

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 and other
5 investigations in health and human 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 Subsection (a-7) 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-7), legal services;
20 (5) budgeting; and
21 (6) personnel and employment policies.

22 (a-6) The office shall conduct, ~~[investigations]~~
23 independent of the executive commissioner and the commission,
24 investigations of commission employees and programs but shall rely

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

6 (a-7) For purposes of Subsection (a-3), "legal services"
7 includes only legal services related to open records, procurement,
8 contracting, human resources, privacy, litigation support by the
9 attorney general, bankruptcy, and other legal services as detailed
10 in the memorandum of understanding or other written agreement
11 required under Section 531.00553, as added by Chapter 837 (S.B.
12 200), Acts of the 84th Legislature, Regular Session, 2015.

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

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

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

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

22 (k) A final report on an audit, inspection, or investigation
23 is subject to required disclosure under Chapter 552. All
24 information and materials compiled during the audit, inspection, or
25 investigation remain confidential and not subject to required
26 disclosure in accordance with Section 531.1021(g). A confidential
27 draft report on an audit, inspection, or investigation that

1 concerns the death of a child may be shared with the Department of
2 Family and Protective Services. A draft report that is shared with
3 the Department of Family and Protective Services remains
4 confidential and is not subject to disclosure under Chapter 552.

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

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

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

21 Sec. 531.106. LEARNING, ~~OR~~ NEURAL NETWORK, OR OTHER
22 TECHNOLOGY.

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

25 (a) The commission shall use learning, ~~or~~ neural network,
26 or other technology to identify and deter fraud in Medicaid
27 throughout this state.

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

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

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

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

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

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

24 (3) generate documents and reports related to the
25 status of the case investigation; and

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

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

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

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

15 (2) subject to Subsection (b), begin payment recovery
16 efforts; and

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

20 (b) If the amount sought to be recovered under Subsection
21 (a)(2) exceeds \$100,000, the managed care organization
22 [~~organization's special investigative unit~~] or the contracted
23 entity described by Subsection (a) may not engage in payment
24 recovery efforts if, not later than the 10th business day after the
25 date the organization [~~unit~~] or entity notified the commission's
26 office of inspector general and the office of the attorney general
27 under Subsection (a)(1), the organization [~~unit~~] or entity receives

1 a notice from either office indicating that the organization [~~unit~~]
2 or entity is not authorized to proceed with recovery efforts.

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

9 (c-1) If the commission's office of inspector general or the
10 office of the attorney general notifies a managed care organization
11 under Subsection (b) and that office proceeds with recovery
12 efforts, the organization is entitled to one-half of each payment
13 the organization identified as required by Subsection (a)(1). The
14 organization may not receive more than one-half of the total amount
15 of money recovered.

16 (c-2) Notwithstanding any provision of this section, if the
17 commission's office of inspector general discovers fraud, waste, or
18 abuse in Medicaid or the child health plan program in the
19 performance of its duties, the office may recover and retain
20 payments made to a provider as a result of the fraud, waste, or
21 abuse as otherwise provided by this subchapter.

22 SECTION 7. If before implementing any provision of this Act
23 a state agency determines that a waiver or authorization from a
24 federal agency is necessary for implementation of that provision,
25 the agency affected by the provision shall request the waiver or
26 authorization and may delay implementing that provision until the
27 waiver or authorization is granted.

1 SECTION 8. Section [531.1131](#), Government Code, as amended by
2 this Act, applies only to an amount of money recovered on or after
3 the effective date of this Act. An amount of money recovered before
4 the effective date of this Act is governed by the law in effect
5 immediately before that date, and that law is continued in effect
6 for that purpose.

7 SECTION 9. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section [39](#), Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2017.