

1-1 By: Kolkhorst, et al. S.B. No. 745  
 1-2 (In the Senate - Filed February 7, 2023; March 1, 2023, read  
 1-3 first time and referred to Committee on Health & Human Services;  
 1-4 March 20, 2023, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 20, 2023,  
 1-6 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. 745 By: Hancock

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

1-21 relating to fraud prevention under certain health care programs.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Article 39.026(a)(3), Code of Criminal  
 1-24 Procedure, is amended to read as follows:  
 1-25 (3) "Medicaid recipient" means an individual on whose  
 1-26 behalf a person claims or receives a payment from the Medicaid  
 1-27 program or a fiscal agent, without regard to whether the individual  
 1-28 was eligible for benefits under the Medicaid program [~~has the~~  
 1-29 ~~meaning assigned by Section 36.001, Human Resources Code~~].  
 1-30 SECTION 2. The heading to Chapter 36, Human Resources Code,  
 1-31 is amended to read as follows:  
 1-32 CHAPTER 36. HEALTH CARE PROGRAM [~~MEDICAID~~] FRAUD PREVENTION  
 1-33 SECTION 3. Section 36.001, Human Resources Code, is amended  
 1-34 by amending Subdivisions (1), (2), (3), (5), (9), and (10) and  
 1-35 adding Subdivisions (1-a), (4-a), (4-b), and (4-c) to read as  
 1-36 follows:  
 1-37 (1) "Child health plan program" means the child health  
 1-38 plan program established under Chapters 62 and 63, Health and  
 1-39 Safety Code.  
 1-40 (1-a) "Claim" means a written or electronically  
 1-41 submitted request or demand that:  
 1-42 (A) is signed by a provider or a fiscal agent and  
 1-43 that identifies a product or service provided or purported to have  
 1-44 been provided to a health care [~~Medicaid~~] recipient as reimbursable  
 1-45 under a health care [~~the Medicaid~~] program, without regard to  
 1-46 whether the money that is requested or demanded is paid; or  
 1-47 (B) states the income earned or expense incurred  
 1-48 by a provider in providing a product or a service and that is used to  
 1-49 determine a rate of payment under a health care [~~the Medicaid~~]  
 1-50 program.  
 1-51 (2) "Documentary material" means a record, document,  
 1-52 or other tangible item of any form, including:  
 1-53 (A) a medical document or X ray prepared by a  
 1-54 person in relation to the provision or purported provision of a  
 1-55 product or service to a health care [~~Medicaid~~] recipient;  
 1-56 (B) a medical, professional, or business record  
 1-57 relating to:  
 1-58 (i) the provision of a product or service to  
 1-59 a health care [~~Medicaid~~] recipient; or  
 1-60 (ii) a rate or amount paid or claimed for a

2-1 product or service, including a record relating to a product or  
2-2 service provided to a person other than a health care [~~Medicaid~~]  
2-3 recipient as needed to verify the rate or amount;

2-4 (C) a record required to be kept by an agency that  
2-5 regulates health care providers; or

2-6 (D) a record necessary to disclose the extent of  
2-7 services a provider furnishes to health care [~~Medicaid~~] recipients.

2-8 (3) "Fiscal agent" means:

2-9 (A) a person who, through a contractual  
2-10 relationship with a state agency, receives, processes, and pays a  
2-11 claim under a health care [~~the Medicaid~~] program; or

2-12 (B) the designated agent of a person described by  
2-13 Paragraph (A).

2-14 (4-a) "Health care program" means:

2-15 (A) the Medicaid program;

2-16 (B) the child health plan program; and

2-17 (C) the Healthy Texas Women program.

2-18 (4-b) "Health care recipient" means an individual on  
2-19 whose behalf a person claims or receives a payment from a health  
2-20 care program or a fiscal agent, without regard to whether the  
2-21 individual was eligible for benefits under the health care program.

2-22 (4-c) "Healthy Texas Women program" means a program  
2-23 operated by the commission that is substantially similar to the  
2-24 demonstration project operated under former Section 32.0248 and  
2-25 that is intended to expand access to preventive health and family  
2-26 planning services for women in this state.

2-27 (5) "Managed care organization" means a person who is  
2-28 authorized or otherwise permitted by law to arrange for or provide a  
2-29 managed care plan [~~has the meaning assigned by Section 32.039(a)~~].

2-30 (9) "Provider" means a person who participates in or  
2-31 who has applied to participate in a health care [~~the Medicaid~~]  
2-32 program as a supplier of a product or service and includes:

2-33 (A) a management company that manages, operates,  
2-34 or controls another provider;

2-35 (B) a person, including a medical vendor, that  
2-36 provides a product or service to a provider or to a fiscal agent;

2-37 (C) an employee of a provider;

2-38 (D) a managed care organization; and

2-39 (E) a manufacturer or distributor of a product  
2-40 for which a health care [~~the Medicaid~~] program provides  
2-41 reimbursement.

2-42 (10) "Service" includes care or treatment of a health  
2-43 care [~~Medicaid~~] recipient.

2-44 SECTION 4. Section 36.002, Human Resources Code, is amended  
2-45 to read as follows:

2-46 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful  
2-47 act if the person:

2-48 (1) knowingly makes or causes to be made a false  
2-49 statement or misrepresentation of a material fact to permit a  
2-50 person to receive a benefit or payment under a health care [~~the~~  
2-51 ~~Medicaid~~] program that is not authorized or that is greater than the  
2-52 benefit or payment that is authorized;

2-53 (2) knowingly conceals or fails to disclose  
2-54 information that permits a person to receive a benefit or payment  
2-55 under a health care [~~the Medicaid~~] program that is not authorized or  
2-56 that is greater than the benefit or payment that is authorized;

2-57 (3) knowingly applies for and receives a benefit or  
2-58 payment on behalf of another person under a health care [~~the~~  
2-59 ~~Medicaid~~] program and converts any part of the benefit or payment to  
2-60 a use other than for the benefit of the person on whose behalf it was  
2-61 received;

2-62 (4) knowingly makes, causes to be made, induces, or  
2-63 seeks to induce the making of a false statement or  
2-64 misrepresentation of material fact concerning:

2-65 (A) the conditions or operation of a facility in  
2-66 order that the facility may qualify for certification or  
2-67 recertification required by a health care [~~the Medicaid~~] program,  
2-68 including certification or recertification as:

2-69 (i) a hospital;

3-1 (ii) a nursing facility or skilled nursing  
3-2 facility;  
3-3 (iii) a hospice;  
3-4 (iv) an ICF-IID;  
3-5 (v) an assisted living facility; or  
3-6 (vi) a home health agency; or  
3-7 (B) information required to be provided by a  
3-8 federal or state law, rule, regulation, or provider agreement  
3-9 pertaining to a health care [~~the Medicaid~~] program;  
3-10 (5) except as authorized under a health care [~~the~~  
3-11 ~~Medicaid~~] program, knowingly pays, charges, solicits, accepts, or  
3-12 receives, in addition to an amount paid under the [~~Medicaid~~]  
3-13 program, a gift, money, a donation, or other consideration as a  
3-14 condition to the provision of a service or product or the continued  
3-15 provision of a service or product if the cost of the service or  
3-16 product is paid for, in whole or in part, under the [~~Medicaid~~]  
3-17 program;  
3-18 (6) knowingly presents or causes to be presented a  
3-19 claim for payment under a health care [~~the Medicaid~~] program for a  
3-20 product provided or a service rendered by a person who:  
3-21 (A) is not licensed to provide the product or  
3-22 render the service, if a license is required; or  
3-23 (B) is not licensed in the manner claimed;  
3-24 (7) knowingly makes or causes to be made a claim under  
3-25 a health care [~~the Medicaid~~] program for:  
3-26 (A) a service or product that has not been  
3-27 approved or acquiesced in by a treating physician or health care  
3-28 practitioner;  
3-29 (B) a service or product that is substantially  
3-30 inadequate or inappropriate when compared to generally recognized  
3-31 standards within the particular discipline or within the health  
3-32 care industry; or  
3-33 (C) a product that has been adulterated, debased,  
3-34 mislabeled, or that is otherwise inappropriate;  
3-35 (8) makes a claim under a health care [~~the Medicaid~~]  
3-36 program and knowingly fails to indicate the type of license and the  
3-37 identification number of the licensed health care provider who  
3-38 actually provided the service;  
3-39 (9) conspires to commit a violation of Subdivision  
3-40 (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);  
3-41 (10) is a managed care organization that contracts  
3-42 with the commission or other state agency to provide or arrange to  
3-43 provide health care benefits or services to individuals eligible  
3-44 under a health care [~~the Medicaid~~] program and knowingly:  
3-45 (A) fails to provide to an individual a health  
3-46 care benefit or service that the organization is required to  
3-47 provide under the contract;  
3-48 (B) fails to provide to the commission or  
3-49 appropriate state agency information required to be provided by  
3-50 law, commission or agency rule, or contractual provision; or  
3-51 (C) engages in a fraudulent activity in  
3-52 connection with the enrollment of an individual eligible under the  
3-53 [~~Medicaid~~] program in the organization's managed care plan or in  
3-54 connection with marketing the organization's services to an  
3-55 individual eligible under the [~~Medicaid~~] program;  
3-56 (11) knowingly obstructs an investigation by the  
3-57 attorney general of an alleged unlawful act under this section;  
3-58 (12) knowingly makes, uses, or causes the making or  
3-59 use of a false record or statement material to an obligation to pay  
3-60 or transmit money or property to this state under a health care [~~the~~  
3-61 ~~Medicaid~~] program, or knowingly conceals or knowingly and  
3-62 improperly avoids or decreases an obligation to pay or transmit  
3-63 money or property to this state under a health care [~~the Medicaid~~]  
3-64 program; or  
3-65 (13) knowingly engages in conduct that constitutes a  
3-66 violation under Section 32.039(b).  
3-67 SECTION 5. Section 36.003(a), Human Resources Code, is  
3-68 amended to read as follows:  
3-69 (a) A state agency, including the commission, the

4-1 Department of State Health Services, the Department of Aging and  
 4-2 Disability Services, and the Department of Family and Protective  
 4-3 Services, shall provide the attorney general access to all  
 4-4 documentary materials of persons and health care [~~Medicaid~~]  
 4-5 recipients under a health care [~~the Medicaid~~] program to which that  
 4-6 agency has access. Documentary material provided under this  
 4-7 subsection is provided to permit investigation of an alleged  
 4-8 unlawful act or for use or potential use in an administrative or  
 4-9 judicial proceeding.

4-10 SECTION 6. Section 36.005(b), Human Resources Code, is  
 4-11 amended to read as follows:

4-12 (b) A provider found liable under Section 36.052 for an  
 4-13 unlawful act may not, for a period of 10 years, provide or arrange  
 4-14 to provide health care services under a health care [~~the Medicaid~~]  
 4-15 program or supply or sell, directly or indirectly, a product to or  
 4-16 under a health care [~~the Medicaid~~] program. The executive  
 4-17 commissioner may by rule:

4-18 (1) provide for a period of ineligibility longer than  
 4-19 10 years; or

4-20 (2) grant a provider a full or partial exemption from  
 4-21 the period of ineligibility required by this subsection if the  
 4-22 executive commissioner finds that enforcement of the full period of  
 4-23 ineligibility is harmful to the [~~Medicaid~~] program or a beneficiary  
 4-24 of the program.

4-25 SECTION 7. Section 36.008, Human Resources Code, is amended  
 4-26 to read as follows:

4-27 Sec. 36.008. USE OF MONEY RECOVERED. The legislature, in  
 4-28 appropriating money recovered under this chapter, shall consider  
 4-29 the requirements of the attorney general and other affected state  
 4-30 agencies in investigating health care program [~~Medicaid~~] fraud and  
 4-31 enforcing this chapter.

4-32 SECTION 8. Section 36.052(a), Human Resources Code, is  
 4-33 amended to read as follows:

4-34 (a) Except as provided by Subsection (c), a person who  
 4-35 commits an unlawful act is liable to the state for:

4-36 (1) the amount of any payment or the value of any  
 4-37 monetary or in-kind benefit provided under a health care [~~the~~  
 4-38 ~~Medicaid~~] program, directly or indirectly, as a result of the  
 4-39 unlawful act, including any payment made to a third party;

4-40 (2) interest on the amount of the payment or the value  
 4-41 of the benefit described by Subdivision (1) at the prejudgment  
 4-42 interest rate in effect on the day the payment or benefit was  
 4-43 received or paid, for the period from the date the benefit was  
 4-44 received or paid to the date that the state recovers the amount of  
 4-45 the payment or value of the benefit;

4-46 (3) a civil penalty of:

4-47 (A) not less than \$5,500 or the minimum amount  
 4-48 imposed as provided by 31 U.S.C. Section 3729(a), if that amount  
 4-49 exceeds \$5,500, and not more than \$15,000 or the maximum amount  
 4-50 imposed as provided by 31 U.S.C. Section 3729(a), if that amount  
 4-51 exceeds \$15,000, for each unlawful act committed by the person that  
 4-52 results in injury to an elderly person, as defined by Section  
 4-53 48.002(a)(1), a person with a disability, as defined by Section  
 4-54 48.002(a)(8)(A), or a person younger than 18 years of age; or

4-55 (B) not less than \$5,500 or the minimum amount  
 4-56 imposed as provided by 31 U.S.C. Section 3729(a), if that amount  
 4-57 exceeds \$5,500, and not more than \$11,000 or the maximum amount  
 4-58 imposed as provided by 31 U.S.C. Section 3729(a), if that amount  
 4-59 exceeds \$11,000, for each unlawful act committed by the person that  
 4-60 does not result in injury to a person described by Paragraph (A);  
 4-61 and

4-62 (4) two times the amount of the payment or the value of  
 4-63 the benefit described by Subdivision (1).

4-64 SECTION 9. Section 36.054(h), Human Resources Code, is  
 4-65 amended to read as follows:

4-66 (h) A person who has committed an unlawful act in relation  
 4-67 to a health care [~~the Medicaid~~] program in this state has submitted  
 4-68 to the jurisdiction of this state and personal service of an  
 4-69 investigative demand under this section may be made on the person

5-1 outside of this state.

5-2 SECTION 10. Section 36.055, Human Resources Code, is  
5-3 amended to read as follows:

5-4 Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION.

5-5 To the extent permitted by 31 U.S.C. Sections 3729-3733, the  
5-6 attorney general may bring an action as relator under 31 U.S.C.  
5-7 Section 3730 with respect to an act in connection with a health care  
5-8 [~~the Medicaid~~] program for which a person may be held liable under  
5-9 31 U.S.C. Section 3729. The attorney general may contract with a  
5-10 private attorney to represent the state under this section.

5-11 SECTION 11. Section 36.132(a)(2), Human Resources Code, is  
5-12 amended to read as follows:

5-13 (2) "Licensing authority" means:

5-14 (A) the Texas Medical Board;

5-15 (B) the State Board of Dental Examiners;

5-16 (C) the Texas Behavioral Health Executive  
5-17 Council;

5-18 (D) the Texas Board of Nursing;

5-19 (E) the Texas Board of Physical Therapy  
5-20 Examiners;

5-21 (F) the Texas Board of Occupational Therapy  
5-22 Examiners; or

5-23 (G) another state agency authorized to regulate a  
5-24 provider who receives or is eligible to receive payment for a health  
5-25 care service under a health care [~~the Medicaid~~] program.

5-26 SECTION 12. Sections 36.001(6) and (7), Human Resources  
5-27 Code, are repealed.

5-28 SECTION 13. The changes in law made by this Act apply only  
5-29 to an unlawful act described by Section 36.002, Human Resources  
5-30 Code, as amended by this Act, that is committed on or after the  
5-31 effective date of this Act.

5-32 SECTION 14. If before implementing any provision of this  
5-33 Act a state agency determines that a waiver or authorization from a  
5-34 federal agency is necessary for implementation of that provision,  
5-35 the agency affected by the provision shall request the waiver or  
5-36 authorization and may delay implementing that provision until the  
5-37 waiver or authorization is granted.

5-38 SECTION 15. This Act takes effect September 1, 2023.

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