

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

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1719

By: Representative M. Gray

By: Senator Flippo

For An Act To Be Entitled

AN ACT TO UPDATE THE MEDICAID FRAUD ACT AND THE MEDICAID FRAUD FALSE CLAIMS ACT TO ADDRESS FLAWS IDENTIFIED IN RECENT INVESTIGATIONS AND CHANGES RELATED TO THE IMPLEMENTATION OF MANAGED CARE; TO MODIFY THE SENTENCING SCHEME OF MEDICAID FRAUD BY IMPLEMENTING APPROPRIATE SANCTIONS IN CERTAIN SITUATIONS; TO PROHIBIT FALSE STATEMENTS IN A MEDICAID PROVIDER APPLICATION OR AGREEMENT; TO PROHIBIT PERSONS WHO HAVE BEEN SUSPENDED OR EXCLUDED FROM THE ARKANSAS MEDICAID PROGRAM FROM PARTICIPATING DIRECTLY OR INDIRECTLY IN THE ARKANSAS MEDICAID PROGRAM; TO CLARIFY WHEN REWARDS MAY BE PAID AND FROM WHAT FUNDS; TO PROVIDE FOR A MEANINGFUL SAFE HARBOR WHEN MEDICAID PROVIDERS DISCOVER AND REPORT FRAUD IN A TIMELY MANNER; TO UPDATE THE ADULT ABUSE PENALTIES; AND FOR OTHER PURPOSES.

Subtitle

TO UPDATE THE MEDICAID FRAUD ACT AND THE MEDICAID FRAUD FALSE CLAIMS ACT TO ADDRESS FLAWS IDENTIFIED IN RECENT INVESTIGATIONS AND CHANGES RELATED TO THE IMPLEMENTATION OF MANAGED CARE; AND TO UPDATE THE ADULT ABUSE PENALTIES.

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



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SECTION 1. Arkansas Code § 5-28-103 is amended to read as follows:

5-28-103. Criminal penalties for abuse of an endangered or impaired person.

(a) It is unlawful for any person or caregiver to abuse, neglect, or exploit any endangered person or impaired person subject to protection under a provision of this chapter.

(b)(1) If the abuse causes serious physical injury or a substantial risk of death, any person or caregiver who purposely abuses an endangered person or an impaired person is guilty of a Class B felony.

(2) If the abuse causes physical injury, any person or caregiver who purposely abuses an adult endangered person or an adult impaired person in violation of a provision of this chapter is guilty of a Class D felony.

(3) Any person or caregiver who abuses an adult endangered person or an adult impaired person is guilty of a Class B misdemeanor.

(c)(1) Any person or caregiver who neglects an adult endangered person or an adult impaired person in violation of a provision of this chapter, causing serious physical injury or substantial risk of death, is guilty of a Class D felony.

(2) Any person or caregiver who neglects an adult endangered person or an adult impaired person in violation of a provision of this chapter, causing physical injury, is guilty of a Class B misdemeanor.

(3) Any person or caregiver who purposely neglects an adult endangered person or an adult impaired person without causing physical injury is guilty of a Class C misdemeanor.

~~(d) Any person or caregiver who abuses an adult endangered person or an adult impaired person is guilty of a Class B misdemeanor.~~

~~(e)~~(d) Any person or caregiver who exploits a person in violation of a provision of this chapter when the value of the property, asset, or resource is:

(1) Two thousand five hundred dollars (\$2,500) or more, is guilty of a Class B felony;

(2) Less than two thousand five hundred dollars (\$2,500) but more than two hundred dollars (\$200), is guilty of a Class C felony; and

(3) Two hundred dollars (\$200) or less, is guilty of a Class A misdemeanor.

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

(2) "Claim" means any written or electronically submitted request or demand for reimbursement or payment made by any Medicaid provider to the Arkansas Medicaid Program, a managed care organization, or its any fiscal agents agent of the Arkansas Medicaid Program or a managed care organization for each good or service purported to have been provided to any Medicaid recipient ~~whether or not the State of Arkansas provides any portion of the money that is requested or demanded~~ 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;

SECTION 3. Arkansas Code § 5-55-102, concerning the definitions within the Medicaid Fraud Act, is amended to add an additional subdivision to read as follows:

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

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

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

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

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

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

5-55-103. Unlawful acts – Classification.

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

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

~~(A)~~(1) Class C felony if the aggregate amount of payments illegally claimed is two thousand five hundred dollars (\$2,500) or more but less than five thousand dollars (\$5,000);

~~(B)~~(2) Class B felony if the aggregate amount of payments illegally claimed is five thousand dollars (\$5,000) or more but less than twenty-five thousand dollars (\$25,000); and

~~(C)~~(3) Class A felony if the aggregate amount of payments illegally claimed is twenty-five thousand dollars (\$25,000) or more.

~~(3)~~(c) Otherwise, Medicaid fraud is a Class A misdemeanor.

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

~~(A)~~ Having been found guilty of or having pleaded guilty or nolo contendere to the charge of Medicaid fraud, theft of public benefits, § 5-36-202, or abuse of adults, § 5-28-101 et seq., as defined in the Arkansas Criminal Code, § 5-1-101 et seq., that person participates directly or indirectly in the Arkansas Medicaid Program; or

~~(B)~~ As a certified health provider, enrolled in the Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act, as amended, 42 U.S.C. § 1396 et seq., or the fiscal agent of the certified health provider, employs, or engages as an independent contractor, or engages as a consultant, or otherwise permits the participation in the business activities of the certified health 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, § 5-36-202, or abuse of adults, § 5-28-101 et seq., as defined in the Arkansas Criminal Code, § 5-1-101 et seq.

~~(2)~~ Illegal Medicaid participation is a:

~~(A)~~ Class A misdemeanor for the first offense;

~~(B)~~ Class D felony for the second offense; and

~~(C)~~ Class C felony for the third offense and subsequent offenses.

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

(a) In addition to any other fine that may be levied, any person found guilty of or who pleads guilty or nolo contendere to Medicaid fraud as described in this subchapter is required to make full restitution ~~to~~ and payment of costs as follows:

(1)(A) The Department of Human Services, with the restitution to be deposited into the Arkansas Medicaid Program Trust Fund for the loss to the Arkansas Medicaid Program or its fiscal agents, ~~and,~~

(B) When permitted by contract or rules, the department may return all or a portion of the restitution to a managed care organization or any similar organization that suffered a loss due to the Medicaid fraud; and

(2) The office of the Attorney General or prosecuting attorney may recover for reasonable and necessary expenses incurred during investigation and prosecution of Medicaid fraud.

SECTION 6. Arkansas Code § 5-55-111(5), concerning criminal acts constituting Medicaid fraud under the Medicaid Fraud Act, is amended to read as follows:

(5) Purposely presents or causes to be presented a claim for a ~~physician's service for which payment may be made under a program under the Arkansas Medicaid Program while~~ 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 ~~as a physician~~ or credentialed;

SECTION 7. Arkansas Code § 5-55-111(7), concerning criminal acts constituting Medicaid fraud under the Medicaid Fraud Act, is amended to read as follows:

(7)(A) Purposely 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 that 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) ~~Subdivisions~~ If the transaction is otherwise legal and properly documented as occurring in the normal course of business, subdivisions (7)(A)(i) and (ii) of this section do 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 provision 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 that specifies the amount to be paid to the person and the 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 provider of services as defined in § 20-9-101, the person discloses in such 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;

SECTION 8. Arkansas Code § 5-55-111(12), concerning criminal acts constituting Medicaid fraud under the Medicaid Fraud Act, is amended to read as follows:

(12) Purposely forges the signature of a doctor, nurse, or other medical professional on a prescription, referral for healthcare goods or

services, or finding of medical necessity for any Medicaid recipient of the Arkansas Medicaid Program;

SECTION 9. Arkansas Code § 5-55-113 is amended to read as follows:

5-55-113. Reward for information.

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

(b)(1) Upon the disposition of any criminal action relating to a violation 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 detecting and bringing to trial and punishment a person guilty of Medicaid fraud to award the person in an amount commensurate with the quality and usefulness of the information determined by the court to have been provided, in accordance with the requirements of this subchapter.

(2) 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.

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

(d) An employee or fiscal agents charged with the duty of referring or investigating a case of Medicaid fraud who are employed by or contract with any governmental entity are not eligible to receive a reward under this section.

(e)(1) The Attorney General may agree to a payment of up to ten percent (10%) of the civil penalty as a reward in any settlement agreement under this section.

(2) A portion of restitution shall not be used as a reward.

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

5-55-115. Suspension, exclusion, and illegal Medicaid participation.

(a) It is unlawful for a suspended or excluded individual or organization to participate in the Arkansas Medicaid Program under federal

and state laws.

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

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

(B) As a certified health provider enrolled in the Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act, as amended, 42 U.S.C. § 1396 et seq., or as the fiscal agent of the certified health provider, the person employs, or engages as an independent contractor, or engages as a consultant, or otherwise permits the participation in the business activities of the certified health 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, § 5-36-202, or abuse of adults, § 5-28-101 et seq.

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

SECTION 11. Arkansas Code §§ 20-77-902 and 20-77-903 are amended to read as follows:

20-77-902. Liability for certain acts.

A person shall be liable to the State of Arkansas, through the Attorney General, for restitution, damages, and a civil penalty of three (3) times the amount of the damages for an act or omission in violation of this subchapter 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 of the benefit or payment 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~~ If the transaction is otherwise legal and properly documented as occurring in the normal course of business, ~~subdivision~~ (7)(A) of this section ~~shall~~ does 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~~ salary, wages, or commission paid during the normal course of business 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~~ that are furnishing services reimbursed under the Arkansas Medicaid Program, if:

(a) The person has a written contract with each individual or entity ~~which~~ that 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 other 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 the 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 as 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; or

(20) Knowingly 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.

20-77-903. Civil Restitution, damages, and civil penalties.

(a)(1) It shall be unlawful for any person to commit any act ~~proscribed~~ prohibited 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~~.

(2) In a case in which direct monetary loss does not exist or in which it is difficult or impossible to determine the extent of the loss, the

Attorney General may elect to seek a civil penalty based on the number of fraudulent claims submitted.

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

~~(1)(A) A civil penalty of not~~ Not ~~less than five thousand five hundred dollars (\$5,500)~~ five hundred dollars (\$500) ~~or but not~~ more than ~~eleven thousand dollars (\$11,000)~~ ten thousand dollars (\$10,000) for each claim; ~~and~~ or

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

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

(2) The person or Medicaid provider fully cooperated with any Attorney General's investigation of the violation, and at the time the person or Medicaid provider 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 or Medicaid provider 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)(1) The When the loss is to the Arkansas Medicaid Program or its fiscal agents, the entirety of any penalty obtained under subsection (a) of this section less reimbursement of investigation and prosecution costs and any reward ~~which~~ that 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.

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

(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.

SECTION 12. Arkansas Code § 20-77-909 is amended to read as follows:
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 or avoid paying restitution, fines, and civil penalties owed under this subchapter or the Medicaid Fraud Act, § 5-55-101 et seq., 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~~ that 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~~ of the order 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.

(3)(A) If the court finds the assets or funds can be preserved without physical seizure, the court may order a constructive seizure by entering an order directing the defendant or third-party financial institution to freeze or forgo further transfer of the assets of funds.

(B) The court may fashion the constructive seizure in any manner reasonably necessary to protect and preserve the assets or funds pending the resolution of related civil and criminal cases.

(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.

SECTION 13. Arkansas Code § 20-77-911 is amended to read as follows:

20-77-911. Persons providing information regarding false Medicaid ~~fraud~~ claims – Rewards.

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

(b) Upon disposition of any civil action relating to violations of this subchapter in which a civil 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~~ of false claims and the recovery of restitution and a civil penalty damages assessment 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.

(e) The Attorney General may agree to a payment of up to ten percent (10%) of the civil penalty as a reward in any settlement agreement under this section.

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