

ENROLLED HOUSE
BILL NO. 1838

By: Glover, Hastings and
Adair of the House

and

Cain of the Senate

An Act relating to poor persons and public health and safety; amending 56 O.S. 1991, Sections 1002, 1003, 1004, 1005 and 1007, which relate to the Oklahoma Medicaid Program Integrity Act; adding and modifying definitions; updating and clarifying language; providing for an increase in the time period for which the Oklahoma Health Care Authority may suspend a provider agreement; creating the Oklahoma Health Care Authority Medicaid Program Fund; providing for expenditures; providing for deposits; authorizing transfers; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 56 O.S. 1991, Section 1002, is amended to read as follows:

Section 1002. As used in the Oklahoma Medicaid Program Integrity Act:

1. "Authority" means the Oklahoma Health Care Authority;
2. "Attorney General" means the Attorney General of this state, his employees or his authorized representatives;
- ~~2.~~ 3. "Claim" means a communication, including written, electronic, or magnetic, which is utilized to identify a good, item, or service as reimbursable pursuant to the Oklahoma Medicaid Program, or which states income or expense and is or may be used to determine a rate of payment pursuant to the Oklahoma Medicaid Program; and any application for payment by any person from the Oklahoma Medicaid Program or its fiscal agents for each good or service purported by any person to have been provided by any person to any Medicaid recipient;
- ~~3.~~ "Department" means the Department of Human Services;
4. "Fiscal agents" means any individual, firm, corporation, professional association, partnership, organization, or other legal entity which, through a contractual relationship with the ~~Department of Human Services~~ Oklahoma Health Care Authority and, thereby, the State of Oklahoma, receives, processes, and pays claims under the Oklahoma Medicaid Program;
5. "Kickback" means a return in any form by any individual, company, corporation, partnership, or association of a part of an expenditure made by a provider:
 - a. to the same provider,
 - b. to an entity controlled by the provider or,

c. to an entity which the provider intends to benefit whenever such expenditure is reimbursed, or reimbursable, or claimed by a provider as being reimbursable by the Oklahoma Medicaid Program and when the sum or value returned is not credited to the benefit of the Oklahoma Medicaid Program;

6. "Medicaid recipient" means any individual in whose behalf any person claimed or received any payment or payments from the Oklahoma Medicaid Program or its fiscal agents, whether or not any such individual was eligible for benefits under the Oklahoma Medicaid Program;

7. "Oklahoma Medicaid Program" means the state program administered by the ~~Department of Human Services~~ Oklahoma Health Care Authority pursuant to Title XIX of the federal Social Security Act, which provides for payments for medical goods or services on behalf of indigent families with dependent children and of aged, blind, or disabled individuals whose income and resources are insufficient to meet the cost of necessary medical services;

8. "Person" means any Medicaid provider of goods or services or any employee of such provider, whether that provider is an individual, individual medical vendor, firm, corporation, professional association, partnership, organization, or other legal entity under the Oklahoma Medicaid Program, or any individual, individual medical vendor, firm, corporation, professional association, partnership, organization, other legal entity, or any employee of such who is not a provider under the Oklahoma Medicaid Program but who provides goods or services to a provider under the Oklahoma Medicaid Program for which the provider submits claims to the Oklahoma Medicaid Program or its fiscal agents;

9. "Provider" means any person who has applied to participate or who participates in the Oklahoma Medicaid Program as a supplier of a good or a service;

10. "Records" means all medical, professional, or business records or documents relating to the treatment or care of any recipient, or to a good or a service provided to any such recipient, or to rates or amounts paid or claimed for such a good or a service including but not limited to records of non-Medicaid goods or services to verify rates or amounts; and any records required to be kept by the ~~Department~~ Oklahoma Health Care Authority to be kept by any person; and

11. "Sign" means to affix a signature directly or indirectly by means of handwriting, typewriter, signature stamp, computer impulse, or other means recognized by Oklahoma Law.

SECTION 2. AMENDATORY 56 O.S. 1991, Section 1003, is amended to read as follows:

Section 1003. A. There is hereby created within the Office of the Attorney General, a Medicaid fraud control unit.

B. The Medicaid fraud control unit shall be the state entity to which all cases of suspected Medicaid fraud shall be referred by the ~~Department~~ Oklahoma Health Care Authority or its fiscal agents for the purposes of investigation, civil action, criminal action or referral to the district attorney. Provided however, nothing contained in the Oklahoma Medicaid Program Integrity Act shall prohibit the ~~Department~~ Oklahoma Health Care Authority from investigating or additionally referring to other proper law enforcement agencies cases of suspected Medicaid fraud.

C. 1. In carrying out these responsibilities, the Attorney General shall have all the powers necessary to comply with federal laws and regulations relative to the operation of a Medicaid fraud unit, the power to cross-designate assistant United States attorneys

as assistant attorneys general, the power to investigate cases of patient abuse, the power to issue or cause to be issued subpoenas or other process in aid of investigations and prosecutions, the power to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by the Oklahoma Medicaid Program Integrity Act and shall have all the powers of a district attorney.

2. Subpoenas ad testificandum or duces tecum issued pursuant to the Oklahoma Medicaid Program Integrity Act may be served by the Attorney General, any peace officer, or any competent person over eighteen (18) years of age, and may require attendance or production at any place in this state. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify, or produce records at the place and time specified shall constitute contempt and shall be enforced by the district court of the county where issued or the county where served, at the election of the Attorney General, as if it was a contempt on that court.

D. The Attorney General shall have authority to collect all penalties, amounts of restitution, or interest accruing on any amount of restitution to be made and any penalties to be paid from and after default in the payment thereof levied pursuant to the provisions of the Oklahoma Medicaid Program Integrity Act. However, this subsection is not in any way intended to affect the contempt power of any court.

SECTION 3. AMENDATORY 56 O.S. 1991, Section 1004, is amended to read as follows:

Section 1004. A. No potential Medicaid recipient shall be eligible for medical assistance unless such recipient has, in writing, authorized the ~~Department~~ Oklahoma Health Care Authority and the Attorney General to examine all records maintained as required by the Oklahoma Medicaid Program by the recipient, or of those receiving or having received Medicaid benefits through the recipient, whether the receipt of such benefits would be allowed by the Oklahoma Medicaid Program or not.

B. 1. Each application to participate as a provider in the Oklahoma Medicaid Program, each report stating income or expense upon which rates of payment are or may be based, and each invoice for payment for a good or a service provided to recipient, shall contain a statement that all matters stated therein are true and accurate, signed by the provider or his agent. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. For purposes of this subsection, an individual who signs on behalf of a provider shall be presumed to have the authorization of the provider and to be acting at his direction.

2. All providers subject to the Oklahoma Medicaid Program are required to maintain at their or its principal place of Medicaid business all such records at least for a period of six (6) years from the date of claimed provision of any goods or services to any Medicaid recipient.

C. The Attorney General shall be allowed access to all records of persons and Medicaid recipients under the Oklahoma Medicaid Program which are held by a provider, for the purpose of investigating whether any person may have committed the crime of Medicaid fraud, or for use or potential use in any legal, administrative, or judicial proceeding. In carrying out the purposes of the Oklahoma Medicaid Program Integrity Act, the Attorney General may take possession of records held by a provider by subpoena, in which case copies of those records obtained by the

Attorney General which are necessary for the provider to continue doing business shall be supplied to the provider, or the Attorney General may elect to require that the provider supply the Medicaid fraud control unit within the office of the Attorney General with copies of the records.

D. Records obtained or created by the ~~Department of Human Services~~ Authority or the Attorney General pursuant to the Oklahoma Medicaid Program Integrity Act shall be classified as confidential information and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual except, if authorized by the Attorney General, in relation to legal, administrative, or judicial proceeding.

E. No person holding such records may refuse to provide the ~~Department~~ Authority or the Attorney General with access to such records on the basis that release would violate any recipient's right of privacy, any recipient's privilege against disclosure or use, or any professional or other privilege or right. The disclosure of patient information as required by ~~this act~~ the Oklahoma Medicaid Program Integrity Act shall not subject any physician or other health services provider to liability for breach of any confidential relationship between a patient and a provider.

SECTION 4. AMENDATORY 56 O.S. 1991, Section 1005, is amended to read as follows:

Section 1005. A. It shall be unlawful for any person to willfully and knowingly:

1. Make or cause to be made a claim, knowing the claim to be false, in whole or in part, by commission or omission; or

2. Make or cause to be made a statement or representation for use in obtaining or seeking to obtain authorization to provide a good or a service knowing the statement or representation to be false, in whole or in part, by commission or omission; or

3. Make or cause to be made a statement or representation for use by another in obtaining a good or a service under the Oklahoma Medicaid Program, knowing the statement or representation to be false, in whole or in part, by commission or omission; or

4. Make or cause to be made a statement or representation for use in qualifying as a provider of a good or a service under the Oklahoma Medicaid Program, knowing the statement or representation to be false, in whole or in part, by commission or omission; or

5. Charge any recipient or person acting on behalf of a recipient, money or other consideration in addition to or in excess of rates of remuneration established under the Oklahoma Medicaid Program; or

6. Solicit or accept a benefit, pecuniary benefit, or kickback in connection with goods or services paid or claimed by a provider to be payable by the Oklahoma Medicaid Program; or

7. Having submitted a claim for or received payment for a good or a service under the Oklahoma Medicaid Program, fail to maintain or destroy such records as required by law or the rules and regulations of the ~~Department~~ Oklahoma Health Care Authority for a period of at least six (6) years following the date on which payment was received.

B. For the purposes of this section, a person shall be deemed to have made or caused to be made a claim, statement, or representation if the person:

1. Had the authority or responsibility to make the claim, statement, or representation, to supervise those who made the claim, statement, or representation, or to authorize the making of the claim, statement, or representation, whether by operation of law, business or professional practice, or office procedure; and

2. Exercised such authority or responsibility or failed to exercise such authority or responsibility and as a direct or indirect result, the false statement was made.

C. For the purposes of this section, a person shall be deemed to have known that a claim, statement, or representation was false if the person knew, or by virtue of his position, authority or responsibility, had reason to know, of the falsity of the claim, statement or representation.

SECTION 5. AMENDATORY 56 O.S. 1991, Section 1007, is amended to read as follows:

Section 1007. A. Any person who receives payment for furnishing ~~a good~~ goods or ~~a service~~ services under the Oklahoma Medicaid Program, which the person is not entitled to receive by reason of offenses under paragraphs 1 through 6 of subsection A of Section 1005 of this title, shall, in addition to any other penalties provided by law, be liable for:

1. Full restitution to the ~~Department~~ Oklahoma Health Care Authority of all funds or payments received in violation of the Oklahoma Medicaid Program Integrity Act which shall be returned to the ~~Department~~ Authority for deposit to the ~~Human Services Medical and Assistance~~ Oklahoma Health Care Authority Medicaid Program Fund, created in Section 6 of this act;

2. Payment of interest on the amount of the excess payment at the maximum legal rate in effect on the date the payment was made to ~~said~~ the person for the period from the date upon which payment was made to the date upon which the repayment is made to the ~~Department~~ Authority. All such payments shall be deposited in the ~~Human Services Medical and Assistance~~ Oklahoma Health Care Authority Medicaid Program Fund, created in Section 6 of this act; and

3. The cost of investigation, litigation, and attorney fees, which shall be deposited to the General Revenue Fund; ~~and.~~

~~4.~~ B. 1. In addition to the penalties imposed by paragraphs 1, 2 and 3 of subsection A of this section, any person who receives payment for furnishing goods or services under the Oklahoma Medicaid Program, which the person is not entitled to receive by reason of violation of paragraphs 1 through 6 of subsection A of Section 1005 of this title, shall be liable for one of the following penalties:

- a. a civil penalty of two (2) times the amount of restitution and interest thereon from date of judgment, which shall be deposited to the General Revenue Fund, or
- b. a civil penalty in the sum of Two Thousand Dollars (\$2,000.00) and interest thereon from date of judgment for each false or fraudulent claim, statement, or representation submitted for providing ~~a good~~ goods or ~~service~~ services, which shall be deposited to the General Revenue Fund.

~~B. 2.~~ A criminal action need not be brought against the person before civil liability attaches under this section.

C. In addition to the sanctions provided by the Oklahoma Medicaid Program Integrity Act, the ~~Department of Human Services~~ Authority may, upon the conviction of or the entry of an administrative, civil or criminal judgment against any person wherein Medicaid fraud on the person's part is involved, suspend the provider agreement between the ~~Department of Human Services~~ Authority and the person and stop reimbursement to the person for goods or services claimed for a period of up to ~~three (3)~~ five (5) years from the date of final adjudication of the matter.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5018 of Title 63, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a fund for the Oklahoma Health Care Authority to be designated the "Oklahoma Health Care Authority Medicaid Program Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Health Care Authority at the discretion of the Oklahoma Health Care Authority Board. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

The Administrator of the Oklahoma Health Care Authority may request the Director of State Finance to transfer monies between the Oklahoma Health Care Authority Medicaid Program Fund and any other fund of the Authority, as needed for the expenditure of funds.

SECTION 7. This act shall become effective July 1, 1995.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 25th day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 25th day of May, 1995.

President of the Senate