

By: Senator(s) Nunnelee

To: Public Health and
Welfare

SENATE BILL NO. 2888

1 AN ACT TO AMEND SECTIONS 43-13-125 AND 43-13-305, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THAT IN THIRD-PARTY ACTIONS, THE AMOUNT
3 OF MEDICAL EXPENSES RECOVERABLE BY MEDICAID RECIPIENTS IS THE
4 ACTUAL AMOUNT OF PAYMENTS MADE BY THE DIVISION OF MEDICAID; AND
5 FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 43-13-125, Mississippi Code of 1972, is
8 amended as follows:

9 43-13-125. (1) If Medicaid is provided to a recipient under
10 this article for injuries, disease or sickness caused under
11 circumstances creating a cause of action in favor of the recipient
12 against any person, firm or corporation, then the division shall
13 be entitled to recover the proceeds that may result from the
14 exercise of any rights of recovery that the recipient may have
15 against any such person, firm or corporation to the extent of the
16 Division of Medicaid's interest on behalf of the recipient. The
17 recipient shall execute and deliver instruments and papers to do
18 whatever is necessary to secure those rights and shall do nothing
19 after Medicaid is provided to prejudice the subrogation rights of
20 the division. Court orders or agreements for reimbursement of
21 Medicaid's interest shall direct those payments to the Division of
22 Medicaid, which shall be authorized to endorse any and all,
23 including, but not limited to, multi-payee checks, drafts, money
24 orders, or other negotiable instruments representing Medicaid
25 payment recoveries that are received. In accordance with Section
26 43-13-305, endorsement of multi-payee checks, drafts, money orders
27 or other negotiable instruments by the Division of Medicaid shall
28 be deemed endorsed by the recipient.

29 The division, with the approval of the Governor, may
30 compromise or settle any such claim and execute a release of any
31 claim it has by virtue of this section.

32 (2) The acceptance of Medicaid under this article or the
33 making of a claim under this article shall not affect the right of
34 a recipient or his or her legal representative to recover any
35 payments made or owed by the recipient and the actual amount of
36 the medical assistance payments made by the Division of Medicaid
37 on behalf of the recipient as an element of damages in any action
38 at law but shall limit such recovery for medical damages to such
39 amount; however, a copy of the pleadings shall be certified to the
40 division at the time of the institution of suit, and proof of
41 that notice shall be filed of record in that action. The division
42 may, at any time before the trial on the facts, join in that
43 action or may intervene in that action. Any amount recovered by a
44 recipient or his or her legal representative shall be applied as
45 follows:

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

50 (b) The actual amount of the medical assistance
51 payments made by the Division of Medicaid on behalf of the
52 recipient; or such pro rata amount as may be arrived at by the
53 legal representative of the division and the recipient's attorney,
54 or as set by the court having jurisdiction; and

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

56 (3) No compromise of any claim by the recipient or his or
57 her legal representative shall be binding upon or affect the
58 rights of the division against the third party unless the
59 division, with the approval of the Governor, has entered into the
60 compromise. Any compromise effected by the recipient or his or
61 her legal representative with the third party in the absence of

62 advance notification to and approved by the division shall
63 constitute conclusive evidence of the liability of the third
64 party, and the division, in litigating its claim against the third
65 party, shall be required only to prove the amount and correctness
66 of its claim relating to the injury, disease or sickness. If the
67 recipient or his or her legal representative fails to notify the
68 division of the institution of legal proceedings against a third
69 party for which the division has a cause of action, the facts
70 relating to negligence and the liability of the third party, if
71 judgment is rendered for the recipient, shall constitute
72 conclusive evidence of liability in a subsequent action maintained
73 by the division and only the amount and correctness of the
74 division's claim relating to injuries, disease or sickness shall
75 be tried before the court. The division shall be authorized in
76 bringing that action against the third party and his or her
77 insurer jointly or against the insurer alone.

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

84 (5) Any amounts recovered by the division under this section
85 shall, by the division, be placed to the credit of the funds
86 appropriated for benefits under this article proportionate to the
87 amounts provided by the state and federal governments
88 respectively.

89 **SECTION 2.** Section 43-13-305, Mississippi Code of 1972, is
90 amended as follows:

91 43-13-305. (1) By accepting Medicaid from the Division of
92 Medicaid in the Office of the Governor, the recipient shall, to
93 the extent of the actual amount of medical assistance payments
94 made by the Division of Medicaid, be deemed to have made an

95 assignment to the Division of Medicaid of any and all rights and
96 interests in any third-party benefits, hospitalization or
97 indemnity contract or any cause of action, past, present or
98 future, against any person, firm or corporation for the actual
99 amount of medical assistance payments made by the Division of
100 Medicaid on behalf of the recipient for injuries, disease or
101 sickness caused or suffered under circumstances creating a cause
102 of action in favor of the recipient against any such person, firm
103 or corporation as set out in Section 43-13-125. The recipient
104 shall be deemed, without the necessity of signing any document, to
105 have appointed the Division of Medicaid as his or her true and
106 lawful attorney-in-fact in his or her name, place and stead in
107 collecting any and all amounts due and owing for medical expenses
108 paid by the Division of Medicaid against such person, firm or
109 corporation.

110 (2) Whenever a provider of medical services or the Division
111 of Medicaid submits claims to an insurer on behalf of a Medicaid
112 recipient for whom an assignment of rights has been received, or
113 whose rights have been assigned by the operation of law, the
114 insurer must respond within sixty (60) days of receipt of a claim
115 by forwarding payment or issuing a notice of denial directly to
116 the submitter of the claim. The failure of the insuring entity to
117 comply with the provisions of this section shall subject the
118 insuring entity to recourse by the Division of Medicaid in
119 accordance with the provision of Section 43-13-315. The Division
120 of Medicaid shall be authorized to endorse any and all, including,
121 but not limited to, multi-payee checks, drafts, money orders or
122 other negotiable instruments representing Medicaid payment
123 recoveries that are received by the Division of Medicaid.

124 (3) Court orders or agreements for medical support shall
125 direct such payments to the Division of Medicaid, which shall be
126 authorized to endorse any and all checks, drafts, money orders or
127 other negotiable instruments representing medical support payments

128 which are received. Any designated medical support funds received
129 by the State Department of Human Services or through its local
130 county departments shall be paid over to the Division of Medicaid.
131 When medical support for a Medicaid recipient is available through
132 an absent parent or custodial parent, the insuring entity shall
133 direct the medical support payment(s) to the provider of medical
134 services or to the Division of Medicaid.

135 **SECTION 3.** This act shall take effect and be in force from
136 and after July 1, 2005.