

1-1 By: Hinojosa, Schwertner S.B. No. 293  
 1-2 (In the Senate - Filed December 14, 2016; January 30, 2017,  
 1-3 read first time and referred to Committee on Health & Human  
 1-4 Services; March 30, 2017, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
 1-6 March 30, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 293 By: Uresti

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the proof required to impose payment holds in certain  
 1-22 cases of alleged fraud by Medicaid providers.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 531.102(g), Government Code, is amended  
 1-25 to read as follows:

1-26 (g)(1) Whenever the office learns or has reason to suspect  
 1-27 that a provider's records are being withheld, concealed, destroyed,  
 1-28 fabricated, or in any way falsified, the office shall immediately  
 1-29 refer the case to the state's Medicaid fraud control unit. However,  
 1-30 such criminal referral does not preclude the office from continuing  
 1-31 its investigation of the provider, which investigation may lead to  
 1-32 the imposition of appropriate administrative or civil sanctions.

1-33 (2) As authorized under state and federal law, and  
 1-34 except as provided by Subdivisions (8) and (9), the office shall  
 1-35 impose without prior notice a payment hold on claims for  
 1-36 reimbursement submitted by a provider only to compel production of  
 1-37 records, when requested by the state's Medicaid fraud control unit,  
 1-38 or on the determination that a credible allegation of fraud exists,  
 1-39 subject to Subsections (l) and (m), as applicable. The payment hold  
 1-40 is a serious enforcement tool that the office imposes to mitigate  
 1-41 ongoing financial risk to the state. A payment hold imposed under  
 1-42 this subdivision takes effect immediately. The office must notify  
 1-43 the provider of the payment hold in accordance with 42 C.F.R.  
 1-44 Section 455.23(b) and, except as provided by that regulation, not  
 1-45 later than the fifth day after the date the office imposes the  
 1-46 payment hold. In addition to the requirements of 42 C.F.R. Section  
 1-47 455.23(b), the notice of payment hold provided under this  
 1-48 subdivision must also include:

1-49 (A) the specific basis for the hold, including  
 1-50 identification of the claims supporting the allegation at that  
 1-51 point in the investigation, a representative sample of any  
 1-52 documents that form the basis for the hold, and a detailed summary  
 1-53 of the office's evidence relating to the allegation;

1-54 (B) a description of administrative and judicial  
 1-55 due process rights and remedies, including the provider's option to  
 1-56 seek informal resolution, the provider's right to seek a formal  
 1-57 administrative appeal hearing, or that the provider may seek both;  
 1-58 and

1-59 (C) a detailed timeline for the provider to  
 1-60 pursue the rights and remedies described in Paragraph (B).

2-1 (3) On timely written request by a provider subject to  
 2-2 a payment hold under Subdivision (2), other than a hold requested by  
 2-3 the state's Medicaid fraud control unit, the office shall file a  
 2-4 request with the State Office of Administrative Hearings for an  
 2-5 expedited administrative hearing regarding the hold not later than  
 2-6 the third day after the date the office receives the provider's  
 2-7 request. The provider must request an expedited administrative  
 2-8 hearing under this subdivision not later than the 10th day after the  
 2-9 date the provider receives notice from the office under Subdivision  
 2-10 (2). The State Office of Administrative Hearings shall hold the  
 2-11 expedited administrative hearing not later than the 45th day after  
 2-12 the date the State Office of Administrative Hearings receives the  
 2-13 request for the hearing. In a hearing held under this subdivision:

2-14 (A) the provider and the office are each limited  
 2-15 to four hours of testimony, excluding time for responding to  
 2-16 questions from the administrative law judge;

2-17 (B) the provider and the office are each entitled  
 2-18 to two continuances under reasonable circumstances; and

2-19 (C) the office is required to show probable cause  
 2-20 that the credible allegation of fraud that is the basis of the  
 2-21 payment hold has an indicia of reliability and that continuing to  
 2-22 pay the provider presents:

2-23 (i) an ongoing significant financial risk  
 2-24 that ~~the~~ the state may lose more than \$100,000; or ~~and~~

2-25 (ii) a threat to the integrity of Medicaid  
 2-26 as defined in rules adopted by the executive commissioner, in  
 2-27 consultation with the office.

2-28 (4) The office is responsible for the costs of a  
 2-29 hearing held under Subdivision (3), but a provider is responsible  
 2-30 for the provider's own costs incurred in preparing for the hearing.

2-31 (5) In a hearing held under Subdivision (3), the  
 2-32 administrative law judge shall decide if the payment hold should  
 2-33 continue but may not adjust the amount or percent of the payment  
 2-34 hold. Notwithstanding any other law, including Section  
 2-35 2001.058(e), the decision of the administrative law judge is final  
 2-36 and may not be appealed.

2-37 (6) The executive commissioner, in consultation with  
 2-38 the office, shall adopt rules that allow a provider subject to a  
 2-39 payment hold under Subdivision (2), other than a hold requested by  
 2-40 the state's Medicaid fraud control unit, to seek an informal  
 2-41 resolution of the issues identified by the office in the notice  
 2-42 provided under that subdivision. A provider must request an  
 2-43 initial informal resolution meeting under this subdivision not  
 2-44 later than the deadline prescribed by Subdivision (3) for  
 2-45 requesting an expedited administrative hearing. On receipt of a  
 2-46 timely request, the office shall decide whether to grant the  
 2-47 provider's request for an initial informal resolution meeting, and  
 2-48 if the office decides to grant the request, the office shall  
 2-49 schedule the initial informal resolution meeting. The office shall  
 2-50 give notice to the provider of the time and place of the initial  
 2-51 informal resolution meeting. A provider may request a second  
 2-52 informal resolution meeting after the date of the initial informal  
 2-53 resolution meeting. On receipt of a timely request, the office  
 2-54 shall decide whether to grant the provider's request for a second  
 2-55 informal resolution meeting, and if the office decides to grant the  
 2-56 request, the office shall schedule the second informal resolution  
 2-57 meeting. The office shall give notice to the provider of the time  
 2-58 and place of the second informal resolution meeting. A provider  
 2-59 must have an opportunity to provide additional information before  
 2-60 the second informal resolution meeting for consideration by the  
 2-61 office. A provider's decision to seek an informal resolution under  
 2-62 this subdivision does not extend the time by which the provider must  
 2-63 request an expedited administrative hearing under Subdivision (3).  
 2-64 The informal resolution process shall run concurrently with the  
 2-65 administrative hearing process, and the informal resolution  
 2-66 process shall be discontinued once the State Office of  
 2-67 Administrative Hearings issues a final determination on the payment  
 2-68 hold.

2-69 (7) The office shall, in consultation with the state's

3-1 Medicaid fraud control unit, establish guidelines under which  
3-2 program exclusions:

3-3 (A) may permissively be imposed on a provider; or  
3-4 (B) shall automatically be imposed on a provider.

3-5 (7-a) The office shall, in consultation with the  
3-6 state's Medicaid fraud control unit, establish guidelines  
3-7 regarding the imposition of payment holds authorized under  
3-8 Subdivision (2).

3-9 (8) In accordance with 42 C.F.R. Sections 455.23(e)  
3-10 and (f), on the determination that a credible allegation of fraud  
3-11 exists, the office may find that good cause exists to not impose a  
3-12 payment hold, to not continue a payment hold, to impose a payment  
3-13 hold only in part, or to convert a payment hold imposed in whole to  
3-14 one imposed only in part, if any of the following are applicable:

3-15 (A) law enforcement officials have specifically  
3-16 requested that a payment hold not be imposed because a payment hold  
3-17 would compromise or jeopardize an investigation;

3-18 (B) available remedies implemented by the state  
3-19 other than a payment hold would more effectively or quickly protect  
3-20 Medicaid funds;

3-21 (C) the office determines, based on the  
3-22 submission of written evidence by the provider who is the subject of  
3-23 the payment hold, that the payment hold should be removed;

3-24 (D) Medicaid recipients' access to items or  
3-25 services would be jeopardized by a full or partial payment hold  
3-26 because the provider who is the subject of the payment hold:

3-27 (i) is the sole community physician or the  
3-28 sole source of essential specialized services in a community; or

3-29 (ii) serves a large number of Medicaid  
3-30 recipients within a designated medically underserved area;

3-31 (E) the attorney general declines to certify that  
3-32 a matter continues to be under investigation; or

3-33 (F) the office determines that a full or partial  
3-34 payment hold is not in the best interests of Medicaid.

3-35 (9) The office may not impose a payment hold on claims  
3-36 for reimbursement submitted by a provider for medically necessary  
3-37 services for which the provider has obtained prior authorization  
3-38 from the commission or a contractor of the commission unless the  
3-39 office has evidence that the provider has materially misrepresented  
3-40 documentation relating to those services.

3-41 SECTION 2. As soon as practicable after the effective date  
3-42 of this Act, the executive commissioner of the Health and Human  
3-43 Services Commission shall adopt the rules required by Section  
3-44 531.102(g)(3)(C)(ii), Government Code, as added by this Act.

3-45 SECTION 3. If before implementing any provision of this Act  
3-46 a state agency determines that a waiver or authorization from a  
3-47 federal agency is necessary for implementation of that provision,  
3-48 the agency affected by the provision shall request the waiver or  
3-49 authorization and may delay implementing that provision until the  
3-50 waiver or authorization is granted.

3-51 SECTION 4. This Act takes effect immediately if it receives  
3-52 a vote of two-thirds of all the members elected to each house, as  
3-53 provided by Section 39, Article III, Texas Constitution. If this  
3-54 Act does not receive the vote necessary for immediate effect, this  
3-55 Act takes effect September 1, 2017.

3-56 \* \* \* \* \*