

By: Nelson

S.B. No. 746

A BILL TO BE ENTITLED

1 AN ACT
2 relating to unlawful acts against and criminal offenses involving
3 the Medicaid program.

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

5 SECTION 1. Section 36.002(9) and (12), Human Resources
6 Code, are amended to read as follows:

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

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(b), Human Resources Code, is
23 amended to read as follows:

24 (b) If the state declines to take over the action, the

1 person bringing the action may proceed without the state's
2 participation. On request by the state, the state is entitled to be
3 served with copies of all pleadings filed in the action and be
4 provided at the state's expense with copies of all deposition
5 transcripts. If the person bringing the action proceeds without
6 the state's participation, the court, without limiting the status
7 and right of that person, may permit the state to intervene at a
8 later date on a showing of good cause. A person pursuing an action
9 under this subsection may file suit for claims that accrued on or
10 after September 1, 1995, the effective date of this Statute.

11 SECTION 3. Sections 36.110(b) and (c), Human Resources
12 Code, are amended to read as follows:

13 (b) If the court finds that the action is based primarily on
14 disclosures of specific information, other than information
15 provided by the person bringing the action, relating to allegations
16 or transactions in a state criminal or civil hearing, in a state
17 legislative or administrative report, hearing, audit, or
18 investigation, or from the news media, the court may award the
19 amount the court considers appropriate but not more than 10 [~~seven~~]
20 percent of the proceeds of the action. The court shall consider the
21 significance of the information and the role of the person bringing
22 the action in advancing the case to litigation.

23 (c) A payment to a person under this section shall be made
24 from the proceeds of the action. A person receiving a payment under
25 this section is also entitled to receive from the defendant an
26 amount for reasonable expenses, reasonable attorney's fees, and
27 costs that the court finds to have been necessarily incurred. The

1 court's determination of expenses, fees, and costs to be awarded
2 under this subsection shall be made only after the defendant has
3 been found liable in the action or the claim is settled [~~state~~
4 ~~settles an action with a defendant that the court determined, after~~
5 ~~a hearing, was fair, adequate, and reasonable in accordance with~~
6 ~~Section 36.107(c)~~].

7 SECTION 4. Section 36.113(b), Human Resources Code, is
8 amended to read as follows:

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

19 (1) prior to a public disclosure under this
20 subsection, has voluntarily disclosed to the state the information
21 on which allegations or transactions in a claim are based [~~had~~
22 ~~direct and independent knowledge of the information on which the~~
23 ~~allegations are based and has voluntarily provided the information~~
24 ~~to the state before filing an action under this subchapter that is~~
25 ~~based on the information~~]; or

26 (2) has knowledge that is independent of and
27 materially adds to the publicly disclosed allegation[s] or

1 transactions who has voluntarily provided the information to the
2 state before filing an action under this subchapter [~~that is based~~
3 ~~on the information~~].

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

7 (a) A person, including an employee, contractor, or agent,
8 who is discharged, demoted, suspended, threatened, harassed, or in
9 any other manner discriminated against in the terms and conditions
10 of employment because of a lawful act taken by the person or
11 associated others in furtherance of an action under this
12 subchapter, including investigation for, initiation of, testimony
13 for, or assistance in an action filed or to be filed under this
14 subchapter, or other efforts taken by the person to stop one or more
15 violations of Section 36.002 is entitled to:

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

18 (2) not less than two times the amount of back pay,
19 interest on the back pay, and compensation for any special damages
20 sustained as a result of the discrimination, including litigation
21 costs and reasonable attorney's fees.

22 (c) A person must bring suit on an action under this section
23 not later than the third anniversary of the date on which the cause
24 of action accrues. For purposes of this section, the cause of
25 action accrues on the date the retaliation occurs.

26 SECTION 6. Section 36.113(c), Human Resources Code, is
27 repealed.

1 SECTION 7. (a) The changes in law made by this Act to
2 Section 36.002, Human Resources Code, apply only to conduct that
3 occurs on or after the effective date of this Act. Conduct that
4 occurs before the effective date of this Act is governed by the law
5 in effect at the time the conduct occurred, and that law is
6 continued in effect for that purpose.

7 SECTION 8. The changes in law made by this Act to Sections
8 36.110 and 36.113, Human Resources Code, apply only to a civil
9 action for a violation of Section 36.002, Human Resources Code, as
10 amended by this Act, commenced on or after the effective date of
11 this Act. A civil action commenced before the effective date of
12 this Act is governed by the law in effect immediately before the
13 effective date of this Act, and that law is continued in effect for
14 that purpose.

15 SECTION 9. The changes in law made by this Act to Section
16 36.115, Human Resources Code, apply only to a cause of action that
17 accrues on or after the effective date of this Act. A cause of
18 action that accrued before the effective date of this Act is
19 governed by the law applicable to the case of action immediately
20 before the effective date of this Act, and that law is continued in
21 effect for that purpose.

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