

By: Seliger

S.B. No. 544

A BILL TO BE ENTITLED

AN ACT

1
2 relating to unlawful acts against and criminal offenses involving
3 the Medicaid program.

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

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

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

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

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

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

22 (4) knowingly makes, causes to be made, induces, or
23 seeks to induce the making of a false statement or
24 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. Section 35A.02(a), Penal Code, is amended to
18 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.