An Act

ENROLLED SENATE
BILL NO. 1386

By: Crain of the Senate

and

Cox of the House

An Act relating to Medicaid fraud; amending 56 O.S. 2011, Sections 1003 and 1004, which relate to the Oklahoma Medicaid Program Integrity Act; permitting the Attorney General to pursue certain cases; granting the Attorney General access to certain records; and providing an effective date.

SUBJECT: Medicaid fraud

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

SECTION 1. AMENDATORY 56 O.S. 2011, Section 1003, is amended to read as follows:

Section 1003. A. There is hereby created within the Office of the Attorney General, a Medicaid fraud control unit.

B. The Medicaid fraud control unit shall be the state entity to which all cases of suspected Medicaid fraud shall be referred by the Oklahoma Health Care Authority or its fiscal agents for the purposes of investigation, civil action, criminal action or referral to the district attorney. Provided however, nothing contained in the Oklahoma Medicaid Program Integrity Act shall prohibit the Oklahoma Health Care Authority from investigating or additionally referring to other proper law enforcement agencies cases of suspected Medicaid fraud, nor the Attorney General from pursuing cases of suspected

Medicaid fraud without a referral from the Oklahoma Health Care Authority if there is credible evidence of fraud.

C. 1. In carrying out these responsibilities, the Attorney General shall have all the powers necessary to comply with federal laws and regulations relative to the operation of a Medicaid fraud unit, the power to cross-designate assistant United States attorneys as assistant attorneys general, the power to investigate cases of patient abuse, the power to issue or cause to be issued subpoenas or other process in aid of investigations and prosecutions, the power to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by the Oklahoma Medicaid Program Integrity Act and shall have all the powers of a district attorney.

2. Subpoenas ad testificandum or duces tecum issued pursuant to the Oklahoma Medicaid Program Integrity Act may be served by the Attorney General, any peace officer, or any competent person over eighteen (18) years of age, and may require attendance or production at any place in this state. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify, or produce records at the place and time specified shall constitute contempt and shall be enforced by the district court of the county where issued or the county where served, at the election of the Attorney General, as if it was a contempt on that court.

D. The Attorney General shall have authority to collect all fines, penalties, amounts of restitution, or interest accruing on any amount of restitution to be made and any penalties to be paid from and after default in the payment thereof levied pursuant to the provisions of the Oklahoma Medicaid Program Integrity Act, the Oklahoma Medicaid False Claims Act, or any other charge, cause of action, prelitigation settlement or other settlement which recovers money wrongfully paid by the Oklahoma Health Care Authority on a claim submitted to the Oklahoma Health Care Authority. However, this subsection is not in any way intended to affect the contempt power of any court. Funds collected by the Attorney General pursuant to this section shall be deposited as follows:

1. Restitution recovered and interest thereon shall be returned to the Oklahoma Health Care Authority for deposit to the Oklahoma

Health Care Authority Medicaid Program Fund created pursuant to Section 5020 of Title 63 of the Oklahoma Statutes.

2. Costs of investigation, litigation, attorney fees, and other expenses shall be retained by the Office of the Attorney General and shall be deposited in the Attorney General's Medicaid Fraud Revolving Fund created pursuant to subsection E of this section.

3. Fines and penalties and other funds recovered and interest thereon shall be deposited in the Attorney General's Medicaid Fraud Revolving Fund; provided, the balance in the Attorney General's Medicaid Fraud Revolving Fund shall not exceed an amount equal to fifty percent (50%) of the current-year budget for operating costs of the Medicaid Fraud Control Unit. Any funds exceeding that amount shall be deposited as follows:

a. seventy-five percent (75%) to the General Revenue Fund, and

b. twenty-five percent (25%) to the Attorney General's Evidence Fund created pursuant to Section 19 of Title 74 of the Oklahoma Statutes.

E. There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General, to be designated the "Attorney General's Medicaid Fraud Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies designated to the fund by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Attorney General for activities related to the Medicaid Fraud Control Unit. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.

SECTION 2. AMENDATORY 56 O.S. 2011, Section 1004, is amended to read as follows:

Section 1004. A. No potential Medicaid recipient shall be eligible for medical assistance unless such recipient has, in writing, authorized the Oklahoma Health Care Authority and the Attorney General to examine all records maintained as required by

the Oklahoma Medicaid Program by the recipient, or of those receiving or having received Medicaid benefits through the recipient, whether the receipt of such benefits would be allowed by the Oklahoma Medicaid Program or not.

B. 1. Each application to participate as a provider in the Oklahoma Medicaid Program, each report stating income or expense upon which rates of payment are or may be based, and each invoice for payment for a good or a service provided to recipient, shall contain a statement that all matters stated therein are true and accurate, signed by the provider or his or her agent. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. For purposes of this subsection, an individual who signs on behalf of a provider shall be presumed to have the authorization of the provider and to be acting at his or her direction.

2. All providers subject to the Oklahoma Medicaid Program are required to maintain at their or its principal place of Medicaid business all such records at least for a period of six (6) years from the date of claimed provision of any goods or services to any Medicaid recipient.

C. The Attorney General shall be allowed access to all records of persons and Medicaid recipients under the Oklahoma Medicaid Program which are held by a provider~~,~~ or the Oklahoma Health Care Authority for the purpose of investigating whether any person may have committed the crime of Medicaid fraud, or for use or potential use in any legal, administrative, or judicial proceeding. In carrying out the purposes of the Oklahoma Medicaid Program Integrity Act, the Attorney General may take possession of records held by a provider by subpoena, in which case copies of those records obtained by the Attorney General which are necessary for the provider to continue doing business shall be supplied to the provider, or the Attorney General may elect to require that the provider supply the Medicaid fraud control unit within the office of the Attorney General with copies of the records. Upon request, the Attorney General shall be granted access to records, including electronic data, held by the Oklahoma Health Care Authority for the purpose of investigating whether any person or entity may have committed the crime of Medicaid fraud.

D. Records obtained or created by the Authority or the Attorney General pursuant to the Oklahoma Medicaid Program Integrity Act shall be classified as confidential information and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual except, if authorized by the Attorney General, in relation to legal, administrative, or judicial proceeding.

E. No person holding such records may refuse to provide the Authority or the Attorney General with access to such records on the basis that release would violate any recipient's right of privacy, any recipient's privilege against disclosure or use, or any professional or other privilege or right. The disclosure of patient information as required by the Oklahoma Medicaid Program Integrity Act shall not subject any physician or other health services provider to liability for breach of any confidential relationship between a patient and a provider.

SECTION 3. This act shall become effective November 1, 2012.

Passed the Senate the 7th day of May, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 29th day of March, 2012.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 8th

day of May, 2012,

at 3:43 o'clock P M.

By: Jennie B Bryen

Approved by the Governor of the State of Oklahoma the 14th day of

May, 2012, at 10:13 o'clock A M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

14th day of May, 2012,

at 11:26 o'clock A M.

By: Michelle R Day