

An Act

ENROLLED SENATE
BILL NO. 645

By: Standridge of the Senate

and

Kannady of the House

An Act relating to the Oklahoma Medicaid False Claims Act; amending 63 O.S. 2011, Sections 5053.1 and 5053.5, as amended by Sections 1 and 5, Chapter 44, O.S.L. 2016 (63 O.S. Supp. 2016, Sections 5053.1 and 5053.5), which relate to civil penalty and dismissal; modifying award of certain civil penalty; clarifying certain dismissal requirements; clarifying requirements for certain relief; and providing an effective date.

SUBJECT: Oklahoma Medicaid False Claims Act

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 5053.1, as amended by Section 1, Chapter 44, O.S.L. 2016 (63 O.S. Supp. 2016, Section 5053.1), is amended to read as follows:

Section 5053.1. A. For purposes of this section:

1. "Claim":

- a. means any request or demand for money or property, 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, 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 a false or fraudulent claim;

3. Conspires to 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 knowingly delivers, or causes to be delivered, less than all of such 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 property; or

7. Knowingly makes, uses or causes to be made or used, a false record or statement material to 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 Five Hundred Dollars (\$5,500.00) and not more than Eleven Thousand Dollars (\$11,000.00)~~ consistent with the civil penalties provision of the Federal False Claims Act, 31 U.S.C. 3729(a), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 101-410), and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-

74), 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 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.

E. Any information furnished pursuant to subsections A through D 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 2. AMENDATORY 63 O.S. 2011, Section 5053.5, as amended by Section 5, Chapter 44, O.S.L. 2016 (63 O.S. Supp. 2016, 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. The court shall dismiss an action or claim under this section, 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 which the state or its agent is a party, in a legislative, 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 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, 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 because of lawful acts done by the employee, contractor, agent or ~~associate~~ associated others in furtherance of an action under this act, or other efforts to stop one or more violations of the Oklahoma Medicaid False Claims Act.

2. Relief which shall include reinstatement with the same seniority status 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 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 3. This act shall become effective November 1, 2017.

Passed the Senate the 20th day of February, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2017.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____