

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 889

By: Crain of the Senate

3 and

4 Cox of the House
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6
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8 An Act relating to public health and safety; creating the
9 Oklahoma Medicaid False Claims Act; providing short title;
10 stating liability for certain actions; * * * authorizing
11 the Oklahoma Health Care Authority to make certain
12 investigations; providing for codification; and providing
13 an effective date.

13 AUTHORS: Add the following House Coauthors: Sears, Martin (Steve),
14 McDaniel (Randy) and Tibbs

15 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
16 and insert

17 "An Act relating to public health and safety;
18 creating the Oklahoma Medicaid False Claims Act;
19 providing short title; defining terms; stating
20 liability for certain actions; providing certain
21 exemption; stating certain nonexemption; directing
22 certain responsibilities of the Attorney General;
23 permitting certain actions by specified persons;
24 directing responsibility for certain prosecution;
setting certain options for the state; granting
certain rights; permitting certain action by court
in certain circumstance; permitting certain
alternative remedies; setting certain payment of
claim in specified circumstances; prohibiting
certain actions; prohibiting certain jurisdiction;
exempting state from responsibility for certain

1 expenses; permitting certain relief; directing
2 certain subpoenas; limiting proceeds in certain
3 actions; prohibiting certain civil action in
4 specified circumstances; permitting location of
5 certain action; providing for codification; and
6 providing an effective date.

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

8 SECTION 1. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 5053 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 This act shall be known and may be cited as the "Oklahoma
12 Medicaid False Claims Act".

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 5053.1 of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 A. For purposes of this section:

17 1. "Knowing" and "knowingly" mean that a person, with respect
18 to information:

19 a. has actual knowledge of the information,

20 b. acts in deliberate ignorance of the truth or falsity
21 of the information, or

22 c. acts in reckless disregard of the truth or falsity of
23 the information.

24 No proof of specific intent to defraud is required; and

1 2. "Claim" includes any request or demand, whether under a
2 contract or otherwise, for money or property which is made to a
3 contractor, grantee, or other recipient if this state provides any
4 portion of the money or property which is requested or demanded, or
5 if the state will reimburse the contractor, grantee, or other
6 recipient for any portion of the money or property which is
7 requested or demanded.

8 B. Any person who:

9 1. Knowingly presents, or causes to be presented, to an officer
10 or employee of the State of Oklahoma, a false or fraudulent claim
11 for payment or approval;

12 2. Knowingly makes, uses, or causes to be made or used, a false
13 record or statement to get a false or fraudulent claim paid or
14 approved by the state;

15 3. Conspires to defraud the state by getting a false or
16 fraudulent claim allowed or paid;

17 4. Has possession, custody, or control of property or money
18 used, or to be used, by the state and, intending to defraud the
19 state or willfully to conceal the property, delivers, or causes to
20 be delivered, less property than the amount for which the person
21 receives a certificate or receipt;

22 5. Is authorized to make or deliver a document certifying
23 receipt of property used, or to be used, by the state and, intending
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1 to defraud the state, makes or delivers the receipt without
2 completely knowing that the information on the receipt is true;

3 6. Knowingly buys, or receives as a pledge of an obligation or
4 debt, public property from an officer or employee of the state, who
5 lawfully may not sell or pledge the property; or

6 7. Knowingly makes, uses, or causes to be made or used, a false
7 record or statement to conceal, avoid, or decrease an obligation to
8 pay or transmit money or property to the state,
9 is liable to the State of Oklahoma for a civil penalty of not less
10 than Five Thousand Dollars (\$5,000.00) and not more than Ten
11 Thousand Dollars (\$10,000.00), unless a penalty is imposed for the
12 act of that person in violation of this subsection under the federal
13 False Claims Act for the same or a prior action, plus three times
14 the amount of damages which the state sustains because of the act of
15 that person.

16 C. If the court finds that:

17 1. The person committing the violation in subsection B of this
18 section furnished officials of this state responsible for
19 investigating false claims violations with all information known to
20 such person about the violation within thirty (30) days after the
21 date on which the defendant first obtained the information;

22 2. The person fully cooperated with any state investigation of
23 the violation; and

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1 3. At the time the person furnished the state with the
2 information about the violation, no criminal prosecution, civil
3 action, or administrative action had commenced under Title 63 of the
4 Oklahoma Statutes with respect to the violation, and the person did
5 not have actual knowledge of the existence of an investigation into
6 the violation,
7 the court may assess not less than two times the amount of damages
8 which the state sustains because of the act of the person. A person
9 violating subsection B of this section shall also be liable to this
10 state for the costs of a civil action brought to recover any such
11 penalty or damages.

12 D. Any information furnished pursuant to subsections A through
13 C of this section shall be exempt from disclosure under the Oklahoma
14 Open Records Act.

15 E. This section does not apply to claims, records or statements
16 under the Oklahoma Tax Code.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 5053.2 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The Attorney General shall diligently investigate a
21 violation under the Oklahoma Medicaid False Claims Act. If the
22 Attorney General finds that a person has violated or is violating
23 the Oklahoma Medicaid False Claims Act, the Attorney General may
24 bring a civil action under this section against the person.

1 B. 1. A person may bring a civil action for a violation of the
2 Oklahoma Medicaid False Claims Act for the person and for this
3 state. The action shall be brought in the name of the state. The
4 action may be dismissed only if the court and the Attorney General
5 give written consent to the dismissal and state the reasons for
6 consenting.

7 2. A copy of the complaint and written disclosure of
8 substantially all material evidence and information the person
9 possesses shall be served on the state pursuant to Section 2004 of
10 Title 12 of the Oklahoma Statutes. The complaint shall be filed in
11 camera, shall remain under seal for at least sixty (60) days, and
12 shall not be served on the defendant until the court so orders. The
13 state may elect to intervene and proceed with the action within
14 sixty (60) days after it receives both the complaint and the
15 material evidence and information.

16 3. The state may, for good cause shown, move the court for
17 extensions of the time during which the complaint remains under seal
18 under paragraph 2 of this subsection. Any such motions may be
19 supported by affidavits or other submissions in camera. The
20 defendant shall not be required to respond to any complaint filed
21 under this section until twenty (20) days after the complaint is
22 unsealed and served upon the defendant pursuant to Section 2004 of
23 Title 12 of the Oklahoma Statutes.

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1 4. Before the expiration of the sixty-day period or any
2 extensions obtained under paragraph 3 of this subsection, the state
3 shall:

- 4 a. proceed with the action, in which case the action
5 shall be conducted by the state, or
- 6 b. notify the court that it declines to take over the
7 action, in which case the person bringing the action
8 shall have the right to conduct the action.

9 5. When a person brings an action under this section, under the
10 federal False Claims Act, or under any similar provision of the law
11 of any other state, no person other than the state may intervene or
12 bring a related action based on the facts underlying the pending
13 action.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5053.3 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. If the state proceeds with the action pursuant to Section 3
18 of the Oklahoma Medicaid False Claims Act, it shall have the primary
19 responsibility for prosecuting the action, and shall not be bound by
20 an act of the person bringing the action. Such person shall have
21 the right to continue as a party to the action, subject to the
22 limitations set forth in paragraph 1 of subsection B of Section 3 of
23 this act.

1 1. The state may dismiss the action notwithstanding the
2 objections of the person initiating the action if the person has
3 been notified by the state of the filing of the motion and the court
4 has provided the person with an opportunity for a hearing on the
5 motion.

6 2. The state may settle the action with the defendant
7 notwithstanding the objections of the person initiating the action
8 if the court determines, after a hearing, that the proposed
9 settlement is fair, adequate, and reasonable under all the
10 circumstances. Upon a showing of good cause, the hearing may be
11 held in camera.

12 3. Upon a showing by the state that unrestricted participation
13 during the course of the litigation by the person initiating the
14 action would interfere with or unduly delay the state's prosecution
15 of the case, or would be repetitious, irrelevant, or for purposes of
16 harassment, the court may, in its discretion, impose limitations on
17 the participation of the person, such as:

- 18 a. limiting the number of witnesses the person may call,
- 19 b. limiting the length of the testimony of the witnesses,
- 20 c. limiting the person's cross-examination of witnesses,
- 21 or
- 22 d. otherwise limiting the participation by the person in
- 23 the litigation.

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1 4. Upon a showing by the defendant that unrestricted
2 participation during the course of the litigation by the person
3 initiating the action would be for purposes of harassment or would
4 cause the defendant undue burden or unnecessary expense, the court
5 may limit the participation by the person in the litigation.

6 B. If the state elects not to proceed with the action, the
7 person who initiated the action shall have the right to conduct the
8 action. If the state so requests, it shall be served with copies of
9 all pleadings filed in the action and shall be supplied with copies
10 of all deposition transcripts at the expense of the state. When a
11 person proceeds with the action, the court, without limiting the
12 status and rights of the person initiating the action, may
13 nevertheless permit the state to intervene at a later date upon a
14 showing of good cause.

15 C. Whether or not the state proceeds with the action, upon a
16 showing by the state that certain actions of discovery by the person
17 initiating the action would interfere with the state's investigation
18 or prosecution of a criminal or civil matter arising out of the same
19 facts, the court may stay the discovery for a period of not more
20 than sixty (60) days. Such a showing shall be conducted in camera.
21 The court may extend the sixty-day period upon a further showing in
22 camera that the state has pursued the criminal or civil
23 investigation or proceedings with reasonable diligence and any
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1 proposed discovery in the civil action will interfere with the
2 ongoing criminal or civil investigation or proceedings.

3 D. Notwithstanding subsection B of Section 3 of this act, the
4 state may elect to pursue its claim through any alternate remedy
5 available to the state, including any administrative proceeding to
6 determine a civil money penalty. If any alternate remedy is pursued
7 in another proceeding, the person initiating the action shall have
8 the same rights in the proceeding as the person would have had if
9 the action had continued under this section. Any finding of fact or
10 conclusion of law made in the other proceeding that has become final
11 shall be conclusive on all parties to an action under this section.
12 For purposes of this subsection, a finding or conclusion is final if
13 it has been finally determined on appeal to the appropriate court of
14 the State of Oklahoma, if all time for filing the appeal with
15 respect to the finding or conclusion has expired, or if the finding
16 or conclusion is not subject to judicial review.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 5053.4 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. 1. If the state proceeds with an action brought by a person
21 under subsection B of Section 3 of this act, the person shall,
22 subject to paragraph 2 of this subsection, receive at least fifteen
23 percent (15%) but not more than twenty-five percent (25%) of the
24 proceeds of the action or settlement of the claim, depending upon

1 the extent to which the person substantially contributed to the
2 prosecution of the action.

3 2. Where the action is one which the court finds to be based
4 primarily on disclosures of specific information other than
5 information provided by the person bringing the action relating to
6 allegations or transactions in a criminal, civil, or administrative
7 hearing, in a Congressional, legislative, administrative, or State
8 Auditor and Inspector report, hearing, audit, or investigation, or
9 from the news media, the court may award such sums as it considers
10 appropriate, but in no case more than ten percent (10%) of the
11 proceeds, taking into account the significance of the information
12 and the role of the person bringing the action in advancing the case
13 to litigation.

14 3. Any payment to a person under paragraph 1 or 2 of this
15 subsection shall be made from the proceeds. Any such person shall
16 also receive an amount for reasonable expenses which the court finds
17 to have been necessarily incurred, plus reasonable attorney fees and
18 costs. All such expenses, fees, and costs shall be awarded against
19 the defendant.

20 B. If the state does not proceed with an action under this
21 section, the person bringing the action or settling the claim shall
22 receive an amount which the court decides is reasonable for
23 collecting the civil penalty and damages. The amount shall be not
24 less than twenty-five percent (25%) and not more than thirty percent

1 (30%) of the proceeds of the action or settlement and shall be paid
2 out of the proceeds. The person shall also receive an amount for
3 reasonable expenses which the court finds to have been necessarily
4 incurred, plus reasonable attorney fees and costs. All such
5 expenses, fees, and costs shall be awarded against the defendant.

6 C. Whether or not the state proceeds with the action, if the
7 court finds that the action was brought by a person who planned,
8 initiated, or participated in the violation of the Oklahoma Medicaid
9 False Claims Act upon which the action was brought, then the court
10 may, to the extent the court considers appropriate, reduce the share
11 of the proceeds of the action which the person would otherwise
12 receive under subsection A or B of this section to no more than ten
13 percent (10%), taking into account the role of that person in
14 advancing the case to litigation and any relevant circumstances
15 pertaining to the violation. If the person bringing the action is
16 convicted of criminal conduct arising from his or her role in the
17 violation of the Oklahoma Medicaid False Claims Act, that person
18 shall be dismissed from the civil action and shall not receive any
19 share of the proceeds of the action. The dismissal shall not
20 prejudice the right of this state to continue the action,
21 represented by the Office of the Attorney General or its assigns.

22 D. The court shall reduce the share of the proceeds of the
23 action which the person would otherwise receive to no more than ten
24 percent (10%) of the proceeds of the action if:

1 1. An action brought under subsection B of Section 3 of this
2 act is based upon allegations or transactions of which the person
3 bringing the action became aware while employed by, or under
4 contract to, or serving as an agent for a defendant; and

5 2. The person bringing the action failed to make an effective
6 disclosure of those allegations or transactions under the corporate
7 compliance plan of that defendant.

8 E. If the state does not proceed with the action and the person
9 bringing the action conducts the action, the court may award to the
10 defendant its reasonable attorney fees and expenses if the defendant
11 prevails in the action and the court finds that the claim of the
12 person bringing the action was clearly frivolous, clearly vexatious,
13 or brought primarily for purposes of harassment.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5053.5 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. In no event may a person bring an action under subsection B
18 of Section 3 of this act which is based upon allegations or
19 transactions which are the subject of a civil suit or an
20 administrative civil money penalty proceeding in which the state is
21 already a party.

22 B. No court shall have jurisdiction over an action under this
23 section based upon the public disclosure of allegations or
24 transactions in a criminal, civil, or administrative hearing, in a

1 Congressional, legislative, administrative, or State Auditor and
2 Inspector report, hearing, audit, or investigation, or from the news
3 media, unless the action is brought by the Attorney General or the
4 person bringing the action is an original source of the information.
5 For purposes of this subsection, "original source" means an
6 individual who has direct and independent knowledge of the
7 information on which the allegations are based and has voluntarily
8 provided the information to the state before filing an action under
9 this section which is based on the information.

10 C. In no event may a person bring an action under subsection B
11 of Section 3 of this act that is based on allegations or
12 transactions that the person knew or had reason to know were known
13 to the Attorney General or the other law enforcement officials of
14 the state prior to that person filing the action or serving the
15 disclosure of the material evidence.

16 D. The state is not liable for expenses which a person incurs
17 in bringing an action under this section.

18 E. In civil actions brought under this section by this state,
19 the provisions of Title 28 of the Oklahoma Statutes shall apply.

20 F. Any employee who is discharged, demoted, suspended,
21 threatened, harassed, or in any other manner discriminated against
22 in the terms and conditions of employment by his or her employer
23 because of lawful acts done by the employee on behalf of the
24 employee or others in furtherance of an action under this act,

1 including investigation for, initiation of, testimony for, or
2 assistance in an action filed or to be filed, shall be entitled to
3 all relief necessary to make the employee whole. Such relief shall
4 include reinstatement with the same seniority status such employee
5 would have had but for the discrimination, two times the amount of
6 back pay, interest on the back pay, and compensation for any special
7 damages sustained as a result of the discrimination, including
8 litigation costs and reasonable attorney fees. An employee may
9 bring an action in the appropriate district court of the State of
10 Oklahoma for the relief provided in this subsection.

11 SECTION 7. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 5053.6 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. A subpoena requiring the attendance of a witness at a trial
15 or hearing conducted under subsection B of Section 3 of the Oklahoma
16 Medicaid False Claims Act may be served at any place in Oklahoma.

17 B. A civil action under subsection B of Section 3 of this act
18 may not be brought:

19 1. More than six (6) years after the date on which the
20 violation of the Oklahoma Medicaid False Claims Act is committed; or

21 2. More than three (3) years after the date when facts material
22 to the right of action are known or reasonably should have been
23 known by the official of the State of Oklahoma charged with
24 responsibility to act in the circumstances, but in no event more

1 than ten (10) years after the date on which the violation is
2 committed, whichever occurs last.

3 C. In any action brought under subsection B of Section 3 of
4 this act, this state shall be required to prove all essential
5 elements of the cause of action, including damages, by a
6 preponderance of the evidence.

7 D. Notwithstanding any other provision of law, a final judgment
8 rendered in favor of this state in any criminal proceeding charging
9 fraud or false statements, whether upon a verdict after trial or
10 upon a plea of guilty or nolo contendere, shall estop the defendant
11 from denying the essential elements of the offense in any action
12 which involves the same transaction as in the criminal proceeding
13 and which is brought under this act.

14 SECTION 8. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5053.7 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Any action under subsection B of Section 3 of the Oklahoma
18 Medicaid False Claims Act may be brought in any judicial district in
19 which the defendant or, in the case of multiple defendants, any one
20 defendant can be found, resides, transacts business, or in which any
21 act proscribed by the Oklahoma Medicaid False Claims Act occurred.
22 A summons as required by Section 2004 of Title 12 of the Oklahoma
23 Statutes shall be issued by the appropriate district court and
24 served at any place within or outside the State of Oklahoma.

