

MISSISSIPPI CODE of 1972

*** Current through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions ***

TITLE 43. PUBLIC WELFARE
CHAPTER 13. MEDICAL ASSISTANCE FOR THE AGED; MEDICAID
ARTICLE 3. MEDICAID

Miss. Code Ann. § 43-13-125 (2014)

§ 43-13-125. Recovery of Medicaid payments from third parties; compromise or settlement of claims; plaintiff's recovery of medical expenses as special damages; disposition of funds received

(1) If Medicaid is provided to a recipient under this article for injuries, disease or sickness caused under circumstances creating a cause of action in favor of the recipient against any person, firm, corporation, political subdivision or other state agency, then the division shall be entitled to recover the proceeds that may result from the exercise of any rights of recovery that the recipient may have against any such person, firm, corporation, political subdivision or other state agency, to the extent of the Division of Medicaid's interest on behalf of the recipient. The recipient shall execute and deliver instruments and papers to do whatever is necessary to secure those rights and shall do nothing after Medicaid is provided to prejudice the subrogation rights of the division. Court orders or agreements for reimbursement of Medicaid's interest shall direct those payments to the Division of Medicaid, which shall be authorized to endorse any and all, including, but not limited to, multipayee checks, drafts, money orders, or other negotiable instruments representing Medicaid payment recoveries that are received. In accordance with Section 43-13-305, endorsement of multipayee checks, drafts, money orders or other negotiable instruments by the Division of Medicaid shall be deemed endorsed by the recipient. All payments must be remitted to the division within sixty (60) days from the date of a settlement or the entry of a final judgment; failure to do so hereby authorizes the division to assert its rights under Sections 43-13-307 and 43-13-315, plus interest.

The division, with the approval of the Governor, may compromise or settle any such claim and execute a release of any claim it has by virtue of this section at the division's sole discretion. Nothing in this section shall be construed to require the Division of Medicaid to compromise any such claim.

(2) The acceptance of Medicaid under this article or the making of a claim under this article shall not affect the right of a recipient or his or her legal representative to recover Medicaid's interest as an element of damages in any action at law; however, a copy of the pleadings shall be certified to the division at the time of the institution of suit, and proof of that notice shall be filed of record in that action. The division may, at any time before the trial on the facts, join in that action or may intervene in that action. Any amount recovered by a recipient or his or her legal representative shall be applied as follows:

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

by the legal representative of the division;

(b) The amount of Medicaid's interest on behalf of the recipient; or such amount as may be arrived at by the legal representative of the division and the recipient's attorney; and

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

(3) No compromise of any claim by the recipient or his or her legal representative shall be binding upon or affect the rights of the division against the third party unless the division, with the approval of the Governor, has entered into the compromise in writing. The recipient or his or her legal representative maintain the absolute duty to notify the division of the institution of legal proceedings, and the third party and his or her insurer maintain the absolute duty to notify the division of a proposed compromise for which the division has an interest. The aforementioned absolute duties may not be delegated or assigned by contract or otherwise. Any compromise effected by the recipient or his or her legal representative with the third party in the absence of advance notification to and approved by the division shall constitute conclusive evidence of the liability of the third party, and the division, in litigating its claim against the third party, shall be required only to prove the amount and correctness of its claim relating to the injury, disease or sickness. If the recipient or his or her legal representative fails to notify the division of the institution of legal proceedings against a third party for which the division has a cause of action, the facts relating to negligence and the liability of the third party, if judgment is rendered for the recipient, shall constitute conclusive evidence of liability in a subsequent action maintained by the division and only the amount and correctness of the division's claim relating to injuries, disease or sickness shall be tried before the court. The division shall be authorized in bringing that action against the third party and his or her insurer jointly or against the insurer alone.

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

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

HISTORY: SOURCES: Codes, 1942, § 7290-43; Laws, 1969, Ex Sess, ch. 37, § 13; Laws, 1979, ch. 326; Laws, 1984, ch. 488, § 52; Laws, 1993, ch. 609, § 6; Laws, 2000, ch. 301, § 11; Laws, 2004, ch. 593, § 5; Laws, 2014, ch. 488, § 4, eff from and after July 1, 2014.
