

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-068

State of Arkansas

As Engrossed: H3/23/09

87th General Assembly

**A Bill**

Regular Session, 2009

HOUSE BILL 2103

By: Representative L. Smith

Filed with: House Interim Committee on Judiciary  
pursuant to A.C.A. §10-3-217.

**For An Act To Be Entitled**

*AN ACT TO ENCOURAGE CITIZENS TO FILE LAWSUITS  
SEEKING RECOVERY OF MONEYS FRAUDULENTLY RECEIVED  
FROM THE STATE; TO INCREASE THE STATE'S PORTION  
OF FUNDS RECOVERED IN MEDICAID FRAUD LAWSUITS;  
AND FOR OTHER PURPOSES.*

**Subtitle**

*TO ENCOURAGE CITIZENS TO FILE LAWSUITS  
SEEKING RECOVERY OF MONEYS FRAUDULENTLY  
RECEIVED FROM THE STATE AND TO INCREASE  
THE STATE'S PORTION OF FUNDS RECOVERED  
IN MEDICAID FRAUD LAWSUITS.*

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

*SECTION 1. Arkansas Code § 20-77-901 and 20-77-902 are amended to read  
as follows:*

*20-77-901. Definitions.*

*As used in this subchapter:*

*(1) "Arkansas Medicaid program" means the program authorized  
under Title XIX of the federal Social Security Act, which provides for  
payments for medical goods or services on behalf of indigent families with  
dependent children and of aged, blind, or disabled individuals whose income*



1 and resources are insufficient to meet the cost of necessary medical  
2 services;

3 (2) "Claim" includes any request or demand, including any and  
4 all documents or information required by federal or state law or by rule,  
5 made against medical assistance programs funds for payment. A claim may be  
6 based on costs or projected costs and includes any entry or omission in a  
7 cost report or similar document, book of account, or any other document which  
8 supports, or attempts to support, the claim. A claim may be made through  
9 electronic means if authorized by the Department of Human Services. Each  
10 claim may be treated as a separate claim, or several claims may be combined  
11 to form one claim;

12 (3) "Fiscal agent" means any individual, firm, corporation,  
13 professional association, partnership, organization, or other legal entity  
14 which, through a contractual relationship with the Department of Human  
15 Services, the State of Arkansas receives, processes, and pays claims under  
16 the program;

17 (4)(A) "Knowing" or "knowingly" means that the person has actual  
18 knowledge of the information or acts in deliberate ignorance or reckless  
19 disregard of the truth or falsity of the information.

20 (B) "Knowing" or "knowingly" does not require proof of  
21 specific intent to defraud;

22 (5) "Medicaid recipient" means any individual on whose behalf  
23 any person claimed or received any payment or payments from the program or  
24 its fiscal agents, whether or not the individual was eligible for benefits  
25 under the program;

26 (6) "Person" means any provider of goods or services or any  
27 employee of the provider, whether that provider be an individual, individual  
28 medical vendor, firm, corporation, professional association, partnership,  
29 organization, or other legal entity under the program but which provides  
30 goods or services to a provider under the program or its fiscal agents; and

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

34  
35 20-77-902. Liability for certain acts.

36 A person shall be liable to the State of Arkansas, through the Attorney

1 *General, for a civil penalty and restitution if he or she:*

2 *(1) Knowingly makes or causes to be made any false statement or*  
3 *representation of a material fact in any application for any benefit or*  
4 *payment under the Arkansas Medicaid program;*

5 *(2) At any time knowingly makes or causes to be made any false*  
6 *statement or representation of a material fact for use in determining rights*  
7 *to a benefit or payment;*

8 *(3) Having knowledge of the occurrence of any event affecting*  
9 *his or her initial or continued right to any benefit or payment or the*  
10 *initial or continued right to any benefit or payment of any other individual*  
11 *in whose behalf he or she has applied for or is receiving a benefit or*  
12 *payment knowingly conceals or fails to disclose that event with an intent*  
13 *fraudulently to secure the benefit or payment either in a greater amount or*  
14 *quantity than is due or when no benefit or payment is authorized;*

15 *(4) Having made application to receive any benefit or payment*  
16 *for the use and benefit of another and having received it, knowingly converts*  
17 *the benefit or payment or any part thereof to a use other than for the use*  
18 *and benefit of the other person;*

19 *(5) Knowingly presents or causes to be presented a claim for a*  
20 *physician's service for which payment may be made under the program and knows*  
21 *that the individual who furnished the service was not licensed as a*  
22 *physician;*

23 *(6) Knowingly solicits or receives any remuneration, including*  
24 *any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,*  
25 *in cash or in kind:*

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

29 *(B) In return for purchasing, leasing, ordering, or*  
30 *arranging for or recommending purchasing, leasing, or ordering any good,*  
31 *facility, service, or item for which payment may be made in whole or in part*  
32 *under the program;*

33 *(7)(A) Knowingly offers or pays any remuneration, including any*  
34 *kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in*  
35 *cash or in kind to any person to induce the person:*

36 *(i) To refer an individual to a person for the*

1 *furnishing or arranging for the furnishing of any item or service for which*  
2 *payment may be made in whole or in part under the program; or*

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

6 *(B) Subdivision (7)(A) of this section shall not apply to:*

7 *(i) A discount or other reduction in price obtained*  
8 *by a provider of services or other entity under the program if the reduction*  
9 *in price is properly disclosed and appropriately reflected in the costs*  
10 *claimed or charges made by the provider or entity under the program;*

11 *(ii) Any amount paid by an employer to an employee*  
12 *who has a bona fide employment relationship with the employer for employment*  
13 *in the providing of covered items or services; or*

14 *(iii) Any amount paid by a vendor of goods or*  
15 *services to a person authorized to act as a purchasing agent for a group of*  
16 *individuals or entities who are furnishing services reimbursed under the*  
17 *program, if:*

18 *(a) The person has a written contract with*  
19 *each individual or entity which specifies the amount to be paid the person,*  
20 *which amount may be a fixed amount or a fixed percentage of the value of the*  
21 *purchases made by each individual or entity under the contract; and*

22 *(b) In the case of an entity that is a*  
23 *provider of services as defined in § 20-9-101, the person discloses, in the*  
24 *form and manner as the Director of the Department of Human Services requires,*  
25 *to the entity and upon request to the director the amount received from each*  
26 *vendor with respect to purchases made by or on behalf of the entity; and*

27 *(iv) Any payment practice specified by the director*  
28 *promulgated pursuant to applicable federal or state law;*

29 *(8) Knowingly makes or causes to be made or induces or seeks to*  
30 *induce the making of any false statement or representation of a material*  
31 *fact:*

32 *(A) With respect to the conditions or operation of any*  
33 *institution, facility, or entity in order that the institution, facility, or*  
34 *entity may qualify either upon initial certification or upon recertification*  
35 *as a hospital, rural primary care hospital, skilled nursing facility, nursing*  
36 *facility, intermediate care facility for the mentally retarded, home health*

1 agency, or other entity for which certification is required; or

2 (B) With respect to information required pursuant to  
3 applicable federal and state law, rules, regulations, and provider  
4 agreements;

5 (9) Knowingly:

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

9 (B) Charges, solicits, accepts, or receives, in addition  
10 to any amount otherwise required to be paid under the program, any gift,  
11 money, donation, or other consideration other than a charitable, religious,  
12 or philanthropic contribution from an organization or from a person unrelated  
13 to the patient as a precondition of admitting a patient to a hospital,  
14 nursing facility, or intermediate care facility for the mentally retarded or  
15 as a requirement for the patient's continued stay in the facility when the  
16 cost of the services provided therein to the patient is paid for in whole or  
17 in part under the program;

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

22 (11) Knowingly:

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

28 (B) As a certified health provider enrolled in the  
29 Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act or  
30 the fiscal agent of such a provider who employs, engages as an independent  
31 contractor, engages as a consultant, or otherwise permits the participation  
32 in the business activities of such a provider, any person who has pleaded  
33 guilty or nolo contendere to or has been found guilty of a charge of Medicaid  
34 fraud, theft of public benefits, or abuse of adults as defined in the  
35 Arkansas Criminal Code, § 5-1-101 et seq.;

36 (12) Knowingly enters into an agreement, combination, or

1 conspiracy to defraud the Arkansas Medicaid program by obtaining or aiding  
2 another person in obtaining an unauthorized payment or benefit from the  
3 Medicaid program or a fiscal agent or getting an otherwise false or  
4 fraudulent claim allowed or paid;

5 (13) Has possession, custody, or control of property or money  
6 used or to be used by the Arkansas Medicaid program and, intending to defraud  
7 the Arkansas Medicaid program or willfully to conceal the property, delivers,  
8 or causes to be delivered, less property than the amount for which the person  
9 receives a certificate of receipt;

10 (14) Being authorized to make or deliver a document certifying  
11 receipt of property used or to be used, by the State of Arkansas and  
12 knowingly intending to defraud the State of Arkansas, knowingly makes or  
13 delivers the receipt;

14 (15) Knowingly buys, or receives as a pledge of an obligation or  
15 debt, public property from an officer, employee, or designee of the State of  
16 Arkansas, who lawfully may not sell or pledge the property; or

17 (16) Knowingly makes, uses, or causes to be made or used, a  
18 false record or statement to conceal, avoid, or decrease an obligation to pay  
19 or transmit money or property to the Arkansas Medicaid program.

20  
21 SECTION 2. Arkansas Code § 20-77-903(a)(1), concerning civil penalties  
22 under the Medicaid Fraud False Claims Act, is amended to read as follows:

23 (a)(1) It shall be unlawful for any person to commit any act  
24 proscribed by § 20-77-902, and any person found to have committed any such  
25 act or acts shall be deemed liable to the State of Arkansas, through the  
26 Attorney General, for full restitution and for a civil penalty of not less  
27 than ~~five thousand dollars (\$5,000)~~ five thousand five hundred dollars  
28 (\$5,500) and not more than ~~ten thousand dollars (\$10,000)~~ eleven thousand  
29 dollars (\$11,000) for each violation, plus three (3) times the amount of all  
30 payments judicially found to have been fraudulently received from the  
31 Arkansas Medicaid program or its fiscal agents because of the act of that  
32 person, except that if the court finds the following:

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

1                   (B) *The person fully cooperated with any Attorney*  
2 *General's investigation of the violation, and at the time the person*  
3 *furnished the Attorney General with the information about the violation:*

4                   (i) *No criminal prosecution, civil action, or*  
5 *administrative action had commenced under this subchapter with respect to the*  
6 *violation; and*

7                   (ii) *The person did not have actual knowledge of the*  
8 *existence of an investigation into the violation.*

9  
10           SECTION 3. *Arkansas Code § 20-77-904 is amended to read as follows:*

11           20-77-904. *Investigation by and Responsibilities of Attorney General –*  
12 *Alternate remedies of qui tam plaintiff.*

13           (a) *If the Attorney General has reasonable cause to believe that a*  
14 *person has information or is in possession, custody, or control of any*  
15 *document or other tangible object relevant to an investigation or that would*  
16 *lead to the discovery of relevant information in an investigation for*  
17 *violation of this subchapter, the Attorney General may serve upon the person,*  
18 *before bringing any action in the circuit court, a written demand to appear*  
19 *and be examined under oath, to answer written interrogatories under oath, and*  
20 *to produce the document or object for inspection and copying. The demand*  
21 *shall:*

22                   (1) *Be served upon the person in the manner required for service*  
23 *of process in the State of Arkansas or by certified mail with return receipt*  
24 *requested;*

25                   (2) *Describe the nature of the conduct constituting the*  
26 *violation under investigation;*

27                   (3) *Describe the class or classes of documents or objects with*  
28 *sufficient definiteness to permit them to be fairly identified;*

29                   (4) *Contain a copy of the written interrogatories;*

30                   (5) *Prescribe a reasonable time at which the person must appear*  
31 *to testify, a time within which to answer the written interrogatories, and a*  
32 *time within which the document or object must be produced;*

33                   (6) *Advise the person that objections to or reasons for not*  
34 *complying with the demand may be filed with the Attorney General on or before*  
35 *that time;*

36                   (7) *Specify a place for the taking of testimony or for*

1 production and designate a person who shall be custodian of the document or  
2 object; and

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

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

8 (2) Venue for the action to enforce the demand shall be in  
9 Pulaski County.

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

13 (4) If the court finds that the demand is proper, that there is  
14 reasonable cause to believe there may have been a violation of this  
15 subchapter, and that the information sought or document or object demanded is  
16 relevant to the violation, it shall order the person to comply with the  
17 demand, subject to modifications the court may prescribe.

18 (c) If the person fails to comply with the order, the court may issue  
19 any of the following orders until the person complies with the order:

20 (1) Adjudging the person in contempt of court;

21 (2) Granting injunctive relief against the person to whom the  
22 demand is issued to restrain the conduct which is the subject of the  
23 investigation; or

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

25 (d) The court may award to the Attorney General costs and reasonable  
26 attorney's fees as determined by the court against the person failing to obey  
27 the order.

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

32 (f)(1)(A) A person may bring a civil action for a violation of § 20-  
33 77-901 et seq. for the person and for the state.

34 (B) The person bringing the action shall be referred to as  
35 the qui tam plaintiff.

36 (C) The action shall be brought in the name of the State



1 of Arkansas.

2 (D) The action may be dismissed only if the court and the  
3 Attorney General give:

4 (i) Written consent to the dismissal; and

5 (ii) The court's and the Attorney General's reasons  
6 for consenting to the dismissal.

7 (2)(A)(i) A copy of the complaint and written disclosure of  
8 substantially all material evidence and information the person possesses  
9 shall be served on the Attorney General.

10 (ii) The complaint shall:

11 (a) Be filed in camera;

12 (b) Remain under seal for at least sixty (60)  
13 days; and

14 (c) Not be served on the defendant until the  
15 court so orders.

16 (B) The Attorney General may elect to intervene and  
17 proceed with the action within sixty (60) days after receiving both the  
18 complaint and the material evidence and information.

19 (3)(A) For good cause shown, the Attorney General may move the  
20 court for extensions of the time during which the complaint remains under  
21 seal under subdivision (f)(2) of this section.

22 (B) A motion under subdivision (f)(3)(A) of this section  
23 may be supported by affidavits or other submissions in camera.

24 (C) The defendant shall not be required to respond to any  
25 complaint filed under this section until twenty (20) days after the complaint  
26 is unsealed and served upon the defendant.

27 (4) Before the expiration of the sixty-day period or any  
28 extensions obtained under subdivision (f)(3) of this section, the Attorney  
29 General shall:

30 (A) Proceed with the action, in which case the action  
31 shall be conducted by the state; or

32 (B) Notify the court that it declines to take over the  
33 action, in which case the person bringing the action may conduct the action.

34 (5) If a person brings an action under this subsection (f), a  
35 person other than the Attorney General may not intervene or bring a related  
36 action based on the facts underlying the pending action.

1 (g)(1)(A) If the Attorney General proceeds with the action, the  
2 Attorney General:

3 (i) Has the primary responsibility for prosecuting  
4 the action; and

5 (ii) Is not be bound by an act of the person  
6 bringing the action.

7 (B) A person bringing the action may continue as a party  
8 to the action, except as under subdivision (g)(2) of this section.

9 (2)(A) If the Attorney General proceeds with the action, the  
10 Attorney General may dismiss the action notwithstanding the objections of the  
11 person initiating the action, if the person has been notified by the state of  
12 the filing of the motion and the court has provided the person with an  
13 opportunity for a hearing on the motion.

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

18 (ii) Upon a showing of good cause, a hearing under  
19 subdivision (g)(2)(B)(i) of this section may be held in camera.

20 (C) Upon a showing by the Attorney General that  
21 unrestricted participation during the course of the litigation by the person  
22 initiating the action would interfere with or unduly delay the state's  
23 prosecution of the case, or would be repetitious, irrelevant, or for purposes  
24 of harassment, the court may impose limitations on the person's  
25 participation, including without limitation:

26 (i) Limiting the number of witnesses the person may  
27 call;

28 (ii) Limiting the length of the testimony of  
29 witnesses the person calls;

30 (iii) Limiting the person's cross-examination of  
31 witnesses; or

32 (iv) Otherwise limiting the participation by the  
33 person in the litigation.

34 (D) Upon a showing by the defendant that unrestricted  
35 participation during the course of the litigation by the person initiating  
36 the action would be for purposes of harassment or would cause the defendant

1 undue burden or unnecessary expense, the court may limit the participation by  
2 the person in the litigation.

3 (3)(A) If the Attorney General elects not to proceed with the  
4 action, the person who initiated the action may conduct the action.

5 (B) If the state so requests, the state shall be:

6 (i) Served with copies of all pleadings filed in the  
7 action; and

8 (ii) Supplied with copies of all deposition  
9 transcripts, at the state's expense.

10 (C) When a person proceeds with the action, the court,  
11 without limiting the status and rights of the person initiating the action,  
12 may nevertheless permit the state to intervene at a later date upon a showing  
13 of good cause.

14 (4)(A) Whether or not the Attorney General proceeds with the  
15 action, upon a showing by the state that certain actions of discovery by the  
16 person initiating the action would interfere with the state's investigation  
17 or prosecution of a criminal or civil matter arising out of the same facts,  
18 the court may stay discovery by the person initiating the action for not more  
19 than sixty (60) days.

20 (B) A showing of interference under subdivision (g)(4)(A)  
21 of this section shall be conducted in camera.

22 (C) The court may extend the sixty-day period upon a  
23 further showing in camera that the state has pursued the criminal or civil  
24 investigation or proceedings with reasonable diligence and any proposed  
25 discovery in the civil action will interfere with the ongoing criminal or  
26 civil investigation or proceedings.

27 (5)(A) Notwithstanding subsection (b) of this section, the state  
28 may elect to pursue its claim through any alternate remedy available to the  
29 state, including without limitation any administrative proceeding to  
30 determine a civil monetary penalty.

31 (B) If an alternate remedy under subdivision (g)(5)(A) of  
32 this section is pursued in another proceeding, the person initiating the  
33 action shall have the same rights in the proceedings as the person would have  
34 had if the action had continued under this section.

35 (C) A finding of fact or a conclusion of law made in an  
36 alternative remedy proceeding that has become final is conclusive on all

1 parties to an action under this section.

2 (D) For purposes of this subdivision (g)(5), a finding or  
3 conclusion is final if:

4 (i)(a) The finding or conclusion has been finally  
5 determined on appeal to the appropriate court of jurisdiction; and

6 (b) All time for filing an appeal under this  
7 subdivision (g)(5) with respect to the finding or conclusion has expired; or

8 (ii) The finding or conclusion is not subject to  
9 judicial review.

10  
11 SECTION 4. Arkansas Code § 20-77-908 is amended to read as follows:  
12 20-77-908. False claims jurisdiction - Procedure.

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

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

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

22 ~~(d) A subpoena requiring the production of documents or the attendance~~  
23 ~~of a witness at an interview, trial, or hearing conducted under this section~~  
24 ~~may be served by the Attorney General or any duly authorized law enforcement~~  
25 ~~officer in the State of Arkansas personally, telephonically, or by registered~~  
26 ~~or certified mail. In the case of service by registered or certified mail,~~  
27 ~~the return shall be accompanied by the return post office receipt of delivery~~  
28 ~~of the demand.~~

29 (a) A subpoena requiring the attendance of a witness at a trial or  
30 hearing conducted under § 20-77-901 et. seq. may be served at any place in  
31 the United States.

32 (b) A civil action under § 20-77-901, et. seq. may not be brought:

33 (1) More than six (6) years after the date on which the  
34 violation of § 20-77-902 is committed; or

35 (2) More than three (3) years after the date when facts material  
36 to the right of action are known or reasonably should have been known by the

1 official of the state charged with responsibility to act in the  
 2 circumstances, but in no event more than ten (10) years after the date on  
 3 which the violation is committed, whichever occurs last.

4 (c) In an action brought under § 20-77-901 et. seq., the state shall  
 5 prove all essential elements of the cause of action, including damages, by a  
 6 preponderance of the evidence.

7 (d) Notwithstanding any other provision of law, or rule of law or  
 8 evidence, a final judgment rendered in favor of the state in any criminal  
 9 proceeding charging fraud or false statements, whether upon a verdict after  
 10 trial or upon a plea of guilty or nolo contendere, shall stop the defendant  
 11 from denying the essential elements of the offense in any action that  
 12 involves the same transaction as in the criminal proceeding and that is  
 13 brought under § 5-55-101 et. seq., or § 20-77-901 et. seq.

14  
 15 SECTION 5. Arkansas Code § 20-77-911 is amended to read as follows:

16 20-77-911. Reward for the detection and punishment of Medicaid fraud.

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

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

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

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

36 ~~(d) Employees or fiscal agents charged with the duty of referring or~~

1 ~~investigating cases of Medicaid fraud who are employed by or who contract~~  
2 ~~with any governmental entity shall not be eligible to receive a reward under~~  
3 ~~this section.~~

4 (a)(1) Subject to subdivision (a)(2) of this section, if the state  
5 proceeds with an action brought by a person under § 20-77-904(f), the person  
6 shall receive at least fifteen percent (15%) but not more than twenty-five  
7 percent (25%) of the proceeds of the action or settlement of the claim,  
8 depending upon the extent to which the person substantially contributed to  
9 the prosecution of the action.

10 (2)(A) Where the action is one that the court finds to be based  
11 primarily on disclosures of specific information, other than information  
12 provided by the person bringing the action, relating to allegations or  
13 transactions in a criminal, civil, or administrative hearing, report, audit,  
14 investigation, or from the news media, the court may award to the person  
15 brining the action a sum the court considers appropriate.

16 (B) In making an award under subdivision (a)(2)(A) of this  
17 section the court shall take into account the significance of the information  
18 and the role of the person bringing the action in advancing the case to  
19 litigation.

20 (3)(A) A payment to a person under subsections (a) or (b) of  
21 this section, or both shall be made from the proceeds recovered and collected  
22 in the action or in settlement of the claim.

23 (B)(i) A person who receives a payment under subsection  
24 (a) or (b) of this sections, or both also shall receive an amount for  
25 reasonable expenses that the court finds to have been necessarily incurred,  
26 plus reasonable attorney's fees and costs.

27 (ii) All expenses, fees, and costs paid under  
28 subdivision (a)(3)(B)(i) of this section shall be awarded against the  
29 defendant.

30 (b)(1) If the Attorney General does not proceed with an action under  
31 this section, the person bringing the action or settling the claim shall  
32 receive an amount that the court decides is reasonable for collecting the  
33 civil penalty and damages.

34 (2) The amount paid under subdivision (b)(1) of this section  
35 shall not be less than twenty-five percent (25%) and not more than thirty  
36 percent (30%) of the proceeds of the action or settlement and shall be paid

1 out of the proceeds of the action or settlement.

2 (3)(A) A person who receives payment under this subsection (b)  
3 shall also receive an amount for reasonable expenses that the court finds to  
4 have been necessarily incurred, plus reasonable attorney's fees and costs.

5 (B) All expenses, fees, and costs paid under subdivision  
6 (b)(3)(A) of this section shall be awarded against the defendant.

7 (c)(A) Whether or not the Attorney General proceeds with the action,  
8 if the court finds that the action was brought by a person who planned and  
9 initiated the violation of § 20-77-902 upon which the action was brought, the  
10 court may reduce, to the extent the court considers appropriate, or eliminate  
11 the share of the proceeds of the action that the person would otherwise  
12 receive under subdivision (a) or (b) of this section, or both, taking into  
13 account the role of the person in advancing the case to litigation and any  
14 relevant circumstances pertaining to the violation.

15 (B)(i) If the person bringing the action is convicted of  
16 criminal conduct arising from the person's role in the violation of § 20-77-  
17 902, the person shall be dismissed from the civil action and shall not  
18 receive any share of the proceeds of the action.

19 (ii) A dismissal under subdivision (c)(B)(i) of this  
20 section does not prejudice the right of the state to continue the action.

21 (d) If the state does not proceed with the action and the person  
22 bringing the action conducts the action, the court shall award to the  
23 defendant reasonable attorney's fees and expenses if:

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

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

28 (e)(1) A person shall not bring an action under this subchapter that  
29 is based upon allegations or transactions that are the subject of a civil  
30 suit or an administrative civil money penalty proceeding in which the state  
31 is already a party.

32 (2)(A) A court shall not have jurisdiction over an action under  
33 this section based upon the public disclosure of allegations or transactions  
34 in a criminal, civil, or administrative hearing, audit, investigation, or  
35 from the news media, unless the action is brought by the Attorney General or  
36 the person bringing the action is an original source of the information.

1 (B) For purpose of this subdivision (e)(2), "original  
2 source" means an individual who has direct and independent knowledge of the  
3 information on which the allegations are based and who has voluntarily  
4 provided the information to the state before filing an action under this  
5 section that is based on the information.

6 (f) The state is not liable for expenses that a person incurs in  
7 bringing an action under this section.

8  
9 SECTION 6. Arkansas Code Title 20, chapter 77, Subchapter 9 is amended  
10 to add additional sections to read as follows:

11 20-77-912. Money recovered by the state – False claims prosecution  
12 fund.

13 (a) Money recovered by the state as a result of actions brought by the  
14 Attorney General or a person under this subchapter shall be credited as  
15 special revenues of the State of Arkansas and deposited into the Arkansas  
16 Medicaid Program Trust Fund for the sole use of the Arkansas Medicaid  
17 Program.

18 (b) Costs and attorney’s fees awarded to a relator by final judicial  
19 order in an action under this subchapter shall be paid directly by the  
20 defendant to the relator.

21 (c) No liability shall be incurred by the state, the affected agency,  
22 or the Attorney General for any expenses, attorney’s fees, or other costs  
23 incurred by a person in bringing or defending an action under this  
24 subchapter.

25  
26 20-77-913. Retaliation by employer against person bringing suit  
27 prohibited.

28 (a) A person who is discharged, demoted, suspended, threatened,  
29 harassed, or in any other manner discriminated against in the terms of  
30 employment by the person’s employer because of a lawful act taken by the  
31 person in furtherance of an action under this subchapter, including  
32 investigation for, initiation of, testimony for, or assistance in an action  
33 filed or to be filed under this subchapter, is entitled to:

34 (1) Reinstatement with the same seniority status the person  
35 would have had but for the discrimination; and

36 (2) Not less than two (2) times the amount of back pay, interest



1 on the back pay, and compensation for any special damages sustained as a  
2 result of the discrimination, including without limitation litigation costs  
3 and reasonable attorney's fees.

4 (b) A person may bring an action in the appropriate district court for  
5 the relief provided under this section.

6  
7 20-77-914. Rules – Attorney General.

8 The Attorney General may adopt rules that, in the attorney general's  
9 judgment, are necessary and appropriate to the effective administration of  
10 this subchapter.

11  
12 20-77-915. Retroactivity.

13 (a) The Medicaid Fraud False Claims Act, codified in § 20-77-901, et.  
14 seq., shall take effect immediately and shall be deemed to have been in full  
15 force and effect on and after the effective date of this act.

16 (b) This act applies to claims filed or presented before, on, or after  
17 the effective date of this act.

18  
19 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the  
20 General Assembly of the State of Arkansas that the Medicaid Fraud Act is in  
21 immediate need of this revision to clarify an ambiguity in the law; and that  
22 the provisions of this act are essential to successful operations and  
23 activities of the Medicaid Fraud Control Unit of the Attorney General's  
24 Office and the Department of Human Services. Therefore, an emergency is  
25 declared to exist and this act being immediately necessary for the  
26 preservation of the public peace, health, and safety shall become effective  
27 on:

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

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

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

*/s/ L. Sh*

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