

1-1 By: Seliger S.B. No. 544
1-2 (In the Senate - Filed February 7, 2011; February 17, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 28, 2011, reported favorably by the following
1-5 vote: Yeas 9, Nays 0; March 28, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to unlawful acts against and criminal offenses involving
1-9 the Medicaid program.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 36.002, Human Resources Code, is amended
1-12 to read as follows:

1-13 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
1-14 act if the person:

1-15 (1) knowingly makes or causes to be made a false
1-16 statement or misrepresentation of a material fact to permit a
1-17 person to receive a benefit or payment under the Medicaid program
1-18 that is not authorized or that is greater than the benefit or
1-19 payment that is authorized;

1-20 (2) knowingly conceals or fails to disclose
1-21 information that permits a person to receive a benefit or payment
1-22 under the Medicaid program that is not authorized or that is greater
1-23 than the benefit or payment that is authorized;

1-24 (3) knowingly applies for and receives a benefit or
1-25 payment on behalf of another person under the Medicaid program and
1-26 converts any part of the benefit or payment to a use other than for
1-27 the benefit of the person on whose behalf it was received;

1-28 (4) knowingly makes, causes to be made, induces, or
1-29 seeks to induce the making of a false statement or
1-30 misrepresentation of material fact concerning:

1-31 (A) the conditions or operation of a facility in
1-32 order that the facility may qualify for certification or
1-33 recertification required by the Medicaid program, including
1-34 certification or recertification as:

1-35 (i) a hospital;

1-36 (ii) a nursing facility or skilled nursing
1-37 facility;

1-38 (iii) a hospice;

1-39 (iv) an intermediate care facility for the
1-40 mentally retarded;

1-41 (v) an assisted living facility; or

1-42 (vi) a home health agency; or

1-43 (B) information required to be provided by a
1-44 federal or state law, rule, regulation, or provider agreement
1-45 pertaining to the Medicaid program;

1-46 (5) except as authorized under the Medicaid program,
1-47 knowingly pays, charges, solicits, accepts, or receives, in
1-48 addition to an amount paid under the Medicaid program, a gift,
1-49 money, a donation, or other consideration as a condition to the
1-50 provision of a service or product or the continued provision of a
1-51 service or product if the cost of the service or product is paid
1-52 for, in whole or in part, under the Medicaid program;

1-53 (6) knowingly presents or causes to be presented a
1-54 claim for payment under the Medicaid program for a product provided
1-55 or a service rendered by a person who:

1-56 (A) is not licensed to provide the product or
1-57 render the service, if a license is required; or

1-58 (B) is not licensed in the manner claimed;

1-59 (7) knowingly makes or causes to be made a claim under
1-60 the Medicaid program for:

1-61 (A) a service or product that has not been
1-62 approved or acquiesced in by a treating physician or health care
1-63 practitioner;

1-64 (B) a service or product that is substantially

2-1 inadequate or inappropriate when compared to generally recognized
 2-2 standards within the particular discipline or within the health
 2-3 care industry; or
 2-4 (C) a product that has been adulterated, debased,
 2-5 mislabeled, or that is otherwise inappropriate;
 2-6 (8) makes a claim under the Medicaid program and
 2-7 knowingly fails to indicate the type of license and the
 2-8 identification number of the licensed health care provider who
 2-9 actually provided the service;
 2-10 (9) knowingly enters into an agreement, combination,
 2-11 or conspiracy to defraud the state by obtaining or aiding another
 2-12 person in obtaining an unauthorized payment or benefit from the
 2-13 Medicaid program or a fiscal agent;
 2-14 (10) is a managed care organization that contracts
 2-15 with the Health and Human Services Commission or other state agency
 2-16 to provide or arrange to provide health care benefits or services to
 2-17 individuals eligible under the Medicaid program and knowingly:
 2-18 (A) fails to provide to an individual a health
 2-19 care benefit or service that the organization is required to
 2-20 provide under the contract;
 2-21 (B) fails to provide to the commission or
 2-22 appropriate state agency information required to be provided by
 2-23 law, commission or agency rule, or contractual provision; or
 2-24 (C) engages in a fraudulent activity in
 2-25 connection with the enrollment of an individual eligible under the
 2-26 Medicaid program in the organization's managed care plan or in
 2-27 connection with marketing the organization's services to an
 2-28 individual eligible under the Medicaid program;
 2-29 (11) knowingly obstructs an investigation by the
 2-30 attorney general of an alleged unlawful act under this section;
 2-31 (12) knowingly makes, uses, or causes the making or
 2-32 use of a false record or statement to conceal, avoid, or decrease an
 2-33 obligation to pay or transmit money or property to this state under
 2-34 the Medicaid program; or
 2-35 (13) knowingly engages in conduct that constitutes a
 2-36 violation under Section 32.039(b).
 2-37 SECTION 2. Subsection (a), Section 35A.02, Penal Code, is
 2-38 amended to read as follows:
 2-39 (a) A person commits an offense if the person:
 2-40 (1) knowingly makes or causes to be made a false
 2-41 statement or misrepresentation of a material fact to permit a
 2-42 person to receive a benefit or payment under the Medicaid program
 2-43 that is not authorized or that is greater than the benefit or
 2-44 payment that is authorized;
 2-45 (2) knowingly conceals or fails to disclose
 2-46 information that permits a person to receive a benefit or payment
 2-47 under the Medicaid program that is not authorized or that is greater
 2-48 than the benefit or payment that is authorized;
 2-49 (3) knowingly applies for and receives a benefit or
 2-50 payment on behalf of another person under the Medicaid program and
 2-51 converts any part of the benefit or payment to a use other than for
 2-52 the benefit of the person on whose behalf it was received;
 2-53 (4) knowingly makes, causes to be made, induces, or
 2-54 seeks to induce the making of a false statement or
 2-55 misrepresentation of material fact concerning:
 2-56 (A) the conditions or operation of a facility in
 2-57 order that the facility may qualify for certification or
 2-58 recertification required by the Medicaid program, including
 2-59 certification or recertification as:
 2-60 (i) a hospital;
 2-61 (ii) a nursing facility or skilled nursing
 2-62 facility;
 2-63 (iii) a hospice;
 2-64 (iv) an intermediate care facility for the
 2-65 mentally retarded;
 2-66 (v) an assisted living facility; or
 2-67 (vi) a home health agency; or
 2-68 (B) information required to be provided by a
 2-69 federal or state law, rule, regulation, or provider agreement

3-1 pertaining to the Medicaid program;

3-2 (5) except as authorized under the Medicaid program,
3-3 knowingly pays, charges, solicits, accepts, or receives, in
3-4 addition to an amount paid under the Medicaid program, a gift,
3-5 money, a donation, or other consideration as a condition to the
3-6 provision of a service or product or the continued provision of a
3-7 service or product if the cost of the service or product is paid
3-8 for, in whole or in part, under the Medicaid program;

3-9 (6) knowingly presents or causes to be presented a
3-10 claim for payment under the Medicaid program for a product provided
3-11 or a service rendered by a person who:

3-12 (A) is not licensed to provide the product or
3-13 render the service, if a license is required; or

3-14 (B) is not licensed in the manner claimed;

3-15 (7) knowingly makes or causes to be made a claim under
3-16 the Medicaid program for:

3-17 (A) a service or product that has not been
3-18 approved or acquiesced in by a treating physician or health care
3-19 practitioner;

3-20 (B) a service or product that is substantially
3-21 inadequate or inappropriate when compared to generally recognized
3-22 standards within the particular discipline or within the health
3-23 care industry; or

3-24 (C) a product that has been adulterated, debased,
3-25 mislabeled, or that is otherwise inappropriate;

3-26 (8) makes a claim under the Medicaid program and
3-27 knowingly fails to indicate the type of license and the
3-28 identification number of the licensed health care provider who
3-29 actually provided the service;

3-30 (9) knowingly enters into an agreement, combination,
3-31 or conspiracy to defraud the state by obtaining or aiding another
3-32 person in obtaining an unauthorized payment or benefit from the
3-33 Medicaid program or a fiscal agent;

3-34 (10) is a managed care organization that contracts
3-35 with the Health and Human Services Commission or other state agency
3-36 to provide or arrange to provide health care benefits or services to
3-37 individuals eligible under the Medicaid program and knowingly:

3-38 (A) fails to provide to an individual a health
3-39 care benefit or service that the organization is required to
3-40 provide under the contract;

3-41 (B) fails to provide to the commission or
3-42 appropriate state agency information required to be provided by
3-43 law, commission or agency rule, or contractual provision; or

3-44 (C) engages in a fraudulent activity in
3-45 connection with the enrollment of an individual eligible under the
3-46 Medicaid program in the organization's managed care plan or in
3-47 connection with marketing the organization's services to an
3-48 individual eligible under the Medicaid program;

3-49 (11) knowingly obstructs an investigation by the
3-50 attorney general of an alleged unlawful act under this section or
3-51 under Section 32.039, 32.0391, or 36.002, Human Resources Code; or

3-52 (12) knowingly makes, uses, or causes the making or
3-53 use of a false record or statement to conceal, avoid, or decrease an
3-54 obligation to pay or transmit money or property to this state under
3-55 the Medicaid program.

3-56 SECTION 3. (a) The change in law made by this Act applies
3-57 only to conduct that occurs on or after the effective date of this
3-58 Act. Conduct that occurs before the effective date of this Act is
3-59 governed by the law in effect at the time the conduct occurred, and
3-60 that law is continued in effect for that purpose.

3-61 (b) For purposes of this section, conduct constituting an
3-62 offense under the penal law of this state occurred before the
3-63 effective date of this Act if any element of the offense occurred
3-64 before that date.

3-65 SECTION 4. This Act takes effect September 1, 2011.

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