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## Texas Medicaid regulators hit with legal setback

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Posted: 2:39 p.m. Tuesday, Nov. 25, 2014



By [Eric Dexheimer](#) - American-Statesman Staff

The Texas agency charged with investigating health care fraud suffered a serious setback Tuesday, when a state appeals court ruled that the Health and Human Services Commission's Office of Inspector General's expansive use of a key tactic – withholding Medicaid payments from doctors it investigates – was illegal.

The 3rd Court of Appeals found the agency had improperly expanded a law allowing regulators to withhold payments from providers against whom there was a "credible allegation of fraud." Since 2011, the inspector general has withheld tens of millions of dollars from 127 providers, much of it from dentists and orthodontists, as it developed cases against them.

Yet the court concluded the agency has been overreaching by using such holds for reasons that had nothing to do with fraud, such as unintentional billing errors or paperwork irregularities. The inspector general has "impose(d) a payment hold whenever it believes a provider has committed any program violation, no matter how minor and irrespective of whether there is any indication of fraud," Chief Justice Woody Jones wrote for the three-judge panel.

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RICARDO B. BRAZZIELL

Inspector General Doug Wilson's office has come under fire recently for its handling of Medicaid fraud cases.

The agency said it was too early to gauge the decision's impact. "We are still reviewing the court decision to determine what steps to take next," said Linda Edwards Gockel, a Health and Human Services Commission spokeswoman.

But the finding was welcome news for providers. While regulators say the payment holds are necessary to stop unscrupulous doctors from continuing to bill taxpayers, they have crippled some medical practices.

"What this means is that if you're going to put somebody on a payment hold, it's got to be for fraud," said Jason Ray, an Austin attorney who represented Harlingen Family Dentistry in the appeal. "It can't just be because they don't have their papers in order."

The decision is the latest in a series of setbacks for the inspector general's office, which, despite an infusion of money from the Legislature in recent years to buttress its anti-fraud work, has enjoyed few substantive legal victories against providers. In one recent case, against Austin dentist Rachel Trueblood, it settled for a \$39,000 payment after accusing her of improper billings of \$16.2 million.

In October, the Sunset Advisory Commission, which evaluates state agencies every decade, released a highly critical report on the inspector general's office. Among other findings, Sunset investigators said the office had failed to distinguish between serious misconduct and minor transgressions – thus inflating its fraud estimates – and had misused its authority to withhold payments from providers as unfair leverage to compel financial settlements.

"We have a loss of confidence in your office," state Sen. Charles Schwertner, R-Georgetown, chairman of the Senate Health and Human Services Committee, told Inspector General Doug Wilson two weeks ago in a legislative hearing to review the Sunset report. State Rep. Richard Peña Raymond, D-Laredo, called the agency "broken."

The agency is also embroiled in a legal dispute with the company it hired to conduct pre-authorization evaluations of orthodontic procedures. In a lawsuit, officials claimed that the Texas Medicaid and

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Healthcare Partnership, a Xerox subsidiary, merely rubber-stamped the requests, resulting in hundreds of millions of public dollars being spent on unnecessary dental work.

Yet as the American-Statesman reported earlier this year, Health and Human Services Commission officials were warned at least twice of the inadequate preapproval process and did nothing to stop it.

In the meantime, the Texas Rangers are investigating a former actuary in the inspector general's office for fabricating numbers in more than a dozen Medicaid fraud cases. The state has conceded that Brad Nelson's work could put hundreds of millions of dollars' worth of fraud investigations at risk.

In addition to harming dentists by withholding money for minor infractions, the appellate court decision noted the inspector general's improper use of its payment hold authority could end up harming the public, as well: "It could result in Medicaid providers withdrawing from the program, declaring bankruptcy, or otherwise being unable to continue providing services for which they are not being paid."



**EXPERT REPORTING**

This story continues the American-Statesman's leading coverage of the troubled Texas regulatory agency charged with rooting out Medicaid fraud. The newspaper was first to report officials' inaction despite knowing a contractor was rubber-stamping preapproval requests for dental procedures and how an actuary in the Office of Inspector General had fabricated data, potentially compromising hundreds of millions of dollars' worth of fraud cases.

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Larrywp

Rep

Well give that judge a cee-garr. This has been going on for years all over the country. Medicaid, especially, going after doctors and fining them and holding their payments because some nurse they hired thought th doctor's notes weren't up to snuff! A NURSE!! All doctors, everywhere, should immediately stop taking Medicaid. I mean now! Let's watch those people dance when that happens. They are a bunch of entitled bureaucratic cockroaches and judges should start going after THEM, instead of allowing doctors to be harassed over stupid paperwork errors. Most doctors are not committing fraud! But you wouldn't know that by the way these Medicaid scum go after them. Stop taking Medicaid Doctors!! Just stop! You can make a living without it! I promise!

12:19 a.m. Nov. 26, 2014



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