

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

# A Bill

HOUSE BILL 1256

5 By: Representative Westerman  
6 By: Senator D. Sanders  
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  
19

## Subtitle

20  
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.  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

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".  
36



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.

29  
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.

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 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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