual, or
1-48 disabled individual who is a resident of the group home or facility.

1-49 (f) An offense under Subsection (a)(3) or (a-1)(3) [~~or (4)~~]
1-50 is a felony of the third degree when the conduct is committed
1-51 intentionally or knowingly. When the conduct is engaged in
1-52 recklessly, the offense is a state jail felony.

1-53 (g) An offense under Subsection (a) is a state jail felony
1-54 when the person acts with criminal negligence. An offense under
1-55 Subsection (a-1) is a state jail felony when the person, with
1-56 criminal negligence and by omission, causes a condition described
1-57 by Subsection (a-1)(1), (2), or (3) [~~, or (4)~~].

1-58 SECTION 3. Subsection (d), Section 32.46, Penal Code, is
1-59 amended to read as follows:

1-60 (d) In this section:

1-61 (1) "Deception" [~~, "deception"~~] has the meaning
1-62 assigned by Section 31.01.

1-63 (2) "Document" includes electronically stored data or
1-64 other information that is retrievable in a readable, perceivable

2-1 form.

2-2 SECTION 4. Subchapter D, Chapter 32, Penal Code, is amended
2-3 by adding Section 32.53 to read as follows:

2-4 Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR
2-5 DISABLED INDIVIDUAL. (a) In this section:

2-6 (1) "Child," "elderly individual," and "disabled
2-7 individual" have the meanings assigned by Section 22.04.

2-8 (2) "Exploitation" means the illegal or improper use
2-9 of an individual or of the resources of the individual for monetary
2-10 or personal benefit, profit, or gain.

2-11 (b) A person commits an offense if the person intentionally,
2-12 knowingly, or recklessly causes the exploitation of a child,
2-13 elderly individual, or disabled individual.

2-14 (c) An offense under this section is a felony of the third
2-15 degree.

2-16 (d) A person who is subject to prosecution under both this
2-17 section and another section of this code may be prosecuted under
2-18 either or both sections. Section 3.04 does not apply to criminal
2-19 episodes prosecuted under both this section and another section of
2-20 this code. If a criminal episode is prosecuted under both this
2-21 section and another section of this code and sentences are assessed
2-22 for convictions under both sections, the sentences shall run
2-23 concurrently.

2-24 SECTION 5. Section 35A.01, Penal Code, is amended by adding
2-25 Subdivision (10) to read as follows:

2-26 (10) "High managerial agent" means a director,
2-27 officer, or employee who is authorized to act on behalf of a
2-28 provider and has duties of such responsibility that the conduct of
2-29 the director, officer, or employee reasonably may be assumed to
2-30 represent the policy or intent of the provider.

2-31 SECTION 6. Section 35A.02, Penal Code, is amended by
2-32 amending Subsection (c) and adding Subsection (e) to read as
2-33 follows:

2-34 (c) If conduct constituting an offense under this section
2-35 also constitutes an offense under another section of this code or
2-36 another provision of law, the actor may be prosecuted under either
2-37 this section or the other section or provision or both this section
2-38 and the other section or provision.

2-39 (e) The punishment prescribed for an offense under this
2-40 section is increased to the punishment prescribed for the next
2-41 highest category of offense if it is shown beyond a reasonable doubt
2-42 on the trial of the offense that the actor was a provider or high
2-43 managerial agent at the time of the offense.

2-44 SECTION 7. Subsection (a), Section 71.02, Penal Code, is
2-45 amended to read as follows:

2-46 (a) A person commits an offense if, with the intent to
2-47 establish, maintain, or participate in a combination or in the
2-48 profits of a combination or as a member of a criminal street gang,
2-49 he commits or conspires to commit one or more of the following:

2-50 (1) murder, capital murder, arson, aggravated
2-51 robbery, robbery, burglary, theft, aggravated kidnapping,
2-52 kidnapping, aggravated assault, aggravated sexual assault, sexual
2-53 assault, forgery, deadly conduct, assault punishable as a Class A
2-54 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
2-55 motor vehicle;

2-56 (2) any gambling offense punishable as a Class A
2-57 misdemeanor;

2-58 (3) promotion of prostitution, aggravated promotion
2-59 of prostitution, or compelling prostitution;

2-60 (4) unlawful manufacture, transportation, repair, or
2-61 sale of firearms or prohibited weapons;

2-62 (5) unlawful manufacture, delivery, dispensation, or
2-63 distribution of a controlled substance or dangerous drug, or
2-64 unlawful possession of a controlled substance or dangerous drug
2-65 through forgery, fraud, misrepresentation, or deception;

2-66 (6) any unlawful wholesale promotion or possession of
2-67 any obscene material or obscene device with the intent to wholesale
2-68 promote the same;

2-69 (7) any offense under Subchapter B, Chapter 43,

- 3-1 depicting or involving conduct by or directed toward a child
- 3-2 younger than 18 years of age;
- 3-3 (8) any felony offense under Chapter 32;
- 3-4 (9) any offense under Chapter 36;
- 3-5 (10) any offense under Chapter 34, ~~[or]~~ 35, or 35A;
- 3-6 (11) any offense under Section 37.11(a);
- 3-7 (12) any offense under Chapter 20A; or
- 3-8 (13) any offense under Section 37.10.

3-9 SECTION 8. Subdivision (4), Subsection (c), Section 22.04,
3-10 Penal Code, is repealed.

3-11 SECTION 9. The change in law made by this Act applies only
3-12 to an offense committed on or after the effective date of this Act.
3-13 An offense committed before the effective date of this Act is
3-14 covered by the law in effect when the offense was committed, and the
3-15 former law is continued in effect for that purpose. For purposes of
3-16 this section, an offense was committed before the effective date of
3-17 this Act if any element of the offense occurred before that date.

3-18 SECTION 10. This Act takes effect September 1, 2009.

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