MISSISSIPPI LEGISLATURE

REGULAR SESSION 2017

By: Representatives Brown, Hood, Boyd, Crawford, Eubanks, Hopkins, White, Formby, Willis, Kinkade

To: Medicaid

HOUSE BILL NO. 1090
(As Sent to Governor)

AN ACT TO BE KNOWN AS THE MEDICAID AND HUMAN SERVICES TRANSPARENCY AND FRAUD PREVENTION ACT; TO REVISE VARIOUS PROVISIONS RELATING TO ELIGIBILITY MONITORING IN THE MEDICAID PROGRAM, THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM, AND THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP); AND FOR RELATED PURPOSES.

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

SECTION 1. Short title. This act shall be known and may be cited as the "Medicaid and Human Services Transparency and Fraud Prevention Act."

SECTION 2. Integration of eligibility systems. The Division of Medicaid shall submit a final Advanced Planning Document to the Centers for Medicare and Medicaid Services (CMS) for the purpose of applying for the OMB A87 exception to support the integration of eligibility systems between the division and any applicable Department of Human Services program where an integrated system of eligibility will serve the state's interest in developing shared eligibility services across health and human services programs, while at the same time promoting and enhancing the state's efforts of ensuring maximum program integrity across each agency. In
preparing the final Advanced Planning Document, the division also shall:

(a) Identify functions that can be leveraged or shared across the state Medicaid program and other Department of Human Services programs;

(b) Weigh benefits of shared systems;

(c) Identify interoperability and integration goals;

(d) Seek guidance from the Centers for Medicaid and Medicare Services (CMS) and the Office for the Administration of Children and Families (ACF) on state ideas before submitting the Advanced Planning Document; and

(e) Ensure that the enhancement to front end identity and asset verification is an integral part of the advanced planning and integration process going forward.

The division shall submit a report on its progress to the chairman of the House and Senate Medicaid Committees within ninety (90) business days and on a quarterly basis thereafter until the final Advanced Planning Document is completed. The report also shall be provided to the other members of the Legislature upon request.

**SECTION 3.** Real-time eligibility verification service. (1)

Definitions. For purposes of Sections 3 through 9 of this act, the following definitions apply:

(a) "Department" means the Division of Medicaid or the Department of Human Services, as the case may be.
(b) "Identity information" means an applicant or recipient's full name, aliases, date of birth, address, Social Security number and other related information, including, but not limited to, the information in subsection (2)(a) of this section.

(2) Establishment of enhanced eligibility verification service.

(a) The department shall establish and use a computerized income, asset, residence and identity eligibility verification service in order to verify eligibility, eliminate the duplication of assistance, and deter waste, fraud, and abuse within each respective assistance program administered by the department. The information verified shall include, but not be limited to:

(i) Earned and unearned income;
(ii) Employment status and changes in employment;
(iii) Immigration status;
(iv) Residency status, including a nationwide best-address source to verify individuals are residents of the state;
(v) Enrollment status in other state-administered public assistance programs, as available in a cost-efficient manner;
(vi) Financial resources;
(vii) Incarceration status;
(viii) Death records;
(ix) Enrollment status in public assistance programs outside of this state, as available in a cost-efficient manner; and

(x) Potential identity fraud or identity theft.

(b) The department may issue a Request for Proposals (RFP) from multiple third-party vendors, regardless of the amount of funds to be expended under the contract, for the purposes of identifying fraud in the programs described in this act and pursuant to the specifications prescribed in this subsection (2). After evaluating the proposals submitted, the department shall enter into a competitively bid contract with a third-party vendor for the purposes of using and accessing an eligibility verification service by which to verify the income, assets, residence, identity, and other information in paragraph (a) of this subsection (2) to prevent fraud, misrepresentation, and inadequate documentation when determining an applicant's eligibility for assistance before the distribution of benefits, periodically between eligibility redeterminations, and during eligibility redeterminations and reviews, as prescribed in this section. The department may use more than one (1) eligibility verification service and/or third-party vendor, if doing so is more cost-efficient. The department may renegotiate an existing contract with a current vendor for the purposes stated in this paragraph (b) if doing so is more cost-efficient than issuing a Request for Proposals (RFP) from multiple third-party vendors. If
the department determines that it is not more cost-efficient to renegotiate an existing contract with a current vendor, the department shall issue a Request for Proposals (RFP) from multiple third-party vendors as provided in this paragraph (b), regardless of the amount of funds to be expended under the contract. The department may also enter into a competitively bid contract with a third-party vendor to provide information to facilitate reviews of recipient eligibility conducted by the department.

(c) When the department enters into a competitively bid contract with a third-party vendor or renegotiates an existing contract with a current vendor for the purposes of carrying out this eligibility verification service, the vendor, in partnership with the department, shall be required by contract to establish annualized savings realized from implementation of the eligibility verification service. It is the intent of the Legislature that savings exceed the total yearly cost for implementing the eligibility verification service.

(d) To avoid any conflict of interest, when the department enters into a competitively bid contract with a third-party vendor or renegotiates an existing contract with a current vendor, that primary vendor may not currently or will not be allowed to bid on or be awarded a state contract to run enrollment services.

(e) It shall be the responsibility of the contracted third-party vendor to obtain access to any data, data sources and
databases, not already being used by the department, for the purposes of implementing the eligibility verification service. The payment structure for the contracted third-party vendor shall be based on a per-applicant rate.

(f) Nothing in this section shall preclude the department from continuing to conduct additional eligibility verification processes, not detailed in this section, that are currently in practice; and nothing in this section shall require the department or third-party vendor to violate the Fair Credit Reporting Act.

(3) The department shall have the eligibility verification service required by this section implemented and operational not later than July 1, 2019. The department shall submit a report every six (6) months on its progress on implementing the eligibility verification service to the Chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees. The report also shall be provided to the other members of the Legislature upon request.

(4) (a) As used in this subsection, the following terms shall be defined as provided in this paragraph:

(i) "Abuse" includes any practice that is inconsistent with acceptable fiscal, business or medical practices that unnecessarily increase cost.
(ii) "Fraud" means misrepresenting the truth to obtain an unauthorized benefit.

(b) The department shall enter or have entered into a competitively-bid contract with a third-party vendor for the purposes of identifying waste, abuse and fraud in the programs administered by the department, focusing on detecting and preventing abuse and fraud by providers of services in those programs, and recovering improper payments made to providers of services in those programs.

SECTION 4. Enhanced eligibility verification process. (1) Before awarding assistance, the department shall verify eligibility for assistance by using the enhanced eligibility verification service established in Section 3(2) of this act. The department shall also conduct enhanced eligibility verification under Section 3(2) of this act periodically between eligibility redeterminations and during eligibility redeterminations when there is a risk of changes in income, assets, residency or other relevant factors and the department has determined that the benefits of enhanced eligibility verification outweigh the cost.

(2) It is the intent of the Legislature that any recipient who has moved out of state shall be terminated from the rolls of eligible recipients within three (3) months of the department being made aware of their change of residency.

SECTION 5. Enhanced identity authentication process. Before awarding assistance, applicants for benefits must complete a
computerized identity authentication process that shall confirm the applicant owns the identity presented in the application. The department shall continue to review the recipient's identity ownership periodically to verify and protect the identity of the recipient.

SECTION 6. Discrepancies and case review. (1) If a discrepancy results from an applicant or recipient's identity information and one or more of the databases or information tools authorized under Sections 3 through 9 of this act, the department shall review the respective applicant or recipient's case using the following procedures:

(a) If the information discovered does not result in the department finding a discrepancy or change in an applicant's or recipient's circumstances that may affect eligibility, the department shall take no further action.

(b) If the information discovered under Sections 3 through 9 of this act results in the department finding a discrepancy or change in a recipient's circumstances that may affect eligibility, the department shall promptly redetermine eligibility after receiving such information within ten (10) business days, or the minimum required by federal law.

(c) If the information discovered under Sections 3 through 9 of this act results in the department finding a discrepancy or change in an applicant's or recipient's circumstances that may affect eligibility, the applicant or
recipient shall be given an opportunity to explain the discrepancy; however, self-declarations by applicants or recipients shall not be accepted as verification of categorical and financial eligibility during eligibility evaluations, reviews, and redeterminations.

(d) Unless prohibited by federal law, the department shall provide written notice, within ten (10) business days, or the minimum required by federal law to the applicant or recipient, which shall describe in sufficient detail the circumstances of the discrepancy or change, the manner in which the applicant or recipient may respond, and the consequences of failing to take action. The applicant or recipient shall have ten (10) business days, or the minimum required by federal law, to respond in an attempt to resolve the discrepancy or change. The explanation provided by the recipient or applicant shall be given in writing. After receiving the explanation, the department may request additional documentation if it determines that there is risk of fraud, misrepresentation, or inadequate documentation.

(e) Unless prohibited by federal laws, if the applicant or recipient does not respond to the notice, the department shall, within ten (10) business days, or the minimum required by federal law deny or discontinue assistance for failure to cooperate, in which case the department shall provide notice of intent to deny or discontinue assistance. Eligibility for assistance shall not
be established or reestablished until the discrepancy or change has been resolved.

(f) If an applicant or recipient responds to the notice and disagrees with the findings of the match between his or her identity information and one or more databases or information tools authorized under Sections 3 through 9 of this act, the department shall review the matter. If the department finds that there has been an error, the department shall take immediate action to correct it and no further action shall be taken. If, after a review, the department determines that there is no error, the department shall determine the effect on the applicant's or recipient's case and take appropriate action. Written notice of the respective department's action shall be given to the applicant or recipient.

(g) If the applicant or recipient agrees with the findings of the match between the applicant's or recipient's identity information and one or more databases or information tools authorized under Sections 3 through 9 of this act, the department shall determine the effect on the applicant or recipient's case and take appropriate action. Written notice of the department's action shall be given to the applicant or recipient. In no case shall the department discontinue assistance upon finding a discrepancy or change in circumstances between an individual's identity information and one or more databases or information tools authorized under Sections 3 through 9 of this act.
act until the applicant or recipient has been given notice of the
discrepancy and the opportunity to respond as required under this
section.

(2) The executive director of the department, or his or her
designee, at his or her discretion may review the agency
conference record of a hearing to determine that the local or
state decision was correct. The executive director, or his or her
designee, shall prepare a decision summarizing the issue and the
basis for the decision. In cases in which the executive director,
or his or her designee, finds that the facts in the record are
inadequate or that incorrect policy has been applied, he or she
will direct the county to get the facts or use correct policy and
change the decision, reinstate the payment, or correct the amount
of payment retroactively to the date of erroneous action.

(3) The department shall promulgate rules and regulations
necessary for the purposes of carrying out this section.

(4) Wherever applicable and cost-effective, the Division of
Medicaid and the Department of Human Services shall share data,
data sources, and verification processes aimed at reducing fraud
and waste.

SECTION 7. Referrals for fraud, misrepresentation, or
inadequate documentation. After reviewing changes or
discrepancies that may affect program eligibility, the department
shall refer, within forty-five (45) business days, suspected cases
of fraud, misrepresentation, or inadequate documentation to
appropriate agencies, divisions, or departments for review of eligibility discrepancies in other public programs. This shall also include cases where an individual is determined to be no longer eligible for the original program. In cases where fraud affecting program eligibility is substantiated, the department or other appropriate agencies shall garnish wages or state income tax refunds until the state recovers an amount equal to the amount of benefits that were fraudulently received.

SECTION 8. Reporting. (1) Thirty (30) business days before entering into a competitively bid contract for the eligibility verification service required by Section 3 of this act, the department shall provide a written report to the Governor, the Chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, detailing the data sources proposed to be used by the third-party vendor for eligibility and redeterminations, the relevancy of the information from the data sources, the frequency of how often each data source will be accessed, and an explanation of why other data sources that are readily available are not being used. The report shall include a dynamic cost-benefit analysis that shows the ratio of potential fraud detection to the types and kinds of data sources and information tools proposed to be used by the third-party vendor.
The report also shall be provided to the other members of the Legislature upon request.

(2) Six (6) months after the implementation of the eligibility verification service required by Section 3 of this act, and quarterly thereafter, the department shall provide a written report to the Governor, the chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, detailing the effectiveness and general findings of the eligibility verification service, including the number of cases reviewed, the number of case closures, the number of referrals for criminal prosecution, recovery of improper payments, collection of civil penalties, and the savings that have resulted from the service. The report also shall be provided to the other members of the Legislature upon request.

SECTION 9. Transparency in Medicaid. Following the precedent set by Medicare, the department shall electronically release to the public data that includes, but is not limited to the following: the provider's name and office locations; a provider's National Provider Identifier (NPI); the type of service provided by Healthcare Common Procedure Coding System (HCPCS) code; and whether the service was performed in a facility or office setting. This public data shall also include the number of services, average submitted charges, average allowed amount,
average Medicaid payment, and a count of unique beneficiaries treated. Nothing in this section shall be construed to require the department to publicly share protected information as defined by the federal Health Insurance Portability and Accountability Act (HIPAA).

SECTION 10. Work requirements. The Department of Human Services shall not seek, apply for, accept or renew any waiver of requirements established under 7 USC Section 2015(o), except during a formal state or federal declaration of a natural disaster.

SECTION 11. Federal asset limits for the Supplemental Nutrition Assistance Program. In no case shall the resource limit standards of the Supplemental Nutrition Assistance Program (SNAP) exceed the standards specified in 7 USC Section 2014(g)(1), unless expressly required by federal law. In no case shall categorical eligibility exempting households from these resource limits be granted for any noncash, in-kind or other benefit, unless expressly required by federal law.

SECTION 12. Broad-based categorical eligibility. (1) In no case shall categorical eligibility under 7 USC Section 2014(a) or 7 CFR Section 273.2(j)(2)(iii) be granted for any noncash, in-kind or other benefit unless expressly required by federal law for the Supplemental Nutrition Assistance Program (SNAP).

(2) The Department of Human Services shall not apply gross income standards for food assistance higher than the standards
specified in 7 USC Section 2014(c) unless expressly required by federal law. Categorical eligibility exempting households from such gross income standards requirements shall not be granted for any noncash, in-kind or other benefit, unless expressly required by federal law.

SECTION 13. Sharing enrollee information across agencies.

(1) The Division of Medicaid and the Department of Human Services shall share eligibility information with each other within thirty (30) business days when an enrollee has been disenrolled for any financial or nonfinancial reason that may result in the enrollee's disqualification for benefits with the other department, and shall include the rationale for the action.

(2) Any department, agency or division receiving information under subsection (1) of this section shall establish procedures to redetermine eligibility for any enrollee whose eligibility or benefit levels could change as a result of new information provided under subsection (1) of this section.

SECTION 14. Maximum family grant. For purposes of determining the maximum aid payment under the TANF program, the number of persons in a household shall not be increased for any child born into a household that has received aid under TANF continuously for the ten (10) months before the birth of the child.

SECTION 15. Verify identities and household composition, and all expenses of welfare applicants. The Department of Human
Services shall verify identity, household composition, expenses, and any other factor affecting eligibility allowed under 7 CFR Section 273.2(f)(3).

**SECTION 16. Full cooperation with fraud investigations.** The Department of Human Services shall communicate the expectation of mandatory cooperation with a fraud investigation and that noncompliance could result in case closure and termination of benefits within thirty (30) business days.

**SECTION 17. Gaps in eligibility reporting.** The Department of Human Services shall not establish or use a simplified reporting system under 7 CFR Section 273.12(a)(5). The department shall provide a written report to the Chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, on the costs and state and federal savings of not using a simplified reporting system. The report also shall be provided to the other members of the Legislature upon request.

**SECTION 18. Noncompliance with Temporary Assistance for Needy Families program rules.** (1) The Department of Human Services shall only grant benefits when an approved applicant has signed a written agreement clearly enumerating continued eligibility requirements, circumstances in which sanctions may be imposed, and any potential penalties for noncompliance.
(2) The department shall require all enrollees to be compliant with all program requirements, including work requirements, before granting benefits.

(3) The department shall institute a three-month, full-household sanction for the first instance of noncompliance with any TANF requirement, unless expressly prohibited by federal law.

(4) The department shall terminate benefits for the second instance of noncompliance with any TANF requirement, unless expressly prohibited by federal law.

(5) An individual sanctioned under subsection (3) of this section shall not have benefits reinstated without reviewing the agreement required under subsection (1) of this section.

(6) The department shall deny benefits to any adult member of a household where another adult member of the household has been found to have committed benefits fraud.

SECTION 19. Noncompliance with Supplemental Nutrition Assistance Program rules. (1) The Department of Human Services shall set disqualification periods for all instances of noncompliance with any SNAP requirement, unless expressly prohibited by federal law.

(2) The department shall institute a three-month, full-household disqualification period for the first instance of noncompliance, unless expressly prohibited by federal law.
(3) The department shall institute a six-month, full-household disqualification period for the second instance of noncompliance, unless expressly prohibited by federal law.

(4) The department shall institute a permanent disqualification period for the third instance of noncompliance, unless expressly prohibited by federal law.

(5) If a recipient is subject to a disqualification period under subsection (4) of this section, the department shall institute a six-month disqualification period for the recipient's entire household, unless expressly prohibited by federal law.

(6) Unless expressly prohibited by federal law, recipients shall be subject to disqualification for failure to perform actions required by other federal, state, or local means-tested public assistance programs.

**SECTION 20. Out-of-state spending.** (1) The Department of Human Services shall post on its website and make available on an annual basis to the chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee a report of SNAP and TANF benefit spending. The report also shall be provided to the other members of the Legislature upon request.

(2) The report required under subsection (1) of this section shall include:
(a) The dollar amount and number of transactions of SNAP benefits that are accessed or spent out-of-state, disaggregated by state;

(b) The dollar amount and number of transactions of TANF benefits that are accessed or spent out-of-state, disaggregated by state;

(c) The dollar amount, number of transactions, and times of transactions of SNAP benefits that are accessed or spent in-state, disaggregated by retailer, institution, or location, unless expressly prohibited by federal law; and

(d) The dollar amount, number of transactions, and time of transactions of TANF benefits that are accessed or spent in-state, disaggregated by retailer, institution, or location.

(3) The report required under subsection (1) of this section shall be de-identified to prevent identification of individual recipients.

SECTION 21. Public reporting. (1) The Division of Medicaid and the Department of Human Services shall provide on an annual basis to the chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, a report of characteristics of recipients of Medicaid, SNAP and TANF benefits. The report also shall be provided to the other members of the Legislature upon request.
(2) The report required under subsection (1) of this section shall include:

(a) The length of enrollment, disaggregated by program and eligibility group;

(b) The share of recipients concurrently enrolled in one or more additional means-tested programs, disaggregated by program and eligibility group;

(c) The number of means-tested programs recipients are concurrently enrolled in, disaggregated by program and eligibility group;

(d) The demographics and characteristics of recipients, disaggregated by program and eligibility group; and

(e) The dollar amount spent on advertising and marketing for TANF, SNAP, Medicaid, and other means-tested programs, including both state and federal funds, disaggregated by program.

(3) The report required under subsection (1) of this section shall be de-identified to prevent identification of individual recipients.

SECTION 22. Pilot program for photos on EBT cards. (1) The Department of Human Services may establish a pilot program in which a photograph of the recipient is included on any electronic benefits transfer card issued by the department to the recipient, unless the recipient declines to have the photograph included.

When a recipient is a minor or otherwise incapacitated individual,
a parent or legal guardian of such recipient may have a photograph
of such parent or legal guardian placed on the card.

(2) The Department of Human Services shall explore
opportunities with other state agencies, departments, or
divisions, including the Department of Public Safety, to share
photographs when available. The Department of Human Services may
sign one or more memorandum of understanding with such agencies,
departments, or divisions as necessary to implement this section.

SECTION 23. Limits on spending locations. (1) Funds
available on electronic benefit transfer cards shall not be used
to purchase alcohol, liquor or imitation liquor, cigarettes,
tobacco products, bail, gambling activities, lottery tickets,
tattoos, travel services provided by a travel agent, money
transmission to locations abroad, sexually oriented adult
materials, concert tickets, professional or collegiate sporting
event tickets, or tickets for other entertainment events intended
for the general public.

(2) Electronic benefit transfer card transactions shall be
prohibited at all retail liquor stores, casinos, gaming
establishments, jewelry stores, tattoo parlors, massage parlors,
body piercing parlors, spas, nail salons, lingerie shops, tobacco
paraphernalia stores, vapor cigarette stores, psychic or fortune
telling businesses, bail bond companies, video arcades, movie
theaters, cruise ships, theme parks, dog or horse racing
facilities, pari-mutuel facilities, sexually oriented businesses,
retail establishments that provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, and businesses or retail establishments where minors under eighteen (18) years of age are not permitted.

(3) Upon enrollment, the Department of Human Services shall provide new applicants an itemized list of prohibited purchases, including those specified in subsection (1) of this section, and make such a list available on the department's website.

(4) The department shall prohibit establishments identified under subsection (2) of this section from operating ATMs that accept electronic benefit transfer cards. Businesses found in violation of this subsection shall be subject to appropriate licensing sanctions.

(5) If a recipient is found to have violated subsection (1) of this section, the department shall issue a warning in writing to the recipient. The recipient shall be subject to disqualification of benefits for up to three (3) months following the first offense and a permanent termination of benefits following the second offense, unless expressly prohibited by federal law.

SECTION 24. Excessive EBT card loss. (1) The Department of Human Services shall send all recipients that have requested four (4) replacement cards within a twelve-month-period a letter informing them that another request shall require participation in
a face-to-face interview with a fraud investigator and eligibility expert.

(2) If a third-party vendor is administering replacement cards directly to recipients, it shall notify the department after the request for a fourth replacement card in a twelve-month-period, and any subsequent request thereafter.

(3) Upon a recipient's request of a fifth replacement card within any twelve-month-period, and any subsequent request thereafter, the department shall schedule an interview, within thirty (30) business days, with a fraud investigator and eligibility expert before another new card is issued.

(4) Unless expressly prohibited by federal law, if a recipient fails to appear at an interview scheduled under subsection (3) of this section, the department shall terminate the recipient's benefits within ten (10) business days, or the minimum required by federal law.

SECTION 25. Sections 1, 2 and 8 of this act shall take effect and be in force from and after the passage of this act; Sections 3, 6, 9, 10, 11, 14, 16, 18 and 21 shall take effect and be in force from and after July 1, 2017; and Sections 4, 5, 7, 12, 13, 15, 17, 19, 20, 22, 23 and 24 shall take effect and be in force from and after July 1, 2019.