To: Public Health and Welfare; Appropriations

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Senator(s) Smith

SENATE BILL NO. 2884

AN ACT ENTITLES THE "MEDICAID BEST PRACTICES FOR MANAGING CHRONIC ILLNESS AND DISABILITIES PROGRAM"; TO ESTABLISH AND EMPOWER A MEDICAID BEST PRACTICES TASK FORCE; TO AMEND SECTION 43-13-121, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DIVISION OF MEDICAID TO ADOPT REGULATIONS TO IMPLEMENT THE RECOMMENDATIONS OF THE TASK FORCE IN A COST EFFECTIVE MANNER; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) This act shall be known and may be cited as the "Mississippi Medicaid Best Practices for Managing Chronic Illness and Disabilities Program."

(2) The Legislature finds that:

(a) Disease and care management programs are an integrated approach to delivering health care services which target specific diseases or conditions or individuals and provide treatment mechanisms based on best practices and the coordination of care between health care providers.

(b) Disease and care management programs have become an innovative way for states to control rising costs while not hindering access to prescription drugs. These programs are an effective alternative to component management techniques such as prior authorization or restrictive formularies which can have the unintended, but real, consequences of harming patients and costing states more than they save.

(c) Medicaid patients are often the state's most disadvantaged citizens, burdened with significant medical, financial and social needs. Medicaid patients benefit from an integrated approach to health care with open and continuous access to physician prescribed medicines.
(d) The state should encourage the use of disease management, case management and utilization review programs to coordinate care, improve health status and reduce inappropriate care.

(e) The Medicaid Best Practices Task Force shall advise the state, and specifically the Department of Health, on the establishment and implementation of programs specifically targeted at improving the health care of Medicaid patients and reducing state costs without restricting patient access to appropriate care.

(3) As used in this section, "division" means the Division of Medicaid, Office of the Governor.

(4) The Medicaid Best Practices Task Force (Task Force) is hereby established within the Division of Medicaid. The Task Force shall consist of seven (7) members as appointed by the Director of the Division of Medicaid as follows:

(a) Three (3) physicians licensed in this state and actively engaged in the practice of medicine chosen from a list of nominees provided by the Mississippi Medical Association;

(b) Two (2) pharmacists licensed in this state, actively engaged in the practice of pharmacy, and chosen from a list of nominees provided by the Mississippi Pharmaceutical Association;

(c) One (1) person who is a resident of this state chosen to represent program beneficiaries in this state; and

(d) One (1) person representing the pharmaceutical industry chosen from a list of nominees provided by the Pharmaceutical Research and Manufacturers of America.

Task Force members shall serve staggered three-year terms. One (1) physician, one (1) pharmacist and the beneficiary representative shall each be initially appointed for two-year terms, and two (2) physicians, one (1) pharmacist and the industry representative shall each be initially appointed for one-year terms.
terms. Members may be reappointed for a period not to exceed three (3), three-year terms. Vacancies on the Task Force shall be filled for the balance of the unexpired term from nominee lists for the appropriate Task Force category as under subsection (4).

Task Force members shall select a chairperson and a vice chairperson on an annual basis from the Task Force membership.

The Task Force shall meet at least quarterly and may meet at other times at the discretion of the chairperson.

(5) The Task Force shall have the power and duty to:

(a) Identify Medicaid patients who require ongoing and expensive care and develop interventions to improve their health, functional status and independence;

(b) Promote adherence to best medical practices;

(c) Encourage health plans and health care systems participating in the Medicaid program to:

   (i) Conduct patient needs assessments upon enrollment;

   (ii) Develop individual, patient-centered plans;

   and

   (iii) Use case management incorporating evidence-based practice guidelines.

(d) Advise and make recommendations to the division regarding program-wide initiatives to use disease management, case management and utilization review programs to improve the health status of Medicaid patients and reduce Medicaid costs.

SECTION 2. Section 43-13-121, Mississippi Code of 1972, is amended as follows:

43-13-121. (1) The division is authorized and empowered to administer a program of medical assistance under the provisions of this article, and to do the following:

   (a) Adopt and promulgate reasonable rules, regulations and standards, with approval of the Governor, and in accordance with the Administrative Procedures Law, Section 25-43-1 et seq.:
(i) Establishing methods and procedures as may be necessary for the proper and efficient administration of this article;

(ii) Providing medical assistance to all qualified recipients under the provisions of this article as the division may determine and within the limits of appropriated funds;

(iii) Establishing reasonable fees, charges and rates for medical services and drugs; and in doing so shall fix all such fees, charges and rates at the minimum levels absolutely necessary to provide the medical assistance authorized by this article, and shall not change any such fees, charges or rates except as may be authorized in Section 43-13-117;

(iv) Providing for fair and impartial hearings;

(v) Providing safeguards for preserving the confidentiality of records; and

(vi) For detecting and processing fraudulent practices and abuses of the program;

(b) Receive and expend state, federal and other funds in accordance with court judgments or settlements and agreements between the State of Mississippi and the federal government, the rules and regulations promulgated by the division, with the approval of the Governor, and within the limitations and restrictions of this article and within the limits of funds available for such purpose;

(c) Subject to the limits imposed by this article, to submit a plan for medical assistance to the federal Department of Health and Human Services for approval pursuant to the provisions of the Social Security Act, to act for the state in making negotiations relative to the submission and approval of such plan, to make such arrangements, not inconsistent with the law, as may be required by or pursuant to federal law to obtain and retain such approval and to secure for the state the benefits of the provisions of such law;
No agreements, specifically including the general plan for
the operation of the Medicaid program in this state, shall be made
by and between the division and the Department of Health and Human
Services unless the Attorney General of the State of Mississippi
has reviewed the agreements, specifically including the
operational plan, and has certified in writing to the Governor and
to the director of the division that the agreements, including the
plan of operation, have been drawn strictly in accordance with the
terms and requirements of this article;

(d) Pursuant to the purposes and intent of this article
and in compliance with its provisions, provide for aged persons
otherwise eligible for the benefits provided under Title XVIII of
the federal Social Security Act by expenditure of funds available
for such purposes;

(e) To make reports to the federal Department of Health
and Human Services as from time to time may be required by such
federal department and to the Mississippi Legislature as
hereinafter provided;

(f) Define and determine the scope, duration and amount
of medical assistance which may be provided in accordance with
this article and establish priorities therefor in conformity with
this article;

(g) Cooperate and contract with other state agencies
for the purpose of coordinating medical assistance rendered under
this article and eliminating duplication and inefficiency in the
program;

(h) Adopt and use an official seal of the division;

(i) Sue in its own name on behalf of the State of
Mississippi and employ legal counsel on a contingency basis with
the approval of the Attorney General;

(j) To recover any and all payments incorrectly made by
the division or by the Medicaid Commission to a recipient or
provider from the recipient or provider receiving the payments;
(k) To recover any and all payments by the division or by the Medicaid Commission fraudulently obtained by a recipient or provider. Additionally, if recovery of any payments fraudulently obtained by a recipient or provider is made in any court, then, upon motion of the Governor, the judge of the court may award twice the payments recovered as damages;

(l) Have full, complete and plenary power and authority to conduct such investigations as it may deem necessary and requisite of alleged or suspected violations or abuses of the provisions of this article or of the regulations adopted hereunder including, but not limited to, fraudulent or unlawful act or deed by applicants for medical assistance or other benefits, or payments made to any person, firm or corporation under the terms, conditions and authority of this article, to suspend or disqualify any provider of services, applicant or recipient for gross abuse, fraudulent or unlawful acts for such periods, including permanently, and under such conditions as the division may deem proper and just, including the imposition of a legal rate of interest on the amount improperly or incorrectly paid. Recipients who are found to have misused or abused medical assistance benefits may be locked into one (1) physician and/or one (1) pharmacy of the recipient's choice for a reasonable amount of time in order to educate and promote appropriate use of medical services, in accordance with federal regulations. Should an administrative hearing become necessary, the division shall be authorized, should the provider not succeed in his defense, in taxing the costs of the administrative hearing, including the costs of the court reporter or stenographer and transcript, to the provider. The convictions of a recipient or a provider in a state or federal court for abuse, fraudulent or unlawful acts under this chapter shall constitute an automatic disqualification of the recipient or automatic disqualification of the provider from participation under the Medicaid program.
A conviction, for the purposes of this chapter, shall include a judgment entered on a plea of nolo contendere or a nonadjudicated guilty plea and shall have the same force as a judgment entered pursuant to a guilty plea or a conviction following trial. A certified copy of the judgment of the court of competent jurisdiction of such conviction shall constitute prima facie evidence of such conviction for disqualification purposes;

(m) Establish and provide such methods of administration as may be necessary for the proper and efficient operation of the program, fully utilizing computer equipment as may be necessary to oversee and control all current expenditures for purposes of this article, and to closely monitor and supervise all recipient payments and vendors rendering such services hereunder;

(n) To cooperate and contract with the federal government for the purpose of providing medical assistance to Vietnamese and Cambodian refugees, pursuant to the provisions of Public Law 94-23 and Public Law 94-24, including any amendments thereto, only to the extent that such assistance and the administrative cost related thereto are one hundred percent (100%) reimbursable by the federal government. For the purposes of Section 43-13-117, persons receiving medical assistance pursuant to Public Law 94-23 and Public Law 94-24, including any amendments thereto, shall not be considered a new group or category of recipient;

(o) The division shall impose penalties upon Medicaid only, Title XIX participating long-term care facilities found to be in noncompliance with division and certification standards in accordance with federal and state regulations, including interest at the same rate calculated by the Department of Health and Human Services and/or the Health Care Financing Administration under federal regulations.
(p) The division shall promulgate and adopt rules and regulations as are necessary to study and implement the recommendations of the Medicaid Best Practices Task Force established and empowered in Section 1 of this act in a cost-effective manner. Any such recommendations which require statutory revision shall be reported to the Legislature for appropriate action. The division shall maintain data to evaluate the cost and effectiveness of the Task Force recommendations and report to the Chairmen of the Public Health and Welfare Committees of both houses of the Legislature on annual basis.

(2) The division also shall exercise such additional powers and perform such other duties as may be conferred upon the division by act of the Legislature hereafter.

(3) The division, and the State Department of Health as the agency for licensure of health care facilities and certification and inspection for the Medicaid and/or Medicare programs, shall contract for or otherwise provide for the consolidation of on-site inspections of health care facilities which are necessitated by the respective programs and functions of the division and the department.

(4) The division and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable them effectively to discharge the duties of their office. In compelling the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions, as authorized by this section, the division or its hearing officers may designate an individual employed by the division or some other
suitable person to execute and return such process, whose action
in executing and returning such process shall be as lawful as if
done by the sheriff or some other proper officer authorized to
execute and return process in the county where the witness may
reside. In carrying out the investigatory powers under the
provisions of this article, the director or other designated
person or persons shall be authorized to examine, obtain, copy or
reproduce the books, papers, documents, medical charts,
prescriptions and other records relating to medical care and
services furnished by the provider to a recipient or designated
recipients of Medicaid services under investigation. In the
absence of the voluntary submission of the books, papers,
documents, medical charts, prescriptions and other records, the
Governor, the director, or other designated person shall be
authorized to issue and serve subpoenas instantly upon such
provider, his agent, servant or employee for the production of the
books, papers, documents, medical charts, prescriptions or other
records during an audit or investigation of the provider. If any
provider or his agent, servant or employee should refuse to
produce the records after being duly subpoenaed, the director
shall be authorized to certify such facts and institute contempt
proceedings in the manner, time, and place as authorized by law
for administrative proceedings. As an additional remedy, the
division shall be authorized to recover all amounts paid to the
provider covering the period of the audit or investigation,
inclusive of a legal rate of interest and a reasonable attorney's
fee and costs of court if suit becomes necessary. Division staff
shall have immediate access to the provider's physical location,
facilities, records, documents, books, and any other records
relating to medical care and services rendered to recipients
during regular business hours.

(5) If any person in proceedings before the division
disobeys or resists any lawful order or process, or misbehaves
during a hearing or so near the place thereof as to obstruct the
same, or neglects to produce, after having been ordered to do so,
any pertinent book, paper or document, or refuses to appear after
having been subpoenaed, or upon appearing refuses to take the oath
as a witness, or after having taken the oath refuses to be
examined according to law, the director shall certify the facts to
any court having jurisdiction in the place in which it is sitting,
and the court shall thereupon, in a summary manner, hear the
evidence as to the acts complained of, and if the evidence so
warrants, punish such person in the same manner and to the same
extent as for a contempt committed before the court, or commit
such person upon the same condition as if the doing of the
forbidden act had occurred with reference to the process of, or in
the presence of, the court.

(6) In suspending or terminating any provider from
participation in the Medicaid program, the division shall preclude
such provider from submitting claims for payment, either
personally or through any clinic, group, corporation or other
association to the division or its fiscal agents for any services
or supplies provided under the Medicaid program except for those
services or supplies provided prior to the suspension or
termination. No clinic, group, corporation or other association
which is a provider of services shall submit claims for payment to
the division or its fiscal agents for any services or supplies
provided by a person within such organization who has been
suspended or terminated from participation in the Medicaid program
except for those services or supplies provided prior to the
suspension or termination. When this provision is violated by a
provider of services which is a clinic, group, corporation or
other association, the division may suspend or terminate such
organization from participation. Suspension may be applied by the
division to all known affiliates of a provider, provided that each
decision to include an affiliate is made on a case-by-case basis
after giving due regard to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the provider is affiliated where such conduct was accomplished with the course of his official duty or was effectuated by him with the knowledge or approval of such person.

(7) If the division ascertains that a provider has been convicted of a felony under federal or state law for an offense which the division determines is detrimental to the best interests of the program or of Medicaid recipients, the division may refuse to enter into an agreement with such provider, or may terminate or refuse to renew an existing agreement.

SECTION 3. This act shall take effect and be in force from and after July 1, 2002.