

By: Collier

H.B. No. 2894

Substitute the following for H.B. No. 2894:

By: González of Dallas

C.S.H.B. No. 2894

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of health care fraud; creating a criminal offense.

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

SECTION 1. Article 12.01, Code of Criminal Procedure, is amended to read as follows:

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

(1) no limitation:

(A) murder and manslaughter;

(B) sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C) sexual assault, if:

(i) during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(ii) probable cause exists to believe that the defendant has committed the same or a similar sexual offense against five or more victims;

(D) continuous sexual abuse of young child or

children under Section 21.02, Penal Code;

(E) indecency with a child under Section 21.11, Penal Code;

(F) an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(G) trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;

(H) continuous trafficking of persons under Section 20A.03, Penal Code; or

(I) compelling prostitution under Section 43.05(a)(2), Penal Code;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which the public servant ~~he~~ exercises control in the public servant's ~~his~~ official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(D) injury to an elderly or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;

(E) sexual assault, except as provided by

Subdivision (1);

(F) arson;

(G) trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or

(H) compelling prostitution under Section 43.05(a)(1), Penal Code;

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) securing execution of document by deception;

(C) a felony violation under Chapter 162, Tax Code;

(D) false statement to obtain property or credit under Section 32.32, Penal Code;

(E) money laundering;

(F) credit card or debit card abuse under Section 32.31, Penal Code;

(G) fraudulent use or possession of identifying information under Section 32.51, Penal Code;

(H) exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;

(I) health care [~~Medicaid~~] fraud under Section 35A.02, Penal Code; or

(J) bigamy under Section 25.01, Penal Code, except as provided by Subdivision (6);

(4) five years from the date of the commission of the

offense:

(A) theft or robbery;

(B) except as provided by Subdivision (5), kidnapping or burglary;

(C) injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D) abandoning or endangering a child; or

(E) insurance fraud;

(5) if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(A) sexual performance by a child under Section 43.25, Penal Code;

(B) aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(C) burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (B) of this subdivision;

(6) ten years from the 18th birthday of the victim of the offense:

(A) trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;

(B) injury to a child under Section 22.04, Penal Code; or

(C) bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed; or

(7) three years from the date of the commission of the offense: all other felonies.

SECTION 2. Section 3(a)(3), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(3) 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, the state and the defendant may offer evidence not offered during the guilt or innocence phase of the trial concerning the total pecuniary loss to the affected health care [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. Evidence may be offered in summary form ~~[Subject to the applicable rules of evidence, an employee of the Health and Human Services Commission's office of inspector general or the office of attorney general's Medicaid fraud control unit may testify]~~ concerning the total pecuniary loss to the affected health care [Medicaid] program. Testimony regarding the total pecuniary loss to the affected health care

1 program [~~An employee who testifies under this subdivision~~] is
2 subject to cross-examination. Evidence offered under this
3 subdivision may be considered by the judge or jury in ordering or
4 recommending the amount of any restitution to be made to the
5 affected health care [~~Medicaid~~] program or the appropriate
6 punishment for the defendant.

7 SECTION 3. Article 59.01(2), Code of Criminal Procedure, is
8 amended to read as follows:

9 (2) "Contraband" means property of any nature,
10 including real, personal, tangible, or intangible, that is:

11 (A) used in the commission of:

12 (i) any first or second degree felony under
13 the Penal Code;

14 (ii) any felony under Section 15.031(b),
15 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33,
16 33A, or 35, Penal Code;

17 (iii) any felony under The Securities Act
18 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

19 (iv) any offense under Chapter 49, Penal
20 Code, that is punishable as a felony of the third degree or state
21 jail felony, if the defendant has been previously convicted three
22 times of an offense under that chapter;

23 (B) used or intended to be used in the commission
24 of:

25 (i) any felony under Chapter 481, Health
26 and Safety Code (Texas Controlled Substances Act);

27 (ii) any felony under Chapter 483, Health

1 and Safety Code;

2 (iii) a felony under Chapter 151, Finance

3 Code;

4 (iv) any felony under Chapter 34, Penal

5 Code;

6 (v) a Class A misdemeanor under Subchapter

7 B, Chapter 365, Health and Safety Code, if the defendant has been

8 previously convicted twice of an offense under that subchapter;

9 (vi) any felony under Chapter 32, Human

10 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that

11 involves a health care ~~[the state Medicaid]~~ program, as defined by

12 Section 35A.01, Penal Code;

13 (vii) a Class B misdemeanor under Chapter

14 522, Business & Commerce Code;

15 (viii) a Class A misdemeanor under Section

16 306.051, Business & Commerce Code;

17 (ix) any offense under Section 42.10, Penal

18 Code;

19 (x) any offense under Section 46.06(a)(1)

20 or 46.14, Penal Code;

21 (xi) any offense under Chapter 71, Penal

22 Code;

23 (xii) any offense under Section 20.05 or

24 20.06, Penal Code; or

25 (xiii) an offense under Section 326.002,

26 Business & Commerce Code;

27 (C) the proceeds gained from the commission of a

felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

SECTION 4. Article 59.06(p), Code of Criminal Procedure, is amended to read as follows:

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the state's ~~[commission'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 ~~[commission]~~ may otherwise be entitled by law, the attorney representing the state shall transfer to the governmental entity administering the affected health care program ~~[Health and Human Services Commission]~~ all forfeited property defined as contraband under Article 59.01(2)(B)(vi). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, with the consent of the governmental entity administering the affected health care program

1 ~~[if approved by the commission]~~, sell the property and deliver to
2 the governmental entity administering the affected health care
3 program ~~[commission]~~ the proceeds from the sale, minus costs
4 attributable to the sale. The sale must be conducted in a manner
5 that is reasonably expected to result in receiving the fair market
6 value for the property.

7 SECTION 5. Section 250.006(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) A person for whom the facility or the individual
10 employer is entitled to obtain criminal history record information
11 may not be employed in a facility or by an individual employer if
12 the person has been convicted of an offense listed in this
13 subsection:

14 (1) an offense under Chapter 19, Penal Code (criminal
15 homicide);

16 (2) an offense under Chapter 20, Penal Code
17 (kidnapping, unlawful restraint, and smuggling of persons);

18 (3) an offense under Section 21.02, Penal Code
19 (continuous sexual abuse of young child or children), or Section
20 21.11, Penal Code (indecent with a child);

21 (4) an offense under Section 22.011, Penal Code
22 (sexual assault);

23 (5) an offense under Section 22.02, Penal Code
24 (aggravated assault);

25 (6) an offense under Section 22.04, Penal Code (injury
26 to a child, elderly individual, or disabled individual);

27 (7) an offense under Section 22.041, Penal Code

1 (abandoning or endangering child);
2 (8) an offense under Section 22.08, Penal Code (aiding
3 suicide);
4 (9) an offense under Section 25.031, Penal Code
5 (agreement to abduct from custody);
6 (10) an offense under Section 25.08, Penal Code (sale
7 or purchase of child);
8 (11) an offense under Section 28.02, Penal Code
9 (arson);
10 (12) an offense under Section 29.02, Penal Code
11 (robbery);
12 (13) an offense under Section 29.03, Penal Code
13 (aggravated robbery);
14 (14) an offense under Section 21.08, Penal Code
15 (indecent exposure);
16 (15) an offense under Section 21.12, Penal Code
17 (improper relationship between educator and student);
18 (16) an offense under Section 21.15, Penal Code
19 (invasive [~~improper photography or~~] visual recording);
20 (17) an offense under Section 22.05, Penal Code
21 (deadly conduct);
22 (18) an offense under Section 22.021, Penal Code
23 (aggravated sexual assault);
24 (19) an offense under Section 22.07, Penal Code
25 (terroristic threat);
26 (20) an offense under Section 32.53, Penal Code
27 (exploitation of child, elderly individual, or disabled

individual);

(21) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(22) an offense under Section 34.02, Penal Code (money laundering);

(23) an offense under Section 35A.02, Penal Code (health care ~~[Medicaid]~~ fraud);

(24) an offense under Section 36.06, Penal Code (obstruction or retaliation);

(25) an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or

(26) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

SECTION 6. Chapter 35A, Penal Code, is amended to read as follows:

CHAPTER 35A. HEALTH CARE ~~[MEDICAID]~~ FRAUD

Sec. 35A.01. DEFINITIONS. In this chapter:

(1) "Claim" means a written or electronically submitted request or demand that:

(A) is submitted by a provider or the provider's agent and identifies a service or product provided or purported to have been provided to a health care recipient as reimbursable under a health care program, without regard to whether the money that is requested or demanded is paid; or

1 (B) states the income earned or expense incurred
2 by a provider in providing a service or product and is used to
3 determine a rate of payment under a health care program [~~has the~~
4 ~~meaning assigned by Section 36.001, Human Resources Code~~].

5 (2) "Fiscal agent" means:

6 (A) a person who, through a contractual
7 relationship with a state agency or the federal government,
8 receives, processes, and pays a claim under a health care program;
9 or

10 (B) the designated agent of a person described by
11 Paragraph (A) [~~has the meaning assigned by Section 36.001, Human~~
12 ~~Resources Code~~].

13 (3) "Health care practitioner" means a dentist,
14 podiatrist, psychologist, physical therapist, chiropractor,
15 registered nurse, or other provider licensed to provide health care
16 services in this state [~~has the meaning assigned by Section 36.001,~~
17 ~~Human Resources Code~~].

18 (4) "Health care program" means a program funded by
19 this state, the federal government, or both and designed to provide
20 health care services to health care recipients, including a program
21 that is administered in whole or in part through a managed care
22 delivery model.

23 (5) "Health care recipient" means an individual to
24 whom a service or product is provided or purported to have been
25 provided and with respect to whom a person claims or receives a
26 payment for that service or product from a health care program or
27 fiscal agent, without regard to whether the individual was eligible

1 for benefits under the health care program.

2 (6) "Managed care organization" means a person who is
3 authorized or otherwise permitted by law to arrange for or provide a
4 managed care plan [~~has the meaning assigned by Section 36.001,~~
5 ~~Human Resources Code~~].

6 [~~(5) "Medicaid program" has the meaning assigned by~~
7 ~~Section 36.001, Human Resources Code.~~

8 [~~(6) "Medicaid recipient" has the meaning assigned by~~
9 ~~Section 36.001, Human Resources Code.~~]

10 (7) "Physician" means a physician licensed to practice
11 medicine in this state [~~has the meaning assigned by Section 36.001,~~
12 ~~Human Resources Code~~].

13 (8) "Provider" means a person who participates in or
14 has applied to participate in a health care program as a supplier of
15 a service or product and includes:

16 (A) a management company that manages, operates,
17 or controls another provider;

18 (B) a person, including a medical vendor, who
19 provides a service or product to another provider or the other
20 provider's agent;

21 (C) an employee of the person who participates in
22 or has applied to participate in the program;

23 (D) a managed care organization; and

24 (E) a manufacturer or distributor of a product
25 for which a health care program provides reimbursement [~~has the~~
26 ~~meaning assigned by Section 36.001, Human Resources Code~~].

27 (9) "Service" includes care or treatment of a health

1 care recipient [~~has the meaning assigned by Section 36.001, Human~~
2 ~~Resources Code~~].

3 (10) "High managerial agent" means a director,
4 officer, or employee who is authorized to act on behalf of a
5 provider and has duties of such responsibility that the conduct of
6 the director, officer, or employee reasonably may be assumed to
7 represent the policy or intent of the provider.

8 Sec. 35A.02. HEALTH CARE [~~MEDICAID~~] FRAUD. (a) A person
9 commits an offense if the person:

10 (1) knowingly makes or causes to be made a false
11 statement or misrepresentation of a material fact to permit a
12 person to receive a benefit or payment under a health care [~~the~~
13 ~~Medicaid~~] program that is not authorized or that is greater than the
14 benefit or payment that is authorized;

15 (2) knowingly conceals or fails to disclose
16 information that permits a person to receive a benefit or payment
17 under a health care [~~the Medicaid~~] program that is not authorized or
18 that is greater than the benefit or payment that is authorized;

19 (3) knowingly applies for and receives a benefit or
20 payment on behalf of another person under a health care [~~the~~
21 ~~Medicaid~~] program and converts any part of the benefit or payment to
22 a use other than for the benefit of the person on whose behalf it was
23 received;

24 (4) knowingly makes, causes to be made, induces, or
25 seeks to induce the making of a false statement or
26 misrepresentation of material fact concerning:

27 (A) the conditions or operation of a facility in

order that the facility may qualify for certification or recertification under a health care program ~~[required by the Medicaid program, including certification or recertification as:~~

~~[(i) a hospital,~~

~~[(ii) a nursing facility or skilled nursing facility,~~

~~[(iii) a hospice,~~

~~[(iv) an intermediate care facility for the mentally retarded,~~

~~[(v) an assisted living facility, or~~

~~[(vi) a home health agency]; or~~

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to a health care ~~[the Medicaid]~~ program;

(5) except as authorized under a health care ~~[the Medicaid]~~ program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the health care ~~[Medicaid]~~ program, a gift, money, ~~[a]~~ donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under a health care ~~[the Medicaid]~~ program;

(6) knowingly presents or causes to be presented a claim for payment under a health care ~~[the Medicaid]~~ program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under a health care ~~[the Medicaid]~~ program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under a health care ~~[the Medicaid]~~ program and knowingly fails to indicate the type of license and the identification number of the licensed health care practitioner ~~[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 ~~[the Medicaid]~~ program or ~~[a]~~ fiscal agent;

(10) is a managed care organization that contracts with the Health and Human Services Commission, another ~~[or other]~~ state agency, or the federal government to provide or arrange to provide health care benefits or services to individuals eligible under a health care ~~[the Medicaid]~~ program and knowingly:

(A) fails to provide to an individual a health

1 care benefit or service that the organization is required to
2 provide under the contract;

3 (B) fails to provide [~~to the commission~~] or
4 falsifies [~~appropriate state agency~~] information required to be
5 provided by law, [~~commission or agency~~] rule, or contractual
6 provision; or

7 (C) engages in a fraudulent activity in
8 connection with the enrollment of an individual eligible under a
9 health care [~~the Medicaid~~] program in the organization's managed
10 care plan or in connection with marketing the organization's
11 services to an individual eligible under a health care [~~the~~
12 ~~Medicaid~~] program;

13 (11) knowingly obstructs an investigation by the
14 attorney general of an alleged unlawful act under this section or
15 under Section [32.039](#), [32.0391](#), or [36.002](#), Human Resources Code; or

16 (12) knowingly makes, uses, or causes the making or
17 use of a false record or statement to conceal, avoid, or decrease an
18 obligation to pay or transmit money or property to this state or the
19 federal government under a health care [~~the Medicaid~~] program.

20 (b) An offense under this section is:

21 (1) a Class C misdemeanor if the amount of any payment
22 or the value of any monetary or in-kind benefit provided or claim
23 for payment made under a health care [~~the Medicaid~~] program,
24 directly or indirectly, as a result of the conduct is less than
25 \$100;

26 (2) a Class B misdemeanor if the amount of any payment
27 or the value of any monetary or in-kind benefit provided or claim

1 for payment made under a health care [~~the Medicaid~~] program,
2 directly or indirectly, as a result of the conduct is \$100 or more
3 but less than \$750;

4 (3) a Class A misdemeanor if the amount of any payment
5 or the value of any monetary or in-kind benefit provided or claim
6 for payment made under a health care [~~the Medicaid~~] program,
7 directly or indirectly, as a result of the conduct is \$750 or more
8 but less than \$2,500;

9 (4) a state jail felony if:

10 (A) the amount of any payment or the value of any
11 monetary or in-kind benefit provided or claim for payment made
12 under a health care [~~the Medicaid~~] program, directly or indirectly,
13 as a result of the conduct is \$2,500 or more but less than \$30,000;

14 (B) the offense is committed under Subsection
15 (a)(11); or

16 (C) it is shown on the trial of the offense that
17 the amount of the payment or value of the benefit described by this
18 subsection cannot be reasonably ascertained;

19 (5) a felony of the third degree if:

20 (A) the amount of any payment or the value of any
21 monetary or in-kind benefit provided or claim for payment made
22 under a health care [~~the Medicaid~~] program, directly or indirectly,
23 as a result of the conduct is \$30,000 or more but less than
24 \$150,000; or

25 (B) it is shown on the trial of the offense that
26 the defendant submitted more than 25 but fewer than 50 fraudulent
27 claims under a health care [~~the Medicaid~~] program and the

1 submission of each claim constitutes conduct prohibited by
2 Subsection (a);

3 (6) a felony of the second degree if:

4 (A) the amount of any payment or the value of any
5 monetary or in-kind benefit provided or claim for payment made
6 under a health care [~~the Medicaid~~] program, directly or indirectly,
7 as a result of the conduct is \$150,000 or more but less than
8 \$300,000; or

9 (B) it is shown on the trial of the offense that
10 the defendant submitted 50 or more fraudulent claims under a health
11 care [~~the Medicaid~~] program and the submission of each claim
12 constitutes conduct prohibited by Subsection (a); or

13 (7) a felony of the first degree if the amount of any
14 payment or the value of any monetary or in-kind benefit provided or
15 claim for payment made under a health care [~~the Medicaid~~] program,
16 directly or indirectly, as a result of the conduct is \$300,000 or
17 more.

18 (c) If conduct constituting an offense under this section
19 also constitutes an offense under another section of this code or
20 another provision of law, the actor may be prosecuted under either
21 this section or the other section or provision or both this section
22 and the other section or provision.

23 (d) When multiple payments or monetary or in-kind benefits
24 are provided under one or more health care programs [~~the Medicaid~~
25 ~~program~~] as a result of one scheme or continuing course of conduct,
26 the conduct may be considered as one offense and the amounts of the
27 payments or monetary or in-kind benefits aggregated in determining

1 the grade of the offense.

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

8 (f) With the consent of the appropriate local county or
9 district attorney, the attorney general has concurrent
10 jurisdiction with that consenting local prosecutor to prosecute an
11 offense under this section that involves a health care [~~the~~
12 ~~Medicaid~~] program.

13 SECTION 7. The change in law made by this Act applies only
14 to an offense committed on or after the effective date of this Act.
15 An offense committed before the effective date of this Act is
16 governed by the law in effect on the date the offense was committed,
17 and the former law is continued in effect for that purpose. For
18 purposes of this section, an offense was committed before the
19 effective date of this Act if any element of the offense occurred
20 before that date.

21 SECTION 8. This Act takes effect September 1, 2019.