

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 25, 2013

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1803 by Huffman (Relating to the Office of the Inspector General.), **As Introduced**

Because the number of Medicaid provider payment holds or overpayment cases that could be referred to regulatory boards or the State Office of Administrative Hearings by the Office of Inspector General is unknown, and the hearing procedure unspecified, the fiscal implications to the state cannot be estimated.

The bill would amend Chapter 531 of the Government Code by adding definitions of “credible allegation of fraud” and “preliminary finding of fraud” and by establishing various due process practices when the Office of the Inspector General (OIG) at the Health and Human Services Commission determines there is a credible allegation of fraud and imposes a payment hold on a provider or when the OIG determines a Medicaid overpayment has been made. The bill would require the OIG to refer the case of a payment hold, upon receipt of a written request, to an appropriate regulatory agency or the State Office of Administrative Hearings (SOAH) for a determination of whether the hold should remain in place or be dissolved. The bill would require the OIG to refer Medicaid overpayment findings to an appropriate regulatory agency or SOAH without a written request.

This analysis assumes that the bill would not preclude the OIG from imposing a hold on payment of claims for reimbursement submitted by the provider that are currently authorized under state or federal law. Otherwise, significant federal funding could be jeopardized as all federal matching funds paid to providers while a credible allegation of fraud is pending are at risk of disallowance and recoupment by the federal Centers for Medicare and Medicaid Services.

Based on the analysis of HHSC, the bill would increase the burden of proof based on a credible allegation of fraud to an increased standard of “clear and convincing evidence.” The OIG estimates an increase in workload to meet this standard that would require an additional 10.7 full time equivalents (FTEs).

There is broad discrepancy among the affected agencies related to the potential cost of the bill because the bill does not specify a procedure related to a hearing for an overpayment, as it does for the hold on payment hearings. The OIG anticipates significant cost and the need for an additional 93.8 FTEs from the portion of the bill that authorizes a hearing for overpayments; OIG assumes 5,772 cases would be referred for hearing in fiscal year 2014 and 5,784 in each subsequent year to either SOAH or a regulatory licensing board. SOAH, on the other hand, estimates an additional 60 cases per year. The regulatory agencies also provided a range of estimated numbers of hearings.

It is not known how many cases would be referred to each specific licensing board in the state for hearings on payment holds or overpayments. While certain agencies do not anticipate a significant increase in cases, the bill's provisions on hearings are not restricted to providers who have submitted a written request for a hearing or only to Medicaid fraud related cases; as such, its enactment could result in a significant increase in cases for the regulatory boards. The time involved per case could vary, and certain regulatory agencies anticipate needing additional staff with expertise to review credible allegations of fraud or overpayment issues. Many of the state regulatory agencies are self-funding agencies; their expenditures are covered by increased fees on the professionals they license. As such, there is a potential for increased licensing fees on health care providers across the state.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 360 State Office of Administrative Hearings, 503 Texas Medical Board, 504 Texas State Board of Dental Examiners, 507 Texas Board of Nursing, 508 Board of Chiropractic Examiners, 512 Board of Podiatric Medical Examiners, 515 Board of Pharmacy, 520 Board of Examiners of Psychologists, 529 Health and Human Services Commission, 533 Executive Council of Physical Therapy & Occupational Therapy Examiners

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