

By: Nelson

S.B. No. 56

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the provision and delivery of certain health care
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 B, Chapter 531, Government Code, is
8 amended by adding Section 531.02115 to read as follows:

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

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

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

24 (3) is intended to influence the client's or parent's

1 choice of provider.

2 (b) In addition to the requirements of Subsection (a), a
3 provider participating in the network of a managed care
4 organization described by that subsection must comply with the
5 marketing guidelines established by the commission under Section
6 533.008.

7 (c) Nothing in this section prohibits a provider
8 participating in the Medicaid or child health plan program from
9 engaging in a marketing activity, including any dissemination of
10 material or other attempt to communicate, that is intended to
11 influence the choice of provider by a Medicaid client or a parent
12 whose child is enrolled in the Medicaid or child health plan
13 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 (d) The executive commissioner may adopt rules as necessary
18 to implement this section.

19 SECTION 2. Section 531.02414, Government Code, is amended
20 by adding Subsection (g) to read as follows:

21 (g) The commission shall enter into a memorandum of
22 understanding with the Texas Department of Motor Vehicles and the
23 Texas Department of Public Safety for purposes of obtaining the
24 motor vehicle registration and driver's license information of a
25 recipient of medical transportation services, or another medical
26 assistance recipient requesting those services, to confirm that the
27 recipient meets the eligibility criteria for the services requiring

1 that recipients have no other means of transportation. The
2 commission shall establish a process by which managed care
3 organizations contracting with the commission under Chapter 533 may
4 request and obtain the information described under this subsection
5 for purposes of similarly confirming a medical assistance
6 recipient's eligibility for medical transportation services.

7 SECTION 3. Section 531.102(a), Government Code, is amended
8 to read as follows:

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

19 SECTION 4. (a) Subchapter A, Chapter 533, Government Code,
20 is amended by adding Section 533.00254 to read as follows:

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

24 (b) Subject to Subsection (c), the commission shall provide
25 medical transportation program services through a managed care
26 delivery model.

27 (c) The commission may delay providing medical

1 transportation program services through a managed care delivery
2 model in areas of this state in which the commission on September 1,
3 2013, is piloting a full-risk transportation broker model until:

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

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

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

13 SECTION 5. Section 32.0322, Human Resources Code, is
14 amended by amending Subsection (b) and adding Subsections (b-1),
15 (e), (f), and (g) to read as follows:

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

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

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

26 (3) the provider's failure to bill for medical
27 assistance or refer clients for medical assistance within a

1 12-month period; or

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

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

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

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

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

19 (B) a person with a disability; or

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

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

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

27 (2) the person has not committed an act that would

1 require revocation of a provider's enrollment or denial of a
2 person's application to enroll since the person's enrollment was
3 revoked or application was denied, as appropriate.

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

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

12 SECTION 6. Section 36.005(b-1), Human Resources Code, is
13 amended to read as follows:

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

18 SECTION 7. Subchapter C, Chapter 36, Human Resources Code,
19 is amended by adding Section 36.1041 to read as follows:

20 Sec. 36.1041. NOTIFICATION OF SETTLEMENT. (a) Not later
21 than the 10th day after the date a person described by Section
22 36.104(b) reaches a proposed settlement agreement with a defendant,
23 the person must notify the attorney general.

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

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

7 SECTION 8. (a) The Health and Human Services Commission
8 shall:

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

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

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

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

23 SECTION 9. (a) The Department of State Health Services
24 shall:

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

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

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

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

10 SECTION 10. (a) The Texas Medical Board shall:

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

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

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

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

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

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

1 SECTION 11. (a) This section is a clarification of
2 legislative intent regarding Section 32.024(s), Human Resources
3 Code, and a validation of certain Health and Human Services
4 Commission acts and decisions.

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

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

26 (d) In response, in 1999, the legislature enacted Chapter
27 766 (H.B. 1285), Acts of the 76th Legislature, Regular Session,

1 which amended Section 32.024, Human Resources Code, by amending
2 Subsection (s) and adding Subsection (s-1). As amended, Section
3 32.024(s), Human Resources Code, requires that a child's parent or
4 guardian or another adult authorized by the child's parent or
5 guardian accompany the child at a visit or screening under the early
6 and periodic screening, diagnosis, and treatment program in order
7 for a Medicaid provider to be reimbursed for services provided at
8 the visit or screening. As filed, the bill required a child's
9 parent or guardian to accompany the child. The house committee
10 report added the language allowing an adult authorized by the
11 child's parent or guardian to accompany the child in order to
12 accommodate a parent or guardian for whom accompanying the parent's
13 or guardian's child to each visit or screening would be a hardship.

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

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

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

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

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

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

12 (g) The legislature declares that a Medicaid provider, or an
13 employee or associate of the Medicaid provider, is not "another
14 adult" within the meaning of Section 32.024(s), Human Resources
15 Code, from the date the section was amended, and may not be
16 authorized by the parent or guardian of a child to accompany the
17 child at a visit or screening under the early and periodic
18 screening, diagnosis, and treatment program at which the Medicaid
19 provider provides services to the child. Any interpretation of
20 Section 32.024(s), Human Resources Code, that allows a Medicaid
21 provider, or an employee or associate of the Medicaid provider, to
22 be authorized to accompany a child at a visit or screening at which
23 the Medicaid provider provides services is contrary to the intent
24 of the legislature.

25 (h)(1) On March 15, 2012, the Health and Human Services
26 Commission notified certain Medicaid providers that state law and
27 commission policy require a child's parent or guardian or another

1 properly authorized adult to accompany a child receiving services
2 under the Medicaid program. This notice followed the commission's
3 discovery that some providers were transporting children from
4 schools to therapy clinics and other locations to receive therapy
5 services. Although the children were not accompanied by a parent or
6 guardian during these trips, the providers were obtaining
7 reimbursement for the trips under the Medicaid medical
8 transportation program. The commission clarified in the notice
9 that in order for a provider to be reimbursed for transportation
10 services provided to a child under the Medicaid medical
11 transportation program, the child must be accompanied by the
12 child's parent or guardian or another adult who is not the provider
13 and whom the child's parent or guardian has authorized to accompany
14 the child by submitting signed, written consent to the provider.

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

1 the child's parent or guardian, provided that the child's parent or
2 guardian authorizes another adult to accompany the child. The
3 state has filed a notice of appeal of the court's order.

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

19 (4) The legislature declares that a governmental
20 action taken or a decision made by the Health and Human Services
21 Commission before the effective date of this Act to implement or
22 enforce a policy requiring that, in order for a Medicaid provider to
23 be reimbursed for services provided to a child under the early and
24 periodic screening, diagnosis, and treatment program, the child
25 must be accompanied by the child's parent or guardian or another
26 adult who is not the provider or the provider's employee or
27 associate and whom the child's parent or guardian has authorized to

1 accompany the child by submitting signed, written consent to the
2 provider pursuant to Section 32.024(s), Human Resources Code, is
3 conclusively presumed, as of the date the action was taken or the
4 decision was made, to be valid and to have occurred in accordance
5 with all applicable law.

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

15 (6) This section does not apply 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 SECTION 12. The Health and Human Services Commission shall,
24 as soon as practicable after the effective date of this Act,
25 establish data analytical processes to improve contract
26 management, detect data trends, and identify anomalies in service
27 utilization, payment methodologies, and adherence to requirements

1 in Medicaid and CHIP managed care and fee-for-service contracts.

2 SECTION 13. The amendment by this Act of Section
3 36.005(b-1), Human Resources Code, is intended to clarify rather
4 than change existing law.

5 SECTION 14. If before implementing any provision of this
6 Act a state agency determines that a waiver or authorization from a
7 federal agency is necessary for implementation of that provision,
8 the agency affected by the provision shall request the waiver or
9 authorization and may delay implementing that provision until the
10 waiver or authorization is granted.

11 SECTION 15. This Act takes effect September 1, 2013.