

## **BILL ANALYSIS**

Senate Research Center

S.B. 1038  
By: Sparks  
Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

According to the National Health Care Anti-Fraud Association, up to 10 percent of any given state's annual spending on healthcare is lost each year to FWA. In Texas, this means as much as \$5 billion from the annual \$50 billion appropriate on health and human services is lost. While some of these losses may stem from inadvertent errors, a portion is directly linked to knowing misconduct.

The Office of Inspector General (OIG) is the state agency responsible for enforcing administrative violations against state health and human service programs. The OIG aims to align Chapter 32, Human Resources Code, with the violations outlined in Chapter 36 (Healthcare Program Fraud Prevention Act), Human Resources Code, and Chapter 35A, Penal Code, enabling consistent pursuit of misconduct across criminal, civil, and administrative domains as warranted. While the legislature has amended the civil and criminal statutes many times over the years to make them stronger and more effective, Chapter 32 has remained largely unchanged since the legislature first adopted it in 1987.

C.S.S.B. 1038 strengthens OIG's enforcement in Medicaid by clarifying the scope of impermissible activities that may subject an actor to administrative remedies. It also ensures OIG's authority effectively applies across different healthcare delivery systems as Chapter 32 was written before managed care was the predominate payor in Medicaid. Additionally, this bill enhances accountability by providing a modernized remedies structure, which will increase the OIG's effectiveness in holding bad actors accountable, recovering dollars, and deterring future unlawful behavior.

C.S.S.B. 1038 strengthens the administrative enforcement of Medicaid-related fraud and abuse, aligning it with modern healthcare and business practices. By clarifying the violations, and providing a modernized administrative remedies structure, the bill supports the integrity of the Medicaid program and helps ensure that taxpayer dollars are used appropriately.

S.B. 1038 amends current law relating to administrative remedies for certain fraud and abuse violations under Medicaid and provides administrative penalties.

### **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 Sections 544.0205(a) and (b), Government Code, as effective April 1, 2025, as follows:

- (a) Authorizes the Health and Human Services Commission (HHSC) to grant an award to an individual who reports activity that constitutes fraud or abuse of Medicaid funds or who reports Medicaid overcharges if HHSC determines that the disclosure results in the recovery of a remedy, rather than an administrative penalty, imposed under Section 32.039, Human Resources Code.

(b) Makes a conforming change to this subsection.

SECTION 2. Amends the heading to Section 32.039, Human Resources Code, to read as follows:

Sec. 32.039. ADMINISTRATIVE REMEDIES.

SECTION 3. Amends Section 32.039(a), Human Resources Code, by amending Subdivision (1) to redefine "claim" and adding Subdivision (3-a) to define "material."

SECTION 4. Amends Section 32.039, Human Resources Code, by adding Subsections (a-1), (a-2), (c-1), and (c-2) and amending Subsections (b), (c), (d), (f), (g), (h), (i), (k), (l), (m), (n), (o), (p), (q), (r), (s), and (x) to read as follows:

(a-1) Provides that a person, for purposes of this section, acts knowingly with respect to information if the person has knowledge of the information, acts with conscious indifference to the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information.

(a-2) Provides that proof of a person's specific intent to commit a violation under this section is not required in a civil or administrative proceeding to show that the person acted "knowingly" with respect to information under this section.

(b) Provides that a person commits a violation if the person:

(1) knowingly submits or causes to be submitted a claim that contains a false statement, misrepresentation, or an omission of a material fact, rather than presents or causes to be presented to HHSC a claim that contains a statement or representation the person knows or should know to be false;

(2)-(7) redesignates existing Subdivisions (1-a)-(1-f) as Subdivisions (2)-(7) and makes no further changes;

(8) 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 the medical assistance program that is not authorized or that is greater than the benefit or payment that is authorized;

(9) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the medical assistance program that is not authorized or that is greater than the benefit or payment that is authorized;

(10) knowingly applies for and receives a benefit or payment on behalf of another person under the medical assistance program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(11) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of a material fact concerning the condition or operation of a facility in order that the facility be authorized to qualify for certification or recertification under the medical assistance program, including certification or recertification as a hospital, a nursing facility or skilled nursing facility, a hospice provider, an intermediate care facility for individuals with an intellectual disability, an assisted living facility, or a home and community support services agency;

(12) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of a material fact concerning information required to be provided under a federal or state law, rule, regulation, or provider agreement pertaining to the medical assistance program;

(13) knowingly presents or causes to be presented a claim for payment for a product provided or a service rendered by a person who is not licensed to provide the product or render the service, if a license is required, or is not licensed in the manner claimed;

(14) knowingly makes or causes to be made a claim for a service or product that has not been approved or accepted by a treating physician or health care practitioner, a service or product that is substantially inadequate or inappropriate as 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;

(15) makes a claim and knowingly fails to indicate the type of license of the provider who actually provided the service;

(16) makes a claim and knowingly fails to indicate the identification number of the licensed provider who actually provided the service;

(17) knowingly obstructs the office of inspector general from carrying out the office's duties under Section 544.0103 (Office of Inspector General: General Power and Duties), Government Code;

(18) knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under the medical assistance program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to this state under the medical assistance program;

(19) is a managed care organization that contracts with HHSC to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and commits certain acts, including failing to provide to HHSC or other appropriate agency information required to be provided by law, HHSC or agency rule, or contractual provision;

(20) redesignates existing Subdivision (3) as Subdivision (20) and makes a nonsubstantive change; or

(21) creates this subdivision from existing text and makes no further changes.

Makes nonsubstantive changes to this subsection.

(c) Provides that a person who commits a violation under Subsection (b) is liable to HHSC for the following administrative remedy:

(1) the amount paid or benefit received, if any, directly or indirectly as a result of the violation, including any payment made to a third party, and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and

(2) payment of an administrative penalty of an amount not to exceed twice the amount paid, if any, as a result of the violation, plus an amount:

(A) not less than \$5,000 or more than \$15,000 or the maximum dollar amount imposed as provided by 31 U.S.C. Section 3729(a)(1), if that amount exceeds \$15,000, for each violation that results in injury to certain persons; or

(B) not more than \$10,000 or the maximum dollar amount imposed as provided by 31 U.S.C. Section 3729(a)(1), if that amount exceeds

\$10,000, for each violation that does not result in injury to a person described by Paragraph (A).

(c-1) Provides that for purposes of Subsection (c)(2), each day a person violates Subsection (b)(17), (18), or (19) constitutes a separate violation.

(c-2) Provides that, notwithstanding Subsection (c), a person who commits a violation described by Subsection (b)(20) (relating to failing to maintain documentation to support a claim for payment in accordance with certain policies or rules) is liable to HHSC for, as determined by HHSC, either the amount paid in response to the claim for payment or the payment of an administrative penalty in an amount not to exceed \$500 for each violation.

(d) Provides that this section does not apply to a claim based on a voucher if HHSC calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature, unless the provider knowingly submitted false or misleading information to HHSC for use in preparing a voucher or knowingly failed to correct false or misleading information, rather than unless the provider submitted information to HHSC for use in preparing a voucher that the provider knew or should have known was false or failed to correct information that the provider knew or should have known was false, when provided an opportunity to do so.

(f) Makes conforming changes to this subsection.

(g) Requires that the written notice of the preliminary report required to be given by HHSC include certain information, including a description of the administrative and judicial due process remedies available to the person. Makes conforming and nonsubstantive changes.

(h) Authorizes a person, not later than the 30th, rather than the 10th, day after the date on which the person charged with committing the violation receives the notice, to either give HHSC written consent to the report, including the recommended remedy, rather than penalty, or make a written request for an informal review by HHSC.

(i) Makes conforming changes to this subsection.

(k) Authorizes a person, not later than the 30th, rather than the 10th, day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (j) (relating to requiring HHSC to conduct a review if a person charged with committing a violation meets certain criteria), to make to HHSC a written request for a hearing.

(l)-(x) Makes conforming changes to these subsections.

SECTION 5. Amends Section 32.0391(a), Human Resources Code, to make conforming changes.

SECTION 6. Amends Section 36.006, Human Resources Code, to make conforming changes.

SECTION 7. Repealers: Sections 32.039(a)(4) (relating to providing that a person should know information to be false under certain circumstances) and 32.039(b-1) (relating to providing certain penalties for a person who commits a violation), Human Resources Code.

SECTION 8. Makes application of Section 32.039, Human Resources Code, as amended by this Act, prospective.

SECTION 9. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 10. Effective date: September 1, 2025.