

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1719

5 By: Representative M. Gray
6 By: Senator Flippo
7

For An Act To Be Entitled

9 AN ACT TO UPDATE THE MEDICAID FRAUD ACT AND THE
10 MEDICAID FRAUD FALSE CLAIMS ACT TO ADDRESS FLAWS
11 IDENTIFIED IN RECENT INVESTIGATIONS AND CHANGES
12 RELATED TO THE IMPLEMENTATION OF MANAGED CARE; TO
13 MODIFY THE SENTENCING SCHEME OF MEDICAID FRAUD BY
14 IMPLEMENTING APPROPRIATE SANCTIONS IN CERTAIN
15 SITUATIONS; TO PROHIBIT FALSE STATEMENTS IN A
16 MEDICAID PROVIDER APPLICATION OR AGREEMENT; TO
17 PROHIBIT PERSONS WHO HAVE BEEN SUSPENDED OR EXCLUDED
18 FROM THE ARKANSAS MEDICAID PROGRAM FROM PARTICIPATING
19 DIRECTLY OR INDIRECTLY IN THE ARKANSAS MEDICAID
20 PROGRAM; TO CLARIFY WHEN REWARDS MAY BE PAID AND FROM
21 WHAT FUNDS; TO PROVIDE FOR A MEANINGFUL SAFE HARBOR
22 WHEN MEDICAID PROVIDERS DISCOVER AND REPORT FRAUD IN
23 A TIMELY MANNER; TO UPDATE THE ADULT ABUSE PENALTIES;
24 AND FOR OTHER PURPOSES.

Subtitle

25
26
27
28 TO UPDATE THE MEDICAID FRAUD ACT AND THE
29 MEDICAID FRAUD FALSE CLAIMS ACT TO
30 ADDRESS FLAWS IDENTIFIED IN RECENT
31 INVESTIGATIONS AND CHANGES RELATED TO THE
32 IMPLEMENTATION OF MANAGED CARE; AND TO
33 UPDATE THE ADULT ABUSE PENALTIES.
34
35

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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 1. Arkansas Code § 5-28-103 is amended to read as follows:

5-28-103. Criminal penalties for abuse of an endangered or impaired person.

(a) It is unlawful for any person or caregiver to abuse, neglect, or exploit any endangered person or impaired person subject to protection under a provision of this chapter.

(b)(1) If the abuse causes serious physical injury or a substantial risk of death, any person or caregiver who purposely abuses an endangered person or an impaired person is guilty of a Class B felony.

(2) If the abuse causes physical injury, any person or caregiver who purposely abuses an adult endangered person or an adult impaired person in violation of a provision of this chapter is guilty of a Class D felony.

(3) Any person or caregiver who abuses an adult endangered person or an adult impaired person is guilty of a Class B misdemeanor.

(c)(1) Any person or caregiver who neglects an adult endangered person or an adult impaired person in violation of a provision of this chapter, causing serious physical injury or substantial risk of death, is guilty of a Class D felony.

(2) Any person or caregiver who neglects an adult endangered person or an adult impaired person in violation of a provision of this chapter, causing physical injury, is guilty of a Class B misdemeanor.

(3) Any person or caregiver who purposely neglects an adult endangered person or an adult impaired person without causing physical injury is guilty of a Class C misdemeanor.

~~(d) Any person or caregiver who abuses an adult endangered person or and adult impaired person is guilty of a Class B misdemeanor.~~

~~(e)~~(d) Any person or caregiver who exploits a person in violation of a provision of this chapter when the value of the property, asset, or resource is:

(1) Two thousand five hundred dollars (\$2,500) or more, is guilty of a Class B felony;

(2) Less than two thousand five hundred dollars (\$2,500) but more than two hundred dollars (\$200), is guilty of a Class C felony; and

(3) Two hundred dollars (\$200) or less, is guilty of a Class A misdemeanor.

1
 2 SECTION 2. Arkansas Code § 5-55-102(2), concerning the definition of
 3 "claim" within the Medicaid Fraud Act, is amended to read as follows:

4 (2) "Claim" means any written or electronically submitted
 5 request or demand for reimbursement or payment made by any Medicaid provider
 6 to the Arkansas Medicaid Program, a managed care organization, or its any
 7 fiscal agents agent of the Arkansas Medicaid Program or a managed care
 8 organization for each good or service purported to have been provided to any
 9 Medicaid recipient ~~whether or not the State of Arkansas provides any portion~~
 10 ~~of the money that is requested or demanded~~ and all documentation required to
 11 be created or maintained by law or rule to justify, support, approve, or
 12 document the delivery of healthcare goods or services to a Medicaid recipient
 13 as a condition of participation in the Arkansas Medicaid Program as mandated
 14 by the Arkansas Medicaid Program provider agreement, rules, or managed care
 15 contract;

16
 17 SECTION 3. Arkansas Code § 5-55-102, concerning the definitions within
 18 the Medicaid Fraud Act, is amended to add an additional subdivision to read
 19 as follows:

20 (9)(A) "Illegal Medicaid participation" means participation in
 21 the Arkansas Medicaid Program when the individual or organization is
 22 suspended from the Arkansas Medicaid Program or on a state or federal
 23 excluded Medicaid provider list.

24 (B) "Illegal Medicaid participation" includes without
 25 limitation when a suspended or excluded individual or organization:

26 (i) Is employed or contracting with a Medicaid
 27 provider or managed care organization or otherwise associated with a Medicaid
 28 provider or managed care organization for the purpose of providing or
 29 supervising the provision of goods and services to Medicaid recipients;

30 (ii) Plays any role in the management of a Medicaid
 31 provider directly as a manager or management company or indirectly as a
 32 consultant or advisor; or

33 (iii) Receives payment for administrative and
 34 management services directly or indirectly related to patient care such as
 35 processing Medicaid claims for payment, attending to services that assist or
 36 support Medicaid recipients, or acting as a Medicaid consultant or advisor.

SECTION 4. Arkansas Code § 5-55-103 is amended to read as follows:

5-55-103. Unlawful acts – Classification.

(a)~~(1)~~ It is unlawful for any person to commit Medicaid fraud as prohibited by § 5-55-111.

~~(2)~~(b) Medicaid fraud is a:

~~(A)~~(1) Class C felony if the aggregate amount of payments illegally claimed is two thousand five hundred dollars (\$2,500) or more but less than five thousand dollars (\$5,000);

~~(B)~~(2) Class B felony if the aggregate amount of payments illegally claimed is five thousand dollars (\$5,000) or more but less than twenty-five thousand dollars (\$25,000); and

~~(C)~~(3) Class A felony if the aggregate amount of payments illegally claimed is twenty-five thousand dollars (\$25,000) or more.

~~(3)~~(c) Otherwise, Medicaid fraud is a Class A misdemeanor.

~~(b)(1)~~ A person commits illegal Medicaid participation if:

~~(A)~~ Having been found guilty of or having pleaded guilty or nolo contendere to the charge of Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, § 5-28-101 et seq., as defined in the Arkansas Criminal Code, § 5-1-101 et seq., that person participates directly or indirectly in the Arkansas Medicaid Program; or

~~(B)~~ As a certified health provider, enrolled in the Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act, as amended, 42 U.S.C. § 1396 et seq., or the fiscal agent of the certified health provider, employs, or engages as an independent contractor, or engages as a consultant, or otherwise permits the participation in the business activities of the certified health provider, any person who has pleaded guilty or nolo contendere to or has been found guilty of a charge of Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, § 5-28-101 et seq., as defined in the Arkansas Criminal Code, § 5-1-101 et seq.

~~(2)~~ Illegal Medicaid participation is a:

~~(A)~~ Class A misdemeanor for the first offense;

~~(B)~~ Class D felony for the second offense; and

~~(C)~~ Class C felony for the third offense and subsequent offenses.

1 SECTION 5. Arkansas Code § 5-55-107(a), concerning restitution and
 2 collection under the Medicaid Fraud Act, is amended to read as follows:

3 (a) In addition to any other fine that may be levied, any person found
 4 guilty of or who pleads guilty or nolo contendere to Medicaid fraud as
 5 described in this subchapter is required to make full restitution ~~to~~ and
 6 payment of costs as follows:

7 (1)(A) The Department of Human Services, with the restitution to
 8 be deposited into the Arkansas Medicaid Program Trust Fund for the loss to
 9 the Arkansas Medicaid Program or its fiscal agents, ~~and,~~

10 (B) When permitted by contract or rules, the department
 11 may return all or a portion of the restitution to a managed care organization
 12 or any similar organization that suffered a loss due to the Medicaid fraud;
 13 and

14 (2) The office of the Attorney General or prosecuting attorney
 15 may recover for reasonable and necessary expenses incurred during
 16 investigation and prosecution of Medicaid fraud.

17
 18 SECTION 6. Arkansas Code § 5-55-111(5), concerning criminal acts
 19 constituting Medicaid fraud under the Medicaid Fraud Act, is amended to read
 20 as follows:

21 (5) Purposely presents or causes to be presented a claim for a
 22 ~~physician's service for which payment may be made under a program under the~~
 23 ~~Arkansas Medicaid Program while~~ required to be provided by a person with a
 24 particular type of license or credential while knowing that the individual
 25 who furnished the service was not licensed ~~as a physician~~ or credentialed;
 26

27 SECTION 7. Arkansas Code § 5-55-111(7), concerning criminal acts
 28 constituting Medicaid fraud under the Medicaid Fraud Act, is amended to read
 29 as follows:

30 (7)(A) Purposely offers or pays any remuneration, including any
 31 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in
 32 cash or in kind, to any person to induce that person to:

33 (i) Refer an individual to a person for the
 34 furnishing or arranging for the furnishing of any item or service for which
 35 payment may be made in whole or in part under the Arkansas Medicaid Program;
 36 or

1 (ii) Purchase, lease, order, or arrange for or
 2 recommend purchasing, leasing, or ordering any good, facility, service, or
 3 item for which payment may be made in whole or in part under the Arkansas
 4 Medicaid Program.

5 (B) ~~Subdivisions~~ If the transaction is otherwise legal and
 6 properly documented as occurring in the normal course of business,

7 subdivisions (7)(A)(i) and (ii) of this section do not apply to:

8 (i) A discount or other reduction in price obtained
 9 by a provider of services or other entity under the Arkansas Medicaid Program
 10 if the reduction in price is properly disclosed and appropriately reflected
 11 in the costs claimed or charges made by the provider or entity under the
 12 Arkansas Medicaid Program;

13 (ii) Any amount paid by an employer to an employee
 14 who has a bona fide employment relationship with the employer for employment
 15 in the provision of covered items or services;

16 (iii) Any amount paid by a vendor of goods or
 17 services to a person authorized to act as a purchasing agent for a group of
 18 individuals or entities who are furnishing services reimbursed under the
 19 Arkansas Medicaid Program if:

20 (a) The person has a written contract with
 21 each individual or entity that specifies the amount to be paid to the person
 22 and the amount may be a fixed amount or a fixed percentage of the value of
 23 the purchases made by each individual or entity under the contract; and

24 (b) In the case of an entity that is a
 25 provider of services as defined in § 20-9-101, the person discloses in such
 26 form and manner as the Director of the Department of Human Services requires
 27 to the entity and, upon request, to the director, the amount received from
 28 each vendor with respect to purchases made by or on behalf of the entity; or

29 (iv) Any payment practice specified by the director
 30 promulgated pursuant to applicable federal or state law;

31
 32 SECTION 8. Arkansas Code § 5-55-111(12), concerning criminal acts
 33 constituting Medicaid fraud under the Medicaid Fraud Act, is amended to read
 34 as follows:

35 (12) Purposely forges the signature of a doctor, nurse, or other
 36 medical professional on a prescription, referral for healthcare goods or

1 services, or finding of medical necessity for any Medicaid recipient of the
2 Arkansas Medicaid Program;

3
4 SECTION 9. Arkansas Code § 5-55-113 is amended to read as follows:
5 5-55-113. Reward for information.

6 (a) The court may pay a person such sums, not exceeding ten percent
7 (10%) of the aggregate penalty recovered under this section, as the court may
8 deem just, for information the person may have provided that led to detecting
9 and bringing to trial and punishment a person guilty of violating the
10 Medicaid fraud laws.

11 (b)(1) Upon the disposition of any criminal action relating to a
12 violation of this subchapter in which a penalty is recovered, the Attorney
13 General may petition the court on behalf of a person who may have provided
14 information that led to detecting and bringing to trial and punishment a
15 person guilty of Medicaid fraud to award the person in an amount commensurate
16 with the quality and usefulness of the information determined by the court to
17 have been provided, in accordance with the requirements of this subchapter.

18 (2) If the Attorney General elects not to petition the court on
19 behalf of the person, the person may petition the court on his or her own
20 behalf.

21 (c) Neither the state nor any defendant within the action is liable
22 for expenses that a person incurs in bringing an action under this section.

23 (d) An employee or fiscal agents charged with the duty of referring or
24 investigating a case of Medicaid fraud who are employed by or contract with
25 any governmental entity are not eligible to receive a reward under this
26 section.

27 (e)(1) The Attorney General may agree to a payment of up to ten
28 percent (10%) of the civil penalty as a reward in any settlement agreement
29 under this section.

30 (2) A portion of restitution shall not be used as a reward.

31
32 SECTION 10. Arkansas Code Title 5, Chapter 55, Subchapter 1, is
33 amended to add an additional section to read as follows:

34 5-55-115. Suspension, exclusion, and illegal Medicaid participation.

35 (a) It is unlawful for a suspended or excluded individual or
36 organization to participate in the Arkansas Medicaid Program under federal

1 and state laws.

2 (b)(1) A person commits illegal Medicaid participation if:

3 (A) Having been suspended from the Arkansas Medicaid
 4 Program or placed on a state or federal excluded Medicaid provider list, the
 5 person knowingly participates, directly or indirectly, in the Arkansas
 6 Medicaid Program; or

7 (B) As a certified health provider enrolled in the
 8 Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act,
 9 as amended, 42 U.S.C. § 1396 et seq., or as the fiscal agent of the certified
 10 health provider, the person employs, or engages as an independent contractor,
 11 or engages as a consultant, or otherwise permits the participation in the
 12 business activities of the certified health provider, any person who has
 13 pleaded guilty or nolo contendere to or has been found guilty of a charge of
 14 Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, §
 15 5-28-101 et seq.

16 (2) Illegal Medicaid participation is a Class A misdemeanor.

17
 18 SECTION 11. Arkansas Code §§ 20-77-902 and 20-77-903 are amended to
 19 read as follows:

20 20-77-902. Liability for certain acts.

21 A person shall be liable to the State of Arkansas, through the Attorney
 22 General, for restitution, damages, and a civil penalty of three (3) times the
 23 amount of the damages for an act or omission in violation of this subchapter
 24 if he or she:

25 (1) Knowingly makes or causes to be made any false statement or
 26 representation of a material fact in any claim, request for payment, or
 27 application for any benefit or payment under the Arkansas Medicaid Program;

28 (2) Knowingly makes or causes to be made any omission or false
 29 statement or representation of a material fact for use in determining rights
 30 to a benefit or payment under the Arkansas Medicaid Program;

31 (3) Having knowledge of the occurrence of any event affecting
 32 his or her initial or continued right to any benefit or payment or the
 33 initial or continued right to any benefit or payment of any other individual
 34 in whose behalf he or she has applied for or is receiving a benefit or
 35 payment, knowingly conceals or fails to disclose that event with an intent
 36 fraudulently to secure the benefit or payment either in a greater amount or

1 quantity than is due or when no benefit or payment is authorized;

2 (4) Having made or submitted a claim, request for payment, or
 3 application to receive any benefit or payment for the use and benefit of
 4 another person and having received it, knowingly converts the benefit or
 5 payment or any part ~~thereof~~ of the benefit or payment to a use other than for
 6 the use and benefit of the other person;

7 (5) Knowingly presents or causes to be presented a claim for a
 8 physician's service for which payment may be made under the Arkansas Medicaid
 9 Program and knows that the individual who furnished the service was not
 10 licensed as a physician;

11 (6) Knowingly solicits or receives any remuneration, including
 12 any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,
 13 in cash or in kind:

14 (A) In return for referring an individual to a person for
 15 the furnishing or arranging for the furnishing of any item or service for
 16 which payment may be made in whole or in part under the Arkansas Medicaid
 17 Program; or

18 (B) In return for purchasing, leasing, ordering, or
 19 arranging for or recommending purchasing, leasing, or ordering any good,
 20 facility, service, or item for which payment may be made in whole or in part
 21 under the Arkansas Medicaid Program;

22 (7)(A) Knowingly offers or pays any remuneration, including any
 23 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in
 24 cash or in kind to any person to induce the person to:

25 (i) Refer an individual to a person for the
 26 furnishing or arranging for the furnishing of any item or service for which
 27 payment may be made in whole or in part under the Arkansas Medicaid Program;
 28 or

29 (ii) Purchase, lease, order, or arrange for or
 30 recommend purchasing, leasing, or ordering any good, facility, service, or
 31 item for which payment may be made in whole or in part under the Arkansas
 32 Medicaid Program.

33 (B) ~~Subdivision~~ If the transaction is otherwise legal and
 34 properly documented as occurring in the normal course of business,
 35 subdivision (7)(A) of this section ~~shall~~ does not apply to:

36 (i) A discount or other reduction in price obtained

1 by a provider of services or other entity under the Arkansas Medicaid Program
2 if the reduction in price is properly disclosed and appropriately reflected
3 in the costs claimed or charges made by the provider or entity under the
4 Arkansas Medicaid Program;

5 (ii) Any amount paid by an employer to an employee
6 who has a bona fide employment relationship with the employer for employment
7 in the providing of covered items or services;

8 (iii) Any ~~amount~~ salary, wages, or commission paid
9 during the normal course of business by a vendor of goods or services to a
10 person authorized to act as a purchasing agent for a group of individuals or
11 entities ~~who~~ that are furnishing services reimbursed under the Arkansas
12 Medicaid Program, if:

13 (a) The person has a written contract with
14 each individual or entity ~~which~~ that specifies the amount to be paid to the
15 person, which amount may be a fixed amount or a fixed percentage of the value
16 of the purchases made by each individual or entity under the contract; and

17 (b) In the case of an entity that is a
18 Medicaid provider as defined in § 20-77-901, the person discloses, in the
19 form and manner as the Director of the Department of Human Services requires,
20 to the entity and upon request to the director the amount received from each
21 vendor with respect to purchases made by or on behalf of the entity; or

22 (iv) Any other payment practice specified by the
23 director promulgated pursuant to applicable federal or state law;

24 (8) Knowingly makes or causes to be made or induces or seeks to
25 induce any omission or false statement or representation of a material fact
26 with respect to the conditions or operation of any institution, facility, or
27 Medicaid provider in order that the institution, facility, or Medicaid
28 provider may qualify to obtain or maintain any licensure or certification
29 when the licensure or certification is required to be enrolled or eligible to
30 deliver any healthcare goods or services to Medicaid recipients by state law,
31 federal law, or the rules of the Arkansas Medicaid Program;

32 (9) Knowingly:

33 (A) Charges for any service provided to a patient under
34 the Arkansas Medicaid Program money or other consideration at a rate in
35 excess of the rates established by the state; or

36 (B) Charges, solicits, accepts, or receives, in addition

1 to any amount otherwise required to be paid under the Arkansas Medicaid
 2 Program, any gift, money, donation, or other consideration other than a
 3 charitable, religious, or philanthropic contribution from an organization or
 4 from a person unrelated to the patient:

5 (i) As a precondition of admitting a patient to a
 6 hospital, nursing facility, or intermediate care facility for individuals
 7 with intellectual disabilities; or

8 (ii) As a requirement for the patient's continued
 9 stay in the hospital, nursing facility, or intermediate care facility for
 10 individuals with intellectual disabilities when the cost of the services
 11 provided therein to the patient is paid for in whole or in part under the
 12 Arkansas Medicaid Program;

13 (10) Knowingly makes or causes to be made any omission or false
 14 statement or representation of a material fact in any application for
 15 benefits or for payment in violation of the rules, regulations, and provider
 16 agreements issued by the Arkansas Medicaid Program or its fiscal agents;

17 (11) Knowingly:

18 (A) Participates, directly or indirectly, in the Arkansas
 19 Medicaid Program after having pleaded guilty or nolo contendere to or been
 20 found guilty of a charge of Medicaid fraud, theft of public benefits, or
 21 abuse of adults as defined in the Arkansas Criminal Code, § 5-1-101 et seq.;

22 or
 23 (B) As a certified health provider enrolled in the
 24 Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act or
 25 as the fiscal agent of such a provider who employs, engages as an independent
 26 contractor, engages as a consultant, or otherwise permits the participation
 27 in the business activities of such a provider, any person who has pleaded
 28 guilty or nolo contendere to or has been found guilty of a charge of Medicaid
 29 fraud, theft of public benefits, or abuse of adults as defined in the
 30 Arkansas Criminal Code, § 5-1-101 et seq.;

31 (12) Knowingly submits any false documentation supporting a
 32 claim or prior payment to the Office of Medicaid Inspector General or the
 33 Medicaid Fraud Control Unit within the office of the Attorney General during
 34 an audit or in response to a request for information or a subpoena;

35 (13) Knowingly makes or causes to be made, or induces or seeks
 36 to induce, any material false statement to the Office of Medicaid Inspector

1 General or the Medicaid Fraud Control Unit within the office of the Attorney
 2 General during an audit or in response to a request for information or a
 3 subpoena;

4 (14) Knowingly forges the signature of a doctor or nurse on a
 5 prescription or referral for healthcare goods or services or submits a forged
 6 prescription or referral for healthcare goods or services in support of a
 7 claim for payment under the Arkansas Medicaid Program;

8 (15) Knowingly places a false entry in a medical chart or
 9 medical record that indicates that healthcare goods or services have been
 10 provided to a Medicaid recipient knowing that the healthcare goods or
 11 services were not provided;

12 (16) Knowingly presents, or causes to be presented, a false or
 13 fraudulent claim for payment or approval to the Arkansas Medicaid Program;

14 (17) Knowingly makes, uses, or causes to be made or used a false
 15 record or statement that is material to a false or fraudulent claim to the
 16 Arkansas Medicaid Program;

17 (18) Knowingly:

18 (A) Makes, uses, or causes to be made or used a false
 19 record or statement that is material to an obligation to pay or transmit
 20 money or property to the Arkansas Medicaid Program; or

21 (B) Conceals or improperly avoids or decreases an
 22 obligation to pay or transmit money or property to the Arkansas Medicaid
 23 Program; ~~or~~

24 (19) Conspires to commit a violation of this section; or

25 (20) Knowingly presents or causes to be presented a claim for a
 26 service required to be provided by a person with a particular type of license
 27 or credential while knowing that the individual who furnished the service was
 28 not licensed or credentialed.

29
 30 20-77-903. Civil Restitution, damages, and civil penalties.

31 (a)(1) It shall be unlawful for any person to commit any act
 32 ~~proscribed~~ prohibited by § 20-77-902, and any person found to have committed
 33 any such act or acts shall be ~~deemed~~ liable to the State of Arkansas, through
 34 the Attorney General, ~~for~~.

35 (2) In a case in which direct monetary loss does not exist or in
 36 which it is difficult or impossible to determine the extent of the loss, the

1 Attorney General may elect to seek a civil penalty based on the number of
 2 fraudulent claims submitted.

3 (3) The state shall make an election and give notice in the
 4 complaint whether the state is seeking a civil penalty of:

5 ~~(1)(A) A civil penalty of not~~ Not ~~less than five thousand five~~
 6 ~~hundred dollars (\$5,500)~~ five hundred dollars (\$500) ~~or~~ but not more than
 7 ~~eleven thousand dollars (\$11,000)~~ ten thousand dollars (\$10,000) for each
 8 claim; ~~and~~ or

9 ~~(2)(B) Three~~ ~~(3)~~ Two (2) times the amount of damages that the
 10 state sustained because of the act of the person.

11 (b) ~~The trier of fact may assess not less than two (2) times the~~
 12 ~~amount of damages that the state sustained because of the act of the person~~
 13 ~~if the trier of fact finds~~ When a person or Medicaid provider discovers an
 14 employee or subcontractor working for the person or Medicaid provider has
 15 committed a violation of this subchapter or a violation under the Medicaid
 16 Fraud Act, § 5-55-101 et seq., any statutory liability for civil penalties
 17 under this section may be reduced by fifty percent (50%) if a person or
 18 Medicaid provider can establish all of the following:

19 (1) The person or Medicaid provider committing the violation of
 20 this subchapter furnished officials of the Attorney General's office with all
 21 information known to the person or Medicaid provider about the violation
 22 within thirty (30) days after the date on which the ~~defendant~~ person or
 23 Medicaid provider first obtained the information; and

24 (2) The person or Medicaid provider fully cooperated with any
 25 Attorney General's investigation of the violation, and at the time the person
 26 or Medicaid provider furnished the Attorney General with the information
 27 about the violation:

28 (A) No criminal prosecution, civil action, or
 29 administrative action had commenced under this subchapter with respect to the
 30 violation; and

31 (B) The person or Medicaid provider did not have actual
 32 knowledge of the existence of an investigation into the violation.

33 (c)(1) In addition to any other penalties authorized herein, any
 34 person violating this subchapter shall also be liable to the State of
 35 Arkansas for the Attorney General's reasonable expenses, including the cost
 36 of investigation, attorney's fees, court costs, witness fees, and deposition

1 fees.

2 (2) Any cost or reimbursement ordered under this subsection
 3 shall be paid to the office of the Attorney General to be used for future
 4 Medicaid investigations and cases.

5 (d)(1) The When the loss is to the Arkansas Medicaid Program or its
 6 fiscal agents, the entirety of any penalty obtained under subsection (a) of
 7 this section less reimbursement of investigation and prosecution costs and
 8 any reward ~~which~~ that may be determined by the court pursuant to this
 9 subchapter shall be credited as special revenues of the State of Arkansas and
 10 deposited into the Arkansas Medicaid Program Trust Fund for the sole use of
 11 the Arkansas Medicaid Program.

12 (2) When the loss is to a managed care organization or similar
 13 organization that is paid at capitated rate, the Department of Human Services
 14 may return all or a portion of the funds to a managed care organization or
 15 any similar organization when permitted by the contract or rules.

16 (e)(1) A person who engages or has engaged in any act described by §
 17 20-77-902 may be enjoined in a court of competent jurisdiction in an action
 18 brought by the Attorney General.

19 (2) An injunction described by subdivision (e)(1) of this
 20 section shall be:

21 (A) Brought in the name of the state; and

22 (B) Granted if a case is clearly shown that the rights of
 23 the state are being violated by the person and the state will suffer
 24 immediate and irreparable injury, loss, or damage pending a final judgment in
 25 the action or that the acts or omissions of the person will tend to render a
 26 final judgment ineffectual.

27 (f) The court may make orders or judgments, including the appointment
 28 of a receiver, as necessary to:

29 (1) Prevent any act described by § 20-77-902 by any person; or

30 (2) Restore to the Arkansas Medicaid Program any money or
 31 property, real or personal, that may have been acquired by means of an act
 32 described by § 20-77-902.

33

34 SECTION 12. Arkansas Code § 20-77-909 is amended to read as follows:
 35 20-77-909. Injunctions against fraud.

36 (a)(1) Whenever it appears that any person is engaged in or intends to

1 engage in the transfer, conversion, or destruction of assets, records, or
2 property in an effort to avoid detection of violations of this subchapter or
3 avoid paying restitution, fines, and civil penalties owed under this
4 subchapter or the Medicaid Fraud Act, § 5-55-101 et seq., the Attorney
5 General may apply to the Pulaski County Circuit Court, or to the court in
6 which the records or property are located, to seize and impound the property.

7 (2) The application for an ex parte order shall be in writing,
8 furnish a reasonable basis for the granting of the proposed order, and
9 demonstrate that an emergency exists ~~which~~ that would support the granting of
10 the motion.

11 (b)(1) If the order is granted, the respondent shall be notified of
12 the order seizing and impounding his or her property immediately after the
13 seizure, or as soon as is reasonably practicable. If, after diligent inquiry,
14 the respondent cannot be located, notice under this subsection may be
15 accomplished by leaving a copy of the order at his or her dwelling house or
16 usual place of abode with some person residing therein who is at least
17 eighteen (18) years of age, or by delivering a copy ~~thereof~~ of the order to a
18 representative at the respondent's place of business who is at least eighteen
19 (18) years of age.

20 (2) If the order is granted, the respondent shall be granted a
21 hearing no later than five (5) days after being notified of the property's
22 seizure for the purpose of determining whether the order should be continued.

23 (3)(A) If the court finds the assets or funds can be preserved
24 without physical seizure, the court may order a constructive seizure by
25 entering an order directing the defendant or third-party financial
26 institution to freeze or forgo further transfer of the assets of funds.

27 (B) The court may fashion the constructive seizure in any
28 manner reasonably necessary to protect and preserve the assets or funds
29 pending the resolution of related civil and criminal cases.

30 (c) The burden at all stages of the proceeding shall be upon the state
31 to prove by a preponderance of the evidence the necessity of the order of
32 seizure.

33
34 SECTION 13. Arkansas Code § 20-77-911 is amended to read as follows:

35 20-77-911. Persons providing information regarding false Medicaid
36 ~~fraud~~ claims – Rewards.

1 (a) The court is authorized to pay a person sums, not exceeding ten
 2 percent (10%) of the aggregate collected civil penalty recovered, as it may
 3 deem just, for information the person may have provided ~~which that~~ led to the
 4 detecting ~~and bringing to trial and punishment persons guilty of violating~~
 5 ~~the Medicaid fraud laws~~ of false claims under this subchapter.

6 (b) Upon disposition of any civil action relating to violations of
 7 this subchapter in which a civil penalty is recovered, the Attorney General
 8 may petition the court on behalf of a person who may have provided
 9 information that led to the detecting ~~and bringing to trial and punishment~~
 10 ~~persons guilty of Medicaid fraud~~ of false claims and the recovery of
 11 restitution and a civil penalty damages assessment to reward the person in an
 12 amount commensurate with the quality of information determined by the court
 13 to have been provided, in accordance with the requirements of this
 14 subchapter.

15 (c)(1) If the Attorney General elects not to petition the court on
 16 behalf of the person, the person may petition the court on his or her own
 17 behalf.

18 (2) Neither the state nor any defendant within the action shall
 19 be liable for expenses that a person incurs in bringing an action under this
 20 section.

21 (d) An employee or a fiscal agent charged with the duty of referring
 22 or investigating cases of Medicaid fraud who is employed by or who contracts
 23 with any governmental entity shall not be eligible to receive a reward under
 24 this section.

25 (e) The Attorney General may agree to a payment of up to ten percent
 26 (10%) of the civil penalty as a reward in any settlement agreement under this
 27 section.

28 (f) A portion of restitution shall not be used as a reward.

31 **APPROVED: 4/11/19**