

BILL ANALYSIS

Senate Research Center

S.B. 544
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recently, the Texas Civil Medicaid Fraud Division of the Office of the Attorney General participated in a lawsuit that resulted in a settlement relating to four different adulterated drugs. The drugs were adulterated because of poor manufacturing practices at a plant in Puerto Rico. The global settlement (Texas, other states, and the federal government) was for \$750 million. Texas will be receiving a part of the settlement that was coordinated by the National Association of Medicaid Fraud Control Units because this provision of law exists in federal statutes.

S.B. 544 modifies the Texas Medicaid Fraud Prevention Act to give the state a civil cause of action to pursue this type of violation. This provision would bring Texas in line with federal law and could allow the state to recover additional funds on behalf of the Medicaid program.

S.B. 544 amends current law relating to unlawful acts against and criminal offenses involving the Medicaid program, and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.001, Human Resources Code, by adding Subdivisions (5-a) and (7-a) to define "material" and "obligation."

SECTION 2. Amends Section 36.002, Human Resources Code, to provide that a person commits an unlawful act if the person performs certain actions, including knowingly makes or causes to be made a claim under the Medicaid program for a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner, a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry, or a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate.

SECTION 3. Amends Section 36.052(a), Human Resources Code, to provide that except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for certain amounts, including a civil penalty of not less than \$5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$5,500, and not more than \$15,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$15,000, rather than of not less than \$5,000 or more than \$15,000, for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(a)(1), a disabled person, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or not less than \$5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$5,500, and not more than \$11,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$11,000, rather than not less than \$5,000 or more than \$10,000, for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A).

SECTION 4. Amends Section 36.110(c), Human Resources Code, to require that the court's determination of expenses, fees, and costs to be awarded under this subsection be made only after the defendant has been found liable in the action or the state settles an action with a defendant that the court determined, after a hearing, was fair, adequate, and reasonable in accordance with Section 36.107(c).

SECTION 5. Amends Section 36.113, Human Resources Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Prohibits a person from bringing an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing in which the state or an agent of the state is a party, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. Redefines, in this subsection, "original source."

(c) Requires the court, before dismissing an action as barred under this section, to give the attorney general an opportunity to oppose the dismissal.

SECTION 6. Amends the heading to Section 36.115, Human Resources Code, to read as follows:

Sec. 36.115. RETALIATION AGAINST PERSON PROHIBITED.

SECTION 7. Amends Section 36.115(a), Human Resources Code, as follows:

(a) Entitles a person, including an employee, contractor, or agent, who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of a lawful act taken by the person in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, or other efforts taken by the person to stop one or more violations of Section 36.002 to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

SECTION 8. Amends Section 35A.02(a), Penal Code, to provide that a person commits an offense if the person performs certain actions, including knowingly makes or causes to be made a claim under the Medicaid program for a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner, a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry, or a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate.

SECTION 9. (a) Makes application of the changes in law made by this Act to Section 36.002, Human Resources Code, and Section 35A.02, Penal Code, prospective.

(b) Provides that, for purposes of this section, conduct constituting an offense under the penal law of this state occurred before the effective date of this Act if any element of the offense occurred before that date.

SECTION 10. Makes application of the changes in law made by this Act to Sections 36.052, 36.110, and 36.113, Human Resources Code, only to a civil action for a violation of Section 36.002, Human Resources Code, as amended by this Act, prospective.

SECTION 11. Effective date: September 1, 2011.