

BILL ANALYSIS

S.B. 746
By: Nelson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert that certain revisions to provisions relating to unlawful acts against and criminal offenses involving the Medicaid program are necessary to bring those provisions into compliance with the federal Deficit Reduction Act. S.B. 746 seeks to address this issue.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 746 amends the Human Resources Code to remove a provision making it an unlawful act under the Medicaid program for a person to knowingly enter 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 and instead makes it an unlawful act for a person to conspire to engage in any conduct considered to be an unlawful act under the Medicaid program. The bill specifies that a person commits an unlawful act under the Medicaid program if the person 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 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 program.

S.B. 746 authorizes a person proceeding without the state's participation in an action relating to Medicaid fraud 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. The bill prohibits such a person from recovering for an unlawful act that occurred more than 10 years before the date the lawsuit was filed.

S.B. 746 increases from seven to 10 percent of the proceeds of an action the cap on the amount a court may award if the court finds that an action relating to Medicaid fraud that is brought by a private person is based primarily on disclosures of certain specific information and clarifies that the disclosures on which such an action is based include information relating to allegations or transactions in a Texas or federal criminal or civil hearing or in a Texas or federal legislative or administrative report, hearing, audit, or investigation. The bill requires the court's determination of expenses, fees, and costs to be awarded to be made only after the defendant has been found liable in the action or the claim is settled, rather than only after the defendant has been found liable in the action or the state settles an action with a defendant that the court determined, after a hearing, was fair, adequate, and reasonable in accordance with relevant statutory provisions.

S.B. 746 removes a prohibition against a private person bringing an action relating to Medicaid

fraud that is based on the public disclosure of certain allegations or transactions unless the person bringing the action is an original source of the information and instead requires a court to dismiss such an action or claim, 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. The bill redefines "original source" for purposes of these provisions as an individual who, as an alternative to other criteria and prior to a public disclosure, has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based, rather than an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action that is based on the information.

S.B. 746 specifies that a provision entitling a person who is discriminated against in the terms and conditions of employment because of a lawful act taken by the person in furtherance of an action relating to Medicaid fraud or other efforts taken by the person to stop one or more unlawful acts under the Medicaid program to reinstatement, back pay, and other compensation is applicable to such a person discriminated against because of a lawful act taken by associated persons. The bill requires a person to bring suit on an action relating to such retaliation not later than the third anniversary of the date on which the cause of action accrues. The bill specifies that the cause of action accrues on the date the retaliation occurs.

S.B. 746 repeals Section 36.113(c), Human Resources Code.

EFFECTIVE DATE

September 1, 2013.