

By: Representative Moak

To: Medicaid; Judiciary A

HOUSE BILL NO. 317

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 TO THE PROVISIONS OF THIS ACT; 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 that
17 the 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 that
21 the 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 that the
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 that the 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 that 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 (1) furnished officials of the state responsible for
36 investigating false claims violations with all information known
37 to the person about the violation within thirty (30) days after
38 the date on which the defendant first obtains the information;

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

41 (iii) At the time that the person furnished the
42 state with the information about the violation, no criminal
43 prosecution, civil action or administrative action had begun under
44 this act with respect to the violation, and the person did not
45 have actual knowledge of the existence of an investigation into
46 such violation; the court may assess not less than two (2) times
47 the amount of damages that the state sustains because of the act
48 of the person. A person violating this subsection (1) also shall
49 be liable for the costs of a civil action brought to recover any
50 such 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, for good cause shown, may move the court
74 for extensions of the time during which the complaint remains
75 under seal under paragraph (b) of this subsection. Any such
76 motions may be supported by affidavits or other submissions in
77 camera. The defendant shall not be required to respond to any
78 complaint filed under this section until twenty (20) days after
79 the complaint is unsealed and served upon the defendant.

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

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

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

88 (e) When a person brings an action under this
89 subsection (1), no person other than the state may intervene or
90 bring a related action based on the facts underlying the pending
91 action.

92 (2) (a) If the state proceeds with the action, it shall
93 have the primary responsibility for prosecuting the action, and
94 shall not be bound by an act of the person bringing the action.

95 The person shall have the right to continue as a party to the
96 action, subject to the limitations set forth in paragraph (b) of
97 this subsection.

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

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

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

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

124 (iv) Upon a showing by the defendant that
125 unrestricted participation during the course of the litigation by
126 the person initiating the action would be for purposes of
127 harassment or would cause the defendant undue burden or

128 unnecessary expense, the court may limit the participation by the
129 person in the litigation.

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

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

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

161 preceding sentence, a finding or conclusion is final if it has
162 been finally determined on appeal to the appropriate court of
163 jurisdiction, if all time for filing such an appeal with respect
164 to the finding or conclusion has expired, or if the finding or
165 conclusion is not subject to judicial review.

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

188 (b) If the state does not proceed with an action under
189 this section, the person bringing the action or settling the claim
190 shall receive an amount that the court decides is reasonable for
191 collecting the civil penalty and damages. The amount shall be not
192 less than twenty-five percent (25%) and not more than thirty
193 percent (30%) of the proceeds of the action or settlement and

194 shall be paid out of the proceeds. The person also shall receive
195 an amount for reasonable expenses that the court finds to have
196 been necessarily incurred, plus reasonable attorney's fees and
197 costs. All those expenses, fees and costs shall be awarded
198 against the defendant.

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

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

220 (4) (a) In no event may a person bring an action under
221 subsection (1) of this section that is based upon allegations or
222 transactions that are the subject of a civil suit or an
223 administrative civil monetary penalty proceeding in which the
224 state is already a party.

225 (b) (i) No court shall have jurisdiction over an
226 action under this section based upon the public disclosure of

227 allegations or transactions in a criminal, civil or administrative
228 hearing, audit, investigation, or from the news media, unless the
229 action is brought by the Attorney General or district attorney or
230 the person bringing the action is an original source of the
231 information.

232 (ii) For purposes of this paragraph (b), "original
233 source" means an individual who has direct and independent
234 knowledge of the information on which the allegations are based
235 and who has voluntarily provided the information to the state
236 before filing an action under this section that is based on the
237 information.

238 (5) The state is not liable for expenses that a person
239 incurs in bringing an action under this section.

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

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

258 43-13-205. (1) A person shall not knowingly make or cause
259 to be made a false representation of a material fact in an
260 application for Medicaid benefits.

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

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

270 (4) Violations of this section shall be subject to the
271 provisions of Sections 1 through 3 of this act.

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

274 43-13-207. A person shall not solicit, offer or receive a
275 kickback or bribe in the furnishing of goods or services for which
276 payment is or may be made in whole or in part under the Medicaid
277 program, or make or receive any such payment, or receive a rebate
278 of a fee or charge for referring an individual to another person
279 for the furnishing of those goods or services. The person shall
280 be subject to the provisions of Sections 1 through 3 of this act.

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

283 43-13-209. A person shall not knowingly and wilfully make,
284 induce or seek to induce the making of a false statement or false
285 representation of a material fact with respect to the conditions
286 or operation of an institution or facility in order that the
287 institution or facility may qualify, upon initial certification or
288 upon recertification, to receive Medicaid benefits as a hospital,
289 skilled nursing facility, intermediate care facility or home

290 health agency. The person shall be subject to the provisions of
291 Sections 1 through 3 of this act.

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

294 43-13-211. A person shall not enter into an agreement,
295 combination or conspiracy to defraud the state by obtaining or
296 aiding another to obtain the payment or allowance of a false,
297 fictitious or fraudulent claim for Medicaid benefits. The person
298 shall be subject to the provisions of Sections 1 through 3 of this
299 act.

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

302 43-13-213. A person shall not make, present or cause to be
303 made or presented a claim for Medicaid benefits, knowing the claim
304 to be false, fictitious or fraudulent. The person shall be
305 subject to the provisions of Sections 1 through 3 of act.

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

308 43-13-215. A person who violates any provision of Sections
309 43-13-205 through 43-13-213 shall be guilty of a felony, and, upon
310 conviction thereof, shall be punished by imprisonment for not more
311 than five (5) years, or by a fine of not more than Fifty Thousand
312 Dollars (\$50,000.00), or both. The person also shall be subject
313 to the provisions of Sections 1 through 3 of this act. Sentences
314 imposed for convictions of separate offenses under this act may
315 run consecutively.

316 **SECTION 10.** This act shall take effect and be in force from
317 and after July 1, 2005.