

By: Nelson, et al. S.B. No. 8
(Kolkhorst, Bonnen of Galveston, Zerwas, Sheffield of Coryell)

Substitute the following for S.B. No. 8:

By: Laubenberg C.S.S.B. No. 8

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the provision and delivery of certain health and human
3 services in this state, including the provision of those services
4 through the Medicaid program and the prevention of fraud, waste,
5 and abuse in that program and other programs.

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

7 SECTION 1. Subchapter A, Chapter 531, Government Code, is
8 amended by adding Section 531.0082 to read as follows:

9 Sec. 531.0082. DATA ANALYSIS UNIT. (a) The executive
10 commissioner shall establish a data analysis unit within the
11 commission to establish, employ, and oversee data analysis
12 processes designed to:

13 (1) improve contract management;

14 (2) detect data trends; and

15 (3) identify anomalies relating to service
16 utilization, providers, payment methodologies, and compliance with
17 requirements in Medicaid and child health plan program managed care
18 and fee-for-service contracts.

19 (b) The commission shall assign staff to the data analysis
20 unit who perform duties only in relation to the unit.

21 (c) The data analysis unit shall use all available data and
22 tools for data analysis when establishing, employing, and
23 overseeing data analysis processes under this section.

24 (d) Not later than the 30th day following the end of each

1 calendar quarter, the data analysis unit shall provide an update on
2 the unit's activities and findings to the governor, the lieutenant
3 governor, the speaker of the house of representatives, the chair of
4 the Senate Finance Committee, the chair of the House Appropriations
5 Committee, and the chairs of the standing committees of the senate
6 and house of representatives having jurisdiction over the Medicaid
7 program.

8 SECTION 2. Subchapter B, Chapter 531, Government Code, is
9 amended by adding Section 531.02115 to read as follows:

10 Sec. 531.02115. MARKETING ACTIVITIES BY PROVIDERS
11 PARTICIPATING IN MEDICAID OR CHILD HEALTH PLAN PROGRAM. (a) A
12 provider participating in the Medicaid or child health plan
13 program, including a provider participating in the network of a
14 managed care organization that contracts with the commission to
15 provide services under the Medicaid or child health plan program,
16 may not engage in any marketing activity, including any
17 dissemination of material or other attempt to communicate, that:

18 (1) involves unsolicited personal contact, including
19 by door-to-door solicitation, solicitation at a child-care
20 facility or other type of facility, direct mail, or telephone, with
21 a Medicaid client or a parent whose child is enrolled in the
22 Medicaid or child health plan program;

23 (2) is directed at the client or parent solely because
24 the client or the parent's child is receiving benefits under the
25 Medicaid or child health plan program; and

26 (3) is intended to influence the client's or parent's
27 choice of provider.

1 (b) In addition to the requirements of Subsection (a), a
2 provider participating in the network of a managed care
3 organization described by that subsection must comply with the
4 marketing guidelines established by the commission under Section
5 533.008.

6 (c) Nothing in this section prohibits:

7 (1) a provider participating in the Medicaid or child
8 health plan program from:

9 (A) engaging in a marketing activity, including
10 any dissemination of material or other attempt to communicate, that
11 is intended to influence the choice of provider by a Medicaid client
12 or a parent whose child is enrolled in the Medicaid or child health
13 plan program, if the marketing activity involves only the general
14 dissemination of information, including by television, radio,
15 newspaper, or billboard advertisement, and does not involve
16 unsolicited personal contact;

17 (B) as permitted under the provider's contract,
18 engaging in the dissemination of material or another attempt to
19 communicate with a Medicaid client or a parent whose child is
20 enrolled in the Medicaid or child health plan program, including
21 communication in person or by direct mail or telephone, for the
22 purpose of:

23 (i) providing an appointment reminder;
24 (ii) distributing promotional health
25 materials;

26 (iii) providing information about the types
27 of services offered by the provider; or

1 (iv) coordinating patient care; or

2 (C) engaging in a marketing activity that has
3 been submitted for review and obtained a notice of prior
4 authorization from the commission under Subsection (d); or

5 (2) a provider participating in the Medicaid STAR +
6 PLUS program from, as permitted under the provider's contract,
7 engaging in a marketing activity, including any dissemination of
8 material or other attempt to communicate, that is intended to
9 educate a Medicaid client about available long-term care services
10 and supports.

11 (d) The commission shall establish a process by which
12 providers may submit proposed marketing activities for review and
13 prior authorization to ensure that providers are in compliance with
14 the requirements of this section and, if applicable, Section
15 533.008, or to determine whether the providers are exempt from a
16 requirement of this section and, if applicable, Section 533.008.
17 The commission may grant or deny a provider's request for
18 authorization to engage in a proposed marketing activity.

19 (e) The executive commissioner shall adopt rules as
20 necessary to implement this section, including rules relating to
21 provider marketing activities that are exempt from the requirements
22 of this section and, if applicable, Section 533.008.

23 SECTION 3. Section 531.02414, Government Code, is amended
24 by amending Subsection (d) and adding Subsections (g) and (h) to
25 read as follows:

26 (d) Subject to Section 533.00257, the ~~[The]~~ commission may
27 contract with a public transportation provider, as defined by

1 Section 461.002, Transportation Code, a private transportation
2 provider, or a regional transportation broker for the provision of
3 public transportation services, as defined by Section 461.002,
4 Transportation Code, under the medical transportation program.

5 (g) The commission shall enter into a memorandum of
6 understanding with the Texas Department of Motor Vehicles and the
7 Department of Public Safety for purposes of obtaining the motor
8 vehicle registration and driver's license information of a provider
9 of medical transportation services, including a regional
10 contracted broker and a subcontractor of the broker, to confirm
11 that the provider complies with applicable requirements adopted
12 under Subsection (e).

13 (h) The commission shall establish a process by which
14 providers of medical transportation services, including providers
15 under a managed transportation delivery model, that contract with
16 the commission may request and obtain the information described
17 under Subsection (g) for purposes of ensuring that subcontractors
18 providing medical transportation services meet applicable
19 requirements adopted under Subsection (e).

20 SECTION 4. Subchapter B, Chapter 531, Government Code, is
21 amended by adding Section 531.076 to read as follows:

22 Sec. 531.076. REVIEW OF PRIOR AUTHORIZATION AND UTILIZATION
23 REVIEW PROCESSES. (a) The commission shall periodically review in
24 accordance with an established schedule the prior authorization and
25 utilization review processes within the Medicaid fee-for-service
26 delivery model to determine if those processes need modification to
27 reduce authorizations of unnecessary services and inappropriate

1 use of services. The commission shall also monitor the processes
2 described in this subsection for anomalies and, on identification
3 of an anomaly in a process, shall review the process for
4 modification earlier than scheduled.

5 (b) The commission shall monitor Medicaid managed care
6 organizations to ensure that the organizations are using prior
7 authorization and utilization review processes to reduce
8 authorizations of unnecessary services and inappropriate use of
9 services.

10 SECTION 5. Section 531.102, Government Code, is amended by
11 amending Subsection (a) and adding Subsection (1) to read as
12 follows:

13 (a) The [~~commission, through the~~] commission's office of
14 inspector general[~~7~~] is responsible for the prevention, detection,
15 audit, inspection, review, and investigation of fraud, waste, and
16 abuse in the provision and delivery of all health and human services
17 in the state, including services through any state-administered
18 health or human services program that is wholly or partly federally
19 funded, and the enforcement of state law relating to the provision
20 of those services. The commission may obtain any information or
21 technology necessary to enable the office to meet its
22 responsibilities under this subchapter or other law.

23 (1) Nothing in this section limits the authority of any
24 other state agency or governmental entity.

25 SECTION 6. (a) Subchapter A, Chapter 533, Government Code,
26 is amended by adding Section 533.00257 to read as follows:

27 Sec. 533.00257. DELIVERY OF MEDICAL TRANSPORTATION PROGRAM

1 SERVICES. (a) In this section:

2 (1) "Managed transportation organization" means:

3 (A) a rural or urban transit district created
4 under Chapter 458, Transportation Code;

5 (B) a public transportation provider defined by
6 Section 461.002, Transportation Code;

7 (C) a regional contracted broker defined by
8 Section 531.02414;

9 (D) a local private transportation provider
10 approved by the commission to provide Medicaid nonemergency medical
11 transportation services; or

12 (E) any other entity the commission determines
13 meets the requirements of this section.

14 (2) "Medical transportation program" has the meaning
15 assigned by Section 531.02414.

16 (3) "Transportation service area provider" means a
17 for-profit or nonprofit entity that provides demand response,
18 curb-to-curb, nonemergency transportation under the medical
19 transportation program.

20 (b) Subject to Subsection (h), the commission shall provide
21 medical transportation program services on a regional basis through
22 a managed transportation delivery model using managed
23 transportation organizations and providers, as appropriate, that:

24 (1) operate under a capitated rate system;

25 (2) assume financial responsibility under a full-risk
26 model;

27 (3) operate a call center;

1 (4) use fixed routes when available and appropriate;

2 and

3 (5) agree to provide data to the commission if the
4 commission determines that the data is required to receive federal
5 matching funds.

6 (c) The commission shall procure managed transportation
7 organizations under the medical transportation program through a
8 competitive bidding process.

9 (d) A managed transportation organization that participates
10 in the medical transportation program must attempt to contract with
11 medical transportation providers that:

12 (1) are considered significant traditional providers,
13 as defined by rule by the executive commissioner;

14 (2) meet the minimum quality and efficiency measures
15 required under Subsection (g) and other requirements that may be
16 imposed by the managed transportation organization; and

17 (3) agree to accept the prevailing contract rate of
18 the managed transportation organization.

19 (e) To the extent allowed under federal law, a managed
20 transportation organization may own, operate, and maintain a fleet
21 of vehicles or contract with an entity that owns, operates, and
22 maintains a fleet of vehicles.

23 (f) The commission shall consider the ownership, operation,
24 and maintenance of a fleet of vehicles by a managed transportation
25 organization to be a related-party transaction for purposes of
26 applying experience rebates, administrative costs, and other
27 administrative controls determined by the commission.

1 (g) The commission shall require that managed
2 transportation providers participating in the medical
3 transportation program meet minimum quality and efficiency
4 measures as determined by the commission.

5 (h) The commission may delay providing medical
6 transportation program services through a managed transportation
7 delivery model in areas of this state in which the commission on
8 September 1, 2013, is operating a full-risk transportation broker
9 model.

10 (b) The Health and Human Services Commission shall begin
11 providing medical transportation program services through the
12 delivery model required by Section 533.00257, Government Code, as
13 added by this section, not later than September 1, 2014, subject to
14 Subsection (h), Section 533.00257, Government Code, as added by
15 this section.

16 SECTION 7. (a) Section 773.0571, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 773.0571. REQUIREMENTS FOR PROVIDER LICENSE. The
19 department shall issue to an emergency medical services provider
20 applicant a license that is valid for two years if the department is
21 satisfied that:

22 (1) the applicant [~~emergency medical services~~
23 ~~provider~~] has adequate staff to meet the staffing standards
24 prescribed by this chapter and the rules adopted under this
25 chapter;

26 (2) each emergency medical services vehicle is
27 adequately constructed, equipped, maintained, and operated to

1 render basic or advanced life support services safely and
2 efficiently;

3 (3) the applicant [~~emergency medical services~~
4 ~~provider~~] offers safe and efficient services for emergency
5 prehospital care and transportation of patients; [~~and~~]

6 (4) the applicant:

7 (A) possesses sufficient professional experience
8 and qualifications to provide emergency medical services; and

9 (B) has not been excluded from participation in
10 the state Medicaid program;

11 (5) the applicant holds a letter of approval issued
12 under Section 773.0573 by the governing body of the municipality or
13 the commissioners court of the county in which the applicant is
14 located and is applying to provide emergency medical services, as
15 applicable; and

16 (6) the applicant [~~emergency medical services~~
17 ~~provider~~] complies with the rules adopted [~~by the board~~] under this
18 chapter.

19 (b) Subchapter C, Chapter 773, Health and Safety Code, is
20 amended by adding Sections 773.05711, 773.05712, and 773.05713 to
21 read as follows:

22 Sec. 773.05711. ADDITIONAL EMERGENCY MEDICAL SERVICES
23 PROVIDER LICENSE REQUIREMENTS. (a) In addition to the
24 requirements for obtaining or renewing an emergency medical
25 services provider license under this subchapter, a person who
26 applies for a license or for a renewal of a license must:

27 (1) provide the department with a letter of credit

1 issued by a federally insured bank or savings institution in the
2 amount of:

3 (A) \$100,000 for the initial license and for
4 renewal of the license on the second anniversary of the date the
5 initial license is issued;

6 (B) \$75,000 for renewal of the license on the
7 fourth anniversary of the date the initial license is issued;

8 (C) \$50,000 for renewal of the license on the
9 sixth anniversary of the date the initial license is issued; and

10 (D) \$25,000 for renewal of the license on the
11 eighth anniversary of the date the initial license is issued and
12 each subsequent renewal;

13 (2) provide the department with a surety bond in the
14 amount of:

15 (A) \$50,000 for the initial license and for
16 renewal of the license on the second anniversary of the date the
17 initial license is issued;

18 (B) \$25,000 for renewal of the license on the
19 fourth anniversary of the date the initial license is issued; and

20 (C) \$10,000 for renewal of the license on the
21 sixth anniversary of the date the initial license is issued and each
22 subsequent renewal; and

23 (3) submit for approval by the department the name and
24 contact information of the provider's administrator of record who
25 satisfies the requirements under Section 773.05712.

26 (b) An emergency medical services provider that is directly
27 operated by a governmental entity is exempt from this section.

1 Sec. 773.05712. ADMINISTRATOR OF RECORD. (a) The
2 administrator of record for an emergency medical services provider
3 licensed under this subchapter:

4 (1) may not be employed or otherwise compensated by
5 another private for-profit emergency medical services provider;

6 (2) must meet the qualifications required for an
7 emergency medical technician or other health care professional
8 license or certification issued by this state; and

9 (3) must submit to a criminal history record check at
10 the applicant's expense.

11 (b) Section 773.0415 does not apply to information an
12 administrator of record is required to provide under this section.

13 (c) An administrator of record initially approved by the
14 department may be required to complete an education course for new
15 administrators of record. The executive commissioner shall
16 recognize, prepare, or administer the education course for new
17 administrators of record, which must include information about the
18 laws and department rules that affect emergency medical services
19 providers.

20 (d) An administrator of record approved by the department
21 under Section 773.05711(a) annually must complete at least eight
22 hours of continuing education following initial approval. The
23 executive commissioner shall recognize, prepare, or administer
24 continuing education programs for administrators of record, which
25 must include information about changes in law and department rules
26 that affect emergency medical services providers.

27 (e) An emergency medical services provider that is directly

1 operated by a governmental entity is exempt from this section.

2 Sec. 773.05713. REPORT TO LEGISLATURE. Not later than
3 December 1 of each even-numbered year, the department shall
4 electronically submit a report to the lieutenant governor, the
5 speaker of the house of representatives, and the standing
6 committees of the house and senate with jurisdiction over the
7 department on the effect of Sections 773.05711 and 773.05712 that
8 includes:

9 (1) the total number of applications for emergency
10 medical services provider licenses submitted to the department and
11 the number of applications for which licenses were issued or
12 licenses were denied by the department;

13 (2) the number of emergency medical services provider
14 licenses that were suspended or revoked by the department for
15 violations of those sections and a description of the types of
16 violations that led to the license suspension or revocation;

17 (3) the number of occurrences and types of fraud
18 committed by licensed emergency medical services providers related
19 to those sections;

20 (4) the number of complaints made against licensed
21 emergency medical services providers for violations of those
22 sections and a description of the types of complaints; and

23 (5) the status of any coordination efforts of the
24 department and the Texas Medical Board related to those sections.

25 (c) Subchapter C, Chapter 773, Health and Safety Code, is
26 amended by adding Section 773.0573 to read as follows:

27 Sec. 773.0573. LETTER OF APPROVAL FROM LOCAL GOVERNMENTAL

1 ENTITY. (a) An emergency medical services provider applicant must
2 obtain a letter of approval from:

3 (1) the governing body of the municipality in which
4 the applicant is located and is applying to provide emergency
5 medical services; or

6 (2) if the applicant is not located in a municipality,
7 the commissioners court of the county in which the applicant is
8 located and is applying to provide emergency medical services.

9 (b) A governing body of a municipality or a commissioners
10 court of a county may issue a letter of approval to an emergency
11 medical services provider applicant who is applying to provide
12 emergency medical services in the municipality or county only if
13 the governing body or commissioners court determines that:

14 (1) the addition of another licensed emergency medical
15 services provider will not interfere with or adversely affect the
16 provision of emergency medical services by the licensed emergency
17 medical services providers operating in the municipality or county;

18 (2) the addition of another licensed emergency medical
19 services provider will remedy an existing provider shortage that
20 cannot be resolved through the use of the licensed emergency
21 medical services providers operating in the municipality or county;
22 and

23 (3) the addition of another licensed emergency medical
24 services provider will not cause an oversupply of licensed
25 emergency medical services providers in the municipality or county.

26 (c) An emergency medical services provider is prohibited
27 from expanding operations to or stationing any emergency medical

1 services vehicles in a municipality or county other than the
2 municipality or county from which the provider obtained the letter
3 of approval under this section until after the second anniversary
4 of the date the provider's initial license was issued, unless the
5 expansion or stationing occurs in connection with:

6 (1) a contract awarded by another municipality or
7 county for the provision of emergency medical services;

8 (2) an emergency response made in connection with an
9 existing mutual aid agreement; or

10 (3) an activation of a statewide emergency or disaster
11 response by the department.

12 (d) This section does not apply to:

13 (1) renewal of an emergency medical services provider
14 license; or

15 (2) a municipality, county, emergency services
16 district, hospital, or emergency medical services volunteer
17 provider organization in this state that applies for an emergency
18 medical services provider license.

19 (d) Subchapter C, Chapter 773, Health and Safety Code, is
20 amended by adding Section 773.06141 to read as follows:

21 Sec. 773.06141. SUSPENSION, REVOCATION, OR DENIAL OF
22 EMERGENCY MEDICAL SERVICES PROVIDER LICENSE. The commissioner may
23 suspend, revoke, or deny an emergency medical services provider
24 license on the grounds that the provider's administrator of record,
25 employee, or other representative:

26 (1) has been convicted of, or placed on deferred
27 adjudication community supervision or deferred disposition for, an

1 offense that directly relates to the duties and responsibilities of
2 the administrator, employee, or representative, other than an
3 offense for which points are assigned under Section 708.052,
4 Transportation Code;

5 (2) has been convicted of or placed on deferred
6 adjudication community supervision or deferred disposition for an
7 offense, including:

8 (A) an offense listed in Sections 3g(a)(1)(A)
9 through (H), Article 42.12, Code of Criminal Procedure; or

10 (B) an offense, other than an offense described
11 by Subdivision (1), for which the person is subject to registration
12 under Chapter 62, Code of Criminal Procedure; or

13 (3) has been convicted of Medicare or Medicaid fraud,
14 has been excluded from participation in the state Medicaid program,
15 or has a hold on payment for reimbursement under the state Medicaid
16 program under Subchapter C, Chapter 531, Government Code.

17 (e) Notwithstanding Chapter 773, Health and Safety Code, as
18 amended by this section, the Department of State Health Services
19 may not issue any new emergency medical services provider licenses
20 for the period beginning on September 1, 2013, and ending on
21 February 28, 2015. The moratorium does not apply to the issuance of
22 an emergency medical services provider license to a municipality,
23 county, emergency services district, hospital, or emergency
24 medical services volunteer provider organization in this state, or
25 to an emergency medical services provider applicant who is applying
26 to provide services in response to 9-1-1 calls and is located in a
27 rural area, as that term is defined in Section 773.0045, Health and

1 Safety Code.

2 (f) Section 773.0571, Health and Safety Code, as amended by
3 this section, and Section 773.0573, Health and Safety Code, as
4 added by this section, apply only to an application for approval of
5 an emergency medical services provider license submitted to the
6 Department of State Health Services on or after the effective date
7 of this Act. An application submitted before the effective date of
8 this Act is governed by the law in effect immediately before the
9 effective date of this Act, and that law is continued in effect for
10 that purpose.

11 (g) The changes in law made by this section apply only to an
12 application for approval or renewal of an emergency medical
13 services provider license submitted to the Department of State
14 Health Services on or after the effective date of this Act. An
15 application submitted before the effective date of this Act is
16 governed by the law in effect immediately before the effective date
17 of this Act, and that law is continued in effect for that purpose.

18 SECTION 8. Section 32.0322, Human Resources Code, is
19 amended by amending Subsection (b) and adding Subsections (b-1),
20 (e), and (f) to read as follows:

21 (b) Subject to Subsections (b-1) and (e), the ~~[The]~~
22 executive commissioner of the Health and Human Services Commission
23 by rule shall establish criteria for the department or the
24 commission's office of inspector general to suspend a provider's
25 billing privileges under the medical assistance program, revoke a
26 provider's enrollment under the program, or deny a person's
27 application to enroll as a provider under the program based on:

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

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

4 (3) the provider's failure to bill for medical
5 assistance or refer clients for medical assistance within a
6 12-month period; or

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

9 (b-1) In adopting rules under this section, the executive
10 commissioner of the Health and Human Services Commission shall
11 require revocation of a provider's enrollment or denial of a
12 person's application for enrollment as a provider under the medical
13 assistance program if the person has been excluded or debarred from
14 participation in a state or federally funded health care program as
15 a result of:

16 (1) a criminal conviction or finding of civil or
17 administrative liability for committing a fraudulent act, theft,
18 embezzlement, or other financial misconduct under a state or
19 federally funded health care program; or

20 (2) a criminal conviction for committing an act under
21 a state or federally funded health care program that caused bodily
22 injury to:

23 (A) a person who is 65 years of age or older;

24 (B) a person with a disability; or

25 (C) a person under 18 years of age.

26 (e) The department may reinstate a provider's enrollment
27 under the medical assistance program or grant a person's previously

1 denied application to enroll as a provider, including a person
2 described by Subsection (b-1), if the department finds:

3 (1) good cause to determine that it is in the best
4 interest of the medical assistance program; and

5 (2) the person has not committed an act that would
6 require revocation of a provider's enrollment or denial of a
7 person's application to enroll since the person's enrollment was
8 revoked or application was denied, as appropriate.

9 (f) The department must support a determination made under
10 Subsection (e) with written findings of good cause for the
11 determination.

12 SECTION 9. Section 36.005, Human Resources Code, is amended
13 by amending Subsection (b-1) and adding Subsections (e), (f), and
14 (g) to read as follows:

15 (b-1) The period of ineligibility begins on the date on
16 which the judgment finding the provider liable under Section 36.052
17 is entered by the trial court [~~determination that the provider is~~
18 ~~liable becomes final~~].

19 (e) Notwithstanding Subsection (b-1), the period of
20 ineligibility for an individual licensed by a health care
21 regulatory agency or a physician begins on the date on which the
22 determination that the individual or physician is liable becomes
23 final.

24 (f) For purposes of Subsection (e), a "physician" includes a
25 physician, a professional association composed solely of
26 physicians, a single legal entity authorized to practice medicine
27 owned by two or more physicians, a nonprofit health corporation

1 certified by the Texas Medical Board under Chapter 162, Occupations
2 Code, or a partnership composed solely of physicians.

3 (g) For purposes of Subsection (e), "health care regulatory
4 agency" has the meaning assigned by Section 774.001, Government
5 Code.

6 SECTION 10. (a) The Health and Human Services Commission,
7 in cooperation with the Department of State Health Services and the
8 Texas Medical Board, shall:

9 (1) as soon as practicable after the effective date of
10 this Act, conduct a thorough review of and solicit stakeholder
11 input regarding the laws and policies related to the use of
12 non-emergent services provided by ambulance providers under the
13 medical assistance program established under Chapter 32, Human
14 Resources Code;

15 (2) not later than January 1, 2014, make
16 recommendations to the legislature regarding suggested changes to
17 the law that would reduce the incidence of and opportunities for
18 fraud, waste, and abuse with respect to the activities described by
19 Subdivision (1) of this subsection; and

20 (3) amend the policies described by Subdivision (1) of
21 this subsection as necessary to assist in accomplishing the goals
22 described by Subdivision (2) of this subsection.

23 (b) This section expires September 1, 2015.

24 SECTION 11. (a) The Department of State Health Services,
25 in cooperation with the Health and Human Services Commission and
26 the Texas Medical Board, shall:

27 (1) as soon as practicable after the effective date of

1 this Act, conduct a thorough review of and solicit stakeholder
2 input regarding the laws and policies related to the licensure of
3 nonemergency transportation providers;

4 (2) not later than January 1, 2014, make
5 recommendations to the legislature regarding suggested changes to
6 the law that would reduce the incidence of and opportunities for
7 fraud, waste, and abuse with respect to the activities described by
8 Subdivision (1) of this subsection; and

9 (3) amend the policies described by Subdivision (1) of
10 this subsection as necessary to assist in accomplishing the goals
11 described by Subdivision (2) of this subsection.

12 (b) This section expires September 1, 2015.

13 SECTION 12. (a) The Texas Medical Board, in cooperation
14 with the Department of State Health Services and the Health and
15 Human Services Commission, shall:

16 (1) as soon as practicable after the effective date of
17 this Act, conduct a thorough review of and solicit stakeholder
18 input regarding the laws and policies related to:

19 (A) the delegation of health care services by
20 physicians or medical directors to qualified emergency medical
21 services personnel; and

22 (B) physicians' assessment of patients' needs for
23 purposes of ambulatory transfer or transport or other purposes;

24 (2) not later than January 1, 2014, make
25 recommendations to the legislature regarding suggested changes to
26 the law that would reduce the incidence of and opportunities for
27 fraud, waste, and abuse with respect to the activities described by

1 Subdivision (1) of this subsection; and

2 (3) amend the policies described by Subdivision (1) of
3 this subsection as necessary to assist in accomplishing the goals
4 described by Subdivision (2) of this subsection.

5 (b) This section expires September 1, 2015.

6 SECTION 13. (a) This section is a clarification of
7 legislative intent regarding Subsection (s), Section 32.024, Human
8 Resources Code, and a validation of certain Health and Human
9 Services Commission acts and decisions.

10 (b) In 1999, the legislature became aware that certain
11 children enrolled in the Medicaid program were receiving treatment
12 under the program outside the presence of a parent or another
13 responsible adult. The treatment of unaccompanied children under
14 the Medicaid program resulted in the provision of unnecessary
15 services to those children, the exposure of those children to
16 unnecessary health and safety risks, and the submission of
17 fraudulent claims by Medicaid providers.

18 (c) In addition, in 1999, the legislature became aware of
19 allegations that certain Medicaid providers were offering money and
20 other gifts in exchange for a parent's or child's consent to receive
21 unnecessary services under the Medicaid program. In some cases, a
22 child was offered money or gifts in exchange for the parent's or
23 child's consent to have the child transported to a different
24 location to receive unnecessary services. In some of those cases,
25 once transported, the child received no treatment and was left
26 unsupervised for hours before being transported home. The
27 provision of money and other gifts by Medicaid providers in

1 exchange for parents' or children's consent to services deprived
2 those parents and children of the right to choose a Medicaid
3 provider without improper inducement.

4 (d) In response, in 1999, the legislature enacted Chapter
5 766 (H.B. 1285), Acts of the 76th Legislature, Regular Session,
6 1999, which amended Section 32.024, Human Resources Code, by
7 amending Subsection (s) and adding Subsection (s-1). As amended,
8 Subsection (s), Section 32.024, Human Resources Code, requires that
9 a child's parent or guardian or another adult authorized by the
10 child's parent or guardian accompany the child at a visit or
11 screening under the early and periodic screening, diagnosis, and
12 treatment program in order for a Medicaid provider to be reimbursed
13 for services provided at the visit or screening. As filed, the bill
14 required a child's parent or guardian to accompany the child. The
15 house committee report added the language allowing an adult
16 authorized by the child's parent or guardian to accompany the child
17 in order to accommodate a parent or guardian for whom accompanying
18 the parent's or guardian's child to each visit or screening would be
19 a hardship.

20 (e) The principal purposes of Chapter 766 (H.B. 1285), Acts
21 of the 76th Legislature, Regular Session, 1999, were to prevent
22 Medicaid providers from committing fraud, encourage parental
23 involvement in and management of health care of children enrolled
24 in the early and periodic screening, diagnosis, and treatment
25 program, and ensure the safety of children receiving services under
26 the Medicaid program. The addition of the language allowing an
27 adult authorized by a child's parent or guardian to accompany the

1 child furthered each of those purposes.

2 (f) The legislature, in amending Subsection (s), Section
3 32.024, Human Resources Code, understood that:

4 (1) the effectiveness of medical, dental, and therapy
5 services provided to a child improves when the child's parent or
6 guardian actively participates in the delivery of those services;

7 (2) a parent is responsible for the safety and
8 well-being of the parent's child, and that a parent cannot casually
9 delegate this responsibility to a stranger;

10 (3) a parent may not always be available to accompany
11 the parent's child at a visit to the child's doctor, dentist, or
12 therapist; and

13 (4) Medicaid providers and their employees and
14 associates have a financial interest in the delivery of services
15 under the Medicaid program and, accordingly, cannot fulfill the
16 responsibilities of a parent or guardian when providing services to
17 a child.

18 (g)(1) On March 15, 2012, the Health and Human Services
19 Commission notified certain Medicaid providers that state law and
20 commission policy require a child's parent or guardian or another
21 properly authorized adult to accompany a child receiving services
22 under the Medicaid program. This notice followed the commission's
23 discovery that some providers were transporting children from
24 schools to therapy clinics and other locations to receive therapy
25 services. Although the children were not accompanied by a parent or
26 guardian during these trips, the providers were obtaining
27 reimbursement for the trips under the Medicaid medical

1 transportation program. The commission clarified in the notice
2 that, in order for a provider to be reimbursed for transportation
3 services provided to a child under the Medicaid medical
4 transportation program, the child must be accompanied by the
5 child's parent or guardian or another adult who is not the provider
6 and whom the child's parent or guardian has authorized to accompany
7 the child by submitting signed, written consent to the provider.

8 (2) In May 2012, a lawsuit was filed to enjoin the
9 Health and Human Services Commission from enforcing Subsection (s),
10 Section 32.024, Human Resources Code, and 1 T.A.C. Section 380.207,
11 as interpreted in certain notices issued by the commission. A state
12 district court enjoined the commission from denying eligibility to
13 a child for transportation services under the Medicaid medical
14 transportation program if the child's parent or guardian does not
15 accompany the child, provided that the child's parent or guardian
16 authorizes any other adult to accompany the child. The court also
17 enjoined the commission from requiring as a condition for a
18 provider to be reimbursed for services provided to a child during a
19 visit or screening under the early and periodic screening,
20 diagnosis, and treatment program that the child be accompanied by
21 the child's parent or guardian, provided that the child's parent or
22 guardian authorizes another adult to accompany the child. The
23 state has filed a notice of appeal of the court's order.

24 (3) The legislature declares that a rule or policy
25 adopted by the Health and Human Services Commission before the
26 effective date of this Act to require that, in order for a Medicaid
27 provider to be reimbursed for services provided to a child under the

1 early and periodic screening, diagnosis, and treatment program or
2 the medical transportation program, the child must be accompanied
3 by the child's parent or guardian or another adult whom the child's
4 parent or guardian has authorized to accompany the child is
5 conclusively presumed, as of the date the rule or policy was
6 adopted, to be a valid exercise of the commission's authority and
7 consistent with the intent of the legislature, provided that the
8 rule or policy:

9 (A) was adopted pursuant to Subsection (s),
10 Section 32.024, Human Resources Code; and

11 (B) prohibits the child's parent or guardian from
12 authorizing the provider or the provider's employee or associate as
13 an adult who may accompany the child.

14 (4) Subdivision (3) of this subsection does not apply
15 to:

16 (A) an action or decision that was void at the
17 time the action was taken or the decision was made;

18 (B) an action or decision that violates federal
19 law or the terms of a federal waiver; or

20 (C) an action or decision that, under a statute
21 of this state or the United States, was a misdemeanor or felony at
22 the time the action was taken or the decision was made.

23 (5) This section does not apply to:

24 (A) an action or decision that was void at the
25 time the action was taken or the decision was made;

26 (B) an action or decision that violates federal
27 law or the terms of a federal waiver; or

1 (C) an action or decision that, under a statute
2 of this state or the United States, was a misdemeanor or felony at
3 the time the action was taken or the decision was made.

4 SECTION 14. As soon as practicable after the effective date
5 of this Act, the executive commissioner of the Health and Human
6 Services Commission shall establish the data analysis unit required
7 under Section 531.0082, Government Code, as added by this Act. The
8 data analysis unit shall provide the initial update required under
9 Subsection (d), Section 531.0082, Government Code, as added by this
10 Act, not later than the 30th day after the last day of the first
11 complete calendar quarter occurring after the date the unit is
12 established.

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

19 SECTION 16. This Act takes effect September 1, 2013.