

SUBJECT: Preventing and penalizing Medicaid fraud

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Berlanga, Hirschi, Glaze, Maxey, McDonald
0 nays
4 absent — Coleman, Delisi, Janek, Rodriguez

WITNESSES: For — Lindsay Thorpe, Chartwell Group of Companies; Sara Speights, Texas Health Care Association
Against — none
On — Hal Ray, Office of the Attorney General; DeAnn Friedholm, Texas Health and Human Services Commission

DIGEST: HB 2523 would amend the Human Resources Code to create civil offenses of Medicaid fraud and enact penalties and injunctive relief. The act would take effect September 1, 1995.

Unlawful acts

A person would commit an unlawful act if the person knowingly or intentionally:

- made a false statement or misrepresentation on applications for payments or Medicaid eligibility;
- failed to disclose an event that would affect Medicaid eligibility or payment;
- applied for and received a benefit or payment on behalf of another Medicaid recipient but who did not use the benefit or payment for that person;
- charged or received a gift, money or other consideration as a condition to continue service to the Medicaid recipient if the cost of the service was paid for in whole or in part by the Medicaid program;

- presented a Medicaid payment claim for a product provided or service rendered by an unauthorized person;
- paid, offered, solicited or received a kickback, bribe, rebate, fee or consideration of value for securing or referring Medicaid recipients;
- made a Medicaid claim for a service or product that is unapproved, adulterated, inappropriate, not medically necessary or that did not meet acceptable health standards;
- failed to indicate the type of license and the identification number of the licensed health care provider who actually provided the service or
- entered into an agreement to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program.

A person would also commit an offense if a false statement or misrepresentation was made about the conditions or operation of a facility's qualifications for Medicaid certification or in other federal or state-required information.

Investigations

The attorney general could investigate an unlawful act if the attorney general has reason to believe that a person has information or control of material relevant to the investigation, is committing or about to commit an unlawful act or if an investigation is needed to ascertain whether a person committed or is about to commit an unlawful act.

The attorney general could serve a civil investigative demand, require a person to provide written information on a prescribed form and examine under oath a person in connection with the alleged unlawful act. The civil investigative demand would be required to state the rule or statute under which the alleged unlawful act was being investigated, describe the documentary material required to be produced, identify the attorney general employee to whom the material was to be delivered and to prescribe a return date for the material. The attorney general would be required to prescribe reasonable terms and could file in Travis County district court a petition for an order to enforce the investigative demand if a person failed to comply.

Documentary material could not be disclosed to persons other than authorized employees of the attorney general without consent of the owner except to a state or U.S. agency, a criminal district attorney, a Texas district attorney, a county attorney, the U.S. attorney general or a state or federal grand jury. A person would not be civilly or criminally liable for providing access to documentary material to entities listed above.

A state agency would be required to provide the attorney general access to all documentary materials of persons and Medicaid recipients to permit investigation of an alleged unlawful act or for use in an administrative or judicial proceeding.

Injunctive Relief

The attorney general could institute an action to order the restraint of the person from committing or continuing to commit an unlawful act. The action could be brought in a district court in the county in which the unlawful act occurred or was about to occur or in Travis County.

Civil and other remedies

A person who commits an offense would be liable to the state for restitution and interest, a civil penalty of not less than \$10,000 or more than \$50,000 for each unlawful act and up to three times the value of the unlawful payment or benefit.

A person found liable for civil remedies would be subject to professional discipline under applicable licensing laws. A state agency also could suspend or revoke the person's permit, license, certification or provider agreement with the agency.

The application of a civil remedy would not preclude the application of another common law, statutory or regulatory remedy except that a person could not be liable for the same offense civil penalties and damages under sec. 32.039 of the Human Resources Code and this act. Section 32.039 governs civil damages and penalties for the submission of false payment claims.

The attorney general could recover fees, expenses and court and investigation costs in obtaining injunctive relief or civil remedies. The Legislature, when appropriating recovered money, would be required to consider the requirements of the attorney general and other affected state agencies in investigating Medicaid fraud and enforcing this chapter.

**SUPPORTERS
SAY:**

HB 2523 is needed to improve state enforcement against Medicaid fraud. Existing Medicaid laws do not adequately or specifically address fraudulent activities and state recourse in investigating and punishing unlawful acts.

Medicaid spending has grown from \$4.7 billion in fiscal 1988-89 to about \$15.9 billion in fiscal 1994-95 (state and federal dollars). It is essential for Medicaid recipients and for taxpayers that Medicaid pays only lawful, necessary and appropriate services and that funding is not diverted away from Medicaid eligibles who need health care. As the Medicaid program grows, the incidence and opportunity for fraudulent practices by providers, contractors and recipients grow. HB 2523 will help contain Medicaid expenditures by reducing fraud and obtaining restitution from fraudulent practices.

**OPPONENTS
SAY:**

HB 2523 would give the attorney general too much authority and could subject some providers to unnecessary investigations and civil procedures. There could be legitimate disagreements between the provider and the attorney general as to what constitutes medically necessary and acceptable care. Allegations of fraudulent practices could be devastating to a provider's business and reputation, and could be used to harass providers.

The attorney general's authority in Medicaid fraud investigation should be more closely linked to existing regulatory monitoring activities and administrative, civil and criminal remedies found in statutes governing health care providers.

NOTES:

One amendment would add the motivation of "knowing and intentionally" in the creation of an offense; the other would remove the requirement to place money recovered under this act in a dedicated account in the general revenue fund.