

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Gibson**

A Bill

HOUSE BILL 1961

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 5, CHAPTER 55,
9 PERTAINING TO MEDICAID FRAUD."

Subtitle

12 "AN ACT TO AMEND THE MEDICAID FRAUD ACT."

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16 SECTION 1. Arkansas Code 5-55-102(6) is amended to read as follows:

17 "(6) Claim means any written or electronically submitted request or
18 demand for reimbursement made to the Arkansas Medicaid Program by any provider
19 or its fiscal agents for each good or service purported to have been provided
20 to any Medicaid recipient whether or not the State of Arkansas provides any or
21 no portion of the money which is requested or demanded."

23 SECTION 2. Arkansas Code 5-55-103 is amended to read as follows:

24 "5-55-103 Unlawful acts - Classification.

25 (a) It shall be unlawful for any person to commit Medicaid fraud as
26 defined in this chapter, and any person found to have committed any such act
27 or acts shall be deemed guilty of Medicaid fraud.

28 (b) Medicaid fraud shall be:

29 (1) A Class B felony if the aggregate amount of payments illegally
30 claimed is two thousand five hundred dollars (\$2,500) or more;

31 (2) A Class C felony if the aggregate amount of payments illegally
32 claimed is less than two thousand five hundred dollars (\$2,500) but more than
33 two hundred dollars (\$200).

34 (c) Otherwise, Medicaid fraud shall be a Class A misdemeanor."
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1 SECTION 3. Arkansas Code 5-55-104 (f) is amended to read as follows:

2 "(f) All persons under the Arkansas Medicaid Program are required to
3 maintain at their or its principal place of Medicaid business all records at
4 least for a period of five (5) years from the date of claimed provision of any
5 goods or services to any Medicaid recipient."
6

7 SECTION 4. Arkansas Code 5-55-107 is amended to read as follows:

8 "5-55-107. Restitution.

9 (a) Any person found guilty of Medicaid fraud as described in this Act
10 shall, in addition to any other fines which may be levied under 5-4-201, be
11 required to make full restitution to the Department of Human Services and to
12 pay a mandatory fine in the amount of three (3) times the amount of all
13 payments judicially found to have been illegally received from the Arkansas
14 Medicaid Program or its fiscal agents, which shall be credited to the General
15 *Revenues of the State of Arkansas*.

16 (b) Any person found guilty of Medicaid fraud as described in this Act
17 may, in addition to any other fines mandated by this chapter or which may be
18 levied under 5-4-201, be required to pay a fine into the Treasury of the State
19 of Arkansas in any amount up to three thousand dollars (\$3,000) for each claim
20 judicially found to be fraudulently submitted to the Arkansas Medicaid Program
21 or its fiscal agents, which shall be credited to the *General Revenues of the*
22 *State of Arkansas*.

23 (c) For prosecutions brought under this Act, the following language
24 shall apply:

25 (1) To enable the Court to properly fix the amount of restitution, the
26 prosecuting attorney shall, after appropriate investigation, recommend an
27 amount that would make the Arkansas Medicaid Program whole with respect to the
28 money fraudulently received from the Arkansas Medicaid Program, including
29 expense of investigation, and all other measurable monetary damages directly
30 related to the offense.

31 (2) If the defendant disagrees with the recommendation of the
32 prosecuting attorney, he shall be entitled to introduce evidence in mitigation
33 of the amount recommended.

34 (3) The monetary judgment for restitution, as provided in this
35 subchapter, shall become a judgment against the offender and shall have the

1 same force and effect as any other civil judgment recorded in this state.

2 (d) The Attorney General shall have concurrent jurisdiction and
3 authority with the prosecuting attorneys to collect all fines and amounts of
4 restitution levied pursuant to any criminal violation of this chapter in the
5 manner provided by § 5-4-204, with interest accruing on any amount of
6 restitution to be made and any fines to be paid from and after default in the
7 payment thereof in the manner provided in § 16-65-114. However, this
8 subsection is not in any way intended to affect the contempt power of any
9 court."

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11 SECTION 5. Arkansas Code 5-55-110 is amended to read as follows:

12 "5-55-110. Suspension of violators.

13 The Director of the Department of Human Services may suspend or revoke
14 the provider agreement between the Department of Human Services and the person
15 in the event the person is found guilty of violating the provisions of this
16 chapter."

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18 SECTION 6. Subchapter 1 of Chapter 55 of Title 5 of the Arkansas Code
19 is amended by inserting four additional sections at the end thereof to read as
20 follows:

21 "5-55-111. Criminal acts constituting Medicaid fraud.

22 (a) A person commits Medicaid fraud when he:

23 (1) Purposely makes or causes to be made any false statement or
24 representation of a material fact in any application for any benefit or
25 payment under the Medicaid Program;

26 (2) At any time purposely makes or causes to be made any false statement
27 or representation of a material fact for use in determining rights to such
28 benefit or payment;

29 (3) Having knowledge of the occurrence of any event affecting his
30 initial or continued right to any such benefit or payment, or the initial or
31 continued right to any such benefit or payment of any other individual in
32 whose behalf he has applied for or is receiving such benefit or payment, he
33 purposely conceals or fails to disclose such event with an intent fraudulently
34 to secure such benefit or payment either in a greater amount or quantity than
35 is due or when no such benefit or payment is authorized;

1 (4) Having made application to receive any such benefit or payment for
2 the use and benefit of another and having received it, purposely converts
3 such benefit or payment or any part thereof to a use other than for the use
4 and benefit of such other person;

5 (5) Purposely presenting or causing to be presented a claim for a
6 physician's service for which payment may be made under a program under the
7 Arkansas Medicaid program while knowing that the individual who furnished the
8 service was not licensed as a physician;

9 (6) Purposely solicits or receives any remuneration including any
10 kickback, bribe, or rebate directly or indirectly, overtly or covertly, in
11 cash or in kind:

12 (i) In return for referring an individual to a person for the
13 furnishing or arranging for the furnishing of any item or service for which
14 payment may be made in whole or in part under the Arkansas Medicaid program or

15 (ii) In return for purchasing, leasing, ordering, or arranging for
16 or recommending purchasing, leasing, or ordering any good, facility, service,
17 or item for which payment may be made in whole or in part under the Arkansas
18 Medicaid program, or

19 (7) Purposely offers or pays any remuneration including any
20 kickback, bribe, or rebate directly or indirectly, overtly or covertly, in
21 cash or in kind to any person to induce such person:

22 (i) To refer an individual to a person for the furnishing or
23 arranging for the furnishing of any item or service for which payment may be
24 made in whole or in part under the Arkansas Medicaid program, or

25 (ii) To purchase, lease, order, or arrange for or recommend
26 purchasing, leasing, or ordering any good, facility, service, or item for
27 which payment may be made in whole or in part under the Arkansas Medicaid
28 program. Subdivisions (i) and (ii) shall not apply to:

29 (A) A discount or other reduction in price obtained by a provider
30 of services or other entity under the Medicaid program if the reduction in
31 price is properly disclosed and appropriately reflected in the costs claimed
32 or charges made by the provider or entity under the Arkansas Medicaid program;

33 (B) Any amount paid by an employer to an employee who has a bona
34 fide employment relationship with such employer for employment in the
35 provision of covered items or services;

1 (C) Any amount paid by a vendor of goods or services to a person
2 authorized to act as a purchasing agent for a group of individuals or entities
3 who are furnishing services reimbursed under the Arkansas Medicaid program if:

4 (D) The person has a written contract, with each such individual
5 or entity, which specifies the amount to be paid the person, which amount may
6 be a fixed amount or a fixed percentage of the value of the purchases made by
7 each such individual or entity under the contract, and

8 (E) In the case of an entity that is a provider of services (as
9 defined in section A.C.A. 20-9-101), the person discloses in such form and
10 manner as the Director of Human Services requires to the entity and, upon
11 request, to the Director the amount received from each such vendor with
12 respect to purchases made by or on behalf of the entity;

13 (F) Any payment practice specified by the Director of Human
14 Services promulgated pursuant to applicable federal or state law.

15 (8) Purposely makes or causes to be made, or induces or seeks to induce
16 the making of, any false statement or representation of a material fact with
17 respect to the conditions or operation of any institution, facility, or entity
18 in order that such institution, facility, or entity may qualify either upon
19 initial certification or upon recertification as a hospital, rural primary
20 care hospital, skilled nursing facility, nursing facility, intermediate care
21 facility for the mentally retarded, home health agency, or other entity
22 including an eligible organization under applicable federal law for which
23 certification is required or with respect to information required pursuant to
24 applicable federal and state law, rules, regulations and provider agreements.

25 (9) Purposely:

26 (i) Charges, for any service provided to a patient under the
27 Arkansas Medicaid Program, money or other consideration at a rate in excess of
28 the rates established by the state, or

29 (ii) Charges, solicits, accepts, or receives, in addition to any
30 amount otherwise required to be paid under the Arkansas Medicaid Program any
31 gift, money, donation, or other consideration other than a charitable,
32 religious, or philanthropic contribution from an organization or from a person
33 unrelated to the patient:

34 (A) As a precondition of admitting a patient to a hospital,
35 nursing facility, or intermediate care facility for the mentally retarded, or

1 (B) As a requirement for the patient's continued stay in such a
2 facility, when the cost of the services provided therein to the patient is
3 paid for in whole or in part under the Arkansas Medicaid Program.

4 (10) *Purposely makes or causes to be made any false statement or*
5 *representation of a material fact in any application for benefits or payment*
6 *in violation of the rules, regulations and provider agreements issued by the*
7 *Arkansas Medicaid Program or its fiscal agents."*

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9 5-55-113. Disposition of Offenders.

10 (a) For prosecutions under this Act, whether a case is tried by the
11 Court or jury the punishment and restitution shall be fixed by the Court.

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13 5-55-114. Criminal fines and penalties and civil penalties mutually
14 exclusive.

15 Section 5-55-107 which provides for additional criminal fines, and the
16 Medicaid Fraud False Claims Act, which provides for civil penalties, shall not
17 both be applied to the same payment received or claim made by any person under
18 the Arkansas Medicaid Program or its fiscal agents."

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20 SECTION 7. Arkansas Code 5-55-104 (f) is amended to read as follows:

21 "(f) All persons under the Arkansas Medicaid Program are required to
22 maintain at their or its principal place of Medicaid business all records at
23 least for a period of five (5) years from the date of claimed provision of any
24 goods or services to any Medicaid recipient."

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26 SECTION 8. Arkansas Code 5-55-102 (7) and 5-55-109 are repealed.

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28 SECTION 9. All provisions of this act of a general and permanent nature
29 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
30 Revision Commission shall incorporate the same in the Code.

31

32 SECTION 10. All provision of this act of a general and permanent nature
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
34 Revision Commission shall incorporate the same in the Code.

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1 SECTION 11. If any provision of this act or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall not affect
3 other provisions or applications of the act which can be given effect without
4 the invalid provision or application, and to this end the provisions of this
5 act are declared to severable.

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7 SECTION 12. All laws and parts of laws in conflict with this act are
8 hereby repealed.

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10 SECTION 13. EMERGENCY. It is hereby found and determined by the
11 General Assembly that the Attorney General and the Prosecuting Attorneys are
12 in need of specific legislation by which to eliminate fraud in the Arkansas
13 Medicaid Program and that immediate passage of this Act is necessary to
14 protect the integrity of the program. Therefore, an emergency is hereby
15 declared to exist, and this Act, being necessary for the immediate
16 preservation of the public peace, health and safety, shall be in full force
17 and effect from and after its passage and approval.

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/s/Bynum Gibson

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As Engrossed: 3/19/93 4/7/93

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