

## **BILL ANALYSIS**

C.S.H.B. 4012  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

As reported by the Health and Human Services Commission's office of inspector general (OIG), the National Health Care Anti-Fraud Association estimates that anywhere from 3 to 10 percent of health care expenditures are lost to fraud each year. The bill author has informed the committee that such fraud increases health insurance premiums and that Texas employers and families have faced significant increases in health care costs in the past three years. The bill author has further informed the committee that, while the state proactively investigates fraud and abuse in Medicaid and Medicare, the same protections are not in place for employers and families with private coverage. C.S.H.B. 4012 seeks to address these issues by creating an offense for conduct constituting health care fraud in the commercial insurance market similar to the offense of health care fraud involving an applicable government-funded health care program, providing for the coordination of health care fraud detection and prevention between the OIG and the Texas Department of Insurance, authorizing the imposition of civil penalties for certain violations of health care fraud, and allowing private persons to bring civil actions for certain health care fraud violations.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4012 sets out provisions relating to health care and insurance fraud, including provisions creating an offense for certain conduct constituting health care fraud, providing for state coordination of health care fraud detection and prevention, authorizing the imposition of civil penalties for violations of certain health care fraud, and providing for the initiation of civil antifraud actions by private persons on behalf of the person and the state for violations of the health care fraud offense created by the bill.

#### **Health Care Fraud Offense**

C.S.H.B. 4012 amends the Penal Code to create the offense of health care fraud for a person who does the following:

- knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive from a health benefit plan issuer a benefit or

payment that is not authorized or that is greater than the benefit or payment that is authorized;

- knowingly conceals or fails to disclose information that permits a person to receive from a health benefit plan issuer a benefit or payment that is not authorized or that is greater than the benefit or payment that is authorized;
- knowingly makes or causes to be made a health benefit claim to a health benefit plan issuer for:
  - a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;
  - 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
  - a product that has been adulterated, debased, or mislabeled or that is otherwise inappropriate; or
- knowingly enters into an agreement, combination, or conspiracy to defraud a health benefit plan issuer by obtaining or aiding another person in obtaining an unauthorized payment or benefit from a health benefit plan issuer.

The bill extends the applicability of provisions establishing the penalties for the offense of health care fraud in current law ranging from a Class C misdemeanor to a first degree felony to the offense of health care fraud created by the bill. The bill authorizes conduct involving multiple payments or monetary or in-kind benefits provided by one or more health benefit plan issuers as a result of one scheme or continuing course of conduct to be considered as one offense and the amounts of the payments or benefits aggregated in determining the grade of the offense.

C.S.H.B. 4012 defines the following terms for purposes of provisions relating to health care fraud offenses:

- "health benefit claim" as a written or electronically submitted request or demand that:
  - is submitted by a person who provides or purports to provide a service or product to an individual covered under a health benefit plan or by that person's agent and identifies a service or product provided or purported to have been provided to the covered individual as reimbursable under the health benefit plan, without regard to whether the money that is requested or demanded is paid and without regard to whether the individual was eligible for benefits under the health benefit plan; or
  - states the income earned or expense incurred by a person in providing a service or product to an individual covered by a health benefit plan and is used to determine a rate of payment under the plan;
- "health benefit plan" as a health insurance policy, a health care plan, as defined by reference to the Texas Health Maintenance Organization Act, or another agreement, contract, or evidence of coverage under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of health care services; and
- "health benefit plan issuer" as a person who is authorized or otherwise permitted by law to issue a health insurance policy, to arrange for or provide a health care plan, as defined by reference to the Texas Health Maintenance Organization Act, or to otherwise provide health benefit plan coverage.

The bill includes an individual covered under a health benefit plan among the individuals of whom care or treatment is considered a service for purposes of provisions relating to health care fraud offenses.

C.S.H.B. 4012 amends the Code of Criminal Procedure to authorize the state and the defendant during the punishment phase of the trial for an offense involving health care fraud to offer evidence not offered during the guilt or innocence phase of the trial concerning the total pecuniary loss to the affected health benefit plan issuer in the same manner that the state or a defendant may do so concerning such a loss to an affected government-funded health care program.

## **State Coordination of Health Care Fraud Detection and Prevention**

C.S.H.B. 4012 amends the Government Code to authorize the office of inspector general (OIG) of the Health and Human Services Commission to provide for coordination between the OIG and the Texas Department of Insurance (TDI) to coordinate health care fraud detection and prevention in Texas.

C.S.H.B. 4012 amends the Insurance Code to require TDI, in coordination with the OIG, to establish the fraud prevention partnership to detect and prevent health care fraud in Texas across the private and public markets. The bill requires the partnership to include the following individuals:

- a representative of one or more Medicaid managed care organizations;
- a representative of one or more health benefit plan issuers, defined by reference as an entity authorized under any Texas insurance law that provides health insurance or health benefits in Texas; and
- any other appropriate person as determined by the commissioner of insurance and inspector general.

## **Civil Remedies for Violations of Health Care Fraud**

C.S.H.B. 4012 makes a person who violates the offense of health care fraud created under the bill liable to the state for the following:

- the amount of a payment made by or the value of a benefit provided by a health benefit plan issuer, directly or indirectly, as a result of the violation, including any payment made to a third party;
- two times the amount of that payment or the value of that benefit;
- interest on the amount of that payment or the value of that benefit at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that the state recovers the amount of the payment or value of the benefit; and
- a civil penalty of:
  - not less than \$5,500 and not more than \$15,000 for each violation committed by the person that results in injury to an elderly person or a person with a disability, as those persons are defined by reference to Human Resources Code provisions relating to investigations and protective services for elderly persons with disabilities, or a person younger than 18 years of age; or
  - not less than \$5,500 and not more than \$11,000 for each violation committed by the person that does not result in injury to such a person.

The bill requires the trier of fact, in determining the amount of the civil penalty, to consider the following:

- whether the person has previously violated the bill's provisions creating the offense of health care fraud;
- the seriousness of the violation committed by the person, including the nature, circumstances, extent, and gravity of the violation;
- whether the health and safety of the public or an individual was threatened by the violation;
- whether the person acted in bad faith when the person engaged in the conduct that formed the basis of the violation; and
- the amount necessary to deter future violations.

The bill authorizes the trier of fact to assess a total of not more than two times the amount of a payment made by or the value of a benefit provided by a health benefit plan issuer, directly or indirectly, as a result of the violation, including any payment made to a third party, if the trier of fact makes the following findings:

- the person reported to TDI's insurance fraud unit all information known to the person about the violation not later than the 30th day after the date on which the person first obtained the information; and
- the insurance fraud unit had not yet begun an insurance fraud investigation at the time the person furnished all the information to the insurance fraud unit.

### **Antifraud Action by Private Person**

C.S.H.B. 4012 authorizes a private person to bring a civil action for a violation of the offense of health care fraud created under the bill on behalf of the person and the state and requires the action to be brought in the name of the person and the state. The bill makes a person who violates that offense, in a civil action brought by a private person, liable as provided by the bill's provisions providing for the imposition of civil penalties for violations of that offense. The bill requires a private person bringing such an action to serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure. The bill requires a person to file a petition for an action brought under the bill in camera and, except as otherwise provided by the bill, the petition must remain under seal until the earlier of the following:

- the 180th day after the date the petition is served on the attorney general; or
- the date on which the state elects to intervene.

The bill prohibits a person bringing an action under the bill from serving process on a defendant until the court orders service of process. The bill authorizes the state to elect to intervene and proceed with the action not later than the 180th day after the date the attorney general receives the petition and the material evidence and information as required by the bill. The bill authorizes the attorney general, at the time the state intervenes in the action, to file a motion with the court requesting that the petition remain under seal for an extended period. The bill authorizes the state, for good cause shown, to move the court to extend the 180-day periods prescribed by the bill and authorizes such a motion to move the court to be supported by affidavits or other submissions in camera. The bill conditions the dismissal of an action brought by a private person under the bill on the court and the attorney general consenting in writing to the dismissal and stating their reasons for consenting. The bill establishes that a defendant is not required to file in accordance with the Texas Rules of Civil Procedure an answer to a petition filed under the bill until the petition is unsealed and served on the defendant.

C.S.H.B. 4012 requires the state, not later than the last day of the 180 day period in which the state may elect to intervene and proceed with an action by a private person, or an extension of that period as provided by the bill, to either proceed with the action or to notify the court that the state declines to take over the action. If the state declines to take over the action, the bill authorizes the person bringing the action to proceed without the state's participation and to recover for a violation for a period of up to six years before the date the action was filed, or for a period beginning when the violation occurred until up to three years from the date the state knows or reasonably should have known facts material to the violation, whichever of these two periods is longer, regardless of whether the violation occurred more than six years before the date the action was filed. The bill prohibits a person proceeding with an action without the state's participation from recovering for a violation that occurred more than 10 years before the date the action was filed. The bill entitles the state, on request by the state, to be served with copies of all pleadings filed in an action by a private person and be provided at the state's expense with copies of all deposition transcripts. The bill authorizes the court, if the person bringing the action proceeds without the state's participation, without limiting the status and right of that person, to permit the state to intervene at a later date on a showing of good cause.

C.S.H.B. 4012 authorizes the attorney general to contract with a private attorney to represent the state in an action by a private person with which the state elects to proceed. The bill prohibits a person other than the state from intervening or bringing a related action based on the facts underlying a pending action by a private person. The bill sets out provisions that do the following with respect to the rights of parties if the state proceeds with action by a private person:

- establishes that the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action;
- establishes that the person bringing the action has the right to continue as a party to the action, subject to the limitations provided by the bill;
- authorizes the state to dismiss the action notwithstanding the objections of the person bringing the action if the attorney general notifies the person that the state has filed a motion to dismiss and the court provides the person with an opportunity for a hearing on the motion;
- authorizes the state to settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances and authorizes that hearing, on a showing of good cause, to be held in camera;
- authorizes the court, on a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the action, or would be repetitious, irrelevant, or for purposes of harassment, to impose limitations on the person's participation, including:
  - limiting the number of witnesses the person may call;
  - limiting the length of the testimony of witnesses called by the person;
  - limiting the person's cross-examination of witnesses; or
  - otherwise limiting the participation by the person in the litigation; and
- authorizes the court, on a showing by a defendant in the action that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, to limit the participation by the person in the litigation.

C.S.H.B. 4012 authorizes the court, on a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, to stay the discovery for a period capped at 60 days. The bill requires the court to hear a motion to stay discovery in camera and authorizes the court to extend that 60 day period on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

C.S.H.B. 4012 authorizes the state to elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. The bill establishes the following:

- if an alternate remedy is pursued in another proceeding, the private person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued;
- a finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action brought under the bill; and
- for purposes of these alternate remedy provisions, a finding or conclusion is final if one of the following apply:
  - the finding or conclusion has been finally determined on appeal to the appropriate court;
  - no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or
  - the finding or conclusion is not subject to judicial review.

C.S.H.B. 4012 entitles a private person bringing an action under the bill's provisions to receive the following awards:

- if the state proceeds with the action, at least 15 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action; and

- if the state does not proceed with the action, at least 25 percent but not more than 30 percent of the proceeds of the action.

The bill establishes that such an entitlement if the state does not proceed with the action is not affected by any subsequent intervention in the action by the state in accordance with the bill. The bill authorizes a court finding that an action by a private person is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a Texas or federal criminal or civil hearing, in a Texas or federal legislative or administrative report, hearing, audit, or investigation, or from the news media, to award the amount the court considers appropriate but not more than 10 percent of the proceeds of the action. The bill requires the court to consider the significance of the information and the role of the person bringing the action in advancing the case to litigation. The bill requires a payment of an award to a private person to be made from the proceeds of the action. The bill entitles a person receiving such a payment to also receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. The bill conditions the court's determination of expenses, fees, and costs to be awarded on the defendant being found liable in the action or the claim being settled. For purposes of the bill's provisions providing for an award to a private person, "proceeds of the action" includes proceeds of a settlement of the action.

C.S.H.B. 4012 authorizes a court finding that an action by a private person under the bill was brought by a person who planned and initiated the violation on which the action was brought to reduce the share of the proceeds of the action the person would otherwise receive under the bill to the extent the court considers appropriate and taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation, the bill requires the court to dismiss the person from the civil action and prohibits the person from receiving any share of the proceeds of the action. The bill establishes that such a dismissal does not prejudice the right of the state to continue the action.

C.S.H.B. 4012 entitles TDI, if the state proceeds with an action by a private person under the bill, to receive at least 15 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which TDI substantially contributed to the prosecution of the action. For that purpose, "proceeds of the action" includes proceeds of a settlement of the action.

C.S.H.B. 4012 entitles a health benefit plan issuer, if the person bringing an action under the bill is not a health benefit plan issuer harmed by the violation that is the subject of the action, to any money remaining after all awards and costs are distributed as provided by the bill, including, in an action where the state proceeds, reasonable expenses, reasonable attorney's fees, and costs to the state that the court finds to have been necessarily incurred. For these purposes, the bill defines "health benefit issuer" by reference to Penal Code provisions relating to health care fraud offenses.

C.S.H.B. 4012 establishes that Civil Practice and Remedies Code provisions relating to a frivolous claim or regulatory action by a state agency apply to an action brought by a private person under the bill with which the state proceeds. The bill prohibits a person from bringing an action under the bill that is based on allegations or transactions that are the subject of a civil action or an administrative penalty proceeding in which the state is already a party. The bill requires the court to dismiss an action or claim brought under the bill, unless opposed by the attorney general, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a Texas or federal criminal or civil hearing in which the state or an agent of the state is a party, in a legislative or administrative report of the state, or other hearing, audit, or investigation in Texas, or from the news media, unless the person bringing the action is an original source of the information. For that purpose, the bill defines "original source" as an individual who meets one of the following criteria:

- before such a public disclosure, the individual has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based; or

- the individual has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and who has voluntarily provided the information to the state before filing an action under the bill.

C.S.H.B. 4012 exempts the state from liability for expenses that a person incurs in bringing an action under the bill.

C.S.H.B. 4012 entitles a person, including an employee, contractor, or agent, who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of employment because of a lawful act taken by the person or associated others in furtherance of an action brought under the bill's provisions, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under those provisions, or other efforts taken by the person to stop one or more violations to the following:

- reinstatement with the same seniority status the person would have had but for the discrimination; and
- not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

The bill authorizes a person to bring an action regarding such retaliation in the appropriate district court not later than the third anniversary of the date on which the cause of action accrues. For that purpose, the cause of action accrues on the date the retaliation occurs.

C.S.H.B. 4012 establishes that the bill's provisions relating to an action by a private person do not waive sovereign immunity, except as provided by the bill's provisions relating to an award to a defendant for frivolous action.

C.S.H.B. 4012 authorizes the attorney general to retain a reasonable portion of the amount recovered under the bill's provisions relating to an action by a private person, not to exceed amounts specified in the General Appropriations Act, for the administration of those provisions.

### **Procedural Provision**

C.S.H.B. 4012 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date.

### **EFFECTIVE DATE**

September 1, 2025.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4012 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits the following provisions that were present in the introduced:

- a requirement for the commissioner of insurance, in exercising the commissioner's authority to conduct an insurance fraud investigation, to prioritize investigating alleged violations of the offense of health care fraud created under the bill;
- an authorization for TDI to retain up to 50 percent of any money recovered as a result of such a health care fraud investigation; and
- a requirement for TDI to remit the remaining amount of money to the person or persons harmed by the offense.

Both the introduced and the substitute authorize a person to bring a civil action for a violation of the offense of health care fraud created under the bill on behalf of the person and the state. However, the substitute clarifies that a person authorized to do so is a private person, whereas the introduced did not.

Both the introduced and the substitute provide for the entitlement of an injured insurer to certain awards. However, the substitute differs from the introduced in the following ways:

- whereas the introduced provided for an award to an injured insurer, the substitute provides for an award to an injured health benefit plan issuer; and
- the substitute includes a provision absent from the introduced defining "health benefit plan issuer" by reference to Penal Code provisions relating to health care fraud offenses.