

THE HOUSE OF REPRESENTATIVES  
Tuesday, April 17, 2007

Committee Substitute for  
ENGROSSED  
Senate Bill No. 889

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 889 - By: CRAIN  
of the Senate and COX of the House.

An Act relating to public health and safety; creating the Oklahoma Medicaid False Claims Act; providing short title; defining terms; stating liability for certain actions; providing certain exemption; stating certain nonexemption; directing certain responsibilities of the Attorney General; permitting certain actions by specified persons; 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 expenses; permitting certain relief; directing certain subpoenas; limiting proceeds in certain actions; prohibiting certain civil action in specified circumstances; permitting location of certain action; providing for codification; and providing an effective date.

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

- 1       SECTION 1.   NEW LAW   A new section of law to be codified in the Oklahoma
- 2 Statutes as Section 5053 of Title 63, unless there is created a duplication in numbering,
- 3 reads as follows:
- 4       This act shall be known and may be cited as the "Oklahoma Medicaid False Claims
- 5 Act".

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

4 A. For purposes of this section:

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

- 6 a. has actual knowledge of the information,  
7 b. acts in deliberate ignorance of the truth or falsity of the information, or  
8 c. acts in reckless disregard of the truth or falsity of the information.

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

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

15 B. Any person who:

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

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

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

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

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

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

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

19           C. If the court finds that:

20           1. The person committing the violation in subsection B of this section furnished  
21 officials of this state responsible for investigating false claims violations with all

1 information known to 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 the violation; and

4 3. At the time the person furnished the state with the information about the  
5 violation, no criminal prosecution, civil action, or administrative action had commenced  
6 under Title 63 of the Oklahoma Statutes with respect to the violation, and the person did  
7 not have actual knowledge of the existence of an investigation into the violation,  
8 the court may assess not less than two times the amount of damages which the state  
9 sustains because of the act of the person. A person violating subsection B of this section  
10 shall also be liable to this 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 C of this section  
13 shall be exempt from disclosure under the Oklahoma Open Records Act.

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

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

19 A. The Attorney General shall diligently investigate a violation under the  
20 Oklahoma Medicaid False Claims Act. If the Attorney General finds that a person has  
21 violated or is violating the Oklahoma Medicaid False Claims Act, the Attorney General  
22 may 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 Oklahoma Medicaid  
2 False Claims Act for the person and for this state. The action shall be brought in the  
3 name of the state. The action may be dismissed only if the court and the Attorney  
4 General give written consent to the dismissal and state the reasons for consenting.

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

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

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

- 20 a. proceed with the action, in which case the action shall be conducted by  
21 the state, or

1           b.       notify the court that it declines to take over the action, in which case  
2                    the person bringing the action shall have the right to conduct the  
3                    action.

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

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

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

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

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

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

- 6           a. limiting the number of witnesses the person may call,
- 7           b. limiting the length of the testimony of the witnesses,
- 8           c. limiting the person's cross-examination of witnesses, or
- 9           d. otherwise limiting the participation by the person in the litigation.

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

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

21           C. Whether or not the state proceeds with the action, upon a showing by the state  
22 that certain actions of discovery by the person initiating the action would interfere with

1 the state's investigation or prosecution of a criminal or civil matter arising out of the  
2 same facts, the court may stay the discovery for a period of not more than sixty (60) days.  
3 Such a showing shall be conducted in camera. The court may extend the sixty-day period  
4 upon a further showing in camera that the state has pursued the criminal or civil  
5 investigation or proceedings with reasonable diligence and any proposed discovery in the  
6 civil action will interfere with the ongoing criminal or civil investigation or proceedings.

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

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

21 A. 1. If the state proceeds with an action brought by a person under subsection B of  
22 Section 3 of this act, the person shall, subject to paragraph 2 of this subsection, receive at

1 least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of  
2 the action or settlement of the claim, depending upon the extent to which the person  
3 substantially contributed to the prosecution of the action.

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

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

17 B. If the state does not proceed with an action under this section, the person  
18 bringing the action or settling the claim shall receive an amount which the court decides  
19 is reasonable for collecting the civil penalty and damages. The amount shall be not less  
20 than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of  
21 the action or settlement and shall be paid out of the proceeds. The person shall also  
22 receive an amount for reasonable expenses which the court finds to have been necessarily

1 incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall  
2 be awarded against the defendant.

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

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

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

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

1 E. If the state does not proceed with the action and the person bringing the action  
2 conducts the action, the court may award to the defendant its reasonable attorney fees  
3 and expenses if the defendant prevails in the action and the court finds that the claim of  
4 the person bringing the action was clearly frivolous, clearly vexatious, or brought  
5 primarily for purposes of harassment.

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

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

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

21 C. In no event may a person bring an action under subsection B of Section 3 of  
22 this act that is based on allegations or transactions that the person knew or had reason

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

7 2. More than three (3) years after the date when facts material to the right of  
8 action are known or reasonably should have been known by the official of the State of  
9 Oklahoma charged with responsibility to act in the circumstances, but in no event more  
10 than ten (10) years after the date on which the violation is committed, whichever occurs  
11 last.

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

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

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

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

8           B. The district courts shall have jurisdiction over any action brought under the  
9 laws of the state for the recovery of funds paid by a state or local government if the action  
10 arises from the same transaction or occurrence as an action brought under subsection B  
11 of Section 3 of this act.

12           SECTION 9. This act shall become effective November 1, 2007.

13           COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04-16-07 - DO  
14           PASS, As Amended.