

By: Senator(s) Ferris

To: Education; Juvenile
JusticeSENATE BILL NO. 2893
(As Passed the Senate)

1 AN ACT TO ESTABLISH THE RESCUE CENTERS OF MISSISSIPPI PILOT
2 PROGRAM; TO CREATE FIVE RESIDENTIAL FACILITIES FOR THE TREATMENT
3 AND TRAINING OF COMPULSORY-SCHOOL-AGE CHILDREN WHO HAVE BEEN
4 EXPELLED OR SUSPENDED FROM SCHOOL FOR SERIOUS AND CHRONIC
5 MISCONDUCT PURSUANT TO ORDER OF THE YOUTH COURT OR VOLUNTARY
6 COMMITMENT; TO ESTABLISH AND EMPOWER THE JUVENILE HEALTH RECOVERY
7 BOARD TO PROVIDE FOR THE CONSTRUCTION, EQUIPPING, SUPPORT AND
8 MAINTENANCE OF THE RESCUE CENTER FACILITIES WITH RULEMAKING
9 AUTHORITY TO PROVIDE FOR THE OPERATION OF THE CENTERS; TO DEFINE
10 THOSE CHILDREN ELIGIBLE FOR SERVICE AT THE CENTERS AND TO DEFINE
11 THOSE SERVICES TO BE PROVIDED AT THE CENTERS; TO CREATE A SPECIAL
12 FUND IN THE STATE TREASURY FOR SUPPORT OF THE PROGRAM TO BE
13 ADMINISTERED BY THE JUVENILE HEALTH RECOVERY BOARD; TO PRESCRIBE A
14 MISDEMEANOR FOR POSSESSING DEADLY WEAPONS OR EXPLOSIVES ON THE
15 GROUNDS OF A RESCUE CENTER; TO AMEND SECTION 43-21-605,
16 MISSISSIPPI CODE OF 1972, TO AUTHORIZE YOUTH COURT PLACEMENT
17 ORDERS TO THE RESCUE CENTER RESIDENTIAL FACILITIES; TO AMEND
18 SECTION 37-13-92, MISSISSIPPI CODE OF 1972, TO AUTHORIZE LOCAL
19 SCHOOL BOARDS TO REFER SUCH CHILDREN TO THE YOUTH COURT FOR
20 PLACEMENT IN THESE CENTERS IF THE ALTERNATIVE SCHOOL PROGRAM IS
21 NOT APPROPRIATE AND TO CLARIFY THE DISCRETION OF SCHOOL
22 SUPERINTENDENTS IN ASSIGNING STUDENTS TO ALTERNATIVE SCHOOLS; TO
23 AMEND SECTION 43-13-117, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
24 MEDICAID REIMBURSEMENT FOR SERVICES AT RESCUE CENTER RESIDENTIAL
25 FACILITIES ESTABLISHED UNDER THE PROGRAM; AND FOR RELATED
26 PURPOSES.

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

28 SECTION 1. The purpose of this act is to create, equip and
29 maintain a comprehensive system of a multidisciplinary continuum
30 of care and services for compulsory-school-age children,
31 including, but not limited to, in-home treatment, therapeutic
32 foster care, community-based programs and residential therapeutic
33 facilities for compulsory-school-age children who have been
34 suspended or expelled from a local school district for serious and
35 chronic misconduct or who have been voluntarily placed in the
36 facility by the child's parent(s) or guardian(s). These
37 facilities shall be known as "Rescue Centers of Mississippi."

38 SECTION 2. (1) The Rescue Centers of Mississippi shall be
39 established and operated on a phased-in pilot program basis, and

40 shall be under the interim control and administrative authority of
41 a Juvenile Health Recovery Board consisting of the following six
42 (6) members, or their designees:

43 (a) The Attorney General;

44 (b) The Executive Director of the Division of Medicaid;

45 (c) The Executive Director of the Department of Human
46 Services;

47 (d) The Executive Director of the Department of Mental
48 Health;

49 (e) The State Superintendent of Education; and

50 (f) The Executive Director of the State Department of
51 Health.

52 The Juvenile Health Recovery Board shall meet upon the call
53 of the Attorney General not later than thirty (30) days after
54 passage of this act. The Attorney General shall serve as chairman
55 of the board. A vice-chairman who shall serve as secretary of the
56 board shall also be selected by the membership of the board.
57 Board members may designate other appropriate representatives of
58 their offices to attend and fully act for an on behalf of the
59 board member.

60 (2) The Juvenile Health Recovery Board shall have the
61 following powers and responsibilities:

62 (a) The board shall promulgate rules and regulations as
63 necessary to implement and administer the Rescue Centers of
64 Mississippi program;

65 (b) The board shall select the location for each of the
66 five (5) pilot rescue center locations, one (1) to be in each of
67 the five (5) Mississippi congressional districts;

68 (c) The board shall contract with providers of health,
69 education and other residential services to the children residing
70 in such facilities, and may enter contracts for terms as the board
71 deems appropriate;

72 (d) The board shall coordinate the delivery and funding
73 of services at such facilities, utilizing whatever funding from

74 state, local, federal and private sources may be made available to
75 the board;

76 (e) The board shall conduct research on the program to
77 determine a cost/benefit analysis of the program upon full
78 implementation, in comparison to the incarceration of such
79 children in correctional institutions, and other costs including
80 crime, human and social services and legal services; and

81 (f) The board shall establish local advisory councils
82 to each residential therapeutic rescue center for the purpose of
83 assisting in the coordination and provision of services to the
84 children, consisting of the local school superintendent, local law
85 enforcement officers, the director of the regional mental
86 health/retardation center, school guidance counselors, and other
87 appropriate members.

88 (3) The Juvenile Health Recovery Board shall develop the
89 rules and regulations for the operation of the pilot rescue
90 centers on or before January 1, 2000, and shall submit a report
91 with recommendations for full implementation of the program or its
92 discontinuance on or before July 1, 2002.

93 SECTION 3. The Rescue Centers of Mississippi shall serve
94 compulsory-school-age children as defined in Section 39-13-91 who
95 have been expelled or suspended from school and are not
96 appropriate for an alternative school program because of serious
97 and chronically emotional or other behavioral disorders, and have
98 been ordered to such facility by the youth court of the county of
99 the residence of the child. Such youth court placement orders
100 shall be entered upon the recommendation of the local school board
101 or local law enforcement officers. Consensual orders may also be
102 entered for the placement of such children by their parent(s) or
103 guardian(s).

104 SECTION 4. (1) Subject to available funding, there shall be
105 at least five (5) Mississippi Rescue Centers in the three-year
106 pilot program, with no less than one (1) to be located in each of
107 the five (5) Mississippi congressional districts. It is the

108 intent of the Legislature that the board establish multiple
109 varieties of service delivery models under the auspices of this
110 program, including in-home treatment, therapeutic foster care,
111 community-based programs, and residential therapeutic Rescue
112 Centers. All such programs will include a family treatment,
113 training and accountability component. Rescue centers shall be
114 twenty-four-hour residential facilities with appropriate staff and
115 student housing for up to twenty-five (25) children. The various
116 rescue centers in the pilot program may have residential programs
117 ranging from six-month to twenty-four-month treatment cycles.
118 Rescue centers may deliver the following services to children
119 residing in the facilities:

- 120 (a) Mental health services;
- 121 (b) Health care;
- 122 (c) Social services and training;
- 123 (d) Academic, vocational-technical and workforce
124 education;
- 125 (e) Security and law enforcement; and
- 126 (f) Youth court supervision.

127 (2) Support and maintenance costs of the rescue centers
128 shall be defrayed from the special fund created in Section 5.

129 SECTION 5. There is created in the State Treasury a special
130 fund into which shall be deposited all funds contributed by the
131 Department of Human Services, Department of Mental Health, State
132 Department of Education, Division of Medicaid, or from any other
133 source of state, local, federal or private funds which may be
134 available for the operation of the Rescue Centers of Mississippi
135 pilot program. By the first quarter of the 2000 fiscal year, and
136 the three (3) fiscal years thereafter, each agency named in this
137 section shall pay into the special fund out of its annual
138 appropriation a sum equal to the amount determined by the Juvenile
139 Health Recovery Board to be necessary for the operation of the
140 pilot rescue centers, and subject to such funds as may have been
141 otherwise made available to such agencies by legislative

142 appropriation or otherwise. The Division of Medicaid shall use
143 all unmatched funds not committed for another purpose to match
144 federal Medicaid funds for any Medicaid approved services that
145 will be used in the rescue center pilot program for Medicaid
146 eligible children served at the rescue centers, or through any
147 other of the continuum of services provided, including therapeutic
148 foster care, in-home treatment and community-based programs.

149 SECTION 6. Any person who knowingly brings any firearm,
150 deadly weapon or explosive into a Rescue Center of Mississippi or
151 its grounds, or passes any thereof to a resident, employee or
152 officer of the center, is guilty of a misdemeanor and, upon
153 conviction, shall be punished by a fine of not less than Fifty
154 Dollars (\$50.00) nor more than Two Hundred Fifty Dollars
155 (\$250.00), imprisonment for not less than six (6) months nor more
156 than one (1) year, or both.

157 SECTION 7. Section 43-21-605, Mississippi Code of 1972, is
158 amended as follows:

159 43-21-605. (1) In delinquency cases, the disposition order
160 may include any of the following alternatives, giving precedence
161 in the following sequence:

162 (a) Release the child without further action;

163 (b) Place the child in the custody of the parents, a
164 relative or other persons subject to any conditions and
165 limitations, including restitution, as the youth court may
166 prescribe;

167 (c) Place the child on probation subject to any
168 reasonable and appropriate conditions and limitations, including
169 restitution, as the youth court may prescribe;

170 (d) Order terms of treatment calculated to assist the
171 child and the child's parents or guardian which are within the
172 ability of the parent or guardian to perform;

173 (e) Order terms of supervision which may include
174 participation in a constructive program of service or education or
175 civil fines not in excess of Five Hundred Dollars (\$500.00), or

176 restitution not in excess of actual damages caused by the child to
177 be paid out of his own assets or by performance of services
178 acceptable to the victims and approved by the youth court and
179 reasonably capable of performance within one (1) year;

180 (f) Suspend the child's driver's license by taking and
181 keeping it in custody of the court for not more than one (1) year;

182 (g) Give legal custody of the child to any of the
183 following:

184 (i) The Department of Human Services for
185 appropriate placement; or

186 (ii) Any public or private organization,
187 preferably community-based, able to assume the education, care and
188 maintenance of the child, which has been found suitable by the
189 court; or

190 (iii) The Department of Human Services for
191 placement in a wilderness training program or a state-supported
192 training school, except that no child under the age of ten (10)
193 years shall be committed to a state training school. The training
194 school may retain custody of the child until the child's twentieth
195 birthday but for no longer. The superintendent of a state
196 training school may parole a child at any time he may deem it in
197 the best interest and welfare of such child. Twenty (20) days
198 prior to such parole, the training school shall notify the
199 committing court of the pending release. The youth court may then
200 arrange subsequent placement after a reconvened disposition
201 hearing except that the youth court may not recommit the child to
202 the training school or any other secure facility without an
203 adjudication of a new offense or probation or parole violation.
204 Prior to assigning the custody of any child to any private
205 institution or agency, the youth court through its designee shall
206 first inspect the physical facilities to determine that they
207 provide a reasonable standard of health and safety for the child.

208 The youth court shall not place a child in the custody of a state
209 training school for truancy, unless such child has been

210 adjudicated to have committed an act of delinquency in addition to
211 truancy;

212 (h) Recommend to the child and the child's parents or
213 guardian that the child attend and participate in the Youth
214 Challenge Program under the Mississippi National Guard, as created
215 in Section 43-27-203, subject to the selection of the child for
216 the program by the National Guard; however, the child must
217 volunteer to participate in the program. The youth court may not
218 order any child to apply or attend the program;

219 (i) (i) Adjudicate the juvenile to the Statewide
220 Juvenile Work Program if the program is established in the court's
221 jurisdiction. The juvenile and his parents or guardians must sign
222 a waiver of liability in order to participate in the work program.
223 The judge will coordinate with the youth services counselors as to
224 placing participants in the work program;

225 (ii) The severity of the crime, whether or not the
226 juvenile is a repeat offender or is a felony offender will be
227 taken into consideration by the judge when adjudicating a juvenile
228 to the work program. The juveniles adjudicated to the work
229 program will be supervised by police officers or reserve officers.
230 The term of service will be from twenty-four (24) to one hundred
231 twenty (120) hours of community service. A juvenile will work the
232 hours to which he was adjudicated on the weekends during school
233 and week days during the summer. Parents are responsible for a
234 juvenile reporting for work. Noncompliance with an order to
235 perform community service will result in a heavier adjudication.
236 A juvenile may be adjudicated to the community service program
237 only two (2) times;

238 (iii) The judge shall assess an additional fine on
239 the juvenile which will be used to pay the costs of implementation
240 of the program and to pay for supervision by police officers and
241 reserve officers. The amount of the fine will be based on the
242 number of hours to which the juvenile has been adjudicated; * * *

243 (j) Order the child to participate in a youth court

244 work program as provided in Section 43-21-627; or

245 (k) Upon recommendation of the local school
246 superintendent or local law enforcement officers, adjudicate the
247 child to a Mississippi Rescue Center residential treatment and
248 education program facility if such facility or facilities are
249 established under Senate Bill No. 2893, 1999 Regular Session.

250 (2) In addition to any of the disposition alternatives
251 authorized under subsection (1) of this section, the disposition
252 order in any case in which the child is adjudicated delinquent for
253 an offense under Section 63-11-30 shall include an order denying
254 the driver's license and driving privileges of the child as
255 required under subsection (8) of Section 63-11-30.

256 (3) Fines levied under this chapter shall be paid into the
257 general fund of the county but, in those counties wherein the
258 youth court is a branch of the municipal government, it shall be
259 paid into the municipal treasury.

260 (4) Any institution or agency to which a child has been
261 committed shall give to the youth court any information concerning
262 the child as the youth court may at any time require.

263 (5) The youth court shall not place a child in another
264 school district who has been expelled from a school district for
265 the commission of a violent act. For the purpose of this
266 subsection, "violent act" means any action which results in death
267 or physical harm to another or an attempt to cause death or
268 physical harm to another.

269 SECTION 8. Section 37-13-92, Mississippi Code of 1972, is
270 amended as follows:

271 37-13-92. (1) Beginning with the school year 1993-1994, the
272 school boards of all school districts shall establish, maintain
273 and operate, in connection with the regular programs of the school
274 district, an alternative school program for, but not limited to,
275 the following categories of compulsory-school-age students:

276 (a) Any compulsory-school-age child who has been
277 suspended for more than ten (10) days or expelled from school,

278 except as provided in subsection (2);

279 (b) Any compulsory-school-age child referred to such
280 alternative school based upon a documented need for placement in
281 the alternative school program by the parent, legal guardian or
282 custodian of such child due to disciplinary problems; and

283 (c) Any compulsory-school-age child referred to such
284 alternative school program by the dispositive order of a
285 chancellor or youth court judge, with the consent of the
286 superintendent of the child's school district.

287 (2) Notwithstanding any other provisions to the contrary, no
288 school district shall be required to enroll any
289 compulsory-school-age child in an alternative school program if
290 such student (a) is suspended or expelled for possession of a
291 weapon or other felonious conduct or any other violation set forth
292 in Section 37-11-18, Mississippi Code of 1972; (b) poses a threat
293 to the safety of himself or to others; or (c) is disruptive to the
294 educational process being provided to other students, subject to
295 review by and the approval of the school board taking under
296 consideration recommendations by the administrator of the
297 alternative school and the appropriate guidance counselor. In
298 such cases the local school superintendent may recommend to the
299 youth court of the residence of the child that the child should be
300 placed in a Mississippi Rescue Center residential treatment
301 facility program pursuant to Senate Bill No. 2893, 1999 Regular
302 Session.

303 (3) The principal or program administrator of any such
304 alternative school program shall require verification from the
305 appropriate guidance counselor of any such child referred to the
306 alternative school program regarding the suitability of such child
307 for attendance at the alternative school program. Before a
308 student may be removed to an alternative school education program,
309 the superintendent of the student's school district must determine
310 that the written and distributed disciplinary policy of the local
311 district is being followed. The policy shall include standards

312 for:

313 (a) The removal of a student to an alternative
314 education program that will include a process of educational
315 review to develop the student's individual instruction plan and
316 the evaluation at regular intervals of the student's educational
317 progress; the process shall include classroom teachers and/or
318 other appropriate professional personnel, as defined in the
319 district policy, to ensure a continuing educational program for
320 the removed student;

321 (b) The duration of alternative placement; and

322 (c) The notification of parents or guardians, and their
323 appropriate inclusion in the removal and evaluation process, as
324 defined in the district policy. Nothing in this paragraph should
325 be defined in a manner to circumvent the principal's or the
326 superintendent's authority to remove a student to alternative
327 education.

328 (4) The local school board or the superintendent shall
329 provide for the continuing education of a student who has been
330 removed to an alternative school program.

331 (5) A school district, in its discretion, may provide a
332 program of general educational development (GED) preparatory
333 instruction in the alternative school program. However, any GED
334 preparation program offered in an alternative school program must
335 be administered in compliance with the rules and regulations
336 established for such programs under Sections 37-35-1 through
337 37-35-11 and by the State Board for Community and Junior Colleges.
338 The school district may administer the General Educational
339 Development (GED) Testing Program under the policies and
340 guidelines of the GED Testing Service of the American Council on
341 Education in the alternative school program or may authorize the
342 test to be administered through the community/junior college
343 district in which the alternative school is situated.

344 (6) Any such alternative school program operated under the
345 authority of this section shall meet all appropriate accreditation

346 requirements of the State Department of Education.

347 (7) The alternative school program may be held within such
348 school district or may be operated by two (2) or more adjacent
349 school districts, pursuant to a contract approved by the State
350 Board of Education. When two (2) or more school districts
351 contract to operate an alternative school program, the school
352 board of a district designated to be the lead district shall serve
353 as the governing board of the alternative school program.

354 Transportation for students attending the alternative school
355 program shall be the responsibility of the local school district.

356 The expense of establishing, maintaining and operating such
357 alternative school program may be paid from funds contributed or
358 otherwise made available to the school district for such purpose
359 or from local district maintenance funds.

360 (8) The State Board of Education shall promulgate minimum
361 guidelines for alternative school programs. The guidelines shall
362 require, at a minimum, the formulation of an individual
363 instruction plan for each student referred to the alternative
364 school program and, upon a determination that it is in a student's
365 best interest for that student to receive general educational
366 development (GED) preparatory instruction, that the local school
367 board assign the student to a GED preparatory program established
368 under subsection (4) of this section. The minimum guidelines for
369 alternative school programs shall also require the following
370 components:

371 (a) Clear guidelines and procedures for placement of
372 students into alternative education programs which at a minimum
373 shall prescribe due process procedures for disciplinary and
374 general educational development (GED) placement;

375 (b) Clear and consistent goals for students and
376 parents;

377 (c) Curricula addressing cultural and learning style
378 differences;

379 (d) Direct supervision of all activities on a closed

380 campus;

381 (e) Full-day attendance with a rigorous workload and
382 minimal time off;

383 (f) Selection of program from options provided by the
384 local school district, Division of Youth Services or the youth
385 court, including transfer to a community-based alternative school;

386 (g) Continual monitoring and evaluation and formalized
387 passage from one step or program to another;

388 (h) A motivated and culturally diverse staff;

389 (i) Counseling for parents and students;

390 (j) Administrative and community support for the
391 program; and

392 (k) Clear procedures for annual alternative school
393 program review and evaluation.

394 (9) On request of a school district, the State Department of
395 Education shall provide the district informational material on
396 developing an alternative school program that takes into
397 consideration size, wealth and existing facilities in determining
398 a program best suited to a district.

399 (10) Any compulsory-school-age child who becomes involved in
400 any criminal or violent behavior shall be removed from such
401 alternative school program and, if probable cause exists, a case
402 shall be referred to the youth court.

403 (11) The State Board of Education, in its discretion, may
404 exempt not more than four (4) school district alternative school
405 programs in the state from any compulsory standard of
406 accreditation for a period of three (3) years. During this
407 period, the State Department of Education shall conduct a study of
408 all alternative school programs in the state, and on or before
409 January 1, 2000, shall develop and promulgate accreditation
410 standards for all alternative school programs, including any
411 recommendations for necessary legislation relating to such
412 alternative school programs.

413 SECTION 9. Section 43-13-117, Mississippi Code of 1972, is

414 amended as follows:

415 43-13-117. Medical assistance as authorized by this article
416 shall include payment of part or all of the costs, at the
417 discretion of the division or its successor, with approval of the
418 Governor, of the following types of care and services rendered to
419 eligible applicants who shall have been determined to be eligible
420 for such care and services, within the limits of state
421 appropriations and federal matching funds:

422 (1) Inpatient hospital services.

423 (a) The division shall allow thirty (30) days of
424 inpatient hospital care annually for all Medicaid recipients;
425 however, before any recipient will be allowed more than fifteen
426 (15) days of inpatient hospital care in any one (1) year, he must
427 obtain prior approval therefor from the division. The division
428 shall be authorized to allow unlimited days in disproportionate
429 hospitals as defined by the division for eligible infants under
430 the age of six (6) years.

431 (b) From and after July 1, 1994, the Executive Director
432 of the Division of Medicaid shall amend the Mississippi Title XIX
433 Inpatient Hospital Reimbursement Plan to remove the occupancy rate
434 penalty from the calculation of the Medicaid Capital Cost
435 Component utilized to determine total hospital costs allocated to
436 the Medicaid Program.

437 (2) Outpatient hospital services. Provided that where the
438 same services are reimbursed as clinic services, the division may
439 revise the rate or methodology of outpatient reimbursement to
440 maintain consistency, efficiency, economy and quality of care.

441 (3) Laboratory and X-ray services.

442 (4) Nursing facility services.

443 (a) The division shall make full payment to nursing
444 facilities for each day, not exceeding thirty-six (36) days per
445 year, that a patient is absent from the facility on home leave.
446 However, before payment may be made for more than eighteen (18)
447 home leave days in a year for a patient, the patient must have

448 written authorization from a physician stating that the patient is
449 physically and mentally able to be away from the facility on home
450 leave. Such authorization must be filed with the division before
451 it will be effective and the authorization shall be effective for
452 three (3) months from the date it is received by the division,
453 unless it is revoked earlier by the physician because of a change
454 in the condition of the patient.

455 (b) From and after July 1, 1993, the division shall
456 implement the integrated case-mix payment and quality monitoring
457 system developed pursuant to Section 43-13-122, which includes the
458 fair rental system for property costs and in which recapture of
459 depreciation is eliminated. The division may revise the
460 reimbursement methodology for the case-mix payment system by
461 reducing payment for hospital leave and therapeutic home leave
462 days to the lowest case-mix category for nursing facilities,
463 modifying the current method of scoring residents so that only
464 services provided at the nursing facility are considered in
465 calculating a facility's per diem, and the division may limit
466 administrative and operating costs, but in no case shall these
467 costs be less than one hundred nine percent (109%) of the median
468 administrative and operating costs for each class of facility, not
469 to exceed the median used to calculate the nursing facility
470 reimbursement for Fiscal Year 1996, to be applied uniformly to all
471 long-term care facilities. This paragraph (b) shall stand
472 repealed on July 1, 1997.

473 (c) From and after July 1, 1997, all state-owned
474 nursing facilities shall be reimbursed on a full reasonable costs
475 basis. From and after July 1, 1997, payments by the division to
476 nursing facilities for return on equity capital shall be made at
477 the rate paid under Medicare (Title XVIII of the Social Security
478 Act), but shall be no less than seven and one-half percent (7.5%)
479 nor greater than ten percent (10%).

480 (d) A Review Board for nursing facilities is
481 established to conduct reviews of the Division of Medicaid's

482 decision in the areas set forth below:

483 (i) Review shall be heard in the following areas:

484 (A) Matters relating to cost reports

485 including, but not limited to, allowable costs and cost

486 adjustments resulting from desk reviews and audits.

487 (B) Matters relating to the Minimum Data Set

488 Plus (MDS +) or successor assessment formats including, but not

489 limited to, audits, classifications and submissions.

490 (ii) The Review Board shall be composed of six (6)

491 members, three (3) having expertise in one (1) of the two (2)

492 areas set forth above and three (3) having expertise in the other

493 area set forth above. Each panel of three (3) shall only review

494 appeals arising in its area of expertise. The members shall be

495 appointed as follows:

496 (A) In each of the areas of expertise defined

497 under subparagraphs (i)(A) and (i)(B), the Executive Director of

498 the Division of Medicaid shall appoint one (1) person chosen from

499 the private sector nursing home industry in the state, which may

500 include independent accountants and consultants serving the

501 industry;

502 (B) In each of the areas of expertise defined

503 under subparagraphs (i)(A) and (i)(B), the Executive Director of

504 the Division of Medicaid shall appoint one (1) person who is

505 employed by the state who does not participate directly in desk

506 reviews or audits of nursing facilities in the two (2) areas of

507 review;

508 (C) The two (2) members appointed by the

509 Executive Director of the Division of Medicaid in each area of

510 expertise shall appoint a third member in the same area of

511 expertise.

512 In the event of a conflict of interest on the part of any

513 Review Board members, the Executive Director of the Division of

514 Medicaid or the other two (2) panel members, as applicable, shall

515 appoint a substitute member for conducting a specific review.

516 (iii) The Review Board panels shall have the power
517 to preserve and enforce order during hearings; to issue subpoenas;
518 to administer oaths; to compel attendance and testimony of
519 witnesses; or to compel the production of books, papers, documents
520 and other evidence; or the taking of depositions before any
521 designated individual competent to administer oaths; to examine
522 witnesses; and to do all things conformable to law that may be
523 necessary to enable it effectively to discharge its duties. The
524 Review Board panels may appoint such person or persons as they
525 shall deem proper to execute and return process in connection
526 therewith.

527 (iv) The Review Board shall promulgate, publish
528 and disseminate to nursing facility providers rules of procedure
529 for the efficient conduct of proceedings, subject to the approval
530 of the Executive Director of the Division of Medicaid and in
531 accordance with federal and state administrative hearing laws and
532 regulations.

533 (v) Proceedings of the Review Board shall be of
534 record.

535 (vi) Appeals to the Review Board shall be in
536 writing and shall set out the issues, a statement of alleged facts
537 and reasons supporting the provider's position. Relevant
538 documents may also be attached. The appeal shall be filed within
539 thirty (30) days from the date the provider is notified of the
540 action being appealed or, if informal review procedures are taken,
541 as provided by administrative regulations of the Division of
542 Medicaid, within thirty (30) days after a decision has been
543 rendered through informal hearing procedures.

544 (vii) The provider shall be notified of the
545 hearing date by certified mail within thirty (30) days from the
546 date the Division of Medicaid receives the request for appeal.
547 Notification of the hearing date shall in no event be less than
548 thirty (30) days before the scheduled hearing date. The appeal
549 may be heard on shorter notice by written agreement between the

550 provider and the Division of Medicaid.

551 (viii) Within thirty (30) days from the date of
552 the hearing, the Review Board panel shall render a written
553 recommendation to the Executive Director of the Division of
554 Medicaid setting forth the issues, findings of fact and applicable
555 law, regulations or provisions.

556 (ix) The Executive Director of the Division of
557 Medicaid shall, upon review of the recommendation, the proceedings
558 and the record, prepare a written decision which shall be mailed
559 to the nursing facility provider no later than twenty (20) days
560 after the submission of the recommendation by the panel. The
561 decision of the executive director is final, subject only to
562 judicial review.

563 (x) Appeals from a final decision shall be made to
564 the Chancery Court of Hinds County. The appeal shall be filed
565 with the court within thirty (30) days from the date the decision
566 of the Executive Director of the Division of Medicaid becomes
567 final.

568 (xi) The action of the Division of Medicaid under
569 review shall be stayed until all administrative proceedings have
570 been exhausted.

571 (xii) Appeals by nursing facility providers
572 involving any issues other than those two (2) specified in
573 subparagraphs (i)(A) and (ii)(B) shall be taken in accordance with
574 the administrative hearing procedures established by the Division
575 of Medicaid.

576 (e) When a facility of a category that does not require
577 a certificate of need for construction and that could not be
578 eligible for Medicaid reimbursement is constructed to nursing
579 facility specifications for licensure and certification, and the
580 facility is subsequently converted to a nursing facility pursuant
581 to a certificate of need that authorizes conversion only and the
582 applicant for the certificate of need was assessed an application
583 review fee based on capital expenditures incurred in constructing

584 the facility, the division shall allow reimbursement for capital
585 expenditures necessary for construction of the facility that were
586 incurred within the twenty-four (24) consecutive calendar months
587 immediately preceding the date that the certificate of need
588 authorizing such conversion was issued, to the same extent that
589 reimbursement would be allowed for construction of a new nursing
590 facility pursuant to a certificate of need that authorizes such
591 construction. The reimbursement authorized in this subparagraph
592 (e) may be made only to facilities the construction of which was
593 completed after June 30, 1989. Before the division shall be
594 authorized to make the reimbursement authorized in this
595 subparagraph (e), the division first must have received approval
596 from the Health Care Financing Administration of the United States
597 Department of Health and Human Services of the change in the state
598 Medicaid plan providing for such reimbursement.

599 (5) Periodic screening and diagnostic services for
600 individuals under age twenty-one (21) years as are needed to
601 identify physical and mental defects and to provide health care
602 treatment and other measures designed to correct or ameliorate
603 defects and physical and mental illness and conditions discovered
604 by the screening services regardless of whether these services are
605 included in the state plan. The division may include in its
606 periodic screening and diagnostic program those discretionary
607 services authorized under the federal regulations adopted to
608 implement Title XIX of the federal Social Security Act, as
609 amended. The division, in obtaining physical therapy services,
610 occupational therapy services, and services for individuals with
611 speech, hearing and language disorders, may enter into a
612 cooperative agreement with the State Department of Education for
613 the provision of such services to handicapped students by public
614 school districts using state funds which are provided from the
615 appropriation to the Department of Education to obtain federal
616 matching funds through the division. The division, in obtaining
617 medical and psychological evaluations for children in the custody

618 of the State Department of Human Services may enter into a
619 cooperative agreement with the State Department of Human Services
620 for the provision of such services using state funds which are
621 provided from the appropriation to the Department of Human
622 Services to obtain federal matching funds through the division.

623 On July 1, 1993, all fees for periodic screening and
624 diagnostic services under this paragraph (5) shall be increased by
625 twenty-five percent (25%) of the reimbursement rate in effect on
626 June 30, 1993.

627 (6) Physicians' services. On January 1, 1996, all fees for
628 physicians' services shall be reimbursed at seventy percent (70%)
629 of the rate established on January 1, 1994, under Medicare (Title
630 XVIII of the Social Security Act), as amended, and the division
631 may adjust the physicians' reimbursement schedule to reflect the
632 differences in relative value between Medicaid and Medicare.

633 (7) (a) Home health services for eligible persons, not to
634 exceed in cost the prevailing cost of nursing facility services,
635 not to exceed sixty (60) visits per year.

636 (b) The division may revise reimbursement for home
637 health services in order to establish equity between reimbursement
638 for home health services and reimbursement for institutional
639 services within the Medicaid program. This paragraph (b) shall
640 stand repealed on July 1, 1997.

641 (8) Emergency medical transportation services. On January
642 1, 1994, emergency medical transportation services shall be
643 reimbursed at seventy percent (70%) of the rate established under
644 Medicare (Title XVIII of the Social Security Act), as amended.
645 "Emergency medical transportation services" shall mean, but shall
646 not be limited to, the following services by a properly permitted
647 ambulance operated by a properly licensed provider in accordance
648 with the Emergency Medical Services Act of 1974 (Section 41-59-1
649 et seq.): (i) basic life support, (ii) advanced life support,
650 (iii) mileage, (iv) oxygen, (v) intravenous fluids, (vi)
651 disposable supplies, (vii) similar services.

652 (9) Legend and other drugs as may be determined by the
653 division. The division may implement a program of prior approval
654 for drugs to the extent permitted by law. Payment by the division
655 for covered multiple source drugs shall be limited to the lower of
656 the upper limits established and published by the Health Care
657 Financing Administration (HCFA) plus a dispensing fee of Four
658 Dollars and Ninety-one Cents (\$4.91), or the estimated acquisition
659 cost (EAC) as determined by the division plus a dispensing fee of
660 Four Dollars and Ninety-one Cents (\$4.91), or the providers' usual
661 and customary charge to the general public. The division shall
662 allow five (5) prescriptions per month for noninstitutionalized
663 Medicaid recipients.

664 Payment for other covered drugs, other than multiple source
665 drugs with HCFA upper limits, shall not exceed the lower of the
666 estimated acquisition cost as determined by the division plus a
667 dispensing fee of Four Dollars and Ninety-one Cents (\$4.91) or the
668 providers' usual and customary charge to the general public.

669 Payment for nonlegend or over-the-counter drugs covered on
670 the division's formulary shall be reimbursed at the lower of the
671 division's estimated shelf price or the providers' usual and
672 customary charge to the general public. No dispensing fee shall
673 be paid.

674 The division shall develop and implement a program of payment
675 for additional pharmacist services, with payment to be based on
676 demonstrated savings, but in no case shall the total payment
677 exceed twice the amount of the dispensing fee.

678 As used in this paragraph (9), "estimated acquisition cost"
679 means the division's best estimate of what price providers
680 generally are paying for a drug in the package size that providers
681 buy most frequently. Product selection shall be made in
682 compliance with existing state law; however, the division may
683 reimburse as if the prescription had been filled under the generic
684 name. The division may provide otherwise in the case of specified
685 drugs when the consensus of competent medical advice is that

686 trademarked drugs are substantially more effective.

687 (10) Dental care that is an adjunct to treatment of an acute
688 medical or surgical condition; services of oral surgeons and
689 dentists in connection with surgery related to the jaw or any
690 structure contiguous to the jaw or the reduction of any fracture
691 of the jaw or any facial bone; and emergency dental extractions
692 and treatment related thereto. On January 1, 1994, all fees for
693 dental care and surgery under authority of this paragraph (10)
694 shall be increased by twenty percent (20%) of the reimbursement
695 rate as provided in the Dental Services Provider Manual in effect
696 on December 31, 1993.

697 (11) Eyeglasses necessitated by reason of eye surgery, and
698 as prescribed by a physician skilled in diseases of the eye or an
699 optometrist, whichever the patient may select.

700 (12) Intermediate care facility services.

701 (a) The division shall make full payment to all
702 intermediate care facilities for the mentally retarded for each
703 day, not exceeding thirty-six (36) days per year, that a patient
704 is absent from the facility on home leave. However, before
705 payment may be made for more than eighteen (18) home leave days in
706 a year for a patient, the patient must have written authorization
707 from a physician stating that the patient is physically and
708 mentally able to be away from the facility on home leave. Such
709 authorization must be filed with the division before it will be
710 effective, and the authorization shall be effective for three (3)
711 months from the date it is received by the division, unless it is
712 revoked earlier by the physician because of a change in the
713 condition of the patient.

714 (b) All state-owned intermediate care facilities for
715 the mentally retarded shall be reimbursed on a full reasonable
716 cost basis.

717 (13) Family planning services, including drugs, supplies and
718 devices, when such services are under the supervision of a
719 physician.

720 (14) Clinic services. Such diagnostic, preventive,
721 therapeutic, rehabilitative or palliative services furnished to an
722 outpatient by or under the supervision of a physician or dentist
723 in a facility which is not a part of a hospital but which is
724 organized and operated to provide medical care to outpatients.
725 Clinic services shall include any services reimbursed as
726 outpatient hospital services which may be rendered in such a
727 facility, including those that become so after July 1, 1991. On
728 January 1, 1994, all fees for physicians' services reimbursed
729 under authority of this paragraph (14) shall be reimbursed at
730 seventy percent (70%) of the rate established on January 1, 1993,
731 under Medicare (Title XVIII of the Social Security Act), as
732 amended, or the amount that would have been paid under the
733 division's fee schedule that was in effect on December 31, 1993,
734 whichever is greater, and the division may adjust the physicians'
735 reimbursement schedule to reflect the differences in relative
736 value between Medicaid and Medicare. However, on January 1, 1994,
737 the division may increase any fee for physicians' services in the
738 division's fee schedule on December 31, 1993, that was greater
739 than seventy percent (70%) of the rate established under Medicare
740 by no more than ten percent (10%). On January 1, 1994, all fees
741 for dentists' services reimbursed under authority of this
742 paragraph (14) shall be increased by twenty percent (20%) of the
743 reimbursement rate as provided in the Dental Services Provider
744 Manual in effect on December 31, 1993.

745 (15) Home- and community-based services, as provided under
746 Title XIX of the federal Social Security Act, as amended, under
747 waivers, subject to the availability of funds specifically
748 appropriated therefor by the Legislature. Payment for such
749 services shall be limited to individuals who would be eligible for
750 and would otherwise require the level of care provided in a
751 nursing facility. The division shall certify case management
752 agencies to provide case management services and provide for home-
753 and community-based services for eligible individuals under this

754 paragraph. The home- and community-based services under this
755 paragraph and the activities performed by certified case
756 management agencies under this paragraph shall be funded using
757 state funds that are provided from the appropriation to the
758 Division of Medicaid and used to match federal funds under a
759 cooperative agreement between the division and the Department of
760 Human Services.

761 (16) Mental health services. Approved therapeutic and case
762 management services provided by (a) an approved regional mental
763 health/retardation center established under Sections 41-19-31
764 through 41-19-39, or by another community mental health service
765 provider meeting the requirements of the Department of Mental
766 Health to be an approved mental health/retardation center if
767 determined necessary by the Department of Mental Health, using
768 state funds which are provided from the appropriation to the State
769 Department of Mental Health and used to match federal funds under
770 a cooperative agreement between the division and the department,
771 or (b) a facility which is certified by the State Department of
772 Mental Health to provide therapeutic and case management services,
773 to be reimbursed on a fee for service basis. Any such services
774 provided by a facility described in paragraph (b) must have the
775 prior approval of the division to be reimbursable under this
776 section. After June 30, 1997, mental health services provided by
777 regional mental health/retardation centers established under
778 Sections 41-19-31 through 41-19-39, or by hospitals as defined in
779 Section 41-9-3(a) and/or their subsidiaries and divisions, or by
780 psychiatric residential treatment facilities as defined in Section
781 43-11-1, or by another community mental health service provider
782 meeting the requirements of the Department of Mental Health to be
783 an approved mental health/retardation center if determined
784 necessary by the Department of Mental Health, shall not be
785 included in or provided under any capitated managed care pilot
786 program provided for under paragraph (24) of this section.

787 (17) Durable medical equipment services and medical supplies

788 restricted to patients receiving home health services unless
789 waived on an individual basis by the division. The division shall
790 not expend more than Three Hundred Thousand Dollars (\$300,000.00)
791 of state funds annually to pay for medical supplies authorized
792 under this paragraph.

793 (18) Notwithstanding any other provision of this section to
794 the contrary, the division shall make additional reimbursement to
795 hospitals which serve a disproportionate share of low-income
796 patients and which meet the federal requirements for such payments
797 as provided in Section 1923 of the federal Social Security Act and
798 any applicable regulations.

799 (19) (a) Perinatal risk management services. The division
800 shall promulgate regulations to be effective from and after
801 October 1, 1988, to establish a comprehensive perinatal system for
802 risk assessment of all pregnant and infant Medicaid recipients and
803 for management, education and follow-up for those who are
804 determined to be at risk. Services to be performed include case
805 management, nutrition assessment/counseling, psychosocial
806 assessment/counseling and health education. The division shall
807 set reimbursement rates for providers in conjunction with the
808 State Department of Health.

809 (b) Early intervention system services. The division
810 shall cooperate with the State Department of Health, acting as
811 lead agency, in the development and implementation of a statewide
812 system of delivery of early intervention services, pursuant to
813 Part H of the Individuals with Disabilities Education Act (IDEA).

814 The State Department of Health shall certify annually in writing
815 to the director of the division the dollar amount of state early
816 intervention funds available which shall be utilized as a
817 certified match for Medicaid matching funds. Those funds then
818 shall be used to provide expanded targeted case management
819 services for Medicaid eligible children with special needs who are
820 eligible for the state's early intervention system.

821 Qualifications for persons providing service coordination shall be

822 determined by the State Department of Health and the Division of
823 Medicaid.

824 (20) Home- and community-based services for physically
825 disabled approved services as allowed by a waiver from the U.S.
826 Department of Health and Human Services for home- and
827 community-based services for physically disabled people using
828 state funds which are provided from the appropriation to the State
829 Department of Rehabilitation Services and used to match federal
830 funds under a cooperative agreement between the division and the
831 department, provided that funds for these services are
832 specifically appropriated to the Department of Rehabilitation
833 Services.

834 (21) Nurse practitioner services. Services furnished by a
835 registered nurse who is licensed and certified by the Mississippi
836 Board of Nursing as a nurse practitioner including, but not
837 limited to, nurse anesthetists, nurse midwives, family nurse
838 practitioners, family planning nurse practitioners, pediatric
839 nurse practitioners, obstetrics-gynecology nurse practitioners and
840 neonatal nurse practitioners, under regulations adopted by the
841 division. Reimbursement for such services shall not exceed ninety
842 percent (90%) of the reimbursement rate for comparable services
843 rendered by a physician.

844 (22) Ambulatory services delivered in federally qualified
845 health centers and in clinics of the local health departments of
846 the State Department of Health for individuals eligible for
847 medical assistance under this article based on reasonable costs as
848 determined by the division.

849 (23) Inpatient psychiatric services. Inpatient psychiatric
850 services to be determined by the division for recipients under age
851 twenty-one (21) which are provided under the direction of a
852 physician in an inpatient program in a licensed acute care
853 psychiatric facility or in a licensed psychiatric residential
854 treatment facility, before the recipient reaches age twenty-one
855 (21) or, if the recipient was receiving the services immediately

856 before he reached age twenty-one (21), before the earlier of the
857 date he no longer requires the services or the date he reaches age
858 twenty-two (22), as provided by federal regulations. Recipients
859 shall be allowed forty-five (45) days per year of psychiatric
860 services provided in acute care psychiatric facilities, and shall
861 be allowed unlimited days of psychiatric services provided in
862 licensed psychiatric residential treatment facilities.

863 (24) Managed care services in a program to be developed by
864 the division by a public or private provider. Notwithstanding any
865 other provision in this article to the contrary, the division
866 shall establish rates of reimbursement to providers rendering care
867 and services authorized under this section, and may revise such
868 rates of reimbursement without amendment to this section by the
869 Legislature for the purpose of achieving effective and accessible
870 health services, and for responsible containment of costs. This
871 shall include, but not be limited to, one (1) module of capitated
872 managed care in a rural area, and one (1) module of capitated
873 managed care in an urban area.

874 (25) Birthing center services.

875 (26) Hospice care. As used in this paragraph, the term
876 "hospice care" means a coordinated program of active professional
877 medical attention within the home and outpatient and inpatient
878 care which treats the terminally ill patient and family as a unit,
879 employing a medically directed interdisciplinary team. The
880 program provides relief of severe pain or other physical symptoms
881 and supportive care to meet the special needs arising out of
882 physical, psychological, spiritual, social and economic stresses
883 which are experienced during the final stages of illness and
884 during dying and bereavement and meets the Medicare requirements
885 for participation as a hospice as provided in 42 CFR Part 418.

886 (27) Group health plan premiums and cost sharing if it is
887 cost effective as defined by the Secretary of Health and Human
888 Services.

889 (28) Other health insurance premiums which are cost

890 effective as defined by the Secretary of Health and Human
891 Services. Medicare eligible must have Medicare Part B before
892 other insurance premiums can be paid.

893 (29) The Division of Medicaid may apply for a waiver from
894 the Department of Health and Human Services for home- and
895 community-based services for developmentally disabled people using
896 state funds which are provided from the appropriation to the State
897 Department of Mental Health and used to match federal funds under
898 a cooperative agreement between the division and the department,
899 provided that funds for these services are specifically
900 appropriated to the Department of Mental Health.

901 (30) Pediatric skilled nursing services for eligible persons
902 under twenty-one (21) years of age.

903 (31) Targeted case management services for children with
904 special needs, under waivers from the U.S. Department of Health
905 and Human Services, using state funds that are provided from the
906 appropriation to the Mississippi Department of Human Services and
907 used to match federal funds under a cooperative agreement between
908 the division and the department.

909 (32) Care and services provided in Christian Science
910 Sanatoria operated by or listed and certified by The First Church
911 of Christ Scientist, Boston, Massachusetts, rendered in connection
912 with treatment by prayer or spiritual means to the extent that
913 such services are subject to reimbursement under Section 1903 of
914 the Social Security Act.

915 (33) Podiatrist services.

916 (34) Personal care services provided in a pilot program to
917 not more than forty (40) residents at a location or locations to
918 be determined by the division and delivered by individuals
919 qualified to provide such services, as allowed by waivers under
920 Title XIX of the Social Security Act, as amended. The division
921 shall not expend more than Three Hundred Thousand Dollars
922 (\$300,000.00) annually to provide such personal care services.

923 The division shall develop recommendations for the effective

924 regulation of any facilities that would provide personal care
925 services which may become eligible for Medicaid reimbursement
926 under this section, and shall present such recommendations with
927 any proposed legislation to the 1996 Regular Session of the
928 Legislature on or before January 1, 1996.

929 (35) Services and activities authorized in Sections
930 43-27-101 and 43-27-103, using state funds that are provided from
931 the appropriation to the State Department of Human Services and
932 used to match federal funds under a cooperative agreement between
933 the division and the department.

934 (36) Nonemergency transportation services for
935 Medicaid-eligible persons, to be provided by the Department of
936 Human Services. The division may contract with additional
937 entities to administer nonemergency transportation services as it
938 deems necessary. All providers shall have a valid driver's
939 license, vehicle inspection sticker and a standard liability
940 insurance policy covering the vehicle.

941 (37) Targeted case management services for individuals with
942 chronic diseases, with expanded eligibility to cover services to
943 uninsured recipients, on a pilot program basis. This paragraph
944 (37) shall be contingent upon continued receipt of special funds
945 from the Health Care Financing Authority and private foundations
946 who have granted funds for planning these services. No funding
947 for these services shall be provided from State General Funds.

948 (38) Chiropractic services: a chiropractor's manual
949 manipulation of the spine to correct a subluxation, if x-ray
950 demonstrates that a subluxation exists and if the subluxation has
951 resulted in a neuromusculoskeletal condition for which
952 manipulation is appropriate treatment. Reimbursement for
953 chiropractic services shall not exceed Seven Hundred Dollars
954 (\$700.00) per year per recipient.

955 (39) Services for children placed in a Mississippi Rescue
956 Center treatment and education facility by the youth court, using
957 state funds that are provided from appropriations to the

958 Department of Human Services, the Department of Mental Health, the
959 State Department of Education and the Division of Medicaid and
960 used to match federal funds under a cooperative agreement with the
961 Juvenile Health Recovery Board pursuant to Senate Bill No. 2893,
962 1999 Regular Session.

963 Notwithstanding any provision of this article, except as
964 authorized in the following paragraph and in Section 43-13-139,
965 neither (a) the limitations on quantity or frequency of use of or
966 the fees or charges for any of the care or services available to
967 recipients under this section, nor (b) the payments or rates of
968 reimbursement to providers rendering care or services authorized
969 under this section to recipients, may be increased, decreased or
970 otherwise changed from the levels in effect on July 1, 1986,
971 unless such is authorized by an amendment to this section by the
972 Legislature. However, the restriction in this paragraph shall not
973 prevent the division from changing the payments or rates of
974 reimbursement to providers without an amendment to this section
975 whenever such changes are required by federal law or regulation,
976 or whenever such changes are necessary to correct administrative
977 errors or omissions in calculating such payments or rates of
978 reimbursement.

979 Notwithstanding any provision of this article, no new groups
980 or categories of recipients and new types of care and services may
981 be added without enabling legislation from the Mississippi
982 Legislature, except that the division may authorize such changes
983 without enabling legislation when such addition of recipients or
984 services is ordered by a court of proper authority. The director
985 shall keep the Governor advised on a timely basis of the funds
986 available for expenditure and the projected expenditures. In the
987 event current or projected expenditures can be reasonably
988 anticipated to exceed the amounts appropriated for any fiscal
989 year, the Governor, after consultation with the director, shall
990 discontinue any or all of the payment of the types of care and
991 services as provided herein which are deemed to be optional

992 services under Title XIX of the federal Social Security Act, as
993 amended, for any period necessary to not exceed appropriated
994 funds, and when necessary shall institute any other cost
995 containment measures on any program or programs authorized under
996 the article to the extent allowed under the federal law governing
997 such program or programs, it being the intent of the Legislature
998 that expenditures during any fiscal year shall not exceed the
999 amounts appropriated for such fiscal year.

1000 SECTION 10. This act shall take effect and be in force from
1001 and after July 1, 1999.