

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2559

1 AN ACT TO AMEND SECTIONS 43-13-125 AND 43-13-305, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THAT IN THIRD-PARTY ACTIONS, THE AMOUNT
3 OF MEDICAL EXPENSES RECOVERABLE BY MEDICAID RECIPIENTS IS THE
4 ACTUAL AMOUNT OF PAYMENTS MADE BY THE DIVISION OF MEDICAID; AND
5 FOR RELATED PURPOSES.

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

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

9 43-13-125. (1) If medical assistance is provided to a
10 recipient under this article for injuries, disease or sickness
11 caused under circumstances creating a cause of action in favor of
12 the recipient against any person, firm or corporation, then the
13 division shall be entitled to recover the proceeds that may result
14 from the exercise of any rights of recovery which the recipient
15 may have against any such person, firm or corporation to the
16 extent of the Division of Medicaid's interest on behalf of the
17 recipient. The recipient shall execute and deliver instruments
18 and papers to do whatever is necessary to secure such rights and
19 shall do nothing after the medical assistance is provided to
20 prejudice the subrogation rights of the division. Court orders or
21 agreements for reimbursement of Medicaid's interest shall direct
22 such payments to the Division of Medicaid, which shall be
23 authorized to endorse any and all, including, but not limited to,
24 multi-payee checks, drafts, money orders, or other negotiable
25 instruments representing Medicaid payment recoveries that are
26 received. In accordance with Section 43-13-305, endorsement of
27 multi-payee checks, drafts, money orders or other negotiable

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

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

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

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

50 (b) The actual amount of the medical assistance
51 payments made by the Division of Medicaid on behalf of the
52 recipient; or such pro rata amount as may be arrived at by the
53 legal representative of the division and the recipient's attorney,
54 or as set by the court having jurisdiction; and

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

56 (3) No compromise of any claim by the recipient or his legal
57 representative shall be binding upon or affect the rights of the
58 division against the third party unless the division, with the
59 approval of the Governor, has entered into the compromise. Any
60 compromise effected by the recipient or his legal representative

61 with the third party in the absence of advance notification to and
62 approved by the division shall constitute conclusive evidence of
63 the liability of the third party, and the division, in litigating
64 its claim against the third party, shall be required only to prove
65 the amount and correctness of its claim relating to such injury,
66 disease or sickness. It is further provided that should the
67 recipient or his legal representative fail to notify the division
68 of the institution of legal proceedings against a third party for
69 which the division has a cause of action, the facts relating to
70 negligence and the liability of the third party, if judgment is
71 rendered for the recipient, shall constitute conclusive evidence
72 of liability in a subsequent action maintained by the division and
73 only the amount and correctness of the division's claim relating
74 to injuries, disease or sickness shall be tried before the court.
75 The division shall be authorized in bringing such action against
76 the third party and his insurer jointly or against the insurer
77 alone.

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

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

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

91 43-13-305. (1) By accepting Medicaid from the Division of
92 Medicaid in the Office of the Governor, the recipient shall, to
93 the extent of the actual amount of medical assistance payments

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