

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1694

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to Medicaid false claims; amending 63
8 O.S. 2011, Sections 5053.1, 5053.4, 5053.5 and
9 5053.6, which relate to the Oklahoma Medicaid False
10 Claims Act; modifying definitions; modifying list of
11 persons liable for certain civil penalty; modifying
12 certain civil penalty; making certain persons liable
13 for specified costs; directing certain state agencies
14 to receive specified percentage of proceeds or
15 reimbursement; modifying definition; modifying
16 requirements for certain relief; limiting time period
17 for certain civil action; authorizing the filing of
18 certain complaint or amendment; requiring certain
19 notice; permitting certain sanctions; providing for
20 codification; and providing an effective date.

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

3 ~~e.~~

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

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

8 2. "Claim" ~~includes:~~

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

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

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

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

22 (b) will reimburse the contractor, grantee, or
23 other recipient for any portion of the money
24

1 or property which is requested or demanded,
2 and

3 b. does not include requests or demands for money or
4 property that the government has paid to an individual
5 as compensation for federal employment or as an income
6 subsidy with no restrictions on that individual's use
7 of the money or property;

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

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

15 B. Any person who:

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

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

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

1 4. Has possession, custody, or control of property or money
2 used, or to be used, by the state and, ~~intending to defraud the~~
3 ~~state or willfully to conceal the property,~~ knowingly delivers, or
4 causes to be delivered, less ~~property than the amount for which the~~
5 ~~person receives a certificate or receipt~~ than all of that money or
6 property;

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

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

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

1 prior action, plus three times the amount of damages which the state
2 sustains because of the act of that person.

3 C. If the court finds that:

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

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

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

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

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

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

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

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

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

15 2. Where the action is one which the court finds to be based
16 primarily on disclosures of specific information other than
17 information provided by the person bringing the action relating to
18 allegations or transactions in a criminal, civil, or administrative
19 hearing, in a Congressional, legislative, administrative, or State
20 Auditor and Inspector report, hearing, audit, or investigation, or
21 from the news media, the court may award such sums as it considers
22 appropriate, but in no case more than ten percent (10%) of the
23 proceeds, taking into account the significance of the information
24

1 and the role of the person bringing the action in advancing the case
2 to litigation.

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

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

19 C. Whether or not the state proceeds with the action, if the
20 court finds that the action was brought by a person who planned, and
21 ~~initiated, or participated in~~ the violation of the Oklahoma Medicaid
22 False Claims Act upon which the action was brought, then the court
23 may, to the extent the court considers appropriate, reduce the share
24 of the proceeds of the action which the person would otherwise

1 receive under subsection A or B of this section, taking into account
2 the role of that person in advancing the case to litigation and any
3 relevant circumstances pertaining to the violation. If the person
4 bringing the action is convicted of criminal conduct arising from
5 his or her role in the violation of the Oklahoma Medicaid False
6 Claims Act, that person shall be dismissed from the civil action and
7 shall not receive any share of the proceeds of the action. The
8 dismissal shall not prejudice the right of this state to continue
9 the action, represented by the Office of the Attorney General or its
10 assigns.

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

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

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

23 Section 5053.5. A. In no event may a person bring an action
24 under subsection B of Section 5053.2 of this title which is based

1 upon allegations or transactions which are the subject of a civil
2 suit or an administrative civil money penalty proceeding in which
3 the state is already a party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 C. If the state elects to intervene and proceed with an action
20 brought under Section 5053.2 of this title, the state may file its
21 own complaint or amend the complaint of a person who has brought an
22 action under Section 5053.2 of this title to clarify or add detail
23 to the claims in which the state is intervening and to add any
24 additional claims with respect to which the state contends it is

1 entitled to relief. For statute of limitation purposes, any such
2 state pleading shall relate back to the filing date of the complaint
3 of the person who originally brought the action to the extent that
4 the claim of the state arises out of the conduct, transactions, or
5 occurrences set forth, or attempted to be set forth, in the prior
6 complaint of that person.

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

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

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

22 A. Upon a final conviction, deferred sentence or plea of nolo
23 contendere in a criminal action or a settlement of a civil action in
24 a state, federal or administrative court for a case involving

1 Medicaid fraud, the Attorney General shall forward a notice to any
2 state agency or board listed in Subsection C of this section in
3 which the defendant holds a professional license.

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

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

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

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

3 14. The Department of Rehabilitation Services; and

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

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

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