

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023

A Bill

SENATE BILL 515

4
5 By: Senator Irvin

For An Act To Be Entitled

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

Subtitle

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18
19 TO AMEND THE MEDICAID FRAUD ACT AND THE
20 MEDICAID FRAUD FALSE CLAIMS ACT.

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23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

25
26 SECTION 1. Arkansas Code § 5-55-102(2), concerning the definition of
27 "claim" within the Medicaid Fraud Act, is amended to read as follows:

28 (2)(A) "Claim" means any ~~written or electronically submitted~~
29 ~~request or demand for reimbursement or payment made by any Medicaid provider~~
30 ~~to the Arkansas Medicaid Program, a managed care organization, or any fiscal~~
31 ~~agent of the Arkansas Medicaid Program or a managed care organization for~~
32 ~~each good or service purported to have been provided to any Medicaid~~
33 ~~recipient and all documentation required to be created or maintained by law~~
34 ~~or rule to justify, support, approve, or document the delivery of healthcare~~
35 ~~goods or services to a Medicaid recipient as a condition of participation in~~
36 ~~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:

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

~~(B) "Illegal Medicaid participation" includes without~~

1 ~~limitation when a suspended or excluded individual or organization;~~

2 ~~(i) Is employed or contracting with a Medicaid~~
3 ~~provider or managed care organization or otherwise associated with a Medicaid~~
4 ~~provider or managed care organization for the purpose of providing or~~
5 ~~supervising the provision of goods and services to Medicaid recipients;~~

6 ~~(ii) Plays any role in the management of a Medicaid~~
7 ~~provider directly as a manager or management company or indirectly as a~~
8 ~~consultant or advisor; or~~

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

13 ~~(5)(4)~~ "Managed care organization" means a health insurer,
14 Medicaid provider, or other business entity authorized by state law or
15 through a contract with the state to receive a fixed or capitated rate or fee
16 to manage all or a portion of the delivery of healthcare goods or services to
17 Medicaid recipients;

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

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

26 (8) "Overpayment" means the full amount of the Medicaid funds
27 obtained as a direct or indirect result of a violation of Medicaid fraud, §
28 5-55-111, § 20-77-902, the rules of the Arkansas Medicaid Program, or a
29 managed care provider contract;

30 (9) "Person" means any:

31 (A) Medicaid provider of goods or services under the
32 Arkansas Medicaid Program or any employee of the Medicaid provider,
33 independent contractor of the Medicaid provider, contractor of the Medicaid
34 provider, or subcontractor of the Medicaid provider, whether the Medicaid
35 provider be an individual, individual medical vendor, firm, corporation,
36 professional association, partnership, organization, risk-based provider

1 organization, managed care organization, or other legal entity; or

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

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

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

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

21 (B) Records documenting treatment administration,
22 medication administration, and activities of daily living; and

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

27 (11) "Serious physical injury" means a physical injury to an
28 endangered person or impaired person that:

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

30 (B) Causes:

31 (i) Protracted disfigurement;

32 (ii) Protracted impairment of health; or

33 (iii) Loss or protracted impairment of the function
34 of any bodily member or organ; and

35 (12)(A) "Unlawful Medicaid participation" means participation in
36 the Arkansas Medicaid Program when an individual or organization is suspended

1 from the Arkansas Medicaid Program or is on a state or federal excluded
 2 Medicaid provider list.

3 (B) "Unlawful Medicaid participation" includes without
 4 limitation when a suspended or excluded individual or organization:

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

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

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

16
 17 SECTION 4. Arkansas Code § 5-55-103 is amended to read as follows:

18 5-55-103. Unlawful acts – Classification.

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

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

22 (A) Class D felony if the aggregate amount of overpayment
 23 resulting from a violation of Medicaid fraud, § 5-55-111 is one thousand
 24 dollars (\$1,000) or more but less than two thousand five hundred dollars
 25 (\$2,500);

26 ~~(1)(B)~~ Class C felony if the aggregate amount of ~~payments~~
 27 ~~illegally claimed~~ overpayment resulting from a violation of Medicaid fraud, §
 28 5-55-111 is two thousand five hundred dollars (\$2,500) or more but less than
 29 five thousand dollars (\$5,000);

30 ~~(2)(C)~~ Class B felony if the aggregate amount of ~~payments~~
 31 ~~illegally claimed~~ overpayment resulting from a violation of Medicaid fraud, §
 32 5-55-111 is five thousand dollars (\$5,000) or more but less than twenty-five
 33 thousand dollars (\$25,000); ~~and~~

34 ~~(3)(D)~~ Class A felony if the aggregate amount of ~~payments~~
 35 ~~illegally claimed~~ overpayment resulting from a violation of Medicaid fraud, §
 36 5-55-111 is twenty-five thousand dollars (\$25,000) or more; or

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

4 ~~(c) Otherwise, Medicaid fraud is a Class A misdemeanor.~~

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

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

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

13 (B) To seek the enhanced penalty permitted by this
14 section, the state shall charge the enhancement in the information or
15 indictment.

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

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

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

26 (2)(A) A charge based on aggregated acts of Medicaid fraud, § 5-
27 55-111, may be brought in any county where one (1) of the alleged acts
28 occurred or in Pulaski County.

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

33
34 SECTION 5. Arkansas Code § 5-55-104(c)-(i), concerning records related
35 to Medicaid fraud within the Medicaid Fraud Act, are amended to read as
36 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24 SECTION 6. Arkansas Code § 5-55-106 is amended to read as follows:

25 5-55-106. Investigation by Attorney General – Access to records.

26 ~~The office of the Attorney General is the entity to which a case of
27 suspected Medicaid fraud shall be referred by the Arkansas Medicaid Program
28 or its fiscal agents for the purposes of investigation, civil action, or
29 referral to the prosecuting attorney having criminal jurisdiction in the
30 matter.~~

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

35 (B) When fully certified by the Office of Inspector
36 General of the United States Department of Health and Human Services, a

1 investigative and prosecution unit as described in subdivision (a)(1)(A) of
2 this section is identified under federal law and regulations as a Medicaid
3 Fraud Control Unit.

4 (2) The Medicaid Fraud Control Unit, under the supervision of
5 the Attorney General, shall have statewide law enforcement investigative
6 jurisdiction and may utilize all civil investigative and litigation authority
7 of the Attorney General’s office.

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

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

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

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

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

23 (B) Allowed access to all records whether in the
24 possession of the Arkansas Medicaid Program, a Medicaid provider, or employee
25 or contractor of a Medicaid provider.

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

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

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

32 (B) Encounter claims data and other records of managed
33 care organizations and any other record related to provision of goods and
34 services to Medicaid recipients;

35 (C) Notwithstanding any other confidentiality law, all
36 financial reports, cost reports, disclosure forms, and other records

1 submitted or required to be retained in any licensure process, rate
2 development process, rate review process, reconciliation process, or
3 actuarial process required to participate in the Arkansas Medicaid Program or
4 by state law or rule.

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

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

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

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

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

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

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

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

34
35 SECTION 7. Arkansas Code § 5-55-107(a)(1)(A), concerning restitution
36 and collection within the Medicaid Fraud Act, is amended to read as follows:

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

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

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

11 (B) As the State of Arkansas has a right to litigate any
12 claim that a debt is uncollectable, the Attorney General’s office shall be
13 given notice, a reasonable time to investigate a claim by a defendant that
14 the amount of the restitution is uncollectable, and the opportunity to
15 present evidence before any finding that a debt is uncollectable is entered.

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

18
19 SECTION 9. Arkansas Code § 5-55-107(e)(2), concerning restitution and
20 collection within the Medicaid Fraud Act, is amended to read as follows:

21 (2) Restitution ~~ordered~~ payments to reimburse for reasonable and
22 necessary expenses incurred by the ~~office of the Attorney General~~ Attorney
23 General’s office or the prosecuting attorney during investigation and
24 prosecution shall be paid to the office of the Attorney General or the
25 prosecuting attorney to be retained and used in future investigations for
26 Medicaid fraud.

27
28 SECTION 10. Arkansas Code § 5-55-108 is amended to read as follows:
29 5-55-108. Fines.

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

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

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

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

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

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

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

18
19 SECTION 11. Arkansas Code § 5-55-110 and § 5-55-111 are amended to
20 read as follows:

21 5-55-110. ~~Suspension~~ Exclusion of violators.

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

26 (a) Upon conviction for a violation of this subchapter, the Secretary
27 of the Department of Human Services or the Secretary of the Department of
28 Inspector General may exclude a person or Medicaid provider from
29 participation in the Arkansas Medicaid Program and terminate the Medicaid
30 provider number and provider agreement.

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

33
34 5-55-111. Criminal acts constituting Medicaid fraud.

35 A person commits Medicaid fraud when he or she:

36 (1) Purposely makes or causes to be made any ~~omission or~~

1 ~~material~~ false statement, omission, or representation of a ~~material~~ fact in
2 any claim, bill, invoice, census, request for payment, or ~~application for any~~
3 ~~benefit or~~ other communication seeking payment under the Arkansas Medicaid
4 Program;

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

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

21 (4) Having made or submitted a claim, request for payment, or
22 application to receive any benefit or payment under the Arkansas Medicaid
23 Program for the use and benefit of another person and having received it,
24 purposely converts the benefit or payment under the Arkansas Medicaid Program
25 or any part of the benefit or payment under the Arkansas Medicaid Program to
26 a use other than for the use and benefit of the other person;

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

31 ~~(6) Purposely solicits or receives any remuneration, including~~
32 ~~any kickback, bribe, or rebate, directly or indirectly, overtly or covertly,~~
33 ~~in cash or in kind;~~

34 ~~(A) In return for referring an individual to a person for~~
35 ~~the furnishing or arranging for the furnishing of any item or service for~~
36 ~~which payment may be made in whole or in part under the Arkansas Medicaid~~

1 Program; or

2 (B) In return for purchasing, leasing, ordering, or
3 arranging for or recommending purchasing, leasing, or ordering any good,
4 facility, service, or item for which payment may be made in whole or in part
5 under the Arkansas Medicaid Program;

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

9 (i) Refer an individual to a person for the
10 furnishing or arranging for the furnishing of any item or service for which
11 payment may be made in whole or in part under the Arkansas Medicaid Program;
12 or

13 (ii) Purchase, lease, order, or arrange for or
14 recommend purchasing, leasing, or ordering any good, facility, service, or
15 item for which payment may be made in whole or in part under the Arkansas
16 Medicaid Program.

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

20 (i) A discount or other reduction in price obtained
21 by a provider of services or other entity under the Arkansas Medicaid Program
22 if the reduction in price is properly disclosed and appropriately reflected
23 in the costs claimed or charges made by the provider or entity under the
24 Arkansas Medicaid Program;

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

28 (iii) Any amount paid by a vendor of goods or
29 services to a person authorized to act as a purchasing agent for a group of
30 individuals or entities who are furnishing services reimbursed under the
31 Arkansas Medicaid Program if:

32 (a) The person has a written contract with
33 each individual or entity that specifies the amount to be paid to the person
34 and the amount may be a fixed amount or a fixed percentage of the value of
35 the purchases made by each individual or entity under the contract; and

36 (b) In the case of an entity that is a

~~provider of services as defined in § 20-9-101, the person discloses in such form and manner as the Secretary of the Department of Human Services requires to the entity and, upon request, to the secretary, the amount received from each vendor with respect to purchases made by or on behalf of the entity; or~~

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

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

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

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

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

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

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

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

5 ~~(10)(8)~~ Purposely makes or causes to be made any material false
6 statement, omission, or representation of a ~~material~~ fact in any application
7 for a benefit or payment in violation of the rules and provider agreements
8 issued by the Arkansas Medicaid Program or its fiscal agents;

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

14 ~~(12)(9)~~ Purposely alters, forges, or utters a forged the
15 ~~signature of a doctor, nurse, or other medical professional on a~~
16 prescription, referral for healthcare goods or services, or finding of
17 medical necessity for any Medicaid recipient ~~of the Arkansas Medicaid~~
18 ~~Program;~~

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

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

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

25 ~~(14)(10)~~ Purposely places a false entry makes or causes to be
26 made any material false statement, omission, or representation of fact in a
27 medical chart, medical record, or any record ~~of services required to be made~~
28 ~~to the Arkansas Medicaid Program~~ that indicates that healthcare goods or
29 services have been provided to a Medicaid recipient knowing that the
30 healthcare goods or services were not provided;

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

35 (12)(A) Having knowledge or having discovered that an improper,
36 inadvertent, or accidental overpayment has been made by the Arkansas Medicaid

1 Program, purposely fails to promptly report and repay the overpayment.

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

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

8 5-55-112. Kickbacks and other unlawful remuneration, referral fees,
9 bonuses, bribes, or rebates.

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

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

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

21 (b) It is unlawful to offer or pay any payment or compensation,
22 including any kickback, bribe, rebate, or referral fee, directly or
23 indirectly, overtly or covertly, in cash or in kind, to any person to induce
24 that person to:

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

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

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

35 (1) A discount or other reduction in price obtained by a
36 provider of services or other entity under the Arkansas Medicaid Program if

1 the reduction in price is properly disclosed and appropriately reflected in
2 the costs claimed or charges made by the provider or entity under the
3 Arkansas Medicaid Program;

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

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

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

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

23 (d)(1)(A) A violation under this section is a Class D felony if the
24 aggregate amount of the unlawful compensation paid or received in violation
25 of this section is one thousand dollars (\$1,000) or more but less than two
26 thousand five hundred dollars (\$2,500).

27 (B) A violation under this section is a Class A
28 misdemeanor if the aggregate amount of the unlawful compensation paid or
29 received in violation of this section is less than one thousand dollars
30 (\$1,000).

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

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

1 of this section is five thousand dollars (\$5,000) or more but less than
2 twenty-five thousand dollars (\$25,000).

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

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

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

14 (2) All other fines assessed under this section shall be paid to
15 the Attorney General’s office and disbursed in accordance with rules of the
16 Arkansas Medicaid Program with the state’s share being deposited into the
17 Arkansas Medicaid Program Trust Fund.

18

19 SECTION 13. Arkansas Code § 5-55-113(e), concerning rewards for
20 information within the Medicaid Fraud 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 funds~~ collected at the time of the
23 conviction not to exceed ten thousand dollars (\$10,000) as a reward in any
24 settlement agreement case under this section.

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

28

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

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

35 (d) A special deputy prosecutor appointed and functioning as
36 authorized under this section is entitled to the same immunity granted by law

1 to the prosecuting attorney.

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

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

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

10
11 SECTION 15. Arkansas Code § 5-55-115 is amended to read as follows:

12 5-55-115. Suspension, exclusion, and ~~illegal~~ unlawful Medicaid
13 participation.

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

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

19 ~~(b)(1) A person commits illegal Medicaid participation if:~~

20 ~~(A) Having been suspended from the Arkansas Medicaid~~
21 ~~Program or placed on a state or federal excluded Medicaid provider list, the~~
22 ~~person knowingly participates, directly or indirectly, in the Arkansas~~
23 ~~Medicaid Program; or~~

24 ~~(B) As a certified health provider enrolled in the~~
25 ~~Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act,~~
26 ~~as amended, 42 U.S.C. § 1396 et seq., or as the fiscal agent of the certified~~
27 ~~health provider, the person employs, or engages as an independent contractor,~~
28 ~~or engages as a consultant, or otherwise permits the participation in the~~
29 ~~business activities of the certified health provider, any person who has~~
30 ~~pleaded guilty or nolo contendere to or has been found guilty of a charge of~~
31 ~~Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, §~~
32 ~~5-28-101 et seq.~~

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

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

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

2
3 SECTION 16. Arkansas Code Title 5, Chapter 55, Subchapter 1, is
4 amended to add an additional section to read as follows:

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

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

9 (1) Purposely makes a material false statement or omission or
10 causes another person to make a material false statement or omission to an
11 auditor or investigator with the Office of the Medicaid Inspector General, or
12 the Medicaid Fraud Control Unit, or in response to a request for information
13 or subpoena;

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

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

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

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

29
30 SECTION 17. Arkansas Code § 20-77-901(7), concerning the definition of
31 "material" within the Medicaid Fraud False Claims Act, is amended to read as
32 follows:

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

35 (B) A false statement, omission, or representation is
36 material if the false statement, omission, or representation is likely to

1 induce or cause the Arkansas Medicaid Program to pay, approve, or act in a
2 particular way;

3
4 SECTION 18. Arkansas Code § 20-77-901(11) and (12), concerning the
5 definitions within the Medicaid Fraud False Claims Act, is amended to read as
6 follows:

7 (11) "Overpayment" means the full amount of the Medicaid funds
8 obtained as a direct or indirect result of a violation of § 5-55-111, § 20-
9 77-902, the rules of the Arkansas Medicaid Program, or a managed care
10 provider contract;

11 (12) "Person" means any:

12 (A) Medicaid provider of goods or services or any
13 employee, independent contractor, or subcontractor of the Medicaid provider,
14 whether that provider be an individual, individual medical vendor, firm,
15 corporation, professional association, partnership, organization, risk-based
16 provider organization, managed care organization, or other legal entity; or

17 (B) Individual, individual medical vendor, firm,
18 corporation, professional association, partnership, organization, risk-based
19 provider organization, managed care organization, or other legal entity, or
20 any employee of any individual, individual medical vendor, firm, corporation,
21 professional association, partnership, organization, risk-based provider
22 organization, managed care organization, or other legal entity, not a
23 Medicaid provider under the Arkansas Medicaid Program but that provides goods
24 or services to a Medicaid provider under the Arkansas Medicaid Program for
25 which the Medicaid provider submits claims to the Arkansas Medicaid Program
26 or its fiscal agents; ~~and~~

27 ~~(12)(A)(13)~~ (13) "Records" means all documents ~~in any form~~ that
28 disclose the nature, extent, and level of healthcare goods and services
29 provided to Medicaid recipients, including without limitation:

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

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

36 (B) Records documenting treatment administration,

1 medication administration, and activities of daily living; and

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

6 (14)(A) "Unlawful Medicaid participation" means participation in
7 the Arkansas Medicaid Program when the individual or organization is
8 suspended from the Arkansas Medicaid Program or on a state or federal
9 excluded Medicaid provider list.

10 (B) "Unlawful Medicaid participation" includes without
11 limitation when a suspended or excluded individual or organization:

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

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

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

23
24 SECTION 19. Arkansas Code §§ 20-77-902 and 20-77-903 are amended to
25 read as follows:

26 20-77-902. Liability for certain acts.

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

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

34 (2) Knowingly makes or causes to be made any ~~material omission~~
35 ~~or~~ false statement, ~~omission~~, or representation of a ~~material~~ fact in an
36 application for eligibility or in required documentation for use in

1 determining ~~rights~~ the right to a benefit or payment under the Arkansas
2 Medicaid Program;

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

14 (4) Having made or submitted a claim, request for payment, or
15 application to receive any benefit or payment under the Arkansas Medicaid
16 Program for the use and benefit of another person and having received it,
17 knowingly converts the benefit or payment under the Arkansas Medicaid Program
18 or any part of the benefit or payment under the Arkansas Medicaid Program to
19 a use other than for the use and benefit of the other person;

20 (5) Knowingly presents or causes to be presented a claim for a
21 ~~physician's service for which payment may be made under the program and knows~~
22 ~~that the individual who furnished the service was not licensed as a physician~~
23 service required to be provided by a person with a particular type of license
24 or credential while knowing that the individual who furnished the service was
25 not licensed or credentialed;

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

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

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

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

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

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

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

16 (i) A discount or other reduction in price obtained
17 by a provider of services or other entity under the ~~program~~ Arkansas Medicaid
18 Program if the reduction in price is properly disclosed and appropriately
19 reflected in the costs claimed or charges made by the provider or entity
20 under the ~~program~~ Arkansas Medicaid Program;

21 (ii) Any amount paid by an employer to an employee
22 who has a bona fide employment relationship with the employer for employment
23 in the providing of covered items or services, except that an employer may
24 not pay an employee a signing bonus, referral fee, or other payments for a
25 new client or patient the employee previously provided covered goods or
26 services to at a prior place of employment during the preceding twelve (12)
27 months; or

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

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

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

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

9 (8) Knowingly makes or causes to be made or induces or seeks to
10 induce any material omission ~~or false statement, omission,~~ or representation
11 of a ~~material~~ fact with respect to the conditions or operation of any
12 institution, facility, or Medicaid provider in order that the institution,
13 facility, or Medicaid provider may qualify to obtain or maintain any
14 licensure or certification when the licensure or certification is required to
15 be enrolled or eligible to deliver any healthcare goods or services to
16 Medicaid recipients by state law, federal law, or the rules of the ~~program~~
17 Arkansas Medicaid Program;

18 (9) Knowingly:

19 (A) Charges a Medicaid recipient or any person acting on
20 behalf of a Medicaid recipient money or other consideration for any good or
21 service provided to a patient Medicaid recipient under the ~~program money or~~
22 ~~other consideration~~ Arkansas Medicaid Program at a rate in excess of the
23 rates established by the ~~state~~ Arkansas Medicaid Program; ~~or~~

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

29 (i) As a precondition of admitting a patient to a
30 hospital, nursing facility, or intermediate care facility for individuals
31 with intellectual disabilities; or

32 (ii) As a requirement for the patient's continued
33 stay in the hospital, nursing facility, or intermediate care facility for
34 individuals with intellectual disabilities when the cost of the services
35 provided ~~therein~~ at the hospital, nursing facility, or intermediate care
36 facility for individuals with intellectual disabilities to the patient is

1 paid for in whole or in part under the ~~program~~ Arkansas Medicaid Program; or
2 (C) Charges a Medicaid recipient who is receiving goods or
3 services from a managed care organization or other form of capitated rate
4 program in any amount or method not authorized by the rules of the Arkansas
5 Medicaid Program or a contract with a Medicaid provider;

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

11 ~~(11) Knowingly:~~

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

17 ~~(B) As a certified health provider enrolled in the program~~
18 ~~pursuant to Title XIX of the Social Security Act or as the fiscal agent of~~
19 ~~such a provider who employs, engages as an independent contractor, engages as~~
20 ~~a consultant, or otherwise permits the participation in the business~~
21 ~~activities of such a provider, any person who has pleaded guilty or nolo~~
22 ~~contendere to or has been found guilty of a charge of Medicaid fraud, theft~~
23 ~~of public benefits, or abuse of adults as defined in the Arkansas Criminal~~
24 ~~Code, § 5-1-101 et seq.;~~

25 ~~(12)~~(11) Knowingly submits any false documentation supporting a
26 claim or prior payment to the Office of Medicaid Inspector General or the
27 Medicaid Fraud Control Unit within the office of the Attorney General during
28 an investigation or audit or in response to a request for information or a
29 subpoena;

30 ~~(13)~~(12) Knowingly makes or causes to be made, or induces or
31 seeks to induce, any material false statement to the Office of Medicaid
32 Inspector General or the Medicaid Fraud Control Unit within the ~~office of the~~
33 ~~Attorney General~~ Attorney General's office during an investigation or audit
34 or in response to a request for information or a subpoena;

35 ~~(14)~~(13) Knowingly alters, forges, or utters a forged the
36 ~~signature of a doctor or nurse on a prescription,~~ ~~or~~ referral for healthcare

1 goods or services, ~~or submits a forged prescription or referral for~~
2 ~~healthcare goods or services in support of a claim for payment under the~~
3 ~~program~~ a finding of medical necessity for a Medicaid recipient;

4 ~~(15)(14)~~ Knowingly places a false entry makes or causes to be
5 made any material false statement, omission, or representation of a fact in a
6 medical chart, ~~or~~ medical record, or record that indicates that healthcare
7 goods or services have been provided to a Medicaid recipient knowing that the
8 healthcare goods or services were not provided;

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

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

16 (16) Knowingly commits or permits another person or an
17 organization to commit unlawful Medicaid participation as defined by § 20-77-
18 901(14);

19 ~~(16)(17)~~ Knowingly presents, or causes to be presented, a false
20 or fraudulent claim for payment or approval to the ~~program~~ Arkansas Medicaid
21 Program;

22 ~~(17)(18)~~ Knowingly makes, uses, or causes to be made or used a
23 false record or statement that is material to a false or fraudulent claim to
24 the ~~program~~ Arkansas Medicaid Program;

25 ~~(18)(19)~~ Knowingly:

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

29 (B) Conceals or improperly avoids or decreases an
30 obligation to pay or transmit money or property to the ~~program~~ Arkansas
31 Medicaid Program;

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

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

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

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

7 (b) Every person who directly or indirectly controls another person
8 who is in violation of or liable under this subchapter and every partner,
9 officer, or director of a person who is in violation of or liable under this
10 subchapter shall be jointly and severally liable for any penalties assessed
11 and any monetary judgments awarded in any proceeding for civil enforcement of
12 the provisions of this subchapter if the persons to be held jointly and
13 severally liable knew or should have known of the existence of the facts by
14 reason of which the violation or liability exists.

15
16 20-77-903. Restitution, damages, and civil penalties.

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

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

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

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

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

33 (b) When a person or Medicaid provider discovers an employee or
34 subcontractor working for the person or Medicaid provider has committed a
35 violation of this subchapter or a violation under the Medicaid Fraud Act, §
36 5-55-101 et seq., the person or Medicaid provider can avoid any statutory

1 liability for civil penalties under subdivision (a)(3)(B) of this section ~~may~~
 2 ~~be reduced by fifty percent (50%)~~ if a person or Medicaid provider can
 3 establish all of the following:

4 (1) The employer or contractor of the person or Medicaid
 5 provider committing the violation of this subchapter furnished officials of
 6 the Attorney General's office Medicaid Fraud Control Unit with all
 7 information known to the person or Medicaid provider employer or contractor
 8 about the violation within thirty (30) sixty (60) days after the date on
 9 which the person or Medicaid provider employer or contractor first obtained
 10 the information; and

11 (2) The employer or contractor of the person or Medicaid
 12 provider committing the violation of this subchapter fully cooperated with
 13 any Attorney General's investigation of the violation, and at the time the
 14 person or Medicaid provider furnished the Attorney General with the
 15 information about the violation; and

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

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

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

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

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

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

36 ~~(2) Any cost or reimbursement ordered under this subsection~~

1 shall be paid to the office of the Attorney General to be used for future
2 Medicaid investigations and cases.

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

10 (2) When the loss is to a managed care organization or similar
11 organization that is paid at a capitated rate, the Department of Human
12 Services may return all or a portion of the funds to a managed care
13 organization or any similar organization when permitted by the contract or
14 rules.

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

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

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

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

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

28 (1) Prevent any act described by § 20-77-902 by any person; or

29 (2) Restore to the program any money or property, real or
30 personal, that may have been acquired by means of an act described by § 20-
31 77-902.

32
33 SECTION 20. Arkansas Code § 20-77-904, concerning investigations by
34 the Attorney General within the Medicaid Fraud False Claims Act, is amended
35 to add an additional subsection to read as follows:

36 (f)(1) A Medicaid program provider shall cooperate in reviews, audits,

1 and investigations conducted by the Department of Human Services, Office of
 2 the Medicaid Inspector General, and the Medicaid Fraud Control Unit.

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

7
 8 SECTION 21. Arkansas Code § 20-77-908(c) and (d), concerning the false
 9 claims jurisdiction and the procedures within the Medicaid Fraud False Claims
 10 Act, are amended to read as follows:

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

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

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

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

28
 29 SECTION 22. Arkansas Code § 20-77-910 is amended to read as follows:
 30 20-77-910. Suspension of violators.

31 The Secretary of the Department of Human Services may ~~suspend~~ exclude a
 32 Medicaid provider or revoke the provider agreement between an individual and
 33 the Department of Human Services and the person in the event that the person
 34 is found guilty of or a Medicaid provider for violating the terms of this
 35 subchapter.

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

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

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

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

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

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

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

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

21 (D) This section authorizes a limited right to bring false
 22 claims and other ancillary state claims in federal court under 31 U.S.C. §
 23 3730, to recover the Medicaid funds subject to recovery under 31 U.S.C. §
 24 3730 and associated penalties and costs; and

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

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

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

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

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

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

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

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