

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

# A Bill

HOUSE BILL 2600

5 By: Representatives D. Johnson, Pennartz, L. Smith  
6  
7

## For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE ARKANSAS FALSE CLAIMS  
10 ACT; TO ENCOURAGE CITIZENS TO FILE LAWSUITS  
11 SEEKING RECOVERY OF MONEYS FRAUDULENTLY RECEIVED  
12 FROM THE STATE; TO INCREASE THE STATE'S PORTION  
13 OF FUNDS RECOVERED IN MEDICAID FRAUD LAWSUITS;  
14 AND FOR OTHER PURPOSES.  
15

## Subtitle

16 THE ARKANSAS FALSE CLAIMS ACT; TO  
17 ENCOURAGE CITIZENS TO FILE LAWSUITS  
18 SEEKING RECOVERY OF MONEYS FRAUDULENTLY  
19 RECEIVED FROM THE STATE; TO INCREASE THE  
20 STATE'S PORTION OF FUNDS RECOVERED IN  
21 MEDICAID FRAUD LAWSUITS.  
22  
23  
24

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

27 SECTION 1. Arkansas Code Title 20, Chapter 77 is amended to add a new  
28 subchapter to read as follows:  
29

30 Subchapter 18. ARKANSAS FALSE CLAIMS ACT.

31 20-77-1801. Title.

32 The subchapter shall be known and may be cited as the "Arkansas False  
33 Claims Act".  
34

35 20-77-1802. Definitions.  
36



1 As used in this subchapter:

2 (1) "Arkansas Medicaid Program" means the state medical  
 3 assistance program authorized under Title XIX of the Social Security Act as  
 4 it existed on January 1, 2007, that is operated by the Department of Health  
 5 and Human Services;

6 (2)(A) "Claim" means any request or demand for money, property,  
 7 or services made to any contractor, employee, fiscal agent, grantee, or  
 8 officer of the state or recipient or beneficiary of the state, whether under  
 9 contract or not, if:

10 (i) Any portion of the money, property, or services  
 11 requested or demanded issued from or was provided by the state;

12 (ii) The state will reimburse any portion of the  
 13 money or property that is requested or demanded; or

14 (iii) The request or demand was made on behalf of a  
 15 recipient or beneficiary of the state for goods or services purported to have  
 16 been provided to the recipient or beneficiary of the state whether or not the  
 17 state provided any or no portion of the money that is requested or demanded.

18 (B) A signature that is required as part of any claim is  
 19 presumed to be a certification that the information in the claim is true and  
 20 correct;

21 (3)(A) "Knowing" or "knowingly" means that a person with respect  
 22 to information:

23 (i) Has actual knowledge of the information;

24 (ii) Acts in deliberate ignorance of the truth or  
 25 falsity of the information; or

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

28 (B) Proof of specific intent to defraud is not required to  
 29 establish that a person acted knowingly or in a knowing manner;

30 (4) "Original source" means a person who has direct and  
 31 independent knowledge of the information on which the allegations are based  
 32 and has voluntarily provided the information to the Attorney General before  
 33 filing an action under this subchapter based on the information;

34 (5) "Person" means any natural person, partnership, corporation,  
 35 association, or other legal entity, including any state or political  
 36 subdivision of a state;

1           (6) "Product of discovery" means:

2           (A) The original or duplicate of any deposition,  
 3 interrogatory, document, thing, result of the inspection of land or other  
 4 property, examination, or admission that is obtained by any method of  
 5 discovery in any judicial or administrative proceeding of an adversarial  
 6 nature;

7           (B) Any digest, analysis, selection, compilation, or  
 8 derivation of any item listed in subdivision (6)(A) of this section; and

9           (C) Any index or other manner of access to any item listed  
 10 in subdivision (6)(A) of this section.

11          (7) "Qui tam relator" means a person who:

12          (A) Brings an action under this subchapter; and

13          (B) Is not the Attorney General or a person acting on  
 14 behalf of the Attorney General.

15  
 16          20-77-1803. Liability for certain acts.

17          (a) A person commits a violation of this subchapter if the person:

18          (1) Knowingly presents or causes to be presented to an officer  
 19 or employee of the state a false or fraudulent claim for payment or approval;

20          (2) Knowingly makes, uses, or causes to be made or used a false  
 21 record or statement to get a false or fraudulent claim paid or approved by  
 22 the state;

23          (3) Conspires to defraud the state by getting a false or  
 24 fraudulent claim allowed or paid;

25          (4) Has possession, custody, or control of property or money  
 26 used or to be used by the state and, intending to defraud the state or  
 27 willfully to conceal the property, delivers, or causes to be delivered less  
 28 property than the amount for which the person receives a certificate or  
 29 receipt;

30          (5) Is authorized to make or deliver a document certifying  
 31 receipt of property used or to be used, by the state and, intending to  
 32 defraud the state, makes or delivers the receipt without completely knowing  
 33 that the information on the receipt is true;

34          (6) Knowingly buys or receives as a pledge of an obligation or  
 35 debt public property from an officer or employee of the state who lawfully  
 36 may not sell or pledge the property; or

1           (7) Knowingly makes, uses, or causes to be made or used a false  
 2 record or statement to conceal, avoid, or decrease an obligation to pay or  
 3 transmit money or property to the State of Arkansas.

4           (b)(1) Any person found to have committed a violation of this  
 5 subchapter is liable to the state for:

6                   (A) A civil penalty of not less than five thousand dollars  
 7 (\$5,000) and not more than ten thousand dollars (\$10,000) for each violation;

8                   (B) Three (3) times the amount of damages that the state  
 9 sustains because of the act of that person; and

10                   (C) The reasonable costs of a civil action brought to  
 11 recover any such penalty or damages.

12           (2) However, a person found to have committed a violation of  
 13 this subchapter is not liable to the state for damages in an amount more than  
 14 two (2) times the amount of all payments found by the court to have been  
 15 fraudulently received from the state because of the violation of the person  
 16 if the court finds the following:

17                   (A) The person committing the violation under this  
 18 subchapter furnished the Attorney General's office with all information known  
 19 to the person about the violation within thirty (30) days after the date on  
 20 which the person obtained the information;

21                   (B) The person fully cooperated with any Attorney  
 22 General's investigation of the violation; and

23                   (C) At the time the person furnished the Attorney General  
 24 with the information about the violation:

25                           (i) No criminal prosecution, civil action, or  
 26 administrative action had commenced under this subchapter with respect to the  
 27 violation; and

28                           (ii) The person did not have actual knowledge of the  
 29 existence of an investigation into the violation.

30  
 31           20-77-1804. Exemption.

32           This subchapter does not apply to claims, records, or statements made  
 33 under Arkansas Code Title 26.

34  
 35           20-77-1805. Civil actions generally.

36           (a)(1) The Attorney General diligently shall investigate an alleged

1 violation of this subchapter.

2 (2) If the Attorney General finds that a person has violated or  
 3 is violating this subchapter, the Attorney General may bring a civil action  
 4 in circuit court against the person.

5 (b)(1) A qui tam relator may bring a civil action in circuit court for  
 6 a violation of this subchapter for the qui tam relator in his or her name and  
 7 for the State of Arkansas in the name of the state.

8 (2)(A) A complaint filed by a qui tam relator shall:

9 (i) Be filed in camera;

10 (ii) Remain under seal for at least sixty (60) days;

11 and

12 (iii) Not be served on the defendant until the court

13 so orders.

14 (B) On the same day that the complaint is filed in circuit  
 15 court by a qui tam relator shall serve on the Attorney General pursuant to  
 16 the Arkansas Rules of Civil Procedure:

17 (i) A copy of the complaint;

18 (ii) Written disclosure of substantially all  
 19 material evidence; and

20 (iii) Other related information the qui tam relator  
 21 possesses.

22 (3)(A)(i) During the sixty-day period that the complaint remains  
 23 under seal, the Attorney General diligently shall investigate the allegations  
 24 of the qui tam relator.

25 (ii)(a) Upon the motion of the Attorney General and  
 26 a showing of good cause, the court may extend the sixty-day period during  
 27 which the complaint remains under seal.

28 (b) The motion and any supporting documents  
 29 shall be filed in camera, and the showing shall be conducted in camera.

30 (B) Before the expiration of the sixty-day period or any  
 31 extensions obtained under subdivision (b)(3)(A)(ii) of this section, the  
 32 Attorney General shall notify the court that the state:

33 (i) Elects to proceed with the action; or

34 (ii) Declines to proceed with the action in which  
 35 case the qui tam relator may conduct the action.

36 (4) If a qui tam relator files an action under this subchapter,

1 no person other than the Attorney General may intervene or bring a related  
 2 action based on the facts underlying the action filed by the qui tam relator.

3 (5)(A) Once an action under this subchapter is filed, the action  
 4 may be dismissed only with the written consent of the court.

5 (B) In dismissing an action under this subchapter, the  
 6 court shall take into account the best interests of the parties and the  
 7 public purposes behind this subchapter.

8 (c) A defendant in an action under this subchapter is not required to  
 9 respond to a complaint filed under this section until after the complaint is  
 10 unsealed and served on the defendant pursuant to the Arkansas Rules of Civil  
 11 Procedure.

12  
 13 20-77-1806. Civil Actions – Rights of the parties.

14 (a)(1) If the Attorney General proceeds with an action under this  
 15 subchapter, the Attorney General shall have the primary responsibility for  
 16 prosecuting the action and is not bound by an act of the qui tam relator.

17 (2) Subject to the limitations set forth in subsection (b) of  
 18 this section, the qui tam relator has a right to continue as a party to the  
 19 action.

20 (b)(1)(A) Upon a showing by the Attorney General that unrestricted  
 21 participation in the prosecution of the action by the qui tam relator would  
 22 interfere with or inappropriately delay the Attorney General’s prosecution of  
 23 the matter or would be repetitious, irrelevant, or used for purposes of  
 24 harassment, the court may restrict the qui tam relator’s participation in the  
 25 action if:

26 (i) The Attorney General has served the qui tam  
 27 relator with a copy of the motion; and

28 (ii) The court has provided the qui tam relator with  
 29 an opportunity to oppose the motion and present evidence at a hearing.

30 (B) Upon a showing by the defendant in an action brought  
 31 under this subchapter that unrestricted participation in the prosecution of  
 32 the action by the qui tam relator would cause the defendant undue burden or  
 33 unnecessary expense or would be used for purposes of harassment, the court  
 34 may restrict the qui tam relator’s participation in the action if:

35 (i) The defendant has served the qui tam relator  
 36 with a copy of the motion; and

1                   (ii) The court has provided the qui tam relator with  
2 an opportunity to oppose the motion and present evidence at a hearing.

3                   (2) Restrictions imposed by a court under subdivision (b)(1) of  
4 this section may include without limitation:

5                   (A) Limiting the scope of the qui tam relator’s  
6 participation in discovery;

7                   (B) Limiting the number of witnesses the qui tam relator  
8 may call;

9                   (C) Limiting the length of the testimony of the qui tam  
10 relator;

11                   (D) Limiting the qui tam relator’s cross-examination of  
12 witnesses; or

13                   (E) Other similar limitations on the scope of the qui tam  
14 relator’s participation in the action.

15                   (c) Upon the motion of the Attorney General and a showing of good  
16 cause, the court may dismiss an action brought under this subchapter  
17 notwithstanding the objections of the qui tam relator if:

18                   (1) The Attorney General has served the qui tam relator with a  
19 copy of the motion; and

20                   (2) The court has provided the qui tam relator with an  
21 opportunity to oppose the proposed motion and present evidence at a hearing.

22                   (d) Upon the motion of the Attorney General and a showing that a  
23 proposed settlement of an action brought under this subchapter is fair,  
24 adequate, and reasonable under all of the circumstances, the court may  
25 consent to the Attorney General’s proposed settlement with the defendant in  
26 the action notwithstanding the objections of the qui tam relator if:

27                   (1) The qui tam relator has been notified by the Attorney  
28 General of the terms of the proposed settlement; and

29                   (2) The court has provided the qui tam relator with an  
30 opportunity to oppose the proposed settlement and present evidence at a  
31 hearing.

32                   (e)(1)(A) If the Attorney General elects not to proceed with an action  
33 brought under this subchapter, the qui tam relator may prosecute the action.

34                   (B) Without limiting the status and rights of the qui tam  
35 relator, the court may permit the Attorney General to intervene in the action  
36 at a later date upon the motion of the Attorney General and a showing of good

1 cause.

2 (2) Upon the request of the Attorney General, the qui tam  
 3 relator shall serve the Attorney General with copies of all pleadings filed  
 4 in the action and provide the Attorney General with copies of all deposition  
 5 transcripts, at the state's expense.

6 (f)(1) Whether or not the Attorney General proceeds with an action  
 7 brought under this subchapter, upon the motion of the Attorney General or the  
 8 prosecuting attorney having criminal jurisdiction and a showing that certain  
 9 actions of discovery by the qui tam relator would interfere with the  
 10 investigation or prosecution of a criminal or civil matter arising out of the  
 11 same facts, the court may stay the qui tam relator's discovery for a period  
 12 of not more than sixty (60) days.

13 (2) The motion and any supporting documents required under  
 14 subdivision (f)(1) of this section shall be filed in camera, and the showing  
 15 shall be conducted in camera.

16 (3) The court may extend the sixty-day stay granted under  
 17 subdivision (f)(1) of this section upon a further showing in camera that the  
 18 Attorney General has pursued the criminal or civil investigation or  
 19 proceedings with reasonable diligence and any proposed discovery in the civil  
 20 action will interfere with the ongoing criminal or civil investigation or  
 21 proceedings.

22  
 23 20-77-1807. Alternative remedies.

24 (a)(1) The Attorney General may pursue the state's claim under this  
 25 subchapter through any alternate remedy available to the Attorney General,  
 26 including without limitation, a remedy established in an administrative or  
 27 similar proceeding.

28 (2) If the Attorney General pursues the state's claim under this  
 29 subchapter an alternate remedy, the qui tam relator has the same rights in  
 30 the proceeding for the alternate remedy as the qui tam relator has in a civil  
 31 action brought under this subchapter.

32 (b)(1) Any finding of fact or conclusion of law made in a proceeding  
 33 under subdivision (a)(1) of this section that has become final is conclusive  
 34 on all parties to a related civil action under this section.

35 (2) A finding of fact or conclusion of law is final under  
 36 subdivision (b)(1) of this section if:



1           (A) The finding of fact or conclusion of law has been  
2 finally determined on appeal to the appropriate court;

3           (B) All time for filing an appeal with respect to the  
4 finding of fact or conclusion of law has expired; or

5           (C) The finding of fact or conclusion of law is not  
6 subject to judicial review.

7  
8           20-77-1808. Award to qui tam relator.

9           (a)(1)(A) Subject to subdivision (a)(1)(B) of this section, if the  
10 Attorney General proceeds with an action brought by a qui tam relator under  
11 this subchapter, the qui tam relator shall receive at least fifteen percent  
12 (15%) but not more than twenty-five percent (25%) of the proceeds of the  
13 action or settlement of the claim and shall be paid out of such proceeds.

14           (B)(i) The court shall calculate the award under  
15 subdivision (a)(1)(A) of this section on the basis of the extent to which the  
16 qui tam relator substantially contributed to the prosecution of the action.

17           (ii) If the court finds that the action was based  
18 primarily on disclosures of specific information relating to allegations or  
19 transactions revealed in a criminal, civil, or administrative hearing, in a  
20 legislative or administrative report, hearing, audit, or investigation, or by  
21 the news media, the court may award a sum it considers appropriate, but in no  
22 case more than ten percent (10%) of the proceeds, taking into account the  
23 significance of the information and the role of the qui tam relator in  
24 advancing the prosecution of the action.

25           (3)(A) The qui tam relator shall also receive an amount for  
26 reasonable expenses that the court finds to have been necessarily incurred,  
27 plus reasonable attorneys' fees and costs.

28           (B) All expenses, fees, and costs shall be awarded against  
29 the defendant.

30           (C) The state is not liable for any expenses that a qui  
31 tam relator or any other person incurs in bringing an action under this  
32 subchapter.

33           (b)(1) If the Attorney General does not proceed with an action under  
34 this subchapter, the qui tam relator shall receive an amount that the court  
35 finds is reasonable for prosecuting the action.

36           (2) The amount shall be not less than twenty-five percent (25%)

1 and not more than thirty percent (30%) of the proceeds of the action or  
 2 settlement and shall be paid out of such proceeds.

3 (3)(A) The qui tam relator shall also receive an amount for  
 4 reasonable expenses that the court finds to have been necessarily incurred,  
 5 plus reasonable attorney’s fees and costs.

6 (B) All expenses, fees, and costs shall be awarded against  
 7 the defendant in the action.

8 (C) The state is not liable for any expenses that a qui  
 9 tam relator or any other person incurs in bringing an action under this  
 10 subchapter.

11 (c)(1) If the Attorney General initially declines to proceed with an  
 12 action under this subchapter but later intervenes for good cause in  
 13 accordance with § 20-77-1806(e)(1)(B), the qui tam relator shall receive an  
 14 amount that the court finds is reasonable for prosecuting the action, taking  
 15 into consideration the extent to which the qui tam relator substantially  
 16 contributed to the prosecution of the action.

17 (2) The amount that the qui tam relator is entitled to receive  
 18 under subdivision (c)(1) of this section shall be not less than twenty  
 19 percent (20%) and not more than thirty percent (30%) of the proceeds of the  
 20 action or settlement and shall be paid out of the proceeds.

21 (3)(A) The qui tam relator shall also receive an amount for  
 22 reasonable expenses that the court finds to have been necessarily incurred,  
 23 plus reasonable attorney’s fees and costs.

24 (B) All expenses, fees, and costs shall be awarded against  
 25 the defendant in the action.

26 (C) The state is not liable for any expenses that a qui  
 27 tam relator or any other person incurs in bringing an action under this  
 28 subchapter.

29 (d)(1)(A) Whether or not the Attorney General proceeds with the  
 30 action, if the court finds that the qui tam relator planned, initiated, or  
 31 knowingly participated in the violation of this subchapter upon which the  
 32 action was brought, the court, to the extent the court considers appropriate,  
 33 may reduce or eliminate the share of the proceeds that the qui tam relator  
 34 would otherwise receive under subsection (a) or subsection (b) of this  
 35 section.

36 (B) In considering a reduction under subdivision (c)(1)(A)

1 of this section, the court shall take into account the role of the qui tam  
 2 relator in prosecuting the action and any relevant circumstances pertaining  
 3 to the violation.

4 (2)(A) If the qui tam relator is convicted of criminal conduct  
 5 arising from his or her role in the violation of this subchapter, the qui tam  
 6 relator shall be dismissed from the civil action and shall not receive any  
 7 share of the proceeds of the action.

8 (B) A dismissal under subdivision (c)(2)(A) of this  
 9 section shall not prejudice the right of the Attorney General to continue the  
 10 action.

11 (e)(1) If the Attorney General does not proceed with the action and  
 12 the qui tam relator conducts the action, the court may award the defendant  
 13 his or her reasonable expenses found to have been necessarily incurred if:

14 (A) The defendant prevails in the action; and

15 (B) The court finds that the claim of the qui tam relator  
 16 was clearly frivolous, clearly vexatious, or brought primarily for purposes  
 17 of harassment.

18 (2) Expenses that may be awarded to a defendant under  
 19 subdivision (e)(1) of this section include without limitation attorney's  
 20 fees, court costs, witness fees, deposition fees, and any other reasonable  
 21 expense associated with defending the action.

22  
 23 20-77-1809. Private action against retaliation.

24 (a) Any employee who is discharged, demoted, suspended, threatened,  
 25 harassed, or in any other manner discriminated against in the terms and  
 26 conditions of employment by his or her employer because of lawful acts done  
 27 by the employee on behalf of the employee or others in furtherance of an  
 28 action under this subchapter, including investigation for, initiation of,  
 29 testimony for, or assistance in an action filed or to be filed under this  
 30 subchapter, is entitled to all relief necessary to make the employee whole.

31 (b) Relief under this section shall include without limitation:

32 (1) Reinstatement with the same seniority status the employee  
 33 would have had but for the discrimination;

34 (2) Two (2) times the amount of back pay and interest on the  
 35 back pay, if applicable; and

36 (3) Compensation for any special damages sustained as a result

1 of the discrimination, including litigation costs and reasonable attorney's  
2 fees.

3 (c) An employee may bring an action in circuit court for the relief  
4 provided in this section.

5  
6 20-77-1810. Certain actions barred.

7 No court shall have jurisdiction over an action brought under this  
8 subchapter:

9 (1) Against a member of the General Assembly, a member of the  
10 judiciary, or a senior executive branch official if the action is based on  
11 evidence or information known to the state at the time the action was  
12 brought;

13 (2) Based upon allegations or transactions that are the subject  
14 of a civil suit or an administrative proceeding in which the Attorney General  
15 or the state is already a party; or

16 (3) Based upon the public disclosure of allegations or  
17 transactions in a criminal, civil, or administrative hearing, in a  
18 legislative, administrative, or hearing, audit, or investigation, or from the  
19 news media, unless the action is brought by the Attorney General or the  
20 person bringing the action is an original source of the information.

21  
22 20-77-1811. False claims jurisdiction.

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

26 (b)(1) A civil action shall not be brought:

27 (A) More than six (6) years after the date on which the  
28 violation of this subchapter is committed; or

29 (B) More than three (3) years after the date when facts  
30 material to the right of action are known or reasonably should have been  
31 known by the Attorney General, but in no event more than ten (10) years after  
32 the date on which the violation is committed, whichever occurs last.

33 (2) A civil action may be brought for activity before the  
34 effective date of this subchapter if the limitations period set in  
35 subdivision (b)(1) of this section has not lapsed.

36 (c) In any action brought for a violation of this subchapter, the

1 Attorney General or the qui tam relator shall be required to prove all  
 2 essential elements of the cause of action, including damages, by a  
 3 preponderance of the evidence.

4 (d) An action for a violation of this subchapter may be brought for  
 5 activity that occurred before the effective date of this subchapter if the  
 6 limitations period established in subsection (b) of this section has not  
 7 lapsed.

8  
 9 20-77-1812. Estoppel.

10 A guilty verdict rendered in a criminal proceeding charging false  
 11 statements or fraud, whether upon a verdict after trial or upon a plea of  
 12 guilty or nolo contendere estops the defendant from denying the essential  
 13 elements of the offense in any action involving the same transaction as in  
 14 the criminal proceeding brought under this subchapter.

15  
 16 20-77-1813. Civil investigative demands – Issuance.

17 (a) If the Attorney General has reasonable cause to believe that a  
 18 person may be in possession, custody, or control of documentary material or  
 19 other information relevant to an investigation under this subchapter, the  
 20 Attorney General before filing a civil action under this subchapter may issue  
 21 in writing and cause to be served on the person a civil investigative demand  
 22 requiring the person to:

23 (1) Produce documentary material or other information for  
 24 inspection and copying;

25 (2) Answer in writing written interrogatories with respect to  
 26 the documentary material or other information;

27 (3) Give oral testimony concerning the documentary material or  
 28 other information; or

29 (4) Furnish any combination of material, answers, or testimony.

30 (b)(1) Whenever a civil investigative demand is an express demand for  
 31 any product of discovery, the Attorney General shall cause to be served, in  
 32 any manner authorized by this subchapter, a copy of the civil investigative  
 33 demand upon the person from whom the discovery was obtained and shall notify  
 34 the person to whom the civil investigative demand is issued of the date on  
 35 which the copy was served.

36 (2) Any civil investigative demand that is an express demand for

1 any product of discovery shall not be returned or returnable until twenty  
 2 (20) days after a copy of the civil investigative demand has been served upon  
 3 the person from whom the discovery was obtained.

4  
 5 20-77-1814. Civil investigative demands – Contents and deadlines.

6 (a) A civil investigative demand issued under this subchapter shall  
 7 state the nature of the conduct constituting the alleged violation of this  
 8 subchapter that is under investigation and the applicable provision of law  
 9 alleged to be violated.

10 (b) If the civil investigative demand issued under this subchapter is  
 11 for the production of documentary material, the civil investigative demand  
 12 shall:

13 (1) Describe each class of documentary material to be produced  
 14 with such definiteness and certainty as to permit the documentary to be  
 15 fairly identified;

16 (2) Prescribe a return date for each class of documentary  
 17 material that will provide a reasonable period of time within which the  
 18 documentary material so demanded may be assembled and made available for  
 19 inspection and copying; and

20 (3) Identify the investigator to whom the documentary material  
 21 shall be made available.

22 (c) If the civil investigative demand issued under this subchapter is  
 23 for answers to written interrogatories, the civil investigative demand shall:

24 (1) Set forth with specificity the written interrogatories to be  
 25 answered;

26 (2) Prescribe dates at which time answers to written  
 27 interrogatories shall be submitted; and

28 (3) Identify the investigator to whom the answers shall be  
 29 submitted.

30 (d)(1) If the civil investigative demand issued under this subchapter  
 31 is for the giving of oral testimony, the civil investigative demand shall:

32 (A) Prescribe a date, time, and place at which oral  
 33 testimony shall be commenced;

34 (B) Identify the investigator who shall conduct the oral  
 35 examination and the Attorney General representative to whom the transcript of  
 36 the oral examination shall be submitted;

1                   (C) Specify that attendance and oral testimony are  
 2 necessary to the conduct of the investigation;

3                   (D) Notify the person receiving the civil investigative  
 4 demand of the right to be accompanied by an attorney and any other  
 5 representative; and

6                   (E) Describe the general purpose for which the civil  
 7 investigative demand is being issued and the general nature of the testimony,  
 8 including the primary areas of inquiry that will be taken pursuant to the  
 9 civil investigative demand.

10                   (2) The date prescribed for the commencement of oral testimony  
 11 pursuant to a civil investigative demand issued under this subchapter shall  
 12 be a date that is not less than seven (7) days after the date on which the  
 13 civil investigative demand is received, unless the Attorney General  
 14 determines that exceptional circumstances are present that warrant the  
 15 commencement of the oral testimony within a lesser time period.

16                   (3) The Attorney General shall not authorize the issuance of  
 17 more than one (1) civil investigative demand for oral testimony by the same  
 18 person unless the person requests otherwise or unless the Attorney General  
 19 after investigation notifies that person in writing that an additional demand  
 20 for oral testimony is necessary.

21  
 22                   20-77-1815. Civil investigative demands – Protected material or  
 23 information.

24                   (a) A civil investigative demand issued under this subchapter shall  
 25 not require the production of any documentary material or other information,  
 26 the submission of any answers to written interrogatories, or the giving of  
 27 any oral testimony if the material, information, answers, or testimony would  
 28 be protected from disclosure under:

29                   (1) Standards applicable to subpoenas or subpoenas duces tecum  
 30 issued by a court of this state to aid in a grand jury investigation; or

31                   (2) Standards applicable to discovery requests under the  
 32 Arkansas Rules of Civil Procedure to the extent that the application of the  
 33 standards to a civil investigative demand is appropriate and consistent with  
 34 the provisions and purposes of this subchapter.

35                   (b)(1) Except for this section, a civil investigative demand issued  
 36 under this subchapter that is an express demand for a product of discovery

1 supersedes any inconsistent order, rule, or provision of law that prevents or  
 2 restrains disclosure of a product of discovery to a person.

3 (2) Disclosure of a product of discovery pursuant to an express  
 4 demand under this subchapter does not constitute a waiver of any right or  
 5 privilege that the person making the disclosure may be entitled to invoke to  
 6 resist discovery of trial preparation materials.

7  
 8 20-77-1816. Civil investigative demands – Service and jurisdiction.

9 (a) A civil investigative demand issued under this subchapter may be  
 10 served by an investigator or by a person authorized by the state to serve  
 11 process.

12 (b)(1) A civil investigative demand issued under this subchapter or  
 13 any complaint filed under this subchapter may be served upon a person who is  
 14 not found within the state in the manner prescribed for service of process  
 15 outside the state that is provided in the Arkansas Rules of Civil Procedure  
 16 or the Arkansas Code.

17 (2) To the extent that the courts of this state can assert  
 18 jurisdiction over a person outside the state consistent with due process, the  
 19 courts of this state shall have the same jurisdiction to take any action  
 20 respecting compliance with the provisions of this subchapter by a person  
 21 outside the state that the court would have if the person were personally  
 22 within the jurisdiction of the court.

23 (c) Service of a civil investigative demand issued under this  
 24 subchapter or of a complaint filed under this subchapter may be made upon a  
 25 partnership, corporation, association, or other legal entity by:

26 (1) Delivering an executed copy of the civil investigative  
 27 demand or complaint to any partner, executive officer, managing agent, or  
 28 general agent of the partnership, corporation, association, or entity or to  
 29 any agent authorized by appointment or by law to receive service of process  
 30 on behalf of the partnership, corporation, association, or entity;

31 (2) Delivering an executed copy of the civil investigative  
 32 demand or complaint to the principal office or place of business of the  
 33 partnership, corporation, association, or entity; or

34 (3) Depositing an executed copy of the civil investigative  
 35 demand or complaint in the United States mail by certified mail, return  
 36 receipt requested, addressed to the partnership, corporation, association, or



1 entity at its principal office or place of business.

2 (d) Service of a civil investigative demand issued under this  
 3 subchapter or complaint filed under this subchapter may be made upon any  
 4 natural person by:

5 (1) Delivering an executed copy of the civil investigative  
 6 demand or complaint to the person; or

7 (2) Depositing an executed copy of the civil investigative  
 8 demand or complaint in the United States mail by certified mail, return  
 9 receipt requested, addressed to the person at the person's residence,  
 10 principal office, or place of business.

11 (e)(1) A verified return by the person serving a civil investigative  
 12 demand issued under this subchapter or a complaint filed under this  
 13 subchapter setting forth the manner of the service shall be proof of service.

14 (2) In the case of service by certified mail, the return shall  
 15 be accompanied by the return post office receipt of delivery of the civil  
 16 investigative demand or complaint.

17  
 18 20-77-1817. Civil investigative demands – Documentary material.

19 (a)(1) The production of documentary material or other information in  
 20 response to a civil investigative demand served under this subchapter shall  
 21 be made under a sworn certificate in such form as the civil investigative  
 22 demand designates by:

23 (A) The person to whom the civil investigative demand is  
 24 directed in the case of a natural person; or

25 (B) The person having knowledge of the facts and  
 26 circumstances relating to the production of documentary materials and other  
 27 information and authorized to act on behalf of the person to whom the civil  
 28 investigative demand is directed in the case of a person other than a natural  
 29 person.

30 (2) The certificate shall state that all of the documentary  
 31 material and other information required by the civil investigative demand and  
 32 in the possession, custody, or control of the person to whom the civil  
 33 investigative demand is directed has been produced and made available to the  
 34 investigator identified in the civil investigative demand.

35 (b) A person upon whom a civil investigative demand for the production  
 36 of documentary material or other information has been served under this

1 subchapter shall make the documentary material or other information available  
 2 for inspection and copying to the investigator identified in the civil  
 3 investigative demand:

4 (1) At the principal place of business of the person;

5 (2) At a place agreed to and prescribed in writing by the  
 6 investigator and the person; or

7 (3) As directed by the court.

8 (c) The documentary material or other information shall be made  
 9 available on the return date specified in the civil investigative demand or  
 10 on a later date as the investigator may prescribe in writing.

11 (d) Upon written agreement between the investigator and the person to  
 12 whom the civil investigative demand is directed, the person may substitute  
 13 copies for originals of all or any part of the documentary material or other  
 14 information.

15  
 16 20-7-1818. Civil investigative demands – Interrogatories.

17 (a)(1) Each inquiry in a civil investigative demand served under this  
 18 subchapter shall be answered separately and fully in writing under oath and  
 19 shall be submitted under a sworn certificate in such form as the civil  
 20 investigative demand designates by:

21 (A) The person to whom the civil investigative demand is  
 22 directed in the case of a natural person; or

23 (B) The person having knowledge of the facts and  
 24 circumstances relating to the answer of an inquiry and authorized to act on  
 25 behalf of the person to whom the civil investigative demand is directed in  
 26 the case of a person other than a natural person.

27 (b)(1) The certificate shall state that all information required by  
 28 the civil investigative demand and in the possession, custody, control, or  
 29 knowledge of the person to whom the civil investigative demand is directed  
 30 has been submitted.

31 (2) To the extent that any information is not furnished, the  
 32 information shall be identified and reasons set forth with particularity  
 33 regarding the reasons why the information was not furnished.

34 (3) If any inquiry is objected to, the reasons for the objection  
 35 shall be stated in the certificate instead of an answer.

36

20-77-1819. Civil investigative demands – Oral examinations.

(a)(1) The examination of any person pursuant to a civil investigative demand for oral testimony served under this subchapter shall be taken before an officer authorized to administer oaths under the laws of this state or of the place where the examination is held.

(2) The officer before whom the testimony is to be taken shall put the witness under oath and shall record the testimony of the witness personally or by someone acting under the direction of the officer and in the officer’s presence.

(3)(A) The testimony shall be taken stenographically and shall be transcribed.

(B)(i) When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the Attorney General.

(ii) This section does not preclude the taking of testimony by any means authorized by and in a manner consistent with the Arkansas Rules of Civil Procedure.

(b) The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the state, any person who may be agreed upon by the attorney for the state and the person giving the testimony, the officer before whom the testimony is to be taken, and any court reporter taking the testimony.

(c) The oral testimony of any person taken pursuant to a civil investigative demand served under this subchapter shall be taken in the county or city within which the person resides, is found, or transacts business or in such other place as may be agreed upon by the investigator conducting the examination and the person to whom the civil investigative demand is directed.

(d)(1) When the testimony is fully transcribed, the investigator or the officer before whom the testimony is taken shall afford the witness who may be accompanied by counsel a reasonable opportunity to examine and read the transcript of his or her testimony unless the examination and reading are waived by the witness.

(2)(A) Any changes in form or substance that the witness desires

1 to make shall be entered and identified upon the transcript by the officer or  
2 the investigator with a statement of the reasons given by the witness for  
3 making the changes.

4 (B) The transcript shall then be signed by the witness,  
5 unless the witness in writing waives the signing, is ill, cannot be found, or  
6 refuses to sign.

7 (C) If the transcript is not signed by the witness within  
8 thirty (30) days after being afforded a reasonable opportunity to examine it,  
9 the officer or the investigator shall sign it and state on the record the  
10 fact of the waiver, illness, absence of the witness, or the refusal to sign,  
11 together with the reasons given if any.

12 (e)(1) The officer before whom the testimony is taken shall certify on  
13 the transcript that the witness was sworn by the officer and that the  
14 transcript is a true record of the testimony given by the witness.

15 (2) The officer or investigator shall promptly deliver the  
16 transcript or send the transcript by registered or certified mail to the  
17 Attorney General.

18 (f) Upon payment of reasonable charges, the investigator shall furnish  
19 a copy of the transcript to the witness only, except that the Attorney  
20 General, for good cause, may limit the witness to inspection of the official  
21 transcript of the witness' testimony.

22 (g)(1) Any person compelled to appear for oral testimony under a civil  
23 investigative demand issued under this subchapter may be accompanied,  
24 represented, and advised by counsel.

25 (2) Counsel may advise the person, in confidence, with respect  
26 to any question asked of the person.

27 (3)(A) The person or counsel may object on the record to any  
28 question, in whole or in part, and shall briefly state for the record the  
29 reason for the objection.

30 (B)(i) An objection may be made, received, and entered  
31 upon the record if it is claimed that the person is entitled to refuse to  
32 answer the question on the grounds of any constitutional or other legal right  
33 or privilege.

34 (ii) The person may not otherwise object to or  
35 refuse to answer any question and shall not directly or through counsel  
36 otherwise interrupt the oral examination.

1                   (C)(i) If the person refuses to answer any question, a  
 2 petition may be filed in the circuit court for an order compelling the person  
 3 to answer the question.

4                   (ii) If the person refuses to answer any question on  
 5 the grounds of the privilege against self-incrimination, the testimony of the  
 6 person may be compelled in accordance with applicable law.

7                   (iii) After complying, the testimony or evidence or  
 8 any information directly derived from the testimony or evidence shall not be  
 9 used against the person in any proceeding or prosecution of a crime or  
 10 offense concerning which he or she gave an answer or produced evidence under  
 11 the court order.

12                   (iv) Immunity obtained under subdivision  
 13 (g)(3)(C)(ii) of this section does not exempt any person from prosecution,  
 14 penalty, or forfeiture for any perjury, false swearing, or contempt committed  
 15 in answering or failing to answer or in producing or failing to produce  
 16 evidence in accordance with the order.

17                   (v) If a person refuses to testify after being  
 18 granted immunity and after being ordered to testify as prescribed in  
 19 subdivision (g)(3)(C)(iii) of this section, he or she may be adjudged in  
 20 contempt.

21                   (h) Any person appearing for oral testimony under a civil  
 22 investigative demand issued under this subchapter shall be entitled to the  
 23 same fees and allowances paid to witnesses in the circuit court.

24  
 25                   20-77-1820. Civil investigative demands – Custodian of documents.

26                   (a) The Attorney General shall serve as custodian of documentary  
 27 material or other information, answers to interrogatories, and transcripts of  
 28 oral testimony received under this subchapter.

29                   (b)(1) An investigator who receives any documentary material or other  
 30 information, answers to interrogatories, or transcripts of oral testimony  
 31 under this subchapter shall transmit them to the Attorney General.

32                   (2) The Attorney General shall take physical possession of the  
 33 material, information, answers, or transcripts and shall be responsible for  
 34 the use made of them and for the return of documentary material.

35                   (c)(1) The Attorney General may cause the preparation of copies of  
 36 documentary material or other information, answers to interrogatories, or

1 transcripts of oral testimony as may be required for official use by any  
 2 investigator or other officer or employee of the Attorney General or employee  
 3 of the Department of Arkansas State Police who is authorized for such use by  
 4 the Attorney General.

5 (2) The material, answers, and transcripts may be used by any  
 6 investigator or other officer or employee of the Attorney General or employee  
 7 of the Department of Arkansas State Police in connection with the taking of  
 8 oral testimony under this subchapter.

9 (d)(1) Except as otherwise provided in this section, no documentary  
 10 material or other information, answers to interrogatories, or transcripts of  
 11 oral testimony, or copies thereof, while in the possession of the Attorney  
 12 General, shall be available for examination by any individual other than an  
 13 investigator or other officer or employee of the Attorney General or employee  
 14 of the Department of Arkansas State Police authorized by the Attorney  
 15 General.

16 (2) The prohibition on the availability of material,  
 17 information, answers, or transcripts shall not apply if consent is given by  
 18 the person who produced the material, answers, or transcripts or, in the case  
 19 of any product of discovery produced pursuant to an express demand for the  
 20 material, consent is given by the person from whom the discovery was  
 21 obtained.

22 (3) Nothing in this subsection is intended to prevent disclosure  
 23 to the General Assembly, including any committee or subcommittee of the  
 24 General Assembly, or to any other state agency for use by the agency in  
 25 furtherance of its statutory or regulatory responsibilities.

26 (4) Disclosure of information to any other agency shall be  
 27 allowed only upon application made by the Attorney General to a circuit  
 28 court, showing substantial need for the use of the information by the agency  
 29 in furtherance of its statutory responsibilities.

30 (e) While in the possession of the Attorney General and under such  
 31 reasonable terms and conditions as the Attorney General shall prescribe:

32 (1) Documentary material and answers to interrogatories shall be  
 33 available for examination by the person who produced the material or answers  
 34 or by a representative of that person authorized by that person to examine  
 35 the material and answers; and

36 (2) Transcripts of oral testimony shall be available for

1 examination by the person who produced the testimony or by a representative  
 2 of that person authorized by that person to examine the transcripts.

3 (f)(1) Any attorney employed by the Office of the Attorney General  
 4 designated to appear before any court, grand jury, or state agency in any  
 5 case or proceeding may use any documentary material, answers to  
 6 interrogatories, or transcripts of oral testimony in connection with any case  
 7 or proceeding as the attorney determines to be required.

8 (2) Upon the completion of the case or proceeding, the attorney  
 9 shall return to the Attorney General the material, answers, or transcripts so  
 10 delivered that have not passed into the control of the court, grand jury, or  
 11 agency through introduction into the record of the case or proceeding.

12 (g) Upon written request of a person who produced documentary material  
 13 in the course of any investigation pursuant to a civil investigative demand  
 14 under this subchapter, the Attorney General shall return to the person any  
 15 material, other than copies furnished to the investigator or made for the  
 16 Attorney General, that has not passed into the control of any court, grand  
 17 jury, or agency through introduction into the record of the case or  
 18 proceeding if:

19 (1) Any case or proceeding before the court or grand jury  
 20 arising out of the investigation or any proceeding before any state agency  
 21 involving the material has been completed; or

22 (2) No case or proceeding in which the material may be used has  
 23 been commenced within a reasonable time after completion of the examination  
 24 and analysis of all documentary material and other information assembled in  
 25 the course of the investigation.

26  
 27 20-77-1821. Civil investigative demands – Judicial proceedings for  
 28 noncompliance.

29 (a)(1) Whenever any person fails to comply with a civil investigative  
 30 demand issued under this subchapter or whenever satisfactory copying or  
 31 reproduction of any material requested in a civil investigative demand cannot  
 32 be done and the person refuses to surrender the material, the Attorney  
 33 General may file in circuit court and serve upon the person a petition for a  
 34 court order for the enforcement of the civil investigative demand.

35 (2) Venue for filing under subdivision (a)(1) of this section  
 36 shall be in Pulaski County.

1       (b)(1) Any person who has received a civil investigative demand issued  
 2 under this subchapter may file in circuit court and serve upon the  
 3 investigator identified in the civil investigative demand a petition for an  
 4 order of the court to modify or set aside the civil investigative demand.  
 5 Venue for such an action shall be in Pulaski County.

6               (2)(A) In the case of a petition addressed to an express demand  
 7 for a product of discovery, a petition to modify or set aside the civil  
 8 investigative demand may be brought only in the circuit court of the county  
 9 or city where the proceeding in which the discovery was obtained is or was  
 10 last pending.

11                       (B) Any petition under this section shall be filed:

12                               (i) Within twenty (20) days after the date of  
 13 service of the civil investigative demand or at any time before the return  
 14 date specified in the civil investigative demand, whichever is earlier; or

15                                       (ii) Within a longer period as may be prescribed in  
 16 writing by an investigator identified in the civil investigative demand.

17               (3) The petition shall specify each ground upon which the  
 18 petitioner relies in seeking relief and may be based upon the failure of the  
 19 civil investigative demand to comply with the provisions of this subchapter  
 20 or upon any constitutional or other legal right or privilege of the person.

21               (4)(A) During the pendency of the petition in the court, the  
 22 court may stay, in whole or in part, the running of the time allowed for  
 23 compliance with the civil investigative demand.

24                       (B) However, the person filing the petition shall comply  
 25 with any portions of the civil investigative demand not sought to be modified  
 26 or set aside.

27               (c)(1) In the case of any civil investigative demand issued under this  
 28 subchapter that is an express demand for any product of discovery, the person  
 29 from whom the discovery was obtained may file in the circuit court of the  
 30 county or city where the proceeding in which the discovery was obtained is or  
 31 was last pending and serve upon any investigator identified in the civil  
 32 investigative demand and upon the recipient of the civil investigative demand  
 33 a petition for a court order to modify or set aside those portions of the  
 34 civil investigative demand requiring production of the product of discovery.

35                       (2) Any petition under this subsection shall be filed:

36                               (i) Within twenty (20) days after the date of service of



1 the civil investigative demand or at any time before the return date  
2 specified in the civil investigative demand, whichever date is earlier; or

3 (ii) Within a longer period as may be prescribed in  
4 writing by an investigator identified in the civil investigative demand.

5 (3) The petition shall specify each ground upon which the  
6 petitioner relies in seeking relief and may be based upon any failure of the  
7 civil investigative demand from which relief is sought to comply with the  
8 provisions of this subchapter, or upon any constitutional or other legal  
9 right or privilege of the petitioner.

10 (4) During the pendency of the petition, the court may stay  
11 compliance with the investigative demand and the running of the time allowed  
12 for compliance with the investigative demand.

13 (d)(1) At any time during which the Attorney General is in custody or  
14 control of any documentary material or other information, answers to  
15 interrogatories produced, or transcripts of oral testimony given by any  
16 person in compliance with any civil investigative demand issued under this  
17 subchapter, the person, and in the case of an express demand for any product  
18 of discovery, the person from whom the discovery was obtained, may file in  
19 circuit court and serve upon the Attorney General a petition for a court  
20 order to require the performance by the Attorney General of any duty imposed  
21 upon the Attorney General by this section.

22 (2) Venue for filing under subdivision (d)(1) of this section  
23 shall be in Pulaski County.

24 (e)(1) Whenever any petition is filed in the appropriate circuit court  
25 under this section, the court shall have jurisdiction to hear and determine  
26 the matter so presented and to enter the order or orders as may be required  
27 to carry out the provisions of this section.

28 (2) If the court finds that the process by which the civil  
29 investigative demand is made is proper, that there is reasonable cause to  
30 believe there may have been a violation of this subchapter, and that the  
31 information sought or document or object demanded is relevant to the  
32 violation, the court shall order the person to comply with the demand,  
33 subject to modifications the court may prescribe.

34 (3) Any final order so entered shall be subject to appeal in the  
35 same manner as appeals of other final orders in civil matters.

36 (4) Any disobedience of any final order entered under this

1 section by any court shall be punished as contempt of the court.

2 (f) Any documentary material or other information, answers to written  
 3 interrogatories, or oral testimony provided under any civil investigative  
 4 demand issued under this subchapter shall be exempt from disclosure under the  
 5 Freedom of Information Act of 1967, § 25-19-101 et seq.

6  
 7 20-77-1822. Application of the Arkansas Rules of Civil Procedure.

8 The Arkansas Rules of Civil Procedure shall apply to all proceedings  
 9 under this subchapter except when the rules are inconsistent with this  
 10 subchapter.

11  
 12 20-77-1823. Remedies under other laws – Liberal construction.

13 (a) The provisions of this subchapter are not exclusive, and the  
 14 remedies provided in this subchapter are in addition to any other remedies  
 15 provided in any other law or available under common law.

16 (b) This subchapter shall be liberally construed to promote the public  
 17 interest.

18  
 19 20-77-1824 False Claims Act Fund – Creation.

20 (a) There is created on the books of the Treasurer of State, the  
 21 Auditor of State, and the Chief Fiscal Officer of the State a special revenue  
 22 fund to be known as the “False Claims Act Fund”.

23 (b)(1) Except as otherwise provided in subsection (d) of this section,  
 24 the proceeds of an action or settlement under this subchapter less any amount  
 25 including reasonable expenses awarded to a qui tam relator shall be deposited  
 26 into the State Treasury to the credit of the False Claims Act Fund as special  
 27 revenues.

28 (2) The False Claims Act shall also consist of any other  
 29 revenues as may be authorized by law.

30 (c) The False Claims Act Fund shall be used by the Attorney General  
 31 for the purpose of carrying out the responsibilities of the office under this  
 32 subchapter.

33 (d) The proceeds of an action or settlement under this subchapter  
 34 arising out of a violation with respect to the Arkansas Medicaid Program less  
 35 any amount including reasonable expenses awarded to a qui tam relator shall  
 36 be deposited into the State Treasury to the credit of the Arkansas Medicaid

1 Program Trust Fund as special revenues for the sole use of the Arkansas  
2 Medicaid Program.

3  
4 20-77-1825. Training of state employees.

5 (a)(1) The Attorney General shall prepare a comprehensive training  
6 program and related written materials for state employees concerning fraud  
7 against the government.

8 (2) The training program shall include at a minimum:

9 (A) A detailed discussion of the Federal False Claims Act;

10 (B) A detailed discussion of this subchapter; and

11 (C) The rights of whistleblowers.

12 (b) The Attorney General shall update the training program at least  
13 one (1) time per year.

14 (c) The training program shall be offered to state employees no less  
15 than one (1) time per quarter.

16  
17 20-77-1826. Reporting – Legislative Council.

18 The Attorney General shall report annually to the Legislative Council  
19 with regard to activities under this subchapter, including without limitation  
20 the receipt of funds into the False Claims Act Fund and the Arkansas Medicaid  
21 Program Trust Fund as a result of actions brought under this subchapter.

22  
23 20-77-1827. Provisions supplemental.

24 The provisions of this subchapter are not exclusive and the remedies  
25 provided for in this subchapter are in addition to any other remedies  
26 provided for in any other law or available under common law.

27  
28 SECTION 2. Arkansas Code Title 20, Chapter 77, Subchapter 9 is amended  
29 to read as follows:

30 Subchapter 9. Civil Medicaid Fraud ~~False Claims~~ Act.

31  
32 20-77-901. Definitions.

33 As used in this subchapter:

34 (1) “Arkansas Medicaid ~~program~~ Program” means the medical  
35 assistance program authorized under Title XIX of the federal Social Security  
36 Act as it existed on January 1, 2007, that is operated by the Department of

1 Health and Human Services ~~which provides for payments for medical goods or~~  
 2 ~~services on behalf of indigent families with dependent children and of aged,~~  
 3 ~~blind, or disabled individuals whose income and resources are insufficient to~~  
 4 ~~meet the cost of necessary medical services;~~

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

14 ~~(3)(2)~~ "Fiscal agent" means any individual, firm, corporation,  
 15 professional association, partnership, organization, or other legal entity  
 16 which, through a contractual relationship with the Department of Health and  
 17 Human Services, the State of Arkansas receives, processes, and pays claims  
 18 under the program;

19 ~~(4)(3)~~ "Knowing" or "knowingly" means that the person has actual  
 20 knowledge of the information or acts in deliberate ignorance or reckless  
 21 disregard of the truth or falsity of the information;

22 ~~(5)(4)~~ "Medicaid recipient" means any individual on whose behalf  
 23 any person claimed or received any payment or payments from the program or  
 24 its fiscal agents, whether or not the individual was eligible for benefits  
 25 under the program;

26 ~~(6)(5)~~ "Person" means any:

27 (A) any provider Provider of goods or services under the  
 28 program or any employee of the provider, whether that provider be an  
 29 individual, individual medical vendor, firm, corporation, professional  
 30 association, partnership, organization, or other legal entity under the  
 31 program but which provides goods or services to a provider under the program  
 32 or its fiscal agents; and

33 (B) Individual, individual medical vendor, firm,  
 34 corporation, professional association, partnership, organization, or other  
 35 legal entity or any employee of any individual, individual medical vendor,  
 36 firm, corporation, professional association, partnership, organization, or

1 other legal entity that is not a provider under the program but that provides  
 2 goods or services to a provider under the program for which the provider  
 3 submits claims to the program or its fiscal agents; and

4 ~~(7)~~(6) "Records" means all documents in any form, including, but  
 5 not limited to, medical documents and X rays, prepared by any person for the  
 6 purported provision of any goods or services to any Medicaid recipient.

7  
 8 20-77-902. Liability for certain acts.

9 A person ~~shall be liable to the State of Arkansas, through the Attorney~~  
 10 ~~General, for a civil penalty and restitution~~ commits a violation of this  
 11 subchapter if he or she:

12 ~~(1) Knowingly makes or causes to be made any false statement or~~  
 13 ~~representation of a material fact in any application for any benefit or~~  
 14 ~~payment under the Arkansas Medicaid program;~~

15 ~~(2) At any time knowingly makes or causes to be made any~~  
 16 ~~statement or representation of a material fact for use in determining rights~~  
 17 ~~to a benefit or payment;~~

18 ~~(3)~~(1) Having knowledge of the occurrence of any event affecting  
 19 his or her initial or continued right to any benefit or payment from the  
 20 Arkansas Medicaid program or the initial or continued right to any benefit or  
 21 payment of any other individual in whose behalf he or she has applied for or  
 22 is receiving a benefit or payment from the program, knowingly conceals or  
 23 fails to disclose that event with an intent fraudulently to secure the  
 24 benefit or payment either in a greater amount or quantity than is due or when  
 25 no benefit or payment is authorized;

26 ~~(4)~~(2) Having made application to receive any benefit or payment  
 27 from the program for the use and benefit of another and having received it,  
 28 knowingly converts the benefit or payment or any part thereof to a use other  
 29 than for the use and benefit of the other person;

30 ~~(5) Knowingly presents or causes to be presented a claim for a~~  
 31 ~~physician's service for which payment may be made under the program and knows~~  
 32 ~~that the individual who furnished the service was not licensed as a~~  
 33 ~~physician;~~

34 ~~(6)~~(3) Knowingly solicits or receives any remuneration,  
 35 including any kickback, bribe, or rebate, directly or indirectly, overtly or  
 36 covertly, in cash or in kind:

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

4 (B) In return for purchasing, leasing, ordering, or  
 5 arranging for or recommending purchasing, leasing, or ordering any good,  
 6 facility, service, or item for which payment may be made in whole or in part  
 7 under the program;

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

11 (i) To refer an individual to a person for the  
 12 furnishing or arranging for the furnishing of any item or service for which  
 13 payment may be made in whole or in part under the program; or

14 (ii) To purchase, lease, order, or arrange for or  
 15 recommend purchasing, leasing, or ordering any good, facility, service, or  
 16 item for which payment may be made in whole or in part under the program.

17 (B) Subdivision ~~(7)(A)(4)(A)~~ of this section shall not  
 18 apply to:

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

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

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

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

34 (b) In the case of an entity that is a  
 35 provider of services as defined in § 20-9-101, the person discloses, in the  
 36 form and manner as the Director of the Department of Health and Human

1 Services requires, to the entity and upon request to the director the amount  
2 received from each vendor with respect to purchases made by or on behalf of  
3 the entity; and

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

6 ~~(8)~~(5) Knowingly makes or causes to be made or induces or seeks  
7 to induce the making of any false statement or representation of a material  
8 fact:

9 (A) With respect to the conditions or operation of any  
10 institution, facility, or entity in order that the institution, facility, or  
11 entity may qualify either upon initial certification or upon recertification  
12 as a hospital, rural primary care hospital, skilled nursing facility, nursing  
13 facility, intermediate care facility for the mentally retarded, home health  
14 agency, or other entity for which certification is required; or

15 (B) With respect to information required pursuant to  
16 applicable federal and state law, rules, regulations, and provider  
17 agreements;

18 ~~(9)~~(6) Knowingly:

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

22 (B) Charges, solicits, accepts, or receives, in addition  
23 to any amount otherwise required to be paid under the program, any gift,  
24 money, donation, or other consideration other than a charitable, religious,  
25 or philanthropic contribution from an organization or from a person unrelated  
26 to the patient as a precondition of admitting a patient to a hospital,  
27 nursing facility, or intermediate care facility for the mentally retarded or  
28 as a requirement for the patient's continued stay in the facility when the  
29 cost of the services provided therein to the patient is paid for in whole or  
30 in part under the program;

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

35 ~~(11)~~(7) Knowingly:

36 (A) Participates, directly or indirectly, in the ~~Arkansas~~

1 ~~Medicaid Program~~ program after having pleaded guilty or nolo contendere to or  
 2 been found guilty of ~~a charge of Medicaid~~ medicaid fraud as defined in § 5-  
 3 55-103(a), theft of public benefits as ~~defined~~ described in § 5-36-202, or  
 4 ~~abuse of adults~~ adult maltreatment as defined in ~~the Arkansas Criminal Code,~~  
 5 ~~§§ 5-1-101 et seq.,~~ § 5-28-101; or

6 (B) As a certified health provider enrolled in the  
 7 ~~Arkansas Medicaid Program~~ program pursuant to Title XIX of the Social  
 8 Security Act or the fiscal agent of such a provider who employs, engages as  
 9 an independent contractor, engages as a consultant, or otherwise permits the  
 10 participation in the business activities of such a provider, any person who  
 11 has pleaded guilty or nolo contendere to or has been found guilty of ~~a charge~~  
 12 ~~of Medicaid~~ medicaid fraud as defined in § 5-55-103(a), theft of public  
 13 benefits as ~~defined~~ described in § 5-36-202, or ~~abuse of adults~~ adult  
 14 maltreatment as defined in ~~the Arkansas Criminal Code,~~ ~~§§ 5-1-101 et seq.,~~ §  
 15 5-28-101.

16  
 17 20-77-903. Civil penalties.

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

27 (2) However, the court may assess not more than two (2) times  
 28 the amount of damages that the state sustained because of the act of the  
 29 person, except that if the court finds the following:

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

34 (B) The person fully cooperated with any Attorney  
 35 General's investigation of the violation, and at the time the person  
 36 furnished the Attorney General with the information about the violation:



1 (i) No criminal prosecution, civil action, or  
 2 administrative action had commenced under this subchapter with respect to the  
 3 violation; and

4 (ii) The person did not have actual knowledge of the  
 5 existence of an investigation into the violation.

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

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

13 (c) The entirety of any penalty less any reward which may be  
 14 determined by the court pursuant to this subchapter shall be credited as  
 15 special revenues of the State of Arkansas and deposited into the Arkansas  
 16 Medicaid Program Trust Fund for the sole use of the program.

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

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

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

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

29  
 30 20-77-904. ~~Investigation by Attorney General.~~ Civil investigative  
 31 demands.

32 ~~(a) If the Attorney General has reasonable cause to believe that a~~  
 33 ~~person has information or is in possession, custody, or control of any~~  
 34 ~~document or other tangible object relevant to an investigation or that would~~  
 35 ~~lead to the discovery of relevant information in an investigation for~~  
 36 ~~violation of this subchapter, the Attorney General may serve upon the person,~~

1 before bringing any action in the circuit court, a written demand to appear  
 2 and be examined under oath, to answer written interrogatories under oath, and  
 3 to produce the document or object for inspection and copying. The demand  
 4 shall:

5 (1) Be served upon the person in the manner required for service  
 6 of process in the State of Arkansas or by certified mail with return receipt  
 7 requested;

8 (2) Describe the nature of the conduct constituting the  
 9 violation under investigation;

10 (3) Describe the class or classes of documents or objects with  
 11 sufficient definiteness to permit them to be fairly identified;

12 (4) Contain a copy of the written interrogatories;

13 (5) Prescribe a reasonable time at which the person must appear  
 14 to testify, a time within which to answer the written interrogatories, and a  
 15 time within which the document or object must be produced;

16 (6) Advise the person that objections to or reasons for not  
 17 complying with the demand may be filed with the Attorney General on or before  
 18 that time;

19 (7) Specify a place for the taking of testimony or for  
 20 production and designate a person who shall be custodian of the document or  
 21 object; and

22 (8) Contain a copy of subsections (b) and (d) of this section.

23 (b)(1) If a person objects to or otherwise fails to comply with the  
 24 written demand served upon him or her under subsection (a) of this section,  
 25 the Attorney General may file an action in the circuit court for an order to  
 26 enforce the demand.

27 (2) Venue for the action to enforce the demand shall be in  
 28 Pulaski County.

29 (3) Notice of a hearing on the action to enforce the demand and  
 30 a copy of the action shall be served upon the person in the same manner as  
 31 that prescribed in the Arkansas Rules of Civil Procedure.

32 (4) If the court finds that the demand is proper, that there is  
 33 reasonable cause to believe there may have been a violation of this  
 34 subchapter, and that the information sought or document or object demanded is  
 35 relevant to the violation, it shall order the person to comply with the  
 36 demand, subject to modifications the court may prescribe.

1           ~~(c) If the person fails to comply with the order, the court may issue~~  
 2 ~~any of the following orders until the person complies with the order:~~

3                     ~~(1) Adjudging the person in contempt of court;~~

4                     ~~(2) Granting injunctive relief against the person to whom the~~  
 5 ~~demand is issued to restrain the conduct which is the subject of the~~  
 6 ~~investigation; or~~

7                     ~~(3) Granting other relief as the court may deem proper.~~

8           ~~(d) The court may award to the Attorney General costs and reasonable~~  
 9 ~~attorney's fees as determined by the court against the person failing to obey~~  
 10 ~~the order.~~

11           ~~(e) Upon motion by the person and for good cause shown, the court may~~  
 12 ~~make any further order in the proceedings that justice requires to protect~~  
 13 ~~the person from unreasonable annoyance, embarrassment, oppression, burden, or~~  
 14 ~~expense.~~

15           (a) If the Attorney General has reasonable cause to believe that a  
 16 person may be in possession, custody, or control of documentary material or  
 17 other information relevant to an investigation under this subchapter, the  
 18 Attorney General may before filing a civil action under this subchapter issue  
 19 in writing and cause to be served on the person a civil investigative demand  
 20 in accordance with the procedures set forth in §§ 20-77-813 – 20-77-821.

21           (b) The procedures set forth in subsection (a) of this section shall  
 22 govern all aspects of an investigation of violations of this subchapter.

23  
 24           ~~20-77-905.—Order compelling testimony or production of evidence—~~  
 25 ~~Immunity—Contempt.~~

26           ~~(a)(1)(A) In any proceeding or investigation under this subchapter, if~~  
 27 ~~a person refuses to answer a question or produce evidence of any kind on the~~  
 28 ~~ground that he or she may be incriminated and if the Attorney General or~~  
 29 ~~prosecuting attorney requests the court in writing to order the person to~~  
 30 ~~answer the question or produce the evidence, the court may make this order,~~  
 31 ~~and the person shall comply with the order.~~

32                     ~~(B) If the court denies the request, the court shall state~~  
 33 ~~its reasons for the denial in writing.~~

34                     ~~(2) After complying, the testimony or evidence or any~~  
 35 ~~information directly derived from the testimony or evidence shall may not be~~  
 36 ~~used against the person in any proceeding or prosecution of a crime or~~

1 ~~offense concerning which he or she gave an answer or produced evidence under~~  
 2 ~~the court order.~~

3 ~~(3) Immunity obtained pursuant to this section does not exempt~~  
 4 ~~any person from prosecution, penalty, or forfeiture for any perjury, false~~  
 5 ~~swearing, or contempt committed in answering or failing to answer or in~~  
 6 ~~producing or failing to produce evidence in accordance with the order.~~

7 ~~(b) If a person refuses to testify after being granted immunity and~~  
 8 ~~after being ordered to testify as prescribed in subsection (a) of this~~  
 9 ~~section, he or she may be adjudged in contempt.~~

10  
 11 ~~20-77-906. Evidence—Disclosure.~~

12 ~~(a) If the Attorney General determines that disclosure to the~~  
 13 ~~respondent of the evidence relied on to establish reasonable cause is not in~~  
 14 ~~the best interests of the investigation, he or she may request that the court~~  
 15 ~~examine the evidence in camera. If the Attorney General makes this request,~~  
 16 ~~the court may examine the evidence in camera and then make its determination.~~

17 ~~(b)(1) Any procedure, testimony taken, or material produced under this~~  
 18 ~~section shall be kept confidential by the Attorney General before bringing an~~  
 19 ~~action against a person under this subchapter for the violation under~~  
 20 ~~investigation unless any of the following applies:~~

21 ~~(A) Confidentiality is waived by the person whose~~  
 22 ~~testimony is disclosed;~~

23 ~~(B) Confidentiality is waived by the person who produced~~  
 24 ~~to the Attorney General the material being disclosed;~~

25 ~~(C) The testimony or material is disclosed solely to the~~  
 26 ~~person, or the person's attorney, who testified or provided the material to~~  
 27 ~~the Attorney General; or~~

28 ~~(D) Disclosure is authorized by court order.~~

29 ~~(2) The Attorney General may disclose the testimony or material~~  
 30 ~~to an agency director of the State of Arkansas, of the United States, or of~~  
 31 ~~any other state, to the prosecuting attorney, or to the United States~~  
 32 ~~Attorney.~~

33 ~~(c) An investigator conducting an examination pursuant to this section~~  
 34 ~~may exclude from the place of examination any person except the person being~~  
 35 ~~examined and the person's counsel.~~

36 ~~(d) Nothing in this section shall be construed to limit the Attorney~~

1 ~~General's authority to access provider records in accordance with existing~~  
 2 ~~provisions of the Arkansas Code of 1987 Annotated.~~

3  
 4 20-77-907. Records.

5 (a)(1) All persons under the Arkansas Medicaid ~~program~~ Program are  
 6 required to maintain at the person's principal place of Medicaid business all  
 7 records at least for a period of five (5) years from the date of claimed  
 8 provision of any goods or services to any Medicaid recipient.

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

12 (B) Otherwise, the unavailability of records shall be a  
 13 Class A misdemeanor.

14 (b)(1) No potential Medicaid recipient shall be eligible for medical  
 15 assistance unless he or she has authorized in writing the Director of the  
 16 Department of Health and Human Services to examine all records of his or her  
 17 own or of those receiving or having received Medicaid benefits through him or  
 18 her, whether the receipt of the benefits would be allowed by the program or  
 19 not, for the purpose of investigating whether any person may have violated  
 20 this subchapter or for use or potential use in any legal, administrative, or  
 21 judicial proceeding.

22 (2) No person shall be eligible to receive any payment from the  
 23 program or its fiscal agents unless that person has authorized in writing the  
 24 director to examine all records for the purpose of investigating whether any  
 25 person may have ~~committed the crime of Medicaid fraud~~ violated this  
 26 subchapter, the Arkansas False Claims Act, § 20-77-801 et seq., or § 5-55-  
 27 103, or for use or for potential use in any legal, administrative, or  
 28 judicial proceeding.

29 (c) The Attorney General and, if applicable, the prosecuting attorney  
 30 having criminal jurisdiction shall be allowed access to all records of  
 31 persons and Medicaid recipients under the program to which the director has  
 32 access for the purpose of investigating whether any person may have violated  
 33 this subchapter, the Arkansas False Claims Act, § 20-77-801 et seq., § 5-55-  
 34 103, or for use or potential use in any legal, administrative, or judicial  
 35 proceeding.

36 (d)(1) Records obtained by the director, ~~or~~ the Attorney General, or

1 the prosecuting attorney pursuant to this subchapter shall be classified as  
 2 confidential information and shall not be subject to outside review or  
 3 release by any individual except when records are used or potentially to be  
 4 used by any governmental entity in any legal, administrative, or judicial  
 5 proceeding.

6 (2) Notwithstanding any other law to the contrary, no person  
 7 shall be subject to any civil or criminal liability for providing access to  
 8 records to the director, to the Attorney General, or to the prosecuting  
 9 attorneys.

10  
 11 20-77-908. ~~False claims jurisdiction~~ Medicaid fraud jurisdiction -  
 12 Procedure.

13 (a) Any action under this subchapter may be brought in the circuit  
 14 court of the county where the defendant, or in the case of multiple  
 15 defendants, any one (1) defendant resides.

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

19 (c) In any action brought pursuant to this subchapter, the State of  
 20 Arkansas shall be required to prove all essential elements of the cause of  
 21 action, including damages, by a preponderance of the evidence.

22 ~~(d) A subpoena requiring the production of documents or the attendance~~  
 23 ~~of a witness at an interview, trial, or hearing conducted under this section~~  
 24 ~~may be served by the Attorney General or any duly authorized law enforcement~~  
 25 ~~officer in the State of Arkansas personally, telephonically, or by registered~~  
 26 ~~or certified mail. In the case of service by registered or certified mail,~~  
 27 ~~the return shall be accompanied by the return post office receipt of delivery~~  
 28 ~~of the demand.~~

29  
 30 20-77-909. Injunctions against fraud.

31 (a)(1) Whenever it appears that any person is engaged in or intends to  
 32 engage in the transfer, conversion, or destruction of assets, records, or  
 33 property in an effort to avoid detection of violations of this subchapter,  
 34 the Attorney General may apply to the Circuit Court of Pulaski County, or to  
 35 the circuit court in which the records or property are located, to seize and  
 36 impound the property.

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

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

15           (2) If the order is granted, the circuit court shall grant the  
 16 respondent ~~shall be granted~~ a hearing no later than five (5) days after being  
 17 notified of the property's seizure for the purpose of determining whether the  
 18 order should be continued.

19           (c) The burden at all stages of the proceeding ~~shall be~~ is upon the  
 20 ~~state~~ Attorney General to prove by a preponderance of the evidence the  
 21 necessity of the order of seizure.

22  
 23           20-77-910. Suspension of violators.

24           The Director of the Department of Health and Human Services may suspend  
 25 or revoke the provider agreement between the Department of Human Services and  
 26 the person in the event that the person is found guilty of violating the  
 27 terms of this subchapter or the Arkansas False Claims Act, § 20-77-801.

28  
 29           20-77-911. Reward for the detection and punishment of Medicaid fraud.

30           (a) The court is authorized to pay a person sums, not exceeding ten  
 31 percent (10%) of the aggregate penalty recovered, or in any case not more  
 32 than one hundred thousand dollars (\$100,000), as it may deem just, for  
 33 information the person may have provided which led to the detecting and  
 34 bringing to trial and punishment persons guilty of violating ~~the Medicaid~~  
 35 ~~fraud laws~~ this subchapter.

36           (b) Upon disposition of any civil action relating to violations of

1 this subchapter in which a penalty is recovered, the Attorney General may  
 2 petition the court on behalf of a person who may have provided information  
 3 which led to the detecting and bringing to trial and punishment persons  
 4 guilty of ~~Medicaid fraud~~ violating this subchapter to reward the person in an  
 5 amount commensurate with the quality of information determined by the court  
 6 to have been provided, in accordance with the requirements of this  
 7 subchapter.

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

11 (2) Neither the state nor any defendant within the action shall  
 12 be liable for expenses which a person incurs in bringing an action under this  
 13 section.

14 (d) Employees or fiscal agents charged with the duty of referring or  
 15 investigating ~~eases of Medicaid fraud~~ violations of this subchapter who are  
 16 employed by or who contract with any governmental entity shall not be  
 17 eligible to receive a reward under this section.

18  
 19 SECTION 3. Arkansas Code §§ 5-55-102 and 5-55-102 are amended to read  
 20 as follows:

21 5-55-102. Definitions.

22 As used in this subchapter:

23 (1) "Arkansas Medicaid Program" means the medical assistance  
 24 program authorized under Title XIX of the Social Security Act, ~~42 U.S.C. §~~  
 25 ~~1396 et seq.~~ as it existed on January 1, 2007, that is operated by the  
 26 Department of Health and Human Services ~~provides for payments for medical~~  
 27 ~~goods or services on behalf of indigent families with dependent children and~~  
 28 ~~of aged, blind, or disabled individuals whose income and resources are~~  
 29 ~~insufficient to meet the cost of necessary medical services;~~

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

35 (3) ~~(2)~~ "Fiscal agents agent" means any individual, firm,  
 36 corporation, professional association, partnership, organization, or other



1 legal entity that, through a contractual relationship with the Department of  
 2 Health and Human Services ~~and, thereby,~~ the State of Arkansas receives,  
 3 processes, and pays claims under the ~~Arkansas Medicaid Program~~ program; ~~and~~

4 ~~(4) “Medicaid recipient” means any individual in whose behalf~~  
 5 ~~any person claimed or received any payment from the Arkansas Medicaid Program~~  
 6 ~~or its fiscal agents, whether or not the individual was eligible for benefits~~  
 7 ~~under the Arkansas Medicaid Program;~~

8 ~~(5)~~(3) “Person” means any:

9 (A) Provider of goods or services under the ~~Arkansas~~  
 10 ~~Medicaid Program~~ program or any employee of the provider, whether the  
 11 provider be an individual, individual medical vendor, firm, corporation,  
 12 professional association, partnership, organization, or other legal entity;  
 13 or

14 (B) Individual, individual medical vendor, firm,  
 15 corporation, professional association, partnership, organization, or other  
 16 legal entity, or any employee of any individual, individual medical vendor,  
 17 firm, corporation, professional association, partnership, organization, or  
 18 other legal entity, not a provider under the ~~Arkansas Medicaid Program~~  
 19 program but that provides goods or services to a provider under the ~~Arkansas~~  
 20 ~~Medicaid Program~~ program for which the provider submits claims to the  
 21 ~~Arkansas Medicaid Program~~ program or its fiscal agents; ~~and.~~

22 ~~(6) “Records” means all documents including, but not limited to,~~  
 23 ~~medical documents and X rays, developed by any person through the claimed~~  
 24 ~~provision of any goods or services to any medicaid recipient.~~

25  
 26 5-55-103. Unlawful acts – Classification.

27 (a)(1) ~~It is unlawful for any person to commit medicaid fraud as~~  
 28 ~~defined in this subchapter~~ A person commits medicaid fraud if that person  
 29 violates the Arkansas False Claims Act, § 20-77-1801 et seq. with respect to  
 30 the Arkansas Medicaid Program or violates § 20-77-902(1)-(6) and any person  
 31 found to have committed any such act or acts is deemed guilty of medicaid  
 32 fraud.

33 (2) Medicaid fraud is a:

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

36 (B) A Class C felony if the aggregate amount of payments

1 illegally claimed is less than two thousand five hundred dollars (\$2,500) but  
 2 more than two hundred dollars (\$200).

3 (3) Otherwise, medicaid fraud is a Class A misdemeanor.

4 (b)(1) A person commits illegal medicaid participation if+ that person  
 5 violates § 20-77-902(7).

6 ~~(A) Having been found guilty of or having pleaded guilty~~  
 7 ~~or nolo contendere to the charge of medicaid fraud, theft of public benefits,~~  
 8 ~~§ 5-36-202, or abuse of adults, § 5-28-101 et seq., as defined in the~~  
 9 ~~Arkansas Criminal Code, § 5-1-101 et seq., that person participates directly~~  
 10 ~~or indirectly in the Arkansas Medicaid Program; or~~

11 ~~(B) As a certified health provider, enrolled in the~~  
 12 ~~Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act,~~  
 13 ~~as amended, 42 U.S.C. § 1396 et seq., or the fiscal agent of the certified~~  
 14 ~~health provider, employs, or engages as an independent contractor, or engages~~  
 15 ~~as a consultant, or otherwise permits the participation in the business~~  
 16 ~~activities of the certified health 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, § 5-36-202, or abuse of adults, § 5-28-101~~  
 19 ~~et seq., as defined in the Arkansas Criminal Code § 5-1-101 et seq.~~

20 (2) Illegal medicaid participation is a:

- 21 (A) Class A misdemeanor for the first offense;
- 22 (B) Class D felony for the second offense; and
- 23 (C) Class C felony for the third offense and subsequent

24 offenses.

25  
 26 SECTION 4. Arkansas Code § 5-55-104 is repealed.

27 ~~5-55-104. Records.~~

28 ~~(a) No potential medicaid recipient is eligible for medical assistance~~  
 29 ~~unless he or she has authorized in writing the Director of the Department of~~  
 30 ~~Health and Human Services to examine all records of the potential medicaid~~  
 31 ~~recipient's own, or of those receiving or having received medicaid benefits~~  
 32 ~~through him or her, whether or not the receipt of the benefits would be~~  
 33 ~~allowed by the Arkansas Medicaid Program, for the purpose of investigating~~  
 34 ~~whether any person may have committed the crime of Medicaid fraud or for use~~  
 35 ~~or potential use in any legal, administrative, or judicial proceeding.~~

36 ~~(b) No person is eligible to receive any payment from the Arkansas~~

1 Medicaid Program or its fiscal agents unless the person has authorized in  
 2 writing the director to examine all records for the purpose of investigating  
 3 whether any person may have committed the crime of medicaid fraud or for use  
 4 or for potential use in any legal, administrative, or judicial proceeding.

5 (c) ~~The Attorney General and the prosecuting attorneys are allowed~~  
 6 ~~access to all records of persons and medicaid recipients under the Arkansas~~  
 7 ~~Medicaid Program to which the director has access for the purpose of~~  
 8 ~~investigating whether any person may have committed the crime of medicaid~~  
 9 ~~fraud or for use or potential use in any legal, administrative, or judicial~~  
 10 ~~proceeding.~~

11 (d) ~~Notwithstanding any other law to the contrary, no person is~~  
 12 ~~subject to any civil or criminal liability for providing access to records to~~  
 13 ~~the director, the Attorney General, or the prosecuting attorneys.~~

14 (e) ~~Records obtained by the director, the Attorney General, or the~~  
 15 ~~prosecuting attorneys pursuant to this subchapter are classified as~~  
 16 ~~confidential information and are not subject to outside review or release by~~  
 17 ~~any individual except when records are used or potentially to be used by any~~  
 18 ~~government entity in any legal, administrative, or judicial proceeding.~~

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

23 (g)(1) ~~Any person found not to have maintained any records is guilty~~  
 24 ~~of a Class D felony if the unavailability of records impairs or obstructs the~~  
 25 ~~prosecution of a felony.~~

26 (2) ~~Otherwise, the unavailability of records is a Class A~~  
 27 ~~misdemeanor.~~

28  
 29 SECTION 5. Arkansas Code §§ 5-55-106 and 5-55-107 are amended to read  
 30 as follows:

31 5-55-106. Investigation by Attorney General.

32 The office of the Attorney General is the entity to which ~~a case of~~  
 33 ~~suspected medicaid fraud~~ violations of this subchapter shall be referred by  
 34 the Arkansas Medicaid Program or its fiscal agents for the purposes of  
 35 investigation, civil action, or referral to the prosecuting attorney having  
 36 criminal jurisdiction in the matter.

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5-55-107. Restitution.

(a) In addition to any other fine that may be levied under § 5-4-201, any person found guilty of medicaid fraud as described in this subchapter is required to: ~~(1) Make~~ make full restitution to the Department of Health and Human Services; ~~and~~

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

~~(B) The mandatory fine shall be credited to the general revenues of the State of Arkansas.~~

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

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

(c) For prosecutions brought under this chapter, the following provisions apply:

(1) To enable the court to properly fix the amount of restitution, the prosecuting attorney after appropriate investigation, shall recommend an amount that would make the Arkansas Medicaid Program whole with respect to the money fraudulently received from the ~~Arkansas Medicaid Program~~ program, including the expense of investigation and all other measurable monetary damages directly related to the offense;

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

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

~~(d)(1) The Attorney General has concurrent jurisdiction and authority with the prosecuting attorney to collect all fines and amounts of restitution levied pursuant to any criminal violation of this subchapter in the manner~~

1 provided by § 5-4-204, with interest accruing on any amount of restitution to  
 2 be made and any fine to be paid from and after default in the payment of the  
 3 restitution or fine in the manner provided in § 16-65-114.

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

6  
 7 SECTION 6 . Arkansas Code § 5-55-108 and 109 are repealed.

8 ~~5-55-108. Civil penalties—Expenses.~~

9 (a)(1) ~~Any person against which any civil judgment is entered as the~~  
 10 ~~result of a civil action brought or threatened to be brought by the State of~~  
 11 ~~Arkansas, through the Attorney General, on a complaint alleging the person to~~  
 12 ~~have fraudulently received any payment from the Arkansas Medicaid Program or~~  
 13 ~~its fiscal agents, is required to pay a civil penalty in the amount of two~~  
 14 ~~(2) times the amount of all payments judicially found to have been~~  
 15 ~~fraudulently received from the Arkansas Medicaid Program or its fiscal~~  
 16 ~~agents.~~

17 (2) ~~Any penalty shall be paid into the State Treasury and~~  
 18 ~~credited to the General Fund.~~

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

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

29 (2) ~~The entirety of the civil penalty shall be credited to the~~  
 30 ~~General Fund.~~

31 (c)(1) ~~Any person against which any civil judgment is entered as the~~  
 32 ~~result of a civil action brought or threatened to be brought by the State of~~  
 33 ~~Arkansas, through the Attorney General, on a complaint alleging any~~  
 34 ~~fraudulent receipt of payment from or false claim submitted to the Arkansas~~  
 35 ~~Medicaid Program or its fiscal agents, may be required to pay into the State~~  
 36 ~~Treasury all reasonable expenses that the court determines have been~~

1 necessarily incurred by the Attorney General in the enforcement of this  
 2 subchapter.

3 ~~(2) The entirety of the amount under subdivision (c)(1) of this~~  
 4 ~~section shall be credited to the General Fund.~~

5  
 6 ~~5-55-109. Criminal penalties and civil penalties mutually exclusive.~~  
 7 ~~Section 5-55-107, which provides for additional criminal fines, and the~~  
 8 ~~Medicaid Fraud False Claims Act, § 20-77-901 et seq., which provides for~~  
 9 ~~civil penalties, shall not both be applied to the same payment received or~~  
 10 ~~claim made by any person under the Arkansas Medicaid Program or its fiscal~~  
 11 ~~agents.~~

12  
 13 SECTION 7. Arkansas Code § 5-55-111 is repealed.

14 ~~5-55-111. Criminal acts constituting medicaid fraud.~~

15 ~~A person commits medicaid fraud when he or she:~~

16 ~~(1) Purposely makes or causes to be made any false statement or~~  
 17 ~~representation of a material fact in any application for any benefit or~~  
 18 ~~payment under the Arkansas Medicaid Program;~~

19 ~~(2) At any time purposely makes or causes to be made any false~~  
 20 ~~statement or representation of a material fact for use in determining rights~~  
 21 ~~to a benefit or payment under the Arkansas Medicaid Program;~~

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

32 ~~(4) Having made application to receive any benefit or payment~~  
 33 ~~under the Arkansas Medicaid Program for the use and benefit of another person~~  
 34 ~~and having received it, purposely converts the benefit or payment under the~~  
 35 ~~Arkansas Medicaid Program or any part of the benefit or payment under the~~  
 36 ~~Arkansas Medicaid Program to a use other than for the use and benefit of the~~

1 ~~other person;~~

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

6 ~~(6) Purposely solicits or receives any remuneration, including~~  
7 ~~any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,~~  
8 ~~in cash or in kind;~~

9 ~~(A) In return for referring an individual to a person for~~  
10 ~~the furnishing or arranging for the furnishing of any item or service for~~  
11 ~~which payment may be made in whole or in part under the Arkansas Medicaid~~  
12 ~~Program; or~~

13 ~~(B) In return for purchasing, leasing, ordering, or~~  
14 ~~arranging for or recommending purchasing, leasing, or ordering any good,~~  
15 ~~facility, service, or item for which payment may be made in whole or in part~~  
16 ~~under the Arkansas Medicaid Program;~~

17 ~~(7)(A) Purposely offers or pays any remuneration, including any~~  
18 ~~kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in~~  
19 ~~cash or in kind, to any person to induce that person to:~~

20 ~~(i) Refer an individual to a person for the~~  
21 ~~furnishing or arranging for the furnishing of any item or service for which~~  
22 ~~payment may be made in whole or in part under the Arkansas Medicaid Program;~~  
23 ~~or~~

24 ~~(ii) Purchase, lease, order, or arrange for or~~  
25 ~~recommend purchasing, leasing, or ordering any good, facility, service, or~~  
26 ~~item for which payment may be made in whole or in part under the Arkansas~~  
27 ~~Medicaid Program.~~

28 ~~(B) Subdivisions (7)(A)(i) and (ii) of this section do not~~  
29 ~~apply to:~~

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

35 ~~(ii) Any amount paid by an employer to an employee~~  
36 ~~who has a bona fide employment relationship with the employer for employment~~

1 ~~in the provision of covered items or services;~~

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

6 ~~(a) The person has a written contract with~~  
 7 ~~each individual or entity that specifies the amount to be paid to the person~~  
 8 ~~and the amount may be a fixed amount or a fixed percentage of the value of~~  
 9 ~~the purchases made by each individual or entity under the contract; and~~

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

16 ~~(iv) Any payment practice specified by the director~~  
 17 ~~promulgated pursuant to applicable federal or state law;~~

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

29 ~~(9) Purposely:~~

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

33 ~~(B) Charges, solicits, accepts, or receives, in addition~~  
 34 ~~to any amount otherwise required to be paid under the Arkansas Medicaid~~  
 35 ~~Program, any gift, money, donation, or other consideration other than a~~  
 36 ~~charitable, religious, or philanthropic contribution from an organization or~~



1 from a person unrelated to the patient;

2 (i) ~~As a precondition of admitting a patient to a~~  
3 ~~hospital, nursing facility, or intermediate care facility for the mentally~~  
4 ~~retarded; or~~

5 (ii) ~~As a requirement for the patient's continued~~  
6 ~~stay in a hospital, nursing facility, or intermediate care facility for the~~  
7 ~~mentally retarded when the cost of the services provided in the hospital,~~  
8 ~~nursing facility, or intermediate care facility for the mentally retarded to~~  
9 ~~the patient is paid for in whole or in part under the Arkansas Medicaid~~  
10 ~~Program; or~~

11 (10) ~~Purposely makes or causes to be made any false statement or~~  
12 ~~representation of a material fact in any application for a benefit or payment~~  
13 ~~in violation of the rules, regulations, and provider agreements issued by the~~  
14 ~~Arkansas Medicaid Program or its fiscal agents.~~

15  
16 SECTION 8. Arkansas Code § 5-55-113 is amended to read as follows:

17 5-55-113. Reward for the detection and punishment of medicaid fraud.

18 (a)(1) The court may pay a person such sums, not exceeding ten percent  
19 (10%) of the aggregate penalty recovered, or in any case not more than one  
20 hundred thousand dollars (\$100,000), as the court may deem just, for  
21 information the person may have provided which led to detecting and bringing  
22 to trial and punishment a person guilty of violating ~~the medicaid fraud laws~~  
23 this subchapter.

24 (2)(A) The reward may be in addition to amounts paid to qui tam  
25 relator under § 20-77-1808.

26 (B) However, the person may not receive a reward under  
27 both this section and § 20-77-911.

28 (b)(1) Upon the disposition of any criminal action relating to a  
29 violation of this subchapter in which a penalty is recovered, the Attorney  
30 General may petition the court on behalf of a person who may have provided  
31 information that led to detecting and bringing to trial and punishment a  
32 person guilty of ~~medicaid fraud~~ violating this subchapter to award the person  
33 in an amount commensurate with the quality and usefulness of the information  
34 determined by the court to have been provided, in accordance with the  
35 requirements of this subchapter.

36 (2) If the Attorney General elects not to petition the court on

1 behalf of the person, the person may petition the court on his or her own  
2 behalf.

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

5 (d) An employee or fiscal ~~agents~~ agent charged with the duty of  
6 referring or investigating ~~a case of medicaid fraud~~ violations of this  
7 subchapter who are employed by or contract with any governmental entity ~~are~~  
8 is not eligible to receive a reward under this section.

9  
10 SECTION 9. It is found and determined by the General Assembly of the  
11 State of Arkansas that the Medicaid Fraud Act is in immediate need of this  
12 revision to clarify an ambiguity in the law; and that the provisions of this  
13 act are essential to successful operations and activities of the Medicaid  
14 Fraud Control Unit of the Attorney General's Office and the Department of  
15 Health and Human Services. Therefore, an emergency is declared to exist and  
16 this act being immediately necessary for the preservation of the public  
17 peace, health, and safety shall become effective on:

- 18 (1) The date of its approval by the Governor;  
19 (2) If the bill is neither approved nor vetoed by the Governor,  
20 the expiration of the period of time during which the Governor may veto the  
21 bill; or  
22 (3) If the bill is vetoed by the Governor and the veto is  
23 overridden, the date the last house overrides the veto.

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