BILL ANALYSIS

Senate Research Center

S.B. 30
By: Zaffirini
Health & Human Services
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DIGEST

Texas spent more than $7.3 billion for Medicaid services and $1.3 billion on financial assistance and food stamp programs in fiscal year 1995, yet fraud may account for as much as 10 percent of all Medicaid, financial assistance, and food stamp claims. Even if Texas loses only a fraction of this amount to fraud, the loss represents a serious, ongoing drain of public resources. Successful fraud control efforts demand strong referral and detection programs, an effective investigative function, and appropriate punishments.

This legislation provides a package of reforms intended to improve the state's ability to combat fraudulent acts committed against publicly funded programs. This bill will centralize and streamline fraud referral, investigation, and prosecution efforts under the Health and Human Services Commission's newly-created Office of Investigations and Enforcement; ensure appropriate use of Medicaid-funded services and equipment; tighten provider enrollment processes through the use of background checks and on-site inspections; require health and human services agencies to use advanced fraud-detection technologies based on the success of the comptroller's Medicaid Fraud Detection project; add a state *qui tam* cause of action to prosecute fraudulent Medicaid providers; provide additional controls for fraud and abuse in Medicaid managed care; and enact stiffer penalties for fraud, especially for those acts of fraud that harm children.

PURPOSE

As proposed, S.B. 30 establishes fraud and improper payments under the state Medicaid program and other programs, and creates a criminal offense of Medicaid fraud while providing penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Department of Human Services in SECTIONS 1.01, 2.01-2.04, 3.01, 3.02, and 5.01 (Sections 22.0254(d), 32.024(t), 32.024(u), 32.0321(a), 32.0322(b), 32.039(u) and (v), 32.046(a), and 23.016, Human Resources Code); to the Health and Human Services Commission (HHSC) in SECTION 1.04 (Section 531.047(a), Government Code) and SECTION 2.07(a); to the secretary of state in SECTION 1.06(c); to HHSC and each agency operating part of the state Medicaid program in SECTION 2.08(c); and to the board of a state agency that operates part of the Medicaid program in SECTION 4.06 (Section 36.005(b), Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GENERAL PROVISIONS RELATING TO WELFARE AGENCIES

SECTION 1.01. COLLECTION OF FOOD STAMP AND FINANCIAL ASSISTANCE PAYMENTS MADE IN ERROR. (a) Amends Chapter 22, Human Resources Code, by adding Sections 22.0251-22.0252, as follows:

> Sec. 22.0251. TIMELY DETERMINATION OF ERRORS. Requires the Texas Department of Human Services (department), subject to the approval of the commissioner of health and human services (commissioner), to record the time taken to discover an error in making a grant; set progressive goals for reducing the discovery time; and adopt a schedule to meet the goals set. Sets forth the terms under which the department is

required to submit a progress report.

Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. Sets forth the terms by which the department is required to use the telephone to collect reimbursement from a person who receives a benefit granted in error, and submit a semiannual report.

Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET PROGRAM. Requires the department to participate in the Federal Tax Refund Offset Program to attempt to recover benefits granted in error, and submit as many claims as possible for offset against income tax returns.

Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. Requires the department to keep a record of the dispositions of referrals made by the department to a district attorney concerning fraudulent claims for benefits. Sets forth the terms by which the department is required to obtain status information on each major fraudulent claim; request a written explanation for each case referred in which the district attorney declines to prosecute; and encourage the creation of a special welfare fraud unit in each district attorney's office. Requires a district attorney to cooperate in providing information requested by the department. Requires the department, by rule, to define what constitutes a major fraudulent claim.

(b) Amends Chapter 22, Human Resources Code, by adding Section 22.0291, as follows:

Sec. 22.0291. EMBASSY INFORMATION MATCHING SYSTEM. Sets forth the terms by which the department is required to use a computerized matching system for the purpose of preventing individuals from unlawfully receiving benefits administered by the department. Sets forth the terms by which the department is authorized to enter into an agreement with an embassy as necessary to implement this section, and by which the department and embassies are required to protect the confidentiality of shared information. Requires the department to submit a semiannual report.

(c) Requires the department to begin operation of the telephone collection program not later than January 1, 1998.

(d) Requires the department to submit the initial reports required by Sections 22.0251(b) and 22.0291(e), Human Resources Code, not later than January 1, 1998.

(e) Requires the department to submit the initial report required by Section 22.0252(b), Human Resources Code, not later than September 1, 1998.

SECTION 1.02. PAYMENT OF MEDICAID CLAIMS. (a) Amends Chapter 32B, Human Resources Code, by adding Sections 32.043 and 32.044, as follows:

Sec. 32.043. DUAL MEDICAID AND MEDICARE COVERAGE. Requires the department to identify each individual receiving dual Medicaid and Medicare coverage, and to analyze claims to ensure that payment is not made under the medical assistance program if the service is covered under the Medicare program.

Sec. 32.044. MISDIRECTED BILLING. Requires the department to develop a procedure for matching claims to determine alternative responsibility for payment and ensuring that the appropriate entity bears the cost.

(b) Sets forth the terms by which the Health and Human Services Commission (HHSC) is required to submit an amendment to the state's Medicaid plan authorizing the state to limit payment associated with a service for a person entitled to both Medicaid and Medicare coverage. Requires HHSC, on receipt of approval of the amendment, to ensure that the payments are limited.

SECTION 1.03. ENHANCED MEDICAID REIMBURSEMENT. (a) Amends Chapter 32B,

Human Resources Code, by adding Section 32.045, as follows:

Sec. 32.045. ENHANCED REIMBURSEMENT. Requires the department to develop a procedure for identifying each service provided under the medical assistance program for which the state is eligible to receive enhanced reimbursement of costs from the federal government and ensuring that the state seeks the highest level of federal reimbursement available.

(b) Requires the Texas Department of Health (TDH) to identify and seek reimbursement for all services provided under the state Medicaid program for a certain period for which the state was eligible but did not receive enhanced reimbursement of costs at a certain rate.

SECTION 1.04. MINIMUM COLLECTION GOAL. Amends Chapter 531B, Government Code, by adding Section 531.047, as follows:

Sec. 531.047. MINIMUM COLLECTION GOAL. Requires HHSC, by rule, to set a minimum goal for the department specifying the amount of benefits granted in error that the department should recover. Sets forth the terms by which the comptroller, if the department fails to meet the goal set under Subsection (a), is required to reduce the department's general revenue appropriations by a certain amount. Requires HHSC, the governor, and the Legislative Budget Board to monitor the department's performance, and requires the department to cooperate by providing information on request.

SECTION 1.05. COMMISSION POWERS AND DUTIES RELATING TO WELFARE FRAUD. (a) Amends Chapter 531, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. MEDICAID AND OTHER WELFARE FRAUD, MISUSE, OR OVERCHARGES

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, MISUSE, OR OVERCHARGES. Sets forth the terms by which HHSC is authorized to grant an award to an individual who reports activity constituting fraud, misuse of funds, or overcharges; and determine the amount of an award. Provides that an award under this section is subject to appropriation. Sets forth the procedure for payment of, and appropriation of money for, an award.

Sec. 531.102. INVESTIGATIONS AND ENFORCEMENT OFFICE. Sets forth the terms by which HHSC, through the office of investigations and enforcement, is responsible for the investigation of fraud and the enforcement of state law relating to the provision of health and human services. Requires HHSC to set certain objectives, priorities, and performance standards for the office; and cross-train office staff to enable pursuit of priority Medicaid and welfare fraud and abuse cases.

Sec. 531.103. INTERAGENCY COORDINATION. Establishes the conditions under which HHSC and the office of the attorney general are required to enter into a memorandum of understanding to implement procedures for processing cases of suspected fraud, waste, or abuse; and jointly prepare and submit a report.

Sec. 531.104. ASSISTING INVESTIGATIONS BY ATTORNEY GENERAL. Sets forth the terms by which HHSC and the attorney general are required to execute a memorandum of understanding under which HHSC shall provide investigative support to the attorney general.

Sec. 531.105. FRAUD DETECTION TRAINING. Establishes the conditions by which HHSC is required to implement a program to provide annual training in identifying cases of fraud, waste, or abuse. Requires TDH and the department, in cooperation with HHSC, to periodically set a goal of the number of cases that each agency will attempt to identify and refer to HHSC. Requires HHSC to include goal-related information in the annual report.

Sec. 531.106. LEARNING OR NEURAL NETWORK TECHNOLOGY. Requires HHSC to use learning or neural network technology to identify and deter fraud; contract with a private or public entity to develop and implement the technology; require certain health and human services agencies to participate; maintain all information necessary to apply the technology to claims data covering a two-year period; and refer cases identified by the technology to the appropriate office.

Sec. 531.107. PUBLIC ASSISTANCE FRAUD OVERSIGHT TASK FORCE. Provides that the Public Assistance Fraud Oversight Task Force assists HHSC and the office of investigations and enforcement in improving the efficiency of fraud investigations and collections. Sets forth the composition, presiding officer, and meeting times of the task force. Sets forth the compensation for a member's service on the task force. Establishes the conditions under which the commission's office of investigations and enforcement is required to provide certain information to the task force.

Sec. 531.108. FRAUD PREVENTION. Requires the office of investigations and enforcement to compile and disseminate accurate information and statistics relating to fraud prevention and certain post-fraud referrals. Sets forth the terms by which HHSC is required to publicize successful fraud prosecutions; establish a toll-free hotline; develop a cost-effective method of identifying applicants for public assistance in certain areas; verify automobile information used as eligibility criteria; establish a computerized matching system to prevent an incarcerated individual from illegally receiving benefits; and submit a semiannual report.

Sec. 531.109. DISPOSITION OF FUNDS. Sets forth the disposition of funds under this subchapter.

(b) Sets forth the terms under which Section 531.104, Government Code, takes effect.

(c) Sets forth the terms by which HHSC is required to award the contract for the learning or neural network technology, and by which the contractor is required to begin operations. Sets forth the terms by which the commissioner is required to enter into an interagency agreement and execute a memorandum of understanding with the comptroller.

(d) Requires HHSC to submit the initial report required by Section 531.108(e) not later than September 1, 1997.

(e) Provides that this article, in adding Section 531.101, Government Code, conforms to a change in law made by Section 1, Chapter 444, Acts of the 74th Legislature, Regular Session, 1995.

(f) Repealer: Section 16G, Article 4413(502), V.T.C.S., as added by Section 1, Chapter 444, Acts of the 74th Legislature, Regular Session, 1997.

(g) Sets forth the terms by which this Act prevails over another Act of the 75th Legislature.

(h) Repealer: Section 21.0145, Human Resources Code (Public Assistance Fraud Oversight Task Force) and Section 22.027, Human Resources Code (Fraud Prevention).

SECTION 1.06. CONSOLIDATION OF INVESTIGATIONS STAFF. Sets forth the terms by which the powers, duties, programs, funds, contracts, records, employees, and rules or forms adopted by the department's office of inspector general or TDH's policy and analysis group are transferred to HHSC. Provides that the secretary of state is authorized to adopt rules as necessary to expedite the implementation of this subsection. Makes application of this Act prospective regarding the consolidation of investigations staff.

SECTION 1.07. CONTINGENT INTERAGENCY AGREEMENT RELATING TO INVESTIGATIONS STAFF. Sets forth the terms by which, if HHSC and the affected agencies do

not complete the transfers required, the commissioner is required to enter into an interagency agreement and execute a memorandum of understanding with the comptroller.

SECTION 1.08. USE OF PRIVATE COLLECTION AGENTS. Sets forth the terms under which the department, with assistance from the Council on Competitive Government, is required to use private collections agents to collect reimbursements for benefits granted in error, and submit a progress and final report. Requires the department to ensure that the collection agents are engaged in work not later than March 1, 1998.

SECTION 1.09. EXPEDITED FOOD STAMP DELIVERY; IMPACT ON FRAUDULENT CLAIMS. Establishes the conditions by which the department is required to conduct a study to determine the impact of one-day screening and service delivery requirements on the level of fraud in the food stamp program, and submit a report.

SECTION 1.10. STUDY ON COLLECTION OF ERRONEOUS FOOD STAMP OR FINANCIAL ASSISTANCE BENEFITS THROUGH LIENS OR WAGE GARNISHMENT. Sets forth the terms by which the department is required to conduct a study on collection of erroneous food stamp or financial assistance benefits through liens or wage garnishment, and submit a report.

SECTION 1.11. OPERATION RESTORE TRUST. Requires HHSC and the office of the attorney general to cooperate with entities in other state participating in "Operation Restore Trust" and share information. Defines "Operation Restore Trust."

ARTICLE 2. MEDICAID SERVICE PROVIDERS

SECTION 2.01. AUTHORIZATION FOR AMBULANCE SERVICES. Amends Section 32.024, Human Resources Code, by adding Subsection (t), to establish the conditions under which the department, by rule, is required to require a physician, nursing facility, or other health care provider to obtain authorization for non-emergency ambulance services. Requires HHSC and each appropriate health and human services agency to adopt these rules not later than January 1, 1998.

SECTION 2.02. DURABLE MEDICAL EQUIPMENT. Amends Section 32.024, Human Resources Code, by adding Subsection (u), to require the department, by rule, to require a health care provider who prescribes durable medical equipment for a child who receives medical assistance to certify that the child received the proper equipment, the equipment fit properly, and the child received the proper information. Sets forth the terms under which the department is required to develop a form for use in making this certification. Requires HHSC and each appropriate health and human services agency to adopt these rules not later than January 1, 1998.

SECTION 2.03. SURETY BOND. Amends Chapter 32B, Human Resources Code, by adding Section 32.0321, as follows:

> Sec. 32.0321. SURETY BOND. Authorizes the department, by rule, to require each provider of medical assistance in a provider group that has demonstrated significant potential for fraud or abuse to file a surety bond.

SECTION 2.04. CRIMINAL HISTORY INFORMATION. (a) Amends Chapter 32B, Human Resources Code, by adding Section 32.0322, as follows:

> Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION. Authorizes the department to obtain the criminal history record information relating to a provider or a person applying to enroll as a provider. Requires the department, by rule, to establish criteria for revoking a provider's enrollment or denying a person's application to enroll as a provider.

(b) Amends Chapter 411F, Government Code, by adding Section 411.132, as follows:

> Sec. 411.132. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; AGENCIES OPERATING PART OF MEDICAL ASSISTANCE PROGRAM. Provides

that HHSC or an agency operating part of the medical assistance program is entitled to obtain criminal history record information relating to a provider or a person applying to enroll as a provider. Prohibits such information from being released or disclosed except in certain circumstances.

SECTION 2.05. DIRECTOR AND OFFICER LIABILITY. (a) Amends Chapter 32B, Human Resources Code, by adding Section 32.0323, as follows:

Sec. 32.0323. LIABILITY OF DIRECTORS AND OFFICERS OF CORPORATIONS. Sets forth the liability of directors and officers of corporations if a corporation is found liable for damages, penalties, or fines resulting from an act of fraud or abuse. Requires the department to include a reference to such liability in certain agreements.

(b) Makes application of this Act prospective regarding corporate fraud or abuse.

SECTION 2.06. MANAGED CARE ORGANIZATIONS. (a) Amends Section 16A, Article 4413(502), V.T.C.S., by amending Subsection (n) and adding Subsections (o)-(s), to require a managed care organization that contracts with HHSC to report information necessary to set rates, detect fraud, and ensure quality of care; develop and submit a plan for preventing, detecting, and reporting fraud and abuse; include standard provisions in each subcontract that affects the delivery of or payment of Medicaid services; and submit the subcontract and annual disclosure statements to HHSC. Requires HHSC to require each contract to contain certain provisions, and to audit each managed care organization that contracts with HHSC. Sets forth the terms by which an audited managed care organization is responsible for paying the costs of the audit. Establishes the conditions under which HHSC and the Texas Department of Insurance are required to enter into a memorandum of understanding.

(b) Amends Chapter 532B, Government Code as added by the Act of the 75th Legislature, Regular Session, 1997, by adding Sections 532.112 and 532.113, as follows:

Sec. 532.112. DUTIES OF MANAGED CARE ORGANIZATION; CONTRACTUAL PROVISIONS. Makes conforming changes.

Sec. 532.113. AUDITS; MEMORANDUM OF UNDERSTANDING. Makes conforming changes.

(c) Requires HHSC to develop guidelines applicable to a managed care organization's plan for preventing, detecting, and reporting Medicaid fraud not later than November 1, 1997.

(d) Makes application of this Act prospective to November 1, 1997 regarding a managed care organization that enters into a contract with HHSC.

(e) Makes application of this Act prospective regarding a contract.

(f) Sets forth those conditions which do not have to be met by a managed care organization that contracts with HHSC before the effective date of this section.

(g) Requires a managed care organization that renews a contract or subcontract after the effective date to include all provisions required by this section.

(h) Sets forth the terms under which Subsection (a) takes effect.

(i) Sets forth the terms under which Subsection (b) takes effect.

SECTION 2.07. PILOT PROGRAM; ON-SITE REVIEWS OF PROSPECTIVE PROVIDERS. Sets forth the conditions under which HHSC shall, by rule, establish a pilot program to reduce fraud by conducting on-site reviews of prospective providers; may expand the program; and shall submit a report. Provides that this section expires September 1, 1999.

SECTION 2.08. DEVELOPMENT OF NEW PROVIDER CONTRACT. Sets forth the terms by which HHSC is required to develop a new provider contract that contains provisions designed to strengthen HHSC's ability to prevent provider fraud. Establishes the conditions by which HHSC and each agency operating part of the state Medicaid program, by rule, is required to require each provider who enrolled in the program before the effective date of this Act to reenroll under the new contract.

SECTION 2.09. PREFERRED VENDOR FOR DURABLE MEDICAL EQUIPMENT. Requires HHSC to submit an amendment to the state's Medicaid plan authorizing TDH to select and use a preferred vendor for the delivery of durable medical equipment.

SECTION 2.10. REVIEW OF SERVICE PROVIDER BILLING PRACTICES. Sets forth the terms by which TDH is required to conduct an automated review of service provider billing practices, and to require the entity that administers the state Medicaid program to modify the entity's claims processing, monitoring procedures, and computer technology to prevent improper billing.

ARTICLE 3. ADMINISTRATIVE PENALTIES AND SANCTIONS RELATING TO MEDICAID FRAUD

SECTION 3.01. ADMINISTRATIVE PENALTIES. (a) Amends Section 32.039, Human Resources Code, as follows:

> Sec. 32.039. New heading: DAMAGES AND PENALTIES. Defines "claim," "managed care organization," and "managed care plan." Provides that a person commits a violation if the person presents to the department a claim that contains a statement or representation that the person knows to be false; or is a managed care organization that fails to provide a medically necessary and required health benefit or service, fails to provide certain required information, or engages in a fraudulent activity in connection with enrollment of, or marketing to, an individual eligible for medical assistance. Replaces all references to "false claim" with "violation." Sets forth the penalty for a violation under Subsection (b). Sets forth the terms by which a person is required to file a petition for judicial review, and may stay enforcement of the penalty. Deletes the existing provisions regarding judicial review. Sets forth the terms by which a person found liable for a violation under Subsection (c) is prohibited from providing health care services for a certain period. Authorizes the department, by rule, to provide for an extended period of ineligibility.

(b) Makes application of this Act prospective regarding a violation.

SECTION 3.02. SANCTIONS APPLICABLE TO VENDOR DRUG PROGRAM. Amends Chapter 32B, Human Resources Code, by adding Section 32.046, as follows:

> Sec. 32.046. VENDOR DRUG PROGRAM; SANCTIONS AND PENALTIES. Requires the department to adopt rules governing sanctions and penalties that apply to a provider in the vendor drug program who submits an improper claim for reimbursement; and to notify each provider in the program that the provider is subject to sanctions and penalties.

SECTION 3.03. PROHIBITION OF CERTAIN PERSONS CONVICTED OF FRAUD. Amends Chapter 32B, Human Resources Code, by adding Section 32.047, as follows:

> Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE PROVIDERS. Sets forth the terms under which a person is permanently prohibited from providing or arranging to provide health care services.

SECTION 3.04. DEDUCTIONS FROM LOTTERY WINNINGS. (a) Amends Sections 466.407(a) and (c), Government Code, to require the executive director to deduct a certain amount from the winnings of a person determined to be delinquent in the payment of a tax or other money collected by the comptroller, rather than the state treasurer; or delinquent in reimbursing the department for a benefit granted in error. Includes the department among the entities required to provide the executive director with a report of persons who have been determined to be delinquent.

(b) Requires the department to implement the change in law made by this section not later than January 1, 1998. Prohibits the department from seeking recovery through lottery prize deduction of an amount of a benefit granted in error to a person.

(c) Sets forth the terms by which the executive director of the Texas Lottery Commission is required to deduct erroneous amounts from lottery prizes.

ARTICLE 4. CIVIL REMEDIES RELATING TO MEDICAID FRAUD AND CREATION OF CRIMINAL OFFENSE

SECTION 4.01. REDESIGNATION. (a) Amends Chapter 36, Human Resources Code, by designating Sections 36.001, 36.002, and 36.007-36.012 as Subchapter A; renumbering Sections 36.007-36.012 as Sections 36.003-36.008, respectively, and adding a subchapter heading, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

(b) Amends Chapter 36, Human Resources Code, by designating Sections 36.003-36.006 as Subchapter B, renumbering those sections as Sections 36.051-36.054, respectively, and adding a subchapter heading, as follows:

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL

SECTION 4.02. DEFINITIONS. Amends Section 36.001, Human Resources Code, by amending Subdivisions (5)-(11) and adding Subdivision (12), to define "managed care organization" and to redefine "provider." Makes conforming changes.

SECTION 4.03. UNLAWFUL ACTS RELATING TO MANAGED CARE ORGANIZATION. Amends Section 36.002, Human Resources Code, to set forth the terms by which a managed care organization engages in unlawful acts.

SECTION 4.04. APPLICABLE PENALTIES AND CONFORMING AMENDMENT. Amends Section 36.004, Human Resources Code, as renumbered by this article as Section 36.052, by amending Subsections (a) and (e), to make conforming changes.

SECTION 4.05. CONFORMING AMENDMENT. Amends Section 36.005, Human Resources Code, as renumbered by this Act as Section 36.053, by amending Subsection (b), to make a conforming change.

SECTION 4.06. ADDITIONAL SANCTIONS FOR MEDICAID FRAUD. Amends Section 36.009, Human Resources Code, as renumbered by this article as Section 36.005, to establish the conditions under which certain provider agreements, permits, licenses, and certifications are required and authorized to be suspended or revoked for an unlawful act. Sets forth the terms by which a person found liable under Section 32.052 is prohibited from providing health care services for a certain period. Authorizes the board of a state agency that operates part of the Medicaid program, by rule, to extend the ineligibility period longer than 10 years.

SECTION 4.07. USE OF MONEY RECOVERED. Amends Section 36.012, Human Resources Code, as renumbered by this article as Section 36.008, to authorize the attorney general to retain a certain portion of money recovered under this chapter for the administration of this chapter.

SECTION 4.08. AUTHORITY OF ATTORNEY GENERAL. (a) Amends Chapter 36B, Human Resources Code, by adding Section 36.055, as follows:

Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION. Establishes the conditions under which the attorney general is authorized to bring an action as relator regarding an act in connection with the Medicaid program for which a person may be held liable.

(b) Sets forth the terms by which the attorney general is required to develop strategies to increase state recoveries and report the results of the office's effort to the legislature.

SECTION 4.09. CIVIL ACTION BY PRIVATE PERSON FOR MEDICAID FRAUD. Amends Chapter 36, Human Resources Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ACTION BY PRIVATE PERSONS

Sec. 36.101. ACTION BY PRIVATE PERSON AUTHORIZED. Sets forth the terms by which a person is authorized to bring a civil action for a violation of Section 36.002 for the person and the state in the name of the state.

Sec. 36.102. INITIATION OF ACTION. Sets forth the terms by which a person is required to initiate an action under this subchapter.

Sec. 36.103. ANSWER BY DEFENDANT. Sets forth the terms by which a defendant is required to file an answer to a petition.

Sec. 36.104. STATE'S DECISION TO CONTINUE ACTION. Requires the state to proceed with the action or notify the court that the state declines to take over the action by a certain date.

Sec. 36.105. REPRESENTATION OF STATE BY PRIVATE ATTORNEY. Authorizes the attorney general to contract with a private attorney to represent the state in an action.

Sec. 36.106. INTERVENTION BY OTHER PARTIES PROHIBITED. Prohibits a person other than the state from intervening or bringing a related action based on the facts underlying a pending action.

Sec. 36.107. RIGHTS OF PARTIES IF STATE CONTINUES ACTION. Sets forth the rights of the parties to an action if the state proceeds with the action.

Sec. 36.108. RIGHTS OF PARTIES IF STATE DOES NOT CONTINUE ACTION. Sets forth the rights of the parties to an action if the state elects not to proceed with the action.

Sec. 36.109. STAY OF CERTAIN DISCOVERY. Sets forth the terms by which the court is authorized to stay the discovery for a certain period under certain circumstances.

Sec. 36.110. PURSUIT OF ALTERNATE REMEDY BY STATE. Authorizes the state to pursue the state's claim through any alternate remedy available to the state, notwithstanding Section 36.101. Establishes the rights of the person bringing the action if an alternate remedy is pursued in another proceeding. Sets forth the terms under which a finding of fact or conclusion of law is final and conclusive.

Sec. 36.111. AWARD TO PRIVATE PLAINTIFF. Sets forth the terms by which the person bringing an action or settling a claim is entitled to an award in a certain amount; and by which the court is authorized to award a certain amount. Defines "proceeds of the action."

Sec. 36.112. REDUCTION OF AWARD. Sets forth the terms by which the court may reduce the share of the proceeds of an action the person would otherwise receive under Section 36.111, and is required to dismiss the person from the civil action, under certain circumstances. Prohibits the person from receiving any share of the proceeds in certain situations.

Sec. 36.113. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION OR ACTION BROUGHT FOR PURPOSES OF HARASSMENT. Establishes the conditions under which the court is authorized to award the defendant reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim was frivolous, vexatious, or brought for purposes of harassment. Provides that Chapter 105, Civil Practice and

Remedies Code, applies in an action with which the state proceeds.

Sec. 36.114. CERTAIN ACTIONS BARRED. Prohibits a person from bringing an action under certain circumstances. Defines "original source."

Sec. 36.115. STATE NOT LIABLE FOR CERTAIN EXPENSES. Provides that the state is not liable for expenses that a person incurs in bringing an action under this section.

Sec. 36.116. RETALIATION BY EMPLOYER AGAINST PERSON BRINGING SUIT PROHIBITED. Establishes the terms by which a person who is discharged, demoted, suspended, harassed, or discriminated against by the person's employer because of a lawful act taken by the person in furtherance of an action under this subchapter is entitled to reinstatement with the same seniority status and a certain amount of back pay and compensation. Authorizes a person to bring an action for the relief provided in this section.

SECTION 4.10. CRIMINAL OFFENSE AND REVOCATION OF CERTAIN LICENSES. (a) Amends Chapter 36, Human Resources Code, by adding Subchapter D, as follows:

SUBCHAPTER D. CRIMINAL PENALTIES

Sec. 36.131. CRIMINAL OFFENSE. Provides that a person commits an offense if the person commits an unlawful act under Section 36.002, ranging from a Class C misdemeanor to a first degree felony, depending on the value of the payment or benefit provided. Provides that if conduct constituting an offense also constitutes an offense under another provision, an actor may be prosecuted under either section.

(b) Amends Section 4.01(b), Article 4495b, V.T.C.S. (Medical Practice Act), to make a conforming change.

SECTION 4.11. APPLICATION. Makes application of this Act prospective regarding a violation.

ARTICLE 5. SUSPENSION OF LICENSES

SECTION 5.01. SUSPENSION OF LICENSES. (a) Amends Title 2B, Human Resources Code, by adding Chapter 23, as follows:

CHAPTER 23. SUSPENSION OF LICENSE FOR FAILURE TO REIMBURSE DEPARTMENT

Sec. 23.001. DEFINITIONS. Defines "license" and "order suspending a license."

Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. Defines "licensing authority."

Sec. 23.003. SUSPENSION OF LICENSE. Sets forth the terms by which the department is authorized to issue an order suspending a license of certain persons.

Sec. 23.004. INITIATION OF PROCEEDING. Sets forth the terms by which the department is authorized to initiate a proceeding to suspend a person's license. Requires the commissioner to render a final decision in the proceeding.

Sec. 23.005. CONTENTS OF PETITION. Set forth the contents of a petition for license suspension.

Sec. 23.006. NOTICE. Requires the department to give certain notices and a form requesting a hearing to the person named in the petition on initiating a proceeding under Section 23.004.

Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. Sets forth the

procedure regarding a hearing on a petition to suspend a license.

Sec. 23.008. ORDER SUSPENDING LICENSE. Sets forth the procedure by which the department is required to render an order suspending a license, is authorized to stay such an order, and is prohibited from rendering an order.

Sec. 23.009. DEFAULT ORDER. Requires the department to consider the allegations of the petition for suspension to be admitted, and render an order suspending a license if the person fails to respond to the notice, request a hearing, or appear at the hearing.

Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. Provides that an order issued by the department is a final agency decision and subject to review as provided by Chapter 2001, Government Code.

Sec. 23.011. ACTION BY LICENSING AUTHORITY. Requires a licensing authority to take certain actions on receipt of a final order suspending a license, and prohibits other actions. Sets forth the terms by which a person who continues to engage in the licensed activity after the implementation of the order is liable for certain civil and criminal penalties. Establishes that the denial or suspension of a driver's license is governed by this chapter and not by Title 7B, Transportation Code.

Sec. 23.012. MOTION TO REVOKE STAY. Sets forth the terms under which the department is authorized to file a motion to revoke the stay of an order suspending a license, and is required to revoke the stay and render a final order suspending a license under certain circumstances.

Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING A LICENSE. Sets forth the terms by which the department is authorized to render an order vacating or staying an order suspending a license. Sets forth the terms by which on receipt of such an order, the licensing authority is required to reinstate and return the affected license to the person.

Sec. 23.014. FEE BY LICENSING AUTHORITY. Authorizes a licensing authority to charge a fee to a person who is the subject of an order suspending a license.

Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND DEPARTMENT. Sets forth the terms by which the department is authorized to request certain information from each licensing authority, and by which a licensing authority is required to provide the information. Authorizes the department to enter into a cooperative agreement with a licensing authority to administer this chapter.

Sec. 23.016. RULES, FORMS, AND PROCEDURES. Requires the department, by rule, to prescribe forms and procedures for the implementation of this chapter.

(b) Requires the department to take all action necessary to implement the change in law made by this article not later than January 1, 1998. Prohibits the department from suspending a license because of a person's failure to reimburse the department for a benefit granted in error before September 1, 1997.

ARTICLE 6. MEASUREMENT OF FRAUD

SECTION 6.01. HEALTH CARE FRAUD STUDY. (a) Amends Chapter 403B, Government Code, by adding Section 403.026, as follows:

Sec. 403.026. HEALTH CARE FRAUD STUDY. Sets forth the terms by which the comptroller is required to conduct a study each biennium to determine the number and type of fraudulent claims for benefits submitted. Establishes the conditions under which the comptroller and certain state agencies are required to cooperate and may enter into a memorandum of understanding. Requires the comptroller to report the results of the study

in a certain manner.

(b) Requires the comptroller to complete the initial study required by Section 403.026, Government Code, not later than December 1, 1998.

SECTION 6.02. COMPILATION OF STATISTICS. Amends Chapter 531B, Government Code, by adding Section 531.0215, as follows:

Sec. 531.0215. COMPILATION OF STATISTICS RELATING TO FRAUD. Requires HHSC and each health and human services agency that administers a part of the state Medicaid program to maintain statistics on fraudulent claims for benefits.

(b) Amends Chapter 501C, Labor Code, by adding Section 501.0431, as follows:

Sec. 501.0431. COMPILATION OF STATISTICS RELATING TO FRAUD. Requires the director to maintain statistics on fraudulent claims for medical benefits.

(c) Amends Section 17(a), Article 3.50-2, V.T.C.S. (Texas Employees Uniform Group Insurance Benefits Act), to require the trustee to maintain statistics on fraudulent claims for benefits under this Act.

ARTICLE 7. WAIVERS; EFFECTIVE DATE; EMERGENCY

SECTION 7.01. WAIVERS. Sets forth the terms by which a state agency is required to request a waiver or authorization for implementation of a provision.

SECTION 7.02. Effective date: September 1, 1997, except as otherwise provided by this Act.

SECTION 7.03. Emergency clause.