

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 830

By: Senator D. Sanders

For An Act To Be Entitled

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

Subtitle

TO CREATE THE ARKANSAS MEDICAID FALSE
CLAIMS ACT OF 2015.

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

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

Subchapter 26 – Arkansas Medicaid False Claims Act of 2015

20-77-2601. Title.

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

20-77-2602. Definitions.

As used in this subchapter:

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

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

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



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

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

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

(i) A cost report or similar document;

(ii) A book of account; or

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

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

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

(A) The Department of Human Services;

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

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

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

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

(F) The Office of Medicaid Inspector General; and

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

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

(i) Has actual knowledge of the information;

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

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

(B) "Knowing" and "knowingly" require no proof of specific intent to defraud;

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

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

(6) "Original source" means an individual who either:

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

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

(7) "Person" means any natural person, partnership, corporation, firm, association, political subdivision, or other legal or commercial entity; and

(8) "Public disclosure" and "Publicly disclosed" means disclosure of specific information:

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

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

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

(D) From the news media.

20-77-2603. Violations and liability.

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

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

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

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

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

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

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

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

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

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

20-77-2605. Damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The complaint shall:

(A) Be filed in camera;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) A finding or conclusion is final if:

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

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

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

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

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

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

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

(2) A showing shall be conducted in camera.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The defendant prevails in the action; and

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

purposes of harassment.

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

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

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

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

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

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

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

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

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

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

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

subchapter.

(b) Relief under this section shall include:

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

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

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