

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2888

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

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

32           (2) The acceptance of Medicaid under this article or the  
33 making of a claim under this article shall not affect the right of  
34 a recipient or his or her legal representative to recover any  
35 payments made or owed by the recipient and the actual amount of  
36 the medical assistance payments made by the Division of Medicaid  
37 on behalf of the recipient as an element of damages in any action  
38 at law but shall limit such recovery for medical damages to such  
39 amount; however, a copy of the pleadings shall be certified to the  
40 division at the time of the institution of suit, and proof of  
41 that notice shall be filed of record in that action. The division  
42 may, at any time before the trial on the facts, join in that  
43 action or may intervene in that action. Any amount recovered by a  
44 recipient or his or her 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 that 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 or  
57 her legal representative shall be binding upon or affect the  
58 rights of the division against the third party unless the  
59 division, with the approval of the Governor, has entered into the  
60 compromise. Any compromise effected by the recipient or his or  
61 her legal representative with the third party in the absence of

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

78 (4) Nothing in this section shall be construed to diminish  
79 or otherwise restrict the subrogation rights of the Division of  
80 Medicaid against a third party for Medicaid provided by the  
81 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, 2005.