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2 88th General Assembly
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4

As Engrossed: S3/15/11

A Bill

SENATE BILL 838

5 By: Senator J. Hutchinson
6

For An Act To Be Entitled

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

Subtitle

14
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16
17 *TO ENACT THE FALSE MEDICAID CLAIMS ACT;*
18 *TO ENCOURAGE AND ASSIST THE RECOVERY OF*
19 *MONEYS FRAUDULENTLY RECEIVED FROM THE*
20 *MEDICAID PROGRAM; TO INCREASE THE STATE'S*
21 *PORTION OF FUNDS RECOVERED; TO DECLARE AN*
22 *EMERGENCY.*

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 *Subchapter 20 – FALSE MEDICAID CLAIMS ACT*

30
31 *20-77-2001. Title.*

32 *This subchapter shall be known and may be cited as the "False Medicaid*
33 *Claims Act".*

34
35 *20-77-2002. Findings and intent.*

36 *(a) The General Assembly recognizes that the submission of false or*



1 fraudulent claims to the Arkansas Medicaid program can and does cause the
2 State Treasury to incur serious financial losses that result in direct harm
3 to the taxpayers of this state.

4 (b) This subchapter is intended to provide a partial remedy for the
5 harm caused from the submission of false or fraudulent Medicaid claims by
6 providing specific procedures to allow the state and private citizens acting
7 for and on behalf of the state to bring civil actions against persons and
8 entities who have obtained state funds through the submission of false or
9 fraudulent claims to state agencies.

10 (c) The provisions of this subchapter for double and sometimes treble
11 damages are remedial in purpose and intended not to punish, but to the extent
12 possible make the State Treasury whole for both the direct and indirect
13 losses caused by the submission of false or fraudulent claims resulting in
14 payments by the state or state agencies.

15 (d) By receiving a portion of the recovery in civil actions brought
16 under this article, whistle blowers are encouraged to contact the Arkansas
17 Medicaid program when they have information about the submission of false or
18 fraudulent claims to the program and are rewarded when their initiative
19 results in civil recoveries for the state.

20
21 20-77-2003. Definitions.

22 As used in this subchapter:

23 (1)(A) "Claim" means a request or demand under a contract or
24 otherwise for money, property, or services, that is made to the Arkansas
25 Medicaid program, to an officer, an employee, a fiscal intermediary, a
26 grantee, or a contractor of the Arkansas Medicaid program, or to another
27 person or entity that results in a payment by the Arkansas Medicaid program,
28 if the Arkansas Medicaid program:

29 (i) Provides or will provide any portion of the
30 money or property requested or demanded; or

31 (ii) Reimburses or will reimburse the contractor,
32 grantee, or other recipient for any portion of the money or property
33 requested or demanded.

34 (B)(i) "Claim" includes a request or demand made orally,
35 in writing, electronically, or magnetically.

36 (ii) Regardless of how a claim is submitted, each

1 claim may be treated as a separate claim under this subchapter;

2 (2)(A) "Knowing" and "knowingly" mean that a person, with
3 respect to information:

4 (i) Has actual knowledge of the information;

5 (ii) Acts in deliberate ignorance of the truth or
6 falsity of the information; or

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

9 (B) "Knowing" and "knowingly" does not require proof of
10 specific intent to defraud; and

11 (3) "Person" means an individual or a corporation, a company, an
12 association, a firm, a partnership, a society, a joint-stock company, or any
13 other entity with the capacity to sue or be sued.

14
15 20-77-2004. Liability for certain acts.

16 (a) Except as provided in subsection (b) of this section, a person is
17 liable to the State of Arkansas for a civil penalty of not less than five
18 thousand five hundred dollars (\$5,500) and not more than eleven thousand
19 dollars (\$11,000) for each false or fraudulent claim, plus three (3) times
20 the amount of damages which the Arkansas Medicaid program sustains because of
21 the act of the person, if the person:

22 (1) Knowingly presents or causes to be presented to the Arkansas
23 Medicaid program a false or fraudulent claim for payment or approval;

24 (2) Knowingly makes, uses, or causes to be made or used, a false
25 record or statement to get a false or fraudulent claim paid or approved by
26 the Arkansas Medicaid program;

27 (3) Conspires to defraud the Arkansas Medicaid program by
28 getting a false or fraudulent claim allowed or paid;

29 (4) Has possession, custody, or control of property or money
30 used or to be used by the Arkansas Medicaid program and, intending to defraud
31 the Arkansas Medicaid program or willfully concealing the property, delivers
32 or causes to be delivered less property than the amount for which the person
33 receives a certificate of receipt;

34 (5) Being authorized to make or deliver a document certifying
35 receipt of property used or to be used by the Arkansas Medicaid program and
36 intending to defraud the Arkansas Medicaid program, makes or delivers the

1 receipt without completely knowing that the information on the receipt is
2 true;

3 (6) Knowingly buys or receives as a pledge of an obligation or
4 debt public property from an officer or employee of the Arkansas Medicaid
5 program that the person lawfully may not sell or pledge; or

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

9 (b) A court may assess not more than two (2) times the amount of the
10 actual damages that the Arkansas Medicaid program sustained because of the
11 act of a person if the court finds that:

12 (1) The person committing the violation of subsection (a) of
13 this section furnished officials of the Arkansas Medicaid program with all
14 information known to the person about the violation within thirty (30) days
15 after the date on which the person first obtained the information;

16 (2) The person fully cooperated with a government investigation
17 of the violation; and

18 (3) At the time the person furnished the Arkansas Medicaid
19 program with the information about the violation, no criminal prosecution,
20 civil action, or administrative action had commenced under this subchapter
21 with respect to the violation, and the person did not have actual knowledge
22 of the existence of an investigation into the violation.

23 (c) A person violating this section is also liable to the state for
24 all costs of any civil action to recover the damages and penalties provided
25 under this subchapter.

26
27 20-77-2005. Investigation by Attorney General – Civil actions and
28 proceedings.

29 (a)(1) The Attorney General is authorized to investigate suspected,
30 alleged, and reported violations of this subchapter.

31 (2) If the Attorney General finds that a person has violated or
32 is violating this subchapter, the Attorney General may bring a civil action
33 against the person under this subchapter.

34 (b)(1) Subject to the exclusions and limitations provided by this
35 section, a civil action under this subchapter also may be brought by a
36 private person.

1 (2) A civil action shall be brought in the name of the State of
2 Arkansas.

3 (3) The civil action may be dismissed only if the court and the
4 Attorney General give written consent to the dismissal and state the reasons
5 for consenting to the dismissal.

6 (c) If a private person brings a civil action under this subchapter,
7 the person shall follow the following special procedures:

8 (1) A copy of the complaint and written disclosure of
9 substantially all material evidence and information the person possesses
10 shall be served on the Attorney General;

11 (2)(A) The complaint shall be filed in camera, shall remain
12 under seal for at least sixty (60) days, and shall not be served on the
13 defendant until the court so orders.

14 (B) The purpose of the period under seal shall be to allow
15 the Attorney General to investigate the allegations of the complaint.

16 (C) The Attorney General may elect to intervene and
17 proceed with the civil action within sixty (60) days after the Attorney
18 General receives both the complaint and the material evidence and
19 information;

20 (3)(A) The Attorney General for good cause shown may move the
21 court for extensions of the time during which the complaint remains under
22 seal under subdivision (c)(2) of this section.

23 (B) The motion may be supported by affidavits or other
24 submissions in camera;

25 (4) Before the expiration of the sixty-day period and any
26 extensions under subdivision (c)(3) of this section, the Attorney General
27 shall:

28 (A) Proceed with the civil action, in which case the civil
29 action shall be conducted by the Attorney General; or

30 (B) Notify the court that the Attorney General declines to
31 take over the civil action, in which case the person bringing the civil
32 action shall have the right to proceed with the civil action;

33 (5) The defendant shall not be required to respond to a
34 complaint filed under this section until thirty (30) days after the complaint
35 is unsealed and served upon the defendant; and

36 (6) When a person brings a civil action under this subsection,

1 no person other than the Attorney General may intervene or bring a related
2 civil action based on the facts underlying the pending civil action.

3 (d)(1)(A) If the Attorney General elects to intervene and proceed with
4 the civil action, he or she shall:

5 (i) Have the primary responsibility for prosecuting
6 the civil action; and

7 (ii) Not be bound by an act of the person bringing
8 the civil action.

9 (B) The person that initiated the civil action has the
10 right to continue as a party to the action, subject to the limitations set
11 forth in this subsection.

12 (2) The Attorney General may dismiss the civil action
13 notwithstanding the objections of the person that initiated the civil action,
14 if the person has been notified by the Attorney General of the filing of the
15 motion for dismissal and the court has provided the person with an
16 opportunity for a hearing on the motion.

17 (3)(A) The Attorney General may settle the civil action with the
18 defendant notwithstanding the objections of the person that initiated the
19 civil action if the court determines after a hearing that the proposed
20 settlement is fair, adequate, and reasonable under all the circumstances.

21 (B) Upon a showing of good cause the hearing may be held
22 in camera.

23 (4) Upon a showing by the Attorney General that unrestricted
24 participation during the course of the litigation by the person that
25 initiated the civil action would interfere with or unduly delay the Attorney
26 General's litigation of the case, or would be repetitious, irrelevant, or for
27 purposes of harassment, the court may impose limitations on the person's
28 participation, including without limitation:

29 (A) Limiting the number of witnesses the person may call;

30 (B) Limiting the length of the testimony of witnesses the
31 person may call;

32 (C) Limiting the person's cross-examination of witnesses;
33 and

34 (D) Otherwise limiting the participation by the person in
35 the litigation.

36 (e) Upon a showing by the defendant that unrestricted participation

1 during the course of the litigation by the person that initiated the civil
2 action would be for purposes of harassment or would cause the defendant undue
3 burden or unnecessary expense, the court may limit the participation by the
4 person in the litigation.

5 (f)(1) If the Attorney General elects not to proceed with the civil
6 action, the person that initiated the civil action has the right to conduct
7 the civil action.

8 (2) If requested by the Attorney General, the Attorney General
9 shall be served with copies of all pleadings filed in the civil action and
10 shall be supplied with copies of all deposition transcripts.

11 (3) If a person proceeds with the civil action, the court may
12 nevertheless permit the Attorney General to intervene at a later date for any
13 purpose, including without limitation the dismissal of the civil action
14 notwithstanding the objections of the person that initiated the civil action
15 if the person has been notified by the Attorney General of the filing of the
16 motion for dismissal and the court has provided the person with an
17 opportunity for a hearing on the motion.

18 (g)(1) Whether or not the Attorney General proceeds with the civil
19 action, upon a showing by the Attorney General that certain actions of
20 discovery by the person that initiated the civil action would interfere with
21 the Attorney General's investigation or prosecution of a criminal or civil
22 matter arising out of the same facts, the court may stay the discovery for a
23 period of not more than sixty (60) days.

24 (2) The showing under subdivision (g)(1) of this section shall
25 be conducted in camera. The court may extend the sixty-day period upon a
26 further showing in camera that the Attorney General has pursued the criminal
27 or civil investigation or proceedings with reasonable diligence and the
28 proposed discovery in the civil action will interfere with the ongoing
29 criminal or civil investigation or proceedings.

30 (h)(1) This section does not prevent the Attorney General from
31 electing to pursue the state's claim through any alternative remedy available
32 to the Attorney General, including any administrative proceeding to determine
33 a civil money penalty.

34 (2) If an alternative remedy is pursued in another proceeding,
35 the person that initiated the civil action has the same rights in the
36 alternative proceeding as the person would have had if the civil action had

1 continued under this section.

2 (3) A finding of fact or conclusion of law made in an
3 alternative proceeding that has become final is conclusive on all parties to
4 a civil action under this section.

5 (4) For purposes of this subsection, a finding or conclusion is
6 final if it has been finally determined on appeal to the appropriate court of
7 the State of Arkansas, if all time for filing an appeal with respect to the
8 finding or conclusion has expired, or if the finding or conclusion is not
9 subject to judicial review.

10 (i)(1)(A) Except as provided in subdivision (i)(1)(B) of this section,
11 if the Attorney General proceeds with a civil action brought by a private
12 person under subsection (b) of this section, the person shall receive at
13 least fifteen percent (15%) but not more than twenty-five percent (25%) of
14 the proceeds of the civil action or settlement of the claim, depending upon
15 the extent to which the person substantially contributed to the prosecution
16 of the civil action.

17 (B) If the court finds that the civil action is based
18 primarily on disclosures of specific information other than information
19 provided by the person bringing the civil action relating to allegations or
20 transactions in a criminal, civil, or administrative hearing, in a
21 legislative, administrative, or Attorney General hearing, audit, or
22 investigation, or from the news media, the court may award no more than ten
23 percent (10%) of the proceeds of the civil action or settlement of the claim,
24 taking into account the significance of the information and the role of the
25 person bringing the civil action in advancing the case to litigation.

26 (C)(i) A payment to a person entitled to receive payment
27 under subdivision (i)(1)(A) or subdivision (i)(1)(B) of this section shall be
28 made from the proceeds of the civil action or settlement of the claim.

29 (ii) The remaining proceeds of the civil action or
30 settlement of the claim shall be paid to the Arkansas Medicaid Program Trust
31 Fund for the sole use of the Arkansas Medicaid program.

32 (D)(i) A person entitled to receive payment under
33 subdivision (i)(1)(A) or subdivision (i)(1)(B) of this section shall also
34 receive an amount for reasonable expenses that the court finds to have been
35 necessarily incurred, plus reasonable attorney's fees and costs.

36 (ii) Expenses, attorney's fees, and costs under

1 subdivision (i)(1)(D)(i) of this section shall be awarded against the
2 defendant.

3 (2)(A) If the Attorney General does not proceed with a civil
4 action under this section, the person bringing the civil action or settling
5 the claim shall receive an amount that the court decides is reasonable for
6 collecting the civil penalty and damages.

7 (B) The amount shall be not less than twenty-five percent
8 (25%) and not more than thirty percent (30%) of the proceeds of the civil
9 action or settlement and shall be paid out of the proceeds.

10 (C) The remaining proceeds shall be payable to the
11 Arkansas Medicaid Program Trust Fund for the sole use of the Arkansas
12 Medicaid program.

13 (D)(i) The person shall also receive an amount for
14 reasonable expenses that the court finds to have been necessarily incurred,
15 plus reasonable attorney's fees and costs.

16 (ii) The expenses, attorney's fees, and costs under
17 subdivision (i)(2)(D)(i) of this section shall be awarded against the
18 defendant.

19 (3)(A) Whether or not the Attorney General proceeds with the
20 civil action, if the court finds that the civil action was brought by a
21 person that planned and initiated a violation of § 20-77-2004 upon which the
22 civil action was brought, then the court may to the extent the court
23 considers appropriate reduce the share of the proceeds of the civil action or
24 settlement of the claim that the person would otherwise receive under
25 subdivision (i)(1) or subdivision (i)(2) of this section, taking into account
26 the role of the person in advancing the case to litigation and any relevant
27 circumstances pertaining to the violation.

28 (B)(i) If the person bringing the civil action has pleaded
29 guilty or nolo contendere to or has been found guilty of criminal conduct
30 arising from his or her role in a violation of § 20-77-2004, the person shall
31 be dismissed from the civil action and shall not receive any share of the
32 proceeds of the civil action.

33 (ii) The dismissal of the person from the civil
34 action shall not prejudice the right of the State of Arkansas to continue the
35 civil action, represented by the Attorney General.

36 (4) If the Attorney General does not proceed with the civil

1 action and the person bringing the civil action conducts the civil action,
2 the court may award to the defendant its reasonable attorney's fees and
3 expenses against the person bringing the civil action if the defendant
4 prevails in the civil action and the court finds that the claim of the person
5 bringing the civil action was clearly frivolous, clearly vexatious, or
6 brought primarily for purposes of harassment.

7 (5) The State of Arkansas shall not be liable for expenses which
8 a private person incurs in bringing a civil action under this subchapter.

9 (j)(1) For purposes of this subsection:

10 (A) "Public employee" and "public official" mean a
11 federal, state, county, city, or local employee or official; and

12 (B) "Public employment" means a federal, state, city,
13 county, or local office or institution.

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

17 (A) Allegations of wrongdoing or misconduct that the
18 person had a duty or obligation to report or investigate within the scope of
19 his or her public employment; or

20 (B) Information or records to which the person had access
21 as a result of his or her public employment.

22 (3)(A) A court shall not have jurisdiction over a civil action
23 under this subchapter based upon the public disclosure of allegations or
24 transactions in a criminal, civil, or administrative hearing, in a
25 legislative, administrative, or Attorney General report, hearing, audit, or
26 investigation, or from the news media, unless the civil action is brought by
27 the Attorney General or unless the person bringing the civil action is an
28 original source of the information.

29 (B) For purposes of subdivision (j)(3)(A) of this section,
30 "original source" means an individual who has direct and independent
31 knowledge of the information on which the allegations are based and has
32 voluntarily provided the information to the State of Arkansas before filing a
33 civil action under this section based upon the information.

34 (4) A civil action shall not be brought under this subchapter:

35 (A) That is based upon allegations or transactions that
36 are the subject of a civil or administrative proceeding to which the State of

1 Arkansas is already party; or

2 (B) Concerning a claim relating to the assessment,
3 payment, nonpayment, refund, or collection of taxes under Arkansas Code Title
4 26.

5
6 20-77-2006. Burden of proof – Procedure.

7 (a) In any civil action brought under this subchapter, the State of
8 Arkansas or person bringing the civil action shall be required to prove all
9 essential elements of the cause of civil action, including damages, by a
10 preponderance of the evidence.

11 (b) Except as otherwise provided in this subchapter, a civil action
12 under this subchapter is governed by the Arkansas Rules of Civil Procedure.

13
14 20-77-2007. Private action for retaliation.

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

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

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

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

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

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

33
34 20-77-2008. Time for filing suit.

35 (a) Except as provided in subsection (b) of this section, a civil
36 action under this subchapter shall be filed pursuant to this section within

1 the later of:

2 (1) Six (6) years after the date a violation of this subchapter
3 is committed; or

4 (2) Three (3) years after the date when facts material to the
5 right of civil action are known or reasonably should have been known by the
6 state official charged with the responsibility to act on the material facts.

7 (b) A civil action shall not be filed more than ten (10) years after
8 the date upon which a violation of this subchapter is committed.

9
10 20-77-2009. Venue.

11 A civil action brought against an individual under this subchapter
12 shall be brought in the county where:

13 (1) The defendant resides, can be found, transacts business, or
14 commits an act in furtherance of the submittal of a false or fraudulent claim
15 to the Arkansas Medicaid program; or

16 (2) In the case of multiple defendants or defendants who are not
17 residents of the State of Arkansas, in any county where a defendant resides,
18 can be found, transacts business, or commits an act in furtherance of the
19 submittal of a false or fraudulent claim to the Arkansas Medicaid program.

20
21 20-77-2010. Retroactivity.

22 This subchapter applies to claims filed or presented before, on, or
23 after the effective date of this subchapter.

24
25 SECTION 2. Arkansas Code Title 20, Chapter 77, Subchapter 9 is
26 repealed.

27 Subchapter 9 — Medicaid Fraud False Claims Act

28 20-77-901. — Definitions.

29 As used in this subchapter:

30 (1) “Arkansas Medicaid program” means the program authorized
31 under Title XIX of the federal Social Security Act, which provides for
32 payments for medical goods or services on behalf of indigent families with
33 dependent children and of aged, blind, or disabled individuals whose income
34 and resources are insufficient to meet the cost of necessary medical
35 services;

36 (2) “Claim” includes any request or demand, including any and

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

9 ~~(3) "Fiscal agent" means any individual, firm, corporation,~~
10 ~~professional association, partnership, organization, or other legal entity~~
11 ~~which, through a contractual relationship with the Department of Human~~
12 ~~Services, the State of Arkansas receives, processes, and pays claims under~~
13 ~~the program;~~

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

17 ~~(5) "Medicaid recipient" means any individual on whose behalf~~
18 ~~any person claimed or received any payment or payments from the program or~~
19 ~~its fiscal agents, whether or not the individual was eligible for benefits~~
20 ~~under the program;~~

21 ~~(6) "Person" means any provider of goods or services or any~~
22 ~~employee of the provider, whether that provider be an individual, individual~~
23 ~~medical vendor, firm, corporation, professional association, partnership,~~
24 ~~organization, or other legal entity under the program but which provides~~
25 ~~goods or services to a provider under the program or its fiscal agents; and~~

26 ~~(7) "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 if he or she:~~

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

36 ~~(2) At any time knowingly makes or causes to be made any false~~

1 ~~statement or representation of a material fact for use in determining rights~~
2 ~~to a benefit or payment;~~

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

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

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

18 ~~(6) Knowingly solicits or receives any remuneration, including~~
19 ~~any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,~~
20 ~~in cash or in kind;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~(B) With respect to information required pursuant to~~
34 ~~applicable federal and state law, rules, regulations, and provider~~
35 ~~agreements;~~

36 ~~(9) Knowingly;~~

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

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

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

17 ~~(11) Knowingly:~~

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

23 ~~(B) As a certified health provider enrolled in the~~
24 ~~Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act or~~
25 ~~the fiscal agent of such a provider who employs, engages as an independent~~
26 ~~contractor, engages as a consultant, or otherwise permits the participation~~
27 ~~in the business activities of such a provider, any person who has pleaded~~
28 ~~guilty or nolo contendere to or has been found guilty of a charge of Medicaid~~
29 ~~fraud, theft of public benefits, or abuse of adults as defined in the~~
30 ~~Arkansas Criminal Code, § 5-1-101 et seq.~~

31
32 ~~20-77-903. Civil penalties.~~

33 ~~(a)(1) It shall be unlawful for any person to commit any act~~
34 ~~proscribed by § 20-77-902, and any person found to have committed any such~~
35 ~~act or acts shall be deemed liable to the State of Arkansas, through the~~
36 ~~Attorney General, for full restitution and for a civil penalty of not less~~

1 ~~than five thousand dollars (\$5,000) and not more than ten thousand dollars~~
2 ~~(\$10,000) for each violation, plus three (3) times the amount of all payments~~
3 ~~judicially found to have been fraudulently received from the Arkansas~~
4 ~~Medicaid program or its fiscal agents because of the act of that person,~~
5 ~~except that if the court finds the following:~~

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

10 ~~(B) The person fully cooperated with any Attorney~~
11 ~~General's investigation of the violation, and at the time the person~~
12 ~~furnished the Attorney General with the information about the violation;~~

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

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

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

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

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

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

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

36 ~~(2) If the defendant disagrees with the recommendation of the~~

1 ~~Attorney General, he or she shall be entitled to introduce evidence in~~
2 ~~mitigation of the amount recommended.~~

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

5
6 ~~20-77-904. Investigation by Attorney General.~~

7 ~~(a) If the Attorney General has reasonable cause to believe that a~~
8 ~~person has information or is in possession, custody, or control of any~~
9 ~~document or other tangible object relevant to an investigation or that would~~
10 ~~lead to the discovery of relevant information in an investigation for~~
11 ~~violation of this subchapter, the Attorney General may serve upon the person,~~
12 ~~before bringing any action in the circuit court, a written demand to appear~~
13 ~~and be examined under oath, to answer written interrogatories under oath, and~~
14 ~~to produce the document or object for inspection and copying. The demand~~
15 ~~shall:~~

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

19 ~~(2) Describe the nature of the conduct constituting the~~
20 ~~violation under investigation;~~

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

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

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

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

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

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

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

1 ~~enforce the demand.~~

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

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

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

12 ~~(e) If the person fails to comply with the order, the court may issue~~
13 ~~any of the following orders until the person complies with the order:~~

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

15 ~~(2) Granting injunctive relief against the person to whom the~~
16 ~~demand is issued to restrain the conduct which is the subject of the~~
17 ~~investigation; or~~

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

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

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

26

27 ~~20-77-905. Order compelling testimony or production of evidence—~~
28 ~~Immunity—Contempt.~~

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

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

1 ~~(2) After complying, the testimony or evidence or any~~
2 ~~information directly derived from the testimony or evidence shall not be used~~
3 ~~against the person in any proceeding or prosecution of a crime or offense~~
4 ~~concerning which he or she gave an answer or produced evidence under the~~
5 ~~court order.~~

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

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

13
14 ~~20-77-906. Evidence — Disclosure.~~

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

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

24 ~~(A) Confidentiality is waived by the person whose~~
25 ~~testimony is disclosed;~~

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

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

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

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

36 ~~(c) An investigator conducting an examination pursuant to this section~~

1 ~~may exclude from the place of examination any person except the person being~~
2 ~~examined and the person's counsel.~~

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

6
7 ~~20-77-907. Records.~~

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

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

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

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

25 ~~(2) No person shall be eligible to receive any payment from the~~
26 ~~program or its fiscal agents unless that person has authorized in writing the~~
27 ~~director to examine all records for the purpose of investigating whether any~~
28 ~~person may have committed the crime of Medicaid fraud or for use or for~~
29 ~~potential use in any legal, administrative, or judicial proceeding.~~

30 ~~(c) The Attorney General 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 or for use or potential use in any legal, administrative, or~~
34 ~~judicial proceeding.~~

35 ~~(d)(1) Records obtained by the director or the Attorney General~~
36 ~~pursuant to this subchapter shall be classified as confidential information~~

1 ~~and shall not be subject to outside review or release by any individual~~
2 ~~except when records are used or potentially to be used by any governmental~~
3 ~~entity in any legal, administrative, or judicial proceeding.~~

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

8
9 ~~20-77-908. False claims jurisdiction—Procedure.~~

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

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

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

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

26
27 ~~20-77-909. Injunctions against fraud.~~

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

34 ~~(2) The application for an ex parte order shall be in writing,~~
35 ~~furnish a reasonable basis for the granting of the proposed order, and~~
36 ~~demonstrate that an emergency exists which would support the granting of the~~

1 ~~motion.~~

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

11 ~~(2) If the order is granted, the respondent shall be granted a~~
12 ~~hearing no later than five (5) days after being notified of the property's~~
13 ~~seizure for the purpose of determining whether the order should be continued.~~

14 ~~(c) The burden at all stages of the proceeding shall be upon the state~~
15 ~~to prove by a preponderance of the evidence the necessity of the order of~~
16 ~~seizure.~~

17

18 ~~20-77-910.—Suspension of violators.~~

19 ~~The Director of the Department of Human Services may suspend or revoke~~
20 ~~the provider agreement between the Department of Human Services and the~~
21 ~~person in the event that the person is found guilty of violating the terms of~~
22 ~~this subchapter.~~

23

24 ~~20-77-911.—Reward for the detection and punishment of Medicaid fraud.~~

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

31 ~~(b) Upon disposition of any civil action relating to violations of~~
32 ~~this subchapter in which a penalty is recovered, the Attorney General may~~
33 ~~petition the court on behalf of a person who may have provided information~~
34 ~~which led to the detecting and bringing to trial and punishment persons~~
35 ~~guilty of Medicaid fraud to reward the person in an amount commensurate with~~
36 ~~the quality of information determined by the court to have been provided, in~~

~~accordance with the requirements of this subchapter.~~

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

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

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

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the statutes authorizing procedures for the recovery of false or fraudulent Medicaid claims are in immediate need of this revision to clarify ambiguities in the law; that an urgent need exists to permit the citizens of the state to help recover public funds and Medicaid moneys that have been wrongfully misappropriated and will otherwise be lost forever; and that the provisions of this act are essential to successful operations and activities of the Medicaid Fraud Control Unit of the Attorney General's Office and the Department of Human Services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

/s/J. Hutchinson