

SUBJECT: Enhanced penalties for Medicaid fraud causing injury to a child

COMMITTEE: Public Health — favorable, without amendments

VOTE: 6 ayes — Berlanga, Coleman, Davila, Delisi, Glaze, Maxey
0 nays
3 absent — Hirschi, Janek, Rodriguez

WITNESSES: For — None
Against — None
On — Robin Herskowitz, Comptroller's Office

BACKGROUND : The Human Resources Code establishes a civil penalty of up to \$2,000 for presenting false information related to a Medicaid claim.

DIGEST: HB 1637 would impose additional civil penalties of \$5,000 to \$15,000 for false statements or representations that resulted in injury to a person younger than 18 years old. The penalty would apply to each item or service for which payment was claimed. Person convicted of a criminal offense arising from a fraudulent act that resulted in injury to a person younger than 18 years old would be permanently prohibited from providing Medicaid services.

A person found liable for injury to a child also could not provide Medicaid health care services for 10 years, beginning on the date on which the determination of liability became final. Relevant regulatory agencies would have to suspend or revoke their agreement with the provider and any permit, license or certification issued by the agency to the provider.

HB 1637 would take effect September 1, 1997, and would apply to violations committed on or after the effective date. The Health and Human Services Commission would be directed to seek federal authorization to implement its provisions, if necessary.

SUPPORTERS SAY: HB 1627 would impose higher penalties on fraudulent providers who take advantage of child Medicaid recipients. Existing statutes, under which fraudulent providers are assessed monetary penalties and removed from the Medicaid program, do not distinguish between children and adult victims of fraud, even though the consequences of medical malfeasance can be far more harmful to children.

These providers deserve special punishment because of the vulnerability of this population and because children receive more extensive services through Medicaid than do adults. Children receiving unnecessary medical care are less likely than adults to protect themselves by questioning their physician, and drugs and other treatments that do not harm adults can, if improperly used, cause long-lasting damage to children. Children can also be harmed when they fail to receive necessary care.

The substantial penalties proposed by CSHB 1637 would provide effective protection against abuses such as occurred in several poor Houston neighborhoods in 1995. "Screening vans" picked up children from the area and delivered them to doctors for a range of tests covered by the Medicaid program. Parents who resisted the unnecessary testing were threatened with loss of Medicaid benefits. Records on the children were reported as lost when concerned public health officials asked for them.

Such nightmares are likely to continue unless penalties are beefed up for unscrupulous providers. The latest Texas Performance Review, *Disturbing the Peace*, recommends precisely this type of approach to fend off greater abuse of Texas children and the Medicaid system.

OPPONENTS SAY: Punishments should be structured to fit the offense, regardless of who is the victim. Carving out higher penalty levels for one type of victim could open the door for other groups, such as the elderly or disabled, also asking for special treatment as well.

NOTES: Other proposals related to Medicaid fraud are included in HB 820 by Cuellar, which was placed on the calendar for April 30; HB 494 by

Alvarado, which passed the House on April 16; and SB 30 by Zaffirini, which was reported favorably as substituted by the House Public Health Committee on April 25.