

TEXAS LAW

Texas laws provide that it is unlawful to make false statements to receive benefits or payments under the Medicaid program and establish liability to the state for individuals and entities that submit false or fraudulent claims. In addition, similar to the Federal False Claims Act, Texas law allows private citizens or employees to file civil lawsuits to recover monetary damages against individuals and entities that submit false or fraudulent claims to the Texas Medicaid Program, and protects employees from being discharged or discriminated against in terms of employment because of lawful acts taken by the employees under the Texas False Claims Act.

Texas False Claims Statutes

Texas Human Resources Code § 36.002 provides, in pertinent part:

A person commits an unlawful act if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under 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;

Similar prohibitions against presenting false claims to the Texas Medicaid program are included in Texas Human Resources Code § 32.039 and in Texas Penal Code § 35A.02.

Criminal penalties for violations of these laws include fines and imprisonment, the amount of which varies depending on the amount of any payments received for the false claims. Civil remedies include liability for the amount of the payment provided by the Medicaid program as a result of the unlawful act, plus interest. Civil penalties may be assessed in the amount of not less than \$5,000 nor more than \$15,000 for each violation, and two times the amount of the payment resulting from the unlawful act. Additionally, suspension or revocation of the Medicaid provider agreement may be imposed.

Private right of action

Texas Human Resources Code § 36.101 authorizes a private person to bring a civil action for a violation of § 36.002. The action shall be brought in the name of the person and of the state, and a person violating § 36.002 may be held liable in such action for the civil penalties discussed above. A person bringing an action is required to serve a copy of the petition and a written disclosure of substantially all material evidence and information the

person possesses on the Texas attorney general in compliance with the Texas Rules of Civil Procedure.

The state may elect to intervene and proceed with the action not later than the 180th day after the date the attorney general receives the petition and the material evidence and information. If the state declines to take over the action, the person bringing the action may proceed without the state's participation. 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 limitations set out in the law.

If the state proceeds with the action, the person bringing the action is entitled, subject to certain exceptions contained in the law, to receive at least 15 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. If the state does not proceed with the action, the person bringing the action is entitled, subject to certain exceptions contained in the law, to receive at least 25 percent but not more than 30 percent of the proceeds of the action. A person receiving a payment under this section is also entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred.

If the court finds that the action was brought by a person who planned and initiated the violation of § 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, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of § 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.

Texas law also prohibits retaliation by an employer against a person bringing suit for a violation of § 36.002. Human Resources Code § 36.115 provides in pertinent part:

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.

Texas Government Code § 531.101 provides that the Health and Human Services 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 administrative penalty imposed under Human Resources Code §32.039, not to exceed five percent of the penalty. The commission may not grant an award to an individual in connection with a report if the commission or attorney general had independent knowledge of the activity reported by the individual. In determining the amount of the award, the commission shall consider how important the disclosure is in ensuring the fiscal integrity of the program. The commission may also consider whether the individual participated in the fraud, abuse, or overcharge. A person who brings a civil action under Human Resources Code §36.002 (discussed above), is not eligible for an award under this section.

References:

Texas Medicaid Fraud Prevention Act – Tex. Hum. Res. Code §§ 36.001 – 36.132, as amended by 2007 Texas S.B. 362 on May 4, 2007

Texas False Claims Act – Tex. Hum. Res. Code § 32.039

Medicaid Fraud - Texas Penal Code § 35A.02

Award for reporting Medicaid fraud or abuse - Texas Gov't Code § 531.101