By: Huffman S.B. No. 1803

A BILL TO BE ENTITLED

AN ACT

relating to the Office of the Inspector General.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Amend Section 531.1011, Government Code, as follows, and not withstanding any other law:

Sec. 531.1011. DEFINITIONS. For purposes of this subchapter:

(1) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person, including any act that constitutes fraud under applicable federal or state law.

(2) "Furnished" refers to items or services provided directly by, or under the direct supervision of, or ordered by a practitioner or other individual (either as an employee or in the individual's own capacity), a provider, or other supplier of services, excluding services ordered by one party but billed for and provided by or under the supervision of another.

(3) "Hold on payment" means the temporary denial of reimbursement under the Medicaid program for items or services furnished by a specified provider.

(4) "Practitioner" means a physician or other individual licensed under state law to practice the individual's profession.

(5) "Program exclusion" means the suspension of a provider from being authorized under the Medicaid program to request reimbursement of items or services furnished by that specific provider.

(6) "Provider" means a person, firm, partnership, corporation, agency, association, institution, or other entity that was or is approved by the commission to:

(A) provide medical assistance under contract or provider agreement with the commission; or

(B) provide third-party billing vendor services under a contract or provider agreement with the commission.

(7) "Appropriate regulatory agency" means, with respect to a recipient who holds a license issued by a state agency, the state agency that issued the license. If the recipient does not hold a license issued by a state agency, then the appropriate regulatory agency means the State Office of Administrative Hearings. If the appropriate agency is a board, the board may appoint a subcommittee to fulfill the board's role.

(8) "Credible allegation of fraud" means:

1(A) an allegation of fraud, from any source, against a provider; and

(B) that has been communicated to the provider and to which the provider has had the opportunity to respond; and

(C) that a reasonable provider, in the same field or discipline as the provider against whom the allegations have been made, could reasonably conclude that the allegation of fraud has been substantiated after reviewing the information that is

available to the office with respect to the allegation; or a finding by the Inspector General. OR:

2.If the Inspector General certifies that a credible allegation of fraud exists or exists under subsection F-4.

(9) "Preliminary finding of fraud" means:

(A) an allegation of fraud, from any source, against a provider;

(B) that has been preliminarily investigated by the office; and

(C) that, based on the office's review of the allegations, the office's experience with similar providers and any other relevant facts and circumstances involving the allegations, lead the office to reasonably determine that an additional investigation into the allegations is warranted.

SECTION 2. Section 531.102, Government Code, is amended by amending subsection (f), and adding new subsections (f-1), (f-2), (f-3) and (j) as follows, and not withstanding any other law.

(f)(1) If the commission receives a complaint of Medicaid fraud or abuse from any source, the office must conduct an integrity review to determine whether there is sufficient ~~basis~~ evidence to warrant a preliminary finding of fraud ~~a full investigation~~. An integrity review must begin not later than the 30th day after the date the commission receives a complaint ~~or has reason to believe that fraud or abuse has occurred~~. An integrity review shall be completed not later than the 90th day after it began.

(2) If the findings of an integrity review give the office reason to believe that there is sufficient evidence to

warrant a preliminary finding of fraud ~~an incident of fraud or abuse involving possible criminal conduct has occurred in the Medicaid program,~~ the office must ~~take the following action, as appropriate~~, not later than the 30th day after the completion of the integrity review, notify the recipient that the office has made a preliminary determination of fraud with respect to that recipient.

(3)~~(A) if~~ If a provider is suspected of fraud or abuse involving criminal conduct, the office must refer the case to the state's Medicaid fraud control unit, provided that the criminal referral does not preclude the office from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions; or

~~(B) if there is reason to believe that a recipient has defrauded the Medicaid program, the office may conduct a full investigation of the suspected fraud~~.

(f-1) (a) If the office notifies a recipient that the office has made a preliminary finding of fraud with respect to that recipient under section (f)(2), then the office shall, along with this notification, provide the recipient with:

(1) the specific facts that form the basis of the office's preliminary finding of fraud;

(2) a representative sample of any documents that form the basis of the office's preliminary finding of fraud; and

(3) a document, written in plain English, that describes the office's processes and procedures for determining when and how the office determines whether a preliminary finding of fraud or credible allegation of fraud exists.

(b) The recipient has thirty days after being notified that the office has made a preliminary finding of fraud with respect to that recipient to respond to the office. The recipient's response may include any documentation or any other relevant evidence that the recipient believes would rebut or refute the office's preliminary finding of fraud.

(c) If requested by the recipient, the office shall provide the recipient with an additional thirty days to respond under subsection (b).

(f-2) (a) If, after reviewing the documentation and other relevant evidence submitted by a provider under section (f-1), the office determines that credible allegation of fraud exists, then, in addition to other instances authorized under state or federal law, the office shall impose a hold on payment of claims for reimbursement submitted by the provider

(b) At any time after written request by a provider subject to a hold on payment under subsection (a), the office shall refer the hold, and any documentation or other relevant evidence the office has with respect to the hold to the appropriate regulatory agency

(c) If the appropriate regulatory agency is the State Office of Administrative Hearings, then the office shall file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold.

(d) If the appropriate regulatory agency is not the State Office of Administrative Hearings, then the executive director of the appropriate regulatory agency shall review the hold and any

documentation and any other relevant evidence related to the hold. The executive director shall then recommend to the board of the appropriate regulatory agency whether, based on the executive director's review of the hold and the documentation and other relevant evidence submitted by the office, the hold should remain in place or be dissolved. The board shall take up and consider the executive director's recommendation under this section at its next board meeting. A decision by the Board of the appropriate regulatory agency may be appealed directly to a district court in Travis County under this subsection.

(f-3) The commission shall adopt rules that allow a provider subject to a hold on payment under this section other than a hold requested by the state's Medicaid fraud control unit, to seek an informal resolution of the issues identified by the office. A provider may seek an informal resolution under this subsection at any time.

(j) The office shall post on its publicly available website a description, in plain English, of the processes and procedures that the office uses to determine whether to impose a hold on a recipient under this section.

(f-4) Not withstanding any other provision in this section, if the Inspector General, after reviewing documentation, or other relevant evidence regarding a provider, determines that by clear and convincing evidence that a credible allegation of fraud exists, then the Inspector General may certify that finding. The Inspector General may not delegate a certification under this subsection to any other employee in the Office of Inspector General.

SECTION 3. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.118 to read as follows:

Sec.531.118. HEARINGS ON ACTIONS TAKEN BY OFFICE OF INSPECTOR GENERAL TO RECOVER CERTAIN OVERPAYMENTS UNDER MEDICAID PROGRAM. (a) A Medicaid provider from whom the commission's office of inspector general seeks to recover an overpayment made to the provider under the Medicaid program is entitled to a hearing on a determination made or other action taken by the office to recover the overpayment. If there is an overpayment issue, the Office of Inspector General shall adhere to the following actions:

(b) If the commission receives a complaint of Medicaid overpayment from any source, the office must conduct an integrity review to determine whether there is sufficient ~~basis~~ evidence that an overpayment has been made.

(c) If the office notifies a recipient that the office has made a finding of overpayment with respect to that recipient under then the office shall, along with this notification, provide the recipient with:

(1) the specific facts that form the basis of the office's preliminary finding of overpayment;

(2) a representative sample of any documents that form the basis of the office's finding of overpayment; and

(3) a document, written in plain English, that describes the office's processes and procedures for determining when and how the office determines whether an overpayment exists.

(d) If, after reviewing the documentation and other relevant evidence submitted by a provider the office determines

that an overpayment exists, then:

(1) The appropriate regulatory agency as defined in Sec. 531.1011 (7) is the State Office of Administrative Hearings, shall file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the overpayment, or:

(2) The appropriate regulatory agency as defined in Sec. 531.1011 (7) is not the State Office of Administrative Hearings, then the executive director of the appropriate regulatory agency shall review the overpayment and any documentation and any other relevant evidence related to the overpayment. The executive director shall then recommend to the board of the appropriate regulatory agency whether, based on the executive director's review of the overpayment and the documentation and other relevant evidence submitted by the office, the overpayment should remain in place or be dissolved. The board shall take up and consider the executive director's recommendation under this section at its next board meeting. A decision by the Board of the appropriate regulatory agency may be appealed directly to a district court in Travis County under this subsection.

(3) The office shall post on its publicly available website a description, in plain English, of the processes and procedures that the office uses to determine whether to impose a hold on a recipient under this section.

SECTION 4: Not later than January 1, 2014, the appropriate regulatory agencies shall adopt the rules necessary to implement the changes in law made by this Act. These rules shall include a

standard process for all applicable hearings, including an opportunity for the provider to respond to any allegations.

SECTION 5: Chapter 2001 and 2003 of the Government code do not apply to hearings that are held by the appropriate regulatory agencies under this subsection.

SECTION 6. This Act takes effect September 1, 2013.