

SUBJECT: Revised civil remedies and qui tam provisions regarding Medicaid fraud

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Laubenberg, Jackson, Cohen, Coleman, Gonzales, S. King,
Olivo, Truitt

0 nays

1 absent — Delisi

WITNESSES: For — John E. Clark

Against — (*Registered, but did not testify*: Miryam Bujanda, Methodist
Healthcare Ministries)

On —Patrick O’Connell, Office of the Attorney General

BACKGROUND: In 1995, the 74th Legislature enacted the Medicaid Fraud Prevention Act, which prohibits fraud, kickbacks, and false claims under the Medicaid program and provides civil penalties for these violations. Human Resources Code, ch. 36, subch. C also allows individuals with knowledge of Medicaid fraud to bring “qui tam” suits on behalf of the state or the federal government. The state decides whether to pursue the action, but the private plaintiff bringing the action may recover between 10 and 25 percent of the proceeds of the action. In addition, the attorney general of Texas may join a federal qui tam action on behalf of the state.

In 2005, Congress enacted the Deficit Reduction Act (DRA), which provides incentives for states to comply with the Federal False Claims Act. For a state to qualify for the incentives, it must have a law in effect that relates to the enforcement of false or fraudulent claims against the Medicaid program. For a state law to comply with DRA, it must, among other criteria:

- match minimum provisions in federal law for facilitating qui tam actions;
- establish liability to the state for false or fraudulent claims; and

- contain a civil penalty that is not less than the amount of the civil penalty authorized under federal law establishing liability for false claims.

DIGEST: HB 2732 would amend civil remedies and qui tam provisions under the state's Medicaid Fraud Prevention Act.

The bill would amend Human Resources Code, sec 36.052 to increase the minimum civil penalty from \$1,000 to \$5,000 for a violation under the act that did not result in injury to a person. It would add sec. 36.1021 to stipulate that actions brought under the subchapter governing qui tam suits would have to prove all elements, including damages, by a preponderance of the evidence.

Sec. 36.104 would be retitled "State Decision; Continuation of Action" and would allow a person to bring a qui tam action without the state's participation. The state later could intervene in the action upon a showing of good cause and, in the meantime, could request copies of all pleadings, filings, and depositions at state expense. The person bringing the action would be entitled to receive between 15 percent and 25 of the proceeds if the state proceeded with the action. The person bringing the action could receive between 25 percent and 30 percent of the proceeds of the action if the state did not proceed.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply only to conduct that occurred on or after that date.

**SUPPORTERS
SAY:**

HB 2732 would update the state's Medicaid Fraud Prevention Act to meet federal DRA requirements. As a result, enactment of the bill could be sufficient to convince the federal Office of Inspector General to allow the state to retain a greater proportion of penalty revenues recovered from Medicaid fraud actions. These increased penalty revenues in turn could decrease state Medicaid costs and lead to the provision of better health care under the program. For every \$1 that the government spends on False Claims Act actions, it nets approximately \$15, which demonstrates that encouraging qui tam actions would be an effective means of fighting fraud. Finally, this bill would signal that Texas seriously discourages fraud and waste in the Medicaid program and is willing to take the steps to combat the problem.

Concerns that the bill would create a mercenary incentive for an individual to bring a qui tam suit after a similar action had been filed by the state are unfounded. Human Resources Code already prevents a person other than the state from intervening or bringing “a related action based on the facts underlying a pending action,” and federal law contains a similar provision.

**OPPONENTS
SAY:**

HB 2732 may foster inequitable and unfair situations. It could subject a company to dual penalties at the state and federal level for the same action.

NOTES:

The companion bill, SB 362 by Janek, passed the Senate by 30-0 on April 3 and has been referred to the House Public Health Committee.