

By: Representative Taylor

To: Medicaid

HOUSE BILL NO. 376

1 AN ACT TO AMEND SECTION 43-13-125, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE ANY PERSON WHO BRINGS A LEGAL ACTION AGAINST A HEALTH
3 CARE FACILITY ON BEHALF OF A MEDICAID RECIPIENT TO NOTIFY THE
4 DIVISION OF MEDICAID IN WRITING AND CERTIFY A COPY OF THE
5 PLEADINGS TO THE DIVISION AT THE TIME OF THE FILING OF THE ACTION;
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 43-13-125, Mississippi Code of 1972, is
9 amended as follows:

10 43-13-125. (1) If medical assistance is provided to a
11 recipient under this article for injuries, disease or sickness
12 caused under circumstances creating a cause of action in favor of
13 the recipient against any person, firm or corporation, then the
14 division shall be entitled to recover the proceeds that may result
15 from the exercise of any rights of recovery which the recipient
16 may have against any such person, firm or corporation to the
17 extent of the Division of Medicaid's interest on behalf of the
18 recipient. The recipient shall execute and deliver instruments
19 and papers to do whatever is necessary to secure those rights and
20 shall do nothing after the medical assistance is provided to
21 prejudice the subrogation rights of the division. Court orders or
22 agreements for reimbursement of Medicaid's interest shall direct
23 those payments to the Division of Medicaid, which shall be
24 authorized to endorse any and all, including, but not limited to,
25 multi-payee checks, drafts, money orders, or other negotiable
26 instruments representing Medicaid payment recoveries that are
27 received. In accordance with Section 43-13-305, endorsement of
28 multi-payee checks, drafts, money orders or other negotiable

29 instruments by the Division of Medicaid shall be deemed endorsed
30 by the recipient.

31 The division, with the approval of the Governor, may
32 compromise or settle any such claim and execute a release of any
33 claim it has by virtue of this section.

34 (2) The acceptance of medical assistance under this article
35 or the making of a claim thereunder shall not affect the right of
36 a recipient or his legal representative to recover Medicaid's
37 interest as an element of special damages in any action at law;
38 however, a copy of the pleadings shall be certified to the
39 division at the time of the institution of suit, and proof of
40 that notice shall be filed of record in the action. In addition,
41 any person who brings a legal action against a health care
42 facility on behalf of a Medicaid recipient shall notify the
43 Division of Medicaid in writing and certify a copy of the
44 pleadings to the division at the time of the filing of the action,
45 and proof of that notice shall be filed of record in the action.

46 The division may, at any time before the trial on the facts, join
47 in the action or may intervene in the action. Any amount
48 recovered by a recipient or his legal representative shall be
49 applied as follows:

50 (a) The reasonable costs of the collection, including
51 attorney's fees, as approved and allowed by the court in which
52 the action is pending, or in case of settlement without suit, by
53 the legal representative of the division;

54 (b) The amount of Medicaid's interest on behalf of the
55 recipient; or such pro rata amount as may be arrived at by the
56 legal representative of the division and the recipient's attorney,
57 or as set by the court having jurisdiction; and

58 (c) Any excess shall be awarded to the recipient.

59 (3) No compromise of any claim by the recipient or his legal
60 representative shall be binding upon or affect the rights of the
61 division against the third party unless the division, with the

62 approval of the Governor, has entered into the compromise. Any
63 compromise effected by the recipient or his legal representative
64 with the third party in the absence of advance notification to and
65 approved by the division shall constitute conclusive evidence of
66 the liability of the third party, and the division, in litigating
67 its claim against the third party, shall be required only to prove
68 the amount and correctness of its claim relating to the injury,
69 disease or sickness.

70 (4) If the recipient or his legal representative fails to
71 notify the division of the institution of legal proceedings
72 against a third party for which the division has a cause of
73 action, the facts relating to negligence and the liability of the
74 third party, if judgment is rendered for the recipient, shall
75 constitute conclusive evidence of liability in a subsequent action
76 maintained by the division and only the amount and correctness of
77 the division's claim relating to injuries, disease or sickness
78 shall be tried before the court. The division shall be authorized
79 in bringing that action against the third party and his insurer
80 jointly or against the insurer alone.

81 (5) Nothing in this section shall be construed to diminish
82 or otherwise restrict the subrogation rights of the Division of
83 Medicaid against a third party for medical assistance provided by
84 the Division of Medicaid to the recipient as a result of injuries,
85 disease or sickness caused under circumstances creating a cause of
86 action in favor of the recipient against such a third party.

87 (6) Any amounts recovered by the division under this section
88 shall, by the division, be placed to the credit of the funds
89 appropriated for benefits under this article proportionate to the
90 amounts provided by the state and federal governments
91 respectively.

92 **SECTION 2.** This act shall take effect and be in force from
93 and after July 1, 2004.