

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**March 24, 2011**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: SB688** by Nichols (Relating to the investigation, prosecution, and punishment of criminal Medicaid fraud and certain other offenses related to Medicaid fraud; providing penalties.),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code, the Code of Criminal Procedure, and the Penal Code as it relates to the investigation, prosecution, and punishment of criminal Medicaid fraud and certain other offenses related to Medicaid fraud. The bill would amend the Government Code by specifying conditions for disclosing confidential information in connection with an investigation of Medicaid fraud. The bill would amend the Code of Criminal Procedure by expanding the definition of "Authorized peace officer" to include an investigator commissioned by the attorney general, in reference to search warrants for pen registers and trap and trace devices, access to stored communications, and mobile tracking devices. The bill would add Medicaid fraud to the list of offenses and limitation periods provided in the Code of Criminal Procedure. The bill would also amend the Code of Criminal Procedure by allowing a defendant to offer evidence during the punishment phase of the trial of a Medicaid fraud offense.

The bill would amend the definitions provided in the Penal Code for the offense of Medicaid fraud to include "High managerial agent". The bill would amend the Penal Code by creating felony punishment for the offense of Medicaid fraud based on the number of fraudulent claims submitted under the Medicaid program, and by enhancing the punishment prescribed for the offense of Medicaid fraud to the next highest category of offense if it is shown that the actor was a provider or high managerial agent. The bill would also include the offense of Medicaid fraud in the list of offenses for which the engaging in organized criminal activity provision is applied. The bill would further define document included in the offense of securing execution of document by deception provided in the Penal Code.

The bill would also amend the Penal Code by amending and adding conditions related to the prosecution of exploitation of child, elderly individual, or disabled individual. The bill would repeal Section 22.04(c)(4) of the Penal Code relating to the meaning of "Exploitation" for the offense of injury to a child, elderly individual, or disabled individual. The bill would take effect on September 1, 2011.

The Office of the Attorney General and the Department of Aging and Disability Services anticipate no significant fiscal impact from this bill. The Texas Department of Criminal Justice anticipates no significant fiscal impact from this bill unless it has an impact on the offender population. Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. It is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 539 Aging and Disability Services, Department of,  
696 Department of Criminal Justice

**LBB Staff:** JOB, CL, LM, ESi, GG, ADM