

By: Nelson

S.B. No. 8

A BILL TO BE ENTITLED

1 AN ACT  
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. Section 531.008(c), Government Code, is amended  
8 to read as follows:

9 (c) The executive commissioner shall establish the  
10 following divisions and offices within the commission:

11 (1) the eligibility services division to make  
12 eligibility determinations for services provided through the  
13 commission or a health and human services agency related to:

14 (A) the child health plan program;

15 (B) the financial assistance program under  
16 Chapter 31, Human Resources Code;

17 (C) the medical assistance program under Chapter  
18 32, Human Resources Code;

19 (D) the nutritional assistance programs under  
20 Chapter 33, Human Resources Code;

21 (E) long-term care services, as defined by  
22 Section 22.0011, Human Resources Code;

23 (F) community-based support services identified  
24 or provided in accordance with Section 531.02481; and

1 (G) other health and human services programs, as  
2 appropriate;

3 (2) the office of inspector general to perform fraud  
4 and abuse investigation and enforcement functions as provided by  
5 Subchapter C and other law;

6 (3) the office of the ombudsman to:

7 (A) provide dispute resolution services for the  
8 commission and the health and human services agencies; and

9 (B) perform consumer protection functions  
10 related to health and human services;

11 (4) a purchasing division as provided by Section  
12 531.017; ~~and~~

13 (5) an internal audit division to conduct a program of  
14 internal auditing in accordance with ~~[Government Code,~~ Chapter  
15 2102; and

16 (6) a data analysis division as provided by Section  
17 531.0082.

18 SECTION 2. Subchapter A, Chapter 531, Government Code, is  
19 amended by adding Section 531.0082 to read as follows:

20 Sec. 531.0082. DATA ANALYSIS DIVISION. (a) The data  
21 analysis division within the commission required by Section  
22 531.008(c) shall establish, employ, and oversee data analysis  
23 processes designed to:

24 (1) improve contract management;

25 (2) detect data trends; and

26 (3) identify anomalies relating to service  
27 utilization, providers, payment methodologies, and compliance with

1 requirements in Medicaid and child health plan program managed care  
2 and fee-for-service contracts.

3 (b) The commission shall assign staff to the data analysis  
4 division who perform duties only in relation to the division.

5 (c) The data analysis division shall use all available data  
6 and tools for data analysis when establishing, employing, and  
7 overseeing data analysis processes under this section.

8 (d) Not later than the 30th day following the end of each  
9 calendar quarter, the data analysis division shall provide an  
10 update on the division's activities and findings to the governor,  
11 the lieutenant governor, the speaker of the house of  
12 representatives, the chair of the senate finance committee, the  
13 chair of the house appropriations committee, and the chairs of the  
14 standing committees of the senate and house of representatives  
15 having jurisdiction over the Medicaid program.

16 SECTION 3. Subchapter B, Chapter 531, Government Code, is  
17 amended by adding Section 531.02115 to read as follows:

18 Sec. 531.02115. MARKETING ACTIVITIES BY PROVIDERS  
19 PARTICIPATING IN MEDICAID OR CHILD HEALTH PLAN PROGRAM. (a) A  
20 provider participating in the Medicaid or child health plan  
21 program, including a provider participating in the network of a  
22 managed care organization that contracts with the commission to  
23 provide services under the Medicaid or child health plan program,  
24 may not engage in any marketing activity, including any  
25 dissemination of material or other attempt to communicate, that:

26 (1) involves unsolicited personal contact, including  
27 by door-to-door solicitation, direct mail, or telephone, with a

1 Medicaid client or a parent whose child is enrolled in the Medicaid  
2 or child health plan program;

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

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

8 (b) In addition to the requirements of Subsection (a), a  
9 provider participating in the network of a managed care  
10 organization described by that subsection must comply with the  
11 marketing guidelines established by the commission under Section  
12 533.008.

13 (c) Nothing in this section prohibits a provider  
14 participating in the Medicaid or child health plan program from  
15 engaging in a marketing activity, including any dissemination of  
16 material or other attempt to communicate, that is intended to  
17 influence the choice of provider by a Medicaid client or a parent  
18 whose child is enrolled in the Medicaid or child health plan  
19 program, if the marketing activity involves only the general  
20 dissemination of information, including by television, radio,  
21 newspaper, or billboard advertisement, and does not involve  
22 unsolicited personal contact.

23 (d) The executive commissioner may adopt rules as necessary  
24 to implement this section.

25 SECTION 4. Section 531.02414, Government Code, is amended  
26 by adding Subsection (g) to read as follows:

27 (g) The commission shall enter into a memorandum of

1 understanding with the Texas Department of Motor Vehicles and the  
2 Texas Department of Public Safety for purposes of obtaining the  
3 motor vehicle registration and driver's license information of a  
4 recipient of medical transportation services, or another medical  
5 assistance recipient requesting those services, to confirm that the  
6 recipient meets the eligibility criteria for the services requiring  
7 that recipients have no other means of transportation. The  
8 commission shall establish a process by which managed care  
9 organizations contracting with the commission under Chapter 533 may  
10 request and obtain the information described under this subsection  
11 for purposes of similarly confirming a medical assistance  
12 recipient's eligibility for medical transportation services.

13 SECTION 5. Section 531.102(a), Government Code, is amended  
14 to read as follows:

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

25 SECTION 6. (a) Subchapter A, Chapter 533, Government Code,  
26 is amended by adding Section 533.00254 to read as follows:

27 Sec. 533.00254. DELIVERY OF MEDICAL TRANSPORTATION PROGRAM

1 SERVICES. (a) In this section, "medical transportation program"  
2 has the meaning assigned by Section 531.02414.

3 (b) Subject to Subsection (c), the commission shall provide  
4 medical transportation program services through a managed care  
5 delivery model.

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

10 (1) the date the contract entered into with the broker  
11 expires; or

12 (2) an earlier date, if the commission determines that  
13 earlier implementation is feasible.

14 (b) The Health and Human Services Commission shall begin  
15 providing medical transportation program services through the  
16 delivery model required by Section 533.00254, Government Code, as  
17 added by this section, not later than March 1, 2014, subject to  
18 Section 533.00254(c), Government Code, as added by this section.

19 SECTION 7. Section 32.0322, Human Resources Code, is  
20 amended by amending Subsection (b) and adding Subsections (b-1),  
21 (e), (f), and (g) to read as follows:

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

1 application to enroll as a provider under the program based on:

- 2 (1) the results of a criminal history check;
- 3 (2) any exclusion or debarment of the provider from  
4 participation in a state or federally funded health care program;
- 5 (3) the provider's failure to bill for medical  
6 assistance or refer clients for medical assistance within a  
7 12-month period; or
- 8 (4) any of the provider screening or enrollment  
9 provisions contained in 42 C.F.R. Part 455, Subpart E.

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

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

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

- 24 (A) a person who is 65 years of age or older;
- 25 (B) a person with a disability; or
- 26 (C) a person under 18 years of age.

27 (e) The department may reinstate a provider's enrollment

1 under the medical assistance program or grant a person's previously  
2 denied application to enroll as a provider, including a person  
3 described by Subsection (b-1), if the department finds:

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

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

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

13 (g) The executive commissioner of the Health and Human  
14 Services Commission may not adopt rules under Subsection (b-1) that  
15 would require the revocation of enrollment of a provider who  
16 operates a nursing facility or an ICF-MR facility subject to  
17 Section 36.005(a)(2).

18 SECTION 8. Section 36.005(b-1), Human Resources Code, is  
19 amended to read as follows:

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

24 SECTION 9. Subchapter C, Chapter 36, Human Resources Code,  
25 is amended by adding Section 36.1041 to read as follows:

26 Sec. 36.1041. NOTIFICATION OF SETTLEMENT. (a) Not later  
27 than the 10th day after the date a person described by Section



1 36.104(b) reaches a proposed settlement agreement with a defendant,  
2 the person must notify the attorney general.

3 (b) Not later than the 30th day after the date the attorney  
4 general receives notice under Subsection (a), the attorney general  
5 shall file any objections to the terms of the proposed settlement  
6 agreement with the court.

7 (c) On filing of objections under Subsection (b), the court  
8 shall conduct a hearing. On a showing of good cause, the hearing  
9 may be held in camera. If, after the hearing, the court determines  
10 that the proposed settlement is fair, adequate, and reasonable  
11 under all the circumstances, the court may allow the parties to  
12 settle notwithstanding the attorney general's objection.

13 SECTION 10. (a) The Health and Human Services Commission  
14 shall:

15 (1) as soon as practicable after the effective date of  
16 this Act, conduct a thorough review of the laws and policies related  
17 to the use of non-emergent services provided by ambulance providers  
18 under the medical assistance program established under Chapter 32,  
19 Human Resources Code;

20 (2) not later than January 1, 2014, make  
21 recommendations to the legislature regarding suggested changes to  
22 the law that would reduce the incidence of and opportunities for  
23 fraud, waste, and abuse with respect to the activities described by  
24 Subdivision (1) of this subsection; and

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

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

2 SECTION 11. (a) The Department of State Health Services  
3 shall:

4 (1) as soon as practicable after the effective date of  
5 this Act, conduct a thorough review of the laws and policies related  
6 to the licensure of nonemergency transportation providers;

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

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

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

16 SECTION 12. (a) The Texas Medical Board shall:

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

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

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

25 (2) not later than January 1, 2014, make  
26 recommendations to the legislature regarding suggested changes to  
27 the law that would reduce the incidence of and opportunities for

1 fraud, waste, and abuse with respect to the activities described by  
2 Subdivision (1) of this subsection; and

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

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

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

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

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

1 provision of money and other gifts by Medicaid providers in  
2 exchange for parents' or children's consent to services deprived  
3 those parents and children of the right to choose a Medicaid  
4 provider without improper inducement.

5 (d) In response, in 1999, the legislature enacted Chapter  
6 766 (H.B. 1285), Acts of the 76th Legislature, Regular Session,  
7 which amended Section 32.024, Human Resources Code, by amending  
8 Subsection (s) and adding Subsection (s-1). As amended, Section  
9 32.024(s), Human Resources Code, requires that a child's parent or  
10 guardian or another adult authorized by the child's parent or  
11 guardian accompany the child at a visit or screening under the early  
12 and periodic screening, diagnosis, and treatment program in order  
13 for a Medicaid provider to be reimbursed for services provided at  
14 the visit or screening. As filed, the bill required a child's  
15 parent or guardian to accompany the child. The house committee  
16 report added the language allowing an adult authorized by the  
17 child's parent or guardian to accompany the child in order to  
18 accommodate a parent or guardian for whom accompanying the parent's  
19 or guardian's child to each visit or screening would be 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 Section 32.024(s), Human  
3 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) The legislature declares that a Medicaid provider, or an  
19 employee or associate of the Medicaid provider, is not "another  
20 adult" within the meaning of Section 32.024(s), Human Resources  
21 Code, from the date the section was amended, and may not be  
22 authorized by the parent or guardian of a child to accompany the  
23 child at a visit or screening under the early and periodic  
24 screening, diagnosis, and treatment program at which the Medicaid  
25 provider provides services to the child. Any interpretation of  
26 Section 32.024(s), Human Resources Code, that allows a Medicaid  
27 provider, or an employee or associate of the Medicaid provider, to

1 be authorized to accompany a child at a visit or screening at which  
2 the Medicaid provider provides services is contrary to the intent  
3 of the legislature.

4 (h)(1) On March 15, 2012, the Health and Human Services  
5 Commission notified certain Medicaid providers that state law and  
6 commission policy require a child's parent or guardian or another  
7 properly authorized adult to accompany a child receiving services  
8 under the Medicaid program. This notice followed the commission's  
9 discovery that some providers were transporting children from  
10 schools to therapy clinics and other locations to receive therapy  
11 services. Although the children were not accompanied by a parent or  
12 guardian during these trips, the providers were obtaining  
13 reimbursement for the trips under the Medicaid medical  
14 transportation program. The commission clarified in the notice that  
15 in order for a provider to be reimbursed for transportation  
16 services provided to a child under the Medicaid medical  
17 transportation program, the child must be accompanied by the  
18 child's parent or guardian or another adult who is not the provider  
19 and whom the child's parent or guardian has authorized to accompany  
20 the child by submitting signed, written consent to the provider.

21 (2) In May 2012, a lawsuit was filed to enjoin the  
22 Health and Human Services Commission from enforcing Section  
23 32.024(s), Human Resources Code, and 1 T.A.C. Section 380.207, as  
24 interpreted in certain notices issued by the commission. A state  
25 district court enjoined the commission from denying eligibility to  
26 a child for transportation services under the Medicaid medical  
27 transportation program if the child's parent or guardian does not

1 accompany the child, provided that the child's parent or guardian  
2 authorizes any other adult to accompany the child. The court also  
3 enjoined the commission from requiring as a condition for a  
4 provider to be reimbursed for services provided to a child during a  
5 visit or screening under the early and periodic screening,  
6 diagnosis, and treatment program that the child be accompanied by  
7 the child's parent or guardian, provided that the child's parent or  
8 guardian authorizes another adult to accompany the child. The  
9 state has filed a notice of appeal of the court's order.

10 (3) Additionally, the office of inspector general of  
11 the Health and Human Services Commission has found that several  
12 Medicaid providers have knowingly offered and provided inducements  
13 to individuals enrolled in the Medicaid program to influence  
14 decisions by the individuals relating to selecting a Medicaid  
15 provider and receiving goods and services under the Medicaid  
16 program. Specifically, some providers have offered, arranged for,  
17 and provided free transportation services to influence  
18 individuals' selection of a provider in violation of federal law.  
19 The office of inspector general has the authority to sanction these  
20 violations under 1 T.A.C. Chapter 371. Accordingly, in late July  
21 and early August 2012, the office of inspector general issued  
22 notices of intent to assess penalties against providers whom the  
23 office of inspector general found to have committed these  
24 violations.

25 (4) The legislature declares that a governmental  
26 action taken or a decision made by the Health and Human Services  
27 Commission before the effective date of this Act to implement or

1 enforce a policy requiring that, in order for a Medicaid provider to  
2 be reimbursed for services provided to a child under the early and  
3 periodic screening, diagnosis, and treatment program, the child  
4 must be accompanied by the child's parent or guardian or another  
5 adult who is not the provider or the provider's employee or  
6 associate and whom the child's parent or guardian has authorized to  
7 accompany the child by submitting signed, written consent to the  
8 provider pursuant to Section 32.024(s), Human Resources Code, is  
9 conclusively presumed, as of the date the action was taken or the  
10 decision was made, to be valid and to have occurred in accordance  
11 with all applicable law.

12 (5) The legislature also declares that, without  
13 determination of the weight or sufficiency of the evidence relied  
14 upon, the imposition of sanctions by the office of inspector  
15 general of the Health and Human Services Commission on Medicaid  
16 providers whom the office of inspector general has found to have  
17 offered and provided inducements to individuals enrolled in the  
18 Medicaid program in violation of federal law is a valid exercise of  
19 that office's authority to enforce laws that regulate fraud, waste,  
20 and abuse in the Medicaid program.

21 (6) This section does not apply to:

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

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

26 (C) an action or decision that, under a statute  
27 of this state or the United States, was a misdemeanor or felony at



1 the time the action was taken or the decision was made.

2 SECTION 14. As soon as practicable after the effective date  
3 of this Act, the executive commissioner of the Health and Human  
4 Services Commission shall establish the data analysis division  
5 required under Section 531.008(c)(6), Government Code, as added by  
6 this Act. The data analysis division shall provide the initial  
7 update required under Section 531.0082(d), Government Code, as  
8 added by this Act, not later than the 30th day after the last day of  
9 the first complete calendar quarter occurring after the date the  
10 division is established.

11 SECTION 15. The amendment by this Act of Section  
12 36.005(b-1), Human Resources Code, is intended to clarify rather  
13 than change existing law.

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

20 SECTION 17. This Act takes effect September 1, 2013.