

By: Representatives Blackmon, Holland

To: Sel Cmte on Access &
Afford Med Mal Ins

HOUSE BILL NO. 1569

1 AN ACT TO AMEND SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO
 2 EXPAND THE MEDICAL MALPRACTICE INSURANCE AVAILABILITY PLAN THAT IS
 3 ADMINISTERED BY THE MISSISSIPPI TORT CLAIMS BOARD TO MAKE
 4 AVAILABLE PRIOR ACTS EXTENDED REPORTING PERIOD COVERAGE TO ALL
 5 PARTICIPANTS OF THE PLAN AT ADDITIONAL PREMIUM ASSESSMENTS FOR
 6 SUCH COVERAGE AND TO PAY ALL MEDICAL MALPRACTICE INSURANCE
 7 PREMIUMS FOR CERTAIN RETIRED PHYSICIANS WHO PROVIDE VOLUNTEER
 8 UNPAID HEALTH CARE SERVICES; TO AMEND SECTION 11-46-1, MISSISSIPPI
 9 CODE OF 1972, TO REVISE THE DEFINITION OF "EMPLOYEE" FOR PURPOSES
 10 OF LIMITED LIABILITY UNDER THE TORT CLAIMS BOARD TO INCLUDE THOSE
 11 PHYSICIANS WHO PROVIDE HEALTH CARE SERVICES TO MEDICAID
 12 RECIPIENTS, STATE AND SCHOOL EMPLOYEES HEALTH INSURANCE PLAN
 13 PARTICIPANTS AND CHILDREN'S HEALTH INSURANCE PROGRAM PARTICIPANTS
 14 IF AT LEAST SIXTY-FIVE PERCENT OF THE PHYSICIAN'S PATIENTS ARE
 15 MEDICAID RECIPIENTS AND TO INCLUDE CERTAIN RETIRED PHYSICIANS WHO
 16 PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES TO ANY PUBLIC ENTITY
 17 OR PRIVATE ENTITY; TO CREATE AN ADVISORY COUNCIL TO ASSIST THE
 18 MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER A PHYSICIAN
 19 MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY AS AN
 20 EMPLOYEE FOR LIMITED LIABILITY PURPOSES; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** The Legislature recognizes the importance of
 23 assuring adequate health care services for all Mississippians, and
 24 it acknowledges that physicians are a vital component of providing
 25 such services. The Legislature finds that because of the makeup
 26 of the citizenry of the state and the percentage of citizens who
 27 are (a) Medicaid recipients, (b) State and School Employees Health
 28 Insurance Plan participants and (c) Children's Health Insurance
 29 Program participants, physicians who provide health care services
 30 to such individuals are providing an essential public service and
 31 that it is in the public interest to provide funding to further
 32 address medical malpractice insurance needs of these physicians.

33 **SECTION 2.** Section 83-48-5, Mississippi Code of 1972, is
 34 amended as follows:

35 83-48-5. (1) There is created the Medical Malpractice
 36 Insurance Availability Plan that shall be funded by the

37 participants in the plan. The plan shall be administered by the
38 Tort Claims Board created under Section 11-46-18.

39 (2) (a) The plan shall provide coverage for medical
40 malpractice to hospitals, institutions for the aged or infirm, or
41 other health care facilities licensed by the State of Mississippi,
42 physicians, nurses or other personnel who are duly licensed to
43 practice in a hospital or other health care facility licensed by
44 the State of Mississippi. Participation in the plan shall be
45 voluntary for any hospital, institution for the aged or infirm, or
46 other health care facilities licensed by the State of Mississippi,
47 physicians, nurses and any other personnel who are duly licensed
48 to practice in a hospital or other health care facility licensed
49 by the State of Mississippi. However, no state entity may
50 participate in the plan. The term "state" as used in this
51 subsection has the meaning ascribed to that term under Section
52 11-46-1. The plan shall make available tail (extended reporting
53 period) coverage for participants of the plan at an additional
54 premium assessment for such coverage. The plan shall make
55 available prior acts extended reporting period coverage
56 (retroactive to the inception date of the physician's last medical
57 malpractice policy) for participants of the plan at an additional
58 premium assessment for such coverage. The board shall encourage
59 participation in the insurance industry market. Any duly licensed
60 qualified Mississippi agent who writes a policy under the plan may
61 receive a commission not to exceed five percent (5%) of the
62 premium assessment as full compensation.

63 (b) The limits of coverage under the plan shall be as
64 follows:

65 (i) For participants who are "political
66 subdivisions" and participants who are "employees" of political
67 subdivisions, as such terms are defined under Section 11-46-1, a
68 maximum of Five Hundred Thousand Dollars (\$500,000.00), per single

69 occurrence, and Two Million Dollars (\$2,000,000.00), in the
70 aggregate, per year, for all occurrences;

71 (ii) For all other participants, a maximum of One
72 Million Dollars (\$1,000,000.00), per single occurrence, and Three
73 Million Dollars (\$3,000,000.00), in the aggregate, per year, for
74 all occurrences; and

75 (iii) For tail coverage, the plan shall provide
76 the same limits of coverage as designated in subparagraphs (i) and
77 (ii) of this paragraph (b).

78 (iv) For prior acts extended reporting period
79 coverage, the plan shall provide the same limits of coverage as
80 designated in subparagraphs (i) and (ii) of this paragraph (b).
81 For the purpose of providing funds, in addition to assessments,
82 for prior acts extending reporting period coverage, the
83 Mississippi Tort Claims Board shall use monies in the special fund
84 created under Section 7 of House Bill No. 1569, 2004 Regular
85 Session.

86 (3) Policies may be underwritten based on participant
87 history. All rates applicable to the coverage provided herein
88 shall be on an actuarially sound basis and calculated to be
89 self-supporting. Policies for prior acts extended reporting
90 period coverage shall be underwritten at the lowest premium rates
91 possible on an actuarially sound basis.

92 (4) Every participant in the plan shall:

93 (a) File with the board a written agreement, the form
94 and substance of which shall be determined by the board, signed by
95 a duly authorized representative of the participant, that the
96 participant will provide services to (i) Medicaid recipients, (ii)
97 State and School Employees Health Insurance Plan participants, and
98 (iii) Children's Health Insurance Program participants. The
99 agreement must provide, among other things, that the participant
100 will provide services to Medicaid recipients, State and School
101 Employees Health Insurance Plan participants, and Children's

102 Health Insurance Program participants in a manner that is
103 comparable to the services provided to all other patients and
104 shall be made without balance billing to the patient; and

105 (b) Pay all assessments and premiums established by the
106 board.

107 (5) This chapter shall not preclude any hospital,
108 institution for the aged or infirm, or other health care
109 facilities licensed by the State of Mississippi, physician, nurse
110 or other personnel who are duly licensed to practice in a hospital
111 or other health care facility licensed by the State of Mississippi
112 from procuring medical malpractice insurance from any source other
113 than the plan.

114 (6) Notwithstanding any other provision of this section to
115 the contrary, the Mississippi Torts Claim Board shall use so much
116 of the monies in the special fund created in Section 7 of House
117 Bill No. 1569, 2004 Regular Session, as may be necessary to pay
118 all medical malpractice insurance premiums for not more than an
119 aggregate of twenty-five (25) physicians described in Section
120 11-46-1(f)(ii).

121 (7) The Tort Claims Board shall have the following powers
122 and duties:

123 (a) To expend money from a loan from the Tort Claims
124 Fund in an amount not to exceed Five Hundred Thousand Dollars
125 (\$500,000.00) for the start-up costs of administering the Medical
126 Malpractice Insurance Availability Plan;

127 (b) To approve and pay claims of participants;

128 (c) To charge and collect assessments and fees from
129 participants in the plan;

130 (d) To contract with accountants, attorneys, actuaries
131 and any other experts deemed necessary to carry out the
132 responsibilities under the plan. The outsourcing of any function
133 of the board shall be provided by Mississippi residents or
134 Mississippi domicile corporations, if available;

135 (e) To employ not more than five (5) persons in
136 time-limited positions to assist the board in the administration
137 of the plan;

138 (f) To contract for administration of the claims and
139 service of the plan to a third party. The outsourcing of any
140 function of the board shall be provided by Mississippi residents
141 or Mississippi domicile corporations, if available;

142 (g) To use monies in the special fund created under
143 Section 7 of House Bill No. 1569, 2004 Regular Session, for the
144 purposes provided in subsections (2)(b)(iv) and (6) of this
145 section.

146 (h) To adopt and promulgate rules and regulations to
147 implement the provisions of the plan. The Tort Claims Board shall
148 adopt such rules and regulations as may be necessary to ensure
149 that the plan remains actuarially sound. The board shall retain
150 the limited liability established by Section 11-46-15; and

151 (i) To submit an annual report on or before March 1
152 each year to the House and Senate Insurance Committees. Such
153 report shall contain:

154 (i) Certification by a qualified actuary that the
155 plan is solvent;

156 (ii) The number of participants in the plan;

157 (iii) The number of claims filed and paid by the
158 plan; and

159 (iv) The amount of all assessments and fees
160 collected from the participants in the plan.

161 (8) Nothing contained in this section shall be construed as
162 repealing, amending or superseding the provisions of any other law
163 and, if the provisions of this section conflict with any other
164 law, then the provisions of such other law shall govern and
165 control to the extent of the conflict.

166 **SECTION 3.** Section 11-46-1, Mississippi Code of 1972, is
167 amended as follows:

168 11-46-1. As used in this chapter the following terms shall
169 have the meanings herein ascribed unless the context otherwise
170 requires:

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

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

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

177 (d) "Department" means the Department of Finance and
178 Administration.

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

181 (f) "Employee" means:

182 (i) Any officer, employee or servant of the State
183 of Mississippi or a political subdivision of the state, including
184 elected or appointed officials and persons acting on behalf of the
185 state or a political subdivision in any official capacity,
186 temporarily or permanently, in the service of the state or a
187 political subdivision whether with or without compensation. The
188 term "employee" shall not mean a person or other legal entity
189 while acting in the capacity of an independent contractor under
190 contract to the state or a political subdivision; provided,
191 however, that for purposes of the limits of liability provided for
192 in Section 11-46-15, the term "employee" shall include physicians
193 under contract to provide health services with the State Board of
194 Health, the State Board of Mental Health or any county or
195 municipal jail facility while rendering services under such
196 contract. The term "employee" shall also include any physician,
197 dentist or other health care practitioner employed by the
198 University of Mississippi Medical Center (UMMC) and its
199 departmental practice plans who is a faculty member and provides
200 health care services only for patients at UMMC or its affiliated

201 practice sites. The term "employee" shall also include any
202 physician, dentist or other health care practitioner employed by
203 any university under the control of the Board of Trustees of State
204 Institutions of Higher Learning who practices only on the campus
205 of any university under the control of the Board of Trustees of
206 State Institutions of Higher Learning. The term "employee" shall
207 also include any physician, dentist or other health care
208 practitioner employed by the State Veterans Affairs Board and who
209 provides health care services for patients for the State Veterans
210 Affairs Board. The term "employee" shall also include Mississippi
211 Department of Human Services licensed foster parents for the
212 limited purposes of coverage under the Tort Claims Act as provided
213 in Section 11-46-8. For the purposes of the limits of liability
214 provided for in Section 11-46-15 and for no other purpose under
215 this chapter, the term "employee" also shall include any physician
216 who provides health care services to Medicaid recipients, State
217 and School Employees Health Insurance Plan participants and
218 Children's Health Insurance Program participants, provided that at
219 least sixty-five percent (65%) of the physician's patients, as
220 determined by the board, are Medicaid recipients; and

221 (ii) Any retired physician who provides volunteer
222 unpaid health care services to any public entity or private
223 entity. For the purposes of this subparagraph (ii), "public
224 entity" means any agency, department, institution, instrumentality
225 or political subdivision of the state, or any agency, department,
226 institution or instrumentality of any political subdivision of the
227 state; and "private entity" means any business, organization,
228 corporation, association or other legal entity which is not a
229 public entity.

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

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

235 (i) "Political subdivision" means any body politic or
236 body corporate other than the state responsible for governmental
237 activities only in geographic areas smaller than that of the
238 state, including, but not limited to, any county, municipality,
239 school district, community hospital as defined in Section
240 41-13-10, Mississippi Code of 1972, airport authority or other
241 instrumentality thereof, whether or not such body or
242 instrumentality thereof has the authority to levy taxes or to sue
243 or be sued in its own name.

244 (j) "State" means the State of Mississippi and any
245 office, department, agency, division, bureau, commission, board,
246 institution, hospital, college, university, airport authority or
247 other instrumentality thereof, whether or not such body or
248 instrumentality thereof has the authority to levy taxes or to sue
249 or be sued in its own name.

250 (k) "Law" means all species of law including, but not
251 limited to, any and all constitutions, statutes, case law, common
252 law, customary law, court order, court rule, court decision, court
253 opinion, court judgment or mandate, administrative rule or
254 regulation, executive order, or principle or rule of equity.

255 **SECTION 4.** There is created in the State Treasury a special
256 fund to the credit of the Mississippi Tort Claims Board, which
257 shall be comprised of any funds that may be made available for the
258 fund by the Legislature. Monies in the fund shall be expended by
259 the Mississippi Tort Claims Board, upon appropriation by the
260 Legislature, only for the purpose of providing additional funds
261 for prior acts extended reporting period coverage as provided in
262 Section 83-48-5 and for paying the medical malpractice premiums
263 for those physicians described in Section 11-46-1(f)(ii) as
264 provided for in Section 83-48-5. Unexpended amounts remaining in

265 the special fund at the end of a fiscal year shall not lapse into
266 the State General Fund, and any interest earned or investment
267 earnings on amounts in the special fund shall be deposited to the
268 credit of the special fund.

269 **SECTION 5.** There is created an advisory council to assist
270 the Mississippi Tort Claims Board in determining whether a
271 physician meets the percentage requirement under Section
272 11-46-1(f) to qualify as an employee. The advisory council shall
273 be composed of the Executive Director of the Mississippi Medical
274 Association or his designee; the President of the Mississippi
275 Medical and Surgical Association or his designee; the
276 administrator of the Mississippi Tort Claims Board or his
277 designee; two (2) physicians appointed by the Lieutenant Governor;
278 and two (2) physicians appointed by the Speaker of the House of
279 Representatives.

280 **SECTION 6.** This act shall take effect and be in force from
281 and after July 1, 2004.