

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 518

5 By: Senator Irvin
6

For An Act To Be Entitled

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

Subtitle

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19
20 TO AMEND THE MEDICAID FRAUD ACT AND THE
21 MEDICAID FRAUD FALSE CLAIMS ACT; AND TO
22 UPDATE LANGUAGE AND DEFINITIONS TO
23 REFLECT CHANGES WITHIN THE HEALTHCARE
24 SYSTEM; .
25

26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

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

31 (2)(A) "Claim" means any ~~written or electronically submitted~~
32 ~~request or demand for reimbursement or payment made by any Medicaid provider~~
33 ~~to the Arkansas Medicaid Program, a managed care organization, or any fiscal~~
34 ~~agent of the Arkansas Medicaid Program or a managed care organization for~~
35 ~~each good or service purported to have been provided to any Medicaid~~
36 ~~recipient and all documentation required to be created or maintained by law~~



~~or rule to justify, support, approve, or document the delivery of healthcare goods or services to a Medicaid recipient as a condition of participation in the Arkansas Medicaid Program as mandated by the Arkansas Medicaid Program provider agreement, rules, or managed care contract request or demand for money or property, regardless of whether under a contract, that:~~

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

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

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

~~(b) The Arkansas Medicaid Program:~~

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

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

~~(B) "Claim" includes:~~

~~(i) Billing documentation;~~

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

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

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

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

~~(4)(A) "Illegal Medicaid participation" means participation in the Arkansas Medicaid Program when the individual or organization is~~

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

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

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

26
27 SECTION 3. Arkansas Code § 5-55-102(8) and (9), concerning the
28 definitions within the Medicaid Fraud Act, are amended to read as follows:

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

33 (9) "Person" means any:

34 (A) Medicaid provider of goods or services under the
35 Arkansas Medicaid Program or any employee of the Medicaid provider,
36 independent contractor of the Medicaid provider, contractor of the Medicaid

1 provider, or subcontractor of the Medicaid provider, whether the Medicaid
2 provider be an individual, individual medical vendor, firm, corporation,
3 professional association, partnership, organization, risk-based provider
4 organization, managed care organization, or other legal entity; or

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

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

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

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

24 (B) Records documenting treatment administration,
25 medication administration, and activities of daily living; and

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

30 (11) "Serious physical injury" means a physical injury to a
31 person that:

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

33 (B) Causes:

34 (i) Protracted disfigurement;

35 (ii) Protracted impairment of health; or

36 (iii) Loss or protracted impairment of the function

1 of any bodily member or organ; and

2 (12)(A) "Unlawful Medicaid participation" means participation in
3 the Arkansas Medicaid Program when an individual or organization is suspended
4 from the Arkansas Medicaid Program or is on a state or federal excluded
5 Medicaid provider list.

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

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

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

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

19
20 SECTION 4. Arkansas Code § 5-55-103 is amended to read as follows:

21 5-55-103. Unlawful acts – Classification.

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

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

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

29 ~~(1)~~(B) Class C felony if the aggregate amount of ~~payments~~
30 ~~illegally claimed~~ overpayment resulting from a violation of Medicaid fraud, §
31 5-55-111 is two thousand five hundred dollars (\$2,500) or more but less than
32 five thousand dollars (\$5,000);

33 ~~(2)~~(C) Class B felony if the aggregate amount of ~~payments~~
34 ~~illegally claimed~~ overpayment resulting from a violation of Medicaid fraud, §
35 5-55-111 is five thousand dollars (\$5,000) or more but less than twenty-five
36 thousand dollars (\$25,000); and

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

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

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

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

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

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

16 (B) To seek the enhanced penalty permitted by this
17 section, the state shall charge the enhancement in the information or
18 indictment.

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

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

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

29 (2)(A) A charge based on aggregated acts of Medicaid fraud, § 5-
30 55-111, may be brought in any county where one (1) of the alleged acts
31 occurred or in Pulaski County.

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

36

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

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

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

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

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

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

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

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

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

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

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

35 (C) A Medicaid provider shall disclose upon request by the
 36 Arkansas Medicaid Program, the Office of Medicaid Inspector General, or the

1 Medicaid Fraud Control Unit the location of any offsite storage facility or
2 server and the contact information of the person or company that manages the
3 storage facility or server to any agency with authority to audit the records.

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

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

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

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

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

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

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

26
27 SECTION 6. Arkansas Code § 5-55-106 is amended to read as follows:

28 5-55-106. Investigation by Attorney General - Access to records.

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

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

1 exploitation and to protect the Arkansas Medicaid Program from fraud.

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

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

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

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

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

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

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

26 (B) Allowed access to all records whether in the
27 possession of the Arkansas Medicaid Program, a Medicaid provider, or employee
28 or contractor of a Medicaid provider.

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

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

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

35 (B) Encounter claims data and other records of managed
36 care organizations and any other record related to provision of goods and

1 services to Medicaid recipients;

2 (C) Notwithstanding any other confidentiality law, all
3 financial reports, cost reports, disclosure forms, and other records
4 submitted or required to be retained in any licensure process, rate
5 development process, rate review process, reconciliation process, or
6 actuarial process required to participate in the Arkansas Medicaid Program or
7 by state law or rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21
 22 SECTION 9. Arkansas Code § 5-55-107(e)(2), concerning restitution and
 23 collection within the Medicaid Fraud Act, is amended to read as follows:

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

30
 31 SECTION 10. Arkansas Code § 5-55-108 is amended to read as follows:
 32 5-55-108. Fines.

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

36 (1) If no ~~monetary loss~~ overpayment is incurred by the Arkansas

1 Medicaid Program, a fine of not less than one thousand dollars (\$1,000) or
2 more than three thousand dollars (\$3,000) for each ~~omission or fraudulent act~~
3 ~~or claim~~ violation of Medicaid fraud, § 5-55-111; or

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

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

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

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

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

21
22 SECTION 11. Arkansas Code § 5-55-110 and § 5-55-111 are amended to
23 read as follows:

24 5-55-110. ~~Suspension~~ Exclusion of violators.

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

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

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

36

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

A person commits Medicaid fraud when he or she:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 ~~(a) The person has a written contract with~~
36 ~~each individual or entity that specifies the amount to be paid to the person~~

1 ~~and the amount may be a fixed amount or a fixed percentage of the value of~~
2 ~~the purchases made by each individual or entity under the contract; and~~

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

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

10 ~~(8)(6)~~ Purposely makes or causes to be made, or induces or seeks
11 to induce, any ~~omission or~~ material false statement, omission, or
12 representation of a ~~material~~ fact with respect to the conditions or operation
13 of any institution, facility, or Medicaid provider in order that the
14 institution, facility, or Medicaid provider may qualify to obtain or maintain
15 any licensure or certification when the licensure or certification is
16 required to be enrolled or eligible to deliver any healthcare goods or
17 services to Medicaid recipients by state law, federal law, or the rules of
18 the Arkansas Medicaid Program;

19 ~~(9)(7)~~ Purposely:

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

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

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

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

1 provided in the hospital, nursing facility, or intermediate care facility for
2 individuals with intellectual disabilities to the patient is paid for in
3 whole or in part under the Arkansas Medicaid Program; or

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

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

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

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

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

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

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

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

34 (11) Purposely makes or causes to be made any material false
35 statement, omission, or representation of a fact in any unit rate development
36 process, actuarial process, reconciliation process, cost report, disclosure

1 form, or documentation required under the Arkansas Medicaid Program; or

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

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

8
9 SECTION 12. Arkansas Code Title 5, Chapter 55, Subchapter 1, is
10 amended to add an additional section to read as follows:

11 5-55-112. Kickbacks and other unlawful remuneration, referral fees,
12 bonuses, bribes, or rebates.

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

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

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

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

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

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

35 (c) If the transaction is otherwise legal and properly documented as
36 occurring in the normal course of business, subdivisions (b)(1) and (2) of

1 this section do not apply to:

2 (1) A discount or other reduction in price obtained by a
 3 provider of services or other entity under the Arkansas Medicaid Program if
 4 the reduction in price is properly disclosed and appropriately reflected in
 5 the costs claimed or charges made by the provider or entity under the
 6 Arkansas Medicaid Program;

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

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

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

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

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

30 (B) A violation under this section is a Class A
 31 misdemeanor if the aggregate amount of the unlawful compensation paid or
 32 received in violation of this section is less than one thousand dollars
 33 (\$1,000).

34 (2) A violation under this section is a Class C felony if the
 35 aggregate amount of the unlawful compensation paid or received in violation
 36 of this section is two thousand five hundred dollars (\$2,500) or more but

1 less than five thousand dollars (\$5,000).

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

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

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

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

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

21
22 SECTION 13. Arkansas Code § 5-55-113(e), concerning rewards for
23 information within the Medicaid Fraud Act, is amended to read as follows:

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

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

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

35 (c) With the approval of the prosecuting attorney, a special deputy
36 prosecutor under this section may also use a prosecutor investigative

1 subpoena as provided in § 16-43-212.

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

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

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

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

13
14 SECTION 15. Arkansas Code § 5-55-115 is amended to read as follows:

15 5-55-115. Suspension, exclusion, and ~~illegal~~ unlawful Medicaid
16 participation.

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

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

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

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

27 ~~(B) As a certified health provider enrolled in the~~
28 ~~Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act,~~
29 ~~as amended, 42 U.S.C. § 1396 et seq., or as the fiscal agent of the certified~~
30 ~~health provider, the person employs, or engages as an independent contractor,~~
31 ~~or engages as a consultant, or otherwise permits the participation in the~~
32 ~~business activities of the certified health provider, any person who has~~
33 ~~pleaded guilty or nolo contendere to or has been found guilty of a charge of~~
34 ~~Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, §~~
35 ~~5-28-101 et seq.~~

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

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

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

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

8 5-55-116. Obstructing a Medicaid review, audit, investigation, or
9 prosecution.

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

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

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

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

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

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

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

36 (7)(A) "Material" means having a natural tendency to influence,

1 or be capable of influencing, the payment or receipt of money or property.
2 (B) A false statement, omission, or representation is
3 material if the false statement, omission, or representation is likely to
4 induce or cause the Arkansas Medicaid Program to pay, approve, or act in a
5 particular way;

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

10 (11) "Overpayment" means the full amount of the Medicaid funds
11 obtained as a direct or indirect result of a violation of § 5-55-111, § 20-
12 77-902, the rules of the Arkansas Medicaid Program, or a managed care
13 provider contract;

14 (12) "Person" means any:

15 (A) Medicaid provider of goods or services or any
16 employee, independent contractor, or subcontractor of the Medicaid provider,
17 whether that provider be an 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 (B) Individual, individual medical vendor, firm,
21 corporation, professional association, partnership, organization, risk-based
22 provider organization, managed care organization, or other legal entity, or
23 any employee of any individual, individual medical vendor, firm, corporation,
24 professional association, partnership, organization, risk-based provider
25 organization, managed care organization, or other legal entity, not a
26 Medicaid provider under the Arkansas Medicaid Program but that provides goods
27 or services to a Medicaid provider under the Arkansas Medicaid Program for
28 which the Medicaid provider submits claims to the Arkansas Medicaid Program
29 or its fiscal agents; ~~and~~

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

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

35 ~~(B)~~ "Records" include X-rays, magnetic resonance imaging
36 scans, computed tomography scans, computed axial tomography scans,

1 ultrasounds, and other diagnostic ~~imaging commonly used and retained as part~~
2 of the medical records of a patient ~~tools;~~

3 (B) Records documenting treatment administration,
4 medication administration, and activities of daily living; and

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

9 (14)(A) “Unlawful Medicaid participation” means participation in
10 the Arkansas Medicaid Program when the individual or organization is
11 suspended from the Arkansas Medicaid Program or on a state or federal
12 excluded Medicaid provider list.

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

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

19 (ii) Plays any role in the management of a Medicaid
20 provider directly as a manager or management company or indirectly as a
21 consultant or advisor; or

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

26
27 SECTION 19. Arkansas Code §§ 20-77-902 and 20-77-903 are amended to
28 read as follows:

29 20-77-902. Liability for certain acts.

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

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

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

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

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

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

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

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

36 (B) In return for purchasing, leasing, ordering, or

1 arranging for or recommending purchasing, leasing, or ordering any good,
2 facility, service, or item for which payment may be made in whole or in part
3 under the ~~program~~ Arkansas Medicaid Program;

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

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

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

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

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

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

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

36 (a) The person has a written contract with

1 each individual or entity that specifies the amount to be paid to the person,
2 which amount may be a fixed amount or a fixed percentage of the value of the
3 purchases made by each individual or entity under the contract; and

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

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

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

21 (9) Knowingly:

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

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

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

35 (ii) As a requirement for the patient's continued
36 stay in the hospital, nursing facility, or intermediate care facility for

1 individuals with intellectual disabilities when the cost of the services
2 provided ~~therein~~ at the hospital, nursing facility, or intermediate care
3 facility for individuals with intellectual disabilities to the patient is
4 paid for in whole or in part under the ~~program~~ Arkansas Medicaid Program; or

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

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

14 ~~(11) Knowingly:~~

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

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

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

33 ~~(13)~~(12) Knowingly makes or causes to be made, or induces or
34 seeks to induce, any material false statement to the Office of Medicaid
35 Inspector General or the Medicaid Fraud Control Unit within the ~~office of the~~
36 ~~Attorney General~~ Attorney General's office during an investigation or audit

1 or in response to a request for information or a subpoena;

2 ~~(14)~~(13) Knowingly alters, forges, or utters a forged the
3 signature of a doctor or nurse on a prescription, or referral for healthcare
4 goods or services, or submits a forged prescription or referral for
5 healthcare goods or services in support of a claim for payment under the
6 program a finding of medical necessity for a Medicaid recipient;

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

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

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

19 (16) Knowingly commits or permits another person or an
20 organization to commit unlawful Medicaid participation as defined by § 20-77-
21 901(14);

22 ~~(16)~~(17) Knowingly presents, or causes to be presented, a false
23 or fraudulent claim for payment or approval to the ~~program~~ Arkansas Medicaid
24 Program;

25 ~~(17)~~(18) Knowingly makes, uses, or causes to be made or used a
26 false record or statement that is material to a false or fraudulent claim to
27 the ~~program~~ Arkansas Medicaid Program;

28 ~~(18)~~(19) Knowingly:

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

32 (B) Conceals or improperly avoids or decreases an
33 obligation to pay or transmit money or property to the ~~program~~ Arkansas
34 Medicaid Program;

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

36 ~~(20) Knowingly presents or causes to be presented a claim for a~~

1 ~~service required to be provided by a person with a particular type of license~~
2 ~~or credential while knowing that the individual who furnished the service was~~
3 ~~not licensed or credentialed~~

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

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

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

18
19 20-77-903. Restitution, damages, and civil penalties.

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

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

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

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

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

36 (b) When a person or Medicaid provider discovers an employee or

1 subcontractor working for the person or Medicaid provider has committed a
2 violation of this subchapter or a violation under the Medicaid Fraud Act, §
3 5-55-101 et seq., the person or Medicaid provider can avoid any statutory
4 liability for civil penalties under subdivision (a)(3)(B) of this section ~~may~~
5 ~~be reduced by fifty percent (50%)~~ if a person or Medicaid provider can
6 establish all of the following:

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

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

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

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

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

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

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

35 (2) The ~~the~~ Attorney General's reasonable expenses, including
36 the cost of investigation, attorney's fees, court costs, witness fees, and

1 deposition fees, which shall be paid to the Attorney General's office to be
2 used for future Medicaid investigations and cases.

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

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

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

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

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

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

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

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

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

32 (2) Restore to the program any money or property, real or
33 personal, that may have been acquired by means of an act described by § 20-
34 77-902.

35
36 SECTION 20. Arkansas Code § 20-77-904, concerning investigations by

1 the Attorney General within the Medicaid Fraud False Claims Act, is amended
2 to add an additional subsection to read as follows:

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

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

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

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

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

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

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

31
32 SECTION 22. Arkansas Code § 20-77-910 is amended to read as follows:
33 20-77-910. Suspension of violators.

34 The Secretary of the Department of Human Services may ~~suspend~~ exclude a
35 Medicaid provider or revoke the provider agreement between an individual and
36 the Department of Human Services ~~and the person in the event that the person~~

1 ~~is found guilty of~~ or a Medicaid provider for violating the terms of this
2 subchapter.

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

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

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

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

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

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

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

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

24 (D) This section authorizes a limited right to bring false
25 claims and other ancillary state claims in federal court under 31 U.S.C. §
26 3730, to recover the Medicaid funds subject to recovery under 31 U.S.C. §
27 3730 and associated penalties and costs; and

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

34 (2)(A) Any party bringing a claim in federal court to recover
35 state funds associated with the Arkansas Medicaid Program or pursuant to an
36 assertion of a state claim under state law shall serve the Attorney General

1 through the Medicaid Fraud Control Unit with any complaint, any other
2 pleadings, and the written disclosure of all material evidence and
3 information possessed by the person bringing the action.

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

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

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

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

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

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