

By: Seliger, et al.  
(Shelton)

S.B. No. 544

Substitute the following for S.B. No. 544:

By: Coleman

C.S.S.B. No. 544

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 36.001, Human Resources Code, is amended  
by adding Subdivisions (5-a) and (7-a) to read as follows:

(5-a) "Material" means having a natural tendency to  
influence or to be capable of influencing.

(7-a) "Obligation" means a duty, whether or not fixed,  
that arises from:

(A) an express or implied contractual,  
grantor-grantee, or licensor-licensee relationship;

(B) a fee-based or similar relationship;

(C) a statute or regulation; or

(D) the retention of any overpayment.

SECTION 2. 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;

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

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

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

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

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

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

27           (5) except as authorized under the Medicaid program,

1 knowingly pays, charges, solicits, accepts, or receives, in  
2 addition to an amount paid under the Medicaid program, a gift,  
3 money, a donation, or other consideration as a condition to the  
4 provision of a service or product or the continued provision of a  
5 service or product if the cost of the service or product is paid  
6 for, in whole or in part, under the Medicaid program;

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

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

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

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

15 (A) a service or product that has not been  
16 approved or acquiesced in by a treating physician or health care  
17 practitioner;

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

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

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

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

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

9           (A) fails to provide to an individual a health  
10 care benefit or service that the organization is required to  
11 provide under the contract;

12           (B) fails to provide to the commission or  
13 appropriate state agency information required to be provided by  
14 law, commission or agency rule, or contractual provision; or

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

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

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

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

1 SECTION 3. Section 36.052(a), Human Resources Code, is  
2 amended to read as follows:

3 (a) Except as provided by Subsection (c), a person who  
4 commits an unlawful act is liable to the state for:

5 (1) the amount of any payment or the value of any  
6 monetary or in-kind benefit provided under the Medicaid program,  
7 directly or indirectly, as a result of the unlawful act, including  
8 any payment made to a third party;

9 (2) interest on the amount of the payment or the value  
10 of the benefit described by Subdivision (1) at the prejudgment  
11 interest rate in effect on the day the payment or benefit was  
12 received or paid, for the period from the date the benefit was  
13 received or paid to the date that the state recovers the amount of  
14 the payment or value of the benefit;

15 (3) a civil penalty of:

16 (A) not less than \$5,500 or the minimum amount  
17 imposed as provided by 31 U.S.C. Section 3729(a), if that amount  
18 exceeds \$5,500, and not [~~\$5,000 or~~] more than \$15,000 or the maximum  
19 amount imposed as provided by 31 U.S.C. Section 3729(a), if that  
20 amount exceeds \$15,000, for each unlawful act committed by the  
21 person that results in injury to an elderly person, as defined by  
22 Section 48.002(a)(1), a disabled person, as defined by Section  
23 48.002(a)(8)(A), or a person younger than 18 years of age; or

24 (B) not less than \$5,500 or the minimum amount  
25 imposed as provided by 31 U.S.C. Section 3729(a), if that amount  
26 exceeds \$5,500, and not [~~\$5,000 or~~] more than \$11,000 or the maximum  
27 amount imposed as provided by 31 U.S.C. Section 3729(a), if that

1 amount exceeds \$11,000, [~~\$10,000~~] for each unlawful act committed  
2 by the person that does not result in injury to a person described  
3 by Paragraph (A); and

4 (4) two times the amount of the payment or the value of  
5 the benefit described by Subdivision (1).

6 SECTION 4. Section 36.110(c), Human Resources Code, is  
7 amended to read as follows:

8 (c) A payment to a person under this section shall be made  
9 from the proceeds of the action. A person receiving a payment  
10 under this section is also entitled to receive from the defendant an  
11 amount for reasonable expenses, reasonable attorney's fees, and  
12 costs that the court finds to have been necessarily incurred. The  
13 court's determination of expenses, fees, and costs to be awarded  
14 under this subsection shall be made only after the defendant has  
15 been found liable in the action or the state settles an action with  
16 a defendant that the court determined, after a hearing, was fair,  
17 adequate, and reasonable in accordance with Section 36.107(c).

18 SECTION 5. Section 36.113, Human Resources Code, is amended  
19 by amending Subsection (b) and adding Subsection (c) to read as  
20 follows:

21 (b) A person may not bring an action under this subchapter  
22 that is based on the public disclosure of allegations or  
23 transactions in a criminal or civil hearing in which the state or an  
24 agent of the state is a party, in a legislative or administrative  
25 report, hearing, audit, or investigation, or from the news media,  
26 unless the person bringing the action is an original source of the  
27 information. In this subsection, "original source" means an

1 individual who:

2 (1) has direct and independent knowledge of the  
3 information on which the allegations are based and has voluntarily  
4 provided the information to the state before filing an action under  
5 this subchapter that is based on the information; or

6 (2) has knowledge that is independent of and  
7 materially adds to the publicly disclosed allegations and who has  
8 voluntarily provided the information to the state before filing an  
9 action under this subchapter that is based on the information.

10 (c) Before dismissing an action as barred under this  
11 section, the court shall give the attorney general an opportunity  
12 to oppose the dismissal.

13 SECTION 6. The heading to Section 36.115, Human Resources  
14 Code, is amended to read as follows:

15 Sec. 36.115. RETALIATION [~~BY EMPLOYER~~] AGAINST PERSON  
16 [~~BRINGING SUIT~~] PROHIBITED.

17 SECTION 7. Section 36.115(a), Human Resources Code, is  
18 amended to read as follows:

19 (a) A person, including an employee, contractor, or agent,  
20 who is discharged, demoted, suspended, threatened, harassed, or in  
21 any other manner discriminated against in the terms and conditions  
22 of employment [~~by the person's employer~~] because of a lawful act  
23 taken by the person in furtherance of an action under this  
24 subchapter, including investigation for, initiation of, testimony  
25 for, or assistance in an action filed or to be filed under this  
26 subchapter, or other efforts taken by the person to stop one or more  
27 violations of Section 36.002 is entitled to:

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

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

7           SECTION 8. Section 35A.02(a), Penal Code, is amended to  
8 read as follows:

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

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

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

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

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

26           (A) the conditions or operation of a facility in  
27 order that the facility may qualify for certification or



1 recertification required by the Medicaid program, including  
2 certification or recertification as:

3 (i) a hospital;

4 (ii) a nursing facility or skilled nursing  
5 facility;

6 (iii) a hospice;

7 (iv) an intermediate care facility for the  
8 mentally retarded;

9 (v) an assisted living facility; or

10 (vi) a home health agency; or

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

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

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

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

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

27 (7) knowingly makes or causes to be made a claim under

1 the Medicaid program for:

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

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

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

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

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

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

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

26 (B) fails to provide to the commission or  
27 appropriate state agency information required to be provided by

1 law, commission or agency rule, or contractual provision; or

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

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

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

14 SECTION 9. (a) The changes in law made by this Act to  
15 Section 36.002, Human Resources Code, and Section 35A.02, Penal  
16 Code, apply only to conduct that occurs on or after the effective  
17 date of this Act. Conduct that occurs before the effective date of  
18 this Act is governed by the law in effect at the time the conduct  
19 occurred, and that law is continued in effect for that purpose.

20 (b) For purposes of this section, conduct constituting an  
21 offense under the penal law of this state occurred before the  
22 effective date of this Act if any element of the offense occurred  
23 before that date.

24 SECTION 10. The changes in law made by this Act to Sections  
25 36.052, 36.110, and 36.113, Human Resources Code, apply only to a  
26 civil action for a violation of Section 36.002, Human Resources  
27 Code, as amended by this Act, commenced on or after the effective

1 date of this Act. A civil action commenced before the effective date  
2 of this Act is governed by the law in effect immediately before the  
3 effective date of this Act, and that law is continued in effect for  
4 that purpose.

5 SECTION 11. This Act takes effect September 1, 2011.