

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

SENATE BILL 838

5 By: Senator J. Hutchinson
6

For An Act To Be Entitled

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

Subtitle

15
16 TO ESTABLISH THE FALSE CLAIMS ACT; TO
17 ENCOURAGE CITIZENS TO FILE LAWSUITS
18 SEEKING RECOVERY OF MONEYS FRAUDULENTLY
19 RECEIVED FROM THE STATE; AND TO INCREASE
20 THE STATE'S PORTION OF FUNDS RECOVERED IN
21 MEDICAID FRAUD LAWSUITS.
22
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24

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

27 SECTION 1. Arkansas Code Title 20 is amended to add a new chapter to
28 read as follows:

29 Chapter 3 – Recovery of Public Benefits.

30 Subchapter 1. GENERAL PROVISIONS [reserved].

31 Subchapter 2. FALSE CLAIMS ACT.

32 20-3-201. Title.

33 The subchapter shall be known and may be cited as the “False Claims
34 Act”.
35

36 20-3-202. Definitions.



1 As used in this subchapter:

2 (1) "Arkansas Medicaid Program" means the state medical
3 assistance program authorized under Title XIX of the federal Social Security
4 Act that is operated by the Department of Human Services;

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

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

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

13 (iii) The request or demand was made on behalf of a
14 recipient or beneficiary of the state for goods or services purported to have
15 been provided to the recipient or beneficiary of the state whether or not the
16 state provided any portion of the goods or services that is requested or
17 demanded.

18 (B)(i) "Claim" includes a signature that is required as
19 part of a claim.

20 (ii) The signature is presumed to be a certification
21 that the information in the claim is true and correct;

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

24 (i) Has actual knowledge of the information;

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

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

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

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

36 (5) "Person" means an individual, acting entity, or state

1 governmental entity, including without limitation a partnership, a
 2 corporation, an association, or a political subdivision of a state;

3 (6) "Product of discovery" means:

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

8 (B) A digest, analysis, selection, compilation, or
 9 derivation from an item listed in subdivision (6)(A) of this section; or

10 (C) An index, electronic reproduction, or other manner of
 11 access to an item listed in subdivision (6)(A) of this section;

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

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

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

16
 17 20-3-203. Liability for certain acts.

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

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

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

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

26 (4) Has possession, custody, or control of property or money
 27 used or to be used by the state and, with the purpose of defrauding the state
 28 or knowingly concealing the property, delivers, or causes to be delivered
 29 less property than the amount for which the person receives a certificate or
 30 receipt;

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

35 (6) Knowingly buys or receives as a pledge of an obligation or
 36 debt public property from an officer or employee of the state who lawfully

1 may not sell or pledge the property; or

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

5 (b)(1) A person found to have committed a violation of this subchapter
6 is liable to the State of Arkansas for the return of any money or property
7 received in violation of this subchapter and for:

8 (A) A civil penalty of not less than five thousand dollars
9 (\$5,000) and not more than ten thousand dollars (\$10,000) for each violation;

10 (B) Three (3) times the amount of damages that the state
11 sustains because of the person's violation; and

12 (C) The reasonable costs of a civil action brought to
13 recover a penalty, damages, money, or property under this subchapter.

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

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

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

25 (C) At the time the person furnished the Attorney General
26 with the information about the violation:

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

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

32
33 20-3-204. Applicability.

34 This subchapter does not apply to claims, records, or statements made
35 under Title 26.

1 20-3-205. Civil actions generally.

2 (a)(1) The Attorney General may investigate an alleged violation of
3 this subchapter.

4 (2) If the Attorney General finds that a person has violated or
5 is violating this subchapter, the Attorney General may:

6 (A) Bring a civil action in circuit court against the
7 person; or

8 (B) Intervene in an action brought against the person by a
9 qui tam relator.

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

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

14 (A) Be filed in camera; and

15 (B) Remain under seal and not served on a defendant until
16 ordered by the court.

17 (3) Written notice of filing the complaint and written
18 disclosure of substantially all material evidence supporting the complaint
19 shall be provided to the Attorney General within thirty (30) days of filing
20 the complaint.

21 (4) If a qui tam relator files an action under this subchapter,
22 no person other than the Attorney General may intervene or bring a related
23 action based on the facts underlying the action filed by the qui tam relator.

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

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

29 (c) A defendant in an action under this subchapter is not required to
30 respond to a complaint filed under this section until after the complaint is
31 unsealed and served on the defendant under the Arkansas Rules of Civil
32 Procedure.

33
34 20-3-206. Civil Actions – Rights of the parties.

35 (a)(1) If the Attorney General proceeds with an action under this
36 subchapter, the Attorney General shall have the primary responsibility for

1 prosecuting the action and is not bound by an act of the qui tam relator.

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

5 (b)(1)(A) Upon a motion by the Attorney General in an action brought
6 under this subchapter showing that unrestricted participation in the
7 prosecution of the action by the qui tam relator would interfere with or
8 inappropriately delay the Attorney General's prosecution of the matter or
9 would be repetitious, irrelevant, or used for purposes of harassment, the
10 court may restrict the qui tam relator's participation in the action if:

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

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

15 (B) Upon a motion by a defendant in an action brought
16 under this subchapter showing that unrestricted participation in the
17 prosecution of the action by the qui tam relator would cause the defendant
18 undue burden or unnecessary expense or would be used for purposes of
19 harassment, the court may restrict the qui tam relator's participation in the
20 action if:

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

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

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

27 (A) Limiting the scope of the qui tam relator's
28 participation in discovery;

29 (B) Limiting the number of witnesses the qui tam relator
30 may call;

31 (C) Limiting the length of the testimony of the qui tam
32 relator;

33 (D) Limiting the qui tam relator's cross-examination of
34 witnesses; or

35 (E) Other similar limitations on the scope of the qui tam
36 relator's participation in the action.

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

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

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

8 (d) Upon the motion of the Attorney General and a showing that a
9 proposed settlement of an action brought under this subchapter is fair,
10 adequate, and reasonable under all of the circumstances, the court may
11 consent to the Attorney General's proposed settlement with one (1) or more
12 defendants in the action notwithstanding the objections of the qui tam
13 relator if:

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

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

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

21 (B) Without limiting the status and rights of the qui tam
22 relator, the court may permit the Attorney General to intervene in the action
23 at a later date upon the motion of the Attorney General and a showing of good
24 cause.

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

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

36 (2) The motion and any supporting documents required under

1 subdivision (f)(1) of this section shall be filed in camera, and the showing
2 shall be conducted in camera.

3 (3) The court may extend the sixty-day stay granted under
4 subdivision (f)(1) of this section upon a further showing in camera that the
5 Attorney General or prosecuting attorney has pursued the criminal or civil
6 investigation or proceedings with reasonable diligence, and any proposed
7 discovery in the civil action will interfere with the ongoing criminal or
8 civil investigation or proceedings.

9
10 20-3-207. Alternative remedies.

11 (a)(1) The Attorney General may pursue the state's claim under this
12 subchapter through any alternative remedy available to the Attorney General,
13 including without limitation a remedy established in an administrative,
14 alternate dispute, or other proceeding.

15 (2) If the Attorney General pursues the state's claim under this
16 subchapter through an alternative remedy, the qui tam relator has the same
17 rights in the proceeding for the alternative remedy as the qui tam relator
18 has in a civil action brought under this subchapter.

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

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

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

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

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

30
31 20-3-208. Award to qui tam relator.

32 (a)(1)(A) Subject to subdivision (a)(1)(B) of this section, if the
33 Attorney General proceeds with an action brought by a qui tam relator under
34 this subchapter, the qui tam relator shall receive at least fifteen percent
35 (15%) but not more than twenty-five percent (25%) of the proceeds of the
36 action or settlement of the claim and shall be paid out of the proceeds of

1 the action or settlement of the claim.

2 (B)(i) The court shall calculate the award under
3 subdivision (a)(1)(A) of this section based upon the extent to which the qui
4 tam relator substantially contributed to the prosecution of the action.

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

13 (2)(A) The qui tam relator shall also receive an amount for
14 reasonable expenses that the court finds to have been necessarily incurred,
15 plus a reasonable attorney's fee and costs.

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

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

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

24 (2) The amount shall be not less than twenty-five percent (25%)
25 and not more than thirty percent (30%) of the proceeds of the action or
26 settlement of the claim and shall be paid out of the proceeds of the action
27 or settlement of the claim.

28 (3)(A) The qui tam relator shall also receive an amount for
29 reasonable expenses that the court finds to have been necessarily incurred,
30 plus a reasonable attorney's fee and costs.

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

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

36 (c)(1) If the Attorney General initially declines to proceed with an

1 action under this subchapter but later intervenes for good cause in
2 accordance with § 20-3-206(e)(1)(B), the qui tam relator shall receive an
3 amount that the court finds is reasonable for prosecuting the action, taking
4 into consideration the extent to which the qui tam relator substantially
5 contributed to the prosecution of the action.

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

11 (3)(A) The qui tam relator shall also receive an amount for
12 reasonable expenses that the court finds to have been necessarily incurred,
13 plus a reasonable attorney's fee and costs.

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

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

19 (d)(1)(A) Whether or not the Attorney General proceeds with the
20 action, if the court finds that the qui tam relator planned, initiated, or
21 knowingly participated in the violation of this subchapter upon which the
22 action was brought, the court, to the extent the court considers appropriate,
23 may reduce or eliminate the share of the proceeds that the qui tam relator
24 would otherwise receive under this section.

25 (B) In considering a reduction under subdivision (d)(1)(A)
26 of this section, the court shall take into account the role of the qui tam
27 relator in prosecuting the action and any relevant circumstances pertaining
28 to the violation.

29 (2)(A) If the qui tam relator pleads guilty or nolo contendere
30 to or is found guilty of criminal conduct arising from his or her role in the
31 violation of this subchapter, the qui tam relator shall be dismissed from the
32 civil action and shall not receive any share of the proceeds of the action or
33 settlement of the claim.

34 (B) A dismissal under subdivision (d)(2)(A) of this
35 section shall not prejudice the right of the Attorney General to continue the
36 action.

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

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

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

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

11
12 20-3-209. Private action for retaliation.

13 (a) An employee who is discharged, demoted, suspended, threatened,
14 harassed, or in any other manner discriminated against in the terms and
15 conditions of employment by his or her employer because of lawful acts done
16 by the employee on behalf of the employee or others in furtherance of an
17 action under this subchapter, including investigation for, initiation of,
18 testimony for, or assistance in an action filed or to be filed under this
19 subchapter, is entitled to all relief necessary to make the employee whole
20 and any additional relief authorized by this section.

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

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

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

26 (3) Compensation for any special damages sustained as a result
27 of the discrimination, including litigation costs and reasonable attorney's
28 fees.

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

31
32 20-3-210. Certain actions barred.

33 A court shall not have jurisdiction over an action brought under this
34 subchapter:

35 (1) Against a member of the General Assembly, a member of the
36 judiciary, or a senior executive branch official if the action is based on

1 evidence or information known to the state at the time the action was
 2 brought;

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

6 (3) Unless the action is brought by the Attorney General or the
 7 person bringing the action is an original source of the information, if the
 8 action is based upon the public disclosure of allegations or transactions:

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

10 (B) In a legislative hearing, audit, or investigation; or

11 (C) From the news media.

12
 13 20-3-211. False claims jurisdiction.

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

17 (b)(1) A civil action shall not be brought more than ten (10) years
 18 after the date on which a violation of this subchapter is committed.

19 (2) A civil action may be brought for activity before the
 20 effective date of this subchapter if the limitations period established by
 21 subdivision (b)(1) of this section has not lapsed.

22 (c) In an action brought for a violation of this subchapter, the
 23 Attorney General or the qui tam relator shall be required to prove all
 24 essential elements of the cause of action, including damages, by a
 25 preponderance of the evidence.

26
 27 20-3-212. Estoppel.

28 A guilty verdict rendered in a criminal proceeding charging false
 29 statements or fraud, whether upon a verdict after trial or upon a plea of
 30 guilty or nolo contendere, estops the defendant from denying the essential
 31 elements of the offense in an action involving the same transaction as in the
 32 criminal proceeding brought under this subchapter.

33
 34 20-3-213. Civil investigative demands – Issuance.

35 (a) If the Attorney General has reasonable cause to believe that a
 36 person may be in possession, custody, or control of documentary material or

1 other information relevant to an investigation under this subchapter, the
2 Attorney General may issue in writing and cause to be served on the person a
3 civil investigative demand requiring the person to:

4 (1) Produce the documentary material or other information for
5 inspection and copying;

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

8 (3) Give oral testimony concerning the documentary material or
9 other information; or

10 (4) Furnish any combination of documentary material or other
11 information, answers, or testimony.

12 (b)(1) If a civil investigative demand is an express demand for a
13 product of discovery, the Attorney General shall:

14 (A) Cause to be served in a manner authorized by this
15 subchapter a copy of the civil investigative demand upon the person from whom
16 the discovery was obtained; and

17 (B) Notify the person to whom the civil investigative
18 demand is issued of the date on which the copy was served.

19 (2) A civil investigative demand that is an express demand for a
20 product of discovery shall not be returned or returnable until twenty (20)
21 days after a copy of the civil investigative demand has been served upon the
22 person from whom the discovery was obtained.

23
24 20-3-214. Civil investigative demands – Contents and deadlines.

25 (a) A civil investigative demand issued under this subchapter shall
26 state the nature of the conduct constituting the alleged violation of this
27 subchapter that is under investigation and the applicable provision of law
28 alleged to be violated.

29 (b) If the civil investigative demand issued under this subchapter is
30 for the production of documentary material or other information, the civil
31 investigative demand shall:

32 (1) Describe each class of documentary material or other
33 information to be produced with such definiteness and certainty as to permit
34 the documentary material or other information to be fairly identified;

35 (2) Prescribe a return date for each class of documentary
36 material or other information that will provide a reasonable period of time

1 within which the documentary material or other information demanded may be
2 assembled and made available for inspection and copying; and

3 (3) Identify the investigator to whom the documentary material
4 or other information shall be made available.

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

7 (1) Set forth with specificity the written interrogatories to be
8 answered;

9 (2) Prescribe the date or dates when the answers to the written
10 interrogatories shall be submitted; and

11 (3) Identify the investigator to whom the answers to the written
12 interrogatories shall be submitted.

13 (d)(1) If the civil investigative demand issued under this subchapter
14 is for oral testimony, the civil investigative demand shall:

15 (A) Prescribe a date, time, and place at which the oral
16 testimony shall be given;

17 (B) Identify the investigator who shall take the oral
18 testimony and the Attorney General representative to whom the transcript of
19 the oral testimony shall be submitted;

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

22 (D) Notify the person receiving the civil investigative
23 demand of the right to be accompanied by an attorney and any other
24 representative; and

25 (E) Describe the general purpose for which the civil
26 investigative demand is being issued and the general nature of the testimony,
27 including the primary areas of inquiry that will be taken pursuant to the
28 civil investigative demand.

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

35 (3) The Attorney General shall not authorize the issuance of
36 more than one (1) civil investigative demand for oral testimony by the same

1 person unless the person requests otherwise or unless the Attorney General
2 after investigation notifies the person in writing that an additional demand
3 for oral testimony is necessary.

4
5 20-3-215. Civil investigative demands – Protected material or
6 information.

7 (a) A civil investigative demand issued under this subchapter shall
8 not require the production of documentary material or other information, the
9 submission of answers to written interrogatories, or oral testimony if the
10 documentary material, other information, answers to written interrogatories,
11 or oral testimony would be protected from disclosure under standards
12 applicable to:

13 (1) A subpoena or subpoena duces tecum issued by a court of this
14 state to aid in a grand jury investigation; or

15 (2) Discovery requests under the Arkansas Rules of Civil
16 Procedure to the extent that the application of the standards to a civil
17 investigative demand is appropriate and consistent with the provisions and
18 purposes of this subchapter.

19 (b)(1) Unless protected from disclosure by this section, a civil
20 investigative demand issued under this subchapter that is an express demand
21 for a product of discovery supersedes an inconsistent order, rule, or
22 provision of law that prevents or restrains disclosure of a product of
23 discovery to a person.

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

28
29 20-3-216. Civil investigative demands – Service and jurisdiction.

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

33 (b)(1) A civil investigative demand issued under this subchapter or a
34 complaint filed under this subchapter may be served upon a person who is not
35 found within the state in the manner prescribed for service of process
36 outside the state under the Arkansas Rules of Civil Procedure or the Arkansas

1 Code.

2 (2) To the extent that the courts of this state may assert
3 jurisdiction over a person outside the state consistent with due process, the
4 courts of this state shall have the same jurisdiction to take action to
5 obtain compliance with the provisions of this subchapter by a person outside
6 the state that the court would have if the person were personally within the
7 jurisdiction of the court.

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

11 (1) Delivering an executed copy of the civil investigative
12 demand or complaint to any partner, executive officer, managing agent, or
13 general agent of the partnership, corporation, association, or entity or to
14 any agent authorized by appointment or by law to receive service of process
15 on behalf of the partnership, corporation, association, or entity;

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

19 (3) Depositing an executed copy of the civil investigative
20 demand or complaint in the United States mail by certified mail, return
21 receipt requested, addressed to the partnership, corporation, association, or
22 entity at its principal office or place of business.

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

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

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

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

35 (2) In the case of service by certified mail, the return shall
36 be accompanied by the return post office receipt of delivery of the civil

1 investigative demand or complaint.

2
3 20-3-217. Civil investigative demands – Documentary material.

4 (a)(1) The production of documentary material or other information in
5 response to a civil investigative demand served under this subchapter shall
6 be made under a sworn certificate in the form that the civil investigative
7 demand designates by:

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

10 (B) A person having knowledge of the facts and
11 circumstances relating to the production of documentary materials or other
12 information who is authorized to act on behalf of the person to whom the
13 civil investigative demand is directed in the case of a person other than a
14 natural person.

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

20 (b) A person upon whom a civil investigative demand for the production
21 of documentary material or other information has been served under this
22 subchapter shall make the documentary material or other information available
23 for inspection and copying to the investigator identified in the civil
24 investigative demand:

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

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

28 (3) As directed by the court.

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

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

36

1 20-3-218. Civil investigative demands – Interrogatories.

2 (a) Each inquiry in a civil investigative demand served under this
3 subchapter shall be answered separately and fully in writing under oath and
4 shall be submitted under a sworn certificate in the form that the civil
5 investigative demand designates by:

6 (1) The person to whom the civil investigative demand is
7 directed in the case of a natural person; or

8 (2) A person having knowledge of the facts and circumstances
9 relating to the answer to an inquiry who is authorized to act on behalf of
10 the person to whom the civil investigative demand is directed in the case of
11 a person other than a natural person.

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

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

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

21
22 20-3-219. Civil investigative demands – Oral examinations.

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

27 (2) The officer before whom the testimony is to be taken shall
28 place the witness under oath and shall record the testimony of the witness
29 personally or by someone acting under the direction of the officer and in the
30 officer's presence.

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

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

36 (ii) This section does not preclude the taking of

1 testimony by any means authorized by and in a manner consistent with the
2 Arkansas Rules of Civil Procedure.

3 (b) The investigator taking the oral testimony shall exclude from the
4 place where the oral testimony is taken all persons except the person giving
5 the testimony, the attorney for and any other representative of the person
6 giving the testimony, the attorney for the state, any person who may be
7 agreed upon by the attorney for the state and the person giving the
8 testimony, the officer before whom the testimony is to be taken, and any
9 court reporter taking the testimony.

10 (c) The oral testimony of any person taken pursuant to a civil
11 investigative demand served under this subchapter shall be taken in the
12 county or city within which the person resides, is found, or transacts
13 business or in another place if agreed upon by the investigator conducting
14 the examination and the person to whom the civil investigative demand is
15 directed.

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

21 (2)(A) Any changes in form or substance that the witness desires
22 to make shall be entered and identified upon the transcript by the officer or
23 the investigator with a statement of the reasons given by the witness for
24 making the changes.

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

28 (C)(i) The right to examine and sign the transcript is
29 waived if the transcript is not signed by the witness within thirty (30) days
30 after being afforded a reasonable opportunity to examine the transcript.

31 (ii) The officer or the investigator shall sign the
32 transcript and state on the record the fact of the waiver, illness, absence
33 of the witness, or the refusal to sign, together with the reasons given if
34 any.

35 (e)(1) The officer before whom the testimony is taken shall certify on
36 the transcript that the witness was sworn by the officer and that the

1 transcript is a true record of the testimony given by the witness.

2 (2) The officer or investigator shall promptly deliver the
3 transcript or send the transcript by commercial delivery or registered or
4 certified mail to the Attorney General.

5 (f) Upon payment of reasonable charges, the investigator shall furnish
6 a copy of the transcript to the witness only, except that the Attorney
7 General for good cause may limit the witness to inspection of the official
8 transcript of the witness's testimony.

9 (g)(1) A person compelled to appear for oral testimony under a civil
10 investigative demand issued under this subchapter may be accompanied,
11 represented, and advised by counsel.

12 (2) Counsel may advise the person in confidence with respect to
13 any question asked of the person.

14 (3)(A) The person or counsel may object on the record to all or
15 part of a question and shall briefly state for the record the reason for the
16 objection.

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

21 (ii) The person may not otherwise object to or
22 refuse to answer a question and shall not directly or through counsel
23 otherwise interrupt the oral examination.

24 (C)(i) If the person refuses to answer a question, a
25 petition may be filed in the circuit court for an order compelling the person
26 to answer the question.

27 (ii) If the person refuses to answer a question on
28 the grounds of the privilege against self-incrimination, the testimony of the
29 person may by court order be compelled in accordance with applicable law, but
30 the testimony or evidence and any information directly derived from the
31 testimony or evidence shall not be used against the person in a proceeding or
32 the prosecution of a crime or offense concerning which he or she gave an
33 answer or produced evidence under the court order.

34 (iii) The immunity obtained under subdivision
35 (g)(3)(C)(ii) of this section does not exempt a person from prosecution,
36 penalty, or forfeiture for perjury, false swearing, or contempt committed in

1 answering or failing to answer or in producing or failing to produce evidence
2 in accordance with the order.

3 (iv) If a person refuses to testify after being
4 granted immunity and after being ordered to testify under subdivision
5 (g)(3)(C)(ii) of this section, he or she may be adjudged in contempt.

6 (h) A person appearing for oral testimony under a civil investigative
7 demand issued under this subchapter shall be entitled to the same fees and
8 allowances paid to witnesses in the circuit court.

9
10 20-3-220. Civil investigative demands – Custodian of documents.

11 (a) The Attorney General shall serve as the custodian of documentary
12 material or other information, answers to written interrogatories, and
13 transcripts of oral testimony received under this subchapter.

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

17 (2) The Attorney General shall take physical possession of the
18 documentary material or other information, answers to written
19 interrogatories, or transcripts of oral testimony and shall be responsible
20 for the use made of them and for the return of documentary material or other
21 information.

22 (c)(1) The Attorney General may prepare copies of documentary material
23 or other information, answers to interrogatories, or transcripts of oral
24 testimony required for official use by an investigator or other officer or
25 employee of the Attorney General or employee of the Department of Arkansas
26 State Police who is authorized by the Attorney General.

27 (2) The documentary material or other information, answers to
28 written interrogatories, or transcripts of oral testimony may be used by an
29 investigator or other officer or employee of the Attorney General or an
30 employee of the Department of Arkansas State Police in connection with the
31 taking of oral testimony under this subchapter.

32 (d)(1) Except as otherwise provided in this section, the original and
33 copies of documentary material or other information, answers to
34 interrogatories, or transcripts of oral testimony, while in the possession of
35 the Attorney General, shall not be available for examination by an individual
36 other than an investigator or other officer or employee of the Attorney

1 General or an employee of the Department of Arkansas State Police authorized
2 by the Attorney General.

3 (2) The prohibition on the availability of documentary material
4 or other information, answers to written interrogatories, or transcripts of
5 oral testimony shall not apply if consent is given by the person who produced
6 the documentary material or other information, answers to written
7 interrogatories, or transcripts of oral testimony or, in the case of any
8 product of discovery produced pursuant to an express demand for the
9 documentary material or other information, answers to written
10 interrogatories, or transcripts of oral testimony, consent is given by the
11 person from whom the discovery was obtained.

12 (3) Nothing in this subsection prevents disclosure of the
13 documentary material or other information, answers to written
14 interrogatories, or transcripts of oral testimony to the General Assembly or
15 a committee or subcommittee of the General Assembly or a state agency for the
16 agency's use to further its statutory or regulatory responsibilities.

17 (4) Disclosure of information to any other agency shall be
18 allowed only upon application by the Attorney General to a circuit court
19 showing substantial need for the use of the information by the agency in
20 furtherance of its statutory responsibilities.

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

23 (1) Documentary material or other information and answers to
24 written interrogatories shall be available for examination by the person who
25 produced the documentary material or other information, answers to written
26 interrogatories, or transcripts of oral testimony or by a representative of
27 the person authorized by the person to examine the documentary material or
28 other information, answers to written interrogatories, or transcripts of oral
29 testimony; and

30 (2) Transcripts of oral testimony shall be available for
31 examination by the person who produced the oral testimony or by a
32 representative of the person authorized by the person to examine the
33 transcripts.

34 (f)(1) An attorney employed by the office of the Attorney General
35 designated to appear before a court, grand jury, or state agency in a case or
36 proceeding may use documentary material or other information, answers to

1 written interrogatories, or transcripts of oral testimony in connection with
2 the case or proceeding.

3 (2) Upon the completion of the case or proceeding, the attorney
4 shall return to the Attorney General the documentary material or other
5 information, answers to written interrogatories, or transcripts of oral
6 testimony that have not passed into the control of the court, grand jury, or
7 agency through introduction into the record of the case or proceeding.

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

15 (1) The case or proceeding before the court or grand jury
16 arising out of the investigation or a proceeding before a state agency
17 involving the documentary material or other information has been completed;
18 or

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

23
24 20-3-221. Civil investigative demands – Judicial proceedings for
25 noncompliance.

26 (a)(1) If a person fails to comply with a civil investigative demand
27 issued under this subchapter or if satisfactory copying or reproduction of
28 material requested in a civil investigative demand cannot be accomplished and
29 the person refuses to surrender the material, the Attorney General may file
30 in circuit court and serve upon the person a petition for a court order for
31 the enforcement of the civil investigative demand.

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

34 (b)(1) A person who has received a civil investigative demand issued
35 under this subchapter may file in circuit court and serve upon the
36 investigator identified in the civil investigative demand a petition for an

1 order of the court to modify or set aside the civil investigative demand.

2 (2) Venue for such an action shall be in Pulaski County.

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

8 (B) A petition under this subsection shall be filed:

9 (i) Within the earlier of twenty (20) days after the
10 date of service of the civil investigative demand or at any time before the
11 return date specified in the civil investigative demand; or

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

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

18 (5)(A) During the pendency of the petition in the court, the
19 court may stay or extend the time allowed to comply with all or part of the
20 civil investigative demand.

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

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

32 (2) A petition under this subsection shall be filed:

33 (i) Within the earlier of twenty (20) days after the date
34 of service of the civil investigative demand or at any time before the return
35 date specified in the civil investigative demand; or

36 (ii) Within a longer period as may be prescribed in

1 writing by an investigator identified in the civil investigative demand.

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

7 (4) During the pendency of the petition, the court may stay or
8 extend the time to comply with all or part of the investigative demand.

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

18 (2) Venue for filing under subdivision (d)(1) of this section is
19 in Pulaski County.

20 (e)(1) If a petition is filed in the appropriate circuit court under
21 this section, the court shall have jurisdiction to hear and determine the
22 matter presented and to enter the order or orders required to carry out the
23 provisions of this section.

24 (2) If the court finds that the process by which the civil
25 investigative demand is made is proper, that there is reasonable cause to
26 believe this subchapter may have been violated, and that the documentary
27 material or other information, answers to written interrogatories, or
28 transcripts of oral testimony sought or demanded is relevant to the
29 violation, the court shall order the person to comply with the demand subject
30 to modifications the court may prescribe.

31 (3) A final order entered under this subsection is subject to
32 appeal in the same manner as appeals of other final orders in civil matters.

33 (4) Disobedience to a final order under this section shall be
34 punished as contempt of the court.

35 (f) Documentary material or other information, answers to written
36 interrogatories, or oral testimony provided under any civil investigative

1 demand issued under this subchapter shall be exempt from disclosure under the
2 Freedom of Information Act of 1967, § 25-19-101 et seq.

3
4 20-3-222. Application of the Arkansas Rules of Civil Procedure.

5 The Rules of the Arkansas Rules of Civil Procedure apply to a
6 proceeding under this subchapter unless the rule or a part of the rule is
7 inconsistent with this subchapter.

8
9 20-3-223. Remedies under other laws – Liberal construction.

10 (a) The remedies provided in this subchapter are in addition to any
11 other remedies provided in any other law or available under common law.

12 (b) This subchapter shall be liberally construed to promote the public
13 interest.

14
15 20-3-224. Money recovered.

16 (a) The proceeds of an action or settlement of a claim under this
17 subchapter less any amount including reasonable expenses awarded to a qui tam
18 relator shall be deposited as special revenues into the State Treasury to the
19 credit of the False Claims Act Fund created under § 19-5-1243.

20 (b) The Attorney General shall administer the False Claims Act Fund.

21 (c) The proceeds of an action or settlement of a claim under this
22 subchapter arising out of a violation with respect to the Arkansas Medicaid
23 Program less any amount including reasonable expenses awarded to a qui tam
24 relator shall be deposited into the State Treasury to the credit of the
25 Arkansas Medicaid Program Trust Fund as special revenues for the sole use of
26 the Arkansas Medicaid Program.

27
28 20-3-225. Training of state employees.

29 (a)(1) The Attorney General may prepare a comprehensive training
30 program and related written materials for state employees concerning fraud
31 against the government.

32 (2) The training program may include at a minimum:

33 (A) A detailed discussion of the federal False Claims Act,
34 31 U.S.C. §§ 3729-3733;

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

36 (C) The rights of whistleblowers.

1 (b) The Attorney General may update the training program at least one
 2 (1) time per year.

3
 4 20-3-226. Reporting – Legislative Council.

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

9
 10 20-3-227. Provisions supplemental.

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

14
 15 SECTION 2. Arkansas Code Title 20, Chapter 77, Subchapter 9 is amended
 16 to read as follows:

17 Subchapter 9 – Civil Medicaid Fraud ~~False Claims Act~~.

18 20-77-901. Definitions.

19 As used in this subchapter:

20 (1) “Arkansas Medicaid ~~program~~ Program” means the medical
 21 assistance program authorized under Title XIX of the federal Social Security
 22 Act that is operated by the Department of Human Services ~~which provides for~~
 23 ~~payments for medical goods or services on behalf of indigent families with~~
 24 ~~dependent children and of aged, blind, or disabled individuals whose income~~
 25 ~~and resources are insufficient to meet the cost of necessary medical~~
 26 ~~services;~~

27 ~~(2) “Claim” includes any request or demand, including any and~~
 28 ~~all documents or information required by federal or state law or by rule,~~
 29 ~~made against medical assistance programs funds for payment. A claim may be~~
 30 ~~based on costs or projected costs and includes any entry or omission in a~~
 31 ~~cost report or similar document, book of account, or any other document which~~
 32 ~~supports, or attempts to support, the claim. A claim may be made through~~
 33 ~~electronic means if authorized by the Department of Human Services. Each~~
 34 ~~claim may be treated as a separate claim, or several claims may be combined~~
 35 ~~to form one claim.~~

36 ~~(3)~~(2) “Fiscal agent” means any individual, firm, corporation,

1 professional association, partnership, organization, or other legal entity
 2 which, through a contractual relationship with the Department of Human
 3 Services, the State of Arkansas receives, processes, and pays claims under
 4 the program;

5 ~~(4)~~(3) "Knowing" or "knowingly" means that the person has actual
 6 knowledge of the information or acts in deliberate ignorance or reckless
 7 disregard of the truth or falsity of the information;

8 ~~(5)~~(4) "Medicaid recipient" means any individual on whose behalf
 9 any person claimed or received any payment or payments from the program or
 10 its fiscal agents, whether or not the individual was eligible for benefits
 11 under the program;

12 ~~(6)~~(5) "Person" means any:

13 (A) any ~~provider~~ Provider of goods or services under the
 14 program or any employee of the provider, whether that provider ~~be~~ is an
 15 individual, individual medical vendor, firm, corporation, professional
 16 association, partnership, organization, or other legal entity ~~under the~~
 17 program but which provides goods or services to a provider under the program
 18 or its fiscal agents; and

19 (B) Individual, individual medical vendor, firm,
 20 corporation, professional association, partnership, organization, or other
 21 legal entity or any employee of any individual, individual medical vendor,
 22 firm, corporation, professional association, partnership, organization, or
 23 other legal entity that is not a provider under the program but that provides
 24 goods or services to a provider under the program for which the provider
 25 submits claims to the program or its fiscal agents; and

26 ~~(7)~~(6) "Records" means all documents in any form, including, but
 27 not limited to, medical documents and X rays, prepared by any person for the
 28 purported provision of any goods or services to any Medicaid recipient.

29
 30 20-77-902. Liability for certain acts.

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

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

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

4 ~~(3)(1)~~ Having knowledge of the occurrence of any event affecting
5 his or her initial or continued right to any benefit or payment from the
6 Arkansas Medicaid Program or the initial or continued right to any benefit or
7 payment of any other individual in whose behalf he or she has applied for or
8 is receiving a benefit or payment from the program, knowingly conceals or
9 fails to disclose that event with ~~an intent~~ a purpose to secure fraudulently
10 ~~to secure~~ the benefit or payment either in a greater amount or quantity than
11 is due or when no benefit or payment is authorized;

12 ~~(4)(2)~~ Having made application to receive any benefit or payment
13 from the program for the use and benefit of another and having received it,
14 knowingly converts the benefit or payment or any part ~~thereof~~ of the benefit
15 or payment to a use other than for the use and benefit of the other person;

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

20 ~~(6)(3)~~ Knowingly solicits or receives any remuneration,
21 including any kickback, bribe, or rebate, directly or indirectly, overtly or
22 covertly, in cash or in kind:

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

26 (B) In return for purchasing, leasing, ordering, or
27 arranging for or recommending purchasing, leasing, or ordering any good,
28 facility, service, or item for which payment may be made in whole or in part
29 under the program;

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

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

36 (ii) To purchase, lease, order, or arrange for or

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

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

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

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

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

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

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

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

27 ~~(8)(5)~~ Knowingly makes or causes to be made or induces or seeks
 28 to induce the making of any false statement or representation of a material
 29 fact:

30 (A) With respect to the conditions or operation of any
 31 institution, facility, or entity in order that the institution, facility, or
 32 entity may qualify either upon initial certification or upon recertification
 33 as a hospital, rural primary care hospital, skilled nursing facility, nursing
 34 facility, intermediate care facility for ~~the mentally retarded~~ individuals
 35 with mental retardation, home health agency, or other entity for which
 36 certification is required; or

1 (B) With respect to information required pursuant to
 2 applicable federal and state law, rules, regulations, and provider
 3 agreements;

4 ~~(9)~~(6) Knowingly:

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

8 (B) Charges, solicits, accepts, or receives, in addition
 9 to any amount otherwise required to be paid under the program, any gift,
 10 money, donation, or other consideration other than a charitable, religious,
 11 or philanthropic contribution from an organization or from a person unrelated
 12 to the patient as a precondition of admitting a patient to a hospital,
 13 nursing facility, or intermediate care facility for ~~the mentally retarded~~
 14 individuals with mental retardation or as a requirement for the patient's
 15 continued stay in the facility when the cost of the services provided therein
 16 to the patient is paid for in whole or in part under the program;

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

21 ~~(11)~~(7) Knowingly:

22 (A) Participates, directly or indirectly, in the ~~Arkansas~~
 23 ~~Medicaid Program~~ program after having pleaded guilty or nolo contendere to or
 24 been found guilty of ~~a charge of Medicaid~~ medicaid fraud under § 5-55-101 et
 25 seq., theft of public benefits ~~as defined~~ described in § 5-36-202, or ~~abuse~~
 26 ~~of adults~~ adult maltreatment as defined in ~~the Arkansas Criminal Code, §§ 5-~~
 27 ~~1-101 et seq., § 5-28-101; or~~

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

20-77-903. Civil penalties.

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

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

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

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

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

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

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

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

(c) The entirety of any penalty less any reward which may be determined by the court pursuant to this subchapter shall be credited as special revenues of the State of Arkansas and deposited into the Arkansas

1 Medicaid Program Trust Fund for the sole use of the program.

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

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

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

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

14
 15 20-77-904. ~~Investigation by Attorney General.~~ Civil investigative
 16 demands.

17 ~~(a) If the Attorney General has reasonable cause to believe that a~~
 18 ~~person has information or is in possession, custody, or control of any~~
 19 ~~document or other tangible object relevant to an investigation or that would~~
 20 ~~lead to the discovery of relevant information in an investigation for~~
 21 ~~violation of this subchapter, the Attorney General may serve upon the person,~~
 22 ~~before bringing any action in the circuit court, a written demand to appear~~
 23 ~~and be examined under oath, to answer written interrogatories under oath, and~~
 24 ~~to produce the document or object for inspection and copying. The demand~~
 25 ~~shall:~~

26 ~~(1) Be served upon the person in the manner required for service~~
 27 ~~of process in the State of Arkansas or by certified mail with return receipt~~
 28 ~~requested;~~

29 ~~(2) Describe the nature of the conduct constituting the~~
 30 ~~violation under investigation;~~

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

33 ~~(4) Contain a copy of the written interrogatories;~~

34 ~~(5) Prescribe a reasonable time at which the person must appear~~
 35 ~~to testify, a time within which to answer the written interrogatories, and a~~
 36 ~~time within which the document or object must be produced;~~

1 ~~(6) Advise the person that objections to or reasons for not~~
2 ~~complying with the demand may be filed with the Attorney General on or before~~
3 ~~that time;~~

4 ~~(7) Specify a place for the taking of testimony or for~~
5 ~~production and designate a person who shall be custodian of the document or~~
6 ~~object; and~~

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

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

12 ~~(2) Venue for the action to enforce the demand shall be in~~
13 ~~Pulaski County.~~

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

17 ~~(4) If the court finds that the demand is proper, that there is~~
18 ~~reasonable cause to believe there may have been a violation of this~~
19 ~~subchapter, and that the information sought or document or object demanded is~~
20 ~~relevant to the violation, it shall order the person to comply with the~~
21 ~~demand, subject to modifications the court may prescribe.~~

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

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

25 ~~(2) Granting injunctive relief against the person to whom the~~
26 ~~demand is issued to restrain the conduct which is the subject of the~~
27 ~~investigation; or~~

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

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

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

36 If the Attorney General has reasonable cause to believe that a person

1 may be in possession, custody, or control of documentary material or other
 2 information relevant to an investigation under this subchapter, the Attorney
 3 General may with or without filing a civil action under this subchapter issue
 4 in writing and cause to be served on the person a civil investigative demand
 5 in accordance with the procedures set forth in §§ 20-3-213 – 20-3-221.

6
 7 ~~20-77-905. — Order compelling testimony or production of evidence —~~
 8 ~~Immunity — Contempt.~~

9 ~~(a)(1)(A) — In any proceeding or investigation under this subchapter, if~~
 10 ~~a person refuses to answer a question or produce evidence of any kind on the~~
 11 ~~ground that he or she may be incriminated and if the Attorney General or~~
 12 ~~prosecuting attorney requests the court in writing to order the person to~~
 13 ~~answer the question or produce the evidence, the court may make this order,~~
 14 ~~and the person shall comply with the order.~~

15 ~~(B) — If the court denies the request, the court shall state~~
 16 ~~its reasons for the denial in writing.~~

17 ~~(2) — After complying, the testimony or evidence or any~~
 18 ~~information directly derived from the testimony or evidence shall may not be~~
 19 ~~used against the person in any proceeding or prosecution of a crime or~~
 20 ~~offense concerning which he or she gave an answer or produced evidence under~~
 21 ~~the court order.~~

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

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

29
 30 ~~20-77-906. — Evidence — Disclosure.~~

31 ~~(a) — If the Attorney General determines that disclosure to the~~
 32 ~~respondent of the evidence relied on to establish reasonable cause is not in~~
 33 ~~the best interests of the investigation, he or she may request that the court~~
 34 ~~examine the evidence in camera. — If the Attorney General makes this request,~~
 35 ~~the court may examine the evidence in camera and then make its determination.~~

36 ~~(b)(1) — Any procedure, testimony taken, or material produced under this~~

1 ~~section shall be kept confidential by the Attorney General before bringing an~~
 2 ~~action against a person under this subchapter for the violation under~~
 3 ~~investigation unless any of the following applies:~~

4 ~~(A) Confidentiality is waived by the person whose~~
 5 ~~testimony is disclosed;~~

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

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

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

12 ~~(2) The Attorney General may disclose the testimony or material~~
 13 ~~to an agency director of the State of Arkansas, of the United States, or of~~
 14 ~~any other state, to the prosecuting attorney, or to the United States~~
 15 ~~Attorney.~~

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

19 ~~(d) Nothing in this section shall be construed to limit the Attorney~~
 20 ~~General's authority to access provider records in accordance with existing~~
 21 ~~provisions of the Arkansas Code of 1987 Annotated.~~

22
 23 20-77-907. Records.

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

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

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

33 (b)(1) No potential Medicaid recipient shall be eligible for medical
 34 assistance unless he or she has authorized in writing the Director of the
 35 Department of Human Services to examine all records of his or her own or of
 36 those receiving or having received Medicaid benefits through him or her,

1 whether the receipt of the benefits would be allowed by the program or not,
 2 for the purpose of investigating whether any person may have violated this
 3 subchapter or for use or potential use in any legal, administrative, or
 4 judicial proceeding.

5 (2) No person shall be eligible to receive any payment from the
 6 program or its fiscal agents unless that person has authorized in writing the
 7 director to examine all records for the purpose of investigating whether any
 8 person may have ~~committed the crime of Medicaid fraud~~ violated this
 9 subchapter, the False Claims Act, § 20-3-201 et seq., § 5-36-202, or § 5-55-
 10 101 et seq., or for use or for potential use in any legal, administrative, or
 11 judicial proceeding.

12 (c) The Attorney General and, if applicable, the prosecuting attorney
 13 having criminal jurisdiction shall be allowed access to all records of
 14 persons and Medicaid recipients under the program to which the director has
 15 access for the purpose of investigating whether any person may have violated
 16 this subchapter, the Arkansas False Claims Act, § 20-3-201 et seq., § 5-36-
 17 202, or § 5-55-101 et seq., or for use or potential use in any legal,
 18 administrative, or judicial proceeding.

19 (d)(1) Records obtained by the director, ~~or~~ the Attorney General, or
 20 the prosecuting attorney pursuant to this subchapter shall be classified as
 21 confidential information and shall not be subject to outside review or
 22 release by any individual except when records are used or potentially to be
 23 used by any governmental entity in any legal, administrative, or judicial
 24 proceeding.

25 (2) Notwithstanding any other law to the contrary, no person
 26 shall be subject to any civil or criminal liability for providing access to
 27 records to the director, to the Attorney General, or to the prosecuting
 28 attorneys.

29
 30 20-77-908. ~~False claims jurisdiction~~ Medicaid fraud jurisdiction -
 31 Procedure.

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

35 (b) A civil action under this section may not be brought more than
 36 five (5) years after the date on which the violation of this subchapter is

1 committed.

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

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

12
13 20-77-909. Injunctions against fraud.

14 (a)(1) Whenever it appears that any person is engaged in or intends to
15 engage in the transfer, conversion, or destruction of assets, records, or
16 property in an effort to avoid detection of violations of this subchapter,
17 the Attorney General may apply to the ~~Circuit Court of~~ Pulaski County Circuit
18 Court, or to the circuit court in which the records or property are located,
19 to seize and impound the property.

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

24 (b)(1)(A) If the order is granted, the Attorney General shall notify
25 the respondent ~~shall be notified~~ of the order seizing and impounding his or
26 her property immediately after the seizure, or as soon as is reasonably
27 practicable.

28 (B) If, after diligent inquiry, the respondent cannot be
29 located, notice under this subsection may be accomplished by leaving a copy
30 of the order at his or her dwelling house or usual place of abode with some
31 person residing therein who is at least eighteen (18) years of age, or by
32 delivering a copy ~~thereof~~ of the order to a representative who is at least
33 eighteen (18) years of age at the respondent's place of business ~~who is at~~
34 ~~least eighteen (18) years of age.~~

35 (2) If the order is granted, the circuit court shall grant the
36 respondent ~~shall be granted~~ a hearing no later than five (5) days after being

1 notified of the property's seizure for the purpose of determining whether the
2 order should be continued.

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

6
7 20-77-910. Suspension of violators.

8 The Director of the Department of Human Services may suspend or revoke
9 the provider agreement between the Department of Human Services and the
10 person in the event that the person is found guilty of violating the terms of
11 this subchapter or the False Claims Act, § 20-3-201 et seq.

12
13 20-77-911. Reward for the detection and punishment of Medicaid fraud.

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

20 (b) Upon disposition of any civil action relating to violations of
21 this subchapter in which a penalty is recovered, the Attorney General may
22 petition the court on behalf of a person who may have provided information
23 which led to the detecting and bringing to trial and punishment persons
24 guilty of ~~Medicaid fraud~~ violating this subchapter to reward the person in an
25 amount commensurate with the quality of information determined by the court
26 to have been provided, in accordance with the requirements of this
27 subchapter.

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

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

34 (d) Employees or fiscal agents charged with the duty of referring or
35 investigating ~~cases of Medicaid fraud~~ violations of this subchapter who are
36 employed by or who contract with any governmental entity shall not be

1 eligible to receive a reward under this section.

2
3 SECTION 3. Arkansas Code § 5-55-113 is amended to read as follows:

4 5-55-113. Reward for the detection and punishment of medicaid fraud.

5 (a)(1) The court may pay a person such sums, not exceeding ten percent
6 (10%) of the aggregate penalty recovered, or in any case not more than one
7 hundred thousand dollars (\$100,000), as the court may deem just, for
8 information the person may have provided which led to detecting and bringing
9 to trial and punishment a person guilty of violating ~~the medicaid fraud laws~~
10 this subchapter.

11 (2)(A) The reward may be in addition to amounts paid to a qui
12 tam relator under § 20-3-208.

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

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

23 (2) If the Attorney General elects not to petition the court on
24 behalf of the person, the person may petition the court on his or her own
25 behalf.

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

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

32
33 SECTION 4. Arkansas Code Title 19, Chapter 5, Subchapter 12 is amended
34 to add an additional section to read as follows:

35 19-5-1243. False Claims Act Fund.

36 (a) There is created on the books of the Treasurer of State, the

1 Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous
 2 fund to be known as the "False Claims Act Fund".

3 (b)(1) Except as provided in subdivision (b)(2) of this section, the
 4 False Claims Act Fund shall consist of:

5 (A) The proceeds of an action or settlement under the
 6 False Claims Act, § 20-3-201 et seq., less any amount including reasonable
 7 expenses awarded to a qui tam relator; and

8 (B) Any other revenues authorized by law.

9 (2) The proceeds of an action or settlement under the False
 10 Claims Act, § 20-3-201 et seq., arising out of a violation with respect to
 11 the Arkansas Medicaid Program less any amount including reasonable expenses
 12 awarded to a qui tam relator shall be deposited into the State Treasury to
 13 the credit of the Arkansas Medicaid Program Trust Fund as special revenues
 14 for the sole use of the Arkansas Medicaid Program.

15 (c) The False Claims Act Fund shall be administered and used by the
 16 Attorney General to investigate claims, perform the duties, and take
 17 appropriate action under the False Claims Act, § 20-3-201 et seq.

18
 19 SECTION 10. EMERGENCY CLAUSE. It is found and determined by the
 20 General Assembly of the State of Arkansas that the Medicaid Fraud Act is in
 21 immediate need of this revision to clarify an ambiguity in the law; that an
 22 urgent need exists to permit the citizens of the state to help recover public
 23 funds and Medicaid moneys that have been wrongfully misappropriated and will
 24 otherwise be lost forever; and that the provisions of this act are essential
 25 to successful operations and activities of the Medicaid Fraud Control Unit of
 26 the Attorney General's Office and the Department of Human Services.
 27 Therefore, an emergency is declared to exist and this act being immediately
 28 necessary for the preservation of the public peace, health, and safety shall
 29 become effective on:

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

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

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