

1 State of Arkansas *As Engrossed: H3/13/13 H3/15/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 1853

4

5 By: Representatives Wardlaw, Alexander, C. Armstrong, E. Armstrong, Catlett, Cozart, J. Dickinson,  
6 Ferguson, Hammer, Hillman, Kerr, Lampkin, Leding, Love, B. Overbey, Richey, W. Wagner, B. Wilkins,  
7 Word, Wren

8 By: Senators Bookout, Burnett, E. Cheatham, S. Flowers, Irvin, R. Thompson, E. Williams

9

## For An Act To Be Entitled

10

11 AN ACT TO CLARIFY THE LAW CONCERNING RECOUPMENT OF  
12 PAYMENTS FOR HEALTHCARE PROVIDERS; TO DECLARE AN  
13 EMERGENCY; AND FOR OTHER PURPOSES.

14

15

16

### Subtitle

17

18

19

TO CLARIFY THE LAW CONCERNING RECOUPMENT  
OF PAYMENTS FOR HEALTHCARE PROVIDERS; AND  
TO DECLARE AN EMERGENCY.

20

21

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

23

24 SECTION 1. Arkansas Code Title 20, Chapter 77, Subchapter 1, is  
25 amended to add two additional sections to read as follows:

26

20-77-125. Contingency fee audits prohibited.

27

(a) As used in this section:

28

(1) "Healthcare provider" means a person enrolled to provide  
29 health or medical care services or goods authorized under Medicaid;

30

(2) "Medicaid" means the medical assistance program provided in  
31 this state under Title XIX of the Social Security Act of 1965, including  
32 components of the program;

33

(3) "Medicaid integrity audit contract" means a contract  
34 required under federal law between the Department of Human Services and a  
35 Medicaid integrity audit program contractor to:

36

(A) Review the actions of healthcare providers furnishing



1 services or goods for which payment may be made under the Medicaid program to  
2 determine whether fraud, waste, or abuse has occurred or is likely to occur,  
3 or whether fraud, waste, or abuse has the potential for resulting in an  
4 expenditure of Medicaid funds that is not intended under the Medicaid  
5 program;

6 (B) Audit Medicaid claims to ensure proper payments were  
7 made; or

8 (C) Identify overpayments made to individuals or entities  
9 receiving Medicaid funds; and

10 (4) "Person" means any individual, company, firm, organization,  
11 association, corporation, or other legal entity.

12 (b) The Division of Medical Services of the Department of Human  
13 Services shall not enter into a Medicaid integrity audit contract that  
14 authorizes all or part of an auditor's compensation to be based, directly or  
15 indirectly, on the amount of overpayments identified or collected by the  
16 auditor.

17 (c)(1) Within forty-five (45) days after the effective date of this  
18 section, the division shall seek a waiver from the Centers for Medicare and  
19 Medicaid Services of the requirement that recovery audit contractors, as  
20 identified in 42 U.S.C. § 1396a(a)(42)(B), be paid on a contingent fee basis  
21 by submitting an amendment to the Medicaid state plan to implement the  
22 requirements of this section.

23 (2)(A) Except as under subdivision (c)(2)(B) of this section,  
24 this section does not apply to:

25 (i) A contract with a Medicaid integrity audit  
26 contract entered into before the state plan amendment is approved by the  
27 Centers for Medicare and Medicaid Services; or

28 (ii) An existing contingent fee contract entered  
29 into before July 1, 2013.

30 (B) An existing contingent fee contract shall not be  
31 renewed from and after July 1, 2013, the effective date of this section, or  
32 the date a waiver from the Centers for Medicare & Medicaid Services becomes  
33 effective, whichever is later.

34  
35 20-77-126. Relation to Arkansas Pharmacy Audit Bill of Rights.

36 (a) From and after the date that a state plan amendment submitted

1 under § 20-77-125 is approved by the Centers for Medicare and Medicaid  
2 Services, § 20-77-125 shall supersede and replace § 17-92-1201(f) with regard  
3 to Medicaid integrity audits of pharmacies and pharmacists, but all other  
4 subsections of § 17-92-1201 shall continue in full force and effect with  
5 regard to Medicaid integrity audits.

6 (b) Section 17-92-1201 is not affected by § 20-77-125 with regard to  
7 audits conducted by or on behalf of a person or entity other than Medicaid  
8 integrity audits under subsection (a) of this section.

9  
10 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General  
11 Assembly of the State of Arkansas that Medicaid providers are subject to an  
12 increasing number of contracted entities performing provider audits and that  
13 such entities should be compensated based on the volume of work that they do  
14 and not be given an incentive to identify more overpayments in order to  
15 increase the payments they receive, and that it is imperative that changes be  
16 made in state law to remedy this problem. Therefore, an emergency is declared  
17 to exist and this act being immediately necessary for the preservation of the  
18 public peace, health, and safety shall become effective on:

19 (1) The date of its approval by the Governor;

20 (2) If the bill is neither approved nor vetoed by the Governor,  
21 the expiration of the period of time during which the Governor may veto the  
22 bill; or

23 (3) If the bill is vetoed by the Governor and the veto is  
24 overridden, the date the last house overrides the veto.

25  
26 /s/Wardlaw

27  
28  
29 **APPROVED: 04/11/2013**