

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 293
By: Hinojosa; Schwertner
Health & Human Services
3/29/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session the Office of Inspector General (OIG) Sunset bill (S.B. 207, 84R, Hinojosa) required the Inspector General to prove that fraud from a provider would have "a significant financial risk to the state and a threat to the integrity of Medicaid" if the Inspector General wanted to place a Credible Allegation of Fraud (CAF) hold on the provider. This language was necessary because the OIG was significantly overusing CAF holds.

During the interim, there was some confusion among the Health and Human Services Commission (HHSC) and the OIG as to how exactly this standard applied. C.S.S.B. 293 clarifies this CAF hold standard by requiring the HHSC executive commissioner, together with the OIG, to draft rules defining what constitutes "a significant financial risk to the state and a threat to the integrity of Medicaid."

C.S.S.B. 293 clarifies the CAF hold standard by defining in statute the first prong of the test. The statute defines "a significant financial risk to the state as anything over \$100,000."

This is consistent with other references to the monetary amount of \$100,000 in statute and rule. For example, managed care organizations (MCOs) have to wait to pursue a case until after the OIG or Office of the Attorney General (AG) declines to do so. OIG and the AG defers to the MCOs for cases under \$100,000. Also, MCO special investigative units (SIUs) are not required to refer fraud, waste, or abuse cases under \$100,000. This implies that cases under \$100,000 are not significant enough to warrant OIG's involvement or to warrant a CAF hold. The \$100,000 applies to a "single provider."

C.S.S.B. 293 will still require the executive commissioner of HHSC, together with OIG, to draft rules defining what constitutes the second prong of the test—"a threat to the integrity of Medicaid."

C.S.S.B. 293 also changes the language of the two prong test from "and" to "or" for when the OIG wishes to use a CAF hold. So to justify a CAF hold, the OIG must show that there is a significant financial risk to the state or a threat to the integrity of Medicaid.

C.S.S.B. 293 amends current law relating to the proof required to impose payment holds in certain cases of alleged fraud by Medicaid providers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 531.102, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 531.102(g), Government Code, to include the requirement that in a hearing under this subdivision, the Office of the Inspector General (OIG) show that continuing to pay the provider presents an ongoing significant financial risk that the state may lose more than \$100,000 or presents a threat to the integrity of Medicaid as defined in rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), in consultation with OIG.

SECTION 2. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt the rules required by Section 531.102(g)(3)(C)(ii), Government Code, as added by this Act.

SECTION 3. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

SECTION 4. Effective date: upon passage or September 1, 2017.