

By: Hinojosa, et al.

S.B. No. 1787

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the functions and administration of the Health and
3 Human Services Commission and the commission's office of inspector
4 general in relation to fraud, waste, and abuse in health and human
5 services.

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

7 SECTION 1. Section 531.102, Government Code, is amended by
8 amending Subsections (a-3), (a-6), (j), and (k) and adding
9 Subsections (a-7) and (a-8) to read as follows:

10 (a-3) The executive commissioner is responsible for
11 performing all administrative support services functions necessary
12 to operate the office in the same manner that the executive
13 commissioner is responsible for providing administrative support
14 services functions for the health and human services system,
15 including functions of the office related to the following:

- 16 (1) procurement processes;
17 (2) contracting policies;
18 (3) information technology services;
19 (4) subject to Subsection (a-8), legal services;
20 (5) budgeting; and
21 (6) personnel and employment policies.

22 (a-6) The office shall conduct audits, inspections, and
23 investigations independent of the executive commissioner and the
24 commission but shall rely on the coordination required by

1 Subsection (a-5) to ensure that the office has a thorough
2 understanding of the health and human services system for purposes
3 of knowledgeably and effectively performing the office's duties
4 under this section and any other law.

5 (a-7) The chief counsel for the commission is the final
6 authority for all legal interpretations related to statutes, rules,
7 and commission policy on programs administered by the commission.

8 (a-8) For purposes of Subsection (a-3), "legal services"
9 includes only legal services related to open records, procurement,
10 contracting, human resources, privacy, litigation support by the
11 attorney general, bankruptcy, and other legal services as detailed
12 in the memorandum of understanding or other written agreement
13 required under Section 531.00553, as added by Chapter 837 (S.B.
14 200), Acts of the 84th Legislature, Regular Session, 2015.

15 (j) The office shall prepare a final report on each audit,
16 inspection, or investigation conducted under this section. The
17 final report must include:

18 (1) a summary of the activities performed by the
19 office in conducting the audit, inspection, or investigation;

20 (2) a statement regarding whether the audit,
21 inspection, or investigation resulted in a finding of any
22 wrongdoing; and

23 (3) a description of any findings of wrongdoing.

24 (k) A final report on an audit, inspection, or investigation
25 is subject to required disclosure under Chapter 552. All
26 information and materials compiled during the audit, inspection, or
27 investigation remain confidential and not subject to required

1 disclosure in accordance with Section 531.1021(g). A confidential
2 draft report on an audit, inspection, or investigation that
3 concerns the death of a child may be shared with the Department of
4 Family and Protective Services. A draft report that is shared with
5 the Department of Family and Protective Services remains
6 confidential and is not subject to disclosure under Chapter 552.

7 SECTION 2. Section 531.1021(g), Government Code, is amended
8 to read as follows:

9 (g) All information and materials subpoenaed or compiled by
10 the office in connection with an audit, inspection, or
11 investigation or by the office of the attorney general in
12 connection with a Medicaid fraud investigation are confidential and
13 not subject to disclosure under Chapter 552, and not subject to
14 disclosure, discovery, subpoena, or other means of legal compulsion
15 for their release to anyone other than the office or the attorney
16 general or their employees or agents involved in the audit,
17 inspection, or investigation conducted by the office or the
18 attorney general, except that this information may be disclosed to
19 the state auditor's office, law enforcement agencies, and other
20 entities as permitted by other law.

21 SECTION 3. The heading to Section 531.106, Government Code,
22 is amended to read as follows:

23 Sec. 531.106. LEARNING, [OR] NEURAL NETWORK, OR OTHER
24 TECHNOLOGY.

25 SECTION 4. Sections 531.106(a), (c), and (g), Government
26 Code, are amended to read as follows:

27 (a) The commission shall use learning, [or] neural network,

1 or other technology to identify and deter fraud in Medicaid
2 throughout this state.

3 (c) The data used for data [~~neural network~~] processing shall
4 be maintained as an independent subset for security purposes.

5 (g) Each month, the [~~learning or neural network~~] technology
6 implemented under this section must match vital statistics unit
7 death records with Medicaid claims filed by a provider. If the
8 commission determines that a provider has filed a claim for
9 services provided to a person after the person's date of death, as
10 determined by the vital statistics unit death records, the
11 commission shall refer the case for investigation to the
12 commission's office of inspector general.

13 SECTION 5. Section 531.1061(b), Government Code, is amended
14 to read as follows:

15 (b) For each case of suspected fraud, abuse, or insufficient
16 quality of care identified by the [~~learning or neural network~~]
17 technology required under Section 531.106, the automated fraud
18 investigation tracking system must:

19 (1) receive electronically transferred records
20 relating to the identified case from the [~~learning or neural~~
21 ~~network~~] technology;

22 (2) record the details and monitor the status of an
23 investigation of the identified case, including maintaining a
24 record of the beginning and completion dates for each phase of the
25 case investigation;

26 (3) generate documents and reports related to the
27 status of the case investigation; and

1 (4) generate standard letters to a provider regarding
2 the status or outcome of an investigation.

3 SECTION 6. Section 531.1131, Government Code, is amended by
4 amending Subsections (a), (b), and (c) and adding Subsections
5 (c-1), (c-2), and (c-3) to read as follows:

6 (a) If a managed care organization [~~organization's special~~
7 ~~investigative unit under Section 531.113(a)(1)] or an [~~the~~] entity
8 with which the managed care organization contracts under Section
9 531.113(a)(2) discovers fraud or abuse in Medicaid or the child
10 health plan program, the organization [~~unit~~] or entity shall:~~

11 (1) immediately submit written notice to [~~and~~
12 ~~contemporaneously notify~~] the commission's office of inspector
13 general and the office of the attorney general in the form and
14 manner prescribed by the office of inspector general and containing
15 a detailed description of the fraud or abuse and each payment made
16 to a provider as a result of the fraud or abuse;

17 (2) subject to Subsection (b), begin payment recovery
18 efforts; and

19 (3) ensure that any payment recovery efforts in which
20 the organization engages are in accordance with applicable rules
21 adopted by the executive commissioner.

22 (b) If the amount sought to be recovered under Subsection
23 (a)(2) exceeds \$100,000, the managed care organization
24 [~~organization's special investigative unit~~] or the contracted
25 entity described by Subsection (a) may not engage in payment
26 recovery efforts if, not later than the 10th business day after the
27 date the organization [~~unit~~] or entity notified the commission's

1 office of inspector general and the office of the attorney general
2 under Subsection (a)(1), the organization [~~unit~~] or entity receives
3 a notice from either office indicating that the organization [~~unit~~]
4 or entity is not authorized to proceed with recovery efforts.

5 (c) A managed care organization may retain one-half of any
6 money recovered under Subsection (a)(2) by the organization
7 [~~organization's special investigative unit~~] or the contracted
8 entity described by Subsection (a). The managed care organization
9 shall remit the remaining amount of money recovered under
10 Subsection (a)(2) to the commission's office of inspector general
11 for deposit to the credit of the general revenue fund.

12 (c-1) If the commission's office of inspector general
13 notifies a managed care organization under Subsection (b), proceeds
14 with recovery efforts, and recovers all or part of the payments the
15 organization identified as required by Subsection (a)(1), the
16 organization is entitled to one-half of the amount recovered for
17 each payment the organization identified after any applicable
18 federal share is deducted. The organization may not receive more
19 than one-half of the total amount of money recovered after any
20 applicable federal share is deducted.

21 (c-2) Notwithstanding any provision of this section, if the
22 commission's office of inspector general discovers fraud, waste, or
23 abuse in Medicaid or the child health plan program in the
24 performance of its duties, the office may recover payments made to a
25 provider as a result of the fraud, waste, or abuse as otherwise
26 provided by this subchapter. All payments recovered by the office
27 under this subsection shall be deposited to the credit of the

1 general revenue fund.

2 (c-3) The commission's office of inspector general shall
3 coordinate with appropriate managed care organizations to ensure
4 that the office and an organization or an entity with which an
5 organization contracts under Section 531.113(a)(2) do not both
6 begin payment recovery efforts under this section for the same case
7 of fraud, waste, or abuse.

8 SECTION 7. Section 531.1131, Government Code, as amended by
9 this Act, applies only to an amount of money recovered on or after
10 the effective date of this Act. An amount of money recovered before
11 the effective date of this Act is governed by the law in effect
12 immediately before that date, and that law is continued in effect
13 for that purpose.

14 SECTION 8. If before implementing any provision of this Act
15 a state agency determines that a waiver or authorization from a
16 federal agency is necessary for implementation of that provision,
17 the agency affected by the provision shall request the waiver or
18 authorization and may delay implementing that provision until the
19 waiver or authorization is granted.

20 SECTION 9. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2017.