

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2709

1 AN ACT TO AMEND SECTION 43-13-107, MISSISSIPPI CODE OF 1972,  
2 TO ESTABLISH WITHIN THE DIVISION OF MEDICAID A DRUG USE REVIEW  
3 BOARD TO CONDUCT RECIPIENT DRUG USE REVIEW, AND TO ESTABLISH A  
4 PHARMACY AND THERAPEUTICS COMMITTEE TO DESIGN A FORMULARY OR  
5 PREFERRED/NON-PREFERRED DRUG LIST FOR MEDICAID RECIPIENTS; AND FOR  
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 43-13-107, Mississippi Code of 1972, is  
9 amended as follows:

10 43-13-107. (1) The Division of Medicaid is created in the  
11 Office of the Governor and established to administer this article  
12 and perform such other duties as are prescribed by law.

13 (2) The Governor shall appoint a full-time director, with  
14 the advice and consent of the Senate, who shall be either (a) a  
15 physician with administrative experience in a medical care or  
16 health program, or (b) a person holding a graduate degree in  
17 medical care administration, public health, hospital  
18 administration, or the equivalent, or (c) a person holding a  
19 bachelor's degree in business administration or hospital  
20 administration, with at least ten (10) years' experience in  
21 management-level administration of Medicaid programs, and who  
22 shall serve at the will and pleasure of the Governor. The  
23 director shall be the official secretary and legal custodian of  
24 the records of the division; shall be the agent of the division  
25 for the purpose of receiving all service of process, summons and  
26 notices directed to the division; and shall perform such other  
27 duties as the Governor shall, from time to time, prescribe. The  
28 director, with the approval of the Governor and the rules and  
29 regulations of the State Personnel Board, shall employ such



30 professional, administrative, stenographic, secretarial, clerical  
31 and technical assistance as may be necessary to perform the duties  
32 required in administering this article and fix the compensation  
33 therefor, all in accordance with a state merit system meeting  
34 federal requirements, except that when the salary of the director  
35 is not set by law, such salary shall be set by the State Personnel  
36 Board. No employees of the Division of Medicaid shall be  
37 considered to be staff members of the immediate Office of the  
38 Governor; however, the provisions of Section 25-9-107 (c) (xv)  
39 shall apply to the director and other administrative heads of the  
40 division.

41 (3) (a) There is established a Medical Care Advisory  
42 Committee, which shall be the committee that is required by  
43 federal regulation to advise the Division of Medicaid about health  
44 and medical care services.

45 (b) The committee shall consist of not less than eleven  
46 (11) members, as follows:

47 (i) The Governor shall appoint five (5) members,  
48 one (1) from each congressional district as presently constituted;

49 (ii) The Lieutenant Governor shall appoint three  
50 (3) members, one (1) from each Supreme Court district;

51 (iii) The Speaker of the House of Representatives  
52 shall appoint three (3) members, one (1) from each Supreme Court  
53 district.

54 All members appointed under this paragraph shall either be  
55 health care providers or consumers of health care services. One  
56 (1) member appointed by each of the appointing authorities shall  
57 be a board certified physician.

58 (c) The respective chairmen of the House Public Health  
59 and Welfare Committee, the House Appropriations Committee, the  
60 Senate Public Health and Welfare Committee and the Senate  
61 Appropriations Committee, or their designees, one (1) member of  
62 the State Senate appointed by the Lieutenant Governor and one (1)



63 member of the House of Representatives appointed by the Speaker of  
64 the House, shall serve as ex officio nonvoting members.

65 (d) In addition to the committee members required by  
66 paragraph (b), the committee shall consist of such other members  
67 as are necessary to meet the requirements of the federal  
68 regulation applicable to the Medical Care Advisory Committee, who  
69 shall be appointed as provided in the federal regulation.

70 (e) The chairmanship of the Medical Care Advisory  
71 Committee shall alternate for twelve-month periods between the  
72 chairmen of the House and Senate Public Health and Welfare  
73 Committees, with the Chairman of the House Public Health and  
74 Welfare Committee serving as the first chairman.

75 (f) The members of the committee specified in paragraph  
76 (b) shall serve for terms that are concurrent with the terms of  
77 members of the Legislature, and any member appointed under  
78 paragraph (b) may be reappointed to the committee. The members of  
79 the committee specified in paragraph (b) shall serve without  
80 compensation, but shall receive reimbursement to defray actual  
81 expenses incurred in the performance of committee business as  
82 authorized by law. Legislators shall receive per diem and  
83 expenses which may be paid from the contingent expense funds of  
84 their respective houses in the same amounts as provided for  
85 committee meetings when the Legislature is not in session.

86 (g) The committee shall meet not less than quarterly,  
87 and committee members shall be furnished written notice of the  
88 meetings at least ten (10) days before the date of the meeting.

89 (h) The Executive Director of the Division of Medicaid  
90 shall submit to the committee all amendments, modifications and  
91 changes to the state plan for the operation of the Medicaid  
92 program, for review by the committee before the amendments,  
93 modifications or changes may be implemented by the division.

94 (i) The committee, among its duties and  
95 responsibilities, shall:



96 (i) Advise the division with respect to  
97 amendments, modifications and changes to the state plan for the  
98 operation of the Medicaid program;

99 (ii) Advise the division with respect to issues  
100 concerning receipt and disbursement of funds and eligibility for  
101 medical assistance;

102 (iii) Advise the division with respect to  
103 determining the quantity, quality and extent of medical care  
104 provided under this article;

105 (iv) Communicate the views of the medical care  
106 professions to the division and communicate the views of the  
107 division to the medical care professions;

108 (v) Gather information on reasons that medical  
109 care providers do not participate in the Medicaid program and  
110 changes that could be made in the program to encourage more  
111 providers to participate in the Medicaid program, and advise the  
112 division with respect to encouraging physicians and other medical  
113 care providers to participate in the Medicaid program;

114 (vi) Provide a written report on or before  
115 November 30 of each year to the Governor, Lieutenant Governor and  
116 Speaker of the House of Representatives.

117 (4) (a) There is established a Drug Use Review Board which  
118 shall be the board that is required by federal law to:

119 (i) Review and initiate retrospective drug use,  
120 review including ongoing periodic examination of claims data and  
121 other records in order to identify patterns of fraud, abuse, gross  
122 overuse, or inappropriate or medically unnecessary care, among  
123 physicians, pharmacists and individuals receiving Medicaid  
124 benefits or associated with specific drugs or groups of drugs.

125 (ii) Review and initiate ongoing interventions for  
126 physicians and pharmacists, targeted toward therapy problems or  
127 individuals identified in the course of retrospective drug use  
128 reviews.



129                   (iii) On an ongoing basis, assess data on drug use  
130 against explicit predetermined standards using the compendia and  
131 literature set forth in federal law and regulations.

132                   (b) The board shall consist of not less than twelve  
133 (12) members, as follows:

134                   (i) The Governor shall appoint six (6) Mississippi  
135 licensed and actively practicing physicians from a list of eight  
136 (8) such physicians provided by the Mississippi State Medical  
137 Association. The physicians shall be independent of the Medicaid  
138 division and have expertise in the care of the Medicaid  
139 population;

140                   (ii) The Governor shall appoint four (4)  
141 Mississippi licensed and actively practicing pharmacists from a  
142 list of six (6) such pharmacists provided by the Mississippi  
143 Pharmacists Association;

144                   (iii) The Governor shall appoint one (1) consumer  
145 advocate from a list of two (2) such persons submitted by the  
146 health care taskforce set forth in Mississippi Code Annotated  
147 Section 41-103-1;

148                   (iv) The Governor shall appoint one (1) person  
149 from a list of two (2) such persons submitted by a nonprofit  
150 organization representing entities required to pay Medicaid  
151 rebates required under Section 1927 (42 USC 1396 r-8).

152                   (c) The board shall meet at least quarterly, and board  
153 members shall be furnished written notice of the meetings at least  
154 ten (10) days before the date of the meeting.

155                   (d) The board meetings shall be open to the public,  
156 members of the press, legislators and consumers. Additionally,  
157 all documents provided to board members shall be available to the  
158 public, members of the press, legislators and consumers in the  
159 same manner. However, patient confidentiality and provider  
160 confidentiality shall be protected by blinding patient names and  
161 provider names with numerical or other anonymous identifiers.



162 Board meetings conducted in violation of this section shall be  
163 deemed unlawful.

164 (5) (a) There is established a Pharmacy and Therapeutics  
165 Committee which shall be the committee that is required by federal  
166 law should the Medicaid Agency choose to design a formulary or  
167 should the Medicaid Agency choose to create a preferred or  
168 nonpreferred drug list.

169 (b) The committee shall consist of twelve (12) to  
170 fifteen (15) members, as follows:

171 (i) The Governor shall appoint seven (7)  
172 Mississippi licensed and actively practicing physicians from a  
173 list of nine (9) such physicians provided by the Mississippi State  
174 Medical Association. The physicians shall be independent of the  
175 Medicaid division and have expertise in the care of the Medicaid  
176 population;

177 (ii) The Governor shall appoint three (3)  
178 Mississippi licensed and actively practicing pharmacists from a  
179 list of five (5) such pharmacists provided by the Mississippi  
180 Pharmacists Association;

181 (iii) The Governor shall appoint one (1) consumer  
182 advocate from a list of two (2) such persons submitted by the  
183 health care taskforce set forth in Mississippi Code Annotated  
184 Section 41-103-1;

185 (iv) The Governor shall appoint one (1) person  
186 from a list of two (2) such persons submitted by a nonprofit  
187 organization representing entities required to pay to Medicaid  
188 rebates required under Section 1927 (42 USC 1396 r-8).

189 (c) The committee shall meet at least quarterly, and  
190 committee members shall be furnished written notice of the  
191 meetings at least ten (10) days before the date of the meeting.

192 (d) The committee meetings shall be open to the public,  
193 members of the press, legislators and consumers. Additionally,  
194 all documents provided to committee members shall be available to



195 the public, members of the press, legislators, and consumers in  
196 the same manner. However, patient confidentiality and provider  
197 confidentiality shall be protected by blinding patient names and  
198 provider names with numerical or other anonymous identifiers.  
199 Committee meetings conducted in violation of this section shall be  
200 deemed unlawful.

201 (e) After a thirty-day public notice, the Medicaid  
202 director or designee shall present the division's recommendation  
203 regarding prior approval for a therapeutic class of drugs to the  
204 committee. The written documentation shall include:

205 (i) The original recommendation from any source to  
206 require prior approval or modify existing prior approval  
207 requirements.

208 (ii) Supporting justification for such  
209 recommendation including summaries of any guidance, assistance or  
210 research provided by physicians or pharmacists or others with  
211 expertise in the clinical use of the drug or category of drugs.

212 (iii) Utilization data for the class of drugs  
213 including, but not limited to, information outlining any  
214 inappropriate use, misuse, abuse or inappropriate prescribing of  
215 the class.

216 (iv) The division's recommendation regarding  
217 specifics of prior authorization of the drug including one (1)  
218 specific medical protocol or one (1) specific clinical criterion  
219 per drug or per drug therapeutic class, available to physicians  
220 and patients, specifying when that drug is authorized for  
221 reimbursement without completion of prior authorization  
222 requirements.

223 (v) Any written comments received from interested  
224 parties pertaining to the proposed prior authorization.

225 (vi) Upon reviewing the information and  
226 recommendations, the committee shall forward a written  
227 recommendation approved by a majority of the committee to the



228 Medicaid director, or designee. The decisions of the committee  
229 regarding any limitations to be imposed on any drug or its use for  
230 a specified indication shall be based on sound clinical evidence  
231 found in labeling, drug compendia, and peer reviewed clinical  
232 literature pertaining to use of the drug in the relevant  
233 population.

234 (vii) Upon reviewing and considering all  
235 recommendations including recommendation of the Pharmacy and  
236 Therapeutic Committee, comments, and data, the Medicaid director  
237 shall make a final determination whether to require prior approval  
238 of a therapeutic class of drugs, or modify existing prior approval  
239 requirements for a therapeutic class of drugs.

240 (viii) At least thirty (30) days before the  
241 administrator implements new or amended prior authorization  
242 decisions, written notice of the director's decision shall be  
243 provided to all prescribing Medicaid providers, all Medicaid  
244 enrolled pharmacies, and any other party who has requested such  
245 notification.

246 (ix) Upon completion of the written notification,  
247 drugs that are subject to prior approval will not be reimbursed by  
248 Medicaid unless the prescriber or pharmacist receives  
249 authorization prior to dispensing. However, it is unlawful for  
250 Medicaid, or its designee, to request or require physicians,  
251 pharmacies and/or covered beneficiaries to participate in the  
252 prior approval process unless:

253 1. The prior authorization system provides  
254 for real-time receipts of requests, by voice mail, fax or  
255 electronic transmission, on a twenty-four-hour basis, seven (7)  
256 days a week;

257 2. Any request for authorization or approval  
258 of a drug that the prescriber indicates is for an acute condition,  
259 including infection or exposure requiring treatment with  
260 antibiotics, acute pain, or life threatening symptoms, shall be





261 answered in no more than four (4) hours of the time that  
262 authorization is requested by the prescriber or pharmacy;

263 3. Any request or approval of a drug that the  
264 prescriber indicates is for a chronic or nonacute condition shall  
265 be answered in no more than twenty-four (24) hours of the time  
266 that authorization is requested by the prescriber or pharmacy; and

267 4. In an emergency or, with respect to an  
268 acute condition, a failure (after an initial denial) to authorize  
269 a prescribed course of therapy within the same business day in  
270 which the request is commenced, the patient shall receive coverage  
271 of an initial course of therapy for an acute condition, or a  
272 fourteen (14) days' supply for a chronic condition.

273 **SECTION 2.** This act shall take effect and be in force from  
274 and after July 1, 2002.

