

By: Janek

S.B. No. 362

A BILL TO BE ENTITLED

1 AN ACT

2 relating to civil remedies and qui tam provisions under the
3 Medicaid fraud prevention act.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (a), Section 36.052, Human Resources
6 Code, is amended to read as follows:

7 (a) Except as provided by Subsection (c), a person who
8 commits an unlawful act is liable to the state for:

9 (1) the amount of any payment or the value of any
10 monetary or in-kind benefit provided under the Medicaid program,
11 directly or indirectly, as a result of the unlawful act, including
12 any payment made to a third party;

13 (2) interest on the amount of the payment or the value
14 of the benefit described by Subdivision (1) at the prejudgment
15 interest rate in effect on the day the payment or benefit was
16 received or paid, for the period from the date the benefit was
17 received or paid to the date that the state recovers the amount of
18 the payment or value of the benefit;

19 (3) a civil penalty of:

20 (A) not less than \$5,000 or more than \$15,000 for
21 each unlawful act committed by the person that results in injury to
22 an elderly person, as defined by Section 48.002(a)(1), a disabled
23 person, as defined by Section 48.002(a)(8)(A), or a person younger
24 than 18 years of age; or

1 (B) not less than \$5,000 [~~\$1,000~~] or more than
2 \$10,000 for each unlawful act committed by the person that does not
3 result in injury to a person described by Paragraph (A); and

4 (4) two times the amount of the payment or the value of
5 the benefit described by Subdivision (1).

6 SECTION 2. Subchapter C, Chapter 36, Human Resources Code,
7 is amended by adding Section 36.1021 to read as follows:

8 Sec. 36.1021. STANDARD OF PROOF. In an action under this
9 subchapter, the state or person bringing the action must establish
10 each element of the action, including damages, by a preponderance
11 of the evidence.

12 SECTION 3. The heading to Section 36.104, Human Resources
13 Code, is amended to read as follows:

14 Sec. 36.104. STATE DECISION; CONTINUATION [~~OR DISMISSAL~~] OF
15 ACTION [~~BASED ON STATE DECISION~~].

16 SECTION 4. Subsection (b), Section 36.104, Human Resources
17 Code, is amended to read as follows:

18 (b) If the state declines to take over the action, the
19 person bringing the action may proceed without the state's
20 participation [~~the court shall dismiss the action~~]. On request by
21 the state, the state is entitled to be served with copies of all
22 pleadings filed in the action and be provided at the state's expense
23 with copies of all deposition transcripts. If the person bringing
24 the action proceeds without the state's participation, the court,
25 without limiting the status and right of that person, may permit the
26 state to intervene at a later date on a showing of good cause.

27 SECTION 5. Section 36.110, Human Resources Code, is amended

1 by amending Subsection (a) and adding Subsection (a-1) to read as
2 follows:

3 (a) If the state proceeds with an action under this
4 subchapter, the person bringing the action is entitled, except as
5 provided by Subsection (b), to receive at least 15 [~~10~~] percent but
6 not more than 25 percent of the proceeds of the action, depending on
7 the extent to which the person substantially contributed to the
8 prosecution of the action.

9 (a-1) If the state does not proceed with an action under
10 this subchapter, the person bringing the action is entitled, except
11 as provided by Subsection (b), to receive at least 25 percent but
12 not more than 30 percent of the proceeds of the action. The
13 entitlement of a person under this subsection is not affected by any
14 subsequent intervention in the action by the state in accordance
15 with Section 36.104(b).

16 SECTION 6. (a) This Act applies only to conduct that occurs
17 on or after the effective date of this Act. Conduct that occurs
18 before the effective date of this Act is governed by the law in
19 effect at the time the conduct occurred, and that law is continued
20 in effect for that purpose.

21 (b) For purposes of this section, conduct constituting an
22 offense under the penal law of this state occurred before the
23 effective date of this Act if any element of the offense occurred
24 before that date.

25 SECTION 7. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2007.