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S.B. No. 293

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the proof required to impose payment holds in certain
3 cases of alleged fraud by Medicaid providers.

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

5 SECTION 1. Section 531.102(g), Government Code, is amended
6 to read as follows:

7 (g)(1) Whenever the office learns or has reason to suspect
8 that a provider's records are being withheld, concealed, destroyed,
9 fabricated, or in any way falsified, the office shall immediately
10 refer the case to the state's Medicaid fraud control unit. However,
11 such criminal referral does not preclude the office from continuing
12 its investigation of the provider, which investigation may lead to
13 the imposition of appropriate administrative or civil sanctions.

14 (2) As authorized under state and federal law, and
15 except as provided by Subdivisions (8) and (9), the office shall
16 impose without prior notice a payment hold on claims for
17 reimbursement submitted by a provider only to compel production of
18 records, when requested by the state's Medicaid fraud control unit,
19 or on the determination that a credible allegation of fraud exists,
20 subject to Subsections (1) and (m), as applicable. The payment hold
21 is a serious enforcement tool that the office imposes to mitigate
22 ongoing financial risk to the state. A payment hold imposed under
23 this subdivision takes effect immediately. The office must notify
24 the provider of the payment hold in accordance with 42 C.F.R.

1 Section 455.23(b) and, except as provided by that regulation, not
2 later than the fifth day after the date the office imposes the
3 payment hold. In addition to the requirements of 42 C.F.R. Section
4 455.23(b), the notice of payment hold provided under this
5 subdivision must also include:

6 (A) the specific basis for the hold, including
7 identification of the claims supporting the allegation at that
8 point in the investigation, a representative sample of any
9 documents that form the basis for the hold, and a detailed summary
10 of the office's evidence relating to the allegation;

11 (B) a description of administrative and judicial
12 due process rights and remedies, including the provider's option to
13 seek informal resolution, the provider's right to seek a formal
14 administrative appeal hearing, or that the provider may seek both;
15 and

16 (C) a detailed timeline for the provider to
17 pursue the rights and remedies described in Paragraph (B).

18 (3) On timely written request by a provider subject to
19 a payment hold under Subdivision (2), other than a hold requested by
20 the state's Medicaid fraud control unit, the office shall file a
21 request with the State Office of Administrative Hearings for an
22 expedited administrative hearing regarding the hold not later than
23 the third day after the date the office receives the provider's
24 request. The provider must request an expedited administrative
25 hearing under this subdivision not later than the 10th day after the
26 date the provider receives notice from the office under Subdivision
27 (2). The State Office of Administrative Hearings shall hold the

1 expedited administrative hearing not later than the 45th day after
2 the date the State Office of Administrative Hearings receives the
3 request for the hearing. In a hearing held under this subdivision:

4 (A) the provider and the office are each limited
5 to four hours of testimony, excluding time for responding to
6 questions from the administrative law judge;

7 (B) the provider and the office are each entitled
8 to two continuances under reasonable circumstances; and

9 (C) the office is required to show probable cause
10 that the credible allegation of fraud that is the basis of the
11 payment hold has an indicia of reliability and that continuing to
12 pay the provider presents:

13 (i) an ongoing significant financial risk
14 that [to] the state may lose more than \$100,000; or [and]

15 (ii) a threat to the integrity of Medicaid
16 as defined in rules adopted by the executive commissioner, in
17 consultation with the office.

18 (4) The office is responsible for the costs of a
19 hearing held under Subdivision (3), but a provider is responsible
20 for the provider's own costs incurred in preparing for the hearing.

21 (5) In a hearing held under Subdivision (3), the
22 administrative law judge shall decide if the payment hold should
23 continue but may not adjust the amount or percent of the payment
24 hold. Notwithstanding any other law, including Section
25 [2001.058](#)(e), the decision of the administrative law judge is final
26 and may not be appealed.

27 (6) The executive commissioner, in consultation with

1 the office, shall adopt rules that allow a provider subject to a
2 payment hold under Subdivision (2), other than a hold requested by
3 the state's Medicaid fraud control unit, to seek an informal
4 resolution of the issues identified by the office in the notice
5 provided under that subdivision. A provider must request an
6 initial informal resolution meeting under this subdivision not
7 later than the deadline prescribed by Subdivision (3) for
8 requesting an expedited administrative hearing. On receipt of a
9 timely request, the office shall decide whether to grant the
10 provider's request for an initial informal resolution meeting, and
11 if the office decides to grant the request, the office shall
12 schedule the initial informal resolution meeting. The office shall
13 give notice to the provider of the time and place of the initial
14 informal resolution meeting. A provider may request a second
15 informal resolution meeting after the date of the initial informal
16 resolution meeting. On receipt of a timely request, the office
17 shall decide whether to grant the provider's request for a second
18 informal resolution meeting, and if the office decides to grant the
19 request, the office shall schedule the second informal resolution
20 meeting. The office shall give notice to the provider of the time
21 and place of the second informal resolution meeting. A provider
22 must have an opportunity to provide additional information before
23 the second informal resolution meeting for consideration by the
24 office. A provider's decision to seek an informal resolution under
25 this subdivision does not extend the time by which the provider must
26 request an expedited administrative hearing under Subdivision (3).
27 The informal resolution process shall run concurrently with the

1 administrative hearing process, and the informal resolution
2 process shall be discontinued once the State Office of
3 Administrative Hearings issues a final determination on the payment
4 hold.

5 (7) The office shall, in consultation with the state's
6 Medicaid fraud control unit, establish guidelines under which
7 program exclusions:

8 (A) may permissively be imposed on a provider; or

9 (B) shall automatically be imposed on a provider.

10 (7-a) The office shall, in consultation with the
11 state's Medicaid fraud control unit, establish guidelines
12 regarding the imposition of payment holds authorized under
13 Subdivision (2).

14 (8) In accordance with 42 C.F.R. Sections 455.23(e)
15 and (f), on the determination that a credible allegation of fraud
16 exists, the office may find that good cause exists to not impose a
17 payment hold, to not continue a payment hold, to impose a payment
18 hold only in part, or to convert a payment hold imposed in whole to
19 one imposed only in part, if any of the following are applicable:

20 (A) law enforcement officials have specifically
21 requested that a payment hold not be imposed because a payment hold
22 would compromise or jeopardize an investigation;

23 (B) available remedies implemented by the state
24 other than a payment hold would more effectively or quickly protect
25 Medicaid funds;

26 (C) the office determines, based on the
27 submission of written evidence by the provider who is the subject of

1 the payment hold, that the payment hold should be removed;

2 (D) Medicaid recipients' access to items or
3 services would be jeopardized by a full or partial payment hold
4 because the provider who is the subject of the payment hold:

5 (i) is the sole community physician or the
6 sole source of essential specialized services in a community; or

7 (ii) serves a large number of Medicaid
8 recipients within a designated medically underserved area;

9 (E) the attorney general declines to certify that
10 a matter continues to be under investigation; or

11 (F) the office determines that a full or partial
12 payment hold is not in the best interests of Medicaid.

13 (9) The office may not impose a payment hold on claims
14 for reimbursement submitted by a provider for medically necessary
15 services for which the provider has obtained prior authorization
16 from the commission or a contractor of the commission unless the
17 office has evidence that the provider has materially misrepresented
18 documentation relating to those services.

19 SECTION 2. As soon as practicable after the effective date
20 of this Act, the executive commissioner of the Health and Human
21 Services Commission shall adopt the rules required by Section
22 [531.102\(g\)\(3\)\(C\)\(ii\)](#), Government Code, as added by this Act.

23 SECTION 3. If before implementing any provision of this Act
24 a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 4. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2017.