

SUBJECT: Medicaid fraud liability for certain Medicaid anti-kickback offenses

COMMITTEE: Public Health —favorable, without amendment

VOTE: 8 ayes — Delisi, Laubenberg, Jackson, Cohen, Coleman, Gonzales,  
S. King, Truitt

0 nays

1 absent — Olivo

WITNESSES: For — None

Against — None

On — Patrick O'Connell, Office of the Attorney General

BACKGROUND: Human Resources Code, sec. 32.039 provides for civil liability for false claims and kickbacks, bribes, or rebates in connection with the Medicaid program. Sec. 32.0391 makes intentional or knowing violations a state-jail felony, which is punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000. With the consent of the local prosecutor, the attorney general has concurrent jurisdiction to prosecute this offense.

The Texas Medicaid Fraud Prevention Act, Human Resources Code, ch. 36, allows the attorney general to seek civil damages and injunctive relief against those who commit Medicaid fraud. Under sec. 36.006, the civil remedies allowed under chap. 36 do not preclude another common law, statutory, or administrative remedy, except that a person may not be liable for civil damages or a penalty under both ch. 36 and sec. 32.039 for the same act.

DIGEST: HB 889 would amend Human Resources Code, sec. 36.002 to add to the list of prohibited conduct under the Texas Medicaid program knowingly engaging in conduct that violated the Medicaid anti-kickback statute, Human Resources Code, sec. 32.039(b).

The bill would take effect on September 1, 2007, and would apply only to conduct that occurred on or after the effective date.

**SUPPORTERS  
SAY:**

HB 889 would bring the state Medicaid program into agreement with the federal Medicaid program. The Texas Medicaid fraud act is modeled on the federal False Claims Act, which specifically prohibits violation of the federal anti-kickback statute.

Adding actions under the Medicaid anti-kickback law to the list of violations under the Medicaid fraud statute would not prevent prosecutors from pursuing criminal actions. It simply would allow the attorney general the option to recover civil fines and seek injunctive relief under the Medicaid fraud statute against people or entities that violate the anti-kickback statute.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The companion bill, SB 852 by Nichols, has been referred to the Senate Health and Human Services Committee.