

Texas False Claims Act

A BILL TO BE ENTITLED AN ACT

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

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

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

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

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

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

(3) a civil penalty of:

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

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

(4) two times the amount of the payment or the value of

the benefit described by Subdivision (1).

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

Sec.A36.1021. STANDARD OF PROOF. In an action under this subchapter, the state or person bringing the action must establish each element of the action, including damages, by a preponderance of the evidence.

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

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

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

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

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

(a) If the state proceeds with an action under this

subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 15 [10] percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.

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

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

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

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