SENATE FLOOR VERSION
March 1, 2012
As Amended

SENATE BILL NO. 1694 By: Sykes and Shortey of the Senate

and

Derby of the House

[Medicaid false claims - Oklahoma Medicaid False Claims Act - codification - 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. "Knowing" and "knowingly":

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

~~a.~~

(1) has actual knowledge of the information,

~~b.~~

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

~~c.~~

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

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

2. "Claim" ~~includes~~:

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

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

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

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

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

b. does not include requests or demands for money or property that the government has paid to an individual

as compensation for federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

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

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

B. Any person who:

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

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

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

4. Has possession, custody, or control of property or money used, or to be used, by the state and, ~~intending to defraud the state or willfully to conceal the property,~~ knowingly delivers, or causes to be delivered, less ~~property than the amount for which the~~

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

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

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

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

C. If the court finds that:

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

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

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

the court may assess not less than two times the amount of damages which the state sustains because of ~~the~~ that act of the person. A person violating subsection B of this section shall also be liable to this state for the costs of a civil action brought to recover any such penalty or damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. If the state elects to intervene and proceed with an action brought under Section 5053.2 of this title, the state may file its own complaint or amend the complaint of a person who has brought an action under Section 5053.2 of this title to clarify or add detail to the claims in which the state is intervening and to add any additional claims with respect to which the state contends it is entitled to relief. For statute of limitation purposes, any such state pleading shall relate back to the filing date of the complaint

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

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

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

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

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

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

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

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

1. The Oklahoma Health Care Authority;

2. The Department of Human Services;

3. The State Department of Health;

4. The Department of Mental Health and Substance Abuse Services;

5. The State Board of Medical Licensure and Supervision;

6. The State Board of Osteopathic Examiners;

7. The Board of Dentistry;

8. The Oklahoma Board of Nursing;

9. The State Board of Veterinary Medical Examiners;

10. The State Board of Pharmacy;

11. The Board of Chiropractic Examiners;

12. The Board of Examiners in Optometry;

13. The Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

14. The Department of Rehabilitation Services; and

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

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

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-29-12 - DO PASS, As Amended and Coauthored.