

By: Representative Watson

To: Medicaid

## HOUSE BILL NO. 401

1 AN ACT TO AMEND SECTION 43-13-107, MISSISSIPPI CODE OF 1972,  
2 WHICH CREATES THE DIVISION OF MEDICAID, PRESCRIBES ITS DUTIES AND  
3 RESPONSIBILITIES, PROVIDES FOR THE APPOINTMENT OF AN EXECUTIVE  
4 DIRECTOR OF THE DIVISION, PROVIDES FOR THE AUTHORITY AND  
5 RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR, PROVIDES FOR A MEDICAL  
6 CARE ADVISORY COMMITTEE, PROVIDES FOR A DRUG USE REVIEW BOARD AND  
7 PROVIDES FOR THE PHARMACY AND THERAPEUTICS COMMITTEE, TO EXTEND  
8 THE REPEAL DATE ON THIS SECTION; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

47           (b) The advisory committee shall consist of not less  
48 than eleven (11) members, as follows:

49                   (i) The Governor shall appoint five (5) members,  
50 one (1) from each congressional district and one (1) from the  
51 state at large;

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

54                   (iii) The Speaker of the House of Representatives  
55 shall appoint three (3) members, one (1) from each Supreme Court  
56 district.

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

61           (c) The respective Chairmen of the House Public Health  
62 and Welfare Committee, the House Appropriations Committee, the

63 Senate Public Health and Welfare Committee and the Senate  
64 Appropriations Committee, or their designees, one (1) member of  
65 the State Senate appointed by the Lieutenant Governor and one (1)  
66 member of the House of Representatives appointed by the Speaker of  
67 the House, shall serve as ex officio nonvoting members of the  
68 advisory committee.

69 (d) In addition to the committee members required by  
70 paragraph (b), the advisory committee shall consist of such other  
71 members as are necessary to meet the requirements of the federal  
72 regulation applicable to the advisory committee, who shall be  
73 appointed as provided in the federal regulation.

74 (e) The chairmanship of the advisory committee shall  
75 alternate for twelve-month periods between the chairmen of the  
76 House and Senate Public Health and Welfare Committees, with the  
77 Chairman of the House Public Health and Welfare Committee serving  
78 as the first chairman.

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

90 (g) The advisory committee shall meet not less than  
91 quarterly, and advisory committee members shall be furnished  
92 written notice of the meetings at least ten (10) days before the  
93 date of the meeting.

94 (h) The executive director shall submit to the advisory  
95 committee all amendments, modifications and changes to the state

96 plan for the operation of the Medicaid program, for review by the  
97 advisory committee before the amendments, modifications or changes  
98 may be implemented by the division.

99 (i) The advisory committee, among its duties and  
100 responsibilities, shall:

101 (i) Advise the division with respect to  
102 amendments, modifications and changes to the state plan for the  
103 operation of the Medicaid program;

104 (ii) Advise the division with respect to issues  
105 concerning receipt and disbursement of funds and eligibility for  
106 Medicaid;

107 (iii) Advise the division with respect to  
108 determining the quantity, quality and extent of medical care  
109 provided under this article;

110 (iv) Communicate the views of the medical care  
111 professions to the division and communicate the views of the  
112 division to the medical care professions;

113 (v) Gather information on reasons that medical  
114 care providers do not participate in the Medicaid program and  
115 changes that could be made in the program to encourage more  
116 providers to participate in the Medicaid program, and advise the  
117 division with respect to encouraging physicians and other medical  
118 care providers to participate in the Medicaid program;

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

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

124 (i) Review and initiate retrospective drug use,  
125 review including ongoing periodic examination of claims data and  
126 other records in order to identify patterns of fraud, abuse, gross  
127 overuse, or inappropriate or medically unnecessary care, among

128 physicians, pharmacists and individuals receiving Medicaid  
129 benefits or associated with specific drugs or groups of drugs.

130 (ii) Review and initiate ongoing interventions for  
131 physicians and pharmacists, targeted toward therapy problems or  
132 individuals identified in the course of retrospective drug use  
133 reviews.

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

137 (b) The board shall consist of not less than twelve  
138 (12) members appointed by the Governor, or his designee.

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

142 (d) The board meetings shall be open to the public,  
143 members of the press, legislators and consumers. Additionally,  
144 all documents provided to board members shall be available to  
145 members of the Legislature in the same manner, and shall be made  
146 available to others for a reasonable fee for copying. However,  
147 patient confidentiality and provider confidentiality shall be  
148 protected by blinding patient names and provider names with  
149 numerical or other anonymous identifiers. The board meetings  
150 shall be subject to the Open Meetings Act (Section 25-41-1 et  
151 seq.). Board meetings conducted in violation of this section  
152 shall be deemed unlawful.

153 (5) (a) There is established a Pharmacy and Therapeutics  
154 Committee, which shall be appointed by the Governor, or his  
155 designee.

156 (b) The committee shall meet at least quarterly, and  
157 committee members shall be furnished written notice of the  
158 meetings at least ten (10) days before the date of the meeting.

159 (c) The committee meetings shall be open to the public,  
160 members of the press, legislators and consumers. Additionally,

161 all documents provided to committee members shall be available to  
162 members of the Legislature in the same manner, and shall be made  
163 available to others for a reasonable fee for copying. However,  
164 patient confidentiality and provider confidentiality shall be  
165 protected by blinding patient names and provider names with  
166 numerical or other anonymous identifiers. The committee meetings  
167 shall be subject to the Open Meetings Act (Section 25-41-1 et  
168 seq.). Committee meetings conducted in violation of this section  
169 shall be deemed unlawful.

170 (d) After a thirty-day public notice, the executive  
171 director, or his or her designee, shall present the division's  
172 recommendation regarding prior approval for a therapeutic class of  
173 drugs to the committee. However, in circumstances where the  
174 division deems it necessary for the health and safety of Medicaid  
175 beneficiaries, the division may present to the committee its  
176 recommendations regarding a particular drug without a thirty-day  
177 public notice. In making such presentation, the division shall  
178 state to the committee the circumstances which precipitate the  
179 need for the committee to review the status of a particular drug  
180 without a thirty-day public notice. The committee may determine  
181 whether or not to review the particular drug under the  
182 circumstances stated by the division without a thirty-day public  
183 notice. If the committee determines to review the status of the  
184 particular drug, it shall make its recommendations to the  
185 division, after which the division shall file such recommendations  
186 for a thirty-day public comment under the provisions of Section  
187 25-43-7(1), Mississippi Code of 1972.

188 (e) Upon reviewing the information and recommendations,  
189 the committee shall forward a written recommendation approved by a  
190 majority of the committee to the executive director, or his or her  
191 designee. The decisions of the committee regarding any  
192 limitations to be imposed on any drug or its use for a specified  
193 indication shall be based on sound clinical evidence found in

194 labeling, drug compendia, and peer reviewed clinical literature  
195 pertaining to use of the drug in the relevant population.

196 (f) Upon reviewing and considering all recommendations,  
197 including recommendation of the committee, comments, and data, the  
198 executive director shall make a final determination whether to  
199 require prior approval of a therapeutic class of drugs, or modify  
200 existing prior approval requirements for a therapeutic class of  
201 drugs.

202 (g) At least thirty (30) days before the executive  
203 director implements new or amended prior authorization decisions,  
204 written notice of the executive director's decision shall be  
205 provided to all prescribing Medicaid providers, all Medicaid  
206 enrolled pharmacies, and any other party who has requested the  
207 notification. However, notice given under Section 25-43-7(1) will  
208 substitute for and meet the requirement for notice under this  
209 subsection.

210 (6) This section shall stand repealed on July 1, 2006.

211 **SECTION 2.** This act shall take effect and be in force from  
212 and after July 1, 2004.