

By: Senator(s) Blackwell

To: Medicaid

## SENATE BILL NO. 2396

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



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

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

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

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

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

(b) Federal securities law which indicate that the  
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



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

(3) The participation agreement may include provisions specifying:

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

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

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

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

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

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

(g) The disposition of abandoned ABLE accounts; and

(h) Any other terms and conditions determined to be necessary or proper to conform the participation agreement with 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



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

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



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

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

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

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

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





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

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

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

