

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1386

By: Crain of the Senate

and

Cox of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to Medicaid fraud; amending 56 O.S.
12 2011, Sections 1003 and 1004, which relate to the
13 Oklahoma Medicaid Program Integrity Act; permitting
14 the Attorney General to pursue certain cases;
15 granting the Attorney General access to certain
16 records; and providing an effective date.

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

18 SECTION 1. AMENDATORY 56 O.S. 2011, Section 1003, is
19 amended to read as follows:

20 Section 1003. A. There is hereby created within the Office of
21 the Attorney General, a Medicaid fraud control unit.

22 B. The Medicaid fraud control unit shall be the state entity to
23 which all cases of suspected Medicaid fraud shall be referred by the
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1 Oklahoma Health Care Authority or its fiscal agents for the purposes
2 of investigation, civil action, criminal action or referral to the
3 district attorney. Provided however, nothing contained in the
4 Oklahoma Medicaid Program Integrity Act shall prohibit the Oklahoma
5 Health Care Authority from investigating or additionally referring
6 to other proper law enforcement agencies cases of suspected Medicaid
7 fraud, nor the Attorney General from pursuing cases of suspected
8 Medicaid fraud without a referral from the Oklahoma Health Care
9 Authority if there is credible evidence of fraud.

10 C. 1. In carrying out these responsibilities, the Attorney
11 General shall have all the powers necessary to comply with federal
12 laws and regulations relative to the operation of a Medicaid fraud
13 unit, the power to cross-designate assistant United States attorneys
14 as assistant attorneys general, the power to investigate cases of
15 patient abuse, the power to issue or cause to be issued subpoenas or
16 other process in aid of investigations and prosecutions, the power
17 to administer oaths and take sworn statements under penalty of
18 perjury, the power to serve and execute in any county, search
19 warrants which relate to investigations authorized by the Oklahoma
20 Medicaid Program Integrity Act and shall have all the powers of a
21 district attorney.

22 2. Subpoenas ad testificandum or duces tecum issued pursuant to
23 the Oklahoma Medicaid Program Integrity Act may be served by the
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1 Attorney General, any peace officer, or any competent person over
2 eighteen (18) years of age, and may require attendance or production
3 at any place in this state. A refusal to obey such subpoena, or
4 willful failure to appear, be sworn, testify, or produce records at
5 the place and time specified shall constitute contempt and shall be
6 enforced by the district court of the county where issued or the
7 county where served, at the election of the Attorney General, as if
8 it was a contempt on that court.

9 D. The Attorney General shall have authority to collect all
10 fines, penalties, amounts of restitution, or interest accruing on
11 any amount of restitution to be made and any penalties to be paid
12 from and after default in the payment thereof levied pursuant to the
13 provisions of the Oklahoma Medicaid Program Integrity Act, the
14 Oklahoma Medicaid False Claims Act, or any other charge, cause of
15 action, prelitigation settlement or other settlement which recovers
16 money wrongfully paid by the Oklahoma Health Care Authority on a
17 claim submitted to the Oklahoma Health Care Authority. However,
18 this subsection is not in any way intended to affect the contempt
19 power of any court. Funds collected by the Attorney General
20 pursuant to this section shall be deposited as follows:

21 1. Restitution recovered and interest thereon shall be returned
22 to the Oklahoma Health Care Authority for deposit to the Oklahoma
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1 Health Care Authority Medicaid Program Fund created pursuant to
2 Section 5020 of Title 63 of the Oklahoma Statutes.

3 2. Costs of investigation, litigation, attorney fees, and other
4 expenses shall be retained by the Office of the Attorney General and
5 shall be deposited in the Attorney General's Medicaid Fraud
6 Revolving Fund created pursuant to subsection E of this section.

7 3. Fines and penalties and other funds recovered and interest
8 thereon shall be deposited in the Attorney General's Medicaid Fraud
9 Revolving Fund; provided, the balance in the Attorney General's
10 Medicaid Fraud Revolving Fund shall not exceed an amount equal to
11 fifty percent (50%) of the current-year budget for operating costs
12 of the Medicaid Fraud Control Unit. Any funds exceeding that amount
13 shall be deposited as follows:

14 a. seventy-five percent (75%) to the General Revenue
15 Fund, and

16 b. twenty-five percent (25%) to the Attorney General's
17 Evidence Fund created pursuant to Section 19 of Title
18 74 of the Oklahoma Statutes.

19 E. There is hereby created in the State Treasury a revolving
20 fund for the Office of the Attorney General, to be designated the
21 "Attorney General's Medicaid Fraud Revolving Fund". The fund shall
22 be a continuing fund, not subject to fiscal year limitations, and
23 shall consist of any monies designated to the fund by law. All
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1 monies accruing to the credit of said fund are hereby appropriated
2 and may be budgeted and expended by the Attorney General for
3 activities related to the Medicaid Fraud Control Unit. Expenditures
4 from said fund shall be made upon warrants issued by the State
5 Treasurer against claims filed as prescribed by law with the
6 Director of the Office of State Finance for approval and payment.

7 SECTION 2. AMENDATORY 56 O.S. 2011, Section 1004, is
8 amended to read as follows:

9 Section 1004. A. No potential Medicaid recipient shall be
10 eligible for medical assistance unless such recipient has, in
11 writing, authorized the Oklahoma Health Care Authority and the
12 Attorney General to examine all records maintained as required by
13 the Oklahoma Medicaid Program by the recipient, or of those
14 receiving or having received Medicaid benefits through the
15 recipient, whether the receipt of such benefits would be allowed by
16 the Oklahoma Medicaid Program or not.

17 B. 1. Each application to participate as a provider in the
18 Oklahoma Medicaid Program, each report stating income or expense
19 upon which rates of payment are or may be based, and each invoice
20 for payment for a good or a service provided to recipient, shall
21 contain a statement that all matters stated therein are true and
22 accurate, signed by the provider or his or her agent. Any person
23 who signs this statement or causes another to sign this statement

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1 knowing the statement to be false shall be guilty of perjury. For
2 purposes of this subsection, an individual who signs on behalf of a
3 provider shall be presumed to have the authorization of the provider
4 and to be acting at his or her direction.

5 2. All providers subject to the Oklahoma Medicaid Program are
6 required to maintain at their or its principal place of Medicaid
7 business all such records at least for a period of six (6) years
8 from the date of claimed provision of any goods or services to any
9 Medicaid recipient.

10 C. The Attorney General shall be allowed access to all records
11 of persons and Medicaid recipients under the Oklahoma Medicaid
12 Program which are held by a provider, ~~or the Oklahoma Health Care~~
13 Authority for the purpose of investigating whether any person may
14 have committed the crime of Medicaid fraud, or for use or potential
15 use in any legal, administrative, or judicial proceeding. In
16 carrying out the purposes of the Oklahoma Medicaid Program Integrity
17 Act, the Attorney General may take possession of records held by a
18 provider by subpoena, in which case copies of those records obtained
19 by the Attorney General which are necessary for the provider to
20 continue doing business shall be supplied to the provider, or the
21 Attorney General may elect to require that the provider supply the
22 Medicaid fraud control unit within the office of the Attorney
23 General with copies of the records. Upon request, the Attorney

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1 General shall be granted access to records, including electronic
2 data, held by the Oklahoma Health Care Authority for the purpose of
3 investigating whether any person or entity may have committed the
4 crime of Medicaid fraud.

5 D. Records obtained or created by the Authority or the Attorney
6 General pursuant to the Oklahoma Medicaid Program Integrity Act
7 shall be classified as confidential information and shall not be
8 subject to the Oklahoma Open Records Act or to outside review or
9 release by any individual except, if authorized by the Attorney
10 General, in relation to legal, administrative, or judicial
11 proceeding.

12 E. No person holding such records may refuse to provide the
13 Authority or the Attorney General with access to such records on the
14 basis that release would violate any recipient's right of privacy,
15 any recipient's privilege against disclosure or use, or any
16 professional or other privilege or right. The disclosure of patient
17 information as required by the Oklahoma Medicaid Program Integrity
18 Act shall not subject any physician or other health services
19 provider to liability for breach of any confidential relationship
20 between a patient and a provider.

21 SECTION 3. This act shall become effective November 1, 2012.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/27/2012 - DO
24 PASS, As Amended.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.