

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. 1694

By: Sykes and Shortey of the
Senate

and

Derby of the House

11 COMMITTEE SUBSTITUTE

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

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

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

3 Section 5053.1 A. For purposes of this section:

4 1. "Knowing" and "knowingly":

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

6 ~~a.~~

7 (1) has actual knowledge of the information,

8 ~~b.~~

9 (2) acts in deliberate ignorance of the truth or
10 falsity of the information, or

11 ~~c.~~

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

14 b. require no proof of specific intent to defraud ~~is~~
15 ~~required; and~~

16 2. "Claim" ~~includes:~~

17 a. means any request or demand, whether under a contract
18 or otherwise, for money or property which, whether or
19 not the United States has title to the money or
20 property, that:

21 (1) is presented to an officer, employee or agent of
22 the state, or

23

24

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

5 (a) provides or has provided any portion of the
6 money or property ~~which is~~ requested or
7 demanded, or ~~if the state~~

8 (b) will reimburse the contractor, grantee, or
9 other recipient for any portion of the money
10 or property which is requested or demanded,
11 and

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

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

21 4. "Material" means having a natural tendency to influence, or
22 be capable of influencing, the payment or receipt of money or
23 property.

1 B. Any person who:

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

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

8 3. Conspires to ~~defraud the state by getting a false or~~
9 ~~fraudulent claim allowed or paid~~ commit a violation of this
10 subsection;

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

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

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

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

15 C. If the court finds that:

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

21 2. The person fully cooperated with any state investigation of
22 the violation; and
23
24

1 3. At the time the person furnished the state with the
2 information about the violation, no criminal prosecution, civil
3 action, or administrative action had commenced under ~~Title 63 of the~~
4 ~~Oklahoma Statutes~~ this title with respect to the violation, and the
5 person did not have actual knowledge of the existence of an
6 investigation into the violation,
7 the court may assess not less than two times the amount of damages
8 which the state sustains because of ~~the~~ that act of the person.

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

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

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

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

19 Section 5053.4 A. 1. If the state proceeds with an action
20 brought by a person under subsection B of Section 5053.2 of this
21 title, the person shall, subject to paragraph 2 of this subsection,
22 receive at least fifteen percent (15%) but not more than twenty-five
23 percent (25%) of the proceeds of the action or settlement of the
24

1 claim, depending upon the extent to which the person substantially
2 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

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

7 C. Whether or not the state proceeds with the action, if the
8 court finds that the action was brought by a person who planned⁷ and
9 ~~initiated, or participated in~~ the violation of the Oklahoma Medicaid
10 False Claims Act upon which the action was brought, then the court
11 may, to the extent the court considers appropriate, reduce the share
12 of the proceeds of the action which the person would otherwise
13 receive under subsection A or B of this section, taking into account
14 the role of that person in advancing the case to litigation and any
15 relevant circumstances pertaining to the violation. If the person
16 bringing the action is convicted of criminal conduct arising from
17 his or her role in the violation of the Oklahoma Medicaid False
18 Claims Act, that person shall be dismissed from the civil action and
19 shall not receive any share of the proceeds of the action. The
20 dismissal shall not prejudice the right of this state to continue
21 the action, represented by the Office of the Attorney General or its
22 assigns.

23

24

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 attorney fees and expenses if the defendant
4 prevails in the action and the court finds that the claim of the
5 person bringing the action was clearly frivolous, clearly vexatious,
6 or brought primarily for purposes of harassment.

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

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

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

18 B. No court shall have jurisdiction over an action under this
19 section based upon the public disclosure of allegations or
20 transactions in a criminal, civil, or administrative hearing, in a
21 Congressional, legislative, administrative, or State Auditor and
22 Inspector report, hearing, audit, or investigation, or from the news
23 media, unless the action is brought by the Attorney General or the
24

1 person bringing the action is an original source of the information.
2 For purposes of this subsection, "original source" means an
3 individual who ~~has direct and independent knowledge of the~~
4 ~~information on which the allegations are based and has voluntarily~~
5 ~~provided the information to the state before filing an action under~~
6 ~~this section which is based on the information~~ either:

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

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

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

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

18 E. ~~Any employee who~~ Relief from retaliatory actions shall
19 include:

20 1. All relief necessary to make an employee, contractor or
21 agent whole if that employee, contractor or agent is discharged,
22 demoted, suspended, threatened, harassed, or in any other manner
23 discriminated against in the terms and conditions of employment by

24

1 ~~his or her employer~~ because of lawful acts done by the employee,
2 contractor or agent on behalf of the employee, contractor or agent
3 or associated others in furtherance of ~~an action under this act,~~
4 ~~including investigation for, initiation of, testimony for, or~~
5 ~~assistance in an action filed or to be filed, shall be entitled to~~
6 ~~all relief necessary to make the employee whole. Such relief shall~~
7 ~~include reinstatement~~ other efforts to stop one or more violations
8 of the Oklahoma Medicaid False Claims Act; and

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

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

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

21 Section 5053.6 A. A subpoena requiring the attendance of a
22 witness at a trial or hearing conducted under ~~subsection B of~~
23
24

1 ~~Section 3 of the Oklahoma Medicaid False Claims Act~~ Section 5053.2
2 of this title may be served at any place in Oklahoma.

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

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

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

13 C. If the state elects to intervene and proceed with an action
14 brought under Section 5053.2 of this title, the state may file its
15 own complaint or amend the complaint of a person who has brought an
16 action under Section 5053.2 of this title to clarify or add detail
17 to the claims in which the state is intervening and to add any
18 additional claims with respect to which the state contends it is
19 entitled to relief. For statute of limitation purposes, any such
20 state pleading shall relate back to the filing date of the complaint
21 of the person who originally brought the action to the extent that
22 the claim of the state arises out of the conduct, transactions, or

23
24

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

1 occurrences set forth, or attempted to be set forth, in the prior
2 complaint of that person.

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

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

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

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

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

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

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

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/27/2012 - DO
6 PASS, As Amended.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24