

1 ENGROSSED SENATE  
2 BILL NO. 1694

By: Sykes and Shortey of the  
Senate

3 and

4 Derby of the House

5  
6  
7 [ Medicaid false claims - Oklahoma Medicaid False  
8 Claims Act - codification - effective date ]  
9

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

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

13 Section 5053.1. A. For purposes of this section:

14 1. "Knowing" and "knowingly":

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

16 ~~a.~~

17 (1) has actual knowledge of the information,

18 ~~b.~~

19 (2) acts in deliberate ignorance of the truth or  
20 falsity of the information, or

21 ~~c.~~

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

24

1           b.    require no proof of specific intent to defraud ~~is~~  
2                                   required; and

3           2.    "Claim" ~~includes:~~

4           a.    means any request or demand, whether under a contract  
5                                   or otherwise, for money or property ~~which,~~ whether or  
6                                   not the United States has title to the money or  
7                                   property, that:

8                                   (1) is presented to an officer, employee or agent of  
9                                   the state, or

10                                  (2) is made to a contractor, grantee, or other  
11                                  recipient if the money or property is to be spent  
12                                  or used on the state's behalf or to advance a  
13                                  state's program or interest and this state:

14                                  (a) provides or has provided any portion of the  
15                                  money or property ~~which is~~ requested or  
16                                  demanded, or ~~if the state~~

17                                  (b) will reimburse the contractor, grantee, or  
18                                  other recipient for any portion of the money  
19                                  or property which is requested or demanded,  
20                                  and

21           b.    does not include requests or demands for money or  
22                                   property that the government has paid to an individual  
23                                   as compensation for federal employment or as an income  
24

1           subsidy with no restrictions on that individual's use  
2           of the money or property;

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

7           4. "Material" means having a natural tendency to influence, or  
8 be capable of influencing, the payment or receipt of money or  
9 property.

10           B. Any person who:

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

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

17           3. Conspires to ~~defraud the state by getting a false or~~  
18 ~~fraudulent claim allowed or paid~~ commit a violation of this  
19 subsection;

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,~~ knowingly delivers, or  
23 causes to be delivered, less ~~property than the amount for which the~~

1 ~~person receives a certificate or receipt~~ than all of that money or  
2 property;

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

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

10 7. Knowingly makes, uses, or causes to be made or used, a false  
11 record or statement material to ~~conceal, avoid, or decrease~~ an  
12 obligation to pay or transmit money or property to the state, or  
13 knowingly conceals or knowingly and improperly avoids or decreases  
14 an obligation to pay or transmit money or property to the  
15 government, is liable to the State of Oklahoma for a civil penalty  
16 of not less than ~~Five Thousand Dollars (\$5,000.00)~~ Five Thousand  
17 Five Hundred Dollars (\$5,500.00) and not more than ~~Ten Thousand~~  
18 ~~Dollars (\$10,000.00)~~ Eleven Thousand Dollars (\$11,000.00), unless a  
19 penalty is imposed for the act of that person in violation of this  
20 subsection under the federal False Claims Act for the same or a  
21 prior action, plus three times the amount of damages which the state  
22 sustains because of the act of that person.

23 C. If the court finds that:  
24

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

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

8 3. At the time the person furnished the state with the  
9 information about the violation, no criminal prosecution, civil  
10 action, or administrative action had commenced under Title 63 of the  
11 Oklahoma Statutes with respect to the violation, and the person did  
12 not have actual knowledge of the existence of an investigation into  
13 the violation,  
14 the court may assess not less than two times the amount of damages  
15 which the state sustains because of ~~the~~ that act of the person. A  
16 person violating subsection B of this section shall also be liable  
17 to this state for the costs of a civil action brought to recover any  
18 such penalty or damages.

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

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

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

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

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

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

23       3. Any payment to a person under paragraph 1 or 2 of this  
24 subsection shall be made from the proceeds. Any such person shall

1 also receive an amount for reasonable expenses which the court finds  
2 to have been necessarily incurred, plus reasonable attorney fees and  
3 costs. All such expenses, fees, and costs shall be awarded against  
4 the defendant.

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

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

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

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

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

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

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

24

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

13 1. Prior to a public disclosure under Section 5053.4 of this  
14 title, has voluntarily disclosed to the state the information on  
15 when allegations or transactions in a claim are based; or

16 2. Has knowledge that is independent of and materially adds to  
17 the publicly disclosed allegations or transactions, and who has  
18 voluntarily provided the information to the state before filing an  
19 action under the Oklahoma Medicaid False Claims Act.

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

22 D. In civil actions brought under this section by this state,  
23 the provisions of Title 28 of the Oklahoma Statutes shall apply.

24

1 E. ~~Any employee who~~ Relief from retaliatory actions shall  
2 include:

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

15 2. Reinstatement with the same seniority status ~~such that~~  
16 employee, contractor or agent would have had but for the  
17 discrimination, two times the amount of back pay, interest on the  
18 back pay, and compensation for any special damages sustained as a  
19 result of the discrimination, including litigation costs and  
20 reasonable attorney fees. An ~~employee may bring an~~ action under  
21 this section may be brought in the appropriate district court of the  
22 State of Oklahoma for the relief provided in this subsection.

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

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

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

7 B. A civil action under ~~subsection B of Section 3 of this act~~  
8 Section 5053.2 of this title may not be 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. If the state elects to intervene and proceed with an action  
18 brought under Section 5053.2 of this title, the state may file its  
19 own complaint or amend the complaint of a person who has brought an  
20 action under Section 5053.2 of this title to clarify or add detail  
21 to the claims in which the state is intervening and to add any  
22 additional claims with respect to which the state contends it is  
23 entitled to relief. For statute of limitation purposes, any such  
24 state pleading shall relate back to the filing date of the complaint

1 of the person who originally brought the action to the extent that  
2 the claim of the state arises out of the conduct, transactions, or  
3 occurrences set forth, or attempted to be set forth, in the prior  
4 complaint of that person.

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

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

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

20 A. Upon a final conviction, deferred sentence or plea of nolo  
21 contendere in a criminal action or a settlement of a civil action in  
22 a state, federal or administrative court for a case involving  
23 Medicaid fraud, the Attorney General shall forward a notice to any  
24

1 state agency or board listed in Subsection C of this section in  
2 which the defendant holds a professional license.

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

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

- 10 1. The Oklahoma Health Care Authority;
- 11 2. The Department of Human Services;
- 12 3. The State Department of Health;
- 13 4. The Department of Mental Health and Substance Abuse  
14 Services;
- 15 5. The State Board of Medical Licensure and Supervision;
- 16 6. The State Board of Osteopathic Examiners;
- 17 7. The Board of Dentistry;
- 18 8. The Oklahoma Board of Nursing;
- 19 9. The State Board of Veterinary Medical Examiners;
- 20 10. The Oklahoma State Board of Pharmacy;
- 21 11. The Board of Chiropractic Examiners;
- 22 12. The Board of Examiners in Optometry;
- 23 13. The Oklahoma State Bureau of Narcotics and Dangerous Drugs  
24 Control;

1 14. The State Department of Rehabilitation Services; and

2 15. The Oklahoma State Board of Examiners for Long-Term Care  
3 Administrators.

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

5 Passed the Senate the 13th day of March, 2012.

6  
7 \_\_\_\_\_  
8 Presiding Officer of the Senate

9 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
10 2012.

11  
12 \_\_\_\_\_  
13 Presiding Officer of the House  
14 of Representatives  
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