

By: Representative Rotenberry

To: Public Health and Welfare

HOUSE BILL NO. 1042

1 AN ACT TO AMEND SECTION 43-13-121, MISSISSIPPI CODE OF 1972,  
2 TO DIRECT THE DIVISION OF MEDICAID TO ESTABLISH A POLICY THAT  
3 PRIORITIZES THE SERVICES THAT THE DIVISION WILL PROVIDE TO  
4 RECIPIENTS WHEN THE FUNDS APPROPRIATED TO THE DIVISION ARE NOT  
5 SUFFICIENT TO FULLY FUND ALL AUTHORIZED SERVICES; TO PROVIDE THAT  
6 NURSING FACILITY SERVICES MUST BE AMONG THE HIGHEST PRIORITIES FOR  
7 SERVICES THAT WILL BE PROVIDED; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 43-13-121, Mississippi Code of 1972, is  
10 amended as follows:

11 43-13-121. (1) The division shall administer the Medicaid  
12 program under the provisions of this article, and may do the  
13 following:

14 (a) Adopt and promulgate reasonable rules, regulations  
15 and standards, with approval of the Governor, and in accordance  
16 with the Administrative Procedures Law, Section 25-43-1 et seq.:

17 (i) Establishing methods and procedures as may be  
18 necessary for the proper and efficient administration of this  
19 article;

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

23 (iii) Establishing reasonable fees, charges and  
24 rates for medical services and drugs; in doing so, the division  
25 shall fix all of those fees, charges and rates at the minimum  
26 levels absolutely necessary to provide the medical assistance  
27 authorized by this article, and shall not change any of those  
28 fees, charges or rates except as may be authorized in Section  
29 43-13-117;



30 (iv) Providing for fair and impartial hearings;

31 (v) Providing safeguards for preserving the  
32 confidentiality of records; \* \* \*

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

35 (vii) Establishing a policy that prioritizes the  
36 services that the division will provide to recipients, including  
37 the quantity or frequency of use of those services, when the funds  
38 appropriated to the division are not sufficient to fully fund all  
39 authorized services. The policy shall provide that nursing  
40 facility services are among the highest priorities for services  
41 that will be provided.

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

49 (c) Subject to the limits imposed by this article, to  
50 submit a Medicaid plan to the federal Department of Health and  
51 Human Services for approval under the provisions of the Social  
52 Security Act, to act for the state in making negotiations relative  
53 to the submission and approval of that plan, to make such  
54 arrangements, not inconsistent with the law, as may be required by  
55 or under federal law to obtain and retain that approval and to  
56 secure for the state the benefits of the provisions of that law.

57 No agreements, specifically including the general plan for  
58 the operation of the Medicaid program in this state, shall be made  
59 by and between the division and the Department of Health and Human  
60 Services unless the Attorney General of the State of Mississippi  
61 has reviewed the agreements, specifically including the  
62 operational plan, and has certified in writing to the Governor and



63 to the executive director of the division that the agreements,  
64 including the plan of operation, have been drawn strictly in  
65 accordance with the terms and requirements of this article;

66 (d) In accordance with the purposes and intent of this  
67 article and in compliance with its provisions, provide for aged  
68 persons otherwise eligible for the benefits provided under Title  
69 XVIII of the federal Social Security Act by expenditure of funds  
70 available for those purposes;

71 (e) To make reports to the federal Department of Health  
72 and Human Services as from time to time may be required by that  
73 federal department and to the Mississippi Legislature as provided  
74 in this section;

75 (f) Define and determine the scope, duration and amount  
76 of Medicaid that may be provided in accordance with this article  
77 and establish priorities therefor in conformity with this article;

78 (g) Cooperate and contract with other state agencies  
79 for the purpose of coordinating Medicaid provided under this  
80 article and eliminating duplication and inefficiency in the  
81 Medicaid program;

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

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

86 (j) To recover any and all payments incorrectly made by  
87 the division or by the Medicaid Commission to a recipient or  
88 provider from the recipient or provider receiving the payments;

89 (k) To recover any and all payments by the division or  
90 by the Medicaid Commission fraudulently obtained by a recipient or  
91 provider. Additionally, if recovery of any payments fraudulently  
92 obtained by a recipient or provider is made in any court, then,  
93 upon motion of the Governor, the judge of the court may award  
94 twice the payments recovered as damages;



95           (1) Have full, complete and plenary power and authority  
96 to conduct such investigations as it may deem necessary and  
97 requisite of alleged or suspected violations or abuses of the  
98 provisions of this article or of the regulations adopted under  
99 this article, including, but not limited to, fraudulent or  
100 unlawful act or deed by applicants for Medicaid or other benefits,  
101 or payments made to any person, firm or corporation under the  
102 terms, conditions and authority of this article, to suspend or  
103 disqualify any provider of services, applicant or recipient for  
104 gross abuse, fraudulent or unlawful acts for such periods,  
105 including permanently, and under such conditions as the division  
106 deems proper and just, including the imposition of a legal rate of  
107 interest on the amount improperly or incorrectly paid. Recipients  
108 who are found to have misused or abused Medicaid benefits may be  
109 locked into one (1) physician and/or one (1) pharmacy of the  
110 recipient's choice for a reasonable amount of time in order to  
111 educate and promote appropriate use of medical services, in  
112 accordance with federal regulations. If an administrative hearing  
113 becomes necessary, the division may, if the provider does not  
114 succeed in his defense, tax the costs of the administrative  
115 hearing, including the costs of the court reporter or stenographer  
116 and transcript, to the provider. The convictions of a recipient  
117 or a provider in a state or federal court for abuse, fraudulent or  
118 unlawful acts under this chapter shall constitute an automatic  
119 disqualification of the recipient or automatic disqualification of  
120 the provider from participation under the Medicaid program.

121           A conviction, for the purposes of this chapter, shall include  
122 a judgment entered on a plea of nolo contendere or a  
123 nonadjudicated guilty plea and shall have the same force as a  
124 judgment entered pursuant to a guilty plea or a conviction  
125 following trial. A certified copy of the judgment of the court of  
126 competent jurisdiction of the conviction shall constitute prima  
127 facie evidence of the conviction for disqualification purposes;



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

135           (n) To cooperate and contract with the federal  
136 government for the purpose of providing Medicaid to Vietnamese and  
137 Cambodian refugees, under the provisions of Public Law 94-23 and  
138 Public Law 94-24, including any amendments to those laws, only to  
139 the extent that the Medicaid assistance and the administrative  
140 cost related thereto are one hundred percent (100%) reimbursable  
141 by the federal government. For the purposes of Section 43-13-117,  
142 persons receiving Medicaid under Public Law 94-23 and Public Law  
143 94-24, including any amendments to those laws, shall not be  
144 considered a new group or category of recipient; and

145           (o) The division shall impose penalties upon Medicaid  
146 only, Title XIX participating long-term care facilities found to  
147 be in noncompliance with division and certification standards in  
148 accordance with federal and state regulations, including interest  
149 at the same rate calculated by the Department of Health and Human  
150 Services and/or the Centers for Medicare and Medicaid Services  
151 (CMS) under federal regulations.

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

155           (3) The division, and the State Department of Health as the  
156 agency for licensure of health care facilities and certification  
157 and inspection for the Medicaid and/or Medicare programs, shall  
158 contract for or otherwise provide for the consolidation of on-site  
159 inspections of health care facilities that are necessitated by the



160 respective programs and functions of the division and the  
161 department.

162 (4) The division and its hearing officers shall have power  
163 to preserve and enforce order during hearings; to issue subpoenas  
164 for, to administer oaths to and to compel the attendance and  
165 testimony of witnesses, or the production of books, papers,  
166 documents and other evidence, or the taking of depositions before  
167 any designated individual competent to administer oaths; to  
168 examine witnesses; and to do all things conformable to law that  
169 may be necessary to enable them effectively to discharge the  
170 duties of their office. In compelling the attendance and  
171 testimony of witnesses, or the production of books, papers,  
172 documents and other evidence, or the taking of depositions, as  
173 authorized by this section, the division or its hearing officers  
174 may designate an individual employed by the division or some other  
175 suitable person to execute and return that process, whose action  
176 in executing and returning that process shall be as lawful as if  
177 done by the sheriff or some other proper officer authorized to  
178 execute and return process in the county where the witness may  
179 reside. In carrying out the investigatory powers under the  
180 provisions of this article, the executive director or other  
181 designated person or persons may examine, obtain, copy or  
182 reproduce the books, papers, documents, medical charts,  
183 prescriptions and other records relating to medical care and  
184 services furnished by the provider to a recipient or designated  
185 recipients of Medicaid services under investigation. In the  
186 absence of the voluntary submission of the books, papers,  
187 documents, medical charts, prescriptions and other records, the  
188 Governor, the executive director, or other designated person may  
189 issue and serve subpoenas instantly upon the provider, his agent,  
190 servant or employee for the production of the books, papers,  
191 documents, medical charts, prescriptions or other records during  
192 an audit or investigation of the provider. If any provider or his



193 agent, servant or employee refuses to produce the records after  
194 being duly subpoenaed, the executive director may certify those  
195 facts and institute contempt proceedings in the manner, time and  
196 place as authorized by law for administrative proceedings. As an  
197 additional remedy, the division may recover all amounts paid to  
198 the provider covering the period of the audit or investigation,  
199 inclusive of a legal rate of interest and a reasonable attorney's  
200 fee and costs of court if suit becomes necessary. Division staff  
201 shall have immediate access to the provider's physical location,  
202 facilities, records, documents, books, and any other records  
203 relating to medical care and services rendered to recipients  
204 during regular business hours.

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

221 (6) In suspending or terminating any provider from  
222 participation in the Medicaid program, the division shall preclude  
223 the provider from submitting claims for payment, either personally  
224 or through any clinic, group, corporation or other association to  
225 the division or its fiscal agents for any services or supplies



226 provided under the Medicaid program except for those services or  
227 supplies provided before the suspension or termination. No  
228 clinic, group, corporation or other association that is a provider  
229 of services shall submit claims for payment to the division or its  
230 fiscal agents for any services or supplies provided by a person  
231 within that organization who has been suspended or terminated from  
232 participation in the Medicaid program except for those services or  
233 supplies provided before the suspension or termination. When this  
234 provision is violated by a provider of services that is a clinic,  
235 group, corporation or other association, the division may suspend  
236 or terminate that organization from participation. Suspension may  
237 be applied by the division to all known affiliates of a provider,  
238 provided that each decision to include an affiliate is made on a  
239 case-by-case basis after giving due regard to all relevant facts  
240 and circumstances. The violation, failure or inadequacy of  
241 performance may be imputed to a person with whom the provider is  
242 affiliated where that conduct was accomplished within the course  
243 of his official duty or was effectuated by him with the knowledge  
244 or approval of that person.

245 (7) The division may deny or revoke enrollment in the  
246 Medicaid program to a provider if any of the following are found  
247 to be applicable to the provider, his agent, a managing employee  
248 or any person having an ownership interest equal to five percent  
249 (5%) or greater in the provider:

250 (a) Failure to truthfully or fully disclose any and all  
251 information required, or the concealment of any and all  
252 information required, on a claim, a provider application or a  
253 provider agreement, or the making of a false or misleading  
254 statement to the division relative to the Medicaid program.

255 (b) Previous or current exclusion, suspension,  
256 termination from or the involuntary withdrawing from participation  
257 in the Medicaid program, any other state's Medicaid program,  
258 Medicare or any other public or private health or health insurance





259 program. If the division ascertains that a provider has been  
260 convicted of a felony under federal or state law for an offense  
261 that the division determines is detrimental to the best interest  
262 of the program or of Medicaid beneficiaries, the division may  
263 refuse to enter into an agreement with that provider, or may  
264 terminate or refuse to renew an existing agreement.

265 (c) Conviction under federal or state law of a criminal  
266 offense relating to the delivery of any goods, services or  
267 supplies, including the performance of management or  
268 administrative services relating to the delivery of the goods,  
269 services or supplies, under the Medicaid program, any other  
270 state's Medicaid program, Medicare or any other public or private  
271 health or health insurance program.

272 (d) Conviction under federal or state law of a criminal  
273 offense relating to the neglect or abuse of a patient in  
274 connection with the delivery of any goods, services or supplies.

275 (e) Conviction under federal or state law of a criminal  
276 offense relating to the unlawful manufacture, distribution,  
277 prescription or dispensing of a controlled substance.

278 (f) Conviction under federal or state law of a criminal  
279 offense relating to fraud, theft, embezzlement, breach of  
280 fiduciary responsibility or other financial misconduct.

281 (g) Conviction under federal or state law of a criminal  
282 offense punishable by imprisonment of a year or more that involves  
283 moral turpitude, or acts against the elderly, children or infirm.

284 (h) Conviction under federal or state law of a criminal  
285 offense in connection with the interference or obstruction of any  
286 investigation into any criminal offense listed in paragraphs (c)  
287 through (i) of this subsection.

288 (i) Sanction for a violation of federal or state laws  
289 or rules relative to the Medicaid program, any other state's  
290 Medicaid program, Medicare or any other public health care or  
291 health insurance program.



292 (j) Revocation of license or certification.

293 (k) Failure to pay recovery properly assessed or  
294 pursuant to an approved repayment schedule under the Medicaid  
295 program.

296 (l) Failure to meet any condition of enrollment.

297 **SECTION 2.** This act shall take effect and be in force from  
298 and after its passage.

