

By: Senator(s) Nunnelee, Burton

To: Public Health and  
Welfare

## SENATE BILL NO. 2279

1 AN ACT RELATING TO THE ADMINISTRATION OF THE MISSISSIPPI  
 2 MEDICAID LAW; TO AMEND SECTION 43-13-107, MISSISSIPPI CODE OF  
 3 1972, TO CLARIFY THE QUALIFICATIONS OF THE EXECUTIVE DIRECTOR OF  
 4 THE DIVISION OF MEDICAID, OFFICE OF THE GOVERNOR, TO DELETE  
 5 PROVISIONS RELATING TO THE POSITION OF DEPUTY DIRECTOR OF  
 6 ADMINISTRATION OF THE DIVISION OF MEDICAID, TO PROVIDE FOR THE  
 7 CHAIRMANSHIP OF THE MEDICAL CARE ADVISORY COMMITTEE, AND TO EXTEND  
 8 THE AUTOMATIC REPEALER ON THE SECTION WHICH CREATES THE DIVISION  
 9 OF MEDICAID; TO AMEND SECTION 43-13-213, MISSISSIPPI CODE OF 1972,  
 10 TO PROVIDE CIVIL PENALTIES AND RESTITUTION FOR PERSONS WHO VIOLATE  
 11 THE MEDICAID FRAUD CONTROL ACT; TO CODIFY SECTION 43-13-221.1,  
 12 MISSISSIPPI CODE OF 1972, TO AUTHORIZE A CIVIL ACTION TO BE  
 13 BROUGHT BY AN INDIVIDUAL FOR THE STATE OF MISSISSIPPI FOR  
 14 VIOLATIONS OF THE MEDICAID FRAUD CONTROL ACT AND TO PROVIDE THAT  
 15 THE ATTORNEY GENERAL MAY PROCEED WITH THE ACTION UNDER CERTAIN  
 16 CIRCUMSTANCES; TO AMEND SECTION 43-13-223, MISSISSIPPI CODE OF  
 17 1972, TO PROVIDE FOR VENUE AND A STATUTE OF LIMITATIONS FOR CIVIL  
 18 ACTIONS BROUGHT IN CONNECTION WITH MEDICAID FRAUD; TO CODIFY  
 19 SECTION 43-13-126, MISSISSIPPI CODE OF 1972, TO REQUIRE HEALTH  
 20 INSURERS TO PROVIDE CERTAIN INFORMATION REGARDING INDIVIDUAL  
 21 COVERAGE TO THE DIVISION OF MEDICAID AS A CONDITION OF DOING  
 22 BUSINESS IN THE STATE, TO ACCEPT THE DIVISION OF MEDICAID'S RIGHT  
 23 OF RECOVERY IN THIRD-PARTY ACTIONS AND NOT TO DENY A CLAIM  
 24 SUBMITTED BY THE DIVISION ON THE BASIS OF CERTAIN ERRORS; AND FOR  
 25 RELATED PURPOSES.

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

27 **SECTION 1.** Section 43-13-107, Mississippi Code of 1972, is  
 28 amended as follows:

29 43-13-107. (1) The Division of Medicaid is created in the  
 30 Office of the Governor and established to administer this article  
 31 and perform such other duties as are prescribed by law.

32 (2) (a) The Governor shall appoint a full-time executive  
 33 director, with the advice and consent of the Senate, who shall be  
 34 either (i) a physician or other professional with administrative  
 35 experience in a medical care or health program, or (ii) a person  
 36 holding a graduate degree in medical care administration, public  
 37 health, hospital administration, or the equivalent, or (iii) a  
 38 person holding a bachelor's degree \* \* \*, with at least ten (10)

39 years' experience in management-level administration \* \* \*. The  
40 executive director shall be the official secretary and legal  
41 custodian of the records of the division; shall be the agent of  
42 the division for the purpose of receiving all service of process,  
43 summons and notices directed to the division; and shall perform  
44 such other duties as the Governor may prescribe from time to time.

45 \* \* \*

46 (b) The Executive Director \* \* \* of the Division of  
47 Medicaid shall perform all other duties that are now or may be  
48 imposed upon them by law.

49 (c) The \* \* \* executive director \* \* \* shall serve at  
50 the will and pleasure of the Governor. \* \* \*

51 (d) The executive director \* \* \* shall, before entering  
52 upon the discharge of the duties of his office, take and subscribe  
53 to the oath of office prescribed by the Mississippi Constitution  
54 and shall file the same in the Office of the Secretary of State,  
55 and \* \* \* shall execute a bond in some surety company authorized  
56 to do business in the state in the penal sum of One Hundred  
57 Thousand Dollars (\$100,000.00), conditioned for the faithful and  
58 impartial discharge of the duties of his office. The premium on  
59 this bond shall be paid as provided by law out of funds  
60 appropriated to the Division of Medicaid for contractual services.

61 (e) The executive director, with the approval of the  
62 Governor and subject to the rules and regulations of the State  
63 Personnel Board, shall employ such professional, administrative,  
64 stenographic, secretarial, clerical and technical assistance as  
65 may be necessary to perform the duties required in administering  
66 this article and fix the compensation for those persons, all in  
67 accordance with a state merit system meeting federal requirements.  
68 When the salary of the executive director is not set by law, that  
69 salary shall be set by the State Personnel Board. No employees of  
70 the Division of Medicaid shall be considered to be staff members  
71 of the immediate Office of the Governor; however, the provisions

72 of Section 25-9-107(c)(xv) shall apply to the executive director  
73 and other administrative heads of the division.

74 (3) (a) There is established a Medical Care Advisory  
75 Committee, which shall be the committee that is required by  
76 federal regulation to advise the Division of Medicaid about health  
77 and medical care services.

78 (b) The advisory committee shall consist of not less  
79 than eleven (11) members, as follows:

80 (i) The Governor shall appoint five (5) members,  
81 one (1) from each congressional district and one (1) from the  
82 state at large;

83 (ii) The Lieutenant Governor shall appoint three  
84 (3) members, one (1) from each Supreme Court district;

85 (iii) The Speaker of the House of Representatives  
86 shall appoint three (3) members, one (1) from each Supreme Court  
87 district.

88 All members appointed under this paragraph shall either be  
89 health care providers or consumers of health care services. One  
90 (1) member appointed by each of the appointing authorities shall  
91 be a board certified physician.

92 (c) The respective Chairmen of the House Medicaid  
93 Committee, the House Public Health and Human Services Committee,  
94 the House Appropriations Committee, the Senate Public Health and  
95 Welfare Committee and the Senate Appropriations Committee, or  
96 their designees, two (2) members of the State Senate appointed by  
97 the Lieutenant Governor and one (1) member of the House of  
98 Representatives appointed by the Speaker of the House, shall serve  
99 as ex officio nonvoting members of the advisory committee.

100 (d) In addition to the committee members required by  
101 paragraph (b), the advisory committee shall consist of such other  
102 members as are necessary to meet the requirements of the federal  
103 regulation applicable to the advisory committee, who shall be  
104 appointed as provided in the federal regulation.

105           (e) The chairmanship of the advisory committee shall be  
106 elected by the voting members of the committee annually and shall  
107 not serve more than two (2) consecutive terms.

108           (f) The members of the advisory committee specified in  
109 paragraph (b) shall serve for terms that are concurrent with the  
110 terms of members of the Legislature, and any member appointed  
111 under paragraph (b) may be reappointed to the advisory committee.  
112 The members of the advisory committee specified in paragraph (b)  
113 shall serve without compensation, but shall receive reimbursement  
114 to defray actual expenses incurred in the performance of committee  
115 business as authorized by law. Legislators shall receive per diem  
116 and expenses, which may be paid from the contingent expense funds  
117 of their respective houses in the same amounts as provided for  
118 committee meetings when the Legislature is not in session.

119           (g) The advisory committee shall meet not less than  
120 quarterly, and advisory committee members shall be furnished  
121 written notice of the meetings at least ten (10) days before the  
122 date of the meeting.

123           (h) The executive director shall submit to the advisory  
124 committee all amendments, modifications and changes to the state  
125 plan for the operation of the Medicaid program, for review by the  
126 advisory committee before the amendments, modifications or changes  
127 may be implemented by the division.

128           (i) The advisory committee, among its duties and  
129 responsibilities, shall:

130                   (i) Advise the division with respect to  
131 amendments, modifications and changes to the state plan for the  
132 operation of the Medicaid program;

133                   (ii) Advise the division with respect to issues  
134 concerning receipt and disbursement of funds and eligibility for  
135 Medicaid;

136 (iii) Advise the division with respect to  
137 determining the quantity, quality and extent of medical care  
138 provided under this article;

139 (iv) Communicate the views of the medical care  
140 professions to the division and communicate the views of the  
141 division to the medical care professions;

142 (v) Gather information on reasons that medical  
143 care providers do not participate in the Medicaid program and  
144 changes that could be made in the program to encourage more  
145 providers to participate in the Medicaid program, and advise the  
146 division with respect to encouraging physicians and other medical  
147 care providers to participate in the Medicaid program;

148 (vi) Provide a written report on or before  
149 November 30 of each year to the Governor, Lieutenant Governor and  
150 Speaker of the House of Representatives.

151 (4) (a) There is established a Drug Use Review Board, which  
152 shall be the board that is required by federal law to:

153 (i) Review and initiate retrospective drug use,  
154 review including ongoing periodic examination of claims data and  
155 other records in order to identify patterns of fraud, abuse, gross  
156 overuse, or inappropriate or medically unnecessary care, among  
157 physicians, pharmacists and individuals receiving Medicaid  
158 benefits or associated with specific drugs or groups of drugs.

159 (ii) Review and initiate ongoing interventions for  
160 physicians and pharmacists, targeted toward therapy problems or  
161 individuals identified in the course of retrospective drug use  
162 reviews.

163 (iii) On an ongoing basis, assess data on drug use  
164 against explicit predetermined standards using the compendia and  
165 literature set forth in federal law and regulations.

166 (b) The board shall consist of not less than twelve  
167 (12) members appointed by the Governor, or his designee.

168           (c) The board shall meet at least quarterly, and board  
169 members shall be furnished written notice of the meetings at least  
170 ten (10) days before the date of the meeting.

171           (d) The board meetings shall be open to the public,  
172 members of the press, legislators and consumers. Additionally,  
173 all documents provided to board members shall be available to  
174 members of the Legislature in the same manner, and shall be made  
175 available to others for a reasonable fee for copying. However,  
176 patient confidentiality and provider confidentiality shall be  
177 protected by blinding patient names and provider names with  
178 numerical or other anonymous identifiers. The board meetings  
179 shall be subject to the Open Meetings Act (Section 25-41-1 et  
180 seq.). Board meetings conducted in violation of this section  
181 shall be deemed unlawful.

182           (5) (a) There is established a Pharmacy and Therapeutics  
183 Committee, which shall be appointed by the Governor, or his  
184 designee.

185           (b) The committee shall meet at least quarterly, and  
186 committee members shall be furnished written notice of the  
187 meetings at least ten (10) days before the date of the meeting.

188           (c) The committee meetings shall be open to the public,  
189 members of the press, legislators and consumers. Additionally,  
190 all documents provided to committee members shall be available to  
191 members of the Legislature in the same manner, and shall be made  
192 available to others for a reasonable fee for copying. However,  
193 patient confidentiality and provider confidentiality shall be  
194 protected by blinding patient names and provider names with  
195 numerical or other anonymous identifiers. The committee meetings  
196 shall be subject to the Open Meetings Act (Section 25-41-1 et  
197 seq.). Committee meetings conducted in violation of this section  
198 shall be deemed unlawful.

199           (d) After a thirty-day public notice, the executive  
200 director, or his or her designee, shall present the division's

201 recommendation regarding prior approval for a therapeutic class of  
202 drugs to the committee. However, in circumstances where the  
203 division deems it necessary for the health and safety of Medicaid  
204 beneficiaries, the division may present to the committee its  
205 recommendations regarding a particular drug without a thirty-day  
206 public notice. In making that presentation, the division shall  
207 state to the committee the circumstances that precipitate the need  
208 for the committee to review the status of a particular drug  
209 without a thirty-day public notice. The committee may determine  
210 whether or not to review the particular drug under the  
211 circumstances stated by the division without a thirty-day public  
212 notice. If the committee determines to review the status of the  
213 particular drug, it shall make its recommendations to the  
214 division, after which the division shall file those  
215 recommendations for a thirty-day public comment under the  
216 provisions of Section 25-43-7(1).

217 (e) Upon reviewing the information and recommendations,  
218 the committee shall forward a written recommendation approved by a  
219 majority of the committee to the executive director or his or her  
220 designee. The decisions of the committee regarding any  
221 limitations to be imposed on any drug or its use for a specified  
222 indication shall be based on sound clinical evidence found in  
223 labeling, drug compendia, and peer reviewed clinical literature  
224 pertaining to use of the drug in the relevant population.

225 (f) Upon reviewing and considering all recommendations  
226 including recommendation of the committee, comments, and data, the  
227 executive director shall make a final determination whether to  
228 require prior approval of a therapeutic class of drugs, or modify  
229 existing prior approval requirements for a therapeutic class of  
230 drugs.

231 (g) At least thirty (30) days before the executive  
232 director implements new or amended prior authorization decisions,  
233 written notice of the executive director's decision shall be

234 provided to all prescribing Medicaid providers, all Medicaid  
235 enrolled pharmacies, and any other party who has requested the  
236 notification. However, notice given under Section 25-43-7(1) will  
237 substitute for and meet the requirement for notice under this  
238 subsection.

239 (h) Members of the committee shall dispose of matters  
240 before the committee in an unbiased and professional manner. If a  
241 matter being considered by the committee presents a real or  
242 apparent conflict of interest for any member of the committee,  
243 that member shall disclose the conflict in writing to the  
244 committee chair and recuse himself or herself from any discussions  
245 and/or actions on the matter.

246 (6) This section shall stand repealed on July 1, 2011.

247 **SECTION 2.** Section 43-13-213, Mississippi Code of 1972, is  
248 amended as follows:

249 43-13-213. (1) A person shall not make, present or cause to  
250 be made or presented a claim for Medicaid benefits, knowing the  
251 claim to be false, fictitious or fraudulent.

252 (2) Any person who:

253 (a) Knowingly presents, or causes to be presented, to  
254 an officer, employee or agent of the State of Mississippi, or any  
255 political subdivision or other entity of the State of Mississippi,  
256 a false or fraudulent claim for payment or approval;

257 (b) Knowingly makes, uses, or causes to be made or  
258 used, a false record or statement to get a false or fraudulent  
259 claim paid or approved by the State of Mississippi;

260 (c) Conspires to defraud the State of Mississippi by  
261 getting a false or fraudulent claim allowed or paid;

262 (d) Has possession, custody, or control of property or  
263 money used, or to be used, by the State of Mississippi and,  
264 intending to defraud the State of Mississippi or willfully to  
265 conceal the property, delivers, or causes to be delivered, less



266 property than the amount for which the person receives a  
267 certificate or receipt;

268 (e) Authorized to make or deliver a document certifying  
269 receipt of property used, or to be used, by the State of  
270 Mississippi and, intending to defraud the State of Mississippi,  
271 makes or delivers the receipt without completely knowing that the  
272 information on the receipt is true;

273 (f) Knowingly buys, or receives as a pledge of an  
274 obligation or debt, public property from an officer, employee or  
275 agent of the State of Mississippi, who lawfully may not sell or  
276 pledge the property; or

277 (g) Knowingly makes, uses, or causes to be made or  
278 used, a false record or statement to conceal, avoid or decrease an  
279 obligation to pay or transmit money or property to the State of  
280 Mississippi,  
281 is liable to the State of Mississippi for a civil penalty of not  
282 less than Five Thousand Dollars (\$5,000.00) and not more than Ten  
283 Thousand Dollars (\$10,000.00), plus three (3) times the amount of  
284 damages which the state sustains because of the act of that  
285 person.

286 (3) Provided, however, that if the court finds that:

287 (a) The person committing the violation of this  
288 subsection furnished to officials of the State of Mississippi  
289 responsible for investigating false claims violations all  
290 information known to such person about the violation within thirty  
291 (30) days after the date on which the defendant first obtained the  
292 information;

293 (b) Such person fully cooperated with any investigation  
294 of such violation; and

295 (c) At the time such person furnished the State of  
296 Mississippi with the information about the violation, no criminal  
297 prosecution, civil action or administrative action had commenced  
298 under this title with respect to such violation, and the person

299 did not have actual knowledge of the existence of an investigation  
300 into such violation,  
301 the court may assess not less than two (2) times the amount of  
302 damages which the state sustains because of the act of the person.  
303 A person violating this subsection shall also be liable to the  
304 United States Government for the costs of a civil action brought  
305 to recover any such penalty or damages.

306 (4) For purposes of this section, the terms "knowing" and  
307 "knowingly" mean that a person, with respect to information:

308 (a) Has actual knowledge of the information;

309 (b) Acts in deliberate ignorance of the truth or  
310 falsity of the information; or

311 (c) Acts in reckless disregard of the truth or falsity  
312 of the information, and no proof of specific intent to defraud is  
313 required.

314 (5) For purposes of this section, "claim" includes any  
315 request or demand, whether under a contract or otherwise, for  
316 money or property which is made to a contractor, grantee, or other  
317 recipient if the State of Mississippi provides any portion of the  
318 money or property which is requested or demanded, or if the state  
319 will reimburse such contractor, grantee, or other recipient for  
320 any portion of the money or property which is requested or  
321 demanded.

322 (6) Any information furnished pursuant to paragraphs (a)  
323 through (c) of subsection (2) shall be exempt from disclosure  
324 under the Mississippi Public Records Act.

325 **SECTION 3.** The following shall be codified as Section  
326 43-13-221.1, Mississippi Code of 1972:

327 43-13-221.1. (1) (a) A person may bring a civil action for  
328 a violation of the provisions of this article for the person and  
329 for the State of Mississippi. The action shall be brought in the  
330 name of the State of Mississippi. The action may be dismissed

331 only if the court and the Attorney General give written consent to  
332 the dismissal and their reasons for consenting.

333 (b) A copy of the complaint and written disclosure of  
334 substantially all material evidence and information the person  
335 possesses shall be served on the Attorney General, on behalf of  
336 the state, pursuant to the Mississippi Rules of Civil Procedure.  
337 The complaint shall be filed in camera, shall remain under seal  
338 for at least sixty (60) days, and shall not be served on the  
339 defendant until the court so orders. The state may elect to  
340 intervene and proceed with the action within sixty (60) days after  
341 it receives both the complaint and the material evidence and  
342 information.

343 (c) The state may, for good cause shown, move the court  
344 for extensions of the time during which the complaint remains  
345 under seal under subsection (2). Any such motions may be  
346 supported by affidavits or other submissions in camera. The  
347 defendant shall not be required to respond to any complaint filed  
348 under this section until thirty (30) days after the complaint is  
349 unsealed and served upon the defendant pursuant to the Mississippi  
350 Rules of Civil Procedure.

351 (d) Before the expiration of the sixty-day period or  
352 any extensions obtained under paragraph (c), the Attorney General,  
353 on behalf of the state, shall:

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

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

359 (e) When a person brings an action under this  
360 subsection, no person other than the Attorney General, on behalf  
361 of the state, may intervene or bring a related action based on the  
362 facts underlying the pending action.

363           (2) (a) If the Attorney General, on behalf of the state,  
364 proceeds with the action, it shall have the primary responsibility  
365 for prosecuting the action, and shall not be bound by an act of  
366 the person bringing the action. Such person shall have the right  
367 to continue as a party to the action, subject to the limitations  
368 set forth in paragraph (b).

369           (b) (i) The state may dismiss the action  
370 notwithstanding the objections of the person initiating the action  
371 if the person has been notified by the state of the filing of the  
372 motion and the court has provided the person with an opportunity  
373 for a hearing on the motion.

374           (ii) The state may settle the action with the  
375 defendant notwithstanding the objections of the person initiating  
376 the action if the court determines, after a hearing, that the  
377 proposed settlement is fair, adequate, and reasonable under all  
378 the circumstances. Upon a showing of good cause, such hearing may  
379 be held in camera.

380           (iii) Upon a showing by the state that  
381 unrestricted participation during the course of the litigation by  
382 the person initiating the action would interfere with or unduly  
383 delay the state's prosecution of the case, or would be  
384 repetitious, irrelevant, or for purposes of harassment, the court  
385 may, in its discretion, impose limitations on the person's  
386 participation, such as

- 387                           1. Limiting the number of witnesses the  
388 person may call;
- 389                           2. Limiting the length of the testimony of  
390 such witnesses;
- 391                           3. Limiting the person's cross-examination of  
392 witnesses; or
- 393                           4. Otherwise limiting the participation by  
394 the person in the litigation.

395                   (iv) Upon a showing by the defendant that  
396 unrestricted participation during the course of the litigation by  
397 the person initiating the action would be for purposes of  
398 harassment or would cause the defendant undue burden or  
399 unnecessary expense, the court may limit the participation by the  
400 person in the litigation.

401                   (c) If the state elects not to proceed with the action,  
402 the person who initiated the action shall have the right to  
403 conduct the action. If the state so requests, it shall be served  
404 with copies of all pleadings filed in the action and shall be  
405 supplied with copies of all deposition transcripts (at the state's  
406 expense). When a person proceeds with the action, the court,  
407 without limiting the status and rights of the person initiating  
408 the action, may nevertheless permit the state to intervene at a  
409 later date upon a showing of good cause.

410                   (d) Whether or not the state proceeds with the action,  
411 upon a showing by the state that certain actions of discovery by  
412 the person initiating the action would interfere with the state's  
413 investigation or prosecution of a criminal or civil matter arising  
414 out of the same facts, the court may stay such discovery for a  
415 period of not more than sixty (60) days. Such a showing shall be  
416 conducted in camera. The court may extend the sixty-day period  
417 upon a further showing in camera that the state has pursued the  
418 criminal or civil investigation or proceedings with reasonable  
419 diligence and any proposed discovery in the civil action will  
420 interfere with the ongoing criminal or civil investigation or  
421 proceedings.

422                   (e) Notwithstanding subsection (2), the state may elect  
423 to pursue its claim through any alternate remedy available to the  
424 state, including any administrative proceeding to determine a  
425 civil money penalty. If any such alternate remedy is pursued in  
426 another proceeding, the person initiating the action shall have  
427 the same rights in such proceeding as such person would have had

428 if the action had continued under this section. Any finding of  
429 fact or conclusion of law made in such other proceeding that has  
430 become final shall be conclusive on all parties to an action under  
431 this section. For purposes of the preceding sentence, a finding  
432 or conclusion is final if it has been finally determined on appeal  
433 to the appropriate court of competent jurisdiction, if all time  
434 for filing such an appeal with respect to the finding or  
435 conclusion has expired, or if the finding or conclusion is not  
436 subject to judicial review.

437 (3) (a) If the state proceeds with an action brought by a  
438 person under subsection (2), such person shall, subject to the  
439 second sentence of this paragraph, receive at least fifteen  
440 percent (15%) but not more than twenty-five percent (25%) of the  
441 proceeds of the action or settlement of the claim, depending upon  
442 the extent to which the person substantially contributed to the  
443 prosecution of the action. Where the action is one which the  
444 court finds to be based primarily on disclosures of specific  
445 information (other than information provided by the person  
446 bringing the action) relating to allegations or transactions in a  
447 criminal, civil, or administrative hearing, in a congressional,  
448 administrative, Division of Medicaid, Legislative PEER Commission,  
449 State Auditor or Government Accounting Office report, hearing,  
450 audit, or investigation, or from the news media, the court may  
451 award such sums as it considers appropriate, but in no case more  
452 than ten percent (10%) of the proceeds, taking into account the  
453 significance of the information and the role of the person  
454 bringing the action in advancing the case to litigation. Any  
455 payment to a person under the first or second sentence of this  
456 paragraph shall be made from the proceeds. Any such person shall  
457 also receive an amount for reasonable expenses which the court  
458 finds to have been necessarily incurred, plus reasonable  
459 attorneys' fees and costs. All such expenses, fees, and costs  
460 shall be awarded against the defendant.

461           (b) If the state does not proceed with an action under  
462 this section, the person bringing the action or settling the claim  
463 shall receive an amount which the court decides is reasonable for  
464 collecting the civil penalty and damages. The amount shall be not  
465 less than twenty-five percent (25%) and not more than thirty  
466 percent (30%) of the proceeds of the action or settlement and  
467 shall be paid out of such proceeds. Such person shall also  
468 receive an amount for reasonable expenses which the court finds to  
469 have been necessarily incurred, plus reasonable attorneys' fees  
470 and costs. All such expenses, fees, and costs shall be awarded  
471 against the defendant.

472           (c) Whether or not the state proceeds with the action,  
473 if the court finds that the action was brought by a person who  
474 planned and initiated the violation of this article upon which the  
475 action was brought, then the court may, to the extent the court  
476 considers appropriate, reduce the share of the proceeds of the  
477 action which the person would otherwise receive under paragraph  
478 (a) or (b) of this subsection, taking into account the role of  
479 that person in advancing the case to litigation and any relevant  
480 circumstances pertaining to the violation. If the person bringing  
481 the action is convicted of criminal conduct arising from his or  
482 her role in the violation of this article, that person shall be  
483 dismissed from the civil action and shall not receive any share of  
484 the proceeds of the action. Such dismissal shall not prejudice  
485 the right of the state or the United States to continue the  
486 action, represented by the Attorney General or the Department of  
487 Justice, respectively.

488           (d) If the state does not proceed with the action and  
489 the person bringing the action conducts the action, the court may  
490 award to the defendant its reasonable attorneys' fees and expenses  
491 if the defendant prevails in the action and the court finds that  
492 the claim of the person bringing the action was clearly frivolous,

493 clearly vexatious, or brought primarily for purposes of  
494 harassment.

495 (4) (a) (i) No court shall have jurisdiction over an  
496 action brought under paragraph (b) against a member of the  
497 Legislature, a member of the judiciary, or a senior executive  
498 branch official if the action is based on evidence or information  
499 known to the state when the action was brought.

500 (ii) In no event may a person bring an action  
501 under subsection (2) which is based upon allegations or  
502 transactions which are the subject of a civil suit or an  
503 administrative civil money penalty proceeding in which the state  
504 is already a party.

505 (b) (i) No court shall have jurisdiction over an  
506 action under this section based upon the public disclosure of  
507 allegations or transactions in a criminal, civil, or  
508 administrative hearing, in a congressional, administrative,  
509 Legislative PEER Commission, State Auditor or Government  
510 Accounting Office report, hearing, audit, or investigation, or  
511 from the news media, unless the action is brought by the Attorney  
512 General or the person bringing the action is an original source of  
513 the information.

514 (ii) For purposes of this paragraph, "original  
515 source" means an individual who has direct and independent  
516 knowledge of the information on which the allegations are based  
517 and has voluntarily provided the information to the government  
518 before filing an action under this section which is based on the  
519 information.

520 (5) The state is not liable for expenses which a person  
521 incurs in bringing an action under this section.

522 (6) Any employee who is discharged, demoted, suspended,  
523 threatened, harassed, or in any other manner discriminated against  
524 in the terms and conditions of employment by his or her employer  
525 because of lawful acts done by the employee on behalf of the



526 employee or others in furtherance of an action under this section,  
527 including investigation for, initiation of, testimony for, or  
528 assistance in an action filed or to be filed under this section,  
529 shall be entitled to all relief necessary to make the employee  
530 whole. Such relief shall include reinstatement with the same  
531 seniority status such employee would have had but for the  
532 discrimination, two (2) times the amount of back pay, interest on  
533 the back pay, and compensation for any special damages sustained  
534 as a result of the discrimination, including litigation costs and  
535 reasonable attorneys' fees. An employee may bring an action in  
536 the appropriate state court for the relief provided in this  
537 subsection.

538       **SECTION 4.** Section 43-13-223, Mississippi Code of 1972, is  
539 amended as follows:

540       43-13-223. (1) An action brought in connection with any  
541 matter under this article may be filed in the Circuit Court of the  
542 First Judicial District of Hinds County or in the circuit court of  
543 the county in which the defendant resides, or in the circuit court  
544 of the county in which any portion of the offense occurred, and  
545 may be prosecuted to final judgment in satisfaction there.

546       (2) Process issued by a court in which an action is filed  
547 may be served anywhere in the state.

548       (3) A civil action brought under this article, may not be  
549 brought:

550               (a) More than six (6) years after the date on which the  
551 violation of this article is committed, or

552               (b) More than three (3) years after the date when facts  
553 material to the right of action are known or reasonably should  
554 have been known by the official of the state charged with  
555 responsibility to act in the circumstances, but in no event more  
556 than ten (10) years after the date on which the violation is  
557 committed, whichever occurs last.

558       (4) The preceding subsection (3) shall not apply to actions,  
559 civil or criminal brought by the State of Mississippi.

560       **SECTION 5.** The following shall be codified as Section  
561 43-13-126, Mississippi Code of 1972:

562       43-13-126. As a condition of doing business in the state,  
563 health insurers, including self-insured plans, group health plans  
564 (as defined in Section 607(1) of the Employee Retirement Income  
565 Security Act of 1974), service benefit plans, managed care  
566 organizations, pharmacy benefit managers, or other parties that  
567 are by statute, contract, or agreement, legally responsible for  
568 payment of a claim for a health care item or service, are required  
569 to:

570           (a) Provide, with respect to individuals who are  
571 eligible for, or are provided, medical assistance under the state  
572 plan, upon the request of the Division of Medicaid, information to  
573 determine during what period the individual or their spouses or  
574 their dependents may be (or may have been) covered by a health  
575 insurer and the nature of the coverage that is or was provided by  
576 the health insurer (including the name, address and identifying  
577 number of the plan) in a manner prescribed by the Secretary of the  
578 Department of Health and Human Services;

579           (b) Accept the Division of Medicaid's right of recovery  
580 and the assignment to the division of any right of an individual  
581 or other entity to payment from the party for an item or service  
582 for which payment has been made under the state plan;

583           (c) Respond to any inquiry by the Division of Medicaid  
584 regarding a claim for payment for any health care item or service  
585 that is submitted not later than three (3) years after the date of  
586 the provision of such health care item or service; and

587           (d) Agree not to deny a claim submitted by the Division  
588 of Medicaid solely on the basis of the date of submission of the  
589 claim, the type or format of the claim form, or a failure to

590 present proper documentation at the point-of-sale that is the  
591 basis of the claim, if:

592                   (i) The claim is submitted by the division within  
593 the three-year period beginning on the date on which the item or  
594 service was furnished; and

595                   (ii) Any action by the division to enforce its  
596 rights with respect to such claim is commenced within six (6)  
597 years of the division's submission of such claim.

598           **SECTION 6.** This act shall take effect and be in force from  
599 and after July 1, 2007.