

## **BILL ANALYSIS**

Senate Research Center  
82R6618 MAW-F

S.B. 1680  
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4/4/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A common scheme in Medicare and Medicaid fraud involves an insider who bills hundreds or thousands of recipient accounts at small dollar amounts, totaling millions of dollars.

To prosecute these criminals, the state must call each of these recipients as witnesses at trial to testify that no product or service was ever ordered, delivered, or received. As a result, the number of witnesses in Medicare and Medicaid fraud cases grows to voluminous numbers, lengthening these types of trials by weeks.

The purposes of S.B. 1680 is to provide evidence in Medicare and Medicaid fraud cases more efficiently without compromising the defendant's right to a fair trial.

S.B. 1680 allows individuals in Medicare and Medicaid fraud cases whose information was stolen and used to make fraudulent claims to provide testimony by deposition, shortening testimony by days or weeks. Videotaping depositions of these witnesses before trial allows the court to obtain the evidence in an efficient manner without compromising the defendant's rights to confrontation and cross-examination.

As proposed, S.B. 1680 amends current law relating to certain evidence in a prosecution of fraud or theft involving Medicaid or Medicare benefits.

### **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 Chapter 38, Code of Criminal Procedure, by adding Article 38.46, as follows:

Art. 38.46. EVIDENCE IN AGGREGATION PROSECUTION FOR FRAUD OR THEFT COMMITTED WITH RESPECT TO NUMEROUS MEDICAID OR MEDICARE RECIPIENTS. Provides that, in trials involving an allegation of a continuing scheme of fraud or theft involving Medicaid or Medicare benefits that is alleged to have been committed with respect to a large class of Medicaid or Medicare recipients in an aggregate amount or value, the attorney representing the state is not required to prove by direct evidence that each alleged recipient did not consent or effectively consent to a transaction in question. Provides that it is sufficient if the lack of consent or effective consent to a particular transaction or transactions is proven by either direct or circumstantial evidence.

SECTION 2. Amends Article 39.01, Code of Criminal Procedure, as follows:

Art. 39.01. IN EXAMINING TRIAL. Authorizes the state or the defendant, when an examination takes place in a criminal action before a magistrate, to have the deposition of any witness taken by any officer authorized by this chapter. Prohibits the state or the defendant from using the deposition for any purpose unless that party first acknowledges

that the entire evidence or statement of the witness may be used for or against the defendant on the trial of the case, subject to all legal objections. Authorizes the deposition of a witness duly taken before an examining trial or a jury of inquest and reduced to writing or recorded and certified according to law where the defendant was present when that testimony was taken, and had the privilege afforded of cross-examining the witness, or taken at any prior trial of the defendant for the same offense, to be used by either the state or the defendant in the trial of the defendant's criminal case under the following circumstances:

When oath is made by the party using the deposition that the witness resides outside the state; or that since the witness's testimony was taken, the witness has died, or has removed beyond the limits of the state, or has been prevented from attending the court through the act or agency of the other party, or by the act or agency of any person whose object was to deprive the state or the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, that witness cannot attend; or that the witness is a Medicaid or Medicare recipient or a caregiver or guardian of the recipient, and the recipient's Medicaid or Medicare account was charged for a product or service that was not provided or rendered to the recipient. Authorizes the oath, when the testimony is sought to be used by the state, to be made by any credible person. Requires that the oath, when sought to be used by the defendant, be made by the defendant in person.

Makes nonsubstantive changes.

SECTION 3. Amends Chapter 39, Code of Criminal Procedure, as follows:

Art. 39.026. DEPOSITIONS OF MEDICAID OR MEDICARE RECIPIENTS OR CAREGIVERS. (a) Defines, in this article, "caregiver," "Medicaid," "Medicaid recipient," "Medicare," "Medicare recipient," and "recipient."

(b) Requires the court to order the attorney representing the state to take the deposition of a recipient or caregiver who is the alleged victim of or witness to an offense constituting fraud or theft involving Medicaid or Medicare benefits not later than 180 days after the date on which the state files an application to take the deposition under Article 39.02 (Witness Depositions).

(c) Authorizes the court, on the motion of either party, to order the attorney representing the state to take the deposition of a recipient by video recording. Requires the person operating the video recording device to be available to testify regarding the authenticity of the video recording and the taking of the deposition in order for the video recording to be admissible.

(d) Authorizes the court, if the court finds that the video recording of the deposition is properly authenticated and that requiring the jury to view the entire recording would unnecessarily prolong the trial, to allow the state to offer the entire video recording into evidence without first requiring the jury to view the entire video recording. Provides that this subsection does not preclude the attorney representing the state, the defendant, or the defendant's attorney from offering into evidence and playing for the jury a portion of a video-recorded deposition.

(e) Authorizes the attorney representing the state and the defendant or the defendant's attorney, by written agreement filed with the court, to extend the deadline for the taking of the deposition.

(f) Requires the court to grant any request by the attorney representing the state to extend the deadline for the taking of the deposition if a reason for the request is the unavailability, health, or well-being of the recipient or caregiver.

(g) Provides that the Texas Rules of Civil Procedure govern the taking of the deposition, except that, to the extent of any conflict with this code or applicable

court rules adopted for criminal proceedings, this code and the rules for criminal proceedings govern. Authorizes the attorney representing the state and the defendant or the defendant's attorney to agree to modify the rules applicable to the deposition by written agreement filed with the court before the taking of the deposition.

(h) Requires the court, if a defendant is unavailable to attend a deposition because the defendant is confined in a correctional facility, to issue any orders or warrants necessary to secure the defendant's presence at the deposition. Requires the sheriff of the county in which a deposition is to be taken under this subsection to provide a secure location for the taking of the deposition and sufficient law enforcement personnel to ensure the deposition is taken safely. Provides that the state's application to take a deposition or notice of deposition is not required to include the identity of any law enforcement agents the sheriff assigns to the deposition under this subsection, and prohibits the defendant from objecting to the taking of the deposition based solely on the state's omission of the identity of a law enforcement agent assigned under this subsection.

(i) Requires the defendant or the defendant's attorney, if a defendant is unavailable to attend a deposition for any reason other than confinement in a correctional facility, to request a continuance from the court. Authorizes the court to grant the continuance if the defendant or the defendant's attorney demonstrates good cause for the continuance and that the request is not brought for the purpose of delay or avoidance. Provides that a defendant's failure to attend a deposition or request a continuance in accordance with this subsection constitutes a waiver of the defendant's right to be present at the deposition.

SECTION 4. Amends Article 39.12, Code of Criminal Procedure, as follows:

Art. 39.12. PREDICATE TO READ. Prohibits depositions taken in criminal actions from being read unless oath be made that the witness resides out of the state; or that since the deposition, rather than his deposition, was taken, the witness has died; or that the witness has removed beyond the limits of the state; or that the witness has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the state or the defendant of the benefit of the testimony; or that by reason of age or bodily infirmity, the witness cannot attend; or that the witness is a Medicaid or Medicare recipient or a caregiver or guardian of the recipient, and the recipient's Medicaid or Medicare account was charged for a product or service not provided or rendered to the recipient. Authorizes the oath, when the deposition is sought to be used by the state, to be made by any credible person. Requires that the oath, when sought to be used by the defendant, be made by the defendant in person.

Makes conforming and nonsubstantive changes.

SECTION 5. Provides that change in law made by this Act applies to a criminal proceeding that commences on or after the effective date of this Act. Provides that a criminal proceeding that commences before the effective date of this Act is covered by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2011.