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To: Medicaid

HOUSE BILL NO. 992

1 AN ACT TO AMEND SECTION 43-28-23, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT THE STATE OR ANY AGENCY OR INSTRUMENTALITY OF THE
3 STATE FROM SEEKING PAYMENT FOR MEDICAID BENEFITS PROVIDED TO A
4 DESIGNATED BENEFICIARY FROM A MISSISSIPPI ABLE ACCOUNT; TO AMEND
5 SECTIONS 43-28-17, 43-13-120 AND 43-13-317, MISSISSIPPI CODE OF
6 1972, TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED
7 PURPOSES.

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

9 **SECTION 1.** Section 43-28-23, Mississippi Code of 1972, is
10 amended as follows:

11 43-28-23. (1) * * * Unless otherwise required by the United
12 States Social Security Act, 42 USC Section 1396p(b), the State of
13 Mississippi or any agency or instrumentality of the state, shall
14 not be considered a creditor of, and may not seek repayment for
15 any Medicaid benefits provided to, a designated beneficiary from a
16 Mississippi ABLE account that is established under this chapter or
17 its proceeds.

18 (2) Unless otherwise required by the United States Social
19 Security Act, 42 USC Section 1396p(b), a Mississippi ABLE account
20 established under this chapter or funds distributed from a

21 Mississippi ABLE account established under this chapter upon the
22 death of a qualified beneficiary shall not be considered part of
23 the "estate" of the beneficiary as that term is used in Section
24 43-13-317.

25 (* * *3) The Mississippi ABLE Coordinator shall assist and
26 cooperate with the appropriate health care administration agency
27 and the Division of Medicaid in other states which have provided
28 services to a Mississippi ABLE account beneficiary, by providing
29 the agency and divisions with the information needed to accomplish
30 the purpose and objective of this section.

31 **SECTION 2.** Section 43-28-17, Mississippi Code of 1972, is
32 amended as follows:

33 43-28-17. (1) On or before July 1, 2018, the Mississippi
34 ABLE Board shall establish and administer the Mississippi ABLE
35 Program or shall enter into a contractual relationship or into a
36 consortium with another state or states to provide qualifying
37 Mississippi residents access to enrollment in an operating ABLE
38 Program. Before implementing the program, the board shall obtain
39 a written opinion from counsel specializing in:

40 (a) Federal tax matters which indicate that the
41 Mississippi ABLE Program is designed to comply with Section 529A
42 of the Internal Revenue Code; and

43 (b) Federal securities law which indicate that the
44 Mississippi ABLE Program and the offering of participation in the



45 program are designed to comply with applicable federal securities
46 law and qualify for the available tax exemptions under such law.

47 (2) The Mississippi ABLE account participation agreement
48 must include provisions specifying that:

49 (a) The participation agreement is only an obligation
50 of the Mississippi ABLE Program and the ABLE Trust Fund and is not
51 an obligation of the state;

52 (b) Participation in the Mississippi ABLE Program does
53 not guarantee that sufficient funds will be available to cover all
54 qualified disability expenses for any designated beneficiary and
55 does not guarantee the receipt or continuation of any product or
56 service for the designated beneficiary;

57 (c) The designated beneficiary must be a resident of
58 this state or a resident of a contracting or consortium state at
59 the time the ABLE account is established;

60 (d) The establishment of an ABLE account in violation
61 of federal law is prohibited;

62 (e) Contributions in excess of the limitations set
63 forth in Section 529A of the Internal Revenue Code are prohibited;

64 (f) * * * Unless otherwise required by the United
65 States Social Security Act, 42 USC Section 1396p(b), the state is
66 not a creditor of ABLE accounts; and

67 (g) Material misrepresentations by a party to the
68 participation agreement, other than the board in the application
69 for the participation agreement or in any communication with the



70 board regarding the Mississippi ABLE Program may result in the
71 involuntary liquidation of the ABLE account. If an account is
72 involuntarily liquidated, the designated beneficiary is entitled
73 to a refund, subject to any fees or penalties provided by the
74 participation agreement and the Internal Revenue Code.

75 (3) The participation agreement may include provisions
76 specifying:

77 (a) The requirements and applicable restrictions for
78 opening an ABLE account;

79 (b) The eligibility requirements for a party to a
80 participation agreement and the rights of the party;

81 (c) The requirements and applicable restrictions for
82 making contributions to an ABLE account;

83 (d) The requirements and applicable restrictions for
84 directing the investment of the contributions or balance of the
85 ABLE account;

86 (e) The administrative fee and other fees and penalties
87 applicable to an ABLE account;

88 (f) The terms and conditions under which an ABLE
89 account or participation agreement may be modified, transferred or
90 terminated;

91 (g) The disposition of abandoned ABLE accounts; and

92 (h) Any other terms and conditions determined to be
93 necessary or proper to conform the participation agreement with
94 the requirements of Section 529A of the Internal Revenue Code.



95 (4) The participation agreement may be amended throughout
96 its term for purposes that include, but are not limited to,
97 allowing a participant to increase or decrease the level of
98 participation and to change designated beneficiaries and other
99 matters authorized by this section and Section 529A of the
100 Internal Revenue Code.

101 (5) Notwithstanding any other provision of law, the
102 Mississippi ABLE Board, acting through the ABLE Coordinator, may
103 enter into an agreement with contracting states which either allow
104 Mississippi residents to participate under the design, operation,
105 and rules of a contracting state's qualified ABLE Program or which
106 allows residents of a participating contracting state to
107 participate under the Mississippi ABLE Program.

108 (6) The Mississippi ABLE Program shall continue in existence
109 until terminated by law. If the Mississippi ABLE Board determines
110 that the program is financially infeasible, the board shall submit
111 its recommendation, in the form of a feasibility report, to the
112 Legislature to terminate the program.

113 **SECTION 3.** Section 43-13-120, Mississippi Code of 1972, is
114 amended as follows:

115 43-13-120. (1) Any person who is a Medicaid recipient and
116 is receiving medical assistance for services provided in a
117 long-term care facility under the provisions of Section 43-13-117
118 from the Division of Medicaid in the Office of the Governor, who
119 dies intestate and leaves no known heirs, shall have deemed,



120 through his acceptance of such medical assistance, the Division of
121 Medicaid as his beneficiary to all such funds in an amount not to
122 exceed Two Hundred Fifty Dollars (\$250.00) which are in his
123 possession at the time of his death. Such funds, together with
124 any accrued interest thereon, shall be reported by the long-term
125 care facility to the State Treasurer in the manner provided in
126 subsection (2).

127 (2) The report of such funds shall be verified, shall be on
128 a form prescribed or approved by the Treasurer, and shall include
129 (a) the name of the deceased person and his last known address
130 prior to entering the long-term care facility; (b) the name and
131 last known address of each person who may possess an interest in
132 such funds; and (c) any other information which the Treasurer
133 prescribes by regulation as necessary for the administration of
134 this section. The report shall be filed with the Treasurer prior
135 to November 1 of each year in which the long-term care facility
136 has provided services to a person or persons having funds to which
137 this section applies.

138 (3) Within one hundred twenty (120) days from November 1 of
139 each year in which a report is made pursuant to subsection (2),
140 the Treasurer shall cause notice to be published in a newspaper
141 having general circulation in the county of this state in which is
142 located the last known address of the person or persons named in
143 the report who may possess an interest in such funds, or if no
144 such person is named in the report, in the county in which is



145 located the last known address of the deceased person prior to
146 entering the long-term care facility. If no address is given in
147 the report or if the address is outside of this state, the notice
148 shall be published in a newspaper having general circulation in
149 the county in which the facility is located. The notice shall
150 contain (a) the name of the deceased person; (b) his last known
151 address prior to entering the facility; (c) the name and last
152 known address of each person named in the report who may possess
153 an interest in such funds; and (d) a statement that any person
154 possessing an interest in such funds must make a claim therefor to
155 the Treasurer within ninety (90) days after such publication date
156 or the funds will become the property of the State of Mississippi.
157 In any year in which the Treasurer publishes a notice of abandoned
158 property under Section 89-12-27, the Treasurer may combine the
159 notice required by this section with the notice of abandoned
160 property. The cost to the Treasurer of publishing the notice
161 required by this section shall be paid by the Division of
162 Medicaid.

163 (4) Each long-term care facility that makes a report of
164 funds of a deceased person under this section shall pay over and
165 deliver such funds, together with any accrued interest thereon, to
166 the Treasurer not later than ten (10) days after notice of such
167 funds has been published by the Treasurer as provided in
168 subsection (3). If a claim to such funds is not made by any
169 person having an interest therein within ninety (90) days of the

170 published notice, the Treasurer shall place such funds in the
171 special account in the State Treasury to the credit of the
172 "Governor's Office - Division of Medicaid" to be expended by the
173 Division of Medicaid for the purposes provided under Mississippi
174 Medicaid Law.

175 (5) This section shall not be applicable to any Medicaid
176 patient in a long-term care facility of a state institution listed
177 in Section 41-7-73, who has a personal deposit fund as provided
178 for in Section 41-7-90; and shall not be applicable to amounts in
179 Mississippi ABLE accounts created under Section 43-28-1 et seq.,
180 unless otherwise required by the United States Social Security
181 Act, 42 USC Section 1396p(b).

182 **SECTION 4.** Section 43-13-317, Mississippi Code of 1972, is
183 amended as follows:

184 43-13-317. (1) The division shall be noticed as an
185 identified creditor against the estate of any deceased Medicaid
186 recipient under Section 91-7-145.

187 (2) In accordance with applicable federal law and rules and
188 regulations, including those under Title XIX of the federal Social
189 Security Act, the division may seek recovery of payments for
190 nursing facility services, home- and community-based services and
191 related hospital and prescription drug services from the estate of
192 a deceased Medicaid recipient who was fifty-five (55) years of age
193 or older when he or she received the assistance. The claim shall
194 be waived by the division (a) if there is a surviving spouse; or



195 (b) if there is a surviving dependent who is under the age of
196 twenty-one (21) years or who is blind or disabled; or (c) as
197 provided by federal law and regulation, if it is determined by the
198 division or by court order that there is undue hardship.

199 (3) This section shall not be applicable to amounts in
200 Mississippi ABLE accounts created under Section 43-28-1 et seq.,
201 unless otherwise required by the United States Social Security
202 Act, 42 USC Section 1396p(b).

203 **SECTION 5.** This act shall take effect and be in force from
204 and after July 1, 2025.

