

By: Representative Moak

To: Medicaid; Judiciary A

HOUSE BILL NO. 249

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) The term "Medicaid program," as used in this act,  
12 includes the Mississippi Medicaid Law and any successor program to  
13 the Medicaid 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 the 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 this 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, 2006.