

By: Senator(s) Dawkins, Williamson

To: Public Health and Welfare; Appropriations

SENATE BILL NO. 2433

1 AN ACT TO CREATE THE MISSISSIPPI FAIR SHARE HEALTH CARE ACT;  
 2 TO DEFINE CERTAIN TERMS; TO PROVIDE THAT CERTAIN EMPLOYERS THAT DO  
 3 NOT SPEND AT LEAST 8% OF THE TOTAL WAGES PAID TO ITS EMPLOYEES IN  
 4 THIS STATE ON HEALTH INSURANCE COSTS SHALL PAY TO THE DIVISION OF  
 5 MEDICAID, OFFICE OF THE GOVERNOR, AN AMOUNT EQUAL TO THE  
 6 DIFFERENCE BETWEEN WHAT THE EMPLOYER SPENDS FOR HEALTH INSURANCE  
 7 COSTS AND AN AMOUNT EQUAL TO 8% OF THE TOTAL WAGES PAID TO ITS  
 8 EMPLOYEES IN THIS STATE; TO PROVIDE A CIVIL PENALTY FOR FAILING TO  
 9 MAKE THE REQUIRED PAYMENT; TO AMEND SECTION 43-13-121, MISSISSIPPI  
 10 CODE OF 1972, TO AUTHORIZE THE DIVISION OF MEDICAID TO DEPOSIT AND  
 11 UTILIZE SUCH PAYMENTS TO DEFRAY THE COST OF THE MEDICAID PROGRAM;  
 12 AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** This act shall be known and may be cited as the  
 15 "Mississippi Fair Share Health Care Act."

16 **SECTION 2.** The following words shall have the ascribed  
 17 meanings unless the context clearly indicates otherwise:

18 (a) "Employee" means all individuals employed full time  
 19 or part time directly by an employer.

20 (b) "Employer" means any person, institution,  
 21 organization or other entity that pays salary or wages for work  
 22 performed. The term "employer" shall not include the federal  
 23 government, the State of Mississippi, or any political subdivision  
 24 thereof, or any employer with ten thousand (10,000) or less  
 25 employees in this state.

26 (c) "Health insurance costs" means the amount paid by  
 27 an employer to provide health care or health insurance to  
 28 employees in this state to the extent the costs may be deductible  
 29 by an employer under federal tax law.

30 (d) "Health insurance costs" includes payments for  
 31 medical care, prescription drugs, vision care, medical savings

32 accounts, and any other costs to provide health benefits as  
33 defined in Section 213(d) of the Internal Revenue Code.

34 **SECTION 3.** (1) An employer that is organized as a nonprofit  
35 organization that does not spend at least six percent (6%) of the  
36 total wages paid to its employees in this state on health  
37 insurance costs shall pay to the Division of Medicaid, Office of  
38 the Governor, an amount equal to the difference between what the  
39 employer spends for health insurance costs and an amount equal to  
40 six percent (6%) of the total wages paid to its employees in this  
41 state.

42 (2) An employer that is not organized as a nonprofit  
43 organization and does not spend at least eight percent (8%) of the  
44 total wages paid to its employees in this state on health  
45 insurance costs shall pay to the Division of Medicaid, Office of  
46 the Governor, an amount equal to the difference between what the  
47 employer spends for health insurance costs and an amount equal to  
48 eight percent (8%) of the total wages paid to its employees in  
49 this state.

50 (3) An employer may not deduct any payment made under  
51 subsection (1) or (2) from the wages of an employee.

52 (4) An employer shall make the payment required under this  
53 section to the Division of Medicaid, Office of the Governor, on a  
54 periodic basis as determine by the Executive Director of the  
55 Division of Medicaid.

56 (5) Failure to make the payment required under this section  
57 shall result in the imposition of a civil penalty by the Executive  
58 Director of the Division of Medicaid in an amount not to exceed  
59 Five Hundred Dollars (\$500.00).

60 (6) On an annual basis, the Executive Director of the  
61 Division of Medicaid shall verify which employers have ten  
62 thousand (10,000) or more employees in this state and shall ensure  
63 that all employers have made the payment required in this section.

64 (7) The Division of Medicaid, Office of the Governor, shall  
65 promulgate rules and regulations necessary to carry out the  
66 provisions of this act.

67 **SECTION 4.** Section 43-13-121, Mississippi Code of 1972, is  
68 amended as follows:

69 43-13-121. (1) The division shall administer the Medicaid  
70 program under the provisions of this article, and may do the  
71 following:

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

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

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

81 (iii) Establishing reasonable fees, charges and  
82 rates for medical services and drugs; in doing so, the division  
83 shall fix all of those fees, charges and rates at the minimum  
84 levels absolutely necessary to provide the medical assistance  
85 authorized by this article, and shall not change any of those  
86 fees, charges or rates except as may be authorized in Section  
87 43-13-117;

88 (iv) Providing for fair and impartial hearings;

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

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

93 (b) Receive and expend state, federal and other funds  
94 in accordance with court judgments or settlements and agreements  
95 between the State of Mississippi and the federal government, the  
96 rules and regulations promulgated by the division, with the

97 approval of the Governor, and within the limitations and  
98 restrictions of this article and within the limits of funds  
99 available for that purpose;

100 (c) Subject to the limits imposed by this article, to  
101 submit a Medicaid plan to the United States Department of Health  
102 and Human Services for approval under the provisions of the  
103 federal Social Security Act, to act for the state in making  
104 negotiations relative to the submission and approval of that plan,  
105 to make such arrangements, not inconsistent with the law, as may  
106 be required by or under federal law to obtain and retain that  
107 approval and to secure for the state the benefits of the  
108 provisions of that law.

109 No agreements, specifically including the general plan for  
110 the operation of the Medicaid program in this state, shall be made  
111 by and between the division and the United States Department of  
112 Health and Human Services unless the Attorney General of the State  
113 of Mississippi has reviewed the agreements, specifically including  
114 the operational plan, and has certified in writing to the Governor  
115 and to the executive director of the division that the agreements,  
116 including the plan of operation, have been drawn strictly in  
117 accordance with the terms and requirements of this article;

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

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

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

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

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

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

138           (j) To recover any and all payments incorrectly made by  
139 the division to a recipient or provider from the recipient or  
140 provider receiving the payments. To recover those payments, the  
141 division may use the following methods, in addition to any other  
142 methods available to the division:

143               (i) The division shall report to the State Tax  
144 Commission the name of any current or former Medicaid recipient  
145 who has received medical services rendered during a period of  
146 established Medicaid ineligibility and who has not reimbursed the  
147 division for the related medical service payment(s). The State  
148 Tax Commission shall withhold from the state tax refund of the  
149 individual, and pay to the division, the amount of the payment(s)  
150 for medical services rendered to the ineligible individual that  
151 have not been reimbursed to the division for the related medical  
152 service payment(s).

153               (ii) The division shall report to the State Tax  
154 Commission the name of any Medicaid provider to whom payments were  
155 incorrectly made that the division has not been able to recover by  
156 other methods available to the division. The State Tax Commission  
157 shall withhold from the state tax refund of the provider, and pay  
158 to the division, the amount of the payments that were incorrectly  
159 made to the provider that have not been recovered by other  
160 available methods;

161           (k) To recover any and all payments by the division  
162 fraudulently obtained by a recipient or provider. Additionally,

163 if recovery of any payments fraudulently obtained by a recipient  
164 or provider is made in any court, then, upon motion of the  
165 Governor, the judge of the court may award twice the payments  
166 recovered as damages;

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

193           A conviction, for the purposes of this chapter, shall include  
194 a judgment entered on a plea of nolo contendere or a  
195 nonadjudicated guilty plea and shall have the same force as a

196 judgment entered pursuant to a guilty plea or a conviction  
197 following trial. A certified copy of the judgment of the court of  
198 competent jurisdiction of the conviction shall constitute prima  
199 facie evidence of the conviction for disqualification purposes;

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

207 (n) To cooperate and contract with the federal  
208 government for the purpose of providing Medicaid to Vietnamese and  
209 Cambodian refugees, under the provisions of Public Law 94-23 and  
210 Public Law 94-24, including any amendments to those laws, only to  
211 the extent that the Medicaid assistance and the administrative  
212 cost related thereto are one hundred percent (100%) reimbursable  
213 by the federal government. For the purposes of Section 43-13-117,  
214 persons receiving Medicaid under Public Law 94-23 and Public Law  
215 94-24, including any amendments to those laws, shall not be  
216 considered a new group or category of recipient; and

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

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

227 (3) The division, and the State Department of Health as the  
228 agency for licensure of health care facilities and certification

229 and inspection for the Medicaid and/or Medicare programs, shall  
230 contract for or otherwise provide for the consolidation of on-site  
231 inspections of health care facilities that are necessitated by the  
232 respective programs and functions of the division and the  
233 department.

234 (4) The division and its hearing officers shall have power  
235 to preserve and enforce order during hearings; to issue subpoenas  
236 for, to administer oaths to and to compel the attendance and  
237 testimony of witnesses, or the production of books, papers,  
238 documents and other evidence, or the taking of depositions before  
239 any designated individual competent to administer oaths; to  
240 examine witnesses; and to do all things conformable to law that  
241 may be necessary to enable them effectively to discharge the  
242 duties of their office. In compelling the attendance and  
243 testimony of witnesses, or the production of books, papers,  
244 documents and other evidence, or the taking of depositions, as  
245 authorized by this section, the division or its hearing officers  
246 may designate an individual employed by the division or some other  
247 suitable person to execute and return that process, whose action  
248 in executing and returning that process shall be as lawful as if  
249 done by the sheriff or some other proper officer authorized to  
250 execute and return process in the county where the witness may  
251 reside. In carrying out the investigatory powers under the  
252 provisions of this article, the executive director or other  
253 designated person or persons may examine, obtain, copy or  
254 reproduce the books, papers, documents, medical charts,  
255 prescriptions and other records relating to medical care and  
256 services furnished by the provider to a recipient or designated  
257 recipients of Medicaid services under investigation. In the  
258 absence of the voluntary submission of the books, papers,  
259 documents, medical charts, prescriptions and other records, the  
260 Governor, the executive director, or other designated person may  
261 issue and serve subpoenas instantly upon the provider, his or her



262 agent, servant or employee for the production of the books,  
263 papers, documents, medical charts, prescriptions or other records  
264 during an audit or investigation of the provider. If any provider  
265 or his or her agent, servant or employee refuses to produce the  
266 records after being duly subpoenaed, the executive director may  
267 certify those facts and institute contempt proceedings in the  
268 manner, time and place as authorized by law for administrative  
269 proceedings. As an additional remedy, the division may recover  
270 all amounts paid to the provider covering the period of the audit  
271 or investigation, inclusive of a legal rate of interest and a  
272 reasonable attorney's fee and costs of court if suit becomes  
273 necessary. Division staff shall have immediate access to the  
274 provider's physical location, facilities, records, documents,  
275 books, and any other records relating to medical care and services  
276 rendered to recipients during regular business hours.

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

293 (6) In suspending or terminating any provider from  
294 participation in the Medicaid program, the division shall preclude

295 the provider from submitting claims for payment, either personally  
296 or through any clinic, group, corporation or other association to  
297 the division or its fiscal agents for any services or supplies  
298 provided under the Medicaid program except for those services or  
299 supplies provided before the suspension or termination. No  
300 clinic, group, corporation or other association that is a provider  
301 of services shall submit claims for payment to the division or its  
302 fiscal agents for any services or supplies provided by a person  
303 within that organization who has been suspended or terminated from  
304 participation in the Medicaid program except for those services or  
305 supplies provided before the suspension or termination. When this  
306 provision is violated by a provider of services that is a clinic,  
307 group, corporation or other association, the division may suspend  
308 or terminate that organization from participation. Suspension may  
309 be applied by the division to all known affiliates of a provider,  
310 provided that each decision to include an affiliate is made on a  
311 case-by-case basis after giving due regard to all relevant facts  
312 and circumstances. The violation, failure or inadequacy of  
313 performance may be imputed to a person with whom the provider is  
314 affiliated where that conduct was accomplished within the course  
315 of his or her official duty or was effectuated by him or her with  
316 the knowledge or approval of that person.

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

322 (a) Failure to truthfully or fully disclose any and all  
323 information required, or the concealment of any and all  
324 information required, on a claim, a provider application or a  
325 provider agreement, or the making of a false or misleading  
326 statement to the division relative to the Medicaid program.

327           (b) Previous or current exclusion, suspension,  
328 termination from or the involuntary withdrawing from participation  
329 in the Medicaid program, any other state's Medicaid program,  
330 Medicare or any other public or private health or health insurance  
331 program. If the division ascertains that a provider has been  
332 convicted of a felony under federal or state law for an offense  
333 that the division determines is detrimental to the best interest  
334 of the program or of Medicaid beneficiaries, the division may  
335 refuse to enter into an agreement with that provider, or may  
336 terminate or refuse to renew an existing agreement.

337           (c) Conviction under federal or state law of a criminal  
338 offense relating to the delivery of any goods, services or  
339 supplies, including the performance of management or  
340 administrative services relating to the delivery of the goods,  
341 services or supplies, under the Medicaid program, any other  
342 state's Medicaid program, Medicare or any other public or private  
343 health or health insurance program.

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

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

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

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

356           (h) Conviction under federal or state law of a criminal  
357 offense in connection with the interference or obstruction of any  
358 investigation into any criminal offense listed in paragraphs (c)  
359 through (i) of this subsection.

360 (i) Sanction for a violation of federal or state laws  
361 or rules relative to the Medicaid program, any other state's  
362 Medicaid program, Medicare or any other public health care or  
363 health insurance program.

364 (j) Revocation of license or certification.

365 (k) Failure to pay recovery properly assessed or  
366 pursuant to an approved repayment schedule under the Medicaid  
367 program.

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

369 (8) The division may receive payments from for profit and  
370 nonprofit employers required under Senate Bill No. 2433, 2007  
371 Regular Session, the Mississippi Fair Share Health Care Act, and  
372 deposit such payments into a special fund hereby created in State  
373 Treasury, which shall be used to defray the costs of the Medicaid  
374 program pursuant to appropriation therefor by the Legislature.

375 **SECTION 5.** This act shall take effect and be in force from  
376 and after July 1, 2007.