

BILL ANALYSIS

S.B. 362
By: Janek
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2005, the United States Congress passed the Deficit Reduction Act (DRA). The DRA provided an incentive for states to comply with the Federal False Claims Act for enforcement of Medicaid fraud cases. For a state to qualify for the incentive, state law must meet certain requirements of the DRA. Texas has had a Medicaid Fraud Prevention Act since 1995. The attorney general and the inspector general at the Health and Human Services Commission submitted the Texas law for federal approval. The Texas law did not meet all of the federal requirements. As proposed, Senate Bill 362 makes changes to the Texas statute to comply with the federal requirements.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Senate Bill 362 amends provisions relating to civil remedies and qui tam provisions under the state's Medicaid Fraud Prevention Act. It increases the minimum civil penalty from \$1,000 to \$5,000 for Medicaid fraud that does not result in injury to an elderly or disabled person or a child. The bill establishes the standard of proof, for each element of the action, including damages, that the state or a person bringing a civil action related to Medicaid fraud must establish.

SB 362 retitles Sec. 36.104 of the Human Resource Code to "State Decision; Continuation of Action" and allows a person bringing the civil action to proceed without the state's participation, rather than requiring the court to dismiss the case, in the event the state declines to take over the action. Upon request, the state is entitled to receive certain copies related to the cause of action, and the court is authorized to permit the state to intervene in the case, at a later date, upon a showing of good cause.

The bill increases the minimum amount from 10 to 15 percent of proceeds of an action to which a person bringing the action is entitled. If the state declines to take over an action, and the person proceeds without the state's participation, the person would be entitled to 25 to 30 percent of the proceeds under certain conditions. The provisions of the bill apply only to conduct that occurs after the effective date of the bill.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.