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3 94th General Assembly
4 Regular Session, 2023

A Bill

SENATE BILL 518

5
6 By: Senator Irvin

7 Filed with: Senate Committee on Judiciary
8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT TO AMEND THE MEDICAID FRAUD ACT AND THE
11 MEDICAID FRAUD FALSE CLAIMS ACT; TO UPDATE LANGUAGE
12 AND DEFINITIONS TO REFLECT CHANGES WITHIN THE
13 HEALTHCARE SYSTEM; TO MAKE DEFINITIONS AND LANGUAGE
14 CONSISTENT BETWEEN THE MEDICAID FRAUD ACT AND THE
15 MEDICAID FRAUD FALSE CLAIMS ACT; TO REDUCE CIVIL
16 PENALTIES TO BE CONSISTENT WITH FEDERAL LAW; TO
17 ENHANCE A SENTENCE IF THE MEDICAID FRAUD CAUSES
18 PHYSICAL INJURY OR DEATH; AND FOR OTHER PURPOSES.

21 Subtitle

22 TO AMEND THE MEDICAID FRAUD ACT AND THE
23 MEDICAID FRAUD FALSE CLAIMS ACT; AND TO
24 UPDATE LANGUAGE AND DEFINITIONS TO
25 REFLECT CHANGES WITHIN THE HEALTHCARE
26 SYSTEM; .

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

30
31 SECTION 1. Arkansas Code § 5-55-102(2), concerning the definition of
32 "claim" within the Medicaid Fraud Act, is amended to read as follows:

33 (2)(A) "Claim" means any ~~written or electronically submitted~~
34 ~~request or demand for reimbursement or payment made by any Medicaid provider~~
35 ~~to the Arkansas Medicaid Program, a managed care organization, or any fiscal~~
36 ~~agent of the Arkansas Medicaid Program or a managed care organization for~~

~~each good or service purported to have been provided to any Medicaid recipient and all documentation required to be created or maintained by law or rule to justify, support, approve, or document the delivery of healthcare goods or services to a Medicaid recipient as a condition of participation in the Arkansas Medicaid Program as mandated by the Arkansas Medicaid Program provider agreement, rules, or managed care contract request or demand for money or property, regardless of whether under a contract, that:~~

(i) Is presented to an officer, employee, agent, or fiscal agent of the Arkansas Medicaid Program; and

(ii) Is made to a contractor, grantee, or other recipient if:

(a) The money or property is spent or used on behalf of the Arkansas Medicaid Program or to advance the Arkansas Medicaid Program or its interest; and

(b) The Arkansas Medicaid Program:

(1) Provides or has provided any portion of the money or property requested or demanded; or

(2) Is reimbursing the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

(B) "Claim" includes:

(i) Billing documentation;

(ii) All documentation required to be created or maintained by law or rule to justify, support, or document the delivery of healthcare goods or services to a Medicaid recipient;

(iii) All documentation submitted to justify or help establish a unit rate, capitated rate, or other method of determining what is to be paid for healthcare goods and services to a Medicaid recipient; and

(iv) All transactions in payment for healthcare goods and services delivered or claimed to have been delivered to a Medicaid recipient under the Arkansas Medicaid Program, regardless of whether the state has title to the money or property or has transferred responsibility for delivering healthcare goods or services to another legal entity;

SECTION 2. Arkansas Code § 5-55-102(4) and (5), concerning the definitions within the Medicaid Fraud Act, are amended to read as follows:

1 ~~(4)(A) “Illegal Medicaid participation” means participation in~~
2 ~~the Arkansas Medicaid Program when the individual or organization is~~
3 ~~suspended from the Arkansas Medicaid Program or on a state or federal~~
4 ~~excluded Medicaid provider list.~~

5 ~~(B) “Illegal Medicaid participation” includes without~~
6 ~~limitation when a suspended or excluded individual or organization:~~

7 ~~(i) Is employed or contracting with a Medicaid~~
8 ~~provider or managed care organization or otherwise associated with a Medicaid~~
9 ~~provider or managed care organization for the purpose of providing or~~
10 ~~supervising the provision of goods and services to Medicaid recipients;~~

11 ~~(ii) Plays any role in the management of a Medicaid~~
12 ~~provider directly as a manager or management company or indirectly as a~~
13 ~~consultant or advisor; or~~

14 ~~(iii) Receives payment for administrative and~~
15 ~~management services directly or indirectly related to patient care such as~~
16 ~~processing Medicaid claims for payment, attending to services that assist or~~
17 ~~support Medicaid recipients, or acting as a Medicaid consultant or advisor;~~

18 ~~(5)(4)~~ “Managed care organization” means a health insurer,
19 Medicaid provider, or other business entity authorized by state law or
20 through a contract with the state to receive a fixed or capitated rate or fee
21 to manage all or a portion of the delivery of healthcare goods or services to
22 Medicaid recipients;

23 (5) "Material" means having a natural tendency to influence, or
24 to be capable of influencing, the payment or receipt of money or property and
25 includes without limitation a false statement, omission, or representation if
26 the false statement, omission, or representation is likely to induce or cause
27 the Arkansas Medicaid Program to pay, approve, or act in a particular way;
28

29 SECTION 3. Arkansas Code § 5-55-102(8) and (9), concerning the
30 definitions within the Medicaid Fraud Act, are amended to read as follows:

31 (8) "Overpayment" means the full amount of the Medicaid funds
32 obtained as a direct or indirect result of a violation of Medicaid fraud, §
33 5-55-111, § 20-77-902, the rules of the Arkansas Medicaid Program, or a
34 managed care provider contract;

35 (9) “Person” means any:

1 (A) Medicaid provider of goods or services under the
2 Arkansas Medicaid Program or any employee of the Medicaid provider,
3 independent contractor of the Medicaid provider, contractor of the Medicaid
4 provider, or subcontractor of the Medicaid provider, whether the Medicaid
5 provider be an individual, individual medical vendor, firm, corporation,
6 professional association, partnership, organization, risk-based provider
7 organization, managed care organization, or other legal entity; or

8 (B) Individual, individual medical vendor, firm,
9 corporation, professional association, partnership, organization, risk-based
10 provider organization, managed care organization, or other legal entity, or
11 any employee of any individual, individual medical vendor, firm, corporation,
12 professional association, partnership, organization, risk-based provider
13 organization, managed care organization, or other legal entity, not a
14 Medicaid provider under the Arkansas Medicaid Program but that provides goods
15 or services to a Medicaid provider under the Arkansas Medicaid Program for
16 which the Medicaid provider submits claims to the Arkansas Medicaid Program
17 or its fiscal agents; ~~and~~

18 ~~(9)(A)(10)~~ "Records" means all documents that disclose the
19 nature, extent, and level of healthcare goods and services provided to
20 Medicaid recipients-, including without limitation:

21 (A) Images, slides, film, video, and similar physical and
22 digital files resulting from common diagnostic testing such as

23 ~~(B) "Records" include X-rays, magnetic resonance imaging~~
24 ~~scans, computed tomography scans, computed axial tomography scans,~~
25 ~~ultrasounds, and other diagnostic imaging commonly used and retained as part~~
26 ~~of the medical records of a patient tools;~~

27 (B) Records documenting treatment administration,
28 medication administration, and activities of daily living; and

29 (C) All financial reports, cost reports, disclosure forms,
30 and other Medicaid records submitted or required to be retained in any rate
31 development or review process, reconciliation process, or actuarial process
32 required by the rules of Arkansas Medicaid Program or state law;

33 (11) "Serious physical injury" means a physical injury to a
34 person that:

35 (A) Creates a substantial risk of death; or

36 (B) Causes:

- 1 (i) Protracted disfigurement;
- 2 (ii) Protracted impairment of health; or
- 3 (iii) Loss or protracted impairment of the function
- 4 of any bodily member or organ; and

5 (12)(A) “Unlawful Medicaid participation” means participation in
 6 the Arkansas Medicaid Program when an individual or organization is suspended
 7 from the Arkansas Medicaid Program or is on a state or federal excluded
 8 Medicaid provider list.

9 (B) “Unlawful Medicaid participation” includes without
 10 limitation when a suspended or excluded individual or organization:

11 (i) Is employed or contracting with a Medicaid
 12 provider or managed care organization or otherwise associated with a Medicaid
 13 provider or managed care organization for the purpose of providing or
 14 supervising the provision of goods and services to Medicaid recipients;

15 (ii) Plays any role in the management of a Medicaid
 16 provider directly as a manager or management company or indirectly as a
 17 consultant or advisor; or

18 (iii) Receives payment for administrative and
 19 management services directly or indirectly related to patient care such as
 20 processing Medicaid claims for payment, attending to services that assist or
 21 support Medicaid recipients, or acting as a Medicaid consultant or advisor.

22
 23 SECTION 4. Arkansas Code § 5-55-103 is amended to read as follows:
 24 5-55-103. Unlawful acts – Classification.

25 (a)(1) It is unlawful for any person to commit Medicaid fraud as
 26 prohibited by § 5-55-111.

27 ~~(b)~~(2) Medicaid fraud is a:

28 (A) Class D felony if the aggregate amount of overpayment
 29 resulting from a violation of Medicaid fraud, § 5-55-111 is one thousand
 30 dollars (\$1,000) or more but less than two thousand five hundred dollars
 31 (\$2,500);

32 ~~(1)~~(B) Class C felony if the aggregate amount of payments
 33 illegally claimed overpayment resulting from a violation of Medicaid fraud, §
 34 5-55-111 is two thousand five hundred dollars (\$2,500) or more but less than
 35 five thousand dollars (\$5,000);

1 ~~(2)(C)~~ Class B felony if the aggregate amount of ~~payments~~
2 ~~illegally claimed overpayment resulting from a violation of Medicaid fraud, §~~
3 ~~5-55-111~~ is five thousand dollars (\$5,000) or more but less than twenty-five
4 thousand dollars (\$25,000); ~~and~~

5 ~~(3)(D)~~ Class A felony if the aggregate amount of ~~payments~~
6 ~~illegally claimed overpayment resulting from a violation of Medicaid fraud, §~~
7 ~~5-55-111~~ is twenty-five thousand dollars (\$25,000) or more; ~~or~~

8 (E) Class A misdemeanor if the aggregate amount of
9 ~~overpayment resulting from a violation of Medicaid fraud, § 5-55-111 is less~~
10 ~~than one thousand dollars (\$1,000).~~

11 ~~(e) Otherwise, Medicaid fraud is a Class A misdemeanor.~~

12 (3)(A) It is unlawful to submit claims as prohibited by any
13 provision of § 5-55-111.

14 (B) If a claim is submitted as prohibited by Medicaid
15 fraud, § 5-55-111, but not paid, the state may bring a charge of attempt to
16 commit Medicaid fraud, § 5-55-111, in accordance with § 5-3-201.

17 (4)(A) The classification of Medicaid fraud, § 5-55-111, is
18 enhanced one (1) classification level if the Medicaid fraud, § 5-55-111,
19 causes serious physical injury to or the death of a Medicaid recipient.

20 (B) To seek the enhanced penalty permitted by this
21 section, the state shall charge the enhancement in the information or
22 indictment.

23 (b)(1) It is unlawful to fail to maintain records or documentation
24 required by the rules of the Arkansas Medicaid Program.

25 (2) A violation of subdivision (b)(1) of this section is a Class
26 D felony if the unavailability of records impairs or obstructs the
27 prosecution of a felony or a civil action under § 20-77-901 et seq. or the
28 Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et
29 seq.

30 (c)(1) A single scheme or a series of similar violations of this
31 subchapter is a continuing course of conduct offense that may be treated and
32 charged as a single violation.

33 (2)(A) A charge based on aggregated acts of Medicaid fraud, § 5-
34 55-111, may be brought in any county where one (1) of the alleged acts
35 occurred or in Pulaski County.

1 (B) If there are different fraudulent schemes or
2 fraudulent acts involving different defendants, the charges may be brought
3 separately in any county where one (1) of the alleged acts occurred or in
4 Pulaski County.

5
6 SECTION 5. Arkansas Code § 5-55-104(c)-(i), concerning records related
7 to Medicaid fraud within the Medicaid Fraud Act, are amended to read as
8 follows:

9 ~~(c) The Attorney General and the prosecuting attorneys are allowed~~
10 ~~access to all records of persons and Medicaid recipients under the Arkansas~~
11 ~~Medicaid Program to which the secretary has access for the purpose of~~
12 ~~investigating whether any person may have committed the crime of Medicaid~~
13 ~~fraud or for use or potential use in any legal, administrative, or judicial~~
14 ~~proceeding.~~

15 ~~(d) Notwithstanding any other law to the contrary, no person is~~
16 ~~subject to any civil or criminal liability for providing access to records to~~
17 ~~the secretary, the Attorney General, or the prosecuting attorneys.~~

18 ~~(e) Records obtained by the secretary, the Attorney General, or the~~
19 ~~prosecuting attorneys pursuant to this subchapter are classified as~~
20 ~~confidential information and are not subject to outside review or release by~~
21 ~~any individual except when records are used or potentially to be used by any~~
22 ~~government entity in any legal, administrative, or judicial proceeding.~~

23 ~~(f)(1)(c)(1)~~ A Medicaid provider or person providing healthcare goods
24 or services under the Arkansas Medicaid Program shall:

25 (A) Comply with the retention requirements established by
26 the rules of the Arkansas Medicaid Program for all records; and

27 (B) Maintain ~~is required to maintain~~ all records at least
28 for a period of not less than five (5) years from the date of claimed
29 provision of any goods or services to any Medicaid recipient.

30 (2)(A) The records described in subdivision ~~(f)(1)~~ (c)(1) of
31 this section shall be available for audit during regular business hours at
32 the address listed in the Medicaid provider agreement or where the healthcare
33 goods or services are provided.

34 (B) Closed records for inactive patients or clients may be
35 maintained in offsite storage if:

1 (i) The records can be produced within three (3)
2 working days of being served with a request for records, subpoena, or other
3 lawful notice from any agency with authority to audit the records; and

4 (ii) The records are maintained within the state.

5 (C) A Medicaid provider shall disclose upon request by the
6 Arkansas Medicaid Program, the Office of Medicaid Inspector General, or the
7 Medicaid Fraud Control Unit the location of any offsite storage facility or
8 server and the contact information of the person or company that manages the
9 storage facility or server ~~to any agency with authority to audit the records.~~

10 (3) If the healthcare goods or services are provided in the home
11 of the Medicaid recipient, the records shall be maintained at the principal
12 place of business of the Medicaid provider.

13 (4) If a Medicaid provider goes out of business, the Medicaid
14 provider shall give written notification to the Department of Human Services
15 and the Office of Medicaid Inspector General of where and how the records
16 will be stored.

17 ~~(g)(1) It is unlawful to destroy or alter any record or supporting~~
18 ~~documentation with a purpose to conceal a false or fraudulent claim made to~~
19 ~~the Arkansas Medicaid Program or to interfere with an audit, investigation,~~
20 ~~or prosecution related to a claim made to the Arkansas Medicaid Program.~~

21 ~~(2) A violation of subdivision (g)(1) of this section is a Class~~
22 ~~B felony.~~

23 ~~(h)(1) Any person found not to have maintained any records upon~~
24 ~~conviction is guilty of a Class D felony if the unavailability of records~~
25 ~~impairs or obstructs the prosecution of a felony.~~

26 ~~(2) Otherwise, a violation of subdivision (h)(1) of this section~~
27 ~~is a Class A misdemeanor.~~

28 ~~(i) It is an affirmative defense to a prosecution under this section~~
29 ~~that the records in question were lost or destroyed in a flood, fire, or~~
30 ~~other natural disaster or by a criminal act that did not result from the~~
31 ~~defendant's conduct.~~

32
33 SECTION 6. Arkansas Code § 5-55-106 is amended to read as follows:
34 5-55-106. Investigation by Attorney General - Access to records.

35 ~~The office of the Attorney General is the entity to which a case of~~
36 ~~suspected Medicaid fraud shall be referred by the Arkansas Medicaid Program~~

1 ~~or its fiscal agents for the purposes of investigation, civil action, or~~
2 ~~referral to the prosecuting attorney having criminal jurisdiction in the~~
3 ~~matter.~~

4 (a)(1)(A) In accordance with 42 U.S.C. § 1396b(q), the State of
5 Arkansas shall maintain a single organization with statewide law enforcement
6 authority to protect Medicaid recipients from abuse, neglect, and
7 exploitation and to protect the Arkansas Medicaid Program from fraud.

8 (B) When fully certified by the Office of Inspector
9 General of the United States Department of Health and Human Services, a
10 investigative and prosecution unit as described in subdivision (a)(1)(A) of
11 this section is identified under federal law and regulations as a Medicaid
12 Fraud Control Unit.

13 (2) The Medicaid Fraud Control Unit, under the supervision of
14 the Attorney General, shall have statewide law enforcement investigative
15 jurisdiction and may utilize all civil investigative and litigation authority
16 of the Attorney General's office.

17 (3) Under § 5-55-114, an attorney of the Medicaid Fraud Control
18 Unit may be appointed by local prosecuting attorneys as a special prosecutor
19 or a special deputy prosecutor to prosecute any criminal case.

20 (b)(1) The Secretary of the Department of Human Services, the Arkansas
21 Medicaid Program, and the Medicaid Inspector General shall work closely with
22 the Medicaid Fraud Control Unit to protect against abuse, neglect,
23 exploitation, and fraud.

24 (2) The secretary and the Medicaid Inspector General shall
25 develop and monitor systems that ensure any credible allegations of Medicaid
26 fraud and abuse, neglect, or exploitation of Medicaid recipients are
27 immediately referred to the Medicaid Fraud Control Unit for investigation.

28 (c)(1) The Medicaid Fraud Control Unit is a health oversight agency
29 that is:

30 (A) Exempt from the Health Insurance Portability and
31 Accountability Act of 1996, Pub. L. No. 104-191; and

32 (B) Allowed access to all records whether in the
33 possession of the Arkansas Medicaid Program, a Medicaid provider, or employee
34 or contractor of a Medicaid provider.

35 (2) The Medicaid Fraud Control Unit shall have access to:

36 (A)(i) Records on a Medicaid recipient.

1 (ii) The records shall be available for audit during
2 regular business hours at the address listed in the Medicaid provider
3 agreement or where the healthcare goods or services are provided, or as
4 otherwise provided by this subchapter;

5 (B) Encounter claims data and other records of managed
6 care organizations and any other record related to provision of goods and
7 services to Medicaid recipients;

8 (C) Notwithstanding any other confidentiality law, all
9 financial reports, cost reports, disclosure forms, and other records
10 submitted or required to be retained in any licensure process, rate
11 development process, rate review process, reconciliation process, or
12 actuarial process required to participate in the Arkansas Medicaid Program or
13 by state law or rule.

14 (3) The Medicaid Fraud Control Unit may obtain any other
15 healthcare or business record necessary to conduct an ongoing investigation
16 or audit by subpoena.

17 (4) Notwithstanding any other law to the contrary, a person is
18 not subject to any civil or criminal liability for providing access to
19 records to the Medicaid Fraud Control Unit.

20 (5)(A)(i) Records obtained by the Medicaid Fraud Control Unit
21 under this subchapter are classified as confidential information and are not
22 subject to outside review or release to any individual except as may be
23 necessary for the Medicaid Fraud Control Unit to pursue or to potentially
24 pursue legal, administrative, or judicial proceedings.

25 (ii) Records obtained by the Medicaid Fraud Control
26 Unit under this subchapter are exempt from disclosure under the Freedom of
27 Information Act of 1967, § 25-19-101 et seq.

28 (B) The Medicaid Fraud Control Unit may share records with
29 the Attorney General, the Office of the Medicaid Inspector General, a
30 prosecuting attorney, and any other government entity as may be necessary and
31 appropriate to carry out the mission of the Medicaid Fraud Control Unit.

32 (6) Whenever possible, the Medicaid Fraud Control Unit shall
33 seek protective orders and take any other measures possible to provide
34 maximum confidentiality to the personal health care information of individual
35 Arkansans while accomplishing its mission.

1 (d)(1) A Medicaid program provider shall cooperate in reviews, audits,
 2 and investigations conducted by the Department of Human Services, Office of
 3 the Medicaid Inspector General, and the Medicaid Fraud Control Unit.

4 (2) A request for information includes formal and informal
 5 requests made to a Medicaid provider by any attorney, auditor, officer, or
 6 agent of the Office of the Medicaid Inspector General or the Medicaid Fraud
 7 Control Unit.

8
 9 SECTION 7. Arkansas Code § 5-55-107(a)(1)(A), concerning restitution
 10 and collection within the Medicaid Fraud Act, is amended to read as follows:

11 (1)(A) Restitution of an overpayment made to the Arkansas
 12 Medicaid Program shall be paid to the Department of Human Services, with the
 13 restitution to be deposited into the Arkansas Medicaid Program Trust Fund for
 14 the loss to the Arkansas Medicaid Program or its fiscal agents.

15
 16 SECTION 8. Arkansas Code § 5-55-107(d)(3), concerning restitution and
 17 collection within the Medicaid Fraud Act, is amended to read as follows:

18 (3)(A) Restitution ordered for a loss to the Arkansas Medicaid
 19 Program shall not be excused by the court, except where the court conducts a
 20 hearing and makes a finding of fact that the debt is uncollectable.

21 (B) As the State of Arkansas has a right to litigate any
 22 claim that a debt is uncollectable, the Attorney General's office shall be
 23 given notice, a reasonable time to investigate a claim by a defendant that
 24 the amount of the restitution is uncollectable, and the opportunity to
 25 present evidence before any finding that a debt is uncollectable is entered.

26 ~~(B)(C)~~ (C) A conviction under this subchapter shall not be
 27 sealed or expunged until all ordered restitution is paid in full.

28
 29 SECTION 9. Arkansas Code § 5-55-107(e)(2), concerning restitution and
 30 collection within the Medicaid Fraud Act, is amended to read as follows:

31 (2) Restitution ~~ordered~~ payments to reimburse for reasonable and
 32 necessary expenses incurred by the ~~office of the Attorney General~~ Attorney
 33 General's office or the prosecuting attorney during investigation and
 34 prosecution shall be paid to the office of the Attorney General or the
 35 prosecuting attorney to be retained and used in future investigations for
 36 Medicaid fraud.

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SECTION 10. Arkansas Code § 5-55-108 is amended to read as follows:
5-55-108. Fines.

(a) Any person who is found guilty of or who pleads guilty or nolo contendere to Medicaid fraud as described in this subchapter shall pay one (1) of the following fines assessed under this subchapter:

(1) If no ~~monetary loss~~ overpayment is incurred by the Arkansas Medicaid Program, a fine of not less than one thousand dollars (\$1,000) or more than three thousand dollars (\$3,000) for each ~~omission or fraudulent act or claim violation of Medicaid fraud, § 5-55-111~~; or

(2) If ~~a monetary loss~~ an overpayment is incurred by the Arkansas Medicaid Program, a fine of an amount not less than the amount of the ~~monetary loss to~~ overpayment made by the Arkansas Medicaid Program and not more than ~~three (3) times~~ two (2) times the amount of the ~~monetary loss to~~ overpayment made by the Arkansas Medicaid Program.

(b)(1) The fines described in subdivision (a)(2) of this section may be waived by the prosecuting attorney.

(2) If the fines are waived, the trier of fact may impose fines under § 5-4-201.

(c)(1) All fines assessed under subsection (a) of this section shall be ~~credited to the general revenues of the State of Arkansas paid to the Attorney General's office and disbursed in accordance with the rules of the Arkansas Medicaid Program with the state's share being deposited into the Arkansas Medicaid Trust Fund.~~

(2) All other fines assessed by the court in an action brought under this subchapter shall be credited to the general revenues of the State of Arkansas.

SECTION 11. Arkansas Code § 5-55-110 and § 5-55-111 are amended to read as follows:

5-55-110. ~~Suspension~~ Exclusion of violators.

~~The Secretary of the Department of Human Services may suspend or revoke the provider agreement between the Department of Human Services and a person in the event the person is found guilty of violating a provision of this subchapter.~~

1 (a) Upon conviction for a violation of this subchapter, the Secretary
 2 of the Department of Human Services or the Secretary of the Department of
 3 Inspector General may exclude a person or Medicaid provider from
 4 participation in the Arkansas Medicaid Program and terminate the Medicaid
 5 provider number and provider agreement.

6 (b) The exclusion or termination process shall be conducted in
 7 accordance with rules of the Arkansas Medicaid Program.

8
 9 5-55-111. Criminal acts constituting Medicaid fraud.

10 A person commits Medicaid fraud when he or she:

11 (1) Purposely makes or causes to be made any ~~omission or~~
 12 material false statement, omission, or representation of a ~~material~~ fact in
 13 any claim, bill, invoice, census, request for payment, or ~~application for any~~
 14 ~~benefit or other communication seeking~~ payment under the Arkansas Medicaid
 15 Program;

16 (2) ~~At any time purposely~~ Purposely makes or causes to be made
 17 any ~~omission or material~~ false statement, omission, or representation of a
 18 ~~material~~ fact in an application for eligibility or in required documentation
 19 for use in determining rights to a benefit or payment under the Arkansas
 20 Medicaid Program;

21 (3) Having knowledge of the occurrence of any event affecting
 22 ~~his or her~~ a Medicaid recipient's or a Medicaid provider's initial or
 23 continued right to any benefit or payment under the Arkansas Medicaid
 24 Program, or the initial or continued right to any benefit or payment under
 25 the Arkansas Medicaid Program of any ~~other individual in~~ Medicaid recipient
 26 on whose behalf ~~he or she~~ a Medicaid provider has applied for or is receiving
 27 the benefit or payment under the Arkansas Medicaid Program, purposely
 28 conceals or fails to disclose the event with ~~an intent fraudulently to secure~~
 29 a purpose to secure fraudulently the benefit or payment under the Arkansas
 30 Medicaid Program either in a greater amount or quantity than is due or when
 31 no benefit or payment under the Arkansas Medicaid Program is authorized;

32 (4) Having made or submitted a claim, request for payment, or
 33 application to receive any benefit or payment under the Arkansas Medicaid
 34 Program for the use and benefit of another person and having received it,
 35 purposely converts the benefit or payment under the Arkansas Medicaid Program

1 or any part of the benefit or payment under the Arkansas Medicaid Program to
2 a use other than for the use and benefit of the other person;

3 (5) Purposely presents or causes to be presented a claim for a
4 service required to be provided by a person with a particular type of license
5 or credential while knowing that the individual who furnished the service was
6 not licensed or credentialed;

7 ~~(6) Purposely solicits or receives any remuneration, including~~
8 ~~any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,~~
9 ~~in cash or in kind;~~

10 ~~(A) In return for referring an individual to a person for~~
11 ~~the furnishing or arranging for the furnishing of any item or service for~~
12 ~~which payment may be made in whole or in part under the Arkansas Medicaid~~
13 ~~Program; or~~

14 ~~(B) In return for purchasing, leasing, ordering, or~~
15 ~~arranging for or recommending purchasing, leasing, or ordering any good,~~
16 ~~facility, service, or item for which payment may be made in whole or in part~~
17 ~~under the Arkansas Medicaid Program;~~

18 ~~(7)(A) Purposely offers or pays any remuneration, including any~~
19 ~~kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in~~
20 ~~cash or in kind, to any person to induce that person to:~~

21 ~~(i) Refer an individual to a person for the~~
22 ~~furnishing or arranging for the furnishing of any item or service for which~~
23 ~~payment may be made in whole or in part under the Arkansas Medicaid Program;~~
24 ~~or~~

25 ~~(ii) Purchase, lease, order, or arrange for or~~
26 ~~recommend purchasing, leasing, or ordering any good, facility, service, or~~
27 ~~item for which payment may be made in whole or in part under the Arkansas~~
28 ~~Medicaid Program.~~

29 ~~(B) If the transaction is otherwise legal and properly~~
30 ~~documented as occurring in the normal course of business, subdivisions~~
31 ~~(7)(A)(i) and (ii) of this section do not apply to:~~

32 ~~(i) A discount or other reduction in price obtained~~
33 ~~by a provider of services or other entity under the Arkansas Medicaid Program~~
34 ~~if the reduction in price is properly disclosed and appropriately reflected~~
35 ~~in the costs claimed or charges made by the provider or entity under the~~
36 ~~Arkansas Medicaid Program;~~

1 (ii) ~~Any amount paid by an employer to an employee~~
2 ~~who has a bona fide employment relationship with the employer for employment~~
3 ~~in the provision of covered items or services;~~

4 (iii) ~~Any amount paid by a vendor of goods or~~
5 ~~services to a person authorized to act as a purchasing agent for a group of~~
6 ~~individuals or entities who are furnishing services reimbursed under the~~
7 ~~Arkansas Medicaid Program if:~~

8 (a) ~~The person has a written contract with~~
9 ~~each individual or entity that specifies the amount to be paid to the person~~
10 ~~and the amount may be a fixed amount or a fixed percentage of the value of~~
11 ~~the purchases made by each individual or entity under the contract; and~~

12 (b) ~~In the case of an entity that is a~~
13 ~~provider of services as defined in § 20-9-101, the person discloses in such~~
14 ~~form and manner as the Secretary of the Department of Human Services requires~~
15 ~~to the entity and, upon request, to the secretary, the amount received from~~
16 ~~each vendor with respect to purchases made by or on behalf of the entity; or~~

17 (iv) ~~Any payment practice specified by the secretary~~
18 ~~promulgated pursuant to applicable federal or state law;~~

19 ~~(8)(6)~~ Purposely makes or causes to be made, or induces or seeks
20 to induce, any ~~omission or~~ material false statement, omission, or
21 representation of a ~~material~~ fact with respect to the conditions or operation
22 of any institution, facility, or Medicaid provider in order that the
23 institution, facility, or Medicaid provider may qualify to obtain or maintain
24 any licensure or certification when the licensure or certification is
25 required to be enrolled or eligible to deliver any healthcare goods or
26 services to Medicaid recipients by state law, federal law, or the rules of
27 the Arkansas Medicaid Program;

28 ~~(9)(7)~~ Purposely:

29 (A) Charges a Medicaid recipient or any person acting on
30 behalf of a Medicaid recipient, for any service provided to a patient under
31 the Arkansas Medicaid Program, money or other consideration for any
32 healthcare goods or services provided to a Medicaid recipient under the
33 Arkansas Medicaid Program at a rate in excess of the rates established by the
34 ~~state~~ Arkansas Medicaid Program; or

35 (B) Charges, solicits, accepts, or receives, in addition
36 to any amount otherwise required to be paid under the Arkansas Medicaid

1 Program, any gift, money, donation, or other consideration other than a
2 charitable, religious, or philanthropic contribution from an organization or
3 from a person unrelated to the patient:

4 (i) As a precondition of admitting a patient to a
5 hospital, nursing facility, or intermediate care facility for individuals
6 with intellectual disabilities; or

7 (ii) As a requirement for the patient's continued
8 stay in a hospital, nursing facility, or intermediate care facility for
9 individuals with intellectual disabilities when the cost of the services
10 provided in the hospital, nursing facility, or intermediate care facility for
11 individuals with intellectual disabilities to the patient is paid for in
12 whole or in part under the Arkansas Medicaid Program; or

13 (C) Charges a Medicaid recipient who is receiving
14 healthcare goods or services from a managed care organization or other form
15 of capitated rate program in any amount or method not authorized by the rules
16 of the Arkansas Medicaid Program or a contract with the Medicaid provider;

17 ~~(10)(8)~~ Purposely makes or causes to be made any material false
18 statement, omission, or representation of a ~~material~~ fact in any application
19 for a benefit or payment in violation of the rules and provider agreements
20 issued by the Arkansas Medicaid Program or its fiscal agents;

21 ~~(11) Knowingly submits false documentation or makes or causes to~~
22 ~~be made or induces or seeks to induce any material false statement to the~~
23 ~~Office of Medicaid Inspector General or the Medicaid Fraud Control Unit~~
24 ~~within the office of the Attorney General during an audit or in response to a~~
25 ~~request for information or a subpoena;~~

26 ~~(12)(9)~~ Purposely alters, forges, or utters a forged the
27 ~~signature of a doctor, nurse, or other medical professional on a~~
28 ~~prescription, referral for healthcare goods or services, or finding of~~
29 ~~medical necessity for any Medicaid recipient of the Arkansas Medicaid~~
30 ~~Program;~~

31 ~~(13) Knowingly submits a forged prescription, referral for~~
32 ~~healthcare goods or services, or finding of medical necessity for:~~

33 ~~(A) Payment under the Arkansas Medicaid Program; or~~

34 ~~(B) An audit or in response to a request for information~~
35 ~~or a subpoena to the Office of Medicaid Inspector General or the Medicaid~~
36 ~~Fraud Control Unit within the office of the Attorney General; or~~

1 ~~(14)(10)~~ Purposely places a false entry makes or causes to be
2 made any material false statement, omission, or representation of fact in a
3 medical chart, medical record, or any record of services required to be made
4 to the Arkansas Medicaid Program that indicates that healthcare goods or
5 services have been provided to a Medicaid recipient knowing that the
6 healthcare goods or services were not provided;

7 (11) Purposely makes or causes to be made any material false
8 statement, omission, or representation of a fact in any unit rate development
9 process, actuarial process, reconciliation process, cost report, disclosure
10 form, or documentation required under the Arkansas Medicaid Program; or

11 (12)(A) Having knowledge or having discovered that an improper,
12 inadvertent, or accidental overpayment has been made by the Arkansas Medicaid
13 Program, purposely fails to promptly report and repay the overpayment.

14 (B) It is a defense to a prosecution under subdivision
15 (12)(A) of this section that the overpayment was reported and repayment was
16 made within ninety (90) days of discovery.

17
18 SECTION 12. Arkansas Code Title 5, Chapter 55, Subchapter 1, is
19 amended to add an additional section to read as follows:

20 5-55-112. Kickbacks and other unlawful remuneration, referral fees,
21 bonuses, bribes, or rebates.

22 (a) It is unlawful to solicit or receive any payment or other
23 compensation, including any kickback, bribe, rebate, or referral fee,
24 directly or indirectly, overtly or covertly, in cash or in kind:

25 (1) In return for referring an individual to a person for the
26 furnishing or arranging for the furnishing of any item or service for which
27 payment may be made in whole or in part under the Arkansas Medicaid Program;
28 or

29 (2) In return for purchasing, leasing, ordering, or arranging
30 for or recommending purchasing, leasing, or ordering any goods, facility,
31 service, or item for which payment may be made in whole or in part under the
32 Arkansas Medicaid Program.

33 (b) It is unlawful to offer or pay any payment or compensation,
34 including any kickback, bribe, rebate, or referral fee, directly or
35 indirectly, overtly or covertly, in cash or in kind, to any person to induce
36 that person to:

1 (1) Refer an individual to a person for the furnishing or
2 arranging for the furnishing of any item or service for which payment may be
3 made in whole or in part under the Arkansas Medicaid Program; or

4 (2) Purchase, lease, order, or arrange for or recommend
5 purchasing, leasing, or ordering any goods, facility, service, or item for
6 which payment may be made in whole or in part under the Arkansas Medicaid
7 Program.

8 (c) If the transaction is otherwise legal and properly documented as
9 occurring in the normal course of business, subdivisions (b)(1) and (2) of
10 this section do not apply to:

11 (1) A discount or other reduction in price obtained by a
12 provider of services or other entity under the Arkansas Medicaid Program if
13 the reduction in price is properly disclosed and appropriately reflected in
14 the costs claimed or charges made by the provider or entity under the
15 Arkansas Medicaid Program;

16 (2) Any amount paid by an employer to an employee who has a bona
17 fide employment relationship with the employer for employment in the
18 provision of covered goods or services, except that an employer may not pay
19 an employee a signing bonus, referral fee, or other payments for a new client
20 or patient that the employee provided covered goods or services to at a prior
21 place of employment during the preceding twelve (12) months;

22 (3) Any amount paid by a vendor of goods or services to a person
23 authorized to act as a purchasing agent for a group of individuals or
24 entities who are furnishing services reimbursed under the Arkansas Medicaid
25 Program if:

26 (A) The person has a written contract with each individual
27 or entity that specifies the amount to be paid to the person and the amount
28 may be a fixed amount or a fixed percentage of the value of the purchases
29 made by each individual or entity under the contract; and

30 (B) In the case of an entity that is a provider of
31 services as defined in § 20-9-101, the person discloses on a form and in a
32 manner as the Secretary of the Department of Human Services requires to the
33 entity and, upon request, to the secretary, the amount received from each
34 vendor with respect to purchases made by or on behalf of the entity.

35 (d)(1)(A) A violation under this section is a Class D felony if the
36 aggregate amount of the unlawful compensation paid or received in violation

1 of this section is one thousand dollars (\$1,000) or more but less than two
2 thousand five hundred dollars (\$2,500).

3 (B) A violation under this section is a Class A
4 misdemeanor if the aggregate amount of the unlawful compensation paid or
5 received in violation of this section is less than one thousand dollars
6 (\$1,000).

7 (2) A violation under this section is a Class C felony if the
8 aggregate amount of the unlawful compensation paid or received in violation
9 of this section is two thousand five hundred dollars (\$2,500) or more but
10 less than five thousand dollars (\$5,000).

11 (3) A violation under this section is a Class B felony if the
12 aggregate amount of the unlawful compensation paid or received in violation
13 of this section is five thousand dollars (\$5,000) or more but less than
14 twenty-five thousand dollars (\$25,000).

15 (4) A violation under this section is a Class A felony if the
16 aggregate amount of the unlawful compensation paid or received in violation
17 of this section is twenty-five thousand dollars (\$25,000) or more.

18 (e) Restitution ordered for a violation of this section is limited to
19 the actual loss to the Arkansas Medicaid Program that resulted directly or
20 indirectly from the unlawful payment or compensation.

21 (f)(1) Upon conviction for a violation of this section and in addition
22 to any other fine authorized for the offense, the court shall impose a fine
23 of not less than the unlawful payment or compensation paid or received or
24 more than two (2) times the unlawful payment or compensation paid or
25 received.

26 (2) All other fines assessed under this section shall be paid to
27 the Attorney General's office and disbursed in accordance with rules of the
28 Arkansas Medicaid Program with the state's share being deposited into the
29 Arkansas Medicaid Program Trust Fund.

30
31 SECTION 13. Arkansas Code § 5-55-113(e), concerning rewards for
32 information within the Medicaid Fraud Act, is amended to read as follows:

33 (e)(1) The Attorney General may agree to a payment of up to ten
34 percent (10%) of the ~~civil penalty~~ funds collected at the time of the
35 conviction not to exceed ten thousand dollars (\$10,000) as a reward in any
36 settlement agreement case under this section.

1 (2) ~~A portion of restitution shall not be used as a reward~~ The
2 reward authorized by subdivision (e)(1) of this section shall not reduce the
3 restitution owed.

4
5 SECTION 14. Arkansas Code § 5-55-114(c)-(e), concerning a special
6 deputy prosecutor within the Medicaid Fraud Act, is amended to read as
7 follows:

8 (c) With the approval of the prosecuting attorney, a special deputy
9 prosecutor under this section may also use a prosecutor investigative
10 subpoena as provided in § 16-43-212.

11 (d) A special deputy prosecutor appointed and functioning as
12 authorized under this section is entitled to the same immunity granted by law
13 to the prosecuting attorney.

14 ~~(d)(1)(e)(1)~~ Appointment as a special deputy prosecutor does not
15 enable the attorney to receive any additional fees or salary from the state
16 for services provided pursuant to the appointment.

17 (2) Expenses of the special deputy prosecutor and any fees and
18 costs incurred by the special deputy prosecutor in the prosecution of cases
19 as provided in this section are the responsibility of the Attorney General.

20 ~~(e)(f)~~ The prosecuting attorney may revoke the appointment of a
21 special deputy prosecutor at any time.

22
23 SECTION 15. Arkansas Code § 5-55-115 is amended to read as follows:
24 5-55-115. Suspension, exclusion, and ~~illegal~~ unlawful Medicaid
25 participation.

26 (a)(1) It is unlawful for a suspended or excluded ~~individual person~~ person or
27 organization to participate in the Arkansas Medicaid Program ~~under federal~~
28 ~~and state laws.~~

29 (2) A violation of subdivision (a)(1) of this section is a Class
30 C felony.

31 ~~(b)(1) A person commits illegal Medicaid participation if:~~
32 ~~(A) Having been suspended from the Arkansas Medicaid~~
33 ~~Program or placed on a state or federal excluded Medicaid provider list, the~~
34 ~~person knowingly participates, directly or indirectly, in the Arkansas~~
35 ~~Medicaid Program; or~~

1 ~~(B) As a certified health provider enrolled in the~~
2 ~~Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act,~~
3 ~~as amended, 42 U.S.C. § 1396 et seq., or as the fiscal agent of the certified~~
4 ~~health provider, the person employs, or engages as an independent contractor,~~
5 ~~or engages as a consultant, or otherwise permits the participation in the~~
6 ~~business activities of the certified health provider, any person who has~~
7 ~~pleaded guilty or nolo contendere to or has been found guilty of a charge of~~
8 ~~Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, §~~
9 ~~5-28-101 et seq.~~

10 ~~(2) Illegal Medicaid participation is a Class A misdemeanor.~~

11 (b)(1) A person commits unlawful Medicaid participation if the person
12 knowingly allows or permits a suspended or excluded person or organization to
13 participate directly or indirectly in the Arkansas Medicaid Program.

14 (2) Unlawful Medicaid participation is a Class A misdemeanor.

15
16 SECTION 16. Arkansas Code Title 5, Chapter 55, Subchapter 1, is
17 amended to add an additional section to read as follows:

18 5-55-116. Obstructing a Medicaid review, audit, investigation, or
19 prosecution.

20 (a) A person commits the offense of obstructing a Medicaid review,
21 audit, investigation, or prosecution if the person:

22 (1) Purposely makes a material false statement or omission or
23 causes another person to make a material false statement or omission to an
24 auditor or investigator with the Office of the Medicaid Inspector General, or
25 the Medicaid Fraud Control Unit, or in response to a request for information
26 or subpoena;

27 (2) Purposely submits or causes another person to submit false,
28 fabricated, forged, or altered documentation to the Office of the Medicaid
29 Inspector General or the Medicaid Fraud Control Unit, without regard to
30 whether the documentation is provided in response to a verbal request,
31 written request for information, or a subpoena; or

32 (3) Purposely destroys or alters any record with the purpose to
33 conceal a false or fraudulent claim made to the Arkansas Medicaid Program or
34 to interfere with an ongoing review, audit, investigation, or prosecution
35 being conducted by the Office of the Medicaid Inspector General or the
36 Medicaid Fraud Control Unit.

1 (b)(1) Obstructing a Medicaid review, audit, investigation, or
2 prosecution is a Class B felony if the conduct interferes with an audit,
3 investigation, or prosecution related to any felony offense.

4 (2) Otherwise, obstructing a Medicaid review, audit,
5 investigation, or prosecution is a Class A misdemeanor.

6
7 SECTION 17. Arkansas Code § 20-77-901(7), concerning the definition of
8 "material" within the Medicaid Fraud False Claims Act, is amended to read as
9 follows:

10 (7)(A) "Material" means having a natural tendency to influence,
11 or be capable of influencing, the payment or receipt of money or property.

12 (B) A false statement, omission, or representation is
13 material if the false statement, omission, or representation is likely to
14 induce or cause the Arkansas Medicaid Program to pay, approve, or act in a
15 particular way;

16
17 SECTION 18. Arkansas Code § 20-77-901(11) and (12), concerning the
18 definitions within the Medicaid Fraud False Claims Act, is amended to read as
19 follows:

20 (11) "Overpayment" means the full amount of the Medicaid funds
21 obtained as a direct or indirect result of a violation of § 5-55-111, § 20-
22 77-902, the rules of the Arkansas Medicaid Program, or a managed care
23 provider contract;

24 (12) "Person" means any:

25 (A) Medicaid provider of goods or services or any
26 employee, independent contractor, or subcontractor of the Medicaid provider,
27 whether that provider be an individual, individual medical vendor, firm,
28 corporation, professional association, partnership, organization, risk-based
29 provider organization, managed care organization, or other legal entity; or

30 (B) Individual, individual medical vendor, firm,
31 corporation, professional association, partnership, organization, risk-based
32 provider organization, managed care organization, or other legal entity, or
33 any employee of any individual, individual medical vendor, firm, corporation,
34 professional association, partnership, organization, risk-based provider
35 organization, managed care organization, or other legal entity, not a
36 Medicaid provider under the Arkansas Medicaid Program but that provides goods

1 or services to a Medicaid provider under the Arkansas Medicaid Program for
2 which the Medicaid provider submits claims to the Arkansas Medicaid Program
3 or its fiscal agents; ~~and~~

4 ~~(12)(A)~~(13) “Records” means all documents ~~in any form that~~
5 disclose the nature, extent, and level of healthcare goods and services
6 provided to Medicaid recipients, including without limitation:

7 (A) Images, slides, film, video, and similar physical and
8 digital files resulting from common diagnostic testing such as

9 ~~(B) “Records” include X-rays, magnetic resonance imaging~~
10 ~~scans, computed tomography scans, computed axial tomography scans,~~
11 ~~ultrasounds, and other diagnostic imaging commonly used and retained as part~~
12 ~~of the medical records of a patient~~ tools;

13 (B) Records documenting treatment administration,
14 medication administration, and activities of daily living; and

15 (C) All financial reports, cost reports, disclosure forms,
16 and other Medicaid records submitted or required to be retained in any rate
17 development or review process, reconciliation process, or actuarial process
18 required by the rules of Arkansas Medicaid Program or state law; and

19 (14)(A) “Unlawful Medicaid participation” means participation in
20 the Arkansas Medicaid Program when the individual or organization is
21 suspended from the Arkansas Medicaid Program or on a state or federal
22 excluded Medicaid provider list.

23 (B) “Unlawful Medicaid participation” includes without
24 limitation when a suspended or excluded individual or organization:

25 (i) Is employed or contracting with a Medicaid
26 provider or managed care organization or otherwise associated with a Medicaid
27 provider or managed care organization for the purpose of providing or
28 supervising the provision of goods and services to Medicaid recipients;

29 (ii) Plays any role in the management of a Medicaid
30 provider directly as a manager or management company or indirectly as a
31 consultant or advisor; or

32 (iii) Receives payment for administrative and
33 management services directly or indirectly related to patient care such as
34 processing Medicaid claims for payment, attending to services that assist or
35 support Medicaid recipients, or acting as a Medicaid consultant or advisor.
36

1 SECTION 19. Arkansas Code §§ 20-77-902 and 20-77-903 are amended to
2 read as follows:

3 20-77-902. Liability for certain acts.

4 (a) A person shall be liable to the State of Arkansas, through the
5 Attorney General, for restitution, damages, and a civil penalty for an act or
6 omission in violation of this subchapter if he or she:

7 (1) Knowingly makes or causes to be made any material false
8 statement, omission, or representation of a ~~material~~ fact in any claim, bill,
9 invoice, request for payment, ~~or application for any benefit~~ or other
10 communication seeking payment under the Arkansas Medicaid Program;

11 (2) Knowingly makes or causes to be made any material ~~omission~~
12 ~~or~~ false statement, omission, or representation of a ~~material~~ fact in an
13 application for eligibility or in required documentation for use in
14 determining ~~rights~~ the right to a benefit or payment under the Arkansas
15 Medicaid Program;

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

27 (4) Having made or submitted a claim, request for payment, or
28 application to receive any benefit or payment under the Arkansas Medicaid
29 Program for the use and benefit of another person and having received it,
30 knowingly converts the benefit or payment under the Arkansas Medicaid Program
31 or any part of the benefit or payment under the Arkansas Medicaid Program to
32 a use other than for the use and benefit of the other person;

33 (5) Knowingly presents or causes to be presented a claim for a
34 ~~physician's service for which payment may be made under the program and knows~~
35 ~~that the individual who furnished the service was not licensed as a physician~~
36 service required to be provided by a person with a particular type of license

1 or credential while knowing that the individual who furnished the service was
2 not licensed or credentialed;

3 (6) Knowingly solicits or receives any ~~remuneration~~ payment or
4 other compensation, including any kickback, bribe, ~~or~~ rebate, or referral
5 fee, directly or indirectly, overtly or covertly, in cash or in kind:

6 (A) In return for referring an individual to a person for
7 the furnishing or arranging for the furnishing of any item or service for
8 which payment may be made in whole or in part under the ~~program~~ Arkansas
9 Medicaid Program; or

10 (B) In return for purchasing, leasing, ordering, or
11 arranging for or recommending purchasing, leasing, or ordering any good,
12 facility, service, or item for which payment may be made in whole or in part
13 under the ~~program~~ Arkansas Medicaid Program;

14 (7)(A) Knowingly offers or pays any ~~remuneration~~ payment or
15 other compensation, including any kickback, bribe, ~~or~~ rebate, or referral
16 fee, directly or indirectly, overtly or covertly, in cash or in kind to any
17 person to induce the person to:

18 (i) Refer an individual to a person for the
19 furnishing or arranging for the furnishing of any item or service for which
20 payment may be made in whole or in part under the ~~program~~ Arkansas Medicaid
21 Program; or

22 (ii) Purchase, lease, order, or arrange for or
23 recommend purchasing, leasing, or ordering any good, facility, service, or
24 item for which payment may be made in whole or in part under the ~~program~~
25 Arkansas Medicaid Program.

26 (B) If the transaction is otherwise legal and properly
27 documented as occurring in the normal course of business, subdivision (7)(A)
28 of this section does not apply to:

29 (i) A discount or other reduction in price obtained
30 by a provider of services or other entity under the ~~program~~ Arkansas Medicaid
31 Program if the reduction in price is properly disclosed and appropriately
32 reflected in the costs claimed or charges made by the provider or entity
33 under the ~~program~~ Arkansas Medicaid Program;

34 (ii) Any amount paid by an employer to an employee
35 who has a bona fide employment relationship with the employer for employment
36 in the providing of covered items or services, except that an employer may

1 not pay an employee a signing bonus, referral fee, or other payments for a
2 new client or patient the employee previously provided covered goods or
3 services to at a prior place of employment during the preceding twelve (12)
4 months; or

5 (iii) Any ~~salary, wages, or commission~~ amount paid
6 ~~during the normal course of business~~ by a vendor of goods or services to a
7 person authorized to act as a purchasing agent for a group of individuals or
8 entities that are furnishing services reimbursed under the ~~program~~ Arkansas
9 Medicaid Program, if:

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

14 (b) In the case of an entity that is a
15 Medicaid provider as defined in § 20-77-901, the person discloses, in the
16 form and manner as the Secretary of the Department of Human Services
17 requires, to the entity and upon request to the secretary the amount received
18 from each vendor with respect to purchases made by or on behalf of the
19 entity; ~~or~~

20 ~~(iv) Any other payment practice specified by the~~
21 ~~secretary promulgated pursuant to applicable federal or state law;~~

22 (8) Knowingly makes or causes to be made or induces or seeks to
23 induce any material ~~omission or~~ false statement, omission, or representation
24 of a ~~material~~ fact with respect to the conditions or operation of any
25 institution, facility, or Medicaid provider in order that the institution,
26 facility, or Medicaid provider may qualify to obtain or maintain any
27 licensure or certification when the licensure or certification is required to
28 be enrolled or eligible to deliver any healthcare goods or services to
29 Medicaid recipients by state law, federal law, or the rules of the ~~program~~
30 Arkansas Medicaid Program;

31 (9) Knowingly:

32 (A) Charges a Medicaid recipient or any person acting on
33 behalf of a Medicaid recipient money or other consideration for any good or
34 service provided to a patient Medicaid recipient under the ~~program money or~~
35 ~~other consideration~~ Arkansas Medicaid Program at a rate in excess of the
36 rates established by the ~~state~~ Arkansas Medicaid Program; ~~or~~

1 (B) Charges, solicits, accepts, or receives, in addition
2 to any amount otherwise required to be paid under the ~~program~~ Arkansas
3 Medicaid Program, any gift, money, donation, or other consideration other
4 than a charitable, religious, or philanthropic contribution from an
5 organization or from a person unrelated to the patient:

6 (i) As a precondition of admitting a patient to a
7 hospital, nursing facility, or intermediate care facility for individuals
8 with intellectual disabilities; or

9 (ii) As a requirement for the patient’s continued
10 stay in the hospital, nursing facility, or intermediate care facility for
11 individuals with intellectual disabilities when the cost of the services
12 provided ~~therein~~ at the hospital, nursing facility, or intermediate care
13 facility for individuals with intellectual disabilities to the patient is
14 paid for in whole or in part under the ~~program~~ Arkansas Medicaid Program; or

15 (C) Charges a Medicaid recipient who is receiving goods or
16 services from a managed care organization or other form of capitated rate
17 program in any amount or method not authorized by the rules of the Arkansas
18 Medicaid Program or a contract with a Medicaid provider;

19 (10) Knowingly makes or causes to be made any material omission
20 ~~or~~ false statement, omission, or representation of a ~~material~~ fact in any
21 application for ~~benefits or for~~ a benefit or payment in violation of the
22 rules, regulations, and provider agreements issued by the ~~program~~ Arkansas
23 Medicaid Program or its fiscal agents;

24 ~~(11) Knowingly:~~

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

30 ~~(B) As a certified health provider enrolled in the program~~
31 ~~pursuant to Title XIX of the Social Security Act or as the fiscal agent of~~
32 ~~such a provider who employs, engages as an independent contractor, engages as~~
33 ~~a consultant, or otherwise permits the participation in the business~~
34 ~~activities of such a provider, any person who has pleaded guilty or nolo~~
35 ~~contendere to or has been found guilty of a charge of Medicaid fraud, theft~~

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

3 ~~(12)~~(11) Knowingly submits any false documentation supporting a
 4 claim or prior payment to the Office of Medicaid Inspector General or the
 5 Medicaid Fraud Control Unit within the office of the Attorney General during
 6 an investigation or audit or in response to a request for information or a
 7 subpoena;

8 ~~(13)~~(12) Knowingly makes or causes to be made, or induces or
 9 seeks to induce, any material false statement to the Office of Medicaid
 10 Inspector General or the Medicaid Fraud Control Unit within the ~~office of the~~
 11 ~~Attorney General~~ Attorney General's office during an investigation or audit
 12 or in response to a request for information or a subpoena;

13 ~~(14)~~(13) Knowingly alters, forges, or utters a forged ~~the~~
 14 ~~signature of a doctor or nurse on a~~ prescription, ~~or~~ referral for healthcare
 15 goods or services, ~~or submits a forged prescription or referral for~~
 16 ~~healthcare goods or services in support of a claim for payment under the~~
 17 ~~program~~ a finding of medical necessity for a Medicaid recipient;

18 ~~(15)~~(14) Knowingly ~~places a false entry~~ makes or causes to be
 19 made any material false statement, omission, or representation of a fact in a
 20 medical chart, ~~or~~ medical record, or record that indicates that healthcare
 21 goods or services have been provided to a Medicaid recipient knowing that the
 22 healthcare goods or services were not provided;

23 (15)(A) Knowing or having discovered that an improper,
 24 inadvertent, or accidental overpayment has been made by the Arkansas Medicaid
 25 Program, a Medicaid provider fails to promptly report and repay the
 26 overpayment.

27 (B) It is a defense to prosecution under this section that
 28 the overpayment was reported and repayment was made within ninety (90) days
 29 of discovery;

30 (16) Knowingly commits or permits another person or an
 31 organization to commit unlawful Medicaid participation as defined by § 20-77-
 32 901(14);

33 ~~(16)~~(17) Knowingly presents, or causes to be presented, a false
 34 or fraudulent claim for payment or approval to the ~~program~~ Arkansas Medicaid
 35 Program;

1 ~~(17)~~(18) Knowingly makes, uses, or causes to be made or used a
2 false record or statement that is material to a false or fraudulent claim to
3 the ~~program~~ Arkansas Medicaid Program;

4 ~~(18)~~(19) Knowingly:

5 (A) Makes, uses, or causes to be made or used a false
6 record or statement that is material to an obligation to pay or transmit
7 money or property to the ~~program~~ Arkansas Medicaid Program; or

8 (B) Conceals or improperly avoids or decreases an
9 obligation to pay or transmit money or property to the ~~program~~ Arkansas
10 Medicaid Program;

11 ~~(19) Conspires to commit a violation of this section; or~~

12 ~~(20) Knowingly presents or causes to be presented a claim for a~~
13 ~~service required to be provided by a person with a particular type of license~~
14 ~~or credential while knowing that the individual who furnished the service was~~
15 ~~not licensed or credentialed~~

16 (20) Purposely makes or causes to be made any material false
17 statement, omission, or representation of a fact in any unit rate development
18 process, actuarial process, reconciliation process, cost report, disclosure
19 form, or any other documentation required under the Arkansas Medicaid
20 Program; or

21 (21) Conspires to commit a violation of this section.

22 (b) Every person who directly or indirectly controls another person
23 who is in violation of or liable under this subchapter and every partner,
24 officer, or director of a person who is in violation of or liable under this
25 subchapter shall be jointly and severally liable for any penalties assessed
26 and any monetary judgments awarded in any proceeding for civil enforcement of
27 the provisions of this subchapter if the persons to be held jointly and
28 severally liable knew or should have known of the existence of the facts by
29 reason of which the violation or liability exists.

30
31 20-77-903. Restitution, damages, and civil penalties.

32 (a)(1) It shall be unlawful for any person to commit any act
33 prohibited by § 20-77-902, and any person found to have committed any such
34 act or acts shall be liable to the State of Arkansas through the Attorney
35 General.

1 (2) In a case in which direct monetary loss does not exist or in
 2 which it is difficult or impossible to determine the extent of the loss, the
 3 Attorney General may elect to seek a civil penalty based on the number of
 4 fraudulent claims submitted or other violations of this subchapter.

5 (3) The state shall make an election and give notice in the
 6 complaint whether the state is seeking a civil penalty of:

7 (A) Not less than five hundred dollars (\$500) but not more
 8 than ten thousand dollars (\$10,000) for each false claim or other violation
 9 of § 20-77-902; or

10 (B) Two (2) times the amount of overpayment and damages
 11 that the state and the Arkansas Medicaid Program sustained because of the ~~act~~
 12 ~~of the person~~ false claim or other violation of § 20-77-902.

13 (b) When a person or Medicaid provider discovers an employee or
 14 subcontractor working for the person or Medicaid provider has committed a
 15 violation of this subchapter or a violation under the Medicaid Fraud Act, §
 16 5-55-101 et seq., the person or Medicaid provider can avoid any statutory
 17 liability for civil penalties under subdivision (a)(3)(B) of this section ~~may~~
 18 ~~be reduced by fifty percent (50%)~~ if a person or Medicaid provider can
 19 establish all of the following:

20 (1) The employer or contractor of the person or Medicaid
 21 provider committing the violation of this subchapter furnished officials of
 22 ~~the Attorney General's office~~ Medicaid Fraud Control Unit with all
 23 information known to the ~~person or Medicaid provider~~ employer or contractor
 24 about the violation within ~~thirty (30)~~ sixty (60) days after the date on
 25 which the ~~person or Medicaid provider~~ employer or contractor first obtained
 26 the information; ~~and~~

27 (2) The employer or contractor of the person or Medicaid
 28 provider committing the violation of this subchapter fully cooperated with
 29 any Attorney General's investigation of the violation, ~~and at the time the~~
 30 ~~person or Medicaid provider~~ furnished the Attorney General with the
 31 ~~information about the violation;~~ and

32 ~~(A)(3) No~~ At the time of the report, an audit,
 33 investigation, criminal prosecution, civil action, or administrative action
 34 had not commenced under this subchapter with respect to the violation; ~~and~~

35 ~~(B) The person or Medicaid provider did not have actual~~
 36 ~~knowledge of the existence of an investigation into the violation.~~

1 (c) If the reporting employer or contractor was negligent in its
 2 supervision, without regarding to subdivision (b) of this section, the
 3 employer or contractor may be required to pay a single penalty under
 4 subdivision (a)(3)(A) of this section.

5 ~~(e)(1)(d)~~ In addition to any other penalties authorized ~~herein~~ under
 6 this section, any person violating this subchapter shall also be liable to
 7 the State of Arkansas for:

8 (1) Restitution of an overpayment by the Arkansas Medicaid
 9 Program, which shall be paid to the Department of Human Services and
 10 deposited into the Arkansas Medicaid Program Trust Fund for the loss to the
 11 Arkansas Medicaid Program or its fiscal agents; and

12 (2) The ~~the~~ Attorney General's reasonable expenses, including
 13 the cost of investigation, attorney's fees, court costs, witness fees, and
 14 deposition fees, which shall be paid to the Attorney General's office to be
 15 used for future Medicaid investigations and cases.

16 ~~(2) Any cost or reimbursement ordered under this subsection~~
 17 ~~shall be paid to the office of the Attorney General to be used for future~~
 18 ~~Medicaid investigations and cases.~~

19 ~~(d)(1)(e)(1)~~ When the loss is to the Arkansas Medicaid Program or its
 20 fiscal agents, the entirety of any penalty obtained under subsection (a) of
 21 this section less reimbursement of investigation and prosecution costs and
 22 any reward that may be determined by the court ~~pursuant to~~ under this
 23 subchapter shall be credited as special revenues of the State of Arkansas and
 24 deposited into the Arkansas Medicaid Program Trust Fund for the sole use of
 25 the ~~program~~ Arkansas Medicaid Program.

26 (2) When the loss is to a managed care organization or similar
 27 organization that is paid at a capitated rate, the Department of Human
 28 Services may return all or a portion of the funds to a managed care
 29 organization or any similar organization when permitted by the contract or
 30 rules.

31 ~~(e)(1)(f)(1)~~ A person who engages or has engaged in any act described
 32 by § 20-77-902 may be enjoined in a court of competent jurisdiction in an
 33 action brought by the Attorney General.

34 (2) An injunction described by subdivision ~~(e)(1)~~ (f)(1) of this
 35 section shall be:

36 (A) Brought in the name of the state; and

1 (B) Granted if a case is clearly shown that the rights of
2 the state are being violated by the person and the state ~~will~~ would suffer
3 immediate and irreparable injury, loss, or damage pending a final judgment in
4 the action or that the acts or omissions of the person will tend to render a
5 final judgment ineffectual.

6 ~~(f)~~(g) The court may make orders or judgments, including the
7 appointment of a receiver, as necessary to:

- 8 (1) Prevent any act described by § 20-77-902 by any person; or
9 (2) Restore to the program any money or property, real or
10 personal, that may have been acquired by means of an act described by § 20-
11 77-902.

12
13 SECTION 20. Arkansas Code § 20-77-904, concerning investigations by
14 the Attorney General within the Medicaid Fraud False Claims Act, is amended
15 to add an additional subsection to read as follows:

16 (f)(1) A Medicaid program provider shall cooperate in reviews, audits,
17 and investigations conducted by the Department of Human Services, Office of
18 the Medicaid Inspector General, and the Medicaid Fraud Control Unit.

19 (2) A request for information includes formal and informal
20 requests made to a Medicaid provider by any attorney, auditor, officer, or
21 agent of the Office of the Medicaid Inspector General or the Medicaid Fraud
22 Control Unit.

23
24 SECTION 21. Arkansas Code § 20-77-908(c) and (d), concerning the false
25 claims jurisdiction and the procedures within the Medicaid Fraud False Claims
26 Act, are amended to read as follows:

27 (c) If the offense referenced in subsection (a) of this section is not
28 discovered by the Medicaid Fraud Control Unit or an aggrieved party who has a
29 legal duty to refer the action to the Medicaid Fraud Control Unit during the
30 period stated in subsection (b) of this section, the State of Arkansas may
31 bring a civil action under this subchapter on behalf of the Arkansas Medicaid
32 Program within one (1) year after the offense is discovered by the parties.

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

1 ~~(d)~~(e)(1) A subpoena requiring the production of documents or the
 2 attendance of a witness at an interview, trial, or hearing conducted under
 3 this section may be served by the Attorney General or any duly authorized law
 4 enforcement officer in the State of Arkansas personally, telephonically, or
 5 by registered or certified mail.

6 (2) In the case of service by registered or certified mail, the
 7 return shall be accompanied by the return post office receipt of delivery of
 8 the demand.

9
 10 SECTION 22. Arkansas Code § 20-77-910 is amended to read as follows:

11 20-77-910. Suspension of violators.

12 The Secretary of the Department of Human Services may ~~suspend~~ exclude a
 13 Medicaid provider or revoke the provider agreement between an individual and
 14 the Department of Human Services ~~and the person in the event that the person~~
 15 ~~is found guilty of~~ or a Medicaid provider for violating the terms of this
 16 subchapter.

17
 18 SECTION 23. Arkansas Code § 20-77-911(e)-(g), concerning rewards for
 19 persons providing information regarding false Medicaid claims within the
 20 Medicaid Fraud False Claims Act, is amended to read as follows:

21 ~~(e)~~(1) The Attorney General may agree to a payment of up to ten
 22 percent (10%) of the ~~civil penalty~~ total funds collected at the time of the
 23 settlement not to exceed ten thousand dollars (\$10,000) as a reward ~~in any~~
 24 ~~settlement agreement under this section.~~

25 (2) The reward authorized under subdivision (e)(1) of this
 26 section shall not reduce the restitution owed.

27 ~~(f)~~ A portion of restitution shall not be used as a reward.

28 ~~(g)(1)~~(f)(1) The General Assembly finds that:

29 (A) Medicaid is a joint federal and state program, with
 30 each claim normally involving both state and federal funds;

31 (B) The United States Congress has granted jurisdiction to
 32 federal district courts over any action brought under the laws of any state
 33 for the recovery of funds paid by a state or local government if the action
 34 arises from the same transaction or occurrence as an action brought under 31
 35 U.S.C. § 3730;

1 (C) The General Assembly does not intend to grant a
2 general right of action to private parties in state or federal court; ~~and~~

3 (D) This section authorizes a limited right to bring false
4 claims and other ancillary state claims in federal court under 31 U.S.C. §
5 3730, to recover the Medicaid funds subject to recovery under 31 U.S.C. §
6 3730 and associated penalties and costs; and

7 ~~(D)~~(E) As federal law has granted federal courts with
8 jurisdiction to hear claims involving state funds associated with the
9 Arkansas Medicaid Program, the Attorney General shall be given notice and the
10 opportunity to intervene or to otherwise protect the interest of this state
11 any time a party brings an action attempting to recover funds from the
12 Arkansas Medicaid Program under 31 U.S.C. § 3730.

13 (2)(A) Any party bringing a claim in federal court to recover
14 state funds associated with the Arkansas Medicaid Program or pursuant to an
15 assertion of a state claim under state law shall serve the Attorney General
16 through the Medicaid Fraud Control Unit with any complaint, any other
17 pleadings, and the written disclosure of all material evidence and
18 information possessed by the person bringing the action.

19 (B) The complaint, pleadings, and disclosed information
20 shall be filed under seal pursuant to federal law and shall remain under seal
21 until the seal is lifted in accordance with federal law.

22 (3)(A) The Attorney General may investigate the claim and, if
23 appropriate, intervene or otherwise litigate and pursue any claim brought in
24 any litigation in federal court to recover state funds associated with claims
25 paid by the Arkansas Medicaid Program in actions brought under the federal
26 False Claims Act, 31 U.S.C. § 3729 et seq.

27 (B) The Attorney General may also seek related damages,
28 civil penalties, and costs, and to litigate or settle said claims as
29 permitted or required under state and federal law.

30 (4)(A) If the state is properly served and given notice as
31 required in this subsection by a party bringing an action under the federal
32 False Claims Act to recover ~~state~~ state funds of the Arkansas Medicaid Program, the
33 Attorney General may ~~pay~~ agree to an order or settlement that funds the
34 reward authorized under federal law, if the state's share of funds for the
35 Arkansas Medicaid Program is collected and the Arkansas Medicaid Program is
36 made whole from collected penalties.

1 ~~(B) However, under no circumstances may any reward be paid~~
2 ~~from the state funds owed to the Arkansas Medicaid Program.~~

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Referred requested by the Arkansas Senate
Prepared by: JMB/SJA