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

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

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

43-13-121. (1) The division shall administer the Medicaid program under the provisions of this article, and may 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 Medicaid 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; in doing so, the division shall fix all of those fees, charges and rates at the minimum levels absolutely necessary to provide the medical assistance authorized by this article, and shall not change any of those 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; *
(vi) For detecting and processing fraudulent practices and abuses of the program; and
(vii) Establishing a policy that prioritizes the services that the division will provide to recipients, including the quantity or frequency of use of those services, when the funds appropriated to the division are not sufficient to fully fund all authorized services. The policy shall provide that nursing facility services are among the highest priorities for services that will be provided.

(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 that purpose;

(c) Subject to the limits imposed by this article, to submit a Medicaid plan to the federal Department of Health and Human Services for approval under the provisions of the Social Security Act, to act for the state in making negotiations relative to the submission and approval of that plan, to make such arrangements, not inconsistent with the law, as may be required by or under federal law to obtain and retain that approval and to secure for the state the benefits of the provisions of that 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 executive 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) In accordance with 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 those purposes;

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

(f) Define and determine the scope, duration and amount
of Medicaid that 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 Medicaid provided under this
article and eliminating duplication and inefficiency in the
Medicaid 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;
(1) 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 under this article, including, but not limited to, fraudulent or unlawful act or deed by applicants for Medicaid 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 deems 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 Medicaid 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. If an administrative hearing becomes necessary, the division may, if the provider does not succeed in his defense, tax 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 the conviction shall constitute prima facie evidence of the conviction for disqualification purposes;
(m) Establish and provide such methods of administration as may be necessary for the proper and efficient operation of the Medicaid 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 services under this article;

(n) To cooperate and contract with the federal government for the purpose of providing Medicaid to Vietnamese and Cambodian refugees, under the provisions of Public Law 94-23 and Public Law 94-24, including any amendments to those laws, only to the extent that the Medicaid 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 Medicaid under Public Law 94-23 and Public Law 94-24, including any amendments to those laws, shall not be considered a new group or category of recipient; and

(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 Centers for Medicare and Medicaid Services (CMS) under federal regulations.

(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.

(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 that 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 that
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 that process, whose action
in executing and returning that 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 executive director or other
designated person or persons may 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 executive director, or other designated person may
issue and serve subpoenas instantly upon the 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 refuses to produce the records after being duly subpoenaed, the executive director may certify those facts and institute contempt proceedings in the manner, time and place as authorized by law for administrative proceedings. As an additional remedy, the division may 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 executive 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 that person in the same manner and to the same extent as for a contempt committed before the court, or commit that 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 the 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 before the suspension or termination. No
clinic, group, corporation or other association that 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 that organization who has been suspended or terminated from
participation in the Medicaid program except for those services or
supplies provided before the suspension or termination. When this
provision is violated by a provider of services that is a clinic,
group, corporation or other association, the division may suspend
or terminate that 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 that conduct was accomplished within the course
of his official duty or was effectuated by him with the knowledge
or approval of that person.

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

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

(b) Previous or current exclusion, suspension,
termination from or the involuntary withdrawing from participation
in the Medicaid program, any other state's Medicaid program,
Medicare or any other public or private health or health insurance
program. If the division ascertains that a provider has been
convicted of a felony under federal or state law for an offense
that the division determines is detrimental to the best interest
of the program or of Medicaid beneficiaries, the division may
refuse to enter into an agreement with that provider, or may
terminate or refuse to renew an existing agreement.

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

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

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

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

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

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

(i) Sanction for a violation of federal or state laws
or rules relative to the Medicaid program, any other state's
Medicaid program, Medicare or any other public health care or
health insurance program.
ST: Medicaid; division shall establish policy prioritizing services to be provided when under funded.

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