

By: Representative Moak

To: Medicaid

HOUSE BILL NO. 48

1 AN ACT TO CREATE THE MISSISSIPPI MEDICAID FALSE CLAIMS ACT;
2 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR VIOLATIONS OF THIS ACT; TO
3 PROVIDE FOR DAMAGES; TO PROVIDE FOR CIVIL ACTIONS AND EMPLOYEE
4 REMEDIES; TO PROVIDE PROCEDURES FOR ACTIONS UNDER THIS ACT; TO
5 AMEND SECTIONS 43-13-205, 43-13-207, 43-13-209, 43-13-211,
6 43-13-213 AND 43-13-215, MISSISSIPPI CODE OF 1972, IN CONFORMITY
7 THERETO; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** (1) This act shall be known and may be cited as
10 the "Mississippi Medicaid False Claims Act."

11 (2) "Medicaid program" as used in this act includes the
12 Mississippi Medicaid Law and any successor program to the Medicaid
13 program.

14 **SECTION 2.** (1) (a) Any person who:

15 (i) Presents, or causes to be presented, to the
16 state a claim for payment under the Medicaid program knowing such
17 claim is false or fraudulent;

18 (ii) Makes, uses, or causes to be made or used, a
19 record or statement to get a false or fraudulent claim under the
20 Medicaid program paid for or approved by the state knowing such
21 record or statement is false;

22 (iii) Conspires to defraud the state by getting a
23 claim allowed or paid under the Medicaid program knowing such
24 claim is false or fraudulent; or

25 (iv) Makes, uses, or causes to be made or used, a
26 record or statement to conceal, avoid, or decrease an obligation
27 to pay or transmit money or property to the state, relative to the
28 Medicaid program, knowing such record or statement is false;

29 is liable to the state for a civil penalty of not less than Five
30 Thousand Dollars (\$5,000.00) and not more than Ten Thousand
31 Dollars (\$10,000.00), plus three (3) times the amount of damages
32 which the state sustains because of the act of that person.

33 (b) However, if the court finds that:

34 (i) The person committing the violation of this
35 subsection furnished officials of the state responsible for
36 investigating false claims violations with all information known
37 to such person about the violation within thirty (30) days after
38 the date on which the defendant first obtains the information;

39 (ii) Such person fully cooperated with any state
40 investigation of such violation; and

41 (iii) At the time such person furnished the state
42 with the information about the violation, no criminal prosecution,
43 civil action or administrative action had commenced under this act
44 with respect to such violation, and the person did not have actual
45 knowledge of the existence of an investigation into such
46 violation; the court may assess not less than two (2) times the
47 amount of damages which the state sustains because of the act of
48 the person. A person violating this subsection shall also be
49 liable for the costs of a civil action brought to recover any such
50 penalty or damages.

51 (2) For purposes of this section, "knowing" and "knowingly"
52 mean that a person, with respect to information:

53 (a) Has actual knowledge of the information;

54 (b) Acts in deliberate ignorance of the truth or
55 falsity of the information; or

56 (c) Acts in reckless disregard of the truth or falsity
57 of the information and no proof of specific intent to defraud is
58 required.

59 **SECTION 3.** (1) (a) A person may bring a civil action for a
60 violation of Section 2 of this act for the person and for the
61 state. The action shall be brought in the name of the State of

62 Mississippi. The action may be dismissed only if the court and
63 the Attorney General or district attorney give written consent to
64 the dismissal and their reasons for consenting.

65 (b) A copy of the complaint and written disclosure of
66 substantially all material evidence and information the person
67 possesses shall be served on the state. The complaint shall be
68 filed in camera, shall remain under seal for at least sixty (60)
69 days, and shall not be served on the defendant until the court so
70 orders. The state may elect to intervene and proceed with the
71 action within sixty (60) days after it receives both the complaint
72 and the material evidence and information.

73 (c) The state may, for good cause shown, move the court
74 for extensions of the time during which the complaint remains
75 under seal under subsection (1)(b). Any such motions may be
76 supported by affidavits or other submissions in camera. The
77 defendant shall not be required to respond to any complaint filed
78 under this section until twenty (20) days after the complaint is
79 unsealed and served upon the defendant.

80 (d) Before the expiration of the sixty-day period or
81 any extensions obtained under subsection (1)(c), the state shall:

82 (i) Proceed with the action, in which case the
83 action shall be conducted by the state; or

84 (ii) Notify the court that it declines to take
85 over the action, in which case the person bringing the action
86 shall have the right to conduct the action.

87 (e) When a person brings an action under this
88 subsection, no person other than the state may intervene or bring
89 a related action based on the facts underlying the pending action.

90 (2) (a) If the state proceeds with the action, it shall
91 have the primary responsibility for prosecuting the action, and
92 shall not be bound by an act of the person bringing the action.
93 Such person shall have the right to continue as a party to the
94 action, subject to the limitations set forth in subsection (2)(b).

95 (b) (i) The state may dismiss the action
96 notwithstanding the objections of the person initiating the action
97 if the person has been notified by the state of the filing of the
98 motion and the court has provided the person with an opportunity
99 for a hearing on the motion.

100 (ii) The state may settle the action with the
101 defendant notwithstanding the objections of the person initiating
102 the action if the court determines, after a hearing, that the
103 proposed settlement is fair, adequate and reasonable under all the
104 circumstances. Upon a showing of good cause, such hearing may be
105 held in camera.

106 (iii) Upon a showing by the state that
107 unrestricted participation during the course of the litigation by
108 the person initiating the action would interfere with or unduly
109 delay the state's prosecution of the case, or would be
110 repetitious, irrelevant or for purposes of harassment, the court
111 may, in its discretion, impose limitations on the person's
112 participation such as:

- 113 1. Limiting the number of witnesses the
114 person may call;
- 115 2. Limiting the length of the testimony of
116 such witnesses;
- 117 3. Limiting the person's cross-examination of
118 witnesses; or
- 119 4. Otherwise limiting the participation by
120 the person in the litigation.

121 (iv) Upon a showing by the defendant that
122 unrestricted participation during the course of the litigation by
123 the person initiating the action would be for purposes of
124 harassment or would cause the defendant undue burden or
125 unnecessary expense, the court may limit the participation by the
126 person in the litigation.

127 (c) If the state elects not to proceed with the action,
128 the person who initiated the action shall have the right to
129 conduct the action. If the state so requests, it shall be served
130 with copies of all pleadings filed in the action and shall be
131 supplied with copies of all deposition transcripts at the state's
132 expense. When a person proceeds with the action, the court,
133 without limiting the status and rights of the person initiating
134 the action, may nevertheless permit the state to intervene at a
135 later date upon a showing of good cause.

136 (d) Whether or not the state proceeds with the action,
137 upon a showing by the state that certain actions of discovery by
138 the person initiating the action would interfere with the state's
139 investigation or prosecution of a criminal or civil matter arising
140 out of the same facts, the court may stay such discovery for a
141 period of not more than sixty (60) days. Such a showing shall be
142 conducted in camera. The court may extend the sixty-day period
143 upon a further showing in camera that the state has pursued the
144 criminal or civil investigation or proceedings with reasonable
145 diligence and any proposed discovery in the civil action will
146 interfere with the ongoing criminal or civil investigation or
147 proceedings.

148 (e) Notwithstanding subsection (1), the state may elect
149 to pursue its claim through any alternate remedy available to the
150 state, including any administrative proceeding to determine a
151 civil monetary penalty. If any such alternate remedy is pursued
152 in another proceeding, the person initiating the action shall have
153 the same rights in such proceedings as such person would have had
154 if the action had continued under this section. Any finding of
155 fact or conclusion of law made in such other proceeding that has
156 become final shall be conclusive on all parties to an action under
157 this section. For purposes of the preceding sentence, a finding
158 or conclusion is final if it has been finally determined on appeal
159 to the appropriate court of jurisdiction, if all time for filing

160 such an appeal with respect to the finding or conclusion has
161 expired, or if the finding or conclusion is not subject to
162 judicial review.

163 (3) (a) If the state proceeds with an action brought by a
164 person under subsection (1), a person shall, subject to the second
165 sentence of this paragraph, receive at least fifteen percent (15%)
166 but not more than twenty-five percent (25%) of the proceeds of the
167 action or settlement of the claim, depending upon the extent to
168 which the person substantially contributed to the prosecution of
169 the action. Where the action is one which the court finds to be
170 based primarily on disclosures of specific information (other than
171 information provided by the person bringing the action) relating
172 to allegations or transactions in a criminal, civil or
173 administrative hearing, report, audit, investigation, or from the
174 news media, the court may award such sums as it considers
175 appropriate, but in no case more than ten percent (10%) of the
176 proceeds, taking into account the significance of the information
177 and the role of the person bringing the action in advancing the
178 case to litigation. Any payment to a person under the first or
179 second sentence of this paragraph shall be made from the proceeds.
180 Any such person shall also receive an amount for reasonable
181 expenses which the court finds to have been necessarily incurred,
182 plus reasonable attorney's fees and costs. All such expenses,
183 fees and costs shall be awarded against the defendant.

184 (b) If the state does not proceed with an action under
185 this section, the person bringing the action or settling the claim
186 shall receive an amount which the court decides is reasonable for
187 collecting the civil penalty and damages. The amount shall be not
188 less than twenty-five percent (25%) and not more than thirty
189 percent (30%) of the proceeds of the action or settlement and
190 shall be paid out of such proceeds. Such person shall also
191 receive an amount for reasonable expenses which the court finds to
192 have been necessarily incurred, plus reasonable attorney's fees

193 and costs. All such expenses, fees and costs shall be awarded
194 against the defendant.

195 (c) Whether or not the state proceeds with the action,
196 if the court finds that the action was brought by a person who
197 planned and initiated the violation of Section 2 of this act upon
198 which the action was brought, then the court may, to the extent
199 the court considers appropriate, reduce the share of the proceeds
200 of the action which the person would otherwise receive under
201 subsection (3)(a) or (b), taking into account the role of that
202 person in advancing the case to litigation and any relevant
203 circumstances pertaining to the violation. If the person bringing
204 the action is convicted of criminal conduct arising from such
205 person's role in the violation of Section 1 of this act, that
206 person shall be dismissed from the civil action and shall not
207 receive any share of the proceeds of the action. Such dismissal
208 shall not prejudice the right of the state to continue the action.

209 (d) If the state does not proceed with the action and
210 the person bringing the action conducts the action, the court
211 shall award to the defendant its reasonable attorney's fees and
212 expenses if the defendant prevails in the action and the court
213 finds that the claim of the person bringing the action was clearly
214 frivolous, clearly vexatious or brought primarily for purposes or
215 harassment.

216 (4) (a) In no event may a person bring an action under
217 subsection (1) which is based upon allegations or transactions
218 which are the subject of a civil suit or an administrative civil
219 monetary penalty proceeding in which the state is already a party.

220 (b) (i) No court shall have jurisdiction over an
221 action under this section based upon the public disclosure of
222 allegations or transactions in a criminal, civil or administrative
223 hearing, audit, investigation, or from the news media, unless the
224 action is brought by the Attorney General or district attorney or

225 the person bringing the action is an original source of the
226 information.

227 (ii) For purposes of this paragraph (b), "original
228 source" means an individual who has direct and independent
229 knowledge of the information on which the allegations are based
230 and who has voluntarily provided the information to the state
231 before filing an action under this section which is based on the
232 information.

233 (5) The state is not liable for expenses which a person
234 incurs in bringing an action under this section.

235 (6) Any employee who is discharged, demoted, suspended,
236 threatened, harassed, or in any other manner discriminated against
237 in the terms and conditions of employment by such employee's
238 employer because of lawful acts done by the employee on behalf of
239 the employee or others in furtherance of an action under this
240 section, including investigation for, initiation of, testimony
241 for, or assistance in an action filed or to be filed or to be
242 filed under this section, shall be entitled to all relief
243 necessary to make the employee whole. Such relief shall include
244 reinstatement with the same seniority status such employee would
245 have had but for the discrimination, two (2) times the amount of
246 back pay, interest on the back pay, and compensation for any
247 special damages sustained as a result of the discrimination,
248 including litigation costs and reasonable attorney's fees. An
249 employee may bring an action in the appropriate court for the
250 relief provided in this subsection.

251 **SECTION 4.** Section 43-13-205, Mississippi Code of 1972, is
252 amended as follows:

253 43-13-205. (1) A person shall not knowingly make or cause
254 to be made a false representation of a material fact in an
255 application for Medicaid benefits.

256 (2) A person shall not knowingly make or cause to be made a
257 false statement of a material fact for use in determining rights
258 to a Medicaid benefit.

259 (3) A person, who having knowledge of the occurrence of an
260 event affecting his initial or continued right to receive a
261 Medicaid benefit, shall not conceal or fail to disclose that event
262 with intent to obtain a Medicaid benefit to which the person or
263 any other person is not entitled or in an amount greater than that
264 to which the person or any other person is entitled.

265 (4) Violations of this section shall be subject to the
266 provisions of Sections 1 through 3 of House Bill No. _____, 2004
267 Regular Session.

268 **SECTION 5.** Section 43-13-207, Mississippi Code of 1972, is
269 amended as follows:

270 43-13-207. A person shall not solicit, offer or receive a
271 kickback or bribe in the furnishing of goods or services for which
272 payment is or may be made in whole or in part pursuant to the
273 Medicaid program, or make or receive any such payment, or receive
274 a rebate of a fee or charge for referring an individual to another
275 person for the furnishing of such goods or services. Such person
276 shall be subject to the provisions of Sections 1 through 3 of
277 House Bill No. _____, 2004 Regular Session.

278 **SECTION 6.** Section 43-13-209, Mississippi Code of 1972, is
279 amended as follows:

280 43-13-209. A person shall not knowingly and wilfully make,
281 induce or seek to induce the making of a false statement or false
282 representation of a material fact with respect to the conditions
283 or operation of an institution or facility in order that the
284 institution or facility may qualify, upon initial certification or
285 upon recertification, to receive Medicaid benefits as a hospital,
286 skilled nursing facility, intermediate care facility or home
287 health agency. Such person shall be subject to the provisions of
288 Sections 1 through 3 of House Bill No. _____, 2004 Regular Session.

289 **SECTION 7.** Section 43-13-211, Mississippi Code of 1972, is
290 amended as follows:

291 43-13-211. A person shall not enter into an agreement,
292 combination or conspiracy to defraud the state by obtaining or
293 aiding another to obtain the payment or allowance of a false,
294 fictitious or fraudulent claim for Medicaid benefits. Such person
295 shall be subject to the provisions of Sections 1 through 3 of
296 House Bill No. _____, 2004 Regular Session.

297 **SECTION 8.** Section 43-13-213, Mississippi Code of 1972, is
298 amended as follows:

299 43-13-213. A person shall not make, present or cause to be
300 made or presented a claim for Medicaid benefits, knowing the claim
301 to be false, fictitious or fraudulent. Such person shall be
302 subject to the provisions of Sections 1 through 3 of House Bill
303 No. _____, 2004 Regular Session.

304 **SECTION 9.** Section 43-13-215, Mississippi Code of 1972, is
305 amended as follows:

306 43-13-215. A person who violates any provision of Sections
307 43-13-205 through 43-13-213 shall be guilty of a felony, and, upon
308 conviction thereof, shall be punished by imprisonment for not more
309 than five (5) years, or by a fine of not more than Fifty Thousand
310 Dollars (\$50,000.00), or both. Such person shall also be subject
311 to the provisions of Sections 1 through 3 of House Bill No. _____,
312 2004 Regular Session. Sentences imposed for convictions of
313 separate offenses under this act may run consecutively.

314 **SECTION 10.** This act shall take effect and be in force from
315 and after July 1, 2004.