

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1787
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Health & Human Services
4/6/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1787 offers clarification from last session's Office of Inspector General OIG Sunset bill (S.B. 207) by clarifying the performance of legal services, maintenance of confidentiality, use of technology to identify fraud, and receipt of recovered money from fraudulent payments for OIG.

Specifically, C.S.S.B. 1787:

- Clarifies which OIG functions are to be conducted independent of the Health and Human Services Commission (HHSC) executive commissioner and which legal services are to be provided by HHSC in the same manner as other parts of the consolidated system. This clarification was needed as a result of the implementation of the HHSC consolidation during the interim and concerns over which legal functions were to be retained with the OIG, and which were to transfer to HHSC.
- Provides that resolution and clarifies the intent of "legal services."

Roughly half of OIG lawyers will stay with OIG (investigation, audit lawyers) and half will transfer administratively to HHSC (administrative lawyers). The chief counsel for the HHSC is the final authority for all legal interpretations related to statutes, rules, and HHSC policy on programs administered by HHSC.

- Clarifies in statute that OIG's confidentiality applies to inspections, in addition to audits and investigations.
- Grants OIG flexibility in the type of technology it uses to identify fraud in the Medicaid program.
- Specifies that for all fraud recoveries identified by managed care organizations (MCOs) that are over \$100,000 that the OIG and the managed care organization both receive half of the recovery regardless of which entity investigates and recovers the fraudulent payment. Currently, the MCOs keep 100 percent of what they recover. This will ensure the state will now receive 50 percent of these recoveries.
- States that all payments recovered by OIG go to general revenue (GR).
- Adds clarification language to ensure coordination of payment recovery efforts between OIG and the MCOs.
- Removes the Office of the Attorney General (OAG) and its Medicaid fraud units from this bill. It was our intent to only address the fraud recoveries between the MCOs and OIG. The OAG operates independent of this structure.

C.S.S.B. 1787 amends current law relating to the functions and administration of the Health and Human Services Commission and the commission's office of inspector general in relation to fraud, waste, and abuse and other investigations in health and human services.

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 Section 531.102, Government Code, by amending Subsections (a-3), (a-6), (j), and (k) and adding Subsections (a-7) and (a-8), as follows:

(a-3) Includes legal services subject to Subsection (a-8), rather than legal services, in the list of administrative support services functions that the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) is responsible for providing for the Office of Inspector General-Health and Human Services Commission (OIG-HHSC).

(a-6) Requires OIG-HHSC to conduct, independent of the executive commissioner and HHSC, audits, inspections, and investigations, rather than conduct investigations.

(a-7) Provides that the chief counsel for HHSC is the final authority for all legal interpretations related to statutes, rules, and HHSC policy on programs administered by HHSC.

(a-8) Defines "legal services."

(j) Requires OIG-HHSC to prepare a final report to each audit, inspection, or investigation conducted. Makes conforming changes.

(k) Makes conforming changes.

SECTION 2. Amends Section 531.1021(g), Government Code, to make a conforming change.

SECTION 3. Amends the heading to Section 531.106, Government Code, to read as follows:

Sec. 531.106. LEARNING, NEURAL NETWORK, OR OTHER TECHNOLOGY.

SECTION 4. Amends Sections 531.106(a), (c), and (g), Government Code, as follows:

(a) Requires HHSC to use learning, neural network, or other technology to identify and deter Medicaid fraud.

(c) Requires the data used for data processing, rather than neural network processing, to be maintained as an independent subset for security purposes.

(g) Requires the technology, rather than the learning or neural network technology, implemented under this section to, each month, match vital statistics unit death records with Medicaid claims filed by a provider.

SECTION 5. Amends Section 531.1061(b), Government Code, to require the automated fraud investigation tracking system to, for each case of certain violations identified by the technology required under Section 531.106, rather than the learning or neural network technology required under Section 531.106, take certain actions. Makes a conforming change.

SECTION 6. Amends Section 531.1131, Government Code, by amending Subsections (a), (b), and (c) and adding Subsections (c-1) and (c-2) and (c-3), as follows:

(a) Requires the managed care organization (MCO), rather than the MCO's special investigative unit under Section 531.113(a)(1), or a certain entity to, if an MCO or certain entity discovers fraud or abuse in Medicaid or the child health plan program, to:

(1) immediately submit written notice to, rather than immediately and contemporaneously notify, OIG-HHSC and the Office of the Attorney General

(OAG), in the form and manner prescribed by OIG-HHSC, containing certain information;

(2) and (3) makes no changes to these subdivisions.

(b) Makes conforming changes.

(c) Authorizes an MCO to retain one-half of certain recovered money, rather than any certain recovered money. Requires the MCO to remit the remaining amount of money recovered under Subsection (a)(2) to OIG-HHSC for deposit to the credit of the general revenue fund. Makes a conforming change.

(c-1) Provides that, if OIG-HHSC notifies an MCO under Subsection (b), proceeds with recovery efforts, and recovers all or part of the payments the MCO identified, the MCO is entitled to one-half of each payment the MCO identified as required by Subsection (a)(1) after deduction of any applicable federal share. Prohibits the MCO from receiving more than one-half of the total amount of money recovered after an applicable federal share is deducted.

(c-2) Authorizes OIG-HHSC, notwithstanding any provision of this section, if OIG-HHSC discovers fraud, waste, or abuse in Medicaid or the child health plan program in the performance of its duties, to recover payments made to a provider as a result of the fraud, waste, or abuse as otherwise provided by this subchapter (Medicaid and Other Health and Human Services Fraud, Abuse, or Overcharges). Requires all payments recovered by OIG-HHSC to be deposited to the credit of the general revenue fund.

(c-3) Requires OIG-HHSC to coordinate with appropriate MCOs to ensure that OIG-HHSC and an MCO or an entity with which an MCO contracts do not both begin payment recovery efforts for the same case of fraud, waste, or abuse.

SECTION 7. Makes application of Section 531.1131, Government Code, as amended by this Act, prospective.

SECTION 8. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 9. Effective date: upon passage or September 1, 2017.