

3 Senate Bill No. 889

4 SENATE BILL NO. 889 - By: CRAIN of the Senate and COX of the House.

5 An Act relating to public health and safety; creating the  
6 Oklahoma Medicaid False Claims Act; providing short title;  
7 stating liability for certain actions; defining terms;  
8 providing certain exemption; stating certain nonexemption;  
9 directing certain responsibilities of the Attorney General;  
10 permitting certain actions by specified persons; directing  
11 responsibility for certain prosecution; setting certain  
12 options for the state; granting certain rights; permitting  
13 certain action by court in certain circumstance; permitting  
14 certain alternative remedies; setting certain payment of  
15 claim in specified circumstances; prohibiting certain  
16 actions; prohibiting certain jurisdiction; exempting state  
17 from responsibility for certain expenses; permitting certain  
18 relief; directing certain subpoenas; prohibiting certain  
19 civil action in specified circumstances; permitting location  
20 of certain action; authorizing the Oklahoma Health Care  
21 Authority to make certain investigations; providing for  
22 codification; and providing an effective date.

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

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

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

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

32 A. 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,

1 is liable to the State of Oklahoma for a civil penalty of not  
2 less than Five Thousand Dollars (\$5,000.00) and not more than Ten  
3 Thousand Dollars (\$10,000.00), plus three (3) times the amount of  
4 damages which the state sustains because of the act of that person.

5 B. If the court finds that:

6 1. The person committing the violation of subsection A of this  
7 section furnished officials of the State of Oklahoma responsible for  
8 investigating false claims violations with all information known to  
9 such person about the violation within thirty (30) days after the  
10 date on which the defendant first obtained the information;

11 2. Such person fully cooperated with any state investigation of  
12 such violation; and

13 3. At the time such person furnished the state with the  
14 information about the violation, no criminal prosecution, civil  
15 action, or administrative action had commenced under this title with  
16 respect to such violation, and the person did not have actual  
17 knowledge of the existence of an investigation into such violation,

18 the court may assess not less than two (2) times the amount of  
19 damages which the state sustains because of the act of the person.

20 A person violating subsection A of this section shall also be liable  
21 to the State of Oklahoma for the costs of a civil action brought to  
22 recover any such penalty or damages.

1 C. For purposes of this section, the terms "knowing" and  
2 "knowingly" mean that a person, with respect to information:  
3 1. Has actual knowledge of the information;  
4 2. Acts in deliberate ignorance of the truth or falsity of the  
5 information; or  
6 3. Acts in reckless disregard of the truth or falsity of the  
7 information, and no proof of specific intent to defraud is required.

8 D. For purposes of this section, "claim" includes any request  
9 or demand, whether under a contract or otherwise, for money or  
10 property which is made to a contractor, grantee, or other recipient  
11 if the State of Oklahoma provides any portion of the money or  
12 property which is requested or demanded, or if the state will  
13 reimburse such contractor, grantee, or other recipient for any  
14 portion of the money or property which is requested or demanded.

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

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

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

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

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

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

21           3. The state may, for good cause shown, move the court for  
22 extensions of the time during which the complaint remains under seal  
23 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 (60) 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, no person  
15 other than the state may intervene or bring a related action based  
16 on the facts underlying the pending action.

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

20 A. If the state proceeds with the action pursuant to Section 3  
21 of this act, it shall have the primary responsibility for  
22 prosecuting the action, and shall not be bound by an act of the  
23 person bringing the action. Such person shall have the right to

1 continue as a party to the action, subject to the limitations set  
2 forth in paragraph 1 of subsection B of Section 3.

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

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

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

- 20 a. limiting the number of witnesses the person may call,  
21 b. limiting the length of the testimony of such  
22 witnesses,

- 1           c.    limiting the person's cross-examination of witnesses,  
2                    or  
3           d.    otherwise limiting the participation by the person in  
4                    the litigation.

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

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

18          C.    Whether or not the state proceeds with the action, upon a  
19 showing by the state that certain actions of discovery by the person  
20 initiating the action would interfere with the state's investigation  
21 or prosecution of a criminal or civil matter arising out of the same  
22 facts, the court may stay such discovery for a period of not more  
23 than sixty (60) days.  Such a showing shall be conducted in camera.

1 The court may extend the sixty (60) day period upon a further  
2 showing in camera that the state has pursued the criminal or civil  
3 investigation or proceedings with reasonable diligence and any  
4 proposed discovery in the civil action will interfere with the  
5 ongoing criminal or civil investigation or proceedings.

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

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

1           A. 1. If the state proceeds with an action brought by a person  
2 under subsection B of Section 3 of this act, such person shall,  
3 subject to paragraph 2 of this subsection, receive at least fifteen  
4 (15) percent but not more than twenty-five (25) percent of the  
5 proceeds of the action or settlement of the claim, depending upon  
6 the extent to which the person substantially contributed to the  
7 prosecution of the action.

8           2. Where the action is one which the court finds to be based  
9 primarily on disclosures of specific information other than  
10 information provided by the person bringing the action relating to  
11 allegations or transactions in a criminal, civil, or administrative  
12 hearing, in a congressional, legislative, administrative, or state  
13 auditor and inspector report, hearing, audit, or investigation, or  
14 from the news media, the court may award such sums as it considers  
15 appropriate, but in no case more than ten (10) percent of the  
16 proceeds, taking into account the significance of the information  
17 and the role of the person bringing the action in advancing the case  
18 to litigation.

19           3. Any payment to a person under paragraph 1 or 2 of this  
20 subsection shall be made from the proceeds. Any such person shall  
21 also receive an amount for reasonable expenses which the court finds  
22 to have been necessarily incurred, plus reasonable attorneys' fees

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

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

14 C. Whether or not the state proceeds with the action, if the  
15 court finds that the action was brought by a person who planned and  
16 initiated the violation of the Oklahoma Medicaid False Claims Act  
17 upon which the action was brought, then the court may, to the extent  
18 the court considers appropriate, reduce the share of the proceeds of  
19 the action which the person would otherwise receive under subsection  
20 A or B of this section, taking into account the role of that person  
21 in advancing the case to litigation and any relevant circumstances  
22 pertaining to the violation. If the person bringing the action is  
23 convicted of criminal conduct arising from his or her role in the

1 violation of the Oklahoma Medicaid False Claims Act, that person  
2 shall be dismissed from the civil action and shall not receive any  
3 share of the proceeds of the action. Such dismissal shall not  
4 prejudice the right of the State of Oklahoma to continue the action,  
5 represented by the Office of the Attorney General or its assigns.

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

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

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

20 B. No court shall have jurisdiction over an action under this  
21 section based upon the public disclosure of allegations or  
22 transactions in a criminal, civil, or administrative hearing, in a  
23 congressional, legislative, administrative, or state auditor and

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

9 C. The state is not liable for expenses which a person incurs  
10 in bringing an action under this section.

11 D. In civil actions brought under this section by the State of  
12 Oklahoma, the provisions of Title 28 of the Oklahoma Statutes shall  
13 apply.

14 E. Any employee who is discharged, demoted, suspended,  
15 threatened, harassed, or in any other manner discriminated against  
16 in the terms and conditions of employment by his or her employer  
17 because of lawful acts done by the employee on behalf of the  
18 employee or others in furtherance of an action under this act,  
19 including investigation for, initiation of, testimony for, or  
20 assistance in an action filed or to be filed, shall be entitled to  
21 all relief necessary to make the employee whole. Such relief shall  
22 include reinstatement with the same seniority status such employee  
23 would have had but for the discrimination, two (2) times the amount

1 of back pay, interest on the back pay, and compensation for any  
2 special damages sustained as a result of the discrimination,  
3 including litigation costs and reasonable attorneys' fees. An  
4 employee may bring an action in the appropriate district court of  
5 the State of Oklahoma for the relief provided in this paragraph.

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

9 A. A subpoena requiring the attendance of a witness at a trial  
10 or hearing conducted under subsection B of Section 3 of this act may  
11 be served at any place in Oklahoma.

12 B. A civil action under subsection B of Section 3 may not be  
13 brought:

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

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

22 C. In any action brought under subsection B of Section 3 of  
23 this act, the State of Oklahoma shall be required to prove all

1 essential elements of the cause of action, including damages, by a  
2 preponderance of the evidence.

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

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

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

21 B. The district courts shall have jurisdiction over any action  
22 brought under the laws of the state for the recovery of funds paid  
23 by a state or local government if the action arises from the same

1 transaction or occurrence as an action brought under subsection B of  
2 Section 3 of this act.

3 SECTION 9. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 5015.8 of Title 63, unless there  
5 is created a duplication in numbering, reads as follows:

6 The Oklahoma Health Care Authority has the authority to  
7 investigate all applications for medical assistance and all health  
8 care requests for medical services. The Oklahoma Health Care  
9 Authority has the authority to investigate complaints regarding the  
10 program, including but not limited to, complaints regarding members  
11 or providers.

12 SECTION 10. This act shall become effective November 1, 2007.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-13-07 - DO  
14 PASS, As Coauthored.