

By: Senator(s) Nunnelee, Burton

To: Public Health and Welfare

COMMITTEE SUBSTITUTE
FOR
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 CODIFY SECTION 43-13-126, MISSISSIPPI CODE OF
10 1972, TO REQUIRE HEALTH INSURERS TO PROVIDE CERTAIN INFORMATION
11 REGARDING INDIVIDUAL COVERAGE TO THE DIVISION OF MEDICAID AS A
12 CONDITION OF DOING BUSINESS IN THE STATE, TO ACCEPT THE DIVISION
13 OF MEDICAID'S RIGHT OF RECOVERY IN THIRD-PARTY ACTIONS AND NOT TO
14 DENY A CLAIM SUBMITTED BY THE DIVISION ON THE BASIS OF CERTAIN
15 ERRORS; AND FOR RELATED PURPOSES.

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

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

19 43-13-107. (1) The Division of Medicaid is created in the
20 Office of the Governor and established to administer this article
21 and perform such other duties as are prescribed by law.

22 (2) (a) The Governor shall appoint a full-time executive
23 director, with the advice and consent of the Senate, who shall be
24 either (i) a physician with administrative experience in a medical
25 care or health program, or (ii) a person holding a graduate degree
26 in medical care administration, public health, hospital
27 administration, or the equivalent, or (iii) a person holding a
28 bachelor's degree * * *, with at least ten (10) years' experience
29 in management-level administration * * *. The executive director
30 shall be the official secretary and legal custodian of the records
31 of the division; shall be the agent of the division for the
32 purpose of receiving all service of process, summons and notices

33 directed to the division; and shall perform such other duties as
34 the Governor may prescribe from time to time.

35 * * *

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

39 (c) The * * * executive director * * * shall serve at
40 the will and pleasure of the Governor. * * *

41 (d) The executive director * * * shall, before entering
42 upon the discharge of the duties of his office, take and subscribe
43 to the oath of office prescribed by the Mississippi Constitution
44 and shall file the same in the Office of the Secretary of State,
45 and * * * shall execute a bond in some surety company authorized
46 to do business in the state in the penal sum of One Hundred
47 Thousand Dollars (\$100,000.00), conditioned for the faithful and
48 impartial discharge of the duties of his office. The premium on
49 this bond shall be paid as provided by law out of funds
50 appropriated to the Division of Medicaid for contractual services.

51 (e) The executive director, with the approval of the
52 Governor and subject to the rules and regulations of the State
53 Personnel Board, shall employ such professional, administrative,
54 stenographic, secretarial, clerical and technical assistance as
55 may be necessary to perform the duties required in administering
56 this article and fix the compensation for those persons, all in
57 accordance with a state merit system meeting federal requirements.
58 When the salary of the executive director is not set by law, that
59 salary shall be set by the State Personnel Board. No employees of
60 the Division of Medicaid shall be considered to be staff members
61 of the immediate Office of the Governor; however, the provisions
62 of Section 25-9-107(c)(xv) shall apply to the executive director
63 and other administrative heads of the division.

64 (3) (a) There is established a Medical Care Advisory
65 Committee, which shall be the committee that is required by

66 federal regulation to advise the Division of Medicaid about health
67 and medical care services.

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

70 (i) The Governor shall appoint five (5) members,
71 one (1) from each congressional district and one (1) from the
72 state at large;

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

75 (iii) The Speaker of the House of Representatives
76 shall appoint three (3) members, one (1) from each Supreme Court
77 district.

78 All members appointed under this paragraph shall either be
79 health care providers or consumers of health care services. One
80 (1) member appointed by each of the appointing authorities shall
81 be a board certified physician.

82 (c) The respective Chairmen of the House Medicaid
83 Committee, the House Public Health and Human Services Committee,
84 the House Appropriations Committee, the Senate Public Health and
85 Welfare Committee and the Senate Appropriations Committee, or
86 their designees, two (2) members of the State Senate appointed by
87 the Lieutenant Governor and one (1) member of the House of
88 Representatives appointed by the Speaker of the House, shall serve
89 as ex officio nonvoting members of the advisory committee.

90 (d) In addition to the committee members required by
91 paragraph (b), the advisory committee shall consist of such other
92 members as are necessary to meet the requirements of the federal
93 regulation applicable to the advisory committee, who shall be
94 appointed as provided in the federal regulation.

95 (e) The chairmanship of the advisory committee shall be
96 elected by the voting members of the committee annually and shall
97 not serve more than two (2) consecutive terms of office.

98 (f) The members of the advisory committee specified in
99 paragraph (b) shall serve for terms that are concurrent with the
100 terms of members of the Legislature, and any member appointed
101 under paragraph (b) may be reappointed to the advisory committee.
102 The members of the advisory committee specified in paragraph (b)
103 shall serve without compensation, but shall receive reimbursement
104 to defray actual expenses incurred in the performance of committee
105 business as authorized by law. Legislators shall receive per diem
106 and expenses, which may be paid from the contingent expense funds
107 of their respective houses in the same amounts as provided for
108 committee meetings when the Legislature is not in session.

109 (g) The advisory committee shall meet not less than
110 quarterly, and advisory committee members shall be furnished
111 written notice of the meetings at least ten (10) days before the
112 date of the meeting.

113 (h) The executive director shall submit to the advisory
114 committee all amendments, modifications and changes to the state
115 plan for the operation of the Medicaid program, for review by the
116 advisory committee before the amendments, modifications or changes
117 may be implemented by the division.

118 (i) The advisory committee, among its duties and
119 responsibilities, shall:

120 (i) Advise the division with respect to
121 amendments, modifications and changes to the state plan for the
122 operation of the Medicaid program;

123 (ii) Advise the division with respect to issues
124 concerning receipt and disbursement of funds and eligibility for
125 Medicaid;

126 (iii) Advise the division with respect to
127 determining the quantity, quality and extent of medical care
128 provided under this article;

129 (iv) Communicate the views of the medical care
130 professions to the division and communicate the views of the
131 division to the medical care professions;

132 (v) Gather information on reasons that medical
133 care providers do not participate in the Medicaid program and
134 changes that could be made in the program to encourage more
135 providers to participate in the Medicaid program, and advise the
136 division with respect to encouraging physicians and other medical
137 care providers to participate in the Medicaid program;

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

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

143 (i) Review and initiate retrospective drug use,
144 review including ongoing periodic examination of claims data and
145 other records in order to identify patterns of fraud, abuse, gross
146 overuse, or inappropriate or medically unnecessary care, among
147 physicians, pharmacists and individuals receiving Medicaid
148 benefits or associated with specific drugs or groups of drugs.

149 (ii) Review and initiate ongoing interventions for
150 physicians and pharmacists, targeted toward therapy problems or
151 individuals identified in the course of retrospective drug use
152 reviews.

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

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

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

161 (d) The board meetings shall be open to the public,
162 members of the press, legislators and consumers. Additionally,
163 all documents provided to board members shall be available to
164 members of the Legislature in the same manner, and shall be made
165 available to others for a reasonable fee for copying. However,
166 patient confidentiality and provider confidentiality shall be
167 protected by blinding patient names and provider names with
168 numerical or other anonymous identifiers. The board meetings
169 shall be subject to the Open Meetings Act (Section 25-41-1 et
170 seq.). Board meetings conducted in violation of this section
171 shall be deemed unlawful.

172 (5) (a) There is established a Pharmacy and Therapeutics
173 Committee, which shall be appointed by the Governor, or his
174 designee.

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

178 (c) The committee meetings shall be open to the public,
179 members of the press, legislators and consumers. Additionally,
180 all documents provided to committee members shall be available to
181 members of the Legislature in the same manner, and shall be made
182 available to others for a reasonable fee for copying. However,
183 patient confidentiality and provider confidentiality shall be
184 protected by blinding patient names and provider names with
185 numerical or other anonymous identifiers. The committee meetings
186 shall be subject to the Open Meetings Act (Section 25-41-1 et
187 seq.). Committee meetings conducted in violation of this section
188 shall be deemed unlawful.

189 (d) After a thirty-day public notice, the executive
190 director, or his or her designee, shall present the division's
191 recommendation regarding prior approval for a therapeutic class of
192 drugs to the committee. However, in circumstances where the
193 division deems it necessary for the health and safety of Medicaid

194 beneficiaries, the division may present to the committee its
195 recommendations regarding a particular drug without a thirty-day
196 public notice. In making that presentation, the division shall
197 state to the committee the circumstances that precipitate the need
198 for the committee to review the status of a particular drug
199 without a thirty-day public notice. The committee may determine
200 whether or not to review the particular drug under the
201 circumstances stated by the division without a thirty-day public
202 notice. If the committee determines to review the status of the
203 particular drug, it shall make its recommendations to the
204 division, after which the division shall file those
205 recommendations for a thirty-day public comment under the
206 provisions of Section 25-43-7(1).

207 (e) Upon reviewing the information and recommendations,
208 the committee shall forward a written recommendation approved by a
209 majority of the committee to the executive director or his or her
210 designee. The decisions of the committee regarding any
211 limitations to be imposed on any drug or its use for a specified
212 indication shall be based on sound clinical evidence found in
213 labeling, drug compendia, and peer reviewed clinical literature
214 pertaining to use of the drug in the relevant population.

215 (f) Upon reviewing and considering all recommendations
216 including recommendation of the committee, comments, and data, the
217 executive director shall make a final determination whether to
218 require prior approval of a therapeutic class of drugs, or modify
219 existing prior approval requirements for a therapeutic class of
220 drugs.

221 (g) At least thirty (30) days before the executive
222 director implements new or amended prior authorization decisions,
223 written notice of the executive director's decision shall be
224 provided to all prescribing Medicaid providers, all Medicaid
225 enrolled pharmacies, and any other party who has requested the
226 notification. However, notice given under Section 25-43-7(1) will

227 substitute for and meet the requirement for notice under this
228 subsection.

229 (h) Members of the committee shall dispose of matters
230 before the committee in an unbiased and professional manner. If a
231 matter being considered by the committee presents a real or
232 apparent conflict of interest for any member of the committee,
233 that member shall disclose the conflict in writing to the
234 committee chair and recuse himself or herself from any discussions
235 and/or actions on the matter.

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

237 **SECTION 2.** The following shall be codified as Section
238 43-13-126, Mississippi Code of 1972:

239 43-13-126. As a condition of doing business in the state,
240 health insurers, including self-insured plans, group health plans
241 (as defined in Section 607(1) of the Employee Retirement Income
242 Security Act of 1974), service benefit plans, managed care
243 organizations, pharmacy benefit managers, or other parties that
244 are by statute, contract, or agreement, legally responsible for
245 payment of a claim for a health care item or service, are required
246 to:

247 (a) Provide, with respect to individuals who are
248 eligible for, or are provided, medical assistance under the state
249 plan, upon the request of the Division of Medicaid, information to
250 determine during what period the individual or their spouses or
251 their dependents may be (or may have been) covered by a health
252 insurer and the nature of the coverage that is or was provided by
253 the health insurer (including the name, address and identifying
254 number of the plan) in a manner prescribed by the Secretary of the
255 Department of Health and Human Services;

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

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

264 (d) Agree not to deny a claim submitted by the Division
265 of Medicaid solely on the basis of the date of submission of the
266 claim, the type or format of the claim form, or a failure to
267 present proper documentation at the point-of-sale that is the
268 basis of the claim, if:

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

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

275 **SECTION 3.** This act shall take effect and be in force from
276 and after July 1, 2007.