MISSISSIPPI LEGISLATURE REGULAR SESSION 2002

By: Representative Holland

To: Public Health and Welfare; Appropriations

HOUSE BILL NO. 714

AN ACT TO AMEND SECTION 43-13-107, MISSISSIPPI CODE OF 1972, TO CREATE THE MISSISSIPPI MEDICAID COMMISSION TO ADMINISTER THE MEDICAID PROGRAM; TO PROVIDE FOR THE MEMBERSHIP AND APPOINTMENT OF THE COMMISSION; TO PROVIDE THAT THE EXECUTIVE DIRECTOR OF THE COMMISSION SHALL BE APPOINTED BY THE COMMISSION; TO ABOLISH THE DIVISION OF MEDICAID AND TRANSFER THE POWERS, DUTIES, PROPERTY AND EMPLOYEES OF THE DIVISION TO THE MEDICAID COMMISSION; TO AMEND SECTIONS 43-13-103, 43-13-105, 43-13-109, 43-13-111, 43-13-113, 43-13-115, 43-13-115.1, 43-13-116, 43-13-117, 43-13-118, 43-13-120, 43-13-121, 43-13-122, 43-13-123, 43-13-125, 43-13-127, 43-13-137 AND 43-13-139, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 43-13-107, Mississippi Code of 1972, is amended as follows:

43-13-107. (1) (a) The Mississippi Medicaid Commission is created *** * *** to administer this article and perform such other duties as are prescribed by law. The commission shall consist of seven (7) members appointed by the Governor. All initial and subsequent appointments to the commission shall be with the advice and consent of the Senate.

(b) All members of the commission shall be persons who have some knowledge or practical experience in matters under the jurisdiction of the commission. Three (3) members of the commission shall be persons who are not providers or representative of any provider of Medicaid services or have any financial or other interest in any provider of Medicaid services. No commission member shall be an elected official of the State of Mississippi or a political subdivision of the state.

(c) One (1) member of the commission shall be appointed from each congressional district as constituted on July 1, 2002, and one (1) member of the commission shall be appointed from each

Supreme Court district. The initial members of the commission shall be appointed for staggered terms, as follows: Two (2) members shall be appointed for terms that end on June 30, 2004; three (3) members shall be appointed for terms that end on June 30, 2006; and two (2) members shall be appointed for terms that end on June 30, 2008. All subsequent appointments to the commission shall be for terms of six (6) years from the expiration date of the previous term. No person shall be appointed to the commission for more than two (2) consecutive terms.

(d) Any vacancy on the commission before the expiration of a term shall be filled by appointment of the Governor, with the advice and consent of the Senate. The person appointed to fill the vacancy shall serve for the remainder of the unexpired term.

(e) The members of the commission shall select one (1) member to serve as chairman of the commission. The commission shall select a chairman once every two (2) years, and any person who has previously served as chairman may be reelected as chairman.

(f) Four (4) members of the commission shall constitute a quorum for the transaction of any business of the commission. The commission shall hold regular monthly meetings, and other meetings as may be necessary for the purpose of conducting such business as may be required. All meetings shall be called by the chairman or by a majority of the members of the commission, except the first meeting, which shall be called by the Governor. Any member who does not attend three (3) consecutive regular meetings of the commission, except for illness, shall be subject to removal by a majority vote of the members of the commission.

(g) Members of the commission shall receive the per diem authorized under Section 25-3-69 for each day spent actually discharging their official duties, and shall receive reimbursement for mileage and necessary travel expenses incurred as provided in Section 25-3-41.

(2) (a) The commission shall appoint a full-time executive director * * * who shall be either (i) a physician with administrative experience in a medical care or health program, or (ii) a person holding a graduate degree in medical care administration, public health, hospital administration, or the equivalent, or (iii) a person holding a bachelor's degree in business administration or hospital administration, with at least ten (10) years' experience in management-level administration of Medicaid programs, and who shall serve at the will and pleasure of the commission. The executive director shall be the official secretary and legal custodian of the records of the commission; shall be the agent of the commission for the purpose of receiving all service of process, summons and notices directed to the commission; and shall perform such other duties as the commission may prescribe from time to time * * *.

(b) The executive director, with the approval of the commission and subject to the rules and regulations of the State Personnel Board, shall employ such professional, administrative, stenographic, secretarial, clerical and technical assistance as may be necessary to perform the duties required by the commission in administering this article and fix the compensation therefor, all in accordance with a state merit system meeting federal requirements. When the salary of the executive director is not set by law, that salary shall be set by the State Personnel Board. * * * The provisions of Section 25-9-107(c)(xv) shall apply to the executive director and other administrative heads of the commission.

(c) The provision of paragraph (a) of this subsection providing that the executive director shall be appointed by the commission shall not be applicable until the executive director who holds the office on July 1, 2002, has vacated the office, or January 1, 2004, whichever is earlier.

(3) (a) There is established a Medical Care Advisory Committee, which shall be the committee that is required by federal regulation to advise the commission about health and medical care services.

(b) The advisory committee shall consist of not less than eleven (11) members, as follows:

(i) The Governor shall appoint five (5) members, one (1) from each congressional district as * * * constituted on July 1, 2002, and one (1) from the state at large;

(ii) The Lieutenant Governor shall appoint three (3) members, one (1) from each Supreme Court district;

(iii) The Speaker of the House of Representatives shall appoint three (3) members, one (1) from each Supreme Court district.

All members appointed under this paragraph shall either be health care providers or consumers of health care services. One (1) member appointed by each of the appointing authorities shall be a board certified physician.

(c) The respective chairmen of the House Public Health and Welfare Committee, the House Appropriations Committee, the Senate Public Health and Welfare Committee and the Senate Appropriations Committee, or their designees, one (1) member of the State Senate appointed by the Lieutenant Governor and one (1) member of the House of Representatives appointed by the Speaker of the House, shall serve as ex officio nonvoting members of the advisory committee.

(d) In addition to the committee members required by paragraph (b), the advisory committee shall consist of such other members as are necessary to meet the requirements of the federal regulation applicable to the * * * advisory committee, who shall be appointed as provided in the federal regulation.

(e) The chairmanship of the * * * advisory committee shall alternate for twelve-month periods between the chairmen of

the House and Senate Public Health and Welfare Committees, with the Chairman of the House Public Health and Welfare Committee serving as the first chairman.

(f) The members of the advisory committee specified in paragraph (b) shall serve for terms that are concurrent with the terms of members of the Legislature, and any member appointed under paragraph (b) may be reappointed to the advisory committee. The members of the advisory committee specified in paragraph (b) shall serve without compensation, but shall receive reimbursement to defray actual expenses incurred in the performance of committee business as authorized by law. Legislators shall receive per diem and expenses which may be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session.

(g) The advisory committee shall meet not less than quarterly, and advisory committee members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(h) The executive director of the commission shall submit to the advisory committee all amendments, modifications and changes to the state plan for the operation of the Medicaid program, for review by the advisory committee before the amendments, modifications or changes may be implemented by the commission.

(i) The advisory committee, among its duties and responsibilities, shall:

(i) Advise the commission with respect to amendments, modifications and changes to the state plan for the operation of the Medicaid program;

(ii) Advise the commission with respect to issues concerning receipt and disbursement of funds and eligibility for Medicaid;

(iii) Advise the commission with respect to determining the quantity, quality and extent of medical care provided under this article;

(iv) Communicate the views of the medical care professions to the commission and communicate the views of the commission to the medical care professions;

(v) Gather information on reasons that medical care providers do not participate in the Medicaid program and changes that could be made in the program to encourage more providers to participate in the Medicaid program, and advise the commission with respect to encouraging physicians and other medical care providers to participate in the Medicaid program;

(vi) Provide a written report on or before November 30 of each year to the Governor, Lieutenant Governor and Speaker of the House of Representatives.

(4) The Division of Medicaid in the Office of the Governor is abolished. Employees of the Division of Medicaid holding positions on June 30, 2002, shall be employees of the Mississippi Medicaid Commission on July 1, 2002. All of the powers and duties of the Division of Medicaid are transferred to the Mississippi Medicaid Commission. Any property, contractual rights and obligations and unexpended funds of the Division of Medicaid are transferred to the Mississippi Medicaid Commission.

SECTION 2. Section 43-13-103, Mississippi Code of 1972, is amended as follows:

43-13-103. For the purpose of affording health care and remedial and institutional services in accordance with the requirements for federal grants and other assistance under Titles XVIII, XIX and XXI of the Social Security Act, as amended, a statewide system of medical assistance is established and shall be in effect in all political subdivisions of the state. The medical assistance program shall be known as the Medicaid program, and it shall be financed by state appropriations and federal matching

funds therefor, and shall be administered by the Mississippi Medicaid Commission as * * * provided in this article.

SECTION 3. Section 43-13-105, Mississippi Code of 1972, is amended as follows:

43-13-105. When used in this article, the following definitions shall apply, unless the context requires otherwise:

(a) "Administering agency" means the Mississippi Medicaid Commission.

(b) "Commission" means the Mississippi Medicaid Commission created by Section 43-13-107.

(c) "Medical assistance" means payment of part or all of the costs of medical and remedial care provided under the terms of this article and in accordance with provisions of Titles XIX and XXI of the Social Security Act, as amended.

(d) "Applicant" means a person who applies for assistance under Titles IV, XVI, XIX or XXI of the Social Security Act, as amended, and under the terms of this article.

(e) "Recipient" means a person who is eligible for assistance under Title XIX or XXI of the Social Security Act, as amended and under the terms of this article.

(f) "State health agency" * * * means any agency, department, institution, board or commission of the State of Mississippi, except the University of Mississippi Medical School, which is supported in whole or in part by any public funds, including funds directly appropriated from the State Treasury, funds derived by taxes, fees levied or collected by statutory authority, or any other funds used by "state health agencies" derived from federal sources, when any funds available to such agency are expended either directly or indirectly in connection with, or in support of, any public health, hospital, hospitalization or other public programs for the preventive treatment or actual medical treatment of persons who are physically or mentally ill or mentally retarded.

(g) "Division of Medicaid * * *" or "division" when referring to the Division of Medicaid, wherever they appear in the laws of the State of Mississippi or in any rule, regulation or document, * * * means the Mississippi Medicaid Commission.

SECTION 4. Section 43-13-109, Mississippi Code of 1972, is amended as follows:

43-13-109. The commission may adopt reasonable rules and regulations to provide for an open, competitive or qualifying examination for all employees of the commission other than the executive director, part-time consultants and professional staff members.

SECTION 5. Section 43-13-111, Mississippi Code of 1972, is amended as follows:

43-13-111. Every state health agency, as defined in Section 43-13-105, shall obtain an appropriation of state funds from the State Legislature for all medical assistance programs rendered by the agency, and shall organize its programs and budgets in such a manner as to secure maximum federal funding through the commission under Title XIX or Title XXI of the federal Social Security Act, as amended.

SECTION 6. Section 43-13-113, Mississippi Code of 1972, is amended as follows:

43-13-113. (1) The State Treasurer shall receive on behalf of the state, and execute all instruments incidental thereto, federal and other funds to be used for financing the Medicaid program under this article, and place all those funds in a special fund in the State Treasury to the credit of the commission, which funds shall be expended by the commission for the purposes and under the provisions of this article, and shall be paid out by the State Treasurer as funds appropriated to carry out the provisions of this article are paid out by him.

(2) The commission shall issue all checks or electronic transfers for administrative expenses, and for medical assistance

under the provisions of this article. All those checks or electronic transfers shall be drawn upon funds made available to the commission by the State Fiscal Officer, upon requisition of the executive director, with the approval of the commission. It is the purpose of this section to provide that the State Fiscal Officer shall transfer, in lump sums, amounts to the commission for disbursement under the regulations adopted by the commission. However, the commission, or its fiscal agent in behalf of the commission, shall be authorized in maintaining separate accounts with a Mississippi bank to handle claim payments, refund recoveries and related Medicaid program financial transactions, to aggressively manage the float in these accounts while awaiting clearance of checks or electronic transfers and/or other disposition so as to accrue maximum interest advantage of the funds in the account, and to retain all earned interest on these funds to be applied to match federal funds for Medicaid program operations.

(3) Disbursement of funds to providers shall be made as follows:

(a) All providers must submit all claims to the * * * fiscal agent of the commission no later than twelve (12) months from the date of service.

(b) The * * * fiscal agent of the commission must pay ninety percent (90%) of all clean claims within thirty (30) days of the date of receipt.

(c) The * * * fiscal agent of the commission must pay ninety-nine percent (99%) of all clean claims within ninety (90) days of the date of receipt.

(d) The * * * fiscal agent of the commission must pay all other claims within twelve (12) months of the date of receipt.

(e) If a claim is neither paid nor denied for valid and proper reasons by the end of the time periods as specified above, the * * * fiscal agent of the commission must pay the provider

interest on the claim at the rate of one and one-half percent (1-1/2%) per month on the amount of the claim until it is finally settled or adjudicated.

(4) The date of receipt is the date the fiscal agent receives the claim as indicated by its date stamp on the claim or, for those claims filed electronically, the date of receipt is the date of transmission.

(5) The date of payment is the date of the check or, for those claims paid by electronic funds transfer, the date of the transfer.

(6) The above specified time limitations do not apply in the following circumstances:

(a) Retroactive adjustments paid to providers reimbursed under a retrospective payment system;

(b) If a claim for payment under Medicare has been filed in a timely manner, the fiscal agent may pay a Medicaid claim relating to the same services within six (6) months after it, or the provider, receives notice of the disposition of the Medicare claim;

(c) Claims from providers under investigation for fraud or abuse; and

(d) The commission and/or its fiscal agent may make payments at any time in accordance with a court order, to carry out hearing decisions or corrective actions taken to resolve a dispute, or to extend the benefits of a hearing decision, corrective action, or court order to others in the same situation as those directly affected by it.

*** * ***

(7) If sufficient funds are appropriated therefor by the Legislature, the commission may contract with the Mississippi Dental Association, or an approved designee, to develop and operate a Donated Dental Services (DDS) program through which volunteer dentists will treat needy disabled, aged and

medically-compromised individuals who are non-Medicaid eligible recipients.

SECTION 7. Section 43-13-115, Mississippi Code of 1972, is amended as follows:

43-13-115. Recipients of Medicaid shall be the following persons only:

(1) Who are qualified for public assistance grants under provisions of Title IV-A and E of the federal Social Security Act, as amended, as determined by the State Department of Human Services, including those statutorily deemed to be IV-A and low-income families and children under Section 1931 of the Social Security Act as determined by the State Department of Human Services and certified to the commission, but not optional groups except as specifically covered in this section. For the purposes of this paragraph (1) and paragraphs (8), (17) and (18) of this section, any reference to Title IV-A or to Part A of Title IV of the federal Social Security Act, as amended, or the state plan under Title IV-A or Part A of Title IV, shall be considered as a reference to Title IV-A of the federal Social Security Act, as amended, and the state plan under Title IV-A, including the income and resource standards and methodologies under Title IV-A and the state plan, as they existed on July 16, 1996.

(2) Those qualified for Supplemental Security Income (SSI) benefits under Title XVI of the federal Social Security Act, as amended. The eligibility of individuals covered in this paragraph shall be determined by the Social Security Administration and certified to the commission.

(3) [Deleted]

(4) [Deleted]

(5) A child born on or after October 1, 1984, to a woman eligible for and receiving Medicaid under the state plan on the date of the child's birth shall be deemed to have applied for Medicaid and to have been found eligible for Medicaid under the

plan on the date of that birth, and will remain eligible for Medicaid for a period of one (1) year so long as the child is a member of the woman's household and the woman remains eligible for Medicaid or would be eligible for Medicaid if pregnant. The eligibility of individuals covered in this paragraph shall be determined by the State Department of Human Services and certified to the commission.

(6) Children certified by the State Department of Human Services to the commission of whom the state and county departments of human services have custody and financial responsibility, and children who are in adoptions subsidized in full or part by the Department of Human Services, including special needs children in non-Title IV-E adoption assistance, who are approvable under Title XIX of the Medicaid program.

(7) (a) Persons certified by the commission who are patients in a medical facility (nursing home, hospital, tuberculosis sanatorium or institution for treatment of mental diseases), and who, except for the fact that they are patients in such medical facility, would qualify for grants under Title IV, Supplementary Security Income (SSI) benefits under Title XVI or state supplements, and those aged, blind and disabled persons who would not be eligible for Supplemental Security Income (SSI) benefits under Title XVI or state supplements if they were not institutionalized in a medical facility but whose income is below the maximum standard set by the commission, which standard shall not exceed that prescribed by federal regulation;

(b) Individuals who have elected to receive hospice care benefits and who are eligible using the same criteria and special income limits as those in institutions as described in subparagraph (a) of this paragraph (7).

(8) Children under eighteen (18) years of age and pregnant women (including those in intact families) who meet the * * * financial standards of the state plan approved under

Title IV-A of the federal Social Security Act, as amended. The eligibility of children covered under this paragraph shall be determined by the State Department of Human Services and certified to the commission.

(9) Individuals who are:

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

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

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

The eligibility of individuals covered in (a), (b) and (c) of this paragraph shall be determined by the Department of Human Services.

(10) Certain disabled children age eighteen (18) or under who are living at home, who would be eligible, if in a medical institution, for SSI or a state supplemental payment under Title XVI of the federal Social Security Act, as amended, and therefore for Medicaid under the plan, and for whom the state has made a determination as required under Section 1902(e)(3)(b) of the federal Social Security Act, as amended. The eligibility of individuals under this paragraph shall be determined by the commission.

(11) Individuals who are sixty-five (65) years of age or older or are disabled as determined under Section 1614(a)(3) of the federal Social Security Act, as amended, and whose income does not exceed one hundred thirty-five percent (135%) of the nonfarm

official poverty level as defined by the Office of Management and Budget and revised annually, and whose resources do not exceed those established by the commission.

The eligibility of individuals covered under this paragraph shall be determined by the commission, and those individuals determined eligible shall receive the same Medicaid services as other categorical eligible individuals.

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

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

(13) (a) Individuals who are entitled to Medicare Part A as defined in Section 4501 of the Omnibus Budget Reconciliation Act of 1990, and whose income does not exceed one hundred twenty percent (120%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually. Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums.

(b) Individuals entitled to Part A of Medicare, with income above one hundred twenty percent (120%), but less than one hundred thirty-five percent (135%) of the federal poverty level, and not otherwise eligible for Medicaid. Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums. The number of eligible individuals is limited by the availability of the federal capped allocation at one hundred

percent (100%) of federal matching funds, as more fully defined in the Balanced Budget Act of 1997.

(c) Individuals entitled to Part A of Medicare, with income of at least one hundred thirty-five percent (135%), but not exceeding one hundred seventy-five percent (175%) of the federal poverty level, and not otherwise eligible for Medicaid. Eligibility for Medicaid benefits is limited to partial payment of Medicare Part B premiums. The number of eligible individuals is limited by the availability of the federal capped allocation of one hundred percent (100%) federal matching funds, as more fully defined in the Balanced Budget Act of 1997.

The eligibility of individuals covered under this paragraph shall be determined by the commission.

(14) [Deleted]

(15) Disabled workers who are eligible to enroll in Part A Medicare as required by Public Law 101-239, known as the Omnibus Budget Reconciliation Act of 1989, and whose income does not exceed two hundred percent (200%) of the federal poverty level as determined in accordance with the Supplemental Security Income (SSI) program. The eligibility of individuals covered under this paragraph shall be determined by the commission and those individuals shall be entitled to buy-in coverage of Medicare Part A premiums only under the provisions of this paragraph (15).

(16) In accordance with the terms and conditions of approved Title XIX waiver from the United States Department of Health and Human Services, persons provided home- and community-based services who are physically disabled and certified by the commission as eligible due to applying the income and deeming requirements as if they were institutionalized.

(17) In accordance with the terms of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), persons who become ineligible for assistance under Title IV-A of the federal Social Security Act, as

amended, because of increased income from or hours of employment of the caretaker relative or because of the expiration of the applicable earned income disregards, who were eligible for Medicaid for at least three (3) of the six (6) months preceding the month in which the ineligibility begins, shall be eligible for Medicaid *** * *** for up to twenty-four (24) months; however, Medicaid may be provided for more than twelve (12) months *** * *** only if a federal waiver is obtained to allow Medicaid to be provided for more than twelve (12) months and federal and state funds are available to provide Medicaid for that purpose.

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

(19) Disabled workers, whose incomes are above the Medicaid eligibility limits, but below two hundred fifty percent (250%) of the federal poverty level, shall be allowed to purchase Medicaid coverage on a sliding fee scale developed by the commission.

(20) Medicaid eligible children under age eighteen (18) shall remain eligible for Medicaid benefits until the end of a period of twelve (12) months following an eligibility determination, or until such time that the individual exceeds age eighteen (18).

(21) Women of childbearing age whose family income does not exceed one hundred eighty-five percent (185%) of the federal poverty level. The eligibility of individuals covered under this paragraph (21) shall be determined by the commission, and those

individuals determined eligible shall only receive family planning services covered under Section 43-13-117(13) and not any other services covered under Medicaid. However, any individual eligible under this paragraph (21) who is also eligible under any other provision of this section shall receive the benefits to which he or she is entitled under that other provision, in addition to family planning services covered under Section 43-13-117(13).

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

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

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

The commission shall apply to the United States Secretary of Health and Human Services for a federal waiver of the applicable provisions of Title XIX of the federal Social Security Act, as amended, and any other applicable provisions of federal law as necessary to allow for the implementation of this paragraph (22). The provisions of this paragraph (22) shall be implemented from and after the date that the commission receives the federal waiver.

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

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

(25) Individuals who would be eligible for services in a nursing home but who live in a noninstitutional setting, whose income does not exceed the amount prescribed by federal regulation for nursing home care, and who regularly expend more than fifty percent (50%) of their monthly income on prescription drugs and over-the-counter drugs.

The eligibility of individuals covered under this paragraph (25) shall be determined by the commission. The individuals

determined eligible shall be eligible only for prescription drugs and over-the-counter drugs covered under Section 43-13-117(9) and not for any other services covered under Section 43-13-117.

The commission shall apply to the United States Secretary of Health and Human Services for a federal waiver of the applicable provisions of Title XIX of the federal Social Security Act, as amended, and any other applicable provisions of federal law as necessary to allow for the implementation of this paragraph (25). The provisions of this paragraph (25) shall be implemented from and after the date that the commission receives the federal waiver.

SECTION 8. Section 43-13-115.1, Mississippi Code of 1972, is amended as follows:

43-13-115.1. (1) There will be presumptive eligibility under this article for children under nineteen (19) years of age, in accordance with the following provisions:

(a) A child will be deemed to be presumptively eligible for covered benefits and services under this article if a qualified entity as defined under federal law (42 USCS Section 1396r-1a) determines, on the basis of preliminary information, that the family income of the child does not exceed the applicable income level of eligibility under the state Medicaid plan.

(b) A child will be presumptively eligible under this article from the date that the qualified entity determines that the child is presumptively eligible until the earlier of either:

(i) The date on which a determination is made with respect to the eligibility of the child for covered benefits and services under this article, or

(ii) The last day of the month following the month in which presumptive eligibility is determined, if an application has not been filed on behalf of the child by that day.

(c) For the period during which a child is presumptively eligible under this article, the child will be

eligible to receive all covered benefits and services under this article.

(d) If a child is determined to be presumptively eligible under this article, the child's parent, guardian or caretaker relative must submit a completed application for Medicaid *** * *** no later than the last day of the month following the month in which presumptive eligibility is determined. The qualified entity shall inform the parent, guardian or caretaker relative of this requirement at the time the qualified entity makes the determination of presumptive eligibility.

(e) The qualified entity shall notify the commission of the determination of presumptive eligibility within five (5) working days after the date on which the determination is made.

(f) The commission shall provide qualified entities with such forms as are necessary for an application to be made on behalf of a child for eligibility under this article. The commission shall make those application forms and the application process itself as simple as possible.

SECTION 9. Section 43-13-116, Mississippi Code of 1972, is amended as follows:

43-13-116. (1) The commission shall fully implement and carry out the administrative functions of determining the eligibility of those persons who qualify for Medicaid under Section 43-13-115.

(2) In determining Medicaid eligibility, the commission may enter into an agreement with the Secretary of the Department of Health and Human Services for the purpose of securing the transfer of eligibility information from the Social Security Administration on those individuals receiving Supplemental Security Income (SSI) benefits under the federal Social Security Act and any other information necessary in determining Medicaid eligibility. In addition, the commission may enter into contractual arrangements with its fiscal agent or with the State Department of Human

Services in securing electronic data processing support as may be necessary.

(3) Administrative hearings shall be available to any applicant who requests it because his or her claim of eligibility for services is denied or is not acted upon with reasonable promptness or by any recipient who requests it because he or she believes the commission has erroneously taken action to deny, reduce, or terminate benefits. The commission need not grant a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients. Eligibility determinations that are made by other agencies and certified to the commission under Section 43-13-115 are not subject to the administrative hearing procedures of the commission, but are subject to the administrative hearing procedures of the agency that determined eligibility.

(a) A request may be made either for a local regional office hearing or a state office hearing when the local regional office has made the initial decision that the claimant seeks to appeal or when the regional office has not acted with reasonable promptness in making a decision on a claim for eligibility or services. The only exception to requesting a local hearing is when the issue under appeal involves either (i) a disability or blindness denial, or termination, or (ii) a level of care denial or termination for a disabled child living at home. An appeal involving disability, blindness or level of care must be handled as a state level hearing. The decision from the local hearing may be appealed to the state office for a state hearing. A decision to deny, reduce or terminate benefits that is initially made at the state office may be appealed by requesting a state hearing.

(b) A request for a hearing, either state or local, must be made in writing by the claimant or claimant's legal representative. "Legal representative" includes the claimant's authorized representative, an attorney retained by the claimant or

claimant's family to represent the claimant, a paralegal representative with a legal aid services, a parent of a minor child if the claimant is a child, a legal guardian or conservator or an individual with power of attorney for the claimant. The claimant may also be represented by anyone that he or she so designates but must give the designation to the Medicaid regional office or state office in writing, if the person is not the legal representative, legal guardian, or authorized representative.

(c) The claimant may make a request for a hearing in person at the regional office but an oral request must be put into written form. Regional office staff will determine from the claimant if a local or state hearing is requested and assist the claimant in completing and signing the appropriate form. Regional office staff may forward a state hearing request to the appropriate division in the state office or the claimant may mail the form to the address listed on the form. The claimant may make a written request for a hearing by letter. A simple statement requesting a hearing that is signed by the claimant or legal representative is sufficient; however, if possible, the claimant should state the reason for the request. The letter may be mailed to the regional office or it may be mailed to the state office. If the letter does not specify the type of hearing desired, local or state, Medicaid staff will attempt to contact the claimant to determine the level of hearing desired. If contact cannot be made within three (3) days of receipt of the request, the request will be assumed to be for a local hearing and scheduled accordingly. A hearing will not be scheduled until either a letter or the appropriate form is received by the regional or state office.

(d) When both members of a couple wish to appeal an action or inaction by the agency that affects both applications or cases similarly and arose from the same issue, one or both may file the request for hearing, both may present evidence at the hearing, and the agency's decision will be applicable to both. If

both file a request for hearing, two (2) hearings will be registered but they will be conducted on the same day and in the same place, either consecutively or jointly, as the couple wishes. If they so desire, only one of the couple need attend the hearing.

(e) The procedure for administrative hearings shall be as follows:

(i) The claimant has thirty (30) days from the date the agency mails the appropriate notice to the claimant of its decision regarding eligibility, services, or benefits to request either a state or local hearing. This time period may be extended if the claimant can show good cause for not filing within thirty (30) days. Good cause includes, but may not be limited to, illness, failure to receive the notice, being out of state, or some other reasonable explanation. If good cause can be shown, a late request may be accepted provided the facts in the case remain the same. If a claimant's circumstances have changed or if good cause for filing a request beyond thirty (30) days is not shown, a hearing request will not be accepted. If the claimant wishes to have eligibility reconsidered, he or she may reapply.

(ii) If a claimant or representative requests a hearing in writing during the advance notice period before benefits are reduced or terminated, benefits must be continued or reinstated to the benefit level in effect before the effective date of the adverse action. Benefits will continue at the original level until the final hearing decision is rendered. Any hearing requested after the advance notice period will not be accepted as a timely request in order for continuation of benefits to apply.

(iii) Upon receipt of a written request for a hearing, the request will be acknowledged in writing within twenty (20) days and a hearing scheduled. The claimant or representative will be given at least five (5) days' advance notice of the hearing date. The local and/or state level hearings will be held

by telephone unless, at the hearing officer's discretion, it is determined that an in-person hearing is necessary. If a local hearing is requested, the regional office will notify the claimant or representative in writing of the time of the local hearing. If a state hearing is requested, the state office will notify the claimant or representative in writing of the time of the state hearing. If an in-person hearing is necessary, local hearings will be held at the regional office and state hearings will be held at the state office unless other arrangements are necessitated by the claimant's inability to travel.

(iv) All persons attending a hearing will attend for the purpose of giving information on behalf of the claimant or rendering the claimant assistance in some other way, or for the purpose of representing the commission.

(v) A state or local hearing request may be withdrawn at any time before the scheduled hearing, or after the hearing is held but before a decision is rendered. The withdrawal must be in writing and signed by the claimant or representative. A hearing request will be considered abandoned if the claimant or representative fails to appear at a scheduled hearing without good cause. If no one appears for a hearing, the appropriate office will notify the claimant in writing that the hearing is dismissed unless good cause is shown for not attending. The proposed agency action will be taken on the case following failure to appear for a hearing if the action has not already been effected.

(vi) The claimant or his representative has the following rights in connection with a local or state hearing:

(A) The right to examine at a reasonable time before the date of the hearing and during the hearing the content of the claimant's case record;

(B) The right to have legal representation at the hearing and to bring witnesses;

(C) The right to produce documentary evidence and establish all facts and circumstances concerning eligibility, services, or benefits;

(D) The right to present an argument without undue interference;

(E) The right to question or refute any testimony or evidence including an opportunity to confront and cross-examine adverse witnesses.

(vii) When a request for a local hearing is received by the regional office or if the regional office is notified by the state office that a local hearing has been requested, the Medicaid specialist supervisor in the regional office will review the case record, reexamine the action taken on the case, and determine if policy and procedures have been followed. If any adjustments or corrections should be made, the Medicaid specialist supervisor will ensure that corrective action is taken. If the request for hearing was timely made such that continuation of benefits applies, the Medicaid specialist supervisor will ensure that benefits continue at the level before the proposed adverse action that is the subject of the appeal. The Medicaid specialist supervisor will also ensure that all needed information, verification, and evidence is in the case record for the hearing.

(viii) When a state hearing is requested that appeals the action or inaction of a regional office, the regional office will prepare copies of the case record and forward it to the appropriate division in the state office no later than five (5) days after receipt of the request for a state hearing. The original case record will remain in the regional office. Either the original case record in the regional office or the copy forwarded to the state office will be available for inspection by the claimant or claimant's representative a reasonable time before the date of the hearing.

(ix) The Medicaid specialist supervisor will serve as the hearing officer for a local hearing unless the Medicaid specialist supervisor actually participated in the eligibility, benefits, or services decision under appeal, in which case the Medicaid specialist supervisor must appoint a Medicaid specialist in the regional office who did not actually participate in the decision under appeal to serve as hearing officer. The local hearing will be an informal proceeding in which the claimant or representative may present new or additional information, may question the action taken on the client's case, and will hear an explanation from agency staff as to the regulations and requirements that were applied to claimant's case in making the decision.

(x) After the hearing, the hearing officer will prepare a written summary of the hearing procedure and file it with the case record. The hearing officer will consider the facts presented at the local hearing in reaching a decision. The claimant will be notified of the local hearing decision on the appropriate form that will state clearly the reason for the decision, the policy that governs the decision, the claimant's right to appeal the decision to the state office, and, if the original adverse action is upheld, the new effective date of the reduction or termination of benefits or services if continuation of benefits applied during the hearing process. The new effective date of the reduction or termination of benefits or services must be at the end of the fifteen-day advance notice period from the mailing date of the notice of hearing decision. The notice to claimant will be made part of the case record.

(xi) The claimant has the right to appeal a local hearing decision by requesting a state hearing in writing within fifteen (15) days of the mailing date of the notice of local hearing decision. The state hearing request should be made to the regional office. If benefits have been continued pending the

local hearing process, then benefits will continue throughout the fifteen-day advance notice period for an adverse local hearing decision. If a state hearing is timely requested within the fifteen-day period, then benefits will continue pending the state hearing process. State hearings requested after the fifteen-day local hearing advance notice period will not be accepted unless the initial thirty-day period for filing a hearing request has not expired because the local hearing was held early, in which case a state hearing request will be accepted as timely within the number of days remaining of the unexpired initial thirty-day period in addition to the fifteen-day time period. Continuation of benefits during the state hearing process, however, will only apply if the state hearing request is received within the fifteen-day advance notice period.

(xii) When a request for a state hearing is received in the regional office, the request will be made part of the case record and the regional office will prepare the case record and forward it to the appropriate division in the state office within five (5) days of receipt of the state hearing request. A request for a state hearing received in the state office will be forwarded to the regional office for inclusion in the case record and the regional office will prepare the case record and forward it to the appropriate division in the state office within five (5) days of receipt of the state hearing request.

(xiii) Upon receipt of the hearing record, the commission shall assign an impartial hearing officer * * * to hear the case * * *. Hearing officers will be individuals with appropriate expertise employed by the commission and who have not been involved in any way with the action or decision on appeal in the case. The hearing officer will review the case record and if the review shows that an error was made in the action of the agency or in the interpretation of policy, or that a change of

policy has been made, the hearing officer will discuss these matters with the appropriate agency personnel and request that an appropriate adjustment be made. Appropriate agency personnel will discuss the matter with the claimant and if the claimant is agreeable to the adjustment of the claim, then agency personnel will request in writing dismissal of the hearing and the reason therefor, to be placed in the case record. If the hearing is to go forward, it shall be scheduled by the hearing officer in the manner set forth in subparagraph (iii) of this paragraph (e).

(xiv) In conducting the hearing, the state hearing officer will inform those present of the following:

(A) That the hearing will be recorded on tape and that a transcript of the proceedings will be typed for the record;

(B) The action taken by the agency which prompted the appeal;

(C) An explanation of the claimant's rights during the hearing as outlined in subparagraph (vi) of this paragraph (e);

(D) That the purpose of the hearing is for the claimant to express dissatisfaction and present additional information or evidence;

(E) That the case record is available for review by the claimant or representative during the hearing;

(F) That the final hearing decision will be rendered by the commission on the basis of facts presented at the hearing and the case record and that the claimant will be notified by letter of the final decision.

(xv) During the hearing, the claimant and/or representative will be allowed an opportunity to make a full statement concerning the appeal and will be assisted, if necessary, in disclosing all information on which the claim is based. All persons representing the claimant and those

representing the commission will have the opportunity to state all facts pertinent to the appeal. The hearing officer may recess or continue the hearing for a reasonable time should additional information or facts be required or if some change in the claimant's circumstances occurs during the hearing process which impacts the appeal. When all information has been presented, the hearing officer will close the hearing and stop the recorder.

(xvi) Immediately following the hearing the hearing tape will be transcribed and a copy of the transcription forwarded to the regional office for filing in the case record. As soon as possible, the hearing officer shall review the evidence and record of the proceedings, testimony, exhibits, and other supporting documents, prepare a written summary of the facts as the hearing officer finds them, and prepare a written recommendation of action to be taken by the agency, citing appropriate policy and regulations that govern the recommendation. The decision cannot be based on any material, oral or written, not available to the claimant before or during the hearing. The hearing officer's recommendation will become part of the case record which will be submitted to the commission for further review and decision.

(xvii) The commission, upon review of the recommendation, proceedings and the record, may sustain the recommendation of the hearing officer, reject the same, or remand the matter to the hearing officer to take additional testimony and evidence, in which case, the hearing officer thereafter shall submit to the commission a new recommendation. The commission shall prepare a written decision summarizing the facts and identifying policies and regulations that support the decision, which shall be mailed to the claimant and the representative, with a copy to the regional office if appropriate, as soon as possible after submission of a recommendation by the hearing officer. The decision notice will specify any action to be taken by the agency,

specify any revised eligibility dates or, if continuation of benefits applies, will notify the claimant of the new effective date of reduction or termination of benefits or services, which will be fifteen (15) days from the mailing date of the notice of decision. The decision rendered by the commission is final and binding. The claimant is entitled to seek judicial review in a court of proper jurisdiction.

(xviii) The commission must take final administrative action on a hearing, whether state or local, within ninety (90) days from the date of the initial request for a hearing.

(xix) A group hearing may be held for a number of claimants under the following circumstances:

(A) The commission may consolidate the cases and conduct a single group hearing when the only issue involved is one (1) of a single law or agency policy;

(B) The claimants may request a group hearing when there is one (1) issue of agency policy common to all of them.

In all group hearings, whether initiated by the commission or by the claimants, the policies governing fair hearings must be followed. Each claimant in a group hearing must be permitted to present his or her own case and be represented by his or her own representative, or to withdraw from the group hearing and have his or her appeal heard individually. As in individual hearings, the hearing will be conducted only on the issue being appealed, and each claimant will be expected to keep individual testimony within a reasonable time frame as a matter of consideration to the other claimants involved.

(xx) Any specific matter necessitating an administrative hearing not otherwise provided under this article or agency policy shall be afforded under the hearing procedures as outlined above. If the specific time frames of such a unique

matter relating to requesting, granting, and concluding of the hearing is contrary to the time frames as set out in the hearing procedures above, the specific time frames will govern over the time frames as set out within these procedures.

(4) The commission may employ eligibility, technical, clerical and supportive staff as may be required in carrying out and fully implementing the determination of Medicaid eligibility, including conducting quality control reviews and the investigation of the improper receipt of Medicaid. Staffing needs will be set forth in the annual appropriation act for the commission. Additional office space as needed in performing eligibility, quality control and investigative functions shall be obtained by the commission.

SECTION 10. Section 43-13-117, Mississippi Code of 1972, is amended as follows:

43-13-117. Medicaid authorized by this article shall include payment of part or all of the costs, at the discretion of the commission, of the following types of care and services rendered to eligible applicants who *** * *** have been determined to be eligible for that care and services, within the limits of state appropriations and federal matching funds:

(1) Inpatient hospital services.

(a) The commission shall allow thirty (30) days of inpatient hospital care annually for all Medicaid recipients. Precertification of inpatient days must be obtained as required by the commission. The commission may allow unlimited days in disproportionate hospitals as defined by the commission for eligible infants under the age of six (6) years.

(b) From and after July 1, 1994, the commission shall amend the Mississippi Title XIX Inpatient Hospital Reimbursement Plan to remove the occupancy rate penalty from the calculation of the Medicaid Capital Cost Component utilized to determine total hospital costs allocated to the Medicaid program.

(c) Hospitals will receive an additional payment for the implantable programmable baclofen drug pump used to treat spasticity which is implanted on an inpatient basis. The payment pursuant to written invoice will be in addition to the facility's per diem reimbursement and will represent a reduction of costs on the facility's annual cost report, and shall not exceed Ten Thousand Dollars ($10,000.00) per year per recipient. This paragraph (c) shall stand repealed on July 1, 2005.

(2) Outpatient hospital services. * * * Where the same services are reimbursed as clinic services, the commission may revise the rate or methodology of outpatient reimbursement to maintain consistency, efficiency, economy and quality of care. * * *

(3) Laboratory and x-ray services.

(4) Nursing facility services.

(a) The commission shall make full payment to nursing facilities for each day, not exceeding fifty-two (52) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the fifty-two-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) From and after July 1, 1997, the commission shall implement the integrated case-mix payment and quality monitoring system, which includes the fair rental system for property costs and in which recapture of depreciation is eliminated. The commission may reduce the payment for hospital leave and therapeutic home leave days to the lower of the case-mix category as computed for the resident on leave using the assessment being utilized for payment at that point in time, or a case-mix score of 1.000 for nursing facilities, and shall compute case-mix scores of residents so that only services provided at the

nursing facility are considered in calculating a facility's per diem.

(c) From and after July 1, 1997, all state-owned nursing facilities shall be reimbursed on a full reasonable cost basis.

(d) When a facility of a category that does not require a certificate of need for construction and that could not be eligible for Medicaid reimbursement is constructed to nursing facility specifications for licensure and certification, and the facility is subsequently converted to a nursing facility under a certificate of need that authorizes conversion only and the applicant for the certificate of need was assessed an application review fee based on capital expenditures incurred in constructing the facility, the commission shall allow reimbursement for capital expenditures necessary for construction of the facility that were incurred within the twenty-four (24) consecutive calendar months immediately preceding the date that the certificate of need authorizing the conversion was issued, to the same extent that reimbursement would be allowed for construction of a new nursing facility under a certificate of need that authorizes that construction. The reimbursement authorized in this subparagraph (d) may be made only to facilities the construction of which was completed after June 30, 1989. Before the commission shall be authorized to make the reimbursement authorized in this subparagraph (d), the commission first must have received approval from the Health Care Financing Administration of the United States Department of Health and Human Services of the change in the state Medicaid plan providing for the reimbursement.

(e) The commission shall develop and implement, not later than January 1, 2001, a case-mix payment add-on determined by time studies and other valid statistical data that will reimburse a nursing facility for the additional cost of caring for a resident who has a diagnosis of Alzheimer's or other

related dementia and exhibits symptoms that require special care. Any such case-mix add-on payment shall be supported by a determination of additional cost. The commission shall also develop and implement as part of the fair rental reimbursement system for nursing facility beds, an Alzheimer's resident bed depreciation enhanced reimbursement system that will provide an incentive to encourage nursing facilities to convert or construct beds for residents with Alzheimer's or other related dementia.

(f) The commission shall develop and implement a referral process for long-term care alternatives for Medicaid beneficiaries and applicants. No Medicaid beneficiary shall be admitted to a Medicaid-certified nursing facility unless a licensed physician certifies that nursing facility care is appropriate for that person on a standardized form to be prepared and provided to nursing facilities by the commission. The physician shall forward a copy of that certification to the commission within twenty-four (24) hours after it is signed by the physician. Any physician who fails to forward the certification to the commission within the time period specified in this paragraph shall be ineligible for Medicaid reimbursement for any physician's services performed for the applicant. The commission shall determine, through an assessment of the applicant conducted within two (2) business days after receipt of the physician's certification, whether the applicant also could live appropriately and cost-effectively at home or in some other community-based setting if home- or community-based services were available to the applicant. The time limitation prescribed in this paragraph shall be waived in cases of emergency. If the commission determines that a home- or other community-based setting is appropriate and cost-effective, the commission shall:

(i) Advise the applicant or the applicant's legal representative that a home- or other community-based setting is appropriate;

(ii) Provide a proposed care plan and inform the applicant or the applicant's legal representative regarding the degree to which the services in the care plan are available in a home- or in other community-based setting rather than nursing facility care; and

(iii) Explain that the plan and services are available only if the applicant or the applicant's legal representative chooses a home- or community-based alternative to nursing facility care, and that the applicant is free to choose nursing facility care.

The commission may provide the services described in this paragraph (f) directly or through contract with case managers from the local Area Agencies on Aging, and shall coordinate long-term care alternatives to avoid duplication with hospital discharge planning procedures.

Placement in a nursing facility may not be denied by the commission if home- or community-based services that would be more appropriate than nursing facility care are not actually available, or if the applicant chooses not to receive the appropriate home- or community-based services.

The commission shall provide an opportunity for a fair hearing under federal regulations to any applicant who is not given the choice of home- or community-based services as an alternative to institutional care.

The commission shall make full payment for long-term care alternative services.

The commission shall apply for necessary federal waivers to assure that additional services providing alternatives to nursing facility care are made available to applicants for nursing facility care.

(5) Periodic screening and diagnostic services for individuals under age twenty-one (21) years as are needed to identify physical and mental defects and to provide health care

treatment and other measures designed to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services regardless of whether these services are included in the state plan. The commission may include in its periodic screening and diagnostic program those discretionary services authorized under the federal regulations adopted to implement Title XIX of the federal Social Security Act, as amended. The commission, in obtaining physical therapy services, occupational therapy services, and services for individuals with speech, hearing and language disorders, may enter into a cooperative agreement with the State Department of Education for the provision of those services to handicapped students by public school districts using state funds that are provided from the appropriation to the Department of Education to obtain federal matching funds through the commission. The commission, in obtaining medical and psychological evaluations for children in the custody of the State Department of Human Services may enter into a cooperative agreement with the State Department of Human Services for the provision of those services using state funds that are provided from the appropriation to the Department of Human Services to obtain federal matching funds through the commission.

On July 1, 1993, all fees for periodic screening and diagnostic services under this paragraph (5) shall be increased by twenty-five percent (25%) of the reimbursement rate in effect on June 30, 1993.

(6) Physician's services. The commission shall allow twelve (12) physician visits annually. All fees for physicians' services that are covered only by Medicaid shall be reimbursed at ninety percent (90%) of the rate established on January 1, 1999, and as adjusted each January thereafter, under Medicare (Title XVIII of the Social Security Act, as amended), and which shall in no event be less than seventy percent (70%) of the rate

established on January 1, 1994. All fees for physicians' services that are covered by both Medicare and Medicaid shall be reimbursed at ten percent (10%) of the adjusted Medicare payment established on January 1, 1999, and as adjusted each January thereafter, under Medicare (Title XVIII of the Social Security Act, as amended), and which shall in no event be less than seventy percent (70%) of the adjusted Medicare payment established on January 1, 1994.

(7) (a) Home health services for eligible persons, not to exceed in cost the prevailing cost of nursing facility services, not to exceed sixty (60) visits per year. All home health visits must be precertified as required by the commission.

(b) Repealed.

(8) Emergency medical transportation services. On January 1, 1994, emergency medical transportation services shall be reimbursed at seventy percent (70%) of the rate established under Medicare (Title XVIII of the Social Security Act, as amended). "Emergency medical transportation services" shall mean, but shall not be limited to, the following services by a properly permitted ambulance operated by a properly licensed provider in accordance with the Emergency Medical Services Act of 1974 (Section 41-59-1 et seq.): (i) basic life support, (ii) advanced life support, (iii) mileage, (iv) oxygen, (v) intravenous fluids, (vi) disposable supplies, (vii) similar services.

(9) Legend and other drugs as may be determined by the commission. The commission may implement a program of prior approval for drugs to the extent permitted by law. Payment by the commission for covered multiple source drugs shall be limited to the lower of the upper limits established and published by the Centers for Medicare and Medicaid Services (CMS) plus a dispensing fee of Four Dollars and Ninety-one Cents ($4.91), or the estimated acquisition cost (EAC) as determined by the commission plus a dispensing fee of Four Dollars and Ninety-one Cents ($4.91), or the providers' usual and customary charge to the general public.

The commission shall allow ten (10) prescriptions per month for noninstitutionalized Medicaid recipients.

Payment for other covered drugs, other than multiple source drugs with CMS upper limits, shall not exceed the lower of the estimated acquisition cost as determined by the commission plus a dispensing fee of Four Dollars and Ninety-one Cents ($4.91) or the providers' usual and customary charge to the general public.

Payment for nonlegend or over-the-counter drugs covered on the commission's formulary shall be reimbursed at the lower of the commission's estimated shelf price or the providers' usual and customary charge to the general public. No dispensing fee shall be paid.

The commission shall develop and implement a program of payment for additional pharmacist services, with payment to be based on demonstrated savings, but in no case shall the total payment exceed twice the amount of the dispensing fee.

As used in this paragraph (9), "estimated acquisition cost" means the commission's best estimate of what price providers generally are paying for a drug in the package size that providers buy most frequently. Product selection shall be made in compliance with existing state law; however, the commission may reimburse as if the prescription had been filled under the generic name. The commission may provide otherwise in the case of specified drugs when the consensus of competent medical advice is that trademarked drugs are substantially more effective.

(10) Dental care that is an adjunct to treatment of an acute medical or surgical condition; services of oral surgeons and dentists in connection with surgery related to the jaw or any structure contiguous to the jaw or the reduction of any fracture of the jaw or any facial bone; and emergency dental extractions and treatment related thereto. On July 1, 1999, all fees for dental care and surgery under authority of this paragraph (10) shall be increased to one hundred sixty percent (160%) of the

amount of the reimbursement rate that was in effect on June 30, 1999. It is the intent of the Legislature to encourage more dentists to participate in the Medicaid program.

(11) Eyeglasses necessitated by reason of eye surgery, and as prescribed by a physician skilled in diseases of the eye or an optometrist, whichever the patient may select, or one (1) pair every three (3) years as prescribed by a physician or an optometrist, whichever the patient may select.

(12) Intermediate care facility services.

(a) The commission shall make full payment to all intermediate care facilities for the mentally retarded for each day, not exceeding eighty-four (84) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the eighty-four-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) All state-owned intermediate care facilities for the mentally retarded shall be reimbursed on a full reasonable cost basis.

(13) Family planning services, including drugs, supplies and devices, when those services are under the supervision of a physician.

(14) Clinic services. Such diagnostic, preventive, therapeutic, rehabilitative or palliative services furnished to an outpatient by or under the supervision of a physician or dentist in a facility that is not a part of a hospital but that is organized and operated to provide medical care to outpatients. Clinic services shall include any services reimbursed as outpatient hospital services that may be rendered in such a facility, including those that become so after July 1, 1991. On July 1, 1999, all fees for physicians' services reimbursed under authority of this paragraph (14) shall be reimbursed at ninety

percent (90%) of the rate established on January 1, 1999, and as adjusted each January thereafter, under Medicare (Title XVIII of the Social Security Act, as amended), and which shall in no event be less than seventy percent (70%) of the rate established on January 1, 1994. All fees for physicians' services that are covered by both Medicare and Medicaid shall be reimbursed at ten percent (10%) of the adjusted Medicare payment established on January 1, 1999, and as adjusted each January thereafter, under Medicare (Title XVIII of the Social Security Act, as amended), and which shall in no event be less than seventy percent (70%) of the adjusted Medicare payment established on January 1, 1994. On July 1, 1999, all fees for dentists' services reimbursed under authority of this paragraph (14) shall be increased to one hundred sixty percent (160%) of the amount of the reimbursement rate that was in effect on June 30, 1999.

(15) Home- and community-based services, as provided under Title XIX of the federal Social Security Act, as amended, under waivers, subject to the availability of funds specifically appropriated therefor by the Legislature. Payment for those services shall be limited to individuals who would be eligible for and would otherwise require the level of care provided in a nursing facility. The home- and community-based services authorized under this paragraph shall be expanded over a five-year period beginning July 1, 1999. The commission shall certify case management agencies to provide case management services and provide for home- and community-based services for eligible individuals under this paragraph. The home- and community-based services under this paragraph and the activities performed by certified case management agencies under this paragraph shall be funded using state funds that are provided from the appropriation to the commission and used to match federal funds.

(16) Mental health services. Approved therapeutic and case management services provided by (a) an approved regional

mental health/retardation center established under Sections 41-19-31 through 41-19-39, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/retardation center if determined necessary by the Department of Mental Health, using state funds that are provided from the appropriation to the State Department of Mental Health and used to match federal funds under a cooperative agreement between the commission and the department, or (b) a facility that is certified by the State Department of Mental Health to provide therapeutic and case management services, to be reimbursed on a fee for service basis. Any such services provided by a facility described in paragraph (b) must have the prior approval of the commission to be reimbursable under this section. After June 30, 1997, mental health services provided by regional mental health/retardation centers established under Sections 41-19-31 through 41-19-39, or by hospitals as defined in Section 41-9-3(a) and/or their subsidiaries and divisions, or by psychiatric residential treatment facilities as defined in Section 43-11-1, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/retardation center if determined necessary by the Department of Mental Health, shall not be included in or provided under any capitated managed care pilot program provided for under paragraph (24) of this section.

(17) Durable medical equipment services and medical supplies. Precertification of durable medical equipment and medical supplies must be obtained as required by the commission. The commission may require durable medical equipment providers to obtain a surety bond in the amount and to the specifications as established by the Balanced Budget Act of 1997.

(18) (a) Notwithstanding any other provision of this section to the contrary, the commission shall make additional reimbursement to hospitals that serve a disproportionate share of

low-income patients and that meet the federal requirements for such payments as provided in Section 1923 of the federal Social Security Act and any applicable regulations. However, from and after January 1, 2000, no public hospital shall participate in the Medicaid disproportionate share program unless the public hospital participates in an intergovernmental transfer program as provided in Section 1903 of the federal Social Security Act and any applicable regulations. Administration and support for participating hospitals shall be provided by the Mississippi Hospital Association.

(b) The commission shall establish a Medicare Upper Payment Limits Program as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations. The commission shall assess each hospital for the sole purpose of financing the state portion of the Medicare Upper Payment Limits Program. This assessment shall be based on Medicaid utilization, or other appropriate method consistent with federal regulations, and will remain in effect as long as the state participates in the Medicare Upper Payment Limits Program. The commission shall make additional reimbursement to hospitals for the Medicare Upper Payment Limits as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations. This paragraph (b) shall stand repealed from and after July 1, 2005.

(c) The commission shall contract with the Mississippi Hospital Association to provide administrative support for the operation of the disproportionate share hospital program and the Medicare Upper Payment Limits Program. This paragraph (c) shall stand repealed from and after July 1, 2005.

(19) (a) Perinatal risk management services. The commission shall promulgate regulations to be effective from and after October 1, 1988, to establish a comprehensive perinatal system for risk assessment of all pregnant and infant Medicaid

recipients and for management, education and follow-up for those who are determined to be at risk. Services to be performed include case management, nutrition assessment/counseling, psychosocial assessment/counseling and health education. The commission shall set reimbursement rates for providers in conjunction with the State Department of Health.

(b) Early intervention system services. The commission shall cooperate with the State Department of Health, acting as lead agency, in the development and implementation of a statewide system of delivery of early intervention services, pursuant to Part H of the Individuals with Disabilities Education Act (IDEA). The State Department of Health shall certify annually in writing to the commission the dollar amount of state early intervention funds available that will be utilized as a certified match for Medicaid matching funds. Those funds then shall be used to provide expanded targeted case management services for Medicaid eligible children with special needs who are eligible for the state's early intervention system. Qualifications for persons providing service coordination shall be determined by the State Department of Health and the commission.

(20) Home- and community-based services for physically disabled approved services as allowed by a waiver from the United States Department of Health and Human Services for home- and community-based services for physically disabled people using state funds that are provided from the appropriation to the State Department of Rehabilitation Services and used to match federal funds under a cooperative agreement between the commission and the department, provided that funds for these services are specifically appropriated to the Department of Rehabilitation Services.

(21) Nurse practitioner services. Services furnished by a registered nurse who is licensed and certified by the Mississippi Board of Nursing as a nurse practitioner including,

but not limited to, nurse anesthetists, nurse midwives, family nurse practitioners, family planning nurse practitioners, pediatric nurse practitioners, obstetrics-gynecology nurse practitioners and neonatal nurse practitioners, under regulations adopted by the commission. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician.

(22) Ambulatory services delivered in federally qualified health centers and in clinics of the local health departments of the State Department of Health for individuals eligible for medical assistance under this article based on reasonable costs as determined by the commission.

(23) Inpatient psychiatric services. Inpatient psychiatric services to be determined by the commission for recipients under age twenty-one (21) that are provided under the direction of a physician in an inpatient program in a licensed acute care psychiatric facility or in a licensed psychiatric residential treatment facility, before the recipient reaches age twenty-one (21) or, if the recipient was receiving the services immediately before he reached age twenty-one (21), before the earlier of the date he no longer requires the services or the date he reaches age twenty-two (22), as provided by federal regulations. Precertification of inpatient days and residential treatment days must be obtained as required by the commission.

(24) Managed care services in a program to be developed by the commission by a public or private provider. If managed care services are provided by the commission to Medicaid recipients, and those managed care services are operated, managed and controlled by and under the authority of the commission, the commission shall be responsible for educating the Medicaid recipients who are participants in the managed care program regarding the manner in which the participants should seek health care under the program. Notwithstanding any other provision in

this article to the contrary, the commission shall establish rates of reimbursement to providers rendering care and services authorized under this paragraph (24), and may revise those rates of reimbursement without amendment to this section by the Legislature for the purpose of achieving effective and accessible health services, and for responsible containment of costs.

(25) Birthing center services.

(26) Hospice care. As used in this paragraph, the term "hospice care" means a coordinated program of active professional medical attention within the home and outpatient and inpatient care that treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses that are experienced during the final stages of illness and during dying and bereavement and meets the Medicare requirements for participation as a hospice as provided in federal regulations.

(27) Group health plan premiums and cost sharing if it is cost effective as defined by the Secretary of Health and Human Services.

(28) Other health insurance premiums that are cost effective as defined by the Secretary of Health and Human Services. Medicare eligible must have Medicare Part B before other insurance premiums can be paid.

(29) The commission may apply for a waiver from the Department of Health and Human Services for home- and community-based services for developmentally disabled people using state funds that are provided from the appropriation to the State Department of Mental Health and used to match federal funds under a cooperative agreement between the commission and the department, provided that funds for these services are specifically appropriated to the Department of Mental Health.

(30) Pediatric skilled nursing services for eligible persons under twenty-one (21) years of age.

(31) Targeted case management services for children with special needs, under waivers from the United States Department of Health and Human Services, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the commission and the department.

(32) Care and services provided in Christian Science Sanatoria operated by or listed and certified by The First Church of Christ Scientist, Boston, Massachusetts, rendered in connection with treatment by prayer or spiritual means to the extent that those services are subject to reimbursement under Section 1903 of the Social Security Act.

(33) Podiatrist services.

(34) The commission shall make application to the United States Health Care Financing Administration for a waiver to develop a program of services to personal care and assisted living homes in Mississippi. This waiver shall be completed by December 1, 1999.

(35) Services and activities authorized in Sections 43-27-101 and 43-27-103, using state funds that are provided from the appropriation to the State Department of Human Services and used to match federal funds under a cooperative agreement between the commission and the department.

(36) Nonemergency transportation services for Medicaid-eligible persons, to be provided by the commission. The commission may contract with additional entities to administer nonemergency transportation services as it deems necessary. All providers shall have a valid driver's license, vehicle inspection sticker, valid vehicle license tags and a standard liability insurance policy covering the vehicle.

(37) [Deleted]

(38) Chiropractic services: a chiropractor's manual manipulation of the spine to correct a subluxation, if x-ray demonstrates that a subluxation exists and if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment. Reimbursement for chiropractic services shall not exceed Seven Hundred Dollars ($700.00) per year per recipient.

(39) Dually eligible Medicare/Medicaid beneficiaries. The commission shall pay the Medicare deductible and ten percent (10%) coinsurance amounts for services available under Medicare for the duration and scope of services otherwise available under the Medicaid program.

(40) [Deleted]

(41) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons with spinal cord injuries or traumatic brain injuries, as allowed under waivers from the United States Department of Health and Human Services, using up to seventy-five percent (75%) of the funds that are appropriated to the Department of Rehabilitation Services from the Spinal Cord and Head Injury Trust Fund established under Section 37-33-261 and used to match federal funds under a cooperative agreement between the commission and the department.

(42) Notwithstanding any other provision in this article to the contrary, the commission may develop a population health management program for women and children health services through the age of two (2) years. This program is primarily for obstetrical care associated with low birth weight and pre-term babies. In order to effect cost savings, the commission may develop a revised payment methodology that may include at-risk capitated payments.

(43) The commission shall provide reimbursement, according to a payment schedule developed by the commission, for

smoking cessation medications for pregnant women during their pregnancy and other Medicaid-eligible women who are of child-bearing age.

(44) Nursing facility services for the severely disabled.

(a) Severe disabilities include, but are not limited to, spinal cord injuries, closed head injuries and ventilator dependent patients.

(b) Those services must be provided in a long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities, and shall be reimbursed as a separate category of nursing facilities.

(45) Physician assistant services. Services furnished by a physician assistant who is licensed by the State Board of Medical Licensure and is practicing with physician supervision under regulations adopted by the board, under regulations adopted by the commission. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician.

(46) The commission shall make application to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver to develop and provide services for children with serious emotional disturbances as defined in Section 43-14-1(1), which may include home- and community-based services, case management services or managed care services through mental health providers certified by the Department of Mental Health. The commission may implement and provide services under this waivered program only if funds for these services are specifically appropriated for this purpose by the Legislature, or if funds are voluntarily provided by affected agencies.

Notwithstanding any provision of this article, except as authorized in the following paragraph and in Section 43-13-139, neither (a) the limitations on quantity or frequency of use of or

the fees or charges for any of the care or services available to recipients under this section, nor (b) the payments or rates of reimbursement to providers rendering care or services authorized under this section to recipients, may be increased, decreased or otherwise changed from the levels in effect on July 1, 1999, unless they are authorized by an amendment to this section by the Legislature. However, the restriction in this paragraph shall not prevent the commission from changing the payments or rates of reimbursement to providers without an amendment to this section whenever those changes are required by federal law or regulation, or whenever those changes are necessary to correct administrative errors or omissions in calculating those payments or rates of reimbursement.

Notwithstanding any provision of this article, no new groups or categories of recipients and new types of care and services may be added without enabling legislation from the Mississippi Legislature, except that the commission may authorize those changes without enabling legislation when the addition of recipients or services is ordered by a court of proper authority. If current or projected expenditures of the commission can be reasonably anticipated to exceed the amounts appropriated for any fiscal year, the commission shall discontinue any or all of the payment of the types of care and services as provided in this section that are deemed to be optional services under Title XIX of the federal Social Security Act, as amended, for any period necessary to not exceed appropriated funds, and when necessary shall institute any other cost containment measures on any program or programs authorized under the article to the extent allowed under the federal law governing that program or programs, it being the intent of the Legislature that expenditures during any fiscal year shall not exceed the amounts appropriated for that fiscal year.

Notwithstanding any other provision of this article, it shall be the duty of each nursing facility, intermediate care facility for the mentally retarded, psychiatric residential treatment facility, and nursing facility for the severely disabled that is participating in the Medicaid program to keep and maintain books, documents, and other records as prescribed by the commission in substantiation of its cost reports for a period of three (3) years after the date of submission * * * of an original cost report to the commission, or three (3) years after the date of submission * * * of an amended cost report to the commission.

SECTION 11. Section 43-13-118, Mississippi Code of 1972, is amended as follows:

43-13-118. It shall be the duty of each provider participating in the Medicaid program to keep and maintain books, documents, and other records as prescribed by the commission in substantiation of its claim for services rendered Medicaid recipients, and those books, documents, and other records shall be kept and maintained for a period of five (5) years or for whatever longer period as may be required or prescribed under federal or state statutes and shall be subject to audit by the commission. The commission shall be entitled to full recoupment of the amount that the commission or the Division of Medicaid has paid any provider of medical service who has failed to keep or maintain records as required in this section.

SECTION 12. Section 43-13-120, Mississippi Code of 1972, is amended as follows:

43-13-120. (1) Any person who is a Medicaid recipient and is receiving Medicaid assistance for services provided in a long-term care facility under the provisions of Section 43-13-117 from the commission, who dies intestate and leaves no known heirs, shall have deemed, through his acceptance of Medicaid, the commission as his beneficiary to all those funds in an amount not to exceed Two Hundred Fifty Dollars ($250.00) that are in his

possession at the time of his death. Those funds, together with any accrued interest thereon, shall be reported by the long-term care facility to the State Treasurer in the manner provided in subsection (2).

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

(3) Within one hundred twenty (120) days from November 1 of each year in which a report is made under subsection (2), the Treasurer shall cause notice to be published in a newspaper having general circulation in the county of this state in which is located the last known address of the person or persons named in the report who may possess an interest in the funds, or if no such person is named in the report, in the county in which is located the last known address of the deceased person before 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 before entering the facility; (c) the name and last known address of each person named in the report who may possess an interest in the funds; and (d) a statement that any person possessing an interest in the funds must make a claim for the funds to the Treasurer within ninety (90) days after the 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 commission.

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

SECTION 13. Section 43-13-121, Mississippi Code of 1972, is amended as follows:

43-13-121. (1) The commission shall administer the Medicaid program *** * *** under the provisions of this article, and may do the following:

(a) Adopt and promulgate reasonable rules, regulations and standards, *** * *** in accordance with the Administrative Procedures Law, Section 25-43-1 et seq.:

(i) Establishing methods and procedures as may be necessary for the proper and efficient administration of this article;

(ii) Providing Medicaid to all qualified recipients under the provisions of this article as the commission may determine and within the limits of appropriated funds;

(iii) Establishing reasonable fees, charges and rates for medical services and drugs; and in doing so shall fix all of those fees, charges and rates at the minimum levels absolutely necessary to provide the medical assistance authorized by this article, and shall not change any of those fees, charges or rates except as may be authorized in Section 43-13-117;

(iv) Providing for fair and impartial hearings;

(v) Providing safeguards for preserving the confidentiality of records; and

(vi) For detecting and processing fraudulent practices and abuses of the program;

(b) Receive and expend state, federal and other funds in accordance with court judgments or settlements and agreements between the State of Mississippi and the federal government, the rules and regulations promulgated by the commission, and within the limitations and restrictions of this article and within the limits of funds available for that purpose;

(c) Subject to the limits imposed by this article, to submit a Medicaid plan * * * to the federal Department of Health and Human Services for approval under the provisions of the Social Security Act, to act for the state in making negotiations relative to the submission and approval of that plan, to make such arrangements, not inconsistent with the law, as may be required by or pursuant to federal law to obtain and retain that approval and to secure for the state the benefits of the provisions of that law;

No agreements, specifically including the general plan for the operation of the Medicaid program in this state, shall be made by and between the commission and the Department of Health and Human Services unless the Attorney General of the State of

Mississippi has reviewed the agreements, specifically including the operational plan, and has certified in writing to the Governor and to the commission that the agreements, including the plan of operation, have been drawn strictly in accordance with the terms and requirements of this article;

(d) Pursuant to the purposes and intent of this article and in compliance with its provisions, provide for aged persons otherwise eligible for the benefits provided under Title XVIII of the federal Social Security Act by expenditure of funds available for those purposes;

(e) To make reports to the federal Department of Health and Human Services as from time to time may be required by that federal department and to the Mississippi Legislature as hereinafter provided;

(f) Define and determine the scope, duration and amount of Medicaid that may be provided in accordance with this article and establish priorities therefor in conformity with this article;

(g) Cooperate and contract with other state agencies for the purpose of coordinating Medicaid provided under this article and eliminating duplication and inefficiency in the Medicaid program;

(h) Adopt and use an official seal of the commission;

(i) Sue in its own name on behalf of the State of Mississippi and employ legal counsel on a contingency basis with the approval of the Attorney General;

(j) To recover any and all payments incorrectly made by the commission or by the Division of Medicaid * * * to a recipient or provider from the recipient or provider receiving the payments;

(k) To recover any and all payments by the commission or by the Division of Medicaid * * * fraudulently obtained by a recipient or provider. Additionally, if recovery of any payments fraudulently obtained by a recipient or provider is made in any

court, then, upon motion of the commission, the judge of the court may award twice the payments recovered as damages;

(l) Have full, complete and plenary power and authority to conduct such investigations as it may deem necessary and requisite of alleged or suspected violations or abuses of the provisions of this article or of the regulations adopted under this article including, but not limited to, fraudulent or unlawful act or deed by applicants for Medicaid or other benefits, or payments made to any person, firm or corporation under the terms, conditions and authority of this article, to suspend or disqualify any provider of services, applicant or recipient for gross abuse, fraudulent or unlawful acts for such periods, including permanently, and under such conditions as the commission may deem proper and just, including the imposition of a legal rate of interest on the amount improperly or incorrectly paid. Recipients who are found to have misused or abused Medicaid benefits may be locked into one (1) physician and/or one (1) pharmacy of the recipient's choice for a reasonable amount of time in order to educate and promote appropriate use of medical services, in accordance with federal regulations. If an administrative hearing becomes necessary, the commission may, if the provider does not succeed in his defense, tax the costs of the administrative hearing, including the costs of the court reporter or stenographer and transcript, to the provider. The convictions of a recipient or a provider in a state or federal court for abuse, fraudulent or unlawful acts under this chapter shall constitute an automatic disqualification of the recipient or automatic disqualification of the provider from participation under the Medicaid program.

A conviction, for the purposes of this chapter, shall include a judgment entered on a plea of nolo contendere or a nonadjudicated guilty plea and shall have the same force as a judgment entered pursuant to a guilty plea or a conviction following trial. A certified copy of the judgment of the court of

competent jurisdiction of the conviction shall constitute prima facie evidence of the conviction for disqualification purposes;

(m) Establish and provide such methods of administration as may be necessary for the proper and efficient operation of the Medicaid program, fully utilizing computer equipment as may be necessary to oversee and control all current expenditures for purposes of this article, and to closely monitor and supervise all recipient payments and vendors rendering * * * services under this article;

(n) To cooperate and contract with the federal government for the purpose of providing Medicaid to Vietnamese and Cambodian refugees, under the provisions of Public Law 94-23 and Public Law 94-24, including any amendments thereto, only to the extent that such assistance and the administrative cost related thereto are one hundred percent (100%) reimbursable by the federal government. For the purposes of Section 43-13-117, persons receiving Medicaid under Public Law 94-23 and Public Law 94-24, including any amendments thereto, shall not be considered a new group or category of recipient; and

(o) The commission shall impose penalties upon Medicaid only, Title XIX participating long-term care facilities found to be in noncompliance with commission and certification standards in accordance with federal and state regulations, including interest at the same rate calculated by the Department of Health and Human Services and/or the Centers for Medicare and Medicaid Services (CMS) under federal regulations.

(2) The commission also shall exercise such additional powers and perform such other duties as may be conferred upon the commission by act of the Legislature hereafter.

(3) The commission, and the State Department of Health as the agency for licensure of health care facilities and certification and inspection for the Medicaid and/or Medicare programs, shall contract for or otherwise provide for the

consolidation of on-site inspections of health care facilities that are necessitated by the respective programs and functions of the commission and the department.

(4) The commission and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law that may be necessary to enable them effectively to discharge the duties of their office. In compelling the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions, as authorized by this section, the commission or its hearing officers may designate an individual employed by the commission or some other suitable person to execute and return that process, whose action in executing and returning that process shall be as lawful as if done by the sheriff or some other proper officer authorized to execute and return process in the county where the witness may reside. In carrying out the investigatory powers under the provisions of this article, the executive director or other designated person or persons may examine, obtain, copy or reproduce the books, papers, documents, medical charts, prescriptions and other records relating to medical care and services furnished by the provider to a recipient or designated recipients of Medicaid services under investigation. In the absence of the voluntary submission of the books, papers, documents, medical charts, prescriptions and other records, the commission, the executive director, or other designated person may issue and serve subpoenas instantly upon the provider, his agent, servant or employee for the production of the books, papers, documents, medical charts, prescriptions or other records

during an audit or investigation of the provider. If any provider or his agent, servant or employee * * * refuses to produce the records after being duly subpoenaed, the commission or the executive director may certify those facts and institute contempt proceedings in the manner, time, and place as authorized by law for administrative proceedings. As an additional remedy, the commission may recover all amounts paid to the provider covering the period of the audit or investigation, inclusive of a legal rate of interest and a reasonable attorney's fee and costs of court if suit becomes necessary. Commission staff shall have immediate access to the provider's physical location, facilities, records, documents, books, and any other records relating to medical care and services rendered to recipients during regular business hours.

(5) If any person in proceedings before the commission disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the commission or the executive director shall certify the facts to any court having jurisdiction in the place in which it is sitting, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and if the evidence so warrants, punish that person in the same manner and to the same extent as for a contempt committed before the court, or commit that person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

(6) In suspending or terminating any provider from participation in the Medicaid program, the commission shall preclude the provider from submitting claims for payment, either

personally or through any clinic, group, corporation or other association to the commission or its fiscal agents for any services or supplies provided under the Medicaid program except for those services or supplies provided before the suspension or termination. No clinic, group, corporation or other association that is a provider of services shall submit claims for payment to the commission or its fiscal agents for any services or supplies provided by a person within that organization who has been suspended or terminated from participation in the Medicaid program except for those services or supplies provided before the suspension or termination. When this provision is violated by a provider of services that is a clinic, group, corporation or other association, the commission may suspend or terminate that organization from participation. Suspension may be applied by the commission to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the provider is affiliated where that conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of that person.

(7) If the commission ascertains that a provider has been convicted of a felony under federal or state law for an offense that the commission determines is detrimental to the best interests of the Medicaid program or of Medicaid recipients, the commission may refuse to enter into an agreement with that provider, or may terminate or refuse to renew an existing agreement.

SECTION 14. Section 43-13-122, Mississippi Code of 1972, is amended as follows:

43-13-122. (1) The commission may apply to the Centers for Medicare and Medicaid Services (CMS) of the United States

Department of Health and Human Services for waivers and research and demonstration grants as are otherwise authorized by the Legislature in this chapter.

(2) The may accept and expend any grants, donations or contributions from any public or private organization together with any additional federal matching funds that may accrue and including, but not limited to, one hundred percent (100%) federal grant funds or funds from any governmental entity or instrumentality thereof in furthering the purposes and objectives of the Mississippi Medicaid program, provided that those receipts and expenditures are reported and otherwise handled in accordance with the state budget laws (Section 27-103-101 et seq. and Section 27-104-1 et seq.). The Department of Finance and Administration may transfer monies to the commission from special funds in the State Treasury in amounts not exceeding the amounts authorized in the appropriation to the commission.

SECTION 15. Section 43-13-123, Mississippi Code of 1972, is amended as follows:

43-13-123. The determination of the method of providing payment of claims under this article shall be made by the commission, which methods may be:

(1) By contract with insurance companies licensed to do business in the State of Mississippi or with nonprofit hospital service corporations, medical or dental service corporations, authorized to do business in Mississippi to underwrite on an insured premium approach, such medical assistance benefits as may be available, and any carrier selected under the provisions of this article is * * * expressly authorized and empowered to undertake the performance of the requirements of that contract.

(2) By contract with an insurance company licensed to do business in the State of Mississippi or with nonprofit hospital service, medical or dental service organizations, or other

organizations including data processing companies, authorized to do business in Mississippi to act as fiscal agent.

The commission shall solicit, receive, review, accept and award contracts for services to be provided under either of the above-described provisions after advertising for bids by publication of notice therefor in one or more newspapers having a general circulation in the State of Mississippi, which * * * notice shall be published for at least once a week for three (3) consecutive weeks, the first publication of which shall be at least twenty-one (21) days before the date set in the notice for the receipt of bids. Final determination on acceptance of a bid for the purposes of this provision will be subject to the review and approval of the Public Procurement Review Board.

The authorization of the foregoing methods shall not preclude other methods of providing payment of claims through direct operation of the program by the state or its agencies.

SECTION 16. Section 43-13-125, Mississippi Code of 1972, is amended as follows:

43-13-125. (1) If Medicaid is provided to a recipient under this article for injuries, disease or sickness caused under circumstances creating a cause of action in favor of the recipient against any person, firm or corporation, then the commission shall be entitled to recover the proceeds that may result from the exercise of any rights of recovery that the recipient may have against any such person, firm or corporation to the extent of the commission's interest on behalf of the recipient. The recipient shall execute and deliver instruments and papers to do whatever is necessary to secure those rights and shall do nothing after Medicaid is provided to prejudice the subrogation rights of the commission. Court orders or agreements for reimbursement of the commission's interest shall direct those payments to the commission, which shall be authorized to endorse any and all, including, but not limited to, multi-payee checks, drafts, money

orders, or other negotiable instruments representing Medicaid payment recoveries that are received. In accordance with Section 43-13-305, endorsement of multi-payee checks, drafts, money orders or other negotiable instruments by the commission shall be deemed endorsed by the recipient.

The commission may compromise or settle any such claim and execute a release of any claim it has by virtue of this section.

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

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

(b) The amount of the commission's interest on behalf of the recipient; or such pro rata amount as may be arrived at by the legal representative of the commission and the recipient's attorney, or as set by the court having jurisdiction; and

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

(3) No compromise of any claim by the recipient or his legal representative shall be binding upon or affect the rights of the commission against the third party unless the commission has entered into the compromise. Any compromise effected by the recipient or his legal representative with the third party in the absence of advance notification to and approved by the commission

shall constitute conclusive evidence of the liability of the third party, and the commission, in litigating its claim against the third party, shall be required only to prove the amount and correctness of its claim relating to the injury, disease or sickness. If the recipient or his legal representative fails to notify the commission of the institution of legal proceedings against a third party for which the commission has a cause of action, the facts relating to negligence and the liability of the third party, if judgment is rendered for the recipient, shall constitute conclusive evidence of liability in a subsequent action maintained by the commission, and only the amount and correctness of the commission's claim relating to injuries, disease or sickness shall be tried before the court. The commission may bring that action against the third party and his insurer jointly or against the insurer alone.

(4) Nothing in this section shall be construed to diminish or otherwise restrict the subrogation rights of the commission against a third party for Medicaid provided by the commission to the recipient as a result of injuries, disease or sickness caused under circumstances creating a cause of action in favor of the recipient against such a third party.

(5) Any amounts recovered by the commission under this section shall *** * *** be placed by the commission to the credit of the funds appropriated for benefits under this article proportionate to the amounts provided by the state and federal governments respectively.

SECTION 17. Section 43-13-127, Mississippi Code of 1972, is amended as follows:

43-13-127. Within sixty (60) days after the end of each fiscal year and at each regular session of the Legislature, the commission shall make and publish a report to the Governor and to the Legislature, showing for the period of time covered the following:

(a) The total number of recipients;

(b) The total amount paid for Medicaid assistance and care under this article;

(c) The total number of applications;

(d) The number of applications approved;

(e) The number of applications denied;

(f) The amount expended for administration of the provisions of this article;

(g) The amount of money received from the federal government, if any;

(h) The amount of money recovered by reason of collections from third persons by reason of assignment or subrogation, and the disposition of the same;

(i) The actions and activities of the commission in detecting and investigating suspected or alleged fraudulent practices, violations and abuses of the Medicaid program;

(j) Any recommendations it may have as to expanding, enlarging, limiting or restricting, the eligibility of persons covered by this article or services provided by this article, to make more effective the basic purposes of this article; to eliminate or curtail fraudulent practices and inequities in the plan or administration thereof; and to continue to participate in receiving federal funds for the furnishing of medical assistance under Title XIX of the Social Security Act or other federal law.

SECTION 18. Section 43-13-137, Mississippi Code of 1972, is amended as follows:

43-13-137. The commission is an agency as defined under Section 25-43-3 and, therefore, must comply in all respects with the Administrative Procedures Law, Section 25-43-1 et seq.

SECTION 19. Section 43-13-139, Mississippi Code of 1972, is amended as follows:

43-13-139. Nothing contained in this article shall be construed to prevent the commission, in its discretion and through

a majority vote of its members, from discontinuing or limiting Medicaid to any individuals who are classified or deemed to be within any optional group or optional category of recipients as prescribed under Title XIX of the federal Social Security Act or the implementing federal regulations. If the Congress or the United States Department of Health and Human Services ceases to provide federal matching funds for any group or category of recipients or any type of care and services, the commission shall cease state funding for that group or category or that type of care and services, notwithstanding any provision of this article.

SECTION 20. This act shall take effect and be in force from and after July 1, 2002.