

By: Representative Rotenberry

To: Medicaid

HOUSE BILL NO. 539

1 AN ACT TO AMEND SECTION 43-13-121, MISSISSIPPI CODE OF 1972,  
2 TO DIRECT THE DIVISION OF MEDICAID TO ESTABLISH A POLICY THAT  
3 PRIORITIZES THE SERVICES THAT THE DIVISION WILL PROVIDE TO  
4 RECIPIENTS WHEN THE FUNDS APPROPRIATED TO THE DIVISION ARE NOT  
5 SUFFICIENT TO FULLY FUND ALL AUTHORIZED SERVICES; TO PROVIDE THAT  
6 NURSING FACILITY SERVICES MUST BE AMONG THE HIGHEST PRIORITIES FOR  
7 SERVICES THAT WILL BE PROVIDED; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 43-13-121, Mississippi Code of 1972, is  
10 amended as follows:

11 43-13-121. (1) The division shall administer the Medicaid  
12 program under the provisions of this article, and may do the  
13 following:

14 (a) Adopt and promulgate reasonable rules, regulations  
15 and standards, with approval of the Governor, and in accordance  
16 with the Administrative Procedures Law, Section 25-43-1 et seq.:

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

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

23 (iii) Establishing reasonable fees, charges and  
24 rates for medical services and drugs; in doing so, the division  
25 shall fix all of those fees, charges and rates at the minimum  
26 levels absolutely necessary to provide the medical assistance  
27 authorized by this article, and shall not change any of those  
28 fees, charges or rates except as may be authorized in Section  
29 43-13-117;

30 (iv) Providing for fair and impartial hearings;

31 (v) Providing safeguards for preserving the  
32 confidentiality of records; \* \* \*

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

35 (vii) Establishing a policy that prioritizes the  
36 services that the division will provide to recipients, including  
37 the quantity or frequency of use of those services, when the funds  
38 appropriated to the division are not sufficient to fully fund all  
39 authorized services. The policy shall provide that nursing  
40 facility services are among the highest priorities for services  
41 that will be provided.

42 (b) Receive and expend state, federal and other funds  
43 in accordance with court judgments or settlements and agreements  
44 between the State of Mississippi and the federal government, the  
45 rules and regulations promulgated by the division, with the  
46 approval of the Governor, and within the limitations and  
47 restrictions of this article and within the limits of funds  
48 available for that purpose;

49 (c) Subject to the limits imposed by this article, to  
50 submit a Medicaid plan to the United States Department of Health  
51 and Human Services for approval under the provisions of the  
52 federal Social Security Act, to act for the state in making  
53 negotiations relative to the submission and approval of that plan,  
54 to make such arrangements, not inconsistent with the law, as may  
55 be required by or under federal law to obtain and retain that  
56 approval and to secure for the state the benefits of the  
57 provisions of that law.

58 No agreements, specifically including the general plan for  
59 the operation of the Medicaid program in this state, shall be made  
60 by and between the division and the United States Department of  
61 Health and Human Services unless the Attorney General of the State  
62 of Mississippi has reviewed the agreements, specifically including

63 the operational plan, and has certified in writing to the Governor  
64 and to the executive director of the division that the agreements,  
65 including the plan of operation, have been drawn strictly in  
66 accordance with the terms and requirements of this article;

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

72 (e) To make reports to the United States Department of  
73 Health and Human Services as from time to time may be required by  
74 that federal department and to the Mississippi Legislature as  
75 provided in this section;

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

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

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

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

87 (j) To recover any and all payments incorrectly made by  
88 the division to a recipient or provider from the recipient or  
89 provider receiving the payments. To recover those payments, the  
90 division may use the following methods, in addition to any other  
91 methods available to the division:

92 (i) The division shall report to the State Tax  
93 Commission the name of any current or former Medicaid recipient  
94 who has received medical services rendered during a period of  
95 established Medicaid ineligibility and who has not reimbursed the

96 division for the related medical service payment(s). The State  
97 Tax Commission shall withhold from the state tax refund of the  
98 individual, and pay to the division, the amount of the payment(s)  
99 for medical services rendered to the ineligible individual that  
100 have not been reimbursed to the division for the related medical  
101 service payment(s);

102 (ii) The division shall report to the State Tax  
103 Commission the name of any Medicaid provider to whom payments were  
104 incorrectly made that the division has not been able to recover by  
105 other methods available to the division. The State Tax Commission  
106 shall withhold from the state tax refund of the provider, and pay  
107 to the division, the amount of the payments that were incorrectly  
108 made to the provider that have not been recovered by other  
109 available methods;

110 (k) To recover any and all payments by the division  
111 fraudulently obtained by a recipient or provider. Additionally,  
112 if recovery of any payments fraudulently obtained by a recipient  
113 or provider is made in any court, then, upon motion of the  
114 Governor, the judge of the court may award twice the payments  
115 recovered as damages;

116 (l) Have full, complete and plenary power and authority  
117 to conduct such investigations as it may deem necessary and  
118 requisite of alleged or suspected violations or abuses of the  
119 provisions of this article or of the regulations adopted under  
120 this article, including, but not limited to, fraudulent or  
121 unlawful act or deed by applicants for Medicaid or other benefits,  
122 or payments made to any person, firm or corporation under the  
123 terms, conditions and authority of this article, to suspend or  
124 disqualify any provider of services, applicant or recipient for  
125 gross abuse, fraudulent or unlawful acts for such periods,  
126 including permanently, and under such conditions as the division  
127 deems proper and just, including the imposition of a legal rate of  
128 interest on the amount improperly or incorrectly paid. Recipients

129 who are found to have misused or abused Medicaid benefits may be  
130 locked into one (1) physician and/or one (1) pharmacy of the  
131 recipient's choice for a reasonable amount of time in order to  
132 educate and promote appropriate use of medical services, in  
133 accordance with federal regulations. If an administrative hearing  
134 becomes necessary, the division may, if the provider does not  
135 succeed in his or her defense, tax the costs of the administrative  
136 hearing, including the costs of the court reporter or stenographer  
137 and transcript, to the provider. The convictions of a recipient  
138 or a provider in a state or federal court for abuse, fraudulent or  
139 unlawful acts under this chapter shall constitute an automatic  
140 disqualification of the recipient or automatic disqualification of  
141 the provider from participation under the Medicaid program.

142 A conviction, for the purposes of this chapter, shall include  
143 a judgment entered on a plea of nolo contendere or a  
144 nonadjudicated guilty plea and shall have the same force as a  
145 judgment entered pursuant to a guilty plea or a conviction  
146 following trial. A certified copy of the judgment of the court of  
147 competent jurisdiction of the conviction shall constitute prima  
148 facie evidence of the conviction for disqualification purposes;

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

156 (n) To cooperate and contract with the federal  
157 government for the purpose of providing Medicaid to Vietnamese and  
158 Cambodian refugees, under the provisions of Public Law 94-23 and  
159 Public Law 94-24, including any amendments to those laws, only to  
160 the extent that the Medicaid assistance and the administrative  
161 cost related thereto are one hundred percent (100%) reimbursable

162 by the federal government. For the purposes of Section 43-13-117,  
163 persons receiving Medicaid under Public Law 94-23 and Public Law  
164 94-24, including any amendments to those laws, shall not be  
165 considered a new group or category of recipient; and

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

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

176 (3) The division, and the State Department of Health as the  
177 agency for licensure of health care facilities and certification  
178 and inspection for the Medicaid and/or Medicare programs, shall  
179 contract for or otherwise provide for the consolidation of on-site  
180 inspections of health care facilities that are necessitated by the  
181 respective programs and functions of the division and the  
182 department.

183 (4) The division and its hearing officers shall have power  
184 to preserve and enforce order during hearings; to issue subpoenas  
185 for, to administer oaths to and to compel the attendance and  
186 testimony of witnesses, or the production of books, papers,  
187 documents and other evidence, or the taking of depositions before  
188 any designated individual competent to administer oaths; to  
189 examine witnesses; and to do all things conformable to law that  
190 may be necessary to enable them effectively to discharge the  
191 duties of their office. In compelling the attendance and  
192 testimony of witnesses, or the production of books, papers,  
193 documents and other evidence, or the taking of depositions, as  
194 authorized by this section, the division or its hearing officers

195 may designate an individual employed by the division or some other  
196 suitable person to execute and return that process, whose action  
197 in executing and returning that process shall be as lawful as if  
198 done by the sheriff or some other proper officer authorized to  
199 execute and return process in the county where the witness may  
200 reside. In carrying out the investigatory powers under the  
201 provisions of this article, the executive director or other  
202 designated person or persons may examine, obtain, copy or  
203 reproduce the books, papers, documents, medical charts,  
204 prescriptions and other records relating to medical care and  
205 services furnished by the provider to a recipient or designated  
206 recipients of Medicaid services under investigation. In the  
207 absence of the voluntary submission of the books, papers,  
208 documents, medical charts, prescriptions and other records, the  
209 Governor, the executive director, or other designated person may  
210 issue and serve subpoenas instantly upon the provider, his or her  
211 agent, servant or employee for the production of the books,  
212 papers, documents, medical charts, prescriptions or other records  
213 during an audit or investigation of the provider. If any provider  
214 or his or her agent, servant or employee refuses to produce the  
215 records after being duly subpoenaed, the executive director may  
216 certify those facts and institute contempt proceedings in the  
217 manner, time and place as authorized by law for administrative  
218 proceedings. As an additional remedy, the division may recover  
219 all amounts paid to the provider covering the period of the audit  
220 or investigation, inclusive of a legal rate of interest and a  
221 reasonable attorney's fee and costs of court if suit becomes  
222 necessary. Division staff shall have immediate access to the  
223 provider's physical location, facilities, records, documents,  
224 books, and any other records relating to medical care and services  
225 rendered to recipients during regular business hours.

226 (5) If any person in proceedings before the division  
227 disobeys or resists any lawful order or process, or misbehaves

228 during a hearing or so near the place thereof as to obstruct the  
229 hearing, or neglects to produce, after having been ordered to do  
230 so, any pertinent book, paper or document, or refuses to appear  
231 after having been subpoenaed, or upon appearing refuses to take  
232 the oath as a witness, or after having taken the oath refuses to  
233 be examined according to law, the executive director shall certify  
234 the facts to any court having jurisdiction in the place in which  
235 it is sitting, and the court shall thereupon, in a summary manner,  
236 hear the evidence as to the acts complained of, and if the  
237 evidence so warrants, punish that person in the same manner and to  
238 the same extent as for a contempt committed before the court, or  
239 commit that person upon the same condition as if the doing of the  
240 forbidden act had occurred with reference to the process of, or in  
241 the presence of, the court.

242 (6) In suspending or terminating any provider from  
243 participation in the Medicaid program, the division shall preclude  
244 the provider from submitting claims for payment, either personally  
245 or through any clinic, group, corporation or other association to  
246 the division or its fiscal agents for any services or supplies  
247 provided under the Medicaid program except for those services or  
248 supplies provided before the suspension or termination. No  
249 clinic, group, corporation or other association that is a provider  
250 of services shall submit claims for payment to the division or its  
251 fiscal agents for any services or supplies provided by a person  
252 within that organization who has been suspended or terminated from  
253 participation in the Medicaid program except for those services or  
254 supplies provided before the suspension or termination. When this  
255 provision is violated by a provider of services that is a clinic,  
256 group, corporation or other association, the division may suspend  
257 or terminate that organization from participation. Suspension may  
258 be applied by the division to all known affiliates of a provider,  
259 provided that each decision to include an affiliate is made on a  
260 case-by-case basis after giving due regard to all relevant facts



261 and circumstances. The violation, failure or inadequacy of  
262 performance may be imputed to a person with whom the provider is  
263 affiliated where that conduct was accomplished within the course  
264 of his or her official duty or was effectuated by him or her with  
265 the knowledge or approval of that person.

266 (7) The division may deny or revoke enrollment in the  
267 Medicaid program to a provider if any of the following are found  
268 to be applicable to the provider, his or her agent, a managing  
269 employee or any person having an ownership interest equal to five  
270 percent (5%) or greater in the provider:

271 (a) Failure to truthfully or fully disclose any and all  
272 information required, or the concealment of any and all  
273 information required, on a claim, a provider application or a  
274 provider agreement, or the making of a false or misleading  
275 statement to the division relative to the Medicaid program.

276 (b) Previous or current exclusion, suspension,  
277 termination from or the involuntary withdrawing from participation  
278 in the Medicaid program, any other state's Medicaid program,  
279 Medicare or any other public or private health or health insurance  
280 program. If the division ascertains that a provider has been  
281 convicted of a felony under federal or state law for an offense  
282 that the division determines is detrimental to the best interest  
283 of the program or of Medicaid beneficiaries, the division may  
284 refuse to enter into an agreement with that provider, or may  
285 terminate or refuse to renew an existing agreement.

286 (c) Conviction under federal or state law of a criminal  
287 offense relating to the delivery of any goods, services or  
288 supplies, including the performance of management or  
289 administrative services relating to the delivery of the goods,  
290 services or supplies, under the Medicaid program, any other  
291 state's Medicaid program, Medicare or any other public or private  
292 health or health insurance program.

293 (d) Conviction under federal or state law of a criminal  
294 offense relating to the neglect or abuse of a patient in  
295 connection with the delivery of any goods, services or supplies.

296 (e) Conviction under federal or state law of a criminal  
297 offense relating to the unlawful manufacture, distribution,  
298 prescription or dispensing of a controlled substance.

299 (f) Conviction under federal or state law of a criminal  
300 offense relating to fraud, theft, embezzlement, breach of  
301 fiduciary responsibility or other financial misconduct.

302 (g) Conviction under federal or state law of a criminal  
303 offense punishable by imprisonment of a year or more that involves  
304 moral turpitude, or acts against the elderly, children or infirm.

305 (h) Conviction under federal or state law of a criminal  
306 offense in connection with the interference or obstruction of any  
307 investigation into any criminal offense listed in paragraphs (c)  
308 through (i) of this subsection.

309 (i) Sanction for a violation of federal or state laws  
310 or rules relative to the Medicaid program, any other state's  
311 Medicaid program, Medicare or any other public health care or  
312 health insurance program.

313 (j) Revocation of license or certification.

314 (k) Failure to pay recovery properly assessed or  
315 pursuant to an approved repayment schedule under the Medicaid  
316 program.

317 (l) Failure to meet any condition of enrollment.

318 **SECTION 2.** This act shall take effect and be in force from  
319 and after its passage.