

By: Representative Howell

To: Medicaid

HOUSE BILL NO. 544

1 AN ACT TO AMEND SECTION 43-13-121, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE DIVISION OF MEDICAID TO EXTEND CERTAIN MANAGEMENT
3 INFORMATION SYSTEM AND SUPPORT CONTRACTS FOR A PERIOD NOT
4 EXCEEDING 5 YEARS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 43-13-121, Mississippi Code of 1972, is
7 amended as follows:

8 43-13-121. (1) The division shall administer the Medicaid
9 program under the provisions of this article, and may do the
10 following:

11 (a) Adopt and promulgate reasonable rules, regulations
12 and standards, with approval of the Governor, and in accordance
13 with the Administrative Procedures Law, Section 25-43-1.101 et
14 seq.:

15 (i) Establishing methods and procedures as may be
16 necessary for the proper and efficient administration of this
17 article;



18 (ii) Providing Medicaid to all qualified
19 recipients under the provisions of this article as the division
20 may determine and within the limits of appropriated funds;

21 (iii) Establishing reasonable fees, charges and
22 rates for medical services and drugs; in doing so, the division
23 shall fix all of those fees, charges and rates at the minimum
24 levels absolutely necessary to provide the medical assistance
25 authorized by this article, and shall not change any of those
26 fees, charges or rates except as may be authorized in Section
27 43-13-117;

28 (iv) Providing for fair and impartial hearings;

29 (v) Providing safeguards for preserving the
30 confidentiality of records; and

31 (vi) For detecting and processing fraudulent
32 practices and abuses of the program;

33 (b) Receive and expend state, federal and other funds
34 in accordance with court judgments or settlements and agreements
35 between the State of Mississippi and the federal government, the
36 rules and regulations promulgated by the division, with the
37 approval of the Governor, and within the limitations and
38 restrictions of this article and within the limits of funds
39 available for that purpose;

40 (c) Subject to the limits imposed by this article, to
41 submit a Medicaid plan to the United States Department of Health
42 and Human Services for approval under the provisions of the



43 federal Social Security Act, to act for the state in making
44 negotiations relative to the submission and approval of that plan,
45 to make such arrangements, not inconsistent with the law, as may
46 be required by or under federal law to obtain and retain that
47 approval and to secure for the state the benefits of the
48 provisions of that law.

49 No agreements, specifically including the general plan for
50 the operation of the Medicaid program in this state, shall be made
51 by and between the division and the United States Department of
52 Health and Human Services unless the Attorney General of the State
53 of Mississippi has reviewed the agreements, specifically including
54 the operational plan, and has certified in writing to the Governor
55 and to the executive director of the division that the agreements,
56 including the plan of operation, have been drawn strictly in
57 accordance with the terms and requirements of this article;

58 (d) In accordance with the purposes and intent of this
59 article and in compliance with its provisions, provide for aged
60 persons otherwise eligible for the benefits provided under Title
61 XVIII of the federal Social Security Act by expenditure of funds
62 available for those purposes;

63 (e) To make reports to the United States Department of
64 Health and Human Services as from time to time may be required by
65 that federal department and to the Mississippi Legislature as
66 provided in this section;



67 (f) Define and determine the scope, duration and amount
68 of Medicaid that may be provided in accordance with this article
69 and establish priorities therefor in conformity with this article;

70 (g) Cooperate and contract with other state agencies
71 for the purpose of coordinating Medicaid provided under this
72 article and eliminating duplication and inefficiency in the
73 Medicaid program;

74 (h) Adopt and use an official seal of the division;

75 (i) Sue in its own name on behalf of the State of
76 Mississippi and employ legal counsel on a contingency basis with
77 the approval of the Attorney General;

78 (j) To recover any and all payments incorrectly made by
79 the division to a recipient or provider from the recipient or
80 provider receiving the payments. The division shall be authorized
81 to collect any overpayments to providers thirty (30) days after
82 the conclusion of any administrative appeal unless the matter is
83 appealed to a court of proper jurisdiction and bond is posted.
84 Any appeal filed after July 1, 2014, shall be to the Chancery
85 Court of the First Judicial District of Hinds County, Mississippi.
86 To recover those payments, the division may use the following
87 methods, in addition to any other methods available to the
88 division:

89 (i) The division shall report to the Department of
90 Revenue the name of any current or former Medicaid recipient who
91 has received medical services rendered during a period of



92 established Medicaid ineligibility and who has not reimbursed the
93 division for the related medical service payment(s). The
94 Department of Revenue shall withhold from the state tax refund of
95 the individual, and pay to the division, the amount of the
96 payment(s) for medical services rendered to the ineligible
97 individual that have not been reimbursed to the division for the
98 related medical service payment(s).

99 (ii) The division shall report to the Department
100 of Revenue the name of any Medicaid provider to whom payments were
101 incorrectly made that the division has not been able to recover by
102 other methods available to the division. The Department of
103 Revenue shall withhold from the state tax refund of the provider,
104 and pay to the division, the amount of the payments that were
105 incorrectly made to the provider that have not been recovered by
106 other available methods;

107 (k) To recover any and all payments by the division
108 fraudulently obtained by a recipient or provider. Additionally,
109 if recovery of any payments fraudulently obtained by a recipient
110 or provider is made in any court, then, upon motion of the
111 Governor, the judge of the court may award twice the payments
112 recovered as damages;

113 (l) Have full, complete and plenary power and authority
114 to conduct such investigations as it may deem necessary and
115 requisite of alleged or suspected violations or abuses of the
116 provisions of this article or of the regulations adopted under



117 this article, including, but not limited to, fraudulent or
118 unlawful act or deed by applicants for Medicaid or other benefits,
119 or payments made to any person, firm or corporation under the
120 terms, conditions and authority of this article, to suspend or
121 disqualify any provider of services, applicant or recipient for
122 gross abuse, fraudulent or unlawful acts for such periods,
123 including permanently, and under such conditions as the division
124 deems proper and just, including the imposition of a legal rate of
125 interest on the amount improperly or incorrectly paid. Recipients
126 who are found to have misused or abused Medicaid benefits may be
127 locked into one (1) physician and/or one (1) pharmacy of the
128 recipient's choice for a reasonable amount of time in order to
129 educate and promote appropriate use of medical services, in
130 accordance with federal regulations. If an administrative hearing
131 becomes necessary, the division may, if the provider does not
132 succeed in his or her defense, tax the costs of the administrative
133 hearing, including the costs of the court reporter or stenographer
134 and transcript, to the provider. The convictions of a recipient
135 or a provider in a state or federal court for abuse, fraudulent or
136 unlawful acts under this chapter shall constitute an automatic
137 disqualification of the recipient or automatic disqualification of
138 the provider from participation under the Medicaid program.

139 A conviction, for the purposes of this chapter, shall include
140 a judgment entered on a plea of nolo contendere or a
141 nonadjudicated guilty plea and shall have the same force as a



142 judgment entered pursuant to a guilty plea or a conviction
143 following trial. A certified copy of the judgment of the court of
144 competent jurisdiction of the conviction shall constitute prima
145 facie evidence of the conviction for disqualification purposes;

146 (m) Establish and provide such methods of
147 administration as may be necessary for the proper and efficient
148 operation of the Medicaid program, fully utilizing computer
149 equipment as may be necessary to oversee and control all current
150 expenditures for purposes of this article, and to closely monitor
151 and supervise all recipient payments and vendors rendering
152 services under this article. Notwithstanding any other provision
153 of state law, the division is authorized to enter into a ten-year
154 contract(s) with a vendor(s) to provide services described in this
155 paragraph (m). * * * Notwithstanding any provision of law to the
156 contrary, the division is authorized to extend its * * * Medicaid
157 Management Information Systems, including all related components
158 and services, and Decision Support System, including all related
159 components and services, contracts expiring on * * * June 30,
160 2015, for a period not to exceed * * * five (5) years without
161 complying with the requirements provided in Section 25-9-120 and
162 the Personal Service Contract Review Board procurement
163 regulations;

164 (n) To cooperate and contract with the federal
165 government for the purpose of providing Medicaid to Vietnamese and
166 Cambodian refugees, under the provisions of Public Law 94-23 and



167 Public Law 94-24, including any amendments to those laws, only to
168 the extent that the Medicaid assistance and the administrative
169 cost related thereto are one hundred percent (100%) reimbursable
170 by the federal government. For the purposes of Section 43-13-117,
171 persons receiving Medicaid under Public Law 94-23 and Public Law
172 94-24, including any amendments to those laws, shall not be
173 considered a new group or category of recipient; and

174 (o) The division shall impose penalties upon Medicaid
175 only, Title XIX participating long-term care facilities found to
176 be in noncompliance with division and certification standards in
177 accordance with federal and state regulations, including interest
178 at the same rate calculated by the United States Department of
179 Health and Human Services and/or the Centers for Medicare and
180 Medicaid Services (CMS) under federal regulations.

181 (2) The division also shall exercise such additional powers
182 and perform such other duties as may be conferred upon the
183 division by act of the Legislature.

184 (3) The division, and the State Department of Health as the
185 agency for licensure of health care facilities and certification
186 and inspection for the Medicaid and/or Medicare programs, shall
187 contract for or otherwise provide for the consolidation of on-site
188 inspections of health care facilities that are necessitated by the
189 respective programs and functions of the division and the
190 department.



191 (4) The division and its hearing officers shall have power
192 to preserve and enforce order during hearings; to issue subpoenas
193 for, to administer oaths to and to compel the attendance and
194 testimony of witnesses, or the production of books, papers,
195 documents and other evidence, or the taking of depositions before
196 any designated individual competent to administer oaths; to
197 examine witnesses; and to do all things conformable to law that
198 may be necessary to enable them effectively to discharge the
199 duties of their office. In compelling the attendance and
200 testimony of witnesses, or the production of books, papers,
201 documents and other evidence, or the taking of depositions, as
202 authorized by this section, the division or its hearing officers
203 may designate an individual employed by the division or some other
204 suitable person to execute and return that process, whose action
205 in executing and returning that process shall be as lawful as if
206 done by the sheriff or some other proper officer authorized to
207 execute and return process in the county where the witness may
208 reside. In carrying out the investigatory powers under the
209 provisions of this article, the executive director or other
210 designated person or persons may examine, obtain, copy or
211 reproduce the books, papers, documents, medical charts,
212 prescriptions and other records relating to medical care and
213 services furnished by the provider to a recipient or designated
214 recipients of Medicaid services under investigation. In the
215 absence of the voluntary submission of the books, papers,



216 documents, medical charts, prescriptions and other records, the
217 Governor, the executive director, or other designated person may
218 issue and serve subpoenas instantly upon the provider, his or her
219 agent, servant or employee for the production of the books,
220 papers, documents, medical charts, prescriptions or other records
221 during an audit or investigation of the provider. If any provider
222 or his or her agent, servant or employee refuses to produce the
223 records after being duly subpoenaed, the executive director may
224 certify those facts and institute contempt proceedings in the
225 manner, time and place as authorized by law for administrative
226 proceedings. As an additional remedy, the division may recover
227 all amounts paid to the provider covering the period of the audit
228 or investigation, inclusive of a legal rate of interest and a
229 reasonable attorney's fee and costs of court if suit becomes
230 necessary. Division staff shall have immediate access to the
231 provider's physical location, facilities, records, documents,
232 books, and any other records relating to medical care and services
233 rendered to recipients during regular business hours.

234 (5) If any person in proceedings before the division
235 disobeys or resists any lawful order or process, or misbehaves
236 during a hearing or so near the place thereof as to obstruct the
237 hearing, or neglects to produce, after having been ordered to do
238 so, any pertinent book, paper or document, or refuses to appear
239 after having been subpoenaed, or upon appearing refuses to take
240 the oath as a witness, or after having taken the oath refuses to



241 be examined according to law, the executive director shall certify
242 the facts to any court having jurisdiction in the place in which
243 it is sitting, and the court shall thereupon, in a summary manner,
244 hear the evidence as to the acts complained of, and if the
245 evidence so warrants, punish that person in the same manner and to
246 the same extent as for a contempt committed before the court, or
247 commit that person upon the same condition as if the doing of the
248 forbidden act had occurred with reference to the process of, or in
249 the presence of, the court.

250 (6) In suspending or terminating any provider from
251 participation in the Medicaid program, the division shall preclude
252 the provider from submitting claims for payment, either personally
253 or through any clinic, group, corporation or other association to
254 the division or its fiscal agents for any services or supplies
255 provided under the Medicaid program except for those services or
256 supplies provided before the suspension or termination. No
257 clinic, group, corporation or other association that is a provider
258 of services shall submit claims for payment to the division or its
259 fiscal agents for any services or supplies provided by a person
260 within that organization who has been suspended or terminated from
261 participation in the Medicaid program except for those services or
262 supplies provided before the suspension or termination. When this
263 provision is violated by a provider of services that is a clinic,
264 group, corporation or other association, the division may suspend
265 or terminate that organization from participation. Suspension may



266 be applied by the division to all known affiliates of a provider,
267 provided that each decision to include an affiliate is made on a
268 case-by-case basis after giving due regard to all relevant facts
269 and circumstances. The violation, failure or inadequacy of
270 performance may be imputed to a person with whom the provider is
271 affiliated where that conduct was accomplished within the course
272 of his or her official duty or was effectuated by him or her with
273 the knowledge or approval of that person.

274 (7) The division may deny or revoke enrollment in the
275 Medicaid program to a provider if any of the following are found
276 to be applicable to the provider, his or her agent, a managing
277 employee or any person having an ownership interest equal to five
278 percent (5%) or greater in the provider:

279 (a) Failure to truthfully or fully disclose any and all
280 information required, or the concealment of any and all
281 information required, on a claim, a provider application or a
282 provider agreement, or the making of a false or misleading
283 statement to the division relative to the Medicaid program.

284 (b) Previous or current exclusion, suspension,
285 termination from or the involuntary withdrawing from participation
286 in the Medicaid program, any other state's Medicaid program,
287 Medicare or any other public or private health or health insurance
288 program. If the division ascertains that a provider has been
289 convicted of a felony under federal or state law for an offense
290 that the division determines is detrimental to the best interest



291 of the program or of Medicaid beneficiaries, the division may
292 refuse to enter into an agreement with that provider, or may
293 terminate or refuse to renew an existing agreement.

294 (c) Conviction under federal or state law of a criminal
295 offense relating to the delivery of any goods, services or
296 supplies, including the performance of management or
297 administrative services relating to the delivery of the goods,
298 services or supplies, under the Medicaid program, any other
299 state's Medicaid program, Medicare or any other public or private
300 health or health insurance program.

301 (d) Conviction under federal or state law of a criminal
302 offense relating to the neglect or abuse of a patient in
303 connection with the delivery of any goods, services or supplies.

304 (e) Conviction under federal or state law of a criminal
305 offense relating to the unlawful manufacture, distribution,
306 prescription or dispensing of a controlled substance.

307 (f) Conviction under federal or state law of a criminal
308 offense relating to fraud, theft, embezzlement, breach of
309 fiduciary responsibility or other financial misconduct.

310 (g) Conviction under federal or state law of a criminal
311 offense punishable by imprisonment of a year or more that involves
312 moral turpitude, or acts against the elderly, children or infirm.

313 (h) Conviction under federal or state law of a criminal
314 offense in connection with the interference or obstruction of any



315 investigation into any criminal offense listed in paragraphs (c)
316 through (i) of this subsection.

317 (i) Sanction for a violation of federal or state laws
318 or rules relative to the Medicaid program, any other state's
319 Medicaid program, Medicare or any other public health care or
320 health insurance program.

321 (j) Revocation of license or certification.

322 (k) Failure to pay recovery properly assessed or
323 pursuant to an approved repayment schedule under the Medicaid
324 program.

325 (l) Failure to meet any condition of enrollment.

326 **SECTION 2.** This act shall take effect and be in force from
327 and after its passage.

