

By: Sparks

S.B. No. 1038

A BILL TO BE ENTITLED

AN ACT

relating to administrative remedies for certain fraud and abuse violations under Medicaid; providing administrative penalties.

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

SECTION 1. Sections 544.0205(a) and (b), Government Code, as effective April 1, 2025, are amended to read as follows:

(a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of Medicaid funds or who reports Medicaid overcharges if the commission determines that the disclosure results in the recovery of a remedy [~~an administrative penalty~~] imposed under Section 32.039, Human Resources Code. The commission may not grant an award to an individual in connection with a report if the commission or attorney general had independent knowledge of the activity the individual reported.

(b) The commission shall determine the amount of an award. The award may not exceed five percent of the amount of the remedy [~~administrative penalty~~] imposed under Section 32.039, Human Resources Code, that resulted from the individual's disclosure. In determining the award amount, the commission:

(1) shall consider how important the disclosure is in ensuring the fiscal integrity of Medicaid; and

(2) may consider whether the individual participated in the fraud, abuse, or overcharge.

1 SECTION 2. The heading to Section 32.039, Human Resources
2 Code, is amended to read as follows:

3 Sec. 32.039. ADMINISTRATIVE REMEDIES [~~DAMAGES AND~~
4 ~~PENALTIES~~].

5 SECTION 3. Section 32.039(a), Human Resources Code, is
6 amended by amending Subdivision (1) and adding Subdivision (3-a) to
7 read as follows:

8 (1) "Claim" means an application, request, or demand
9 for a benefit or payment [~~of health care services~~] under Title XIX
10 of the [~~federal~~] Social Security Act (42 U.S.C. Section 1396 et
11 seq.) [~~that is submitted by a person who is under a contract or~~
12 ~~provider agreement with the commission~~].

13 (3-a) "Material" means having a natural tendency to
14 influence or to be capable of influencing.

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

19 (a-1) For purposes of this section, a person acts knowingly
20 with respect to information if the person:

21 (1) has knowledge of the information;

22 (2) acts with conscious indifference to the truth or
23 falsity of the information; or

24 (3) acts in reckless disregard of the truth or falsity
25 of the information.

26 (a-2) Proof of a person's specific intent to violate this
27 section is not required in an administrative or civil proceeding to

1 show that the person acted knowingly with respect to information.

2 (b) A person commits a violation if the person:

3 (1) knowingly submits [~~presents~~] or causes to be
4 submitted [~~presented to the commission~~] a claim that contains a
5 false statement, misrepresentation, or omission of a material fact
6 [~~representation the person knows or should know to be false~~];

7 (2) [~~(1-a)~~] engages in conduct that violates Section
8 102.001, Occupations Code;

9 (3) [~~(1-b)~~] solicits or receives, directly or
10 indirectly, overtly or covertly any remuneration, including any
11 kickback, bribe, or rebate, in cash or in kind for referring an
12 individual to a person for the furnishing of, or for arranging the
13 furnishing of, any item or service for which payment may be made, in
14 whole or in part, under the medical assistance program, provided
15 that this subdivision does not prohibit the referral of a patient to
16 another practitioner within a multispecialty group or university
17 medical services research and development plan (practice plan) for
18 medically necessary services;

19 (4) [~~(1-c)~~] solicits or receives, directly or
20 indirectly, overtly or covertly any remuneration, including any
21 kickback, bribe, or rebate, in cash or in kind for purchasing,
22 leasing, or ordering, or arranging for or recommending the
23 purchasing, leasing, or ordering of, any good, facility, service,
24 or item for which payment may be made, in whole or in part, under the
25 medical assistance program;

26 (5) [~~(1-d)~~] offers or pays, directly or indirectly,
27 overtly or covertly any remuneration, including any kickback,

1 bribe, or rebate, in cash or in kind to induce a person to refer an
2 individual to another person for the furnishing of, or for
3 arranging the furnishing of, any item or service for which payment
4 may be made, in whole or in part, under the medical assistance
5 program, provided that this subdivision does not prohibit the
6 referral of a patient to another practitioner within a
7 multispecialty group or university medical services research and
8 development plan (practice plan) for medically necessary services;

9 (6) [~~(1-e)~~] offers or pays, directly or indirectly,
10 overtly or covertly any remuneration, including any kickback,
11 bribe, or rebate, in cash or in kind to induce a person to purchase,
12 lease, or order, or arrange for or recommend the purchase, lease, or
13 order of, any good, facility, service, or item for which payment may
14 be made, in whole or in part, under the medical assistance program;

15 (7) [~~(1-f)~~] provides, offers, or receives an
16 inducement in a manner or for a purpose not otherwise prohibited by
17 this section or Section 102.001, Occupations Code, to or from a
18 person, including a recipient, provider, employee or agent of a
19 provider, third-party vendor, or public servant, for the purpose of
20 influencing or being influenced in a decision regarding:

21 (A) selection of a provider or receipt of a good
22 or service under the medical assistance program;

23 (B) the use of goods or services provided under
24 the medical assistance program; or

25 (C) the inclusion or exclusion of goods or
26 services available under the medical assistance program;

27 (8) knowingly makes or causes to be made a false

1 statement or misrepresentation of a material fact to permit a
2 person to receive a benefit or payment under the medical assistance
3 program that is not authorized or that is greater than the
4 authorized benefit or payment;

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

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

14 (11) knowingly makes, causes to be made, induces, or
15 seeks to induce the making of a false statement or
16 misrepresentation of a material fact concerning the condition or
17 operation of a facility in order for the facility to meet
18 certification or recertification standards required to participate
19 under the medical assistance program, including:

20 (A) a hospital;

21 (B) a nursing facility;

22 (C) a hospice provider;

23 (D) an intermediate care facility for
24 individuals with an intellectual disability;

25 (E) an assisted living facility; or

26 (F) a home and community support services agency;

27 (12) knowingly makes, causes to be made, induces, or

1 seeks to induce the making of a false statement or
2 misrepresentation of a material fact concerning information
3 required to be provided under a federal or state law, rule, or
4 provider agreement pertaining to the medical assistance program;

5 (13) knowingly presents or causes to be presented a
6 claim for payment for a product provided or a service rendered by a
7 person who:

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

10 (B) is not licensed in the manner claimed;

11 (14) knowingly makes or causes to be made a claim for:

12 (A) a service or product that has not been
13 approved or accepted by a treating physician or health care
14 practitioner;

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

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

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

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

26 (17) knowingly obstructs the office of inspector
27 general from carrying out the office's duties under Section

1 544.0103, Government Code;

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

9 (19) [~~(2)~~] is a managed care organization that
10 contracts with the commission to provide or arrange to provide
11 health care benefits or services to individuals eligible for
12 medical assistance and:

13 (A) fails to provide to an individual a health
14 care benefit or service that the organization is required to
15 provide under the contract with the commission;

16 (B) fails to provide to the commission or other
17 appropriate agency information required to be provided by law,
18 commission or agency rule, or contractual provision;

19 (C) engages in a fraudulent activity in
20 connection with the enrollment in the organization's managed care
21 plan of an individual eligible for medical assistance or in
22 connection with marketing the organization's services to an
23 individual eligible for medical assistance; or

24 (D) engages in actions that indicate a pattern
25 of:

26 (i) wrongful denial of payment for a health
27 care benefit or service that the organization is required to

1 provide under the contract with the commission; or

2 (ii) wrongful delay of at least 45 days or a
3 longer period specified in the contract with the commission, not to
4 exceed 60 days, in making payment for a health care benefit or
5 service that the organization is required to provide under the
6 contract with the commission;

7 (20) ~~or~~

8 ~~(3)~~ fails to maintain documentation to support a
9 claim for payment in accordance with the requirements specified by
10 commission rule or medical assistance program policy; or

11 (21) engages in any other conduct that a commission
12 rule has defined as a violation of the medical assistance program.

13 (c) A person who commits a violation under Subsection (b) is
14 liable to the commission for the following administrative remedy:

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

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

23 (A) not less than \$5,000 or more than \$15,000 or
24 the maximum dollar amount imposed as provided by 31 U.S.C. Section
25 3729(a)(1), if that amount exceeds \$15,000, for each violation that
26 results in injury to an elderly person, as defined by Section
27 48.002(a)(1), a person with a disability, as defined by Section

1 48.002(a)(8)(A), or a person younger than 18 years of age; or

2 (B) not more than \$10,000 or the maximum dollar
3 amount imposed as provided by 31 U.S.C. Section 3729(a)(1), if that
4 amount exceeds \$10,000, for each violation that does not result in
5 injury to a person described by Paragraph (A).

6 (c-1) For purposes of Subsection (c)(2), each day a person
7 violates Subsection (b)(17), (18), or (19) constitutes a separate
8 violation.

9 (d) Unless the provider knowingly submitted false or
10 misleading information to the commission for use in preparing a
11 voucher [~~that the provider knew or should have known was false~~] or
12 knowingly failed to correct false or misleading information [~~that~~
13 ~~the provider knew or should have known was false~~] when provided an
14 opportunity to do so, this section does not apply to a claim based
15 on the voucher if the commission calculated and printed the amount
16 of the claim on the voucher and then submitted the voucher to the
17 provider for the provider's signature. In addition, the provider's
18 signature on the voucher does not constitute fraud. The executive
19 commissioner shall adopt rules that establish a grace period during
20 which errors contained in a voucher prepared by the commission may
21 be corrected without penalty to the provider.

22 (f) If after an examination of the facts the commission
23 concludes that the person committed a violation, the commission may
24 issue a preliminary report stating the facts on which it based its
25 conclusion, recommending that an administrative remedy [~~penalty~~]
26 under this section be imposed and recommending the amount of the
27 proposed remedy [~~penalty~~].

1 (g) The commission shall give written notice of the report
2 to the person charged with committing the violation. The notice
3 must include:

4 (1) a brief summary of the [~~facts, a statement of the~~
5 ~~amount of the~~] recommended remedy; [~~penalty~~] and

6 (2) a statement of the person's right to an informal
7 review of:

8 (A) the alleged violation;

9 (B) [~~✓~~] the amount of the recommended remedy;
10 [~~penalty~~] or

11 (C) both the alleged violation and the amount of
12 the recommended remedy [~~penalty~~].

13 (h) Not later than the 10th day after the date on which the
14 person charged with committing the violation receives the notice,
15 the person may either give the commission written consent to the
16 report, including the recommended remedy [~~penalty~~], or make a
17 written request for an informal review by the commission.

18 (i) If the person charged with committing the violation
19 consents to the remedy [~~penalty~~] recommended by the commission or
20 fails to timely request an informal review, the commission shall
21 assess the remedy [~~penalty~~]. The commission shall give the person
22 written notice of its action. The person shall pay the remedy
23 [~~penalty~~] not later than the 30th day after the date on which the
24 person receives the notice.

25 (l) If, after informal review, a person who has been ordered
26 to pay a remedy [~~penalty~~] fails to request a formal hearing in a
27 timely manner, the commission shall assess the remedy [~~penalty~~].

1 The commission shall give the person written notice of its action.
2 The person shall pay the remedy [~~penalty~~] not later than the 30th
3 day after the date on which the person receives the notice.

4 (m) Within 30 days after the date on which the commission's
5 order issued after a hearing under Subsection (k) becomes final as
6 provided by Section 2001.144, Government Code, the person shall:

7 (1) pay the amount of the remedy [~~penalty~~];

8 (2) pay the amount of the remedy [~~penalty~~] and file a
9 petition for judicial review contesting the occurrence of the
10 violation, the amount of the remedy [~~penalty~~], or both the
11 occurrence of the violation and the amount of the remedy [~~penalty~~];
12 or

13 (3) without paying the amount of the remedy [~~penalty~~],
14 file a petition for judicial review contesting the occurrence of
15 the violation, the amount of the remedy [~~penalty~~], or both the
16 occurrence of the violation and the amount of the remedy [~~penalty~~].

17 (n) A person who acts under Subsection (m)(3) within the
18 30-day period may:

19 (1) stay enforcement of the remedy [~~penalty~~] by:

20 (A) paying the amount of the remedy [~~penalty~~] to
21 the court for placement in an escrow account; or

22 (B) giving to the court a supersedeas bond that
23 is approved by the court for the amount of the remedy [~~penalty~~] and
24 that is effective until all judicial review of the commission's
25 order is final; or

26 (2) request the court to stay enforcement of the
27 remedy [~~penalty~~] by:

1 (A) filing with the court a sworn affidavit of
2 the person stating that the person is financially unable to pay the
3 amount of the remedy [~~penalty~~] and is financially unable to give the
4 supersedeas bond; and

5 (B) giving a copy of the affidavit to the
6 executive commissioner by certified mail.

7 (o) If the executive commissioner receives a copy of an
8 affidavit under Subsection (n)(2), the executive commissioner may
9 file with the court, within five days after the date the copy is
10 received, a contest to the affidavit. The court shall hold a hearing
11 on the facts alleged in the affidavit as soon as practicable and
12 shall stay the enforcement of the remedy [~~penalty~~] on finding that
13 the alleged facts are true. The person who files an affidavit has
14 the burden of proving that the person is financially unable to pay
15 the amount of the remedy [~~penalty~~] and to give a supersedeas bond.

16 (p) If the person charged does not pay the amount of the
17 remedy [~~penalty~~] and the enforcement of the remedy [~~penalty~~] is not
18 stayed, the commission may forward the matter to the attorney
19 general for enforcement of the remedy [~~penalty~~] and interest as
20 provided by law for legal judgments. An action to enforce a remedy
21 [~~penalty~~] order under this section must be initiated in a court of
22 competent jurisdiction in Travis County or in the county in which
23 the violation was committed.

24 (q) Judicial review of a commission order or review under
25 this section assessing a remedy [~~penalty~~] is under the substantial
26 evidence rule. A suit may be initiated by filing a petition with a
27 district court in Travis County, as provided by Subchapter G,

1 Chapter 2001, Government Code.

2 (r) If a remedy [~~penalty~~] is reduced or not assessed, the
3 commission shall remit to the person the appropriate amount plus
4 accrued interest if the remedy [~~penalty~~] has been paid or shall
5 execute a release of the bond if a supersedeas bond has been posted.
6 The accrued interest on amounts remitted by the commission under
7 this subsection shall be paid at a rate equal to the rate provided
8 by law for legal judgments and shall be paid for the period
9 beginning on the date the remedy [~~penalty~~] is paid to the commission
10 under this section and ending on the date the remedy [~~penalty~~] is
11 remitted.

12 (s) A remedy [~~damage, cost, or penalty~~] collected under this
13 section is not an allowable expense in a claim or cost report that
14 is or could be used to determine a rate or payment under the medical
15 assistance program.

16 (x) Subsections (b)(3) [~~(b)(1-b)~~] through (7) [~~(1-f)~~] do
17 not prohibit a person from engaging in:

18 (1) generally accepted business practices, as
19 determined by commission rule, including:

20 (A) conducting a marketing campaign;

21 (B) providing token items of minimal value that
22 advertise the person's trade name; and

23 (C) providing complimentary refreshments at an
24 informational meeting promoting the person's goods or services;

25 (2) the provision of a value-added service if the
26 person is a managed care organization; or

27 (3) other conduct specifically authorized by law,

1 including conduct authorized by federal safe harbor regulations (42
2 C.F.R. Section 1001.952).

3 SECTION 5. Section 32.0391(a), Human Resources Code, is
4 amended to read as follows:

5 (a) A person commits an offense if the person intentionally
6 or knowingly commits a violation under Section 32.039(b)(3), (4),
7 (5), (6), or (7) [~~32.039(b)(1-b), (1-c), (1-d), (1-e), or (1-f)~~].

8 SECTION 6. Section 36.002, Human Resources Code, is amended
9 to read as follows:

10 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
11 act if the person:

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

17 (2) knowingly conceals or fails to disclose
18 information that permits a person to receive a benefit or payment
19 under a health care program that is not authorized or that is
20 greater than the benefit or payment that is authorized;

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

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

1 (A) the conditions or operation of a facility in
2 order that the facility may qualify for certification or
3 recertification required by a health care program, including
4 certification or recertification as:

- 5 (i) a hospital;
- 6 (ii) a nursing facility or skilled nursing
7 facility;
- 8 (iii) a hospice;
- 9 (iv) an ICF-IID;
- 10 (v) an assisted living facility; or
- 11 (vi) a home health agency; or

12 (B) information required to be provided by a
13 federal or state law, rule, regulation, or provider agreement
14 pertaining to a health care program;

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

22 (6) knowingly presents or causes to be presented a
23 claim for payment under a health care program for a product provided
24 or a service rendered by a person who:

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

27 (B) is not licensed in the manner claimed;

1 (7) knowingly makes or causes to be made a claim under
2 a health care program for:

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

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

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

12 (8) makes a claim under a health care program and
13 knowingly fails to indicate the type of license and the
14 identification number of the licensed health care provider who
15 actually provided the service;

16 (9) conspires to commit a violation of Subdivision
17 (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

18 (10) is a managed care organization that contracts
19 with the commission or other state agency to provide or arrange to
20 provide health care benefits or services to individuals eligible
21 under a health care program and knowingly:

22 (A) fails to provide to an individual a health
23 care benefit or service that the organization is required to
24 provide under the contract;

25 (B) fails to provide to the commission or
26 appropriate state agency information required to be provided by
27 law, commission or agency rule, or contractual provision; or

1 (C) engages in a fraudulent activity in
2 connection with the enrollment of an individual eligible under the
3 program in the organization's managed care plan or in connection
4 with marketing the organization's services to an individual
5 eligible under the program;

6 (11) knowingly obstructs an investigation by the
7 attorney general of an alleged unlawful act under this section;

8 (12) knowingly makes, uses, or causes the making or
9 use of a false record or statement material to an obligation to pay
10 or transmit money or property to this state under a health care
11 program, or knowingly conceals or knowingly and improperly avoids
12 or decreases an obligation to pay or transmit money or property to
13 this state under a health care program; or

14 (13) knowingly engages in conduct that constitutes a
15 violation under Section 32.039(b)(1), (2), (3), (4), (5), (6), (7),
16 or (17) [~~32.039(b)~~].

17 SECTION 7. Section 36.006, Human Resources Code, is amended
18 to read as follows:

19 Sec. 36.006. APPLICATION OF OTHER LAW. The application of a
20 civil remedy under this chapter does not preclude the application
21 of another common law, statutory, or regulatory remedy, except that
22 a person may not be liable for a civil remedy under this chapter and
23 an administrative remedy [~~civil damages or a penalty~~] under Section
24 32.039 if the civil remedy and administrative remedy [~~civil damages~~
25 ~~or penalty~~] are assessed for the same act.

26 SECTION 8. The following provisions of the Human Resources
27 Code are repealed:

1 (1) Section 32.039(a)(4); and

2 (2) Section 32.039(b-1).

3 SECTION 9. Section 32.039, Human Resources Code, as amended
4 by this Act, applies only to a violation that occurs on or after the
5 effective date of this Act. A violation that occurs before the
6 effective date of this Act is governed by the law in effect on the
7 date the violation occurred, and that law is continued in effect for
8 that purpose.

9 SECTION 10. If before implementing any provision of this
10 Act a state agency determines that a waiver or authorization from a
11 federal agency is necessary for implementation of that provision,
12 the agency affected by the provision shall request the waiver or
13 authorization and may delay implementing that provision until the
14 waiver or authorization is granted.

15 SECTION 11. This Act takes effect September 1, 2025.