

By: Zerwas

H.B. No. 2959

A BILL TO BE ENTITLED

AN ACT

relating to Medicaid interception of certain insurance payments.

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

SECTION 1. Subtitle C, Title 2, Human Resources Code, is amended by adding Chapter 37 to read as follows:

CHAPTER 37. MEDICAID INTERCEPTION OF CERTAIN INSURANCE PAYMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 37.001. SHORT TITLE. This chapter may be cited as the Medicaid Interception of Insurance Payments Act.

Sec. 37.002. PURPOSE. The purpose of this chapter is to regulate the recovery of money paid by the Health and Human Services Commission under the Medicaid program.

Sec. 37.003. DEFINITIONS. In this chapter:

(1) "Claimant" means an insured under an insurance policy or self-funded plan or a third-party claimant under a policy or plan seeking benefits for injuries received as a result of an accident or loss. The term includes an insured's or third party's legal representative, family member, or any other individual acting on the insured's or third party's behalf.

(2) "Commission" means the Health and Human Services Commission.

(3) "Insurer" means an insurance company holding a certificate of authority to engage in the business of insurance in this state.

1           (4) "Self-funded plan" means a plan that an entity  
2 self-insures for the entity's legal responsibility without the  
3 benefit of primary insurance through the use of a self-insured  
4 retention.

5           (5) "Self-insurer" means an entity insured under a  
6 self-funded plan. The term includes any entity that is directing  
7 the handling of self-funded plan claims through a third party or as  
8 a result of a policy buyback, cost-sharing agreement, or  
9 coverage-in-place agreement.

10           Sec. 37.004. APPLICABILITY OF CHAPTER. (a) This chapter  
11 applies only to personal injury protection, medical payments  
12 coverage, and third-party payments for bodily injury from liability  
13 insurance and self-funded plans that insure similar liabilities.

14 This chapter does not apply to:

15           (1) a claim under a liability insurance policy that  
16 does not cover bodily injury;

17           (2) a claim for property damage or loss of use of  
18 property;

19           (3) a claim made against an accident and health policy  
20 regardless of whether the policy is payable on an expense-incurred  
21 or indemnity basis; and

22           (4) a workers' compensation claim.

23           (b) This chapter does not apply to a claimant seeking less  
24 than \$2,000 under an insurance policy or self-funded plan or a  
25 Medicaid recipient with respect to whom this state has incurred  
26 less than \$2,000 of Medicaid costs in connection with an injury  
27 resulting from an accident or loss.

1       Sec. 37.005. EFFECT ON OTHER LAW. This chapter does not  
2 limit the commission from recovering any other money allowed under  
3 the laws of this state and federal law.

4       Sec. 37.006. RULEMAKING AUTHORITY. The executive  
5 commissioner of the commission may adopt rules as necessary to  
6 implement this chapter.

7                   SUBCHAPTER B. MEDICAID INTERCEPTION

8       Sec. 37.051. AUTOMATIC ASSIGNMENT OF RIGHTS. In accordance  
9 with the laws of this state and applicable rules, when applying for  
10 Medicaid, an applicant or recipient assigns the applicant's or  
11 recipient's rights to any payments under applicable insurance  
12 coverage to the commission.

13       Sec. 37.052. MATCH PROCESS. (a) This section applies only  
14 to an individual or estate making a bodily injury or wrongful death  
15 claim under an insurance policy or self-funded plan.

16           (b) At any time before providing a total payment of at least  
17 \$2,000 on behalf of or to a claimant on a claim under an insurance  
18 policy or self-funded plan, the insurer or self-insurer shall  
19 exchange information with the commission in accordance with this  
20 chapter.

21           (c) To facilitate compliance with this chapter, the  
22 commission shall develop and maintain a data match system to  
23 compare claimant information held by insurers and self-insurers  
24 with the commission's database of recipients. The commission shall  
25 seek the comment of insurers and self-insurers in this state in  
26 developing the data match system. The data match system must use  
27 automated data exchanges to the maximum extent possible.

1       (d) An insurer or self-insurer shall provide the commission  
2 with the name and address of an individual or estate determined by  
3 the commission to be a recipient and may provide the recipient's  
4 date of birth and last four digits of the recipient's social  
5 security number.

6       (e) An insurer or self-insurer may provide the information  
7 described by Subsection (d) by:

8           (1) authorizing an insurance claim data collection  
9 organization, to which the insurer or self-insurer subscribes and  
10 to which the insurer or self-insurer submits the required claim  
11 data on at least a weekly basis, to:

12                   (A) receive or access a data file from the  
13 commission and conduct a data match to identify all recipients who  
14 are claimants under an insurance policy or self-funded plan and  
15 submit the required information for each data match to the  
16 commission; or

17                   (B) submit a data file to the commission that  
18 contains the required information for each claim against the  
19 insurer or self-insurer for the commission to conduct a data match;

20           (2) electronically providing the required information  
21 for each claim against the insurer or self-insurer directly to the  
22 commission; or

23           (3) receiving or accessing a data file from the  
24 commission and conducting a data match to identify each recipient  
25 who is a claimant under an insurance policy or self-funded plan and  
26 submitting the required information for each data match to the  
27 commission.

1       (f) On receiving a data match under this section, the  
2 commission shall send the insurer or self-insurer a notice of lien  
3 against the amount payable to the recipient. The notice must  
4 include the amount of the lien and the name of the recipient who is  
5 the subject of the lien.

6       (g) An insurer or self-insurer may comply with this section  
7 by making a good faith effort to comply. The commission may only  
8 demonstrate a violation of this section by proving an intentional  
9 failure to comply through a pattern and practice of noncompliance.  
10 The commission may not demonstrate a violation through a single  
11 instance of noncompliance.

12       Sec. 37.053. PAYMENT PROCESS. (a) Subject to this section,  
13 on receipt of a notice of lien under Section 37.052, an insurer or  
14 self-insurer shall withhold the lesser of the amount of the payment  
15 owed to a claimant under an insurance policy or self-funded plan or  
16 the amount described by the notice of lien and shall remit that  
17 amount to the commission.

18       (b) A lien under this subchapter encumbers the right of the  
19 claimant to payment under the insurance policy or self-funded plan,  
20 and the insurer or self-insurer shall disburse to the claimant only  
21 the portion of the payment remaining after the satisfaction of the  
22 lien.

23       (c) A lien under this subchapter is inferior to any other  
24 lien or claim for attorney's fees.

25       (d) If a recipient believes that the payment of the lien  
26 exceeds the amount incurred by this state under the Medicaid  
27 program on behalf of the recipient and notifies the insurer or

1 self-insurer that the recipient intends to file an administrative  
2 appeal, the insurer or self-insurer may issue a single check made  
3 payable to the recipient and the commission. The insurer or  
4 self-insurer may notify the commission of its intent to issue  
5 payment as a single check under this subsection.

6 (e) If the notice of lien is received after the insurer or  
7 self-insurer has issued payment to a claimant, the insurer or  
8 self-insurer shall notify the commission of the date of payment,  
9 the amount of payment, and the name and address of the claimant.  
10 The insurer or self-insurer is not obligated to make a payment to  
11 the commission.

12 (f) An insurer or self-insurer shall pay the commission  
13 under this section not later than the 30th day after the date of  
14 notice of lien unless the recipient requests a hearing under  
15 Section 37.056. If the recipient requests a hearing, the insurer or  
16 self-insurer shall pay the commission in accordance with the result  
17 of the hearing not later than the 10th business day after the date a  
18 decision is rendered.

19 (g) The time for prompt payment of a claim under Chapter  
20 542, Insurance Code, is tolled from the date the insurer receives  
21 notice of lien under this chapter to the date payment is required to  
22 be made under Subsection (f).

23 Sec. 37.054. DATA CONFIDENTIALITY. (a) The information  
24 obtained by the commission from an insurer or self-insurer under  
25 this chapter may only be used for the purposes of this chapter.

26 (b) An insurer or self-insurer, including the insurer's or  
27 self-insurer's directors, agents, or employees, and an insurance

1 claim data collection organization, including the organization's  
2 agents and employees authorized by the insurer or self-insurer to  
3 act on the insurer's or self-insurer's behalf, shall keep  
4 information concerning a recipient described by this chapter secure  
5 and confidential.

6 Sec. 37.055. NOTICE OF INTERCEPTION. The commission shall  
7 provide written notice to the claimant and claimant's attorney, if  
8 applicable, that includes the date of the notice, the name of the  
9 recipient, the last four digits of the social security number of the  
10 recipient, the case number, the intercepted amount, the reason for  
11 the interception, and notification of an opportunity to request a  
12 hearing.

13 Sec. 37.056. REQUEST FOR HEARING. Not later than the 30th  
14 day after the date of the notice under Section 37.055, a claimant or  
15 recipient who has a claim intercepted under this chapter may  
16 request a hearing from the State Office of Administrative Hearings.

17 Sec. 37.057. LIMITATION OF LIABILITY. (a) An insurer or  
18 self-insurer, including the insurer's or self-insurer's directors,  
19 agents, or employees, or an insurance claim data collection  
20 organization, including the organization's agents and employees  
21 authorized by the insurer or self-insurer to act on the insurer's or  
22 self-insurer's behalf, that provides or attempts to provide  
23 information under this chapter is not liable for damages that occur  
24 as a result of providing or attempting to provide data under this  
25 chapter. This chapter does not create civil liability for an  
26 insurer or self-insurer.

27 (b) An insurer or self-insurer, including the insurer's or

1 self-insurer's directors, agents, or employees, or any insurance  
2 claim data collection organization, including the organization's  
3 agents and employees authorized by the insurer or self-insurer to  
4 act on the insurer's or self-insurer's behalf, is not liable for  
5 damages that occur as a result of making a payment to the commission  
6 under this chapter.

7 (c) A person against whom any action is brought who is found  
8 to be immune from liability under this section is entitled to  
9 recover reasonable attorney's fees and costs from the person who  
10 brought the action. This section does not abrogate or modify in any  
11 way any common law or statutory privilege or immunity otherwise  
12 enjoyed by any person.

13 Sec. 37.058. STATUTE OF LIMITATIONS. A person must bring an  
14 action to pursue the recovery of money paid to the commission under  
15 this chapter not later than two years after the date of the accident  
16 or loss causing the injury that is the basis for the payment to the  
17 commission. This chapter may not be construed to lengthen any  
18 limitations under an insurance policy or self-funded plan.

19 SECTION 2. The change in law made by this Act applies only  
20 to a claim made under an insurance policy or self-funded plan on or  
21 after the effective date of this Act. A claim made before the  
22 effective date of this Act is governed by the law applicable to the  
23 claim immediately before the effective date of this Act, and that  
24 law is continued in effect for that purpose.

25 SECTION 3. This Act takes effect September 1, 2015.