

TEXAS HUMAN RESOURCES CODE

CHAPTER 32. MEDICAL ASSISTANCE PROGRAM SUBCHAPTER B. ADMINISTRATIVE PROVISIONS §§32.039. Damages and Penalties

(a) In this section:

- (1) "Claim" means an application for payment of health care services under Title XIX of the federal Social Security Act that is submitted by a person who is under a contract or provider agreement with the department.
- (2) "Managed care organization" means any entity or person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan.
- (3) "Managed care plan" means a plan under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.
- (4) A person "should know" or "should have known" information to be false if the person acts in deliberate ignorance of the truth or falsity of the information or in reckless disregard of the truth or falsity of the information, and proof of the person's specific intent to defraud is not required.

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

- (1) presents or causes to be presented to the department a claim that contains a statement or representation the person knows or should know to be false; or
- (2) is a managed care organization that contracts with the department to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:
 - (A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the department;
 - (B) fails to provide to the department information required to be provided by law, department 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 department; or
 - (ii) wrongful delay of at least 45 days or a longer period specified in the contract with the department, 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 department.

(c) A person who commits a violation under Subsection (b) is liable to the department for:

- (1) the amount paid, if any, as a result of the violation 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 for each violation that results in injury to an elderly person, as defined by Section 48.002 (1), a disabled person, as defined by Section 48.002 (8) (A), or a person younger than 18 years of age; or

(B) not more than \$10,000 for each violation that does not result in injury to a person described by Paragraph (A).

(d) Unless the provider submitted information to the department for use in preparing a voucher that the provider knew or should have known was false or failed to correct 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 department 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 department shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the department may be corrected without penalty to the provider.

(e) In determining the amount of the penalty to be assessed under Subsection (c) (2), the department shall consider:

- (1) the seriousness of the violation;
- (2) whether the person had previously committed a violation; and
- (3) the amount necessary to deter the person from committing future violations.

(f) If after an examination of the facts the department concludes that the person committed a violation, the department may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed and recommending the amount of the proposed penalty.

(g) The department shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the alleged violation, the amount of the penalty, or both the alleged violation and the amount of the penalty.

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

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

(j) If the person charged with committing the violation requests an informal review as provided by Subsection (h), the department shall conduct the review. The department shall give the person written notice of the results of the review.

(k) Not later than the 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 department 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 penalty fails to request a formal hearing in a timely manner, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the 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 board'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 penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

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

- (1) stay enforcement of the penalty by:
 - (A) paying the amount of the 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 penalty and that is

effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the 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 penalty and is financially unable to give the supersedeas bond; and

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

(o) If the commissioner receives a copy of an affidavit under Subsection (n) (2), the 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 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 penalty and to give a supersedeas bond.

(p) If the person charged does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a 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 department order or review under this section assessing a 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 penalty is reduced or not assessed, the department shall remit to the person the appropriate amount plus accrued interest if the 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 department 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 penalty is paid to the department under this section and ending on the date the penalty is remitted.

(s) A 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.

(t) All funds collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(u) A person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section 48.002 (1), a disabled person, as defined by Section 48.002 (8) (A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The department by rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

(v) A person found liable for a violation under Subsection (c) that did not result in injury to an elderly person, as defined by Section 48.002 (1), a disabled person, as defined by Section 48.002 (8) (A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years. The department by rule may provide for a period of ineligibility longer than three years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility. Added by Acts 1987, 70th Leg., ch. 1052, §§ 2.04, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, §§ 5.95 (49), (53), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1153, §§ 3.01 (a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 12, §§§§ 1, 2, eff. Sept. 1, 1999.

CHAPTER 36. MEDICAID FRAUD PREVENTION SUBCHAPTER A. GENERAL PROVISIONS §§ 36.001. Definitions In this chapter:

(1) "Claim" means a written or electronically submitted request or demand that:

(A) is signed by a provider or a fiscal agent and that identifies a product or service provided or purported to have been provided to a Medicaid recipient as reimbursable under the Medicaid program, without regard to whether the money that is requested or demanded is paid; or

(B) states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under the Medicaid program.

(2) "Documentary material" means a record, document, or other tangible item of any form, including:

(A) a medical document or X ray prepared by a person in relation to the provision or purported provision of a product or service to a Medicaid recipient;

(B) a medical, professional, or business record relating to:

- (i) the provision of a product or service to a Medicaid recipient; or
- (ii) a rate or amount paid or claimed for a product or service, including a record relating to a product or service provided to a person other than a Medicaid recipient as needed to verify the rate or amount;

(C) a record required to be kept by an agency that regulates health care providers; or

(D) a record necessary to disclose the extent of services a provider furnishes to Medicaid recipients.

(3) "Fiscal agent" means:

(A) a person who, through a contractual relationship with the Texas Department of Human Services, the Texas Department of Health, or another state agency, receives, processes, and pays a claim under the Medicaid program; or

(B) the designated agent of a person described by Paragraph (A).

(4) "Health care practitioner" means a dentist, podiatrist, psychologist, physical therapist, chiropractor, registered nurse, or other provider licensed to provide health care services in this state.

(5) "Managed care organization" has the meaning assigned by Section 32.039 (a).

(6) "Medicaid program" means the state Medicaid program.

(7) "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.

(8) "Physician" means a physician licensed to practice medicine in this state.

(9) "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;

(C) an employee of a provider; and

(D) a managed care organization.

(10) "Service" includes care or treatment of a Medicaid recipient.

(11) "Signed" means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.

(12) "Unlawful act" means an act declared to be unlawful under Section 36.002. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1153, §§ 4.02, eff. Sept. 1, 1997. §§ 36.002. Unlawful Acts A person commits an unlawful act if the person:

(1) knowingly or intentionally makes or causes to be made a false statement or misrepresentation of a material fact:

(A) on an application for a contract, benefit, or payment under the Medicaid program; or

(B) that is intended to be used to determine a person's eligibility for a benefit or payment under the Medicaid program;

(2) knowingly or intentionally conceals or fails to disclose an event:

(A) that the person knows affects the initial or continued right to a benefit or payment under the Medicaid program of:

(i) the person; or

(ii) another person on whose behalf the person has applied for a benefit or payment or is receiving a benefit or payment; and

(B) to permit a person to receive a benefit or payment that is not authorized or that is greater than the payment or benefit that is authorized;

(3) knowingly or intentionally applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly or intentionally makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

- (i) a hospital;
- (ii) a nursing facility or skilled nursing facility;
- (iii) a hospice;
- (iv) an intermediate care facility for the mentally retarded;
- (v) an assisted living facility; or
- (vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly or intentionally charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or continued service to a Medicaid recipient if the cost of the service provided to the Medicaid recipient is paid for, in whole or in part, under the Medicaid program;

(6) knowingly or intentionally presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

- (A) is not licensed to provide the product or render the service, if a license is required; or
- (B) is not licensed in the manner claimed;

(7) knowingly or intentionally makes a claim under the Medicaid program for:

- (A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;
- (B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or
- (C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly or intentionally fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly or intentionally enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent; or

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly or intentionally:

- (A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;
- (B) fails to provide to the commission or appropriate state 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 of an individual eligible under the Medicaid program in the

organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program; or

(D) obstructs an investigation by the attorney general of an alleged unlawful act under this section. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1153, §§ 4.03, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, §§ 4, eff. Sept. 1, 1999. § 36.003. Documentary Material in Possession of State Agency (a) A state agency, including the Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, or the Department of Protective and Regulatory Services, shall provide the attorney general access to all documentary materials of persons and Medicaid recipients under the Medicaid program to which that agency has access. Documentary material provided under this subsection is provided to permit investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.

(b) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than:

- (1) an authorized employee of the attorney general;
- (2) an agency of this state, the United States, or another state;
- (3) a criminal district attorney, district attorney, or county attorney of this state;
- (4) the United States attorney general; or
- (5) a state or federal grand jury. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.007 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (a) eff. Sept. 1, 1997. §§ 36.004.

Immunity Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material under this chapter to:

- (1) an authorized employee of the attorney general;
- (2) an agency of this state, the United States, or another state;
- (3) a criminal district attorney, district attorney, or county attorney of this state;
- (4) the United States attorney general; or
- (5) a state or federal grand jury. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. enumbered from V.T.C.A., Human Resources Code §§ 36.008 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (a), eff. Sept. 1, 1997. §§ 36.005. Suspension or Revocation of Agreement; Professional Discipline (a) The commissioner of human services, the commissioner of public health, the commissioner of mental health and mental retardation, the executive director of the Department of Protective and Regulatory Services, or the executive director of another state health care regulatory agency:

(1) shall suspend or revoke:

- (A) a provider agreement between the department or agency and a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and
- (B) a permit, license, or certification granted by the department or agency to a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(2) may suspend or revoke:

- (A) a provider agreement between the department or agency and a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052; or
- (B) a permit, license, or certification granted by the department or agency to a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052.

(b) A person found liable under Section 36.052 for an unlawful act may not provide or arrange to provide health care services under the Medicaid program for a period of 10 years. The board of a state agency that operates part of the Medicaid program may by rule provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility or an ICF-MR facility.

(c) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have been found liable under Section 36.052 if the person is found liable in an action brought under Subchapter C. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.009 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (a), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, §§ 4.06, eff. Sept. 1, 1997. §§ 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 civil damages or a penalty under Section 32.039 if the civil remedy and civil damages or penalty are assessed for the same act. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.010 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01(a), eff. Sept. 1, 1997. §§ 36.007. Recovery of Costs, Fees, and Expenses The attorney general may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, reasonable attorney's fees, witness fees, and deposition fees. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.011 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (a), eff. Sept. 1, 1997. §§ 36.008. Use of Money Recovered The legislature, in appropriating money recovered under this chapter, shall consider the requirements of the attorney general and other affected state agencies in investigating Medicaid fraud and enforcing this chapter. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.012 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (a), eff. Sept. 1, 1997.

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL §§ 36.051. Injunctive Relief

(a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit an unlawful act, the attorney general may institute an action for an appropriate order to restrain the person from committing or continuing to commit the act.

(b) An action under this section shall be brought in a district court of Travis County or of a county in which any part of the unlawful act occurred, is occurring, or is about to occur. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.003 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (b), eff. Sept. 1, 1997. §§ 36.052. Civil Remedies (a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) restitution of the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act;

(2) interest on the value of the payment or benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that restitution is paid to the state;

(3) a civil penalty of:

(A) not less than \$5,000 or more than \$15,000 for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002 (1), a disabled person, as defined by Section 48.002 (8) (A), or a person younger than 18 years of age; or

(B) not less than \$1,000 or more than \$10,000 for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the value of the payment or benefit described by Subdivision (1). (b) In determining the amount of the civil penalty described by Subsection (a) (3), the trier of fact shall consider:

(1) whether the person has previously violated the provisions of this chapter;

(2) the seriousness of the unlawful act committed by the person, including the nature, circumstances, extent, and gravity of the unlawful act;

(3) whether the health and safety of the public or an individual was threatened by the unlawful act;

(4) whether the person acted in bad faith when the person engaged in the conduct that formed the basis of the unlawful act; and

(5) the amount necessary to deter future unlawful acts.

(c) The trier of fact may assess a total of not more than two times the value of a payment or benefit described by Subsection (a) (1) if the trier of fact finds that:

(1) the person furnished the attorney general with all information known to the person about the unlawful act not later than the 30th day after the date on which the person first obtained the information; and

(2) at the time the person furnished all the information to the attorney general, the attorney general had not yet begun an investigation under this chapter.

(d) An action under this section shall be brought in Travis County or in a county in which any part of the unlawful act occurred.

(e) The attorney general may:

(1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.051; or

(2) institute an action for civil remedies independently of an action for injunctive relief. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.004 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (b), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, §§ 4.04, eff. Sept. 1, 1997. §§ 36.053. Investigation (a) The attorney general may take action under Subsection (b) if the attorney general has reason to believe that: (1) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged unlawful act; (2) a person is committing, has committed, or is about to commit an unlawful act; or (3) it is in the public interest to conduct an investigation to ascertain whether a person is committing, has committed, or is about to commit an unlawful act.

(b) In investigating an unlawful act, the attorney general may:

(1) require the person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;

(2) examine under oath a person in connection with the alleged unlawful act; and

(3) execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material under Section 36.054. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.005 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (b), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, §§ 4.05, eff. Sept. 1, 1997. §§ 36.054. Civil Investigative Demand (a) An investigative demand must:

(1) state the rule or statute under which the alleged unlawful act is being investigated and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(b) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Texas Rules of Civil Procedure.

(c) Service of an investigative demand may be made by:

(1) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of business in this state or, if the person has no place of business in this state, to a person's principal office or place of business.

(d) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(e) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or

otherwise disclose the contents of documentary material obtained under this section to a person other than an authorized employee of the attorney general without the consent of the person who produced the documentary material. The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(f) A person may file a petition, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A petition under this section shall be filed in a district court of Travis County and must be filed before the earlier of:

- (1) the return date specified in the demand; or
- (2) the 20th day after the date the demand is served.

(g) Except as provided by court order, a person on whom a demand has been served under this section shall comply with the terms of an investigative demand.

(h) A person who has committed an unlawful act in relation to the Medicaid program in this state has submitted to the jurisdiction of this state and personal service of an investigative demand under this section may be made on the person outside of this state.

(i) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Texas Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(j) If a person fails to comply with an investigative demand, or if copying and reproduction of the documentary material demanded cannot be satisfactorily accomplished and the person refuses to surrender the documentary material, the attorney general may file in a district court of Travis County a petition for an order to enforce the investigative demand.

(k) If a petition is filed under Subsection (j), the court may determine the matter presented and may enter an order to implement this section.

(l) Failure to comply with a final order entered under Subsection (k) is punishable by contempt.

(m) A final order issued by a district court under Subsection (k) is subject to appeal to the supreme court. Added by Acts 1995, 74th Leg., ch. 824, §§ 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Human Resources Code §§ 36.006 by Acts 1997, 75th Leg., ch. 1153, §§ 4.01 (b), eff. Sept. 1, 1997. §§ 36.055. Attorney General as Relator in Federal Action To the extent permitted by 31 U.S.C. Sections 3729--3733, the attorney general may bring an action as relator under 31 U.S.C. Section 3730 with respect to an act in connection with the Medicaid program for which a person may be held liable under 31 U.S.C. Section 3729. The attorney general may contract with a private attorney to represent the state under this section. Added by Acts 1997, 75th Leg., ch. 1153, § 4.07 (a), eff. Sept. 1, 1997.

SUBCHAPTER C. ACTION BY PRIVATE PERSONS §§ 36.101. Action by Private Person Authorized

(a) A person may bring a civil action for a violation of Section 36.002 for the person and for the state. The action shall be brought in the name of the person and of the state.

(b) In an action brought under this subchapter, a person who violates Section 36.002 is liable as provided by Section 36.052. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.102. Initiation of Action

(a) A person bringing an action under this subchapter shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(b) The petition shall be filed in camera and shall remain under seal until at least the 60th day after the date the petition is filed. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later than the 60th day after the date the attorney general receives the petition and the material evidence and information.

(d) The state may, for good cause shown, move the court to extend the time during which the petition remains under seal under Subsection (b). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed before the end of the period prescribed by Subsection (b), as extended as provided by Subsection (d), if applicable, only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.103. Answer by Defendant A defendant is not required to file an answer to a petition filed under this subchapter until the 20th day after the date the petition is unsealed and served on the defendant in compliance with the Texas Rules of Civil Procedure.

Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.104. Continuation or Dismissal of Action Based on State Decision

(a) Not later than the last day of the period prescribed by Section 36.102 (c), the state shall:

- (1) proceed with the action; or
- (2) notify the court that the state declines to take over the action.

(b) If the state declines to take over the action, the court shall dismiss the action. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.105. Representation of State by Private Attorney The attorney general may contract with a private attorney to represent the state in an action under this subchapter with which the state elects to proceed. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.106. Intervention by Other Parties Prohibited A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.107. Rights of Parties if State Continues Action

(a) If the state proceeds with the action, the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The state may dismiss the action notwithstanding the objections of the person bringing the action if:

- (1) the attorney general notifies the person that the state has filed a motion to dismiss; and
- (2) the court provides the person with an opportunity for a hearing on the motion.

(c) The state may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

- (1) limiting the number of witnesses the person may call;
- (2) limiting the length of the testimony of witnesses called by the person;
- (3) limiting the person's cross-examination of witnesses; or
- (4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.108. Stay of Certain Discovery

(a) On a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period not to exceed 60 days.

(b) The court shall hear a motion to stay discovery under this section in camera.

(c) The court may extend the period prescribed by Subsection (a) on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.109. Pursuit of Alternate Remedy by State

(a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter.

(b) A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this subchapter. For purposes of this subsection, a finding or conclusion is final if:

- (1) the finding or conclusion has been finally determined on appeal to the appropriate court;
- (2) no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or

(3) the finding or conclusion is not subject to judicial review. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.110.

Award to Private Plaintiff

(a) If the state proceeds with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 10 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.

(b) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than seven percent of the proceeds of the action. The court shall consider the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. Expenses, fees, and costs shall be awarded against the defendant.

(d) In this section, "proceeds of the action" includes proceeds of a settlement of the action. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.111. Reduction of Award

(a) If the court finds that the action was brought by a person who planned and initiated the violation of Section 36.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive under Section 36.110, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of Section 36.002, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.112. Award to Defendant for Frivolous Action Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.113. Certain Actions Barred

(a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this subchapter that is based on the information. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.114. State Not Liable for Certain Expenses The state is not liable for expenses that a person incurs in bringing an action under this subchapter. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.115. Retaliation by Employer Against Person Bringing Suit Prohibited

(a) A person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms of employment by the person's employer because of a lawful act taken by the person in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, is entitled to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(b) A person may bring an action in the appropriate district court for the relief provided in this section. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.116. Sovereign Immunity Not Waived Except as provided by Section 36.112, this subchapter does not waive sovereign immunity. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997. §§ 36.117. Attorney General Compensation The office of the attorney general may retain a reasonable portion of recoveries under this subchapter, not to exceed amounts specified in the General Appropriations Act, for the administration of this subchapter. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.08, eff. Sept. 1, 1997.

SUBCHAPTER D. CRIMINAL PENALTIES AND REVOCATION OF CERTAIN OCCUPATIONAL LICENSES §§ 36.131. Criminal Offense

(a) A person commits an offense if the person commits an unlawful act under Section 36.002.

(b) An offense under this section is:

- (1) a Class C misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is less than \$50;
- (2) a Class B misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$50 or more but less than \$500;
- (3) a Class A misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$500 or more but less than \$1,500;
- (4) a state jail felony if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$1,500 or more but less than \$20,000;
- (5) a felony of the third degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$20,000 or more but less than \$100,000;
- (6) a felony of the second degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$100,000 or more but less than \$200,000; or
- (7) a felony of the first degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is \$200,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, the actor may be prosecuted under either this section or the other provision.

(d) When multiple payments or monetary or in-kind benefits are provided under the Medicaid program as a result of one scheme or continuing course of conduct, the conduct may be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.09, eff. Sept. 1, 1997. §§ 36.132. Revocation of Licenses

(a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

- (A) is issued by a licensing authority;
- (B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and
- (C) must be obtained before a person may practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means:

- (A) the Texas State Board of Medical Examiners;
- (B) the State Board of Dental Examiners;
- (C) the Texas State Board of Examiners of Psychologists;
- (D) the Texas State Board of Social Worker Examiners;
- (E) the Board of Nurse Examiners;
- (F) the Board of Vocational Nurse Examiners;
- (G) the Texas Board of Physical Therapy Examiners;
- (H) the Texas Board of Occupational Therapy Examiners; or
- (I) another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under the Medicaid program.

(b) A licensing authority shall revoke a license issued by the authority to a person if the person is convicted of a felony under Section 36.131. In revoking the license, the licensing authority shall comply with all procedures generally applicable to the licensing authority in revoking licenses. Added by Acts 1997, 75th Leg., ch. 1153, §§ 4.09, eff. Sept. 1, 1997.

CHAPTER 531. HEALTH AND HUMAN SERVICES COMMISSION SUBCHAPTER C. MEDICAID AND OTHER WELFARE FRAUD, ABUSE, OR OVERCHARGES §§ 531.101. Award for Reporting Medicaid Fraud, Abuse, or Overcharges

(a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program if the commission determines that the disclosure results in the recovery of an overcharge or in the termination of the fraudulent activity or abuse of funds.

(b) The commission shall determine the amount of an award. The award must be equal to not less than 10 percent of the savings to this state that result from the individual's disclosure. In determining the amount of the award, the commission shall consider how important the disclosure is in ensuring the fiscal integrity of the program.

(c) An award under this section is subject to appropriation. The award must be paid from money appropriated to or otherwise available to the commission, and additional money may not be appropriated to the commission for the purpose of paying the award.

(d) Payment of an award under this section from federal funds is subject to the permissible use under federal law of funds for this purpose.

(e) A person who brings an action under Subchapter C, Chapter 36, Human Resources Code, is not eligible for an award under this section. Added by Acts 1997, 75th Leg., ch. 165, §§ 14.16, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. Sept. 1, 1997. §§ 531.102. Investigations and Enforcement Office

(a) The commission, through the commission's office of investigations and enforcement, is responsible for the investigation of fraud in the provision of health and human services and the enforcement of state law relating to the provision of those services.

(b) The commission shall set clear objectives, priorities, and performance standards for the office that emphasize:

- (1) coordinating investigative efforts to aggressively recover money;
- (2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and
- (3) maximizing opportunities for referral of cases to the office of the attorney general.

(c) The commission shall train office staff to enable the staff to pursue priority Medicaid and welfare fraud and abuse cases as necessary.

(d) The commission may require employees of health and human services agencies to provide assistance to the commission in connection with the commission's duties relating to the investigation of fraud in the provision of health and human services.

(e) The commission by rule shall set specific claims criteria that, when met, require the office to begin an investigation. Added by Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. June 20, 1997. Amended by Acts 1999, 76th Leg., ch. 1289, §§ 3, eff. Sept. 1, 1999. §§ 531.103. Interagency Coordination

(a) The commission and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse under the state Medicaid program. The memorandum of understanding shall require:

- (1) the commission and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation to enhance deterrence of fraud, waste, or abuse in the program and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;
- (2) the commission to keep detailed records for cases processed by the commission or the office of the attorney general, including information on the total number of cases processed and, for each case:
 - (A) the agency and division to which the case is referred for investigation;
 - (B) the date on which the case is referred; and
 - (C) the nature of the suspected fraud, waste, or abuse;
- (3) the commission to notify each appropriate division of the office of the attorney general of each case referred by the commission;
- (4) the office of the attorney general to ensure that information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;
- (5) the office of the attorney general to notify the commission of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the commission and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; and

(7) the commission and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection.

(b) An exchange of information under this section between the office of the attorney general and the commission or a health and human services agency does not affect whether the information is subject to disclosure under Chapter 552.

(c) The commission and the office of the attorney general shall jointly prepare and submit a semiannual report to the governor, lieutenant governor, and speaker of the house of representatives concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under the state Medicaid program. The report may be consolidated with any other report relating to the same subject matter the commission or office of the attorney general is required to submit under other law.

(d) The commission and the office of the attorney general may not assess or collect investigation and attorney's fees on behalf of any state agency unless the office of the attorney general or other state agency collects a penalty, restitution, or other reimbursement payment to the state.

(e) The commission shall refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate district attorney, county attorney, city attorney, or private collection agency if the attorney general fails to act within 30 days of referral of the case to the office of the attorney general. A failure by the attorney general to act within 30 days constitutes approval by the attorney general under Section 2107.003.

(f) The district attorney, county attorney, city attorney, or private collection agency may collect and retain costs associated with the case and 20 percent of the amount of the penalty, restitution, or other reimbursement payment collected. Added by Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. Sept. 1, 1997. §§ 531.104. Assisting Investigations by Attorney General

(a) The commission and the attorney general shall execute a memorandum of understanding under which the commission shall provide investigative support as required to the attorney general in connection with cases under Subchapter B, Chapter 36, Human Resources Code. Under the memorandum of understanding, the commission shall assist in performing preliminary investigations and ongoing investigations for actions prosecuted by the attorney general under Subchapter C, Chapter 36, Human Resources Code.

(b) The memorandum of understanding must provide that the commission is not required to provide investigative support in more than 100 open investigations in a fiscal year. Added by Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. Sept. 1, 1997. §§ 531.105. Fraud Detection Training

(a) The commission shall develop and implement a program to provide annual training to contractors who process Medicaid claims and appropriate staff of the Texas Department of Health and the Texas Department of Human Services in identifying potential cases of fraud, waste, or abuse under the state Medicaid program. The training provided to the contractors and staff must include clear criteria that specify:

(1) the circumstances under which a person should refer a potential case to the commission; and

(2) the time by which a referral should be made.

(b) The Texas Department of Health and the Texas Department of Human Services, in cooperation with the commission, shall periodically set a goal of the number of potential cases of fraud, waste, or abuse under the state Medicaid program that each agency will attempt to identify and refer to the commission. The commission shall include information on the agencies' goals and the success of each agency in meeting the agency's goal in the report required by Section 531.103 (c). Added by Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. Sept. 1, 1997. §§ 531.106. Learning or Neural Network Technology

(a) The commission shall use learning or neural network technology to identify and deter fraud in the Medicaid program throughout this state.

(b) The commission shall contract with a private or public entity to develop and implement the technology. The commission may require the entity it contracts with to install and operate the technology at locations specified by the commission, including commission offices.

(c) The data used for neural network processing shall be maintained as an independent subset for security purposes.

(d) The commission shall require each health and human services agency that performs any aspect of the state Medicaid program to participate in the implementation and use of the technology.

(e) The commission shall maintain all information necessary to apply the technology to claims data covering a period of at least two years.

(f) The commission shall refer cases identified by the technology to the commission's office of investigations and enforcement or the office of the attorney

general, as appropriate.

(g) Each month, the learning or neural network technology implemented under this section must match bureau of vital statistics death records with Medicaid claims filed by a provider. If the commission determines that a provider has filed a claim for services provided to a person after the person's date of death, as determined by the bureau of vital statistics death records, the commission shall refer the case for investigation to the commission's office of investigations and enforcement. Added by Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. June 20, 1997. Amended by Acts 1999, 76th Leg., ch. 215, §§ 2, eff. Sept. 1, 1999. §§ 531.1061. Fraud Investigation Tracking System

(a) The commission shall use an automated fraud investigation tracking system through the commission's office of investigations and enforcement to monitor the progress of an investigation of suspected fraud, abuse, or insufficient quality of care under the state Medicaid program.

(b) For each case of suspected fraud, abuse, or insufficient quality of care identified by the learning or neural network technology required under Section 531.106, the automated fraud investigation tracking system must:

- (1) receive electronically transferred records relating to the identified case from the learning or neural network technology;
- (2) record the details and monitor the status of an investigation of the identified case, including maintaining a record of the beginning and completion dates for each phase of the case investigation;
- (3) generate documents and reports related to the status of the case investigation; and
- (4) generate standard letters to a provider regarding the status or outcome of an investigation.

(c) The commission shall require each health and human services agency that performs any aspect of the state Medicaid program to participate in the implementation and use of the automated fraud investigation tracking system. Added by Acts 1999, 76th Leg., ch. 206, §§ 1, eff. Sept. 1, 1999. §§ 531.1062. Recovery Monitoring System

(a) The commission shall use an automated recovery monitoring system to monitor the collections process for a settled case of fraud, abuse, or insufficient quality of care under the state Medicaid program.

(b) The recovery monitoring system must:

- (1) monitor the collection of funds resulting from settled cases, including:
 - (A) recording monetary payments received from a provider who has agreed to a monetary payment plan; and
 - (B) recording deductions taken through the recoupment program from subsequent Medicaid claims filed by the provider; and
- (2) provide immediate notice of a provider who has agreed to a monetary payment plan or to deductions through the recoupment program from subsequent Medicaid claims who fails to comply with the settlement agreement, including providing notice of a provider who does not make a scheduled payment or who pays less than the scheduled amount. Added by Acts 1999, 76th Leg., ch. 206, §§ 1, eff. Sept. 1, 1999. §§ 531.107. Medicaid and Public Assistance Fraud Oversight Task Force

(a) The Medicaid and Public Assistance Fraud Oversight Task Force advises and assists the commission and the commission's office of investigations and enforcement in improving the efficiency of fraud investigations and collections.

(b) The task force is composed of a representative of the:

- (1) attorney general's office, appointed by the attorney general;
- (2) comptroller's office, appointed by the comptroller;
- (3) Department of Public Safety, appointed by the public safety director;
- (4) state auditor's office, appointed by the state auditor;
- (5) commission, appointed by the commissioner of health and human services;
- (6) Texas Department of Human Services, appointed by the commissioner of human services; and
- (7) Texas Department of Insurance, appointed by the commissioner of insurance.

(c) The comptroller or the comptroller's designee serves as the presiding officer of the task force. The task force may elect any other necessary officers.

- (d) The task force shall meet at least once each fiscal quarter at the call of the presiding officer.
 - (e) The appointing agency is responsible for the expenses of a member's service on the task force. Members of the task force receive no additional compensation for serving on the task force.
 - (f) At least once each fiscal quarter, the commission's office of investigations and enforcement shall provide to the task force:
 - (1) information detailing:
 - (A) the number of fraud referrals made to the office and the origin of each referral;
 - (B) the time spent investigating each case;
 - (C) the number of cases investigated each month, by program and region;
 - (D) the dollar value of each fraud case that results in a criminal conviction; and
 - (E) the number of cases the office rejects and the reason for rejection, by region; and
 - (2) any additional information the task force requires. Added by Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. Sept. 1, 1997. §§ 531.108. Fraud Prevention
- (a) The commission's office of investigations and enforcement shall compile and disseminate accurate information and statistics relating to:
 - (1) fraud prevention; and
 - (2) post-fraud referrals received and accepted or rejected from the commission's case management system or the case management system of a health and human services agency.
 - (b) The commission shall:
 - (1) aggressively publicize successful fraud prosecutions and fraud-prevention programs through all available means, including the use of statewide press releases issued in coordination with the Texas Department of Human Services; and
 - (2) ensure that a toll-free hotline for reporting suspected fraud in programs administered by the commission or a health and human services agency is maintained and promoted, either by the commission or by a health and human services agency.
 - (c) The commission shall develop a cost-effective method of identifying applicants for public assistance in counties bordering other states and in metropolitan areas selected by the commission who are already receiving benefits in other states. If economically feasible, the commission may develop a computerized matching system.
 - (d) The commission shall:
 - (1) verify automobile information that is used as criteria for eligibility; and
 - (2) establish a computerized matching system with the Texas Department of Criminal Justice to prevent an incarcerated individual from illegally receiving public assistance benefits administered by the commission.
 - (e) The commission shall submit to the governor and Legislative Budget Board a semiannual report on the results of computerized matching of commission information with information from neighboring states, if any, and information from the Texas Department of Criminal Justice. The report may be consolidated with any other report relating to the same subject matter the commission is required to submit under other law. Added by Acts 1997, 75th Leg., ch. 1153, §§ 1.06 (a), eff. Sept. 1, 1997.