

1-1 By: Sparks S.B. No. 1038
1-2 (In the Senate - Filed January 31, 2025; February 24, 2025,
1-3 read first time and referred to Committee on Health & Human
1-4 Services; March 24, 2025, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 1;
1-6 March 24, 2025, sent to printer.)

1-7	COMMITTEE VOTE			
1-8		Yea	Nay	Absent
1-9	Kolkhorst	X		PNV
1-10	Perry	X		
1-11	Blanco			X
1-12	Cook		X	
1-13	Hall	X		
1-14	Hancock	X		
1-15	Hughes	X		
1-16	Miles	X		
1-17	Sparks	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1038 By: Perry

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

1-21 relating to administrative remedies for certain fraud and abuse
1-22 violations under Medicaid; providing administrative penalties.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Sections 544.0205(a) and (b), Government Code,
1-25 as effective April 1, 2025, are amended to read as follows:

1-26 (a) The commission may grant an award to an individual who
1-27 reports activity that constitutes fraud or abuse of Medicaid funds
1-28 or who reports Medicaid overcharges if the commission determines
1-29 that the disclosure results in the recovery of a remedy ~~[an~~
1-30 ~~administrative penalty]~~ imposed under Section 32.039, Human
1-31 Resources Code. The commission may not grant an award to an
1-32 individual in connection with a report if the commission or
1-33 attorney general had independent knowledge of the activity the
1-34 individual reported.

1-35 (b) The commission shall determine the amount of an
1-36 award. The award may not exceed five percent of the amount of the
1-37 ~~remedy [administrative penalty]~~ imposed under Section 32.039,
1-38 Human Resources Code, that resulted from the individual's
1-39 disclosure. In determining the award amount, the commission:

1-40 (1) shall consider how important the disclosure is in
1-41 ensuring the fiscal integrity of Medicaid; and

1-42 (2) may consider whether the individual participated
1-43 in the fraud, abuse, or overcharge.

1-44 SECTION 2. The heading to Section 32.039, Human Resources
1-45 Code, is amended to read as follows:

1-46 Sec. 32.039. ADMINISTRATIVE REMEDIES ~~[DAMAGES AND~~
1-47 ~~PENALTIES]~~.

1-48 SECTION 3. Section 32.039(a), Human Resources Code, is
1-49 amended by amending Subdivision (1) and adding Subdivision (3-a) to
1-50 read as follows:

1-51 (1) "Claim" means an application, request, or demand
1-52 for a benefit or payment ~~[of health care services]~~ under Title XIX
1-53 of the ~~[Federal]~~ Social Security Act (42 U.S.C. Section 1396 et
1-54 seq.) ~~[that is submitted by a person who is under a contract or~~
1-55 ~~provider agreement with the commission]~~.

1-56 (3-a) "Material" means having a natural tendency to
1-57 influence or to be capable of influencing.

1-58 SECTION 4. Section 32.039, Human Resources Code, is amended
1-59 by adding Subsections (a-1), (a-2), (c-1), and (c-2) and amending
1-60 Subsections (b), (c), (d), (f), (g), (h), (i), (k), (l), (m), (n),

(o), (p), (q), (r), (s), and (x) to read as follows:

(a-1) For purposes of this section, a person acts knowingly with respect to information if the person:

- (1) has knowledge of the information;
- (2) acts with conscious indifference to the truth or falsity of the information; or
- (3) acts in reckless disregard of the truth or falsity of the information.

(a-2) Proof of the person's specific intent to commit a violation under this section is not required in a civil or administrative proceeding to show that the person acted "knowingly" with respect to information under this section.

(b) A person commits a violation if the person:

(1) knowingly submits [presents] or causes to be submitted [presented to the commission] a claim that contains:

- (A) a false statement;
- (B) a misrepresentation; or
- (C) an omission of a material fact [representation the person knows or should know to be false];

(2) [(1-a)] engages in conduct that violates Section 102.001, Occupations Code;

(3) [(1-b)] solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(4) [(1-c)] solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(5) [(1-d)] offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(6) [(1-e)] offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(7) [(1-f)] provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by this section or Section 102.001, Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding:

- (A) selection of a provider or receipt of a good or service under the medical assistance program;
- (B) the use of goods or services provided under the medical assistance program; or
- (C) the inclusion or exclusion of goods or services available under the medical assistance program;

(8) 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 the medical assistance

3-1 program that is not authorized or that is greater than the benefit
 3-2 or payment that is authorized;
 3-3 (9) knowingly conceals or fails to disclose
 3-4 information that permits a person to receive a benefit or payment
 3-5 under the medical assistance program that is not authorized or that
 3-6 is greater than the benefit or payment that is authorized;
 3-7 (10) knowingly applies for and receives a benefit or
 3-8 payment on behalf of another person under the medical assistance
 3-9 program and converts any part of the benefit or payment to a use
 3-10 other than for the benefit of the person on whose behalf it was
 3-11 received;
 3-12 (11) knowingly makes, causes to be made, induces, or
 3-13 seeks to induce the making of a false statement or
 3-14 misrepresentation of a material fact concerning the conditions or
 3-15 operation of a facility in order that the facility may qualify for
 3-16 certification or recertification under the medical assistance
 3-17 program, including certification or recertification as:
 3-18 (A) a hospital;
 3-19 (B) a nursing facility or skilled nursing
 3-20 facility;
 3-21 (C) a hospice provider;
 3-22 (D) an intermediate care facility for
 3-23 individuals with an intellectual disability;
 3-24 (E) an assisted living facility; or
 3-25 (F) a home and community support services agency;
 3-26 (12) knowingly makes, causes to be made, induces, or
 3-27 seeks to induce the making of a false statement or
 3-28 misrepresentation of a material fact concerning information
 3-29 required to be provided under a federal or state law, rule,
 3-30 regulation, or provider agreement pertaining to the medical
 3-31 assistance program;
 3-32 (13) knowingly presents or causes to be presented a
 3-33 claim for payment for a product provided or a service rendered by a
 3-34 person who:
 3-35 (A) is not licensed to provide the product or
 3-36 render the service, if a license is required; or
 3-37 (B) is not licensed in the manner claimed;
 3-38 (14) knowingly makes or causes to be made a claim for:
 3-39 (A) a service or product that has not been
 3-40 approved or accepted by a treating physician or health care
 3-41 practitioner;
 3-42 (B) a service or product that is substantially
 3-43 inadequate or inappropriate as compared to generally recognized
 3-44 standards within the particular discipline or within the health
 3-45 care industry; or
 3-46 (C) a product that has been adulterated, debased,
 3-47 or mislabeled, or that is otherwise inappropriate;
 3-48 (15) makes a claim and knowingly fails to indicate the
 3-49 type of license of the provider who actually provided the service;
 3-50 (16) makes a claim and knowingly fails to indicate the
 3-51 identification number of the licensed provider who actually
 3-52 provided the service;
 3-53 (17) knowingly obstructs the office of inspector
 3-54 general from carrying out the office's duties under Section
 3-55 544.0103, Government Code;
 3-56 (18) knowingly makes, uses, or causes the making or
 3-57 use of a false record or statement material to an obligation to pay
 3-58 or transmit money or property to this state under the medical
 3-59 assistance program, or knowingly conceals or knowingly and
 3-60 improperly avoids or decreases an obligation to pay or transmit
 3-61 money or property to this state under the medical assistance
 3-62 program;
 3-63 (19) ~~[(2)]~~ is a managed care organization that
 3-64 contracts with the commission to provide or arrange to provide
 3-65 health care benefits or services to individuals eligible for
 3-66 medical assistance and:
 3-67 (A) fails to provide to an individual a health
 3-68 care benefit or service that the organization is required to
 3-69 provide under the contract with the commission;

(B) fails to provide to the commission or other appropriate agency information required to be provided by law, commission or agency rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with the commission; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the commission, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the commission; ~~or~~

(20) ~~[(3)]~~ fails to maintain documentation to support a claim for payment in accordance with the requirements specified by commission rule or medical assistance program policy; or

(21) engages in any other conduct that a commission rule has defined as a violation of the medical assistance program.

(c) A person who commits a violation under Subsection (b) is liable to the commission for the following administrative remedy:

(1) the amount paid or benefit received, if any, directly or indirectly as a result of the violation, including any payment made to a third party, and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and

(2) payment of an administrative penalty of an amount not to exceed twice the amount paid, if any, as a result of the violation, plus an amount:

(A) not less than \$5,000 or more than \$15,000 or the maximum dollar amount imposed as provided by 31 U.S.C. Section 3729(a)(1), if that amount exceeds \$15,000, for each violation that results in injury to an elderly person, as defined by Section 48.002(a)(1), a person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or

(B) not more than \$10,000 or the maximum dollar amount imposed as provided by 31 U.S.C. Section 3729(a)(1), if that amount exceeds \$10,000, for each violation that does not result in injury to a person described by Paragraph (A).

(c-1) For purposes of Subsection (c)(2), each day a person violates Subsection (b)(17), (18), or (19) constitutes a separate violation.

(c-2) Notwithstanding Subsection (c), a person who commits a violation described by Subsection (b)(20) is liable to the commission for, as determined by the commission, either:

(1) the amount paid in response to the claim for payment; or

(2) the payment of an administrative penalty in an amount not to exceed \$500 for each violation.

(d) Unless the provider knowingly submitted false or misleading information to the commission for use in preparing a voucher ~~[that the provider knew or should have known was false]~~ or knowingly failed to correct false or misleading information ~~[that the provider knew or should have known was false]~~ when provided an opportunity to do so, this section does not apply to a claim based on the voucher if the commission calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature. In addition, the provider's signature on the voucher does not constitute fraud. The executive commissioner shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the commission may be corrected without penalty to the provider.

(f) If after an examination of the facts the commission concludes that the person committed a violation, the commission may issue a preliminary report stating the facts on which it based its

conclusion, recommending that an administrative remedy [penalty] under this section be imposed and recommending the amount of the proposed remedy [penalty].

(g) The commission shall give written notice of the report to the person charged with committing the violation. The notice must include:

(1) a brief summary of the facts;
 (2) [7] a statement of the amount of the recommended remedy;

(3) [penalty, and] a statement of the person's right to an informal review of:

(A) the alleged violation;
 (B) [7] the amount of the recommended remedy; [penalty,] or

(C) both the alleged violation and the amount of the recommended remedy; and

(4) a description of the administrative and judicial due process remedies available to the person [penalty].

(h) Not later than the 30th [10th] day after the date on which the person charged with committing the violation receives the notice, the person may either give the commission written consent to the report, including the recommended remedy [penalty], or make a written request for an informal review by the commission.

(i) If the person charged with committing the violation consents to the remedy [penalty] recommended by the commission or fails to timely request an informal review, the commission shall assess the remedy [penalty]. The commission shall give the person written notice of its action. The person shall pay the remedy [penalty] not later than the 30th day after the date on which the person receives the notice.

(k) Not later than the 30th [10th] day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (j), the person may make to the commission a written request for a hearing. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(l) If, after informal review, a person who has been ordered to pay a remedy [penalty] fails to request a formal hearing in a timely manner, the commission shall assess the remedy [penalty]. The commission shall give the person written notice of its action. The person shall pay the remedy [penalty] not later than the 30th day after the date on which the person receives the notice.

(m) Within 30 days after the date on which the commission's order issued after a hearing under Subsection (k) becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the remedy [penalty];
 (2) pay the amount of the remedy [penalty] and file a petition for judicial review contesting the occurrence of the violation, the amount of the remedy [penalty], or both the occurrence of the violation and the amount of the remedy [penalty]; or

(3) without paying the amount of the remedy [penalty], file a petition for judicial review contesting the occurrence of the violation, the amount of the remedy [penalty], or both the occurrence of the violation and the amount of the remedy [penalty].

(n) A person who acts under Subsection (m)(3) within the 30-day period may:

(1) stay enforcement of the remedy [penalty] by:
 (A) paying the amount of the remedy [penalty] to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the remedy [penalty] and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the remedy [penalty] by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the remedy [penalty] and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive commissioner by certified mail.

(o) If the executive commissioner receives a copy of an affidavit under Subsection (n)(2), the executive commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the remedy [~~penalty~~] on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the remedy [~~penalty~~] and to give a supersedeas bond.

(p) If the person charged does not pay the amount of the remedy [~~penalty~~] and the enforcement of the remedy [~~penalty~~] is not stayed, the commission may forward the matter to the attorney general for enforcement of the remedy [~~penalty~~] and interest as provided by law for legal judgments. An action to enforce a remedy [~~penalty~~] order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county in which the violation was committed.

(q) Judicial review of a commission order or review under this section assessing a remedy [~~penalty~~] is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(r) If a remedy [~~penalty~~] is reduced or not assessed, the commission shall remit to the person the appropriate amount plus accrued interest if the remedy [~~penalty~~] has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commission under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the remedy [~~penalty~~] is paid to the commission under this section and ending on the date the remedy [~~penalty~~] is remitted.

(s) A remedy [~~damage, cost, or penalty~~] collected under this section is not an allowable expense in a claim or cost report that is or could be used to determine a rate or payment under the medical assistance program.

(x) Subsections (b)(3) [~~(b)(1-b)~~] through (7) [~~(1-f)~~] do not prohibit a person from engaging in:

(1) generally accepted business practices, as determined by commission rule, including:

(A) conducting a marketing campaign;
(B) providing token items of minimal value that advertise the person's trade name; and

(C) providing complimentary refreshments at an informational meeting promoting the person's goods or services;

(2) the provision of a value-added service if the person is a managed care organization; or

(3) other conduct specifically authorized by law, including conduct authorized by federal safe harbor regulations (42 C.F.R. Section 1001.952).

SECTION 5. Section 32.0391(a), Human Resources Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally or knowingly commits a violation under Section 32.039(b)(3), (4), (5), (6), or (7) [~~32.039(b)(1-b), (1-c), (1-d), (1-e), or (1-f)~~].

SECTION 6. Section 36.006, Human Resources Code, is amended to read as follows:

Sec. 36.006. APPLICATION OF OTHER LAW. The application of a civil remedy under this chapter does not preclude the application of another common law, statutory, or regulatory remedy, except that a person may not be liable for a civil remedy under this chapter and an administrative remedy [~~civil damages or a penalty~~] under Section 32.039 if the civil remedy and administrative remedy [~~civil damages or penalty~~] are assessed for the same act.

SECTION 7. The following provisions of the Human Resources Code are repealed:

(1) Section 32.039(a)(4); and

7-1 (2) Section 32.039(b-1).

7-2 SECTION 8. Section 32.039, Human Resources Code, as amended
7-3 by this Act, applies only to a violation that occurs on or after the
7-4 effective date of this Act. A violation that occurs before the
7-5 effective date of this Act is governed by the law in effect on the
7-6 date the violation occurred, and that law is continued in effect for
7-7 that purpose.

7-8 SECTION 9. If before implementing any provision of this Act
7-9 a state agency determines that a waiver or authorization from a
7-10 federal agency is necessary for implementation of that provision,
7-11 the agency affected by the provision shall request the waiver or
7-12 authorization and may delay implementing that provision until the
7-13 waiver or authorization is granted.

7-14 SECTION 10. This Act takes effect September 1, 2025.

7-15 * * * * *