

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/23/09

A Bill

HOUSE BILL 2103

5 By: Representative L. Smith
6
7

For An Act To Be Entitled

9 AN ACT TO ENCOURAGE CITIZENS TO FILE LAWSUITS
10 SEEKING RECOVERY OF MONEYS FRAUDULENTLY RECEIVED
11 FROM THE STATE; TO INCREASE THE STATE'S PORTION
12 OF FUNDS RECOVERED IN MEDICAID FRAUD LAWSUITS;
13 AND FOR OTHER PURPOSES.
14

Subtitle

15 TO ENCOURAGE CITIZENS TO FILE LAWSUITS
16 SEEKING RECOVERY OF MONEYS FRAUDULENTLY
17 RECEIVED FROM THE STATE AND TO INCREASE
18 THE STATE'S PORTION OF FUNDS RECOVERED
19 IN MEDICAID FRAUD LAWSUITS.
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

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

28 20-77-901. Definitions.

29 As used in this subchapter:

30 (1) "Arkansas Medicaid program" means the program authorized
31 under Title XIX of the federal Social Security Act, which provides for
32 payments for medical goods or services on behalf of indigent families with
33 dependent children and of aged, blind, or disabled individuals whose income
34 and resources are insufficient to meet the cost of necessary medical
35 services;

36 (2) "Claim" includes any request or demand, including any and



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

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

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

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

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

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

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

31

32 20-77-902. Liability for certain acts.

33 A person shall be liable to the State of Arkansas, through the Attorney
 34 General, for a civil penalty and restitution if he or she:

35 (1) Knowingly makes or causes to be made any false statement or
 36 representation of a material fact in any application for any benefit or

1 payment under the Arkansas Medicaid program;

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

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

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

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

20 (6) Knowingly solicits or receives any remuneration, including
21 any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,
22 in cash or in kind:

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

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

30 (7)(A) Knowingly offers or pays any remuneration, including any
31 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in
32 cash or in kind to any person to induce the person:

33 (i) To refer an individual to a person for the
34 furnishing or arranging for the furnishing of any item or service for which
35 payment may be made in whole or in part under the program; or

36 (ii) To purchase, lease, order, or arrange for or

1 recommend purchasing, leasing, or ordering any good, facility, service, or
2 item for which payment may be made in whole or in part under the program.

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

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

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

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

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

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

24 (iv) Any payment practice specified by the director
25 promulgated pursuant to applicable federal or state law;

26 (8) Knowingly makes or causes to be made or induces or seeks to
27 induce the making of any false statement or representation of a material
28 fact:

29 (A) With respect to the conditions or operation of any
30 institution, facility, or entity in order that the institution, facility, or
31 entity may qualify either upon initial certification or upon recertification
32 as a hospital, rural primary care hospital, skilled nursing facility, nursing
33 facility, intermediate care facility for the mentally retarded, home health
34 agency, or other entity for which certification is required; or

35 (B) With respect to information required pursuant to
36 applicable federal and state law, rules, regulations, and provider

1 agreements;

2 (9) Knowingly:

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

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

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

19 (11) Knowingly:

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

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

33 (12) Knowingly enters into an agreement, combination, or
34 conspiracy to defraud the Arkansas Medicaid program by obtaining or aiding
35 another person in obtaining an unauthorized payment or benefit from the
36 Medicaid program or a fiscal agent or getting an otherwise false or

1 fraudulent claim allowed or paid;

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

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

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

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

17
 18 SECTION 2. Arkansas Code § 20-77-903(a)(1), concerning civil penalties
 19 under the Medicaid Fraud False Claims Act, is amended to read as follows:

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

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

34 (B) The person fully cooperated with any Attorney
 35 General's investigation of the violation, and at the time the person
 36 furnished the Attorney General with the information about the violation:

1 (i) No criminal prosecution, civil action, or
2 administrative action had commenced under this subchapter with respect to the
3 violation; and

4 (ii) The person did not have actual knowledge of the
5 existence of an investigation into the violation.

6
7 SECTION 3. Arkansas Code § 20-77-904 is amended to read as follows:

8 20-77-904. Investigation by and Responsibilities of Attorney General –
9 Alternate remedies of qui tam plaintiff.

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

19 (1) Be served upon the person in the manner required for service
20 of process in the State of Arkansas or by certified mail with return receipt
21 requested;

22 (2) Describe the nature of the conduct constituting the
23 violation under investigation;

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

26 (4) Contain a copy of the written interrogatories;

27 (5) Prescribe a reasonable time at which the person must appear
28 to testify, a time within which to answer the written interrogatories, and a
29 time within which the document or object must be produced;

30 (6) Advise the person that objections to or reasons for not
31 complying with the demand may be filed with the Attorney General on or before
32 that time;

33 (7) Specify a place for the taking of testimony or for
34 production and designate a person who shall be custodian of the document or
35 object; and

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

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

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

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

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

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

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

18 (2) Granting injunctive relief against the person to whom the
19 demand is issued to restrain the conduct which is the subject of the
20 investigation; or

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

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

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

29 (f)(1)(A) A person may bring a civil action for a violation of § 20-
30 77-901 et seq. for the person and for the state.

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

33 (C) The action shall be brought in the name of the State
34 of Arkansas.

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

1 (i) Written consent to the dismissal; and
2 (ii) The court's and the Attorney General's reasons
3 for consenting to the dismissal.

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

7 (ii) The complaint shall:
8 (a) Be filed in camera;
9 (b) Remain under seal for at least sixty (60)
10 days; and

11 (c) Not be served on the defendant until the
12 court so orders.

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

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

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

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

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

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

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

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

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

36 (i) Has the primary responsibility for prosecuting

1 the action; and

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

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

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

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

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

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

23 (i) Limiting the number of witnesses the person may
24 call;

25 (ii) Limiting the length of the testimony of
26 witnesses the person calls;

27 (iii) Limiting the person's cross-examination of
28 witnesses; or

29 (iv) Otherwise limiting the participation by the
30 person in the litigation.

31 (D) Upon a showing by the defendant that unrestricted
32 participation during the course of the litigation by the person initiating
33 the action would be for purposes of harassment or would cause the defendant
34 undue burden or unnecessary expense, the court may limit the participation by
35 the person in the litigation.

36 (3)(A) If the Attorney General elects not to proceed with the

1 action, the person who initiated the action may conduct the action.

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

3 (i) Served with copies of all pleadings filed in the
4 action; and

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

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

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

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

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

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

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

32 (C) A finding of fact or a conclusion of law made in an
33 alternative remedy proceeding that has become final is conclusive on all
34 parties to an action under this section.

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

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

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

5 (ii) The finding or conclusion is not subject to
6 judicial review.

7
8 SECTION 4. Arkansas Code § 20-77-908 is amended to read as follows:
9 20-77-908. False claims jurisdiction - Procedure.

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

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

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

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

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

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

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

32 (2) More than three (3) years after the date when facts material
33 to the right of action are known or reasonably should have been known by the
34 official of the state charged with responsibility to act in the
35 circumstances, but in no event more than ten (10) years after the date on
36 which the violation is committed, whichever occurs last.

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

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

11
12 SECTION 5. Arkansas Code § 20-77-911 is amended to read as follows:

13 20-77-911. Reward for the detection and punishment of Medicaid fraud.

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

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

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

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

33 ~~(d) Employees or fiscal agents charged with the duty of referring or~~
34 ~~investigating cases of Medicaid fraud who are employed by or who contract~~
35 ~~with any governmental entity shall not be eligible to receive a reward under~~
36 ~~this section.~~

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

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

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

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

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

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

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

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

35 (3)(A) A person who receives payment under this subsection (b)
36 shall also receive an amount for reasonable expenses that the court finds to

1 have been necessarily incurred, plus reasonable attorney's fees and costs.

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

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

12 (B)(i) If the person bringing the action is convicted of
13 criminal conduct arising from the person's role in the violation of § 20-77-
14 902, the person shall be dismissed from the civil action and shall not
15 receive any share of the proceeds of the action.

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

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

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

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

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

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

34 (B) For purpose of this subdivision (e)(2), "original
35 source" means an individual who has direct and independent knowledge of the
36 information on which the allegations are based and who has voluntarily

1 provided the information to the state before filing an action under this
2 section that is based on the information.

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

5
6 SECTION 6. Arkansas Code Title 20, chapter 77, Subchapter 9 is amended
7 to add additional sections to read as follows:

8 20-77-912. Money recovered by the state – False claims prosecution
9 fund.

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

15 (b) Costs and attorney's fees awarded to a relator by final judicial
16 order in an action under this subchapter shall be paid directly by the
17 defendant to the relator.

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

22
23 20-77-913. Retaliation by employer against person bringing suit
24 prohibited.

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

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

33 (2) Not less than two (2) times the amount of back pay, interest
34 on the back pay, and compensation for any special damages sustained as a
35 result of the discrimination, including without limitation litigation costs
36 and reasonable attorney's fees.

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

3
4 20-77-914. Rules – Attorney General.

5 The Attorney General may adopt rules that, in the attorney general’s
6 judgment, are necessary and appropriate to the effective administration of
7 this subchapter.

8
9 20-77-915. Retroactivity.

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

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

15
16 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that the Medicaid Fraud Act is in
18 immediate need of this revision to clarify an ambiguity in the law; and that
19 the provisions of this act are essential to successful operations and
20 activities of the Medicaid Fraud Control Unit of the Attorney General’s
21 Office and the Department of Human Services. Therefore, an emergency is
22 declared to exist and this act being immediately necessary for the
23 preservation of the public peace, health, and safety shall become effective
24 on:

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

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

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

31
32
33
34 /s/ L. Smith