

1 ENGROSSED SENATE
2 BILL NO. 1549

By: Crain of the Senate

3 and

4 Cox of the House

5
6 [public health and safety - acts and omissions -

7 Oklahoma Medicaid False Claims Act -

8 effective date]

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1939, as
12 amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2007,
13 Section 1-1939), is amended to read as follows:

14 Section 1-1939. A. The owner and licensee are liable to a
15 resident for any intentional or negligent act or omission of their
16 agents or employees which injures the resident. The owner and
17 licensee shall maintain sufficient assets to cover all claims
18 resulting from the intentional or negligent acts or omissions of
19 their agents or employees which injure a resident. A liability
20 insurance policy in the minimum amount of Two Hundred Fifty Thousand
21 Dollars (\$250,000.00) that would compensate the resident or the
22 resident's family for injuries or death of a resident shall be prima
23 facie evidence that the owner or licensee has maintained sufficient
24 assets to adequately cover claims. If the owner or licensee is a

1 domestic or foreign corporation, partnership, limited liability
2 company, or other similar entity, regardless of whether formed for
3 profit or non-profit, and does not have a minimum of Two Hundred
4 Fifty Thousand Dollars (\$250,000.00) of liability insurance at the
5 time of the claim for injuries or death of the resident, then a
6 direct action may be brought against the officers, shareholders,
7 partners, members or other similar persons of the corporation or
8 entity which is the owner or licensee, or against the officers,
9 shareholders, partners, members or other similar persons of any
10 other corporation or entity owning all or part of the owner or
11 licensee, and such persons shall be individually liable for the
12 injuries and death of the resident. In addition, any state employee
13 that aids, abets, assists, or conspires with an owner or licensee to
14 perform an act that causes injury to a resident shall be
15 individually liable.

16 B. A resident may maintain an action under the Nursing Home
17 Care Act for any other type of relief, including injunctive and
18 declaratory relief, permitted by law.

19 C. Any damages recoverable under this section, including
20 minimum damages as provided by this section, may be recovered in any
21 action which a court may authorize to be brought as a class action.
22 The remedies provided in this section, are in addition to and
23 cumulative with any other legal remedies available to a resident.

24

1 Exhaustion of any available administrative remedies shall not be
2 required prior to commencement of suit hereunder.

3 D. Any waiver by a resident or the legal representative of the
4 resident of the right to commence an action under this section,
5 whether oral or in writing, shall be null and void, and without
6 legal force or effect.

7 E. Any party to an action brought under this section shall be
8 entitled to a trial by jury and any waiver of the right to a trial
9 by a jury, whether oral or in writing, prior to the commencement of
10 an action, shall be null and void, and without legal force or
11 effect.

12 F. A licensee or its agents or employees shall not transfer,
13 discharge, evict, harass, dismiss or retaliate against a resident, a
14 resident's guardian or an employee or agent who makes a report,
15 brings, or testifies in, an action under this section, or files a
16 complaint because of a report, testimony or complaint.

17 G. Any person, institution or agency, under the Nursing Home
18 Care Act, participating in good faith in the making of a report, or
19 in the investigation of such a report shall not be deemed to have
20 violated any privileged communication and shall have immunity from
21 any liability, civil or criminal, or any other proceedings, civil or
22 criminal, as a consequence of making such report. The good faith of
23 any persons required, or permitted to report cases of suspected
24 resident abuse or neglect under this act shall be presumed.

1 H. A facility employee or agent who becomes aware of abuse,
2 neglect or exploitation of a resident prohibited by the Nursing Home
3 Care Act shall immediately report the matter to the facility
4 administrator. A facility administrator who becomes aware of abuse,
5 neglect, or exploitation of a resident shall immediately act to
6 rectify the problem and shall make a report of the incident and its
7 correction to the Department.

8 I. 1. The facility shall be responsible for reporting the
9 following serious incidents to the Department within twenty-four
10 (24) hours:

- 11 a. communicable diseases,
- 12 b. deaths by unusual occurrence, including accidental
13 deaths or deaths other than by natural causes, and
14 deaths that may be attributed to a medical device,
- 15 c. missing residents. In addition, the facility shall
16 make a report to local law enforcement agencies within
17 two (2) hours if the resident is still missing,
- 18 d. situations arising where criminal intent is suspected.
19 Such situations shall also be reported to local law
20 enforcement, and
- 21 e. resident abuse, neglect and misappropriation of the
22 property of a resident.

23 2. All other incident reports shall be made in accordance with
24 federal law.

1 3. All initial written reports of incidents or situations shall
2 be mailed to the Department within five (5) working days after the
3 incident or situation. The final report shall be filed with the
4 Department when the full investigation is complete.

5 SECTION 2. AMENDATORY Section 2, Chapter 137, O.S.L.
6 2007 (63 O.S. Supp. 2007, Section 5053.1), is amended to read as
7 follows:

8 Section 5053.1 A. For purposes of this section:

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

- 11 a. has actual knowledge of the information,
- 12 b. acts in deliberate ignorance of the truth or falsity
13 of the information, or
- 14 c. acts in reckless disregard of the truth or falsity of
15 the information.

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

17 2. "Claim" includes any request or demand, whether under a
18 contract or otherwise, for money or property which is made to a
19 contractor, grantee, or other recipient if this state provides any
20 portion of the money or property which is requested or demanded, or
21 if the state will reimburse the contractor, grantee, or other
22 recipient for any portion of the money or property which is
23 requested or demanded.

24 B. Any person who:

- 1 1. Knowingly presents, or causes to be presented, to an officer
2 or employee of the State of Oklahoma, a false or fraudulent claim
3 for payment or approval;
- 4 2. Knowingly makes, uses, or causes to be made or used, a false
5 record or statement to get a false or fraudulent claim paid or
6 approved by the state;
- 7 3. Conspires to defraud the state by getting a false or
8 fraudulent claim allowed or paid;
- 9 4. Has possession, custody, or control of property or money
10 used, or to be used, by the state and, intending to defraud the
11 state or willfully to conceal the property, delivers, or causes to
12 be delivered, less property than the amount for which the person
13 receives a certificate or receipt;
- 14 5. Is authorized to make or deliver a document certifying
15 receipt of property used, or to be used, by the state and, intending
16 to defraud the state, makes or delivers the receipt without
17 completely knowing that the information on the receipt is true;
- 18 6. Knowingly buys, or receives as a pledge of an obligation or
19 debt, public property from an officer or employee of the state, who
20 lawfully may not sell or pledge the property; or
- 21 7. Knowingly makes, uses, or causes to be made or used, a false
22 record or statement to conceal, avoid, or decrease an obligation to
23 pay or transmit money or property to the state,

24

1 is liable to the State of Oklahoma for a civil penalty of not less
2 than Five Thousand Dollars (\$5,000.00) and not more than Ten
3 Thousand Dollars (\$10,000.00), ~~unless a penalty is imposed for the~~
4 ~~act of that person in violation of this subsection under the federal~~
5 ~~False Claims Act for the same or a prior action,~~ plus three times
6 the amount of damages which the state sustains because of the act of
7 that person.

8 C. If the court finds that:

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

14 2. The person fully cooperated with any state investigation of
15 the violation; and

16 3. At the time the person furnished the state with the
17 information about the violation, no criminal prosecution, civil
18 action, or administrative action had commenced under ~~Title 63 of the~~
19 ~~Oklahoma Statutes~~ this title with respect to the violation, and the
20 person did not have actual knowledge of the existence of an
21 investigation into the violation,

22 the court may assess not less than two times the amount of damages
23 which the state sustains because of the act of the person. A person
24 violating subsection B of this section shall also be liable to this

1 state for the costs of a civil action brought to recover any such
2 penalty or damages.

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

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

8 SECTION 3. AMENDATORY Section 3, Chapter 137, O.S.L.
9 2007 (63 O.S. Supp. 2007, Section 5053.2), is amended to read as
10 follows:

11 Section 5053.2 A. The Attorney General shall diligently
12 investigate a violation under the Oklahoma Medicaid False Claims
13 Act. If the Attorney General finds that a person has violated or is
14 violating the Oklahoma Medicaid False Claims Act, the Attorney
15 General may bring a civil action under this section against the
16 person.

17 B. 1. A person may bring a civil action for a violation of the
18 Oklahoma Medicaid False Claims Act for the person and for this
19 state. The action shall be brought in the name of the state. The
20 action may be dismissed only if the court and the Attorney General
21 give written consent to the dismissal and state the reasons for
22 consenting.

23 2. A copy of the complaint and written disclosure of
24 substantially all material evidence and information the person

1 possesses shall be served on the state pursuant to Section 2004 of
2 Title 12 of the Oklahoma Statutes. The complaint shall be filed in
3 camera, shall remain under seal for at least sixty (60) days, and
4 shall not be served on the defendant until the court so orders. The
5 state may elect to intervene and proceed with the action within
6 sixty (60) days after it receives both the complaint and the
7 material evidence and information.

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

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

- 19 a. proceed with the action, in which case the action
20 shall be conducted by the state, or
- 21 b. notify the court that it declines to take over the
22 action, in which case the person bringing the action
23 shall have the right to conduct the action.

24

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

6 SECTION 4. AMENDATORY Section 5, Chapter 137, O.S.L.
7 2007 (63 O.S. Supp. 2007, Section 5053.4), is amended to read as
8 follows:

9 Section 5053.4 A. 1. If the state proceeds with an action
10 brought by a person under subsection B of Section ~~3~~ 5053.2 of this
11 ~~act~~ title, the person shall, subject to paragraph 2 of this
12 subsection, receive at least fifteen percent (15%) but not more than
13 twenty-five percent (25%) of the proceeds of the action or
14 settlement of the claim, depending upon the extent to which the
15 person substantially contributed to the prosecution of the action.

16 2. Where the action is one which the court finds to be based
17 primarily on disclosures of specific information other than
18 information provided by the person bringing the action relating to
19 allegations or transactions in a criminal, civil, or administrative
20 hearing, in a Congressional, legislative, administrative, or State
21 Auditor and Inspector report, hearing, audit, or investigation, or
22 from the news media, the court may award such sums as it considers
23 appropriate, but in no case more than ten percent (10%) of the
24 proceeds, taking into account the significance of the information

1 and the role of the person bringing the action in advancing the case
2 to litigation.

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

9 B. If the state does not proceed with an action under this
10 section, the person bringing the action or settling the claim shall
11 receive an amount which the court decides is reasonable for
12 collecting the civil penalty and damages. The amount shall be not
13 less than twenty-five percent (25%) and not more than thirty percent
14 (30%) of the proceeds of the action or settlement and shall be paid
15 out of the proceeds. The person shall also receive an amount for
16 reasonable expenses which the court finds to have been necessarily
17 incurred, plus reasonable attorney fees and costs. All such
18 expenses, fees, and costs shall be awarded against the defendant.

19 C. Whether or not the state proceeds with the action, if the
20 court finds that the action was brought by a person who planned,
21 initiated, or participated in the violation of the Oklahoma Medicaid
22 False Claims Act upon which the action was brought, then the court
23 may, to the extent the court considers appropriate, reduce the share
24 of the proceeds of the action which the person would otherwise

1 receive under subsection A or B of this section ~~to no more than ten~~
2 ~~percent (10%)~~, taking into account the role of that person in
3 advancing the case to litigation and any relevant circumstances
4 pertaining to the violation. If the person bringing the action is
5 convicted of criminal conduct arising from his or her role in the
6 violation of the Oklahoma Medicaid False Claims Act, that person
7 shall be dismissed from the civil action and shall not receive any
8 share of the proceeds of the action. The dismissal shall not
9 prejudice the right of this state to continue the action,
10 represented by the Office of the Attorney General or its assigns.

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

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

18 ~~2. The person bringing the action failed to make an effective~~
19 ~~disclosure of those allegations or transactions under the corporate~~
20 ~~compliance plan of that defendant.~~

21 ~~E.~~ If the state does not proceed with the action and the person
22 bringing the action conducts the action, the court may award to the
23 defendant its reasonable attorney fees and expenses if the defendant
24 prevails in the action and the court finds that the claim of the

1 person bringing the action was clearly frivolous, clearly vexatious,
2 or brought primarily for purposes of harassment.

3 SECTION 5. AMENDATORY Section 6, Chapter 137, O.S.L.
4 2007 (63 O.S. Supp. 2007, Section 5053.5), is amended to read as
5 follows:

6 Section 5053.5 A. In no event may a person bring an action
7 under subsection B of Section ~~3~~ 5053.2 of this ~~act~~ title which is
8 based upon allegations or transactions which are the subject of a
9 civil suit or an administrative civil money penalty proceeding in
10 which the state is already a party.

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

23 C. ~~In no event may a person bring an action under subsection B~~
24 ~~of Section 3 of this act that is based on allegations or~~

1 ~~transactions that the person knew or had reason to know were known~~
2 ~~to the Attorney General or the other law enforcement officials of~~
3 ~~the state prior to that person filing the action or serving the~~
4 ~~disclosure of the material evidence.~~

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

7 E. D. In civil actions brought under this section by this
8 state, the provisions of Title 28 of the Oklahoma Statutes shall
9 apply.

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

