

## **BILL ANALYSIS**

Senate Research Center

S.B. 362  
By: Janek  
Health & Human Services  
7/2/2007  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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.

S.B. 362 makes changes to the Texas statute to authorize the state to qualify for the additional 10 percent recovery of Medicaid funds. S.B. 362 establishes a minimum civil penalty of \$5,000, requires the state or person bringing the action to establish each element of the action, authorizes a person to proceed without the state's participation, and entitles a person bringing an action to receive at least 15 percent of an action if the state proceeds with the action and 25 percent of the proceeds if the state does not proceed with the action.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.052(a), Human Resources Code, to set the minimum civil penalty for a person who commits an unlawful act that does not result in injury to an elderly person, a disabled person, or a person younger than 18 years of age at \$5,000, rather than \$1,000.

SECTION 2. Amends Subchapter C, Chapter 36, Human Resources Code, by adding Section 36.1021, as follows:

Sec. 36.1021. STANDARD OF PROOF. Requires the state or a person bringing forward a civil action (action), to establish each element of the action, including damages, by a preponderance of the evidence.

SECTION 3. Amends the heading to Section 36.104, Human Resources Code, to read as follows:

Sec. 36.104. STATE DECISION; CONTINUATION OF ACTION.

SECTION 4. Amends Section 36.104 (b), Human Resources Code, as follows:

(b) Deletes the requirement that the court dismiss the action if the state declines to take over the action, and authorizes the person bringing the action to proceed without the state's participation. Entitles the state, on request, to be served with copies of all pleadings filed in the action and to be provided at the state's expense with copies of all deposition transcripts. Authorizes the court to permit the state to intervene at a later date on a showing of good cause, without limiting the status and right of that person, if the person bringing the action proceeds without the state's participation.

SECTION 5. Amends Section 36.110, Human Resources Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that a person bringing the action is entitled to receive at least 15 percent, rather than 10 percent, of the proceeds of the action in cases where the state proceeds with an action.

(a-1) Entitles a person bringing the action to receive at least 25 percent but not more than 30 percent of the proceeds of the action in cases where the state does not proceed with an action. Provides that the entitlement is not affected by any subsequent intervention in the action by the state in accordance with Section 36.104(b).

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2007.