

## **BILL ANALYSIS**

Senate Research Center

S.B. 746  
By: Nelson; West  
Health & Human Services  
7/25/2013  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 746 makes clarifying changes to bring the Texas Medicaid Fraud Prevention Act (TMFPA) into compliance with the federal Deficit Reduction Act (DRA).

Specifically, S.B. 746:

- clarifies that it is an unlawful act to conspire to engage in conduct that constitutes a violation of TMFPA;
- clarifies that it is an unlawful act for a person to retain a Medicaid overpayment, even if the person commits no additional overt act;
- increases the potential amount of the recovery that may be awarded to a relator from seven percent to 10 percent and clarifies that the relator may retain attorney's fees;
- codifies the state's position that a relator in a case in which the state has declined to intervene is entitled to pursue the same claims that the state would have been allowed to pursue;
- clarifies that the attorney general can veto the dismissal of the claims of a relator based on the prior disclosure of the allegations or transactions in Texas hearings or reports;
- clarifies that it is unlawful to retaliate against a relator for lawful actions by the relator or for the lawful actions of others associated with the relator; and
- clarifies that a relator has three years from the date of alleged retaliation to file a lawsuit.

S.B. 746 amends current law relating to unlawful acts against and criminal offenses involving the Medicaid program.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.002, Human Resources Code, as follows:

Sec. 36.002. UNLAWFUL ACTS. Provides that a person commits an unlawful act if the person:

(1)-(8) Makes no change to these subdivisions;

(9) conspires to commit a violation of Subdivision (1) (relating to a person committing an unlawful act if the person knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized), (2) (relating to a person committing an unlawful act if the person knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized), (3) (relating to a person committing an unlawful act if the person knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit

or payment to a use other than for the benefit of the person on whose behalf it was received), (4) (relating to a person committing an unlawful act if the person knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of certain material facts), (5) (relating to a person committing an unlawful act if the person, except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program), (6) (relating to a person committing an unlawful act if the person knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or service rendered by a certain person), (7) (relating to a person committing an unlawful act if the person knowingly makes or causes to be made certain claims under the Medicaid program), (8) (relating to a person committing an unlawful act if the person makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service), (10) (relating to a person committing an unlawful act if the person is a managed care organization that contracts with the Health and Human Services Commission (HHSC) or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly fails to provide to an individual certain health care benefits or services, fails to provide certain information to HHSC or appropriate state agency, or engages in certain fraudulent activity), (11) (relating to a person committing an unlawful act if the person knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section (Unlawful Acts)), (12), or (13) (knowingly engages in conduct that constitutes a certain violation).

Deletes existing text of Subdivision (9) providing that a person commits an unlawful act if the person knowingly enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

(10)-(11) Makes no change to these subdivisions;

(12) knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under the Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to this state under the Medicaid program, rather than knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program; or

(13) Makes no change to this subdivision.

SECTION 2. Amends Section 36.104, Human Resources Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes a person proceeding under this subsection to recover for an unlawful act for a period of up to six years before the date the lawsuit was filed, or for a period beginning when the unlawful act occurred until up to three years from the date the state knows or reasonably should have known facts material to the unlawful act, whichever of these two periods is longer, regardless of whether the unlawful act occurred more than six years before the date the lawsuit was filed. Provides that, notwithstanding the preceding sentence, in no event shall a person proceeding under this subsection recover for an unlawful act that occurred more than 10 years before the date the lawsuit was filed.

(b-1) Creates this subsection from existing text and makes no further change.

SECTION 3. Amends Sections 36.110(b) and (c), Human Resources Code, as follows:

(b) Authorizes a court, if the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a Texas or federal criminal or civil hearing, in a Texas or federal legislative or administrative report, hearing, audit, or investigation, or from the news media, to award the amount the court considers appropriate but not more than 10 percent, rather than seven percent, of the proceeds of the action.

(c) Requires that a court's determination of expenses, fees, and costs to be awarded to the plaintiff under this subsection (relating to a payment award to a private plaintiff) be made only after the defendant has been found liable in the action or the claim is settled, rather than only after the state settles an action with a defendant that the court determined, after a hearing, was fair, adequate, and reasonable in accordance with Section 36.107(c) (relating to authorizing the state to settle an action with a defendant).

SECTION 4. Amends Section 36.113(b), Human Resources Code, as follows:

(b) Requires the court to dismiss an action or claim under this subchapter (Action by Private Persons), unless opposed by the attorney general, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a Texas or federal criminal or civil hearing in which the state or an agent of the state is a party, in a Texas legislative or administrative report, or other Texas hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. Redefines "original source" in this subsection. Deletes existing text prohibiting a person from bringing an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing in which the state or an agent of the state is a party, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information.

SECTION 5. Amends Section 36.115, Human Resources Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Entitles a person, including an employee, contractor, or agent, who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of a lawful act taken by the person or associated others in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, or other efforts taken by the person to stop one or more violations of Section 36.002 to reinstatement with the same seniority status the person would have had but for the discrimination and not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(c) Requires a person to bring suit on an action under this section (Retaliation Against Person Prohibited) not later than the third anniversary of the date on which the cause of action accrues. Provides that, for purposes of this section, the cause of action accrues on the date the retaliation occurs.

SECTION 6. Repealer: Section 36.113(c) (relating to requiring the court, before dismissing an action as barred, to give the attorney general an opportunity to oppose the dismissal), Human Resources Code.

SECTION 7. Makes application of the changes in law made by this Act to Section 36.002, Human Resources Code, prospective.

SECTION 8. Makes application of the changes in law made by this Act to Sections 36.110 and 36.113, Human Resources Code, prospective.

SECTION 9. Makes application of the changes in law made by this Act to Section 36.115, Human Resources Code, prospective.

SECTION 10. Effective date: September 1, 2013.