

SUBJECT: Modifying recovery for certain frivolous Medicaid fraud actions

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

WITNESSES: For — Jason Ray; Jay Shafi; (*Registered, but did not testify*: Jennifer Banda, Texas Hospital Association)

Against — None

On — Raymond Winter, Office of the Attorney General

BACKGROUND: Civil Practice and Remedies Code ch. 105 governs frivolous claims or regulatory actions by a state agency. Sec. 105.002 specifies that a party to a civil suit in a Texas court brought by or against a state agency in which the agency asserts a cause of action against the party, either originally or as a counterclaim or cross claim, is entitled to recover, in addition to all other costs allowed by law or rule, a total amount not to exceed \$1 million for fees, expenses, and reasonable attorney's fees incurred by the party in defending the agency's action if:

- the court finds that the action is frivolous; and
- the action is dismissed or judgment is awarded to the party.

Human Resources Code sec. 36.002 specifies conduct constituting an "unlawful act" for the purposes of Medicaid fraud prevention and related actions. Sec. 36.101 authorizes a private person to bring a civil action for a violation of section 36.002 for the person and for the state. The Medicaid fraud action must be brought in the name of the person and of the state.

Human Resources Code sec. 36.112 specifies that Civil Practice and

Remedies Code ch. 105 applies in a Medicaid fraud action by a private person in which the government proceeds with the action.

Concerns have been raised regarding the misuse of the legal process by which a private plaintiff can sue a defendant for Medicaid fraud, specifically concerning private plaintiff whistleblowers suing with no actual knowledge of a defendant's unlawful acts.

DIGEST:

CSHB 3082 would establish that in a Medicaid fraud action, if the state did not proceed with an action by a private person and the person who brought the action proceeded with the action, the court could award the defendant reasonable attorney's fees and expenses to the same extent the defendant would be entitled to recover those fees and expenses if the state had proceeded with the action, provided that:

- the court found that the action was frivolous; and
- the person who brought the action was not the original source of the information on which the action was based.

The bill would take effect September 1, 2021, and would apply only to an action commenced on or after that date.