STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1515 By: Standridge

AS INTRODUCED

An Act relating to the Oklahoma Medicaid False Claims Act; amending 63 O.S. 2011, Sections 5053.1, 5053.2, 5053.3, 5053.4, 5053.5, 5053.6 and 5053.7, which relate to penalties, civil actions, procedure and jurisdiction; modifying definitions; modifying requirements for certain liability; increasing certain penalties; updating statutory references; modifying requirements for certain intervention; modifying requirements for award of certain proceeds; requiring dismissal of certain actions; modifying definition; modifying requirements for certain relief; establishing statute of limitations for certain action; establishing procedures for certain intervention; and providing an 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" mean that a person, with respect to information:~~

~~a. has actual knowledge of the information,~~

~~b. acts in deliberate ignorance of the truth or falsity of the information, or~~

~~c. acts in reckless disregard of the truth or falsity of the information.~~

~~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 is made to a contractor, grantee, or other recipient if this state provides any portion of the money or property which is requested or demanded, or if the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded~~, whether under a contract or otherwise and whether or not the state 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 program or interest, and if this state:

(a) provides or has provided any portion of the money or property requested or demanded, or

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

or property which is requested or demanded; and

b. shall not include requests or demands for money or property that the government has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on the individual's use of the money or property;

2. "Knowing" and "knowingly" mean that a person, with respect to information:

a. has actual knowledge of the information,

b. acts in deliberate ignorance of the truth or falsity of the information, or

c. acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required;

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

4. "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation or from the retention of any overpayment.

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~~ 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 the Oklahoma Medicaid False Claims Act;

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 than all of such money or property ~~than the amount for which the person receives a certificate or receipt~~;

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 state; 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~~ this title 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 act of the person.

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.

~~D.~~ E. Any information furnished pursuant to subsections A through ~~C~~ D 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 5053.2, is amended to read as follows:

Section 5053.2. A. The Attorney General shall diligently investigate a violation under the Oklahoma Medicaid False Claims Act. If the Attorney General finds that a person has violated or is violating the Oklahoma Medicaid False Claims Act, the Attorney General may bring a civil action under this section against the person.

B. 1. A person may bring a civil action for a violation of the Oklahoma Medicaid False Claims Act for the person and for this state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting.

2. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state pursuant to Section 2004 of Title 12 of the Oklahoma Statutes. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

3. The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph 2 of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant pursuant to Section 2004 of Title 12 of the Oklahoma Statutes.

4. Before the expiration of the sixty-day period or any extensions obtained under paragraph 3 of this subsection, the state shall:

a. proceed with the action, in which case the action shall be conducted by the state, or

b. notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

5. When a person brings an action under this section, ~~under the federal False Claims Act, or under any similar provision of the law of any other state,~~ no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

SECTION 3. AMENDATORY 63 O.S. 2011, Section 5053.3, is amended to read as follows:

Section 5053.3. A. If the state proceeds with the action pursuant to Section ~~3~~ 5053.2 of ~~the Oklahoma Medicaid False Claims Act~~ this title, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in ~~paragraph 1 of subsection B of Section 3 of~~ this ~~act~~ subsection.

1. The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

2. The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

3. Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the participation of the person, such as:

a. limiting the number of witnesses the person may call,

b. limiting the length of the testimony of the witnesses,

c. limiting the person's cross-examination of witnesses, or

d. otherwise limiting the participation by the person in the litigation.

4. Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

B. If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the expense of the state. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

C. Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

D. Notwithstanding subsection B of Section ~~3~~ 5053.2 of this ~~act~~ title, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any alternate

remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceeding as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Oklahoma, if all time for filing the appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

SECTION 4. 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 Section 5053.2 of this ~~section~~ title, 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.

SECTION 5. 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~~ The court shall ~~have jurisdiction over~~ dismiss an action or claim under this section ~~based upon the public disclosure of~~, unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed 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 subsection B of this section, has voluntarily disclosed to the state the information on which 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~~, contractor or agent shall be entitled to:

1. All relief necessary to make the employee, contractor or agent whole, if the 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 ~~on behalf of the employee or~~, contractor, agent or associate 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~~ or other efforts to stop one or more violations of the Oklahoma Medicaid False Claims Act.

~~Such relief~~ 2. Relief which shall include reinstatement with the same seniority status ~~such~~ the 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. An action under this section shall not be brought more than three (3) years after the date when the retaliation occurred.

SECTION 6. 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 may be served at any place in Oklahoma.

B. A civil action under ~~subsection B of~~ Section ~~3~~ 5053.2 of this ~~act~~ 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 limitations 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 the person.

D. In any action brought under ~~subsection B of~~ Section ~~3~~ 5053.2 of this ~~act~~ 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 7. AMENDATORY 63 O.S. 2011, Section 5053.7, is amended to read as follows:

Section 5053.7. A. Any action under ~~subsection B of~~ Section ~~3~~ 5053.2 of ~~the Oklahoma Medicaid False Claims Act~~ this title may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by the Oklahoma Medicaid False Claims Act occurred. A summons as required by Section 2004 of Title 12 of the Oklahoma Statutes shall be issued by the appropriate district court and served at any place within or outside the State of Oklahoma.

B. The district courts shall have jurisdiction over any action brought under the laws of the state for the recovery of funds paid by a state or local government if the action arises from the same transaction or occurrence as an action brought under ~~subsection B of Section 3 of this act~~ the Oklahoma Medicaid False Claims Act.

SECTION 8. This act shall become effective November 1, 2016.

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