

- SUBJECT:** Clarifying the date of Medicaid ineligibility for providers liable of fraud
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, S. King, Laubenberg, J.D. Sheffield, Zedler
- 0 nays
- 2 absent — Coleman, Guerra
- WITNESSES:** For — Arlene Wohlgemuth, Texas Public Policy Foundation; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition)
- Against — None
- On — Raymond Winter, Office of the Attorney General; (*Registered, but did not testify*: Mark Einfalt, Office of the Attorney General; Karen Nelson, Health and Human Services Commission-Office of the Inspector General)
- BACKGROUND:** Human Resources Code, sec. 36.005 prohibits a provider found liable for Medicaid fraud from participating in the Medicaid program for at least 10 years from the date the determination of liability becomes final.
- DIGEST:** CSHB 2158 would specify the date on which a provider would be ineligible to participate in the Medicaid program to be the date a trial court renders its judgment of liability.
- Physicians, physician organizations, and individuals licensed by a state-licensed health regulatory agency would become ineligible the date their determination of liability became final and all appeals had been exhausted or waived.
- A state agency that determined it needed a federal waiver or authorization to implement part of this bill would be required to request the waiver and could delay implementing that provision until it was granted.
- The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 2158 would decrease Medicaid fraud and increase certainty about its consequences. Currently, the point at which a provider becomes ineligible for participation in the Medicaid program can be interpreted as beginning with either the trial court's final judgment or with the end of the appeals process. The bill would provide certainty for the Medicaid program and providers, and would prevent providers found liable from potentially continuing to defraud the Texas Medicaid system.

The bill would shorten an appeals process that is often long and drawn out. Providers would be less incentivized to pursue frivolous appeals or to otherwise slow down the appeals process in order to delay their exclusion from the Medicaid program. The current appeals process is sufficient should a provider have a legitimate claim to overturn a court's judgment.

**OPPONENTS
SAY:**

CSHB 2158 would be overly punitive and would undermine an important legal safeguard for some providers. By excluding providers from participation in the Medicaid program before they receive a judgment on their appeals, the bill would be extremely disruptive and even fatal to some providers' practices or businesses, even if the trial verdict were overturned on appeal. The appeals process is particularly important in the current climate prioritizing increased fraud prosecutions, judgments, and recoupments.

The bill inequitably would target non-physician, non-licensed providers, such as pharmaceutical companies and durable medical equipment providers, when the protections of the appeals process should apply equally. There is no evidence that non-licensed providers commit fraud more frequently than physicians or state-licensed providers.