

By: Senator(s) Blackmon, Simmons (12th),
Simmons (13th), Blount, Butler, Jolly, Horhn,
Stone, Norwood, Turner, Witherspoon

To: Medicaid

SENATE BILL NO. 2188

1 AN ACT TO AMEND SECTION 43-13-125, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE RIGHTS AND OBLIGATIONS OF THE DIVISION OF MEDICAID
3 WITH RESPECT TO A CLAIM AGAINST A THIRD PARTY; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 43-13-125, Mississippi Code of 1972, is
7 amended as follows:

8 43-13-125. (1) If Medicaid is provided to a recipient under
9 this article for injuries, disease or sickness caused under
10 circumstances creating a cause of action in favor of the recipient
11 against any person, firm, corporation, political subdivision or
12 other state agency, then the division shall be entitled to recover
13 the proceeds that may result from the exercise of any rights of
14 recovery that the recipient may have against any such person,
15 firm, corporation, political subdivision or other state agency, to
16 the extent of the Division of Medicaid's interest on behalf of the
17 recipient. The recipient shall execute and deliver instruments
18 and papers to do whatever is necessary to secure those rights and
19 shall do nothing after Medicaid is provided to prejudice the



20 subrogation rights of the division. Court orders or agreements
21 for reimbursement of Medicaid's interest shall direct those
22 payments to the Division of Medicaid, which shall be authorized to
23 endorse any and all, including, but not limited to, multipayee
24 checks, drafts, money orders, or other negotiable instruments
25 representing Medicaid payment recoveries that are received. In
26 accordance with Section 43-13-305, endorsement of multipayee
27 checks, drafts, money orders or other negotiable instruments by
28 the Division of Medicaid shall be deemed endorsed by the
29 recipient. All payments must be remitted to the division within
30 sixty (60) days from the date of a settlement or the entry of a
31 final judgment; failure to do so hereby authorizes the division to
32 assert its rights under Sections 43-13-307 and 43-13-315, plus
33 interest.

34 The division * * * may compromise or settle any such claim
35 and execute a release of any claim it has by virtue of this
36 section. * * * In cases that compromise or settle any such claim,
37 the Division of Medicaid shall reduce its claim by twenty-five
38 percent (25%) of the total amount of Medicaid benefits paid as a
39 result of the injury giving rise to the third-party claim and may,
40 in the discretion of its designee or subcontractor, compromise its
41 claim in a greater amount, regardless of the amount of total
42 Medicaid lien. The recipient may request additional relief from
43 the Division of Medicaid or a court with jurisdiction under
44 special circumstances.



45 (2) The acceptance of Medicaid under this article or the
46 making of a claim under this article shall not affect the right of
47 a recipient or his or her legal representative to recover
48 Medicaid's interest as an element of damages in any action at law;
49 however, a copy of the pleadings shall be certified to the
50 division at the time of the institution of suit, and proof of
51 that notice shall be filed of record in that action. The division
52 may, at any time before the trial on the facts, join in that
53 action or may intervene in that action. Any amount recovered by a
54 recipient or his or her legal representative shall be applied as
55 follows:

56 (a) The reasonable costs of the collection, including
57 attorney's fees, as approved and allowed by the court in which
58 that action is pending, or in case of settlement without suit, by
59 the legal representative of the division;

60 (b) The amount of Medicaid's interest on behalf of the
61 recipient; or such reduced amount as may be arrived at by the
62 legal representative of the division and the recipient's attorney,
63 or such amount as set by the court having jurisdiction over the
64 third party, a minor's settlement or an estate action; and

65 (c) Any excess shall be awarded to the recipient.

66 (3) * * * The recipient or his or her legal representative
67 maintain the absolute duty to notify the division of the
68 institution of legal proceedings, and the third party and his or
69 her insurer maintain the absolute duty to notify the division of a



70 proposed compromise for which the division has an interest. The
71 aforementioned absolute duties may not be delegated or assigned by
72 contract or otherwise. Any compromise effected by the recipient
73 or his or her legal representative with the third party in the
74 absence of advance notification to and approved by the division
75 shall constitute conclusive evidence of the liability of the third
76 party, and the division, in litigating its claim against the third
77 party, shall be required only to prove the amount and correctness
78 of its claim relating to the injury, disease or sickness. If the
79 recipient or his or her legal representative fails to notify the
80 division of the institution of legal proceedings against a third
81 party for which the division has a cause of action, the facts
82 relating to negligence and the liability of the third party, if
83 judgment is rendered for the recipient, shall constitute
84 conclusive evidence of liability in a subsequent action maintained
85 by the division and only the amount and correctness of the
86 division's claim relating to injuries, disease or sickness shall
87 be tried before the court. The division shall be authorized in
88 bringing that action against the third party and his or her
89 insurer jointly or against the insurer alone.

90 (4) Nothing in this section shall be construed to diminish
91 or otherwise restrict the subrogation rights of the Division of
92 Medicaid against a third party for Medicaid provided by the
93 Division of Medicaid to the recipient as a result of injuries,



94 disease or sickness caused under circumstances creating a cause of
95 action in favor of the recipient against such a third party.

96 (5) Any amounts recovered by the division under this section
97 shall, by the division, be placed to the credit of the funds
98 appropriated for benefits under this article proportionate to the
99 amounts provided by the state and federal governments
100 respectively.

101 **SECTION 2.** Nothing in this act shall affect or defeat any
102 claim, assessment, appeal, suit, right or cause of action which
103 accrued prior to the date on which the applicable sections of this
104 act become effective, whether such assessments, appeals, suits,
105 claims or actions shall have been begun before the date on which
106 the applicable sections of this act become effective or shall
107 thereafter be begun.

108 **SECTION 3.** This act shall take effect and be in force from
109 and after July 1, 2016.

