

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1549

By: Crain

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 Sections 2, 3, 5 and 6, Chapter 137, O.S.L. 2007 (63
9 O.S. Supp. 2007, Sections 5053.1, 5053.2, 5053.4 and
10 5053.5), which relate to the Oklahoma Medicaid False
11 Claims Act; deleting certain exemption; removing
12 language prohibiting certain persons from intervening
under specified actions; deleting certain cap;
removing language directing the court to reduce
certain share under specified circumstances; deleting
language prohibiting a person from bringing certain
actions; and providing an effective date

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

16 SECTION 1. AMENDATORY Section 2, Chapter 137, O.S.L.
17 2007 (63 O.S. Supp. 2007, Section 5053.1), is amended to read as
18 follows:

19 Section 5053.1 A. For purposes of this section:

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

- 22 a. has actual knowledge of the information,
23 b. acts in deliberate ignorance of the truth or falsity
24 of the information, or

1 c. acts in reckless disregard of the truth or falsity of
2 the information.

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

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

11 B. Any person who:

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

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

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

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

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

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

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

18 C. If the court finds that:

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

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

3 3. At the time the person furnished the state with the
4 information about the violation, no criminal prosecution, civil
5 action, or administrative action had commenced under ~~Title 63 of the~~
6 ~~Oklahoma Statutes~~ this title with respect to the violation, and the
7 person did not have actual knowledge of the existence of an
8 investigation into the violation,

9 the court may assess not less than two times the amount of damages
10 which the state sustains because of the act of the person. A person
11 violating subsection B of this section shall also be liable to this
12 state for the costs of a civil action brought to recover any such
13 penalty or damages.

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

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

19 SECTION 2. AMENDATORY Section 3, Chapter 137, O.S.L.
20 2007 (63 O.S. Supp. 2007, Section 5053.2), is amended to read as
21 follows:

22 Section 5053.2 A. The Attorney General shall diligently
23 investigate a violation under the Oklahoma Medicaid False Claims
24 Act. If the Attorney General finds that a person has violated or is

1 violating the Oklahoma Medicaid False Claims Act, the Attorney
2 General may bring a civil action under this section against the
3 person.

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

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

19 3. The state may, for good cause shown, move the court for
20 extensions of the time during which the complaint remains under seal
21 under paragraph 2 of this subsection. Any such motions may be
22 supported by affidavits or other submissions in camera. The
23 defendant shall not be required to respond to any complaint filed
24 under this section until twenty (20) days after the complaint is

1 unsealed and served upon the defendant pursuant to Section 2004 of
2 Title 12 of the Oklahoma Statutes.

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

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

8 b. notify the court that it declines to take over the
9 action, in which case the person bringing the action
10 shall have the right to conduct the action.

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

16 SECTION 3. AMENDATORY Section 5, Chapter 137, O.S.L.
17 2007 (63 O.S. Supp. 2007, Section 5053.4), is amended to read as
18 follows:

19 Section 5053.4 A. 1. If the state proceeds with an action
20 brought by a person under subsection B of Section ~~3~~ 5053.2 of this
21 ~~act~~ title, the person shall, subject to paragraph 2 of this
22 subsection, receive at least fifteen percent (15%) but not more than
23 twenty-five percent (25%) of the proceeds of the action or

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1 settlement of the claim, depending upon the extent to which the
2 person substantially contributed to the 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 4. AMENDATORY Section 6, Chapter 137, O.S.L.
15 2007 (63 O.S. Supp. 2007, Section 5053.5), is amended to read as
16 follows:

17 Section 5053.5 A. In no event may a person bring an action
18 under subsection B of Section ~~3~~ 5053.2 of this ~~act~~ title which is
19 based upon allegations or transactions which are the subject of a
20 civil suit or an administrative civil money penalty proceeding in
21 which the state is 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.~~ D. In civil actions brought under this section by this
19 state, the provisions of Title 28 of the Oklahoma Statutes shall
20 apply.

21 ~~F.~~ E. Any employee who is discharged, demoted, suspended,
22 threatened, harassed, or in any other manner discriminated against
23 in the terms and conditions of employment by his or her employer
24 because of lawful acts done by the employee on behalf of the

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

12 SECTION 5. This act shall become effective November 1, 2008.

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