

BILL ANALYSIS

Senate Research Center
78R1518 KKA-D

S.B. 1168
By: Janek
Health & Human Services
4/1/2003
As Filed

DIGEST AND PURPOSE

Texas has three divisions in two separate state agencies that investigate Medicaid fraud, abuse, and overpayments. The Texas Health and Human Services Commission's Office of Investigations and Enforcement (OIE) investigates complaints of fraud and abuse. The Office of the Attorney General's Medicaid Fraud Control Unit conducts criminal investigations into allegations of fraud, physical abuse and criminal neglect by Medicaid providers, while its Civil Medicaid Fraud Section investigates civil Medicaid fraud. As proposed, S.B. 1168 allocates more resources toward these entities to help improve and increase efforts to identify, reconcile, and prevent Medicaid fraud and abuse.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 4 (Section 32.0321(a), Human Resources Code) and in SECTION 6 (Section 32.039, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.024, Human Resources Code, by adding Subsection (t-1), as follows:

(t-1) Prohibits the Health and Human Services Commission (HHSC), in its rules governing the medical transportation program, from prohibiting a recipient of medical assistance from receiving transportation services through the program on the basis that the recipient resides in a nursing facility.

SECTION 2. Amends Chapter 32B, Human Resources Code, by adding Section 32.0291, as follows:

Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.(a)
Authorizes HHSC, notwithstanding any other law, to perform certain functions.

(b) Authorizes HHSC, notwithstanding any other law, to impose a postpayment hold on payment of future claims submitted by a provider if HHSC has reliable evidence that the provider has committed fraud or wilful misrepresentation regarding a claim for reimbursement under the medical assistance program. Requires HHSC to notify the provider of the postpayment hold not later than the fifth working day after the date the hold is imposed.

SECTION 3. Amends Section 32.032, Human Resources Code, to add "abuse" to existing text related to prevention and detection of fraud. Makes conforming changes.

SECTION 4. Amends Section 32.0321(a), Human Resources Code, to require HHSC by rule to require a provider of medical assistance to file with HHSC a surety bond in a reasonable amount if HHSC identifies an irregularity relating to the provider's services under the medical assistance program that indicates the need for protection against potential future acts of fraud or abuse.

SECTION 5. Amends Section 32.039(a), Human Resources Code, by adding Subdivision (1-a),

to provide that “inducement” includes a service, cash in any amount, entertainment, or any item of value.

SECTION 6. Amends Section 32.039, Human Resources Code, by amending Subsections(b),(u), and (v) and adding Subsections (w) and (x), as follows:

(b) Sets forth new violations relating to influencing a decision regarding a selection of a provider for goods or services.

(u) Makes conforming changes.

(v) Makes conforming changes.

(w) Authorizes HHSC by rule to prescribe criteria under which a person described by Subsection (u) or (v) is not prohibited from providing or arranging to provide health care services under the medical assistance program. Authorizes the criteria to include consideration of certain information.

(x) Provides that Subsections (b)(1-b) through (1-f) do not prohibit a person from engaging in certain practices.

SECTION 7. Amends Chapter 32B, Human Resources Code, by adding Section 32.0391, as follows:

Sec. 32.0391. CRIMINAL OFFENSE. (a) Provides that a person commits an offense if the person commits a violation under Section 32.039(b)(1-b), (1-c), (1-d), or (1-e).

(b) Provides that an offense under this section is a state jail felony.

(c) Authorizes the person, if conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, to be prosecuted under either this section or the other provision.

SECTION 8. Amends Chapter 32B, Human Resources Code, by adding Section 32.060, as follows:

Sec. 32.060. THIRD-PARTY BILLING VENDORS. (a) Prohibits a third-party billing vendor from submitting a claim with HHSC for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with HHSC authorizing that activity.

(b) Requires the contract, to the extent practical, to contain provisions comparable to the provisions contained in contracts between HHSC and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. Requires the contract, at a minimum, to require the third-party billing vendor to perform certain tasks.

(c) Requires HHSC, on receipt of a claim submitted by a third-party billing vendor, to send a remittance notice directly to the provider referenced in the claim. Requires the notice detail certain information.

(d) Requires HHSC to take all action necessary, including any modifications of HHSC’s claims processing system, to enable HHSC to identify and verify a third-party billing vendor submitting a claim for reimbursement under the medical assistance program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

SECTION 9. Amends Section 531.102, Government Code, by amending Subsections (a) and (d) and adding Subsections (f) and (g), as follows:

(a) and (d) Make conforming changes.

(f) Provides that notwithstanding any other law, for purposes of obtaining information relevant to the office's duties from a law enforcement agency, prosecutor, or governmental entity, the office is considered to be a law enforcement agency and authorizes it to obtain the information in the same manner as another law enforcement agency. Provides that information obtained by the office under this subsection that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 in the manner provided by Section 552.108.

(g) Authorizes the office, in connection with the investigation of fraud and abuse in the provision of health and human services, to issue a subpoena throughout this state to compel the attendance and testimony of a witness or production of records. Authorizes the subpoena to compel attendance or production at the office or at another place designated in the subpoena.

SECTION 10. Amends Chapter 531C, Government Code, by adding Section 531.1021, as follows:

Sec. 531.1021. SEIZURE OF ASSETS. (a) Authorizes HHSC, through HHSC's office of investigations and enforcement, to seize assets owned by a person if certain conditions are met.

(b) Requires HHSC to provide a person whose assets are seized with an opportunity for a hearing at which the person may contest the seizure.

(c) Prohibits HHSC from disposing of seized assets until certain factors are met.

SECTION 11. Amends Section 531.103, Government Code, by adding Subsections (c-1) and (e-1) and amending Subsection (e), as follows:

(c-1) Requires, the office of the attorney general, not later than November 1 of each year, to prepare and submit to the governor, the legislature, and the comptroller a report that specifically addresses the activities of the attorney general's Medicaid fraud control unit and civil Medicaid fraud section, in addition to the report required by Subsection (c). Requires the attorney general to consult with the comptroller regarding the format of the report and make reasonable efforts to provide the report in the format requested by the comptroller. Requires the report to specify, for the Medicaid fraud control unit and the civil Medicaid fraud section, respectively, certain information.

(e) Requires HHSC to refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate United States attorney.

(e-1) Requires, in addition to the provisions required by Subsection (a), the memorandum of understanding required by this section to identify circumstances under which HHSC may refer a case of suspected fraud, waste, or abuse under the state Medicaid program directly to the appropriate United States attorney, district attorney, county attorney, city attorney, or private collection agency. Provides that a case referred in accordance with this subsection is considered approved by the attorney general under Section 2107.003.

SECTION 12. Amends Section 531.107(b), Government Code, to provide that the task force includes a representative of the Texas Department of Health, appointed by the commissioner of public health.

SECTION 13. (a) Requires the Medicaid and Public Assistance Fraud Oversight Task Force,

with the participation of the Texas Department of Health's Bureau of Vital Statistics and other agencies designated by the comptroller, to study procedures and documentation requirements used by the state in confirming a person's identity for purposes of establishing entitlement to Medicaid and other benefits provided through health and human services programs.

(b) Requires, the Medicaid and Public Assistance Fraud Oversight Task Force, not later than December 1, 2004, with assistance from the agencies participating in the study required by Subsection (a) of this section, to submit a report to the legislature containing recommendations for improvements in the procedures and documentation requirements described by Subsection (a) of this section that would strengthen the state's ability to prevent fraud and abuse in the Medicaid program and other health and human services programs.

SECTION 14. Requires, the Office of the Attorney General and the Health and Human Services Commission, not later than December 1, 2003, to amend the memorandum of understanding required by Section 531.103, Government Code, as necessary to comply with Section 531.103(e-1), Government Code, as added by this Act.

SECTION 15. Makes application of the changes in law made by this Act prospective.

SECTION 16. Requires a state agency, if before implementing any provision of this Act the agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and authorizes it to delay implementing that provision until the waiver or authorization is granted.

SECTION 17. (a) Provides that except as otherwise provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Provides that Section 32.060, Human Resources Code, as added by this Act, takes effect January 1, 2004.