

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S3/21/17
A Bill

SENATE BILL 564

5 By: Senator D. Sanders
6

7 **For An Act To Be Entitled**

8 AN ACT TO CLARIFY THE SCOPE OF HEALTHCARE FRAUD; TO
9 MODIFY THE SENTENCING SCHEME OF HEALTHCARE FRAUD TO
10 BE CONSISTENT WITH OTHER ARKANSAS THEFT AND FRAUD
11 LAWS; TO UPDATE THE MEDICAID FRAUD ACT AND THE
12 MEDICAID FRAUD FALSE CLAIMS ACT; TO CONFORM THE
13 MEDICAID FRAUD ACT WITH THE MEDICAID FRAUD FALSE
14 CLAIMS ACT; TO CONFORM THE MEDICAID FRAUD FALSE
15 CLAIMS ACT TO THE FEDERAL FALSE CLAIMS ACT; AND FOR
16 OTHER PURPOSES.

17
18
19 **Subtitle**

20 TO CLARIFY THE SCOPE OF HEALTHCARE FRAUD;
21 AND TO UPDATE THE MEDICAID FRAUD ACT AND
22 THE MEDICAID FRAUD FALSE CLAIMS ACT.
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 5-37-217 is amended to read as follows:
28 5-37-217. Healthcare fraud.

29 (a) As used in this section, "healthcare plan" means a publicly or
30 privately funded program or organization that is formed to provide or pay for
31 healthcare goods or services including without limitation:

32 (1) Health insurance plans;

33 (2) Managed care organization plans;

34 (3) Risk-based provider plans;

35 (4) Arkansas Medicaid Program;

36 (5) The Social Security Disability Insurance program; and



1 (6) Medicare program.

2 ~~(a)(b)~~ A person commits healthcare fraud if, with a purpose to defraud
3 a health healthcare plan, the person provides materially false information or
4 omits material information in support of:

5 ~~(1) The person knowingly provides materially false information~~
6 ~~or omits material information for the purpose of requesting payment from a~~
7 ~~single health plan for a health care item or service; and~~

8 ~~(2) As a result of the materially false information or omission~~
9 ~~of material information, a person receives payment in an amount that the~~
10 ~~person is not entitled to under the circumstances.~~

11 (1) An application for membership or eligibility for a
12 healthcare plan;

13 (2) A claim for payment or reimbursement as a member or provider
14 in a healthcare plan; or

15 (3) A prior claim for payment or to justify payments previously
16 received from a healthcare plan for healthcare goods or services during the
17 course of an audit or investigation conducted by the Office of Medicaid
18 Inspector General or a healthcare oversight agency with jurisdiction to
19 audit, investigate, or prosecute any form of healthcare fraud.

20 ~~(b)(1) Healthcare fraud is a Class A misdemeanor.~~

21 ~~(2) However, if on one (1) or more occasions, the payment or~~
22 ~~portion of the payment wrongfully received from a single health plan in a~~
23 ~~period of not more than one (1) year exceeds:~~

24 ~~(A) Ten thousand dollars (\$10,000) in the aggregate,~~
25 ~~healthcare fraud is a Class D felony;~~

26 ~~(B) Twenty five thousand dollars (\$25,000) in the~~
27 ~~aggregate, healthcare fraud is a Class C felony;~~

28 ~~(C) Fifty thousand dollars (\$50,000) in the aggregate,~~
29 ~~healthcare fraud is a Class B felony; or~~

30 ~~(D) One million dollars (\$1,000,000) in the aggregate,~~
31 ~~healthcare fraud is a Class A felony.~~

32 ~~(c) It is an affirmative defense to prosecution under this section~~
33 ~~that the defendant was a clerk, bookkeeper, or other employee other than an~~
34 ~~employee charged with the active management and control in an executive~~
35 ~~capacity of the affairs of the corporation who executed the orders of his or~~
36 ~~her employer or of a superior employee generally authorized to direct his or~~

1 ~~her activities.~~

2 (c) Healthcare fraud is a:

3 (1) Class A misdemeanor if the aggregate amount of the
4 healthcare fraud in any period of twelve (12) months is less than two
5 thousand five hundred dollars (\$2,500);

6 (2) Class C felony if the aggregate amount of the healthcare
7 fraud in any period of twelve (12) months is two thousand five hundred
8 dollars (\$2,500) or more but less than five thousand dollars (\$5,000);

9 (3) Class B felony if the aggregate amount of the healthcare
10 fraud in any period of twelve (12) months is five thousand dollars (\$5,000)
11 or more but less than twenty-five thousand dollars (\$25,000); and

12 (4) Class A felony if the aggregate amount of the healthcare
13 fraud in any period of twelve (12) months is twenty-five thousand dollars
14 (\$25,000) or more.

15
16 SECTION 2. Arkansas Code § 5-55-102 is amended to read as follows:
17 5-55-102. Definitions.

18 As used in this subchapter:

19 (1) "Arkansas Medicaid Program" means the program authorized
20 under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., that
21 provides for payments for medical goods or services on behalf of indigent
22 families with dependent children and of aged, blind, or disabled individuals
23 whose income and resources are insufficient to meet the cost of necessary
24 medical services, including all transactions through the actual delivery of
25 healthcare goods or services to a Medicaid recipient regardless of whether
26 the healthcare goods or services are paid for directly by the Department of
27 Human Services or indirectly through a fiscal agent, contractor,
28 subcontractor, risk-based provider organization, managed care organization,
29 or individual;

30 (2) "Claim" means any written or electronically submitted
31 request or demand for reimbursement or payment ~~made to the Arkansas Medicaid~~
32 ~~Program~~ by any Medicaid provider or its fiscal agents for each good or
33 service purported to have been provided to any Medicaid recipient whether or
34 not the State of Arkansas provides any ~~or no~~ portion of the money that is
35 requested or demanded;

36 (3) "Fiscal ~~agents~~ agent" means any individual, firm,

1 corporation, professional association, partnership, organization, risk-based
2 provider organization, managed care organization, or other legal entity that,
3 ~~through a contractual relationship with the Department of Human Services and,~~
4 ~~thereby, the State of Arkansas receives, processes, and or pays claims for~~
5 the delivery of healthcare goods or services to Medicaid recipients under the
6 Arkansas Medicaid Program;

7 (4) "Managed care organization" means a health insurer, Medicaid
8 provider, or other business entity authorized by state law or through a
9 contract with the state to receive a fixed or capitated rate or fee to manage
10 all or a portion of the delivery of healthcare goods or services to Medicaid
11 recipients;

12 (5)(A) "Medicaid provider" means a person, business
13 organization, risk-based provider organization, or managed care organization
14 that delivers, purports to deliver, or arranges for the delivery of
15 healthcare goods or services to a Medicaid recipient under the Arkansas
16 Medicaid Program.

17 (B) "Medicaid provider" includes an employee, agent,
18 representative, contractor, or subcontractor of a person, business
19 organization, risk-based provider organization, or managed care organization;

20 (6) "Medicaid recipient" means any individual in whose behalf
21 any person claimed or received any payment from the Arkansas Medicaid Program
22 or its fiscal agents, whether or not the individual was eligible for benefits
23 under the Arkansas Medicaid Program;

24 ~~(5)(7)~~ "Person" means any:

25 (A) ~~Provider~~ Medicaid provider of goods or services under
26 the Arkansas Medicaid Program or any employee of the Medicaid provider,
27 independent contractor of the Medicaid provider, contractor of the Medicaid
28 provider, or subcontractor of the Medicaid provider, whether the provider be
29 an individual, individual medical vendor, firm, corporation, professional
30 association, partnership, organization, risk-based provider organization,
31 managed care organization, or other legal entity; or

32 (B) Individual, individual medical vendor, firm,
33 corporation, professional association, partnership, organization, risk-based
34 provider organization, managed care organization, or other legal entity, or
35 any employee of any individual, individual medical vendor, firm, corporation,
36 professional association, partnership, organization, risk-based provider

1 organization, managed care organization, or other legal entity, not a
 2 Medicaid provider under the Arkansas Medicaid Program but that provides goods
 3 or services to a Medicaid provider under the Arkansas Medicaid Program for
 4 which the Medicaid provider submits claims to the Arkansas Medicaid Program
 5 or its fiscal agents; and

6 ~~(6)-(8)(A)~~ "Records" means all documents that disclose the
 7 nature, extent, and level of healthcare goods and services provided to
 8 Medicaid recipients including, but not limited to, medical documents and X-
 9 rays, developed by any person through the claimed provision of any goods or
 10 services to any Medicaid recipient.

11 (B) "Records" include x-rays, magnetic resonance imaging
 12 scans, computed tomography scans, computed axial tomography scans, and other
 13 diagnostic imaging commonly used and retained as part of the medical records
 14 of a patient.

15
 16 *SECTION 3. Arkansas Code § 5-55-103(a)(2), concerning the*
 17 *classification of Medicaid fraud, is amended to read as follows:*

18 *(2) Medicaid fraud is a:*

19 ~~*(A) Class B felony if the aggregate amount of payments*~~
 20 ~~*illegally claimed is two thousand five hundred dollars (\$2,500) or more; and*~~

21 ~~*(B) Class C felony if the aggregate amount of payments*~~
 22 ~~*illegally claimed is less than two thousand five hundred dollars (\$2,500) but*~~
 23 ~~*more than two hundred dollars (\$200)*~~

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

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

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

32
 33 *SECTION 4. Arkansas Code § 5-55-104(f) and (g), concerning records*
 34 *within the Medicaid Fraud Act, is amended to read as follows:*

35 ~~*(f)(1) All persons*~~ *A Medicaid provider or person providing healthcare*
 36 *goods or services* under the Arkansas Medicaid Program ~~*are*~~ *is* required to

1 ~~maintain at their principal place of Medicaid business~~ all records at least
2 for a period of five (5) years from the date of claimed provision of any
3 goods or services to any Medicaid recipient.

4 (2)(A) The records described in subdivision (f)(1) of this
5 section shall be available for audit during regular business hours at the
6 address listed in the Medicaid provider agreement or where the healthcare
7 goods or services are provided.

8 (B) Closed records for inactive patients or clients may be
9 maintained in offsite storage if:

10 (i) The records can be produced within three (3)
11 working days of being served with a request for records, subpoena, or other
12 lawful notice from any agency with authority to audit the records; and

13 (ii) The records are maintained within the state.

14 (C) A Medicaid provider shall disclose upon request the
15 location of any offsite storage facility to any agency with authority to
16 audit the records.

17 (3) If the healthcare goods or services are provided in the home
18 of the Medicaid recipient, the records shall be maintained at the principal
19 place of business of the Medicaid provider.

20 (4) If a Medicaid provider goes out of business, the provider
21 shall give written notification to the Department of Human Services and the
22 Office of Medicaid Inspector General of where and how the records will be
23 stored.

24 (g)(1) It is unlawful to destroy or alter any record or supporting
25 documentation with a purpose to conceal a false or fraudulent claim made to
26 the Arkansas Medicaid Program or to interfere with an audit, investigation,
27 or prosecution related to a claim made to the Arkansas Medicaid Program.

28 (2) A violation of subdivision (g)(1) of this section is a Class
29 B felony.

30 (h)(1) Any person found not to have maintained any records upon
31 conviction is guilty of a Class D felony if the unavailability of records
32 impairs or obstructs the prosecution of a felony.

33 (2) Otherwise, ~~the unavailability of records~~ a violation of
34 subdivision (h)(1) of this section is a Class A misdemeanor.

35 (i) It is an affirmative defense to a prosecution under this section
36 that the records in question were lost or destroyed in a flood, fire, or

1 other natural disaster or by a criminal act that did not result from the
 2 defendant's conduct.

3
 4 SECTION 5. Arkansas Code §§ 5-55-107 and 5-55-108 are amended to read
 5 as follows:

6 5-55-107. Restitution and collection.

7 (a) In addition to any other fine that may be levied ~~under § 5-4-201,~~
 8 any person found guilty of or who pleads guilty or nolo contendere to
 9 Medicaid fraud as described in this subchapter is required to make full
 10 restitution to:

11 (1) ~~Make full restitution to the~~ The Department of Human
 12 Services, with the restitution to be deposited into the Arkansas Medicaid
 13 Program Trust Fund for the loss to the Arkansas Medicaid Program or its
 14 fiscal agents; and

15 (2)~~(A)~~ ~~Pay a mandatory fine in the amount of three (3) times the~~
 16 ~~amount of all payments judicially found to have been illegally received from~~
 17 ~~the Arkansas Medicaid Program or its fiscal agents.~~

18 ~~(B)~~ ~~The mandatory fine shall be credited to the general~~
 19 ~~revenues of the State of Arkansas~~ The office of the Attorney General or
 20 prosecuting attorney for reasonable and necessary expenses incurred during
 21 investigation and prosecution.

22 ~~(b)(1)~~ ~~In addition to any other fine mandated by this subchapter or~~
 23 ~~that may be levied under § 5-4-201, any person found guilty of Medicaid~~
 24 ~~fraud as described in this subchapter may be required to pay a fine into the~~
 25 ~~State Treasury in any amount up to three thousand dollars (\$3,000) for each~~
 26 ~~claim judicially found to be fraudulently submitted to the Arkansas Medicaid~~
 27 ~~Program or its fiscal agents.~~

28 ~~(2)~~ ~~A fine under subdivision (b)(1) of this section shall be~~
 29 ~~credited to the general revenues of the State of Arkansas.~~

30 ~~(c)~~ ~~For prosecutions brought under this subchapter, the following~~
 31 ~~provisions apply:~~

32 ~~(1)~~ ~~To enable the court to properly fix the amount of~~
 33 ~~restitution, the prosecuting attorney after appropriate investigation, shall~~
 34 ~~recommend an amount that would make the Arkansas Medicaid Program whole with~~
 35 ~~respect to the money fraudulently received from the Arkansas Medicaid~~
 36 ~~Program, including the expense of investigation and all other measurable~~

1 ~~monetary damages directly related to the offense;~~

2 ~~(2) If the defendant disagrees with the recommendation of the~~
3 ~~prosecuting attorney, he or she is entitled to introduce evidence in~~
4 ~~mitigation of the amount recommended; and~~

5 ~~(3) The monetary judgment for restitution, as provided in this~~
6 ~~subchapter, becomes a judgment against the offender and has the same force~~
7 ~~and effect as any other civil judgment recorded in this state.~~

8 ~~(d)(1) The Attorney General has concurrent jurisdiction and authority~~
9 ~~with the prosecuting attorney to collect all fines and amounts of restitution~~
10 ~~levied pursuant to any criminal violation of this subchapter in the manner~~
11 ~~provided by § 5-4-204, with interest accruing on any amount of restitution to~~
12 ~~be made and any fine to be paid from and after default in the payment of the~~
13 ~~restitution or fine in the manner provided in § 16-65-114.~~

14 ~~(2) However, this subsection is not in any way intended to~~
15 ~~affect the contempt power of any court.~~

16 (b)(1) Upon a conviction of Medicaid fraud, the sentencing authority
17 shall make a finding regarding the amount of restitution that a defendant
18 shall pay including without limitation:

19 (A) The full amount of the monetary loss to the Arkansas
20 Medicaid Program and its fiscal agents;

21 (B) The amount of reasonable and necessary expenses
22 incurred by the office of the Attorney General or the prosecuting attorney
23 during the investigation and prosecution; and

24 (C) Any other measurable monetary damages directly related
25 to the Medicaid fraud.

26 (2) Except as provided in subdivision (b)(1) of this section,
27 the sentencing authority shall follow the procedures for determination of the
28 restitution amount under § 5-4-205.

29 (c)(1) In addition to the judgment and commitment order in a criminal
30 case, a court shall enter a separate restitution order against the defendant
31 convicted of Medicaid fraud regarding restitution consistent with this
32 section and § 5-55-108.

33 (2) The restitution order is a judgment against the defendant
34 and has the same effect as any other civil judgment recorded in the state.

35 (3) The restitution order shall:

36 (A) Require the defendant to:

1 (i) Comply with § 16-66-221 by filing a schedule of
2 property; and

3 (ii) Update the schedule of property on an annual
4 basis until the restitution is paid in full;

5 (B) State that:

6 (i) Interest shall accrue on the amount of the
7 restitution from the date of the restitution order under § 16-65-114; and

8 (ii) Restitution may be collected through an
9 interception of the defendant's state income tax return under § 5-4-206 if
10 the defendant fails to comply with the terms and conditions of the
11 restitution order.

12 (d)(1)(A) The Attorney General may use all available civil remedies
13 under state law to collect on a restitution order under this section.

14 (B) Civil efforts to collect restitution may proceed
15 jointly with criminal efforts to collect restitution.

16 (C) This subsection does not limit the contempt power of
17 the court or prevent a court from revoking the probation or suspended
18 sentence of a defendant who has willfully failed to pay restitution ordered
19 under this section.

20 (2)(A) The Attorney General shall provide a full accounting of
21 any restitution collected using civil remedies to the court.

22 (B) A defendant shall not be required to pay restitution
23 more than one (1) time.

24 (3)(A) Restitution ordered for a loss to the Arkansas Medicaid
25 Program shall not be excused by the court.

26 (B) A conviction under this subchapter shall not be sealed
27 or expunged until all ordered restitution is paid in full.

28 (e)(1) Restitution ordered for losses to the Arkansas Medicaid Program
29 shall be paid to the Arkansas Medicaid Program Trust Fund and used by the
30 Department of Human Services as required by state law.

31 (2) Restitution ordered for reasonable and necessary expenses
32 incurred by the office of the Attorney General or the prosecuting attorney
33 during investigation and prosecution shall be paid to the office of the
34 Attorney General or the prosecuting attorney to be retained and used in
35 future investigations for Medicaid fraud.

36

1 5-55-108. ~~Civil penalties—Expenses~~ Fines.

2 (a)~~(1)~~ Any person against which any civil judgment is entered as the
3 result of a civil action brought or threatened to be brought by the State of
4 Arkansas, through the Attorney General, on a complaint alleging the person to
5 have fraudulently received any payment from the Arkansas Medicaid Program or
6 its fiscal agents, is required to pay a civil penalty in the amount of two
7 ~~(2)~~ times the amount of all payments judicially found to have been
8 fraudulently received from the Arkansas Medicaid Program or its fiscal
9 agents, who is found guilty of or who pleads guilty or nolo contendere to
10 Medicaid fraud as described in this subchapter shall pay one (1) of the
11 following fines:

12 (1) If no monetary loss is incurred by the Arkansas Medicaid
13 Program, a fine of not less than one thousand dollars (\$1,000) or more than
14 three thousand dollars (\$3,000) for each omission or fraudulent act or claim;
15 or

16 (2) If a monetary loss is incurred by the Arkansas Medicaid
17 Program, a fine of an amount not less than the amount of the monetary loss to
18 the Arkansas Medicaid Program and not more than three (3) times the amount of
19 the monetary loss to the Arkansas Medicaid Program.

20 ~~(2) Any penalty shall be paid into the State Treasury and~~
21 ~~credited to the General Revenue Fund.~~

22 ~~(3) The judgment upon which the civil penalty is based shall be~~
23 ~~paid as restitution to the Department of Human Services.~~

24 ~~(b)(1) Any person against which any civil judgment is entered as the~~
25 ~~result of a civil action brought or threatened to be brought by the State of~~
26 ~~Arkansas, through the Attorney General, on a complaint alleging the person to~~
27 ~~have fraudulently submitted any claim to the Arkansas Medicaid Program or its~~
28 ~~fiscal agents, may be required to pay a civil penalty into the State Treasury~~
29 ~~in any amount up to two thousand dollars (\$2,000) for each claim judicially~~
30 ~~found to have been fraudulently submitted to the Arkansas Medicaid Program or~~
31 ~~its fiscal agents.~~

32 ~~(2) The entirety of the civil penalty shall be credited to the~~
33 ~~fund.~~

34 ~~(c)(1) Any person against which any civil judgment is entered as the~~
35 ~~result of a civil action brought or threatened to be brought by the State of~~
36 ~~Arkansas, through the Attorney General, on a complaint alleging any~~

1 ~~fraudulent receipt of payment from or false claim submitted to the Arkansas~~
2 ~~Medicaid Program or its fiscal agents, may be required to pay into the State~~
3 ~~Treasury all reasonable expenses that the court determines have been~~
4 ~~necessarily incurred by the Attorney General in the enforcement of this~~
5 ~~subchapter.~~

6 ~~(2) The entirety of the amount under subdivision (c)(1) of this~~
7 ~~section shall be credited to the fund.~~

8 (b)(1) The fines described in subdivision (a)(2) of this section may
9 be waived by the prosecuting attorney.

10 (2) If the fines are waived, the trier of fact may impose fines
11 under 5-4-201.

12 (c) All fines assessed under subsection (a) of this section shall be
13 credited to the general revenues of the State of Arkansas.

14
15 SECTION 6. Arkansas Code § 5-55-111 is amended to read as follows:

16 5-55-111. Criminal acts constituting Medicaid fraud.

17 A person commits Medicaid fraud when he or she:

18 (1) Purposely makes or causes to be made any omission or false
19 statement or representation of a material fact in any claim, request for
20 payment, or application for any benefit or payment under the Arkansas
21 Medicaid Program;

22 (2) At any time purposely makes or causes to be made any
23 omission or false statement or representation of a material fact for use in
24 determining rights to a benefit or payment under the Arkansas Medicaid
25 Program;

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

36 (4) Having made or submitted a claim, request for payment, or

1 application to receive any benefit or payment under the Arkansas Medicaid
2 Program for the use and benefit of another person and having received it,
3 purposely converts the benefit or payment under the Arkansas Medicaid Program
4 or any part of the benefit or payment under the Arkansas Medicaid Program to
5 a use other than for the use and benefit of the other person;

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

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

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

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

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

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

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

32 (B) Subdivisions (7)(A)(i) and (ii) of this section do not
33 apply to:

34 (i) A discount or other reduction in price obtained
35 by a provider of services or other entity under the Arkansas Medicaid Program
36 if the reduction in price is properly disclosed and appropriately reflected

1 in the costs claimed or charges made by the provider or entity under the
2 Arkansas Medicaid Program;

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

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

10 (a) The person has a written contract with
11 each individual or entity that specifies the amount to be paid to the person
12 and the amount may be a fixed amount or a fixed percentage of the value of
13 the purchases made by each individual or entity under the contract; and

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

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

21 (8) Purposely makes or causes to be made, or induces or seeks to
22 induce ~~the making of~~, any omission or false statement or representation of a
23 material fact with respect to the conditions or operation of any institution,
24 facility, or entity Medicaid provider in order that the institution,
25 facility, or entity Medicaid provider may qualify ~~either upon initial~~
26 ~~certification or upon recertification as a hospital, rural primary care~~
27 ~~hospital, skilled nursing facility, nursing facility, intermediate care~~
28 ~~facility for individuals with intellectual disabilities, home health agency,~~
29 ~~or other entity, including an eligible organization under applicable federal~~
30 ~~law for which certification is required, or with respect to information~~
31 ~~required pursuant to applicable federal and state law, rules, regulations,~~
32 ~~and provider agreements~~ to obtain or maintain any licensure or certification
33 when the licensure or certification is required to be enrolled or eligible to
34 deliver any healthcare goods or services to Medicaid recipients by state law,
35 federal law, or the rules of the Arkansas Medicaid Program;

36 (9) Purposely:

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

4 (B) Charges, solicits, accepts, or receives, in addition
5 to any amount otherwise required to be paid under the Arkansas Medicaid
6 Program, any gift, money, donation, or other consideration other than a
7 charitable, religious, or philanthropic contribution from an organization or
8 from a person unrelated to the patient:

9 (i) As a precondition of admitting a patient to a
10 hospital, nursing facility, or intermediate care facility for individuals
11 with intellectual disabilities; or

12 (ii) As a requirement for the patient's continued
13 stay in a hospital, nursing facility, or intermediate care facility for
14 individuals with intellectual disabilities when the cost of the services
15 provided in the hospital, nursing facility, or intermediate care facility for
16 individuals with intellectual disabilities to the patient is paid for in
17 whole or in part under the Arkansas Medicaid Program; ~~or~~

18 (10) Purposely makes or causes to be made any false statement or
19 representation of a material fact in any application for a benefit or payment
20 in violation of the rules, regulations, and provider agreements issued by the
21 Arkansas Medicaid Program or its fiscal agents;

22 (11) Knowingly submits false documentation or makes or causes to
23 be made, or induces or seeks to induce any material false statement to the
24 Office of Medicaid Inspector General or the Medicaid Fraud Control Unit
25 within the office of the Attorney General during an audit or in response to a
26 request for information or a subpoena;

27 (12) Purposely forges the signature of a doctor, nurse, or other
28 medical professional on a prescription, referral for healthcare goods or
29 services, or finding of medical necessity;

30 (13) Knowingly submits a forged prescription, referral for
31 healthcare goods or services, or finding of medical necessity for:

32 (A) Payment under the Arkansas Medicaid Program; or

33 (B) An audit or in response to a request for information
34 or a subpoena to the Office of Medicaid Inspector General or the Medicaid
35 Fraud Control Unit within the office of the Attorney General; or

36 (14) Purposely places a false entry in a medical chart, medical

1 record, or any record of services required to made to the Arkansas Medicaid
2 Program that indicates that healthcare goods or services have been provided
3 to a Medicaid recipient knowing that the healthcare goods or services were
4 not provided.

5
6 SECTION 7. Arkansas Code § 5-55-112 is repealed.

7 ~~5-55-112. Disposition of offenders.~~

8 ~~For a prosecution under this subchapter:~~

9 ~~(1) The punishment shall be fixed by the finder of fact, whether~~
10 ~~a court or a jury; and~~

11 ~~(2) Restitution shall be fixed by the court.~~

12
13 SECTION 8. Arkansas Code § 5-55-114(a), concerning the special deputy
14 prosecutor under the Medicaid Fraud Act, is amended to read as follows:

15 (a) ~~An attorney employed by the office of the Attorney General may be~~
16 ~~designated a special deputy prosecutor by the prosecuting attorney having~~
17 ~~eriminal jurisdiction in the matter for the purposes of prosecuting in a~~
18 ~~court of competent jurisdiction an action brought under this subchapter~~ A
19 prosecuting attorney having jurisdiction over an offense may designate an
20 attorney employed by the office of the Attorney General as a special duty
21 prosecutor to prosecute any charges related to healthcare fraud or any other
22 charges that may arise from the same factual allegations or may be properly
23 joined under state law.

24
25 SECTION 9. Arkansas Code §§ 20-77-901 – 20-77-903 are amended to read
26 as follows:

27 20-77-901. Definitions.

28 As used in this subchapter:

29 (1) “Arkansas Medicaid Program” means the program authorized
30 under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., that
31 ~~which~~ provides for payments for medical goods or services on behalf of
32 indigent families with dependent children and of aged, blind, or disabled
33 individuals whose income and resources are insufficient to meet the cost of
34 necessary medical services, including all transactions through the actual
35 delivery of healthcare goods or services to a Medicaid recipient regardless
36 of whether the healthcare goods or services are paid for directly by the

1 Department of Human Services or indirectly through a fiscal agent,
2 contractor, subcontractor, risk-based provider organization, managed care
3 organization, or individual;

4 (2)(A) "Claim" includes any request or demand, including any and
5 all documents or information required by federal or state law or by rule,
6 made against medical assistance programs funds for payment. A claim may be
7 based on costs or projected costs and includes any entry or omission in a
8 cost report or similar document, book of account, or any other document which
9 supports, or attempts to support, the claim. A claim may be made through
10 electronic means if authorized by the Department of Human Services. Each
11 claim may be treated as a separate claim, or several claims may be combined
12 to form one (1) claim; means any request or demand for money or property,
13 regardless of whether under a contract, that:

14 (i) Is presented to an officer, employee, agent, or
15 fiscal agent of the Arkansas Medicaid Program;

16 (ii) Is made to a contractor, grantee, or other
17 recipient if:

18 (a) The money or property is spent or used on
19 behalf of the Arkansas Medicaid Program or to advance the Arkansas Medicaid
20 Program or its interest; and

21 (b) The Arkansas Medicaid Program:

22 (1) Provides or has provided any portion
23 of the money or property requested or demanded; or

24 (2) Is reimbursing the contractor,
25 grantee, or other recipient for any portion of the money or property which is
26 requested or demanded.

27 (B) "Claim" includes:

28 (i) Billing documentation;

29 (ii) All documentation required to be created or
30 maintained by law or rule to justify, support, or document the delivery of
31 healthcare goods or services to a Medicaid recipient;

32 (iii) All documentation submitted to justify or help
33 establish a unit rate, capitated rate, or other method of determining what to
34 be paid for healthcare goods or services delivered to Medicaid recipients;
35 and

36 (iv) All transactions in payment for healthcare

1 goods or services delivered or claimed to have been delivered to Medicaid
2 recipients under the Arkansas Medicaid Program regardless of whether the
3 State of Arkansas has title to the money or property or has transferred
4 responsibility for delivering healthcare services to another legal entity;

5 (3) "Damages" means the actual loss to the Arkansas Medicaid
6 Program and its fiscal agents, including the total amount of all claims paid
7 as a result of any false claim and the value of healthcare goods or services
8 paid for but not delivered to a Medicaid recipient;

9 ~~(3)~~(4) "Fiscal agent" means any individual, firm, corporation,
10 professional association, partnership, organization, risk-based provider
11 organization, managed care organization, or other legal entity ~~which, through~~
12 ~~a contractual relationship with the department, the State of Arkansas that~~
13 receives, processes, and or pays claims for the delivery of healthcare goods
14 and services to Medicaid recipients under the program;

15 ~~(4)~~(5)(A) "Knowing" or "knowingly" means that the person has
16 actual knowledge of the information or acts in deliberate ignorance or
17 reckless disregard of the truth or falsity of the information.

18 (B) "Knowing" or "knowingly" does not require proof of a
19 specific intent to defraud;

20 ~~(5)~~(6) "Material" means having a natural tendency to influence,
21 or be capable of influencing, the payment or receipt of money or property;

22 (7) "Managed care organization" means a health insurer, Medicaid
23 provider, or other business entity authorized by state law or through a
24 contract with the state to receive a fixed or capitated rate or fee to manage
25 all or a portion of the delivery of healthcare goods or services to Medicaid
26 recipients;

27 (8)(A) "Medicaid provider" means a person, business
28 organization, risk-based provider organization, or managed care organization
29 that delivers, purports to deliver, or arranges for the delivery of
30 healthcare goods or services to a Medicaid recipient under the Arkansas
31 Medicaid Program.

32 (B) "Medicaid provider" includes an employee, agent,
33 representative, contractor, or subcontractor of a person, business
34 organization, risk-based provider organization, or managed care organization;

35 (9) "Medicaid recipient" means any individual on whose behalf
36 any person claimed or received any payment or payments from the program or

1 its fiscal agents, whether or not the individual was eligible for benefits
2 under the program;

3 (10) "Obligation" means an established duty arising from:

4 (A) An express or implied contract, grantor-grantee, or
5 licensor-licensee relationship;

6 (B) A fee-based or similar relationship;

7 (C) State law or rule;

8 (D) Federal law or regulation; or

9 (E) Retention of any overpayment not returned within sixty
10 (60) days from the date of discovery by the provider;

11 ~~(6)~~(11) "Person" means any:

12 (A) Medicaid provider of goods or services or any
13 employee, independent contractor, or subcontractor of the Medicaid provider,
14 whether that provider be an individual, individual medical vendor, firm,
15 corporation, professional association, partnership, organization, risk-based
16 provider organization, managed care organization, or other legal entity under
17 the program but which provides goods or services to a provider under the
18 program or its fiscal agents; or

19 (B) Individual, individual medical vendor, firm,
20 corporation, professional association, partnership, organization, risk-based
21 provider organization, managed care organization, or other legal entity, or
22 any employee of any individual, individual medical vendor, firm, corporation,
23 professional association, partnership, organization, risk-based provider
24 organization, managed care organization, or other legal entity, not a
25 Medicaid provider under the Arkansas Medicaid Program but that provides goods
26 or services to a Medicaid provider under the Arkansas Medicaid Program for
27 which the Medicaid provider submits claims to the Arkansas Medicaid Program
28 or its fiscal agents; and

29 ~~(7)~~(12)(A) "Records" means all documents in any form, including,
30 but not limited to, medical documents and X rays, prepared by any person for
31 the purported provision of any goods or services to any Medicaid recipient
32 that disclose the nature, extent, and level of healthcare goods and services
33 provided to Medicaid recipients.

34 (B) "Records" include x-rays, magnetic resonance imaging
35 scans, computed tomography scans, computed axial tomography scans, and other
36 diagnostic imaging commonly used and retained as part of the medical records

1 of a patient.

2

3 20-77-902. Liability for certain acts.

4 A person shall be liable to the State of Arkansas, through the Attorney
5 General, for a civil penalty ~~and restitution~~ of three (3) times the amount of
6 the damages if he or she:

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

10 (2) ~~At any time knowingly~~ Knowingly makes or causes to be made
11 any omission or false statement or representation of a material fact for use
12 in determining rights to a benefit or payment under the Arkansas Medicaid
13 Program;

14 (3) Having knowledge of the occurrence of any event affecting
15 his or her initial or continued right to any benefit or payment or the
16 initial or continued right to any benefit or payment of any other individual
17 in whose behalf he or she has applied for or is receiving a benefit or
18 payment, knowingly conceals or fails to disclose that event with an intent
19 fraudulently to secure the benefit or payment either in a greater amount or
20 quantity than is due or when no benefit or payment is authorized;

21 (4) Having made or submitted a claim, request for payment, or
22 application to receive any benefit or payment for the use and benefit of
23 another person and having received it, knowingly converts the benefit or
24 payment or any part thereof to a use other than for the use and benefit of
25 the other person;

26 (5) Knowingly presents or causes to be presented a claim for a
27 physician's service for which payment may be made under the program and knows
28 that the individual who furnished the service was not licensed as a
29 physician;

30 (6) Knowingly solicits or receives any remuneration, including
31 any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,
32 in cash or in kind:

33 (A) In return for referring an individual to a person for
34 the furnishing or arranging for the furnishing of any item or service for
35 which payment may be made in whole or in part under the program; or

36 (B) In return for purchasing, leasing, ordering, or

1 arranging for or recommending purchasing, leasing, or ordering any good,
2 facility, service, or item for which payment may be made in whole or in part
3 under the program;

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

7 (i) ~~To refer~~ Refer an individual to a person for the
8 furnishing or arranging for the furnishing of any item or service for which
9 payment may be made in whole or in part under the program; or

10 (ii) ~~To purchase~~ Purchase, lease, order, or arrange
11 for or recommend purchasing, leasing, or ordering any good, facility,
12 service, or item for which payment may be made in whole or in part under the
13 program.

14 (B) Subdivision (7)(A) of this section shall not apply to:

15 (i) A discount or other reduction in price obtained
16 by a provider of services or other entity under the program if the reduction
17 in price is properly disclosed and appropriately reflected in the costs
18 claimed or charges made by the provider or entity under the program;

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

22 (iii) Any amount paid by a vendor of goods or
23 services to a person authorized to act as a purchasing agent for a group of
24 individuals or entities who are furnishing services reimbursed under the
25 program, if:

26 (a) The person has a written contract with
27 each individual or entity which specifies the amount to be paid to the
28 person, which amount may be a fixed amount or a fixed percentage of the value
29 of the purchases made by each individual or entity under the contract; and

30 (b) In the case of an entity that is a
31 Medicaid provider ~~of services~~ as defined in § 20-9-101, the person discloses,
32 in the form and manner as the Director of the Department of Human Services
33 requires, to the entity and upon request to the director the amount received
34 from each vendor with respect to purchases made by or on behalf of the
35 entity; or

36 (iv) Any payment practice specified by the director

1 promulgated pursuant to applicable federal or state law;

2 (8) Knowingly makes or causes to be made or induces or seeks to
3 induce ~~the making of any false statement or representation of a material~~
4 ~~fact;~~

5 ~~(A) With respect to the conditions or operation of any~~
6 ~~institution, facility, or entity in order that the institution, facility, or~~
7 ~~entity may qualify either upon initial certification or upon recertification~~
8 ~~as a hospital, rural primary care hospital, skilled nursing facility, nursing~~
9 ~~facility, intermediate care facility for individuals with intellectual~~
10 ~~disabilities, home health agency, or other entity for which certification is~~
11 ~~required; or~~

12 ~~(B) With respect to information required pursuant to~~
13 ~~applicable federal and state law, rules, regulations, and provider agreements~~
14 any omission or false statement or representation of a material fact with
15 respect to the conditions or operation of any institution, facility, or
16 Medicaid provider in order that the institution, facility, or Medicaid
17 provider may qualify to obtain or maintain any licensure or certification
18 when the licensure or certification is required to be enrolled or eligible to
19 deliver any healthcare goods or services to Medicaid recipients by state law,
20 federal law, or the rules of the Arkansas Medicaid Program;

21 (9) Knowingly:

22 (A) Charges for any service provided to a patient under
23 the program money or other consideration at a rate in excess of the rates
24 established by the state; or

25 (B) Charges, solicits, accepts, or receives, in addition
26 to any amount otherwise required to be paid under the program, any gift,
27 money, donation, or other consideration other than a charitable, religious,
28 or philanthropic contribution from an organization or from a person unrelated
29 to the patient;

30 (i) ~~as~~ As a precondition of admitting a patient to a
31 hospital, nursing facility, or intermediate care facility for individuals
32 with intellectual disabilities; or

33 (ii) ~~as~~ As a requirement for the patient's continued
34 stay in the hospital, nursing facility, or intermediate care facility for
35 individuals with intellectual disabilities when the cost of the services
36 provided therein to the patient is paid for in whole or in part under the

1 program;

2 (10) Knowingly makes or causes to be made any omission or false
3 statement or representation of a material fact in any application for
4 benefits or for payment in violation of the rules, regulations, and provider
5 agreements issued by the program or its fiscal agents; ~~or~~

6 (11) Knowingly:

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

11 or

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

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

24 (13) Knowingly makes or causes to be made, or induces or seeks
25 to induce, any material false statement to made to the Office of Medicaid
26 Inspector General or the Medicaid Fraud Control Unit within the office of the
27 Attorney General during an audit or in response to a request for information
28 or a subpoena;

29 (14) Knowingly forges the signature of a doctor or nurse on a
30 prescription or referral for healthcare goods or services or submits a forged
31 prescription or referral for healthcare goods or services in support of a
32 claim for payment under the Arkansas Medicaid Program;

33 (15) Knowingly places a false entry in a medical chart or
34 medical record that indicates that healthcare goods or services have been
35 provided to a Medicaid recipient knowing that the healthcare goods or
36 services were not provided;

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

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

6 (18) Knowingly:

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

10 (B) Conceals or improperly avoids or decreases an
11 obligation to pay or transmit money or property to the Arkansas Medicaid
12 Program; or

13 (19) Conspires to commit a violation of this section.

14
15 20-77-903. Civil penalties.

16 ~~(a)(1)~~ It shall be unlawful for any person to commit any act
17 proscribed by § 20-77-902, and any person found to have committed any such
18 act or acts shall be deemed liable to the State of Arkansas, through the
19 Attorney General, for ~~full restitution and for a civil penalty of not less~~
20 ~~than five thousand dollars (\$5,000) and not more than ten thousand dollars~~
21 ~~(\$10,000) for each violation, plus three (3) times the amount of all payments~~
22 ~~judicially found to have been fraudulently received from the Arkansas~~
23 ~~Medicaid Program or its fiscal agents because of the act of that person,~~
24 ~~except that if the court finds the following:~~

25 (1) A civil penalty of not less than five thousand five hundred
26 dollars (\$5,500) or more than eleven thousand dollars (\$11,000) for each
27 claim; and

28 (2) Three (3) times the amount of damages that the state
29 sustained because of the act of the person.

30 (b) The trier of fact may assess not less than two (2) times the
31 amount of damages that the state sustained because of the act of the person
32 if the trier of fact finds the following:

33 ~~(A)(1)~~ The person committing the violation of this
34 subchapter furnished officials of the Attorney General's office with all
35 information known to the person about the violation within thirty (30) days
36 after the date on which the defendant first obtained the information; and

1 ~~(B)~~(2) The person fully cooperated with any Attorney
2 General's investigation of the violation, and at the time the person
3 furnished the Attorney General with the information about the violation:

4 ~~(i)~~(A) No criminal prosecution, civil action, or
5 administrative action had commenced under this subchapter with respect to the
6 violation; and

7 ~~(ii)~~(B) The person did not have actual knowledge of
8 the existence of an investigation into the violation.

9 ~~(2) The court may assess not more than two (2) times the amount~~
10 ~~of damages which the state sustained because of the act of the person.~~

11 ~~(b)~~(c)(1) In addition to any other penalties authorized herein, any
12 person violating this subchapter shall also be liable to the State of
13 Arkansas for the Attorney General's reasonable expenses, including the cost
14 of investigation, attorney's fees, court costs, witness fees, and deposition
15 fees.

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

19 ~~(e)~~(d) The entirety of any penalty obtained under subsection (a) less
20 reimbursement of investigation and prosecution costs and any reward which may
21 be determined by the court pursuant to this subchapter shall be credited as
22 special revenues of the State of Arkansas and deposited into the Arkansas
23 Medicaid Program Trust Fund for the sole use of the program.

24 ~~(d) For actions under this subchapter, the following shall apply:~~

25 ~~(1) To enable the court to properly fix the amount of~~
26 ~~restitution, the Attorney General shall, after appropriate investigation,~~
27 ~~recommend an amount that would make the victim whole with respect to the~~
28 ~~money fraudulently received from the program or its fiscal agents, the~~
29 ~~expense of investigation, and all other measurable monetary damages directly~~
30 ~~related to the cause of action; and~~

31 ~~(2) If the defendant disagrees with the recommendation of the~~
32 ~~Attorney General, he or she shall be entitled to introduce evidence in~~
33 ~~mitigation of the amount recommended.~~

34 ~~(e) For actions under this subchapter, whether tried by the court or~~
35 ~~the jury, the restitution and penalty shall be fixed by the court.~~

36 (e)(1) A person who engages or has engaged in any act described by §

1 20-77-902 may be enjoined in a court of competent jurisdiction in an action
 2 brought by the Attorney General.

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

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

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

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

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

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

17
 18 SECTION 10. Arkansas Code § 20-77-904(c)(1), concerning investigation
 19 by the Attorney General under the Medicaid Fraud False Claims Act, is amended
 20 to read as follows:

21 (1) Adjudging the person in contempt of court and exercising any
 22 civil contempt power available under state law;

23
 24 SECTION 11. Arkansas Code § 20-77-907(a), concerning records under the
 25 Medicaid Fraud False Claims Act, is amended to read as follows:

26 (a)(1) ~~All persons~~ A Medicaid provider or person providing healthcare
 27 goods or services under the Arkansas Medicaid Program are required to
 28 ~~maintain at the person's principal place of Medicaid business all records at~~
 29 ~~least for a period of five (5) years from the date of claimed~~ provision of
 30 any goods or services to any Medicaid recipient.

31 ~~(2)(A) Any person found not to have maintained all records shall~~
 32 ~~be guilty of a Class D felony if the unavailability of records impairs or~~
 33 ~~obstructs a civil action pursuant to this subchapter.~~

34 ~~(B) Otherwise, the unavailability of records shall be a~~
 35 ~~Class A misdemeanor.~~

36 (2)(A) The records described in subdivision (a)(1) of this

1 section shall be available for audit during regular business hours at the
 2 address listed in the Medicaid provider agreement or where the healthcare
 3 goods or services are provided.

4 (B) Closed records for inactive patients or clients can be
 5 maintained in offsite storage if:

6 (i) The records can be produced within three (3)
 7 working days of being served with a request for records, subpoena, or other
 8 lawful notice from any agency with authority to audit the records; and

9 (ii) The records are maintained within the State of
 10 Arkansas.

11 (C) A Medicaid provider shall disclose upon request the
 12 location of any offsite storage facility to any agency with authority to
 13 audit the records.

14 (3) If the healthcare goods or services are provided in the home
 15 of the Medicaid recipient, the records shall be maintained at the principal
 16 place of business of the Medicaid provider.

17 (4) If a Medicaid provider goes out of business, the provider
 18 shall give written notification to the Department of Human Services and the
 19 Office of Medicaid Inspector General of where and how the records will be
 20 stored.

21
 22 SECTION 12. Arkansas Code § 20-77-908(a) and (b), concerning the false
 23 claims jurisdiction and procedure under the Medicaid Fraud False Claims Act,
 24 is amended to read as follows:

25 (a) Any action under this subchapter may be brought in the circuit
 26 court of Pulaski County or the county where the defendant, or in the case of
 27 multiple defendants, any one (1) defendant resides.

28 (b) *A civil action under this section may not be brought more than*
 29 *five (5) years after the date on which the violation of this subchapter is*
 30 *committed.*

31
 32 SECTION 13. Arkansas Code § 20-77-2502(3), concerning the definition
 33 of "health plan" regarding the Office of Medicaid Inspector General, is
 34 amended to read as follows:

35 (3) ~~"Health plan"~~ "Healthcare plan" means a publicly or
 36 ~~privately funded health insurance or managed care plan or contract under~~

1 ~~which a healthcare item or service is provided and through which payment is~~
2 ~~made to the person who provided the healthcare item or service~~ program or
3 organization that is formed to provide or pay for healthcare goods or
4 services including without limitation:

- 5 (A) Health insurance plans;
- 6 (B) Managed care organization plans;
- 7 (C) Risk-based provider plans;
- 8 (D) Arkansas Medicaid Program;
- 9 (E) The Social Security Disability Insurance program; and
- 10 (F) Medicare program;

11
12 SECTION 14. Arkansas Code § 20-77-2502(7), concerning the definition
13 of "single health plan" regarding the Office of Medicaid Inspector General,
14 is repealed.

15 ~~(7) "Single health plan" includes without limitation the~~
16 ~~Arkansas Medicaid Program; and~~

17
18 */s/D. Sanders*

19
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21 **APPROVED: 04/05/2017**
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