

By: Seliger, Nelson, West

S.B. No. 544

A BILL TO BE ENTITLED

AN ACT

relating to unlawful acts against and criminal offenses involving  
the Medicaid program.

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

SECTION 1. Section 36.002, Human Resources Code, is amended  
to read as follows:

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful  
act if the person:

(1) knowingly makes or causes to be made a false  
statement or misrepresentation of a material fact to permit a  
person to receive a benefit or payment under the Medicaid program  
that is not authorized or that is greater than the benefit or  
payment that is authorized;

(2) knowingly conceals or fails to disclose  
information that permits a person to receive a benefit or payment  
under the Medicaid program that is not authorized or that is greater  
than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or  
payment on behalf of another person under the Medicaid program and  
converts any part of the benefit or payment to a use other than for  
the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or  
seeks to induce the making of a false statement or  
misrepresentation of material fact concerning:

1 (A) the conditions or operation of a facility in  
2 order that the facility may qualify for certification or  
3 recertification required by the Medicaid program, including  
4 certification or recertification as:

- 5 (i) a hospital;
- 6 (ii) a nursing facility or skilled nursing  
7 facility;
- 8 (iii) a hospice;
- 9 (iv) an intermediate care facility for the  
10 mentally retarded;
- 11 (v) an assisted living facility; or
- 12 (vi) a home health agency; or

13 (B) information required to be provided by a  
14 federal or state law, rule, regulation, or provider agreement  
15 pertaining to the Medicaid program;

16 (5) except as authorized under the Medicaid program,  
17 knowingly pays, charges, solicits, accepts, or receives, in  
18 addition to an amount paid under the Medicaid program, a gift,  
19 money, a donation, or other consideration as a condition to the  
20 provision of a service or product or the continued provision of a  
21 service or product if the cost of the service or product is paid  
22 for, in whole or in part, under the Medicaid program;

23 (6) knowingly presents or causes to be presented a  
24 claim for payment under the Medicaid program for a product provided  
25 or a service rendered by a person who:

26 (A) is not licensed to provide the product or  
27 render the service, if a license is required; or

1 (B) is not licensed in the manner claimed;

2 (7) knowingly makes or causes to be made a claim under  
3 the Medicaid program for:

4 (A) a service or product that has not been  
5 approved or acquiesced in by a treating physician or health care  
6 practitioner;

7 (B) a service or product that is substantially  
8 inadequate or inappropriate when compared to generally recognized  
9 standards within the particular discipline or within the health  
10 care industry; or

11 (C) a product that has been adulterated, debased,  
12 mislabeled, or that is otherwise inappropriate;

13 (8) makes a claim under the Medicaid program and  
14 knowingly fails to indicate the type of license and the  
15 identification number of the licensed health care provider who  
16 actually provided the service;

17 (9) knowingly enters into an agreement, combination,  
18 or conspiracy to defraud the state by obtaining or aiding another  
19 person in obtaining an unauthorized payment or benefit from the  
20 Medicaid program or a fiscal agent;

21 (10) is a managed care organization that contracts  
22 with the Health and Human Services Commission or other state agency  
23 to provide or arrange to provide health care benefits or services to  
24 individuals eligible under the Medicaid program and knowingly:

25 (A) fails to provide to an individual a health  
26 care benefit or service that the organization is required to  
27 provide under the contract;

1 (B) fails to provide to the commission or  
2 appropriate state agency information required to be provided by  
3 law, commission or agency rule, or contractual provision; or

4 (C) engages in a fraudulent activity in  
5 connection with the enrollment of an individual eligible under the  
6 Medicaid program in the organization's managed care plan or in  
7 connection with marketing the organization's services to an  
8 individual eligible under the Medicaid program;

9 (11) knowingly obstructs an investigation by the  
10 attorney general of an alleged unlawful act under this section;

11 (12) knowingly makes, uses, or causes the making or  
12 use of a false record or statement to conceal, avoid, or decrease an  
13 obligation to pay or transmit money or property to this state under  
14 the Medicaid program; or

15 (13) knowingly engages in conduct that constitutes a  
16 violation under Section 32.039(b).

17 SECTION 2. Subsection (a), Section 35A.02, Penal Code, is  
18 amended to read as follows:

19 (a) A person commits an offense if the person:

20 (1) knowingly makes or causes to be made a false  
21 statement or misrepresentation of a material fact to permit a  
22 person to receive a benefit or payment under the Medicaid program  
23 that is not authorized or that is greater than the benefit or  
24 payment that is authorized;

25 (2) knowingly conceals or fails to disclose  
26 information that permits a person to receive a benefit or payment  
27 under the Medicaid program that is not authorized or that is greater

1 than the benefit or payment that is authorized;

2 (3) knowingly applies for and receives a benefit or  
3 payment on behalf of another person under the Medicaid program and  
4 converts any part of the benefit or payment to a use other than for  
5 the benefit of the person on whose behalf it was received;

6 (4) knowingly makes, causes to be made, induces, or  
7 seeks to induce the making of a false statement or  
8 misrepresentation of material fact concerning:

9 (A) the conditions or operation of a facility in  
10 order that the facility may qualify for certification or  
11 recertification required by the Medicaid program, including  
12 certification or recertification as:

- 13 (i) a hospital;
- 14 (ii) a nursing facility or skilled nursing  
15 facility;
- 16 (iii) a hospice;
- 17 (iv) an intermediate care facility for the  
18 mentally retarded;
- 19 (v) an assisted living facility; or
- 20 (vi) a home health agency; or

21 (B) information required to be provided by a  
22 federal or state law, rule, regulation, or provider agreement  
23 pertaining to the Medicaid program;

24 (5) except as authorized under the Medicaid program,  
25 knowingly pays, charges, solicits, accepts, or receives, in  
26 addition to an amount paid under the Medicaid program, a gift,  
27 money, a donation, or other consideration as a condition to the

1 provision of a service or product or the continued provision of a  
2 service or product if the cost of the service or product is paid  
3 for, in whole or in part, under the Medicaid program;

4 (6) knowingly presents or causes to be presented a  
5 claim for payment under the Medicaid program for a product provided  
6 or a service rendered by a person who:

7 (A) is not licensed to provide the product or  
8 render the service, if a license is required; or

9 (B) is not licensed in the manner claimed;

10 (7) knowingly makes or causes to be made a claim under  
11 the Medicaid program for:

12 (A) a service or product that has not been  
13 approved or acquiesced in by a treating physician or health care  
14 practitioner;

15 (B) a service or product that is substantially  
16 inadequate or inappropriate when compared to generally recognized  
17 standards within the particular discipline or within the health  
18 care industry; or

19 (C) a product that has been adulterated, debased,  
20 mislabeled, or that is otherwise inappropriate;

21 (8) makes a claim under the Medicaid program and  
22 knowingly fails to indicate the type of license and the  
23 identification number of the licensed health care provider who  
24 actually provided the service;

25 (9) knowingly enters into an agreement, combination,  
26 or conspiracy to defraud the state by obtaining or aiding another  
27 person in obtaining an unauthorized payment or benefit from the

1 Medicaid program or a fiscal agent;

2 (10) is a managed care organization that contracts  
3 with the Health and Human Services Commission or other state agency  
4 to provide or arrange to provide health care benefits or services to  
5 individuals eligible under the Medicaid program and knowingly:

6 (A) fails to provide to an individual a health  
7 care benefit or service that the organization is required to  
8 provide under the contract;

9 (B) fails to provide to the commission or  
10 appropriate state agency information required to be provided by  
11 law, commission or agency rule, or contractual provision; or

12 (C) engages in a fraudulent activity in  
13 connection with the enrollment of an individual eligible under the  
14 Medicaid program in the organization's managed care plan or in  
15 connection with marketing the organization's services to an  
16 individual eligible under the Medicaid program;

17 (11) knowingly obstructs an investigation by the  
18 attorney general of an alleged unlawful act under this section or  
19 under Section 32.039, 32.0391, or 36.002, Human Resources Code; or

20 (12) knowingly makes, uses, or causes the making or  
21 use of a false record or statement to conceal, avoid, or decrease an  
22 obligation to pay or transmit money or property to this state under  
23 the Medicaid program.

24 SECTION 3. (a) The change in law made by this Act applies  
25 only to conduct that occurs on or after the effective date of this  
26 Act. Conduct that occurs before the effective date of this Act is  
27 governed by the law in effect at the time the conduct occurred, and

1 that law is continued in effect for that purpose.

2 (b) For purposes of this section, conduct constituting an  
3 offense under the penal law of this state occurred before the  
4 effective date of this Act if any element of the offense occurred  
5 before that date.

6 SECTION 4. This Act takes effect September 1, 2011.