

1-1 By: Hinojosa, et al. S.B. No. 1787
 1-2 (In the Senate - Filed March 9, 2017; March 23, 2017, read
 1-3 first time and referred to Committee on Health & Human Services;
 1-4 April 10, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 10, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1787 By: Watson

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the functions and administration of the Health and
 1-22 Human Services Commission and the commission's office of inspector
 1-23 general in relation to fraud, waste, and abuse in health and human
 1-24 services.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 531.102, Government Code, is amended by
 1-27 amending Subsections (a-3), (a-6), (j), and (k) and adding
 1-28 Subsections (a-7) and (a-8) to read as follows:

1-29 (a-3) The executive commissioner is responsible for
 1-30 performing all administrative support services functions necessary
 1-31 to operate the office in the same manner that the executive
 1-32 commissioner is responsible for providing administrative support
 1-33 services functions for the health and human services system,
 1-34 including functions of the office related to the following:

- 1-35 (1) procurement processes;
- 1-36 (2) contracting policies;
- 1-37 (3) information technology services;
- 1-38 (4) subject to Subsection (a-8), legal services;
- 1-39 (5) budgeting; and
- 1-40 (6) personnel and employment policies.

1-41 (a-6) The office shall conduct audits, inspections, and
 1-42 investigations independent of the executive commissioner and the
 1-43 commission but shall rely on the coordination required by
 1-44 Subsection (a-5) to ensure that the office has a thorough
 1-45 understanding of the health and human services system for purposes
 1-46 of knowledgeably and effectively performing the office's duties
 1-47 under this section and any other law.

1-48 (a-7) The chief counsel for the commission is the final
 1-49 authority for all legal interpretations related to statutes, rules,
 1-50 and commission policy on programs administered by the commission.

1-51 (a-8) For purposes of Subsection (a-3), "legal services"
 1-52 includes only legal services related to open records, procurement,
 1-53 contracting, human resources, privacy, litigation support by the
 1-54 attorney general, bankruptcy, and other legal services as detailed
 1-55 in the memorandum of understanding or other written agreement
 1-56 required under Section 531.00553, as added by Chapter 837 (S.B.
 1-57 200), Acts of the 84th Legislature, Regular Session, 2015.

1-58 (j) The office shall prepare a final report on each audit,
 1-59 inspection, or investigation conducted under this section. The
 1-60 final report must include:

2-1 (1) a summary of the activities performed by the
2-2 office in conducting the audit, inspection, or investigation;

2-3 (2) a statement regarding whether the audit,
2-4 inspection, or investigation resulted in a finding of any
2-5 wrongdoing; and

2-6 (3) a description of any findings of wrongdoing.

2-7 (k) A final report on an audit, inspection, or investigation
2-8 is subject to required disclosure under Chapter 552. All
2-9 information and materials compiled during the audit, inspection, or
2-10 investigation remain confidential and not subject to required
2-11 disclosure in accordance with Section 531.1021(g). A confidential
2-12 draft report on an audit, inspection, or investigation that
2-13 concerns the death of a child may be shared with the Department of
2-14 Family and Protective Services. A draft report that is shared with
2-15 the Department of Family and Protective Services remains
2-16 confidential and is not subject to disclosure under Chapter 552.

2-17 SECTION 2. Section 531.1021(g), Government Code, is amended
2-18 to read as follows:

2-19 (g) All information and materials subpoenaed or compiled by
2-20 the office in connection with an audit, inspection, or
2-21 investigation or by the office of the attorney general in
2-22 connection with a Medicaid fraud investigation are confidential and
2-23 not subject to disclosure under Chapter 552, and not subject to
2-24 disclosure, discovery, subpoena, or other means of legal compulsion
2-25 for their release to anyone other than the office or the attorney
2-26 general or their employees or agents involved in the audit,
2-27 inspection, or investigation conducted by the office or the
2-28 attorney general, except that this information may be disclosed to
2-29 the state auditor's office, law enforcement agencies, and other
2-30 entities as permitted by other law.

2-31 SECTION 3. The heading to Section 531.106, Government Code,
2-32 is amended to read as follows:

2-33 Sec. 531.106. LEARNING, ~~[OR]~~ NEURAL NETWORK, OR OTHER
2-34 TECHNOLOGY.

2-35 SECTION 4. Sections 531.106(a), (c), and (g), Government
2-36 Code, are amended to read as follows:

2-37 (a) The commission shall use learning, ~~[or]~~ neural network,
2-38 or other technology to identify and deter fraud in Medicaid
2-39 throughout this state.

2-40 (c) The data used for data ~~[neural network]~~ processing shall
2-41 be maintained as an independent subset for security purposes.

2-42 (g) Each month, the ~~[learning or neural network]~~ technology
2-43 implemented under this section must match vital statistics unit
2-44 death records with Medicaid claims filed by a provider. If the
2-45 commission determines that a provider has filed a claim for
2-46 services provided to a person after the person's date of death, as
2-47 determined by the vital statistics unit death records, the
2-48 commission shall refer the case for investigation to the
2-49 commission's office of inspector general.

2-50 SECTION 5. Section 531.1061(b), Government Code, is amended
2-51 to read as follows:

2-52 (b) For each case of suspected fraud, abuse, or insufficient
2-53 quality of care identified by the ~~[learning or neural network]~~
2-54 technology required under Section 531.106, the automated fraud
2-55 investigation tracking system must:

2-56 (1) receive electronically transferred records
2-57 relating to the identified case from the ~~[learning or neural~~
2-58 ~~network]~~ technology;

2-59 (2) record the details and monitor the status of an
2-60 investigation of the identified case, including maintaining a
2-61 record of the beginning and completion dates for each phase of the
2-62 case investigation;

2-63 (3) generate documents and reports related to the
2-64 status of the case investigation; and

2-65 (4) generate standard letters to a provider regarding
2-66 the status or outcome of an investigation.

2-67 SECTION 6. Section 531.1131, Government Code, is amended by
2-68 amending Subsections (a), (b), and (c) and adding Subsections
2-69 (c-1), (c-2), and (c-3) to read as follows:

3-1 (a) If a managed care organization [~~organization's special~~
 3-2 ~~investigative unit under Section 531.113(a)(1)]~~ or an [~~the~~] entity
 3-3 with which the managed care organization contracts under Section
 3-4 531.113(a)(2) discovers fraud or abuse in Medicaid or the child
 3-5 health plan program, the organization [~~unit~~] or entity shall:

3-6 (1) immediately submit written notice to [~~and~~
 3-7 ~~contemporaneously notify~~] the commission's office of inspector
 3-8 general and the office of the attorney general in the form and
 3-9 manner prescribed by the office of inspector general and containing
 3-10 a detailed description of the fraud or abuse and each payment made
 3-11 to a provider as a result of the fraud or abuse;

3-12 (2) subject to Subsection (b), begin payment recovery
 3-13 efforts; and

3-14 (3) ensure that any payment recovery efforts in which
 3-15 the organization engages are in accordance with applicable rules
 3-16 adopted by the executive commissioner.

3-17 (b) If the amount sought to be recovered under Subsection
 3-18 (a)(2) exceeds \$100,000, the managed care organization
 3-19 [~~organization's special investigative unit~~] or the contracted
 3-20 entity described by Subsection (a) may not engage in payment
 3-21 recovery efforts if, not later than the 10th business day after the
 3-22 date the organization [~~unit~~] or entity notified the commission's
 3-23 office of inspector general and the office of the attorney general
 3-24 under Subsection (a)(1), the organization [~~unit~~] or entity receives
 3-25 a notice from either office indicating that the organization [~~unit~~]
 3-26 or entity is not authorized to proceed with recovery efforts.

3-27 (c) A managed care organization may retain one-half of any
 3-28 money recovered under Subsection (a)(2) by the organization
 3-29 [~~organization's special investigative unit~~] or the contracted
 3-30 entity described by Subsection (a). The managed care organization
 3-31 shall remit the remaining amount of money recovered under
 3-32 Subsection (a)(2) to the commission's office of inspector general
 3-33 for deposit to the credit of the general revenue fund.

3-34 (c-1) If the commission's office of inspector general
 3-35 notifies a managed care organization under Subsection (b), proceeds
 3-36 with recovery efforts, and recovers all or part of the payments the
 3-37 organization identified as required by Subsection (a)(1), the
 3-38 organization is entitled to one-half of the amount recovered for
 3-39 each payment the organization identified after any applicable
 3-40 federal share is deducted. The organization may not receive more
 3-41 than one-half of the total amount of money recovered after any
 3-42 applicable federal share is deducted.

3-43 (c-2) Notwithstanding any provision of this section, if the
 3-44 commission's office of inspector general discovers fraud, waste, or
 3-45 abuse in Medicaid or the child health plan program in the
 3-46 performance of its duties, the office may recover payments made to a
 3-47 provider as a result of the fraud, waste, or abuse as otherwise
 3-48 provided by this subchapter. All payments recovered by the office
 3-49 under this subsection shall be deposited to the credit of the
 3-50 general revenue fund.

3-51 (c-3) The commission's office of inspector general shall
 3-52 coordinate with appropriate managed care organizations to ensure
 3-53 that the office and an organization or an entity with which an
 3-54 organization contracts under Section 531.113(a)(2) do not both
 3-55 begin payment recovery efforts under this section for the same case
 3-56 of fraud, waste, or abuse.

3-57 SECTION 7. Section 531.1131, Government Code, as amended by
 3-58 this Act, applies only to an amount of money recovered on or after
 3-59 the effective date of this Act. An amount of money recovered before
 3-60 the effective date of this Act is governed by the law in effect
 3-61 immediately before that date, and that law is continued in effect
 3-62 for that purpose.

3-63 SECTION 8. If before implementing any provision of this Act
 3-64 a state agency determines that a waiver or authorization from a
 3-65 federal agency is necessary for implementation of that provision,
 3-66 the agency affected by the provision shall request the waiver or
 3-67 authorization and may delay implementing that provision until the
 3-68 waiver or authorization is granted.

3-69 SECTION 9. This Act takes effect immediately if it receives

4-1 a vote of two-thirds of all the members elected to each house, as
4-2 provided by Section 39, Article III, Texas Constitution. If this
4-3 Act does not receive the vote necessary for immediate effect, this
4-4 Act takes effect September 1, 2017.

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