

By: Senator(s) Nunnelee

To: Public Health and
Welfare; Judiciary, Division
A

SENATE BILL NO. 2735

1 AN ACT TO AMEND SECTION 43-13-213, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE DEFINITION AND PENALTIES FOR FALSE OR FRAUDULENT
3 MEDICAID CLAIMS IN CONFORMITY WITH FEDERAL LAW; TO CREATE SECTION
4 43-13-221.1, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ATTORNEY
5 GENERAL AND PRIVATE CITIZENS TO RECOVER PAYMENTS INCORRECTLY MADE
6 FOR FALSE OR FRAUDULENT MEDICAID CLAIMS; TO AMEND SECTION
7 43-13-223, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE STATUTE OF
8 LIMITATION FOR ACTIONS BROUGHT UNDER THIS ACT; AND FOR RELATED
9 PURPOSES.

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

11 **SECTION 1.** Section 43-13-213, Mississippi Code of 1972, is
12 amended as follows:

13 43-13-213. (1) A person shall not make, present or cause to
14 be made or presented a claim for Medicaid benefits, knowing the
15 claim to be false, fictitious or fraudulent.

16 (2) Any person who:

17 (a) Knowingly presents, or causes to be presented, to
18 an officer, employee or agent of the State of Mississippi, a false
19 or fraudulent claim for payment or approval;

20 (b) Knowingly makes, uses, or causes to be made or
21 used, a false record or statement to get a false or fraudulent
22 claim paid or approved by the State of Mississippi;

23 (c) Conspires to defraud the State of Mississippi by
24 getting a false or fraudulent claim allowed or paid;

25 (d) Has possession, custody, or control of property or
26 money used, or to be used, by the State of Mississippi and,
27 intending to defraud the State of Mississippi or willfully to
28 conceal the property, delivers, or causes to be delivered, less
29 property than the amount for which the person receives a
30 certificate or receipt;

31 (e) Authorized to make or deliver a document certifying
32 receipt of property used, or to be used, by the State of
33 Mississippi and, intending to defraud the State of Mississippi,
34 makes or delivers the receipt without completely knowing that the
35 information on the receipt is true;

36 (f) Knowingly buys, or receives as a pledge of an
37 obligation or debt, public property from an officer, employee or
38 agent of the State of Mississippi, who lawfully may not sell or
39 pledge the property; or

40 (g) Knowingly makes, uses, or causes to be made or
41 used, a false record or statement to conceal, avoid, or decrease
42 an obligation to pay or transmit money or property to the State of
43 Mississippi, is liable to the State of Mississippi for a civil
44 penalty of not less than Five Thousand Dollars (\$5,000.00) and not
45 more than Ten Thousand Dollars (\$10,000.00), plus three (3) times
46 the amount of damages which the State sustains because of the act
47 of that person, except that if the court finds that:

48 (i) The person committing the violation of this
49 subsection furnished officials of the State of Mississippi
50 responsible for investigating false claims violations with all
51 information known to such person about the violation within thirty
52 (30) days after the date on which the defendant first obtained the
53 information;

54 (ii) Such person fully cooperated with any
55 investigation of such violation; and

56 (iii) At the time such person furnished the State
57 of Mississippi with the information about the violation, no
58 criminal prosecution, civil action or administrative action had
59 commenced under this title with respect to such violation, and the
60 person did not have actual knowledge of the existence of an
61 investigation into such violation;

62 the court may assess not less than two (2) times the amount of
63 damages which the state sustains because of the act of the person.

64 A person violating this subsection shall also be liable to the
65 United States Government for the costs of a civil action brought
66 to recover any such penalty or damages.

67 (3) For purposes of this section, the terms "knowing" and
68 "knowingly" mean that a person, with respect to information:

69 (a) Has actual knowledge of the information;

70 (b) Acts in deliberate ignorance of the truth or
71 falsity of the information; or

72 (c) Acts in reckless disregard of the truth or falsity
73 of the information, and no proof of specific intent to defraud is
74 required.

75 (4) For purposes of this section, "claim" includes any
76 request or demand, whether under a contract or otherwise, for
77 money or property which is made to a contractor, grantee or other
78 recipient if the State of Mississippi provides any portion of the
79 money or property which is requested or demanded, or if the state
80 will reimburse such contractor, grantee or other recipient for any
81 portion of the money or property which is requested or demanded.

82 (5) Any information furnished pursuant to paragraphs (a)
83 through (c) of subsection (3) shall be exempt from disclosure
84 under the Mississippi Public Records Act.

85 **SECTION 2.** The following shall be codified as Section
86 43-13-221.1, Mississippi Code of 1972:

87 43-13-221.1. (1) (a) A person may bring a civil action for
88 a violation of the provisions of this article for the person and
89 for the State of Mississippi. The action shall be brought in the
90 name of the State of Mississippi. The action may be dismissed
91 only if the court and the Attorney General give written consent to
92 the dismissal and their reasons for consenting.

93 (b) A copy of the complaint and written disclosure of
94 substantially all material evidence and information the person
95 possesses shall be served on the Attorney General, on behalf of
96 the state, pursuant to the Mississippi Rules of Civil Procedure.

97 The complaint shall be filed in camera, shall remain under seal
98 for at least sixty (60) days, and shall not be served on the
99 defendant until the court so orders. The state may elect to
100 intervene and proceed with the action within sixty (60) days after
101 it receives both the complaint and the material evidence and
102 information.

103 (c) The state may, for good cause shown, move the court
104 for extensions of the time during which the complaint remains
105 under seal under subsection (2). Any such motions may be
106 supported by affidavits or other submissions in camera. The
107 defendant shall not be required to respond to any complaint filed
108 under this section until thirty (30) days after the complaint is
109 unsealed and served upon the defendant pursuant to the Mississippi
110 Rules of Civil Procedure.

111 (d) Before the expiration of the sixty-day period or
112 any extensions obtained under paragraph (c), the Attorney General,
113 on behalf of the state, shall:

114 (i) Proceed with the action, in which case the
115 action shall be conducted by the state; or

116 (ii) Notify the court that it declines to take
117 over the action, in which case the person bringing the action
118 shall have the right to conduct the action.

119 (e) When a person brings an action under this
120 subsection, no person other than the Attorney General, on behalf
121 of the state, may intervene or bring a related action based on the
122 facts underlying the pending action.

123 (2) (a) If the Attorney General, on behalf of the state,
124 proceeds with the action, it shall have the primary responsibility
125 for prosecuting the action, and shall not be bound by an act of
126 the person bringing the action. Such person shall have the right
127 to continue as a party to the action, subject to the limitations
128 set forth in paragraph (b).

129 (b) (i) The state may dismiss the action
130 notwithstanding the objections of the person initiating the action
131 if the person has been notified by the state of the filing of the
132 motion and the court has provided the person with an opportunity
133 for a hearing on the motion.

134 (ii) The state may settle the action with the
135 defendant notwithstanding the objections of the person initiating
136 the action if the court determines, after a hearing, that the
137 proposed settlement is fair, adequate and reasonable under all the
138 circumstances. Upon a showing of good cause, such hearing may be
139 held in camera.

140 (iii) Upon a showing by the state that
141 unrestricted participation during the course of the litigation by
142 the person initiating the action would interfere with or unduly
143 delay the state's prosecution of the case, or would be
144 repetitious, irrelevant, or for purposes of harassment, the court
145 may, in its discretion, impose limitations on the person's
146 participation, such as:

- 147 1. Limiting the number of witnesses the
148 person may call;
- 149 2. Limiting the length of the testimony of
150 such witnesses;
- 151 3. Limiting the person's cross-examination of
152 witnesses; or
- 153 4. Otherwise limiting the participation by
154 the person in the litigation.

155 (iv) Upon a showing by the defendant that
156 unrestricted participation during the course of the litigation by
157 the person initiating the action would be for purposes of
158 harassment or would cause the defendant undue burden or
159 unnecessary expense, the court may limit the participation by the
160 person in the litigation.

161 (c) If the state elects not to proceed with the action,
162 the person who initiated the action shall have the right to
163 conduct the action. If the state so requests, it shall be served
164 with copies of all pleadings filed in the action and shall be
165 supplied with copies of all deposition transcripts (at the state's
166 expense). When a person proceeds with the action, the court,
167 without limiting the status and rights of the person initiating
168 the action, may nevertheless permit the state to intervene at a
169 later date upon a showing of good cause.

170 (d) Whether or not the state proceeds with the action,
171 upon a showing by the state that certain actions of discovery by
172 the person initiating the action would interfere with the state's
173 investigation or prosecution of a criminal or civil matter arising
174 out of the same facts, the court may stay such discovery for a
175 period of not more than sixty (60) days. Such a showing shall be
176 conducted in camera. The court may extend the sixty-day period
177 upon a further showing in camera that the state has pursued the
178 criminal or civil investigation or proceedings with reasonable
179 diligence and any proposed discovery in the civil action will
180 interfere with the ongoing criminal or civil investigation or
181 proceedings.

182 (e) Notwithstanding subsection (2), the state may elect
183 to pursue its claim through any alternate remedy available to the
184 state, including any administrative proceeding to determine a
185 civil money penalty. If any such alternate remedy is pursued in
186 another proceeding, the person initiating the action shall have
187 the same rights in such proceeding as such person would have had
188 if the action had continued under this section. Any finding of
189 fact or conclusion of law made in such other proceeding that has
190 become final shall be conclusive on all parties to an action under
191 this section. For purposes of the preceding sentence, a finding
192 or conclusion is final if it has been finally determined on appeal
193 to the appropriate court of competent jurisdiction, if all time

194 for filing such an appeal with respect to the finding or
195 conclusion has expired, or if the finding or conclusion is not
196 subject to judicial review.

197 (3) (a) If the state proceeds with an action brought by a
198 person under subsection (2), such person shall, subject to the
199 second sentence of this paragraph, receive at least fifteen
200 percent (15%) but not more than twenty-five percent (25%) of the
201 proceeds of the action or settlement of the claim, depending upon
202 the extent to which the person substantially contributed to the
203 prosecution of the action. Where the action is one which the
204 court finds to be based primarily on disclosures of specific
205 information (other than information provided by the person
206 bringing the action) relating to allegations or transactions in a
207 criminal, civil or administrative hearing, in a congressional,
208 administrative, Division of Medicaid, Legislative PEER Committee,
209 State Auditor or Government Accounting Office report, hearing,
210 audit, or investigation, or from the news media, the court may
211 award such sums as it considers appropriate, but in no case more
212 than ten percent (10%) of the proceeds, taking into account the
213 significance of the information and the role of the person
214 bringing the action in advancing the case to litigation. Any
215 payment to a person under the first or second sentence of this
216 paragraph shall be made from the proceeds. Any such person shall
217 also receive an amount for reasonable expenses which the court
218 finds to have been necessarily incurred, plus reasonable
219 attorneys' fees and costs. All such expenses, fees and costs
220 shall be awarded against the defendant.

221 (b) If the state does not proceed with an action under
222 this section, the person bringing the action or settling the claim
223 shall receive an amount which the court decides is reasonable for
224 collecting the civil penalty and damages. The amount shall be not
225 less than twenty-five percent (25%) and not more than thirty
226 percent (30%) of the proceeds of the action or settlement and

227 shall be paid out of such proceeds. Such person shall also
228 receive an amount for reasonable expenses which the court finds to
229 have been necessarily incurred, plus reasonable attorneys' fees
230 and costs. All such expenses, fees and costs shall be awarded
231 against the defendant.

232 (c) Whether or not the state proceeds with the action,
233 if the court finds that the action was brought by a person who
234 planned and initiated the violation of this article upon which the
235 action was brought, then the court may, to the extent the court
236 considers appropriate, reduce the share of the proceeds of the
237 action which the person would otherwise receive under paragraph
238 (a) or (b) of this subsection, taking into account the role of
239 that person in advancing the case to litigation and any relevant
240 circumstances pertaining to the violation. If the person bringing
241 the action is convicted of criminal conduct arising from his or
242 her role in the violation of this article, that person shall be
243 dismissed from the civil action and shall not receive any share of
244 the proceeds of the action. Such dismissal shall not prejudice
245 the right of the state or the United States to continue the
246 action, represented by the Attorney General or the Department of
247 Justice respectively.

248 (d) If the state does not proceed with the action and
249 the person bringing the action conducts the action, the court may
250 award to the defendant its reasonable attorneys' fees and expenses
251 if the defendant prevails in the action and the court finds that
252 the claim of the person bringing the action was clearly frivolous,
253 clearly vexatious, or brought primarily for purposes of
254 harassment.

255 (4) (a) (i) No court shall have jurisdiction over an
256 action brought under paragraph (b) against a member of the
257 Legislature, a member of the judiciary, or a senior executive
258 branch official if the action is based on evidence or information
259 known to the state when the action was brought.

260 (ii) In no event may a person bring an action
261 under subsection (2) which is based upon allegations or
262 transactions which are the subject of a civil suit or an
263 administrative civil money penalty proceeding in which the state
264 is already a party.

265 (b) (i) No court shall have jurisdiction over an
266 action under this section based upon the public disclosure of
267 allegations or transactions in a criminal, civil or administrative
268 hearing, in a congressional, administrative, Legislative PEER
269 Commission, State Auditor or Government Accounting Office report,
270 hearing, audit, or investigation, or from the news media, unless
271 the action is brought by the Attorney General or the person
272 bringing the action is an original source of the information.

273 (ii) For purposes of this paragraph (b), "original
274 source" means an individual who has direct and independent
275 knowledge of the information on which the allegations are based
276 and has voluntarily provided the information to the government
277 before filing an action under this section which is based on the
278 information.

279 (5) The state is not liable for expenses which a person
280 incurs in bringing an action under this section.

281 (6) Any employee who is discharged, demoted, suspended,
282 threatened, harassed, or in any other manner discriminated against
283 in the terms and conditions of employment by his or her employer
284 because of lawful acts done by the employee on behalf of the
285 employee or others in furtherance of an action under this section,
286 including investigation for, initiation of, testimony for, or
287 assistance in an action filed or to be filed under this section,
288 shall be entitled to all relief necessary to make the employee
289 whole. Such relief shall include reinstatement with the same
290 seniority status such employee would have had but for the
291 discrimination, two (2) times the amount of back pay, interest on
292 the back pay, and compensation for any special damages sustained

293 as a result of the discrimination, including litigation costs and
294 reasonable attorneys' fees. An employee may bring an action in
295 the appropriate state court for the relief provided in this
296 subsection.

297 **SECTION 3.** Section 43-13-223, Mississippi Code of 1972, is
298 amended as follows:

299 43-13-223. (1) An action brought in connection with any
300 matter under this article may be filed in the circuit court of the
301 First Judicial District of Hinds County or in the circuit court of
302 the county in which the defendant resides, and may be prosecuted
303 to final judgment in satisfaction there.

304 (2) Process issued by a court in which an action is filed may
305 be served anywhere in the state.

306 (3) A civil action brought under this article may not be
307 brought:

308 (a) More than six (6) years after the date on which the
309 violation of this article is committed, or

310 (b) More than three (3) years after the date when facts
311 material to the right of action are known, or reasonably should
312 have been known, by the official of the state charged with
313 responsibility to act in the circumstances, but in no event are
314 more than ten (10) years after the date on which the violation is
315 committed, whichever occurs last.

316 **SECTION 4.** This act shall take effect and be in force from
317 and after July 1, 2006.