

V.T.C.A., Human Resources Code § 36.001

§ 36.001. Definitions

Effective: April 2, 2015

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 a 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).

(5-a) “Material” means having a natural tendency to influence or to be capable of influencing.

(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.

(7-a) “Obligation” means a duty, whether or not fixed, that arises from:

(A) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(B) a fee-based or similar relationship;

(C) a statute or regulation; or

(D) the retention of any overpayment.

(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;

(D) a managed care organization; and

(E) a manufacturer or distributor of a product for which the Medicaid program provides reimbursement.

(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.

V.T.C.A., Human Resources Code § 36.0011

§ 36.0011. Culpable Mental State

Effective: September 1, 2005

(a) For purposes of this chapter, a person acts “knowingly” with respect to information if the person:

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

(b) Proof of the person's specific intent to commit an unlawful act under Section 36.002 is not required in a civil or administrative proceeding to show that a person acted “knowingly” with respect to information under this chapter.

V.T.C.A., Human Resources Code § 36.002

§ 36.002. Unlawful Acts

Effective: April 2, 2015

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;

(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 ICF-IID;

(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) conspires to commit a violation of Subdivision (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

(10) is a managed care organization that contracts with the 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;

(12) knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under the Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to this state under the Medicaid program; or

(13) knowingly engages in conduct that constitutes a violation under Section 32.039(b).

V.T.C.A., Human Resources Code § 36.003

§ 36.003. Documentary Material in Possession of State Agency

Effective: April 2, 2015

(a) A state agency, including the commission, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Family and Protective 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 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;
- (5) a state or federal grand jury;
- (6) a political subdivision of this state; or
- (7) a person authorized by the attorney general to receive the information.

V.T.C.A., Human Resources Code § 36.004

§ 36.004. Immunity

Effective: September 1, 2005

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

- (1) an 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;
- (5) a state or federal grand jury;
- (6) a political subdivision of this state; or
- (7) a person authorized by the attorney general to receive the information.

V.T.C.A., Human Resources Code § 36.005

§ 36.005. Suspension or Revocation of Agreement; Professional Discipline

Effective: April 2, 2015

(a) A health and human services agency, as defined by Section 531.001, Government Code:

(1) shall suspend or revoke:

(A) a provider agreement between the agency and a person, other than a person who operates a nursing facility or an ICF-IID, found liable under Section 36.052; and

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

(2) may suspend or revoke:

(A) a provider agreement between the agency and a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the agency to a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052.

(b) A provider found liable under Section 36.052 for an unlawful act may not, for a period of 10 years, provide or arrange to provide health care services under the Medicaid program or supply or sell, directly or indirectly, a product to or under the Medicaid program. The executive commissioner may by rule:

(1) provide for a period of ineligibility longer than 10 years; or

(2) grant a provider a full or partial exemption from the period of ineligibility required by this subsection if the executive commissioner finds that enforcement of the full period of ineligibility is harmful to the Medicaid program or a beneficiary of the program.

(b-1) The period of ineligibility begins on the date on which the judgment finding the provider liable under Section 36.052 is entered by the trial court.

(b-2) Subsections (b) and (b-1) do not apply to a provider who operates a nursing facility or an ICF-IID.

(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.¹

(e) Notwithstanding Subsection (b-1), the period of ineligibility for an individual licensed by a health care regulatory agency or a physician begins on the date on which the determination that the individual or physician is liable becomes final.

(f) For purposes of Subsection (e), a “physician” includes a physician, a professional association composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code, or a partnership composed solely of physicians.

(g) For purposes of Subsection (e), “health care regulatory agency” has the meaning assigned by Section 774.001, Government Code.

V.T.C.A., Human Resources Code § 36.006

§ 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.

V.T.C.A., Human Resources Code § 36.007

§ 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.

V.T.C.A., Human Resources Code § 36.008

§ 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.

V.T.C.A., Human Resources Code § 36.009

§§ 36.009 to 36.012. Renumbered as V.T.C.A., Human Resources Code §§ 36.005 to 36.008
by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997

<Acts 1997, 75th Leg., ch. 1153, § 4.01(a) added the Subchapter A designation>

V.T.C.A., Human Resources Code § 36.012

§§ 36.009 to 36.012. Renumbered as V.T.C.A., Human Resources Code §§ 36.005 to 36.008
by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997

<Acts 1997, 75th Leg., ch. 1153, § 4.01(a) added the Subchapter A designation>

V.T.C.A., Government Code § 531.101

§ 531.101. Award for Reporting Medicaid Fraud, Abuse, or Overcharges

Effective: April 2, 2015

(a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in Medicaid or reports overcharges in Medicaid if the commission determines that the disclosure results in the recovery of an administrative penalty imposed under Section 32.039, Human Resources Code. 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.

(b) The commission shall determine the amount of an award. The award may not exceed five percent of the amount of the administrative penalty imposed under Section 32.039, Human Resources Code, that resulted 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 Medicaid. The commission may also consider whether the individual participated in the fraud, abuse, or overcharge.

(c) A person who brings an action under Subchapter C, Chapter 36, Human Resources Code,¹ is not eligible for an award under this section.

Footnote 1: V.T.C.A., Human Resources Code § 36.101 et seq.