Senate Research Center   S.B. 1203
80R6901 JRH-F   By: Seliger
                                                                                            Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Crime Victims' Compensation Fund is the payer of last resort for crime victim's health care. If a private insurer or Medicaid subsequently pays the health care provider for services rendered to the victim, the attorney general, in cases of fraud, is authorized to request that the provider reimburse the fund for the subsequently paid amount. However, the attorney general has no legal authority to request a refund in cases of overpayment or accounting error where fraud is not a factor.

As proposed, S.B. 1203 provides the attorney general with the authority to request a refund in cases of overpayment or accounting error and sets forth the process by which the attorney general may request such a refund.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 56, Code of Criminal Procedure, by adding Article 56.65, as follows:

Art. 56.65. REPAYMENT OF OVERPAYMENTS. (a) Provides that if a person is erroneously overpaid under this subchapter (Crime Victims' Compensation), the person is liable for and is required to repay the overpayment.

(b) Authorizes the attorney general, if it is determined that a person was erroneously overpaid under this subchapter, to issue a report stating the facts on which the attorney general's determination and recommendation that the overpayment be repaid is made.

(c) Requires the attorney general to give written notice of the report to the person. Authorizes such notice to be given by certified mail and requires it to include certain information set forth in this subsection.

(d) Sets forth the required documents to be submitted by the person within 45 days of receiving notice under Subsection (c).

(e) Authorizes the attorney general to certify to the comptroller of public accounts (comptroller) that the overpaid amount constitutes a debt for purposes of Section 403.055 (Payment to Debtors or Delinquents Prohibited), Government Code, if the person fails to comply with Subsection (d). Authorizes the comptroller to certify the amount of debt to the attorney general for collection.

(f) Requires the attorney general to set a contested case hearing under Chapter 2001 (Administrative Procedure), Government Code, and notify the person of the hearing if the person requests the hearing under Subsection (c). Prohibits an employee of the State Office of Administrative Hearings from conducting a hearing or rendering a final decision under this article. Requires the hearing officer to make findings of fact, conclusions of law, and promptly issue to the

attorney general a proposal for the decision regarding the overpayment. Authorizes the attorney general by order to make a finding of whether an overpayment occurred based on such facts, conclusions, and the proposal.

(g) Requires notice of the attorney general's order to a person under Chapter 2001, Government Code, to include a statement of the person's right to judicial review of the order.

(h) Requires the person to take certain actions set forth in this subsection related to the repayment or challenge of the repayment not later than the 30th day after the date that the attorney general's order is final under Section 2001.144 (Decisions; When Final), Government Code.

(i) Authorizes a person acting under Subsection (h)(3) (filing a petition for judicial review of the repayment order without first repaying the overpayment) to take certain actions set forth under this subsection.

(j) Authorizes the attorney general to file with the court a contest to an affidavit issued under Subsection (i)(2) (stating that the person is financially unable to pay the repayment and is requesting the court to stay enforcement of the order), not later than the fifth day after the date a copy of the affidavit is received by the attorney general. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and, on finding that the alleged facts are true, to stay the enforcement of the order. Provides that a person who files such an affidavit has the burden of proving financial inability to pay the repayment or to give a supersedeas bond.

(k) Authorizes the attorney general to file suit to collect the repayment if the person does not pay the repayment and the enforcement of the order is not stayed.

(l) Provides that judicial review of the attorney general's order is instituted by filing a petition as provided by Section 2001.176 (Petition Initiating Judicial Review), Government Code, and is governed by the substantial evidence rule.

(m) Authorizes the court to order the person to pay the full or reduced amount of the repayment if the court upholds the overpayment finding. Requires the court to order that no repayment is owed if the court does not uphold the finding.

(n) Requires the court, if a person paid the repayment and the repayment is reduced or not upheld by the court, to order that the appropriate amount plus the appropriate amount of accrued interest as set forth in this subsection be remitted to the person. Requires the court to order the release of a supersedeas bond given by the person if the repayment is not upheld or is reduced, provided that the person pay the appropriate amount to the court in the case of a reduction of the repayment.

(o) Requires an ordered repayment under this article to be sent to the comptroller and deposited to the credit of the compensation to victims of crime fund.

(p) Provides that all proceedings under this article are subject to Chapter 2001 (Administrative Procedure), Government Code.

(q) Authorizes the attorney general to recover all expenses incurred in the investigation, institution, and prosecution of the suit, including investigative costs, witness fees, attorney's fees, and deposition expenses, in addition to the repayment.

SECTION 2. Effective date: September 1, 2007.