

SENATE AMENDMENTS

2nd Printing

By: J. Davis of Harris

H.B. No. 1720

A BILL TO BE ENTITLED

AN ACT

relating to improving health care provider accountability and efficiency under the child health plan and Medicaid programs.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.024161 to read as follows:

Sec. 531.024161. REIMBURSEMENT CLAIMS FOR CERTAIN MEDICAID OR CHIP SERVICES INVOLVING SUPERVISED PROVIDERS. (a) If a provider, including a nurse practitioner or physician assistant, under the Medicaid or child health plan program provides a referral for or orders health care services for a recipient or enrollee, as applicable, at the direction or under the supervision of another provider, and the referral or order is based on the supervised provider's evaluation of the recipient or enrollee, the names and associated national provider identifier numbers of the supervised provider and the supervising provider must be included on any claim for reimbursement submitted by a provider based on the referral or order. For purposes of this section, "national provider identifier" means the national provider identifier required under Section 1128J(e), Social Security Act (42 U.S.C. Section 1320a-7k(e)).

(b) The executive commissioner shall adopt rules necessary to implement this section.

SECTION 2. Subchapter C, Chapter 531, Government Code, is

1 amended by adding Sections 531.1131, 531.1132, and 531.117 to read
2 as follows:

3 Sec. 531.1131. FRAUD AND ABUSE RECOVERY BY CERTAIN PERSONS;
4 RETENTION OF RECOVERED AMOUNTS. (a) If a managed care
5 organization's special investigative unit under Section
6 531.113(a)(1) or the entity with which the managed care
7 organization contracts under Section 531.113(a)(2) discovers fraud
8 or abuse in the Medicaid program or the child health plan program,
9 the unit or entity shall:

10 (1) immediately notify the commission's office of
11 inspector general;

12 (2) subject to Subsection (b), begin payment recovery
13 efforts; and

14 (3) ensure that any payment recovery efforts in which
15 the organization engages are in accordance with applicable rules
16 adopted by the executive commissioner.

17 (b) If the amount sought to be recovered under Subsection
18 (a)(2) exceeds \$100,000, the managed care organization's special
19 investigative unit or contracted entity described by Subsection (a)
20 may not engage in payment recovery efforts if, not later than the
21 10th business day after the date the unit or entity notified the
22 commission's office of inspector general under Subsection (a)(1),
23 the unit or entity receives a notice from the office indicating that
24 the unit or entity is not authorized to proceed with recovery
25 efforts.

26 (c) A managed care organization may retain any money
27 recovered under Subsection (a)(2) by the organization's special

1 investigative unit or contracted entity described by Subsection
2 (a).

3 (d) A managed care organization shall submit a quarterly
4 report to the commission's office of inspector general detailing
5 the amount of money recovered under Subsection (a)(2).

6 (e) The executive commissioner shall adopt rules necessary
7 to implement this section, including rules establishing due process
8 procedures that must be followed by managed care organizations when
9 engaging in payment recovery efforts as provided by this section.

10 Sec. 531.1132. ANNUAL REPORT ON CERTAIN FRAUD AND ABUSE
11 RECOVERIES. Not later than December 1 of each year, the commission
12 shall prepare and submit a report to the legislature relating to the
13 amount of money recovered during the preceding 12-month period as a
14 result of investigations and recovery efforts made under Sections
15 531.113 and 531.1131 by special investigative units or entities
16 with which a managed care organization contracts under Section
17 531.113(a)(2). The report must specify the amount of money retained
18 by each managed care organization under Section 531.1131(c).

19 Sec. 531.117. RECOVERY AUDIT CONTRACTORS. To the extent
20 required under Section 1902(a)(42), Social Security Act (42 U.S.C.
21 Section 1396a(a)(42)), the commission shall establish a program
22 under which the commission contracts with one or more recovery
23 audit contractors for purposes of identifying underpayments and
24 overpayments under the Medicaid program and recovering the
25 overpayments.

26 SECTION 3. Subchapter D, Chapter 62, Health and Safety
27 Code, is amended by adding Section 62.1561 to read as follows:

1 Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS.

2 The executive commissioner of the commission shall adopt rules for
3 prohibiting a person from participating in the child health plan
4 program as a health care provider for a reasonable period, as
5 determined by the executive commissioner, if the person:

6 (1) fails to repay overpayments under the program; or

7 (2) owns, controls, manages, or is otherwise
8 affiliated with and has financial, managerial, or administrative
9 influence over a provider who has been suspended or prohibited from
10 participating in the program.

11 SECTION 4. Section 32.047, Human Resources Code, is amended
12 to read as follows:

13 Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE
14 PROVIDERS. (a) A person is permanently prohibited from providing
15 or arranging to provide health care services under the medical
16 assistance program if:

17 (1) the person is convicted of an offense arising from
18 a fraudulent act under the program; and

19 (2) the person's fraudulent act results in injury to an
20 elderly person, as defined by Section 48.002(a)(1) [~~48.002(1)~~], a
21 disabled person, as defined by Section 48.002(a)(8)(A)
22 [~~48.002(8)(A)~~], or a person younger than 18 years of age.

23 (b) The executive commissioner of the Health and Human
24 Services Commission shall adopt rules for prohibiting a person from
25 participating in the medical assistance program as a health care
26 provider for a reasonable period, as determined by the executive
27 commissioner, if the person:

1 (1) fails to repay overpayments under the program; or
2 (2) owns, controls, manages, or is otherwise
3 affiliated with and has financial, managerial, or administrative
4 influence over a provider who has been suspended or prohibited from
5 participating in the program.

6 SECTION 5. Subchapter B, Chapter 32, Human Resources Code,
7 is amended by adding Section 32.068 to read as follows:

8 Sec. 32.068. IN-PERSON EVALUATION REQUIRED FOR CERTAIN
9 SERVICES. (a) A medical assistance provider may order or otherwise
10 authorize the provision of home health services for a recipient
11 only if the provider has conducted an in-person evaluation of the
12 recipient within the six-month period preceding the date the order
13 or other authorization was issued.

14 (b) A physician, physician assistant, nurse practitioner,
15 clinical nurse specialist, or certified nurse-midwife that orders
16 or otherwise authorizes the provision of durable medical equipment
17 for a recipient in accordance with Chapter 157, Occupations Code,
18 and other applicable law, including rules, must certify on the
19 order or other authorization that the person conducted an in-person
20 evaluation of the recipient within the six-month period preceding
21 the date the order or other authorization was issued.

22 (c) The executive commissioner of the Health and Human
23 Services Commission shall adopt rules necessary to implement this
24 section.

25 SECTION 6. Section 531.1131, Government Code, as added by
26 this Act, applies to the investigation of a fraudulent Medicaid or
27 child health plan program claim or other program abuse that

1 commences on or after the effective date of this Act. An
2 investigation that commences before the effective date of this Act
3 is governed by the law in effect when the investigation commenced,
4 and the former law is continued in effect for that purpose.


5 SECTION 7. If before implementing any provision of this Act
6 a state agency determines that a waiver or authorization from a
7 federal agency is necessary for implementation of that provision,
8 the agency affected by the provision shall request the waiver or
9 authorization and may delay implementing that provision until the
10 waiver or authorization is granted.

11 SECTION 8. This Act takes effect September 1, 2011.

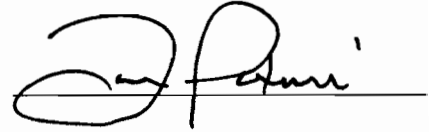
ADOPTED

MAY 23 2011

FLOOR AMENDMENT NO. _____


Secretary of the Senate

BY: _____



1 Amend H.B. No. 1720 (Senate committee printing) as follows:

2 (1) In SECTION 2 of the bill, in added Section
3 531.1131(a)(1), Government Code (page 1, line 40), between
4 "immediately" and "notify", insert "and contemporaneously".

5 (2) In SECTION 2 of the bill, in added Section
6 531.1131(a)(1), Government Code (page 1, line 41), between
7 "general" and the semicolon, insert "and the office of the attorney
8 general".

9 (3) In SECTION 2 of the bill, in added Section 531.1131(b),
10 Government Code (page 1, line 52), between "general" and "under",
11 insert "and the office of the attorney general".

12 (4) In SECTION 2 of the bill, in added Section 531.1131(b),
13 Government Code (page 1, line 53), strike "the office" and
14 substitute "either office".

ADOPTED

MAY 23 2011


Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: 

1 Amend H.B. No. 1720 (Senate committee printing) as follows:

2 (1) In SECTION 5 of the bill, in added Section 32.068(a),
3 Human Resources Code (page 2, line 59), strike "six-month period"
4 and substitute "12-month period".

5 (2) In SECTION 5 of the bill, in added Section 32.068(b),
6 Human Resources Code (page 2, line 67), strike "six-month period"
7 and substitute "12-month period".

8 (3) In SECTION 5 of the bill, in added Section 32.068(c),
9 Human Resources Code (page 3, line 2), immediately following the
10 period, insert "The executive commissioner may by rule adopt
11 limited exceptions to the requirements of this section."

MAY 23 2011

Debra Spaul
Secretary of the Senate

FLOOR AMENDMENT NO. 3

BY: *Nelson*

1 Amend H.B. No. 1720 (senate committee printing) by adding
2 the following appropriately numbered SECTIONS to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:
4 SECTION _____. Section 142.001, Health and Safety Code, is
5 amended by adding Subdivisions (11-a), (11-b), and (12-a) to
6 read as follows:

7 (11-a) "Department" means the Department of Aging and
8 Disability Services.

9 (11-b) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 (12-a) "Home and community support services agency
12 administrator" or "administrator" means the person who is
13 responsible for implementing and supervising the administrative
14 policies and operations of the home and community support
15 services agency and for administratively supervising the
16 provision of all services to agency clients on a day-to-day
17 basis.

18 SECTION _____. Section 142.0025, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 142.0025. TEMPORARY LICENSE. If a person is in the
21 process of becoming certified by the United States Department of
22 Health and Human Services to qualify as a certified agency, the
23 department may issue a temporary home and community support
24 services agency license to the person authorizing the person to
25 provide certified home health services. A temporary license is
26 effective as provided by [~~board~~] rules adopted by the executive
27 commissioner.

28 SECTION _____. Section 142.009, Health and Safety Code, is
29 amended by adding Subsections (a-1) and (i) and amending

1 Subsection (g) to read as follows:

2 (a-1) A license applicant or license holder must provide
3 the department representative conducting the survey with a
4 reasonable and safe workspace at the premises. The executive
5 commissioner may adopt rules to implement this subsection.

6 (g) After a survey of a home and community support
7 services agency by the department, the department shall provide
8 to the home and community support services [~~chief executive~~
9 ~~officer of the~~] agency administrator:

10 (1) specific and timely written notice of the
11 official findings of the survey, including:

12 (A) the specific nature of the survey;

13 (B) any alleged violations of a specific statute
14 or rule;

15 (C) the specific nature of any finding regarding
16 an alleged violation or deficiency; and

17 (D) if a deficiency is alleged, the severity of
18 the deficiency;

19 (2) information on the identity, including the name
20 [~~signature~~], of each department representative conducting or[~~r~~]
21 reviewing[~~, or approving~~] the results of the survey and the date
22 on which the department representative acted on the matter; and

23 (3) if requested by the agency, copies of all
24 documents relating to the survey maintained by the department or
25 provided by the department to any other state or federal agency
26 that are not confidential under state law.

27 (i) Except as provided by Subsection (h), the department
28 may not renew an initial home and community support services
29 agency license unless the department has conducted an initial
30 on-site survey of the agency.

31 SECTION _____. The heading to Section 142.0091, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 142.0091. ~~[SURVEYOR]~~ TRAINING.

3 SECTION _____. Section 142.0091, Health and Safety Code, is
4 amended by amending Subsection (b) and adding Subsection (c) to
5 read as follows:

6 (b) In developing and updating the training required by
7 Subsection (a) [~~this section~~], the department shall consult with
8 and include providers of home health, hospice, and personal
9 assistance services, recipients of those services and their
10 family members, and representatives of appropriate advocacy
11 organizations.

12 (c) The department at least semiannually shall provide
13 joint training for home and community support services agencies
14 and surveyors on subjects that address the 10 most common
15 violations of federal or state law by home and community support
16 services agencies. The department may charge a home and
17 community support services agency a fee, not to exceed \$50 per
18 person, for the training.

19 SECTION _____. Subchapter A, Chapter 142, Health and Safety
20 Code, is amended by adding Section 142.0104 to read as follows:

21 Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If
22 certain application information as specified by executive
23 commissioner rule changes after the applicant submits an
24 application to the department for a license under this chapter
25 or after the department issues the license, the license holder
26 shall report the change to the department and pay a fee not to
27 exceed \$50 not later than the time specified by executive
28 commissioner rule.

29 (b) The executive commissioner by rule shall:

30 (1) specify the information provided in an
31 application that a license holder shall report to the department

1 if the information changes;

2 (2) prescribe the time for reporting a change in the
3 application information required by Subdivision (1);

4 (3) establish which changes required to be reported
5 under Subdivision (1) will require department evaluation and
6 approval; and

7 (4) set the amount of a late fee to be assessed
8 against a license holder who fails to report a change in the
9 application information within the time prescribed under
10 Subdivision (2).

11 SECTION ____ . Subsection (a), Section 142.011, Health and
12 Safety Code, is amended to read as follows:

13 (a) The department may deny a license application or
14 suspend or revoke the license of a person who:

15 (1) fails to comply with the rules or standards for
16 licensing required by this chapter; or

17 (2) engages in conduct that violates Section 102.001,
18 Occupations Code [161.091].

19 SECTION ____ . Subsections (a), (b), and (c), Section
20 142.012, Health and Safety Code, are amended to read as follows:

21 (a) The executive commissioner [~~board, with the~~
22 ~~recommendations of the council,~~] shall adopt rules necessary to
23 implement this chapter. The executive commissioner may adopt
24 rules governing the duties and responsibilities of home and
25 community support services agency administrators, including
26 rules regarding:

27 (1) an administrator's management of daily operations
28 of the home and community support services agency;

29 (2) an administrator's responsibility for supervising
30 the provision of quality care to agency clients;

31 (3) an administrator's implementation of agency

1 policy and procedures; and

2 (4) an administrator's responsibility to be available
3 to the agency at all times in person or by telephone.

4 (b) The executive commissioner [~~board~~] by rule shall set
5 minimum standards for home and community support services
6 agencies licensed under this chapter that relate to:

7 (1) qualifications for professional and
8 nonprofessional personnel, including volunteers;

9 (2) supervision of professional and nonprofessional
10 personnel, including volunteers;

11 (3) the provision and coordination of treatment and
12 services, including support and bereavement services, as
13 appropriate;

14 (4) the management, ownership, and organizational
15 structure, including lines of authority and delegation of
16 responsibility and, as appropriate, the composition of an
17 interdisciplinary team;

18 (5) clinical and business records;

19 (6) financial ability to carry out the functions as
20 proposed;

21 (7) safety, fire prevention, and sanitary standards
22 for residential units and inpatient units; and

23 (8) any other aspects of home health, hospice, or
24 personal assistance services as necessary to protect the public.

25 (c) The initial minimum standards adopted [~~by the board~~]
26 under Subsection (b) for hospice services must be at least as
27 stringent as the conditions of participation for a Medicare
28 certified provider of hospice services in effect on April 30,
29 1993, under Title XVIII, Social Security Act (42 U.S.C. Section
30 1395 et seq.).

31 SECTION _____. As soon as practicable after the effective

1 date of this Act but not later than July 1, 2012, the executive
2 commissioner of the Health and Human Services Commission shall
3 adopt the rules necessary to implement the changes in law made
4 by this article to Chapter 142, Health and Safety Code.

5 SECTION _____. Subsection (e), Section 242.032, Health and
6 Safety Code, is amended to read as follows:

7 (e) In making the evaluation required by Subsection (d),
8 the department shall require the applicant or license holder to
9 file a sworn affidavit of a satisfactory compliance history and
10 any other information required by the department to substantiate
11 a satisfactory compliance history relating to each state or
12 other jurisdiction in which the applicant or license holder and
13 any other person described by Subsection (d) operated an
14 institution at any time before [~~during the five year period~~
15 ~~preceding~~] the date on which the application is made. The
16 department by rule shall determine what constitutes a
17 satisfactory compliance history. The department may consider
18 and evaluate the compliance history of the applicant and any
19 other person described by Subsection (d) for any period during
20 which the applicant or other person operated an institution in
21 this state or in another state or jurisdiction. The department
22 may also require the applicant or license holder to file
23 information relating to the history of the financial condition
24 of the applicant or license holder and any other person
25 described by Subsection (d) with respect to an institution
26 operated in another state or jurisdiction at any time before
27 [~~during the five year period preceding~~] the date on which the
28 application is made.

29 SECTION _____. Subsection (b), Section 242.0615, Health and
30 Safety Code, is amended to read as follows:

31 (b) Exclusion of a person under this section must extend

1 for a period of at least two years and~~[, but]~~ may extend
2 throughout the person's lifetime or existence [~~not exceed a~~
3 ~~period of 10 years~~].

4 SECTION _____. Subsection (e), Section 242.032, Health and
5 Safety Code, as amended by this article, applies only to an
6 application, including a renewal application, filed on or after
7 the effective date of this Act. An application filed before the
8 effective date of this Act is governed by the law in effect when
9 the application was filed, and the former law is continued in
10 effect for that purpose.

11 SECTION _____. Subsection (b), Section 242.0615, Health and
12 Safety Code, as amended by this article, applies only to conduct
13 that occurs on or after the effective date of this Act. Conduct
14 that occurs before the effective date of this Act is governed by
15 the law in effect at the time the conduct occurred, and the
16 former law is continued in effect for that purpose.

17 SECTION _____. Section 250.001, Health and Safety Code, is
18 amended by amending Subdivision (1) and adding Subdivisions (3-
19 a) and (3-b) to read as follows:

20 (1) "Nurse aide registry" means a list maintained by
21 the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services
22 of nurse aides under the Omnibus Budget Reconciliation Act of
23 1987 (Pub. L. No. 100-203).

24 (3-a) "Financial management services agency" means an
25 entity that contracts with the Department of Aging and
26 Disability Services to serve as a fiscal and employer agent for
27 an individual employer in the consumer-directed service option
28 described by Section 531.051, Government Code.

29 (3-b) "Individual employer" means an individual or
30 legally authorized representative who participates in the
31 consumer-directed service option described by Section 531.051,

1 Government Code, and is responsible for hiring service providers
2 to deliver program services.

3 SECTION _____. Section 250.002, Health and Safety Code, is
4 amended by amending Subsection (a) and adding Subsection (c-1)
5 to read as follows:

6 (a) A facility, a regulatory agency, a financial
7 management services agency on behalf of an individual employer,
8 or a private agency on behalf of a facility is entitled to
9 obtain from the Department of Public Safety of the State of
10 Texas criminal history record information maintained by the
11 Department of Public Safety that relates to a person who is:

12 (1) an applicant for employment at a facility other
13 than a facility licensed under Chapter 142;

14 (2) an employee of a facility other than a facility
15 licensed under Chapter 142; [~~or~~]

16 (3) an applicant for employment at or an employee of
17 a facility licensed under Chapter 142 whose employment duties
18 would or do involve direct contact with a consumer in the
19 facility; or

20 (4) an applicant for employment by or an employee of
21 an individual employer.

22 (c-1) A financial management services agency shall forward
23 criminal history record information received under this section
24 to the individual employer requesting the information.

25 SECTION _____. Section 250.003, Health and Safety Code, is
26 amended by amending Subsection (a) and adding Subsection (c-1)
27 to read as follows:

28 (a) A facility or individual employer may not employ an
29 applicant:

30 (1) if the facility or individual employer
31 determines, as a result of a criminal history check, that the

1 applicant has been convicted of an offense listed in this
2 chapter that bars employment or that a conviction is a
3 contraindication to employment with the consumers the facility
4 or individual employer serves;

5 (2) if the applicant is a nurse aide, until the
6 facility further verifies that the applicant is listed in the
7 nurse aide registry; and

8 (3) until the facility verifies that the applicant is
9 not designated in the registry maintained under this chapter or
10 in the employee misconduct registry maintained under Section
11 253.007 as having a finding entered into the registry concerning
12 abuse, neglect, or mistreatment of a consumer of a facility, or
13 misappropriation of a consumer's property.

14 (c-1) An individual employer shall immediately discharge
15 any employee whose criminal history check reveals conviction of
16 a crime that bars employment or that the individual employer
17 determines is a contraindication to employment as provided by
18 this chapter.

19 SECTION _____. Section 250.004, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

22 (a) Identifying information of an employee in a covered
23 facility or of an employee of an individual employer shall be
24 submitted electronically, on disk, or on a typewritten form to
25 the Department of Public Safety to obtain the person's criminal
26 conviction record when the person applies for employment and at
27 other times as the facility or individual employer may determine
28 appropriate. In this subsection, "identifying information"
29 includes:

30 (1) the complete name, race, and sex of the employee;

31 (2) any known identifying number of the employee,

1 including social security number, driver's license number, or
2 state identification number; and

3 (3) the employee's date of birth.

4 (b) If the Department of Public Safety reports that a
5 person has a criminal conviction of any kind, the conviction
6 shall be reviewed by the facility, the financial management
7 services agency, or the individual employer to determine if the
8 conviction may bar the person from employment in a facility or
9 by the individual employer under Section 250.006 or if the
10 conviction may be a contraindication to employment.

11 SECTION _____. Section 250.005, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD
14 CONCERNING ACCURACY OF INFORMATION. (a) If a facility,
15 financial management services agency, or individual employer
16 believes that a conviction may bar a person from employment in a
17 facility or by the individual employer under Section 250.006 or
18 may be a contraindication to employment, the facility or
19 individual employer shall notify the applicant or employee.

20 (b) The Department of Public Safety of the State of Texas
21 shall give a person notified under Subsection (a) the
22 opportunity to be heard concerning the accuracy of the criminal
23 history record information and shall notify the facility or
24 individual employer if inaccurate information is discovered.

25 SECTION _____. Subsections (a) and (b), Section 250.006,
26 Health and Safety Code, are amended to read as follows:

27 (a) A person for whom the facility or the individual
28 employer is entitled to obtain criminal history record
29 information may not be employed in a facility or by an
30 individual employer if the person has been convicted of an
31 offense listed in this subsection:

- 1 (1) an offense under Chapter 19, Penal Code (criminal
2 homicide);
- 3 (2) an offense under Chapter 20, Penal Code
4 (kidnapping and unlawful restraint);
- 5 (3) an offense under Section 21.02, Penal Code
6 (continuous sexual abuse of young child or children), or Section
7 21.11, Penal Code (indecent exposure with a child);
- 8 (4) an offense under Section 22.011, Penal Code
9 (sexual assault);
- 10 (5) an offense under Section 22.02, Penal Code
11 (aggravated assault);
- 12 (6) an offense under Section 22.04, Penal Code
13 (injury to a child, elderly individual, or disabled individual);
- 14 (7) an offense under Section 22.041, Penal Code
15 (abandoning or endangering child);
- 16 (8) an offense under Section 22.08, Penal Code
17 (aiding suicide);
- 18 (9) an offense under Section 25.031, Penal Code
19 (agreement to abduct from custody);
- 20 (10) an offense under Section 25.08, Penal Code (sale
21 or purchase of a child);
- 22 (11) an offense under Section 28.02, Penal Code
23 (arson);
- 24 (12) an offense under Section 29.02, Penal Code
25 (robbery);
- 26 (13) an offense under Section 29.03, Penal Code
27 (aggravated robbery);
- 28 (14) an offense under Section 21.08, Penal Code
29 (indecent exposure);
- 30 (15) an offense under Section 21.12, Penal Code
31 (improper relationship between educator and student);

1 (16) an offense under Section 21.15, Penal Code
2 (improper photography or visual recording);

3 (17) an offense under Section 22.05, Penal Code
4 (deadly conduct);

5 (18) an offense under Section 22.021, Penal Code
6 (aggravated sexual assault);

7 (19) an offense under Section 22.07, Penal Code
8 (terroristic threat);

9 (20) an offense under Section 33.021, Penal Code
10 (online solicitation of a minor);

11 (21) an offense under Section 34.02, Penal Code
12 (money laundering);

13 (22) an offense under Section 35A.02, Penal Code
14 (Medicaid fraud);

15 (23) an offense under Section 42.09, Penal Code
16 (cruelty to animals); or

17 (24) a conviction under the laws of another state,
18 federal law, or the Uniform Code of Military Justice for an
19 offense containing elements that are substantially similar to
20 the elements of an offense listed by this subsection.

21 (b) A person may not be employed in a position the duties
22 of which involve direct contact with a consumer in a facility or
23 may not be employed by an individual employer before the fifth
24 anniversary of the date the person is convicted of:

25 (1) an offense under Section 22.01, Penal Code
26 (assault), that is punishable as a Class A misdemeanor or as a
27 felony;

28 (2) an offense under Section 30.02, Penal Code
29 (burglary);

30 (3) an offense under Chapter 31, Penal Code (theft),
31 that is punishable as a felony;

1 (4) an offense under Section 32.45, Penal Code
2 (misapplication of fiduciary property or property of a financial
3 institution), that is punishable as a Class A misdemeanor or a
4 felony;

5 (5) an offense under Section 32.46, Penal Code
6 (securing execution of a document by deception), that is
7 punishable as a Class A misdemeanor or a felony;

8 (6) an offense under Section 37.12, Penal Code (false
9 identification as peace officer); or

10 (7) an offense under Section 42.01(a)(7), (8), or
11 (9), Penal Code (disorderly conduct).

12 SECTION _____. Subsections (a) and (b), Section 250.007,
13 Health and Safety Code, are amended to read as follows:

14 (a) The criminal history records are for the exclusive use
15 of the regulatory agency, the requesting facility, the private
16 agency on behalf of the requesting facility, the financial
17 management services agency on behalf of the individual employer,
18 the individual employer, and the applicant or employee who is
19 the subject of the records.

20 (b) All criminal records and reports and the information
21 they contain that are received by the regulatory agency or
22 private agency for the purpose of being forwarded to the
23 requesting facility or received by the financial management
24 services agency under this chapter are privileged information.

25 SECTION _____. Subsection (a), Section 250.009, Health and
26 Safety Code, is amended to read as follows:

27 (a) A facility, ~~[or]~~ an officer or employee of a facility,
28 a financial management services agency, or an individual
29 employer is not civilly liable for failure to comply with this
30 chapter if the facility, financial management services agency,
31 or individual employer makes a good faith effort to comply.

1 SECTION ____ . Section 411.1143, Government Code, is amended
2 by amending Subsection (a) and adding Subsection (a-1) to read
3 as follows:

4 (a) The Health and Human Services Commission, ~~[or]~~ an
5 agency operating part of the medical assistance program under
6 Chapter 32, Human Resources Code, or the office of inspector
7 general established under Chapter 531, Government Code, is
8 entitled to obtain from the department the criminal history
9 record information maintained by the department that relates to
10 a provider under the medical assistance program or a person
11 applying to enroll as a provider under the medical assistance
12 program.

13 (a-1) Criminal history record information an agency or the
14 office of inspector general is authorized to obtain under
15 Subsection (a) includes criminal history record information
16 relating to:

17 (1) a person with a direct or indirect ownership or
18 control interest, as defined by 42 C.F.R. Section 455.101, in a
19 provider of five percent or more; and

20 (2) a person whose information is required to be
21 disclosed in accordance with 42 C.F.R. Part 1001.

22 SECTION ____ . Subdivision (2), Subsection (g), Section
23 531.102, Government Code, is amended to read as follows:

24 (2) In addition to other instances authorized under
25 state or federal law, the office shall impose without prior
26 notice a hold on payment of claims for reimbursement submitted
27 by a provider to compel production of records, ~~[or]~~ when
28 requested by the state's Medicaid fraud control unit, or on
29 receipt of reliable evidence that the circumstances giving rise
30 to the hold on payment involve fraud or wilful misrepresentation
31 under the state Medicaid program in accordance with 42 C.F.R.

1 Section 455.23, as applicable. The office must notify the
2 provider of the hold on payment in accordance with 42 C.F.R.
3 Section 455.23(b) [~~not later than the fifth working day after~~
4 ~~the date the payment hold is imposed~~].

5 SECTION _____. The heading to Section 531.1031, Government
6 Code, is amended to read as follows:

7 Sec. 531.1031. DUTY TO EXCHANGE INFORMATION [~~REGARDING~~
8 ~~ALLEGATIONS OF MEDICAID FRAUD OR ABUSE~~].

9 SECTION _____. Subdivision (2), Subsection (a), Section
10 531.1031, Government Code, is amended to read as follows:

11 (2) "Participating agency" means:

12 (A) the Medicaid fraud enforcement divisions of
13 the office of the attorney general; [~~and~~]

14 (B) each board or agency with authority to
15 license, register, regulate, or certify a health care
16 professional or managed care organization that may participate
17 in the state Medicaid program; and

18 (C) the commission's office of inspector
19 general.

20 SECTION _____. Section 531.1031, Government Code, is amended
21 by amending Subsections (b) and (c) and adding Subsection (c-1)
22 to read as follows:

23 (b) This section applies only to criminal history record
24 information held by a participating agency that relates to a
25 health care professional and information held by a participating
26 agency that relates to a health care professional or managed
27 care organization that is the subject of an investigation by a
28 participating agency for alleged fraud or abuse under the state
29 Medicaid program.

30 (c) A participating agency may submit to another
31 participating agency a written request for information described

1 by Subsection (b) regarding a health care professional or
2 managed care organization [~~that is the subject of an~~
3 ~~investigation by the participating agency to any other~~
4 ~~participating agency~~]. The participating agency that receives
5 the request shall provide the requesting agency with the
6 information regarding the health care professional or managed
7 care organization unless:

8 (1) the release of the information would jeopardize
9 an ongoing investigation or prosecution by the participating
10 agency with possession of the information; or

11 (2) the release of the information is prohibited by
12 other law.

13 (c-1) Notwithstanding any other law, a participating
14 agency may enter into a memorandum of understanding or agreement
15 with another participating agency for the purpose of exchanging
16 criminal history record information relating to a health care
17 professional that both participating agencies are authorized to
18 access under Chapter 411. Confidential criminal history record
19 information in the possession of a participating agency that is
20 provided to another participating agency in accordance with this
21 subsection remains confidential while in the possession of the
22 participating agency that receives the information.

23 SECTION ____ . Section 32.0322, Human Resources Code, is
24 amended to read as follows:

25 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
26 ENROLLMENT OF PROVIDERS. (a) The department or the office of
27 inspector general established under Chapter 531, Government
28 Code, may obtain from any law enforcement or criminal justice
29 agency the criminal history record information that relates to a
30 provider under the medical assistance program or a person
31 applying to enroll as a provider under the medical assistance

1 program.

2 (a-1) The criminal history record information the
3 department and the office of inspector general are authorized to
4 obtain under Subsection (a) includes criminal history record
5 information relating to:

6 (1) a person with a direct or indirect ownership or
7 control interest, as defined by 42 C.F.R. Section 455.101, in a
8 provider of five percent or more; and

9 (2) a person whose information is required to be
10 disclosed in accordance with 42 C.F.R. Part 1001.

11 (b) The executive commissioner of the Health and Human
12 Services Commission [~~department~~] by rule shall establish
13 criteria for the department or the commission's office of
14 inspector general to suspend a provider's billing privileges
15 under the medical assistance program, revoke [~~revoking~~] a
16 provider's enrollment under the program, or deny [~~denying~~] a
17 person's application to enroll as a provider under the [~~medical~~
18 assistance] program based on:

19 (1) the results of a criminal history check;

20 (2) any exclusion or debarment of the provider from
21 participation in a state or federally funded health care
22 program;

23 (3) the provider's failure to bill for medical
24 assistance or refer clients for medical assistance within a 12-
25 month period; or

26 (4) any of the provider screening or enrollment
27 provisions contained in 42 C.F.R. Part 455, Subpart E.

28 (c) As a condition of eligibility to participate as a
29 provider in the medical assistance program, the executive
30 commissioner of the Health and Human Services Commission by rule
31 shall:

1 (1) require a provider or a person applying to enroll
2 as a provider to disclose:

3 (A) all persons described by Subsection (a-
4 1)(1);

5 (B) any managing employees of the provider; and

6 (C) an agent or subcontractor of the provider
7 if:

8 (i) the provider or a person described by
9 Subsection (a-1)(1) has a direct or indirect ownership interest
10 of at least five percent in the agent or subcontractor; or

11 (ii) the provider engages in a business
12 transaction with the agent or subcontractor that meets the
13 criteria specified by 42 C.F.R. Section 455.105; and

14 (2) require disclosure by persons applying for
15 enrollment as providers and provide for screening of applicants
16 for enrollment in conformity and compliance with the
17 requirements of 42 C.F.R. Part 455, Subparts B and E.

18 (d) In adopting rules under this section, the executive
19 commissioner of the Health and Human Services Commission shall
20 adopt rules as authorized by and in conformity with 42 C.F.R.
21 Section 455.470 for the imposition of a temporary moratorium on
22 enrollment of new providers, or to impose numerical caps or
23 other limits on the enrollment of providers, that the department
24 or the commission's office of inspector general, in consultation
25 with the department, determines have a significant potential for
26 fraud, waste, or abuse.

27 SECTION ____ . Section 32.039, Human Resources Code, is
28 amended by amending Subsection (b) and adding Subsection (b-1)
29 to read as follows:

30 (b) A person commits a violation if the person:

31 (1) presents or causes to be presented to the

1 department a claim that contains a statement or representation
2 the person knows or should know to be false;

3 (1-a) engages in conduct that violates Section
4 102.001, Occupations Code;

5 (1-b) solicits or receives, directly or indirectly,
6 overtly or covertly any remuneration, including any kickback,
7 bribe, or rebate, in cash or in kind for referring an individual
8 to a person for the furnishing of, or for arranging the
9 furnishing of, any item or service for which payment may be
10 made, in whole or in part, under the medical assistance program,
11 provided that this subdivision does not prohibit the referral of
12 a patient to another practitioner within a multispecialty group
13 or university medical services research and development plan
14 (practice plan) for medically necessary services;

15 (1-c) solicits or receives, directly or indirectly,
16 overtly or covertly any remuneration, including any kickback,
17 bribe, or rebate, in cash or in kind for purchasing, leasing, or
18 ordering, or arranging for or recommending the purchasing,
19 leasing, or ordering of, any good, facility, service, or item
20 for which payment may be made, in whole or in part, under the
21 medical assistance program;

22 (1-d) offers or pays, directly or indirectly, overtly
23 or covertly any remuneration, including any kickback, bribe, or
24 rebate, in cash or in kind to induce a person to refer an
25 individual to another person for the furnishing of, or for
26 arranging the furnishing of, any item or service for which
27 payment may be made, in whole or in part, under the medical
28 assistance program, provided that this subdivision does not
29 prohibit the referral of a patient to another practitioner
30 within a multispecialty group or university medical services
31 research and development plan (practice plan) for medically

1 necessary services;

2 (1-e) offers or pays, directly or indirectly, overtly
3 or covertly any remuneration, including any kickback, bribe, or
4 rebate, in cash or in kind to induce a person to purchase,
5 lease, or order, or arrange for or recommend the purchase,
6 lease, or order of, any good, facility, service, or item for
7 which payment may be made, in whole or in part, under the
8 medical assistance program;

9 (1-f) provides, offers, or receives an inducement in
10 a manner or for a purpose not otherwise prohibited by this
11 section or Section 102.001, Occupations Code, to or from a
12 person, including a recipient, provider, employee or agent of a
13 provider, third-party vendor, or public servant, for the purpose
14 of influencing or being influenced in a decision regarding:

15 (A) selection of a provider or receipt of a good
16 or service under the medical assistance program;

17 (B) the use of goods or services provided under
18 the medical assistance program; or

19 (C) the inclusion or exclusion of goods or
20 services available under the medical assistance program; [~~or~~]

21 (2) is a managed care organization that contracts
22 with the department to provide or arrange to provide health care
23 benefits or services to individuals eligible for medical
24 assistance and:

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 with the department;

28 (B) fails to provide to the department
29 information required to be provided by law, department rule, or
30 contractual provision;

31 (C) engages in a fraudulent activity in

1 connection with the enrollment in the organization's managed
2 care plan of an individual eligible for medical assistance or in
3 connection with marketing the organization's services to an
4 individual eligible for medical assistance; or

5 (D) engages in actions that indicate a pattern
6 of:

7 (i) wrongful denial of payment for a health
8 care benefit or service that the organization is required to
9 provide under the contract with the department; or

10 (ii) wrongful delay of at least 45 days or
11 a longer period specified in the contract with the department,
12 not to exceed 60 days, in making payment for a health care
13 benefit or service that the organization is required to provide
14 under the contract with the department; or

15 (3) fails to maintain documentation to support a
16 claim for payment in accordance with the requirements specified
17 by department rule or medical assistance program policy or
18 engages in any other conduct that a department rule has defined
19 as a violation of the medical assistance program.

20 (b-1) A person who commits a violation described by
21 Subsection (b)(3) is liable to the department for either the
22 amount paid in response to the claim for payment or the payment
23 of an administrative penalty in an amount not to exceed \$500 for
24 each violation, as determined by the department.

25 SECTION ____ . Subsection (a), Section 103.009, Human
26 Resources Code, is amended to read as follows:

27 (a) The department may deny, suspend, or revoke the
28 license of an applicant or holder of a license who fails to
29 comply with the rules or standards for licensing required by
30 this chapter or has committed an act described by Sections
31 103.012(a)(2)-(7).

1 SECTION ____ Chapter 103, Human Resources Code, is amended
2 by adding Sections 103.012 through 103.016 to read as follows:

3 Sec. 103.012. ADMINISTRATIVE PENALTY. (a) The department
4 may assess an administrative penalty against a person who:

5 (1) violates this chapter, a rule, standard, or order
6 adopted under this chapter, or a term of a license issued under
7 this chapter;

8 (2) makes a false statement of a material fact that
9 the person knows or should know is false:

10 (A) on an application for issuance or renewal of
11 a license or in an attachment to the application; or

12 (B) with respect to a matter under investigation
13 by the department;

14 (3) refuses to allow a representative of the
15 department to inspect:

16 (A) a book, record, or file required to be
17 maintained by an adult day-care facility; or

18 (B) any portion of the premises of an adult day-
19 care facility;

20 (4) wilfully interferes with the work of a
21 representative of the department or the enforcement of this
22 chapter;

23 (5) wilfully interferes with a representative of the
24 department preserving evidence of a violation of this chapter, a
25 rule, standard, or order adopted under this chapter, or a term
26 of a license issued under this chapter;

27 (6) fails to pay a penalty assessed under this
28 chapter not later than the 30th day after the date the
29 assessment of the penalty becomes final; or

30 (7) fails to notify the department of a change of
31 ownership before the effective date of the change of ownership.

1 (b) Except as provided by Section 103.013(c), the penalty
2 may not exceed \$500 for each violation.

3 (c) Each day of a continuing violation constitutes a
4 separate violation.

5 (d) The department shall establish gradations of penalties
6 in accordance with the relative seriousness of the violation.

7 (e) In determining the amount of a penalty, the department
8 shall consider any matter that justice may require, including:

9 (1) the gradations of penalties established under
10 Subsection (d);

11 (2) the seriousness of the violation, including the
12 nature, circumstances, extent, and gravity of the prohibited act
13 and the hazard or potential hazard created by the act to the
14 health or safety of the public;

15 (3) the history of previous violations;

16 (4) the deterrence of future violations; and

17 (5) the efforts to correct the violation.

18 (f) A penalty assessed under Subsection (a)(6) is in
19 addition to the penalty previously assessed and not timely paid.

20 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF
21 ADMINISTRATIVE PENALTY. (a) The department may not collect an
22 administrative penalty from an adult day-care facility under
23 Section 103.012 if, not later than the 45th day after the date
24 the facility receives notice under Section 103.014(c), the
25 facility corrects the violation.

26 (b) Subsection (a) does not apply to:

27 (1) a violation that the department determines:

28 (A) results in serious harm to or death of a
29 person attending the facility;

30 (B) constitutes a serious threat to the health
31 and safety of a person attending the facility; or

1 (C) substantially limits the facility's capacity
2 to provide care;

3 (2) a violation described by Sections 103.012(a)(2)-
4 (7); or

5 (3) a violation of Section 103.011.

6 (c) An adult day-care facility that corrects a violation
7 must maintain the correction. If the facility fails to maintain
8 the correction until at least the first anniversary after the
9 date the correction was made, the department may assess and
10 collect an administrative penalty for the subsequent violation.
11 An administrative penalty assessed under this subsection is
12 equal to three times the amount of the original penalty assessed
13 but not collected. The department is not required to provide
14 the facility with an opportunity under this section to correct
15 the subsequent violation.

16 Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY;
17 NOTICE. (a) The department shall issue a preliminary report
18 stating the facts on which the department concludes that a
19 violation of this chapter, a rule, standard, or order adopted
20 under this chapter, or a term of a license issued under this
21 chapter has occurred if the department has:

22 (1) examined the possible violation and facts
23 surrounding the possible violation; and

24 (2) concluded that a violation has occurred.

25 (b) The report may recommend a penalty under Section
26 103.012 and the amount of the penalty.

27 (c) The department shall give written notice of the report
28 to the person charged with the violation not later than the 10th
29 day after the date on which the report is issued. The notice
30 must include:

31 (1) a brief summary of the charges;

1 (2) a statement of the amount of penalty recommended;

2 (3) a statement of whether the violation is subject
3 to correction under Section 103.013 and, if the violation is
4 subject to correction under that section, a statement of:

5 (A) the date on which the adult day-care
6 facility must file a plan of correction with the department that
7 the department shall review and may approve, if satisfactory;
8 and

9 (B) the date on which the plan of correction
10 must be completed to avoid assessment of the penalty; and

11 (4) a statement that the person charged has a right
12 to a hearing on the occurrence of the violation, the amount of
13 the penalty, or both.

14 (d) Not later than the 20th day after the date on which
15 the notice under Subsection (c) is received, the person charged
16 may:

17 (1) give to the department written notice that the
18 person agrees with the department's report and consents to the
19 recommended penalty; or

20 (2) make a written request for a hearing.

21 (e) If the violation is subject to correction under
22 Section 103.013, the adult day-care facility shall submit a plan
23 of correction to the department for approval not later than the
24 10th day after the date on which the notice under Subsection (c)
25 is received.

26 (f) If the violation is subject to correction under
27 Section 103.013 and the person reports to the department that
28 the violation has been corrected, the department shall inspect
29 the correction or take any other step necessary to confirm the
30 correction and shall notify the person that:

31 (1) the correction is satisfactory and a penalty will

1 not be assessed; or

2 (2) the correction is not satisfactory and a penalty
3 is recommended.

4 (g) Not later than the 20th day after the date on which a
5 notice under Subsection (f)(2) is received, the person charged
6 with the violation may:

7 (1) give to the department written notice that the
8 person agrees with the department's report and consents to the
9 recommended penalty; or

10 (2) make a written request for a hearing.

11 (h) If the person charged with the violation consents to
12 the penalty recommended by the department or does not timely
13 respond to a notice sent under Subsection (c) or (f)(2), the
14 department's commissioner or the commissioner's designee shall
15 assess the penalty recommended by the department.

16 (i) If the department's commissioner or the commissioner's
17 designee assesses the recommended penalty, the department shall
18 give written notice of the decision to the person charged with
19 the violation and the person shall pay the penalty.

20 Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An
21 administrative law judge shall order a hearing and give notice
22 of the hearing if a person assessed a penalty under Section
23 103.013(c) requests a hearing.

24 (b) The hearing shall be held before an administrative law
25 judge.

26 (c) The administrative law judge shall make findings of
27 fact and conclusions of law regarding the occurrence of a
28 violation of this chapter, a rule or order adopted under this
29 chapter, or a term of a license issued under this chapter.

30 (d) Based on the findings of fact and conclusions of law,
31 and the recommendation of the administrative law judge, the

1 department's commissioner or the commissioner's designee by
2 order shall find:

3 (1) a violation has occurred and assess an
4 administrative penalty; or

5 (2) a violation has not occurred.

6 (e) Proceedings under this section are subject to Chapter
7 2001, Government Code.

8 Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE

9 PENALTY; INTEREST; REFUND. (a) The department's commissioner
10 or the commissioner's designee shall give notice of the findings
11 made under Section 103.015(d) to the person charged with a
12 violation. If the commissioner or the commissioner's designee
13 finds that a violation has occurred, the commissioner or the
14 commissioner's designee shall give to the person charged written
15 notice of:

16 (1) the findings;

17 (2) the amount of the administrative penalty;

18 (3) the rate of interest payable with respect to the
19 penalty and the date on which interest begins to accrue; and

20 (4) the person's right to judicial review of the
21 order of the commissioner or the commissioner's designee.

22 (b) Not later than the 30th day after the date on which
23 the order of the department's commissioner or the commissioner's
24 designee is final, the person assessed the penalty shall:

25 (1) pay the full amount of the penalty; or

26 (2) file a petition for judicial review contesting
27 the occurrence of the violation, the amount of the penalty, or
28 both the occurrence of the violation and the amount of the
29 penalty.

30 (c) Notwithstanding Subsection (b), the department may
31 permit the person to pay a penalty in installments.

1 (d) If the person does not pay the penalty within the
2 period provided by Subsection (b) or in accordance with
3 Subsection (c), if applicable:

4 (1) the penalty is subject to interest; and

5 (2) the department may refer the matter to the
6 attorney general for collection of the penalty and interest.

7 (e) Interest under Subsection (d)(1) accrues:

8 (1) at a rate equal to the rate charged on loans to
9 depository institutions by the New York Federal Reserve Bank;
10 and

11 (2) for the period beginning on the day after the
12 date on which the penalty becomes due and ending on the date the
13 penalty is paid.

14 (f) If the amount of the penalty is reduced or the
15 assessment of a penalty is not upheld on judicial review, the
16 department's commissioner or the commissioner's designee shall:

17 (1) remit to the person charged the appropriate
18 amount of any penalty payment plus accrued interest; or

19 (2) execute a release of the supersedeas bond if one
20 has been posted.

21 (g) Accrued interest on the amount remitted by the
22 department's commissioner or the commissioner's designee under
23 Subsection (f)(1) shall be paid:

24 (1) at a rate equal to the rate charged on loans to
25 depository institutions by the New York Federal Reserve Bank;
26 and

27 (2) for the period beginning on the date the penalty
28 is paid and ending on the date the penalty is remitted to the
29 person charged with the violation.

30 SECTION ____ . Section 22.039(c), Human Resources Code, is
31 amended to read as follows:

1 (c) The department shall semiannually provide training for
2 surveyors and providers on subjects that address [~~at least one~~
3 ~~of~~] the 10 most common violations by long-term care facilities
4 of [~~under~~] federal or state law. The department may charge a fee
5 not to exceed \$50 per person for the training.

6 SECTION _____. As soon as practicable after the effective
7 date of this Act but not later than July 1, 2012, the executive
8 commissioner of the Health and Human Services Commission shall
9 adopt rules necessary to implement Section 22.039, Human
10 Resources Code, as amended by this article.

11 SECTION _____. If before implementing any provision of this
12 Act a state agency determines that a waiver or authorization
13 from a federal agency is necessary for implementation of that
14 provision, the agency affected by the provision shall request
15 the waiver or authorization and may delay implementing that
16 provision until the waiver or authorization is granted.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: HB1720 by Davis, John (Relating to improving health care provider accountability and efficiency under the child health plan and Medicaid programs.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1720, As Passed 2nd House: a positive impact of \$506,658 through the biennium ending August 31, 2013.

This positive impact only reflects Senate Floor Amendment 3. There would be an additional net positive impact from other provisions in the bill, but the amount cannot be determined at this time.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$326,170
2013	\$180,488
2014	\$180,488
2015	\$180,488
2016	\$180,488

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>Federal Funds</i> 555	Change in Number of State Employees from FY 2011
2012	(\$142,378)	\$468,548	(\$40,765)	2.0
2013	(\$141,010)	\$321,498	(\$40,309)	2.0
2014	(\$141,010)	\$321,498	(\$40,309)	2.0
2015	(\$141,010)	\$321,498	(\$40,309)	2.0
2016	(\$141,010)	\$321,498	(\$40,309)	2.0

Fiscal Analysis

SECTION 1 would require, in certain circumstances, inclusion of the names and national provider identification numbers of a supervised and supervising provider on Medicaid or Children's Health Insurance Program (CHIP) claims submitted based on a referral or order.

SECTION 2 (as amended by Senate Floor Amendment (SFA) 1) would require a managed care organization (MCO) or contracted entity to notify the Health and Human Services Commission (HHSC) Office of Inspector General (OIG) and the Office of the Attorney General and to begin

payment recovery efforts if fraud or abuse in Medicaid or CHIP is discovered. If the amount sought to be recovered exceeded \$100,000, payment recovery efforts would be prohibited in certain specified circumstances. MCOs would be permitted to retain any money recovered and would be required to submit quarterly reports to the OIG detailing amounts recovered. HHSC would be required to report annually to the legislature relating to the amount of money recovered as a result of these efforts. To the extent required under Section 1902(a)(42) of the Social Security Act, HHSC would be required to establish a program to contract with recovery audit contractors to identify Medicaid under- or over-payments and recover the overpayments. SECTION 6 of the bill would apply these provisions only to investigations that begin on or after the bill's effective date (September 1, 2011).

SECTIONs 3 and 4 would prohibit certain persons from participating as a provider in CHIP or Medicaid for a reasonable period.

SECTION 5 (as amended by SFA 2) would prohibit Medicaid providers from ordering or authorizing home health services if an in-person evaluation had not been conducted within the prior 12 months. Certain Medicaid providers ordering or authorizing the provision of durable medical equipment would be required to certify an in-person evaluation had been conducted within the prior 12 months.

SFA 3 would amend Chapters 142, 242, and 250 of Health and Safety Code, related to home and community support services training, licensing of convalescent and nursing homes, and criminal history checks; Chapters 411 and 531 of Government Code, regarding criminal background checks and Medicaid fraud; and Chapters 32, 103, and 22 of Human Resources Code, regarding Medicaid fraud, adult day-care facilities, and the general functions of the Department of Human Services. The bill affects verification of employability, Medicaid fraud reporting, and exchange of information with the OIG.

Methodology

SECTION 1 would require modifications to the claims payment system; any costs are assumed not to be significant.

SECTION 2 (as amended by SFA 1): According to HHSC, the requirements of this section could have a significant positive fiscal impact by increasing collections of overpayments and reducing fraud or abuse. Any collections by MCOs would also reduce their net medical expenditures, which could result in reductions to capitation rates. The amount of any increased collections cannot be estimated.

SECTIONs 3 and 4 are assumed to have no significant fiscal impact.

SECTION 5 (as amended by SFA 2): Similar provisions are already included in the Patient Protection and Affordable Care Act (PPACA). It is assumed there would be no fiscal impact from these provisions because HHSC will already be required to implement PPACA.

SFA 3: The Department of Aging and Disability Services (DADS) indicated it would provide training at least semiannually for Home and Community Support Services Agencies (HCSSAs) and surveyors regarding common violations and charge up to \$50 for training. The bill also authorizes DADS to charge HCSSAs an administrative fee not to exceed \$50 for certain changes made after DADS issues a license. The DADS estimate included two (2) full-time equivalents and travel cost. DADS estimated a fiscal year 2012 cost of \$183,143 in All Funds (\$142,378 General Revenue) and fiscal year 2013-2016 costs of \$181,319 in All Funds (\$141,010 General Revenue). DADS included estimated revenues for the trainings in fiscal year 2012 at \$468,548 and for fiscal years 2013-2016 at \$321,498.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 529 Health and Human Services Commission, 539 Aging and Disability Services, Department of

LBB Staff: JOB, CL, LR, ML, MB, NB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 17, 2011

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

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

IN RE: HB1720 by Davis, John (Relating to improving health care provider accountability and efficiency under the child health plan and Medicaid programs.), **As Engrossed**

The possible net savings of the bill cannot be determined at this time.

SECTION 1 of the bill would require, in certain circumstances, inclusion of the names and national provider identification numbers of a supervised and supervising provider on Medicaid or Children's Health Insurance Program (CHIP) claim submitted based on a referral or order. This would require modifications to the claims payment system; any costs are assumed not to be significant.

SECTION 2 of the bill would require a managed care organization (MCO) or a contracted entity to notify the Health and Human Services Commission (HHSC) Office of Inspector General (OIG) and begin payment recovery efforts if fraud or abuse in Medicaid or CHIP is discovered. If the amount sought to be recovered exceeded \$100,000, the MCO or contracted entity would be prohibited from engaging in payment recovery efforts in certain specified circumstances. MCOs would be permitted to retain any money recovered and would be required to submit quarterly reports to the OIG detailing amounts recovered. The commission would be required to submit an annual report to the legislature relating to the amount of money recovered as a result of these efforts. To the extent required under Section 1902(a)(42) of the Social Security Act, HHSC would be required to establish a program to contract with recovery audit contractors to identify Medicaid under- or over-payments and recover the overpayments. SECTION 6 of the bill would apply these provisions only to investigations that begin on or after the bill's effective date. According to HHSC, the requirements of this section could have a significant positive fiscal impact by increasing collections of overpayments and reducing fraud or abuse. Any collections by MCOs would also reduce their net medical expenditures, which could result in reductions to capitation rates. The amount of any increased collections cannot be estimated.

SECTIONs 3 and 4 of the bill would prohibit certain persons from participating as a provider in CHIP or Medicaid for a reasonable period. This section is assumed to have no significant fiscal impact.

SECTION 5 of the bill would prohibit Medicaid providers from ordering or authorizing the provision of home health services if the provider has not conducted an in-person evaluation of the recipient within the prior six-months. Certain providers ordering or authorizing the provision of durable medical equipment to a Medicaid recipient would be required to certify that the provider had conducted an in-person evaluation of the recipient within the prior six-months. Similar provisions are already included in the Patient Protection and Affordable Care Act (PPACA). It is assumed there would be no fiscal impact from these provisions because HHSC will already be required to implement PPACA.

Local Government Impact

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

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JOB, CL, LR, MB, NB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 6, 2011

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

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

IN RE: HB1720 by Davis, John (Relating to improving health care provider accountability and efficiency under the child health plan and Medicaid programs.), **As Introduced**

The fiscal implications of the bill cannot be determined at this time.
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SECTION 1 of the bill would require, in certain circumstances, the name and national provider identification number of a supervised provider to be included on any Medicaid or Children's Health Insurance Program (CHIP) claim submitted based on a referral or order. This would require modifications to the claims payment system; any costs are assumed not to be significant.

SECTION 2 of the bill would require the special investigative unit of a managed care organization (MCO) or an entity with which the MCO contracts to immediately notify the Health and Human Services Commission (HHSC) Office of Inspector General (OIG) and begin payment recovery efforts if fraud or abuse in Medicaid or CHIP is discovered. If the amount sought to be recovered exceeded \$200,000, the MCO's special investigative unit or contracted entity would be prohibited from engaging in payment recovery efforts in certain specified circumstances. MCOs would be permitted to retain any money recovered by their special investigative unit or contracted entity and would be required to submit quarterly reports to the OIG detailing amounts recovered. To the extent required under Section 1902(a)(42) of the Social Security Act, HHSC would be required to establish a program under which HHSC contracts with recovery audit contractors to identify underpayments or overpayments under Medicaid and recover the overpayments. SECTION 6 of the bill would apply the provisions of SECTION 2 only to investigations that commence on or after the effective date of the bill. According to HHSC, the requirements of this section could have a significant positive fiscal impact by increasing collections of overpayments and reducing fraud or abuse. Any collections by MCOs would also reduce their net medical expenditures, which could result in reductions to the capitation rates paid to them. The amount of any increased collections cannot be estimated.

SECTIONs 3 and 4 of the bill would prohibit a person from participating as a provider in CHIP or Medicaid for a reasonable period if they fail to repay overpayments or own, control, manage, or are otherwise affiliated with a provider who has been suspended or prohibited from participating in the programs. This section is assumed to have no significant fiscal impact.

SECTION 5 of the bill would prohibit Medicaid providers from ordering or otherwise authorizing the provision of home health services if the provider has not conducted an in-person evaluation of the recipient within the six-month period preceding the date the order or authorization was issued. Certain specified providers ordering or otherwise authorizing the provision of durable medical equipment to a Medicaid recipient would be required to certify that the provider had conducted an in-person evaluation of the recipient within the six-month period preceding the date the order or other authorization was issued. Similar provisions are already included in the Patient Protection and Affordable Care Act (PPACA). It is assumed there would be no fiscal impact from these provisions because HHSC will already be required to implement the requirements of PPACA.

Local Government Impact

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

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JOB, CL, LR, MB, NB