

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1549

By: Crain of the Senate

and

Cox of the House

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9 COMMITTEE SUBSTITUTE

10 (Public health and safety - acts and omissions -
11 Oklahoma Medicaid False Claims Act - codification -
12 noncodification - effective dates -
13 emergency)

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

17 SECTION 1. AMENDATORY Section 3, Chapter 283, O.S.L.
18 2004 (63 O.S. Supp. 2007, Section 1-1955.3), is amended to read as
19 follows:

20 Section 1-1955.3 A. Upon repeal of the restrictions to asset
21 protection contained in the Omnibus Budget Reconciliation Act of
22 1993, Public Law 103-66, 107 Stat. 312, there shall be established
23 the Oklahoma Long-Term Care Partnership Program, to be administered
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1 by the Oklahoma Health Care Authority, with the assistance of the
2 Insurance Department, to do the following:

3 1. Provide incentives for individuals to insure against the
4 costs of providing for their long-term care needs;

5 2. Provide a mechanism for individuals to qualify for coverage
6 of the cost of their long-term care needs under the state Medicaid
7 program without first being required to substantially exhaust their
8 resources;

9 3. Provide counseling services to individuals in planning for
10 their long-term care needs; and

11 4. Alleviate the financial burden on the state's Medicaid
12 program by encouraging the pursuit of private initiatives.

13 B. ~~Upon exhaustion of benefits under a~~ Under the Oklahoma Long-
14 Term Care Partnership Program policy, certain resources of an
15 individual, as described in subsection C of this section, shall not
16 be considered by the Authority when determining any of the
17 following:

18 1. Medicaid eligibility;

19 2. The amount of any Medicaid payment; and

20 3. Any subsequent recovery by the state of a payment for
21 medical services.

22 C. The Oklahoma Health Care Authority shall amend the state
23 Medicaid program to allow for asset disregard. The Authority shall
24 provide for asset disregard by counting insurance benefits paid

1 under a policy toward asset disregard to the extent the payments are
2 for covered services under the Oklahoma Long-Term Care Partnership
3 Program for purchasers of an Oklahoma Long-Term Care Partnership
4 Program approved policy.

5 SECTION 2. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 5023.1 of Title 63, unless there
7 is created a duplication in numbering, reads as follows:

8 The Oklahoma Health Care Authority shall use all of the
9 following funds for the purpose of supporting the efforts of
10 compensating direct-care costs as provided for in Section 1-1925.2
11 of Title 63 of the Oklahoma Statutes and effectuating facility
12 incentive reimbursement under Section 1011.5 of Title 56 of the
13 Oklahoma Statutes:

- 14 1. Funds appropriated by the Legislature; and
- 15 2. Fees, federal matching funds, and interest collected under
16 the assessment fee pursuant to Section 2002 of Title 56 of the
17 Oklahoma Statutes.

18 SECTION 3. AMENDATORY Section 2, Chapter 137, O.S.L.
19 2007 (63 O.S. Supp. 2007, Section 5053.1), is amended to read as
20 follows:

21 Section 5053.1 A. For purposes of this section:

- 22 1. "Knowing" and "knowingly" mean that a person, with respect
23 to information:
 - 24 a. has actual knowledge of the information,

1 b. acts in deliberate ignorance of the truth or falsity
2 of the information, or

3 c. acts in reckless disregard of the truth or falsity of
4 the information.

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

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

13 B. Any person who:

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

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

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

22 4. Has possession, custody, or control of property or money
23 used, or to be used, by the state and, intending to defraud the
24 state or willfully to conceal the property, delivers, or causes to

1 be delivered, less property than the amount for which the person
2 receives a certificate or receipt;

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

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

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

20 C. If the court finds that:

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

3 2. The person fully cooperated with any state investigation of
4 the violation; and

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

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

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

21 SECTION 4. AMENDATORY Section 3, Chapter 137, O.S.L.
22 2007 (63 O.S. Supp. 2007, Section 5053.2), is amended to read as
23 follows:

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1 Section 5053.2 A. The Attorney General shall diligently
2 investigate a violation under the Oklahoma Medicaid False Claims
3 Act. If the Attorney General finds that a person has violated or is
4 violating the Oklahoma Medicaid False Claims Act, the Attorney
5 General may bring a civil action under this section against the
6 person.

7 B. 1. A person may bring a civil action for a violation of the
8 Oklahoma Medicaid False Claims Act for the person and for this
9 state. The action shall be brought in the name of the state. The
10 action may be dismissed only if the court and the Attorney General
11 give written consent to the dismissal and state the reasons for
12 consenting.

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

22 3. The state may, for good cause shown, move the court for
23 extensions of the time during which the complaint remains under seal
24 under paragraph 2 of this subsection. Any such motions may be

1 supported by affidavits or other submissions in camera. The
2 defendant shall not be required to respond to any complaint filed
3 under this section until twenty (20) days after the complaint is
4 unsealed and served upon the defendant pursuant to Section 2004 of
5 Title 12 of the Oklahoma Statutes.

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

9 a. proceed with the action, in which case the action
10 shall be conducted by the state, or

11 b. notify the court that it declines to take over the
12 action, in which case the person bringing the action
13 shall have the right to conduct the action.

14 5. When a person brings an action under this section, ~~under the~~
15 ~~federal False Claims Act, or under any similar provision of the law~~
16 ~~of any other state,~~ no person other than the state may intervene or
17 bring a related action based on the facts underlying the pending
18 action.

19 SECTION 5. AMENDATORY Section 6, Chapter 137, O.S.L.
20 2007 (63 O.S. Supp. 2007, Section 5053.5), is amended to read as
21 follows:

22 Section 5053.5 A. In no event may a person bring an action
23 under subsection B of Section ~~3~~ 5053.2 of this ~~act~~ title which is
24 based upon allegations or transactions which are the subject of a

1 civil suit or an administrative civil money penalty proceeding in
2 which the state is already a party.

3 B. No court shall have jurisdiction over an action under this
4 section based upon the public disclosure of allegations or
5 transactions in a criminal, civil, or administrative hearing, in a
6 Congressional, legislative, administrative, or State Auditor and
7 Inspector report, hearing, audit, or investigation, or from the news
8 media, unless the action is brought by the Attorney General or the
9 person bringing the action is an original source of the information.
10 For purposes of this subsection, "original source" means an
11 individual who has direct and independent knowledge of the
12 information on which the allegations are based and has voluntarily
13 provided the information to the state before filing an action under
14 this section which is based on the information.

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

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

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1 ~~E.~~ D. In civil actions brought under this section by this
2 state, the provisions of Title 28 of the Oklahoma Statutes shall
3 apply.

4 ~~F.~~ E. Any employee who is discharged, demoted, suspended,
5 threatened, harassed, or in any other manner discriminated against
6 in the terms and conditions of employment by his or her employer
7 because of lawful acts done by the employee on behalf of the
8 employee or others in furtherance of an action under this act,
9 including investigation for, initiation of, testimony for, or
10 assistance in an action filed or to be filed, shall be entitled to
11 all relief necessary to make the employee whole. Such relief shall
12 include reinstatement with the same seniority status such employee
13 would have had but for the discrimination, two times the amount of
14 back pay, interest on the back pay, and compensation for any special
15 damages sustained as a result of the discrimination, including
16 litigation costs and reasonable attorney fees. An employee may
17 bring an action in the appropriate district court of the State of
18 Oklahoma for the relief provided in this subsection.

19 SECTION 6. NEW LAW A new section of law not to be
20 codified in the Oklahoma Statutes, reads as follows:

21 A. There is hereby created, to continue until December 1, 2009,
22 the "Continuum of Care Task Force". The Task Force shall analyze
23 and make recommendations regarding state statutes relating to
24 insurance, accreditation and regulation, and protection of a patient

1 with respect to continuum of care facilities operating in this
2 state.

3 B. The Task Force shall consist of twelve (12) members:

4 1. Five members shall be appointed by the Speaker of the
5 Oklahoma House of Representatives as follows:

6 a. one member from the Oklahoma Association of Health
7 Care Providers,

8 b. one member from the Oklahoma Association of Homes and
9 Services for the Aging,

10 c. one representative of a continuum of care facility
11 currently operating in this state, and

12 d. two members of the Oklahoma House of Representatives;
13 and

14 2. Seven members shall be appointed by the President Pro
15 Tempore of the State Senate as follows:

16 a. two members of the Oklahoma Association of Health Care
17 Providers,

18 b. two members from the Oklahoma Association of Homes and
19 Services for the Aging,

20 c. one representative of a continuum of care facility
21 currently operating in this state, and

22 d. two members of the State Senate.

23 C. The appointed members from the Oklahoma House of
24 Representatives and the appointed members from the State Senate

1 shall choose cochairst of the Task Force. The cochairst shall convene
2 the first meeting of the Task Force. Vacancies shall be filled by
3 the appointing authority. The Task Force shall meet as often as
4 necessary to perform the duties provided for herein.

5 D. Appointments to the Task Force shall be made by September 1,
6 2008.

7 E. A majority of the members of the Task Force shall constitute
8 a quorum. A majority of the members present at a meeting may act
9 for the Task Force.

10 F. Nonlegislative members of the Task Force shall be reimbursed
11 by their appointing authority for necessary travel expenses incurred
12 in the performance of duties pursuant to the provisions of the State
13 Travel Reimbursement Act. Legislative members of the Task Force
14 shall be reimbursed for necessary travel expenses incurred in the
15 performance of duties in accordance with the provisions of Section
16 456 of Title 74 of the Oklahoma Statutes.

17 G. Administrative support for the Task Force including, but not
18 limited to, personnel necessary to ensure the proper performance of
19 the duties and responsibilities of the Task Force shall be provided
20 by the state agencies involved in the Task Force.

21 H. The Task Force shall publish a report of findings and
22 recommendations by December 1, 2009, including recommendations for
23 any resulting legislation.

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1 SECTION 7. Section 6 of this act shall become effective July 1,
2 2008.

3 SECTION 8. Sections 1, 2, 3, 4 and 5 of this act shall become
4 effective November 1, 2008.

5 SECTION 9. It being immediately necessary for the preservation
6 of the public peace, health and safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

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