Arkansas Medicaid Fraud False Claims Act

As amended by Acts 2017, No.978

A.C.A. 20-77-901 et seq.

20-77-901. Definitions.

As used in this subchapter:

(1) "Arkansas Medicaid Program" means the program authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., that provides for payments for medical goods or services on behalf of indigent families with dependent children and of aged, blind, or disabled individuals whose income and resources are insufficient to meet the cost of necessary medical services, including all transactions through the actual delivery of healthcare goods or services to a Medicaid recipient regardless of whether the healthcare goods or services are paid for directly by the Department of Human Services or indirectly through a fiscal agent, contractor, subcontractor, risk-based provider organization, managed care organization, or individual;

(2)(A) "Claim" means any 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;

(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 which 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 to be paid for healthcare goods or services delivered to Medicaid recipients; and

(iv) All transactions in payment for healthcare goods or services delivered or claimed to have been delivered to Medicaid recipients under the Arkansas Medicaid Program regardless of

whether the State of Arkansas has title to the money or property or has transferred responsibility for delivering healthcare services to another legal entity;

(3) "Damages" means the actual loss to the Arkansas Medicaid Program and its fiscal agents, including the total amount of all claims paid as a result of any false claim and the value of healthcare goods or services paid for but not delivered to a Medicaid recipient;

(4) "Fiscal agent" means any individual, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity that receives, processes, or pays claims for the delivery of healthcare goods and services to Medicaid recipients under the program;

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

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

(6) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property;

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

(8)(A) "Medicaid provider" means a person, business organization, risk-based provider organization, or managed care organization that delivers, purports to deliver, or arranges for the delivery of healthcare goods or services to a Medicaid recipient under the Arkansas Medicaid Program.

(B) "Medicaid provider" includes an employee, agent, representative, contractor, or subcontractor of a person, business organization, risk-based provider organization, or managed care organization;

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

(10) "Obligation" means an established duty arising from:

(A) An express or implied contract, grantor-grantee, or licensor-licensee relationship;

(B) A fee-based or similar relationship;

(C) State law or rule;

(D) Federal law or regulation; or

(E) Retention of any overpayment not returned within sixty (60) days from the date of discovery by the provider;

(11) "Person" means any:

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

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

(12)(A) "Records" means all documents in any form that disclose the nature, extent, and level of healthcare goods and services provided to Medicaid recipients.

(B) "Records" include x-rays, magnetic resonance imaging scans, computed tomography scans, computed axial tomography scans, and other diagnostic imaging commonly used and retained as part of the medical records of a patient.

20-77-902. Liability for certain acts.

A person shall be liable to the State of Arkansas, through the Attorney General, for a civil penalty of three (3) times the amount of the damages if he or she:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any claim, request for payment, or application for any benefit or payment under the Arkansas Medicaid Program;

(2) Knowingly makes or causes to be made any omission or false statement or representation of a material fact 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 initial or continued right to any benefit or payment or the initial or continued right to any benefit or payment of any other individual in whose behalf he or she has applied for or is receiving a benefit or payment, knowingly conceals or fails to disclose that event with an intent fraudulently to secure the benefit or payment either in a greater amount or quantity than is due or when no benefit or payment is authorized;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Knowingly:

(A) Charges for any service provided to a patient under Arkansas Medicaid Program money or other consideration at a rate in excess of the rates established by the state; or

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

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

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

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

(11) Knowingly:

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

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

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

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

(14) Knowingly forges the signature of a doctor or nurse on a prescription or referral for healthcare goods or services or submits a forged prescription or referral for healthcare goods or services in support of a claim for payment under the Arkansas Medicaid Program;

(15) Knowingly places a false entry in a medical chart or medical record that indicates that healthcare goods or services have been provided to a Medicaid recipient knowing that the healthcare goods or services were not provided;

(16) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to the Arkansas Medicaid Program;

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

(18) Knowingly:

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

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

(19) Conspires to commit a violation of this section.

20-77-903. Civil penalties.

(a) It shall be unlawful for any person to commit any act proscribed by § 20-77-902, and any person found to have committed any such act or acts shall be deemed liable to the State of Arkansas, through the Attorney General, for:

(1) A civil penalty of not less than five thousand five hundred dollars ($5,500) or more than eleven thousand dollars ($11,000) for each claim; and

(2) Three (3) times the amount of damages that the state sustained because of the act of the person.

(b) The trier of fact may assess not less than two (2) times the amount of damages that the state sustained because of the act of the person if the trier of fact finds the following:

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

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

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

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

(c)

(1) In addition to any other penalties authorized herein, any person violating this subchapter shall also be liable to the State of Arkansas for the Attorney General's reasonable expenses, including the cost of investigation, attorney's fees, court costs, witness fees, and deposition fees.

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

(d) The entirety of any penalty obtained under subsection (a) of this section less reimbursement of investigation and prosecution costs and any reward which may be determined by the court pursuant to this subchapter shall be credited as special revenues of the State of Arkansas and deposited into the Arkansas Medicaid Program Trust Fund for the sole use of the Arkansas Medicaid Program.

(e)

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

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

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

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

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

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

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

20-77-904. Investigation by Attorney General.

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

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

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

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

(4) Contain a copy of the written interrogatories;

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

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

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

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

(b)

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

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

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

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

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

(1) Adjudging the person in contempt of court and exercising any civil contempt power available under state law;

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

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

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

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

20-77-905. Order compelling testimony or production of evidence -- Immunity -- Contempt.

(a) (1) (A) In any proceeding or investigation under this subchapter, if a person refuses to answer a question or produce evidence of any kind on the ground that he or she may be incriminated and if the Attorney General or prosecuting attorney requests the court in writing to order the person to answer the question or produce the evidence, the court may make this order, and the person shall comply with the order.

(B) If the court denies the request, the court shall state its reasons for the denial in writing.

(2) After complying, the testimony or evidence or any information directly derived from the testimony or evidence shall not be used against the person in any proceeding or prosecution of a crime or offense concerning which he or she gave an answer or produced evidence under the court order.

(3) Immunity obtained pursuant to this section does not exempt any person from prosecution, penalty, or forfeiture for any perjury, false swearing, or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

(b) If a person refuses to testify after being granted immunity and after being ordered to testify as prescribed in subsection (a) of this section, he or she may be adjudged in contempt.

20-77-906. Evidence -- Disclosure.

(a) If the Attorney General determines that disclosure to the respondent of the evidence relied on to establish reasonable cause is not in the best interests of the investigation, he or she may request that the court examine the evidence in camera. If the Attorney General makes this request, the court may examine the evidence in camera and then make its determination.

(b) (1) Any procedure, testimony taken, or material produced under this section shall be kept confidential by the Attorney General before bringing an action against a person under this subchapter for the violation under investigation unless any of the following applies:

(A) Confidentiality is waived by the person whose testimony is disclosed;

(B) Confidentiality is waived by the person who produced to the Attorney General the material being disclosed;

(C) The testimony or material is disclosed solely to the person, or the person's attorney, who testified or provided the material to the Attorney General; or

(D) Disclosure is authorized by court order.

(2) The Attorney General may disclose the testimony or material to an agency director of the State of Arkansas, of the United States, or of any other state, to the prosecuting attorney, or to the United States Attorney.

(c) An investigator conducting an examination pursuant to this section may exclude from the place of examination any person except the person being examined and the person's counsel.

(d) Nothing in this section shall be construed to limit the Attorney General's authority to access provider records in accordance with existing provisions of the Arkansas Code of 1987 Annotated.

20-77-907. Records.

(a)

(1) A Medicaid provider or person providing healthcare goods or services under the Arkansas Medicaid Program is required to maintain all records at least for a period of five (5) years from the date of claimed provision of any goods or services to any Medicaid recipient.

(2)

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

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

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

(ii) The records are maintained within the State of Arkansas.

(C) A Medicaid provider shall disclose upon request the location of any offsite storage facility to any agency with authority to audit the records.

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

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

(b)

(1) No potential Medicaid recipient shall be eligible for medical assistance unless he or she has authorized in writing the Director of the Department of Human Services to examine all records of his or her own or of those receiving or having received Medicaid benefits through him or her, whether the receipt of the benefits would be allowed by the program or not, for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(2) No person shall be eligible to receive any payment from the program or its fiscal agents unless that person has authorized in writing the director to examine all records for the purpose of investigating whether any person may have committed the crime of Medicaid fraud or for use or for potential use in any legal, administrative, or judicial proceeding.

(c) The Attorney General shall be allowed access to all records of persons and Medicaid recipients under the program to which the director has access for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(d)

(1) Records obtained by the director or the Attorney General pursuant to this subchapter shall be classified as confidential information and shall not be subject to outside review or release by any individual except when records are used or potentially to be used by any governmental entity in any legal, administrative, or judicial proceeding.

(2) Notwithstanding any other law to the contrary, no person shall be subject to any civil or criminal liability for providing access to records to the director, to the Attorney General, or to the prosecuting attorneys.

20-77-908. False claims jurisdiction -- Procedure.

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

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

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

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

20-77-909. Injunctions against fraud.

(a) (1) Whenever it appears that any person is engaged in or intends to engage in the transfer, conversion, or destruction of assets, records, or property in an effort to avoid detection of violations of this subchapter, the Attorney General may apply to the Pulaski County Circuit Court, or to the court in which the records or property are located, to seize and impound the property.

(2) The application for an ex parte order shall be in writing, furnish a reasonable basis for the granting of the proposed order, and demonstrate that an emergency exists which would support the granting of the motion.

(b) (1) If the order is granted, the respondent shall be notified of the order seizing and impounding his or her property immediately after the seizure, or as soon as is reasonably practicable. If, after diligent inquiry, the respondent cannot be located, notice under this subsection may be accomplished by leaving a copy of the order at his or her dwelling house or usual place of abode with some person residing therein who is at least eighteen (18) years of age, or by delivering a copy thereof to a representative at the respondent's place of business who is at least eighteen (18) years of age.

(2) If the order is granted, the respondent shall be granted a hearing no later than five (5) days after being notified of the property's seizure for the purpose of determining whether the order should be continued.

(c) The burden at all stages of the proceeding shall be upon the state to prove by a preponderance of the evidence the necessity of the order of seizure.

20-77-910. Suspension of violators.

The Director of the Department of Human Services may suspend or revoke the provider agreement between the Department of Human Services and the person in the event that the person is found guilty of violating the terms of this subchapter.

20-77-911. Persons providing information regarding Medicaid fraud -- Rewards.

(a) The court is authorized to pay a person sums, not exceeding ten percent (10%) of the aggregate penalty recovered, as it may deem just, for information the person may have provided which led to the detecting and bringing to trial and punishment persons guilty of violating the Medicaid fraud laws.

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

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

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

(d) An employee or a fiscal agent charged with the duty of referring or investigating cases of Medicaid fraud who is employed by or who contracts with any governmental entity shall not be eligible to receive a reward under this section.