

By: Representative Barnett

To: Public Health and Human Services

HOUSE BILL NO. 121

1 AN ACT TO BRING FORWARD SECTIONS 43-13-501 THROUGH 43-13-509,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR A DRUG REPOSITORY
3 PROGRAM FOR DONATED DRUGS, FOR THE PURPOSE OF AMENDMENT; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** Section 43-13-501, Mississippi Code of 1972, is
7 brought forward as follows:

8 43-13-501. As used in Sections 43-13-501 through 43-13-509,
9 the following terms have the following meanings, unless the
10 context requires otherwise:

11 (a) "Board" means the State Board of Pharmacy.

12 (b) "Health care facility" means any of the following:

13 (i) A hospital as defined under Section 41-9-3;

14 (ii) An institution for the aged or infirm as
15 defined in Section 43-11-1;

16 (iii) A hospice as defined in Section 41-85-3;

17 (c) "Hospital" has the meaning as defined in Section
18 41-9-3.

19 (d) "Nonprofit clinic" means a charitable nonprofit
20 corporation organized and operated under Section 79-11-101 et
21 seq., or any charitable organization not organized and not
22 operated for profit, that provides health care services to
23 indigent and uninsured persons. "Nonprofit clinic" does not
24 include a health care facility as defined in this section or a
25 facility that is operated for profit.

26 (e) "Pharmacy" has the meaning as defined under Section
27 73-21-73.



28 (f) "Prescription drug" means any drug to which the
29 following applies:

30 (i) Under the federal Food, Drug, and Cosmetic
31 Act, as amended (21 USCS Section 301), the drug is required to
32 bear a label containing the legend, "Caution: Federal law
33 prohibits dispensing without prescription" or "Caution: Federal
34 law restricts this drug to be used by or on the order of a
35 licensed veterinarian" or any similar restrictive statement, or
36 the drug may be dispensed only upon a prescription.

37 (ii) Under the Uniform Controlled Substances Law,
38 (Section 41-29-101 et seq.), the drug may be dispensed only upon a
39 prescription.

40 **SECTION 2.** Section 43-13-503, Mississippi Code of 1972, is
41 brought forward as follows:

42 43-13-503. (1) Not later than January 1, 2005, the State
43 Board of Pharmacy and the State Department of Health jointly shall
44 establish a plan for a drug repository program to accept and
45 dispense prescription drugs donated for the purpose of being
46 dispensed to individuals who meet the eligibility standards
47 established in the rules adopted by the board under Section
48 43-13-509. The plan shall be submitted to the Chairmen of the
49 Public Health and Welfare Committees of the Mississippi House of
50 Representatives and Senate for their review. Under the drug
51 repository program:

52 (a) Only drugs in their original sealed and
53 tamper-evident packaging may be accepted and dispensed.

54 (b) The packaging must be unopened, except that drugs
55 packaged in single unit doses may be accepted and dispensed when
56 the outside packaging is opened if the single unit dose packaging
57 is undisturbed.

58 (c) The drugs must have been properly stored such that
59 the integrity of the medicine remains intact.



60 (d) A drug shall not be accepted or dispensed if there
61 is reason to believe that it is adulterated as described in
62 Section 75-29-3.

63 (e) Subject to the limitation specified in this
64 subsection, unused drugs dispensed for the purposes of the
65 Medicaid program may be accepted and dispensed.

66 (2) Nothing in subsection (1) of this section shall be
67 construed as prohibiting a pharmacy from accepting drugs that are
68 not eligible to be dispensed under the drug repository program,
69 for the proper disposal of those drugs.

70 (3) The drug repository program shall be fully implemented
71 not later than July 1, 2005.

72 **SECTION 3.** Section 43-13-505, Mississippi Code of 1972, is
73 brought forward as follows:

74 43-13-505. (1) Any person, including a drug manufacturer,
75 health care facility or government entity may donate prescription
76 drugs to the drug repository program. The drugs must be donated
77 at a pharmacy, hospital, or nonprofit clinic that participates in
78 the drug repository program under the criteria for participation
79 established in the rules adopted by the board under Section
80 43-13-509.

81 (2) A pharmacy, hospital, or nonprofit clinic that
82 participates in the drug repository program shall dispense drugs
83 donated under this section to individuals who meet the eligibility
84 standards established in the rules adopted by the board under
85 Section 43-13-509, or to other government entities and nonprofit
86 private entities to be dispensed to individuals who meet the
87 eligibility standards. A drug may be dispensed only pursuant to a
88 prescription issued by a licensed practitioner as defined in
89 Section 73-21-73. A pharmacy, hospital, or nonprofit clinic that
90 accepts donated drugs shall comply with all applicable federal
91 laws and laws of this state dealing with storage and distribution
92 of dangerous drugs, and shall inspect all drugs before dispensing



93 them to determine that they are not adulterated. The pharmacy,
94 hospital, or nonprofit clinic may charge individuals receiving
95 donated drugs a handling fee established in accordance with the
96 rules adopted by the board under Sections 43-13-501 through
97 43-13-509. Drugs donated to the repository may not be resold.

98 **SECTION 4.** Section 43-13-507, Mississippi Code of 1972, is
99 brought forward as follows:

100 43-13-507. (1) As used in this section, the term "health
101 care professional" means any of the following:

102 (a) Physicians and osteopaths licensed under Section
103 73-25-1 et seq.;

104 (b) Podiatrists licensed under Section 73-27-1 et seq.;

105 (c) Dentists and dental hygienists licensed under
106 Section 73-9-1 et seq.;

107 (d) Optometrists licensed under Section 73-19-1 et
108 seq.;

109 (e) Pharmacists licensed under Section 73-21-71 et
110 seq.;

111 (f) Registered nurses and licensed practical nurses
112 licensed under Section 73-15-1 et seq.; and

113 (g) Physician assistants licensed under Section 73-26-1
114 et seq.

115 (2) The State Board of Pharmacy; the State Department of
116 Health; the Division of Medicaid; any person, including a drug
117 manufacturer, or health care facility or government entity that
118 donates drugs to the repository program; any pharmacy, hospital,
119 nonprofit clinic or health care professional that accepts or
120 dispenses drugs under the program; and any pharmacy, hospital, or
121 nonprofit clinic that employs a health care professional who
122 accepts or dispenses drugs under the program, shall not be subject
123 to any of the following for matters related to donating,
124 accepting, or dispensing drugs under the program: criminal



125 prosecution; liability in tort or other civil action or
126 professional disciplinary action.

127 A drug manufacturer shall not, be subject to criminal
128 prosecution or liability in tort or other civil action for matters
129 related to the donation, acceptance, or dispensing of a drug
130 manufactured by the drug manufacturer that is donated by any
131 person, health care facility or government entity under the
132 program, including, but not limited to, liability for failure to
133 transfer or communicate product or consumer information, or for
134 improper storage or for the expiration date of the donated drug.

135 **SECTION 5.** Section 43-13-509, Mississippi Code of 1972, is
136 brought forward as follows:

137 43-13-509. (1) Not later than January 1, 2005, the State
138 Board of Pharmacy, in consultation with the State Department of
139 Health, shall adopt rules, in accordance with the Administrative
140 Procedures Law (Section 25-43-1 et seq.), governing the drug
141 repository program that establish all of the following:

142 (a) Eligibility criteria for pharmacies, hospitals and
143 nonprofit clinics to receive and dispense donated drugs under the
144 program;

145 (b) Standards and procedures for accepting, safely
146 storing and dispensing donated drugs;

147 (c) Standards and procedures for inspecting donated
148 drugs to determine that the original unit dose packaging is sealed
149 and tamper-evident and that the drugs are unadulterated, safe and
150 suitable for dispensing;

151 (d) Eligibility standards based on economic need for
152 individuals to receive drugs;

153 (e) A means, such as an identification card, by which
154 an individual who is eligible to receive donated drugs may
155 demonstrate eligibility to the pharmacy, hospital, or nonprofit
156 clinic dispensing the drugs;



157 (f) A form that an individual receiving a drug from the
158 repository must sign before receiving the drug to confirm that the
159 individual understands the immunity provisions of the program, and
160 waiving all right to sue any individual or entity involved in the
161 program;

162 (g) A formula to determine the amount of a handling fee
163 that pharmacies, hospitals and nonprofit clinics may charge to
164 drug recipients to cover restocking and dispensing costs;

165 (h) In addition, for drugs donated to the repository by
166 individuals:

167 (i) A list of drugs, arranged either by category
168 or by individual drug, that the repository will accept from
169 individuals;

170 (ii) A list of drugs, arranged either by category
171 or by individual drug, that the repository will not accept from
172 individuals. The list must include a statement as to why the drug
173 is ineligible for donation; and

174 (iii) A form each donor must sign stating that the
175 donor is the owner of the drugs and intends to voluntarily donate
176 them to the repository;

177 (i) In addition, for drugs donated to the repository by
178 health care facilities or government entities:

179 (i) A list of drugs, arranged either by category
180 or by individual drug, that the repository will accept from health
181 care facilities or government entities; and

182 (ii) A list of drugs, arranged either by category
183 or by individual drug, that the repository will not accept from
184 health care facilities or government entities. The list must
185 include a statement as to why the drug is ineligible for donation;
186 and

187 (j) Any other standards and procedures the board
188 considers appropriate.



189 (2) The provisions of paragraphs (h)(ii) and (i)(ii) of
190 subsection (1) of this section shall not be construed as
191 prohibiting a pharmacy from accepting drugs that are not eligible
192 to be dispensed under the drug repository program, for the proper
193 disposal of those drugs.

194 **SECTION 6.** This act shall take effect and be in force from
195 and after July 1, 2007.

