

AMCI 2d _____
MEDICAID FRAUD

_____ (*Defendant*) is charged with the offense of Medicaid fraud. To sustain this charge, the State must prove the following beyond a reasonable doubt:

§5-55-111.1

[_____ (*Defendant*) purposely (made) (or) (caused to be made) a false statement or representation of a material fact in an application for a (benefit) (or) (payment) under the Arkansas Medicaid Program.]

§5-55-111.2

[_____ (*Defendant*), at any time, purposely (made) (or) (caused to be made) a false statement or representation of a material fact for use in determining rights to a (benefit) (or) (payment) under the Arkansas Medicaid Program.]

§5-55-111.3

[**First**, _____ (*Defendant*), having knowledge of the occurrence of an event affecting

(his or her initial or continued right to a (benefit) (or) (payment) under the Arkansas Medicaid Program,)

(the initial or continued right to a (benefit) (or) (payment) under the Arkansas Medicaid Program of an individual in whose behalf he or she has applied for or is receiving the (benefit) (or) (payment) under the Arkansas Medicaid Program,)

purposely concealed or failed to disclose the event; and

Second, _____ (*Defendant*) did so with the intent to fraudulently secure the (benefit) (or) (payment) either in a greater amount or quantity than is due or when no (benefit) (or) (payment) was authorized.]

§5-55-111.4

[**First**, _____ (*Defendant*) made application to receive a (benefit) (or) (payment) under the Arkansas Medicaid Program for the use and benefit of another person;

Second, _____ (*Defendant*) received the (benefit) (or) (payment) for the use and benefit of another person; and

Third, _____ (*Defendant*) purposely converted the (benefit) (or) (payment) or any part of the (benefit) (or) (payment) to a use other than for the use and benefit of the other person.]

§5-55-111.5

[**First**, _____ (*Defendant*) purposely (presented) (or) (caused to be presented) a claim for a physicians service for which payment may be made under a program under the Arkansas Medicaid Program; and

Second, _____ (*Defendant*) knew that the individual who furnished the service was not licensed as a physician.]

§5-55-111.6

[_____ (*Defendant*) purposely solicited or received a remuneration, including a kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind

(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)

(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).]

§5-55-111.7

[**First**, _____ (*Defendant*) purposely offered or paid a remuneration, including a kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to a person to induce that person to

(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)

((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); and

Second, the remuneration was not

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

(an 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); or

(a payment practice specified by the Director of the Department of Health and Human Services pursuant to applicable federal or state law); or

(an 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; and the person has a written contract with each individual or entity that specifies the amount to be paid to the person (; and the person disclosed in such form and manner as required by the Director of the Department of Health and Human Services to the entity [*if a provider of services as defined in 20-9-101*] the amount received from each vendor with respect to purchases made by or on behalf of the entity)).

§5-55-111.8

[**First**, _____ (Defendant) purposely (made or caused to be made) (or) (induced or sought to induce) the making of a false statement or representation of a material fact (with respect to the conditions or operation of an institution, facility, or entity) (or) (with respect to information required pursuant to applicable federal and state law, rules, regulations, and provider agreements); and

Second, _____ (Defendant) did so in order that the institution, facility, or entity would qualify (upon initial certification) (or) (upon recertification) as a (hospital) (rural primary care hospital) (skilled nursing facility) (nursing facility) (intermediate care facility for the mentally retarded) (home health agency) (or) (an entity for which certification is required).]

§5-55-111.9

[_____ (*Defendant*) purposely charged for a 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.]

[_____ (*Defendant*) purposely charged, solicited, accepted, or received, in addition to an amount otherwise required to be paid under the Arkansas Medicaid Program, a gift, money, donation, or other consideration

(as a precondition of admitting a patient to a (hospital) (nursing facility) (or) (intermediate care facility for the mentally retarded;)) (or)

(as a requirement for the patients continued stay in a (hospital) (nursing facility) (or) (intermediate care facility for the mentally retarded) when the cost of the services provided in the (hospital) (nursing facility) (or) (intermediate care facility for the mentally retarded) to the patient was paid for in whole in part under the Arkansas Medicaid Program;)

and the gift, money, donation, or other consideration was not a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient.]

§5-55-111.10

[_____ (*Defendant*) purposely (made) (or) (caused to be made) a false statement or representation of a material fact in an application for a (benefit) (or) (payment) in violation of the rules, regulations, and provider agreements issued by the Arkansas Medicaid Program or its fiscal agents.

The rule, regulation, and provider agreement that _____ (*Defendant*) allegedly violated provides: _____
(Quote or summarize applicable section)]

Definitions

"Knowingly" -- A person acts knowingly with respect to his conduct or the attendant circumstances when he is aware that his conduct is of that nature or that such circumstances

exist. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

"Purpose" -- A person acts with purpose with respect to the results of his conduct when it is his conscious object to cause the results.

"Arkansas Medicaid Program" means the program authorized under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., 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.

"Claim" means any written or electronically submitted request or demand for reimbursement made to the Arkansas Medicaid Program by any provider or its fiscal agents for each good or service purported to have been provided to any medicaid recipient whether or not the State of Arkansas provides any or no portion of the money that is requested or demanded.

"Fiscal agents" means any individual, firm, corporation, professional association, partnership, organization, or other legal entity that, through a contractual relationship with the Department of Health and Human Services and, thereby, the State of Arkansas receives, processes, and pays claims under the Arkansas Medicaid Program.

"Medicaid recipient" means any individual in whose behalf any person claimed or received any payment from the Arkansas Medicaid Program or its fiscal agents, whether or not the individual was eligible for benefits under the Arkansas Medicaid Program.

"Person" means any:

(A) Provider of goods or services under the Arkansas Medicaid Program or any employee of the provider, whether the provider be an individual, individual medical vendor, firm, corporation, professional association, partnership, organization, or other legal entity; or

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

"Records" means all documents including, but not limited to, medical documents and X rays, developed by any person through the claimed provision of any goods or services to any medicaid recipient.

Note on Use

Use _____EXP and VF to determine the amount of fines that may be assessed under Ark. Code Ann. § 5-55-107.

Regarding the form of the instruction for the offense set out in Section 5-55-111.8, see *Ortho-McNeil-Janssen Pharmaceuticals Inc. v. State*, 2014 Ark. 124, at 9-16.

When the option is used or the offense found under §5-55-111.10 is used, if more than one rule, regulation, and provider agreement is asserted, modify instruction to include each. Insert only the portion of the rule, regulation, and provider agreement that is applicable under the facts.

Comment

Ark. Code Ann. § 5-55-111.

Medicaid fraud is a Class B felony if the aggregate amount of payments illegally claimed is \$2,500 or more; and a Class C felony if the aggregate amount of payments illegally claimed is less than \$2,500 but more than \$200; otherwise, Medicaid fraud is a Class A misdemeanor.

In addition to any other fine that may be levied under section 5-4-201, a person found guilty of Medicaid fraud may be assessed the following additional fines:

-- A mandatory fine in the amount of three times the amount of all payments judicially found to have been illegally received. Ark. Code Ann. § 5-55-107(a)(2).

-- An amount up to \$3,000.00 for each claim judicially found to be fraudulently submitted. Medicaid Program. Ark. Code Ann. § 5-55-107 (b)(1).

AMCI 2d -EXP _____
MEDICAID FRAUD -- STAGE ONE VERDICT EXPLANATION --
MULTIPLE POSSIBLE VERDICTS

If you find _____ (*defendant(s)*) guilty of Medicaid fraud, you will so indicate on the verdict form provided you. You will also make [a] finding[s] as directed on the verdict form.

If you reach a verdict of not guilty, you will indicate this on the verdict form.

AMCI 2d -VF- _____
MEDICAID FRAUD--STAGE ONE VERDICT FORM—
MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt
that _____ (*defendant*) is guilty of Medicaid fraud.

FOREMAN

We, the Jury, find _____ (*defendant*) not guilty.

FOREMAN

A. If your verdict is guilty, you shall make a finding of the aggregate amount of payments illegally claimed.

We, the Jury, find beyond a reasonable doubt that the aggregate amount of payments illegally claimed was

\$_____

(insert an amount)

FOREMAN

B. If your verdict is guilty, you shall make the following finding:

[We, the Jury, fix the statutory mandatory fine for the offense at:

\$ _____

[insert an amount by multiplying the amount found under paragraph A by 3]

FOREMAN

C. If your verdict is guilty, you may assess an additional fine as follows:

[We, the Jury, find beyond a reasonable doubt that the number of illegal claims submitted was

[insert a number]

FOREMAN

We, the Jury, fix an additional fine for Medicaid fraud in the amount of

\$ _____

[Insert an amount determined based upon the number of illegal claims found above times up to \$3,000.00 per illegal claim.]

FOREMAN

D. If your verdict is guilty, you may assess an additional fine as follows:

We, the Jury, fix an additional fine for Medicaid fraud in the amount of

\$ _____

[insert the fine range for the applicable offense level]

Note on Use

Under Paragraph A, the jury determines the aggregate amount of payments illegally claimed. This amount determines the level of the offense and is used in assessing the mandatory fine under Section 5-55-107 (a)(2)(A), which is done in paragraph B. \$2,500 or more is a Class B felony; less than \$2,500 but more than \$200 is a Class C felony; and \$200 or less is a Class A misdemeanor.

Under Paragraph B, a mandatory fine is assessed that is calculated at three times the aggregate amount of payments illegally claimed. The Jury fine takes the amount found in Paragraph A and multiplies it by three.

Under Paragraph C, the Jury may assess an additional fine pursuant to Section 5-55-107 (b)(1) in an amount up to \$3,000 per fraudulent claim submitted. The Jury must first determine the number of claims and then calculate the fine, if any.

Under Paragraph D, the Jury may assess an additional fine pursuant to Section 5-4-201 as follows: not exceeding \$15,000 for a Class B felony; not exceeding \$10,000 for a Class C felony; and not exceeding \$2,500 for a Class A misdemeanor.

AMCI 2d _____
ILLEGAL MEDICAID PARTICIPATION

_____ (*Defendant*) is charged with the offense of illegal participation in the Arkansas Medicaid Program. To sustain this charge, the State must prove the following beyond a reasonable doubt:

[**First**, _____ (*Defendant*) was found guilty of (Medicaid fraud) (theft of public benefits) (or) (abuse of adults); and

Second _____ (*Defendant*) participated directly or indirectly in the Arkansas Medicaid Program.]

[**First** _____ (*Defendant*) was (a certified health provider enrolled in the Arkansas Medicaid Program) (or) (the fiscal agent of the certified health provider enrolled in the Arkansas Medicaid Program); and

Second _____ (*Defendant*) (employed or engaged _____ (*insert name*) as an independent contractor) (or) (engaged _____ (*insert name*) as a consultant) (or) (otherwise permitted _____ (*insert name*) to participate in the business activities of the certified health provider enrolled in the Arkansas Medicaid Program); and

Third _____ (*insert name*) was found guilty of (Medicaid fraud) (theft of public benefits) (or) (abuse of adults).]

Definitions

Arkansas Medicaid Program means the program authorized under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., 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.

Fiscal agents means any individual, firm, corporation, professional association, partnership, organization, or other legal entity that, through a contractual relationship with the Department of Health and Human Services and, thereby, the State of Arkansas receives, processes, and pays claims under the Arkansas Medicaid Program.

Note on Use

In the second bracketed alternative, insert the name of the person on which the prosecution of the defendant on this charge is based. The person will have already been found guilty of one of the predicate offenses, and the jury is only being asked to find that the defendant employed, engaged, or otherwise permitted the person to participate in the business activities of the certified health provider.

Comment

Ark. Code Ann. § 5-55-103 (b).

The predicate offenses on which a prosecution of this offense is based are 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.

Illegal Medicaid participation is a: Class A misdemeanor for the first offense; Class D felony for the second offense; and Class C felony for the third offense and subsequent offenses.

AMCI 2d _____
FAILURE TO MAINTAIN MEDICAID RECORDS

_____ (*Defendant*) is charged with the offense of failing to maintain Medicaid records. To sustain this charge, the State must prove the following beyond a reasonable doubt:

_____ (*Defendant*) failed to maintain at his or her principal place of Medicaid business all records for a period of five years from the date of claimed provision of any goods or services to a Medicaid recipient.

Definitions

“Records” means all documents including, but not limited to, medical documents and X-rays, developed by any person through the claimed provision of any goods or services to any Medicaid recipient.

Comment

Ark. Code Ann. § 5-55-104.

Failure to maintain Medicaid records is a Class A misdemeanor unless the unavailability of records impairs or obstructs the prosecution of a felony in which case the offense is a Class D felony).

AMCI 2d –EXP _____
MEDICAID RECORDS --STAGE ONE VERDICT EXPLANATION—
MULTIPLE POSSIBLE RECORDS

If you find _____ (*defendant*) **guilty of failing to maintain records,** you will so indicate on the verdict form provided you. You will also make [a] finding[s] as directed on the form.

If you reach a verdict of not guilty, you will indicate this on the verdict form.

AMCI 2d -VF- _____
MEDICAID RECORDS--STAGE ONE VERDICT FORM—
MULTIPLE POSSIBLE VERDICTS

We, the Jury, find beyond a reasonable doubt
that _____ (*defendant*) failed to maintain Medicaid records.

FOREMAN

We, the Jury, find _____ (*defendant*) not guilty.

FOREMAN

If your verdict is guilty, you shall make [one] of the following findings:

Do you, the Jury, find beyond a reasonable doubt that the unavailability of records impaired or obstructed the prosecution of a felony?

YES _____

NO _____

FOREMAN

Note on Use

The additional finding is required to determine if the unavailability of records impaired or obstructed the prosecution of a felony in which case the offense is a Class D felony).