

By: Senator(s) Smith

To: Select Senate Cmte on  
Civil Justice Syst

SENATE BILL NO. 2009

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE VENUE IN MEDICAL MALPRACTICE ACTIONS; TO CREATE NEW  
3 SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE IMMUNITY  
4 UNDER CERTAIN CONDITIONS TO PHYSICIANS AND OTHER LICENSED  
5 PROFESSIONALS IN CIVIL ACTIONS ALLEGING DAMAGES CAUSED BY  
6 PRESCRIPTION DRUGS; TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF  
7 1972, IN CONFORMITY THERETO; TO AMEND SECTION 11-1-65, MISSISSIPPI  
8 CODE OF 1972, TO IMPOSE A LIMITATION ON PUNITIVE DAMAGES IN  
9 MEDICAL MALPRACTICE ACTIONS; TO PROVIDE IMMUNITY FROM LIABILITY TO  
10 PHYSICIANS AND NURSE PRACTITIONERS WHO PROVIDE HEALTH SERVICES AT  
11 SCHOOLS, AND TO PHYSICIANS WHO RENDER MEDICAL SERVICE UNDER A  
12 SPECIAL VOLUNTEER MEDICAL LICENSE, ON A CHARITABLE BASIS; TO AMEND  
13 SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MEDICAL  
14 PRACTITIONERS COVERED UNDER THE TORT CLAIMS ACT ARE ONLY LIABLE  
15 FOR THEIR PERCENTAGE OF FAULT IN CIVIL ACTIONS; TO AMEND SECTION  
16 43-11-1, MISSISSIPPI CODE OF 1972, TO DEFINE MEDICAL RECORDS MADE  
17 OR MAINTAINED IN INSTITUTIONS FOR THE AGED OR INFIRM; TO CREATE  
18 NEW SECTION 43-11-16, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
19 CONFIDENTIALITY OF MEDICAL RECORDS MADE OR MAINTAINED IN  
20 INSTITUTIONS FOR THE AGED OR INFIRM; TO AMEND SECTION 15-1-36,  
21 MISSISSIPPI CODE OF 1972, TO REVISE THE STATUTE OF LIMITATIONS  
22 APPLICABLE TO CLAIMS AGAINST INSTITUTIONS FOR THE AGED OR INFIRM,  
23 AND TO REQUIRE 90-DAY'S WRITTEN NOTICE OF INTENTION TO SUE; TO  
24 AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE  
25 DEFINITION OF "EMPLOYEE" UNDER THE TORT CLAIMS ACT; TO PROVIDE  
26 LIMITATIONS ON NONECONOMIC DAMAGES IN CIVIL ACTIONS; TO CREATE NEW  
27 SECTION 41-105-1, MISSISSIPPI CODE OF 1972, TO ENACT A SHORT TITLE  
28 FOR THE MISSISSIPPI CARE ACCESS AND RELIABILITY ENHANCEMENT (CARE)  
29 ACT; TO CREATE NEW SECTION 41-105-3, MISSISSIPPI CODE OF 1972, TO  
30 MAKE LEGISLATIVE FINDINGS; TO CREATE NEW SECTION 41-105-5,  
31 MISSISSIPPI CODE OF 1972, TO SPECIFY THE PURPOSE AND SCOPE OF THE  
32 MISSISSIPPI CARE ACT; TO CREATE NEW SECTION 41-105-7, MISSISSIPPI  
33 CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION  
34 41-105-9, MISSISSIPPI CODE OF 1972, TO CREATE THE MISSISSIPPI CARE  
35 AUTHORITY AND BOARD OF DIRECTORS; TO CREATE NEW SECTION 41-105-11,  
36 MISSISSIPPI CODE OF 1972, TO SPECIFY THE POWERS AND DUTIES OF THE  
37 AUTHORITY; TO CREATE NEW SECTION 41-105-13, MISSISSIPPI CODE OF  
38 1972, TO INDEMNIFY THE CARE BOARD AND ITS EMPLOYEES FROM  
39 LIABILITY; TO CREATE NEW SECTION 41-105-15, MISSISSIPPI CODE OF  
40 1972, TO SPECIFY THE QUALIFICATIONS OF PARTICIPATING HEALTH-CARE  
41 PROVIDERS; TO CREATE NEW SECTION 41-105-17, MISSISSIPPI CODE OF  
42 1972, TO SPECIFY REQUIREMENTS TO ESTABLISH FINANCIAL  
43 RESPONSIBILITY OF A PARTICIPATING HEALTH-CARE PROVIDER; TO CREATE  
44 NEW SECTION 41-105-19, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
45 THE EXCLUSIVENESS OF THE REMEDIES AFFORDED BY THE MISSISSIPPI CARE  
46 ACT; TO CREATE NEW SECTION 41-105-21, MISSISSIPPI CODE OF 1972, TO  
47 PROVIDE FOR FUNDING OF THE AUTHORITY; AND FOR RELATED PURPOSES.

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



49           **SECTION 1.** Section 11-11-3, Mississippi Code of 1972, is  
50 amended as follows:

51           11-11-3. (1) Civil actions of which the circuit court has  
52 original jurisdiction shall be commenced in the county in which  
53 the defendant or any of them may be found or in the county where  
54 the cause of action may occur or accrue and, if the defendant is a  
55 domestic corporation, in the county in which said corporation is  
56 domiciled or in the county where the cause of action may occur or  
57 accrue, except where otherwise provided, and except actions of  
58 trespass on land, ejectment and actions for the statutory penalty  
59 for cutting and boxing trees and firing woods and actions for the  
60 actual value of trees cut which shall be brought in the county  
61 where the land or some part thereof is situated. If a civil  
62 action is brought in an improper county, such action may be  
63 transferred to the proper county pursuant to Section 11-11-17.

64           (2) Civil actions for claims of medical malpractice or  
65 claims against institutions for the aged and infirm shall be  
66 commenced in the county where the cause of action occurred.

67           **SECTION 2.** The following shall be codified as Section  
68 11-1-62, Mississippi Code of 1972:

69           11-1-62. (1) Absent any negligence on the part of the  
70 physician or other licensed professional who prescribes drugs, a  
71 cause of action alleging damages caused by a prescription drug  
72 shall not arise against that physician or other licensed  
73 professional, nor shall the physician or other licensed  
74 professional who prescribes drugs be liable, if the federal Food  
75 and Drug Administration (FDA) has approved that drug.

76           (2) Absent any negligence on the part of the pharmacist, a  
77 cause of action alleging damages caused by a prescription drug  
78 shall not arise against a pharmacist who dispenses a prescription  
79 drug, nor shall the pharmacist be liable, if the federal Food and  
80 Drug Administration (FDA) has approved that drug.



81           **SECTION 3.** Section 11-1-63, Mississippi Code of 1972, is  
82 amended as follows:

83           11-1-63. In any action for damages caused by a product  
84 except for commercial damage to the product itself:

85           (a) Subject to the provisions of Section 11-1-62, the  
86 manufacturer, seller, distributor or prescriber of the product  
87 shall not be liable if the claimant does not prove by the  
88 preponderance of the evidence that at the time the product left  
89 the control of the manufacturer, seller, distributor or  
90 prescriber:

91                           (i) 1. The product was defective because it  
92 deviated in a material way from the manufacturer's specifications  
93 or from otherwise identical units manufactured to the same  
94 manufacturing specifications, or

95   2. The product was defective because it  
96 failed to contain adequate warnings or instructions, or

97   3. The product was designed in a defective  
98 manner, or

99   4. The product breached an express warranty  
100 or failed to conform to other express factual representations upon  
101 which the claimant justifiably relied in electing to use the  
102 product; and

103                           (ii) The defective condition rendered the product  
104 unreasonably dangerous to the user or consumer; and

105                           (iii) The defective and unreasonably dangerous  
106 condition of the product proximately caused the damages for which  
107 recovery is sought.

108           (b) A product is not defective in design or formulation  
109 if the harm for which the claimant seeks to recover compensatory  
110 damages was caused by an inherent characteristic of the product  
111 which is a generic aspect of the product that cannot be eliminated  
112 without substantially compromising the product's usefulness or



113 desirability and which is recognized by the ordinary person with  
114 the ordinary knowledge common to the community.

115 (c) (i) In any action alleging that a product is  
116 defective because it failed to contain adequate warnings or  
117 instructions pursuant to paragraph (a)(i)2 of this section, the  
118 manufacturer, seller, distributor or prescriber shall not be  
119 liable if the claimant does not prove by the preponderance of the  
120 evidence that at the time the product left the control of the  
121 manufacturer, seller, distributor or prescriber, the manufacturer,  
122 seller, distributor or prescriber knew or in light of reasonably  
123 available knowledge should have known about the danger that caused  
124 the damage for which recovery is sought and that the ordinary user  
125 or consumer would not realize its dangerous condition.

126 (ii) An adequate product warning or instruction is  
127 one that a reasonably prudent person in the same or similar  
128 circumstances would have provided with respect to the danger and  
129 that communicates sufficient information on the dangers and safe  
130 use of the product, taking into account the characteristics of,  
131 and the ordinary knowledge common to an ordinary consumer who  
132 purchases the product; or in the case of a prescription drug,  
133 medical device or other product that is intended to be used only  
134 under the supervision of a physician or other licensed  
135 professional person, taking into account the characteristics of,  
136 and the ordinary knowledge common to, a physician or other  
137 licensed professional who prescribes the drug, device or other  
138 product.

139 (d) For purposes of this section:

140 (i) "Seller" means any person or entity that sells  
141 products of any kind.

142 (ii) "Prescriber" means any person licensed by the  
143 State of Mississippi to prescribe medicine.

144 (e) In any action alleging that a product is defective  
145 pursuant to paragraph (a) of this section, the manufacturer,



146 seller, distributor or prescriber shall not be liable if the  
147 claimant (i) had knowledge of a condition of the product that was  
148 inconsistent with his safety; (ii) appreciated the danger in the  
149 condition; and (iii) deliberately and voluntarily chose to expose  
150 himself to the danger in such a manner to register assent on the  
151 continuance of the dangerous condition.

152         (f) In any action alleging that a product is defective  
153 pursuant to paragraph (a)(i)2 of this section, the manufacturer,  
154 seller, distributor or prescriber shall not be liable if the  
155 danger posed by the product is known or is open and obvious to the  
156 user or consumer of the product, or should have been known or open  
157 and obvious to the user or consumer of the product, taking into  
158 account the characteristics of, and the ordinary knowledge common  
159 to, the persons who ordinarily use or consume the product.

160         (g) In any action alleging that a product is defective  
161 because of its design pursuant to paragraph (a)(i)3 of this  
162 section, the manufacturer or product seller shall not be liable if  
163 the claimant does not prove by the preponderance of the evidence  
164 that at the time the product left the control of the manufacturer  
165 or seller:

166                 (i) The manufacturer, seller, distributor or  
167 prescriber knew, or in light of reasonably available knowledge or  
168 in the exercise of reasonable care should have known, about the  
169 danger that caused the damage for which recovery is sought; and

170                 (ii) The product failed to function as expected  
171 and there existed a feasible design alternative that would have to  
172 a reasonable probability prevented the harm. A feasible design  
173 alternative is a design that would have to a reasonable  
174 probability prevented the harm without impairing the utility,  
175 usefulness, practicality or desirability of the product to users  
176 or consumers.

177         (h) (i) The manufacturer of a product who is found  
178 liable for a defective product pursuant to paragraph (a) shall



179 indemnify a product seller, distributor or prescriber for the  
180 costs of litigation, any reasonable expenses, reasonable  
181 attorney's fees and any damages awarded by the trier of fact  
182 unless the seller, distributor or prescriber exercised substantial  
183 control over that aspect of the design, testing, manufacture,  
184 packaging or labeling of the product that caused the harm for  
185 which recovery of damages is sought; the seller, distributor or  
186 prescriber altered or modified the product, and the alteration or  
187 modification was a substantial factor in causing the harm for  
188 which recovery of damages is sought; the seller, distributor or  
189 prescriber had actual knowledge of the defective condition of the  
190 product at the time he supplied same; or the seller, distributor  
191 or prescriber made an express factual representation about the  
192 aspect of the product which caused the harm for which recovery of  
193 damages is sought.

194 (ii) Subparagraph (i) shall not apply unless the  
195 seller, distributor or prescriber has given prompt notice of the  
196 suit to the manufacturer within thirty (30) days of the filing of  
197 the complaint against the seller.

198 (i) An agent or employee of a disclosed principal who  
199 directly participates in or authorizes the commission of a tort,  
200 shall be subject to liability for any tortious conduct committed  
201 within the course and scope of employment. The principal shall  
202 indemnify the agent or employee, for such acts committed as its  
203 agent or employee.

204 (j) Nothing in this section shall be construed to  
205 eliminate any common law defense to an action for damages caused  
206 by a product.

207 **SECTION 4.** Section 11-1-65, Mississippi Code of 1972, is  
208 amended as follows:

209 11-1-65. (1) In any action in which punitive damages are  
210 sought:



211 (a) Punitive damages may not be awarded if the claimant  
212 does not prove by clear and convincing evidence that the defendant  
213 against whom punitive damages are sought acted with actual malice,  
214 gross negligence which evidences a willful, wanton or reckless  
215 disregard for the safety of others, or committed actual fraud.

216 (b) In any action in which the claimant seeks an award  
217 of punitive damages, the trier of fact shall first determine  
218 whether compensatory damages are to be awarded and in what amount,  
219 before addressing any issues related to punitive damages.

220 (c) If, but only if, an award of compensatory damages  
221 has been made against a party, the court shall promptly commence  
222 an evidentiary hearing before the same trier of fact to determine  
223 whether punitive damages may be considered.

224 (d) The court shall determine whether the issue of  
225 punitive damages may be submitted to the trier of fact; and, if  
226 so, the trier of fact shall determine whether to award punitive  
227 damages and in what amount.

228 (e) In all cases involving an award of punitive  
229 damages, the fact finder, in determining the amount of punitive  
230 damages, shall consider, to the extent relevant, the following:  
231 the defendant's financial condition and net worth; the nature and  
232 reprehensibility of the defendant's wrongdoing, for example, the  
233 impact of the defendant's conduct on the plaintiff, or the  
234 relationship of the defendant to the plaintiff; the defendant's  
235 awareness of the amount of harm being caused and the defendant's  
236 motivation in causing such harm; the duration of the defendant's  
237 misconduct and whether the defendant attempted to conceal such  
238 misconduct; and any other circumstances shown by the evidence that  
239 bear on determining a proper amount of punitive damages. The  
240 trier of fact shall be instructed that the primary purpose of  
241 punitive damages is to punish the wrongdoer and deter similar  
242 misconduct in the future by the defendant and others while the  
243 purpose of compensatory damages is to make the plaintiff whole.



244 (f) (i) Before entering judgment for an award of  
245 punitive damages the trial court shall ascertain that the award is  
246 reasonable in its amount and rationally related to the purpose to  
247 punish what occurred giving rise to the award and to deter its  
248 repetition by the defendant and others.

249 (ii) In determining whether the award is  
250 excessive, the court shall take into consideration the following  
251 factors:

252 1. Whether there is a reasonable relationship  
253 between the punitive damage award and the harm likely to result  
254 from the defendant's conduct as well as the harm that actually  
255 occurred;

256 2. The degree of reprehensibility of the  
257 defendant's conduct, the duration of that conduct, the defendant's  
258 awareness, any concealment, and the existence and frequency of  
259 similar past conduct;

260 3. The financial condition and net worth of  
261 the defendant; and

262 4. In mitigation, the imposition of criminal  
263 sanctions on the defendant for its conduct and the existence of  
264 other civil awards against the defendant for the same conduct.

265 (g) In all civil actions for claims of medical  
266 malpractice or against institutions for the aged or infirm where  
267 an entitlement to punitive damages shall have been established  
268 under applicable laws, no award of punitive damages shall exceed  
269 the greater of three (3) times the amount of the total  
270 compensatory damages awarded to the plaintiff in an action or  
271 Three Million Dollars (\$3,000,000.00); however, if the defendant  
272 is an individual or a business with less than fifty (50) full-time  
273 employees, an award of punitive damages shall not exceed two (2)  
274 times the amount of the plaintiff's compensatory damages or Two  
275 Million Dollars (\$2,000,000.00) or three percent (3%) of such  
276 defendant's net worth, whichever is less, unless the finder of





277 fact and court find by clear and convincing evidence that the  
278 defendant acted with criminal intent to cause serious physical  
279 bodily injury. This restriction shall not be disclosed to the  
280 trier of fact, but shall be applied by the court to any punitive  
281 damages verdict.

282 (h) Nothing herein shall be construed as creating a  
283 right to an award of punitive damages or to limit the duty of the  
284 court, or the appellate courts, to scrutinize all punitive damage  
285 awards, ensure that all punitive damage awards comply with  
286 applicable procedural, evidentiary and constitutional  
287 requirements, and to order remittitur where appropriate.

288 (2) The seller of a product other than the manufacturer  
289 shall not be liable for punitive damages unless the seller  
290 exercised substantial control over that aspect of the design,  
291 testing, manufacture, packaging or labeling of the product that  
292 caused the harm for which recovery of damages is sought; the  
293 seller altered or modified the product, and the alteration or  
294 modification was a substantial factor in causing the harm for  
295 which recovery of damages is sought; the seller had actual  
296 knowledge of the defective condition of the product at the time he  
297 supplied same; or the seller made an express factual  
298 representation about the aspect of the product which caused the  
299 harm for which recovery of damages is sought.

300 (3) The provisions of Section 11-1-65 shall not apply to:

301 (a) Contracts;

302 (b) Libel and slander; or

303 (c) Causes of action for persons and property arising  
304 out of asbestos.

305 **SECTION 5.** (1) Any licensed physician or certified nurse  
306 practitioner who voluntarily provides needed medical or health  
307 services to any program at an accredited school in the state  
308 without the expectation of payment due to the inability of such  
309 person to pay for said services shall be immune from liability for



310 any civil action arising out of the provision of such medical or  
311 health services provided in good faith on a charitable basis.  
312 This section shall not extend immunity to acts of willful or gross  
313 negligence. Except in cases of rendering emergency care wherein  
314 the provisions of Section 73-25-37, Mississippi Code of 1972,  
315 apply, immunity under this section shall be extended only if the  
316 physician or certified nurse practitioner and patient execute a  
317 written waiver in advance of the rendering of such medical  
318 services specifying that such services are provided without the  
319 expectation of payment and that the licensed physician or  
320 certified nurse practitioner shall be immune as provided herein.

321 (2) Any physician who voluntarily renders any medical  
322 service under a special volunteer medical license authorized under  
323 Section 73-25-18 without any payment or compensation or the  
324 expectation or promise of any payment or compensation shall be  
325 immune from liability for any civil action arising out of any act  
326 or omission resulting from the rendering of the medical service  
327 unless the act or omission was the result of the physician's gross  
328 negligence or willful misconduct. In order for the immunity under  
329 this subsection to apply, there must be a written or oral  
330 agreement for the physician to provide a voluntary noncompensated  
331 medical service before the rendering of the service by the  
332 physician.

333 **SECTION 6.** Section 85-5-7, Mississippi Code of 1972, is  
334 amended as follows:

335 85-5-7. (1) As used in this section "fault" means an act or  
336 omission of a person which is a proximate cause of injury or death  
337 to another person or persons, damages to property, tangible or  
338 intangible, or economic injury, including but not limited to  
339 negligence, malpractice, strict liability, absolute liability or  
340 failure to warn. "Fault" shall not include any tort which results  
341 from an act or omission committed with a specific wrongful intent.



342           (2) Except as may be otherwise provided in subsections (6)  
343 and (8) of this section, in any civil action based on fault, the  
344 liability for damages caused by two (2) or more persons shall be  
345 joint and several only to the extent necessary for the person  
346 suffering injury, death or loss to recover fifty percent (50%) of  
347 his recoverable damages.

348           (3) Except as otherwise provided in subsections (2) and (6)  
349 of this section, in any civil action based on fault, the liability  
350 for damages caused by two (2) or more persons shall be several  
351 only, and not joint and several and a joint tort-feasor shall be  
352 liable only for the amount of damages allocated to him in direct  
353 proportion to his percentage of fault. In assessing percentages  
354 of fault an employer and the employer's employee or a principal  
355 and the principal's agent shall be considered as one (1) defendant  
356 when the liability of such employer or principal has been caused  
357 by the wrongful or negligent act or omission of the employee or  
358 agent.

359           (4) Any defendant held jointly liable under this section  
360 shall have a right of contribution against fellow joint  
361 tort-feasors. A defendant shall be held responsible for  
362 contribution to other joint tort-feasors only for the percentage  
363 of fault assessed to such defendant.

364           (5) Nothing in this section shall eliminate or diminish any  
365 defenses or immunities which currently exist, except as expressly  
366 noted herein.

367           (6) Joint and several liability shall be imposed on all who  
368 consciously and deliberately pursue a common plan or design to  
369 commit a tortious act, or actively take part in it. Any person  
370 held jointly and severally liable under this section shall have a  
371 right of contribution from his fellow defendants acting in  
372 concert.



373 (7) In actions involving joint tort-feasors, the trier of  
374 fact shall determine the percentage of fault for each party  
375 alleged to be at fault.

376 (8) Physicians, dentists and other medical practitioners  
377 covered under the provisions of Section 11-46-1 et seq. shall only  
378 be liable for the amount of damages which is the percentage of  
379 fault allocated to such physician, dentist and other medical  
380 practitioners.

381 (9) Nothing in this section shall be construed to create a  
382 cause of action. Nothing in this section shall be construed, in  
383 any way, to alter the immunity of any person.

384 **SECTION 7.** Section 43-11-1, Mississippi Code of 1972, is  
385 amended as follows:

386 43-11-1. When used in this chapter, the following words  
387 shall have the following meaning:

388 (a) "Institutions for the aged or infirm" means a place  
389 either governmental or private which provides group living  
390 arrangements for four (4) or more persons who are unrelated to the  
391 operator and who are being provided food, shelter and personal  
392 care whether any such place be organized or operated for profit or  
393 not. The term "institution for aged or infirm" includes nursing  
394 homes, pediatric skilled nursing facilities, psychiatric  
395 residential treatment facilities, convalescent homes and homes for  
396 the aged, provided that these institutions fall within the scope  
397 of the definitions set forth above. The term "institution for the  
398 aged or infirm" does not include hospitals, clinics or mental  
399 institutions devoted primarily to providing medical service.

400 (b) "Person" means any individual, firm, partnership,  
401 corporation, company, association or joint stock association, or  
402 any licensee herein or the legal successor thereof.

403 (c) "Personal care" means assistance rendered by  
404 personnel of the home to aged or infirm residents in performing  
405 one or more of the activities of daily living, which includes, but



406 is not limited to, the bathing, walking, excretory functions,  
407 feeding, personal grooming and dressing of such residents.

408 (d) "Psychiatric residential treatment facility" means  
409 any nonhospital establishment with permanent facilities which  
410 provides a 24-hour program of care by qualified therapists  
411 including, but not limited to, duly licensed mental health  
412 professionals, psychiatrists, psychologists, psychotherapists and  
413 licensed certified social workers, for emotionally disturbed  
414 children and adolescents referred to such facility by a court,  
415 local school district or by the Department of Human Services, who  
416 are not in an acute phase of illness requiring the services of a  
417 psychiatric hospital, and are in need of such restorative  
418 treatment services. For purposes of this paragraph, the term  
419 "emotionally disturbed" means a condition exhibiting one or more  
420 of the following characteristics over a long period of time and to  
421 a marked degree, which adversely affects educational performance:

422 1. An inability to learn which cannot be explained  
423 by intellectual, sensory or health factors;

424 2. An inability to build or maintain satisfactory  
425 relationships with peers and teachers;

426 3. Inappropriate types of behavior or feelings  
427 under normal circumstances;

428 4. A general pervasive mood of unhappiness or  
429 depression; or

430 5. A tendency to develop physical symptoms or  
431 fears associated with personal or school problems. An  
432 establishment furnishing primarily domiciliary care is not within  
433 this definition.

434 (e) "Pediatric skilled nursing facility" means an  
435 institution or a distinct part of an institution that is primarily  
436 engaged in providing to inpatients skilled nursing care and  
437 related services for persons under twenty-one (21) years of age



438 who require medical or nursing care or rehabilitation services for  
439 the rehabilitation of injured, disabled or sick persons.

440 (f) "Licensing agency" means the State Department of  
441 Health.

442 (g) "Medical records" means, without restriction, those  
443 medical histories, records, reports, summaries, diagnoses and  
444 prognoses, records of treatment and medication ordered and given,  
445 notes, entries, x-rays and other written or graphic data prepared,  
446 kept, made or maintained in institutions for the aged or infirm  
447 that pertain to residency in, or services rendered to residents  
448 of, an institution for the aged or infirm.

449 **SECTION 8.** The following shall be codified as Section  
450 43-11-16, Mississippi Code of 1972:

451 43-11-16. Medical records are and shall remain the property  
452 of the various institutions for the aged and infirm, subject  
453 however to reasonable access to the information contained therein  
454 upon request of the resident of the institution to whom the  
455 medical records apply, his personal representatives or heirs, his  
456 attending medical personnel and his duly authorized nominees, and  
457 upon payment of any reasonable charges for such service. Nothing  
458 in this section shall be construed to deny access to medical  
459 records by the licensing agency in the discharge of its official  
460 duties under this chapter. Except as otherwise provided by law,  
461 medical records shall not constitute public records and nothing in  
462 this section shall be deemed to impair any privilege of confidence  
463 conferred by law or the Mississippi Rules of Evidence on  
464 residents, their personal representatives or heirs by Section  
465 13-1-21.

466 **SECTION 9.** Section 15-1-36, Mississippi Code of 1972, is  
467 amended as follows:

468 15-1-36. (1) For any claim accruing on or before June 30,  
469 1998, and except as otherwise provided in this section, no claim  
470 in tort may be brought against a licensed physician, osteopath,



471 dentist, hospital, institution for the aged or infirm, nurse,  
472 pharmacist, podiatrist, optometrist or chiropractor for injuries  
473 or wrongful death arising out of the course of medical, surgical  
474 or other professional services unless it is filed within two (2)  
475 years from the date the alleged act, omission or neglect shall or  
476 with reasonable diligence might have been first known or  
477 discovered.

478 (2) For any claim accruing on or after July 1, 1998, and  
479 except as otherwise provided in this section, no claim in tort may  
480 be brought against a licensed physician, osteopath, dentist,  
481 hospital, institution for the aged or infirm, nurse, pharmacist,  
482 podiatrist, optometrist or chiropractor for injuries or wrongful  
483 death arising out of the course of medical, surgical or other  
484 professional services unless it is filed within two (2) years from  
485 the date the alleged act, omission or neglect shall or with  
486 reasonable diligence might have been first known or discovered,  
487 and, except as described in paragraphs (a) and (b) of this  
488 subsection, in no event more than seven (7) years after the  
489 alleged act, omission or neglect occurred:

490 (a) In the event a foreign object introduced during a  
491 surgical or medical procedure has been left in a patient's body,  
492 the cause of action shall be deemed to have first accrued at, and  
493 not before, the time at which the foreign object is, or with  
494 reasonable diligence should have been, first known or discovered  
495 to be in the patient's body.

496 (b) In the event the cause of action shall have been  
497 fraudulently concealed from the knowledge of the person entitled  
498 thereto, the cause of action shall be deemed to have first accrued  
499 at, and not before, the time at which such fraud shall be, or with  
500 reasonable diligence should have been, first known or discovered.

501 (3) Except as otherwise provided in subsection (4) of this  
502 section, if at the time at which the cause of action shall or with  
503 reasonable diligence might have been first known or discovered,



504 the person to whom such claim has accrued shall be six (6) years  
505 of age or younger, then such minor or the person claiming through  
506 such minor may, notwithstanding that the period of time limited  
507 pursuant to subsections (1) and (2) of this section shall have  
508 expired, commence action on such claim at any time within two (2)  
509 years next after the time at which the minor shall have reached  
510 his sixth birthday, or shall have died, whichever shall have first  
511 occurred.

512 (4) If at the time at which the cause of action shall or  
513 with reasonable diligence might have been first known or  
514 discovered, the person to whom such claim has accrued shall be a  
515 minor without a parent or legal guardian, then such minor or the  
516 person claiming through such minor may, notwithstanding that the  
517 period of time limited pursuant to subsections (1) and (2) of this  
518 section shall have expired, commence action on such claim at any  
519 time within two (2) years next after the time at which the minor  
520 shall have a parent or legal guardian or shall have died,  
521 whichever shall have first occurred; provided, however, that in no  
522 event shall the period of limitation begin to run prior to such  
523 minor's sixth birthday unless such minor shall have died.

524 (5) If at the time at which the cause of action shall or  
525 with reasonable diligence might have been first known or  
526 discovered, the person to whom such claim has accrued shall be  
527 under the disability of unsoundness of mind, then such person or  
528 the person claiming through him may, notwithstanding that the  
529 period of time hereinbefore limited shall have expired, commence  
530 action on such claim at any time within two (2) years next after  
531 the time at which the person to whom the right shall have first  
532 accrued shall have ceased to be under the disability, or shall  
533 have died, whichever shall have first occurred.

534 (6) When any person who shall be under the disabilities  
535 mentioned in subsections (3), (4) and (5) of this section at the  
536 time at which his right shall have first accrued, shall depart





537 this life without having ceased to be under such disability, no  
538 time shall be allowed by reason of the disability of such person  
539 to commence action on the claim of such person beyond the period  
540 prescribed under Section 15-1-55, Mississippi Code of 1972.

541 (7) For the purposes of subsection (3) of this section, and  
542 only for the purposes of such subsection, the disability of  
543 infancy or minority shall be removed from and after a person has  
544 reached his sixth birthday.

545 (8) For the purposes of subsection (4) of this section, and  
546 only for the purposes of such subsection, the disability of  
547 infancy or minority shall be removed from and after a person has  
548 reached his sixth birthday or from and after such person shall  
549 have a parent or legal guardian, whichever occurs later, unless  
550 such disability is otherwise removed by law.

551 (9) The limitation established by this section as to a  
552 licensed physician, osteopath, dentist, hospital or nurse shall  
553 apply only to actions the cause of which accrued on or after July  
554 1, 1976.

555 (10) The limitation established by this section as to  
556 pharmacists shall apply only to actions the cause of which accrued  
557 on or after July 1, 1978.

558 (11) The limitation established by this section as to  
559 podiatrists shall apply only to actions the cause of which accrued  
560 on or after July 1, 1979.

561 (12) The limitation established by this section as to  
562 optometrists and chiropractors shall apply only to actions the  
563 cause of which accrued on or after July 1, 1983.

564 (13) The limitation established by this section as to  
565 actions commenced on behalf of minors shall apply only to actions  
566 the cause of which accrued on or after July 1, 1989.

567 (14) The limitation established by this section as to  
568 institutions for the aged or infirm shall apply only to actions



569 the cause of which accrued after the passage of House Bill No. 2,  
570 Third Extraordinary Session of 2002.

571 (15) No action based upon the health-care provider's  
572 professional negligence may be begun unless the defendant has been  
573 given at least ninety (90) days' prior written notice of the  
574 intention to begin the action. No particular form of notice is  
575 required, but it shall notify the defendant of the legal basis of  
576 the claim and the type of loss sustained, including with  
577 specificity the nature of the injuries suffered. If the notice is  
578 served within ninety (90) days of the expiration of the applicable  
579 statute of limitations, the time for the beginning of the action  
580 shall be extended ninety (90) days from the service of the notice.  
581 This subsection shall not be applicable with respect to any  
582 defendant whose name is unknown to the plaintiff at the time of  
583 filing the complaint and who is identified therein by a fictitious  
584 name.

585 **SECTION 10.** Section 11-46-1, Mississippi Code of 1972, is  
586 amended as follows:

587 11-46-1. As used in this chapter the following terms shall  
588 have the meanings herein ascribed unless the context otherwise  
589 requires:

590 (a) "Claim" means any demand to recover damages from a  
591 governmental entity as compensation for injuries.

592 (b) "Claimant" means any person seeking compensation  
593 under the provisions of this chapter, whether by administrative  
594 remedy or through the courts.

595 (c) "Board" means the Mississippi Tort Claims Board.

596 (d) "Department" means the Department of Finance and  
597 Administration.

598 (e) "Director" means the executive director of the  
599 department who is also the executive director of the board.

600 (f) "Employee" means any officer, employee or servant  
601 of the State of Mississippi or a political subdivision of the



602 state, including elected or appointed officials and persons acting  
603 on behalf of the state or a political subdivision in any official  
604 capacity, temporarily or permanently, in the service of the state  
605 or a political subdivision whether with or without compensation.  
606 The term "employee" shall not mean a person or other legal entity  
607 while acting in the capacity of an independent contractor under  
608 contract to the state or a political subdivision; provided,  
609 however, that for purposes of the limits of liability provided for  
610 in Section 11-46-15, the term "employee" shall include physicians  
611 under contract to provide health services with the State Board of  
612 Health, the State Board of Mental Health or any county or  
613 municipal jail facility while rendering services under such  
614 contract. The term "employee" shall also include any physician,  
615 dentist or other medical practitioner under contract or affiliated  
616 with or employed by the University of Mississippi Medical Center,  
617 its departmental practice plans, or who practices on the campus of  
618 any university under the control of the Board of Trustees of State  
619 Institutions of Higher Learning. The term "employee" shall also  
620 include any physician, dentist or other medical practitioner under  
621 contract or affiliated with or employed by the State Veterans  
622 Affairs Board. The term "employee" shall also include Mississippi  
623 Department of Human Services licensed foster parents for the  
624 limited purposes of coverage under the Tort Claims Act as provided  
625 in Section 11-46-8.

626 (g) "Governmental entity" means and includes the state  
627 and political subdivisions as herein defined.

628 (h) "Injury" means death, injury to a person, damage to  
629 or loss of property or any other injury that a person may suffer  
630 that is actionable at law or in equity.

631 (i) "Political subdivision" means any body politic or  
632 body corporate other than the state responsible for governmental  
633 activities only in geographic areas smaller than that of the  
634 state, including, but not limited to, any county, municipality,



635 school district, community hospital as defined in Section  
636 41-13-10, Mississippi Code of 1972, airport authority or other  
637 instrumentality thereof, whether or not such body or  
638 instrumentality thereof has the authority to levy taxes or to sue  
639 or be sued in its own name.

640 (j) "State" means the State of Mississippi and any  
641 office, department, agency, division, bureau, commission, board,  
642 institution, hospital, college, university, airport authority or  
643 other instrumentality thereof, whether or not such body or  
644 instrumentality thereof has the authority to levy taxes or to sue  
645 or be sued in its own name.

646 (k) "Law" means all species of law, including, but not  
647 limited to, any and all constitutions, statutes, case law, common  
648 law, customary law, court order, court rule, court decision, court  
649 opinion, court judgment or mandate, administrative rule or  
650 regulation, executive order, or principle or rule of equity.

651 **SECTION 11.** (1) Except as provided in Section 41-105-15,  
652 compensation for the noneconomic damages suffered by an injured  
653 plaintiff in any action for malpractice, negligence, error,  
654 omission, mistake or the unauthorized rendering of professional  
655 services by a provider of health care shall not exceed the amount  
656 of Five Hundred Thousand Dollars (\$500,000.00).

657 (2) If liability is found, then the trier of fact, in  
658 addition to other appropriate findings, shall make separate  
659 findings specifying the total amount of noneconomic damages and  
660 the total amount of actual economic damages for each separate  
661 claimant in a manner that the court may apply the restrictions of  
662 this section.

663 (3) The trier of fact shall not be advised of the  
664 limitations imposed by this section.

665 (4) For the purposes of this section, the following words  
666 and phrases shall have the meanings ascribed herein unless the  
667 context clearly requires otherwise:



668           (a) "Noneconomic damages" means subjective,  
669 nonpecuniary damages arising from death, pain, suffering,  
670 inconvenience, physical impairment, disfigurement, mental anguish,  
671 worry, emotional distress, loss of society and companionship, loss  
672 of consortium, bystander injury, injury to reputation,  
673 humiliation, loss of the enjoyment of life, hedonic damages, other  
674 nonpecuniary damages, and any other theory of damages such as fear  
675 of loss, illness or injury. The term "noneconomic damages" shall  
676 not include punitive damages.

677           (b) "Actual economic damages" means objectively  
678 verifiable pecuniary damages arising from medical expenses and  
679 medical care, rehabilitation services, custodial care,  
680 disabilities, loss of earnings and earning capacity, loss of  
681 income, burial costs, loss of use of property, costs of repair of  
682 replacement of property, costs of obtaining substitute domestic  
683 services, loss of employment, loss of business or employment  
684 opportunities, and other objectively verifiable monetary losses.

685           **SECTION 12.** The following shall be codified as Section  
686 41-105-1, Mississippi Code of 1972:

687           41-105-1. **Short title.** Sections 41-105-1 through 41-105-21  
688 shall be known and may be cited as the "Mississippi Care Access  
689 and Reliability Enhancement Act" or the "Mississippi CARE Act."

690           **SECTION 13.** The following shall be codified as Section  
691 41-105-3, Mississippi Code of 1972:

692           41-105-3. **Legislative findings.** It is hereby declared:

693           (a) That there exists in the State of Mississippi a  
694 severe shortage of quality, affordable health care;

695           (b) That this shortage contributes to the creation and  
696 persistence of substandard health care for many Mississippians and  
697 is damaging to the health, welfare and prosperity of all of the  
698 residents of the State of Mississippi;

699           (c) That this shortage disproportionately affects  
700 children, the poor, the elderly and public employees;



701 (d) That this shortage can be significantly ameliorated  
702 through the creation and maintenance of a nonprofit authority with  
703 powers to encourage the provision of health care to all  
704 Mississippians, and particularly to children, the poor, the  
705 elderly and public employees;

706 (e) That there now exists an emergency situation  
707 created by this shortage; and

708 (f) That it is in the public interest that the creation  
709 and funding of a nonprofit authority to address these issues be  
710 implemented and effected immediately in order to remedy such  
711 emergency situation.

712 **SECTION 14.** The following shall be codified as Section  
713 41-105-5, Mississippi Code of 1972:

714 41-105-5. **Purpose and scope.** (1) The purpose of the  
715 Mississippi CARE Act is to create a framework to ensure that  
716 quality, affordable health care will be available to Mississippi's  
717 patients, and particularly patients participating in the Medicaid,  
718 Medicare, Children's Health Insurance Program, and State Health  
719 Insurance Programs.

720 (2) The provisions of this act shall apply to all  
721 participating health-care providers as defined in Section  
722 41-105-7.

723 **SECTION 15.** The following shall be codified as Section  
724 41-105-7, Mississippi Code of 1972:

725 41-105-7. **Definitions.** As used in this chapter, the  
726 following words shall have the meaning ascribed herein unless the  
727 context clearly requires otherwise:

728 (a) "Authority" means the Mississippi Care Access and  
729 Reliability Enhancement Authority created in Section 41-105-9.

730 (b) "Board" means the Mississippi CARE Board of  
731 Directors created in Section 41-105-9.

732 (c) "Court" means a court of competent jurisdiction and  
733 proper venue over the parties.



734 (d) "Gross malpractice" means failure to exercise the  
735 required degree of care, skill or knowledge that amounts to: (i)  
736 a conscious indifference to the consequences which may result from  
737 the gross malpractice; and (ii) a disregard for and indifference  
738 to the safety and welfare of the patient.

739 (e) "Health care" means any act, or treatment performed  
740 or furnished, or which should have been performed or furnished, by  
741 any health-care provider for, to, or on behalf of a patient during  
742 the patient's medical care, treatment or confinement.

743 (f) "Health-care provider" means (i) a person,  
744 partnership, limited liability entity or corporation licensed or  
745 certified or authorized by state or federal law to provide  
746 professional health-care service in this state to an individual  
747 during that individual's health care, treatment or confinement;  
748 and (ii) a health care facility or institution, whether public or  
749 private, proprietary or nonprofit, which offers diagnosis,  
750 treatment, inpatient or ambulatory care to two (2) or more  
751 unrelated persons.

752 (g) "Malpractice" means any unintentional tort based on  
753 health-care or professional services rendered, or which should  
754 have been rendered, by a health-care provider, to a patient,  
755 including failure to render services timely and the handling of a  
756 patient, including loading and unloading of a patient, and also  
757 includes all legal responsibility of a health-care provider  
758 arising from acts or omissions in the training or supervision of  
759 health-care providers, or from defects in blood, tissue,  
760 transplants, drugs and medicines, or from defects in or failures  
761 of prosthetic devices, implanted in or used on or in the person of  
762 a patient.

763 (h) "Medical costs and related economic damages" means  
764 all reasonable medical, surgical, hospitalization, physical  
765 rehabilitation, custodial services and related economic damages,  
766 including prescription drugs, care, custody, prosthetic devices



767 and other similar materials reasonably necessary in the provision  
768 of such services, and loss of earnings and loss of earning  
769 capacity after the date of the injury. Medical costs and related  
770 economic damages shall not include any noneconomic damages.

771 (i) "Noneconomic damages" means any damages which  
772 compensate for pain, suffering, inconvenience and other  
773 nonpecuniary damages.

774 (j) "Participating health-care provider" means any  
775 health-care provider who meets the qualification requirements set  
776 forth in Section 41-105-15 and shall include all officers and  
777 employees of such participating health-care provider, provided  
778 that in the event such officers or employees individually fall  
779 within the definition of a health-care provider as set forth in  
780 this section, then such officers and employees must each  
781 individually meet the qualification requirements set forth in  
782 Section 41-105-15.

783 (k) "Patient" means a natural person who receives or  
784 should have received health care from a licensed health-care  
785 provider, under a contract, express or implied.

786 (l) "Patient's Lifetime Adequate Necessities Fund" or  
787 "PLAN Fund" means the fund to be created pursuant to the  
788 provisions of Section 41-105-11(2).

789 (m) "Person" means an individual, corporation, limited  
790 liability entity, partnership, association, joint stock company,  
791 trust, unincorporated organization, any similar entity or any  
792 combination of the foregoing acting in concert.

793 **SECTION 16.** The following shall be codified as Section  
794 41-105-9, Mississippi Code of 1972:

795 41-105-9. **Mississippi CARE Authority.** (1) There is hereby  
796 created a nonprofit legal entity to be known as the Mississippi  
797 Care Access and Reliability Enhancement Authority or the  
798 authority.





799           (2) The authority shall be governed by and shall operate  
800 subject to the supervision and approval of a nine-member board of  
801 directors. All appointees shall be persons with related business,  
802 financial, legal or other relevant expertise.

803           **SECTION 17.** The following shall be codified as Section  
804 41-105-11, Mississippi Code of 1972:

805           41-105-11. **Mississippi CARE Authority powers and duties.**

806           (1) The authority shall create and administer a mandatory medical  
807 review process in accordance with the requirements of this  
808 section.

809           (a) The medical review process shall provide for the  
810 review of all malpractice claims against participating health-care  
811 providers by a medical review panel. No action against a  
812 participating health-care provider or his insurer may be commenced  
813 in any court before the claimant's proposed complaint has been  
814 presented to a medical review panel.

815           (b) A medical review panel shall issue an expert  
816 opinion concerning the malpractice claim which shall be admissible  
817 as evidence in any action subsequently brought by the claimant in  
818 a court of law. Such expert opinion shall not be conclusive.  
819 Either party shall have the right to call, at his cost, any member  
820 of the medical review panel as a witness. If called, the witness  
821 shall be required to appear and testify.

822           (c) The members of a medical review panel shall consist  
823 of three (3) participating health-care providers who hold  
824 unlimited licenses to practice their profession in Mississippi and  
825 one (1) duly licensed attorney. The members of a medical review  
826 panel shall be appointed by the board.

827           (d) The filing of a request for a review of a claim by  
828 a medical review panel shall suspend the time within which suit  
829 must be instituted until ninety (90) days following notification,  
830 by certified mail, to the claimant or his attorney of the issuance  
831 of the opinion by a medical review panel.



832           (e) The authority shall adopt policies and procedures  
833 for the medical review process, including without limitation rules  
834 and procedures for the appointment of the members of a medical  
835 review panel, the presentation of evidence, payment of costs and  
836 fees, witnesses, and the issuance of opinions by the medical  
837 review panel.

838           (2) There shall be created in the State Treasury the  
839 Patient's Lifetime Adequate Necessities Fund, to be known as the  
840 PLAN Fund, in accordance with the requirements of this section.

841           (a) In the event that a judgment, settlement or final  
842 award in an arbitration proceeding exceeds the total liability of  
843 all participating health-care providers as provided in Section  
844 41-105-15(2) (b), then application may be made to the authority for  
845 payment out of the PLAN Fund for that portion of such excess  
846 judgment, settlement or final arbitration award that is determined  
847 by the authority to constitute eligible medical costs and related  
848 economic damages.

849           (b) The authority shall adopt policies and procedures  
850 for the administration of the PLAN Fund. Such policies and  
851 procedures shall be included in the plan of operation required by  
852 Section 41-105-11(4).

853           (c) Jurisdiction for appeals of decisions of the  
854 authority with respect to the PLAN Fund shall be exclusively with  
855 the Chancery Court in the First Judicial District of Hinds County,  
856 Mississippi. Such appeals shall be conducted based on the record  
857 made with the authority and not as a trial de novo.

858           (3) The authority may exercise powers granted to insurers  
859 under the laws of this state to write or otherwise make available  
860 medical malpractice insurance in the State of Mississippi. The  
861 insurance functions of the authority shall be subject to the  
862 insurance laws of the State of Mississippi applicable to insurers  
863 writing similar lines of insurance.



864 (4) The authority shall adopt a plan of operation for  
865 purposes of implementing this chapter, including the provisions of  
866 Section 41-105-19, and submit its plan of operation to the  
867 Mississippi Commissioner of Insurance for approval.

868 (5) The authority may take any legal actions necessary or  
869 proper to accomplish the purposes set forth in this chapter,  
870 including without limitation, entering into contracts, suing or  
871 being sued, and appointing appropriate administrative, legal,  
872 accounting, actuarial and other persons as necessary to provide  
873 assistance in the operation of the authority. The authority is  
874 authorized to borrow money to effect the purposes of the  
875 authority.

876 (6) The Mississippi Commissioner of Insurance may, by rule,  
877 establish additional powers and duties of the board and may adopt  
878 such rules as are necessary and proper to implement this chapter.  
879 The Mississippi Commissioner of Insurance shall have the power to  
880 retain accountants, attorneys, actuaries and any other experts he  
881 deems necessary to carry out his responsibilities under this  
882 chapter.

883 (7) The Mississippi Commissioner of Insurance shall examine  
884 and investigate the authority and make an annual report to the  
885 Legislature and the Governor thereon.

886 (8) If the board at any time determines that the authority  
887 lacks sufficient funds to conduct all or any part of its  
888 operations in accordance with the Mississippi CARE Act, then the  
889 board may suspend or terminate all or any part of the operations  
890 of the authority until such time as the board determines that  
891 adequate funds are available to conduct such suspended or  
892 terminated operations; provided, however, the board must have the  
893 approval of the Mississippi Commissioner of Insurance prior to  
894 suspending or terminating any insurance functions of the  
895 authority. Notice of any such suspension or termination of  
896 operations, and of the resumption of any suspended or terminated



897 operations, shall be given to the Governor, the Legislature, the  
898 Mississippi Commissioner of Insurance and all participating  
899 health-care providers.

900 **SECTION 18.** The following shall be codified as Section  
901 41-105-13, Mississippi Code of 1972:

902 41-105-13. **Liability, indemnification and legal**  
903 **representation.** Neither the CARE Board nor its employees shall be  
904 liable for any obligations of the authority. There shall be no  
905 liability on the part of and no cause of action shall arise  
906 against the authority or its agents or employees, members of the  
907 board of directors, the Commissioner of Insurance or his  
908 representatives for any action or omission by them in the  
909 performance of their powers and duties under this chapter. The  
910 board may provide in its bylaws or rules for indemnification of,  
911 and legal representation for, its members, agents and employees.

912 **SECTION 19.** The following shall be codified as Section  
913 41-105-15, Mississippi Code of 1972:

914 41-105-15. **Participating health-care providers.** (1) In  
915 order to be qualified as a participating health-care provider and  
916 to participate in the provisions of this chapter, a health-care  
917 provider must:

918 (a) Meet the proof of financial responsibility  
919 requirements as set forth in Section 41-105-17.

920 (b) Cause to be filed with the board a written  
921 agreement, the form and substance of which shall be determined by  
922 the board, signed by a duly authorized representative, that the  
923 health-care provider will provide services to (i) Medicaid  
924 recipients, (ii) Medicare recipients, (iii) Children's Health  
925 Insurance Program participants, and (iv) State Health Insurance  
926 Program participants. Such written agreement shall provide, among  
927 other things, that the health-care provider will provide services  
928 to Medicaid recipients, Medicare recipients, Children's Health  
929 Insurance Program participants, and State Health Insurance Program



930 participants in a manner that is comparable to the services  
931 provided to all other patients and shall be made without balance  
932 billing to the patient.

933 (c) Pay all surcharges assessed according to Section  
934 41-105-11(2).

935 (2) Except as specifically set forth in Section  
936 41-105-15(3), the total amount recoverable for all malpractice  
937 claims brought against all participating health-care providers  
938 involved in any one (1) incident of injury to or death of any one  
939 (1) patient, shall be limited to the following:

940 (a) Up to Five Hundred Thousand Dollars (\$500,000.00)  
941 for noneconomic damages; and

942 (b) Up to Two Hundred Fifty Thousand Dollars  
943 (\$250,000.00) for medical costs and related economic damages;  
944 provided, however, that in the event that a judgment, settlement  
945 or final award in an arbitration proceeding exceeds Two Hundred  
946 Fifty Thousand Dollars (\$250,000.00) for medical costs and related  
947 economic damages, then application may be made to the authority  
948 for payment out of the PLAN Fund in accordance with the provision  
949 of Section 41-105-11(2)(b). Payments from the PLAN Fund shall be  
950 paid to the patient as periodic payments in such manner as  
951 determined by the authority.

952 (3) The limitation on noneconomic damages as set forth in  
953 Sections 41-105-15(2)(a) and 41-105-15(4) does not apply in the  
954 following circumstances and types of cases:

955 (a) A case in which the conduct of the defendant is  
956 determined to constitute gross malpractice; or

957 (b) A case in which, following return of a verdict by  
958 the jury or a finding of damages in a bench trial, the court  
959 determines, by clear and convincing evidence admitted at trial,  
960 that an award in excess of Two Hundred Fifty Thousand Dollars  
961 (\$250,000.00) for noneconomic damages is justified because of  
962 exceptional circumstances.



963 (4) No liability shall be imposed upon any participating  
964 health-care provider on the basis of an alleged breach of  
965 contract, whether by express or implied warranty, assuring results  
966 to be obtained from any procedure undertaken in the course of  
967 health care, unless such contract is expressly set forth in  
968 writing and signed by such participating health-care provider or  
969 by an authorized agent of such participating health-care provider.

970 (5) The liability limitations set forth in Section  
971 41-105-15(2) shall be adjusted for inflation annually. The  
972 adjustment made pursuant to this paragraph shall be rounded upward  
973 or downward to the nearest increment of Ten Dollars (\$10.00). The  
974 authority shall make available the cost of living increase  
975 calculations, if any, as soon as such information becomes  
976 available each year.

977 **SECTION 20.** The following shall be codified as Section  
978 41-105-17, Mississippi Code of 1972:

979 41-105-17. **Proof of financial responsibility.** (1)

980 Financial responsibility of a participating health-care provider  
981 may be established by either:

982 (a) Filing with the board proof that the participating  
983 health-care provider is adequately insured for its exposure under  
984 this chapter by a policy of malpractice liability insurance  
985 approved by the board from an insurance company approved by the  
986 board; or

987 (b) Maintaining on deposit with the board an amount  
988 approved by the board to adequately cover its exposure under this  
989 chapter in the form of cash or other collateral approved by the  
990 board.

991 (2) The policy of malpractice liability insurance required  
992 by Section 41-105-17(1)(a) may be issued, in form approved by the  
993 authority, by any company created pursuant to Sections 83-47-1 et  
994 seq. or any other insurance company approved by the board.



995 (3) Any properly licensed agent may sell any policy of  
996 malpractice liability insurance approved by the board from an  
997 insurance company approved by the board to participating  
998 health-care providers in accordance with this chapter.

999 **SECTION 21.** The following shall be codified as Section  
1000 41-105-19, Mississippi Code of 1972:

1001 41-105-19. **Additional protections; exclusive remedy.** (1)  
1002 The Mississippi CARE Act shall not limit or preempt any  
1003 protections or liability limitations afforded to participating  
1004 health-care providers.

1005 (2) Except to the extent that other applicable law would  
1006 further limit the remedies available (and in such event such  
1007 limited remedy shall apply), the remedy provided by this chapter  
1008 against a participating health-care provider is exclusive of any  
1009 other civil action or civil proceeding by reason of the same  
1010 subject matter against the participating health-care provider for  
1011 the act or omission which gave rise to the claim or suit, and any  
1012 claim made or suit filed against a participating health-care  
1013 provider to recover damages for any malpractice injury shall be  
1014 brought only under the provisions of this chapter, notwithstanding  
1015 the provisions of any other law to the contrary.

1016 **SECTION 22.** The following shall be codified as Section  
1017 41-105-21, Mississippi Code of 1972:

1018 41-105-21. **Funding of authority.** Reasonable expenses of the  
1019 authority incurred in connection with the execution of its  
1020 authority under this chapter, including without limitation,  
1021 expenses for start-up costs, operations and insurance reserves  
1022 shall be provided from any available funds, pursuant to  
1023 appropriation by the Legislature.

1024 The plan of operation adopted by the board shall provide  
1025 that, from time to time, the board shall determine whether and to  
1026 what extent its income, including without limitation, any premiums  
1027 and surcharges collected, exceeds anticipated or actual expenses



1028 and reasonable reserves and the board shall pay such excess  
1029 amounts to the Health Care Expendable Fund.

1030         **SECTION 23.** This act shall take effect and be in force from  
1031 and after its passage and shall apply only to causes of action  
1032 accruing on or after that date; provided, however, that Section 6  
1033 of this act shall take effect and be in force from and after its  
1034 passage and shall apply to all causes of action pending on, and  
1035 filed after, that date.

