

By: Representatives Moak, Peranich

To: Public Health and Human Services; Sel Cmte on Access & Afford Med Mal Ins

HOUSE BILL NO. 1411

1 AN ACT TO BRING FORWARD SECTIONS 83-47-1 THROUGH 83-47-25,  
2 MISSISSIPPI CODE OF 1972, WHICH IS THE LAW GOVERNING NONPROFIT  
3 MEDICAL LIABILITY INSURANCE CORPORATIONS, FOR THE PURPOSE OF  
4 AMENDMENT; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 83-47-1, Mississippi Code of 1972, is  
7 brought forward as follows:

8 83-47-1. The public health and welfare requires the adoption  
9 of this chapter providing for the organization and operation of  
10 nonprofit medical liability insurance corporations.

11 **SECTION 2.** Section 83-47-3, Mississippi Code of 1972, is  
12 brought forward as follows:

13 83-47-3. Any seven (7) or more physicians licensed to  
14 practice in Mississippi who are residents of this state, may form  
15 a nonprofit corporation under this chapter for the purpose of  
16 providing medical, professional, general and other liability  
17 insurance to health care providers, health care facilities and  
18 managed care organizations in Mississippi and any other state or  
19 jurisdiction. The term "health care provider," when used in this  
20 chapter, shall mean a physician, dentist, pharmacist, osteopath,  
21 psychologist, podiatrist, optometrist, chiropractor, nurse,  
22 medical technician or other health care provider licensed by the  
23 State of Mississippi or any other state or jurisdiction. The term  
24 "health care facility," when used in this chapter, shall mean a  
25 medical clinic, nursing home, outpatient surgical center,  
26 laboratory, pharmacy, dialysis clinic, hospital or other health  
27 care facility licensed, if necessary, by the State of Mississippi  
28 or any other state or jurisdiction. The term "managed care

29 organization," when used in this chapter, shall mean a health  
30 maintenance organization (HMO), individual practice association  
31 (IPA), preferred provider organization (PPO), competitive medical  
32 plan (CMP), exclusive provider organization (EPO), integrated  
33 delivery system (EDS), independent physician/provider organization  
34 (IPO), management service organization (MSO), physician  
35 hospital/provider organization (PHO) and any other type of managed  
36 care organization. Members of the corporation shall consist of  
37 only individuals under contracts which entitle such individuals to  
38 medical liability insurance. Health care facilities and managed  
39 care organizations need not be owned by or comprised of members of  
40 the corporation in order to be insured by the corporation. All  
41 such corporations shall be governed by this chapter and shall be  
42 exempt from all other provisions of the insurance laws of this  
43 state, unless otherwise specifically provided herein. Such a  
44 corporation may be formed under this chapter in the following  
45 manner:

46 (a) The proposed incorporators shall subscribe articles  
47 of incorporation in which shall be stated:

48 (i) The proposed corporate name of the  
49 corporation, which shall not so closely resemble the name of any  
50 other corporation already transacting business in this state as to  
51 mislead the public or lead to confusion;

52 (ii) The domicile of the proposed corporation;

53 (iii) The names and post office addresses of the  
54 incorporators;

55 (iv) The fact that application for charter is  
56 being made under this chapter and the corporation proposed to  
57 operate under and subject to the provisions of this chapter;

58 (v) The purposes of the corporation.

59 (b) Such articles of incorporation shall be filed with  
60 the Commissioner of Insurance, who shall refer the same to the  
61 Attorney General for his opinion as to whether the same meet the

62 requirements of this chapter and are not otherwise violative of  
63 the Constitution or laws of this state or of the United States.  
64 The Attorney General shall examine the same and endorse his  
65 opinion thereon and return the same to the Commissioner of  
66 Insurance for approval. The Commissioner of Insurance shall (if  
67 the same be approved by the Attorney General) thereupon endorse  
68 his certificate of approval upon such articles of incorporation,  
69 record the same in his office, and refer the same to the office of  
70 the Secretary of State to be there recorded, whereupon said  
71 corporation shall become and be considered an existing entity.  
72 The articles of incorporation as thus approved and recorded shall  
73 be and constitute the charter of incorporation of such  
74 corporation. It shall not be necessary that such charter be  
75 published, nor shall it be necessary that it be recorded in the  
76 office of the chancery clerk.

77 **SECTION 3.** Section 83-47-5, Mississippi Code of 1972, is  
78 brought forward as follows:

79 83-47-5. Corporations organized under this chapter shall  
80 not have capital stock, but shall have members as prescribed and  
81 contemplated by the terms and provisions of this chapter; and such  
82 members shall have the privileges provided for in this chapter.  
83 The subscribers to the articles of incorporation as the organizers  
84 of the corporation shall have power to elect the first board of  
85 directors, who shall serve for the terms prescribed in the next  
86 sentence of this section, or until their successors are elected  
87 and qualified. One-third (1/3) of the members of the first board  
88 of directors shall be elected for a term of one (1) year,  
89 one-third (1/3) for a term of two (2) years, and one-third (1/3)  
90 for a term of three (3) years. Thereafterwards, directors shall be  
91 elected for terms of three (3) years. Provisions shall be made  
92 for subsequent elections of directors, including the time and  
93 place of such elections and notice thereof to the membership by  
94 (a) resolution of the directors entered upon the minutes not less

95 than sixty (60) days before such election, designating the time  
96 and place of such election, such minutes to be open to the  
97 membership as hereinafter provided, or (b) by the time and place  
98 of such election being fixed by resolution of the directors, and  
99 notice thereof being mailed to the members at least fifteen (15)  
100 days before the time fixed for such election. All minutes of the  
101 corporation with respect to the time and place fixed for any such  
102 election of directors shall be open to members at all reasonable  
103 times, but no notice of elections shall be necessary, other than  
104 as herein provided. Each member shall be entitled to one (1) vote  
105 in the election of directors. It shall be the duty of the  
106 directors to provide for elections as the terms of office of  
107 directors expire, and it shall be the duty of the Commissioner of  
108 Insurance as a part of his supervisory jurisdiction over such  
109 corporations to see that the directors faithfully perform this  
110 duty. If such directors shall fail to so provide for the election  
111 of directors, it shall be the duty of the Commissioner of  
112 Insurance to report this fact to the membership of the corporation  
113 and himself call a meeting of the membership for the election of  
114 directors; and the corporation shall forthwith, upon demand of the  
115 commissioner, reimburse him for all expenses incurred in the  
116 performance of these duties. A majority vote of the members  
117 present in person (or by proxy, if proxy be provided for) and  
118 voting shall be required and shall be sufficient for the election  
119 of directors.

120 The membership of the corporation shall consist of any  
121 individual who has applied for, or been granted, a license to  
122 practice medicine in the State of Mississippi, or any other state  
123 or jurisdiction, provided he has first applied for membership on  
124 the form prescribed by the board of directors and paid the  
125 requisite fees, charges and premiums in advance therefor, and  
126 agreed to comply with and be bound by the charter and bylaws and  
127 amendments thereto, and the rules, regulations and guidelines

128 adopted from time to time by the board of directors or any  
129 committee authorized by the board of directors to so act.

130 No person may own more than one (1) membership in the  
131 corporation, nor shall any member be entitled to more than one (1)  
132 vote upon any matter submitted to a vote at the meeting of the  
133 members.

134 Membership shall not be granted until a membership  
135 certificate in the form prescribed by the board of directors shall  
136 have been duly issued.

137 The event of (a) death, or (b) revocation of license to  
138 practice medicine, or (c) nonpayment of membership fees, dues,  
139 assessments or premiums, or (d) failure to comply with and abide  
140 by all provisions of the charter and bylaws and amendments  
141 thereto, and the rules, regulations and guidelines adopted from  
142 time to time by the board of directors or (e) termination of  
143 insurance with the corporation for any reason, shall operate ipso  
144 facto to terminate membership in the corporation, and all interest  
145 of any such member in the assets of the corporation shall then and  
146 thereby terminate and cease, except for the right to receive  
147 benefits provided for under contracts or the bylaws of the  
148 corporation.

149 The directors shall have power to adopt bylaws, elect  
150 officers and manage the affairs of the corporation. They shall  
151 also have the power to determine whether voting in the election of  
152 directors may be done by proxy and, if so, the manner and method  
153 thereof.

154 **SECTION 4.** Section 83-47-7, Mississippi Code of 1972, is  
155 brought forward as follows:

156 83-47-7. (1) Each corporation established under the  
157 provisions of this chapter shall furnish to the Commissioner of  
158 Insurance all information that he may request concerning the  
159 number of members of any such corporation and the type of practice  
160 of each such member. After considering the number of members and

161 the type of practice of each such member, the Commissioner of  
162 Insurance shall require a minimum capital of Five Hundred Thousand  
163 Dollars (\$500,000.00) and a minimum surplus of Five Hundred  
164 Thousand Dollars (\$500,000.00) for such corporation. All dues,  
165 fees and assessments to any member of the corporation shall be set  
166 and maintained at the lowest possible cost subject to sound  
167 business practice and shall be subject to review and approval of  
168 the Commissioner of Insurance. No corporation established under  
169 the provisions of this chapter shall transact any other business  
170 than that specified in its charter and articles of incorporation;  
171 and it shall not begin operation until it has fully complied with  
172 all rules and regulations promulgated by the Commissioner of  
173 Insurance with respect to such corporations and until it has  
174 established the capital and reserve set for it by the  
175 commissioner.

176 (2) When necessary to effect the purposes of this section,  
177 in addition to all other remedies in law or equity, the Attorney  
178 General and Commissioner of Insurance may be and are hereby  
179 authorized to petition the chancery court of the county in which a  
180 corporation established under this chapter is domiciled for a  
181 mandamus or injunction to prevent any violation of the provisions  
182 of this section, or the continuance of any such violation, or to  
183 enforce compliance herewith. The court is hereby vested with  
184 authority to entertain jurisdiction on any such petition to  
185 determine the cause and to issue such process as may be necessary  
186 to accomplish the purposes of this section.

187 **SECTION 5.** Section 83-47-9, Mississippi Code of 1972, is  
188 brought forward as follows:

189 83-47-9. Each member shall pay all dues, fees and  
190 assessments in such amounts as may be established from time to  
191 time by the resolution of the board of directors. The board of  
192 directors shall have the authority to provide for separate and  
193 distinct classes of insurance and groupings of members and

194 insureds and to fix assessments and premiums at varying and  
195 different amounts for the various classes. No member or insured  
196 shall refuse or neglect to pay his or its assessment or premium  
197 because the amount thereof differs or varies from the amount of  
198 the assessment or premium of members in other classes or  
199 groupings. The board of directors shall endeavor to establish and  
200 fix assessments and premiums for the various classes and groupings  
201 which are reasonable in amount, relative to the benefits to be  
202 received by those members and insureds within the classes and  
203 groupings involved, and the action of the board of directors in so  
204 doing shall be conclusive and final. Each member shall also pay  
205 all obligations which may, from time to time, become due and  
206 payable by such member to the corporation as and when the same  
207 shall become due and payable. Such fees, assessments and premiums  
208 required of members and insureds shall contain an amount  
209 sufficient to pay three percent (3%) premium tax, the same as  
210 levied on all other domestic nonprofit insurance corporations.  
211 Such premium taxes shall be collected and paid into the treasury  
212 by the State Tax Commission.

213       **SECTION 6.** Section 83-47-11, Mississippi Code of 1972, is  
214 brought forward as follows:

215       83-47-11. The private property of the members of the  
216 corporation shall be exempt from the execution for the debts of  
217 the corporation, and no member shall be individually liable or  
218 responsible for any debts or liabilities of the corporation.

219       **SECTION 7.** Section 83-47-13, Mississippi Code of 1972, is  
220 brought forward as follows:

221       83-47-13. Every such corporation shall annually, on or  
222 before the first day of March, file in the office of the  
223 Commissioner of Insurance a statement verified by at least two (2)  
224 of the principal officers of said corporation, showing its  
225 condition on the thirty-first day of December of the preceding

226 year, which shall be in such form and shall contain such matters  
227 as the commissioner shall prescribe.

228 **SECTION 8.** Section 83-47-15, Mississippi Code of 1972, is  
229 brought forward as follows:

230 83-47-15. The Commissioner of Insurance may appoint any  
231 deputy or examiner or other person who shall have the power of  
232 visitation and examination into the affairs of any such  
233 corporation and free access to all of the books, papers and  
234 documents that relate to the business of the corporation, and may  
235 summon and qualify witnesses under oath to examine its officers,  
236 agents, employees or other persons in relation to the affairs,  
237 transactions and conditions of the corporation.

238 **SECTION 9.** Section 83-47-17, Mississippi Code of 1972, is  
239 brought forward as follows:

240 83-47-17. Any dissolution or liquidation of a corporation,  
241 subject to the provisions of this chapter, shall be conducted  
242 under the supervision of the Commissioner of Insurance, who shall  
243 have all power with respect thereto under the provisions of law  
244 with respect to the dissolution and liquidation of insurance  
245 companies.

246 **SECTION 10.** Section 83-47-19, Mississippi Code of 1972, is  
247 brought forward as follows:

248 83-47-19. Every corporation organized pursuant to, or  
249 subject to, the provisions of this chapter is hereby declared to  
250 be a charitable and benevolent institution, and its funds and  
251 property shall be exempt from taxation, except from the premium  
252 tax levied in accordance with the provisions of this chapter and  
253 ad valorem taxes upon real estate and motor vehicles owned by it.

254 **SECTION 11.** Section 83-47-21, Mississippi Code of 1972, is  
255 brought forward as follows:

256 83-47-21. Any corporation heretofore or hereafter organized  
257 and operating under Chapter 11, Title 79, Mississippi Code of  
258 1972, desiring to become a nonprofit corporation of the kind and



259 character described in this chapter, and to operate under and  
260 pursuant to the terms of this chapter, may convert its  
261 organization into such nonprofit corporation under this chapter in  
262 the following manner, to wit:

263           (a) File a written application with the Commissioner of  
264 Insurance annexing thereto copies of (i) its articles of  
265 incorporation or new or amended articles of incorporation; (ii)  
266 its bylaws; (iii) its form of contract between the corporation and  
267 members, showing the terms under which medical liability insurance  
268 is to be furnished to members; (iv) its contracts with members,  
269 showing a table of assessments and the benefits to which members  
270 are entitled; and (v) a financial statement of the corporation,  
271 including the amounts of contributions paid or agreed to be paid  
272 to the corporation for working capital, the name or names of each  
273 contributor, and the terms of each contribution.

274           (b) Submit any further data or evidence as may be  
275 required by the commissioner.

276           (c) The commissioner shall refer the corporation's  
277 articles of incorporation to the Attorney General for his opinion  
278 as to whether the same meet the requirements of this chapter. The  
279 Attorney General shall, if in order to do so, endorse his approval  
280 thereon and return the same to the Commissioner of Insurance. The  
281 commissioner shall thereupon endorse upon said articles of  
282 incorporation his certificate of approval, whereupon said  
283 corporation shall be deemed to be converted under and existing and  
284 operating pursuant to the terms of this chapter. The articles of  
285 incorporation bearing such approval of the Attorney General and  
286 the commissioner shall be recorded in the offices of the  
287 Commissioner of Insurance and of the Secretary of State in like  
288 manner as in this chapter provided for recording the articles of  
289 incorporation of a corporation organized under this chapter in the  
290 first instance.

291           **SECTION 12.** Section 83-47-23, Mississippi Code of 1972, is  
292 brought forward as follows:

293           83-47-23. The organization as created under the authority of  
294 this chapter shall in no manner be covered under or included in  
295 the provisions of Sections 83-23-101 through 83-23-135.

296           **SECTION 13.** Section 83-47-25, Mississippi Code of 1972, is  
297 brought forward as follows:

298           83-47-25. (1) A corporation organized under this chapter  
299 may become a stock insurance corporation under such plan and  
300 procedure as may be approved by the Commissioner of Insurance.

301           (2) The Commissioner of Insurance shall approve any such  
302 plan or procedure if:

303                   (a) It is equitable to the corporation's members;

304                   (b) It is subject to approval by vote of not less than  
305 three-fourths (3/4) of the corporation's current members voting  
306 thereon in person or by proxy at a meeting of members called for  
307 the purpose pursuant to such reasonable notice and procedure as  
308 may be approved by the Commissioner of Insurance; right to vote  
309 may be limited to members who hold policies at the time of the  
310 vote and whose policies have been in force for not less than one  
311 (1) policy year;

312                   (c) The equity of each member in the corporation is  
313 determinable under a fair formula approved by the Commissioner of  
314 Insurance, which such equity shall be based upon not less than the  
315 corporation's entire surplus as reported in the corporation's  
316 annual statement to the Commissioner of Insurance, after deducting  
317 borrowed surplus funds, plus all nonadmitted assets;

318                   (d) The members entitled to participate in the purchase  
319 of stock or distribution of assets shall include all current  
320 members who hold policies at the time of the vote and whose  
321 policies have been in force for not less than one (1) policy year;

322                   (e) The plan gives to each member, as specified in  
323 subsection (2)(d) of this section, a preemptive right to acquire

324 his proportionate part of all of the proposed capital stock of the  
325 corporation, within a designated reasonable period, and to apply  
326 upon the purchase thereof the amount of his equity in the  
327 corporation as determined under subsection (2)(c) of this section;

328 (f) Shares are so offered to members at a price not  
329 greater than to be thereafter offered to others;

330 (g) The plan provides for payment to each member not  
331 electing to apply his equity in the corporation for, or upon, the  
332 purchase price of stock to which the member is preemptively  
333 entitled of cash in the amount of his equity not so used for the  
334 purchase of stock, and which case payment, together with stock so  
335 purchased, if any, shall constitute full payment and discharge of  
336 the member's equity as a member of such corporation; and

337 (h) The plan, when completed, would provide for the  
338 converted corporation paid-in capital stock in an amount not less  
339 than the minimum paid-in capital required of a domestic stock  
340 insurer transacting like kinds of insurance, together with surplus  
341 funds in amount not less than one half (1/2) of such required  
342 capital.

343 (3) Once conversion under this section is complete, the  
344 converted corporation shall no longer be governed by this chapter  
345 and shall be governed by the provisions of the insurance laws of  
346 this state applicable to general liability insurers.

347 **SECTION 14.** This act shall take effect and be in force from  
348 and after July 1, 2006.