

1 ENGROSSED SENATE  
2 BILL NO. 1515

By: Standridge of the Senate

3 and

4 Kannady of the House

5  
6 An Act relating to the Oklahoma Medicaid False Claims  
7 Act; amending 63 O.S. 2011, Sections 5053.1, 5053.2,  
8 5053.3, 5053.4, 5053.5, 5053.6 and 5053.7, which  
9 relate to penalties, civil actions, procedure and  
10 jurisdiction; modifying definitions; modifying  
11 requirements for certain liability; increasing  
12 certain penalties; updating statutory references;  
13 modifying requirements for certain intervention;  
14 modifying requirements for award of certain proceeds;  
15 requiring dismissal of certain actions; modifying  
16 definition; modifying requirements for certain  
17 relief; establishing statute of limitations for  
18 certain action; establishing procedures for certain  
19 intervention; and providing an effective date.  
20

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

22 SECTION 1. AMENDATORY 63 O.S. 2011, Section 5053.1, is  
23 amended to read as follows:

24 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~~

1 ~~e. acts in reckless disregard of the truth or falsity of~~  
2 ~~the information.~~

3 ~~No proof of specific intent to defraud is required; and~~

4 ~~2. "Claim" includes:~~

5 ~~a. means any request or demand, whether under a contract~~  
6 ~~or otherwise, for money or property which is made to a~~  
7 ~~contractor, grantee, or other recipient if this state~~  
8 ~~provides any portion of the money or property which is~~  
9 ~~requested or demanded, or if the state will reimburse~~  
10 ~~the contractor, grantee, or other recipient for any~~  
11 ~~portion of the money or property which is requested or~~  
12 ~~demanded, whether under a contract or otherwise and~~  
13 ~~whether or not the state has title to the money or~~  
14 ~~property, that:~~

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

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

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

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

1 or property which is requested or demanded;

2 and

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

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

10 a. has actual knowledge of the information,

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

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

15 No proof of specific intent to defraud is required;

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

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

24 B. Any person who:

- 1           1. Knowingly presents, or causes to be presented, ~~to an officer~~  
2 ~~or employee of the State of Oklahoma,~~ a false or fraudulent claim  
3 for payment or approval;
- 4           2. Knowingly makes, uses, or causes to be made or used, a false  
5 record or statement material to ~~get~~ a false or fraudulent claim ~~paid~~  
6 ~~or approved by the state;~~
- 7           3. Conspires to ~~defraud the state by getting a false or~~  
8 ~~fraudulent claim allowed or paid~~ commit a violation of the Oklahoma  
9 Medicaid False Claims Act;
- 10          4. Has possession, custody, or control of property or money  
11 used, or to be used, by the state and, ~~intending to defraud the~~  
12 ~~state or willfully to conceal the property,~~ knowingly delivers, or  
13 causes to be delivered, less than all of such money or property than  
14 ~~the amount for which the person receives a certificate or receipt;~~
- 15          5. Is authorized to make or deliver a document certifying  
16 receipt of property used, or to be used, by the state and, intending  
17 to defraud the state, makes or delivers the receipt without  
18 completely knowing that the information on the receipt is true;
- 19          6. Knowingly buys, or receives as a pledge of an obligation or  
20 debt, public property from an officer or employee of the state, who  
21 lawfully may not sell or pledge the property; or
- 22          7. Knowingly makes, uses, or causes to be made or used, a false  
23 record or statement material to ~~conceal, avoid, or decrease an~~  
24 obligation to pay or transmit money or property to the state, or

1 knowingly conceals or knowingly and improperly avoids or decreases  
2 an obligation to pay or transmit money or property to the state;  
3 is liable to the State of Oklahoma for a civil penalty of not less  
4 than ~~Five Thousand Dollars (\$5,000.00)~~ Five Thousand Five Hundred  
5 Dollars (\$5,500.00) and not more than ~~Ten Thousand Dollars~~  
6 ~~(\$10,000.00)~~ Eleven Thousand Dollars (\$11,000.00), ~~unless a penalty~~  
7 ~~is imposed for the act of that person in violation of this~~  
8 ~~subsection under the federal False Claims Act for the same or a~~  
9 ~~prior action,~~ plus three times the amount of damages which the state  
10 sustains because of the act of that person.

11 C. If the court finds that:

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

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

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

1 the court may assess not less than two times the amount of damages  
2 which the state sustains because of the act of the person.

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

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

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

11 SECTION 2. AMENDATORY 63 O.S. 2011, Section 5053.2, is  
12 amended to read as follows:

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

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

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

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

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

21           a. proceed with the action, in which case the action  
22                 shall be conducted by the state, or  
23  
24

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

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

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

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

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



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

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

- 13           a. limiting the number of witnesses the person may call,
- 14           b. limiting the length of the testimony of the witnesses,
- 15           c. limiting the person's cross-examination of witnesses,
- 16           or
- 17           d. otherwise limiting the participation by the person in  
18           the litigation.

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

24

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

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

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

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

12 SECTION 4. AMENDATORY 63 O.S. 2011, Section 5053.4, is  
13 amended to read as follows:

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

21 2. Where the action is one which the court finds to be based  
22 primarily on disclosures of specific information, other than  
23 information provided by the person bringing the action, relating to  
24 allegations or transactions in a criminal, civil, or administrative

1 hearing, in a ~~Congressional~~, legislative, administrative, or State  
2 Auditor and Inspector report, hearing, audit, or investigation, or  
3 from the news media, the court may award such sums as it considers  
4 appropriate, but in no case more than ten percent (10%) of the  
5 proceeds, taking into account the significance of the information  
6 and the role of the person bringing the action in advancing the case  
7 to litigation.

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

14 B. If the state does not proceed with an action under Section  
15 5053.2 of this section title, the person bringing the action or  
16 settling the claim shall receive an amount which the court decides  
17 is reasonable for collecting the civil penalty and damages. The  
18 amount shall be not less than twenty-five percent (25%) and not more  
19 than thirty percent (30%) of the proceeds of the action or  
20 settlement and shall be paid out of the proceeds. The person shall  
21 also receive an amount for reasonable expenses which the court finds  
22 to have been necessarily incurred, plus reasonable attorney fees and  
23 costs. All such expenses, fees, and costs shall be awarded against  
24 the defendant.

1 C. Whether or not the state proceeds with the action, if the  
2 court finds that the action was brought by a person who planned, and  
3 ~~initiated, or participated in~~ the violation of the Oklahoma Medicaid  
4 False Claims Act upon which the action was brought, then the court  
5 may, to the extent the court considers appropriate, reduce the share  
6 of the proceeds of the action which the person would otherwise  
7 receive under subsection A or B of this section, taking into account  
8 the role of that person in advancing the case to litigation and any  
9 relevant circumstances pertaining to the violation. If the person  
10 bringing the action is convicted of criminal conduct arising from  
11 his or her role in the violation of the Oklahoma Medicaid False  
12 Claims Act, that person shall be dismissed from the civil action and  
13 shall not receive any share of the proceeds of the action. The  
14 dismissal shall not prejudice the right of this state to continue  
15 the action, represented by the Office of the Attorney General or its  
16 assigns.

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

23 SECTION 5. AMENDATORY 63 O.S. 2011, Section 5053.5, is  
24 amended to read as follows:

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

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

20 1. Prior to a public disclosure under subsection B of this  
21 section, has voluntarily disclosed to the state the information on  
22 which allegations or transactions in a claim are based; or

23 2. Has knowledge that is independent of and materially adds to  
24 the publicly disclosed allegations or transactions, and who has

1 voluntarily provided the information to the state before filing an  
2 action under the Oklahoma Medicaid False Claims Act.

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

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

7 E. Any employee ~~who~~, contractor or agent shall be entitled to:

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

19 ~~Such relief~~ 2. Relief which shall include reinstatement with  
20 the same seniority status ~~such~~ the employee, contractor or agent  
21 would have had but for the discrimination, two times the amount of  
22 back pay, interest on the back pay, and compensation for any special  
23 damages sustained as a result of the discrimination, including  
24 litigation costs and reasonable attorney fees. An ~~employee may~~

1 ~~bring an~~ action under this section may be brought in the appropriate  
2 district court of the State of Oklahoma for the relief provided in  
3 this subsection.

4 F. An action under this section shall not be brought more than  
5 three (3) years after the date when the retaliation occurred.

6 SECTION 6. AMENDATORY 63 O.S. 2011, Section 5053.6, is  
7 amended to read as follows:

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

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

- 14 1. More than six (6) years after the date on which the  
15 violation of the Oklahoma Medicaid False Claims Act is committed; or  
16 2. More than three (3) years after the date when facts material  
17 to the right of action are known or reasonably should have been  
18 known by the official of the State of Oklahoma charged with  
19 responsibility to act in the circumstances, but in no event more  
20 than ten (10) years after the date on which the violation is  
21 committed, whichever occurs last.

22 C. If the state elects to intervene and proceed with an action  
23 brought under Section 5053.2 of this title, the state may file its  
24 own complaint or amend the complaint of a person who has brought an



1 action under Section 5053.2 of this title to clarify or add detail  
2 to the claims in which the state is intervening and to add any  
3 additional claims with respect to which the state contends it is  
4 entitled to relief. For statute of limitations purposes, any such  
5 state pleading shall relate back to the filing date of the complaint  
6 of the person who originally brought the action to the extent that  
7 the claim of the state arises out of the conduct, transactions or  
8 occurrences set forth, or attempted to be set forth, in the prior  
9 complaint of the person.

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

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

22 SECTION 7. AMENDATORY 63 O.S. 2011, Section 5053.7, is  
23 amended to read as follows:

24

1           Section 5053.7. A. Any action under ~~subsection B of Section 3~~  
2 5053.2 of the Oklahoma Medicaid False Claims Act this title may be  
3 brought in any judicial district in which the defendant or, in the  
4 case of multiple defendants, any one defendant can be found,  
5 resides, transacts business, or in which any act proscribed by the  
6 Oklahoma Medicaid False Claims Act occurred. A summons as required  
7 by Section 2004 of Title 12 of the Oklahoma Statutes shall be issued  
8 by the appropriate district court and served at any place within or  
9 outside the State of Oklahoma.

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

15           SECTION 8. This act shall become effective November 1, 2016.  
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1 Passed the Senate the 7th day of March, 2016.

2  
3 Presiding Officer of the Senate  
4

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2016.

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8 Presiding Officer of the House  
9 of Representatives  
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