

## **BILL ANALYSIS**

Senate Research Center  
88R18684 SCP-D

C.S.S.B. 745  
By: Kolkhorst et al.  
Health & Human Services  
3/16/2023  
Committee Report (Substituted)

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

Texas Medicaid is the largest program funded by the state government and covers health care services for nearly five million Texans. It is estimated that for the Fiscal Years 2024 and 2025, Medicaid will cost \$71.8 billion in both state and federal funding (\$28.3 billion GR). On top of these costs, Texas allocates funds to support Texans' health and well-being in a variety of programs such as the Children's Health Insurance Program, Healthy Texas Women, and other programs administered by the Department of State Health Services.

Chapter 36 of Texas Human Resources Code, known as the Texas Medicaid Fraud Prevention Act (TMFPA), currently authorizes the state to investigate fraud that occurs within the Medicaid program only and bring civil enforcement actions against those who commit unlawful acts. The Texas Attorney General's Office investigates dozens of these cases of fraud each year, and pursues civil enforcement actions that recover tens of millions of dollars. In fact, since 2000, the Attorney General's Office has recovered more than \$2.5 Billion for taxpayers under the Texas Medicaid Fraud Prevention Act.

With a growing number of non-Medicaid programs funded with taxpayer dollars, Texas must ensure other state-funded health care programs are subject to similar oversight to deter fraud. As Medicaid begins to unwind after three years of emergency coverage, Texans will increasingly be eligible for taxpayer funded services that fall out of range for the OAG's oversight, and it is our responsibility that our fellow citizens are protected from bad-faith providers seeking to defraud state-funded health care programs.

C.S.S.B. 745 would address this issue by expanding the scope of the Texas Medicaid Fraud Prevention Act and authorizing the OAG to investigate and pursue civil enforcement actions to deter fraudulent conduct and recover funds from providers committing unlawful acts associated with "health care programs," funded in whole or in part by Texas. This bill ensures that monies paid by Texas are used lawfully and provides the ability for the attorney general to continue to root out fraud in taxpayer-funded health care systems.

The committee substitute changes the definition of "Health Care Program" to mean the Medicaid program, the Children's Health Insurance Program, or the Healthy Texas Women Program.

Additionally, the line "otherwise engages in conduct that constitutes an offense under Section 35A.02(a), Penal Code," is removed in order to rid the legislation of all references to the penal code.

C.S.S.B. 745 amends current law relating to fraud prevention under certain health care programs.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 6 (Section 36.005, Human Resources Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 39.026(a)(3), Code of Criminal Procedure, to redefine "Medicaid recipient."

SECTION 2. Amends the heading to Chapter 36, Human Resources Code, to read as follows:

### **CHAPTER 36. HEALTH CARE PROGRAM FRAUD PREVENTION**

SECTION 3. Amends Section 36.001, Human Resources Code, by amending Subdivisions (1), (2), (3), (5), (9), and (10) and adding Subdivisions (1-a), (4-a), (4-b), and (4-c) to define "child health plan program," "health care program," "health care recipient," and "Healthy Texas Women program" and to redefine "claim," "documentary material," "fiscal agent," "managed care organization," "provider," and "service."

SECTION 4. Amends Section 36.002, Human Resources Code, as follows:

Sec. 36.002. UNLAWFUL ACTS. Provides that a person commits an unlawful act if the person:

- (1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under a health care program, rather than the Medicaid program, that is not authorized or that is greater than the benefit or payment that is authorized;
- (2)-(10) makes conforming changes to these subdivisions;
- (11) makes no changes to this subdivision;
- (12) makes conforming to this subdivision; or
- (13) makes no changes to this subdivision.

SECTION 5. Amends Section 36.003(a), Human Resources Code, to make conforming changes.

SECTION 6. Amends Section 36.005(b), Human Resources Code, to make conforming changes.

SECTION 7. Amends Section 36.008, Human Resources Code, as follows:

Sec. 36.008. USE OF MONEY RECOVERED. Makes a conforming change to this section.

SECTION 8. Amends Section 36.052(a), Human Resources Code, to make a conforming change.

SECTION 9. Amends Section 36.054(h), Human Resources Code, to make a conforming change.

SECTION 10. Amends Section 36.055, Human Resources Code, as follows:

Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION. Makes a conforming change to this section.

SECTION 11. Amends Section 36.132(a)(2), Human Resources Code, to make a conforming change.

SECTION 12. Repealers: Sections 36.001(6) (relating to the definition of "Medicaid program") and (7) (relating to the definition of "Medicaid recipient"), Human Resources Code.

SECTION 13. Makes application of this Act prospective.

SECTION 14. 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 15. Effective date: September 1, 2023.