

BILL ANALYSIS

Senate Research Center

S.B. 389
By: Zaffirini
Jurisprudence
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As Filed

DIGEST

Currently, there is no law allowing a private person to sue in the name of the government in a case involving Medicaid and Medicare fraud. This bill allows the attorney general to bring suit for the state under the federal qui tam statute, allowing individuals to file suit against wrongdoers on behalf of the government, in cases involving Medicaid and Medicare fraud. It would also allow private persons to file qui tam suits for the violation of the Medicaid Fraud Prevention Act and allow the attorney general to participate in the suit and take certain actions.

PURPOSE

As proposed, S.B. 389 provides for certain legal actions by private persons and government agencies against persons defrauding the Medicaid program.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 36, Human Resources Code, by designating Sections 36.001, 36.002, and 36.007-36.012 as Subchapter A, renumbering Sections 36.007-36.012 as Sections 36.003-36.008, respectively, and adding a subchapter heading, as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Chapter 36, Human Resources Code, by designating Sections 36.003-36.006 as Subchapter B, renumbering those sections as Sections 36.051-36.054, respectively, and adding a subchapter heading, as follows:

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL

SECTION 3. Renumbers Section 36.004, Human Resources Code, as Section 36.052, and amends Subsection (e) to make a conforming change.

SECTION 4. Renumbers Section 36.005, Human Resources Code, as Section 36.053, and amends Subsection (b) to make a conforming change.

SECTION 5. Renumbers Section 36.009, Human Resources Code, as Section 36.005, by amending Subsection (a) and by adding Subsection (c), to provide that a person under this section is considered liable under Section 36.052, if the person is found liable in an action brought under Subchapter C. Makes a conforming change.

SECTION 6. Amends Chapter 36B, Human Resources Code, by adding Section 36.055, as follows:

Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION. Authorizes the attorney general to bring certain actions as relator and to contract with a private attorney to represent the state.

SECTION 7. Amends Chapter 36, Human Resources Code, to add Subchapter C, as follows:

SUBCHAPTER C. ACTION BY PRIVATE PERSONS

Sec. 36.101. ACTION BY PRIVATE PERSON AUTHORIZED. Authorizes a person to bring a civil action for a violation under Section 36.002, Human Resources Code, for the person and the state. Requires the action to be brought in the name of the state. Provides that a person who violates Section 36.002 is liable as provided by Section 36.052, in an action brought under this subchapter.

Sec. 36.102. INITIATION OF ACTION. Sets forth procedures for bringing an action under this subchapter.

Sec. 36.103. ANSWER BY DEFENDANT. Sets forth the deadline for a defendant to answer.

Sec. 36.104. STATE'S DECISION TO CONTINUE ACTION. Sets forth deadlines for when the state will or will not continue with an action.

Sec. 36.105. INTERVENTION BY OTHER PARTIES PROHIBITED. Prohibits anyone other than the state to intervene or bring a related action under this subchapter.

Sec. 36.106. RIGHTS OF PARTIES IF STATE CONTINUES ACTION. Sets forth rights of a party if the state continues an action. Authorizes a state to dismiss an action if certain provisions are met. Authorizes the state to settle an action. Sets forth requirements for settling an action. Provides certain limitations on a person bringing an action if the state's prosecution would be affected in certain ways. Provides for restriction on a person bringing an action if a defendant would be affected in certain ways.

Sec. 36.107. RIGHTS OF PARTIES IF STATE DOES NOT CONTINUE ACTION. Authorizes the person bringing the action to conduct the action if the state elects not to proceed with the action. Requires the parties to serve the attorney general with copies of all pleadings and deposition transcripts, if the state requests the pleadings and deposition transcripts, at the state's expense. Authorizes the court to allow the state to intervene, without limiting the status and rights of the person bringing the action, on a showing of good cause.

Sec. 36.108. STAY OF CERTAIN DISCOVERY. Sets forth requirements of a stay of certain action of discovery.

Sec. 36.109. PURSUIT OF ALTERNATE REMEDY BY STATE. Authorizes the state to pursue the state's claims through any alternate remedy available to the state. Provides that if the alternative remedy is pursued the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter. Provides that a finding of fact or conclusion in another proceeding that has become final is conclusive on all parties to an action under this subchapter. Sets forth conditions under which a finding or conclusion is final.

Sec. 36.110. AWARD TO PRIVATE PLAINTIFF. Entitles a person bringing an action under this subchapter to certain awards based on certain calculations.

Sec. 36.111. REDUCTION OF AWARD. Authorizes the court to reduce an award, dismiss a person from the civil action, or deny a person from receiving a share of the proceeds under Section 36.110 for committing Medicaid fraud.

Sec. 36.112. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION OR ACTION BROUGHT FOR PURPOSES OF HARASSMENT. Authorizes the court to award the defendant reasonable attorney's fees and costs in certain circumstances. Provides that Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which

the state proceeds.

Sec. 36.113. CERTAIN ACTIONS BARRED. Sets forth certain actions prohibited from being brought. Defines "original source."

Sec 36.114. STATE NOT LIABLE FOR CERTAIN EXPENSES. Provides that the state is not liable for expenses for an action brought under this section.

Sec. 36.115. RETALIATION BY EMPLOYER AGAINST A PERSON BRINGING SUIT PROHIBITED. Provides an employee with certain entitlements for certain actions by an employer. Authorizes a person to bring an action in district court for relief provided in this section.

SECTION 8. Amends Chapter 531, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. MEDICAID FRAUD, MISUSE, OR OVERCHARGES

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, MISUSE, OR OVERCHARGES. Authorizes the Health and Human Services Commission to grant awards to persons reporting Medicaid fraud or overcharging, if the disclosure results in the recovery of the overcharges or termination of the fraud. Sets forth the requirements for the amount of the award and the appropriation of the award. Provides that payment under this section from federal funds is subject to permissible use under federal law of funds for this purpose. Provides that a person who brings an action under Chapter 36C, Government Code, is not eligible for an award under this section.

SECTION 9. Requires the office of the attorney general to develop strategies to increase state recoveries. Requires the office to report the results of the office's effort to the legislature no later than September 1, 1998.

SECTION 10. Provides that this Act conforms Chapter 531, Government Code, to Section 1, Chapter 444, Acts of the 74th Legislature, Regular Session, 1995. Provides that this Act prevails over another Act of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 11. Effective date: September 1, 1997.

SECTION 12. Emergency clause.