

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4
5 By: Senator D. Sanders
6

A Bill

SENATE BILL 830

For An Act To Be Entitled

8 AN ACT TO CREATE THE ARKANSAS MEDICAID FALSE CLAIMS
9 ACT OF 2015; AND FOR OTHER PURPOSES.

Subtitle

12 TO CREATE THE ARKANSAS MEDICAID FALSE
13 CLAIMS ACT OF 2015.

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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code Title 20, Chapter 77, is amended to add an
20 additional subchapter to read as follows:

21 Subchapter 26 – Arkansas Medicaid False Claims Act of 2015

22
23 20-77-2601. Title.

24 This subchapter shall be known and may be cited as the “Arkansas
25 Medicaid False Claims Act of 2015”.

26
27 20-77-2602. Definitions.

28 As used in this subchapter:

29 (1)(A) “Claim” means any request or demand, whether under a
30 contract or otherwise, for money or property, that:

31 (i) Is presented to the Department of Human
32 Services, or to any officer, employee, or agent of the department; or

33 (ii) Is presented to a provider, contractor,
34 grantee, or other recipient, if the money or property is to be spent or used
35 on a Medicaid beneficiary’s behalf or to advance a Medicaid program or
36 interest, and:



1 (a) The department provides or has provided
2 any portion of the money or property requested or demanded; or

3 (b) The department will reimburse such
4 provider, contractor, grantee, or other recipient for any portion of the
5 money or property which is requested or demanded.

6 (B) "Claim" includes without limitation any entry or
7 omission in:

8 (i) A cost report or similar document;

9 (ii) A book of account; or

10 (iii) Any document which supports, or attempts to
11 support, a claim.

12 (C) "Claim" does not include requests or demands for money
13 or property that the department has paid to an individual as compensation for
14 employment or as an income subsidy with no restrictions on that individual's
15 use of the money or property;

16 (2) "Department" means the Department of Human Services and
17 includes:

18 (A) The Department of Human Services;

19 (B) Any fiscal agent, contractor, or other agent employed
20 by the Department of Human Services for the purpose of operating the state
21 Medicaid program;

22 (C) Any quality improvement organization, quality
23 improvement organization-like entity, utilization review entity, or other
24 contractor employed by the department for the purpose of reviewing Medicaid
25 claims or prior authorization requests;

26 (D) Any managed care organization employed by the
27 Department of Human Services for the purpose of providing medical assistance;

28 (E) Any health insurance carrier receiving premium
29 assistance payments from the Department of Human Services on behalf of a
30 Medicaid beneficiary;

31 (F) The Office of Medicaid Inspector General; and

32 (G) The Medicaid Fraud Control Unit of the Attorney
33 General's Office;

34 (3)(A) "Knowing" and "knowingly" mean that a person, with
35 respect to information:

36 (i) Has actual knowledge of the information;

1 (ii) Acts in deliberate ignorance of the truth or
2 falsity of the information; or

3 (iii) Acts in reckless disregard of the truth or
4 falsity of the information.

5 (B) “Knowing” and “knowingly” require no proof of specific
6 intent to defraud;

7 (4) “Material” means having a natural tendency to influence, or
8 be capable of influencing, the payment or receipt of money or property;

9 (5) “Medicaid” includes without limitation any medical
10 assistance plan, waiver, or similar program operated or funded by the
11 department, including without limitation a plan, waiver, or program
12 authorized under Titles XIX or XXI of the Social Security Act;

13 (6) “Original source” means an individual who either:

14 (A) Prior to public disclosure, has voluntarily disclosed
15 to the department or Attorney General the information on which allegations or
16 transactions in a claim are based; or

17 (B) Has knowledge that is independent of and materially
18 adds to any publicly disclosed allegations or transactions, and who has
19 voluntarily provided the information to the department or Attorney General
20 before filing an action under this subchapter;

21 (7) “Person” means any natural person, partnership, corporation,
22 firm, association, political subdivision, or other legal or commercial
23 entity; and

24 (8) “Public disclosure” and “Publicly disclosed” means
25 disclosure of specific information:

26 (A) In a criminal, civil, or administrative hearing or
27 proceeding other than the qui tam civil action under § 20-77-2606;

28 (B) In a congressional, administrative, Government
29 Accountability Office, or other federal report, hearing, audit, or
30 investigation;

31 (C) In a legislative, administrative, Division of
32 Legislative Audit, or other state report, hearing, audit, or investigation;
33 or

34 (D) From the news media.

35
36 20-77-2603. Violations and liability.

1 A person is liable to the State of Arkansas for a violation of this
2 subchapter if the person:

3 (1) Knowingly presents, or causes to be presented, a false or
4 fraudulent Medicaid claim for payment or approval;

5 (2) Knowingly makes, uses, or causes to be made or used, a false
6 record or statement material to a false or fraudulent Medicaid claim;

7 (3) Knowingly makes, uses, or causes to be made or used, a false
8 record or statement material to an obligation to pay or transmit a Medicaid
9 overpayment, recoupment, or penalty to the Department of Human Services;

10 (4) Knowingly conceals or knowingly and improperly avoids or
11 decreases an obligation to pay or transmit a Medicaid overpayment,
12 recoupment, or penalty to the department;

13 (5) Commits any violation for which liability is defined in §
14 20-77-902; or

15 (6) Conspires to commit a violation set forth in any subsection
16 of this section.

17
18 20-77-2604. Civil action by Attorney General.

19 (a) The Attorney General diligently shall investigate a violation
20 under this subchapter.

21 (b) If the Attorney General finds that a person has violated or is
22 violating this subchapter, the Attorney General may bring a civil action
23 against the person.

24
25 20-77-2605. Damages.

26 (a) If a person is found liable to the State of Arkansas in a civil
27 action or qui tam civil action under § 20-77-2606, the court shall:

28 (1) Assess a civil penalty, payable to the State of Arkansas, of
29 not less than five thousand dollars (\$5,000) and no more than twenty-five
30 thousand dollars (\$25,000);

31 (2) Award to the Attorney General an amount for reasonable
32 expenses which the court finds to have been necessarily incurred, plus
33 reasonable attorneys' fees and costs; and

34 (3)(A) Award as liquidated damages treble the amount of damages
35 which the Department of Human Services sustains because of the act of the
36 person held liable.

1 (B) The liquidated damages award, minus any portion
2 payable to a person bringing a qui tam civil action under this subchapter,
3 shall be payable to the department.

4 (b) The court may reduce the liquidated damages awarded under
5 subdivision (a)(2) of this section to an amount not less than double the
6 amount of damages which the department sustained because of the act of the
7 person held liable, if:

8 (1) The person held liable furnished officials of the department
9 responsible for investigating false claims violations with all information
10 known to such person about the violation within thirty (30) days after the
11 date on which the defendant first obtained the information;

12 (2) The person fully cooperated with any department
13 investigation of such violation; and

14 (3) At the time the person furnished the department with the
15 information about the violation, no criminal prosecution, civil action, qui
16 tam civil action, or administrative action had commenced with respect to such
17 violation, and the person did not have actual knowledge of the existence of
18 an investigation into such violation.

19 (c) Any civil penalty awarded under subdivision (a)(1) of this section
20 shall be credited as special revenues of the State of Arkansas and deposited
21 into the Arkansas Medicaid Program Trust Fund.

22
23 20-77-2606. Qui tam civil action – Complaint – Intervention.

24 (a)(1) A person may bring a qui tam civil action for a violation of
25 this subchapter for the person and for the State of Arkansas.

26 (2) The action shall be brought in the name of the State of
27 Arkansas.

28 (3) The action may be dismissed only if the court and the
29 Attorney General give written consent to the dismissal and their reasons for
30 consenting.

31 (b)(1) A copy of the complaint and written disclosure of substantially
32 all material evidence and information the person possesses shall be served on
33 the Attorney General and the Department of Human Services pursuant to the
34 Arkansas Rules of Civil Procedure.

35 (2) The complaint shall:

36 (A) Be filed in camera;

1 (B) Remain under seal for at least sixty (60) days, and
2 (C) Not be served on the defendant until the court so
3 orders.

4 (3) So long as the complaint remains under seal, both the
5 complaint and the material evidence and information are exempt from the
6 Freedom of Information Act of 1967, § 25-19-101 et seq.

7 (4) The Attorney General may elect to intervene and proceed with
8 the action within sixty (60) days after receiving both the complaint and the
9 material evidence and information.

10 (c)(1) The Attorney General may, for good cause shown, move the court
11 for extensions of the time during which the complaint remains under seal
12 under this section.

13 (2) Any such motions may be supported by affidavits or other
14 submissions in camera.

15 (3) Before the expiration of the sixty-day period or any
16 extensions obtained under this subsection, the Attorney General shall:

17 (A) Proceed with the action, in which case the action
18 shall be conducted by the Attorney General; or

19 (B) Notify the court that it declines to take over the
20 action, in which case the person bringing the action shall have the right to
21 conduct the action.

22 (d) When a person brings an action under this section, no person other
23 than the Attorney General or the department may intervene or bring a related
24 action based on the facts underlying the pending action.

25 (e) The time within which the defendant is required to respond to a
26 complaint filed under this section shall not begin to run until the complaint
27 is unsealed and served upon the defendant pursuant to the Arkansas Rules of
28 Civil Procedure.

29
30 20-77-2607. Qui tam civil action – Rights of the parties.

31 (a) If the Attorney General proceeds with the qui tam civil action:

32 (1)(A) The Attorney General shall have the primary
33 responsibility for prosecuting the action, and shall not be bound by an act
34 of the person bringing the action.

35 (B) The person shall have the right to continue as a party
36 to the action, subject to the limitations set forth in this section;

1 (2)(A) The Attorney General may dismiss the action
2 notwithstanding the objections of the person initiating the action if the
3 person has been notified by the Attorney General of the filing of the motion
4 and the court has provided the person with an opportunity for a hearing on
5 the motion.

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

10 (ii) Upon a showing of good cause, such hearing may
11 be held in camera;

12 (3) Upon a showing by the Attorney General that unrestricted
13 participation during the course of the litigation by the person initiating
14 the action would interfere with or unduly delay the Attorney General's
15 prosecution of the case, or would be repetitious, irrelevant, or for purposes
16 of harassment, the court may, in its discretion, impose limitations on the
17 person's participation, including without limitation:

18 (A) Limiting the number of witnesses the person may call;

19 (B) Limiting the length of the testimony of such
20 witnesses;

21 (C) Limiting the person's cross-examination of witnesses;
22 or

23 (D) Otherwise limiting the participation by the person in
24 the litigation;

25 (4) Upon a showing by the defendant that unrestricted
26 participation during the course of the litigation by the person initiating
27 the action would be for purposes of harassment or would cause the defendant
28 undue burden or unnecessary expense, the court may limit the participation by
29 the person in the litigation; and

30 (5)(A) The Attorney General may file his or her own complaint,
31 or amend the complaint filed by the person who originally brought the action,
32 to clarify or add detail to the claims in which the Attorney General is
33 intervening and to add any additional claims with respect to which the
34 Attorney General contends it is entitled to relief.

35 (B) For statute of limitations purposes, a new or amended
36 complaint by the Attorney General shall relate back to the filing date of the

1 complaint of the person who originally brought the action, to the extent that
2 the claim of the Attorney General arises out of the conduct, transactions, or
3 occurrences set forth, or attempted to be set forth, in the prior complaint
4 of that person.

5 (b) If the Attorney General elects not to proceed with the qui tam
6 civil action:

7 (1) The person who initiated the action shall have the right to
8 conduct the action;

9 (2) Upon request, the Attorney General shall be served with
10 copies of all pleadings filed in the action;

11 (3) Upon request, the Attorney General shall be supplied with
12 copies of all deposition transcripts, at the Attorney General's expense; and

13 (4) When a person proceeds with the action, the court, without
14 limiting the status and rights of the person initiating the action, may
15 nevertheless permit the Attorney General to intervene at a later date upon a
16 showing of good cause.

17 (c)(1) The Attorney General or the department, or both, may elect to
18 pursue its claim through any alternate remedy available, including any
19 administrative proceeding to determine a recoupment, civil money penalty, or
20 other adverse action.

21 (2) If any such alternate remedy is pursued in another
22 proceeding, the person initiating the action shall have the same rights in
23 the proceeding as a person would have had if the action had continued under
24 this subchapter.

25 (3)(A) Any finding of fact or conclusion of law made in other
26 proceedings that has become final shall be conclusive on all parties to an
27 action under this subchapter.

28 (B) A finding or conclusion is final if:

29 (i) The finding or conclusion has been finally
30 determined on appeal to the appropriate court;

31 (ii) The time for filing an appeal with respect to
32 the finding or conclusion has expired; or

33 (iii) The finding or conclusion is not subject to
34 judicial review.

35 (d) Notwithstanding any other provision of law, rule of procedure, or
36 rule of evidence, a final judgment rendered in favor of the state or in favor

1 of the United States in any criminal proceeding charging fraud or false
2 statements, whether upon a verdict after trial or upon a plea of guilty or
3 nolo contendere, shall prevent the defendant from denying the essential
4 elements of the offense in any action which involves the same transaction as
5 in the criminal proceeding and which is brought under this subchapter.

6
7 20-77-2608. Qui tam civil action – Interference with investigation.

8 (a)(1) Upon a showing by the Attorney General, the department, or a
9 law enforcement agency that certain actions of discovery by the person
10 initiating the action would interfere with an investigation or prosecution of
11 a criminal or civil matter arising out of the same facts, the court may stay
12 such discovery for a period of not more than sixty (60) days.

13 (2) A showing shall be conducted in camera.

14 (3) The court may extend the sixty-day period upon a further
15 showing in camera that:

16 (A) The Attorney General, department, or law enforcement
17 agency has pursued the criminal or civil investigation or proceedings with
18 reasonable diligence; and

19 (B) Any proposed discovery in the qui tam civil action
20 will interfere with the ongoing criminal or civil investigation or
21 proceedings.

22
23 20-77-2609. Qui tam civil action – Award to qui tam plaintiff.

24 (a)(1) If the Attorney General proceeds with a qui tam civil action
25 brought by a person under this subchapter, such person shall, except as
26 provided in subdivision (a)(2) of this subsection, receive at least fifteen
27 percent (15%) but not more than twenty-five percent (25%) of the proceeds of
28 the action or settlement of the claim, depending upon the extent to which the
29 person substantially contributed to the prosecution of the action.

30 (2) Where the action is one which the court finds to be based
31 primarily on publicly disclosed information other than information provided
32 by the person bringing the action, the court may award such sums as it
33 considers appropriate, but in no case more than ten percent (10%) of the
34 proceeds, taking into account the significance of the information and the
35 role of the person bringing the action in advancing the case to litigation.

36 (3) Any payment to a person under this subsection shall be made

1 from the settlement proceeds or from the liquidated damages awarded under
 2 this subchapter.

3 (b)(1) If the Attorney General does not proceed with a qui tam civil
 4 action brought by a person under § 20-77-2606, the person bringing the action
 5 or settling the claim shall receive at least twenty-five percent (25%) but
 6 not more than thirty percent (30%) of the proceeds of the action or
 7 settlement of the claim, as the court decides is reasonable for collecting
 8 the civil penalty and damages.

9 (2) Any payment to a person under this subsection shall be made
 10 from the settlement proceeds or from the liquidated damages awarded under
 11 this subchapter.

12 (c)(1) A person who brings a qui tam civil action under this
 13 subchapter may also receive an amount for reasonable expenses which the court
 14 finds to have been necessarily incurred, plus reasonable attorney’s fees and
 15 costs.

16 (2) All expenses, fees, and costs shall be awarded against the
 17 defendant.

18 (d)(1) If the court finds that a qui tam civil action under this
 19 subchapter was brought by a person who planned and initiated the violation
 20 upon which the action was brought, then the court may, to the extent the
 21 court considers appropriate, reduce the share of the proceeds of the action
 22 which the person would otherwise receive, taking into account the role of
 23 that person in advancing the case to litigation and any relevant
 24 circumstances pertaining to the violation.

25 (2)(A) If the person bringing the action is convicted of
 26 criminal conduct arising from his or her role in the violation, that person
 27 shall be dismissed from the action and shall not receive any share of the
 28 proceeds of the action.

29 (B) The dismissal shall not prejudice the right of the
 30 Attorney General to continue the action.

31 (e) If the Attorney General does not proceed with the action and the
 32 person bringing the action conducts the action, the court may award to the
 33 defendant its reasonable attorneys’ fees and expenses if:

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

35 (2) The court finds that the claim of the person bringing the
 36 action was clearly frivolous, clearly vexatious, or brought primarily for

1 purposes of harassment.

2
3 20-77-2610. Qui tam civil actions – Certain actions barred –
4 Limitations.

5 (a) A person shall not bring an action under § 20-77-2606 that is
6 based upon allegations or transactions that are the subject of a civil suit
7 or an administrative proceeding in which the department or the Attorney
8 General is already a party.

9 (b) The court shall dismiss an action under § 20-77-2606, unless
10 opposed by the Attorney General, if substantially the same allegations or
11 transactions as alleged in the action or claim were publicly disclosed,
12 unless the action is brought by the Attorney General or the person bringing
13 the action is an original source of the information.

14 (c) An action under § 20-77-2606 shall not be brought by:

15 (1) An employee or a fiscal agent of the department charged with
16 the duty of referring or investigating cases of Medicaid fraud; or

17 (2) An employee of a department fiscal agent or other contractor
18 charged with the duty of referring or investigating cases of Medicaid fraud.

19 (d) A civil action or qui tam civil action brought under this
20 subchapter must be commenced before the later of:

21 (1) Six (6) years after the date on which the violation is
22 committed; or

23 (2) Three (3) years after the date when facts material to the
24 right of action are known or reasonably should have been known by the
25 official of the department charged with the responsibility to act in the
26 circumstances, but in no event more than ten (10) years after the date on
27 which the violation is committed.

28
29 20-77-2611. Qui tam civil actions – Relief from retaliatory actions.

30 (a) An employee, contractor, or agent shall be entitled to all relief
31 necessary to make that employee, contractor, or agent whole, if that
32 employee, contractor, or agent is discharged, demoted, suspended, threatened,
33 harassed, or in any other manner discriminated against in the terms and
34 conditions of employment because of lawful acts done by the employee,
35 contractor, agent or associated others in furtherance of an action under this
36 subchapter or other efforts to stop one (1) or more violations of this

1 subchapter.

2 (b) Relief under this section shall include:

3 (1) Reinstatement with the same seniority status that employee,
4 contractor, or agent would have had but for the discrimination; and

5 (2) Double the amount of back pay, interest on the back pay, and
6 compensation for any special damages sustained as a result of the
7 discrimination, including litigation costs and reasonable attorneys' fees.

8 (c) An action under this section may be brought no more than three (3)
9 years after the date when the retaliation occurred.

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