

BILL ANALYSIS

C.S.H.B. 3375
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been reports of Medicare and Medicaid fraud schemes involving an insider that turns over hundreds or thousands of recipient numbers to others outside the system. Under such a scheme, the fraud then bills hundreds and thousands of these recipient accounts at small dollar amounts, eventually totaling millions. To prosecute these criminals, the state must call each of these recipients as witnesses at trial to testify that no product or service was ever ordered, delivered, or received. The large number of witnesses that may be involved in such cases can prolong the trial by weeks.

C.S.H.B. 3375 seeks to address this issue by allowing for the provision of evidence in Medicare and Medicaid fraud cases more efficiently without compromising the defendant's right to a fair trial. The bill seeks to save court costs and reduce the amount of time witnesses and juries invest in such cases.

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

C.S.H.B. 3375 amends the Code of Criminal Procedure to specify that the attorney representing the state in a trial involving an allegation of a continuing scheme of fraud or theft that involves Medicaid or Medicare benefits and that is alleged to have been committed with respect to a large class of Medicaid or Medicare recipients in an aggregate amount or value is not required to prove by direct evidence that each Medicaid or Medicare recipient did not consent or effectively consent to a transaction in question. The bill makes it sufficient if the lack of consent or effective consent to a particular transaction or transactions is proven by either direct or circumstantial evidence. The bill, in the provision of law authorizing a witness deposition duly taken before an examining trial in a criminal action before a magistrate or before a jury of inquest to be used by the state or the defendant in the trial of the defendant's criminal case under certain circumstances, conditions the authorization on the presence of the defendant's attorney, in addition to the defendant, when the witness testimony was duly taken.

C.S.H.B. 3375 authorizes a court to order the attorney representing the state to take the deposition of a Medicare or Medicaid recipient or caregiver who is the alleged victim of or witness to an offense constituting fraud or theft that involves Medicaid or Medicare benefits. The bill requires any such order to be issued not later than the 180th day after the date on which the state files an application to take the deposition. The bill authorizes the court, on the motion of either party, to order the attorney representing the state to take the deposition of a recipient or caregiver by video recording. The bill requires the person operating the video recording device to be available to testify regarding the authenticity of the video recording and the taking of the deposition in order for the video recording to be admissible. The bill authorizes the court to allow a party to offer the entire video recording into evidence without requiring the jury to view

the entire video recording during the trial if the court finds that the video recording of the deposition is properly authenticated and that requiring the jury to view the entire recording would unnecessarily prolong the trial. The bill specifies that this authorization does not preclude the attorney representing the state, the defendant, or the defendant's attorney from offering into evidence and playing for the jury a portion of a video-recorded deposition. The bill authorizes the attorney representing the state and the defendant or the defendant's attorney, by written agreement filed with the court, to extend the deadline for the taking of the deposition. The bill requires the court to grant any request by the attorney representing the state to extend the deadline for the taking of the deposition if a reason for the request is the unavailability, health, or well-being of the recipient or caregiver.

C.S.H.B. 3375 specifies that the Texas Rules of Civil Procedure govern the taking of the deposition, except that, to the extent of any conflict with the Code of Criminal Procedure or applicable court rules adopted for criminal proceedings, the code and rules govern. The bill authorizes the attorney representing the state and the defendant or the defendant's attorney to agree to modify the rules applicable to the deposition by written agreement filed with the court before the taking of the deposition. The bill requires the court, if a defendant is unavailable to attend a deposition because the defendant is confined in a correctional facility, to issue any orders or warrants necessary to secure the defendant's presence at the deposition. The bill requires the sheriff of the county in which a deposition is to be taken in such a manner to provide a secure location for the taking of the deposition and sufficient law enforcement personnel to ensure the deposition is taken safely. The bill specifies that the state's application to take such a deposition or notice of deposition is not required to include the identity of any law enforcement agent the sheriff assigns to the deposition and prohibits the defendant from objecting to the taking of the deposition based solely on the state's omission of the identity of that agent.

C.S.H.B. 3375 requires a defendant or the defendant's attorney to request a continuance from the court if the defendant is unavailable to attend a deposition for any reason other than confinement in a correctional facility. The bill authorizes the court to grant the continuance if the defendant or the defendant's attorney demonstrates good cause for the continuance and that the request is not brought for the purpose of delay or avoidance. The bill specifies that a defendant's failure to attend a deposition or request a continuance as described above constitutes a waiver of the defendant's right to be present at the deposition. The bill makes conforming changes in provisions of law relating to deposition procedures in an examining trial and the predicate to read depositions in criminal actions. The bill defines "caregiver," "Medicaid," "Medicare," "Medicare recipient," and "recipient" and provides for the meaning of "Medicaid recipient" by reference to the Human Resources Code. The bill makes nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3375 differs from the original by requiring a defendant's attorney to be present at the taking of witness deposition before an examining trial in a criminal action before a magistrate or before a jury of inquest for the deposition to be used by the state or the defendant in the trial of the defendant's criminal case under certain circumstances, whereas the original does not include such a requirement. The substitute differs from the original by including a guardian in the definition of "caregiver," whereas the original does not specifically include such person.

C.S.H.B. 3375 differs from the original by authorizing a court to order the attorney representing the state to take the deposition of a Medicaid or Medicare recipient who is an alleged victim of or witness to an offense constituting fraud or theft that involves Medicaid or Medicare benefits, whereas the original requires the court to issue such an order. The substitute differs from the original by authorizing the court to order the attorney representing the state to take by video

recording the deposition of a recipient or caregiver, rather than only the deposition of a recipient as in the original. The substitute differs from the original by authorizing the court to allow a party to offer the entire video recording into evidence without requiring the jury to view the entire video recording during the trial, whereas the original authorizes the court to allow the state to offer the entire video recording into evidence without first requiring the jury to view the entire video recording. The substitute differs from the original in nonsubstantive ways to make technical corrections.