

PENAL CODE

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 35A. MEDICAID FRAUD

Sec. 35A.01. DEFINITIONS. In this chapter:

(1) "Claim" has the meaning assigned by Section 36.001, Human Resources Code.

(2) "Fiscal agent" has the meaning assigned by Section 36.001, Human Resources Code.

(3) "Health care practitioner" has the meaning assigned by Section 36.001, Human Resources Code.

(4) "Managed care organization" has the meaning assigned by Section 36.001, Human Resources Code.

(5) "Medicaid program" has the meaning assigned by Section 36.001, Human Resources Code.

(6) "Medicaid recipient" has the meaning assigned by Section 36.001, Human Resources Code.

(7) "Physician" has the meaning assigned by Section 36.001, Human Resources Code.

(8) "Provider" has the meaning assigned by Section 36.001, Human Resources Code.

(9) "Service" has the meaning assigned by Section 36.001, Human Resources Code.

(10) "High managerial agent" means a director, officer, or employee who is authorized to act on behalf of a provider and has duties of such responsibility that the conduct of the director, officer, or employee reasonably may be assumed to represent the policy or intent of the provider.

Added by Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 16, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 8, eff. September 1, 2011.

Sec. 35A.02. MEDICAID FRAUD. (a) A person commits an offense if the person:

(1) knowingly makes or causes to be made a false

statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly 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 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 pays, 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 product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly 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 makes or causes to be made 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 fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly 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;

(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:

(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; or

(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;

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section or under Section 32.039, 32.0391, or 36.002, Human Resources Code; or

(12) knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program.

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is less than \$100;

(2) a Class B misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$100 or more but less than \$750;

(3) a Class A misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$750 or more but less than \$2,500;

(4) a state jail felony if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$2,500 or more but less than \$30,000;

(B) the offense is committed under Subsection (a)(11); or

(C) it is shown on the trial of the offense that the amount of the payment or value of the benefit described by this subsection cannot be reasonably ascertained;

(5) a felony of the third degree if:

(A) the amount of any payment or the value of any

monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$30,000 or more but less than \$150,000; or

(B) it is shown on the trial of the offense that the defendant submitted more than 25 but fewer than 50 fraudulent claims under the Medicaid program and the submission of each claim constitutes conduct prohibited by Subsection (a);

(6) a felony of the second degree if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$150,000 or more but less than \$300,000; or

(B) it is shown on the trial of the offense that the defendant submitted 50 or more fraudulent claims under the Medicaid program and the submission of each claim constitutes conduct prohibited by Subsection (a); or

(7) a felony of the first degree if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$300,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision or both this section and the other section or 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.

(e) The punishment prescribed for an offense under this section, other than the punishment prescribed by Subsection (b)(7), is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor was a provider or high managerial agent at the time of the offense.

(f) With the consent of the appropriate local county or

district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the Medicaid program.

Added by Acts 2005, 79th Leg., Ch. 806 (S.B. [563](#)), Sec. 16, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. [1694](#)), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. [544](#)), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. [688](#)), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. [1396](#)), Sec. 27, eff. September 1, 2015.