

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 248

5 By: Senator D. Sanders
6 By: Representative Westerman
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS MEDICAL ASSISTANCE
10 FRAUD PREVENTION PROGRAM; TO PROVIDE FOR THE ADOPTION
11 OF A MEDICAL ASSISTANCE FRAUD PREVENTION PROGRAM; TO
12 PROVIDE FOR DEFINITIONS; TO PROVIDE FOR
13 IMPLEMENTATION BY THE DEPARTMENT OF HUMAN SERVICES;
14 TO PROVIDE FOR IMPLEMENTATION OF A PILOT PROGRAM; TO
15 PROVIDE FOR PARTICIPATION; TO PROVIDE FOR A WAIVER;
16 TO PROVIDE FOR RELATED MATTERS; AND FOR OTHER
17 PURPOSES.
18

Subtitle

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21 TO CREATE THE ARKANSAS MEDICAL ASSISTANCE
22 FRAUD PREVENTION PROGRAM AND TO PROVIDE
23 FOR THE ADOPTION OF A MEDICAL ASSISTANCE
24 FRAUD PREVENTION PROGRAM.
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26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an
30 additional subchapter to read as follows:

31 Subchapter 21 – Arkansas Medical Assistance Fraud Prevention Program
32

33 20-77-2101. Title.

34 This subchapter shall be known and may be cited as the "Arkansas
35 Medical Assistance Fraud Prevention Program".
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1 20-77-2102. Definitions.

2 As used in this subchapter:

3 (1) "Care management organization" means an entity that is
4 organized for the purpose of providing or arranging health care that has been
5 granted a certificate of authority by the Insurance Commissioner as a health
6 maintenance organization and that has entered into a contract with the
7 Department of Human Services to provide or arrange health care services,
8 products, or both, on a prepaid, capitated basis to members;

9 (2)(A) "Claim" a request or demand, whether under a contract or
10 otherwise, for money, property, or services that is made to the Arkansas
11 Medicaid program, or to an officer, employee, fiscal intermediary, grantee or
12 contractor of the Arkansas Medicaid program, or to another person or entity
13 if the request of demand results in payments by the Arkansas Medicaid
14 program, if the Arkansas Medicaid program:

15 (i) Provides or will provide a portion of the money
16 or property requested or demanded; or

17 (ii) Will reimburse the contractor, grantee, or
18 other recipient for any portion of the money or property requested or
19 demanded.

20 (B) "Claim" includes a request or demand that is made orally, in
21 writing, electronically, or magnetically; and

22 (i) Identifies a product or service provided or
23 purported to have been provided within the State of Arkansas to a recipient
24 as reimbursable under the medical assistance program, without regard to
25 whether the money that is requested or demanded is paid;

26 (ii) States the income earned or expense incurred by
27 a provider in providing a product or a service and that is used to determine
28 a rate of payment under the medical assistance program; and

29 (iii) Has been generated at the point of transaction
30 and as a result of a recipient's participating in either biometric or
31 alternative method authentication;

32 (3) "Health care provider" means a person, partnership,
33 professional association, corporation, facility, or institution certified,
34 licensed, or registered by the State of Arkansas and that has contracted with
35 a care management organization to provide health care services, products, or
36 both, to a member;

1 (4) "Medicaid" means the program authorized under Title XIX of
2 the Social Security Act, 42 U.S.C. § 1396 et seq., that provides for payments
3 for medical goods or services on behalf of indigent families with dependent
4 children and of aged, blind, or disabled individuals whose income and
5 resources are insufficient to meet the cost of necessary medical services;

6 (5) "Medical assistance" means payment to a provider of a part
7 or all of the cost of a certain item of medical or remedial care or service
8 rendered by the provider to a recipient, if the items are rendered and
9 received in accordance with Medicaid regulations promulgated by the Secretary
10 Of Health And Human Services, all applicable laws of this state, the state
11 Medicaid plan, and rules of the Department of Human Services that are in
12 effect on the date on which the items are rendered;

13 (6) "Medical assistance card" means a Medicaid card used by a
14 recipient before the implementation of the smart card program under this
15 subchapter, and which will be replaced by smart cards under this subchapter
16 that shall identify an eligible recipient and his or her account numbers and
17 shall be used by recipients to obtain medical assistance for which payment by
18 the state shall be tendered;

19 (7) "Member" means a Medicaid or ARKids First A recipient who is
20 currently enrolled in a care management organization plan;

21 (8) "Multifactor authentication" means a security process in
22 which a user provides multiple means of identification, one (1) of which is a
23 token, such as a smart card, and the other of which is representative of who
24 the user is, such as a fingerprint or a photo;

25 (9) "ARKids First B" means the State of Arkansas's State
26 Children's Health Insurance Program established pursuant to Title XXI of the
27 federal Social Security Act;

28 (10) "Pilot program" means the front-end, proactive Arkansas
29 Medical Assistance Fraud Prevention Pilot Program implemented under this
30 subchapter before the state-wide rollout of the Arkansas Medical Assistance
31 Fraud Prevention Program;

32 (11) "Point of transaction" means the place and time at which a
33 recipient obtains a service or product from a provider, if the service or
34 product, or both is submitted as a claim to be paid by the state Medicaid
35 program under Title XIX of the federal Social Security Act;

36 (12) "Provider" means a health care provider or provider of

1 medical assistance;

2 (13) "Provider of medical assistance" means a person or
3 institution, public or private, including its employees, that participates in
4 the state Medicaid plan and that possesses all licenses, permits,
5 certificates, approvals, registrations, charters, and other forms of
6 permission issued by entities other than the Department of Human Services
7 that are required by law either to render health care services, products, or
8 both or to provide medical assistance for which federal financial
9 participation is available and which meets the further requirements for
10 participation prescribed by the Department of Human Services and which is
11 enrolled in the state Medicaid plan;

12 (14) "Recipient" means a member or a recipient of medical
13 assistance; and

14 (15) "Recipient of medical assistance" means a person who is
15 certified eligible for medical assistace under the state Medicaid plan to
16 have medical assistance paid on his or her behalf.

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18 20-77-2103. Arkansas Medical Assistance Fraud Prevention Pilot Program
19 – Creation.

20 (a) The Department of Human Services shall establish and administer
21 the Arkansas Medical Assistance Fraud Prevention Pilot Program.

22 (b) The department shall enter into an agreement with a third-party
23 vendor to implement and maintain the Arkansas Medical Assistance Fraud
24 Prevention Pilot Program.

25 (c)(1) Before a state-wide rollout of the Arkansas Medical Assistance
26 Fraud Prevention Program, the department shall conduct a front-end, proactive
27 medical assistance fraud prevention pilot program.

28 (2) The department shall determine the scope of the pilot
29 program and shall enter into an agreement with a third-party vendor to
30 develop and execute the pilot program.

31 (3) The department shall adopt rules to implement the pilot
32 program.

33 (d)(1) The department shall implement the pilot program for a minimum
34 of three (3) months, not to exceed a total of six (6) months, within seven
35 (7) counties chosen by the department.

36 (2)(A) The pilot program shall involve enrollment, distribution,

1 and use of a smart card by a recipient.

2 (B) If applicable, the smart card shall serve as a
3 replacement for a currently used medical assistance card.

4 (3) The pilot program shall involve the distribution of
5 fingerprint scanners and card readers at each provider location within the
6 designated counties.

7 (e) The department shall mandate participation in the pilot program by
8 all providers and recipients in the counties in which the pilot program is
9 conducted.

10 (f) The department shall implement the pilot program not later than
11 January 1, 2014.

12
13 20-75-2104. Arkansas Medical Assistance Fraud Prevention Program –
14 Creation.

15 (a) The Department of Human Services shall implement the Arkansas
16 Medical Assistance Fraud Prevention Program to address Medicaid fraud, waste,
17 and abuse.

18 (b) The program shall be designed to:

19 (1) Authenticate a provider at the point of transaction to
20 prevent phantom billing and other forms of provider fraud;

21 (2) Authenticate a recipient at the onset and completion of each
22 point of transaction to prevent card sharing and other forms of fraud;

23 (3) Deny ineligible persons at the point of transaction;

24 (4) Reduce the total amount of medical assistance expenditures
25 by reducing the average cost per recipient; and

26 (5) Secure and protect the personal identity and information of
27 recipients.

28 (c) The program shall include:

29 (1) Biometric fingerprint readers for authentication of a
30 recipient by a provider;

31 (2)(A) Biometric fingerprint scanners and card readers for real
32 time, multifactor authentication of a recipient's fingerprint template and
33 smart card.

34 (B) Biometric fingerprint scanners and card readers shall
35 be kept at the point of transaction with a provider;

36 (3) An image of the recipient stored on both a smart card and in

1 a data base;

2 (4) An information system for recording and reporting
3 authenticated transactions;

4 (5) An information system that interfaces with the state
5 database to determine eligibility of recipients;

6 (6) No requirement for preenrollment of recipients;

7 (7)(A) A secure finger-imaging system that is compliant with the
8 federal Health Insurance Portability and Accountability Act of 1996, Pub. L.
9 No. 104-191.

10 (B) The finger-imaging system shall store a fingerprint
11 template on a central host system for authentication purposes, rather than on
12 the smart card, to allow authentication in the event of a lost, stolen, or
13 forgotten card and to prevent Medicaid fraud associated with card
14 reproduction and card sharing.

15 (C) The finger-imaging system shall take a fingerprint
16 image and convert the finger print image into a fingerprint template
17 associated with a binary PIN number and store the fingerprint template,
18 rather than a fingerprint image, on the central host system.

19 (D) The finger-imaging system shall be designed to prevent
20 the fingerprint template from being converted into a fingerprint image;

21 (8)(A) A smart card for storage of a recipient's state benefit
22 information, insurance information, and other general health information.

23 (B) A smart card shall include a recipient's prescription
24 history information to assist in prevention of drug overutilization and to
25 mitigate costs and risks associated with prescription drugs.

26 (C) Sensitive information stored on a smart card shall be
27 separated into multiple parts and shall be encrypted, with one (1) part
28 stored on the host database;

29 (9) A smart card with the ability to store multiple recipients'
30 information on one (1) card; and

31 (10) A system that gathers analytical information to be provided
32 to a data-mining company to assist in data-mining processes.

33 (d) In implementing the program, the department may:

34 (1) Allow electronic prescribing services and prescription
35 database integration and tracking to prevent medical error through
36 information sharing and to reduce pharmaceutical abuse and lower health care

1 costs;

2 (2) Allow the program, including without limitation smart cards,
3 fingerprint scanners, and card readers, to be adapted for use by other state
4 programs administered by the department to reduce costs associated with the
5 necessity of multiple cards per recipient;

6 (3) Enter and store billing codes, deductible amounts, and bill
7 confirmations;

8 (4) Use an alternative method of authentication of recipients
9 when biometric fingerprint images cannot be used and as necessary to address
10 specific requirements for a waiver or authorization from the Centers for
11 Medicare and Medicaid Services; and

12 (5) Implement quick pay incentives for providers when electronic
13 prescribing services, electronic health records, electronic patient records,
14 or computerized patient records used by providers automatically synchronize
15 with recipients' smart cards and electronically submit a claim.

16 (e)(1) The department shall implement a statewide rollout of the
17 program after completion of a successful pilot program under § 20-77-2103.

18 (2) The pilot program shall be considered a success if it meets
19 the minimum criteria defined in subsections (b) and (c) of this section and
20 reduces the average monthly cost per recipient within the pilot program area
21 by a minimum of three percent (3%).

22 (3)(A) If the pilot program does not meet the minimum criteria
23 to be considered a success, the department may extend and revise the pilot
24 program as necessary and reevaluate the results.

25 (B) To evaluate the average monthly cost of a recipient
26 within the pilot program area and to develop a strategy necessary to achieve
27 the highest rate of savings to the state Medicaid plan, the department shall
28 analyze four (4) sample sets of figures for the pilot program, including:

29 (i)(a) Establishment of base figures.

30 (b) The department shall gather claims data
31 for a first sample set that includes all claims for the recipients in the
32 pilot program area and the average cost per recipient by provider type and
33 county from at least the prior year for the exact time period for all areas
34 in the pilot program;

35 (ii)(a) Adjustment of base figures for increase or
36 decrease in cost of services.

1 (b) To evaluate an increase or decrease in the
2 cost of services, the department shall gather a second sample set and shall
3 adjust the base figures of the first in relation to the second sample set.

4 (c) The second sample set of claims data shall
5 represent a rural area and an urban area not participating in the pilot
6 program, with as close as possible demographics similar to those of
7 recipients in the pilot program areas, including specific data relating to
8 sex, age, race, and ethnicity, county similarities, number of providers, and
9 the average cost per recipient.

10 (d) The department shall analyze the second
11 sample set the preceding year's figures by comparing to current year figures
12 for the same time frame and area to determine an increase or decrease in cost
13 of services.

14 (e) The second sample set shall not include
15 any major changes from the prior year to the current year that would change
16 the comparison, such as the introduction of managed care in the area.

17 (f) The increase or decrease in cost per
18 recipient from the second sample set shall be factored into the data set
19 determined under this subsection to derive an adjusted base figure or average
20 cost per recipient per month;

21 (iii)(a) Comparison of base figures to current
22 figures.

23 (b) A third sample set of data shall be
24 gathered reflecting the claims data of the recipients and the average cost
25 per recipient on a monthly basis during the pilot program by provider type.

26 (c) A comparison of the adjusted base figures
27 arrived at by the second sample set to the actual figures from the third
28 sample set shall determine how much the state saved by provider type.

29 (d) A recipient who leaves the pilot program
30 area to avoid fraud detection will be noted, thus, the third sample set will
31 be adjusted by claims derived outside of the pilot program area; and

32 (iv)(a) Recipient Surveying.

33 (b) The department shall obtain a fourth
34 sample set of data by sampling two percent (2%) of Medicaid recipients in the
35 pilot program area and shall survey the recipients before the beginning of
36 the pilot program to determine services used, frequency of services used, and

1 satisfaction with services used.

2 (c) The department shall repeat the survey
3 required under subdivision (e)(3)(B)(iv)(b) of this section at the completion
4 of the pilot program to rate the level of satisfaction of the pilot program.

5 (f)(1) The department shall adopt a plan to implement the program
6 statewide in phases.

7 (2) The plan shall include for each phase a description of the
8 policies and procedures:

9 (A) For handling lost, forgotten, or stolen cards or
10 situations in which a fingerprint match cannot be confirmed;

11 (B)(i) For distributing and activating smart cards for all
12 recipients.

13 (ii) The policies and procedures shall include a
14 simple step-by-step process that instructs a recipient in the process of
15 enrollment and initial use of smart cards at the recipient's primary care
16 provider and in the process of activating a smart card by providing a
17 fingerprint for association with their smart card.

18 (iii) The biometric fingerprint template shall be
19 stored on a host database and not on a recipient's smart card; and

20 (C)(i) For distributing and installing fingerprint
21 scanners and card readers within provider locations.

22 (ii) The procedures shall include shipping the
23 equipment to providers and providing simple step-by-step instructions for
24 installation of the equipment; and

25 (D) For enrolling recipients for participation in the
26 program.

27 (g) The department shall mandate participation in the program by all
28 providers and recipients as the program is rolled out.

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30 20-75-2105. Pilot program reports.

31 (a) The Department of Human Services, in preparation for implementing
32 the Arkansas Medical Assistance Fraud Prevention Pilot Program required under
33 this subchapter, shall submit a monthly report regarding the progress of
34 preimplementation of the pilot program to the Governor, the Lieutenant
35 Governor, the cochairs of the Legislative Council and the chair of the House
36 Committee on Public Health, Welfare, and Labor, and the chair of the Senate

1 Committee on Public Health, Welfare, and Labor.

2 (b)(1) Upon implementation of the pilot program, the department shall
3 submit a quarterly report to the Governor, the Lieutenant Governor, the
4 cochairs of the Legislative Council and the chair of the House Committee on
5 Public Health, Welfare, and Labor, and the chair of the Senate Committee on
6 Public Health, Welfare, and Labor.

7 (2) The first quarterly report shall include an evaluation of
8 the success of the pilot program.

9
10 20-75-2106. Interaction with federal law.

11 (a) This subchapter is intended to be consistent with the Social
12 Security Act, 42 U.S.C. § 1396 et seq.

13 (b) If a provision of this subchapter is found to be in conflict with
14 the Social Security Act, the provision is void.

15 (c) The Department of Human Services shall adopt rules to comply with
16 the requirements of the Social Security Act.

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18 20-75-2107. Referral to Attorney General.

19 The Department of Human Services shall refer a case of suspected fraud
20 under this subchapter to the Attorney General under § 5-55-106.

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