

Stricken language would be deleted from and underlined language would be added to present law.

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

As Engrossed: S3/15/11 S3/24/11

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

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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 are remedial in purpose and
11 intended not to punish, but to the extent possible make the State Treasury
12 whole for both the direct and indirect losses caused by the submission of
13 false or fraudulent claims resulting in payments by the state or state
14 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 or other property whether or not the State of Arkansas
25 has title to the money or other property that is:

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

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

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

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

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

6 (2) "Documentary material" includes:

7 (A) The original or a copy of:

8 (i) A book;

9 (ii) A record;

10 (iii) A report;

11 (iv) A memorandum;

12 (v) A paper;

13 (vi) A communication;

14 (vii) A tabulation;

15 (viii) A chart;

16 (ix) A document; or

17 (x) Data compilation stored in or accessible through
18 a computer or other information retrieval system, including instructions and
19 all other materials necessary to use or interpret the data compilation; and

20 (B) Any product of discovery, including:

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

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

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

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

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

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

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

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

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

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

8 (i) Has actual knowledge of the information;

9 (ii) Acts in deliberate ignorance of the truth or
10 falsity of the information; or

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

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

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

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

20 (A) An express or implied:

21 (i) Contractual relationship;

22 (ii) Grantor-grantee relationship; or

23 (iii) Licensor-licensee relationship;

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

25 (C) Statute, rule, or regulation; or

26 (D) The retention of an overpayment;

27 (8)(A) "Provider" means:

28 (i) An individual licensed or certified to provide
29 health care;

30 (ii) A licensed facility that provides health care
31 to individuals;

32 (iii) Any other person or entity that provides
33 health care, products, or services to a program recipient; or

34 (iv) A contractor, subcontractor, or vendor who
35 directly or indirectly provides the Department of Health or the Department of
36 Human Services or their recipients supplies, drugs, equipment, or services.

1 (B) "Provider" does not include a state agency that
2 receives grant funding from or through the Department of Health or the
3 Department of Human Services if that agency has in place a corporate
4 compliance program that meets departmental requirements;

5 (9) "Public body" means:

6 (A) The General Assembly or any other elected body;

7 (B) A member or an employee of the General Assembly or
8 other elected body;

9 (C) A state court;

10 (D) A member or an employee of a state court;

11 (E) A state or local regulatory, administrative, or public
12 agency or authority;

13 (F) An instrumentality of a state or local regulatory,
14 administrative, or public agency or authority;

15 (G) A state or local law enforcement agency, prosecutorial
16 office, or police or peace officer;

17 (H) A state or local department of an executive branch of
18 government; or

19 (I) A division, board, bureau, office, committee, or
20 commission of any of the public bodies listed in this subsection;

21 (10) "Retaliatory action" means:

22 (A) Discharging, suspending, demoting, threatening,
23 harassing, or discriminating against an employee, contractor, or agent; or

24 (B) Any other adverse action taken against an employee,
25 contractor, or agent relating to the conditions of employment, contract, or
26 agency;

27 (11)(A) "State health plan" means:

28 (i) The state medical assistance program
29 established:

30 (a) Under the ARKids First Program Act, § 20-
31 77-1101 et seq.; or

32 (b) In connection with the Arkansas Safety-net
33 Benefit Program under § 23-79-1001 et seq.;

34 (ii) A medical assistance plan established by the
35 state; or

36 (iii) A private health insurance carrier, health

1 maintenance organization, managed care organization, health care cooperative
2 or alliance, or another person that provides or contracts to provide health
3 care services that are wholly or partially reimbursed by, or are a required
4 benefit of a health plan established in accordance with:

5 (a) The federal Social Security Act of 1939;

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

9 (c) A state health program.

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

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

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

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

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

24
25 20-77-2004. Actions subject to discipline – Fines and penalties.

26 (a) A person shall not:

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

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

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

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

36 (5) If authorized to make or deliver a receipt or other document

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

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

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

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

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

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

20 (A) A civil penalty of not more than ten thousand dollars
21 (\$10,000) for each violation of subsection (a) of this section; and

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

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

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

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

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

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

1 (D) The person's history of billing compliance;
2 (E) Whether the person has a compliance program in place;
3 (F) The extent to which the person has taken steps to
4 address and correct the violation since the person became aware of the
5 violation;

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

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

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

18 (J) Any other factor as justice requires.

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

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

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

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

31
32 20-77-2005. Civil actions filed by state.

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

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

1 (1) The penalties provided under § 20-77-2004(b); and
2 (2) Subject to the guidelines set forth in § 20-77-2007(a)(4),
3 court costs and attorney's fees.

4
5 20-77-2006. Civil actions filed by persons – Intervention by Attorney
6 General – Stay of discovery.

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

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

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

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

14 (B) Subject to the guidelines set forth in § 20-77-
15 2004(a)(4), court costs and attorney's fees.

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

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

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

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

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

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

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

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

36 (ii) Served on the defendant in accordance with Rule

1 4 of the Arkansas Rules of Civil Procedure.

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

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

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

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

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

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

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

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

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

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

35 (2)(A) During an investigation by the Attorney General conducted
36 either independently or in conjunction with a civil action filed under this

1 subchapter, the Attorney General shall have the same rights of discovery as a
2 civil litigant in the circuit court under the Arkansas Rules of Civil
3 Procedure.

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

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

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

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

14 (ii) The court shall dismiss the action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (e) The state is not liable for expenses that a person incurs in

1 bringing an action under this section.

2
3 20-77-2007. Awards to or against persons initiating action when the
4 Attorney General intervenes.

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

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

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

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

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

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

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

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

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

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

33 (ii) Reasonable attorney's fees and costs.

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

1 justice may require.

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

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

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

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

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

15 (3)(A) If the person initiating a civil action under § 20-77-
16 2006 is convicted of criminal conduct arising from the person's participation
17 in the violation on which the action was based before a final determination
18 of the action, the person:

19 (i) Shall be dismissed from the action; and

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

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

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

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

31 (1) The defendant prevails in the action; and

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

35
36 20-77-2008. Civil actions by or against government employees – Other

1 proceedings.

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

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

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

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

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

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

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

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

27 (C) From the news media.

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

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

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

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

1 (e) A person who is or was employed by the state, a local government,
2 or any other political subdivision of the state as an auditor, investigator,
3 attorney, financial officer, or contracting officer may not bring an action
4 under § 20-77-2006 that is based on allegations or transactions that the
5 person discovered or learned of while acting in the person's capacity as an
6 auditor, investigator, attorney, financial officer, or contracting officer
7 for the state, local government, or other political subdivision of the state.

8
9 20-77-2009. Retaliatory actions against employees, contractors, or
10 grantees prohibited.

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

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

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

20 (3) Provides information to or testifies before a public body
21 conducting an investigation, hearing, or inquiry into a violation of § 20-77-
22 2004(a) or a rule adopted under this subchapter that is allegedly or actually
23 committed by the person; or

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

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

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

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

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

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

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

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

9 (F) Punitive damages;

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

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

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

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

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

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

22 (B) Any collective bargaining agreement or employee
23 contract.

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

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

29
30 20-77-2010. Notice to employees.

31 An employer shall:

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

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

36

1 20-77-2011. Limitations, pleadings, and burden of proof for civil
2 actions filed by the State of Arkansas.

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

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

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

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

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

18 (1) File its own complaint; or

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

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

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

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

36

1 20-77-2012. Remedies, coordination of investigations by the State of
2 Arkansas, and rules.

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

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

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

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

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

18
19 20-77-2013. Reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

12 (i) African American;

13 (ii) Hispanic American;

14 (iii) American Indian;

15 (iv) Asian American; or

16 (v) Pacific Islander American;

17 (3) A description of the violation or alleged violation of § 20-
18 77-2004; and

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

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

24 (1) A description of the violation or alleged violation of § 20-
25 77-2004;

26 (2) The resolution of the claim;

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

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

30
31 SECTION 2. Arkansas Code § 23-79-1002 is amended to read as follows:
32 23-79-1002. Medicaid demonstration initiative.

33 (a) Subject to obtaining all necessary federal approvals, including
34 approval of a demonstration waiver under section 1115 of the Social Security
35 Act as in effect January 1, ~~2003~~ 2011, the Department of Human Services may
36 administer the Health Insurance Flexibility and Accountability demonstration

1 initiative created ~~in § 23-79-1004~~ under this subchapter.

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

4
5 SECTION 3. Arkansas Code Title 20, Chapter 77, Subchapter 9 is
6 repealed.

7 ~~Subchapter 9—Medicaid Fraud False Claims Act~~

8 ~~20-77-901.—Definitions.~~

9 ~~As used in this subchapter:~~

10 (1) ~~“Arkansas Medicaid program” means the program authorized~~
11 ~~under Title XIX of the federal Social Security Act, which provides for~~
12 ~~payments for medical goods or services on behalf of indigent families with~~
13 ~~dependent children and of aged, blind, or disabled individuals whose income~~
14 ~~and resources are insufficient to meet the cost of necessary medical~~
15 ~~services;~~

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

25 (3) ~~“Fiscal agent” means any individual, firm, corporation,~~
26 ~~professional association, partnership, organization, or other legal entity~~
27 ~~which, through a contractual relationship with the Department of Human~~
28 ~~Services, the State of Arkansas receives, processes, and pays claims under~~
29 ~~the program;~~

30 (4) ~~“Knowing” or “knowingly” means that the person has actual~~
31 ~~knowledge of the information or acts in deliberate ignorance or reckless~~
32 ~~disregard of the truth or falsity of the information;~~

33 (5) ~~“Medicaid recipient” means any individual on whose behalf~~
34 ~~any person claimed or received any payment or payments from the program or~~
35 ~~its fiscal agents, whether or not the individual was eligible for benefits~~
36 ~~under the program;~~

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

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

9
10 ~~20-77-902. Liability for certain acts.~~

11 ~~A person shall be liable to the State of Arkansas, through the Attorney~~
12 ~~General, for a civil penalty and restitution if he or she:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~(b) In the case of an entity that is a~~
34 ~~provider of services as defined in § 20-9-101, the person discloses, in the~~
35 ~~form and manner as the Director of the Department of Human Services requires,~~
36 ~~to the entity and upon request to the director the amount received from each~~

1 ~~vendor with respect to purchases made by or on behalf of the entity; and~~

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

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

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

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

16 ~~(9) Knowingly:~~

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

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

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

33 ~~(11) Knowingly:~~

34 ~~(A) Participates, directly or indirectly, in the Arkansas~~
35 ~~Medicaid Program after having pleaded guilty or nolo contendere to or been~~
36 ~~found guilty of a charge of Medicaid fraud, theft of public benefits, or~~

1 ~~abuse of adults as defined in the Arkansas Criminal Code, § 5-1-101 et seq.,~~
2 ~~or~~

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

11
12 ~~20-77-903. Civil penalties.~~

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

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

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

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

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

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

36 ~~(b) In addition to any other penalties authorized herein, any person~~

1 ~~violating this subchapter shall also be liable to the State of Arkansas for~~
2 ~~the Attorney General's reasonable expenses, including the cost of~~
3 ~~investigation, attorney's fees, court costs, witness fees, and deposition~~
4 ~~fees.~~

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

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

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

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

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

21
22 ~~20-77-904. Investigation by Attorney General.~~

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

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

35 ~~(2) Describe the nature of the conduct constituting the~~
36 ~~violation under investigation;~~

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

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

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

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

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

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

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

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

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

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

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

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

31 ~~(2) Granting injunctive relief against the person to whom the~~
32 ~~demand is issued to restrain the conduct which is the subject of the~~
33 ~~investigation; or~~

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

35 ~~(d) The court may award to the Attorney General costs and reasonable~~
36 ~~attorney's fees as determined by the court against the person failing to obey~~

1 ~~the order.~~

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

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 not be used~~
19 ~~against the person in any proceeding or prosecution of a crime or offense~~
20 ~~concerning which he or she gave an answer or produced evidence under the~~
21 ~~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 ~~(e) 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 are required to~~
25 ~~maintain at the person's principal place of Medicaid business all records at~~
26 ~~least for a period of five (5) years from the date of claimed provision of~~
27 ~~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 or for use or for~~
9 ~~potential use in any legal, administrative, or judicial proceeding.~~

10 ~~(c) The Attorney General shall be allowed access to all records of~~
11 ~~persons and Medicaid recipients under the program to which the director has~~
12 ~~access for the purpose of investigating whether any person may have violated~~
13 ~~this subchapter or for use or potential use in any legal, administrative, or~~
14 ~~judicial proceeding.~~

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

20 ~~(2) Notwithstanding any other law to the contrary, no person~~
21 ~~shall be subject to any civil or criminal liability for providing access to~~
22 ~~records to the director, to the Attorney General, or to the prosecuting~~
23 ~~attorneys.~~

24
25 ~~20-77-908. False claims jurisdiction—Procedure.~~

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

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

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

35 ~~(d) A subpoena requiring the production of documents or the attendance~~
36 ~~of a witness at an interview, trial, or hearing conducted under this section~~

1 ~~may be served by the Attorney General or any duly authorized law enforcement~~
2 ~~officer in the State of Arkansas personally, telephonically, or by registered~~
3 ~~or certified mail. In the case of service by registered or certified mail,~~
4 ~~the return shall be accompanied by the return post office receipt of delivery~~
5 ~~of the demand.~~

6
7 ~~20-77-909.—Injunctions against fraud.~~

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

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

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

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

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

33
34 ~~20-77-910.—Suspension of violators.~~

35 ~~The Director of the Department of Human Services may suspend or revoke~~
36 ~~the provider agreement between the Department of Human Services and the~~

1 ~~person in the event that the person is found guilty of violating the terms of~~
2 ~~this subchapter.~~

3
4 ~~20-77-911. Reward for the detection and punishment of Medicaid fraud.~~

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

11 ~~(b) Upon disposition of any civil action relating to violations of~~
12 ~~this subchapter in which a penalty is recovered, the Attorney General may~~
13 ~~petition the court on behalf of a person who may have provided information~~
14 ~~which led to the detecting and bringing to trial and punishment persons~~
15 ~~guilty of Medicaid fraud to reward the person in an amount commensurate with~~
16 ~~the quality of information determined by the court to have been provided, in~~
17 ~~accordance with the requirements of this subchapter.~~

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

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

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

28
29 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that the statutes authorizing
31 procedures for the recovery of false or fraudulent Medicaid claims are in
32 immediate need of this revision to clarify ambiguities in the law; that an
33 urgent need exists to permit the citizens of the state to help recover public
34 funds and Medicaid moneys that have been wrongfully misappropriated and will
35 otherwise be lost forever; and that the provisions of this act are essential
36 to successful operations and activities of the Medicaid Fraud Control Unit of

1 the Attorney General's Office and the Department of Human Services.
2 Therefore, an emergency is declared to exist and this act being immediately
3 necessary for the preservation of the public peace, health, and safety shall
4 become effective on:

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

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

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

11
12 /s/J. Hutchinson
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