MISSISSIPPI LEGISLATURE REGULAR SESSION 2018

By: Representative Dortch

To: Medicaid; Rules; Appropriations

HOUSE BILL NO. 128

1 AN ACT TO DIRECT THE GOVERNOR AND THE DIVISION OF MEDICAID TO
2 ENTER INTO NEGOTIATIONS WITH THE FEDERAL GOVERNMENT TO OBTAIN A
3 WAIVER OF APPLICABLE PROVISIONS OF THE MEDICAID LAWS AND
4 REGULATIONS TO CREATE A PLAN TO ALLOW THE EXPANSION OF MEDICAID
5 COVERAGE IN MISSISSIPPI; TO SPECIFY THE PROVISIONS THAT THE
6 GOVERNOR AND THE DIVISION SHALL SEEK TO HAVE INCLUDED IN THE
7 WAIVER PLAN; TO PROVIDE THAT IF A WAIVER IS OBTAINED TO ALLOW THE
8 EXPANSION OF MEDICAID COVERAGE, THE DIVISION SHALL AMEND THE STATE
9 PLAN TO INCLUDE THE PROVISIONS AUTHORIZED IN THE WAIVER AND SHALL
10 BEGIN IMPLEMENTING THE PLAN AUTHORIZED BY THE WAIVER; TO AMEND
11 SECTION 43-13-115, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
12 PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** (1) The Governor and the Division of Medicaid
15 shall enter into negotiations with the Centers for Medicare and
16 Medicaid Services (CMS) to obtain a waiver of applicable
17 provisions of the Medicaid laws and regulations under Section 1115
18 of the federal Social Security Act to create a plan to allow the
19 expansion of Medicaid coverage in Mississippi, which contains the
20 following provisions:

21 (a) **Overview.** (i) Private market-based health
22 coverage will be provided to adults with incomes of not more than
23 one hundred thirty-eight percent (138%) of Federal Poverty Level

24 (FPL). Most of these adults will be in working families who are
25 not offered affordable coverage options by their employer and earn
26 too much to qualify for Medicaid.
27 (ii) Newly eligible adults will have at least two
28 (2) Qualified Health Plans (QHP) offered by insurance carriers
29 contracting with the state.
30 (iii) Cost-sharing will be required for enrollees
31 with incomes of not less than fifty percent (50%) and not more
32 than one hundred thirty-eight percent (138%) of the FPL (not
33 greater than those allowable under current law), which can be
34 reduced by participating in specified healthy behavior
35 activities.
36 (iv) The Mississippi Healthy Living Account will
37 be created, and enrollees with incomes of not less than fifty
38 percent (50%) and not more than one hundred thirty-eight percent
39 (138%) of the FPL will be required to make income-based
40 contributions to health savings accounts. Enrollees cannot lose
41 or be denied Medicaid eligibility, be denied health plan
42 enrollment, or be denied access to services, and providers may not
43 deny services for failure to pay copays or premiums.
44 (b) **Duration.** The plan will automatically end if the
45 federal contribution rate falls below ninety percent (90%).
46 (c) **Coverage Groups.** The groups that will be covered
47 are:

48 (i) Newly eligible adults without dependent
49 children, who are nineteen (19) through sixty-four (64) years of
50 age with incomes of not more than one hundred thirty-eight percent
51 (138%) of the FPL;
52 (ii) Newly eligible parents who are nineteen (19)
53 through sixty-four (64) years of age with incomes more than
54 twenty-two percent (22%) and not more than one hundred
55 thirty-eight percent (138%) of the FPL; and
56 (iii) Parents with incomes of not more than
57 twenty-two percent (22%) of the FPL will be transitioned from
58 traditional Medicaid to the new plan.
59 (d) **Premiums.** The state will use Medicaid dollars to
60 pay monthly premiums directly to QHPs. Enrollees will not be
61 responsible for the premium but will be responsible to make
62 cost-sharing contributions.
63 (e) **Qualified Health Plan Choice/Benefits.** (i)
64 Enrollees will choose between at least two (2) silver level
65 marketplace QHPs. If enrollees do not choose a plan, they will be
66 automatically assigned to one (1) plan. The state must ensure
67 that beneficiaries authorize auto-assignment to a plan.
68 (ii) Enrollees will have access to at least one
69 (1) QHP that contracts with at least one (1) Federally Qualified
70 Health Center (FQHC).
71 (f) **Health Savings Account/Cost-Sharing.** (i) The
72 Mississippi Healthy Living Account will be established, which is a

73 health savings account for individuals with incomes of not less
74 than fifty percent (50%) and not more than one hundred
75 thirty-eight percent (138%) of the FPL. Contributions to the
76 healthy living account will be used to pay individuals' copays and
77 to meet other cost-sharing requirements. Enrollees will make
78 quarterly contributions to their account.

79 (ii) Cost-sharing obligations will be based on the
80 enrollee's prior six (6) months of copays, billed at the end of
81 each quarter. No cost-sharing will be required for the first six
82 (6) months of enrollment. Cost-sharing will be paid into health
83 accounts and can be reduced through compliance with healthy
84 behaviors.

85 (iii) Cost-sharing for enrollees with incomes of
86 not less than fifty percent (50%) and less than one hundred
87 percent (100%) of the FPL will be capped at two percent (2%) of
88 their income, and cost-sharing for enrollees with incomes of not
89 less than one hundred percent (100%) and not more than one hundred
90 thirty-eight percent (138%) of the FPL will be capped at five
91 percent (5%) of their income.

92 (iv) Cost-sharing will not be administered at the
93 point of service. Enrollees will make their required contribution
94 to their health savings account. The account administrator will
95 make required payments to the enrollee's provider.

96 (v) Healthy living accounts and healthy behavior
97 protocols will be developed by the state and submitted to CMS for
98 approval.
99 (g) **Enrollment Process.** The Medicaid enrollment
100 process will be modernized by implementing a data-sharing
101 initiative commonly called "Fast-Track," which will transition
102 thousands of currently eligible parents off of traditional
103 Medicaid and to the private insurance market.
104 (2) If the Governor and the Division of Medicaid are
105 successful in obtaining a Section 1115 waiver to allow the
106 expansion of Medicaid coverage in Mississippi, the division shall
107 amend the state plan to include the provisions authorized in the
108 waiver, and shall begin implementing the plan authorized by the
109 waiver after receiving CMS approval of the state plan amendment.
110 **SECTION 2.** Section 43-13-115, Mississippi Code of 1972, is
111 amended as follows:
112 43-13-115. Recipients of Medicaid shall be the following
113 persons only:
114 (1) Those who are qualified for public assistance
115 grants under provisions of Title IV-A and E of the federal Social
116 Security Act, as amended, including those statutorily deemed to be
117 IV-A and low-income families and children under Section 1931 of
118 the federal Social Security Act. For the purposes of this
119 paragraph (1) and paragraphs (8), (17) and (18) of this section,
120 any reference to Title IV-A or to Part A of Title IV of the

121 federal Social Security Act, as amended, or the state plan under
122 Title IV-A or Part A of Title IV, shall be considered as a
123 reference to Title IV-A of the federal Social Security Act, as
124 amended, and the state plan under Title IV-A, including the income
125 and resource standards and methodologies under Title IV-A and the
126 state plan, as they existed on July 16, 1996. The Department of
127 Human Services shall determine Medicaid eligibility for children
128 receiving public assistance grants under Title IV-E. The division
129 shall determine eligibility for low-income families under Section
130 1931 of the federal Social Security Act and shall redetermine
131 eligibility for those continuing under Title IV-A grants.

132 (2) Those qualified for Supplemental Security Income
133 (SSI) benefits under Title XVI of the federal Social Security Act,
134 as amended, and those who are deemed SSI eligible as contained in
135 federal statute. The eligibility of individuals covered in this
136 paragraph shall be determined by the Social Security
137 Administration and certified to the Division of Medicaid.

138 (3) Qualified pregnant women who would be eligible for
139 Medicaid as a low-income family member under Section 1931 of the
140 federal Social Security Act if her child were born. The
141 eligibility of the individuals covered under this paragraph shall
142 be determined by the division.

143 (4) [Deleted]

144 (5) A child born on or after October 1, 1984, to a
145 woman eligible for and receiving Medicaid under the state plan on

146 the date of the child's birth shall be deemed to have applied for
147 Medicaid and to have been found eligible for Medicaid under the
148 plan on the date of that birth, and will remain eligible for
149 Medicaid for a period of one (1) year so long as the child is a
150 member of the woman's household and the woman remains eligible for
151 Medicaid or would be eligible for Medicaid if pregnant. The
152 eligibility of individuals covered in this paragraph shall be
153 determined by the Division of Medicaid.

154 (6) Children certified by the State Department of Human
155 Services to the Division of Medicaid of whom the state and county
156 departments of human services have custody and financial
157 responsibility, and children who are in adoptions subsidized in
158 full or part by the Department of Human Services, including
159 special needs children in non-Title IV-E adoption assistance, who
160 are approvable under Title XIX of the Medicaid program. The
161 eligibility of the children covered under this paragraph shall be
162 determined by the State Department of Human Services.

163 (7) Persons certified by the Division of Medicaid who
164 are patients in a medical facility (nursing home, hospital,
165 tuberculosis sanatorium or institution for treatment of mental
166 diseases), and who, except for the fact that they are patients in
167 that medical facility, would qualify for grants under Title IV,
168 Supplementary Security Income (SSI) benefits under Title XVI or
169 state supplements, and those aged, blind and disabled persons who
170 would not be eligible for Supplemental Security Income (SSI)

171 benefits under Title XVI or state supplements if they were not
172 institutionalized in a medical facility but whose income is below
173 the maximum standard set by the Division of Medicaid, which
174 standard shall not exceed that prescribed by federal regulation.

175 (8) Children under eighteen (18) years of age and
176 pregnant women (including those in intact families) who meet the
177 financial standards of the state plan approved under Title IV-A of
178 the federal Social Security Act, as amended. The eligibility of
179 children covered under this paragraph shall be determined by the
180 Division of Medicaid.

181 (9) Individuals who are:

182 (a) Children born after September 30, 1983, who
183 have not attained the age of nineteen (19), with family income
184 that does not exceed one hundred percent (100%) of the nonfarm
185 official poverty level;

186 (b) Pregnant women, infants and children who have
187 not attained the age of six (6), with family income that does not
188 exceed one hundred thirty-three percent (133%) of the federal
189 poverty level; and

190 (c) Pregnant women and infants who have not
191 attained the age of one (1), with family income that does not
192 exceed one hundred eighty-five percent (185%) of the federal
193 poverty level.

194 The eligibility of individuals covered in (a), (b) and (c) of
195 this paragraph shall be determined by the division.

196 (10) Certain disabled children age eighteen (18) or
197 under who are living at home, who would be eligible, if in a
198 medical institution, for SSI or a state supplemental payment under
199 Title XVI of the federal Social Security Act, as amended, and
200 therefore for Medicaid under the plan, and for whom the state has
201 made a determination as required under Section 1902(e)(3)(b) of
202 the federal Social Security Act, as amended. The eligibility of
203 individuals under this paragraph shall be determined by the
204 Division of Medicaid.
205 (11) Until the end of the day on December 31, 2005,
206 individuals who are sixty-five (65) years of age or older or are
207 disabled as determined under Section 1614(a)(3) of the federal
208 Social Security Act, as amended, and whose income does not exceed
209 one hundred thirty-five percent (135%) of the nonfarm official
210 poverty level as defined by the Office of Management and Budget
211 and revised annually, and whose resources do not exceed those
212 established by the Division of Medicaid. The eligibility of
213 individuals covered under this paragraph shall be determined by
214 the Division of Medicaid. After December 31, 2005, only those
215 individuals covered under the 1115(c) Healthier Mississippi waiver
216 will be covered under this category.
217 Any individual who applied for Medicaid during the period
218 from July 1, 2004, through March 31, 2005, who otherwise would
219 have been eligible for coverage under this paragraph (11) if it
220 had been in effect at the time the individual submitted his or her

221 application and is still eligible for coverage under this
222 paragraph (11) on March 31, 2005, shall be eligible for Medicaid
223 coverage under this paragraph (11) from March 31, 2005, through
224 December 31, 2005. The division shall give priority in processing
225 the applications for those individuals to determine their
226 eligibility under this paragraph (11).

227 (12) Individuals who are qualified Medicare
228 beneficiaries (QMB) entitled to Part A Medicare as defined under
229 Section 301, Public Law 100-360, known as the Medicare
230 Catastrophic Coverage Act of 1988, and whose income does not
231 exceed one hundred percent (100%) of the nonfarm official poverty
232 level as defined by the Office of Management and Budget and
233 revised annually.

234 The eligibility of individuals covered under this paragraph
235 shall be determined by the Division of Medicaid, and those
236 individuals determined eligible shall receive Medicare
237 cost-sharing expenses only as more fully defined by the Medicare
238 Catastrophic Coverage Act of 1988 and the Balanced Budget Act of
239 1997.

240 (13) (a) Individuals who are entitled to Medicare Part
241 A as defined in Section 4501 of the Omnibus Budget Reconciliation
242 Act of 1990, and whose income does not exceed one hundred twenty
243 percent (120%) of the nonfarm official poverty level as defined by
244 the Office of Management and Budget and revised annually.

245 Eligibility for Medicaid benefits is limited to full payment of
246 Medicare Part B premiums.
247 (b) Individuals entitled to Part A of Medicare,
248 with income above one hundred twenty percent (120%), but less than
249 one hundred thirty-five percent (135%) of the federal poverty
250 level, and not otherwise eligible for Medicaid. Eligibility for
251 Medicaid benefits is limited to full payment of Medicare Part B
252 premiums. The number of eligible individuals is limited by the
253 availability of the federal capped allocation at one hundred
254 percent (100%) of federal matching funds, as more fully defined in
255 the Balanced Budget Act of 1997.
256 The eligibility of individuals covered under this paragraph
257 shall be determined by the Division of Medicaid.
258 (14) [Deleted]
259 (15) Disabled workers who are eligible to enroll in
260 Part A Medicare as required by Public Law 101-239, known as the
261 Omnibus Budget Reconciliation Act of 1989, and whose income does
262 not exceed two hundred percent (200%) of the federal poverty level
263 as determined in accordance with the Supplemental Security Income
264 (SSI) program. The eligibility of individuals covered under this
265 paragraph shall be determined by the Division of Medicaid and
266 those individuals shall be entitled to buy-in coverage of Medicare
267 Part A premiums only under the provisions of this paragraph (15).
268 (16) In accordance with the terms and conditions of
269 approved Title XIX waiver from the United States Department of

270 Health and Human Services, persons provided home- and
271 community-based services who are physically disabled and certified
272 by the Division of Medicaid as eligible due to applying the income
273 and deeming requirements as if they were institutionalized.

274 (17) In accordance with the terms of the federal
275 Personal Responsibility and Work Opportunity Reconciliation Act of
276 1996 (Public Law 104-193), persons who become ineligible for
277 assistance under Title IV-A of the federal Social Security Act, as
278 amended, because of increased income from or hours of employment
279 of the caretaker relative or because of the expiration of the
280 applicable earned income disregards, who were eligible for
281 Medicaid for at least three (3) of the six (6) months preceding
282 the month in which the ineligibility begins, shall be eligible for
283 Medicaid for up to twelve (12) months. The eligibility of the
284 individuals covered under this paragraph shall be determined by
285 the division.

286 (18) Persons who become ineligible for assistance under
287 Title IV-A of the federal Social Security Act, as amended, as a
288 result, in whole or in part, of the collection or increased
289 collection of child or spousal support under Title IV-D of the
290 federal Social Security Act, as amended, who were eligible for
291 Medicaid for at least three (3) of the six (6) months immediately
292 preceding the month in which the ineligibility begins, shall be
293 eligible for Medicaid for an additional four (4) months beginning
294 with the month in which the ineligibility begins. The eligibility

295 of the individuals covered under this paragraph shall be
296 determined by the division.
297 (19) Disabled workers, whose incomes are above the
298 Medicaid eligibility limits, but below two hundred fifty percent
299 (250%) of the federal poverty level, shall be allowed to purchase
300 Medicaid coverage on a sliding fee scale developed by the Division
301 of Medicaid.
302 (20) Medicaid eligible children under age eighteen (18)
303 shall remain eligible for Medicaid benefits until the end of a
304 period of twelve (12) months following an eligibility
305 determination, or until such time that the individual exceeds age
306 eighteen (18).
307 (21) Women of childbearing age whose family income does
308 not exceed one hundred eighty-five percent (185%) of the federal
309 poverty level. The eligibility of individuals covered under this
310 paragraph (21) shall be determined by the Division of Medicaid,
311 and those individuals determined eligible shall only receive
312 family planning services covered under Section 43-13-117(13) and
313 not any other services covered under Medicaid. However, any
314 individual eligible under this paragraph (21) who is also eligible
315 under any other provision of this section shall receive the
316 benefits to which he or she is entitled under that other
317 provision, in addition to family planning services covered under
318 Section 43-13-117(13).

319 The Division of Medicaid shall apply to the United States
320 Secretary of Health and Human Services for a federal waiver of the
321 applicable provisions of Title XIX of the federal Social Security
322 Act, as amended, and any other applicable provisions of federal
323 law as necessary to allow for the implementation of this paragraph
324 (21). The provisions of this paragraph (21) shall be implemented
325 from and after the date that the Division of Medicaid receives the
326 federal waiver.

327 (22) Persons who are workers with a potentially severe
328 disability, as determined by the division, shall be allowed to
329 purchase Medicaid coverage. The term "worker with a potentially
330 severe disability" means a person who is at least sixteen (16)
331 years of age but under sixty-five (65) years of age, who has a
332 physical or mental impairment that is reasonably expected to cause
333 the person to become blind or disabled as defined under Section
334 1614(a) of the federal Social Security Act, as amended, if the
335 person does not receive items and services provided under
336 Medicaid.

337 The eligibility of persons under this paragraph (22) shall be
338 conducted as a demonstration project that is consistent with
339 Section 204 of the Ticket to Work and Work Incentives Improvement
340 Act of 1999, Public Law 106-170, for a certain number of persons
341 as specified by the division. The eligibility of individuals
342 covered under this paragraph (22) shall be determined by the
343 Division of Medicaid.

344 (23) Children certified by the Mississippi Department
345 of Human Services for whom the state and county departments of
346 human services have custody and financial responsibility who are
347 in foster care on their eighteenth birthday as reported by the
348 Mississippi Department of Human Services shall be certified
349 Medicaid eligible by the Division of Medicaid until their
350 twenty-first birthday.

351 (24) Individuals who have not attained age sixty-five
352 (65), are not otherwise covered by creditable coverage as defined
353 in the Public Health Services Act, and have been screened for
354 breast and cervical cancer under the Centers for Disease Control
355 and Prevention Breast and Cervical Cancer Early Detection Program
356 established under Title XV of the Public Health Service Act in
357 accordance with the requirements of that act and who need
358 treatment for breast or cervical cancer. Eligibility of
359 individuals under this paragraph (24) shall be determined by the
360 Division of Medicaid.

361 (25) The division shall apply to the Centers for
362 Medicare and Medicaid Services (CMS) for any necessary waivers to
363 provide services to individuals who are sixty-five (65) years of
364 age or older or are disabled as determined under Section
365 1614(a)(3) of the federal Social Security Act, as amended, and
366 whose income does not exceed one hundred thirty-five percent
367 (135%) of the nonfarm official poverty level as defined by the
368 Office of Management and Budget and revised annually, and whose

369 resources do not exceed those established by the Division of
370 Medicaid, and who are not otherwise covered by Medicare. Nothing
371 contained in this paragraph (25) shall entitle an individual to
372 benefits. The eligibility of individuals covered under this
373 paragraph shall be determined by the Division of Medicaid.

374 (26) The division shall apply to the Centers for
375 Medicare and Medicaid Services (CMS) for any necessary waivers to
376 provide services to individuals who are sixty-five (65) years of
377 age or older or are disabled as determined under Section
378 1614(a)(3) of the federal Social Security Act, as amended, who are
379 end stage renal disease patients on dialysis, cancer patients on
380 chemotherapy or organ transplant recipients on antirejection
381 drugs, whose income does not exceed one hundred thirty-five
382 percent (135%) of the nonfarm official poverty level as defined by
383 the Office of Management and Budget and revised annually, and
384 whose resources do not exceed those established by the division.
385 Nothing contained in this paragraph (26) shall entitle an
386 individual to benefits. The eligibility of individuals covered
387 under this paragraph shall be determined by the Division of
388 Medicaid.

389 (27) Individuals who are entitled to Medicare Part D
390 and whose income does not exceed one hundred fifty percent (150%)
391 of the nonfarm official poverty level as defined by the Office of
392 Management and Budget and revised annually. Eligibility for

393 payment of the Medicare Part D subsidy under this paragraph shall
394 be determined by the division.
395 (28) Individuals who are eligible under the Section
396 1115 waiver obtained under Section 1 of this act.
397 The division shall redetermine eligibility for all categories
398 of recipients described in each paragraph of this section not less
399 frequently than required by federal law.
400 **SECTION 3.** This act shall take effect and be in force from
401 and after July 1, 2018.