

## **BILL ANALYSIS**

Senate Research Center  
86R5757 MM-D

S.B. 1899  
By: Fallon  
State Affairs  
4/6/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Federal and Texas law (Section 36.101, Human Resources Code et seq.) permit a private citizen to file suit on the state's behalf (known as a qui tam or "whistleblower" suit) to recover funds that the defendant has wrongly obtained through defrauding the state's Medicaid program.

In order to incentivize the uncovering of fraud, the private plaintiff is entitled to retain a percentage of the amount recovered from the defendant in the suit, with the state and federal governments receiving the rest. This process is designed to recover money for the state by allowing private lawyers to file suit.

Under current law, once the suit is filed, the Texas attorney general (attorney general) is notified and decides whether to take over the prosecution of the suit. If the attorney general does not pursue the suit, the case is unsealed and the private plaintiff is permitted to continue with the suit.

In order to give the attorney general time to determine whether the suit is worthwhile, current law prohibits the private plaintiff from dismissing the suit during the first 180 days after it is filed. After the 180 day period, the plaintiff is free to dismiss the action.

In the last several years, a few law firms have perverted the qui tam process by filing suits in which they have no intention of recovering money for the state, in conjunction with wrongful termination suits. Rather, once the 180 days runs, they offer to drop the state's case for no money if the defendant agrees to settle the client's private cause of action, including the lawyer's fees. As a result, the power of the state is brought to bear on the defendant to enrich a private party who has not been injured.

S.B. 1899 would stop this misuse of the qui tam process by repealing the provision allowing the private plaintiff to drop the state's suit without the attorney general's consent after the initial 180-day period. Denying the lawyer the ability to drop the state's suit in exchange for a payment would eliminate the incentive to file frivolous suits against innocent defendants and, on the other hand, would ensure that the state receives the funds it has been defrauded of in cases where the fraud claim has merit.

As proposed, S.B. 1899 amends current law relating to the dismissal of certain actions relating to Medicaid fraud.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends heading to Section 36.102, Human Resources Code, to read as follows:

Sec. 36.102. INITIATION OF ACTION; CONSENT REQUIRED FOR DISMISSAL.

SECTION 2. Amends Section 36.102(e), Human Resources Code, as follows:

(c) Authorizes an action under this subchapter (Action by Private Persons) to be dismissed only if the court and the Texas attorney general consent in writing to the dismissal and state their reasons for consenting. Deletes text referring to an action under this subchapter being dismissed before the end of the period during which the petition remains under seal.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2019.