

BILL ANALYSIS

H.B. 3279
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General Investigating & Ethics
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Health and Human Services Commission Office of Inspector General (OIG) was created as part of H.B. 2292 in 2003 to prevent, detect, and investigate fraud, waste, and abuse and other allegations of wrongdoing in the health and human services system. In fiscal year 2014, OIG had 774 staff and operated on a budget of \$48.9 million, a growth of nearly 30 percent since 2011.

The Sunset Commission found deep management and due process concerns with OIG, particularly in OIG's efforts to detect and deter Medicaid fraud, waste, and abuse. OIG's investigative processes lack structure, guidelines, and performance measures to ensure consistent and fair results. Poor communication and a lack of transparency give a perception that OIG makes up rules as it goes. These significant concerns and vague accountability between the inspector general and the governor who makes the appointment and the executive commissioner who administratively oversees the office demand serious attention to set this office right so it can appropriately ensure the integrity of programs in the health and human services system. H.B. 3279 contains the Sunset Commission's recommendations to address these concerns and subjects OIG to a special Sunset review in six years.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

Amends definition of fraud

H.B. 3279 changes the definition of "fraud" in the Health and Human Services Commission Office of Inspector General (OIG) statute by removing references to other definitions of fraud in other applicable federal and state law and by stating that the definition does not include unintentional technical, clerical, or administrative errors.

Changes appointment of Inspector General

H.B. 3279 removes the gubernatorial appointment of the inspector general and specifies that the inspector general is appointed by the executive commissioner of the Health and Human Services Commission (HHSC). This provision only applies to a person appointed on or after the effective date of the bill.

Changes investigatory timelines

H.B. 3279 removes the requirement that a preliminary investigation for Medicaid fraud or abuse must be completed within 90 days of the beginning of the investigation. The bill adds a requirement that such an investigation must be completed within 45 days of the receipt of the complaint or having reason to believe that fraud or abuse has occurred.

For full scale investigations of Medicaid fraud or abuse, H.B. 3279 requires that investigations be completed within 180 days of the date the full investigation begins, unless the office determines that more time is needed to complete the investigation. When OIG determines additional time is needed, the bill requires OIG to provide notice to the provider who is the subject of the investigation specifying that the length of the investigation will exceed 180 days and the reasons why the investigation was unable to complete the investigation within the 180-day period, unless such notice would jeopardize the investigation. The bill provides that changes affecting investigations of fraud or abuse apply only to complaints or allegations received after the effective date of the bill.

Clarifies payment hold authority

H.B. 3279 specifies that OIG's authority to place payment holds is limited only to the situations listed in statute, and provides that payment holds are serious enforcement tools imposed to mitigate ongoing risk to the state. The bill provides that a payment hold takes immediate effect. The bill provides that the executive commissioner must adopt rules to implement these changes regarding the circumstances in which a payment hold may be placed on claims for reimbursement submitted by a Medicaid provider no later than March 1, 2016.

Streamlines payment hold appeal process

H.B. 3279 requires that notice of a payment hold be sent within five days of the hold being placed, except as provided by federal law, and that this notice contain a detailed summary of OIG's evidence relating to the allegation and a detailed timeline for the provider to pursue their rights and remedies. The bill also specifies that the description of rights and remedies included in this notice include the option instead of the right to informal resolution.

H.B. 3279 requires OIG to request a hearing with the State Office of Administrative Hearings (SOAH) within three days of receiving a hearing request from a provider. The bill changes the timeframe for a provider to request a hearing to not later than 10 days, from 30 days, after receiving notice. The bill requires SOAH to hold the hearing not later than 45 days after receiving the request for hearing, and it places the following requirements on the hearing:

- the provider and OIG are each limited to four hours of testimony, excluding time for questions from the judge;
- the provider and OIG are each entitled to two continuances for reasonable circumstances;
- OIG is required to show probable cause that the credible allegation of fraud that is the basis of the hold has an indicia of reliability, and that continuing to pay the provider presents an ongoing significant financial risk to the state and a threat to the integrity of the Medicaid program.

H.B. 3279 also removes requirements that providers pay or advance security for one-half of the SOAH costs of their payment hold hearings and costs for transcribing the hearing and requires OIG to pay the costs of the hearing, but specifies that providers are responsible for their own costs in preparing for the hearing. The bill provides that a SOAH judge shall decide if a payment hold should continue, but not adjust the amount or percent of the hold, and that the judge's decision is final and may not be appealed.

H.B. 3279 removes the statutory right to two informal resolution meetings and associated timelines before a payment hold hearing, but retains an optional right at the discretion of OIG.

The bill requires that the informal resolution process on the payment hold run concurrently with the payment hold hearing process and that it be discontinued upon SOAH's final determination on the payment hold.

Provides exceptions to full payment holds

H.B. 3279 provides a list of good cause exceptions in the various ways that a payment hold is applied to a provider on a finding that a credible allegation of fraud exists, in accordance with federal law. These include:

- law enforcement officials have specifically requested that a payment hold not be imposed because it would compromise or jeopardize an investigation;
- other alternative remedies are available and would more effectively or quickly protect Medicaid funds;
- the provider submits written evidence which convinces OIG the hold should be removed;
- the hold jeopardizes Medicaid recipients' access to services because the provider meets certain factors;
- the attorney general declines to certify that a matter continues to be under investigation; or
- OIG determines that the hold is not in the best interest of the Medicaid program.

H.B. 3279 prohibits OIG from placing a payment hold based on claims for which the provider obtained a prior authorization, unless OIG has evidence that the provider materially misrepresented documentation relating to those services.

Allows sharing of draft reports with affected agencies

H.B. 3279 allows OIG to share confidential drafts of audits or investigations that concern the death of a child with the Department of Family and Protective Services, without jeopardizing the confidentiality of those draft reports.

Repeals prohibition on client participation in managed care and HIPP

H.B. 3279 repeals a prohibition on an individual enrolled in the Health Insurance Premium Payment reimbursement program from participating in a Medicaid managed care program.

Requires criteria for carrying out core functions

H.B. 3279 requires the executive commissioner to adopt rules establishing criteria:

- for opening a case;
- for prioritizing provider, recipient, and internal affairs cases according to specific factors for each case type; and
- to guide field investigators in closing cases that are not worth full investigation.

H.B. 3279 also requires the executive commissioner, on behalf of the OIG, to adopt rules establishing criteria for determining enforcement and punitive actions for a provider who has violated state law, program rules, or the provider's Medicaid provider agreement. The rules must include direction for categorizing provider violations and scaling resulting enforcement actions, taking into account certain listed factors and must include a specific list of potential penalties, including the amount of the penalties, for fraud and other Medicaid program violations.

Requires internal review of processes

H.B. 3279 requires OIG to have staff not directly involved in investigations to review its investigative processes, including OIG's use of sampling and extrapolation methods to audit provider records.

Provides for stronger role in managed care

H.B. 3279 requires OIG to:

- investigate fraud, waste, and abuse by managed care organizations;
- establish requirements for providing training and oversight of special investigative units or other contracted entities for investigating fraud and other program abuse;
- establishing requirements for approving plans to prevent and reduce fraud and abuse adopted by managed care organizations;
- evaluating and communicating statewide fraud, waste, and abuse trends to special investigative units to determine the prevalence of those trends; and
- assisting managed care units in discovering or investigating fraud, waste, and abuse as needed.

H.B. 3279 also adds specific direction for the executive commissioner to adopt rules including rules defining OIG's role with respect to the investigative role of the special investigative units and other contracted entities. The rules must specify OIG's role in:

- reviewing the findings of special investigative units;
- investigating managed care overpayment cases of more than \$100,000; and
- investigating providers across multiple managed care organizations.

Simplifies overpayment appeal process

H.B. 3279 removes the statutory right to a second informal resolution meeting before an overpayment hearing and removes corresponding timeframes for the first informal resolution meeting from statute. The bill requires that the informal resolution process on the overpayment run concurrently with the payment hold hearing process and that it may not delay the hearing on the overpayment.

H.B. 3279 also removes requirements that providers pay or advance security for one-half the SOAH costs of their overpayment hearings and transcription costs and requires OIG to pay the costs of the hearing, but specifies that providers are responsible for their own costs in preparing for the hearing. The bill provides that changes to the overpayment process apply only to providers notified of a proposed recoupment on or after the effective date of the bill.

Provides appeal rights for pharmacy audits

H.B. 3279 gives a pharmacy audited by OIG or a federal contractor the right to an informal hearing to contest the findings of the audit if the findings of the audit do not include that the pharmacy engaged in Medicaid fraud. The hearing must be held at HHSC's appeals division and staff from the vendor drug program must assist in making the final decision on the audit's accuracy. The bill prohibits OIG staff from participating in the decision making panel. The bill also requires OIG to provide pharmacies detailed information relating to the extrapolation methodology used in the audit, and methods to determine the overpayment if OIG has access to the information. The bill requires the executive commissioner to adopt rules to implement this provision not later than March 1, 2016.

Requires special Sunset review

H.B. 3279 requires the Sunset Advisory Commission to conduct a special-purpose review of OIG as part of its review of agencies for the 87th Legislature. The bill requires Sunset to focus on OIG's investigations and the effectiveness and efficiency of OIG's processes, and provides that OIG is not subject to abolishment as part of the review.

Repealers

H.B. 3279 repeals Section 531.1201(c), Government Code, and Section 32.0422(k), Human Resources Code.

EFFECTIVE DATE

September 1, 2015.