By: Nelson, Patrick, Schwertner S.B. No. 8

(In the Senate - Filed January 16, 2013; January 28, 2013, read first time and referred to Committee on Health and Human Services; February 26, 2013, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; February 26, 2013, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Nelson	X			
Deuell	X			
Huffman	X			
Nichols	X			
Schwertner	X			
Taylor	X			
Uresti	X			
West	X			
Zaffirini	X			

COMMITTEE SUBSTITUTE FOR S.B. No. 8 By: Nelson

A BILL TO BE ENTITLED
AN ACT

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

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

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

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

(1) improve contract management;

(2) detect data trends; and

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

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

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

(d) Not later than the 30th day following the end of each calendar quarter, the data analysis unit shall provide an update on the unit's activities and findings to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of the Senate Finance Committee, the chair of the House Appropriations Committee, and the chairs of the standing committees of the senate and house of representatives having jurisdiction over the Medicaid program.

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

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

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

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

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

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

(c) Nothing in this section prohibits:

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

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

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

(i) providing an appointment reminder;

(ii) distributing promotional health materials;

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

(iv) coordinating patient care; or

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

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

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

(d) Subject to Section 533.00254, the [~~The~~] commission may contract with a public transportation provider, as defined by Section 461.002, Transportation Code, a private transportation provider, or a regional transportation broker for the provision of public transportation services, as defined by Section 461.002, Transportation Code, under the medical transportation program.

(g) The commission shall enter into a memorandum of understanding with the Texas Department of Motor Vehicles and the Texas Department of Public Safety for purposes of obtaining the motor vehicle registration and driver's license information of:

(1) a recipient of medical transportation services, or another medical assistance recipient requesting those services, to confirm that the recipient meets the eligibility criteria for the services requiring that recipients have no other means of transportation; and

(2) a provider of medical transportation services, including a regional contracted broker and a subcontractor of the broker, to confirm that the provider complies with applicable requirements adopted under Subsection (e).

(h) The commission shall establish a process by which

providers of medical transportation services, including providers under a full-risk managed care delivery model, that contract with the commission may request and obtain the information described under Subsection (g) for purposes of:

(1) similarly confirming a medical assistance recipient's eligibility for medical transportation services; and

(2) ensuring that subcontractors providing medical transportation services meet applicable requirements adopted under Subsection (e).

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

Sec. 531.076. REVIEW OF PRIOR AUTHORIZATION AND UTILIZATION REVIEW PROCESSES. (a) The commission shall periodically review in accordance with an established schedule the prior authorization and utilization review processes within the Medicaid fee-for-service delivery model to determine if those processes need modification to reduce authorizations of unnecessary services and inappropriate use of services. The commission shall also monitor the processes described in this subsection for anomalies and, on identification of an anomaly in a process, shall review the process for modification earlier than scheduled.

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

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

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

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

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

Sec. 533.00254. DELIVERY OF MEDICAL TRANSPORTATION PROGRAM SERVICES. (a) In this section, "medical transportation program" has the meaning assigned by Section 531.02414.

(b) Subject to Subsection (c), the commission shall provide medical transportation program services on a regional basis through a full-risk managed care delivery model.

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

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

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

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

SECTION 7. Section 773.0571, Health and Safety Code, is amended to read as follows:

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

that:

(1) the emergency medical services provider has adequate staff to meet the staffing standards prescribed by this chapter and the rules adopted under this chapter;

(2) each emergency medical services vehicle is adequately constructed, equipped, maintained, and operated to render basic or advanced life support services safely and efficiently;

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

(4) the emergency medical services provider has a letter of credit evidencing that the provider has sufficient financial resources;

(5) the emergency medical services provider employs a medical director; and

(6) the emergency medical services provider complies with the rules adopted by the board under this chapter.

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

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

(1) the results of a criminal history check;

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

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

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

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

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

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

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

(B) a person with a disability; or

(C) a person under 18 years of age.

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

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

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

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

SECTION 9. Section 36.005, Human Resources Code, is amended to read as follows:

Sec. 36.005. SUSPENSION OR REVOCATION OF AGREEMENT;

PROFESSIONAL DISCIPLINE. (a) A health and human services agency, as defined by Section 531.001, Government Code:

(1) shall suspend or revoke:

(A) a provider agreement between the agency and a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the agency to a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) a provider agreement between the agency and a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the agency to a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052.

(b) A provider found liable under Section 36.052 for an unlawful act may not, for a period of 10 years, provide or arrange to provide health care services under the Medicaid program or supply or sell, directly or indirectly, a product to or under the Medicaid program. The executive commissioner of the Health and Human Services Commission may by rule:

(1) provide for a period of ineligibility longer than 10 years; or

(2) grant a provider a full or partial exemption from the period of ineligibility required by this subsection if the executive commissioner finds that enforcement of the full period of ineligibility is harmful to the Medicaid program or a beneficiary of the program.

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

(b-2) Subsections (b) and (b-1) do not apply to a provider who operates a nursing facility or an ICF-MR facility.

(c) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have been found liable under Section 36.052 if the person is found liable in an action brought under Subchapter C.

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

(f) For purposes of Subsection (e), a "physician" includes a physician, a professional association composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code, or a partnership composed solely of physicians.

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

SECTION 10. Subchapter C, Chapter 36, Human Resources Code, is amended by adding Section 36.1041 to read as follows:

Sec. 36.1041. NOTIFICATION OF SETTLEMENT. (a) Not later than the 10th day after the date a person described by Section 36.104(b) reaches a proposed settlement agreement with a defendant, the person must notify the attorney general. If the person fails to notify the attorney general as required by this section, the proposed settlement is void.

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

(c) On filing of objections under Subsection (b), the court

shall conduct a hearing. On a showing of good cause, the hearing may be held in camera. If, after the hearing, the court determines that the proposed settlement is fair, adequate, and reasonable under all the circumstances, the court may allow the parties to settle notwithstanding the attorney general's objection.

(d) If, after the hearing, the court determines that the attorney general's objection is well founded, the settlement shall not be approved by the court. The court may order the parties to renegotiate the settlement to address the attorney general's objection.

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

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

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

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

(b) This section expires September 1, 2015.

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

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

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

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

(b) This section expires September 1, 2015.

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

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

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

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

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

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

(b) This section expires September 1, 2015.

SECTION 14. (a) This section is a clarification of legislative intent regarding Subsection (s), Section 32.024, Human Resources Code, and a validation of certain Health and Human Services Commission acts and decisions.

(b) In 1999, the legislature became aware that certain

children enrolled in the Medicaid program were receiving treatment under the program outside the presence of a parent or another responsible adult. The treatment of unaccompanied children under the Medicaid program resulted in the provision of unnecessary services to those children, the exposure of those children to unnecessary health and safety risks, and the submission of fraudulent claims by Medicaid providers.

(c) In addition, in 1999, the legislature became aware of allegations that certain Medicaid providers were offering money and other gifts in exchange for a parent's or child's consent to receive unnecessary services under the Medicaid program. In some cases, a child was offered money or gifts in exchange for the parent's or child's consent to have the child transported to a different location to receive unnecessary services. In some of those cases, once transported, the child received no treatment and was left unsupervised for hours before being transported home. The provision of money and other gifts by Medicaid providers in exchange for parents' or children's consent to services deprived those parents and children of the right to choose a Medicaid provider without improper inducement.

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

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

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

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

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

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

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

(g) The legislature declares that a Medicaid provider, or an employee or associate of the Medicaid provider, is not "another adult" within the meaning of Subsection (s), Section 32.024, Human Resources Code, from the date the section was amended, and may not be authorized by the parent or guardian of a child to accompany the child at a visit or screening under the early and periodic screening, diagnosis, and treatment program at which the Medicaid provider provides services to the child. Any interpretation of

Subsection (s), Section 32.024, Human Resources Code, that allows a Medicaid provider, or an employee or associate of the Medicaid provider, to be authorized to accompany a child at a visit or screening at which the Medicaid provider provides services is contrary to the intent of the legislature.

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

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

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

(4) The legislature declares that a governmental action taken or a decision made by the Health and Human Services Commission before the effective date of the Act to implement or enforce a policy requiring that, in order for a Medicaid provider to be reimbursed for services provided to a child under the early and periodic screening, diagnosis, and treatment program, the child must be accompanied by the child's parent or guardian or another adult who is not the provider or the provider's employee or associate and whom the child's parent or guardian has authorized to accompany the child by submitting signed written consent to the provider pursuant to Subsection (s), Section 32.024, Human Resources Code, is conclusively presumed, as of the date the action was taken or the decision was made, to be valid and to have occurred in accordance with all applicable law.

(5) The legislature also declares that, without determination of the weight or sufficiency of the evidence relied

upon, the imposition of sanctions by the office of inspector general of the Health and Human Services Commission on Medicaid providers whom the office of inspector general has found to have offered and provided inducements to individuals enrolled in the Medicaid program in violation of federal law is a valid exercise of that office's authority to enforce laws that regulate fraud, waste, and abuse in the Medicaid program.

(6) This section does not apply to:

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

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

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

SECTION 15. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall establish the data analysis unit required under Section 531.0082, Government Code, as added by this Act. The data analysis unit shall provide the initial update required under Subsection (d), Section 531.0082, Government Code, as added by this Act, not later than the 30th day after the last day of the first complete calendar quarter occurring after the date the unit is established.

SECTION 16. Section 773.0571, Health and Safety Code, as amended by this Act, applies only to an application for an original emergency medical services provider license submitted to the Department of State Health Services on or after the effective date of this Act. An application submitted before the effective date of this Act, or the renewal of a license issued before that date, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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

SECTION 18. This Act takes effect September 1, 2013.

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