

SUBJECT: Requiring consent for dismissal of certain civil Medicaid fraud actions

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Farrar, Y. Davis, Krause, Meyer, Neave, Smith, White

1 nay — Julie Johnson

WITNESSES: For — (*Registered, but did not testify*: Idona Griffith)

Against — (*Registered, but did not testify*: Karen Collins; Susan Gezana; Ash Hall; Vanessa MacDougal; Robyn Ross; Arthur Simon)

On — Raymond Winter, Office of the Attorney General

BACKGROUND: Human Resources Code ch. 36 establishes the Texas Medicaid Fraud Prevention Act. The act allows private persons to bring civil actions on the state's behalf alleging Medicaid fraud.

Under sec. 36.102, these petitions must be filed in camera, served on the attorney general, and remain under seal until the 180th day after the petition was filed or the date on which the state elects to intervene, whichever is earlier. These actions may be dismissed before the end of the period during which the petition remains under seal only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

DIGEST: HB 2004 would allow a civil Medicaid fraud action brought by a private person under Human Resource Code ch. 36 to be dismissed at any time only if the court and attorney general provided written consent for the dismissal and stated their reasons for consenting.

The bill would take effect September 1, 2019, and would apply only to an action brought on or after that date.

SUPPORTERS HB 2004 would give the attorney general and court more authority in

SAY: deciding whether or not to dismiss a civil case relating to Medicaid fraud. Under the Texas Medicaid Fraud Prevention Act (TMFPA), a private citizen can file suit on the state's behalf to recover funds wrongly obtained through Medicaid fraud. Once a suit is filed, the case remains under seal for six months, during which the attorney general can decide whether to join the prosecution of the suit. If the attorney general declines, the case is unsealed and the private person may continue the suit. Under these circumstances, the state remains a party of interest in the case and recovers funds if the suit is successful.

Once a case is no longer under seal and the attorney general has declined to intervene, current law does not require the attorney general to consent to dismiss a case brought under the TMFPA by a private party. This could lead to the misuse of the TMFPA by private parties who file suits under the act as leverage for private settlements in conjunction with private lawsuits. The claims can later be dismissed with no intention of recovering money for the state. In such cases, the authority of the state may be brought to bear upon defendants to enrich a private party, rather than to recover misappropriated state funds.

HB 2004 would eliminate the incentive for such misuse of the TMFPA by requiring the private plaintiff in a suit to obtain the attorney general and court's consent to dismiss the case even after it was unsealed. Removing private plaintiffs' ability to drop the state's claim without the state's permission would reduce incentives to file frivolous suits against innocent defendants while also ensuring that the state recovered funds in cases where the fraud claim had merit. The bill also would align the TMFPA's requirements with the corresponding section of the federal False Claims Act, which requires the government's consent to dismiss a case.

OPPONENTS
SAY: HB 2004 would remove a private plaintiff's authority to dismiss a case after the state had declined to intervene or when the case was unsealed and would instead place this authority entirely in the hands of the attorney general and court system. Removing a private plaintiff's authority to dismiss a case the private plaintiff had filed would represent an unequal balance of power in court proceedings.

