

By: Nichols

S.B. No. 688

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the investigation, prosecution, and punishment of
3 criminal Medicaid fraud and certain other offenses related to
4 Medicaid fraud; providing penalties.

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

6 SECTION 1. Article 12.01, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 12.01. FELONIES. Except as provided in Article 12.03,
9 felony indictments may be presented within these limits, and not
10 afterward:

11 (1) no limitation:

12 (A) murder and manslaughter;

13 (B) sexual assault under Section 22.011(a)(2),
14 Penal Code, or aggravated sexual assault under Section
15 22.021(a)(1)(B), Penal Code;

16 (C) sexual assault, if during the investigation
17 of the offense biological matter is collected and subjected to
18 forensic DNA testing and the testing results show that the matter
19 does not match the victim or any other person whose identity is
20 readily ascertained;

21 (D) continuous sexual abuse of young child or
22 children under Section 21.02, Penal Code;

23 (E) indecency with a child under Section 21.11,
24 Penal Code; or

1 (F) an offense involving leaving the scene of an
2 accident under Section 550.021, Transportation Code, if the
3 accident resulted in the death of a person;

4 (2) ten years from the date of the commission of the
5 offense:

6 (A) theft of any estate, real, personal or mixed,
7 by an executor, administrator, guardian or trustee, with intent to
8 defraud any creditor, heir, legatee, ward, distributee,
9 beneficiary or settlor of a trust interested in such estate;

10 (B) theft by a public servant of government
11 property over which he exercises control in his official capacity;

12 (C) forgery or the uttering, using or passing of
13 forged instruments;

14 (D) injury to an elderly or disabled individual
15 punishable as a felony of the first degree under Section 22.04,
16 Penal Code;

17 (E) sexual assault, except as provided by
18 Subdivision (1); or

19 (F) arson;

20 (3) seven years from the date of the commission of the
21 offense:

22 (A) misapplication of fiduciary property or
23 property of a financial institution;

24 (B) securing execution of document by deception;

25 (C) a felony violation under Chapter 162, Tax
26 Code;

27 (D) false statement to obtain property or credit

1 under Section 32.32, Penal Code;

2 (E) money laundering;

3 (F) credit card or debit card abuse under Section
4 32.31, Penal Code; [~~or~~]

5 (G) fraudulent use or possession of identifying
6 information under Section 32.51, Penal Code; or

7 (H) Medicaid fraud under Section 35A.02, Penal
8 Code;

9 (4) five years from the date of the commission of the
10 offense:

11 (A) theft or robbery;

12 (B) except as provided by Subdivision (5),
13 kidnapping or burglary;

14 (C) injury to an elderly or disabled individual
15 that is not punishable as a felony of the first degree under Section
16 22.04, Penal Code;

17 (D) abandoning or endangering a child; or

18 (E) insurance fraud;

19 (5) if the investigation of the offense shows that the
20 victim is younger than 17 years of age at the time the offense is
21 committed, 20 years from the 18th birthday of the victim of one of
22 the following offenses:

23 (A) sexual performance by a child under Section
24 43.25, Penal Code;

25 (B) aggravated kidnapping under Section
26 20.04(a)(4), Penal Code, if the defendant committed the offense
27 with the intent to violate or abuse the victim sexually; or

1 (C) burglary under Section 30.02, Penal Code, if
2 the offense is punishable under Subsection (d) of that section and
3 the defendant committed the offense with the intent to commit an
4 offense described by Subdivision (1)(B) or (D) of this article or
5 Paragraph (B) of this subdivision;

6 (6) ten years from the 18th birthday of the victim of
7 the offense: injury to a child under Section 22.04, Penal Code; or

8 (7) three years from the date of the commission of the
9 offense: all other felonies.

10 SECTION 2. Section 1(2), Article 18.21, Code of Criminal
11 Procedure, is amended to read as follows:

12 (2) "Authorized peace officer" means:

13 (A) a sheriff or a sheriff's deputy;

14 (B) a constable or deputy constable;

15 (C) a marshal or police officer of an
16 incorporated city;

17 (D) a ranger or officer commissioned by the
18 Public Safety Commission or the director of the Department of
19 Public Safety;

20 (E) an investigator of a prosecutor's office;

21 (F) a law enforcement agent of the Alcoholic
22 Beverage Commission;

23 (G) a law enforcement officer commissioned by the
24 Parks and Wildlife Commission; ~~or~~

25 (H) an enforcement officer appointed by the
26 executive director of the Texas Department of Criminal Justice
27 under Section 493.019, Government Code; or

1 (I) an investigator commissioned by the attorney
2 general under Section 402.009, Government Code.

3 SECTION 3. Section 3(a), Article 37.07, Code of Criminal
4 Procedure, is amended by adding Subdivision (3) to read as follows:

5 (3) Regardless of the plea and whether the punishment
6 is assessed by the judge or the jury, during the punishment phase of
7 the trial of an offense under Section 35A.02, Penal Code, the state
8 and the defendant may offer evidence not offered during the guilt or
9 innocence phase of the trial concerning the total pecuniary loss to
10 the Medicaid program caused by the defendant's conduct or, if
11 applicable, the scheme or continuing course of conduct of which the
12 defendant's conduct is part. An employee of the Health and Human
13 Services Commission's office of inspector general or the office of
14 attorney general's Medicaid fraud control unit may testify
15 concerning the total pecuniary loss to the Medicaid program. An
16 employee who testifies under this subdivision is subject to
17 cross-examination. Evidence offered under this subdivision may be
18 considered by the judge or jury in ordering or recommending the
19 amount of any restitution to be made to the Medicaid program or the
20 appropriate punishment for the defendant.

21 SECTION 4. Section 36.053, Human Resources Code, is amended
22 by adding Subsection (g) to read as follows:

23 (g) Notwithstanding Subsection (c), any information
24 compiled by the attorney general in connection with an
25 investigation under this subchapter, or provided to the attorney
26 general by the office of the inspector general in connection with an
27 audit or investigation conducted under Subchapter C, Chapter 531,

1 Government Code, is confidential and not subject to disclosure
2 under Chapter 552, Government Code, or to disclosure, discovery,
3 subpoena, or other means of legal compulsion for the release of the
4 information. Information that is confidential and excepted from
5 disclosure under this subsection may be disclosed to the state
6 auditor's office, a law enforcement agency, or a defendant in a
7 criminal proceeding arising from an investigation under this
8 subchapter.

9 SECTION 5. Sections 22.04(a-1), (b), (d), (f), and (g),
10 Penal Code, are amended to read as follows:

11 (a-1) A person commits an offense if the person is an owner,
12 operator, or employee of a group home, nursing facility, assisted
13 living facility, intermediate care facility for persons with mental
14 retardation, or other institutional care facility and the person
15 intentionally, knowingly, recklessly, or with criminal negligence
16 by omission causes to a child, elderly individual, or disabled
17 individual who is a resident of that group home or facility:

- 18 (1) seriousbodily injury;
19 (2) serious mental deficiency, impairment, or injury;
20 or
21 (3) bodily injury~~[, or~~
22 ~~[(4) exploitation]~~.

23 (b) An omission that causes a condition described by
24 Subsection (a)(1), (2), or (3) or (a-1)(1), (2), or (3)~~[, or (4)]~~ is
25 conduct constituting an offense under this section if:

- 26 (1) the actor has a legal or statutory duty to act; or
27 (2) the actor has assumed care, custody, or control of

1 a child, elderly individual, or disabled individual.

2 (d) For purposes of an omission that causes a condition
3 described by Subsection (a)(1), (2), or (3), the actor has assumed
4 care, custody, or control if he has by act, words, or course of
5 conduct acted so as to cause a reasonable person to conclude that he
6 has accepted responsibility for protection, food, shelter, and
7 medical care for a child, elderly individual, or disabled
8 individual. For purposes of an omission that causes a condition
9 described by Subsection (a-1)(1), (2), or (3), [~~or (4)~~], the actor
10 acting during the actor's capacity as owner, operator, or employee
11 of a group home or facility described by Subsection (a-1) is
12 considered to have accepted responsibility for protection, food,
13 shelter, and medical care for the child, elderly individual, or
14 disabled individual who is a resident of the group home or facility.

15 (f) An offense under Subsection (a)(3) or (a-1)(3) [~~or (4)~~]
16 is a felony of the third degree when the conduct is committed
17 intentionally or knowingly, except that an offense under Subsection
18 (a)(3) is a felony of the second degree when the conduct is
19 committed intentionally or knowingly and the victim is a disabled
20 individual residing in a center, as defined by Section 555.001,
21 Health and Safety Code, or in a facility licensed under Chapter 252,
22 Health and Safety Code, and the actor is an employee of the center
23 or facility whose employment involved providing direct care for the
24 victim. When the conduct is engaged in recklessly, the offense is a
25 state jail felony.

26 (g) An offense under Subsection (a) is a state jail felony
27 when the person acts with criminal negligence. An offense under

1 Subsection (a-1) is a state jail felony when the person, with
2 criminal negligence and by omission, causes a condition described
3 by Subsection (a-1)(1), (2), or (3) [~~, or (4)~~].

4 SECTION 6. Section 32.46(d), Penal Code, is amended to read
5 as follows:

6 (d) In this section:

7 (1) "Deception" [~~"deception"~~] has the meaning
8 assigned by Section 31.01.

9 (2) "Document" includes electronically stored data or
10 other information that is retrievable in a readable, perceivable
11 form.

12 SECTION 7. Subchapter D, Chapter 32, Penal Code, is amended
13 by adding Section 32.53 to read as follows:

14 Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR
15 DISABLED INDIVIDUAL. (a) In this section:

16 (1) "Child," "elderly individual," and "disabled
17 individual" have the meanings assigned by Section 22.04.

18 (2) "Exploitation" means the illegal or improper use
19 of a child, elderly individual, or disabled individual or of the
20 resources of a child, elderly individual, or disabled individual
21 for monetary or personal benefit, profit, or gain.

22 (b) A person commits an offense if the person intentionally,
23 knowingly, or recklessly causes the exploitation of a child,
24 elderly individual, or disabled individual.

25 (c) An offense under this section is a felony of the third
26 degree.

27 (d) A person who is subject to prosecution under both this

1 section and another section of this code may be prosecuted under
2 either or both sections. Section 3.04 does not apply to criminal
3 episodes prosecuted under both this section and another section of
4 this code. If a criminal episode is prosecuted under both this
5 section and another section of this code and sentences are assessed
6 for convictions under both sections, the sentences shall run
7 concurrently. The attorney general, if requested to do so by a
8 prosecuting attorney, may assist the prosecuting attorney in the
9 investigation or prosecution of an offense under this section.

10 SECTION 8. Section 35A.01, Penal Code, is amended by adding
11 Subdivision (10) to read as follows:

12 (10) "High managerial agent" means a director,
13 officer, or employee who is authorized to act on behalf of a
14 provider and has duties of such responsibility that the conduct of
15 the director, officer, or employee reasonably may be assumed to
16 represent the policy or intent of the provider.

17 SECTION 9. Section 35A.02, Penal Code, is amended by
18 amending Subsections (b) and (c) and adding Subsections (e) and (f)
19 to read as follows:

20 (b) An offense under this section is:

21 (1) a Class C misdemeanor if the amount of any payment
22 or the value of any monetary or in-kind benefit provided or claim
23 for payment made under the Medicaid program, directly or
24 indirectly, as a result of the conduct is less than \$50;

25 (2) a Class B misdemeanor if the amount of any payment
26 or the value of any monetary or in-kind benefit provided or claim
27 for payment made under the Medicaid program, directly or

1 indirectly, as a result of the conduct is \$50 or more but less than
2 \$500;

3 (3) a Class A misdemeanor if the amount of any payment
4 or the value of any monetary or in-kind benefit provided or claim
5 for payment made under the Medicaid program, directly or
6 indirectly, as a result of the conduct is \$500 or more but less than
7 \$1,500;

8 (4) a state jail felony if:

9 (A) the amount of any payment or the value of any
10 monetary or in-kind benefit provided or claim for payment made
11 under the Medicaid program, directly or indirectly, as a result of
12 the conduct is \$1,500 or more but less than \$20,000;

13 (B) the offense is committed under Subsection
14 (a)(11); or

15 (C) it is shown on the trial of the offense that
16 the amount of the payment or value of the benefit described by this
17 subsection cannot be reasonably ascertained;

18 (5) a felony of the third degree if:

19 (A) the amount of any payment or the value of any
20 monetary or in-kind benefit provided or claim for payment made
21 under the Medicaid program, directly or indirectly, as a result of
22 the conduct is \$20,000 or more but less than \$100,000; or

23 (B) it is shown on the trial of the offense that
24 the defendant submitted more than 25 but fewer than 50 fraudulent
25 claims under the Medicaid program and the submission of each claim
26 constitutes conduct prohibited by Subsection (a);

27 (6) a felony of the second degree if:

1 (A) the amount of any payment or the value of any
2 monetary or in-kind benefit provided or claim for payment made
3 under the Medicaid program, directly or indirectly, as a result of
4 the conduct is \$100,000 or more but less than \$200,000; or

5 (B) it is shown on the trial of the offense that
6 the defendant submitted 50 or more fraudulent claims under the
7 Medicaid program and the submission of each claim constitutes
8 conduct prohibited by Subsection (a); or

9 (7) a felony of the first degree if the amount of any
10 payment or the value of any monetary or in-kind benefit provided or
11 claim for payment made under the Medicaid program, directly or
12 indirectly, as a result of the conduct is \$200,000 or more.

13 (c) If conduct constituting an offense under this section
14 also constitutes an offense under another section of this code or
15 another provision of law, the actor may be prosecuted under either
16 this section or the other section or provision or both this section
17 and the other section or provision.

18 (e) The punishment prescribed for an offense under this
19 section, other than the punishment prescribed by Subsection (b)(7),
20 is increased to the punishment prescribed for the next highest
21 category of offense if it is shown beyond a reasonable doubt on the
22 trial of the offense that the actor was a provider or high
23 managerial agent at the time of the offense.

24 (f) The attorney general, if requested to do so by a
25 prosecuting attorney, may assist the prosecuting attorney in the
26 investigation or prosecution of an offense under this chapter or of
27 any other offense involving Medicaid fraud.

1 SECTION 10. Section 71.02(a), Penal Code, as amended by
2 Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554),
3 Acts of the 81st Legislature, Regular Session, 2009, is reenacted
4 and amended to read as follows:

5 (a) A person commits an offense if, with the intent to
6 establish, maintain, or participate in a combination or in the
7 profits of a combination or as a member of a criminal street gang,
8 the person commits or conspires to commit one or more of the
9 following:

10 (1) murder, capital murder, arson, aggravated
11 robbery, robbery, burglary, theft, aggravated kidnapping,
12 kidnapping, aggravated assault, aggravated sexual assault, sexual
13 assault, forgery, deadly conduct, assault punishable as a Class A
14 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
15 motor vehicle;

16 (2) any gambling offense punishable as a Class A
17 misdemeanor;

18 (3) promotion of prostitution, aggravated promotion
19 of prostitution, or compelling prostitution;

20 (4) unlawful manufacture, transportation, repair, or
21 sale of firearms or prohibited weapons;

22 (5) unlawful manufacture, delivery, dispensation, or
23 distribution of a controlled substance or dangerous drug, or
24 unlawful possession of a controlled substance or dangerous drug
25 through forgery, fraud, misrepresentation, or deception;

26 (6) any unlawful wholesale promotion or possession of
27 any obscene material or obscene device with the intent to wholesale

1 promote the same;

2 (7) any offense under Subchapter B, Chapter 43,
3 depicting or involving conduct by or directed toward a child
4 younger than 18 years of age;

5 (8) any felony offense under Chapter 32;

6 (9) any offense under Chapter 36;

7 (10) any offense under Chapter 34, ~~[or]~~ 35, or 35A;

8 (11) any offense under Section 37.11(a);

9 (12) any offense under Chapter 20A;

10 (13) any offense under Section 37.10; ~~[or]~~

11 (14) any offense under Section 38.06, 38.07, 38.09, or
12 38.11;

13 (15) ~~[(14)]~~ any offense under Section 42.10; or

14 (16) ~~[(14)]~~ any offense under Section 46.06(a)(1) or
15 46.14.

16 SECTION 11. Section 22.04(c)(4), Penal Code, is repealed.

17 SECTION 12. (a) The changes in law made by this Act to
18 Article 37.07, Code of Criminal Procedure, and Sections 22.04,
19 32.46, 35A.01, 35A.02, and 71.02, Penal Code, apply only to an
20 offense committed on or after the effective date of this Act. An
21 offense committed before the effective date of this Act is covered
22 by the law in effect when the offense was committed, and the former
23 law is continued in effect for that purpose. For purposes of this
24 section, an offense was committed before the effective date of this
25 Act if any element of the offense occurred before that date.

26 (b) The change in law made by this Act in amending Article
27 12.01, Code of Criminal Procedure, does not apply to an offense if

1 the prosecution of that offense becomes barred by limitation before
2 the effective date of this Act. The prosecution of that offense
3 remains barred as if this Act had not taken effect.

4 SECTION 13. This Act takes effect September 1, 2011.