

BILL ANALYSIS

Senate Research Center
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H.B. 2894
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised regarding the application of state law governing Medicaid fraud. It has been suggested that the scope of the offense is too narrow and does not adequately address other types of fraudulent conduct that may be committed against governmental health care programs. H.B. 2894 seeks to address this issue by providing for the prosecution of health care fraud.

H.B. 2894 amends current law relating to the prosecution of health care fraud and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Authorizes felony indictments, except as provided in Article 12.03, to be presented within these limits, and not afterward:

- (1) makes no changes to this subdivision;
- (2) ten years from the date of the commission of the offense:
 - (A) makes no changes to this paragraph;
 - (B) makes a nonsubstantive change to this paragraph;
 - (C)-(H) makes no changes to these paragraphs;
- (3) seven years from the date of the commission of the offense:
 - (A)-(H) makes no changes to these paragraphs;
 - (I) health care fraud under Section 35A.02 (Medicaid Fraud), Penal Code, rather than Medicaid fraud under Section 35A.02, Penal Code; or
 - (J) makes no changes to this paragraph;
- (4)-(7) makes no changes to these subdivisions.

SECTION 2. Amends Section 3(a)(3), Article 37.07, Code of Criminal Procedure, as follows:

- (3) Authorizes the state and the defendant, regardless of the plea and whether the punishment is assessed by the judge or the jury, during the punishment phase of the trial of an offense under Section 35A.02, Penal Code, subject to the applicable rules of

evidence, to offer evidence not offered during the guilt or innocence phase of the trial concerning the total pecuniary loss to the affected health care program, rather than Medicaid program, caused by the defendant's conduct or, if applicable, the scheme or continuing course of conduct of which the defendant's conduct is part. Authorizes evidence to be offered in summary form concerning the total pecuniary loss to the affected health care program, rather than authorizing an employee of the Health and Human Services Commission's (HHSC) office of inspector general or the Office of Attorney General's Medicaid fraud control unit, subject to the applicable rules of evidence, to testify concerning the total pecuniary loss to the Medicaid program. Provides that testimony regarding the total pecuniary loss to the affected health care program is subject to cross-examination, rather than providing that an employee who testifies under this subdivision is subject to cross-examination. Makes a conforming change.

SECTION 3. Amends Article 59.01(2), Code of Criminal Procedure, to redefine "contraband" to include a health care program, as defined by Section 35A.01 (Medicaid Fraud), Penal Code.

SECTION 4. Amends Article 59.06(p), Code of Criminal Procedure, as follows:

(p) Requires the attorney representing the state, notwithstanding Subsection (a), and to the extent necessary to protect the state's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the affected health care program may otherwise be entitled by law, to transfer to the governmental entity administering the affected health care program all forfeited property defined as contraband under Article 59.01(2)(B)(vi) (relating to the definition of "contraband"), rather than requiring the attorney representing the state, notwithstanding Subsection (a), and to the extent necessary to protect HHSC's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which HHSC may otherwise be entitled by law, to transfer to HHSC all forfeited property defined as contraband under Article 59.01(2)(B)(vi). Authorizes the attorney representing the state, if the forfeited property consists of property other than money or negotiable instruments, to, with the consent of the governmental entity administering the affected health care program, sell the property and deliver to the governmental entity administering the affected health care program the proceeds from the sale, minus costs attributable to the sale, rather than authorizing the attorney representing the state, if the forfeited property consists of property other than money or negotiable instruments, to, if approved by HHSC, sell the property and deliver to HHSC the proceeds from the sale, minus costs attributable to the sale.

SECTION 5. Amends Section 250.006(a), Health and Safety Code, as follows:

(a) Prohibits a person for whom the facility or the individual employer is entitled to obtain criminal history record information from being employed in a facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

(1)–(15) makes no changes to these subdivisions;

(16) an offense under Section 21.15, Penal Code (invasive visual recording, rather than improper photography or visual recording);

(17)–(22) makes no changes to these subdivisions;

(23) makes a conforming change to this subdivision; or

(24)–(26) makes no changes to these subdivisions.

SECTION 6. Amends Chapter 35A, Penal Code, as follows:

CHAPTER 35A. New heading: HEALTH CARE FRAUD

Sec. 35A.01. DEFINITIONS. Redefines "claim," "fiscal agent," "health care practitioner," "managed care organization," "physician," "provider," "service," and "high managerial agent" and defines "health care program" and "health care recipient" for purposes of this chapter. Deletes existing text relating to defining "Medicaid program" and "Medicaid recipient."

Sec. 35A.02. New heading: HEALTH CARE FRAUD. (a) Provides that a person commits an offense if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under a health care program, rather than the Medicaid program, that is not authorized or that is greater than the benefit or payment that is authorized;

(2)–(7) makes conforming changes to these subdivisions;

(8) makes a claim under a health care program, rather than the Medicaid program, and knowingly fails to indicate the type of license and the identification number of the licensed health care practitioner, rather than a licensed health care provider, who actually provided the service;

(9) knowingly enters into an agreement, combination, or conspiracy to defraud the state or federal government by obtaining or aiding another person in obtaining an unauthorized payment or benefit from a health care program or fiscal agent, rather than knowingly enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

(10) is a managed care organization that contracts with HHSC, another state agency, or the federal government to provide or arrange to provide health care benefits or services to individuals eligible under a health care program and knowingly, rather than is a managed care organization that contracts with HHSC or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:

(A) make no changes to this paragraph;

(B) fails to provide or falsifies information required to be provided by law, rule, or contractual provision, rather than fails to provide to HHSC or appropriate state agency information required to be provided by law, HHSC or agency rule, or contractual provision;
or

(C) makes a conforming change to this paragraph;

(11) makes no changes to this subdivision; or

(12) makes conforming changes to this subdivision.

(b) Makes conforming changes to this subsection.

(c) Makes no changes to this subsection.

(d) Authorizes the conduct, when multiple payments or monetary or in-kind benefits are provided under one or more health care programs, rather than the Medicaid program, as a result of one scheme or continuing course of conduct, to

be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

(e) Provides that the punishment prescribed for an offense under this section, other than the punishment prescribed by Subsection (b)(7), is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor was a high managerial agent at the time of the offense, rather than a provider or high managerial agent at the time of the offense.

(f) Makes a conforming change to this subsection.

SECTION 7. Makes application of this Act prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8. Effective date: September 1, 2019.