

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 889

By: Crain

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5
6 AS INTRODUCED

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

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

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

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

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

6 A. Any person who:

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

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

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

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

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

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

4 7. Knowingly makes, uses, or causes to be made or used, a false
5 record or statement to conceal, avoid, or decrease an obligation to
6 pay or transmit money or property to the state,

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

11 B. If the court finds that:

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

17 2. Such person fully cooperated with any state investigation of
18 such violation; and

19 3. At the time such person furnished the state with the
20 information about the violation, no criminal prosecution, civil
21 action, or administrative action had commenced under this title with
22 respect to such violation, and the person did not have actual
23 knowledge of the existence of an investigation into such violation,
24

1 the court may assess not less than two (2) times the amount of
2 damages which the state sustains because of the act of the person.
3 A person violating subsection A of this section shall also be liable
4 to the State of Oklahoma for the costs of a civil action brought to
5 recover any such penalty or damages.

6 C. For purposes of this section, the terms "knowing" and
7 "knowingly" mean that a person, with respect to information:

8 1. Has actual knowledge of the information;

9 2. Acts in deliberate ignorance of the truth or falsity of the
10 information; or

11 3. Acts in reckless disregard of the truth or falsity of the
12 information, and no proof of specific intent to defraud is required.

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

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

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

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

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

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

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

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

9 4. Before the expiration of the sixty (60) day period or any
10 extensions obtained under paragraph 3 of this subsection, the state
11 shall:

- 12 a. proceed with the action, in which case the action
13 shall be conducted by the state, or
- 14 b. notify the court that it declines to take over the
15 action, in which case the person bringing the action
16 shall have the right to conduct the action.

17 5. When a person brings an action under this section, no person
18 other than the state may intervene or bring a related action based
19 on the facts underlying the pending action.

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

23 A. If the state proceeds with the action pursuant to Section 3
24 of this act, it shall have the primary responsibility for

1 prosecuting the action, and shall not be bound by an act of the
2 person bringing the action. Such person shall have the right to
3 continue as a party to the action, subject to the limitations set
4 forth in paragraph 1 of subsection B of Section 3.

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

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

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

- 22 a. limiting the number of witnesses the person may call,
- 23 b. limiting the length of the testimony of such
- 24 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.
24 The court may extend the sixty (60) day period upon a further

1 showing in camera that the state has pursued the criminal or civil
2 investigation or proceedings with reasonable diligence and any
3 proposed discovery in the civil action will interfere with the
4 ongoing criminal or civil investigation or proceedings.

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

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

23 A. 1. If the state proceeds with an action brought by a person
24 under subsection B of Section 3 of this act, such person shall,

1 subject to paragraph 2 of this subsection, receive at least fifteen
2 (15) percent but not more than twenty-five (25) percent of the
3 proceeds of the action or settlement of the claim, depending upon
4 the extent to which the person substantially contributed to the
5 prosecution of the action.

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

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

23 B. If the state does not proceed with an action under this
24 section, the person bringing the action or settling the claim shall

1 receive an amount which the court decides is reasonable for
2 collecting the civil penalty and damages. The amount shall be not
3 less than twenty-five (25) percent and not more than thirty (30)
4 percent of the proceeds of the action or settlement and shall be
5 paid out of such proceeds. Such person shall also receive an amount
6 for reasonable expenses which the court finds to have been
7 necessarily incurred, plus reasonable attorneys' fees and costs.
8 All such expenses, fees, and costs shall be awarded against the
9 defendant.

10 C. Whether or not the state proceeds with the action, if the
11 court finds that the action was brought by a person who planned and
12 initiated the violation of the Oklahoma Medicaid False Claims Act
13 upon which the action was brought, then the court may, to the extent
14 the court considers appropriate, reduce the share of the proceeds of
15 the action which the person would otherwise receive under subsection
16 A or B of this section, taking into account the role of that person
17 in advancing the case to litigation and any relevant circumstances
18 pertaining to the violation. If the person bringing the action is
19 convicted of criminal conduct arising from his or her role in the
20 violation of the Oklahoma Medicaid False Claims Act, that person
21 shall be dismissed from the civil action and shall not receive any
22 share of the proceeds of the action. Such dismissal shall not
23 prejudice the right of the State of Oklahoma to continue the action,
24 represented by the Office of the Attorney General or its assigns.

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

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

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

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

1 provided the information to the state before filing an action under
2 this section which is based on the information.

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

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

8 E. Any employee who is discharged, demoted, suspended,
9 threatened, harassed, or in any other manner discriminated against
10 in the terms and conditions of employment by his or her employer
11 because of lawful acts done by the employee on behalf of the
12 employee or others in furtherance of an action under this act,
13 including investigation for, initiation of, testimony for, or
14 assistance in an action filed or to be filed, shall be entitled to
15 all relief necessary to make the employee whole. Such relief shall
16 include reinstatement with the same seniority status such employee
17 would have had but for the discrimination, two (2) times the amount
18 of back pay, interest on the back pay, and compensation for any
19 special damages sustained as a result of the discrimination,
20 including litigation costs and reasonable attorneys' fees. An
21 employee may bring an action in the appropriate district court of
22 the State of Oklahoma for the relief provided in this paragraph.

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

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

7 B. A civil action under subsection B of Section 3 may not be
8 brought:

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

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

17 C. In any action brought under subsection B of Section 3 of
18 this act, the State of Oklahoma shall be required to prove all
19 essential elements of the cause of action, including damages, by a
20 preponderance of the evidence.

21 D. Notwithstanding any other provision of law, a final judgment
22 rendered in favor of the State of Oklahoma in any criminal
23 proceeding charging fraud or false statements, whether upon a
24 verdict after trial or upon a plea of guilty or nolo contendere,

1 shall estop the defendant from denying the essential elements of the
2 offense in any action which involves the same transaction as in the
3 criminal proceeding and which is brought under this act.

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

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

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

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

23 The Oklahoma Health Care Authority has the authority to
24 investigate all applications for medical assistance and all health

1 care requests for medical services. The Oklahoma Health Care
2 Authority has the authority to investigate complaints regarding the
3 program, including but not limited to, complaints regarding members
4 or providers.

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

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