SENATE BILL NO. 2636

AN ACT TO AUTHORIZE THE MISSISSIPPI COMMISSIONER OF INSURANCE TO CONTRACT WITH AN INSURANCE COMPANY TO PROVIDE MEDICAL MALPRACTICE INSURANCE BENEFITS FOR PHYSICIANS WHO PROVIDE SERVICES TO MEDICAID AND/OR MEDICARE BENEFICIARIES; TO PROVIDE THAT THE COST OF SUCH COVERAGE SHALL BE PAID FROM THE HEALTH CARE EXPENDABLE FUND; TO PROVIDE FOR THE OPERATION OF THE MEDICAL MALPRACTICE INSURANCE PLAN FOR SUCH PHYSICIANS, TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO APPROVE RATES AND PREMIUMS FOR THE PLAN AND EXAMINE THE AFFAIRS OF THE INSURER; TO CREATE A MEDICAL MALPRACTICE FUND TO RECEIVE FUNDS APPROPRIATED BY THE LEGISLATURE FOR THE PAYMENT OF SUCH INSURANCE PREMIUMS; TO AMEND SECTIONS 43-13-407 AND 43-13-405, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE TREASURER TO TRANSFER $10 MILLION OF THE 2002 TOBACCO SETTLEMENT INSTALLMENT PAYMENT AND ANNUALLY THEREAFTER INTO THE HEALTH CARE EXPENDABLE FUND TO BE APPROPRIATED FOR THE MEDICAID PHYSICIAN MEDICAL MALPRACTICE INSURANCE BENEFIT PROGRAM CREATED UNDER THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) The purpose of this section is to make necessary medical malpractice insurance available for duly licensed physicians who provide patient services to Medicaid, Medicare and dually eligible recipients who are residents of the State of Mississippi.

(2) As used in this section:

(a) "Commissioner" shall mean the Mississippi Commissioner of Insurance.

(b) "Medical malpractice insurance" shall mean insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any physician who provides patient services for Medicaid, Medicare or dually eligible beneficiaries.
(c) "Net direct premiums" shall mean gross direct premiums written on the lines of insurance set forth in this act, as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits.

(d) "Physician" means a person who is fully licensed under Section 73-25-1 et seq., whose license is current and who is not under any restriction by the State Board of Medical Licensure.

(3) The commissioner is authorized to enter into a contract with an insurer authorized to write, and engaged in writing, within this state on any basis, medical malpractice insurance as reported in the company's annual statement. The purpose of the contract shall be to provide a market for medical malpractice insurance for physicians who provide patient services to Medicaid, Medicare or dually eligible beneficiaries with the premium to be subsidized by the state from tobacco litigation payments from the Health Care Expendable Fund established under Section 43-13-407, Mississippi Code of 1972, subject to specific appropriation by the Legislature. The contract shall not be entered into until the commissioner, after due hearing and investigation, has determined that medical malpractice insurance is not readily available for hospitals or for physicians licensed to practice in a hospital or other health care facility licensed by the State of Mississippi in which Medicaid, Medicare or duly eligible beneficiaries receive care. A determination that insurance is not readily available for physicians shall be necessary before the contract is entered into by the commissioner. For the purposes of this section, if premiums for medical malpractice insurance for physicians or hospitals or other licensed facilities in which physicians practice shall increase by one hundred percent (100%) within a period of thirty-six (36) months or less immediately preceding the hearing, the commissioner shall determine that medical malpractice insurance is not readily available in this state.
(4) Upon determination, the commissioner shall be authorized to enter into a contract with an insurer to issue policies of medical malpractice insurance to physicians who provide patient services to Medicaid, Medicare or dually eligible beneficiaries. The premium cost for this coverage shall be subsidized by the state in direct proportion to the number of patient days reimbursed to such physician by the Medicaid program and/or the Medicare program, as compared to the number of patient days reimbursed to such physician by private insurance companies or from other private payment sources. The amount of subsidy shall be calculated over a six-month period or other monthly basis selected by agreement between the commissioner and the insurer. In the event a physician provides more than fifty percent (50%) of his patient day services to Medicaid, Medicare or dually eligible beneficiaries over a six-month period, or other period selected by agreement between the commissioner and the insurer, the state shall subsidize one hundred percent (100%) of the cost of the premium for such physician.

(5) This section shall not preclude any physician from procuring medical malpractice insurance from any source other than that contracted by the commissioner under this section.

(6) The contract with the insurer shall provide that if the commissioner determines at any time that medical malpractice insurance can be made readily available in the voluntary market for physicians, the commissioner may cease all activities and close all accounts with the insurer as agreed upon, until the time that it is necessary to reinstate the plan under like terms and conditions.

(7) All policies issued by the insurer shall provide for a continuous period of coverage beginning on their respective effective dates and terminating automatically three (3) years after the effective date unless sooner terminated according to terms of the policy or the contract with the insurer. Policies
shall provide that premiums shall be payable annually and may be adjusted during the coverage period.

(8) The plan shall include policies of insurance to applicants, including incidental coverage, subject to limits, deductibles and coinsurance amounts specified in the plan of operation but not to exceed One Million Dollars ($1,000,000.00) for each claimant under one (1) policy and Twenty Million Dollars ($20,000,000.00) for all claimants under one (1) policy in any one year; and shall include the authority to underwrite the insurance, and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions; and shall include the authority to provide for reinsurance.

(9) The contract shall be subject to approval by the commissioner after consultation with the Mississippi State Medical Association, representatives of the public and other affected individuals and organizations. The contract shall become effective upon order of the commissioner as agreed to by the insurer. Amendments to the contract may be made by the commissioner as agreed to by the insurer.

(10) The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written under the contract shall be on an actuarially sound basis, giving due consideration to the past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, the investment income of the insurer and such other information as the commissioner may require, to be based on the experience of loss within the State of Mississippi only.

(11) In the event that sufficient funds are not available for the sound financial operation of the plan, the commissioner shall, on a temporary basis, contribute to the financial requirements of the insurer from funds made available from the Medical Malpractice Insurance Fund created hereunder, and any such
contribution shall be reimbursed to the fund if recouped by the insurer.

(12) There is hereby created a Medical Malpractice Insurance Fund which shall be administered by the commissioner, which shall be used for the purpose of discharging, when due, premium charges payable by policyholders of the medical malpractice insurance contracted with the insurer under this section. All monies received by the fund shall be subject to appropriation by the Legislature from the Health Care Expendable Fund or from any other source, and shall be held in trust by the commissioner or a trustee selected by the commissioner. The trustee may invest the trust fund, subject to the approval of the commissioner, and all investment income shall be credited to the fund, and all expenses of administration of the fund shall be charged against the fund.

(13) Any licensed physician qualified under the provisions of this section shall, on or after the effective date of the plan of operation, be entitled to apply to the insurer for medical malpractice insurance coverage. Such application shall be made on behalf of an applicant by a duly licensed agent authorized by the applicant. The Division of Medicaid shall provide necessary information to the commissioner in order to determine the eligibility of the physician to participate in the plan, and the portion of the premium cost to be subsidized by the state.

(14) The insurer, for each year or portion thereof that is in operation, shall file in the office of the commissioner, on or before January 1, a statement containing information with respect to its transactions, condition, operations and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed, and shall be in such form as is approved by the commissioner. The commissioner may, at any time, require the insurer to furnish additional information with respect to its transactions, condition, or any matter connected therewith.
considered to be material and of assistance in evaluating the
operation of the plan.

(15) There shall be no liability on the part of, and no
cause of action of any nature shall arise against, the
commissioner or his authorized representatives for any statements
made in good faith by them during any proceedings or concerning
any matters within the scope of this section.

SECTION 2. Section 43-13-407, Mississippi Code of 1972, is
amended as follows:

43-13-407. (1) In accordance with the purposes of this
article, there is established in the State Treasury the Health
Care Expendable Fund, into which shall be transferred from the
Health Care Trust Fund the following sums:

(a) In fiscal year 2000, Fifty Million Dollars
($50,000,000.00);

(b) In fiscal year 2001, Fifty-five Million Dollars
($55,000,000.00);

(c) In fiscal year 2002, Sixty Million Five Hundred
Thousand Dollars ($60,500,000.00);

(d) In fiscal year 2003, Sixty-six Million Five Hundred
Fifty Thousand Dollars ($66,550,000.00);

(e) In fiscal year 2004 and each subsequent fiscal
year, a sum equal to the average annual amount of the income from
the investment of the funds in the Health Care Trust Fund since
July 1, 1999.

(2) In any fiscal year in which interest and dividends from
the investment of the funds in the Health Care Trust Fund are not
sufficient to fund the full amount of the annual transfer into the
Health Care Expendable Fund as required in subsection (1) of this
section, the State Treasurer shall transfer from tobacco
settlement installment payments an amount that is sufficient to
fully fund the amount of the annual transfer.
The State Treasurer shall transfer Ten Million Dollars ($10,000,000.00) of the 2002 tobacco settlement installment payment, and annually thereafter, into the Health Care Expendable Fund, and said monies shall be appropriated by the Legislature into the Medical Malpractice Insurance Fund to fund the state's portion of the medical malpractice insurance plan for physicians who provide patient services to Medicaid, Medicare and dually eligible beneficiaries, as authorized in Section 1 of this act.

All income from the investment of the funds in the Health Care Expendable Fund shall be credited to the account of the Health Care Expendable Fund. Any funds in the Health Care Expendable Fund at the end of a fiscal year shall not lapse into the State General Fund.

The funds in the Health Care Expendable Fund shall be available for expenditure pursuant to specific appropriation by the Legislature beginning in fiscal year 2000, and shall be expended exclusively for health care purposes.

SECTION 3. Section 43-13-405, Mississippi Code of 1972, is amended as follows:

43-13-405. (1) In accordance with the purposes of this article, there is established in the State Treasury the Health Care Trust Fund, into which shall be deposited Two Hundred Eighty Million Dollars ($280,000,000.00) of the funds received by the State of Mississippi as a result of the tobacco settlement as of the end of fiscal year 1999, and all tobacco settlement installment payments made in subsequent years for which the use or purpose for expenditure is not restricted by the terms of the settlement, except as otherwise provided in Section 43-13-407(2) and 43-13-407(3). All income from the investment of the funds in the Health Care Trust Fund shall be credited to the account of the Health Care Trust Fund. The funds in the Health Care Trust Fund at the end of a fiscal year shall not lapse into the State General Fund.
(2) The Health Care Trust Fund shall remain inviolate and shall never be expended, except as provided in this article. The Legislature shall appropriate from the Health Care Trust Fund such sums as are necessary to recoup any funds lost as a result of any of the following actions:

(a) The federal Health Care Finance Administration, or other agency of the federal government, is successful in recouping tobacco settlement funds from the State of Mississippi;

(b) The federal share of funds for the support of the Mississippi Medicaid Program is reduced directly or indirectly as a result of the tobacco settlement;

(c) Federal funding for any other program is reduced as a result of the tobacco settlement; or

(d) Tobacco cessation programs are mandated by the federal government or court order.

SECTION 4. This act shall take effect and be in force from and after July 1, 2002.