

ARKANSAS SENATE
88th General Assembly - Regular Session, 2011
Amendment Form

Subtitle of Senate Bill No. 838

TO ENACT THE FALSE MEDICAID CLAIMS ACT; TO ENCOURAGE AND ASSIST THE
RECOVERY OF MONEYS FRAUDULENTLY RECEIVED FROM THE MEDICAID
PROGRAM; TO INCREASE THE STATE'S PORTION OF FUNDS RECOVERED; TO
DECLARE AN EMERGENCY.

Amendment No. 2 to Senate Bill No. 838

Amend Senate Bill No. 838 as engrossed, S3/15/11 (version: 03/15/2011 09:49:35 AM)

Page 2, line 10, delete "subchapter for double and sometimes treble" and substitute "subchapter"

AND

Page 2, line 11, delete "damages are" and substitute "are"

AND

Page 2, delete lines 21 through 36 and substitute the following:

"20-77-2003. Definitions.

As used in this subchapter:

(1)(A) "Claim" means a request or demand under a contract or otherwise for money or other property whether or not the State of Arkansas has title to the money or other property that is:

(i) Presented through a state health plan or a state health program to an officer, employee, or agent of the state; or

(ii) Made to a contractor, grantee, or other recipient, if the money or other property is to be spent or used on the state's behalf or to advance a state interest through a state health plan or state health program, and the state:

(a) Provides or has provided any portion of the money or other property requested or demanded; or

(b) Will reimburse the contractor, grantee, or other recipient for any portion of the money or other property that is requested or demanded.

(B) "Claim" does not include requests or demands for money or other property that the state through a state health plan or state health program has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or other property;



(2) "Documentary material" includes:

(A) The original or a copy of:

- (i) A book;
- (ii) A record;
- (iii) A report;
- (iv) A memorandum;
- (v) A paper;
- (vi) A communication;
- (vii) A tabulation;
- (viii) A chart;
- (ix) A document; or
- (x) Data compilation stored in or accessible through

a computer or other information retrieval system, including instructions and all other materials necessary to use or interpret the data compilation; and

(B) Any product of discovery, including:

(i) The original or duplicate of a deposition, interrogatory, document, thing, result of an inspection of land or other property, examination, or admission that is obtained by any method of discovery in a judicial or administrative proceeding of an adversarial nature;

(ii) A digest, analysis, selection, compilation, or derivation of an item listed in subdivision (3)(B)(i) of this section; and

(iii) An index or other manner of access to an item listed in subdivision (3)(B)(i) of this section;

(3) "Employee" means an individual who performs services:

(A) For and under the control and direction of an employer; and

(B) Under an employer's promise or implied promise of payment of wages or other remuneration;

(4) "Employer" means a person or group of persons that, acting directly or indirectly on behalf of another person or group of persons:

(A) Allows an employee to perform services under the employer's control and direction; and

(B) Promises or implies that the employee will receive wages or other remuneration in payment for the performance of those services;

(5)(A) "Knowing" or "knowingly" means, with respect to information and without requiring proof of specific intent to defraud, that a person:

(i) Has actual knowledge of the information;
(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information.

(B) "Knowing" or "knowingly" does not mean, with respect to information, that a person acts in a manner that constitutes mistake or negligence;

(6) "Material" means having a natural tendency to influence or be capable of influencing the payment or receipt of money or other property;

(7) "Obligation" means an established duty whether or not fixed arising from:

(A) An express or implied:

- (i) Contractual relationship;

(ii) Grantor-grantee relationship; or
(iii) Licensor-licensee relationship;
(B) A fee-based or similar relationship;
(C) Statute, rule, or regulation; or
(D) The retention of an overpayment;
(8)(A) "Provider" means:
(i) An individual licensed or certified to provide health care;
(ii) A licensed facility that provides health care to individuals;
(iii) Any other person or entity that provides health care, products, or services to a program recipient; or
(iv) A contractor, subcontractor, or vendor who directly or indirectly provides the Department of Health or the Department of Human Services or their recipients supplies, drugs, equipment, or services.
(B) "Provider" does not include a state agency that receives grant funding from or through the Department of Health or the Department of Human Services if that agency has in place a corporate compliance program that meets departmental requirements;
(9) "Public body" means:
(A) The General Assembly or any other elected body;
(B) A member or an employee of the General Assembly or other elected body;
(C) A state court;
(D) A member or an employee of a state court;
(E) A state or local regulatory, administrative, or public agency or authority;
(F) An instrumentality of a state or local regulatory, administrative, or public agency or authority;
(G) A state or local law enforcement agency, prosecutorial office, or police or peace officer;
(H) A state or local department of an executive branch of government; or
(I) A division, board, bureau, office, committee, or commission of any of the public bodies listed in this subsection;
(10) "Retaliatory action" means:
(A) Discharging, suspending, demoting, threatening, harassing, or discriminating against an employee, contractor, or agent; or
(B) Any other adverse action taken against an employee, contractor, or agent relating to the conditions of employment, contract, or agency;
(11)(A) "State health plan" means:
(i) The state medical assistance program established:
(a) Under the ARKids First Program Act, § 20-77-1101 et seq.; or
(b) In connection with the Arkansas Safety-net Benefit Program under § 23-79-1001 et seq.;
(ii) A medical assistance plan established by the state; or
(iii) A private health insurance carrier, health maintenance organization, managed care organization, health care cooperative

or alliance, or another person that provides or contracts to provide health care services that are wholly or partially reimbursed by, or are a required benefit of a health plan established in accordance with:

(a) The federal Social Security Act of 1939;

(b) The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; or

(c) A state health program.

(B) "State health plan" includes a person who provides or contracts or subcontracts to provide health care services for an entity described in subdivision (12) of this section;

(12) "State health program" means a program or unit of the Department of Health or the Department of Human Services that renders a service or pays a provider for a service rendered or claimed to have been rendered to a recipient; and

(13) "Supervisor" means an individual within an employer's organization who has the authority to:

(A) Direct and control the work performance of an employee; or

(B) Take corrective action regarding the violation of a law, rule, or regulation that is the subject of a complaint or charge under this subchapter.

20-77-2004. Actions subject to discipline – Fines and penalties.

(a) A person shall not:

(1) Knowingly present or cause to be presented a false or fraudulent claim for payment or approval;

(2) Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;

(3) Conspire to commit a violation under this subchapter;

(4) Have possession, custody, or control of money or other property used by or on behalf of the State of Arkansas under a state health plan or a state health program and knowingly deliver or cause to be delivered to the state less than all of the money or other property;

(5) If authorized to make or deliver a receipt or other document certifying receipt of money or other property used or to be used by the state under a state health plan or a state health program and intending to defraud the state, the Department of Health, or the Department of Human Services, make or deliver a receipt or document knowing that the information contained in the receipt or document is not true;

(6) Knowingly buy or receive as a pledge of an obligation or debt publicly owned property from an officer, employee, or agent of a state health plan or a state health program who lawfully may not sell or pledge the property;

(7) Knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or other property to the state;

(8) Knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or other property to the state; or

(9) Knowingly make any other false or fraudulent claim against a state health plan or a state health program.

(b)(1) A person who is found to have violated subsection (a) of this section is liable to the state for:

(A) A civil penalty of not more than ten thousand dollars (\$10,000) for each violation of subsection (a) of this section; and

(B) An additional amount of not more than three (3) times the amount of damages that the state sustains as a result of the acts of the person in violation of subsection (a) of this section.

(2) The total amount owed by a person under subdivision (b)(1) of this section may not be less than the amount of the actual damages the state health plan or state health program incurs as a result of the person's violation of subsection (a) of this section.

(c)(1) In determining the appropriate amount of fines and damages under subsection (b) of this section, the court shall consider:

(A) The number, nature, and severity of the violations of this subchapter for which the person has been found liable;

(B) The number, nature, and severity of any previous violations of this subchapter;

(C) The degree of loss suffered by the state health plan or state health program;

(D) The person's history of billing compliance;

(E) Whether the person has a compliance program in place;

(F) The extent to which the person has taken steps to address and correct the violation since the person became aware of the violation;

(G) The extent to which the violation caused harm or detriment to patients or consumers of the state health plan or state health program;

(H) Any funds previously returned to the state health plan or state health program in compliance with federal requirements regarding overpayments, to the extent the funds represented losses to the state health plan or state health program caused by the violation;

(I) Whether the person self-reported the violation, the timeliness of the self-reporting, the extent to which the person otherwise cooperated in the investigation of the violation, and the extent to which the person had prior knowledge of an investigation or other action relating to the violation; and

(J) Any other factor as justice requires.

(2) In weighing the factors set forth in subdivision (c)(1) of this section, the court, where appropriate, shall give special consideration to:

(A) The extent to which the person's size, operations, or financial condition may have affected each of the factors set forth in subdivision (c)(1) of this section; and

(B) The extent to which the person's size, operations, or financial condition may affect the person's ability to provide care and continue operations after payment of damages and fines.

(d) The penalties provided in subsection (b) of this section are in addition to any criminal, civil, or administrative penalties provided under any other state or federal statute or regulation.

20-77-2005. Civil actions filed by state.

(a) If the State of Arkansas finds that a person has violated or is violating § 20-77-2004(a), the state may file a civil action in a court of competent jurisdiction within the state against the person.

(b) In filing a civil action under this section, the state may seek:

(1) The penalties provided under § 20-77-2004(b); and

(2) Subject to the guidelines set forth in § 20-77-2007(a)(4), court costs and attorney's fees.

20-77-2006. Civil actions filed by persons – Intervention by Attorney General – Stay of discovery.

(a)(1)(A) A person may file a civil action on behalf of the person and the State of Arkansas in a court of competent jurisdiction within the state against a person who has acted or is acting in violation of § 20-77-2004(a).

(B) A civil action filed under subdivision (a)(1)(A) of this section shall be brought in the name of the State of Arkansas.

(2) A person filing an action under this section may seek:

(A) The penalties provided for under § 20-77-2004(b); and

(B) Subject to the guidelines set forth in § 20-77-2004(a)(4), court costs and attorney's fees.

(3)(A) The complaint shall be filed in camera and shall remain under seal for at least sixty (60) days.

(B) The person shall serve on the Attorney General a copy of the complaint and a written disclosure of substantially all material evidence and information that the person possesses, in accordance with Rule 4 of the Arkansas Rules of Civil Procedure.

(C) The complaint may not be served on the defendant until the complaint is unsealed and the court orders the complaint served.

(D) Within sixty (60) days after the Attorney General receives the complaint and the material evidence and information, the Attorney General may elect to intervene and proceed with the action.

(4)(A) For good cause shown, the Attorney General may move the court for extensions of the time during which the complaint remains under seal under subdivision (a)(3)(A) of this section.

(B) A motion made under subdivision (a)(4)(A) of this section may be supported by affidavits or other submissions in camera.

(5)(A) The defendant shall not be required to answer a complaint filed under this section until after the complaint is:

(i) Unsealed and ordered by the court to be served; and

(ii) Served on the defendant in accordance with Rule 4 of the Arkansas Rules of Civil Procedure.

(B) When answering a complaint filed under this section, a defendant shall follow the time frames and other provisions for filing answers to a complaint required by the Arkansas Rules of Civil Procedure.

(C) During the period in which the complaint is under seal, if the Attorney General's investigation reveals that the act, transaction, or occurrence that gave rise to the alleged violation of this subtitle is reasonably likely to be continuing, the Attorney General shall notify the defendant as soon as practicable without jeopardizing the course and conduct of the Attorney General's or the federal government's investigation of the violation, compromising the development of evidence, or violating any state or federal law.

(6) Before the later of the expiration of the sixty-day period during which the complaint remains under seal under subdivision (a)(3)(A) of this section or any extension of the sixty-day period obtained under subdivision (a)(4)(A) of this section, the Attorney General shall:

(A) Intervene and proceed with the action in a court of competent jurisdiction within the state; or

(B) Notify the court that it will not intervene and proceed with the action.

(7) If the Attorney General does not elect to intervene and proceed with the action under subdivision (a)(6) of this section, before unsealing the complaint, the court shall dismiss the action.

(8) If a person initiates an action under this section, no person other than the Attorney General may intervene in the action or initiate a related action based on the facts underlying the pending action.

(b)(1) If the Attorney General intervenes and proceeds with the action under subsection (a)(6)(A) of this section:

(A) The Attorney General shall have the primary responsibility for proceeding with the action and is not be bound by any act of the person who initiated the action; and

(B) Subject to subdivisions (b)(3) through (b)(6) of this section, the person who initiated the action may continue as a party to the action.

(2)(A) During an investigation by the Attorney General conducted either independently or in conjunction with a civil action filed under this subchapter, the Attorney General shall have the same rights of discovery as a civil litigant in the circuit court under the Arkansas Rules of Civil Procedure.

(B) A person from whom the Attorney General seeks discovery shall be considered a party under the Arkansas Rules of Civil Procedure.

(3)(A) Notwithstanding the objections of the person initiating the action, the Attorney General may elect at any point to withdraw its intervention as a party to the action.

(B) If the Attorney General elects to withdraw as a party to the action:

(i) The Attorney General shall notify the court and the party initiating the action; and

(ii) The court shall dismiss the action.

(4) Notwithstanding the objections of the person initiating the action, if the court determines after a hearing that a proposed settlement is fair, adequate, and reasonable under the circumstances, the Attorney General may settle a civil action filed under this section.

(5) On motion of the Attorney General or the defendant or on the court's own motion, the court may impose limitations on the participation of the person initiating an action under this section if:

(A) The Attorney General shows that the person's unrestricted participation in the action would:

(i) Interfere with or delay the Attorney General in its pursuit of the civil action; or

(ii) Be repetitious, irrelevant, or harassing to the defendant; or

(B) The defendant shows that unrestricted participation by the person initiating the action would harass the defendant or cause the defendant undue burden or unnecessary expense.

(6) Limitations imposed by the court under subdivision (b)(5) of this section may include:

(A) A limitation on the number of witnesses the person may call to testify;

(B) A limitation on the length of the testimony of witnesses called by the person;

(C) A limitation on the person's cross-examination of witnesses; or

(D) A limitation on the participation of the person in the litigation.

(c)(1) Instead of proceeding with a civil action filed under this subchapter, the Attorney General may pursue any alternative remedy available to the Attorney General, including any appropriate administrative proceeding to determine a civil money penalty.

(2) If the Attorney General seeks an alternative remedy in another proceeding after intervening in a civil action filed under this section, the person initiating the action shall have the same rights in the alternative proceeding as the person would have had if the civil action had continued under this section.

(3)(A) A finding of fact or conclusion of law made in any alternative proceeding that has become final shall be conclusive on all parties to an action filed under this subchapter.

(B) For purposes of subdivision (c)(3)(A) of this section, a finding or conclusion is final if:

(i) It has been finally determined on appeal to the appropriate court of the state;

(ii) All time for filing the appeal with respect to the finding or conclusion has expired; or

(iii) The finding or conclusion is not subject to judicial review.

(d)(1) On a showing in camera by the Attorney General that certain actions of discovery by the person initiating the action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty (60) days.

(2) The court may extend the sixty-day period on a further showing in camera that:

(A) The Attorney General has pursued the criminal or civil investigation or proceeding with reasonable diligence; and

(B) Any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

(e) The state is not liable for expenses that a person incurs in bringing an action under this section.

20-77-2007. Awards to or against persons initiating action when the Attorney General intervenes.

(a)(1) If the Attorney General intervenes and proceeds with an action initiated by a person under § 20-77-2006 and the Attorney General prevails, the court shall award the person initiating the action an amount that is:

(A) Not less than fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim; and

(B) Proportional to the amount of time and effort that the person substantially contributed to the final resolution of the civil action.

(2)(A) If the court finds that the action is based primarily on disclosures of specific information relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may make an award to the person initiating the action that:

(i) The court considers appropriate, taking into account the significance of the information and the role of the person initiating the action in advancing the case to litigation; and

(ii) Does not exceed ten percent (10%) of the proceeds of the action.

(B) The information described in subdivision (a)(2)(A) of this section does not include information disclosed and provided by the person initiating the action.

(3) Any payment to a person under subdivision (a)(1) or (a)(2) of this section shall be made from the proceeds of the action.

(4)(A) In addition to the amount provided under subdivision (a)(1) and (2) of this section, a court may award the person initiating the action:

(i) An amount for reasonable expenses that the court finds to have been necessarily incurred; and

(ii) Reasonable attorney's fees and costs.

(B) In determining the amount of any award under subdivision (a)(4)(A)(i) of this section, the court shall consider the amount of any penalties and damages recovered in the action and any other factor as justice may require.

(C) Any expenses, fees, and costs awarded under this paragraph shall be awarded against the defendant.

(b)(1) If a court finds that the action is initiated by a person who planned and initiated or otherwise deliberately participated in the violation on which the action was based, the court may to the extent it considers appropriate reduce the share of the proceeds of the action that the person otherwise would have received under this section.

(2) In reducing the share of the proceeds of the person initiating the action under this subsection, the court shall consider:

(A) The role of the person in advancing the case to litigation; and

(B) Any relevant circumstances relating to the underlying violation.

(3)(A) If the person initiating a civil action under § 20-77-2006 is convicted of criminal conduct arising from the person's participation in the violation on which the action was based before a final determination of the action, the person:

(i) Shall be dismissed from the action; and

(ii) Shall not receive any share of the proceeds of the action.

(B) The dismissal of the person initiating the action does not prejudice the right of the state to continue the action.

(4) If the person initiating a civil action under § 20-77-2006 is convicted of criminal conduct arising from the person's participation in the violation on which the action was based after the proceeds from the action are awarded to that person, the court shall order the person to repay the proceeds previously awarded.

(c) A court may award reasonable attorney's fees and expenses to a defendant and against the person initiating the action if:

(1) The defendant prevails in the action; and

(2) The court finds that the claim of the person initiating the action was brought primarily for purposes of harassment or otherwise brought in bad faith.

20-77-2008. Civil actions by or against government employees – Other proceedings.

(a) A court in this state shall not have jurisdiction over an action filed under § 20-77-2004 against any member of the General Assembly, a judge of the Supreme Court, Court of Appeals, a circuit court, or a district court, or any member of the office of the Governor, the Attorney General, the Treasurer of State, or member of the Executive Branch, if the action is based on evidence or information known to the state when the action was filed.

(b) A civil action shall not be brought under this subchapter by a person who is or was a public employee or public official if the allegations of the action are based substantially on:

(1) Allegations of wrongdoing or misconduct that the person had a duty or obligation to report or investigate within the scope of the person's public employment or office; or

(2) Information or records to which the person had access as a result of the person's public employment or office.

(c) A person may not bring an action under § 20-77-2006 that is based on allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(d)(1) Except as provided in subdivision (d)(2) and (3) of this section, a court in this state shall not have jurisdiction over an action filed under § 20-77-2006 that is based on the public disclosure of allegations or transactions:

(A) In a criminal, civil, or an administrative hearing;

(B) In a legislative report, an administrative report, a hearing, an audit, or an investigation; or

(C) From the news media.

(2) Subdivision (d)(1) of this section does not apply if the action is initiated by a person who:

(A) Has direct and independent knowledge of the information on which the allegations are based; and

(B) Has voluntarily provided the information to the state before filing an action under § 20-70-2006 that is based on the information.

(3) The State of Arkansas through the Attorney General may file a civil action under § 20-70-2005 based on a public disclosure described in subdivision (d)(1) of this section.

(e) A person who is or was employed by the state, a local government, or any other political subdivision of the state as an auditor, investigator, attorney, financial officer, or contracting officer may not bring an action

under § 20-77-2006 that is based on allegations or transactions that the person discovered or learned of while acting in the person's capacity as an auditor, investigator, attorney, financial officer, or contracting officer for the state, local government, or other political subdivision of the state.

20-77-2009. Retaliatory actions against employees, contractors, or grantees prohibited.

(a) A person may not take a retaliatory action against an employee, contractor, or grantee because the employee, contractor, or grantee:

(1) Acts lawfully in furtherance of an action filed under this subchapter, including an investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter;

(2) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of the person that the employee, contractor, or grantee reasonably believes is in violation of § 20-77-2004(a) or a rule adopted under this subchapter;

(3) Provides information to or testifies before a public body conducting an investigation, hearing, or inquiry into a violation of § 20-77-2004(a) or a rule adopted under this subchapter that is allegedly or actually committed by the person; or

(4) Objects to or refuses to participate in any activity, policy, or practice that the employee, contractor, or grantee reasonably believes is in violation of § 20-77-2004(a) or a rule adopted under this subchapter.

(b)(1) An employee, contractor, or grantee may file a civil action against a person other than a supervisor in state government, an appointing authority in state government, or the head of a principal unit in state government if the person takes a retaliatory action against the employee, contractor, or grantee in violation of subsection (a) of this section.

(2) The employee, contractor, or grantee may seek in the civil action:

(A) An injunction to restrain a continuing violation of subsection (a) of this section;

(B) Reinstatement to the same seniority status held before the retaliatory action;

(C) Reinstatement of full fringe benefits and seniority rights;

(D) Two (2) times the amount of lost wages, benefits, and other remuneration, including any interest accumulated;

(E) Payment by the person of reasonable costs and attorney's fees;

(F) Punitive damages;

(G) An assessment of a civil penalty not to exceed:

(i) One thousand dollars (\$1,000) for the first violation; and

(ii) Five thousand dollars (\$5,000) for each subsequent violation; and

(H) Any other relief necessary to make the employee, contractor, or grantee whole.

(3) The remedies provided for under this section do not diminish or affect the rights, privileges, or remedies available to the employee, contractor, or grantee under:

(A) Any other federal or state statute, rule, or regulation; or

(B) Any collective bargaining agreement or employee contract.

(c) Subsections (a) and (b) of this section do not apply to an employee of a public body.

(d) An employee of a public body who is subject to retaliatory action in violation of subsection (a) of this section may file a grievance against the public body.

20-77-2010. Notice to employees.

An employer shall:

(1) Conspicuously display notices of the protections provided to and obligations required of its employees under this subchapter; and

(2) Use any appropriate means to inform its employees of the protections and obligations provided under this subchapter.

20-77-2011. Limitations, pleadings, and burden of proof for civil actions filed by the State of Arkansas.

(a) A civil action filed under this subchapter may not be filed after the later of:

(1) Six (6) years after the date on which the underlying violation of § 20-77-2004(a) occurred; or

(2) Three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the relator, the Attorney General, or the Director of the Attorney General's Medicaid Fraud Control Unit but in no event more than ten (10) years after the date on which the underlying violation of § 20-77-2004(a) is committed.

(b) A civil action may be filed under this subchapter for activity that occurred prior to the effective date of this subchapter if the limitations period under subsection (a) of this section has not expired.

(c) If the state elects to intervene and proceed with an action brought under this subchapter, the state through the office of the Attorney General may:

(1) File its own complaint; or

(2) Amend the complaint of the person who brought the action to clarify, add detail to the complaint, or add additional claims to the complaint.

(d) To the extent that the claim of the state arises out of the conduct, transactions, or occurrences set forth or attempted to be set forth by a person, a state pleading relates back to the filing date of the complaint of the person who originally brought the action.

(e) In an action filed under this subchapter, all essential elements of the cause of action including damages shall be proven by a preponderance of the evidence.

(f) Notwithstanding any other provision of law or rule of procedure or evidence, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether on a verdict after trial or on a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action filed under this subchapter that involves the same act, transaction, or occurrence as in the criminal proceeding.

20-77-2012. Remedies, coordination of investigations by the State of Arkansas, and rules.

(a) Any remedy provided under this subchapter is in addition to any other appropriate legal or equitable relief provided under any other applicable state or federal statute, rule, or regulation.

(b)(1) The State of Arkansas shall make all reasonable efforts to coordinate any investigation of an alleged violation under this subchapter with any investigation conducted by the federal government involving the same violation.

(2) The state's objective shall be to avoid unnecessary duplication of effort on the part of the person alleged to have committed the violation and to minimize the burden of the investigation on the person.

(c) The Attorney General shall deposit the net proceeds of any civil penalty, damages, or recovery collected under this subchapter into the Arkansas Medicaid Program Trust Fund.

(d) The Attorney General may adopt rules to implement and administer this subchapter.

20-77-2013. Reporting requirements.

(a) Beginning July 1, 2012, the Director of the Medicaid Fraud Control Unit of the Office of the Attorney General shall report annually to the General Assembly the following information for the previous fiscal year:

(1) The number of civil actions filed under this subchapter;

(2) The number of civil actions under this subchapter in which a judgment was entered, whether by settlement or adjudication; and

(3) The number of claims made by the State of Arkansas based on alleged violations of § 20-77-2004(a) that are settled without the filing of a civil action under this subchapter.

(b) Unless the action is under seal in accordance with § 20-77-2006 for each civil action reported under subdivision (a)(1) or (a)(2) of this section, the report shall state:

(1) Whether the action was filed by the state or by a person on behalf of the state and, if filed by a person, whether the state intervened and proceeded with the action;

(2)(A) The name of the defendant and the following information about the defendant:

(i) The number of employees and any other data relevant to the size of the defendant;

(ii) The amount of payments made to the defendant in the year prior to the filing of the action from state health plans and, to the extent known by the Attorney General or the Medicaid Fraud Control Unit, from other sources; and

(iii) Whether the defendant is a minority-owned business enterprise.

(B) As used in this subdivision, "minority-owned business" means a business that is at least fifty-one percent (51%) owned by one (1) or more lawful permanent residents of this state who are:

(i) African American;

(ii) Hispanic American;

(iii) American Indian;

(iv) Asian American; or

(v) Pacific Islander American;

(3) A description of the violation or alleged violation of § 20-77-2004; and

(4) The amount sought in the action and, if applicable, the amount for which the defendant is liable under a settlement agreement or court order.

(c) For each claim reported under subdivision (a)(3) of this section, the report shall state:

(1) A description of the violation or alleged violation of § 20-77-2004;

(2) The resolution of the claim;

(3) The amount, if any, the person against whom the claim was made agreed to pay in settlement of the claim; and

(4) The amount, if any, collected by the state."

AND

Page 3, delete lines 1 through 36

AND

Page 4, delete lines 1 through 36

AND

Page 5, delete lines 1 through 36

AND

Page 6, delete lines 1 through 36

AND

Page 7, delete lines 1 through 36

AND

Page 8, delete lines 1 through 36

AND

Page 9, delete lines 1 through 36

AND

Page 10, delete lines 1 through 36

AND

Page 11, delete lines 1 through 36

AND

Page 12, delete lines 1 through 23 and substitute the following:

"SECTION 2. Arkansas Code § 23-79-1002 is amended to read as follows:
23-79-1002. Medicaid demonstration initiative.

(a) Subject to obtaining all necessary federal approvals, including approval of a demonstration waiver under section 1115 of the Social Security Act as in effect January 1, ~~2003~~ 2011, the Department of Human Services may administer the Health Insurance Flexibility and Accountability demonstration initiative created ~~in § 23-79-1004~~ under this subchapter.

(b) Coverage may include certain spouses of covered employed individuals."

AND

Page 12, line 25, delete "SECTION 2" and substitute "SECTION 3"

AND

Page 24, line 13, delete "SECTION 3" and substitute "SECTION 4"

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Hutchinson
DLP/AMH - 03/22/11 04:32
DLP224

Secretary