SUBJECT: Preventing Medicaid fraud, waste, and abuse

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

SENATE VOTE: On final passage, April 15 — 30-0

WITNESSES: For — Steven Feist, Logisticare; David Marsh, CARTS (*Registered, but did not testify*: Jess Calvert, Texas Dental Association; Kate Carroll, Acadian Ambulance, Inc; Donna Chatham, Association of Rural Communities in Texas; Brent Connett, Texas Conservative Coalition; Trish Conradt, Coalition for Nurses in Advanced Practice; Scott Gilmore, Texas Transit Association; Omega Hawkins, STAR Transit; Jeff Heckler Sparton Transit – Lubbock, Texoma Area Paratransit Services; Marina Hench, Texas Association for Home Care and Hospice; John McBeth, Brazos Transit District; David Mintz, Texas Academy of General Dentistry; Asbel Montes, Acadian Ambulance Service; Lyle Nelson, CARTS; Stephen Raines, Preferred Care Partners; Jim Rudd, Texas Society of Oral Maxillofacial Surgeons; Tyler Rudd, Texas Academy of Pediatric Dentistry; Nelson Salinas, Texas Association of Business; Lee Spiller, Citizens Commission on Human Rights; Kevin Trimble, Flower Mound Fire Dept; Dudley Wait, City of Schertz EMS; Carole Warlick, Hill Country Transit/Texas Transit Association; Matthew Zavadsky, MedStar EMS, Dallas Fire Rescue)

Against — David Arjona, Javier Camacho, Leticia Galvan, Bernice Garza, Mario Garza, Angela Hernandez, Noel Martinez, Iliana Pena, and Ofilia Zarate, Advocates for Patient Access; TC Betancourt; Mateo Diaz; (*Registered, but did not testify*: Ramon Galvan, Eduardo Matos, Juan Navarro, and Maria Saldivar, Advocates for Patient Access)

On — Brent Byler, Lefleur Transportation (*Registered, but did not testify*:

Kay Ghahremani, Chris Traylor, and Douglas Wilson, HHSC; Derek Jakovich and Rachel Samsel, Department of State Health Services; Mari Robinson, Texas Medical Board; Raymond Winter, Office of the Attorney General)

DIGEST:

SB 8 would implement Medicaid fraud detection measures, marketing limitations, a managed transportation delivery model, regulations on emergency medical transportation providers, and program exclusions on fraudulent providers, and would establish legislative intent regarding the Medicaid program.

Fraud detection. *Data analysis unit.* SB 8 would require that the executive commissioner of the Health and Human Services Commission establish a data analysis unit to improve contract management and detect trends and anomalies related to service utilization, providers, payment methodologies, and compliance with Medicaid and Children's Health Insurance Program (CHIP) contracts. Each quarter, the unit would be required to update the governor and appropriate legislative officials on its activities and findings.

Prior authorization and utilization review. The bill would require HHSC to periodically review the Medicaid prior authorization and utilization review processes with both fee-for-service and managed care delivery models to determine any needed modification to reduce authorizations of unnecessary and inappropriate services. HHSC would monitor these processes for anomalies and review any process earlier than scheduled should an anomaly be found.

Office of Inspector General. SB 8 would specify that the HHSC's Office of Inspector General (OIG) was responsible for the detection, investigation, and prevention of fraud, waste, and abuse in the provision and delivery of all health and human services in the state. The OIG's authority would include but not be limited to Medicaid or any other health and human services program wholly or partly federally funded.

Program review. As soon as practicable after the effective date of the bill, HHSC would cooperate with DSHS and the Texas Medical Board to conduct a thorough review of the laws and policies related to the use of nonemergency services by ambulance providers under the Medicaid medical assistance program, the licensure of nonemergency transportation providers, and the delegation of health care services by physicians to

qualified EMS personnel. The agencies would be required to solicit stakeholder input and would report their findings and recommendations by January 1, 2014.

Marketing. SB 8 would prohibit a Medicaid or CHIP provider, including a managed care organization (MCO), from engaging in any marketing activity or dissemination of information that was intended to influence a Medicaid or CHIP client's choice of provider, was directed at them solely due to their enrollment in Medicaid or CHIP, and involved unsolicited personal contact.

Nothing in the bill would prohibit a Medicaid or CHIP provider from engaging in marketing activities that involved general dissemination of information, such as by television, radio, or newspaper advertisements. Providers would also be allowed to provide appointment reminders, distribute health materials, communicate about the type of services they offered, coordinate patient care, and educate about available long-term services and supports.

The bill would establish a process using rules adopted by the HHSC executive commissioner for providers to submit proposed marketing activities for review and approval or denial by HHSC.

Medical transportation services. *Managed transportation organizations.* SB 8 would require HHSC to provide nonemergency transportation services under the Medicaid medical transportation program through a regional managed transportation delivery model. The managed transportation organizations (MTOs) in the model could be rural or urban transit districts, public transportation providers, local private transportation providers, regional contracted brokers, or other HHSC-approved entities.

The MTOs would operate using a capitated (or flat-fee) rate system, assume financial responsibility under a full-risk model, operate a call center, and use fixed routes when appropriate and available. HHSC would initiate a competitive bidding process to select the MTOs. MTOs participating in the medical transportation program would attempt to contract with providers that were considered significant traditional providers, met HHSC's minimum quality and efficiency measures, and accepted the prevailing contract rate of the MTO.

MTOs would be allowed to own, operate, and maintain a fleet of vehicles or contract with an entity that did the same. HHSC would be allowed to delay implementing the managed transportation delivery model in the Dallas/Fort Worth and Houston/Beaumont areas where full-risk transportation pilot programs are operating.

Memorandum of understanding. SB 8 would require HHSC to enter into a memorandum of understanding with the Texas Department of Motor Vehicles and the Department of Public Safety to obtain the vehicle registration and driver's license information of a provider of medical transportation services (MTS) to ensure the safe and efficient provision of nonemergency transportation services under Medicaid's medical transportation program.

HHSC would establish a process for contracted MTS providers, including those in a managed transportation model, to request and obtain this registration and license information to ensure a subcontractor met applicable safety and efficiency standards.

Emergency medical services. SB 8 would expand the criteria that an applicant to be an emergency medical services (EMS) provider had to satisfy to receive a license from the Department of State Health Services. Applicants would be required to possess sufficient professional experience and qualifications to provide emergency medical services and could not have been previously excluded from participation in the state Medicaid program.

The applicant also would be required to hold a letter of approval from the governing body of the city or county where the applicant was located and was applying to provide emergency services. The governing body would only issue a letter of approval if they determined that another licensed EMS provider would not interfere with or adversely affect the provision of EMS services, would remedy an existing provider shortage, and would not cause an oversupply of EMS providers.

The bill would prohibit DSHS from issuing new EMS provider licenses between September 1, 2013 and February 28, 2015. This would not apply to a volunteer provider organization or in counties with small or isolated populations.

The bill would establish financial security criteria that non-government

operated EMS provider applicants would be required to satisfy, including a letter of credit, a surety bond, and the name and contact information of the provider's administrator of record.

SB 8 would prohibit EMS providers from stationing EMS vehicles in a city or county outside the one in which they received a letter of approval for two years after their initial license was issued. This requirement would not apply to volunteer provider organizations or to an EMS provider that received a contract from another city or county, responded to an emergency in connection with an existing mutual aid agreement, or provided services during a statewide emergency or disaster.

SB 8 would prohibit an administrator of record from being employed by another private for-profit EMS provider, and would require they meet the qualifications for an emergency medical technician or other health care professional licensed by the Department of State Health Services (DSHS). They would also be required to submit to a criminal background check.

The bill would require an administrator of record complete an HHSC-administered education course including information about the laws and DSHS rules that affect EMS providers. They would be required to complete eight hours of continuing education per year following their initial approval.

The HHSC commissioner could suspend, revoke, or deny an EMS provider license on the grounds that the provider's administrator of record or employee had been convicted of or been placed on deferred adjudication for an offense directly related to their official duties, various criminal offenses listed in the bill, or Medicare or Medicaid fraud, including being excluded from the Medicaid program or having a payment hold placed on the provider's Medicaid reimbursement.

Providers. SB 8 would require the HHSC executive commissioner to revoke a medical provider's Medicaid enrollment if the person had been excluded from participation in any state or federally funded health care program after being found liable or being convicted for an act of financial misconduct in a state or federally funded health care program. Their participation would also be revoked for a criminal conviction from bodily injury to a person age 65 or older, a disabled individual, or a child. HHSC could reinstate a provider's enrollment if it had good cause to do so.

The bill would specify that a non-physician provider's period of ineligibility to participate in the Medicaid program would begin on the date a judgment of liability against them was initially entered by the trial court, rather than the date on which the determination of liability became final after any appeals. Physicians, physician organizations, and nonprofit health corporations would become ineligible the date the determination of liability became final.

Authorized adults. The bill's intent language would declare that a rule or policy adopted by HHSC to require the presence of a parent, guardian or authorized adult during certain Medicaid-funded services would be conclusively presumed to be a valid exercise of HHSC's authority. This would not apply to a rule that was void, a misdemeanor, or a felony at the time it was decided or that violated a federal law or waiver.

Effective date. SB 8 would take effect September 1, 2013. The bill would require the HHSC executive commissioner establish the data analysis unit as soon as practicable following this date. It would also require the managed transportation model be effective by September 1, 2014.

If any state agency were to determine that a provision of this bill required a federal waiver or authorization, the affected agency would be required to request it and could delay implementing that provision until it was granted.

SUPPORTERS SAY:

SB 8 would be a necessary action taken to detect and prevent Medicaid fraud, waste, and abuse and save state taxpayers millions of dollars. The bill contains numerous provisions to better ensure Medicaid tax dollars are used only on legitimate services without impeding health care providers' ability to operate. By preventing fraud, waste, and abuse, more of the state's limited resources would be available for the people who truly need them.

SB 8 would establish a data analysis center to detect fraud that would otherwise go undetected, clarify the OIG's authority to investigate fraud, and implement numerous studies of Medicaid programs considered high risk for fraud and abuse, as well as conduct ongoing reviews of HHSC's current utilization review and prior authorization safeguards.

The bill would implement a managed transportation delivery model to bring the savings of a capitated system to nonemergency medical

transportation services. It would create managed transportation organizations that would compete for regional contracts, creating incentives for a more coordinated program that could reduce costs while maintaining quality of service. The managed care model also ensures that numerous authorizations occur before the services are provided, preventing the over-provision of services.

SB 8 would prevent improper soliciting of children and parents for Medicaid services. It would also implement exceptions for educational materials and general advertising, so that providers could continue to operate without being pressured to create a need for services where none existed. The bill would also ensure that bad actors ineligible for Medicaid and other taxpayer reimbursement in other states remained ineligible here.

SB 8 would properly regulate EMS providers to ensure their financial integrity and decrease the use of emergency services for nonemergency needs.

Finally, SB 8 would clarify that it was the Legislature's intent that HHSC's rule requiring parents or guardians accompany children to Medicaid-funded medical treatments or when using the Medicaid transportation program was "a valid exercise of the commission's authority." Following HHSC's determination in March 2012 that a provider would not be reimbursed for services provided without the presence of a parent or guardian, a lawsuit was filed in May 2012 to stop the enforcement of this determination. As a result of the lawsuit, a state district court issued a temporary injunction against HHSC, preventing the agency from denying transportation services to unaccompanied children and from placing payment holds on providers treating unaccompanied children.

Allowing unaccompanied children to use Medicaid transportation and health care services has been linked to unnecessary treatments, overzealous solicitation, and fraud. SB 8 would provide a clear statement to the courts that the Legislature endorses HHSC's policy.

OPPONENTS SAY:

SB 8 would maintain the state's current climate of intimidation toward Medicaid providers and would limit patients' access to care.

The Office of Inspector General and sensationalist reports of Medicaid fraud have overstated the amount of waste in the Medicaid system. The

expansion of managed care has substantially reduced the standard for what is considered excess treatment, and oftentimes providers are investigated and harassed for minor errors. Texas faces a shortage of health care providers willing to accept Medicaid, and this bill would exacerbate an already urgent problem. Pursuing Medicaid abuse is not an efficient or equitable alternative to adequately funding the program. In the long-run, the deficit of quality health care services will be far more expensive than any marginal savings this bill could provide.

SB 8 would amount to an end-run around the legal system. In March 2013, the Third Court of Appeals upheld a district court ruling that stopped HHSC from denying Medicaid transportation services and Medicaid-funded treatment to unaccompanied children. By inserting intent, SB 8 would allow HHSC to deny payments to providers and discontinue transportation services if a child was unaccompanied. This could mean that thousands of children would be denied critical services necessary for their long-term health and self-sufficiency. For example, in the Rio Grande Valley, thousands of blind and disabled children would find it extremely difficult to obtain the treatment they need because their parents were unable to attend every therapy or treatment session for their children. The policy is self-defeating: Without being able to take advantage of medical treatment for which they otherwise would qualify these children would be at risk for being less sufficient and more dependent on state services in the years ahead.

Moreover, the bill's marketing limitations would be overly onerous and would prevent legitimate distribution of educational material to communities.

SB 8 would also cause a significant decrease in the quality of transportation services should the state begin using MTOs, which would be incentivized above all to decrease costs at the expense of service and even safety.

NOTES:

The Legislative Budget Board estimates SB 8 would have a positive fiscal impact of about $14.7 million in fiscal 2014-15 by identifying and decreasing Medicaid fraud and more efficiently operating its medical transportation program.