

2 State of Arkansas  
3 90th General Assembly  
4 Regular Session, 2015

# A Bill

SENATE BILL 830

5  
6 By: Senator D. Sanders

7 Filed with: Senate Committee on Public Health, Welfare, and Labor  
8 pursuant to A.C.A. §10-3-217.

## 9 For An Act To Be Entitled

10 AN ACT TO CREATE THE ARKANSAS MEDICAID FALSE CLAIMS  
11 ACT OF 2015; AND FOR OTHER PURPOSES.

### 12 13 14 Subtitle

15 TO CREATE THE ARKANSAS MEDICAID FALSE  
16 CLAIMS ACT OF 2015.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20  
21 SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an  
22 additional subchapter to read as follows:

23 Subchapter 26 – Arkansas Medicaid False Claims Act of 2015

24  
25 20-77-2601. Title.

26 This subchapter shall be known and may be cited as the “Arkansas  
27 Medicaid False Claims Act of 2015”.

28  
29 20-77-2602. Definitions.

30 As used in this subchapter:

31 (1)(A) “Claim” means any request or demand, whether under a  
32 contract or otherwise, for money or property, that:

33 (i) Is presented to the Department of Human  
34 Services, or to any officer, employee, or agent of the department; or

35 (ii) Is presented to a provider, contractor,  
36 grantee, or other recipient, if the money or property is to be spent or used

1 on a Medicaid beneficiary's behalf or to advance a Medicaid program or  
2 interest, and:

3 (a) The department provides or has provided  
4 any portion of the money or property requested or demanded; or

5 (b) The department will reimburse such  
6 provider, contractor, grantee, or other recipient for any portion of the  
7 money or property which is requested or demanded.

8 (B) "Claim" includes without limitation any entry or  
9 omission in:

10 (i) A cost report or similar document;

11 (ii) A book of account; or

12 (iii) Any document which supports, or attempts to  
13 support, a claim.

14 (C) "Claim" does not include requests or demands for money  
15 or property that the department has paid to an individual as compensation for  
16 employment or as an income subsidy with no restrictions on that individual's  
17 use of the money or property;

18 (2) "Department" means the Department of Human Services and  
19 includes:

20 (A) The Department of Human Services;

21 (B) Any fiscal agent, contractor, or other agent employed  
22 by the Department of Human Services for the purpose of operating the state  
23 Medicaid program;

24 (C) Any quality improvement organization, quality  
25 improvement organization-like entity, utilization review entity, or other  
26 contractor employed by the department for the purpose of reviewing Medicaid  
27 claims or prior authorization requests;

28 (D) Any managed care organization employed by the  
29 Department of Human Services for the purpose of providing medical assistance;

30 (E) Any health insurance carrier receiving premium  
31 assistance payments from the Department of Human Services on behalf of a  
32 Medicaid beneficiary;

33 (F) The Office of Medicaid Inspector General; and

34 (G) The Medicaid Fraud Control Unit of the Attorney  
35 General's Office;

36 (3)(A) "Knowing" and "knowingly" mean that a person, with

1 respect to information:

2 (i) Has actual knowledge of the information;

3 (ii) Acts in deliberate ignorance of the truth or  
4 falsity of the information; or

5 (iii) Acts in reckless disregard of the truth or  
6 falsity of the information.

7 (B) "Knowing" and "knowingly" require no proof of specific  
8 intent to defraud;

9 (4) "Material" means having a natural tendency to influence, or  
10 be capable of influencing, the payment or receipt of money or property;

11 (5) "Medicaid" includes without limitation any medical  
12 assistance plan, waiver, or similar program operated or funded by the  
13 department, including without limitation a plan, waiver, or program  
14 authorized under Titles XIX or XXI of the Social Security Act;

15 (6) "Original source" means an individual who either:

16 (A) Prior to public disclosure, has voluntarily disclosed  
17 to the department or Attorney General the information on which allegations or  
18 transactions in a claim are based; or

19 (B) Has knowledge that is independent of and materially  
20 adds to any publicly disclosed allegations or transactions, and who has  
21 voluntarily provided the information to the department or Attorney General  
22 before filing an action under this subchapter;

23 (7) "Person" means any natural person, partnership, corporation,  
24 firm, association, political subdivision, or other legal or commercial  
25 entity; and

26 (8) "Public disclosure" and "Publicly disclosed" means  
27 disclosure of specific information:

28 (A) In a criminal, civil, or administrative hearing or  
29 proceeding other than the qui tam civil action under § 20-77-2606;

30 (B) In a congressional, administrative, Government  
31 Accountability Office, or other federal report, hearing, audit, or  
32 investigation;

33 (C) In a legislative, administrative, Division of  
34 Legislative Audit, or other state report, hearing, audit, or investigation;  
35 or

36 (D) From the news media.

1  
2 20-77-2603. Violations and liability.

3 A person is liable to the State of Arkansas for a violation of this  
4 subchapter if the person:

5 (1) Knowingly presents, or causes to be presented, a false or  
6 fraudulent Medicaid claim for payment or approval;

7 (2) Knowingly makes, uses, or causes to be made or used, a false  
8 record or statement material to a false or fraudulent Medicaid claim;

9 (3) Knowingly makes, uses, or causes to be made or used, a false  
10 record or statement material to an obligation to pay or transmit a Medicaid  
11 overpayment, recoupment, or penalty to the Department of Human Services;

12 (4) Knowingly conceals or knowingly and improperly avoids or  
13 decreases an obligation to pay or transmit a Medicaid overpayment,  
14 recoupment, or penalty to the department;

15 (5) Commits any violation for which liability is defined in §  
16 20-77-902; or

17 (6) Conspires to commit a violation set forth in any subsection  
18 of this section.

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20 20-77-2604. Civil action by Attorney General.

21 (a) The Attorney General diligently shall investigate a violation  
22 under this subchapter.

23 (b) If the Attorney General finds that a person has violated or is  
24 violating this subchapter, the Attorney General may bring a civil action  
25 against the person.

26  
27 20-77-2605. Damages.

28 (a) If a person is found liable to the State of Arkansas in a civil  
29 action or qui tam civil action under § 20-77-2606, the court shall:

30 (1) Assess a civil penalty, payable to the State of Arkansas, of  
31 not less than five thousand dollars (\$5,000) and no more than twenty-five  
32 thousand dollars (\$25,000);

33 (2) Award to the Attorney General an amount for reasonable  
34 expenses which the court finds to have been necessarily incurred, plus  
35 reasonable attorneys' fees and costs; and

36 (3)(A) Award as liquidated damages treble the amount of damages

1 which the Department of Human Services sustains because of the act of the  
2 person held liable.

3 (B) The liquidated damages award, minus any portion  
4 payable to a person bringing a qui tam civil action under this subchapter,  
5 shall be payable to the department.

6 (b) The court may reduce the liquidated damages awarded under  
7 subdivision (a)(2) of this section to an amount not less than double the  
8 amount of damages which the department sustained because of the act of the  
9 person held liable, if:

10 (1) The person held liable furnished officials of the department  
11 responsible for investigating false claims violations with all information  
12 known to such person about the violation within thirty (30) days after the  
13 date on which the defendant first obtained the information;

14 (2) The person fully cooperated with any department  
15 investigation of such violation; and

16 (3) At the time the person furnished the department with the  
17 information about the violation, no criminal prosecution, civil action, qui  
18 tam civil action, or administrative action had commenced with respect to such  
19 violation, and the person did not have actual knowledge of the existence of  
20 an investigation into such violation.

21 (c) Any civil penalty awarded under subdivision (a)(1) of this section  
22 shall be credited as special revenues of the State of Arkansas and deposited  
23 into the Arkansas Medicaid Program Trust Fund.

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25 20-77-2606. Qui tam civil action – Complaint – Intervention.

26 (a)(1) A person may bring a qui tam civil action for a violation of  
27 this subchapter for the person and for the State of Arkansas.

28 (2) The action shall be brought in the name of the State of  
29 Arkansas.

30 (3) The action may be dismissed only if the court and the  
31 Attorney General give written consent to the dismissal and their reasons for  
32 consenting.

33 (b)(1) A copy of the complaint and written disclosure of substantially  
34 all material evidence and information the person possesses shall be served on  
35 the Attorney General and the Department of Human Services pursuant to the  
36 Arkansas Rules of Civil Procedure.

1           (2) The complaint shall:

2                   (A) Be filed in camera;

3                   (B) Remain under seal for at least sixty (60) days, and

4                   (C) Not be served on the defendant until the court so  
5 orders.

6           (3) So long as the complaint remains under seal, both the  
7 complaint and the material evidence and information are exempt from the  
8 Freedom of Information Act of 1967, § 25-19-101 et seq.

9           (4) The Attorney General may elect to intervene and proceed with  
10 the action within sixty (60) days after receiving both the complaint and the  
11 material evidence and information.

12           (c)(1) The Attorney General may, for good cause shown, move the court  
13 for extensions of the time during which the complaint remains under seal  
14 under this section.

15                   (2) Any such motions may be supported by affidavits or other  
16 submissions in camera.

17           (3) Before the expiration of the sixty-day period or any  
18 extensions obtained under this subsection, the Attorney General shall:

19                   (A) Proceed with the action, in which case the action  
20 shall be conducted by the Attorney General; or

21                   (B) Notify the court that it declines to take over the  
22 action, in which case the person bringing the action shall have the right to  
23 conduct the action.

24           (d) When a person brings an action under this section, no person other  
25 than the Attorney General or the department may intervene or bring a related  
26 action based on the facts underlying the pending action.

27           (e) The time within which the defendant is required to respond to a  
28 complaint filed under this section shall not begin to run until the complaint  
29 is unsealed and served upon the defendant pursuant to the Arkansas Rules of  
30 Civil Procedure.

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32           20-77-2607. Qui tam civil action – Rights of the parties.

33           (a) If the Attorney General proceeds with the qui tam civil action:

34                   (1)(A) The Attorney General shall have the primary  
35 responsibility for prosecuting the action, and shall not be bound by an act  
36 of the person bringing the action.

1                   (B) The person shall have the right to continue as a party  
2 to the action, subject to the limitations set forth in this section;

3                   (2)(A) The Attorney General may dismiss the action  
4 notwithstanding the objections of the person initiating the action if the  
5 person has been notified by the Attorney General of the filing of the motion  
6 and the court has provided the person with an opportunity for a hearing on  
7 the motion.

8                   (B)(i) The Attorney General may settle the action with the  
9 defendant notwithstanding the objections of the person initiating the action  
10 if the court determines, after a hearing, that the proposed settlement is  
11 fair, adequate, and reasonable under all the circumstances.

12                   (ii) Upon a showing of good cause, such hearing may  
13 be held in camera;

14                   (3) Upon a showing by the Attorney General that unrestricted  
15 participation during the course of the litigation by the person initiating  
16 the action would interfere with or unduly delay the Attorney General's  
17 prosecution of the case, or would be repetitious, irrelevant, or for purposes  
18 of harassment, the court may, in its discretion, impose limitations on the  
19 person's participation, including without limitation:

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

21                   (B) Limiting the length of the testimony of such  
22 witnesses;

23                   (C) Limiting the person's cross-examination of witnesses;  
24 or

25                   (D) Otherwise limiting the participation by the person in  
26 the litigation;

27                   (4) Upon a showing by the defendant that unrestricted  
28 participation during the course of the litigation by the person initiating  
29 the action would be for purposes of harassment or would cause the defendant  
30 undue burden or unnecessary expense, the court may limit the participation by  
31 the person in the litigation; and

32                   (5)(A) The Attorney General may file his or her own complaint,  
33 or amend the complaint filed by the person who originally brought the action,  
34 to clarify or add detail to the claims in which the Attorney General is  
35 intervening and to add any additional claims with respect to which the  
36 Attorney General contends it is entitled to relief.

1                   (B) For statute of limitations purposes, a new or amended  
2 complaint by the Attorney General shall relate back to the filing date of the  
3 complaint of the person who originally brought the action, to the extent that  
4 the claim of the Attorney General arises out of the conduct, transactions, or  
5 occurrences set forth, or attempted to be set forth, in the prior complaint  
6 of that person.

7                   (b) If the Attorney General elects not to proceed with the qui tam  
8 civil action:

9                   (1) The person who initiated the action shall have the right to  
10 conduct the action;

11                   (2) Upon request, the Attorney General shall be served with  
12 copies of all pleadings filed in the action;

13                   (3) Upon request, the Attorney General shall be supplied with  
14 copies of all deposition transcripts, at the Attorney General's expense; and

15                   (4) When a person proceeds with the action, the court, without  
16 limiting the status and rights of the person initiating the action, may  
17 nevertheless permit the Attorney General to intervene at a later date upon a  
18 showing of good cause.

19                   (c)(1) The Attorney General or the department, or both, may elect to  
20 pursue its claim through any alternate remedy available, including any  
21 administrative proceeding to determine a recoupment, civil money penalty, or  
22 other adverse action.

23                   (2) If any such alternate remedy is pursued in another  
24 proceeding, the person initiating the action shall have the same rights in  
25 the proceeding as a person would have had if the action had continued under  
26 this subchapter.

27                   (3)(A) Any finding of fact or conclusion of law made in other  
28 proceedings that has become final shall be conclusive on all parties to an  
29 action under this subchapter.

30                   (B) A finding or conclusion is final if:

31                   (i) The finding or conclusion has been finally  
32 determined on appeal to the appropriate court;

33                   (ii) The time for filing an appeal with respect to  
34 the finding or conclusion has expired; or

35                   (iii) The finding or conclusion is not subject to  
36 judicial review.



1        (d) Notwithstanding any other provision of law, rule of procedure, or  
2 rule of evidence, a final judgment rendered in favor of the state or in favor  
3 of the United States in any criminal proceeding charging fraud or false  
4 statements, whether upon a verdict after trial or upon a plea of guilty or  
5 nolo contendere, shall prevent the defendant from denying the essential  
6 elements of the offense in any action which involves the same transaction as  
7 in the criminal proceeding and which is brought under this subchapter.

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9        20-77-2608. Qui tam civil action – Interference with investigation.

10        (a)(1) Upon a showing by the Attorney General, the department, or a  
11 law enforcement agency that certain actions of discovery by the person  
12 initiating the action would interfere with an investigation or prosecution of  
13 a criminal or civil matter arising out of the same facts, the court may stay  
14 such discovery for a period of not more than sixty (60) days.

15                (2) A showing shall be conducted in camera.

16                (3) The court may extend the sixty-day period upon a further  
17 showing in camera that:

18                        (A) The Attorney General, department, or law enforcement  
19 agency has pursued the criminal or civil investigation or proceedings with  
20 reasonable diligence; and

21                        (B) Any proposed discovery in the qui tam civil action  
22 will interfere with the ongoing criminal or civil investigation or  
23 proceedings.

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25        20-77-2609. Qui tam civil action – Award to qui tam plaintiff.

26        (a)(1) If the Attorney General proceeds with a qui tam civil action  
27 brought by a person under this subchapter, such person shall, except as  
28 provided in subdivision (a)(2) of this subsection, receive at least fifteen  
29 percent (15%) but not more than twenty-five percent (25%) of the proceeds of  
30 the action or settlement of the claim, depending upon the extent to which the  
31 person substantially contributed to the prosecution of the action.

32                (2) Where the action is one which the court finds to be based  
33 primarily on publicly disclosed information other than information provided  
34 by the person bringing the action, the court may award such sums as it  
35 considers appropriate, but in no case more than ten percent (10%) of the  
36 proceeds, taking into account the significance of the information and the

1 role of the person bringing the action in advancing the case to litigation.

2 (3) Any payment to a person under this subsection shall be made  
3 from the settlement proceeds or from the liquidated damages awarded under  
4 this subchapter.

5 (b)(1) If the Attorney General does not proceed with a qui tam civil  
6 action brought by a person under § 20-77-2606, the person bringing the action  
7 or settling the claim shall receive at least twenty-five percent (25%) but  
8 not more than thirty percent (30%) of the proceeds of the action or  
9 settlement of the claim, as the court decides is reasonable for collecting  
10 the civil penalty and damages.

11 (2) Any payment to a person under this subsection shall be made  
12 from the settlement proceeds or from the liquidated damages awarded under  
13 this subchapter.

14 (c)(1) A person who brings a qui tam civil action under this  
15 subchapter may also receive an amount for reasonable expenses which the court  
16 finds to have been necessarily incurred, plus reasonable attorney's fees and  
17 costs.

18 (2) All expenses, fees, and costs shall be awarded against the  
19 defendant.

20 (d)(1) If the court finds that a qui tam civil action under this  
21 subchapter was brought by a person who planned and initiated the violation  
22 upon which the action was brought, then the court may, to the extent the  
23 court considers appropriate, reduce the share of the proceeds of the action  
24 which the person would otherwise receive, taking into account the role of  
25 that person in advancing the case to litigation and any relevant  
26 circumstances pertaining to the violation.

27 (2)(A) If the person bringing the action is convicted of  
28 criminal conduct arising from his or her role in the violation, that person  
29 shall be dismissed from the action and shall not receive any share of the  
30 proceeds of the action.

31 (B) The dismissal shall not prejudice the right of the  
32 Attorney General to continue the action.

33 (e) If the Attorney General does not proceed with the action and the  
34 person bringing the action conducts the action, the court may award to the  
35 defendant its reasonable attorneys' fees and expenses if:

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

1           (2) The court finds that the claim of the person bringing the  
2 action was clearly frivolous, clearly vexatious, or brought primarily for  
3 purposes of harassment.

4  
5           20-77-2610. Qui tam civil actions – Certain actions barred –  
6 Limitations.

7           (a) A person shall not bring an action under § 20-77-2606 that is  
8 based upon allegations or transactions that are the subject of a civil suit  
9 or an administrative proceeding in which the department or the Attorney  
10 General is already a party.

11           (b) The court shall dismiss an action under § 20-77-2606, unless  
12 opposed by the Attorney General, if substantially the same allegations or  
13 transactions as alleged in the action or claim were publicly disclosed,  
14 unless the action is brought by the Attorney General or the person bringing  
15 the action is an original source of the information.

16           (c) An action under § 20-77-2606 shall not be brought by:

17                   (1) An employee or a fiscal agent of the department charged with  
18 the duty of referring or investigating cases of Medicaid fraud; or

19                   (2) An employee of a department fiscal agent or other contractor  
20 charged with the duty of referring or investigating cases of Medicaid fraud.

21           (d) A civil action or qui tam civil action brought under this  
22 subchapter must be commenced before the later of:

23                   (1) Six (6) years after the date on which the violation is  
24 committed; or

25                   (2) Three (3) years after the date when facts material to the  
26 right of action are known or reasonably should have been known by the  
27 official of the department charged with the responsibility to act in the  
28 circumstances, but in no event more than ten (10) years after the date on  
29 which the violation is committed.

30  
31           20-77-2611. Qui tam civil actions – Relief from retaliatory actions.

32           (a) An employee, contractor, or agent shall be entitled to all relief  
33 necessary to make that employee, contractor, or agent whole, if that  
34 employee, contractor, or agent is discharged, demoted, suspended, threatened,  
35 harassed, or in any other manner discriminated against in the terms and  
36 conditions of employment because of lawful acts done by the employee,

1 contractor, agent or associated others in furtherance of an action under this  
2 subchapter or other efforts to stop one (1) or more violations of this  
3 subchapter.

4 (b) Relief under this section shall include:

5 (1) Reinstatement with the same seniority status that employee,  
6 contractor, or agent would have had but for the discrimination; and

7 (2) Double the amount of back pay, interest on the back pay, and  
8 compensation for any special damages sustained as a result of the  
9 discrimination, including litigation costs and reasonable attorneys' fees.

10 (c) An action under this section may be brought no more than three (3)  
11 years after the date when the retaliation occurred.

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14 Referred by the Arkansas Senate

15 Prepared by: VJF  
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