

By: Nelson, West

S.B. No. 746

A BILL TO BE ENTITLED

AN ACT

relating to unlawful acts against and criminal offenses involving the Medicaid program.

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

SECTION 1. Section 36.002, Human Resources Code, is amended to read as follows:

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

1 (A) the conditions or operation of a facility in  
2 order that the facility may qualify for certification or  
3 recertification required by the Medicaid program, including  
4 certification or recertification as:

5 (i) a hospital;

6 (ii) a nursing facility or skilled nursing  
7 facility;

8 (iii) a hospice;

9 (iv) an intermediate care facility for the  
10 mentally retarded;

11 (v) an assisted living facility; or

12 (vi) a home health agency; or

13 (B) information required to be provided by a  
14 federal or state law, rule, regulation, or provider agreement  
15 pertaining to the Medicaid program;

16 (5) except as authorized under the Medicaid program,  
17 knowingly pays, charges, solicits, accepts, or receives, in  
18 addition to an amount paid under the Medicaid program, a gift,  
19 money, a donation, or other consideration as a condition to the  
20 provision of a service or product or the continued provision of a  
21 service or product if the cost of the service or product is paid  
22 for, in whole or in part, under the Medicaid program;

23 (6) knowingly presents or causes to be presented a  
24 claim for payment under the Medicaid program for a product provided  
25 or a service rendered by a person who:

26 (A) is not licensed to provide the product or  
27 render the service, if a license is required; or

1 (B) is not licensed in the manner claimed;

2 (7) knowingly makes or causes to be made a claim under  
3 the Medicaid program for:

4 (A) a service or product that has not been  
5 approved or acquiesced in by a treating physician or health care  
6 practitioner;

7 (B) a service or product that is substantially  
8 inadequate or inappropriate when compared to generally recognized  
9 standards within the particular discipline or within the health  
10 care industry; or

11 (C) a product that has been adulterated, debased,  
12 mislabeled, or that is otherwise inappropriate;

13 (8) makes a claim under the Medicaid program and  
14 knowingly fails to indicate the type of license and the  
15 identification number of the licensed health care provider who  
16 actually provided the service;

17 (9) conspires to commit a violation of Subdivision  
18 (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13)  
19 ~~[knowingly enters into an agreement, combination, or conspiracy to~~  
20 ~~defraud the state by obtaining or aiding another person in~~  
21 ~~obtaining an unauthorized payment or benefit from the Medicaid~~  
22 ~~program or a fiscal agent];~~

23 (10) is a managed care organization that contracts  
24 with the Health and Human Services Commission or other state agency  
25 to provide or arrange to provide health care benefits or services to  
26 individuals eligible under the Medicaid program and knowingly:

27 (A) fails to provide to an individual a health

1 care benefit or service that the organization is required to  
2 provide under the contract;

3 (B) fails to provide to the commission or  
4 appropriate state agency information required to be provided by  
5 law, commission or agency rule, or contractual provision; or

6 (C) engages in a fraudulent activity in  
7 connection with the enrollment of an individual eligible under the  
8 Medicaid program in the organization's managed care plan or in  
9 connection with marketing the organization's services to an  
10 individual eligible under the Medicaid program;

11 (11) knowingly obstructs an investigation by the  
12 attorney general of an alleged unlawful act under this section;

13 (12) knowingly makes, uses, or causes the making or  
14 use of a false record or statement material to [~~conceal, avoid, or~~  
15 ~~decrease~~] an obligation to pay or transmit money or property to this  
16 state under the Medicaid program, or knowingly conceals or  
17 knowingly and improperly avoids or decreases an obligation to pay  
18 or transmit money or property to this state under the Medicaid  
19 program; or

20 (13) knowingly engages in conduct that constitutes a  
21 violation under Section 32.039(b).

22 SECTION 2. Section 36.104, Human Resources Code, is amended  
23 by amending Subsection (b) and adding Subsection (b-1) to read as  
24 follows:

25 (b) If the state declines to take over the action, the  
26 person bringing the action may proceed without the state's  
27 participation. A person proceeding under this subsection may

1 recover for an unlawful act for a period of up to six years before  
2 the date the lawsuit was filed, or for a period beginning when the  
3 unlawful act occurred until up to three years from the date the  
4 state knows or reasonably should have known facts material to the  
5 unlawful act, whichever of these two periods is longer, regardless  
6 of whether the unlawful act occurred more than six years before the  
7 date the lawsuit was filed. Notwithstanding the preceding  
8 sentence, in no event shall a person proceeding under this  
9 subsection recover for an unlawful act that occurred more than 10  
10 years before the date the lawsuit was filed.

11       **(b-1)** On request by the state, the state is entitled to be  
12 served with copies of all pleadings filed in the action and be  
13 provided at the state's expense with copies of all deposition  
14 transcripts. If the person bringing the action proceeds without  
15 the state's participation, the court, without limiting the status  
16 and right of that person, may permit the state to intervene at a  
17 later date on a showing of good cause.

18       SECTION 3. Subsections (b) and (c), Section 36.110, Human  
19 Resources Code, are amended to read as follows:

20       (b) If the court finds that the action is based primarily on  
21 disclosures of specific information, other than information  
22 provided by the person bringing the action, relating to allegations  
23 or transactions in a Texas or federal criminal or civil hearing, in  
24 a Texas or federal legislative or administrative report, hearing,  
25 audit, or investigation, or from the news media, the court may award  
26 the amount the court considers appropriate but not more than 10  
27 [~~seven~~] percent of the proceeds of the action. The court shall

1 consider the significance of the information and the role of the  
2 person bringing the action in advancing the case to litigation.

3 (c) A payment to a person under this section shall be made  
4 from the proceeds of the action. A person receiving a payment under  
5 this section is also entitled to receive from the defendant an  
6 amount for reasonable expenses, reasonable attorney's fees, and  
7 costs that the court finds to have been necessarily incurred. The  
8 court's determination of expenses, fees, and costs to be awarded  
9 under this subsection shall be made only after the defendant has  
10 been found liable in the action or the claim is settled [~~state~~  
11 ~~settles an action with a defendant that the court determined, after~~  
12 ~~a hearing, was fair, adequate, and reasonable in accordance with~~  
13 ~~Section 36.107(c)~~].

14 SECTION 4. Subsection (b), Section 36.113, Human Resources  
15 Code, is amended to read as follows:

16 (b) The court shall dismiss [~~A person may not bring~~] an  
17 action or claim under this subchapter, unless opposed by the  
18 attorney general, if substantially the same [~~that is based on the~~  
19 ~~public disclosure of~~] allegations or transactions as alleged in the  
20 action or claim were publicly disclosed in a Texas or federal  
21 criminal or civil hearing in which the state or an agent of the  
22 state is a party, in a Texas legislative or administrative report,  
23 or other Texas hearing, audit, or investigation, or from the news  
24 media, unless the person bringing the action is an original source  
25 of the information. In this subsection, "original source" means an  
26 individual who:

27 (1) prior to a public disclosure under this

1 subsection, has voluntarily disclosed to the state the information  
2 on which allegations or transactions in a claim are based [~~has~~  
3 ~~direct and independent knowledge of the information on which the~~  
4 ~~allegations are based and has voluntarily provided the information~~  
5 ~~to the state before filing an action under this subchapter that is~~  
6 ~~based on the information~~]; or

7           (2) has knowledge that is independent of and  
8 materially adds to the publicly disclosed allegation or  
9 transactions [~~allegations~~] and who has voluntarily provided the  
10 information to the state before filing an action under this  
11 subchapter [~~that is based on the information~~].

12           SECTION 5. Section 36.115, Human Resources Code, is amended  
13 by amending Subsection (a) and adding Subsection (c) to read as  
14 follows:

15           (a) A person, including an employee, contractor, or agent,  
16 who is discharged, demoted, suspended, threatened, harassed, or in  
17 any other manner discriminated against in the terms and conditions  
18 of employment because of a lawful act taken by the person or  
19 associated others in furtherance of an action under this  
20 subchapter, including investigation for, initiation of, testimony  
21 for, or assistance in an action filed or to be filed under this  
22 subchapter, or other efforts taken by the person to stop one or more  
23 violations of Section 36.002 is entitled to:

24           (1) reinstatement with the same seniority status the  
25 person would have had but for the discrimination; and

26           (2) not less than two times the amount of back pay,  
27 interest on the back pay, and compensation for any special damages

1 sustained as a result of the discrimination, including litigation  
2 costs and reasonable attorney's fees.

3 (c) A person must bring suit on an action under this section  
4 not later than the third anniversary of the date on which the cause  
5 of action accrues. For purposes of this section, the cause of  
6 action accrues on the date the retaliation occurs.

7 SECTION 6. Subsection (c), Section 36.113, Human Resources  
8 Code, is repealed.

9 SECTION 7. The changes in law made by this Act to Section  
10 36.002, Human Resources Code, apply only to conduct that occurs on  
11 or after the effective date of this Act. Conduct that occurs before  
12 the effective date of this Act is governed by the law in effect at  
13 the time the conduct occurred, and that law is continued in effect  
14 for that purpose.

15 SECTION 8. The changes in law made by this Act to Sections  
16 36.110 and 36.113, Human Resources Code, apply only to a civil  
17 action for a violation of Section 36.002, Human Resources Code, as  
18 amended by this Act, commenced on or after the effective date of  
19 this Act. A civil action commenced before the effective date of  
20 this Act is governed by the law in effect immediately before the  
21 effective date of this Act, and that law is continued in effect for  
22 that purpose.

23 SECTION 9. The changes in law made by this Act to Section  
24 36.115, Human Resources Code, apply only to a cause of action that  
25 accrues on or after the effective date of this Act. A cause of  
26 action that accrued before the effective date of this Act is  
27 governed by the law applicable to the cause of action immediately



1 before the effective date of this Act, and that law is continued in  
2 effect for that purpose.

3 SECTION 10. This Act takes effect September 1, 2013.