

1-1 By: Janek S.B. No. 362
1-2 (In the Senate - Filed January 30, 2007; February 21, 2007,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 19, 2007, reported favorably by the following
1-5 vote: Yeas 6, Nays 0; March 19, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to civil remedies and qui tam provisions under the
1-9 Medicaid fraud prevention act.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (a), Section 36.052, Human Resources
1-12 Code, is amended to read as follows:

1-13 (a) Except as provided by Subsection (c), a person who
1-14 commits an unlawful act is liable to the state for:

1-15 (1) the amount of any payment or the value of any
1-16 monetary or in-kind benefit provided under the Medicaid program,
1-17 directly or indirectly, as a result of the unlawful act, including
1-18 any payment made to a third party;

1-19 (2) interest on the amount of the payment or the value
1-20 of the benefit described by Subdivision (1) at the prejudgment
1-21 interest rate in effect on the day the payment or benefit was
1-22 received or paid, for the period from the date the benefit was
1-23 received or paid to the date that the state recovers the amount of
1-24 the payment or value of the benefit;

1-25 (3) a civil penalty of:

1-26 (A) not less than \$5,000 or more than \$15,000 for
1-27 each unlawful act committed by the person that results in injury to
1-28 an elderly person, as defined by Section 48.002(a)(1), a disabled
1-29 person, as defined by Section 48.002(a)(8)(A), or a person younger
1-30 than 18 years of age; or

1-31 (B) not less than \$5,000 [~~\$1,000~~] or more than
1-32 \$10,000 for each unlawful act committed by the person that does not
1-33 result in injury to a person described by Paragraph (A); and

1-34 (4) two times the amount of the payment or the value of
1-35 the benefit described by Subdivision (1).

1-36 SECTION 2. Subchapter C, Chapter 36, Human Resources Code,
1-37 is amended by adding Section 36.1021 to read as follows:

1-38 Sec. 36.1021. STANDARD OF PROOF. In an action under this
1-39 subchapter, the state or person bringing the action must establish
1-40 each element of the action, including damages, by a preponderance
1-41 of the evidence.

1-42 SECTION 3. The heading to Section 36.104, Human Resources
1-43 Code, is amended to read as follows:

1-44 Sec. 36.104. STATE DECISION; CONTINUATION [OR DISMISSAL] OF
1-45 ACTION [BASED ON STATE DECISION].

1-46 SECTION 4. Subsection (b), Section 36.104, Human Resources
1-47 Code, is amended to read as follows:

1-48 (b) If the state declines to take over the action, the
1-49 person bringing the action may proceed without the state's
1-50 participation [the court shall dismiss the action]. On request by
1-51 the state, the state is entitled to be served with copies of all
1-52 pleadings filed in the action and be provided at the state's expense
1-53 with copies of all deposition transcripts. If the person bringing
1-54 the action proceeds without the state's participation, the court,
1-55 without limiting the status and right of that person, may permit the
1-56 state to intervene at a later date on a showing of good cause.

1-57 SECTION 5. Section 36.110, Human Resources Code, is amended
1-58 by amending Subsection (a) and adding Subsection (a-1) to read as
1-59 follows:

1-60 (a) If the state proceeds with an action under this
1-61 subchapter, the person bringing the action is entitled, except as
1-62 provided by Subsection (b), to receive at least 15 [~~10~~] percent but
1-63 not more than 25 percent of the proceeds of the action, depending on
1-64 the extent to which the person substantially contributed to the

2-1 prosecution of the action.

2-2 (a-1) If the state does not proceed with an action under
2-3 this subchapter, the person bringing the action is entitled, except
2-4 as provided by Subsection (b), to receive at least 25 percent but
2-5 not more than 30 percent of the proceeds of the action. The
2-6 entitlement of a person under this subsection is not affected by any
2-7 subsequent intervention in the action by the state in accordance
2-8 with Section 36.104(b).

2-9 SECTION 6. (a) This Act applies only to conduct that occurs
2-10 on or after the effective date of this Act. Conduct that occurs
2-11 before the effective date of this Act is governed by the law in
2-12 effect at the time the conduct occurred, and that law is continued
2-13 in effect for that purpose.

2-14 (b) For purposes of this section, conduct constituting an
2-15 offense under the penal law of this state occurred before the
2-16 effective date of this Act if any element of the offense occurred
2-17 before that date.

2-18 SECTION 7. This Act takes effect immediately if it receives
2-19 a vote of two-thirds of all the members elected to each house, as
2-20 provided by Section 39, Article III, Texas Constitution. If this
2-21 Act does not receive the vote necessary for immediate effect, this
2-22 Act takes effect September 1, 2007.

2-23 * * * * *