

STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

SENATE BILL 589

By: Adelson

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Medicaid False Claims Act; providing short title; stating liability for certain actions; defining terms; providing certain exemption; stating certain nonexemption; directing certain responsibilities of the Attorney General; permitting certain actions by specified persons; directing responsibility for certain prosecution; setting certain options for the state; granting certain rights; permitting certain action by court in certain circumstance; permitting certain alternative remedies; setting certain payment of claim in specified circumstances; prohibiting certain actions; prohibiting certain jurisdiction; exempting state from responsibility for certain expenses; permitting certain relief; directing certain subpoenas; prohibiting certain civil action in specified circumstances; permitting location of certain action; authorizing the Oklahoma Health Care Authority to make certain investigations; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Medicaid False Claims Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 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 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;

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, delivers, or causes to be delivered, less 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 to conceal, avoid, or decrease 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) and not more than Ten Thousand Dollars (\$10,000.00), plus three (3) times the amount of damages which the state sustains because of the act of that person.

B. If the court finds that:

1. The person committing the violation of subsection A of this section furnished officials of the State of Oklahoma 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. Such person fully cooperated with any state investigation of such violation; and

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

the court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person. A person violating subsection A of this section shall also be liable to the State of Oklahoma for the costs of a civil action brought to recover any such penalty or damages.

C. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information:

1. Has actual knowledge of the information;

2. Acts in deliberate ignorance of the truth or falsity of the information; or

3. Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

D. For purposes of this section, "claim" includes 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 the State of Oklahoma provides any portion of the money or property which is requested or demanded, or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General diligently shall 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 the State of Oklahoma. 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 their 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 (60) 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, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the state proceeds with the action pursuant to Section 3 of this act, 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.

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, such 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 person's participation, such as:

- a. limiting the number of witnesses the person may call,
- b. limiting the length of the testimony of such 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 state's expense. 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 such 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 (60) 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 of this act, 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 such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such 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 such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. If the state proceeds with an action brought by a person under subsection B of Section 3 of this act, such person shall,

subject to paragraph 2 of this subsection, receive at least fifteen (15) percent but not more than twenty-five (25) percent 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 (10) percent 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 attorneys' 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 (25) percent and not more than thirty (30) percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' 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 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. Such dismissal shall not prejudice the right of the State of Oklahoma 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 attorneys' 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In no event may a person bring an action under subsection B of section 3 of this act 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.

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 the State of Oklahoma, the provisions of Title 28 of the Oklahoma Statutes shall apply.

E. Any employee who 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 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 with the same seniority status such employee would have had but for the discrimination, two (2) 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 attorneys' fees. An employee may bring an action in the appropriate district court of the State of Oklahoma for the relief provided in this paragraph.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A subpoena requiring the attendance of a witness at a trial or hearing conducted under subsection B of Section 3 of this act may be served at any place in Oklahoma.

B. A civil action under subsection B of Section 3 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. In any action brought under subsection B of Section 3 of this act, the State of Oklahoma shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

D. Notwithstanding any other provision of law, a final judgment rendered in favor of the State of Oklahoma 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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5053.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any action under subsection B of Section 3 of this act 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.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5015.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Health Care Authority has the authority to investigate all applications for medical assistance and all health

care requests for medical services. The Oklahoma Health Care Authority has the authority to investigate complaints regarding the program, including but not limited to, complaints regarding members or providers.

SECTION 10. This act shall become effective November 1, 2007.

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