

By: Representative Bondurant

To: Medicaid

HOUSE BILL NO. 1176

1 AN ACT TO AMEND SECTION 43-13-125, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT MEDICAID RECIPIENTS OR THEIR LEGAL REPRESENTATIVES
3 MAY RECOVER THE ACTUAL AMOUNT OF MEDICAID PAYMENTS MADE BY THE
4 DIVISION OF MEDICAID ON BEHALF OF THE RECIPIENT AS AN ELEMENT OF
5 DAMAGES IN ANY LEGAL ACTION AGAINST A THIRD PARTY; TO LIMIT THE
6 AMOUNT OF RECOVERY FOR MEDICAL DAMAGES IN ANY SUCH ACTION TO THE
7 ACTUAL AMOUNT OF MEDICAID PAYMENTS MADE; TO AMEND SECTION
8 43-13-305, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
9 SECTION; AND FOR RELATED PURPOSES.

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

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

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

31 Section 43-13-305, endorsement of multi-payee checks, drafts,
32 money orders or other negotiable instruments by the Division of
33 Medicaid shall be deemed endorsed by the recipient.

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

37 (2) The acceptance of Medicaid under this article or the
38 making of a claim under this article shall not affect the right of
39 a recipient or his legal representative to recover the actual
40 amount of Medicaid payments made by the division on behalf of the
41 recipient as an element of * * * damages in any action at law, but
42 shall limit that recovery for medical damages to that amount;
43 however, a copy of the pleadings shall be certified to the
44 division at the time of the institution of suit, and proof of
45 that notice shall be filed of record in that action. The division
46 may, at any time before the trial on the facts, join in the action
47 or may intervene in that action. Any amount recovered by a
48 recipient or his legal representative shall be applied as follows:

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

53 (b) The actual amount of Medicaid payments made by the
54 division on behalf of the recipient; or such pro rata amount as
55 may be arrived at by the legal representative of the division and
56 the recipient's attorney, or as set by the court having
57 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 such injury,
69 disease or sickness. If the recipient or his legal representative
70 fails to notify the division of the institution of legal
71 proceedings against a third party for which the division has a
72 cause of action, the facts relating to negligence and the
73 liability of the third party, if judgment is rendered for the
74 recipient, shall constitute conclusive evidence of liability in a
75 later action maintained by the division, and only the amount and
76 correctness of the division's claim relating to injuries, disease
77 or sickness shall be tried before the court. The division shall
78 be authorized in bringing that action against the third party and
79 his insurer jointly or against the insurer alone.

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

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

91 **SECTION 2.** Section 43-13-305, Mississippi Code of 1972, is
92 amended as follows:

93 43-13-305. (1) By accepting Medicaid from the Division of
94 Medicaid in the Office of the Governor, the recipient shall, to
95 the extent of the actual amount of Medicaid payments made by the
96 Division of Medicaid, be deemed to have made an assignment to the

97 Division of Medicaid of any and all rights and interests in any
98 third-party benefits, hospitalization or indemnity contract or any
99 cause of action, past, present or future, against any person, firm
100 or corporation for the actual amount of Medicaid payments made by
101 the Division of Medicaid for injuries, disease or sickness caused
102 or suffered under circumstances creating a cause of action in
103 favor of the recipient against any such person, firm or
104 corporation as set out in Section 43-13-125. The recipient shall
105 be deemed, without the necessity of signing any document, to have
106 appointed the Division of Medicaid as his or her true and lawful
107 attorney-in-fact in his or her name, place and stead in collecting
108 any and all amounts due and owing for medical expenses paid by the
109 Division of Medicaid against such person, firm or corporation.

110 (2) Whenever a provider of medical services or the Division
111 of Medicaid submits claims to an insurer on behalf of a Medicaid
112 recipient for whom an assignment of rights has been received, or
113 whose rights have been assigned by the operation of law, the
114 insurer must respond within sixty (60) days of receipt of a claim
115 by forwarding payment or issuing a notice of denial directly to
116 the submitter of the claim. The failure of the insuring entity to
117 comply with the provisions of this section shall subject the
118 insuring entity to recourse by the Division of Medicaid in
119 accordance with the provision of Section 43-13-315. The Division
120 of Medicaid shall be authorized to endorse any and all, including,
121 but not limited to, multi-payee checks, drafts, money orders or
122 other negotiable instruments representing Medicaid payment
123 recoveries that are received by the Division of Medicaid.

124 (3) Court orders or agreements for medical support shall
125 direct those payments to the Division of Medicaid, which shall be
126 authorized to endorse any and all checks, drafts, money orders or
127 other negotiable instruments representing medical support payments
128 that are received. Any designated medical support funds received
129 by the State Department of Human Services or through its local

130 county departments shall be paid over to the Division of Medicaid.
131 When medical support for a Medicaid recipient is available through
132 an absent parent or custodial parent, the insuring entity shall
133 direct the medical support payment(s) to the provider of medical
134 services or to the Division of Medicaid.

135 **SECTION 3.** This act shall take effect and be in force from
136 and after July 1, 2004.