

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1694

By: Sykes and Shortey of the
Senate

6 and

7 Derby of the House

8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to Medicaid false claims; amending 63
12 O.S. 2011, Sections 5053.1, 5053.4, 5053.5 and
13 5053.6, which relate to the Oklahoma Medicaid False
14 Claims Act; modifying definitions; modifying list of
15 persons liable for certain civil penalty; modifying
16 certain civil penalty; making certain persons liable
17 for specified costs; directing certain state agencies
18 to receive specified percentage of proceeds or
19 reimbursement; modifying definition; modifying
20 requirements for certain relief; limiting time period
21 for certain civil action; authorizing the filing of
22 certain complaint or amendment; requiring certain
23 notice; permitting certain sanctions; providing for
24 codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 5053.1, is
amended to read as follows:

Section 5053.1 A. For purposes of this section:

1 1. "Knowing" and "knowingly":

2 a. mean that a person, with respect to information:

3 ~~a.~~

4 (1) has actual knowledge of the information,

5 ~~b.~~

6 (2) acts in deliberate ignorance of the truth or
7 falsity of the information, or

8 ~~c.~~

9 (3) acts in reckless disregard of the truth or
10 falsity of the information. ~~No, and~~

11 b. require no proof of specific intent to defraud ~~is~~
12 ~~required; and~~

13 2. "Claim" includes:

14 a. means any request or demand, whether under a contract
15 or otherwise, for money or property ~~which,~~ whether or
16 not the United States has title to the money or
17 property, that:

18 (1) is presented to an officer, employee or agent of
19 the state, or

20 (2) is made to a contractor, grantee, or other
21 recipient if the money or property is to be spent
22 or used on the state's behalf or to advance a
23 state's program or interest and this state:

1 (a) provides or has provided any portion of the
2 money or property ~~which is~~ requested or
3 demanded, or ~~if the state~~

4 (b) will reimburse the contractor, grantee, or
5 other recipient for any portion of the money
6 or property which is requested or demanded,
7 and

8 b. does not include requests or demands for money or
9 property that the government has paid to an individual
10 as compensation for federal employment or as an income
11 subsidy with no restrictions on that individual's use
12 of the money or property;

13 3. "Obligation" means an established duty, whether or not
14 fixed, arising from an express or implied contractual, grantor-
15 grantee, or licensor-licensee relationship, from the retention of
16 any overpayment; and

17 4. "Material" means having a natural tendency to influence, or
18 be capable of influencing, the payment or receipt of money or
19 property.

20 B. Any person who:

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

1 2. Knowingly makes, uses, or causes to be made or used, a false
2 record or statement material to ~~get~~ getting a false or fraudulent
3 claim ~~paid or approved by the state;~~

4 3. ~~Conspires to defraud the state by getting a false or~~
5 ~~fraudulent claim allowed or paid~~ commit a violation of this
6 subsection;

7 4. Has possession, custody, or control of property or money
8 used, or to be used, by the state and, ~~intending to defraud the~~
9 ~~state or willfully to conceal the property,~~ knowingly delivers, or
10 causes to be delivered, less ~~property than the amount for which the~~
11 ~~person receives a certificate or receipt~~ than all of that money or
12 property;

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

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

20 7. Knowingly makes, uses, or causes to be made or used, a false
21 record or statement material to ~~conceal, avoid, or decrease~~ an
22 obligation to pay or transmit money or property to the state, or
23 knowingly conceals or knowingly and improperly avoids or decreases
24

1 an obligation to pay or transmit money or property to the
2 government,
3 is liable to the State of Oklahoma for a civil penalty of not less
4 than ~~Five Thousand Dollars (\$5,000.00)~~ Five Thousand Five Hundred
5 Dollars (\$5,500.00) and not more than ~~Ten Thousand Dollars~~
6 ~~(\$10,000.00)~~ Eleven Thousand Dollars (\$11,000.00), unless a penalty
7 is imposed for the act of that person in violation of this
8 subsection under the federal False Claims Act for the same or a
9 prior action, plus three times the amount of damages which the state
10 sustains because of the act of that person.

11 C. If the court finds that:

12 1. The person committing the violation in subsection B of this
13 section furnished officials of this state 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. The person fully cooperated with any state investigation of
18 the violation; and

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

1 the court may assess not less than two times the amount of damages
2 which the state sustains because of ~~the~~ that act of the person.

3 D. A person violating subsection B of this section shall also
4 be liable to this state for the costs of a civil action brought to
5 recover any such penalty or damages.

6 ~~D.~~ E. Any information furnished pursuant to subsections A
7 through C of this section shall be exempt from disclosure under the
8 Oklahoma Open Records Act.

9 ~~E.~~ F. This section does not apply to claims, records or
10 statements under the Oklahoma Tax Code.

11 SECTION 2. AMENDATORY 63 O.S. 2011, Section 5053.4, is
12 amended to read as follows:

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

20 2. Where the action is one which the court finds to be based
21 primarily on disclosures of specific information other than
22 information provided by the person bringing the action relating to
23 allegations or transactions in a criminal, civil, or administrative
24 hearing, in a Congressional, legislative, administrative, or State

1 Auditor and Inspector report, hearing, audit, or investigation, or
2 from the news media, the court may award such sums as it considers
3 appropriate, but in no case more than ten percent (10%) of the
4 proceeds, taking into account the significance of the information
5 and the role of the person bringing the action in advancing the case
6 to litigation.

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

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

23 C. Whether or not the state proceeds with the action, if the
24 court finds that the action was brought by a person who planned, and

1 initiated, ~~or participated in~~ the violation of the Oklahoma Medicaid
2 False Claims Act upon which the action was brought, then the court
3 may, to the extent the court considers appropriate, reduce the share
4 of the proceeds of the action which the person would otherwise
5 receive under subsection A or B of this section, taking into account
6 the role of that person in advancing the case to litigation and any
7 relevant circumstances pertaining to the violation. If the person
8 bringing the action is convicted of criminal conduct arising from
9 his or her role in the violation of the Oklahoma Medicaid False
10 Claims Act, that person shall be dismissed from the civil action and
11 shall not receive any share of the proceeds of the action. The
12 dismissal shall not prejudice the right of this state to continue
13 the action, represented by the Office of the Attorney General or its
14 assigns.

15 D. If the state does not proceed with the action and the person
16 bringing the action conducts the action, the court may award to the
17 defendant its reasonable attorney fees and expenses if the defendant
18 prevails in the action and the court finds that the claim of the
19 person bringing the action was clearly frivolous, clearly vexatious,
20 or brought primarily for purposes of harassment.

21 E. Any state agency assisting in the investigation of a
22 Medicaid fraud case shall be entitled to ten percent (10%) of the
23 proceeds or a reimbursement for the costs of the investigation,
24 whichever is greater.

1 SECTION 3. AMENDATORY 63 O.S. 2011, Section 5053.5, is
2 amended to read as follows:

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

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

20 1. Prior to a public disclosure under Section 5053.4 of this
21 title, has voluntarily disclosed to the state the information on
22 which allegations or transactions in a claim are based; or

23 2. Has knowledge that is independent of and materially adds to
24 the publicly disclosed allegations or transactions, and who has

1 voluntarily provided the information to the state before filing an
2 action under the Oklahoma Medicaid False Claims Act.

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 this state,
6 the provisions of Title 28 of the Oklahoma Statutes shall apply.

7 E. ~~Any employee who~~ Relief from retaliatory actions shall
8 include:

9 1. All relief necessary to make an employee, contractor or
10 agent whole if that employee, contractor or agent is discharged,
11 demoted, suspended, threatened, harassed, or in any other manner
12 discriminated against in the terms and conditions of employment by
13 his or her employer because of lawful acts done by the employee,
14 contractor or agent on behalf of the employee, contractor or agent
15 or associated others in furtherance of an action under this act,
16 including investigation for, initiation of, testimony for, or
17 assistance in an action filed or to be filed, shall be entitled to
18 all relief necessary to make the employee whole. Such relief shall
19 include reinstatement other efforts to stop one or more violations
20 of the Oklahoma Medicaid False Claims Act; and

21 2. Reinstatement with the same seniority status ~~such that~~ that
22 employee, contractor or agent would have had but for the
23 discrimination, two times the amount of back pay, interest on the
24 back pay, and compensation for any special damages sustained as a

1 result of the discrimination, including litigation costs and
2 reasonable attorney fees. An ~~employee may bring an action under~~
3 this section may be brought in the appropriate district court of the
4 State of Oklahoma for the relief provided in this subsection.

5 F. A civil action under this section may not be brought more
6 than three (3) years after the date when the retaliation occurred.

7 SECTION 4. AMENDATORY 63 O.S. 2011, Section 5053.6, is
8 amended to read as follows:

9 Section 5053.6 A. A subpoena requiring the attendance of a
10 witness at a trial or hearing conducted under ~~subsection B of~~
11 ~~Section 3 of the Oklahoma Medicaid False Claims Act~~ Section 5053.2
12 of this title may be served at any place in Oklahoma.

13 B. A civil action under ~~subsection B of Section 3 of this act~~
14 Section 5053.2 of this title may not be brought:

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

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

23 C. If the state elects to intervene and proceed with an action
24 brought under Section 5053.2 of this title, the state may file its

1 own complaint or amend the complaint of a person who has brought an
2 action under Section 5053.2 of this title to clarify or add detail
3 to the claims in which the state is intervening and to add any
4 additional claims with respect to which the state contends it is
5 entitled to relief. For statute of limitation purposes, any such
6 state pleading shall relate back to the filing date of the complaint
7 of the person who originally brought the action to the extent that
8 the claim of the state arises out of the conduct, transactions, or
9 occurrences set forth, or attempted to be set forth, in the prior
10 complaint of that person.

11 D. In any action brought under ~~subsection B of~~ Section ~~3~~ 5053.2
12 of this ~~act~~ title, this state shall be required to prove all
13 essential elements of the cause of action, including damages, by a
14 preponderance of the evidence.

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

23
24

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5053.8 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Upon a final conviction, deferred sentence or plea of nolo
5 contendere in a criminal action or a settlement of a civil action in
6 a state, federal or administrative court for a case involving
7 Medicaid fraud, the Attorney General shall forward a notice to any
8 state agency or board listed in subsection C of this section in
9 which the defendant holds a professional license.

10 B. A notification from the Attorney General based on subsection
11 A of this section shall be considered cause for a board or state
12 agency to take an action, including, but not limited to, suspension
13 and all other available sanctions against a person, persons, entity
14 or corporation based on Medicaid fraud.

15 C. Professional licenses subject to this section shall include
16 any license or permit issued by:

- 17 1. The Oklahoma Health Care Authority;
- 18 2. The Department of Human Services;
- 19 3. The State Department of Health;
- 20 4. The Department of Mental Health and Substance Abuse
21 Services;
- 22 5. The State Board of Medical Licensure and Supervision;
- 23 6. The State Board of Osteopathic Examiners;
- 24 7. The Board of Dentistry;

- 1 8. The Oklahoma Board of Nursing;
- 2 9. The State Board of Veterinary Medical Examiners;
- 3 10. The State Board of Pharmacy;
- 4 11. The Board of Chiropractic Examiners;
- 5 12. The Board of Examiners in Optometry;
- 6 13. The Oklahoma State Bureau of Narcotics and Dangerous Drugs
- 7 Control;
- 8 14. The State Department of Rehabilitation Services; and
- 9 15. The Oklahoma State Board of Examiners for Long-Term Care
- 10 Administrators.

11 SECTION 6. This act shall become effective November 1, 2012.

12

13 53-2-10096 SDR 03/27/12

14

15

16

17

18

19

20

21

22

23

24