

By: Representatives Dixon, Touchstone

To: Youth and Family  
Affairs; Accountability,  
Efficiency, Transparency

## HOUSE BILL NO. 1013

1 AN ACT TO AMEND SECTIONS 7-9-41, 7-9-43, 11-46-1, 11-46-8,  
2 25-65-5, 37-23-69, 37-23-77, 37-106-69, 37-115-43, 41-3-18,  
3 41-7-173, 41-21-67, 41-67-12, 43-13-115, 43-13-116, 43-13-117,  
4 43-15-5, 43-15-103, 43-15-105, 43-15-107, 43-15-109, 43-15-113,  
5 43-15-115, 43-15-117, 43-15-119, 43-15-121, 43-15-125, 43-16-3,  
6 43-16-21, 43-18-5, 43-20-8, 43-21-105, 43-21-257, 43-21-261,  
7 43-21-301, 43-21-303, 43-21-351, 43-21-353, 43-21-354, 43-21-357,  
8 43-21-603, 43-21-609, 43-21-613, 43-27-101, 43-27-103, 93-5-23,  
9 93-17-3, 93-17-5, 93-17-8, 93-17-11, 93-17-12, 93-17-53, 93-17-57,  
10 93-17-59, 93-17-61, 93-17-63, 93-17-65, 93-17-67, 93-17-69,  
11 93-17-101, 93-17-103, 93-17-107, 93-17-109, 93-17-203, 93-21-307,  
12 93-31-3, 97-3-54.1, 97-5-24, 97-5-51 AND 97-29-49 MISSISSIPPI CODE  
13 OF 1972, TO MAKE TECHNICAL AMENDMENTS TO CERTAIN PROVISIONS OF LAW  
14 PERTAINING TO THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT  
15 OF CHILD PROTECTION SERVICES TO ACCURATELY REFLECT THE SEPARATION  
16 OF THE DEPARTMENT OF CHILD PROTECTION SERVICES FROM THE DEPARTMENT  
17 OF HUMAN SERVICES; TO AMEND SECTION 25-9-127, MISSISSIPPI CODE OF  
18 1972, TO EXEMPT PERSONNEL ACTIONS OF THE DEPARTMENT OF CHILD  
19 PROTECTION SERVICES FROM THE RULES AND REGULATIONS OF THE STATE  
20 PERSONNEL BOARD FOR A PERIOD OF ONE YEAR; TO CREATE NEW SECTION  
21 43-26-5, MISSISSIPPI CODE OF 1972, TO GIVE THE DEPARTMENT OF CHILD  
22 PROTECTION SERVICES CERTAIN POWERS AND DUTIES; TO CREATE NEW  
23 SECTION 43-26-3, MISSISSIPPI CODE OF 1972, TO GIVE THE  
24 COMMISSIONER OF THE DEPARTMENT OF CHILD PROTECTION SERVICES  
25 CERTAIN POWERS AND DUTIES; AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** Section 7-9-41, Mississippi Code of 1972, is  
28 amended as follows:



29           7-9-41. (1) All support and maintenance funds appropriated  
30 for the operating expenses of all departments, institutions,  
31 agencies, boards and commissions, supported wholly or in part by  
32 the state, shall be drawn from the State Treasury only upon the  
33 issuance of individual warrants by the State Fiscal Officer in  
34 direct payment for goods sold or services performed, except where  
35 specifically provided otherwise in these statutes. The said State  
36 Fiscal Officer shall issue his warrants only upon requisitions  
37 signed by the proper person, officer or officers.

38           (2) In the case of the state institutions of higher  
39 learning, meeting with the written approval of the State Fiscal  
40 Officer, such funds may be drawn from the Treasury in the manner  
41 prescribed hereinbelow, and when such system of withdrawal is  
42 approved by the State Fiscal Officer, it shall not be changed  
43 except on the approval of both said parties.

44           The executive heads, together with the secretary or other  
45 person in charge of the books and accounts, of the state  
46 institutions of higher learning, if they receive such written  
47 approval, shall make up, in the form prescribed by the State  
48 Fiscal Officer and the State Treasurer, checklists of all  
49 salaries, accounts, bills, contracts and claims which shall have  
50 accrued during the month. Based upon such statement and in  
51 company with it, the state institutions of higher learning,  
52 through their proper officers, shall make requisition upon the  
53 State Fiscal Officer for only so much money as shall then be



54 needed to pay salaries, accounts, bills, contracts and claims  
55 which may then be due, together with a reasonable amount for  
56 contingent expenses.

57       Such requisitions may be drawn upon the State Fiscal  
58 Officer's accounts, who shall draw its warrants on the Treasurer  
59 from time to time as required, payable to the official depository  
60 provided in Section 7-9-43. In the case of special appropriations  
61 made for buildings and permanent improvements, repairs, furniture,  
62 fixtures, and special supplies, and in all cases where it is not  
63 practicable to furnish a detailed statement, such funds may be  
64 drawn in installments at such times and in such amounts as  
65 necessity may require, and the requisitions for same must be  
66 accompanied by a general statement of the proposed purchases and  
67 expenditures.

68       In all cases where such lump-sum payments are authorized and  
69 paid as provided in this section, the proper officer or officers  
70 of the state institutions of higher learning shall make such  
71 additional reports to the State Fiscal Officer in the manner and  
72 at such times as he may require. Such reports shall also include  
73 other funds coming into the possession of or for the use and  
74 benefit of the state institutions of higher learning, whether such  
75 funds are regularly handled through the State Treasury or not.

76       (3) In the case of the \* \* \* Department of Human Services  
77 and the Department of Child Protection Services, lump-sum  
78 withdrawals may only be made as provided for in subsection (2) of



79 this section for payments to recipients of services provided by  
80 the department.

81 **SECTION 2.** Section 7-9-43, Mississippi Code of 1972, is  
82 amended as follows:

83 7-9-43. The state institutions of higher learning \* \* \*, the  
84 Department of Human Services and the Department of Child  
85 Protection Services, after receiving the written approval of the  
86 State Fiscal Officer as provided in Section 7-9-41, shall select  
87 and make a contract with some bank to serve as a depository for  
88 funds of the same. Said bank so selected shall qualify to receive  
89 said fund and secure the same as required of state depositories  
90 under Section 27-105-5 before receiving any funds, except as  
91 herein noted in the case of private hospitals. The life of said  
92 contract with a depository shall be for five (5) years. Each bank  
93 shall enter into a written contract, the terms of which shall be  
94 to perform faithfully all acts and duties required of it by this  
95 and other laws of the state. As such depository, it shall receive  
96 and keep account of all funds and pay out same on the check of the  
97 secretary or business manager, countersigned by the president or  
98 chairman of the board or institution. Such bank shall receive,  
99 keep, disburse and account for all funds of the Department of  
100 Human Services, the Department of Child Protection Services and  
101 such state institutions of higher learning for which it shall be a  
102 depository, and turn over all funds and accounts to its legal



successor, provided all private hospitals shall be exempted from providing depositories.

All books, accounts and reports made thereon for any funds shall conform to the requirements of the General Accounting Office, and shall be filed with the said General Accounting Office.

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

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

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

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

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

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

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

(f) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state



or a political subdivision whether with or without compensation, including firefighters who are members of a volunteer fire department that is a political subdivision. The term "employee" shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision; and

(i) For purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include:

1. Physicians under contract to provide health services with the State Board of Health, the State Board of Mental Health or any county or municipal jail facility while rendering services under the contract;

2. Any physician, dentist or other health care practitioner employed by the University of Mississippi Medical Center (UMMC) and its departmental practice plans who is a faculty member and provides health care services only for patients at UMMC or its affiliated practice sites;

3. Any physician, dentist or other health care practitioner employed by any university under the control of the Board of Trustees of State Institutions of Higher Learning who practices only on the campus of any university under the control of the Board of Trustees of State Institutions of Higher Learning;

4. Any physician, dentist or other health care practitioner employed by the State Veterans Affairs Board and



who provides health care services for patients for the State  
Veterans Affairs Board;

(ii) The term "employee" shall also include  
Mississippi Department of \* \* \* Child Protection Services licensed  
foster parents for the limited purposes of coverage under the Tort  
Claims Act as provided in Section 11-46-8; and

(iii) The term "employee" also shall include any  
employee or member of the governing board of a charter school but  
shall not include any person or entity acting in the capacity of  
an independent contractor to provide goods or services under a  
contract with a charter school.

(g) "Governmental entity" means the state and political  
subdivisions.

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

(i) "Political subdivision" means any body politic or  
body corporate other than the state responsible for governmental  
activities only in geographic areas smaller than that of the  
state, including, but not limited to, any county, municipality,  
school district, charter school, volunteer fire department that is  
a chartered nonprofit corporation providing emergency services  
under contract with a county or municipality, community hospital  
as defined in Section 41-13-10, airport authority, or other  
instrumentality of the state, whether or not the body or



instrumentality has the authority to levy taxes or to sue or be  
sued in its own name.

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

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

**SECTION 4.** Section 11-46-8, Mississippi Code of 1972, is  
amended as follows:

11-46-8. Mississippi Department of \* \* \* Child Protection  
Services licensed foster parents shall be covered under this  
chapter for claims made by parties other than the foster child  
which are based on inadequate supervision or inadequate care of  
the foster child on the part of the foster parent.

**SECTION 5.** Section 25-65-5, Mississippi Code of 1972, is  
amended as follows:

25-65-5. The following words and phrases shall have the  
meanings ascribed herein, unless the context clearly indicates  
otherwise:





203           (a) "University" means and includes Alcorn State  
204 University, Delta State University, Jackson State University,  
205 Mississippi State University, Mississippi State University  
206 Agriculture and Forestry Experiment Station, Mississippi State  
207 University Cooperative Extension Service, Mississippi State  
208 University Forest and Wildlife Research Center, Mississippi State  
209 University State Chemical Laboratory, Mississippi University for  
210 Women, Mississippi Valley State University, the University of  
211 Mississippi, University of Mississippi Medical Center and the  
212 University of Southern Mississippi.

213           (b) "Community/Junior college" means and includes  
214 Coahoma Community College, Copiah-Lincoln Community College, East  
215 Central Community College, East Mississippi Community College,  
216 Hinds Community College, Holmes Community College, Itawamba  
217 Community College, Jones County Junior College, Meridian Community  
218 College, Mississippi Delta Community College, Mississippi Gulf  
219 Coast Community College, Northeast Mississippi Community College,  
220 Northwest Mississippi Community College, Pearl River Community  
221 College and Southwest Mississippi Community College.

222           (c) "State agency" means and includes the Department of  
223 Finance and Administration, the State Tax Commission, the  
224 Department of Education, the State Department of Health, the  
225 Department of Mental Health, the Department of Agriculture and  
226 Commerce, the Mississippi Development Authority, the Department of  
227 Environmental Quality, the Department of Wildlife, Fisheries and



Parks, the Department of Corrections, the Division of Medicaid, the Department of Rehabilitation Services, the Department of Public Safety, the Mississippi Employment Security Commission, the Mississippi Department of Information Technology Services, the Public Employees Retirement System, the Mississippi Department of Transportation, the Mississippi Gaming Commission \* \* \*, the Mississippi Department of Human Services and the Mississippi Department of Child Protection Services.

(d) "Agency head" means an elected official who heads an agency, an executive director or a governing board or commission responsible for heading an agency or a president or chancellor of a university or a president of a community/junior college.

(e) "Agency internal audit director" means the person appointed by the agency head to direct the internal audit function for the state agency. Where consistent with responsibilities described in this chapter, the term agency internal audit director may also be referred to as inspector general, audit director, chief auditor or similar internal audit administrator descriptions.

(f) "Audit committee" means a standing committee external to organization management that collectively has the expertise to provide effective guidance regarding the acquisition and provision of internal audit services and to provide guidance in the provision of those services.



253           **SECTION 6.** Section 37-23-69, Mississippi Code of 1972, is  
254 amended as follows:

255           37-23-69. The State Department of Education may determine  
256 and pay the amount of the financial assistance to be made  
257 available to each applicant, and see that all applicants and the  
258 programs for them meet the requirements of the program for  
259 exceptional children. No financial assistance shall exceed the  
260 obligation actually incurred by the applicant for educational  
261 costs, which shall include special education and related services  
262 as defined by the Mississippi Department of Education Policies and  
263 Procedures Regarding Children with Disabilities under the federal  
264 Individuals with Disabilities Education Act (IDEA). Within the  
265 amount of available state funds appropriated for that purpose,  
266 each such applicant may receive assistance according to the  
267 following allowances:

268           (a) If the applicant chooses to attend a private  
269 school, a parochial school or a speech, hearing and/or language  
270 clinic having an appropriate program for the applicant, and if the  
271 school or clinic meets federal and state regulations, then the  
272 educational costs reimbursement will be one hundred percent (100%)  
273 of the first Six Hundred Dollars (\$600.00) in educational costs  
274 charged by the school or clinic; or, if the applicant is under six  
275 (6) years of age, and no program appropriate for the child exists  
276 in the public schools of his domicile, then the reimbursement  
277 shall be one hundred percent (100%) of the first Six Hundred



Dollars (\$600.00) in educational costs charged by the school or clinic, and fifty percent (50%) of the next Eight Hundred Dollars (\$800.00) in educational costs charged by the school or clinic;

(b) A public school district shall be reimbursed for the educational costs of an applicant up to an annual maximum based on a multiple of the base student cost as determined under the Mississippi Adequate Education Program (MAEP) or other cost factor as determined by the State Board of Education if the following conditions are met: (i) an applicant in the age range six (6) through twenty (20) requests the public school district where he resides to provide an education for him and the nature of the applicant's educational problem is such that, according to best educational practices, it cannot be met in the public school district where the child resides; (ii) the public school district decides to provide the applicant a free appropriate education by placing him in a private school, a parochial school or a speech, hearing and/or language clinic having an appropriate program for the applicant; (iii) the program meets federal and state regulations; and (iv) the applicant is approved for financial assistance by a State Level Review Board established by the State Board of Education. The Review Board will act on financial assistance requests within five (5) working days of receipt. Nothing in this paragraph shall prevent two (2) or more public school districts from forming a cooperative to meet the needs of low incidence exceptional children, nor shall the public school be



relieved of its responsibility to provide an education for all children. If state monies are not sufficient to fund all applicants, there will be a ratable reduction for all recipients receiving state funds under this section. School districts may pay additional educational costs from available federal, state and local funds.

If an exceptional child, as defined in Section 37-23-3, is placed in a therapeutic or other group home licensed or approved by the state that has no educational program associated with it, the local school district in which the home is located shall offer an appropriate educational program to that child.

At any time that the Individualized Education Program (IEP) Committee in the district where the home is located determines that an exceptional child, as defined in Section 37-23-3, residing in that home can no longer be provided a free appropriate public education in that school district, and the State Department of Education agrees with that decision, then the State Department of Education shall recommend to the Department of \* \* \* Child Protection Services placement of the child by the Department of \* \* \* Child Protection Services, which shall take appropriate action. The placement of the exceptional child in the facility shall be at no cost to the local school district. Funds available under Sections 37-23-61 through 37-23-77, as well as any available federal funds, may be used to provide the educational costs of the placement. If the exceptional child is under the guardianship of



the Department of \* \* \* Child Protection Services or another state agency, the State Department of Education shall pay only for the educational costs of that placement, and the other agency shall be responsible for the room, board and any other costs. The special education and related services provided to the child shall be in compliance with State Department of Education and any related federal regulations. The State Board of Education may promulgate regulations that are necessary to implement this section; and

(c) If an appropriate local or regional system of care, including a free appropriate public education, is available for exceptional children who are currently being served in out-of-district or Department of \* \* \* Child Protection Services placements under Section 37-23-69(b) or 37-23-77, then the state funds from the State Department of Education that would have been used for those placements may be paid into a pool of funds with funds from other state agencies to be used for the implementation of the individualized plans of care for those children. If there are sufficient funds to serve additional exceptional children because of cost savings as a result of serving these students at home and/or matching the pooled funds with federal dollars, the funds may be used to implement individualized plans of care for those additional exceptional children. Each local or regional provider of services included in the individualized plans of care shall comply with all appropriate state and federal regulations.



The State Board of Education may promulgate regulations that are necessary to implement this section.

The State Department of Education may also provide for the payment of that financial assistance in installments and for proration of that financial assistance in the case of children attending a school or clinic for less than a full school session and, if available funds are insufficient, may allocate the available funds among the qualified applicants and local school districts by reducing the maximum assistance provided for in this section.

Any monies provided an applicant under Sections 37-23-61 through 37-23-75 shall be applied by the receiving educational institution as a reduction in the amount of the educational costs paid by the applicant, and the total educational costs paid by the applicant shall not exceed the total educational costs paid by any other child in similar circumstances enrolled in the same program in that institution. However, this limitation shall not prohibit the waiving of all or part of the educational costs for a limited number of children based upon demonstrated financial need, and the State Department of Education may adopt and enforce reasonable rules and regulations to carry out the intent of these provisions.

**SECTION 7.** Section 37-23-77, Mississippi Code of 1972, is amended as follows:

37-23-77. If a child, as defined in Sections 37-23-61 and 37-23-63, is under the legal guardianship of the \* \* \* Mississippi



377 Department of \* \* \* Child Protection Services, or any other state  
378 agency, and for whom no foster parents are available and no  
379 state-funded institution placement is available, funds available  
380 under Section 37-23-1 et seq. may be used to provide for the  
381 education of the child in an institution approved by the  
382 Department of \* \* \* Child Protection Services and the State  
383 Department of Education. However, if the educational services  
384 needed by the child are available in a state funded institution,  
385 these funds shall not be used to pay for educational services at  
386 that institution. At any such time a child is taken out of a  
387 school setting and placed under the custody of the Department  
388 of \* \* \* Child Protection Services, the department shall  
389 immediately notify the State Department of Education and apply for  
390 funds for the child's educational services under Section 37-23-1  
391 et seq. and the State Department of Education shall respond to the  
392 application within ten (10) working days. The special education  
393 and related services provided for this child shall be provided in  
394 compliance with State Department of Education regulations. The  
395 State Department of Education shall promulgate such regulations as  
396 are necessary to implement this section.

397       The State Department of Education shall require that the  
398 special education and related services provided for the children  
399 under this section be designed to provide individualized  
400 appropriate special education and related services that enable a





child to reach his or her appropriate and uniquely designed goals for success.

**SECTION 8.** Section 37-106-69, Mississippi Code of 1972, is amended as follows:

37-106-69. (1) There is established a forgivable loan program to encourage family protection workers employed by the Department of \* \* \* Child Protection Services to obtain the college education necessary to become licensed as a social worker, master social worker or certified social worker and become a family protection specialist for the department.

(2) Any person who is employed as a family protection worker for the Department of \* \* \* Child Protection Services shall be eligible for a forgivable loan from the board which shall be used to pay the costs of the person's education at a state institution of higher learning in Mississippi to obtain a college degree that is necessary to become licensed as a social worker, master social worker or certified social worker and become a family protection specialist for the department. The annual amount of a forgivable loan award under the program shall be equal to the total cost of tuition and fees at the college or university in which the student is enrolled, not to exceed an amount equal to the highest total cost of tuition and fees assessed by a state institution of higher learning during that school year.

(3) Forgivable loans made under the program shall be available to both full-time and part-time students. Students



enrolling on a full-time basis may receive a maximum of two (2) annual awards. The maximum number of forgivable loans that may be made to students attending school on a part-time basis, and the maximum time period for part-time students to complete the number of academic hours necessary to obtain the necessary degree, shall be established by rules and regulations of the board. Forgivable loans made under the program shall not be based upon an applicant's financial need. A student must maintain a "C" average or higher in his or her college coursework in order to continue receiving the forgivable loan.

(4) Repayment and conversion terms shall be the same as those outlined in Section 37-106-53, except for the following:

(a) After a person who received a forgivable loan under the program has obtained a college degree that is necessary to become licensed as a social worker, master social worker or certified social worker and has received such a license from the Board of Examiners for Social Workers and Marriage and Family Therapists, the person shall render service as a family protection specialist for the Department of \* \* \* Child Protection Services for a period of not less than three (3) years from the date that the person became a family protection specialist;

(b) Any person who fails to complete his or her service obligation as a family protection specialist for the Department of \* \* \* Child Protection Services for not less than three (3) years, as required under subsection (4) (a) of this section, shall



become liable immediately to the board for the sum of all forgivable loan awards made to that person, plus interest accruing at the current Stafford Loan rate at the time the person discontinues his or her service.

(5) It is the intent of the Legislature that the pursuit of necessary college education by family protection workers through the forgivable loan program shall not interfere with the duties of the family protection workers with the Department of \* \* \* Child Protection Services. The department shall promulgate regulations regarding family protection workers who participate in the forgivable loan program to ensure that such participation does not interfere with their duties with the department.

(6) The board shall promulgate rules and regulations necessary for the proper administration of the forgivable loan program established under this section. The board shall be the administering agency of the program.

(7) The total amount of state funds that may be expended for this program shall not exceed Three Hundred Twenty Thousand Dollars (\$320,000.00) in any fiscal year.

**SECTION 9.** Section 37-115-43, Mississippi Code of 1972, is amended as follows:

37-115-43. (1) The University of Mississippi Medical Center, in collaboration with the Mississippi Department of \* \* \* Child Protection Services and the Office of the Attorney General, is authorized and empowered to establish a Center of Excellence



(Center) \* \* \* to provide care for abused and neglected children at the Blair E. Batson Hospital for Children located in Jackson, Mississippi, where suspected victims of child maltreatment referred by the Department of \* \* \* Child Protection Services or law enforcement will receive comprehensive physical examinations conducted by medical professionals who specialize in child maltreatment. The University of Mississippi Medical Center shall promulgate such policies as may be necessary and desirable to carry out the programs of the Center. The Center shall serve as a resource for the assessment, investigation and prosecution of child maltreatment. The Center shall work in collaboration with the Office of the Attorney General, the Mississippi Department of \* \* \* Child Protection Services, and other such state agencies and entities that provide services to children \* \* \* to ensure that CARE Clinic services are provided in a uniform fashion throughout the state.

(2) The Department of Pediatrics may use the Center for educational and outreach programs, telemedicine consultations, to develop satellite clinics in other locations in the state in cooperation with the local community or private hospital when applicable, and to conduct major research initiatives in child maltreatment.

(3) The Center of Excellence shall provide services to maltreated children and comply with national certification standards as necessary to provide services to the Department



501 of \* \* \* Child Protection Services, the youth courts, state child  
502 advocacy centers, district attorney's offices and law enforcement  
503 agencies.

504 (4) There is created in the State Treasury a special fund to  
505 be known as the Children's Safe Center Fund. The University of  
506 Mississippi Medical Center shall expend funds pursuant to  
507 appropriation therefor by the Legislature for the support and  
508 maintenance of the Children's Safe Center. The University of  
509 Mississippi Medical Center is authorized to accept any and all  
510 grants, donations or matching funds from private, public or  
511 federal sources in order to add to, improve and enlarge the  
512 physical facilities of the Center and to expend any such funds for  
513 the support and maintenance of the Center. Assessments from  
514 Section 99-19-73 designated for the Children's Safe Center Fund  
515 shall be deposited into the fund. Monies remaining in the fund at  
516 the end of a fiscal year shall not lapse into the State General  
517 Fund, and any interest earned from the investment of monies in the  
518 fund shall be deposited to the credit of the fund.

519 **SECTION 10.** Section 41-3-18, Mississippi Code of 1972, is  
520 amended as follows:

521 41-3-18. (1) The board shall assess fees in the following  
522 amounts and for the following purposes:

523 (a) Food establishment annual permit fee, based on the  
524 assessment factors of the establishment as follows:

525 Assessment Category 1.....\$ 30.00



526 Assessment Category 2..... 100.00  
527 Assessment Category 3..... 150.00  
528 Assessment Category 4..... 200.00  
529 (b) Private water supply approval fee.....\$ 10.00

530 The board may develop such reasonable standards, rules and  
531 regulations to clearly define each assessment category.  
532 Assessment categories shall be based upon the factors to the  
533 public health implications of the category and type of food  
534 preparation being utilized by the food establishment, utilizing  
535 the model Food Code of 1995, or as may be amended by the federal  
536 Food and Drug Administration.

537 Any increase in the fees charged by the board under this  
538 subsection shall be in accordance with the provisions of Section  
539 41-3-65.

540 (2) The fee authorized under subsection (1)(a) of this  
541 section shall not be assessed for:

542 (a) Food establishments operated by public schools,  
543 public junior and community colleges, or state agencies or  
544 institutions, including, without limitation, the state  
545 institutions of higher learning and the State Penitentiary; and

546 (b) Persons who make infrequent casual sales of honey  
547 and who pack or sell less than five hundred (500) gallons of honey  
548 per year, and those persons shall not be inspected by the State  
549 Department of Health unless requested by the producer.



(3) The fee authorized under subsection (1)(b) of this section shall not be assessed for private water supplies used by foster homes licensed by the Department of \* \* \* Child Protection Services.

**SECTION 11.** Section 41-7-173, Mississippi Code of 1972, is amended as follows:

41-7-173. For the purposes of Section 41-7-171 et seq., the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Affected person" means (i) the applicant; (ii) a person residing within the geographic area to be served by the applicant's proposal; (iii) a person who regularly uses health care facilities or HMOs located in the geographic area of the proposal which provide similar service to that which is proposed; (iv) health care facilities and HMOs which have, prior to receipt of the application under review, formally indicated an intention to provide service similar to that of the proposal being considered at a future date; (v) third-party payers who reimburse health care facilities located in the geographical area of the proposal; or (vi) any agency that establishes rates for health care services or HMOs located in the geographic area of the proposal.

(b) "Certificate of need" means a written order of the State Department of Health setting forth the affirmative finding that a proposal in prescribed application form, sufficiently



satisfies the plans, standards and criteria prescribed for such service or other project by Section 41-7-171 et seq., and by rules and regulations promulgated thereunder by the State Department of Health.

(c) (i) "Capital expenditure," when pertaining to defined major medical equipment, shall mean an expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds One Million Five Hundred Thousand Dollars (\$1,500,000.00).

(ii) "Capital expenditure," when pertaining to other than major medical equipment, shall mean any expenditure which under generally accepted accounting principles consistently applied is not properly chargeable as an expense of operation and maintenance and which exceeds, for clinical health services, as defined in \* \* \* paragraph (k) below, Five Million Dollars (\$5,000,000.00), adjusted for inflation as published by the State Department of Health or which exceeds, for nonclinical health services, as defined in \* \* \* paragraph (k) below, Ten Million Dollars (\$10,000,000.00), adjusted for inflation as published by the State Department of Health.

(iii) A "capital expenditure" shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which





would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within twelve (12) months of each other and are components of an overall plan for meeting patient care objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

(iv) In those instances where a health care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two (2) may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of certificate of need review and in determining the appropriate certificate of need review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

(d) "Change of ownership" includes, but is not limited to, inter vivos gifts, purchases, transfers, lease arrangements, cash and/or stock transactions or other comparable arrangements whenever any person or entity acquires or controls a majority interest of an existing health care facility, and/or the change of



625 ownership of major medical equipment, a health service, or an  
626 institutional health service. Changes of ownership from  
627 partnerships, single proprietorships or corporations to another  
628 form of ownership are specifically included. However, "change of  
629 ownership" shall not include any inherited interest acquired as a  
630 result of a testamentary instrument or under the laws of descent  
631 and distribution of the State of Mississippi.

632 (e) "Commencement of construction" means that all of  
633 the following have been completed with respect to a proposal or  
634 project proposing construction, renovating, remodeling or  
635 alteration:

636 (i) A legally binding written contract has been  
637 consummated by the proponent and a lawfully licensed contractor to  
638 construct and/or complete the intent of the proposal within a  
639 specified period of time in accordance with final architectural  
640 plans which have been approved by the licensing authority of the  
641 State Department of Health;

642 (ii) Any and all permits and/or approvals deemed  
643 lawfully necessary by all authorities with responsibility for such  
644 have been secured; and

645 (iii) Actual bona fide undertaking of the subject  
646 proposal has commenced, and a progress payment of at least one  
647 percent (1%) of the total cost price of the contract has been paid  
648 to the contractor by the proponent, and the requirements of this



paragraph (e) have been certified to in writing by the State Department of Health.

Force account expenditures, such as deposits, securities, bonds, et cetera, may, in the discretion of the State Department of Health, be excluded from any or all of the provisions of defined commencement of construction.

(f) "Consumer" means an individual who is not a provider of health care as defined in paragraph (q) of this section.

(g) "Develop," when used in connection with health services, means to undertake those activities which, on their completion, will result in the offering of a new institutional health service or the incurring of a financial obligation as defined under applicable state law in relation to the offering of such services.

(h) "Health care facility" includes hospitals, psychiatric hospitals, chemical dependency hospitals, skilled nursing facilities, end-stage renal disease (ESRD) facilities, including freestanding hemodialysis units, intermediate care facilities, ambulatory surgical facilities, intermediate care facilities for the mentally retarded, home health agencies, psychiatric residential treatment facilities, pediatric skilled nursing facilities, long-term care hospitals, comprehensive medical rehabilitation facilities, including facilities owned or operated by the state or a political subdivision or



674 instrumentality of the state, but does not include Christian  
675 Science sanatoriums operated or listed and certified by the First  
676 Church of Christ, Scientist, Boston, Massachusetts. This  
677 definition shall not apply to facilities for the private practice,  
678 either independently or by incorporated medical groups, of  
679 physicians, dentists or health care professionals except where  
680 such facilities are an integral part of an institutional health  
681 service. The various health care facilities listed in this  
682 paragraph shall be defined as follows:

683                   (i) "Hospital" means an institution which is  
684 primarily engaged in providing to inpatients, by or under the  
685 supervision of physicians, diagnostic services and therapeutic  
686 services for medical diagnosis, treatment and care of injured,  
687 disabled or sick persons, or rehabilitation services for the  
688 rehabilitation of injured, disabled or sick persons. Such term  
689 does not include psychiatric hospitals.

690                   (ii) "Psychiatric hospital" means an institution  
691 which is primarily engaged in providing to inpatients, by or under  
692 the supervision of a physician, psychiatric services for the  
693 diagnosis and treatment of persons with mental illness.

694                   (iii) "Chemical dependency hospital" means an  
695 institution which is primarily engaged in providing to inpatients,  
696 by or under the supervision of a physician, medical and related  
697 services for the diagnosis and treatment of chemical dependency  
698 such as alcohol and drug abuse.



699                   (iv) "Skilled nursing facility" means an  
700 institution or a distinct part of an institution which is  
701 primarily engaged in providing to inpatients skilled nursing care  
702 and related services for patients who require medical or nursing  
703 care or rehabilitation services for the rehabilitation of injured,  
704 disabled or sick persons.

705                   (v) "End-stage renal disease (ESRD) facilities"  
706 means kidney disease treatment centers, which includes  
707 freestanding hemodialysis units and limited care facilities. The  
708 term "limited care facility" generally refers to an  
709 off-hospital-premises facility, regardless of whether it is  
710 provider or nonprovider operated, which is engaged primarily in  
711 furnishing maintenance hemodialysis services to stabilized  
712 patients.

713                   (vi) "Intermediate care facility" means an  
714 institution which provides, on a regular basis, health-related  
715 care and services to individuals who do not require the degree of  
716 care and treatment which a hospital or skilled nursing facility is  
717 designed to provide, but who, because of their mental or physical  
718 condition, require health-related care and services (above the  
719 level of room and board).

720                   (vii) "Ambulatory surgical facility" means a  
721 facility primarily organized or established for the purpose of  
722 performing surgery for outpatients and is a separate identifiable  
723 legal entity from any other health care facility. Such term does



not include the offices of private physicians or dentists, whether for individual or group practice, and does not include any abortion facility as defined in Section 41-75-1(f).

(viii) "Intermediate care facility for the mentally retarded" means an intermediate care facility that provides health or rehabilitative services in a planned program of activities to persons with an intellectual disability, also including, but not limited to, cerebral palsy and other conditions covered by the Federal Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103.

(ix) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a home health aide;
4. Other services as approved by the licensing agency for home health agencies;



749                   5. Medical supplies, other than drugs and  
750 biologicals, and the use of medical appliances; or

751                   6. Medical services provided by an intern or  
752 resident-in-training at a hospital under a teaching program of  
753 such hospital.

754           Further, all skilled nursing services and those services  
755 listed in items 1 through 4 of this subparagraph (ix) must be  
756 provided directly by the licensed home health agency. For  
757 purposes of this subparagraph, "directly" means either through an  
758 agency employee or by an arrangement with another individual not  
759 defined as a health care facility.

760           This subparagraph (ix) shall not apply to health care  
761 facilities which had contracts for the above services with a home  
762 health agency on January 1, 1990.

763                   (x) "Psychiatric residential treatment facility"  
764 means any nonhospital establishment with permanent licensed  
765 facilities which provides a twenty-four-hour program of care by  
766 qualified therapists, including, but not limited to, duly licensed  
767 mental health professionals, psychiatrists, psychologists,  
768 psychotherapists and licensed certified social workers, for  
769 emotionally disturbed children and adolescents referred to such  
770 facility by a court, local school district or by the Department  
771 of \* \* \* Child Protection Services, who are not in an acute phase  
772 of illness requiring the services of a psychiatric hospital, and  
773 are in need of such restorative treatment services. For purposes



of this subparagraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

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

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

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

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

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

(xi) "Pediatric skilled nursing facility" means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(xii) "Long-term care hospital" means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days, which





799 is primarily engaged in providing chronic or long-term medical  
800 care to patients who do not require more than three (3) hours of  
801 rehabilitation or comprehensive rehabilitation per day, and has a  
802 transfer agreement with an acute care medical center and a  
803 comprehensive medical rehabilitation facility. Long-term care  
804 hospitals shall not use rehabilitation, comprehensive medical  
805 rehabilitation, medical rehabilitation, sub-acute rehabilitation,  
806 nursing home, skilled nursing facility or sub-acute care facility  
807 in association with its name.

808 (xiii) "Comprehensive medical rehabilitation  
809 facility" means a hospital or hospital unit that is licensed  
810 and/or certified as a comprehensive medical rehabilitation  
811 facility which provides specialized programs that are accredited  
812 by the Commission on Accreditation of Rehabilitation Facilities  
813 and supervised by a physician board certified or board eligible in  
814 physiatry or other doctor of medicine or osteopathy with at least  
815 two (2) years of training in the medical direction of a  
816 comprehensive rehabilitation program that:

- 817 1. Includes evaluation and treatment of  
818 individuals with physical disabilities;
- 819 2. Emphasizes education and training of  
820 individuals with disabilities;
- 821 3. Incorporates at least the following core  
822 disciplines:

823 \* \* \*a. Physical Therapy;



824                   \* \* \*b. Occupational Therapy;  
825                   \* \* \*c. Speech and Language Therapy;  
826                   \* \* \*d. Rehabilitation Nursing; and  
827               4. Incorporates at least three (3) of the  
828 following disciplines:  
829                   \* \* \*a. Psychology;  
830                   \* \* \*b. Audiology;  
831                   \* \* \*c. Respiratory Therapy;  
832                   \* \* \*d. Therapeutic Recreation;  
833                   \* \* \*e. Orthotics;  
834                   \* \* \*f. Prosthetics;  
835                   \* \* \*g. Special Education;  
836                   \* \* \*h. Vocational Rehabilitation;  
837                   \* \* \*i. Psychotherapy;  
838                   \* \* \*j. Social Work;  
839                   \* \* \*k. Rehabilitation Engineering.

840               These specialized programs include, but are not limited to:  
841 spinal cord injury programs, head injury programs and infant and  
842 early childhood development programs.

843               (i) "Health maintenance organization" or "HMO" means a  
844 public or private organization organized under the laws of this  
845 state or the federal government which:

846                   (i) Provides or otherwise makes available to  
847 enrolled participants health care services, including  
848 substantially the following basic health care services: usual



physician services, hospitalization, laboratory, x-ray, emergency  
and preventive services, and out-of-area coverage;

(ii) Is compensated (except for copayments) for  
the provision of the basic health care services listed in  
subparagraph (i) of this paragraph to enrolled participants on a  
predetermined basis; and

(iii) Provides physician services primarily:  
1. Directly through physicians who are either  
employees or partners of such organization; or  
2. Through arrangements with individual  
physicians or one or more groups of physicians (organized on a  
group practice or individual practice basis).

(j) "Health service area" means a geographic area of  
the state designated in the State Health Plan as the area to be  
used in planning for specified health facilities and services and  
to be used when considering certificate of need applications to  
provide health facilities and services.

(k) "Health services" means clinically related (i.e.,  
diagnostic, treatment or rehabilitative) services and includes  
alcohol, drug abuse, mental health and home health care services.  
"Clinical health services" shall only include those activities  
which contemplate any change in the existing bed complement of any  
health care facility through the addition or conversion of any  
beds, under Section 41-7-191(1)(c) or propose to offer any health  
services if those services have not been provided on a regular



874 basis by the proposed provider of such services within the period  
875 of twelve (12) months prior to the time such services would be  
876 offered, under Section 41-7-191(1)(d). "Nonclinical health  
877 services" shall be all other services which do not involve any  
878 change in the existing bed complement or offering health services  
879 as described above.

880 (l) "Institutional health services" shall mean health  
881 services provided in or through health care facilities and shall  
882 include the entities in or through which such services are  
883 provided.

884 (m) "Major medical equipment" means medical equipment  
885 designed for providing medical or any health-related service which  
886 costs in excess of One Million Five Hundred Thousand Dollars  
887 (\$1,500,000.00). However, this definition shall not be applicable  
888 to clinical laboratories if they are determined by the State  
889 Department of Health to be independent of any physician's office,  
890 hospital or other health care facility or otherwise not so defined  
891 by federal or state law, or rules and regulations promulgated  
892 thereunder.

893 (n) "State Department of Health" or "department" shall  
894 mean the state agency created under Section 41-3-15, which shall  
895 be considered to be the State Health Planning and Development  
896 Agency, as defined in paragraph (u) of this section.

897 (o) "Offer," when used in connection with health  
898 services, means that it has been determined by the State



899 Department of Health that the health care facility is capable of  
900 providing specified health services.

901 (p) "Person" means an individual, a trust or estate,  
902 partnership, corporation (including associations, joint-stock  
903 companies and insurance companies), the state or a political  
904 subdivision or instrumentality of the state.

905 (q) "Provider" shall mean any person who is a provider  
906 or representative of a provider of health care services requiring  
907 a certificate of need under Section 41-7-171 et seq., or who has  
908 any financial or indirect interest in any provider of services.

909 (r) "Radiation therapy services" means the treatment of  
910 cancer and other diseases using ionizing radiation of either high  
911 energy photons (x-rays or gamma rays) or charged particles  
912 (electrons, protons or heavy nuclei). However, for purposes of a  
913 certificate of need, radiation therapy services shall not include  
914 low energy, superficial, external beam x-ray treatment of  
915 superficial skin lesions.

916 (s) "Secretary" means the Secretary of Health and Human  
917 Services, and any officer or employee of the Department of Health  
918 and Human Services to whom the authority involved has been  
919 delegated.

920 (t) "State Health Plan" means the sole and official  
921 statewide health plan for Mississippi which identifies priority  
922 state health needs and establishes standards and criteria for



health-related activities which require certificate of need review in compliance with Section 41-7-191.

(u) "State Health Planning and Development Agency" means the agency of state government designated to perform health planning and resource development programs for the State of Mississippi.

**SECTION 12.** Section 41-21-67, Mississippi Code of 1972, is amended as follows:

41-21-67. (1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into custody the person alleged to be in need of treatment and to bring the person before the clerk or chancellor, who shall order pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31. The community mental health center will be designated as the first point of entry for screening and treatment. If the community mental health center is unavailable, any reputable licensed physician, psychologist, nurse practitioner or physician assistant, as allowed in the discretion of the court, may conduct the pre-evaluation screening and examination as set forth in Section 41-21-69. The order may provide where the person shall be held before the appearance before the clerk or chancellor. However, when the affidavit fails to set forth factual allegations



and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

In any county in which a Crisis Intervention Team has been established under the provisions of Sections 41-21-131 through 41-21-143, the clerk, upon the direction of the chancellor, may require that the person be referred to the Crisis Intervention Team for appropriate psychiatric or other medical services before the issuance of the writ.

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. However, any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. In all counties in which there is a county health officer, the county health officer,



973 if available, may be one (1) of the physicians so appointed.  
974 Neither of the physicians nor the psychologist, nurse practitioner  
975 or physician assistant selected shall be related to that person in  
976 any way, nor have any direct or indirect interest in the estate of  
977 that person nor shall any full-time staff of residential treatment  
978 facilities operated directly by the State Department of Mental  
979 Health serve as examiner.

980 (3) The clerk shall ascertain whether the respondent is  
981 represented by an attorney, and if it is determined that the  
982 respondent does not have an attorney, the clerk shall immediately  
983 notify the chancellor of that fact. If the chancellor determines  
984 that the respondent for any reason does not have the services of  
985 an attorney, the chancellor shall immediately appoint an attorney  
986 for the respondent at the time the examiners are appointed.

987 (4) If the chancellor determines that there is probable  
988 cause to believe that the respondent is mentally ill and that  
989 there is no reasonable alternative to detention, the chancellor  
990 may order that the respondent be retained as an emergency patient  
991 at any licensed medical facility for evaluation by a physician,  
992 nurse practitioner or physician assistant and that a peace officer  
993 transport the respondent to the specified facility. If the  
994 community mental health center serving the county has partnered  
995 with Crisis Intervention Teams under the provisions of Sections  
996 41-21-131 through 41-21-143, the order may specify that the  
997 licensed medical facility be a designated single point of entry





998 within the county or within an adjacent county served by the  
999 community mental health center. If the person evaluating the  
1000 respondent finds that the respondent is mentally ill and in need  
1001 of treatment, the chancellor may order that the respondent be  
1002 retained at the licensed medical facility or any other available  
1003 suitable location as the court may so designate pending an  
1004 admission hearing. If necessary, the chancellor may order a peace  
1005 officer or other person to transport the respondent to that  
1006 facility or suitable location. Any respondent so retained may be  
1007 given such treatment as is indicated by standard medical practice.  
1008 However, the respondent shall not be held in a hospital operated  
1009 directly by the State Department of Mental Health, and shall not  
1010 be held in jail unless the court finds that there is no reasonable  
1011 alternative.

1012 (5) (a) Whenever a licensed psychologist, nurse  
1013 practitioner or physician assistant who is certified to complete  
1014 examinations for the purpose of commitment or a licensed physician  
1015 has reason to believe that a person poses an immediate substantial  
1016 likelihood of physical harm to himself or others or is gravely  
1017 disabled and unable to care for himself by virtue of mental  
1018 illness, as defined in Section 41-21-61(e), then the physician,  
1019 psychologist, nurse practitioner or physician assistant may hold  
1020 the person or may admit the person to and treat the person in a  
1021 licensed medical facility, without a civil order or warrant for a  
1022 period not to exceed seventy-two (72) hours. However, if the



1023 seventy-two-hour period begins or ends when the chancery clerk's  
1024 office is closed, or within three (3) hours of closing, and the  
1025 chancery clerk's office will be continuously closed for a time  
1026 that exceeds seventy-two (72) hours, then the seventy-two-hour  
1027 period is extended until the end of the next business day that the  
1028 chancery clerk's office is open. The person may be held and  
1029 treated as an emergency patient at any licensed medical facility,  
1030 available regional mental health facility, or crisis intervention  
1031 center. The physician or psychologist, nurse practitioner or  
1032 physician assistant who holds the person shall certify in writing  
1033 the reasons for the need for holding.

1034       If a person is being held and treated in a licensed medical  
1035 facility, and that person decides to continue treatment by  
1036 voluntarily signing consent for admission and treatment, the  
1037 seventy-two-hour hold may be discontinued without filing an  
1038 affidavit for commitment. Any respondent so held may be given  
1039 such treatment as indicated by standard medical practice. Persons  
1040 acting in good faith in connection with the detention and  
1041 reporting of a person believed to be mentally ill shall incur no  
1042 liability, civil or criminal, for those acts.

1043       (b) Whenever an individual is held for purposes of  
1044 receiving treatment as prescribed under paragraph (a) of this  
1045 subsection, and it is communicated to the mental health  
1046 professional holding the individual that the individual resides or  
1047 has visitation rights with a minor child, and if the individual is



1048 considered to be a danger to the minor child, the mental health  
1049 professional shall notify the Department of \* \* \* Child Protection  
1050 Services prior to discharge if the threat of harm continues to  
1051 exist, as is required under Section 43-21-353.

1052 This paragraph shall be known and may be cited as the "Andrew  
1053 Lloyd Law."

1054 **SECTION 13.** Section 41-67-12, Mississippi Code of 1972, is  
1055 amended as follows:

1056 41-67-12. (1) The department shall assess fees in the  
1057 following amounts for the following purposes:

1058 (a) A fee of One Hundred Dollars (\$100.00) shall be  
1059 levied for soil and site evaluation and recommendation of  
1060 individual on-site wastewater disposal systems. The department  
1061 may increase the amount of the fee authorized in this paragraph  
1062 (a) not more than two (2) times during the period from July 1,  
1063 2016, through June 30, 2020, with the percentage of each increase  
1064 being not more than five percent (5%) of the amount of the fee in  
1065 effect at the time of the increase.

1066 (b) A fee of Fifty Dollars (\$50.00) shall be levied  
1067 annually for the certification of installers and pumpers.

1068 (c) A fee of One Hundred Dollars (\$100.00) shall be  
1069 levied annually for the registration of manufacturers.

1070 Any increase in the fee charged by the department under  
1071 paragraph (b) or (c) of this subsection shall be in accordance  
1072 with the provisions of Section 41-3-65.



1073           (2) In the discretion of the board, a person shall be liable  
1074 for a penalty equal to one and one-half (1-1/2) times the amount  
1075 of the fee due and payable for failure to pay the fee on or before  
1076 the date due, plus any amount necessary to reimburse the cost of  
1077 collection.

1078           (3) No fee authorized under this section shall be assessed  
1079 by the department for state agencies or institutions, including,  
1080 without limitation, foster homes licensed by the Mississippi  
1081 Department of \* \* \* Child Protection Services.

1082           **SECTION 14.** Section 43-13-115, Mississippi Code of 1972, is  
1083 amended as follows:

1084           43-13-115. Recipients of Medicaid shall be the following  
1085 persons only:

1086           (1) Those who are qualified for public assistance  
1087 grants under provisions of Title IV-A and E of the federal Social  
1088 Security Act, as amended, including those statutorily deemed to be  
1089 IV-A and low-income families and children under Section 1931 of  
1090 the federal Social Security Act. For the purposes of this  
1091 paragraph (1) and paragraphs (8), (17) and (18) of this section,  
1092 any reference to Title IV-A or to Part A of Title IV of the  
1093 federal Social Security Act, as amended, or the state plan under  
1094 Title IV-A or Part A of Title IV, shall be considered as a  
1095 reference to Title IV-A of the federal Social Security Act, as  
1096 amended, and the state plan under Title IV-A, including the income  
1097 and resource standards and methodologies under Title IV-A and the



1098 state plan, as they existed on July 16, 1996. The Department  
1099 of \* \* \* Child Protection Services shall determine Medicaid  
1100 eligibility for children receiving public assistance grants under  
1101 Title IV-E. The division shall determine eligibility for  
1102 low-income families under Section 1931 of the federal Social  
1103 Security Act and shall redetermine eligibility for those  
1104 continuing under Title IV-A grants.

1105 (2) Those qualified for Supplemental Security Income  
1106 (SSI) benefits under Title XVI of the federal Social Security Act,  
1107 as amended, and those who are deemed SSI eligible as contained in  
1108 federal statute. The eligibility of individuals covered in this  
1109 paragraph shall be determined by the Social Security  
1110 Administration and certified to the Division of Medicaid.

1111 (3) Qualified pregnant women who would be eligible for  
1112 Medicaid as a low-income family member under Section 1931 of the  
1113 federal Social Security Act if her child were born. The  
1114 eligibility of the individuals covered under this paragraph shall  
1115 be determined by the division.

1116 (4) [Deleted]

1117 (5) A child born on or after October 1, 1984, to a  
1118 woman eligible for and receiving Medicaid under the state plan on  
1119 the date of the child's birth shall be deemed to have applied for  
1120 Medicaid and to have been found eligible for Medicaid under the  
1121 plan on the date of that birth, and will remain eligible for  
1122 Medicaid for a period of one (1) year so long as the child is a



1123 member of the woman's household and the woman remains eligible for  
1124 Medicaid or would be eligible for Medicaid if pregnant. The  
1125 eligibility of individuals covered in this paragraph shall be  
1126 determined by the Division of Medicaid.

1127 (6) Children certified by the \* \* \* Department of \* \* \*  
1128 Child Protection Services to the Division of Medicaid of whom the  
1129 state and county departments of \* \* \* child protection services  
1130 have custody and financial responsibility, and children who are in  
1131 adoptions subsidized in full or part by the Department of \* \* \*  
1132 Child Protection Services, including special needs children in  
1133 non-Title IV-E adoption assistance, who are approvable under Title  
1134 XIX of the Medicaid program. The eligibility of the children  
1135 covered under this paragraph shall be determined by the \* \* \*  
1136 Department of \* \* \* Child Protection Services.

1137 (7) Persons certified by the Division of Medicaid who  
1138 are patients in a medical facility (nursing home, hospital,  
1139 tuberculosis sanatorium or institution for treatment of mental  
1140 diseases), and who, except for the fact that they are patients in  
1141 that medical facility, would qualify for grants under Title IV,  
1142 Supplementary Security Income (SSI) benefits under Title XVI or  
1143 state supplements, and those aged, blind and disabled persons who  
1144 would not be eligible for Supplemental Security Income (SSI)  
1145 benefits under Title XVI or state supplements if they were not  
1146 institutionalized in a medical facility but whose income is below



the maximum standard set by the Division of Medicaid, which standard shall not exceed that prescribed by federal regulation.

(8) Children under eighteen (18) years of age and pregnant women (including those in intact families) who meet the financial standards of the state plan approved under Title IV-A of the federal Social Security Act, as amended. The eligibility of children covered under this paragraph shall be determined by the Division of Medicaid.

(9) Individuals who are:

(a) Children born after September 30, 1983, who have not attained the age of nineteen (19), with family income that does not exceed one hundred percent (100%) of the nonfarm official poverty level;

(b) Pregnant women, infants and children who have not attained the age of six (6), with family income that does not exceed one hundred thirty-three percent (133%) of the federal poverty level; and

(c) Pregnant women and infants who have not attained the age of one (1), with family income that does not exceed one hundred eighty-five percent (185%) of the federal poverty level.

The eligibility of individuals covered in (a), (b) and (c) of this paragraph shall be determined by the division.

(10) Certain disabled children age eighteen (18) or under who are living at home, who would be eligible, if in a



1172 medical institution, for SSI or a state supplemental payment under  
1173 Title XVI of the federal Social Security Act, as amended, and  
1174 therefore for Medicaid under the plan, and for whom the state has  
1175 made a determination as required under Section 1902(e)(3)(b) of  
1176 the federal Social Security Act, as amended. The eligibility of  
1177 individuals under this paragraph shall be determined by the  
1178 Division of Medicaid.

1179           (11) Until the end of the day on December 31, 2005,  
1180 individuals who are sixty-five (65) years of age or older or are  
1181 disabled as determined under Section 1614(a)(3) of the federal  
1182 Social Security Act, as amended, and whose income does not exceed  
1183 one hundred thirty-five percent (135%) of the nonfarm official  
1184 poverty level as defined by the Office of Management and Budget  
1185 and revised annually, and whose resources do not exceed those  
1186 established by the Division of Medicaid. The eligibility of  
1187 individuals covered under this paragraph shall be determined by  
1188 the Division of Medicaid. After December 31, 2005, only those  
1189 individuals covered under the 1115(c) Healthier Mississippi waiver  
1190 will be covered under this category.

1191           Any individual who applied for Medicaid during the period  
1192 from July 1, 2004, through March 31, 2005, who otherwise would  
1193 have been eligible for coverage under this paragraph (11) if it  
1194 had been in effect at the time the individual submitted his or her  
1195 application and is still eligible for coverage under this  
1196 paragraph (11) on March 31, 2005, shall be eligible for Medicaid





1197 coverage under this paragraph (11) from March 31, 2005, through  
1198 December 31, 2005. The division shall give priority in processing  
1199 the applications for those individuals to determine their  
1200 eligibility under this paragraph (11).

1201 (12) Individuals who are qualified Medicare  
1202 beneficiaries (QMB) entitled to Part A Medicare as defined under  
1203 Section 301, Public Law 100-360, known as the Medicare  
1204 Catastrophic Coverage Act of 1988, and whose income does not  
1205 exceed one hundred percent (100%) of the nonfarm official poverty  
1206 level as defined by the Office of Management and Budget and  
1207 revised annually.

1208 The eligibility of individuals covered under this paragraph  
1209 shall be determined by the Division of Medicaid, and those  
1210 individuals determined eligible shall receive Medicare  
1211 cost-sharing expenses only as more fully defined by the Medicare  
1212 Catastrophic Coverage Act of 1988 and the Balanced Budget Act of  
1213 1997.

1214 (13) (a) Individuals who are entitled to Medicare Part  
1215 A as defined in Section 4501 of the Omnibus Budget Reconciliation  
1216 Act of 1990, and whose income does not exceed one hundred twenty  
1217 percent (120%) of the nonfarm official poverty level as defined by  
1218 the Office of Management and Budget and revised annually.  
1219 Eligibility for Medicaid benefits is limited to full payment of  
1220 Medicare Part B premiums.



1221 (b) Individuals entitled to Part A of Medicare,  
1222 with income above one hundred twenty percent (120%), but less than  
1223 one hundred thirty-five percent (135%) of the federal poverty  
1224 level, and not otherwise eligible for Medicaid. Eligibility for  
1225 Medicaid benefits is limited to full payment of Medicare Part B  
1226 premiums. The number of eligible individuals is limited by the  
1227 availability of the federal capped allocation at one hundred  
1228 percent (100%) of federal matching funds, as more fully defined in  
1229 the Balanced Budget Act of 1997.

1230 The eligibility of individuals covered under this paragraph  
1231 shall be determined by the Division of Medicaid.

1232 (14) [Deleted]

1233 (15) Disabled workers who are eligible to enroll in  
1234 Part A Medicare as required by Public Law 101-239, known as the  
1235 Omnibus Budget Reconciliation Act of 1989, and whose income does  
1236 not exceed two hundred percent (200%) of the federal poverty level  
1237 as determined in accordance with the Supplemental Security Income  
1238 (SSI) program. The eligibility of individuals covered under this  
1239 paragraph shall be determined by the Division of Medicaid and  
1240 those individuals shall be entitled to buy-in coverage of Medicare  
1241 Part A premiums only under the provisions of this paragraph (15).

1242 (16) In accordance with the terms and conditions of  
1243 approved Title XIX waiver from the United States Department of  
1244 Health and Human Services, persons provided home- and  
1245 community-based services who are physically disabled and certified



1246 by the Division of Medicaid as eligible due to applying the income  
1247 and deeming requirements as if they were institutionalized.

1248           (17) In accordance with the terms of the federal  
1249 Personal Responsibility and Work Opportunity Reconciliation Act of  
1250 1996 (Public Law 104-193), persons who become ineligible for  
1251 assistance under Title IV-A of the federal Social Security Act, as  
1252 amended, because of increased income from or hours of employment  
1253 of the caretaker relative or because of the expiration of the  
1254 applicable earned income disregards, who were eligible for  
1255 Medicaid for at least three (3) of the six (6) months preceding  
1256 the month in which the ineligibility begins, shall be eligible for  
1257 Medicaid for up to twelve (12) months. The eligibility of the  
1258 individuals covered under this paragraph shall be determined by  
1259 the division.

1260           (18) Persons who become ineligible for assistance under  
1261 Title IV-A of the federal Social Security Act, as amended, as a  
1262 result, in whole or in part, of the collection or increased  
1263 collection of child or spousal support under Title IV-D of the  
1264 federal Social Security Act, as amended, who were eligible for  
1265 Medicaid for at least three (3) of the six (6) months immediately  
1266 preceding the month in which the ineligibility begins, shall be  
1267 eligible for Medicaid for an additional four (4) months beginning  
1268 with the month in which the ineligibility begins. The eligibility  
1269 of the individuals covered under this paragraph shall be  
1270 determined by the division.



1271           (19) Disabled workers, whose incomes are above the  
1272 Medicaid eligibility limits, but below two hundred fifty percent  
1273 (250%) of the federal poverty level, shall be allowed to purchase  
1274 Medicaid coverage on a sliding fee scale developed by the Division  
1275 of Medicaid.

1276           (20) Medicaid eligible children under age eighteen (18)  
1277 shall remain eligible for Medicaid benefits until the end of a  
1278 period of twelve (12) months following an eligibility  
1279 determination, or until such time that the individual exceeds age  
1280 eighteen (18).

1281           (21) Women of childbearing age whose family income does  
1282 not exceed one hundred eighty-five percent (185%) of the federal  
1283 poverty level. The eligibility of individuals covered under this  
1284 paragraph (21) shall be determined by the Division of Medicaid,  
1285 and those individuals determined eligible shall only receive  
1286 family planning services covered under Section 43-13-117(13) and  
1287 not any other services covered under Medicaid. However, any  
1288 individual eligible under this paragraph (21) who is also eligible  
1289 under any other provision of this section shall receive the  
1290 benefits to which he or she is entitled under that other  
1291 provision, in addition to family planning services covered under  
1292 Section 43-13-117(13).

1293           The Division of Medicaid shall apply to the United States  
1294 Secretary of Health and Human Services for a federal waiver of the  
1295 applicable provisions of Title XIX of the federal Social Security



Act, as amended, and any other applicable provisions of federal law as necessary to allow for the implementation of this paragraph (21). The provisions of this paragraph (21) shall be implemented from and after the date that the Division of Medicaid receives the federal waiver.

(22) Persons who are workers with a potentially severe disability, as determined by the division, shall be allowed to purchase Medicaid coverage. The term "worker with a potentially severe disability" means a person who is at least sixteen (16) years of age but under sixty-five (65) years of age, who has a physical or mental impairment that is reasonably expected to cause the person to become blind or disabled as defined under Section 1614(a) of the federal Social Security Act, as amended, if the person does not receive items and services provided under Medicaid.

The eligibility of persons under this paragraph (22) shall be conducted as a demonstration project that is consistent with Section 204 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170, for a certain number of persons as specified by the division. The eligibility of individuals covered under this paragraph (22) shall be determined by the Division of Medicaid.

(23) Children certified by the Mississippi Department of \* \* \* Child Protection Services for whom the state and county departments of \* \* \* child protection services have custody and



1321 financial responsibility who are in foster care on their  
1322 eighteenth birthday as reported by the Mississippi Department  
1323 of \* \* \* Child Protection Services shall be certified Medicaid  
1324 eligible by the Division of Medicaid until their twenty-first  
1325 birthday.

1326           (24) Individuals who have not attained age sixty-five  
1327 (65), are not otherwise covered by creditable coverage as defined  
1328 in the Public Health Services Act, and have been screened for  
1329 breast and cervical cancer under the Centers for Disease Control  
1330 and Prevention Breast and Cervical Cancer Early Detection Program  
1331 established under Title XV of the Public Health Service Act in  
1332 accordance with the requirements of that act and who need  
1333 treatment for breast or cervical cancer. Eligibility of  
1334 individuals under this paragraph (24) shall be determined by the  
1335 Division of Medicaid.

1336           (25) The division shall apply to the Centers for  
1337 Medicare and Medicaid Services (CMS) for any necessary waivers to  
1338 provide services to individuals who are sixty-five (65) years of  
1339 age or older or are disabled as determined under Section  
1340 1614(a)(3) of the federal Social Security Act, as amended, and  
1341 whose income does not exceed one hundred thirty-five percent  
1342 (135%) of the nonfarm official poverty level as defined by the  
1343 Office of Management and Budget and revised annually, and whose  
1344 resources do not exceed those established by the Division of  
1345 Medicaid, and who are not otherwise covered by Medicare. Nothing



1346 contained in this paragraph (25) shall entitle an individual to  
1347 benefits. The eligibility of individuals covered under this  
1348 paragraph shall be determined by the Division of Medicaid.

1349           (26) The division shall apply to the Centers for  
1350 Medicare and Medicaid Services (CMS) for any necessary waivers to  
1351 provide services to individuals who are sixty-five (65) years of  
1352 age or older or are disabled as determined under Section  
1353 1614(a)(3) of the federal Social Security Act, as amended, who are  
1354 end stage renal disease patients on dialysis, cancer patients on  
1355 chemotherapy or organ transplant recipients on antirejection  
1356 drugs, whose income does not exceed one hundred thirty-five  
1357 percent (135%) of the nonfarm official poverty level as defined by  
1358 the Office of Management and Budget and revised annually, and  
1359 whose resources do not exceed those established by the division.  
1360 Nothing contained in this paragraph (26) shall entitle an  
1361 individual to benefits. The eligibility of individuals covered  
1362 under this paragraph shall be determined by the Division of  
1363 Medicaid.

1364           (27) Individuals who are entitled to Medicare Part D  
1365 and whose income does not exceed one hundred fifty percent (150%)  
1366 of the nonfarm official poverty level as defined by the Office of  
1367 Management and Budget and revised annually. Eligibility for  
1368 payment of the Medicare Part D subsidy under this paragraph shall  
1369 be determined by the division.



The division shall redetermine eligibility for all categories of recipients described in each paragraph of this section not less frequently than required by federal law.

**SECTION 15.** Section 43-13-116, Mississippi Code of 1972, is amended as follows:

43-13-116. (1) It shall be the duty of the Division of Medicaid to fully implement and carry out the administrative functions of determining the eligibility of those persons who qualify for medical assistance under Section 43-13-115.

(2) In determining Medicaid eligibility, the Division of Medicaid is authorized to enter into an agreement with the Secretary of the Department of Health and Human Services for the purpose of securing the transfer of eligibility information from the Social Security Administration on those individuals receiving supplemental security income benefits under the federal Social Security Act and any other information necessary in determining Medicaid eligibility. The Division of Medicaid is further empowered to enter into contractual arrangements with its fiscal agent or with the \* \* \* Department of Human Services or the Department of Child Protection Services in securing electronic data processing support as may be necessary.

(3) Administrative hearings shall be available to any applicant who requests it because his or her claim of eligibility for services is denied or is not acted upon with reasonable promptness or by any recipient who requests it because he or she





1395 believes the agency has erroneously taken action to deny, reduce,  
1396 or terminate benefits. The agency need not grant a hearing if the  
1397 sole issue is a federal or state law requiring an automatic change  
1398 adversely affecting some or all recipients. Eligibility  
1399 determinations that are made by other agencies and certified to  
1400 the Division of Medicaid pursuant to Section 43-13-115 are not  
1401 subject to the administrative hearing procedures of the Division  
1402 of Medicaid but are subject to the administrative hearing  
1403 procedures of the agency that determined eligibility.

1404           (a) A request may be made either for a local regional  
1405 office hearing or a state office hearing when the local regional  
1406 office has made the initial decision that the claimant seeks to  
1407 appeal or when the regional office has not acted with reasonable  
1408 promptness in making a decision on a claim for eligibility or  
1409 services. The only exception to requesting a local hearing is  
1410 when the issue under appeal involves either (i) a disability or  
1411 blindness denial, or termination, or (ii) a level of care denial  
1412 or termination for a disabled child living at home. An appeal  
1413 involving disability, blindness or level of care must be handled  
1414 as a state level hearing. The decision from the local hearing may  
1415 be appealed to the state office for a state hearing. A decision  
1416 to deny, reduce or terminate benefits that is initially made at  
1417 the state office may be appealed by requesting a state hearing.

1418           (b) A request for a hearing, either state or local,  
1419 must be made in writing by the claimant or claimant's legal



1420 representative. "Legal representative" includes the claimant's  
1421 authorized representative, an attorney retained by the claimant or  
1422 claimant's family to represent the claimant, a paralegal  
1423 representative with a legal aid services, a parent of a minor  
1424 child if the claimant is a child, a legal guardian or conservator  
1425 or an individual with power of attorney for the claimant. The  
1426 claimant may also be represented by anyone that he or she so  
1427 designates but must give the designation to the Medicaid regional  
1428 office or state office in writing, if the person is not the legal  
1429 representative, legal guardian, or authorized representative.

1430 (c) The claimant may make a request for a hearing in  
1431 person at the regional office but an oral request must be put into  
1432 written form. Regional office staff will determine from the  
1433 claimant if a local or state hearing is requested and assist the  
1434 claimant in completing and signing the appropriate form. Regional  
1435 office staff may forward a state hearing request to the  
1436 appropriate division in the state office or the claimant may mail  
1437 the form to the address listed on the form. The claimant may make  
1438 a written request for a hearing by letter. A simple statement  
1439 requesting a hearing that is signed by the claimant or legal  
1440 representative is sufficient; however, if possible, the claimant  
1441 should state the reason for the request. The letter may be mailed  
1442 to the regional office or it may be mailed to the state office. If  
1443 the letter does not specify the type of hearing desired, local or  
1444 state, Medicaid staff will attempt to contact the claimant to



1445 determine the level of hearing desired. If contact cannot be made  
1446 within three (3) days of receipt of the request, the request will  
1447 be assumed to be for a local hearing and scheduled accordingly. A  
1448 hearing will not be scheduled until either a letter or the  
1449 appropriate form is received by the regional or state office.

1450 (d) When both members of a couple wish to appeal an  
1451 action or inaction by the agency that affects both applications or  
1452 cases similarly and arose from the same issue, one or both may  
1453 file the request for hearing, both may present evidence at the  
1454 hearing, and the agency's decision will be applicable to both. If  
1455 both file a request for hearing, two (2) hearings will be  
1456 registered but they will be conducted on the same day and in the  
1457 same place, either consecutively or jointly, as the couple wishes.  
1458 If they so desire, only one of the couple need attend the hearing.

1459 (e) The procedure for administrative hearings shall be  
1460 as follows:

1461 (i) The claimant has thirty (30) days from the  
1462 date the agency mails the appropriate notice to the claimant of  
1463 its decision regarding eligibility, services, or benefits to  
1464 request either a state or local hearing. This time period may be  
1465 extended if the claimant can show good cause for not filing within  
1466 thirty (30) days. Good cause includes, but may not be limited to,  
1467 illness, failure to receive the notice, being out of state, or  
1468 some other reasonable explanation. If good cause can be shown, a  
1469 late request may be accepted provided the facts in the case remain



1470 the same. If a claimant's circumstances have changed or if good  
1471 cause for filing a request beyond thirty (30) days is not shown, a  
1472 hearing request will not be accepted. If the claimant wishes to  
1473 have eligibility reconsidered, he or she may reapply.

1474 (ii) If a claimant or representative requests a  
1475 hearing in writing during the advance notice period before  
1476 benefits are reduced or terminated, benefits must be continued or  
1477 reinstated to the benefit level in effect before the effective  
1478 date of the adverse action. Benefits will continue at the  
1479 original level until the final hearing decision is rendered. Any  
1480 hearing requested after the advance notice period will not be  
1481 accepted as a timely request in order for continuation of benefits  
1482 to apply.

1483 (iii) Upon receipt of a written request for a  
1484 hearing, the request will be acknowledged in writing within twenty  
1485 (20) days and a hearing scheduled. The claimant or representative  
1486 will be given at least five (5) days' advance notice of the  
1487 hearing date. The local and/or state level hearings will be held  
1488 by telephone unless, at the hearing officer's discretion, it is  
1489 determined that an in-person hearing is necessary. If a local  
1490 hearing is requested, the regional office will notify the claimant  
1491 or representative in writing of the time of the local hearing. If  
1492 a state hearing is requested, the state office will notify the  
1493 claimant or representative in writing of the time of the state  
1494 hearing. If an in-person hearing is necessary, local hearings



1495 will be held at the regional office and state hearings will be  
1496 held at the state office unless other arrangements are  
1497 necessitated by the claimant's inability to travel.

1498 (iv) All persons attending a hearing will attend  
1499 for the purpose of giving information on behalf of the claimant or  
1500 rendering the claimant assistance in some other way, or for the  
1501 purpose of representing the Division of Medicaid.

1502 (v) A state or local hearing request may be  
1503 withdrawn at any time before the scheduled hearing, or after the  
1504 hearing is held but before a decision is rendered. The withdrawal  
1505 must be in writing and signed by the claimant or representative.  
1506 A hearing request will be considered abandoned if the claimant or  
1507 representative fails to appear at a scheduled hearing without good  
1508 cause. If no one appears for a hearing, the appropriate office  
1509 will notify the claimant in writing that the hearing is dismissed  
1510 unless good cause is shown for not attending. The proposed agency  
1511 action will be taken on the case following failure to appear for a  
1512 hearing if the action has not already been effected.

1513 (vi) The claimant or his representative has the  
1514 following rights in connection with a local or state hearing:

1515 (A) The right to examine at a reasonable time  
1516 before the date of the hearing and during the hearing the content  
1517 of the claimant's case record;

1518 (B) The right to have legal representation at  
1519 the hearing and to bring witnesses;



1520 (C) The right to produce documentary evidence  
1521 and establish all facts and circumstances concerning eligibility,  
1522 services, or benefits;

1523 (D) The right to present an argument without  
1524 undue interference;

1525 (E) The right to question or refute any  
1526 testimony or evidence including an opportunity to confront and  
1527 cross-examine adverse witnesses.

1528 (vii) When a request for a local hearing is  
1529 received by the regional office or if the regional office is  
1530 notified by the state office that a local hearing has been  
1531 requested, the Medicaid specialist supervisor in the regional  
1532 office will review the case record, reexamine the action taken on  
1533 the case, and determine if policy and procedures have been  
1534 followed. If any adjustments or corrections should be made, the  
1535 Medicaid specialist supervisor will ensure that corrective action  
1536 is taken. If the request for hearing was timely made such that  
1537 continuation of benefits applies, the Medicaid specialist  
1538 supervisor will ensure that benefits continue at the level before  
1539 the proposed adverse action that is the subject of the appeal.  
1540 The Medicaid specialist supervisor will also ensure that all  
1541 needed information, verification, and evidence is in the case  
1542 record for the hearing.

1543 (viii) When a state hearing is requested that  
1544 appeals the action or inaction of a regional office, the regional



1545 office will prepare copies of the case record and forward it to  
1546 the appropriate division in the state office no later than five  
1547 (5) days after receipt of the request for a state hearing. The  
1548 original case record will remain in the regional office. Either  
1549 the original case record in the regional office or the copy  
1550 forwarded to the state office will be available for inspection by  
1551 the claimant or claimant's representative a reasonable time before  
1552 the date of the hearing.

1553 (ix) The Medicaid specialist supervisor will serve  
1554 as the hearing officer for a local hearing unless the Medicaid  
1555 specialist supervisor actually participated in the eligibility,  
1556 benefits, or services decision under appeal, in which case the  
1557 Medicaid specialist supervisor must appoint a Medicaid specialist  
1558 in the regional office who did not actually participate in the  
1559 decision under appeal to serve as hearing officer. The local  
1560 hearing will be an informal proceeding in which the claimant or  
1561 representative may present new or additional information, may  
1562 question the action taken on the client's case, and will hear an  
1563 explanation from agency staff as to the regulations and  
1564 requirements that were applied to claimant's case in making the  
1565 decision.

1566 (x) After the hearing, the hearing officer will  
1567 prepare a written summary of the hearing procedure and file it  
1568 with the case record. The hearing officer will consider the facts  
1569 presented at the local hearing in reaching a decision. The



1570 claimant will be notified of the local hearing decision on the  
1571 appropriate form that will state clearly the reason for the  
1572 decision, the policy that governs the decision, the claimant's  
1573 right to appeal the decision to the state office, and, if the  
1574 original adverse action is upheld, the new effective date of the  
1575 reduction or termination of benefits or services if continuation  
1576 of benefits applied during the hearing process. The new effective  
1577 date of the reduction or termination of benefits or services must  
1578 be at the end of the fifteen-day advance notice period from the  
1579 mailing date of the notice of hearing decision. The notice to  
1580 claimant will be made part of the case record.

1581                   (xi) The claimant has the right to appeal a local  
1582 hearing decision by requesting a state hearing in writing within  
1583 fifteen (15) days of the mailing date of the notice of local  
1584 hearing decision. The state hearing request should be made to the  
1585 regional office. If benefits have been continued pending the  
1586 local hearing process, then benefits will continue throughout the  
1587 fifteen-day advance notice period for an adverse local hearing  
1588 decision. If a state hearing is timely requested within the  
1589 fifteen-day period, then benefits will continue pending the state  
1590 hearing process. State hearings requested after the fifteen-day  
1591 local hearing advance notice period will not be accepted unless  
1592 the initial thirty-day period for filing a hearing request has not  
1593 expired because the local hearing was held early, in which case a  
1594 state hearing request will be accepted as timely within the number





1595 of days remaining of the unexpired initial thirty-day period in  
1596 addition to the fifteen-day time period. Continuation of benefits  
1597 during the state hearing process, however, will only apply if the  
1598 state hearing request is received within the fifteen-day advance  
1599 notice period.

1600 (xii) When a request for a state hearing is  
1601 received in the regional office, the request will be made part of  
1602 the case record and the regional office will prepare the case  
1603 record and forward it to the appropriate division in the state  
1604 office within five (5) days of receipt of the state hearing  
1605 request. A request for a state hearing received in the state  
1606 office will be forwarded to the regional office for inclusion in  
1607 the case record and the regional office will prepare the case  
1608 record and forward it to the appropriate division in the state  
1609 office within five (5) days of receipt of the state hearing  
1610 request.

1611 (xiii) Upon receipt of the hearing record, an  
1612 impartial hearing officer will be assigned to hear the case either  
1613 by the Executive Director of the Division of Medicaid or his or  
1614 her designee. Hearing officers will be individuals with  
1615 appropriate expertise employed by the division and who have not  
1616 been involved in any way with the action or decision on appeal in  
1617 the case. The hearing officer will review the case record and if  
1618 the review shows that an error was made in the action of the  
1619 agency or in the interpretation of policy, or that a change of



1620 policy has been made, the hearing officer will discuss these  
1621 matters with the appropriate agency personnel and request that an  
1622 appropriate adjustment be made. Appropriate agency personnel will  
1623 discuss the matter with the claimant and if the claimant is  
1624 agreeable to the adjustment of the claim, then agency personnel  
1625 will request in writing dismissal of the hearing and the reason  
1626 therefor, to be placed in the case record. If the hearing is to  
1627 go forward, it shall be scheduled by the hearing officer in the  
1628 manner set forth in subparagraph (iii) of this paragraph (e).

1629 (xiv) In conducting the hearing, the state hearing  
1630 officer will inform those present of the following:

1631 (A) That the hearing will be recorded on tape  
1632 and that a transcript of the proceedings will be typed for the  
1633 record;

1634 (B) The action taken by the agency which  
1635 prompted the appeal;

1636 (C) An explanation of the claimant's rights  
1637 during the hearing as outlined in subparagraph (vi) of this  
1638 paragraph (e);

1639 (D) That the purpose of the hearing is for  
1640 the claimant to express dissatisfaction and present additional  
1641 information or evidence;

1642 (E) That the case record is available for  
1643 review by the claimant or representative during the hearing;



1644 (F) That the final hearing decision will be  
1645 rendered by the Executive Director of the Division of Medicaid on  
1646 the basis of facts presented at the hearing and the case record  
1647 and that the claimant will be notified by letter of the final  
1648 decision.

1649 (xv) During the hearing, the claimant and/or  
1650 representative will be allowed an opportunity to make a full  
1651 statement concerning the appeal and will be assisted, if  
1652 necessary, in disclosing all information on which the claim is  
1653 based. All persons representing the claimant and those  
1654 representing the Division of Medicaid will have the opportunity to  
1655 state all facts pertinent to the appeal. The hearing officer may  
1656 recess or continue the hearing for a reasonable time should  
1657 additional information or facts be required or if some change in  
1658 the claimant's circumstances occurs during the hearing process  
1659 which impacts the appeal. When all information has been  
1660 presented, the hearing officer will close the hearing and stop the  
1661 recorder.

1662 (xvi) Immediately following the hearing the  
1663 hearing tape will be transcribed and a copy of the transcription  
1664 forwarded to the regional office for filing in the case record.  
1665 As soon as possible, the hearing officer shall review the evidence  
1666 and record of the proceedings, testimony, exhibits, and other  
1667 supporting documents, prepare a written summary of the facts as  
1668 the hearing officer finds them, and prepare a written



1669 recommendation of action to be taken by the agency, citing  
1670 appropriate policy and regulations that govern the recommendation.  
1671 The decision cannot be based on any material, oral or written, not  
1672 available to the claimant before or during the hearing. The  
1673 hearing officer's recommendation will become part of the case  
1674 record which will be submitted to the Executive Director of the  
1675 Division of Medicaid for further review and decision.

1676                   (xvii) The Executive Director of the Division of  
1677 Medicaid, upon review of the recommendation, proceedings and the  
1678 record, may sustain the recommendation of the hearing officer,  
1679 reject the same, or remand the matter to the hearing officer to  
1680 take additional testimony and evidence, in which case, the hearing  
1681 officer thereafter shall submit to the executive director a new  
1682 recommendation. The executive director shall prepare a written  
1683 decision summarizing the facts and identifying policies and  
1684 regulations that support the decision, which shall be mailed to  
1685 the claimant and the representative, with a copy to the regional  
1686 office if appropriate, as soon as possible after submission of a  
1687 recommendation by the hearing officer. The decision notice will  
1688 specify any action to be taken by the agency, specify any revised  
1689 eligibility dates or, if continuation of benefits applies, will  
1690 notify the claimant of the new effective date of reduction or  
1691 termination of benefits or services, which will be fifteen (15)  
1692 days from the mailing date of the notice of decision. The  
1693 decision rendered by the Executive Director of the Division of



1694 Medicaid is final and binding. The claimant is entitled to seek  
1695 judicial review in a court of proper jurisdiction.

1696 (xviii) The Division of Medicaid must take final  
1697 administrative action on a hearing, whether state or local, within  
1698 ninety (90) days from the date of the initial request for a  
1699 hearing.

1700 (xix) A group hearing may be held for a number of  
1701 claimants under the following circumstances:

1702 (A) The Division of Medicaid may consolidate  
1703 the cases and conduct a single group hearing when the only issue  
1704 involved is one (1) of a single law or agency policy;

1705 (B) The claimants may request a group hearing  
1706 when there is one (1) issue of agency policy common to all of  
1707 them.

1708 In all group hearings, whether initiated by the Division of  
1709 Medicaid or by the claimants, the policies governing fair hearings  
1710 must be followed. Each claimant in a group hearing must be  
1711 permitted to present his or her own case and be represented by his  
1712 or her own representative, or to withdraw from the group hearing  
1713 and have his or her appeal heard individually. As in individual  
1714 hearings, the hearing will be conducted only on the issue being  
1715 appealed, and each claimant will be expected to keep individual  
1716 testimony within a reasonable time frame as a matter of  
1717 consideration to the other claimants involved.



1718                   (xx) Any specific matter necessitating an  
1719 administrative hearing not otherwise provided under this article  
1720 or agency policy shall be afforded under the hearing procedures as  
1721 outlined above. If the specific time frames of such a unique  
1722 matter relating to requesting, granting, and concluding of the  
1723 hearing is contrary to the time frames as set out in the hearing  
1724 procedures above, the specific time frames will govern over the  
1725 time frames as set out within these procedures.

1726           (4) The Executive Director of the Division of Medicaid, with  
1727 the approval of the Governor, shall be authorized to employ  
1728 eligibility, technical, clerical and supportive staff as may be  
1729 required in carrying out and fully implementing the determination  
1730 of Medicaid eligibility, including conducting quality control  
1731 reviews and the investigation of the improper receipt of medical  
1732 assistance. Staffing needs will be set forth in the annual  
1733 appropriation act for the division. Additional office space as  
1734 needed in performing eligibility, quality control and  
1735 investigative functions shall be obtained by the division.

1736           **SECTION 16.** Section 43-13-117, Mississippi Code of 1972, is  
1737 amended as follows:

1738           43-13-117. (A) Medicaid as authorized by this article shall  
1739 include payment of part or all of the costs, at the discretion of  
1740 the division, with approval of the Governor, of the following  
1741 types of care and services rendered to eligible applicants who  
1742 have been determined to be eligible for that care and services,



1743 within the limits of state appropriations and federal matching  
1744 funds:

1745 (1) Inpatient hospital services.

1746 (a) The division shall allow thirty (30) days of  
1747 inpatient hospital care annually for all Medicaid recipients.  
1748 Medicaid recipients requiring transplants shall not have those  
1749 days included in the transplant hospital stay count against the  
1750 thirty-day limit for inpatient hospital care. Precertification of  
1751 inpatient days must be obtained as required by the division.

1752 (b) From and after July 1, 1994, the Executive  
1753 Director of the Division of Medicaid shall amend the Mississippi  
1754 Title XIX Inpatient Hospital Reimbursement Plan to remove the  
1755 occupancy rate penalty from the calculation of the Medicaid  
1756 Capital Cost Component utilized to determine total hospital costs  
1757 allocated to the Medicaid program.

1758 (c) Hospitals will receive an additional payment  
1759 for the implantable programmable baclofen drug pump used to treat  
1760 spasticity that is implanted on an inpatient basis. The payment  
1761 pursuant to written invoice will be in addition to the facility's  
1762 per diem reimbursement and will represent a reduction of costs on  
1763 the facility's annual cost report, and shall not exceed Ten  
1764 Thousand Dollars (\$10,000.00) per year per recipient.

1765 (d) The division is authorized to implement an  
1766 All-Patient Refined-Diagnosis Related Groups (APR-DRG)  
1767 reimbursement methodology for inpatient hospital services.



1768 (e) No service benefits or reimbursement  
1769 limitations in this section shall apply to payments under an  
1770 APR-DRG or Ambulatory Payment Classification (APC) model or a  
1771 managed care program or similar model described in subsection (H)  
1772 of this section.

1773 (2) Outpatient hospital services.

1774 (a) Emergency services.

1775 (b) Other outpatient hospital services. The  
1776 division shall allow benefits for other medically necessary  
1777 outpatient hospital services (such as chemotherapy, radiation,  
1778 surgery and therapy), including outpatient services in a clinic or  
1779 other facility that is not located inside the hospital, but that  
1780 has been designated as an outpatient facility by the hospital, and  
1781 that was in operation or under construction on July 1, 2009,  
1782 provided that the costs and charges associated with the operation  
1783 of the hospital clinic are included in the hospital's cost report.  
1784 In addition, the Medicare thirty-five-mile rule will apply to  
1785 those hospital clinics not located inside the hospital that are  
1786 constructed after July 1, 2009. Where the same services are  
1787 reimbursed as clinic services, the division may revise the rate or  
1788 methodology of outpatient reimbursement to maintain consistency,  
1789 efficiency, economy and quality of care.

1790 (c) The division is authorized to implement an  
1791 Ambulatory Payment Classification (APC) methodology for outpatient  
1792 hospital services.





1793 (d) No service benefits or reimbursement  
1794 limitations in this section shall apply to payments under an  
1795 APR-DRG or APC model or a managed care program or similar model  
1796 described in subsection (H) of this section.

1797 (3) Laboratory and x-ray services.

1798 (4) Nursing facility services.

1799 (a) The division shall make full payment to  
1800 nursing facilities for each day, not exceeding fifty-two (52) days  
1801 per year, that a patient is absent from the facility on home  
1802 leave. Payment may be made for the following home leave days in  
1803 addition to the fifty-two-day limitation: Christmas, the day  
1804 before Christmas, the day after Christmas, Thanksgiving, the day  
1805 before Thanksgiving and the day after Thanksgiving.

1806 (b) From and after July 1, 1997, the division  
1807 shall implement the integrated case-mix payment and quality  
1808 monitoring system, which includes the fair rental system for  
1809 property costs and in which recapture of depreciation is  
1810 eliminated. The division may reduce the payment for hospital  
1811 leave and therapeutic home leave days to the lower of the case-mix  
1812 category as computed for the resident on leave using the  
1813 assessment being utilized for payment at that point in time, or a  
1814 case-mix score of 1.000 for nursing facilities, and shall compute  
1815 case-mix scores of residents so that only services provided at the  
1816 nursing facility are considered in calculating a facility's per  
1817 diem.



1818                   (c) From and after July 1, 1997, all state-owned  
1819 nursing facilities shall be reimbursed on a full reasonable cost  
1820 basis.

1821                   (d) On or after January 1, 2015, the division  
1822 shall update the case-mix payment system resource utilization  
1823 grouper and classifications and fair rental reimbursement system.  
1824 The division shall develop and implement a payment add-on to  
1825 reimburse nursing facilities for ventilator dependent resident  
1826 services.

1827                   (e) The division shall develop and implement, not  
1828 later than January 1, 2001, a case-mix payment add-on determined  
1829 by time studies and other valid statistical data that will  
1830 reimburse a nursing facility for the additional cost of caring for  
1831 a resident who has a diagnosis of Alzheimer's or other related  
1832 dementia and exhibits symptoms that require special care. Any  
1833 such case-mix add-on payment shall be supported by a determination  
1834 of additional cost. The division shall also develop and implement  
1835 as part of the fair rental reimbursement system for nursing  
1836 facility beds, an Alzheimer's resident bed depreciation enhanced  
1837 reimbursement system that will provide an incentive to encourage  
1838 nursing facilities to convert or construct beds for residents with  
1839 Alzheimer's or other related dementia.

1840                   (f) The division shall develop and implement an  
1841 assessment process for long-term care services. The division may



1842 provide the assessment and related functions directly or through  
1843 contract with the area agencies on aging.

1844       The division shall apply for necessary federal waivers to  
1845 assure that additional services providing alternatives to nursing  
1846 facility care are made available to applicants for nursing  
1847 facility care.

1848           (5) Periodic screening and diagnostic services for  
1849 individuals under age twenty-one (21) years as are needed to  
1850 identify physical and mental defects and to provide health care  
1851 treatment and other measures designed to correct or ameliorate  
1852 defects and physical and mental illness and conditions discovered  
1853 by the screening services, regardless of whether these services  
1854 are included in the state plan. The division may include in its  
1855 periodic screening and diagnostic program those discretionary  
1856 services authorized under the federal regulations adopted to  
1857 implement Title XIX of the federal Social Security Act, as  
1858 amended. The division, in obtaining physical therapy services,  
1859 occupational therapy services, and services for individuals with  
1860 speech, hearing and language disorders, may enter into a  
1861 cooperative agreement with the State Department of Education for  
1862 the provision of those services to handicapped students by public  
1863 school districts using state funds that are provided from the  
1864 appropriation to the Department of Education to obtain federal  
1865 matching funds through the division. The division, in obtaining  
1866 medical and mental health assessments, treatment, care and



1867 services for children who are in, or at risk of being put in, the  
1868 custody of the Mississippi Department of \* \* \* Child Protection  
1869 Services may enter into a cooperative agreement with the  
1870 Mississippi Department of \* \* \* Child Protection Services for the  
1871 provision of those services using state funds that are provided  
1872 from the appropriation to the Department of \* \* \* Child Protection  
1873 Services to obtain federal matching funds through the division.

1874           (6) Physician's services. The division shall allow  
1875 twelve (12) physician visits annually. The division may develop  
1876 and implement a different reimbursement model or schedule for  
1877 physician's services provided by physicians based at an academic  
1878 health care center and by physicians at rural health centers that  
1879 are associated with an academic health care center. From and  
1880 after January 1, 2010, all fees for physician's services that are  
1881 covered only by Medicaid shall be increased to ninety percent  
1882 (90%) of the rate established on January 1, 2010, and as may be  
1883 adjusted each July thereafter, under Medicare. The division may  
1884 provide for a reimbursement rate for physician's services of up to  
1885 one hundred percent (100%) of the rate established under Medicare  
1886 for physician's services that are provided after the normal  
1887 working hours of the physician, as determined in accordance with  
1888 regulations of the division. The division may reimburse eligible  
1889 providers as determined by the Patient Protection and Affordable  
1890 Care Act for certain primary care services as defined by the act



1891 at one hundred percent (100%) of the rate established under  
1892 Medicare.

1893 (7) (a) Home health services for eligible persons, not  
1894 to exceed in cost the prevailing cost of nursing facility  
1895 services, not to exceed twenty-five (25) visits per year. All  
1896 home health visits must be precertified as required by the  
1897 division.

1898 (b) [Repealed]

1899 (8) Emergency medical transportation services. On  
1900 January 1, 1994, emergency medical transportation services shall  
1901 be reimbursed at seventy percent (70%) of the rate established  
1902 under Medicare (Title XVIII of the federal Social Security Act, as  
1903 amended). "Emergency medical transportation services" shall mean,  
1904 but shall not be limited to, the following services by a properly  
1905 permitted ambulance operated by a properly licensed provider in  
1906 accordance with the Emergency Medical Services Act of 1974  
1907 (Section 41-59-1 et seq.): (i) basic life support, (ii) advanced  
1908 life support, (iii) mileage, (iv) oxygen, (v) intravenous fluids,  
1909 (vi) disposable supplies, (vii) similar services.

1910 (9) (a) Legend and other drugs as may be determined by  
1911 the division.

1912 The division shall establish a mandatory preferred drug list.  
1913 Drugs not on the mandatory preferred drug list shall be made  
1914 available by utilizing prior authorization procedures established  
1915 by the division.



1916           The division may seek to establish relationships with other  
1917 states in order to lower acquisition costs of prescription drugs  
1918 to include single source and innovator multiple source drugs or  
1919 generic drugs. In addition, if allowed by federal law or  
1920 regulation, the division may seek to establish relationships with  
1921 and negotiate with other countries to facilitate the acquisition  
1922 of prescription drugs to include single source and innovator  
1923 multiple source drugs or generic drugs, if that will lower the  
1924 acquisition costs of those prescription drugs.

1925           The division shall allow for a combination of prescriptions  
1926 for single source and innovator multiple source drugs and generic  
1927 drugs to meet the needs of the beneficiaries, not to exceed five  
1928 (5) prescriptions per month for each noninstitutionalized Medicaid  
1929 beneficiary, with not more than two (2) of those prescriptions  
1930 being for single source or innovator multiple source drugs unless  
1931 the single source or innovator multiple source drug is less  
1932 expensive than the generic equivalent.

1933           The executive director may approve specific maintenance drugs  
1934 for beneficiaries with certain medical conditions, which may be  
1935 prescribed and dispensed in three-month supply increments.

1936           Drugs prescribed for a resident of a psychiatric residential  
1937 treatment facility must be provided in true unit doses when  
1938 available. The division may require that drugs not covered by  
1939 Medicare Part D for a resident of a long-term care facility be  
1940 provided in true unit doses when available. Those drugs that were



1941 originally billed to the division but are not used by a resident  
1942 in any of those facilities shall be returned to the billing  
1943 pharmacy for credit to the division, in accordance with the  
1944 guidelines of the State Board of Pharmacy and any requirements of  
1945 federal law and regulation. Drugs shall be dispensed to a  
1946 recipient and only one (1) dispensing fee per month may be  
1947 charged. The division shall develop a methodology for reimbursing  
1948 for restocked drugs, which shall include a restock fee as  
1949 determined by the division not exceeding Seven Dollars and  
1950 Eighty-two Cents (\$7.82).

1951       The voluntary preferred drug list shall be expanded to  
1952 function in the interim in order to have a manageable prior  
1953 authorization system, thereby minimizing disruption of service to  
1954 beneficiaries.

1955       Except for those specific maintenance drugs approved by the  
1956 executive director, the division shall not reimburse for any  
1957 portion of a prescription that exceeds a thirty-one-day supply of  
1958 the drug based on the daily dosage.

1959       The division shall develop and implement a program of payment  
1960 for additional pharmacist services, with payment to be based on  
1961 demonstrated savings, but in no case shall the total payment  
1962 exceed twice the amount of the dispensing fee.

1963       All claims for drugs for dually eligible Medicare/Medicaid  
1964 beneficiaries that are paid for by Medicare must be submitted to



1965 Medicare for payment before they may be processed by the  
1966 division's online payment system.

1967       The division shall develop a pharmacy policy in which drugs  
1968 in tamper-resistant packaging that are prescribed for a resident  
1969 of a nursing facility but are not dispensed to the resident shall  
1970 be returned to the pharmacy and not billed to Medicaid, in  
1971 accordance with guidelines of the State Board of Pharmacy.

1972       The division shall develop and implement a method or methods  
1973 by which the division will provide on a regular basis to Medicaid  
1974 providers who are authorized to prescribe drugs, information about  
1975 the costs to the Medicaid program of single source drugs and  
1976 innovator multiple source drugs, and information about other drugs  
1977 that may be prescribed as alternatives to those single source  
1978 drugs and innovator multiple source drugs and the costs to the  
1979 Medicaid program of those alternative drugs.

1980       Notwithstanding any law or regulation, information obtained  
1981 or maintained by the division regarding the prescription drug  
1982 program, including trade secrets and manufacturer or labeler  
1983 pricing, is confidential and not subject to disclosure except to  
1984 other state agencies.

1985               (b) Payment by the division for covered  
1986 multisource drugs shall be limited to the lower of the upper  
1987 limits established and published by the Centers for Medicare and  
1988 Medicaid Services (CMS) plus a dispensing fee, or the estimated  
1989 acquisition cost (EAC) as determined by the division, plus a





1990 dispensing fee, or the providers' usual and customary charge to  
1991 the general public.

1992 Payment for other covered drugs, other than multisource drugs  
1993 with CMS upper limits, shall not exceed the lower of the estimated  
1994 acquisition cost as determined by the division, plus a dispensing  
1995 fee or the providers' usual and customary charge to the general  
1996 public.

1997 Payment for nonlegend or over-the-counter drugs covered by  
1998 the division shall be reimbursed at the lower of the division's  
1999 estimated shelf price or the providers' usual and customary charge  
2000 to the general public.

2001 The dispensing fee for each new or refill prescription,  
2002 including nonlegend or over-the-counter drugs covered by the  
2003 division, shall be not less than Three Dollars and Ninety-one  
2004 Cents (\$3.91), as determined by the division.

2005 The division shall not reimburse for single source or  
2006 innovator multiple source drugs if there are equally effective  
2007 generic equivalents available and if the generic equivalents are  
2008 the least expensive.

2009 It is the intent of the Legislature that the pharmacists  
2010 providers be reimbursed for the reasonable costs of filling and  
2011 dispensing prescriptions for Medicaid beneficiaries.

2012 (10) (a) Dental care that is an adjunct to treatment  
2013 of an acute medical or surgical condition; services of oral  
2014 surgeons and dentists in connection with surgery related to the



2015 jaw or any structure contiguous to the jaw or the reduction of any  
2016 fracture of the jaw or any facial bone; and emergency dental  
2017 extractions and treatment related thereto. On July 1, 2007, fees  
2018 for dental care and surgery under authority of this paragraph (10)  
2019 shall be reimbursed as provided in subparagraph (b). It is the  
2020 intent of the Legislature that this rate revision for dental  
2021 services will be an incentive designed to increase the number of  
2022 dentists who actively provide Medicaid services. This dental  
2023 services rate revision shall be known as the "James Russell Dumas  
2024 Medicaid Dental Incentive Program."

2025       The division shall annually determine the effect of this  
2026 incentive by evaluating the number of dentists who are Medicaid  
2027 providers, the number who and the degree to which they are  
2028 actively billing Medicaid, the geographic trends of where dentists  
2029 are offering what types of Medicaid services and other statistics  
2030 pertinent to the goals of this legislative intent. This data  
2031 shall be presented to the Chair of the Senate Public Health and  
2032 Welfare Committee and the Chair of the House Medicaid Committee.

2033               (b) The Division of Medicaid shall establish a fee  
2034 schedule, to be effective from and after July 1, 2007, for dental  
2035 services. The schedule shall provide for a fee for each dental  
2036 service that is equal to a percentile of normal and customary  
2037 private provider fees, as defined by the Ingenix Customized Fee  
2038 Analyzer Report, which percentile shall be determined by the  
2039 division. The schedule shall be reviewed annually by the division



and dental fees shall be adjusted to reflect the percentile determined by the division.

(c) For fiscal year 2008, the amount of state funds appropriated for reimbursement for dental care and surgery shall be increased by ten percent (10%) of the amount of state fund expenditures for that purpose for fiscal year 2007. For each of fiscal years 2009 and 2010, the amount of state funds appropriated for reimbursement for dental care and surgery shall be increased by ten percent (10%) of the amount of state fund expenditures for that purpose for the preceding fiscal year.

(d) The division shall establish an annual benefit limit of Two Thousand Five Hundred Dollars (\$2,500.00) in dental expenditures per Medicaid-eligible recipient; however, a recipient may exceed the annual limit on dental expenditures provided in this paragraph with prior approval of the division.

(e) The division shall include dental services as a necessary component of overall health services provided to children who are eligible for services.

(f) This paragraph (10) shall stand repealed on July 1, 2016.

(11) Eyeglasses for all Medicaid beneficiaries who have (a) had surgery on the eyeball or ocular muscle that results in a vision change for which eyeglasses or a change in eyeglasses is medically indicated within six (6) months of the surgery and is in accordance with policies established by the division, or (b) one



(1) pair every five (5) years and in accordance with policies established by the division. In either instance, the eyeglasses must be prescribed by a physician skilled in diseases of the eye or an optometrist, whichever the beneficiary may select.

(12) Intermediate care facility services.

(a) The division shall make full payment to all intermediate care facilities for individuals with intellectual disabilities for each day, not exceeding eighty-four (84) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the eighty-four-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) All state-owned intermediate care facilities for individuals with intellectual disabilities shall be reimbursed on a full reasonable cost basis.

(c) Effective January 1, 2015, the division shall update the fair rental reimbursement system for intermediate care facilities for individuals with intellectual disabilities.

(13) Family planning services, including drugs, supplies and devices, when those services are under the supervision of a physician or nurse practitioner.

(14) Clinic services. Such diagnostic, preventive, therapeutic, rehabilitative or palliative services furnished to an outpatient by or under the supervision of a physician or dentist



2090 in a facility that is not a part of a hospital but that is  
2091 organized and operated to provide medical care to outpatients.  
2092 Clinic services shall include any services reimbursed as  
2093 outpatient hospital services that may be rendered in such a  
2094 facility, including those that become so after July 1, 1991. On  
2095 July 1, 1999, all fees for physicians' services reimbursed under  
2096 authority of this paragraph (14) shall be reimbursed at ninety  
2097 percent (90%) of the rate established on January 1, 1999, and as  
2098 may be adjusted each July thereafter, under Medicare (Title XVIII  
2099 of the federal Social Security Act, as amended). The division may  
2100 develop and implement a different reimbursement model or schedule  
2101 for physician's services provided by physicians based at an  
2102 academic health care center and by physicians at rural health  
2103 centers that are associated with an academic health care center.  
2104 The division may provide for a reimbursement rate for physician's  
2105 clinic services of up to one hundred percent (100%) of the rate  
2106 established under Medicare for physician's services that are  
2107 provided after the normal working hours of the physician, as  
2108 determined in accordance with regulations of the division.

2109 (15) Home- and community-based services for the elderly  
2110 and disabled, as provided under Title XIX of the federal Social  
2111 Security Act, as amended, under waivers, subject to the  
2112 availability of funds specifically appropriated for that purpose  
2113 by the Legislature.



2114           The Division of Medicaid is directed to apply for a waiver  
2115 amendment to increase payments for all adult day care facilities  
2116 based on acuity of individual patients, with a maximum of  
2117 Seventy-five Dollars (\$75.00) per day for the most acute patients.

2118           (16) Mental health services. Approved therapeutic and  
2119 case management services (a) provided by an approved regional  
2120 mental health/intellectual disability center established under  
2121 Sections 41-19-31 through 41-19-39, or by another community mental  
2122 health service provider meeting the requirements of the Department  
2123 of Mental Health to be an approved mental health/intellectual  
2124 disability center if determined necessary by the Department of  
2125 Mental Health, using state funds that are provided in the  
2126 appropriation to the division to match federal funds, or (b)  
2127 provided by a facility that is certified by the State Department  
2128 of Mental Health to provide therapeutic and case management  
2129 services, to be reimbursed on a fee for service basis, or (c)  
2130 provided in the community by a facility or program operated by the  
2131 Department of Mental Health. Any such services provided by a  
2132 facility described in subparagraph (b) must have the prior  
2133 approval of the division to be reimbursable under this  
2134 section. \* \* \*

2135           (17) Durable medical equipment services and medical  
2136 supplies. Precertification of durable medical equipment and  
2137 medical supplies must be obtained as required by the division.  
2138 The Division of Medicaid may require durable medical equipment



2139 providers to obtain a surety bond in the amount and to the  
2140 specifications as established by the Balanced Budget Act of 1997.

2141           (18) (a) Notwithstanding any other provision of this  
2142 section to the contrary, as provided in the Medicaid state plan  
2143 amendment or amendments as defined in Section 43-13-145(10), the  
2144 division shall make additional reimbursement to hospitals that  
2145 serve a disproportionate share of low-income patients and that  
2146 meet the federal requirements for those payments as provided in  
2147 Section 1923 of the federal Social Security Act and any applicable  
2148 regulations. It is the intent of the Legislature that the  
2149 division shall draw down all available federal funds allotted to  
2150 the state for disproportionate share hospitals. However, from and  
2151 after January 1, 1999, public hospitals participating in the  
2152 Medicaid disproportionate share program may be required to  
2153 participate in an intergovernmental transfer program as provided  
2154 in Section 1903 of the federal Social Security Act and any  
2155 applicable regulations.

2156           (b) The division shall establish a Medicare Upper  
2157 Payment Limits Program, as defined in Section 1902(a)(30) of the  
2158 federal Social Security Act and any applicable federal  
2159 regulations, for hospitals, and may establish a Medicare Upper  
2160 Payment Limits Program for nursing facilities, and may establish a  
2161 Medicare Upper Payment Limits Program for physicians employed or  
2162 contracted by public hospitals. Upon successful implementation of  
2163 a Medicare Upper Payment Limits Program for physicians employed by



2164 public hospitals, the division may develop a plan for implementing  
2165 an Upper Payment Limits Program for physicians employed by other  
2166 classes of hospitals. The division shall assess each hospital  
2167 and, if the program is established for nursing facilities, shall  
2168 assess each nursing facility, for the sole purpose of financing  
2169 the state portion of the Medicare Upper Payment Limits Program.  
2170 The hospital assessment shall be as provided in Section  
2171 43-13-145(4)(a) and the nursing facility assessment, if  
2172 established, shall be based on Medicaid utilization or other  
2173 appropriate method consistent with federal regulations. The  
2174 assessment will remain in effect as long as the state participates  
2175 in the Medicare Upper Payment Limits Program. Public hospitals  
2176 with physicians participating in the Medicare Upper Payment Limits  
2177 Program shall be required to participate in an intergovernmental  
2178 transfer program. As provided in the Medicaid state plan  
2179 amendment or amendments as defined in Section 43-13-145(10), the  
2180 division shall make additional reimbursement to hospitals and, if  
2181 the program is established for nursing facilities, shall make  
2182 additional reimbursement to nursing facilities, for the Medicare  
2183 Upper Payment Limits, and, if the program is established for  
2184 physicians, shall make additional reimbursement for physicians, as  
2185 defined in Section 1902(a)(30) of the federal Social Security Act  
2186 and any applicable federal regulations. Effective upon  
2187 implementation of the Mississippi Hospital Access Program (MHAP)  
2188 provided in subparagraph (c)(i) below, the hospital portion of the





2189 inpatient Upper Payment Limits Program shall transition into and  
2190 be replaced by the MHAP program.

2191 (c) (i) Not later than December 1, 2015, the  
2192 division shall, subject to approval by the Centers for Medicare  
2193 and Medicaid Services (CMS), establish, implement and operate a  
2194 Mississippi Hospital Access Program (MHAP) for the purpose of  
2195 protecting patient access to hospital care through hospital  
2196 inpatient reimbursement programs provided in this section designed  
2197 to maintain total hospital reimbursement for inpatient services  
2198 rendered by in-state hospitals and the out-of-state hospital that  
2199 is authorized by federal law to submit intergovernmental transfers  
2200 (IGTs) to the State of Mississippi and is classified as Level I  
2201 trauma center located in a county contiguous to the state line at  
2202 the maximum levels permissible under applicable federal statutes  
2203 and regulations, at which time the current inpatient Medicare  
2204 Upper Payment Limits (UPL) Program for hospital inpatient services  
2205 shall transition to the MHAP.

2206 (ii) Subject only to approval by the Centers  
2207 for Medicare and Medicaid Services (CMS) where required, the MHAP  
2208 shall provide increased inpatient capitation (PMPM) payments to  
2209 managed care entities contracting with the division pursuant to  
2210 subsection (H) of this section to support availability of hospital  
2211 services or such other payments permissible under federal law  
2212 necessary to accomplish the intent of this subsection. For  
2213 inpatient services rendered after July 1, 2015, but prior to the



2214 effective date of CMS approval and full implementation of this  
2215 program, the division may pay lump-sum enhanced, transition  
2216 payments, prorated inpatient UPL payments based upon fiscal year  
2217 2015 June distribution levels, enhanced hospital access (PMPM)  
2218 payments or such other methodologies as are approved by CMS such  
2219 that the level of additional reimbursement required by this  
2220 section is paid for all Medicaid hospital inpatient services  
2221 delivered in fiscal year 2016.

2222 (iii) The intent of this subparagraph (c) is  
2223 that effective for all inpatient hospital Medicaid services during  
2224 state fiscal year 2016, and so long as this provision shall remain  
2225 in effect hereafter, the division shall to the fullest extent  
2226 feasible replace the additional reimbursement for hospital  
2227 inpatient services under the inpatient Medicare Upper Payment  
2228 Limits (UPL) Program with additional reimbursement under the MHAP.

2229 (iv) The division shall assess each hospital  
2230 as provided in Section 43-13-145(4) (a) for the purpose of  
2231 financing the state portion of the MHAP and such other purposes as  
2232 specified in Section 43-13-145. The assessment will remain in  
2233 effect as long as the MHAP is in effect.

2234 (v) In the event that the MHAP program under  
2235 this subparagraph (c) is not approved by CMS, the inpatient UPL  
2236 program under subparagraph (b) shall immediately become restored  
2237 in the manner required to provide the maximum permissible level of



2238 UPL payments to hospital providers for all inpatient services  
2239 rendered from and after July 1, 2015.

2240           (19) (a) Perinatal risk management services. The  
2241 division shall promulgate regulations to be effective from and  
2242 after October 1, 1988, to establish a comprehensive perinatal  
2243 system for risk assessment of all pregnant and infant Medicaid  
2244 recipients and for management, education and follow-up for those  
2245 who are determined to be at risk. Services to be performed  
2246 include case management, nutrition assessment/counseling,  
2247 psychosocial assessment/counseling and health education. The  
2248 division shall contract with the State Department of Health to  
2249 provide the services within this paragraph (Perinatal High Risk  
2250 Management/Infant Services System (PHRM/ISS)). The State  
2251 Department of Health as the agency for PHRM/ISS for the Division  
2252 of Medicaid shall be reimbursed on a full reasonable cost basis.

2253           (b) Early intervention system services. The  
2254 division shall cooperate with the State Department of Health,  
2255 acting as lead agency, in the development and implementation of a  
2256 statewide system of delivery of early intervention services, under  
2257 Part C of the Individuals with Disabilities Education Act (IDEA).  
2258 The State Department of Health shall certify annually in writing  
2259 to the executive director of the division the dollar amount of  
2260 state early intervention funds available that will be utilized as  
2261 a certified match for Medicaid matching funds. Those funds then  
2262 shall be used to provide expanded targeted case management



2263 services for Medicaid eligible children with special needs who are  
2264 eligible for the state's early intervention system.

2265 Qualifications for persons providing service coordination shall be  
2266 determined by the State Department of Health and the Division of  
2267 Medicaid.

2268           (20) Home- and community-based services for physically  
2269 disabled approved services as allowed by a waiver from the United  
2270 States Department of Health and Human Services for home- and  
2271 community-based services for physically disabled people using  
2272 state funds that are provided from the appropriation to the State  
2273 Department of Rehabilitation Services and used to match federal  
2274 funds under a cooperative agreement between the division and the  
2275 department, provided that funds for these services are  
2276 specifically appropriated to the Department of Rehabilitation  
2277 Services.

2278           (21) Nurse practitioner services. Services furnished  
2279 by a registered nurse who is licensed and certified by the  
2280 Mississippi Board of Nursing as a nurse practitioner, including,  
2281 but not limited to, nurse anesthetists, nurse midwives, family  
2282 nurse practitioners, family planning nurse practitioners,  
2283 pediatric nurse practitioners, obstetrics-gynecology nurse  
2284 practitioners and neonatal nurse practitioners, under regulations  
2285 adopted by the division. Reimbursement for those services shall  
2286 not exceed ninety percent (90%) of the reimbursement rate for  
2287 comparable services rendered by a physician. The division may



2288 provide for a reimbursement rate for nurse practitioner services  
2289 of up to one hundred percent (100%) of the reimbursement rate for  
2290 comparable services rendered by a physician for nurse practitioner  
2291 services that are provided after the normal working hours of the  
2292 nurse practitioner, as determined in accordance with regulations  
2293 of the division.

2294           (22) Ambulatory services delivered in federally  
2295 qualified health centers, rural health centers and clinics of the  
2296 local health departments of the State Department of Health for  
2297 individuals eligible for Medicaid under this article based on  
2298 reasonable costs as determined by the division.

2299           (23) Inpatient psychiatric services. Inpatient  
2300 psychiatric services to be determined by the division for  
2301 recipients under age twenty-one (21) that are provided under the  
2302 direction of a physician in an inpatient program in a licensed  
2303 acute care psychiatric facility or in a licensed psychiatric  
2304 residential treatment facility, before the recipient reaches age  
2305 twenty-one (21) or, if the recipient was receiving the services  
2306 immediately before he or she reached age twenty-one (21), before  
2307 the earlier of the date he or she no longer requires the services  
2308 or the date he or she reaches age twenty-two (22), as provided by  
2309 federal regulations. From and after January 1, 2015, the division  
2310 shall update the fair rental reimbursement system for psychiatric  
2311 residential treatment facilities. Precertification of inpatient  
2312 days and residential treatment days must be obtained as required



2313 by the division. From and after July 1, 2009, all state-owned and  
2314 state-operated facilities that provide inpatient psychiatric  
2315 services to persons under age twenty-one (21) who are eligible for  
2316 Medicaid reimbursement shall be reimbursed for those services on a  
2317 full reasonable cost basis.

2318 (24) [Deleted]

2319 (25) [Deleted]

2320 (26) Hospice care. As used in this paragraph, the term  
2321 "hospice care" means a coordinated program of active professional  
2322 medical attention within the home and outpatient and inpatient  
2323 care that treats the terminally ill patient and family as a unit,  
2324 employing a medically directed interdisciplinary team. The  
2325 program provides relief of severe pain or other physical symptoms  
2326 and supportive care to meet the special needs arising out of  
2327 physical, psychological, spiritual, social and economic stresses  
2328 that are experienced during the final stages of illness and during  
2329 dying and bereavement and meets the Medicare requirements for  
2330 participation as a hospice as provided in federal regulations.

2331 (27) Group health plan premiums and cost-sharing if it  
2332 is cost-effective as defined by the United States Secretary of  
2333 Health and Human Services.

2334 (28) Other health insurance premiums that are  
2335 cost-effective as defined by the United States Secretary of Health  
2336 and Human Services. Medicare eligible must have Medicare Part B  
2337 before other insurance premiums can be paid.



2338                   (29)   The Division of Medicaid may apply for a waiver  
2339   from the United States Department of Health and Human Services for  
2340   home- and community-based services for developmentally disabled  
2341   people using state funds that are provided from the appropriation  
2342   to the State Department of Mental Health and/or funds transferred  
2343   to the department by a political subdivision or instrumentality of  
2344   the state and used to match federal funds under a cooperative  
2345   agreement between the division and the department, provided that  
2346   funds for these services are specifically appropriated to the  
2347   Department of Mental Health and/or transferred to the department  
2348   by a political subdivision or instrumentality of the state.

2349                   (30)   Pediatric skilled nursing services for eligible  
2350   persons under twenty-one (21) years of age.

2351                   (31)   Targeted case management services for children  
2352   with special needs, under waivers from the United States  
2353   Department of Health and Human Services, using state funds that  
2354   are provided from the appropriation to the Mississippi Department  
2355   of \* \* \* Child Protection Services and used to match federal funds  
2356   under a cooperative agreement between the division and the  
2357   department.

2358                   (32)   Care and services provided in Christian Science  
2359   Sanatoria listed and certified by the Commission for Accreditation  
2360   of Christian Science Nursing Organizations/Facilities, Inc.,  
2361   rendered in connection with treatment by prayer or spiritual means



2362 to the extent that those services are subject to reimbursement  
2363 under Section 1903 of the federal Social Security Act.

2364 (33) Podiatrist services.

2365 (34) Assisted living services as provided through  
2366 home- and community-based services under Title XIX of the federal  
2367 Social Security Act, as amended, subject to the availability of  
2368 funds specifically appropriated for that purpose by the  
2369 Legislature.

2370 (35) Services and activities authorized in Sections  
2371 43-27-101 and 43-27-103, using state funds that are provided from  
2372 the appropriation to the Mississippi Department of \* \* \* Child  
2373 Protection Services and used to match federal funds under a  
2374 cooperative agreement between the division and the department.

2375 (36) Nonemergency transportation services for  
2376 Medicaid-eligible persons, to be provided by the Division of  
2377 Medicaid. The division may contract with additional entities to  
2378 administer nonemergency transportation services as it deems  
2379 necessary. All providers shall have a valid driver's license,  
2380 vehicle inspection sticker, valid vehicle license tags and a  
2381 standard liability insurance policy covering the vehicle. The  
2382 division may pay providers a flat fee based on mileage tiers, or  
2383 in the alternative, may reimburse on actual miles traveled. The  
2384 division may apply to the Center for Medicare and Medicaid  
2385 Services (CMS) for a waiver to draw federal matching funds for  
2386 nonemergency transportation services as a covered service instead





2387 of an administrative cost. The PEER Committee shall conduct a  
2388 performance evaluation of the nonemergency transportation program  
2389 to evaluate the administration of the program and the providers of  
2390 transportation services to determine the most cost-effective ways  
2391 of providing nonemergency transportation services to the patients  
2392 served under the program. The performance evaluation shall be  
2393 completed and provided to the members of the Senate Public Health  
2394 and Welfare Committee and the House Medicaid Committee not later  
2395 than January 15, 2008.

2396 (37) [Deleted]

2397 (38) Chiropractic services. A chiropractor's manual  
2398 manipulation of the spine to correct a subluxation, if x-ray  
2399 demonstrates that a subluxation exists and if the subluxation has  
2400 resulted in a neuromusculoskeletal condition for which  
2401 manipulation is appropriate treatment, and related spinal x-rays  
2402 performed to document these conditions. Reimbursement for  
2403 chiropractic services shall not exceed Seven Hundred Dollars  
2404 (\$700.00) per year per beneficiary.

2405 (39) Dually eligible Medicare/Medicaid beneficiaries.  
2406 The division shall pay the Medicare deductible and coinsurance  
2407 amounts for services available under Medicare, as determined by  
2408 the division. From and after July 1, 2009, the division shall  
2409 reimburse crossover claims for inpatient hospital services and  
2410 crossover claims covered under Medicare Part B in the same manner



2411 that was in effect on January 1, 2008, unless specifically  
2412 authorized by the Legislature to change this method.

2413 (40) [Deleted]

2414 (41) Services provided by the State Department of  
2415 Rehabilitation Services for the care and rehabilitation of persons  
2416 with spinal cord injuries or traumatic brain injuries, as allowed  
2417 under waivers from the United States Department of Health and  
2418 Human Services, using up to seventy-five percent (75%) of the  
2419 funds that are appropriated to the Department of Rehabilitation  
2420 Services from the Spinal Cord and Head Injury Trust Fund  
2421 established under Section 37-33-261 and used to match federal  
2422 funds under a cooperative agreement between the division and the  
2423 department.

2424 (42) Notwithstanding any other provision in this  
2425 article to the contrary, the division may develop a population  
2426 health management program for women and children health services  
2427 through the age of one (1) year. This program is primarily for  
2428 obstetrical care associated with low birth weight and preterm  
2429 babies. The division may apply to the federal Centers for  
2430 Medicare and Medicaid Services (CMS) for a Section 1115 waiver or  
2431 any other waivers that may enhance the program. In order to  
2432 effect cost savings, the division may develop a revised payment  
2433 methodology that may include at-risk capitated payments, and may  
2434 require member participation in accordance with the terms and  
2435 conditions of an approved federal waiver.



2436                   (43) The division shall provide reimbursement,  
2437 according to a payment schedule developed by the division, for  
2438 smoking cessation medications for pregnant women during their  
2439 pregnancy and other Medicaid-eligible women who are of  
2440 child-bearing age.

2441                   (44) Nursing facility services for the severely  
2442 disabled.

2443                   (a) Severe disabilities include, but are not  
2444 limited to, spinal cord injuries, closed-head injuries and  
2445 ventilator dependent patients.

2446                   (b) Those services must be provided in a long-term  
2447 care nursing facility dedicated to the care and treatment of  
2448 persons with severe disabilities.

2449                   (45) Physician assistant services. Services furnished  
2450 by a physician assistant who is licensed by the State Board of  
2451 Medical Licensure and is practicing with physician supervision  
2452 under regulations adopted by the board, under regulations adopted  
2453 by the division. Reimbursement for those services shall not  
2454 exceed ninety percent (90%) of the reimbursement rate for  
2455 comparable services rendered by a physician. The division may  
2456 provide for a reimbursement rate for physician assistant services  
2457 of up to one hundred percent (100%) or the reimbursement rate for  
2458 comparable services rendered by a physician for physician  
2459 assistant services that are provided after the normal working



2460 hours of the physician assistant, as determined in accordance with  
2461 regulations of the division.

2462           (46) The division shall make application to the federal  
2463 Centers for Medicare and Medicaid Services (CMS) for a waiver to  
2464 develop and provide services for children with serious emotional  
2465 disturbances as defined in Section 43-14-1(1), which may include  
2466 home- and community-based services, case management services or  
2467 managed care services through mental health providers certified by  
2468 the Department of Mental Health. The division may implement and  
2469 provide services under this waived program only if funds for  
2470 these services are specifically appropriated for this purpose by  
2471 the Legislature, or if funds are voluntarily provided by affected  
2472 agencies.

2473           (47) (a) Notwithstanding any other provision in this  
2474 article to the contrary, the division may develop and implement  
2475 disease management programs for individuals with high-cost chronic  
2476 diseases and conditions, including the use of grants, waivers,  
2477 demonstrations or other projects as necessary.

2478           (b) Participation in any disease management  
2479 program implemented under this paragraph (47) is optional with the  
2480 individual. An individual must affirmatively elect to participate  
2481 in the disease management program in order to participate, and may  
2482 elect to discontinue participation in the program at any time.

2483           (48) Pediatric long-term acute care hospital services.



2484                   (a) Pediatric long-term acute care hospital  
2485 services means services provided to eligible persons under  
2486 twenty-one (21) years of age by a freestanding Medicare-certified  
2487 hospital that has an average length of inpatient stay greater than  
2488 twenty-five (25) days and that is primarily engaged in providing  
2489 chronic or long-term medical care to persons under twenty-one (21)  
2490 years of age.

2491                   (b) The services under this paragraph (48) shall  
2492 be reimbursed as a separate category of hospital services.

2493                   (49) The division shall establish copayments and/or  
2494 coinsurance for all Medicaid services for which copayments and/or  
2495 coinsurance are allowable under federal law or regulation, and  
2496 shall set the amount of the copayment and/or coinsurance for each  
2497 of those services at the maximum amount allowable under federal  
2498 law or regulation.

2499                   (50) Services provided by the State Department of  
2500 Rehabilitation Services for the care and rehabilitation of persons  
2501 who are deaf and blind, as allowed under waivers from the United  
2502 States Department of Health and Human Services to provide  
2503 home- and community-based services using state funds that are  
2504 provided from the appropriation to the State Department of  
2505 Rehabilitation Services or if funds are voluntarily provided by  
2506 another agency.

2507                   (51) Upon determination of Medicaid eligibility and in  
2508 association with annual redetermination of Medicaid eligibility,



2509 beneficiaries shall be encouraged to undertake a physical  
2510 examination that will establish a base-line level of health and  
2511 identification of a usual and customary source of care (a medical  
2512 home) to aid utilization of disease management tools. This  
2513 physical examination and utilization of these disease management  
2514 tools shall be consistent with current United States Preventive  
2515 Services Task Force or other recognized authority recommendations.

2516 For persons who are determined ineligible for Medicaid, the  
2517 division will provide information and direction for accessing  
2518 medical care and services in the area of their residence.

2519 (52) Notwithstanding any provisions of this article,  
2520 the division may pay enhanced reimbursement fees related to trauma  
2521 care, as determined by the division in conjunction with the State  
2522 Department of Health, using funds appropriated to the State  
2523 Department of Health for trauma care and services and used to  
2524 match federal funds under a cooperative agreement between the  
2525 division and the State Department of Health. The division, in  
2526 conjunction with the State Department of Health, may use grants,  
2527 waivers, demonstrations, or other projects as necessary in the  
2528 development and implementation of this reimbursement program.

2529 (53) Targeted case management services for high-cost  
2530 beneficiaries shall be developed by the division for all services  
2531 under this section.

2532 (54) Adult foster care services pilot program. Social  
2533 and protective services on a pilot program basis in an approved



2534 foster care facility for vulnerable adults who would otherwise  
2535 need care in a long-term care facility, to be implemented in an  
2536 area of the state with the greatest need for such program, under  
2537 the Medicaid Waivers for the Elderly and Disabled program or an  
2538 assisted living waiver. The division may use grants, waivers,  
2539 demonstrations or other projects as necessary in the development  
2540 and implementation of this adult foster care services pilot  
2541 program.

2542           (55) Therapy services. The plan of care for therapy  
2543 services may be developed to cover a period of treatment for up to  
2544 six (6) months, but in no event shall the plan of care exceed a  
2545 six-month period of treatment. The projected period of treatment  
2546 must be indicated on the initial plan of care and must be updated  
2547 with each subsequent revised plan of care. Based on medical  
2548 necessity, the division shall approve certification periods for  
2549 less than or up to six (6) months, but in no event shall the  
2550 certification period exceed the period of treatment indicated on  
2551 the plan of care. The appeal process for any reduction in therapy  
2552 services shall be consistent with the appeal process in federal  
2553 regulations.

2554           (56) Prescribed pediatric extended care centers  
2555 services for medically dependent or technologically dependent  
2556 children with complex medical conditions that require continual  
2557 care as prescribed by the child's attending physician, as  
2558 determined by the division.



2559           (57) No Medicaid benefit shall restrict coverage for  
2560 medically appropriate treatment prescribed by a physician and  
2561 agreed to by a fully informed individual, or if the individual  
2562 lacks legal capacity to consent by a person who has legal  
2563 authority to consent on his or her behalf, based on an  
2564 individual's diagnosis with a terminal condition. As used in this  
2565 paragraph (57), "terminal condition" means any aggressive  
2566 malignancy, chronic end-stage cardiovascular or cerebral vascular  
2567 disease, or any other disease, illness or condition which a  
2568 physician diagnoses as terminal.

2569           (B) Notwithstanding any other provision of this article to  
2570 the contrary, the division shall reduce the rate of reimbursement  
2571 to providers for any service provided under this section by five  
2572 percent (5%) of the allowed amount for that service. However, the  
2573 reduction in the reimbursement rates required by this subsection  
2574 (B) shall not apply to inpatient hospital services, nursing  
2575 facility services, intermediate care facility services,  
2576 psychiatric residential treatment facility services, pharmacy  
2577 services provided under subsection (A)(9) of this section, or any  
2578 service provided by the University of Mississippi Medical Center  
2579 or a state agency, a state facility or a public agency that either  
2580 provides its own state match through intergovernmental transfer or  
2581 certification of funds to the division, or a service for which the  
2582 federal government sets the reimbursement methodology and rate.  
2583 From and after January 1, 2010, the reduction in the reimbursement





2584 rates required by this subsection (B) shall not apply to  
2585 physicians' services. In addition, the reduction in the  
2586 reimbursement rates required by this subsection (B) shall not  
2587 apply to case management services and home-delivered meals  
2588 provided under the home- and community-based services program for  
2589 the elderly and disabled by a planning and development district  
2590 (PDD). Planning and development districts participating in the  
2591 home- and community-based services program for the elderly and  
2592 disabled as case management providers shall be reimbursed for case  
2593 management services at the maximum rate approved by the Centers  
2594 for Medicare and Medicaid Services (CMS).

2595 (C) The division may pay to those providers who participate  
2596 in and accept patient referrals from the division's emergency room  
2597 redirection program a percentage, as determined by the division,  
2598 of savings achieved according to the performance measures and  
2599 reduction of costs required of that program. Federally qualified  
2600 health centers may participate in the emergency room redirection  
2601 program, and the division may pay those centers a percentage of  
2602 any savings to the Medicaid program achieved by the centers'  
2603 accepting patient referrals through the program, as provided in  
2604 this subsection (C).

2605 (D) Notwithstanding any provision of this article, except as  
2606 authorized in the following subsection and in Section 43-13-139,  
2607 neither \* \* \* (1) the limitations on quantity or frequency of use  
2608 of or the fees or charges for any of the care or services



2609 available to recipients under this section, nor \* \* \* (2) the  
2610 payments, payment methodology as provided below in this subsection  
2611 (D), or rates of reimbursement to providers rendering care or  
2612 services authorized under this section to recipients, may be  
2613 increased, decreased or otherwise changed from the levels in  
2614 effect on July 1, 1999, unless they are authorized by an amendment  
2615 to this section by the Legislature. However, the restriction in  
2616 this subsection shall not prevent the division from changing the  
2617 payments, payment methodology as provided below in this subsection  
2618 (D), or rates of reimbursement to providers without an amendment  
2619 to this section whenever those changes are required by federal law  
2620 or regulation, or whenever those changes are necessary to correct  
2621 administrative errors or omissions in calculating those payments  
2622 or rates of reimbursement. The prohibition on any changes in  
2623 payment methodology provided in this subsection (D) shall apply  
2624 only to payment methodologies used for determining the rates of  
2625 reimbursement for inpatient hospital services, outpatient hospital  
2626 services, nursing facility services, and/or pharmacy services,  
2627 except as required by federal law, and the federally mandated  
2628 rebasing of rates as required by the Centers for Medicare and  
2629 Medicaid Services (CMS) shall not be considered payment  
2630 methodology for purposes of this subsection (D). No service  
2631 benefits or reimbursement limitations in this section shall apply  
2632 to payments under an APR-DRG or APC model or a managed care



2633 program or similar model described in subsection (H) of this  
2634 section.

2635 (E) Notwithstanding any provision of this article, no new  
2636 groups or categories of recipients and new types of care and  
2637 services may be added without enabling legislation from the  
2638 Mississippi Legislature, except that the division may authorize  
2639 those changes without enabling legislation when the addition of  
2640 recipients or services is ordered by a court of proper authority.

2641 (F) The executive director shall keep the Governor advised  
2642 on a timely basis of the funds available for expenditure and the  
2643 projected expenditures. If current or projected expenditures of  
2644 the division are reasonably anticipated to exceed the amount of  
2645 funds appropriated to the division for any fiscal year, the  
2646 Governor, after consultation with the executive director, shall  
2647 discontinue any or all of the payment of the types of care and  
2648 services as provided in this section that are deemed to be  
2649 optional services under Title XIX of the federal Social Security  
2650 Act, as amended, and when necessary, shall institute any other  
2651 cost containment measures on any program or programs authorized  
2652 under the article to the extent allowed under the federal law  
2653 governing that program or programs. However, the Governor shall  
2654 not be authorized to discontinue or eliminate any service under  
2655 this section that is mandatory under federal law, or to  
2656 discontinue or eliminate, or adjust income limits or resource  
2657 limits for, any eligibility category or group under Section



2658 43-13-115. Beginning in fiscal year 2010 and in fiscal years  
2659 thereafter, when Medicaid expenditures are projected to exceed  
2660 funds available for any quarter in the fiscal year, the division  
2661 shall submit the expected shortfall information to the PEER  
2662 Committee, which shall review the computations of the division and  
2663 report its findings to the Legislative Budget Office within thirty  
2664 (30) days of such notification by the division, and not later than  
2665 January 7 in any year. If expenditure reductions or cost  
2666 containments are implemented, the Governor may implement a maximum  
2667 amount of state share expenditure reductions to providers, of  
2668 which hospitals will be responsible for twenty-five percent (25%)  
2669 of provider reductions as follows: in fiscal year 2010, the  
2670 maximum amount shall be Twenty-four Million Dollars  
2671 (\$24,000,000.00); in fiscal year 2011, the maximum amount shall be  
2672 Thirty-two Million Dollars (\$32,000,000.00); and in fiscal year  
2673 2012 and thereafter, the maximum amount shall be Forty Million  
2674 Dollars (\$40,000,000.00). However, instead of implementing cuts,  
2675 the hospital share shall be in the form of an additional  
2676 assessment not to exceed Ten Million Dollars (\$10,000,000.00) as  
2677 provided in Section 43-13-145(4)(a)(ii). If Medicaid expenditures  
2678 are projected to exceed the amount of funds appropriated to the  
2679 division in any fiscal year in excess of the expenditure  
2680 reductions to providers, then funds shall be transferred by the  
2681 State Fiscal Officer from the Health Care Trust Fund into the  
2682 Health Care Expendable Fund and to the Governor's Office, Division



2683 of Medicaid, from the Health Care Expendable Fund, in the amount  
2684 and at such time as requested by the Governor to reconcile the  
2685 deficit. If the cost containment measures described above have  
2686 been implemented and there are insufficient funds in the Health  
2687 Care Trust Fund to reconcile any remaining deficit in any fiscal  
2688 year, the Governor shall institute any other additional cost  
2689 containment measures on any program or programs authorized under  
2690 this article to the extent allowed under federal law. Hospitals  
2691 shall be responsible for twenty-five percent (25%) of any  
2692 additional imposed provider cuts. However, instead of  
2693 implementing hospital expenditure reductions, the hospital  
2694 reductions shall be in the form of an additional assessment not to  
2695 exceed twenty-five percent (25%) of provider expenditure  
2696 reductions as provided in Section 43-13-145(4)(a)(ii). It is the  
2697 intent of the Legislature that the expenditures of the division  
2698 during any fiscal year shall not exceed the amounts appropriated  
2699 to the division for that fiscal year.

2700 (G) Notwithstanding any other provision of this article, it  
2701 shall be the duty of each nursing facility, intermediate care  
2702 facility for individuals with intellectual disabilities,  
2703 psychiatric residential treatment facility, and nursing facility  
2704 for the severely disabled that is participating in the Medicaid  
2705 program to keep and maintain books, documents and other records as  
2706 prescribed by the Division of Medicaid in substantiation of its  
2707 cost reports for a period of three (3) years after the date of



2708 submission to the Division of Medicaid of an original cost report,  
2709 or three (3) years after the date of submission to the Division of  
2710 Medicaid of an amended cost report.

2711 (H) (1) Notwithstanding any other provision of this  
2712 article, the division is authorized to implement (a) a managed  
2713 care program, (b) a coordinated care program, (c) a coordinated  
2714 care organization program, (d) a health maintenance organization  
2715 program, (e) a patient-centered medical home program, (f) an  
2716 accountable care organization program, (g) provider-sponsored  
2717 health plan, or (h) any combination of the above programs.  
2718 Managed care programs, coordinated care programs, coordinated care  
2719 organization programs, health maintenance organization programs,  
2720 patient-centered medical home programs, accountable care  
2721 organization programs, provider-sponsored health plans, or any  
2722 combination of the above programs or other similar programs  
2723 implemented by the division under this section shall be limited to  
2724 the greater of (i) forty-five percent (45%) of the total  
2725 enrollment of Medicaid beneficiaries, or (ii) the categories of  
2726 beneficiaries participating in the program as of January 1, 2014,  
2727 plus the categories of beneficiaries composed primarily of persons  
2728 younger than nineteen (19) years of age, and the division is  
2729 authorized to enroll categories of beneficiaries in such  
2730 program(s) as long as the appropriate limitations are not exceeded  
2731 in the aggregate. As a condition for the approval of any program



2732 under this subsection (H)(1), the division shall require that no  
2733 program may:

2734 (a) Pay providers at a rate that is less than the  
2735 Medicaid All-Patient Refined-Diagnosis Related Groups (APR-DRG)  
2736 reimbursement rate;

2737 (b) Override the medical decisions of hospital  
2738 physicians or staff regarding patients admitted to a hospital for  
2739 an emergency medical condition as defined by 42 US Code Section  
2740 1395dd. This restriction (b) does not prohibit the retrospective  
2741 review of the appropriateness of the determination that an  
2742 emergency medical condition exists by chart review or coding  
2743 algorithm, nor does it prohibit prior authorization for  
2744 nonemergency hospital admissions;

2745 (c) Pay providers at a rate that is less than the  
2746 normal Medicaid reimbursement rate; however, the division may  
2747 approve use of innovative payment models that recognize  
2748 alternative payment models, including quality and value-based  
2749 payments, provided both parties mutually agree and the Division of  
2750 Medicaid approves of said models. Participation in the provider  
2751 network of any managed care, coordinated care, provider-sponsored  
2752 health plan, or similar contractor shall not be conditioned on the  
2753 provider's agreement to accept such alternative payment models;

2754 (d) Implement a prior authorization program for  
2755 prescription drugs that is more stringent than the prior



2756 authorization processes used by the division in its administration  
2757 of the Medicaid program;

2758 (e) Implement a policy that does not comply with  
2759 the prescription drugs payment requirements established in  
2760 subsection (A) (9) of this section;

2761 (f) Implement a preferred drug list that is more  
2762 stringent than the mandatory preferred drug list established by  
2763 the division under subsection (A) (9) of this section;

2764 (g) Implement a policy which denies beneficiaries  
2765 with hemophilia access to the federally funded hemophilia  
2766 treatment centers as part of the Medicaid Managed Care network of  
2767 providers. All Medicaid beneficiaries with hemophilia shall  
2768 receive unrestricted access to anti-hemophilia factor products  
2769 through noncapitated reimbursement programs.

2770 (2) Any contractors providing direct patient care under  
2771 a managed care program established in this section shall provide  
2772 to the Legislature and the division statistical data to be shared  
2773 with provider groups in order to improve patient access,  
2774 appropriate utilization, cost savings and health outcomes.

2775 (3) All health maintenance organizations, coordinated  
2776 care organizations, provider-sponsored health plans, or other  
2777 organizations paid for services on a capitated basis by the  
2778 division under any managed care program or coordinated care  
2779 program implemented by the division under this section shall  
2780 reimburse all providers in those organizations at rates no lower





2781 than those provided under this section for beneficiaries who are  
2782 not participating in those programs.

2783 (4) No health maintenance organization, coordinated  
2784 care organization, provider-sponsored health plan, or other  
2785 organization paid for services on a capitated basis by the  
2786 division under any managed care program or coordinated care  
2787 program implemented by the division under this section shall  
2788 require its providers or beneficiaries to use any pharmacy that  
2789 ships, mails or delivers prescription drugs or legend drugs or  
2790 devices.

2791 (I) [Deleted]

2792 (J) There shall be no cuts in inpatient and outpatient  
2793 hospital payments, or allowable days or volumes, as long as the  
2794 hospital assessment provided in Section 43-13-145 is in effect.  
2795 This subsection (J) shall not apply to decreases in payments that  
2796 are a result of: reduced hospital admissions, audits or payments  
2797 under the APR-DRG or APC models, or a managed care program or  
2798 similar model described in subsection (H) of this section.

2799 (K) This section shall stand repealed on June 30, 2018.

2800 **SECTION 17.** Section 43-15-5, Mississippi Code of 1972, is  
2801 amended as follows:

2802 43-15-5. (1) The Department of \* \* \* Child Protection  
2803 Services shall have authority and it shall be its duty to  
2804 administer or supervise all public child welfare services,  
2805 including those services, responsibilities, duties and powers with



2806 which the county departments of \* \* \* child protection services  
2807 are charged and empowered in this article; administer and  
2808 supervise the licensing and inspection of all private child  
2809 placing agencies; provide for the care of dependent and neglected  
2810 children in foster family homes or in institutions, supervise the  
2811 care of such children and those of illegitimate birth; supervise  
2812 the importation of children; and supervise the operation of all  
2813 state institutions for children. The Department of \* \* \* Child  
2814 Protection Services shall be authorized to purchase hospital and  
2815 medical insurance coverage for those children placed in foster  
2816 care by the state or county departments of \* \* \* child protection  
2817 services who are not otherwise eligible for medical assistance  
2818 under the Mississippi Medicaid Law. The Department of \* \* \* Child  
2819 Protection Services shall be further authorized to purchase burial  
2820 or life insurance not exceeding One Thousand Five Hundred Dollars  
2821 (\$1,500.00) for those children placed in foster care by the state  
2822 or county departments of \* \* \* child protection services. All  
2823 insurance coverage authorized herein may be purchased with any  
2824 funds other than state funds available to the Department of \* \* \*  
2825 Child Protection Services, including those funds available to the  
2826 child which are administered by the department.

2827 (2) Any person, partnership, group, corporation,  
2828 organization or association desiring to operate a child  
2829 residential home, as defined in Section 43-16-3, may make  
2830 application for a license for such a facility to the Department



2831 of \* \* \* Child Protection Services on the application forms  
2832 furnished for this purpose by the department. If an applicant  
2833 meets the published rules and regulations of the department  
2834 regarding minimum standards for a child residential home, then the  
2835 applicant shall be granted a license by the department.

2836 **SECTION 18.** Section 43-15-103, Mississippi Code of 1972, is  
2837 amended as follows:

2838 43-15-103. As used in this article:

2839 (a) "Agency" means a residential child-caring agency or  
2840 a child-placing agency.

2841 (b) "Child" or "children" mean(s) any unmarried person  
2842 or persons under the age of eighteen (18) years.

2843 (c) "Child placing" means receiving, accepting or  
2844 providing custody or care for any child under eighteen (18) years  
2845 of age, temporarily or permanently, for the purpose of:

2846 (i) Finding a person to adopt the child;

2847 (ii) Placing the child temporarily or permanently  
2848 in a home for adoption; or

2849 (iii) Placing a child in a foster home or  
2850 residential child-caring agency.

2851 (d) "Child-placing agency" means any entity or person  
2852 which places children in foster boarding homes or foster homes for  
2853 temporary care or for adoption or any other entity or person or  
2854 group of persons who are engaged in providing adoption studies or



2855 foster care studies or placement services as defined by the rules  
2856 of the department.

2857 (e) "Department" means the Mississippi Department  
2858 of \* \* \* Child Protection Services.

2859 \* \* \*

2860 ( \* \* \* f) "Family boarding home" or "foster home" means  
2861 a home (occupied residence) operated by any entity or person which  
2862 provides residential child care to at least one (1) child but not  
2863 more than six (6) children who are not related to the primary  
2864 caregivers.

2865 ( \* \* \* g) "Group care home" means any place or facility  
2866 operated by any entity or person which provides residential child  
2867 care for at least seven (7) children but not more than twelve (12)  
2868 children who are not related to the primary caregivers.

2869 ( \* \* \* h) "Licensee" means any person, agency or entity  
2870 licensed under this article.

2871 ( \* \* \* i) "Maternity home" means any place or facility  
2872 operated by any entity or person which receives, treats or cares  
2873 for more than one (1) child or adult who is pregnant out of  
2874 wedlock, either before, during or within two (2) weeks after  
2875 childbirth; provided, that the licensed child-placing agencies and  
2876 licensed maternity homes may use a family boarding home approved  
2877 and supervised by the agency or home, as a part of their work, for  
2878 as many as three (3) children or adults who are pregnant out of  
2879 wedlock, and provided further, that the provisions of this



2880 definition shall not include children or women who receive  
2881 maternity care in the home of a person to whom they are kin within  
2882 the sixth degree of kindred computed according to civil law, nor  
2883 does it apply to any maternity care provided by general or special  
2884 hospitals licensed according to law and in which maternity  
2885 treatment and care are part of the medical services performed and  
2886 the care of children is brief and incidental.

2887 \* \* \*

2888 \* \* \* (j) "Person associated with a licensee" means an  
2889 owner, director, member of the governing body, employee, provider  
2890 of care and volunteer of a human services licensee.

2891 ( \* \* \* k) "Related" means children, step-children,  
2892 grandchildren, step-grandchildren, siblings of the whole or  
2893 half-blood, step-siblings, nieces or nephews of the primary care  
2894 provider.

2895 ( \* \* \* l) "Residential child care" means the provision  
2896 of supervision, and/or protection, and meeting the basic needs of  
2897 a child for twenty-four (24) hours per day, which may include  
2898 services to children in a residential setting where care, lodging,  
2899 maintenance and counseling or therapy for alcohol or controlled  
2900 substance abuse or for any other emotional disorder or mental  
2901 illness is provided for children, whether for compensation or not.

2902 ( \* \* \* m) "Residential child-caring agency" means any  
2903 place or facility operated by any entity or person, public or  
2904 private, providing residential child care, regardless of whether



2905 operated for profit or whether a fee is charged. Such residential  
2906 child-caring agencies include, but are not limited to, maternity  
2907 homes, runaway shelters, group homes that are administered by an  
2908 agency, and emergency shelters that are not in private residence.

2909 **SECTION 19.** Section 43-15-105, Mississippi Code of 1972, is  
2910 amended as follows:

2911 43-15-105. (1) The \* \* \* Mississippi Department of Child  
2912 Protection Services shall be the licensing authority \* \* \* and is  
2913 vested with all the powers, duties and responsibilities described  
2914 in this article. The \* \* \* department shall make and establish  
2915 rules and regulations regarding:

2916 (a) Approving, extending, denying, suspending and  
2917 revoking licenses for foster homes, residential child-caring  
2918 agencies and child-placing agencies;

2919 (b) Conditional licenses, variances from department  
2920 rules and exclusions;

2921 (c) Basic health and safety standards for licensees;  
2922 and

2923 (d) Minimum administration and financial requirements  
2924 for licensees.

2925 (2) The \* \* \* department shall:

2926 (a) Define information that shall be submitted to  
2927 the \* \* \* department with an application for a license;



2928                   (b)   Establish guidelines for the administration and  
2929 maintenance of client and service records, including staff  
2930 qualifications, staff to client ratios;  
2931                   (c)   Issue licenses in accordance with this article;  
2932                   (d)   Conduct surveys and inspections of licensees and  
2933 facilities;  
2934                   (e)   Establish and collect licensure fees;  
2935                   (f)   Investigate complaints regarding any licensee or  
2936 facility;  
2937                   (g)   Have access to all records, correspondence and  
2938 financial data required to be maintained by a licensee or  
2939 facility;  
2940                   (h)   Have authority to interview any client, family  
2941 member of a client, employee or officer of a licensee or facility;  
2942 and  
2943                   (i)   Have authority to revoke, suspend or extend any  
2944 license issued by the \* \* \* department.

2945           **SECTION 20.** Section 43-15-107, Mississippi Code of 1972, is  
2946 amended as follows:

2947           43-15-107. (1) Except as provided in Section 43-15-111, no  
2948 person, agency, firm, corporation, association or other entity,  
2949 acting individually or jointly with any other person or entity,  
2950 may establish, conduct or maintain foster homes, residential  
2951 child-caring agencies and child-placing agencies or facility  
2952 and/or engage in child placing in this state without a valid and



2953 current license issued by and under the authority of the \* \* \*  
2954 department as provided by this article and the rules of the \* \* \*  
2955 department. Any out-of-state child-placing agency that provides a  
2956 full range of services, including, but not limited to, adoptions,  
2957 foster family homes, adoption counseling services or financial  
2958 aid, in this state must be licensed by the \* \* \* department under  
2959 this article.

2960 (2) No license issued under this article is assignable or  
2961 transferable.

2962 (3) A current license shall at all times be posted in each  
2963 licensee's facility, in a place that is visible and readily  
2964 accessible to the public.

2965 (4) (a) Except as otherwise provided in paragraph (b) of  
2966 this subsection, each license issued under this article expires at  
2967 midnight (Central Standard Time) twelve (12) months from the date  
2968 of issuance unless it has been:

2969 (i) Previously revoked by the \* \* \* department; or  
2970 (ii) Voluntarily returned to the \* \* \* department  
2971 by the licensee.

2972 (b) (i) For any child-placing agency located in  
2973 Mississippi that remains in good standing, the license issued  
2974 under this article expires at midnight (Central Standard Time)  
2975 twenty-four (24) months from the date of issuance unless it has  
2976 been:





2977 1. Previously revoked by the \* \* \*  
2978 department; or  
2979 2. Voluntarily returned to the \* \* \*  
2980 department by the licensee.  
2981 (ii) Any child-placing agency whose license is  
2982 governed by this paragraph (b) shall submit the following  
2983 information to the \* \* \* department annually:  
2984 1. A copy of an audit report and IRS Form 990  
2985 for the agency;  
2986 2. The agency's fee schedule; and  
2987 3. The agency's client list.  
2988 (c) A license may be renewed upon application and  
2989 payment of the applicable fee, provided that the licensee meets  
2990 the license requirements established by this article and the rules  
2991 and regulations of the division.  
2992 (5) Any licensee or facility which is in operation at the  
2993 time rules are made in accordance with this article shall be given  
2994 a reasonable time for compliance as determined by the rules of  
2995 the \* \* \* department.  
2996 **SECTION 21.** Section 43-15-109, Mississippi Code of 1972, is  
2997 amended as follows:  
2998 43-15-109. (1) An application for a license under this  
2999 article shall be made to the \* \* \* department and shall contain  
3000 information that the \* \* \* department determines is necessary in  
3001 accordance with established rules.



3002           (2) Information received by the \* \* \* department through  
3003 reports, complaints, investigations and inspections shall be  
3004 classified as public in accordance with Title 25, Chapter 61,  
3005 Mississippi Code of 1972, Mississippi Public Records Act.

3006           **SECTION 22.** Section 43-15-113, Mississippi Code of 1972, is  
3007 amended as follows:

3008           43-15-113. (1) If a license is revoked, the \* \* \*  
3009 department may grant a new license after:

3010                   (a) Satisfactory evidence is submitted to the \* \* \*  
3011 department, evidencing that the conditions upon which revocation  
3012 was based have been corrected; and

3013                   (b) Inspection and compliance with all provisions of  
3014 this article and applicable rules.

3015           (2) The \* \* \* department may only suspend a license for a  
3016 period of time which does not exceed the current expiration date  
3017 of that license.

3018           (3) When a license has been suspended, the \* \* \* department  
3019 may completely or partially restore the suspended license upon a  
3020 determination that the:

3021                   (a) Conditions upon which the suspension was based have  
3022 been completely or partially corrected; and

3023                   (b) Interests of the public will not be jeopardized by  
3024 restoration of the license.

3025           **SECTION 23.** Section 43-15-115, Mississippi Code of 1972, is  
3026 amended as follows:



3027           43-15-115. (1) The \* \* \* department may, for the purpose of  
3028   ascertaining compliance with the provisions of this article and  
3029   its rules and regulations, enter and inspect on a routine basis  
3030   the facility of a licensee.

3031           (2) Before conducting an inspection under subsection (1),  
3032   the \* \* \* department shall, after identifying the person in  
3033   charge:

3034                   (a) Give proper identification;  
3035                   (b) Request to see the applicable license;  
3036                   (c) Describe the nature and purpose of the inspection;  
3037   and

3038                   (d) If necessary, explain the authority of the \* \* \*  
3039   department to conduct the inspection and the penalty for refusing  
3040   to permit the inspection.

3041           (3) In conducting an inspection under subsection (1),  
3042   the \* \* \* department may, after meeting the requirements of  
3043   subsection (2):

3044                   (a) Inspect the physical facilities;  
3045                   (b) Inspect records and documents;  
3046                   (c) Interview directors, employees, clients, family  
3047   members of clients and others; and

3048                   (d) Observe the licensee in operation.

3049           (4) An inspection conducted under subsection (1) shall be  
3050   during regular business hours and may be announced or unannounced.



(5) The licensee shall make copies of inspection reports available to the public upon request.

(6) The provisions of this section apply to on-site inspections and do not restrict the \* \* \* department from contacting family members, neighbors or other individuals, or from seeking information from other sources to determine compliance with the provisions of this article.

**SECTION 24.** Section 43-15-117, Mississippi Code of 1972, is amended as follows:

43-15-117. (1) Except as provided in this article, no person, agency, firm, corporation, association or group children's home may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the \* \* \* department. No out-of-state child-placing agency that provides a full range of services, including, but not limited to, adoptions, foster family homes, adoption counseling services or financial aid, may operate in this state without a valid license issued by the \* \* \* department. No child-placing agency shall advertise in the media markets in Mississippi seeking birth mothers or their children for adoption purposes unless the agency holds a valid and current license issued either by the \* \* \* department or the authorized governmental licensing agency of another state that regulates child-placing agencies. Any child-placing agency, physician or attorney who advertises for child placing or adoption services in Mississippi shall be



required by the \* \* \* department to show their principal office location on all media advertising for adoption services.

(2) An attorney who provides legal services to a client in connection with proceedings for the adoption of a child by the client, who does not receive, accept or provide custody or care for the child for the purposes specified in Section 43-15-103(c), shall not be required to have a license under this article to provide those legal services.

(3) An attorney, physician or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

(4) Nothing in this section precludes payment of reasonable fees for medical, legal or other lawful services rendered in connection with the care of a mother, delivery and care of a child including, but not limited to, the mother's living expenses, or counseling for the parents and/or the child, and for the legal proceedings related to lawful adoption proceedings; and no provision of this section abrogates the right of procedures for independent adoption as provided by law.

(5) The \* \* \* department is specifically authorized to promulgate rules under the Administrative Procedures Law, Title 25, Chapter 43, Mississippi Code of 1972, to regulate fees charged



3101 by licensed child-placing agencies, if it determines that the  
3102 practices of those licensed child-placing agencies demonstrates  
3103 that the fees charged are excessive or that any of the agency's  
3104 practices are deceptive or misleading; however, those rules  
3105 regarding fees shall take into account the use of any sliding fee  
3106 by an agency that uses a sliding fee procedure to permit  
3107 prospective adoptive parents of varying income levels to utilize  
3108 the services of those agencies or persons.

3109 (6) The \* \* \* department shall promulgate rules under the  
3110 Administrative Procedures Law, Title 25, Chapter 43, Mississippi  
3111 Code of 1972, to require that all licensed child-placing agencies  
3112 provide written disclosures to all prospective adoptive parents of  
3113 any fees or other charges for each service performed by the agency  
3114 or person, and file an annual report with the \* \* \* department  
3115 that states the fees and charges for those services, and to  
3116 require them to inform the \* \* \* department in writing thirty (30)  
3117 days in advance of any proposed changes to the fees or charges for  
3118 those services.

3119 (7) The \* \* \* department is specifically authorized to  
3120 disclose to prospective adoptive parents or other interested  
3121 persons any fees charged by any licensed child-placing agency,  
3122 attorney or counseling service or counselor for all legal and  
3123 counseling services provided by that licensed child-placing  
3124 agency, attorney or counseling service or counselor.



3125           **SECTION 25.** Section 43-15-119, Mississippi Code of 1972, is  
3126 amended as follows:

3127           43-15-119. (1) If the \* \* \* department finds that a  
3128 violation has occurred under this article or the rules and  
3129 regulations of the division, it may:

3130           (a) Deny, suspend or revoke a license or place the  
3131 licensee on probation, if the \* \* \* department discovers that a  
3132 licensee is not in compliance with the laws, standards or  
3133 regulations governing its operation, and/or it finds evidence of  
3134 aiding, abetting or permitting the commission of any illegal act;  
3135 or

3136           (b) Restrict or prohibit new admissions to the  
3137 licensee's program or facility, if the \* \* \* department discovers  
3138 that a licensee is not in compliance with the laws, standards or  
3139 regulations governing its operation, and/or it finds evidence of  
3140 aiding, abetting or permitting the commission of any illegal act.

3141           (2) If placed on probation, the agency or licensee shall  
3142 post a copy of the notice in a conspicuous place as directed by  
3143 the \* \* \* department and with the agency's or individual's  
3144 license, and the agency shall notify the custodians of each of the  
3145 children in its care in writing of the agency's status and the  
3146 basis for the probation.

3147           **SECTION 26.** Section 43-15-121, Mississippi Code of 1972, is  
3148 amended as follows:



3149           43-15-121. In addition to, and notwithstanding, any other  
3150 remedy provided by law, the \* \* \* department may, in a manner  
3151 provided by law and upon the advice of the Attorney General who,  
3152 except as otherwise authorized in Section 7-5-39, shall represent  
3153 the \* \* \* department in the proceedings, maintain an action in the  
3154 name of the state for injunction or other process against any  
3155 person or entity to restrain or prevent the establishment,  
3156 management or operation of a program or facility or performance of  
3157 services in violation of this article or rules of the \* \* \*  
3158 department.

3159           **SECTION 27.** Section 43-15-125, Mississippi Code of 1972, is  
3160 amended as follows:

3161           43-15-125. The Department of \* \* \* Child Protective Services  
3162 and/or its officers, employees, attorneys and representatives  
3163 shall not be held civilly liable for any findings, recommendations  
3164 or actions taken pursuant to this article.

3165           **SECTION 28.** Section 43-16-3, Mississippi Code of 1972, is  
3166 amended as follows:

3167           43-16-3. As used in this chapter, the following definitions  
3168 shall apply unless the context clearly provides otherwise:

3169                   (a) "Child" means a person who has not reached the age  
3170 of eighteen (18) years or who has not otherwise been legally  
3171 emancipated.

3172                   (b) "Child residential home" means any place, facility  
3173 or home operated by any person which receives children who are not





3174 related to the operators and whose parents or guardians are not  
3175 residents of the same facility for supervision, care, lodging and  
3176 maintenance for twenty-four (24) hours a day, with or without  
3177 transfer of custody. This term does not include:

3178 (i) Residential homes licensed by the Department  
3179 of \* \* \* Child Protection Services under Section 43-15-5;

3180 (ii) Any public school;

3181 (iii) Any home operated by a state agency;

3182 (iv) Child care facilities as defined in Section  
3183 43-20-5;

3184 (v) Youth camps as defined in Section 75-74-3;

3185 (vi) Health care facilities licensed by the State  
3186 Department of Health; or

3187 (vii) The home of an attorney-in-fact operating  
3188 under a power of attorney executed under Section 93-31-1 et seq.

3189 (c) "Department" shall mean the State Department of  
3190 Health.

3191 (d) "Person" shall include an individual, partnership,  
3192 organization, association or corporation.

3193 **SECTION 29.** Section 43-16-21, Mississippi Code of 1972, is  
3194 amended as follows:

3195 43-16-21. Notwithstanding the existence of any other remedy,  
3196 the department may, in the manner provided by law, in termtime or  
3197 in vacation, upon the advice of the Attorney General who, except  
3198 as otherwise authorized in Section 7-5-39, shall represent the



3199 department in the proceedings, maintain an action in the name of  
3200 the state for an injunction or restraining order to cease the  
3201 operation of the home, and to provide for the appropriate removal  
3202 of the children from the home and placement in the custody of the  
3203 parents or legal guardians, the Department of \* \* \* Child  
3204 Protection Services, or any other appropriate entity in the  
3205 discretion of the court. Such action shall be brought in the  
3206 chancery court or the youth court, as appropriate, of the county  
3207 in which such child residential home is located, and shall only be  
3208 initiated for the following violations:

3209 (a) Providing supervision, care, lodging or maintenance  
3210 for any children in such home without filing notification in  
3211 accordance with this chapter.

3212 (b) Failure to satisfactorily comply with local health  
3213 department or State Fire Marshal inspections made pursuant to  
3214 Section 43-16-15, regarding the health, nutrition, cleanliness,  
3215 safety, sanitation, written records and discipline policy of such  
3216 home.

3217 (c) Suspected abuse and/or neglect of the children  
3218 served by such home, as defined in Section 43-21-105.

3219 **SECTION 30.** Section 43-18-5, Mississippi Code of 1972, is amended  
3220 as follows:

3221 43-18-5. As used in paragraph (a) of Article V of the  
3222 Interstate Compact on the Placement of Children, the phrase  
3223 "appropriate authority in the receiving state" with reference to



this state shall mean the \* \* \* Department of Child Protection Services.

**SECTION 31.** Section 43-20-8, Mississippi Code of 1972, is amended as follows:

43-20-8. (1) The licensing agency shall have powers and duties as set forth below, in addition to other duties prescribed under this chapter:

(a) Promulgate rules and regulations concerning the licensing and regulation of child care facilities as defined in Section 43-20-5;

(b) Have the authority to issue, deny, suspend, revoke, restrict or otherwise take disciplinary action against licensees as provided for in this chapter;

(c) Set and collect fees and penalties as provided for in this chapter; any increase in the fees charged by the licensing agency under this paragraph shall be in accordance with the provisions of Section 41-3-65; and

(d) Have such other powers as may be required to carry out the provisions of this chapter.

(2) Child care facilities shall assure that parents have welcome access to the child care facility at all times and shall comply with the provisions of Chapter 520, Laws of 2006.

(3) Each child care facility shall develop and maintain a current list of contact persons for each child provided care by that facility. An agreement may be made between the child care



3249 facility and the child's parent, guardian or contact person at the  
3250 time of registration to inform the parent, guardian or contact  
3251 person if the child does not arrive at the facility within a  
3252 reasonable time.

3253 (4) Child care facilities shall require that, for any  
3254 current or prospective caregiver, all criminal records, background  
3255 and sex offender registry checks and current child abuse registry  
3256 checks are obtained. In order to determine the applicant's  
3257 suitability for employment, the applicant shall be fingerprinted.  
3258 If no disqualifying record is identified at the state level, the  
3259 fingerprints shall be forwarded by the Department of Public Safety  
3260 to the FBI for a national criminal history record check.

3261 (5) The licensing agency shall require to be performed a  
3262 criminal records background check and a child abuse registry check  
3263 for all operators of a child care facility and any person living  
3264 in a residence used for child care. The Department of \* \* \* Child  
3265 Protection Services shall have the authority to disclose to the  
3266 State Department of Health any potential applicant whose name is  
3267 listed on the Child Abuse Central Registry or has a pending  
3268 administrative review. That information shall remain confidential  
3269 by all parties. In order to determine the applicant's suitability  
3270 for employment, the applicant shall be fingerprinted. If no  
3271 disqualifying record is identified at the state level, the  
3272 fingerprints shall be forwarded by the Department of Public Safety  
3273 to the FBI for a national criminal history record check.



3274           (6) The licensing agency shall have the authority to exclude  
3275 a particular crime or crimes or a substantiated finding of child  
3276 abuse and/or neglect as disqualifying individuals or entities for  
3277 prospective or current employment or licensure.

3278           (7) The licensing agency and its agents, officers,  
3279 employees, attorneys and representatives shall not be held civilly  
3280 liable for any findings, recommendations or actions taken under  
3281 this section.

3282           (8) All fees incurred in compliance with this section shall  
3283 be borne by the child care facility. The licensing agency is  
3284 authorized to charge a fee that includes the amount required by  
3285 the Federal Bureau of Investigation for the national criminal  
3286 history record check in compliance with the Child Protection Act  
3287 of 1993, as amended, and any necessary costs incurred by the  
3288 licensing agency for the handling and administration of the  
3289 criminal history background checks.

3290           (9) From and after January 1, 2008, the State Board of  
3291 Health shall develop regulations to ensure that all children  
3292 enrolled or enrolling in a state licensed child care center  
3293 receive age-appropriate immunization against invasive pneumococcal  
3294 disease as recommended by the Advisory Committee on immunization  
3295 practices of the Centers for Disease Control and Prevention. The  
3296 State Board of Health shall include, within its regulations,  
3297 protocols for children under the age of twenty-four (24) months to  
3298 catch up on missed doses. If the State Board of Health has



3299 adopted regulations before January 1, 2008, that would otherwise  
3300 meet the requirements of this subsection, then this subsection  
3301 shall stand repealed on January 1, 2008.

3302       **SECTION 32.** Section 43-21-105, Mississippi Code of 1972, is  
3303 amended as follows:

3304       43-21-105. The following words and phrases, for purposes of  
3305 this chapter, shall have the meanings ascribed herein unless the  
3306 context clearly otherwise requires:

3307           (a) "Youth court" means the Youth Court Division.

3308           (b) "Judge" means the judge of the Youth Court  
3309 Division.

3310           (c) "Designee" means any person that the judge appoints  
3311 to perform a duty which this chapter requires to be done by the  
3312 judge or his designee. The judge may not appoint a person who is  
3313 involved in law enforcement or who is an employee of the  
3314 Mississippi Department of \* \* \* Child Protection Services to be  
3315 his designee.

3316           (d) "Child" and "youth" are synonymous, and each means  
3317 a person who has not reached his eighteenth birthday. A child who  
3318 has not reached his eighteenth birthday and is on active duty for  
3319 a branch of the armed services or is married is not considered a  
3320 "child" or "youth" for the purposes of this chapter.

3321           (e) "Parent" means the father or mother to whom the  
3322 child has been born, or the father or mother by whom the child has  
3323 been legally adopted.



3324           (f) "Guardian" means a court-appointed guardian of the  
3325 person of a child.

3326           (g) "Custodian" means any person having the present  
3327 care or custody of a child whether such person be a parent or  
3328 otherwise.

3329           (h) "Legal custodian" means a court-appointed custodian  
3330 of the child.

3331           (i) "Delinquent child" means a child who has reached  
3332 his tenth birthday and who has committed a delinquent act.

3333           (j) "Delinquent act" is any act, which if committed by  
3334 an adult, is designated as a crime under state or federal law, or  
3335 municipal or county ordinance other than offenses punishable by  
3336 life imprisonment or death. A delinquent act includes escape from  
3337 lawful detention and violations of the Uniform Controlled  
3338 Substances Law and violent behavior.

3339           (k) "Child in need of supervision" means a child who  
3340 has reached his seventh birthday and is in need of treatment or  
3341 rehabilitation because the child:

3342                   (i) Is habitually disobedient of reasonable and  
3343 lawful commands of his parent, guardian or custodian and is  
3344 ungovernable; or

3345                   (ii) While being required to attend school,  
3346 willfully and habitually violates the rules thereof or willfully  
3347 and habitually absents himself therefrom; or

3348                   (iii) Runs away from home without good cause; or



3349 (iv) Has committed a delinquent act or acts.

3350 (1) "Neglected child" means a child:

3351 (i) Whose parent, guardian or custodian or any  
3352 person responsible for his care or support, neglects or refuses,  
3353 when able so to do, to provide for him proper and necessary care  
3354 or support, or education as required by law, or medical, surgical,  
3355 or other care necessary for his well-being; however, a parent who  
3356 withholds medical treatment from any child who in good faith is  
3357 under treatment by spiritual means alone through prayer in  
3358 accordance with the tenets and practices of a recognized church or  
3359 religious denomination by a duly accredited practitioner thereof  
3360 shall not, for that reason alone, be considered to be neglectful  
3361 under any provision of this chapter; or

3362 (ii) Who is otherwise without proper care,  
3363 custody, supervision or support; or

3364 (iii) Who, for any reason, lacks the special care  
3365 made necessary for him by reason of his mental condition, whether  
3366 the mental condition is having mental illness or having an  
3367 intellectual disability; or

3368 (iv) Who, for any reason, lacks the care necessary  
3369 for his health, morals or well-being.

3370 (m) "Abused child" means a child whose parent, guardian  
3371 or custodian or any person responsible for his care or support,  
3372 whether legally obligated to do so or not, has caused or allowed  
3373 to be caused, upon the child, sexual abuse, sexual exploitation,





3374 emotional abuse, mental injury, nonaccidental physical injury or  
3375 other maltreatment. However, physical discipline, including  
3376 spanking, performed on a child by a parent, guardian or custodian  
3377 in a reasonable manner shall not be deemed abuse under this  
3378 section. "Abused child" also means a child who is or has been  
3379 trafficked within the meaning of the Mississippi Human Trafficking  
3380 Act by any person, without regard to the relationship of the  
3381 person to the child.

3382           (n) "Sexual abuse" means obscene or pornographic  
3383 photographing, filming or depiction of children for commercial  
3384 purposes, or the rape, molestation, incest, prostitution or other  
3385 such forms of sexual exploitation of children under circumstances  
3386 which indicate that the child's health or welfare is harmed or  
3387 threatened.

3388           (o) "A child in need of special care" means a child  
3389 with any mental or physical illness that cannot be treated with  
3390 the dispositional alternatives ordinarily available to the youth  
3391 court.

3392           (p) A "dependent child" means any child who is not a  
3393 child in need of supervision, a delinquent child, an abused child  
3394 or a neglected child, and which child has been voluntarily placed  
3395 in the custody of the Department of \* \* \* Child Protection  
3396 Services by his parent, guardian or custodian.

3397           (q) "Custody" means the physical possession of the  
3398 child by any person.



3399           (r) "Legal custody" means the legal status created by a  
3400 court order which gives the legal custodian the responsibilities  
3401 of physical possession of the child and the duty to provide him  
3402 with food, shelter, education and reasonable medical care, all  
3403 subject to residual rights and responsibilities of the parent or  
3404 guardian of the person.

3405           (s) "Detention" means the care of children in  
3406 physically restrictive facilities.

3407           (t) "Shelter" means care of children in physically  
3408 nonrestrictive facilities.

3409           (u) "Records involving children" means any of the  
3410 following from which the child can be identified:

3411               (i) All youth court records as defined in Section  
3412 43-21-251;

3413               (ii) All social records as defined in Section  
3414 43-21-253;

3415               (iii) All law enforcement records as defined in  
3416 Section 43-21-255;

3417               (iv) All agency records as defined in Section  
3418 43-21-257; and

3419               (v) All other documents maintained by any  
3420 representative of the state, county, municipality or other public  
3421 agency insofar as they relate to the apprehension, custody,  
3422 adjudication or disposition of a child who is the subject of a  
3423 youth court cause.



3424           (v) "Any person responsible for care or support" means  
3425 the person who is providing for the child at a given time. This  
3426 term shall include, but is not limited to, stepparents, foster  
3427 parents, relatives, nonlicensed babysitters or other similar  
3428 persons responsible for a child and staff of residential care  
3429 facilities and group homes that are licensed by the Department  
3430 of \* \* \* Child Protection Services.

3431           (w) The singular includes the plural, the plural the  
3432 singular and the masculine the feminine when consistent with the  
3433 intent of this chapter.

3434           (x) "Out-of-home" setting means the temporary  
3435 supervision or care of children by the staff of licensed day care  
3436 centers, the staff of public, private and state schools, the staff  
3437 of juvenile detention facilities, the staff of unlicensed  
3438 residential care facilities and group homes and the staff of, or  
3439 individuals representing, churches, civic or social organizations.

3440           (y) "Durable legal custody" means the legal status  
3441 created by a court order which gives the durable legal custodian  
3442 the responsibilities of physical possession of the child and the  
3443 duty to provide him with care, nurture, welfare, food, shelter,  
3444 education and reasonable medical care. All these duties as  
3445 enumerated are subject to the residual rights and responsibilities  
3446 of the natural parent(s) or guardian(s) of the child or children.



3447           (z) "Status offense" means conduct subject to  
3448 adjudication by the youth court that would not be a crime if  
3449 committed by an adult.

3450           (aa) "Financially able" means a parent or child who is  
3451 ineligible for a court-appointed attorney.

3452           (bb) "Assessment" means an individualized examination  
3453 of a child to determine the child's psychosocial needs and  
3454 problems, including the type and extent of any mental health,  
3455 substance abuse or co-occurring mental health and substance abuse  
3456 disorders and recommendations for treatment. The term includes,  
3457 but is not limited to, a drug and alcohol, psychological or  
3458 psychiatric evaluation, records review, clinical interview or the  
3459 administration of a formal test and instrument.

3460           (cc) "Screening" means a process, with or without the  
3461 administration of a formal instrument, that is designed to  
3462 identify a child who is at increased risk of having mental health,  
3463 substance abuse or co-occurring mental health and substance abuse  
3464 disorders that warrant immediate attention, intervention or more  
3465 comprehensive assessment.

3466           **SECTION 33.** Section 43-21-257, Mississippi Code of 1972, is  
3467 amended as follows:

3468           43-21-257. (1) Unless otherwise provided in this section,  
3469 any record involving children, including valid and invalid  
3470 complaints, and the contents thereof maintained by the Department  
3471 of Human Services, The Department of Child Protection Services, or



any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) The Office of Youth Services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding those cases as may be requested and is obtainable from the records of the youth court. The Office of Youth Services shall annually publish a statistical record of the number and disposition of all cases, but the names or identity of any children shall not be disclosed in the reports or records. The Office of Youth Services shall adopt such rules as may be necessary to carry out this subsection. The central registry files and the contents thereof shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry shall be subject to the penalty in Section 43-21-267. The youth court shall furnish, upon forms provided by the Office of Youth Services, the necessary information, and these completed forms shall be forwarded to the Office of Youth Services.

(3) The Department of \* \* \* Child Protection Services shall maintain a state central registry on neglect and abuse cases containing (a) the name, address and age of each child, (b) the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported.



3497 "Substantiated perpetrator" shall be defined as an individual who  
3498 has committed an act(s) of sexual abuse or physical abuse that  
3499 would otherwise be deemed as a felony or any child neglect that  
3500 would be deemed as a threat to life, as determined upon  
3501 investigation by the \* \* \* Department of Child Protection  
3502 Services. "Substantiation" for the purposes of the Mississippi  
3503 Department of \* \* \* Child Protection Services Central Registry  
3504 shall require a criminal conviction or an adjudication by a youth  
3505 court judge or court of competent jurisdiction, ordering that the  
3506 name of the perpetrator be listed on the central registry, pending  
3507 due process. The Department of \* \* \* Child Protection Services  
3508 shall adopt such rules and administrative procedures, especially  
3509 those procedures to afford due process to individuals who have  
3510 been named as substantiated perpetrators before the release of  
3511 their name from the central registry, as may be necessary to carry  
3512 out this subsection. The central registry shall be confidential  
3513 and shall not be open to public inspection. Any person who  
3514 discloses or encourages the disclosure of any record involving  
3515 children from the central registry without following the rules and  
3516 administrative procedures of the department shall be subject to  
3517 the penalty in Section 43-21-267. The Department of \* \* \* Child  
3518 Protection Services and its employees are exempt from any civil  
3519 liability as a result of any action taken pursuant to the  
3520 compilation and/or release of information on the central registry  
3521 under this section and any other applicable section of the code,



3522 unless determined that an employee has willfully and maliciously  
3523 violated the rules and administrative procedures of the  
3524 department, pertaining to the central registry or any section of  
3525 this code. If an employee is determined to have willfully and  
3526 maliciously performed such a violation, said employee shall not be  
3527 exempt from civil liability in this regard.

3528       (4) The Mississippi State Department of Health may release  
3529 the findings of investigations into allegations of abuse within  
3530 licensed day care centers made under the provisions of Section  
3531 43-21-353(8) to any parent of a child who is enrolled in the day  
3532 care center at the time of the alleged abuse or at the time the  
3533 request for information is made. The findings of any such  
3534 investigation may also be released to parents who are considering  
3535 placing children in the day care center. No information  
3536 concerning those investigations may contain the names or  
3537 identifying information of individual children.

3538       The Department of Health shall not be held civilly liable for  
3539 the release of information on any findings, recommendations or  
3540 actions taken pursuant to investigations of abuse that have been  
3541 conducted under Section 43-21-353(8).

3542       **SECTION 34.** Section 43-21-261, Mississippi Code of 1972, is  
3543 amended as follows:

3544       43-21-261. (1) Except as otherwise provided in this  
3545 section, records involving children shall not be disclosed, other  
3546 than to necessary staff of the youth court, except pursuant to an



3547 order of the youth court specifying the person or persons to whom  
3548 the records may be disclosed, the extent of the records which may  
3549 be disclosed and the purpose of the disclosure. Such court orders  
3550 for disclosure shall be limited to those instances in which the  
3551 youth court concludes, in its discretion, that disclosure is  
3552 required for the best interests of the child, the public safety or  
3553 the functioning of the youth court and then only to the following  
3554 persons:

3555           (a) The judge of another youth court or member of  
3556 another youth court staff;

3557           (b) The court of the parties in a child custody or  
3558 adoption cause in another court;

3559           (c) A judge of any other court or members of another  
3560 court staff;

3561           (d) Representatives of a public or private agency  
3562 providing supervision or having custody of the child under order  
3563 of the youth court;

3564           (e) Any person engaged in a bona fide research purpose,  
3565 provided that no information identifying the subject of the  
3566 records shall be made available to the researcher unless it is  
3567 absolutely essential to the research purpose and the judge gives  
3568 prior written approval, and the child, through his or her  
3569 representative, gives permission to release the information;

3570           (f) The Mississippi Department of Employment Security,  
3571 or its duly authorized representatives, for the purpose of a





child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;

(g) To any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding.

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney



3597 for such parent, guardian or custodian, shall have the right to  
3598 inspect any record, report or investigation which is to be  
3599 considered by the youth court at a hearing, except that the  
3600 identity of the reporter shall not be released, nor the name of  
3601 any other person where the person or agency making the information  
3602 available finds that disclosure of the information would be likely  
3603 to endanger the life or safety of such person.

3604 (4) Upon request, the child who is the subject of a youth  
3605 court cause shall have the right to have his counsel inspect and  
3606 copy any record, report or investigation which is filed with the  
3607 youth court or which is to be considered by the youth court at a  
3608 hearing.

3609 (5) (a) The youth court prosecutor or prosecutors, the  
3610 county attorney, the district attorney, the youth court defender  
3611 or defenders, or any attorney representing a child shall have the  
3612 right to inspect and copy any law enforcement record involving  
3613 children.

3614 (b) The Department of \* \* \* Child Protection Services  
3615 shall disclose to a county prosecuting attorney or district  
3616 attorney any and all records resulting from an investigation into  
3617 suspected child abuse or neglect when the case has been referred  
3618 by the Department of \* \* \* Child Protection Services to the county  
3619 prosecuting attorney or district attorney for criminal  
3620 prosecution.



(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of \* \* \* Child Protection Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an



adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.

(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.



3671           (13) The youth court shall notify the Department of Public  
3672 Safety of the name, and any other identifying information such  
3673 department may require, of any child who is adjudicated delinquent  
3674 as a result of a violation of the Uniform Controlled Substances  
3675 Law.

3676           (14) The Administrative Office of Courts shall have the  
3677 right to inspect any youth court records in order that the number  
3678 of youthful offenders, abused, neglected, truant and dependent  
3679 children, as well as children in need of special care and children  
3680 in need of supervision, may be tracked with specificity through  
3681 the youth court and adult justice system, and to utilize tracking  
3682 forms for such purpose.

3683           (15) Upon a request by a youth court, the Administrative  
3684 Office of Courts shall disclose all information at its disposal  
3685 concerning any previous youth court intakes alleging that a child  
3686 was a delinquent child, child in need of supervision, child in  
3687 need of special care, truant child, abused child or neglected  
3688 child, as well as any previous youth court adjudications for the  
3689 same and all dispositional information concerning a child who at  
3690 the time of such request comes under the jurisdiction of the youth  
3691 court making such request.

3692           (16) The Administrative Office of Courts may, in its  
3693 discretion, disclose to the Department of Public Safety any or all  
3694 of the information involving children contained in the office's



3695 youth court data management system known as Mississippi Youth  
3696 Court Information Delivery System or "MYCIDS."

3697       (17) The youth courts of the state shall disclose to the  
3698 Joint Legislative Committee on Performance Evaluation and  
3699 Expenditure Review (PEER) any youth court records in order that  
3700 the number of youthful offenders, abused, neglected, truant and  
3701 dependent children, as well as children in need of special care  
3702 and children in need of supervision, may be tracked with  
3703 specificity through the youth court and adult justice system, and  
3704 to utilize tracking forms for such purpose. The disclosure  
3705 prescribed in this subsection shall not require a court order and  
3706 shall be made in sortable, electronic format where possible. The  
3707 PEER Committee may seek the assistance of the Administrative  
3708 Office of Courts in seeking this information. The PEER Committee  
3709 shall not disclose the identities of any youth who have been  
3710 adjudicated in the youth courts of the state and shall only use  
3711 the disclosed information for the purpose of monitoring the  
3712 effectiveness and efficiency of programs established to assist  
3713 adjudicated youth, and to ascertain the incidence of adjudicated  
3714 youth who become adult offenders.

3715       (18) In every case where an abuse or neglect allegation has  
3716 been made, the confidentiality provisions of this section shall  
3717 not apply to prohibit access to a child's records by any state  
3718 regulatory agency, any state or local prosecutorial agency or law  
3719 enforcement agency; however, no identifying information concerning



3720 the child in question may be released to the public by such agency  
3721 except as otherwise provided herein.

3722 (19) In every case where there is any indication or  
3723 suggestion of either abuse or neglect and a child's physical  
3724 condition is medically labeled as medically "serious" or  
3725 "critical" or a child dies, the confidentiality provisions of this  
3726 section shall not apply. In cases of child deaths, the following  
3727 information may be released by the Mississippi Department of Human  
3728 Services and the Department of Child Protection Services: (a)  
3729 child's name; (b) address or location; (c) verification from the  
3730 Department of Human Services or the Department of Child Protection  
3731 Services of case status (no case or involvement, case exists, open  
3732 or active case, case closed); (d) if a case exists, the type of  
3733 report or case (physical abuse, neglect, etc.), date of intake(s)  
3734 and investigation(s), and case disposition (substantiated or  
3735 unsubstantiated). Notwithstanding the aforesaid, the  
3736 confidentiality provisions of this section shall continue if there  
3737 is a pending or planned investigation by any local, state or  
3738 federal governmental agency or institution.

3739 (20) Any member of a foster care review board designated by  
3740 the Department of \* \* \* Child Protection Services shall have the  
3741 right to inspect youth court records relating to the abuse,  
3742 neglect or child in need of supervision cases assigned to such  
3743 member for review.



3744 (21) Information concerning an investigation into a report  
3745 of child abuse or child neglect may be disclosed without further  
3746 order of the youth court in any administrative or due process  
3747 hearing held, pursuant to Section 43-21-257, by the Department  
3748 of \* \* \* Child Protection Services for individuals whose names  
3749 will be placed on the central registry as substantiated  
3750 perpetrators.

3751 **SECTION 35.** Section 43-21-301, Mississippi Code of 1972, is  
3752 amended as follows:

3753 43-21-301. (1) No court other than the youth court shall  
3754 issue an arrest warrant or custody order for a child in a matter  
3755 in which the youth court has exclusive original jurisdiction but  
3756 shall refer the matter to the youth court.

3757 (2) Except as otherwise provided, no child in a matter in  
3758 which the youth court has exclusive original jurisdiction shall be  
3759 taken into custody by a law enforcement officer, the Department of  
3760 Human Services, the Department of Child Protection Services, or  
3761 any other person unless the judge or his designee has issued a  
3762 custody order to take the child into custody.

3763 (3) The judge or his designee may require a law enforcement  
3764 officer, the Department of Human Services, the Department of Child  
3765 Protection Services, or any suitable person to take a child into  
3766 custody for a period not longer than forty-eight (48) hours,  
3767 excluding Saturdays, Sundays, and statutory state holidays.





3768 (a) Custody orders under this subsection may be issued  
3769 if it appears that there is probable cause to believe that:

3770 (i) The child is within the jurisdiction of the  
3771 court;

3772 (ii) Custody is necessary because of any of the  
3773 following reasons: the child is endangered, any person would be  
3774 endangered by the child, to ensure the child's attendance in court  
3775 at such time as required, or a parent, guardian or custodian is  
3776 not available to provide for the care and supervision of the  
3777 child; and

3778 (iii) There is no reasonable alternative to  
3779 custody.

3780 (b) Custody orders under this subsection shall be  
3781 written. In emergency cases, a judge or his designee may issue an  
3782 oral custody order, but the order shall be reduced to writing  
3783 within forty-eight (48) hours of its issuance.

3784 (c) Each youth court judge shall develop and make  
3785 available to law enforcement a list of designees who are available  
3786 after hours, on weekends and on holidays.

3787 (4) The judge or his designee may order, orally or in  
3788 writing, the immediate release of any child in the custody of any  
3789 person or agency. Except as otherwise provided in subsection (3)  
3790 of this section, custody orders as provided by this chapter and  
3791 authorizations of temporary custody may be written or oral, but,



3792 if oral, reduced to writing as soon as practicable. The written  
3793 order shall:

3794 (a) Specify the name and address of the child, or, if  
3795 unknown, designate him or her by any name or description by which  
3796 he or she can be identified with reasonable certainty;

3797 (b) Specify the age of the child, or, if unknown, that  
3798 he or she is believed to be of an age subject to the jurisdiction  
3799 of the youth court;

3800 (c) Except in cases where the child is alleged to be a  
3801 delinquent child or a child in need of supervision, state that the  
3802 effect of the continuation of the child's residing within his or  
3803 her own home would be contrary to the welfare of the child, that  
3804 the placement of the child in foster care is in the best interests  
3805 of the child, and unless the reasonable efforts requirement is  
3806 bypassed under Section 43-21-603(7)(c), also state that (i)  
3807 reasonable efforts have been made to maintain the child within his  
3808 or her own home, but that the circumstances warrant his removal  
3809 and there is no reasonable alternative to custody; or (ii) the  
3810 circumstances are of such an emergency nature that no reasonable  
3811 efforts have been made to maintain the child within his own home,  
3812 and that there is no reasonable alternative to custody. If the  
3813 court makes a finding in accordance with (ii) of this paragraph,  
3814 the court shall order that reasonable efforts be made towards the  
3815 reunification of the child with his or her family;



3816           (d) State that the child shall be brought immediately  
3817 before the youth court or be taken to a place designated by the  
3818 order to be held pending review of the order;

3819           (e) State the date issued and the youth court by which  
3820 the order is issued; and

3821           (f) Be signed by the judge or his designee with the  
3822 title of his office.

3823           (5) The taking of a child into custody shall not be  
3824 considered an arrest except for evidentiary purposes.

3825           (6) (a) No child who has been accused or adjudicated of any  
3826 offense that would not be a crime if committed by an adult shall  
3827 be placed in an adult jail or lockup. An accused status offender  
3828 shall not be held in secure detention longer than twenty-four (24)  
3829 hours prior to and twenty-four (24) hours after an initial court  
3830 appearance, excluding Saturdays, Sundays and statutory state  
3831 holidays, except under the following circumstances: a status  
3832 offender may be held in secure detention for violating a valid  
3833 court order pursuant to the criteria as established by the federal  
3834 Juvenile Justice and Delinquency Prevention Act of 2002, and any  
3835 subsequent amendments thereto, and out-of-state runaways may be  
3836 detained pending return to their home state.

3837           (b) No accused or adjudicated juvenile offender, except  
3838 for an accused or adjudicated juvenile offender in cases where  
3839 jurisdiction is waived to the adult criminal court, shall be



detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.

(c) If any county violates the provisions of paragraph (a) or (b) of this subsection, the state agency authorized to allocate federal funds received pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in scattered Sections of 5, 18, 42 USCS), shall withhold the county's share of such funds.

(d) Any county that does not have a facility in which to detain its juvenile offenders in compliance with the provisions of paragraphs (a) and (b) of this subsection may enter into a contractual agreement to detain or place into custody the juvenile offenders of that county with any county or municipality that does have such a facility, or with the State of Mississippi, or with any private entity that maintains a juvenile correctional facility.

(e) Notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of this subsection, all counties shall be allowed a one-year grace period from March 27, 1993, to comply with the provisions of this subsection.

**SECTION 36.** Section 43-21-303, Mississippi Code of 1972, is amended as follows:

43-21-303. (1) No child in a matter in which the youth court has original exclusive jurisdiction shall be taken in custody by any person without a custody order except that:



3865                   (a) A law enforcement officer may take a child in  
3866 custody if:

3867                   (i) Grounds exist for the arrest of an adult in  
3868 identical circumstances; and

3869                   (ii) Such law enforcement officer has probable  
3870 cause to believe that custody is necessary as defined in  
3871 Section \* \* \* paragraph (d) of this subsection (1); and

3872                   (iii) Such law enforcement officer can find no  
3873 reasonable alternative to custody; or

3874                   (b) A law enforcement officer or an agent of the  
3875 department of public welfare may take a child into custody if:

3876                   (i) There is probable cause to believe that the  
3877 child is in immediate danger of personal harm; and

3878                   (ii) Such law enforcement officer or agent has  
3879 probable cause to believe that immediate custody is necessary as  
3880 defined \* \* \* in paragraph (d) of this subsection (1); and

3881                   (iii) Such law enforcement officer or agent can  
3882 find no reasonable alternative to custody \* \* \* ; and

3883                   (c) Any other person may take a child in custody if  
3884 grounds exist for the arrest of an adult in identical  
3885 circumstances. Such other person shall immediately surrender  
3886 custody of the child to the proper law enforcement officer who  
3887 shall thereupon continue custody only as provided in subsection  
3888 (1) (a) of this section.

3889                   (d) Custody shall be deemed necessary:



(i) When a child is endangered or any person would be endangered by the child;

(ii) To insure the child's attendance in court at such time as required; or

(iii) When a parent, guardian or custodian is not available to provide for the care and supervision of the child.

(2) When it is necessary to take a child into custody, the least restrictive custody should be selected.

(3) Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian and invite the parent, guardian or custodian to be present during any questioning.

(4) A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours, and shall be released to his parent, guardian or custodian unless the judge or his designee authorizes temporary custody.

**SECTION 37.** Section 43-21-351, Mississippi Code of 1972, is amended as follows:

43-21-351. (1) Any person or agency having knowledge that a child residing or being within the county is within the jurisdiction of the youth court may make a written report to the intake unit alleging facts sufficient to establish the



3915 jurisdiction of the youth court. The report shall bear a  
3916 permanent number that will be assigned by the court in accordance  
3917 with the standards established by the Administrative Office of  
3918 Courts pursuant to Section 9-21-9(d), and shall be preserved until  
3919 destroyed on order of the court.

3920 (2) There shall be in each youth court of the state an  
3921 intake officer who shall be responsible for the accurate and  
3922 timely entering of all intake and case information into the  
3923 Mississippi Youth Court Information Delivery System (MYCIDS) for  
3924 the Division of Youth Services, truancy matters and the \* \* \*  
3925 Department of Child Protection Services. It shall be the  
3926 responsibility of the youth court judge or referee of each county  
3927 to ensure that the intake officer is carrying out the  
3928 responsibility of this section.

3929 **SECTION 38.** Section 43-21-353, Mississippi Code of 1972, is  
3930 amended as follows:

3931 43-21-353. (1) Any attorney, physician, dentist, intern,  
3932 resident, nurse, psychologist, social worker, family protection  
3933 worker, family protection specialist, child caregiver, minister,  
3934 law enforcement officer, public or private school employee or any  
3935 other person having reasonable cause to suspect that a child is a  
3936 neglected child or an abused child, shall cause an oral report to  
3937 be made immediately by telephone or otherwise and followed as soon  
3938 thereafter as possible by a report in writing to the Department  
3939 of \* \* \* Child Protection Services, and immediately a referral



3940 shall be made by the Department of \* \* \* Child Protection Services  
3941 to the youth court intake unit, which unit shall promptly comply  
3942 with Section 43-21-357. In the course of an investigation, at the  
3943 initial time of contact with the individual(s) about whom a report  
3944 has been made under this Youth Court Act or with the individual(s)  
3945 responsible for the health or welfare of a child about whom a  
3946 report has been made under this chapter, the Department of \* \* \*  
3947 Child Protection Services shall inform the individual of the  
3948 specific complaints or allegations made against the individual.  
3949 Consistent with subsection (4), the identity of the person who  
3950 reported his or her suspicion shall not be disclosed. Where  
3951 appropriate, the Department of \* \* \* Child Protection Services  
3952 shall additionally make a referral to the youth court prosecutor.

3953       Upon receiving a report that a child has been sexually  
3954 abused, or burned, tortured, mutilated or otherwise physically  
3955 abused in such a manner as to cause serious bodily harm, or upon  
3956 receiving any report of abuse that would be a felony under state  
3957 or federal law, the Department of \* \* \* Child Protection Services  
3958 shall immediately notify the law enforcement agency in whose  
3959 jurisdiction the abuse occurred and shall notify the appropriate  
3960 prosecutor within forty-eight (48) hours, and the Department  
3961 of \* \* \* Child Protection Services shall have the duty to provide  
3962 the law enforcement agency all the names and facts known at the  
3963 time of the report; this duty shall be of a continuing nature.  
3964 The law enforcement agency and the Department of \* \* \* Child





3965 Protection Services shall investigate the reported abuse  
3966 immediately and shall file a preliminary report with the  
3967 appropriate prosecutor's office within twenty-four (24) hours and  
3968 shall make additional reports as new or additional information or  
3969 evidence becomes available. The Department of \* \* \* Child  
3970 Protection Services shall advise the clerk of the youth court and  
3971 the youth court prosecutor of all cases of abuse reported to the  
3972 department within seventy-two (72) hours and shall update such  
3973 report as information becomes available.

3974 (2) Any report to the Department of \* \* \* Child Protection  
3975 Services shall contain the names and addresses of the child and  
3976 his parents or other persons responsible for his care, if known,  
3977 the child's age, the nature and extent of the child's injuries,  
3978 including any evidence of previous injuries \* \* \*, any other  
3979 information that might be helpful in establishing the cause of the  
3980 injury, and the identity of the perpetrator.

3981 (3) The Department of \* \* \* Child Protection Services shall  
3982 maintain a statewide incoming wide-area telephone service or  
3983 similar service for the purpose of receiving reports of suspected  
3984 cases of child abuse; provided that any attorney, physician,  
3985 dentist, intern, resident, nurse, psychologist, social worker,  
3986 family protection worker, family protection specialist, child  
3987 caregiver, minister, law enforcement officer or public or private  
3988 school employee who is required to report under subsection (1) of



3989 this section shall report in the manner required in subsection  
3990 (1).

3991 (4) Reports of abuse and neglect made under this chapter and  
3992 the identity of the reporter are confidential except when the  
3993 court in which the investigation report is filed, in its  
3994 discretion, determines the testimony of the person reporting to be  
3995 material to a judicial proceeding or when the identity of the  
3996 reporter is released to law enforcement agencies and the  
3997 appropriate prosecutor pursuant to subsection (1). Reports made  
3998 under this section to any law enforcement agency or prosecutorial  
3999 officer are for the purpose of criminal investigation and  
4000 prosecution only and no information from these reports may be  
4001 released to the public except as provided by Section 43-21-261.  
4002 Disclosure of any information by the prosecutor shall be according  
4003 to the Mississippi Uniform Rules of Circuit and County Court  
4004 Procedure. The identity of the reporting party shall not be  
4005 disclosed to anyone other than law enforcement officers or  
4006 prosecutors without an order from the appropriate youth court.  
4007 Any person disclosing any reports made under this section in a  
4008 manner not expressly provided for in this section or Section  
4009 43-21-261 shall be guilty of a misdemeanor and subject to the  
4010 penalties prescribed by Section 43-21-267.

4011 (5) All final dispositions of law enforcement investigations  
4012 described in subsection (1) of this section shall be determined  
4013 only by the appropriate prosecutor or court. All final



4014 dispositions of investigations by the Department of \* \* \* Child  
4015 Protection Services as described in subsection (1) of this section  
4016 shall be determined only by the youth court. Reports made under  
4017 subsection (1) of this section by the Department of \* \* \* Child  
4018 Protection Services to the law enforcement agency and to the  
4019 district attorney's office shall include the following, if known  
4020 to the department:

4021 (a) The name and address of the child;  
4022 (b) The names and addresses of the parents;  
4023 (c) The name and address of the suspected perpetrator;  
4024 (d) The names and addresses of all witnesses, including  
4025 the reporting party if a material witness to the abuse;  
4026 (e) A brief statement of the facts indicating that the  
4027 child has been abused and any other information from the agency  
4028 files or known to the family protection worker or family  
4029 protection specialist making the investigation, including medical  
4030 records or other records, which may assist law enforcement or the  
4031 district attorney in investigating and/or prosecuting the case;  
4032 and

4033 (f) What, if any, action is being taken by the  
4034 Department of \* \* \* Child Protection Services.

4035 (6) In any investigation of a report made under this chapter  
4036 of the abuse or neglect of a child as defined in Section  
4037 43-21-105(m), the Department of \* \* \* Child Protection Services  
4038 may request the appropriate law enforcement officer with



4039 jurisdiction to accompany the department in its investigation, and  
4040 in such cases the law enforcement officer shall comply with such  
4041 request.

4042 (7) Anyone who willfully violates any provision of this  
4043 section shall be, upon being found guilty, punished by a fine not  
4044 to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in  
4045 jail not to exceed one (1) year, or both.

4046 (8) If a report is made directly to the Department of \* \* \*  
4047 Child Protection Services that a child has been abused or  
4048 neglected in an out-of-home setting, a referral shall be made  
4049 immediately to the law enforcement agency in whose jurisdiction  
4050 the abuse occurred and the department shall notify the district  
4051 attorney's office within forty-eight (48) hours of such report.  
4052 The Department of \* \* \* Child Protection Services shall  
4053 investigate the out-of-home setting report of abuse or neglect to  
4054 determine whether the child who is the subject of the report, or  
4055 other children in the same environment, comes within the  
4056 jurisdiction of the youth court and shall report to the youth  
4057 court the department's findings and recommendation as to whether  
4058 the child who is the subject of the report or other children in  
4059 the same environment require the protection of the youth court.  
4060 The law enforcement agency shall investigate the reported abuse  
4061 immediately and shall file a preliminary report with the district  
4062 attorney's office within forty-eight (48) hours and shall make  
4063 additional reports as new information or evidence becomes



4064 available. If the out-of-home setting is a licensed facility, an  
4065 additional referral shall be made by the Department of \* \* \* Child  
4066 Protection Services to the licensing agency. The licensing agency  
4067 shall investigate the report and shall provide the Department  
4068 of \* \* \* Child Protection Services, the law enforcement agency and  
4069 the district attorney's office with their written findings from  
4070 such investigation as well as that licensing agency's  
4071 recommendations and actions taken.

4072 (9) If a child protective investigation does not result in  
4073 an out-of-home placement, a child protective investigator must  
4074 provide information to the parent or guardians about community  
4075 service programs that provide respite care, voluntary guardianship  
4076 or other support services for families in crisis.

4077 **SECTION 39.** Section 43-21-354, Mississippi Code of 1972, is  
4078 amended as follows:

4079 43-21-354. The statewide incoming wide area telephone  
4080 service established pursuant to Section 43-21-353, Mississippi  
4081 Code of 1972, shall be maintained by the \* \* \* Department of Child  
4082 Protection Services, or its successor, on a twenty-four-hour seven  
4083 (7) days a week basis.

4084 **SECTION 40.** Section 43-21-357, Mississippi Code of 1972, is  
4085 amended as follows:

4086 43-21-357. (1) After receiving a report, the youth court  
4087 intake unit shall promptly make a preliminary inquiry to determine  
4088 whether the interest of the child, other children in the same



4089 environment or the public requires the youth court to take further  
4090 action. As part of the preliminary inquiry, the youth court  
4091 intake unit may request or the youth court may order the  
4092 Department of Human Services, the Department of Youth Services,  
4093 the Department of Child Protection Services, any successor agency  
4094 or any other qualified public employee to make an investigation or  
4095 report concerning the child and any other children in the same  
4096 environment, and present the findings thereof to the youth court  
4097 intake unit. If the youth court intake unit receives a neglect or  
4098 abuse report, the youth court intake unit shall immediately  
4099 forward the complaint to the Department of \* \* \* Child Protection  
4100 Services to promptly make an investigation or report concerning  
4101 the child and any other children in the same environment and  
4102 promptly present the findings thereof to the youth court intake  
4103 unit. If it appears from the preliminary inquiry that the child  
4104 or other children in the same environment are within the  
4105 jurisdiction of the court, the youth court intake unit shall  
4106 recommend to the youth court:

- 4107           (a) That the youth court take no action;
- 4108           (b) That an informal adjustment be made;
- 4109           (c) The \* \* \* Department of Child Protection Services,  
4110 monitor the child, family and other children in the same  
4111 environment;
- 4112           (d) That the child is warned or counseled informally;



4113                   (e) That the child be referred to the youth court drug  
4114 court; or  
4115                   (f) That a petition be filed.  
4116           (2) The youth court shall then, without a hearing:  
4117                   (a) Order that no action be taken;  
4118                   (b) Order that an informal adjustment be made;  
4119                   (c) Order that the Department of \* \* \* Child Protection  
4120 Services, \* \* \* monitor the child, family and other children in  
4121 the same environment;  
4122                   (d) Order that the child is warned or counseled  
4123 informally;  
4124                   (e) That the child be referred to the youth court drug  
4125 court; or  
4126                   (f) Order that a petition be filed.  
4127           (3) If the preliminary inquiry discloses that a child needs  
4128 emergency medical treatment, the judge may order the necessary  
4129 treatment.

4130           **SECTION 41.** Section 43-21-603, Mississippi Code of 1972, is  
4131 amended as follows:

4132           43-21-603. (1) At the beginning of each disposition  
4133 hearing, the judge shall inform the parties of the purpose of the  
4134 hearing.

4135           (2) All testimony shall be under oath unless waived by all  
4136 parties and may be in narrative form. The court may consider any  
4137 evidence that is material and relevant to the disposition of the



4138 cause, including hearsay and opinion evidence. At the conclusion  
4139 of the evidence, the youth court shall give the parties an  
4140 opportunity to present oral argument.

4141 (3) If the child has been adjudicated a delinquent child,  
4142 before entering a disposition order, the youth court should  
4143 consider, among others, the following relevant factors:

4144 (a) The nature of the offense;

4145 (b) The manner in which the offense was committed;

4146 (c) The nature and number of a child's prior  
4147 adjudicated offenses;

4148 (d) The child's need for care and assistance;

4149 (e) The child's current medical history, including  
4150 medication and diagnosis;

4151 (f) The child's mental health history, which may  
4152 include, but not be limited to, the Massachusetts Youth Screening  
4153 Instrument version 2 (MAYSI-2);

4154 (g) Copies of the child's cumulative record from the  
4155 last school of record, including special education records, if  
4156 applicable;

4157 (h) Recommendation from the school of record based on  
4158 areas of remediation needed;

4159 (i) Disciplinary records from the school of record; and

4160 (j) Records of disciplinary actions outside of the  
4161 school setting.





4162           (4) If the child has been adjudicated a child in need of  
4163 supervision, before entering a disposition order, the youth court  
4164 should consider, among others, the following relevant factors:

- 4165                   (a) The nature and history of the child's conduct;
- 4166                   (b) The family and home situation; and
- 4167                   (c) The child's need of care and assistance.

4168           (5) If the child has been adjudicated a neglected child or  
4169 an abused child, before entering a disposition order, the youth  
4170 court shall consider, among others, the following relevant  
4171 factors:

- 4172                   (a) The child's physical and mental conditions;
- 4173                   (b) The child's need of assistance;
- 4174                   (c) The manner in which the parent, guardian or  
4175 custodian participated in, tolerated or condoned the abuse,  
4176 neglect or abandonment of the child;
- 4177                   (d) The ability of a child's parent, guardian or  
4178 custodian to provide proper supervision and care of a child; and
- 4179                   (e) Relevant testimony and recommendations, where  
4180 available, from the foster parent of the child, the grandparents  
4181 of the child, the guardian ad litem of the child, representatives  
4182 of any private care agency that has cared for the child, the  
4183 family protection worker or family protection specialist assigned  
4184 to the case, and any other relevant testimony pertaining to the  
4185 case.



4186           (6) After consideration of all the evidence and the relevant  
4187 factors, the youth court shall enter a disposition order that  
4188 shall not recite any of the facts or circumstances upon which the  
4189 disposition is based, nor shall it recite that a child has been  
4190 found guilty; but it shall recite that a child is found to be a  
4191 delinquent child, a child in need of supervision, a neglected  
4192 child or an abused child.

4193           (7) If the youth court orders that the custody or  
4194 supervision of a child who has been adjudicated abused or  
4195 neglected be placed with the Department of \* \* \* Child Protection  
4196 Services or any other person or public or private agency, other  
4197 than the child's parent, guardian or custodian, the youth court  
4198 shall find and the disposition order shall recite that:

4199                   (a) (i) Reasonable efforts have been made to maintain  
4200 the child within his own home, but that the circumstances warrant  
4201 his removal and there is no reasonable alternative to custody; or

4202                               (ii) The circumstances are of such an emergency  
4203 nature that no reasonable efforts have been made to maintain the  
4204 child within his own home, and that there is no reasonable  
4205 alternative to custody; and

4206                   (b) That the effect of the continuation of the child's  
4207 residence within his own home would be contrary to the welfare of  
4208 the child and that the placement of the child in foster care is in  
4209 the best interests of the child; or



4210 (c) Reasonable efforts to maintain the child within his  
4211 home shall not be required if the court determines that:

4212 (i) The parent has subjected the child to  
4213 aggravated circumstances, including, but not limited to,  
4214 abandonment, torture, chronic abuse and sexual abuse; or

4215 (ii) The parent has been convicted of murder of  
4216 another child of that parent, voluntary manslaughter of another  
4217 child of that parent, aided or abetted, attempted, conspired or  
4218 solicited to commit that murder or voluntary manslaughter, or a  
4219 felony assault that results in the serious bodily injury to the  
4220 surviving child or another child of that parent; or

4221 (iii) The parental rights of the parent to a  
4222 sibling have been terminated involuntarily; and

4223 (iv) That the effect of the continuation of the  
4224 child's residence within his own home would be contrary to the  
4225 welfare of the child and that placement of the child in foster  
4226 care is in the best interests of the child.

4227 Once the reasonable efforts requirement is bypassed, the  
4228 court shall have a permanency hearing under Section 43-21-613  
4229 within thirty (30) days of the finding.

4230 (8) Upon a written motion by a party, the youth court shall  
4231 make written findings of fact and conclusions of law upon which it  
4232 relies for the disposition order. If the disposition ordered by  
4233 the youth court includes placing the child in the custody of a



4234 training school, an admission packet shall be prepared for the  
4235 child that contains the following information:

4236 (a) The child's current medical history, including  
4237 medications and diagnosis;

4238 (b) The child's mental health history;

4239 (c) Copies of the child's cumulative record from the  
4240 last school of record, including special education records, if  
4241 reasonably available;

4242 (d) Recommendation from the school of record based on  
4243 areas of remediation needed;

4244 (e) Disciplinary records from the school of record; and

4245 (f) Records of disciplinary actions outside of the  
4246 school setting, if reasonably available.

4247 Only individuals who are permitted under the Health Insurance  
4248 Portability and Accountability Act of 1996 (HIPAA) shall have  
4249 access to a child's medical records which are contained in an  
4250 admission packet. The youth court shall provide the admission  
4251 packet to the training school at or before the child's arrival at  
4252 the training school. The admittance of any child to a training  
4253 school shall take place between the hours of 8:00 a.m. and 3:00  
4254 p.m. on designated admission days.

4255 (9) When a child in the jurisdiction of the Youth Court is  
4256 committed to the custody of the Mississippi Department of \* \* \*  
4257 Child Protection Services and is believed to be in need of  
4258 treatment for a mental or emotional disability or infirmity, the



Department of \* \* \* Child Protection Services shall file an affidavit alleging that the child is in need of mental health services with the Youth Court. The Youth Court shall refer the child to the appropriate community mental health center for evaluation pursuant to Section 41-21-67. If the prescreening evaluation recommends residential care, the Youth Court shall proceed with civil commitment pursuant to Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the Department of Mental Health, once commitment is ordered, shall provide appropriate care, treatment and services for at least as many adolescents as were provided services in fiscal year 2004 in its facilities.

(10) Any screening and assessment examinations ordered by the court may aid in dispositions related to delinquency, but no statements or admissions made during the course thereof may be admitted into evidence against the child on the issue of whether the child committed a delinquent act.

**SECTION 42.** Section 43-21-609, Mississippi Code of 1972, is amended as follows:

43-21-609. In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:

- (a) Release the child without further action;
- (b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary



4284 relative placement, adoption or foster care placement is  
4285 inappropriate, unavailable or otherwise not in the best interest  
4286 of the child, durable legal custody may be granted by the court to  
4287 any person subject to any limitations and conditions the court may  
4288 prescribe; such durable legal custody will not take effect unless  
4289 the child or children have been in the physical custody of the  
4290 proposed durable custodians for at least one (1) year under the  
4291 supervision of the Department of \* \* \* Child Protection Services.  
4292 The requirements of Section 43-21-613 as to disposition review  
4293 hearings does not apply to those matters in which the court has  
4294 granted durable legal custody. In such cases, the Department  
4295 of \* \* \* Child Protection Services shall be released from any  
4296 oversight or monitoring responsibilities;

4297 (c) Order terms of treatment calculated to assist the  
4298 child and the child's parent, guardian or custodian which are  
4299 within the ability of the parent, guardian or custodian to  
4300 perform;

4301 (d) Order youth court personnel, the Department of  
4302 Human Services, the Department of Child Protection Services or  
4303 child care agencies to assist the child and the child's parent,  
4304 guardian or custodian to secure social or medical services to  
4305 provide proper supervision and care of the child;

4306 (e) Give legal custody of the child to any of the  
4307 following but in no event to any state training school:



4308                   (i)   The Department of \* \* \* Child Protection  
4309   Services for appropriate placement; or

4310                   (ii)   Any private or public organization,  
4311   preferably community-based, able to assume the education, care and  
4312   maintenance of the child, which has been found suitable by the  
4313   court. Prior to assigning the custody of any child to any private  
4314   institution or agency, the youth court through its designee shall  
4315   first inspect the physical facilities to determine that they  
4316   provide a reasonable standard of health and safety for the child;

4317                   (f)   If the court makes a finding that custody is  
4318   necessary as defined in Section 43-21-301(3)(b), and that the  
4319   child, in the action pending before the youth court had not  
4320   previously been taken into custody, the disposition order shall  
4321   recite that the effect of the continuation of the child's residing  
4322   within his or her own home would be contrary to the welfare of the  
4323   child, that the placement of the child in foster care is in the  
4324   best interests of the child, and unless the reasonable efforts  
4325   requirement is bypassed under Section 43-21-603(7)(c), the order  
4326   also must state:

4327                   (i)   That reasonable efforts have been made to  
4328   maintain the child within his or her own home, but that the  
4329   circumstances warrant his or her removal, and there is no  
4330   reasonable alternative to custody; or

4331                   (ii)   The circumstances are of such an emergency  
4332   nature that no reasonable efforts have been made to maintain the



4333 child within his or her own home, and there is no reasonable  
4334 alternative to custody; or

4335 (iii) If the court makes a finding in accordance  
4336 with (ii) of this paragraph, the court shall order that reasonable  
4337 efforts be made towards the reunification of the child with his or  
4338 her family \* \* \*;

4339 (g) If the court had, before the disposition hearing in  
4340 the action pending before the court, taken the child into custody,  
4341 the judge or referee shall determine, and the youth court order  
4342 shall recite that reasonable efforts were made by the Department  
4343 of \* \* \* Child Protection Services to finalize the child's  
4344 permanency plan that was in effect on the date of the disposition  
4345 hearing.

4346 **SECTION 43.** Section 43-21-613, Mississippi Code of 1972, is  
4347 amended as follows:

4348 43-21-613. (1) If the youth court finds, after a hearing  
4349 which complies with the sections governing adjudicatory hearings,  
4350 that the terms of a delinquency or child in need of supervision  
4351 disposition order, probation or parole have been violated, the  
4352 youth court may, in its discretion, revoke the original  
4353 disposition and make any disposition which it could have  
4354 originally ordered. The hearing shall be initiated by the filing  
4355 of a petition that complies with the sections governing petitions  
4356 in this chapter and that includes a statement of the youth court's  
4357 original disposition order, probation or parole, the alleged





4358 violation of that order, probation or parole, and the facts which  
4359 show the violation of that order, probation or parole. Summons  
4360 shall be served in the same manner as summons for an adjudicatory  
4361 hearing.

4362 (2) On motion of a child or a child's parent, guardian or  
4363 custodian, the youth court may, in its discretion, conduct an  
4364 informal hearing to review the disposition order. If the youth  
4365 court finds a material change of circumstances relating to the  
4366 disposition of the child, the youth court may modify the  
4367 disposition order to any appropriate disposition of equal or  
4368 greater precedence which the youth court could have originally  
4369 ordered.

4370 (3) (a) Unless the youth court's jurisdiction has been  
4371 terminated, all disposition orders for supervision, probation or  
4372 placement of a child with an individual or an agency shall be  
4373 reviewed by the youth court judge or referee at least annually to  
4374 determine if continued placement, probation or supervision is in  
4375 the best interest of the child or the public. For children who  
4376 have been adjudicated abused or neglected, the youth court shall  
4377 conduct a permanency hearing within twelve (12) months after the  
4378 earlier of:

4379 (i) An adjudication that the child has been abused  
4380 or neglected; or

4381 (ii) The date of the child's removal from the  
4382 allegedly abusive or neglectful custodian/parent. Notice of such



4383 hearing shall be given in accordance with the provisions of  
4384 Section 43-21-505(5). In conducting the hearing, the judge or  
4385 referee shall require a written report and may require information  
4386 or statements from the child's youth court counselor, parent,  
4387 guardian or custodian, which includes, but is not limited to, an  
4388 evaluation of the child's progress and recommendations for further  
4389 supervision or treatment. The judge or referee shall, at the  
4390 permanency hearing determine the future status of the child,  
4391 including, but not limited to, whether the child should be  
4392 returned to the parent(s) or placed with suitable relatives,  
4393 placed for adoption, placed for the purpose of establishing  
4394 durable legal custody or should, because of the child's special  
4395 needs or circumstances, be continued in foster care on a permanent  
4396 or long-term basis. If the child is in an out-of-state placement,  
4397 the hearing shall determine whether the out-of-state placement  
4398 continues to be appropriate and in the best interest of the child.  
4399 At the permanency hearing the judge or referee shall determine,  
4400 and the youth court order shall recite that reasonable efforts  
4401 were made by the Department of \* \* \* Child Protection Services to  
4402 finalize the child's permanency plan that was in effect on the  
4403 date of the permanency hearing. The judge or referee may find  
4404 that reasonable efforts to maintain the child within his home  
4405 shall not be required in accordance with Section 43-21-603(7)(c),  
4406 and that the youth court shall continue to conduct permanency  
4407 hearings for a child who has been adjudicated abused or neglected,



4408 at least annually thereafter, for as long as the child remains in  
4409 the custody of the Mississippi Department of \* \* \* Child  
4410 Protection Services.

4411 (b) The court may find that the filing of a termination  
4412 of parental rights petition is not in the child's best interest  
4413 if:

4414 (i) The child is being cared for by a relative;  
4415 and/or

4416 (ii) The Department of \* \* \* Child Protection  
4417 Services has documented compelling and extraordinary reasons why  
4418 termination of parental rights would not be in the best interests  
4419 of the child.

4420 (c) The provisions of this subsection shall also apply  
4421 to review of cases involving a dependent child; however, such  
4422 reviews shall take place not less frequently than once each one  
4423 hundred eighty (180) days. A dependent child shall be ordered by  
4424 the youth court judge or referee to be returned to the custody and  
4425 home of the child's parent, guardian or custodian unless the judge  
4426 or referee, upon such review, makes a written finding that the  
4427 return of the child to the home would be contrary to the child's  
4428 best interests.

4429 (d) Reviews are not to be conducted unless explicitly  
4430 ordered by the youth court concerning those cases in which the  
4431 court has granted durable legal custody. In such cases, the  
4432 Department of \* \* \* Child Protection Services shall be released



from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

**SECTION 44.** Section 43-27-101, Mississippi Code of 1972, is amended as follows:

43-27-101. For purposes of Sections 43-27-101 and 43-27-103, the following words shall have the meanings ascribed in this section, unless the context requires otherwise:

(a) "Child or youth in the custody of the Department of \* \* \* Child Protection Services" means an individual:

(i) Who has not yet reached his eighteenth birthday;

(ii) Who has been legally placed in the custody of the Department of \* \* \* Child Protection Services by the youth court and for whom custody with the Department of \* \* \* Child Protection Services was not sought by the parents or legal custodians or guardians for the parents' or legal custodians' or guardians' legal responsibilities to relieve themselves of the responsibility for paying for treatment for a child or youth; and

(iii) Who is unable to be maintained with the family or legal guardians or custodians due to his or her need for specialized care.

(b) "Child or youth under the supervision of the Department of \* \* \* Child Protection Services" means an individual:



4457 (i) Who has not yet reached his eighteenth  
4458 birthday; and

4459 (ii) Who has been referred for abuse or neglect  
4460 and for whom a case has been opened and is active in the \* \* \*  
4461 Department of Child Protection Services.

4462 (c) "Plan of care" means a written plan of services  
4463 needed to be provided for a child or youth and his or her family  
4464 in order to provide the special care or services required.

4465 (d) "Special needs crisis" means:

4466 (i) Conduct or behavioral problems of such a  
4467 severe nature and level that family or parental violence, abuse,  
4468 and/or neglect pose an imminent threat or are present; or

4469 (ii) Conduct or behavioral problems of such a  
4470 severe nature and level that family or parental violence, abuse,  
4471 and/or neglect pose an imminent threat or are present.

4472 (e) "Specialized care" means:

4473 (i) "Self care," which means the ability to  
4474 provide, sustain and protect himself or herself at a level  
4475 appropriate to his or her age;

4476 (ii) "Interpersonal relationships," which means  
4477 the ability to build and maintain satisfactory relationships with  
4478 peers and adults;

4479 (iii) "Family life," which means the capacity to  
4480 live in a family or family-type environment;



4481 (iv) "Self direction," which means the child's  
4482 ability to control his or her behavior and to make decisions in a  
4483 manner appropriate to his or her age;

4484 (v) "Education," which means the ability to learn  
4485 social and intellectual skill from teachers in an available  
4486 educational setting.

4487 (f) "Special needs child" means a child with a variety  
4488 of handicapping conditions or disabilities, including emotional or  
4489 severely emotional disorders. These conditions or disabilities  
4490 present the need for special medical attention, supervision and  
4491 therapy on a very regimented basis.

4492 **SECTION 45.** Section 43-27-103, Mississippi Code of 1972, is  
4493 amended as follows:

4494 43-27-103. (1) Sections 43-27-101 and 43-27-103 shall  
4495 enable the development by the Department of \* \* \* Child Protection  
4496 Services of a system of services for children or youth in the  
4497 custody of or under the supervision of the Department of \* \* \*  
4498 Child Protection Services, if funds are appropriated to the  
4499 department for that purpose. The system of services may consist  
4500 of emergency response services, an early intervention and  
4501 treatment unit, respite care, crisis nurseries, specialized  
4502 outpatient or inpatient treatment services, special needs foster  
4503 care, therapeutic foster care, emergency foster homes, and  
4504 Medicaid targeted case management for abused and neglected  
4505 children and youth as well as children adjudicated delinquent or



4506 in need of supervision. Any of these services that are provided  
4507 shall be arranged by and coordinated through the Department  
4508 of \* \* \* Child Protection Services, and the department may  
4509 contract with public or private agencies or entities to provide  
4510 any of the services or may provide any of the services itself.  
4511 All of the services shall be provided in facilities that meet the  
4512 standards set by the Department of \* \* \* Child Protection Services  
4513 for the particular type of facility involved. None of the  
4514 services provided shall duplicate existing services except where  
4515 there is a documented need for expansion of the services.

4516 (2) A description of the services that may be provided under  
4517 Sections 43-27-101 and 43-27-103 are as follows:

4518 (a) "Emergency response services" means services to  
4519 respond to children or youth in severe crisis and include:

4520 (i) Emergency single point phone lines;

4521 (ii) Crisis care coordinators staffing shifts that  
4522 enable twenty-four-hour per day response as "front line"  
4523 professionals when crisis calls are received, assist with  
4524 decision-making, family support, initiate plan of action and  
4525 remain "on call" for the first seventy-two (72) hours for other  
4526 service professionals to get in place and insure development of a  
4527 plan of care;

4528 (iii) Acute care/emergency medical response  
4529 through contracted services with up to five (5) regional hospitals  
4530 providing emergency room services and hospitalization for up to



4531 seventy-two (72) hours with a maximum of One Hundred Dollars  
4532 (\$100.00) per day;  
4533 (iv) Case managers;  
4534 (v) Respite services; and  
4535 (vi) Assessment services contracted with social  
4536 workers, psychologists, psychiatrists and other health  
4537 professionals.

4538 (b) "Early intervention and treatment unit" means a  
4539 unique, nonhospital crisis service in a residential context that  
4540 is able to provide the level of support and intervention needed to  
4541 resolve the crisis and as an alternative to hospitalization. This  
4542 unit shall provide specialized assessment, including a variety of  
4543 treatment options and services to best intervene in a child or  
4544 youth's crisis, and provide an appropriate plan for further  
4545 services upon returning to the home and community. Staff-to-child  
4546 or youth ratio shall be high, with multidisciplinary, specialized  
4547 services for up to six (6) children or youths at one (1) time, and  
4548 with the maximum assessment and treatment planning and services  
4549 being ninety (90) days for most children or youths.

4550 (c) "Respite care" means planned temporary care for a  
4551 period of time ranging from a few hours within a twenty-four-hour  
4552 period to an overnight or weekend stay to a maximum of ten (10)  
4553 days. Care may be provided in-home or out-of-home with trained  
4554 respite parents or counselors and is designed to provide a planned  
4555 break for the parents from the caretaking role with the child.





4556           (d) "Crisis nurseries" means a program providing  
4557 therapeutic nursery treatment services to preschool aged children  
4558 who as preschoolers demonstrate significant behavioral or  
4559 emotional disorders. These services shall be to therapeutically  
4560 address developmental and emotional behavioral difficulties  
4561 through direct intervention with the child in a nursery school  
4562 environment and to intervene with parents to provide education,  
4563 support and therapeutic services.

4564           (e) "Specialized outpatient or inpatient treatment  
4565 services," such as sex offender treatment, means specialized  
4566 treatment for perpetrators of sexual offenses with children.

4567           (f) "Special needs foster care" means foster care for  
4568 those children with a variety of handicapping conditions or  
4569 disabilities, including serious emotional disturbance.

4570           (g) "Therapeutic foster care" means residential mental  
4571 health services provided to children and adolescents in a family  
4572 setting, utilizing specially trained foster parents. Therapeutic  
4573 foster care essentially involves the following features:

4574                   (i) Placement with foster parents who have been  
4575 carefully selected by knowledgeable, well-trained mental health  
4576 and social service professionals to work with children with an  
4577 emotional disturbance;

4578                   (ii) Provision of special training to the foster  
4579 parents to assist them in working with children with an emotional  
4580 disturbance;



(iii) Low staff-to-child ratio, allowing the therapeutic staff to work very closely with each child, the foster parents and the biological parents, if available;

(iv) Creation of a support system among these specially trained foster parents; and

(v) Payment of a special foster care payment to the foster parents.

(h) "Emergency foster homes" means those homes used on a short-term basis for (i) children who are temporarily removed from the home in response to a crisis situation, or (ii) youth who exhibit special behavioral or emotional problems for whom removal from the existing home situation is necessary. In some cases they may provide an emergency placement for infants and toddlers for whom no regular foster home is available, rather than placement into an emergency shelter where older and larger groups of children are placed. Foster parents are trained to deal with the special needs of children placed in these emergency homes.

(i) "Medicaid targeted case management" means activities that are related to assuring the completion of proper client evaluations; arranging and supporting treatment plans, monitoring services, coordinating service delivery and other related actions.

**SECTION 46.** Section 93-5-23, Mississippi Code of 1972, is amended as follows:



4605           93-5-23. When a divorce shall be decreed from the bonds of  
4606 matrimony, the court may, in its discretion, having regard to the  
4607 circumstances of the parties and the nature of the case, as may  
4608 seem equitable and just, make all orders touching the care,  
4609 custody and maintenance of the children of the marriage, and also  
4610 touching the maintenance and alimony of the wife or the husband,  
4611 or any allowance to be made to her or him, and shall, if need be,  
4612 require bond, sureties or other guarantee for the payment of the  
4613 sum so allowed. Orders touching on the custody of the children of  
4614 the marriage shall be made in accordance with the provisions of  
4615 Section 93-5-24. For the purposes of orders touching the  
4616 maintenance and alimony of the wife or husband, "property" and "an  
4617 asset of a spouse" shall not include any interest a party may have  
4618 as an heir at law of a living person or any interest under a  
4619 third-party will, nor shall any such interest be considered as an  
4620 economic circumstance or other factor. The court may afterwards,  
4621 on petition, change the decree, and make from time to time such  
4622 new decrees as the case may require. However, where proof shows  
4623 that both parents have separate incomes or estates, the court may  
4624 require that each parent contribute to the support and maintenance  
4625 of the children of the marriage in proportion to the relative  
4626 financial ability of each. In the event a legally responsible  
4627 parent has health insurance available to him or her through an  
4628 employer or organization that may extend benefits to the  
4629 dependents of such parent, any order of support issued against



4630 such parent may require him or her to exercise the option of  
4631 additional coverage in favor of such children as he or she is  
4632 legally responsible to support.

4633 Whenever the court has ordered a party to make periodic  
4634 payments for the maintenance or support of a child, but no bond,  
4635 sureties or other guarantee has been required to secure such  
4636 payments, and whenever such payments as have become due remain  
4637 unpaid for a period of at least thirty (30) days, the court may,  
4638 upon petition of the person to whom such payments are owing, or  
4639 such person's legal representative, enter an order requiring that  
4640 bond, sureties or other security be given by the person obligated  
4641 to make such payments, the amount and sufficiency of which shall  
4642 be approved by the court. The obligor shall, as in other civil  
4643 actions, be served with process and shall be entitled to a hearing  
4644 in such case.

4645 At the discretion of the court, any person found in contempt  
4646 for failure to pay child support and imprisoned therefor may be  
4647 referred for placement in a state, county or municipal  
4648 restitution, house arrest or restorative justice center or  
4649 program, provided such person meets the qualifications prescribed  
4650 in Section 99-37-19.

4651 Whenever in any proceeding in the chancery court concerning  
4652 the custody of a child a party alleges that the child whose  
4653 custody is at issue has been the victim of sexual or physical  
4654 abuse by the other party, the court may, on its own motion, grant



4655 a continuance in the custody proceeding only until such allegation  
4656 has been investigated by the Department of \* \* \* Child Protection  
4657 Services. At the time of ordering such continuance, the court may  
4658 direct the party and his attorney making such allegation of child  
4659 abuse to report in writing and provide all evidence touching on  
4660 the allegation of abuse to the Department of \* \* \* Child  
4661 Protection Services. The Department of \* \* \* Child Protection  
4662 Services shall investigate such allegation and take such action as  
4663 it deems appropriate and as provided in such cases under the Youth  
4664 Court Law (being Chapter 21 of Title 43, Mississippi Code of 1972)  
4665 or under the laws establishing family courts (being Chapter 23 of  
4666 Title 43, Mississippi Code of 1972).

4667 If after investigation by the Department of \* \* \* Child  
4668 Protection Services or final disposition by the youth court or  
4669 family court allegations of child abuse are found to be without  
4670 foundation, the chancery court shall order the alleging party to  
4671 pay all court costs and reasonable attorney's fees incurred by the  
4672 defending party in responding to such allegation.

4673 The court may investigate, hear and make a determination in a  
4674 custody action when a charge of abuse and/or neglect arises in the  
4675 course of a custody action as provided in Section 43-21-151, and  
4676 in such cases the court shall appoint a guardian ad litem for the  
4677 child as provided under Section 43-21-121, who shall be an  
4678 attorney. Unless the chancery court's jurisdiction has been  
4679 terminated, all disposition orders in such cases for placement



with the Department of \* \* \* Child Protection Services shall be reviewed by the court or designated authority at least annually to determine if continued placement with the department is in the best interest of the child or public.

The duty of support of a child terminates upon the emancipation of the child. The court may determine that emancipation has occurred pursuant to Section 93-11-65.

Custody and visitation upon military temporary duty, deployment or mobilization shall be governed by Section 93-5-34.

**SECTION 47.** Section 93-17-3, Mississippi Code of 1972, is amended as follows:

93-17-3. (1) Except as otherwise provided in this section, a court of this state has jurisdiction over a proceeding for the adoption or readoption of a minor commenced under this chapter if:

(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

(b) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary



4705 absence, and there is available in this state substantial evidence  
4706 concerning the minor's present or future care;

4707 (c) The agency that placed the minor for adoption is  
4708 licensed in this state and it is in the best interest of the minor  
4709 that a court of this state assume jurisdiction because:

4710 (i) The minor and the minor's parents, or the  
4711 minor and the prospective adoptive parent, have a significant  
4712 connection with this state; and

4713 (ii) There is available in this state substantial  
4714 evidence concerning the minor's present or future care;

4715 (d) The minor and the prospective adoptive parent are  
4716 physically present in this state and the minor has been abandoned  
4717 or it is necessary in an emergency to protect the minor because  
4718 the minor has been subjected to or threatened with mistreatment or  
4719 abuse or is otherwise neglected;

4720 (e) It appears that no other state would have  
4721 jurisdiction under prerequisites substantially in accordance with  
4722 paragraphs (a) through (d), or another state has declined to  
4723 exercise jurisdiction on the ground that this state is the more  
4724 appropriate forum to hear a petition for adoption of the minor,  
4725 and it is in the best interest of the minor that a court of this  
4726 state assume jurisdiction; or

4727 (f) The child has been adopted in a foreign country,  
4728 the agency that placed the minor for adoption is licensed in this



4729 state, and it is in the best interest of the child to be readopted  
4730 in a court of this state having jurisdiction.

4731 (2) A court of this state may not exercise jurisdiction over  
4732 a proceeding for adoption of a minor if, at the time the petition  
4733 for adoption is filed, a proceeding concerning the custody or  
4734 adoption of the minor is pending in a court of another state  
4735 exercising jurisdiction substantially in conformity with the  
4736 Uniform Child Custody Jurisdiction Act or this section unless the  
4737 proceeding is stayed by the court of the other state.

4738 (3) If a court of another state has issued a decree or order  
4739 concerning the custody of a minor who may be the subject of a  
4740 proceeding for adoption in this state, a court of this state may  
4741 not exercise jurisdiction over a proceeding for adoption of the  
4742 minor unless:

4743 (a) The court of this state finds that the court of the  
4744 state which issued the decree or order:

4745 (i) Does not have continuing jurisdiction to  
4746 modify the decree or order under jurisdictional prerequisites  
4747 substantially in accordance with the Uniform Child Custody  
4748 Jurisdiction Act or has declined to assume jurisdiction to modify  
4749 the decree or order; or

4750 (ii) Does not have jurisdiction over a proceeding  
4751 for adoption substantially in conformity with subsection (1) (a)  
4752 through (d) or has declined to assume jurisdiction over a  
4753 proceeding for adoption; and





4754                   (b) The court of this state has jurisdiction over the  
4755 proceeding.

4756           (4) Any person may be adopted in accordance with the  
4757 provisions of this chapter in termtime or in vacation by an  
4758 unmarried adult or by a married person whose spouse joins in the  
4759 petition. The adoption shall be by sworn petition filed in the  
4760 chancery court of the county in which the adopting petitioner or  
4761 petitioners reside or in which the child to be adopted resides or  
4762 was born, or was found when it was abandoned or deserted, or in  
4763 which the home is located to which the child has been surrendered  
4764 by a person authorized to so do. The petition shall be  
4765 accompanied by a doctor's or nurse practitioner's certificate  
4766 showing the physical and mental condition of the child to be  
4767 adopted and a sworn statement of all property, if any, owned by  
4768 the child. In addition, the petition shall be accompanied by  
4769 affidavits of the petitioner or petitioners stating the amount of  
4770 the service fees charged by any adoption agencies or adoption  
4771 facilitators used by the petitioner or petitioners and any other  
4772 expenses paid by the petitioner or petitioners in the adoption  
4773 process as of the time of filing the petition. If the doctor's or  
4774 nurse practitioner's certificate indicates any abnormal mental or  
4775 physical condition or defect, the condition or defect shall not,  
4776 in the discretion of the chancellor, bar the adoption of the child  
4777 if the adopting parent or parents file an affidavit stating full  
4778 and complete knowledge of the condition or defect and stating a



4779 desire to adopt the child, notwithstanding the condition or  
4780 defect. The court shall have the power to change the name of the  
4781 child as a part of the adoption proceedings. The word "child" in  
4782 this section shall be construed to refer to the person to be  
4783 adopted, though an adult.

4784 (5) Adoption by couples of the same gender is prohibited.

4785 (6) No person may be placed in the home of or adopted by the  
4786 prospective adopting parties before a court-ordered or voluntary  
4787 home study is satisfactorily completed by a licensed adoption  
4788 agency, a licensed, experienced social worker approved by the  
4789 chancery court or by the Department of \* \* \* Child Protection  
4790 Services on the prospective adoptive parties if required by  
4791 Section 93-17-11.

4792 (7) No person may be adopted by a person or persons who  
4793 reside outside the State of Mississippi unless the provisions of  
4794 the Interstate Compact for Placement of Children (Section 43-18-1  
4795 et seq.) have been complied with. In such cases Forms 100A, 100B  
4796 (if applicable) and evidence of Interstate Compact for Placement  
4797 of Children approval shall be added to the permanent adoption  
4798 record file within one (1) month of the placement, and a minimum  
4799 of two (2) post-placement reports conducted by a licensed  
4800 child-placing agency shall be provided to the Mississippi  
4801 Department of \* \* \* Child Protection Services Interstate Compact  
4802 for Placement of Children office.



4803           (8) No person may be adopted unless the provisions of the  
4804 Indian Child Welfare Act (ICWA) have been complied with, if  
4805 applicable. When applicable, proof of compliance shall be  
4806 included in the court adoption file prior to finalization of the  
4807 adoption. If not applicable, a written statement or paragraph in  
4808 the petition for adoption shall be included in the adoption  
4809 petition stating that the provisions of ICWA do not apply before  
4810 finalization.

4811           (9) The readoption of a child who has automatically acquired  
4812 United States citizenship following an adoption in a foreign  
4813 country and who possesses a Certificate of Citizenship in  
4814 accordance with the Child Citizenship Act, CAA, Public Law  
4815 106-395, may be given full force and effect in a readoption  
4816 proceeding conducted by a court of competent jurisdiction in this  
4817 state by compliance with the Mississippi Registration of Foreign  
4818 Adoptions Act, Article 9 of this chapter.

4819           **SECTION 48.** Section 93-17-5, Mississippi Code of 1972, is  
4820 amended as follows:

4821           93-17-5. (1) There shall be made parties to the proceeding  
4822 by process or by the filing therein of a consent to the adoption  
4823 proposed in the petition, which consent shall be duly sworn to or  
4824 acknowledged and executed only by the following persons, but not  
4825 before seventy-two (72) hours after the birth of the child:

4826           (a) The parents, or parent, if only one (1) parent,  
4827 though either be under the age of twenty-one (21) years;



4828           (b) If both parents are dead, then any two (2) adult  
4829 kin of the child within the third degree computed according to the  
4830 civil law; if one of such kin is in possession of the child, he or  
4831 she shall join in the petition or be made a party to the suit; or

4832           (c) The guardian ad litem of an abandoned child, upon  
4833 petition showing that the names of the parents of the child are  
4834 unknown after diligent search and inquiry by the petitioners. In  
4835 addition to the above, there shall be made parties to any  
4836 proceeding to adopt a child, either by process or by the filing of  
4837 a consent to the adoption proposed in the petition, the following:

4838           (i) Those persons having physical custody of the  
4839 child, except persons who are acting as foster parents as a result  
4840 of placement with them by the Department of \* \* \* Child Protection  
4841 Services of the State of Mississippi.

4842           (ii) Any person to whom custody of the child may  
4843 have been awarded by a court of competent jurisdiction of the  
4844 State of Mississippi.

4845           (iii) The agent of the county department of \* \* \*  
4846 child protection services of the State of Mississippi that has  
4847 placed a child in foster care, either by agreement or by court  
4848 order.

4849           (2) The consent may also be executed and filed by the duly  
4850 authorized officer or representative of a home to whose care the  
4851 child has been delivered. The child shall join the petition by  
4852 the child's next friend.



4853           (3) If consent is not filed, process shall be had upon the  
4854 parties as provided by law for process in person or by  
4855 publication, if they are nonresidents of the state or are not  
4856 found therein after diligent search and inquiry, the court or  
4857 chancellor in vacation may fix a date in termtime or in vacation  
4858 to which process may be returnable and shall have power to proceed  
4859 in termtime or vacation. In any event, if the child is more than  
4860 fourteen (14) years of age, a consent to the adoption, sworn to or  
4861 acknowledged by the child, shall also be required or personal  
4862 service of process shall be had upon the child in the same manner  
4863 and in the same effect as if the child were an adult.

4864           **SECTION 49.** Section 93-17-8, Mississippi Code of 1972, is  
4865 amended as follows:

4866           93-17-8. (1) Whenever an adoption becomes a contested  
4867 matter, whether after a hearing on a petition for determination of  
4868 rights under Section 93-17-6 or otherwise, the court:

4869                   (a) Shall, on motion of any party or on its own motion,  
4870 issue an order for immediate blood or tissue sampling in  
4871 accordance with the provisions of Section 93-9-21 et seq., if  
4872 paternity is at issue. The court shall order an expedited report  
4873 of such testing and shall hold the hearing resolving this matter  
4874 at the earliest time possible.

4875                   (b) Shall appoint a guardian ad litem to represent the  
4876 child. Such guardian ad litem shall be an attorney, however his  
4877 duties are as guardian ad litem and not as attorney for the child.



4878 The reasonable costs of the guardian ad litem shall be taxed as  
4879 costs of the court. Neither the child nor anyone purporting to  
4880 act on his behalf may waive the appointment of a guardian ad  
4881 litem.

4882 (c) Shall determine first whether or not the objecting  
4883 parent is entitled to so object under the criteria of Section  
4884 93-17-7 and then shall determine the custody of the child in  
4885 accord with the best interests of the child and the rights of the  
4886 parties as established by the hearings and judgments.

4887 (d) Shall schedule all hearings concerning the  
4888 contested adoption as expeditiously as possible for prompt  
4889 conclusion of the matter.

4890 (2) In determining the custody of the child after a finding  
4891 that the adoption will not be granted, the fact of the surrender  
4892 of the child for adoption by a parent shall not be taken as any  
4893 evidence of that parent's abandonment or desertion of the child or  
4894 of that parent's unfitness as a parent.

4895 (3) In contested adoptions arising through petitions for  
4896 determination of rights where the prospective adopting parents  
4897 were not parties to that proceeding, they need not be made parties  
4898 to the contested adoption until there has been a ruling that the  
4899 objecting parent is not entitled to enter a valid objection to the  
4900 adoption. At that point the prospective adopting parents shall be  
4901 made parties by joinder which shall show their suitability to be  
4902 adopting parents as would a petition for adoption. The identity



4903 and suitability of the prospective adopting parents shall be made  
4904 known to the court and the guardian ad litem, but shall not be  
4905 made known to other parties to the proceeding unless the court  
4906 determines that the interests of justice or the best interests of  
4907 the child require it.

4908 (4) No birth parent or alleged parent shall be permitted to  
4909 contradict statements given in a proceeding for the adoption of  
4910 their child in any other proceeding concerning that child or his  
4911 ancestry.

4912 (5) Appointment of a guardian ad litem is not required in  
4913 any proceeding under this chapter except as provided in subsection  
4914 (1)(b) above and except for the guardian ad litem needed for an  
4915 abandoned child. It shall not be necessary for a guardian ad  
4916 litem to be appointed where the chancery judge presiding in the  
4917 adoption proceeding deems it unnecessary and no adoption agency is  
4918 involved in the proceeding. No final decree of adoption  
4919 heretofore granted shall be set aside or modified because a  
4920 guardian ad litem was not appointed unless as the result of a  
4921 direct appeal not now barred.

4922 (6) The provisions of Chapter 15 of this Title 93,  
4923 Mississippi Code of 1972, are not applicable to proceedings under  
4924 this chapter except as specifically provided by reference herein.

4925 (7) The court may order a child's birth father, identified  
4926 as such in the proceedings, to reimburse the Department of \* \* \*  
4927 Child Protection Services, the foster parents, the adopting



4928 parents, the home, any other agency or person who has assumed  
4929 liability for such child, all or part of the costs of the medical  
4930 expenses incurred for the mother and the child in connection with  
4931 the birth of the child, as well as reasonable support for the  
4932 child after his birth.

4933       **SECTION 50.** Section 93-17-11, Mississippi Code of 1972, is  
4934 amended as follows:

4935       93-17-11. At any time after the filing of the petition for  
4936 adoption and completion of process thereon, and before the  
4937 entering of a final decree, the court may, in its discretion, of  
4938 its own motion or on motion of any party to the proceeding,  
4939 require an investigation and report to the court to be made by any  
4940 person, officer or home as the court may designate and direct  
4941 concerning the child, and shall require in adoptions, other than  
4942 those in which the petitioner or petitioners are a relative or  
4943 stepparent of the child, that a home study be performed of the  
4944 petitioner or petitioners by a licensed adoption agency or by the  
4945 Department of \* \* \* Child Protection Services, at the petitioner's  
4946 or petitioners' sole expense and at no cost to the state or  
4947 county. The investigation and report shall give the material  
4948 facts upon which the court may determine whether the child is a  
4949 proper subject for adoption, whether the petitioner or petitioners  
4950 are suitable parents for the child, whether the adoption is to its  
4951 best interest, and any other facts or circumstances that may be  
4952 material to the proposed adoption. The home study shall be





4953 considered by the court in determining whether the petitioner or  
4954 petitioners are suitable parents for the child. The court, when  
4955 an investigation and report are required by the court or by this  
4956 section, shall stay the proceedings in the cause for such  
4957 reasonable time as may be necessary or required in the opinion of  
4958 the court for the completion of the investigation and report by  
4959 the person, officer or home designated and authorized to make the  
4960 same.

4961       Upon the filing of that consent or the completion of the  
4962 process and the filing of the investigation and report, if  
4963 required by the court or by this section, and the presentation of  
4964 such other evidence as may be desired by the court, if the court  
4965 determines that it is to the best interests of the child that an  
4966 interlocutory decree of adoption be entered, the court may  
4967 thereupon enter an interlocutory decree upon such terms and  
4968 conditions as may be determined by the court, in its discretion,  
4969 but including therein that the complete care, custody and control  
4970 of the child shall be vested in the petitioner or petitioners  
4971 until further orders of the court and that during such time the  
4972 child shall be and remain a ward of the court. If the court  
4973 determines by decree at any time during the pendency of the  
4974 proceeding that it is not to the best interests of the child that  
4975 the adoption proceed, the petitioners shall be entitled to at  
4976 least five (5) days' notice upon their attorneys of record and a  
4977 hearing with the right of appeal as provided by law from a



4978 dismissal of the petition; however, the bond perfecting the appeal  
4979 shall be filed within ten (10) days from the entry of the decree  
4980 of dismissal and the bond shall be in such amount as the  
4981 chancellor may determine and supersedeas may be granted by the  
4982 chancellor or as otherwise provided by law for appeal from final  
4983 decrees.

4984       After the entry of the interlocutory decree and before entry  
4985 of the final decree, the court may require such further and  
4986 additional investigation and reports as it may deem proper. The  
4987 rights of the parties filing the consent or served with process  
4988 shall be subject to the decree but shall not be divested until  
4989 entry of the final decree.

4990       **SECTION 51.** Section 93-17-12, Mississippi Code of 1972, is  
4991 amended as follows:

4992       93-17-12. In any child custody matter hereafter filed in any  
4993 chancery or county court in which temporary or permanent custody  
4994 has already been placed with a parent or guardian and in all  
4995 adoptions, the court shall impose a fee for any court-ordered home  
4996 study performed by the Department of \* \* \* Child Protection  
4997 Services or any other entity. The fee shall be assessed upon  
4998 either party or upon both parties in the court's discretion. The  
4999 minimum fee imposed shall be not less than Three Hundred Fifty  
5000 Dollars (\$350.00) for each household on which a home study is  
5001 performed. The fee shall be paid directly to the Mississippi  
5002 Department of \* \* \* Child Protection Services prior to the home



5003 study being conducted by the department or to the entity if the  
5004 study is performed by another entity. The judge may order the fee  
5005 be paid by one or both of the parents or guardian. If the court  
5006 determines that both parents or the guardian are unable to pay the  
5007 fee, the judge shall waive the fee and the cost of the home study  
5008 shall be defrayed by the Department of \* \* \* Child Protection  
5009 Services.

5010 **SECTION 52.** Section 93-17-53, Mississippi Code of 1972, is  
5011 amended as follows:

5012 93-17-53. The purpose of Sections 93-17-51 through 93-17-67  
5013 is to supplement the Mississippi adoption law by making possible  
5014 through public supplemental benefits the most appropriate adoption  
5015 of each child certified by the \* \* \* Department of Child  
5016 Protection Services as requiring a supplemental benefit to assure  
5017 adoption.

5018 **SECTION 53.** Section 93-17-57, Mississippi Code of 1972, is  
5019 amended as follows:

5020 93-17-57. The \* \* \* Department of Child Protection Services  
5021 shall establish and administer an on-going program of supplemental  
5022 benefits for adoption. Supplemental benefits and services for  
5023 children under this program shall be provided out of such funds as  
5024 may be appropriated to the Mississippi Medicaid Commission for the  
5025 medical services for children in foster care, or made available to  
5026 the department from other sources.



**SECTION 54.** Section 93-17-59, Mississippi Code of 1972, is amended as follows:

93-17-59. Any child meeting criteria specified in Section 93-17-55 for whom the \* \* \* Department of Child Protection Services feels supplemental benefits are necessary to improve opportunities for adoption will be eligible for the program. The adoption agency shall document that reasonable efforts have been made to place the child in adoption without supplemental benefits through the use of adoption resource exchanges, recruitment and referral to appropriate specialized adoption agencies.

**SECTION 55.** Section 93-17-61, Mississippi Code of 1972, is amended as follows:

93-17-61. (1) When parents are found and approved for adoption of a child certified as eligible for supplemental benefits, and before the final decree of adoption is issued, there shall be executed a written agreement between the family entering into the adoption and the Department of \* \* \* Child Protection Services. In individual cases, supplemental benefits may commence with the adoptive placement or at the appropriate time after the adoption decree and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The supplemental benefits may be for special services only or for money payments as allowed under Section 43-13-115, Mississippi Code of 1972, and either for a limited period, for a long-term not exceeding the child's eighteenth birthday, or for any combination



of the foregoing. The amount of the time-limited, long-term supplemental benefits may in no case exceed that which would be currently allowable for such child under the Mississippi Medicaid Law.

(2) When supplemental benefits last for more than one (1) year, the adoptive parents shall present an annual written certification that the child remains under the parents' care and that the child's need for supplemental benefits continues. Based on investigation by the agency and available funds, the agency may approve continued supplemental benefits. These benefits shall be extended so long as the parents remain legally responsible for and are providing support for the child. The agency shall continue paying benefits until a child reaches twenty-one (21) years of age if the child meets the criteria stated in Section 93-17-67(1) for continuation of Medicaid coverage.

(3) A child who is a resident of Mississippi when eligibility for supplemental benefits is certified shall remain eligible and receive supplemental benefits, if necessary for adoption, regardless of the domicile or residence of the adopting parents at the time of application for adoption, placement, legal decree of adoption or thereafter.

**SECTION 56.** Section 93-17-63, Mississippi Code of 1972, is amended as follows:

93-17-63. All records regarding such adoption shall be confidential. Anyone violating or releasing information of a



5077 confidential nature, as contemplated by Sections 93-17-51 through  
5078 93-17-67 without the approval of the court with jurisdiction or  
5079 the \* \* \* Department of \* \* \* Child Protection Services unless  
5080 such release is made pursuant to Sections 93-17-201 through  
5081 93-17-223 shall be guilty of a misdemeanor and subject to a fine  
5082 not exceeding One Thousand Dollars (\$1,000.00) or imprisonment of  
5083 six (6) months, or both.

5084       **SECTION 57.** Section 93-17-65, Mississippi Code of 1972, is  
5085 amended as follows:

5086       93-17-65. The \* \* \* Department of Child Protection Services  
5087 shall promulgate rules and regulations necessary to implement the  
5088 provisions of Sections 93-17-51 through 93-17-67.

5089       **SECTION 58.** Section 93-17-67, Mississippi Code of 1972, is  
5090 amended as follows:

5091       93-17-67. (1) If the adoptive parents of a child eligible  
5092 for adoption supplemental benefits sign an adoption assistance  
5093 agreement with the Department of \* \* \* Child Protection Services,  
5094 then, whether or not they accept such benefits, Medicaid coverage  
5095 shall be provided for the child under the agency's medical payment  
5096 program from and after the commencement date established pursuant  
5097 to Section 93-17-61 until the child's eighteenth birthday,  
5098 provided that federal matching funds are available for such  
5099 payment.

5100       (2) Any child who is adopted in this state through a  
5101 state-supported adoption agency and who immediately prior to such



5102 adoption was receiving Medicaid benefits because of a severe  
5103 physical or mental handicap shall continue to receive such  
5104 coverage benefits after adoption age eighteen (18), and such  
5105 benefits shall be payable as provided under the agency's medical  
5106 payment program for so long as the \* \* \* Department of \* \* \*  
5107 Child Protection Services determines that the treatment or  
5108 rehabilitation for which payment is being made is in the best  
5109 interest of the child concerned, but not past the age of  
5110 twenty-one (21) years, provided that federal matching funds are  
5111 available for such payment and that any state funds used for such  
5112 payment shall have been appropriated specifically for such  
5113 purpose.

5114 (3) If permitted by federal law without any loss to the  
5115 state of federal matching funds, the financial resources of the  
5116 adopting parents shall not be a factor in such determination  
5117 except that payments on behalf of a child of any age may be  
5118 adjusted when insurance benefits available to the adopting parents  
5119 would pay all or part of such payments being made by the state, or  
5120 if medical or rehabilitation services are otherwise available  
5121 without cost to the adopting parents. The amount of financial  
5122 assistance given shall not exceed the amount that the Division of  
5123 Medicaid \* \* \* would be required to pay for the same medical  
5124 treatment or rehabilitation.

5125 (4) The receipt of Medicaid benefits by an adopted child  
5126 under Sections 93-17-51 through 93-17-67 shall not qualify the



5127 adopting parents for Medicaid eligibility, unless either parent is  
5128 otherwise eligible under Section 43-13-115, Mississippi Code of  
5129 1972.

5130       **SECTION 59.** Section 93-17-69, Mississippi Code of 1972, is  
5131 amended as follows:

5132       93-17-69. Any person proposing to adopt a child who is a  
5133 dependent of a state child-placing agency and who is in special  
5134 circumstances as defined in paragraph (c) of Section 93-17-55  
5135 shall be represented by the \* \* \* Department of \* \* \* Child  
5136 Protection Services when requested by the adopting parent in all  
5137 phases of the adoption proceeding. State child-placing agencies  
5138 shall advise prospective adopting parents of their right under  
5139 this section to be represented in adoption proceedings. The fees  
5140 for filing the petition for adoption and preparing a revised birth  
5141 certificate, any court costs taxed against the petitioner and any  
5142 other actual payments made by the Department of \* \* \* Child  
5143 Protection Services to third parties as required to complete the  
5144 adoption proceeding, shall be paid by the adopting parent.

5145       **SECTION 60.** Section 93-17-101, Mississippi Code of 1972, is  
5146 amended as follows:

5147       93-17-101. (1) The Legislature finds that:

5148               (a) Locating adoptive families for children for whom  
5149 state assistance is desirable, pursuant to the Mississippi  
5150 adoption assistance law, and assuring the protection of the  
5151 interests of the children affected during the entire assistance





5152 period, require special measures when the adoptive parents move to  
5153 other states or are residents of another state; and

5154 (b) Providing medical and other necessary services for  
5155 children, with state assistance, encounters special difficulties  
5156 when the providing of services takes place in other states.

5157 (2) The purposes of Sections 93-17-101 through 93-17-109 are  
5158 to:

5159 (a) Authorize the Mississippi Department of \* \* \* Child  
5160 Protection Services to enter into interstate agreements with  
5161 agencies of other states for the protection of children on behalf  
5162 of whom adoption assistance is being provided by the Mississippi  
5163 Department of \* \* \* Child Protection Services; and

5164 (b) Provide procedures for interstate children's  
5165 adoption assistance payments, including medical payments.

5166 **SECTION 61.** Section 93-17-103, Mississippi Code of 1972, is  
5167 amended as follows:

5168 93-17-103. (1) The Mississippi Department of \* \* \* Child  
5169 Protection Services is authorized to develop, participate in the  
5170 development of, negotiate and enter into one or more interstate  
5171 compacts on behalf of this state with other states to implement  
5172 one or more of the purposes set forth in Sections 93-17-101  
5173 through 93-17-109. When so entered into, and for so long as it  
5174 shall remain in force, such a compact shall have the force and  
5175 effect of law.



5176           (2) For the purposes of Sections 93-17-101 through  
5177 93-17-109, the term "state" shall mean a state of the United  
5178 States, the District of Columbia, the Commonwealth of Puerto Rico,  
5179 the Virgin Islands, Guam, the Commonwealth of the Northern Mariana  
5180 Islands or a territory or possession of or administered by the  
5181 United States.

5182           (3) For the purposes of Sections 93-17-101 through  
5183 93-17-109, the term "adoption assistance state" means the state  
5184 that is signatory to an adoption assistance agreement in a  
5185 particular case.

5186           (4) For the purposes of Sections 93-17-101 through  
5187 93-17-109, the term "residence state" means the state of which the  
5188 child is a resident by virtue of the residence of the adoptive  
5189 parents.

5190           **SECTION 62.** Section 93-17-107, Mississippi Code of 1972, is  
5191 amended as follows:

5192           93-17-107. (1) A child with special needs resident in this  
5193 state who is the subject of an adoption assistance agreement with  
5194 another state and who has been determined eligible for medicaid in  
5195 that state shall be entitled to receive a medical assistance  
5196 identification from this state upon filing with the Mississippi  
5197 Department of \* \* \* Child Protection Services a certified copy of  
5198 the adoption assistance agreement obtained from the adoption  
5199 assistance state which certifies to the eligibility of the child  
5200 for medicaid. In accordance with regulations of the Mississippi



5201 Department of \* \* \* Child Protection Services, the adoptive  
5202 parents shall be required, at least annually, to show that the  
5203 agreement is still in force or has been renewed.

5204 (2) The Division of Medicaid, Office of the Governor, shall  
5205 consider the holder of a medical assistance identification  
5206 pursuant to this section as any other holder of a medical  
5207 assistance identification under the laws of this state and shall  
5208 process and make payment on claims on account of such holder in  
5209 the same manner and pursuant to the same conditions and procedures  
5210 as for other recipients of medical assistance.

5211 (3) The submission of any claim for payment or reimbursement  
5212 for services or benefits pursuant to this section or the making of  
5213 any statement in connection therewith, which claim or statement  
5214 the maker knows or should know to be false, misleading or  
5215 fraudulent shall be punishable as perjury and shall also be  
5216 subject to a fine not to exceed Ten Thousand Dollars (\$10,000.00),  
5217 or imprisonment for not to exceed two (2) years, or both.

5218 (4) The provisions of this section shall apply only to  
5219 medical assistance for children under adoption assistance  
5220 agreements from states that have entered into a compact with this  
5221 state under which the other state provides medical assistance to  
5222 children with special needs under adoption assistance agreements  
5223 made by this state. All other children entitled to medical  
5224 assistance pursuant to adoption assistance agreements entered into



5225 by this state shall be eligible to receive it in accordance with  
5226 the laws and procedures applicable thereto.

5227       **SECTION 63.** Section 93-17-109, Mississippi Code of 1972, is  
5228 amended as follows:

5229       93-17-109. Consistent with federal law, the Mississippi  
5230 Department of \* \* \* Child Protection Services and the Division of  
5231 Medicaid, Office of the Governor of the State of Mississippi, in  
5232 connection with the administration of Sections 93-17-101 through  
5233 93-17-109 and any compact entered into pursuant hereto, shall  
5234 include in any state plan made pursuant to the Adoption Assistance  
5235 and Child Welfare Act of 1980 (P.L. 96-272), Titles IV(e) and XIX  
5236 of the Social Security Act, and any other applicable federal laws,  
5237 the provision of adoption assistance and medical assistance for  
5238 which the federal government pays some or all of the cost provided  
5239 such authority is granted under the provisions of some law of this  
5240 state other than the provisions of Sections 93-17-101 through  
5241 93-17-109. Such departments shall apply for and administer all  
5242 relevant federal aid in accordance with law.

5243       **SECTION 64.** Section 93-17-203, Mississippi Code of 1972, is  
5244 amended as follows:

5245       93-17-203. The following words and phrases shall have the  
5246 meanings ascribed herein unless the context clearly indicates  
5247 otherwise:



5248 (a) "Agency" means a county \* \* \* department of human  
5249 service, a licensed or nonlicensed adoption agency or any other  
5250 individual or entity assisting in the finalization of an adoption.

5251 (b) "Adoptee" means a person who is or has been adopted  
5252 in this state at any time.

5253 (c) "Birth parent" means either:

5254 (i) The mother designated on the adoptee's  
5255 original birth certificate; or

5256 (ii) The person named by the mother designated on  
5257 the adoptee's original birth certificate as the father of the  
5258 adoptee.

5259 (d) "Board" means the Mississippi State Board of  
5260 Health.

5261 (e) "Bureau" means the Bureau of Vital Records of the  
5262 Mississippi State Board of Health.

5263 (f) "Licensed adoption agency" means any agency or  
5264 organization performing adoption services and duly licensed by the  
5265 Mississippi Department of \* \* \* Child Protection Services \* \* \*.

5266 **SECTION 65.** Section 93-21-307, Mississippi Code of 1972, is  
5267 amended as follows:

5268 93-21-307. The administration of the Mississippi Children's  
5269 Trust Fund shall be vested in the \* \* \* Mississippi Department of  
5270 Child Protection Services. In carrying out the provisions of  
5271 Sections 93-21-301 through 93-21-311, the \* \* \* Department of



5272 Child Protection Services shall have the following powers and  
5273 duties:

5274 (a) To assist in developing programs aimed at  
5275 discovering and preventing the many factors causing child abuse  
5276 and neglect;

5277 (b) To prepare and disseminate, including the  
5278 presentation of, educational programs and materials on child abuse  
5279 and neglect;

5280 (c) To provide educational programs for professionals  
5281 required by law to make reports of child abuse and neglect;

5282 (d) To help coordinate child protective services at the  
5283 state, regional and local levels with the efforts of other state  
5284 and voluntary social, medical and legal agencies;

5285 (e) To provide advocacy for children in public and  
5286 private state and local agencies affecting children;

5287 (f) To encourage citizen and community awareness as to  
5288 the needs and problems of children;

5289 (g) To facilitate the exchange of information between  
5290 groups concerned with families and children;

5291 (h) To consult with state departments, agencies,  
5292 commissions and boards to help determine the probable  
5293 effectiveness, fiscal soundness and need for proposed educational  
5294 and service programs for the prevention of child abuse and  
5295 neglect;



5296 (i) To adopt rules and regulations, \* \* \* in accordance  
5297 with the Administrative Procedures Law to discharge its  
5298 responsibilities;

5299 (j) To report annually, through the annual report of  
5300 the \* \* \* Department of \* \* \* Child Protection Services, to the  
5301 Governor and the Legislature concerning the \* \* \* department's  
5302 activities under Sections 93-21-301 through 93-21-311 and the  
5303 effectiveness of those activities in fostering the prevention of  
5304 child abuse and neglect;

5305 (k) To recommend to the Governor and the Legislature  
5306 changes in state programs, statutes, policies and standards which  
5307 will reduce child abuse and neglect, improve coordination among  
5308 state agencies which provide services to prevent abuse and  
5309 neglect, improve the condition of children and assist parents and  
5310 guardians;

5311 (l) To evaluate and strengthen all local, regional and  
5312 state programs dealing with child abuse and neglect;

5313 (m) To prepare and submit annually to the Governor and  
5314 the Legislature reports evaluating the level and quality of all  
5315 programs, services and facilities provided to children by state  
5316 agencies;

5317 (n) To contract with public or private nonprofit  
5318 institutions, organizations, agencies or schools or with qualified  
5319 individuals for the establishment of community-based educational



5320 and service programs designed to reduce the occurrence of child  
5321 abuse and neglect;

5322 (o) To determine the eligibility of programs applying  
5323 for financial assistance and to make grants and loans from the  
5324 fund for the purposes set forth in Sections 93-21-301 through  
5325 93-21-311;

5326 (p) To develop, within one (1) year after July 1, 1989,  
5327 a state plan for the distribution of funds from the trust fund  
5328 which shall assure that an equal opportunity exists for  
5329 establishment of prevention programs and for receipt of trust fund  
5330 money among all geographic areas in this state, and to submit the  
5331 plan to the Governor and the Legislature and annually thereafter  
5332 submit revisions thereto as needed;

5333 (q) To provide for the coordination and exchange of  
5334 information on the establishment and maintenance of local  
5335 prevention programs;

5336 (r) To develop and publicize criteria for the receipt  
5337 of trust fund money by eligible local prevention programs;

5338 (s) To enter into contracts with public or private  
5339 agencies to fulfill the requirements of Sections 93-21-301 through  
5340 93-21-311; and

5341 (t) Review, monitor and approve the expenditure of  
5342 trust fund money by eligible local programs.

5343 **SECTION 66.** Section 93-31-3, Mississippi Code of 1972, is  
5344 amended as follows:





5345           93-31-3. (1) (a) A parent or legal custodian of a child,  
5346 by means of a properly executed power of attorney as provided in  
5347 Section 93-31-5, may delegate to another willing person or persons  
5348 as attorney-in-fact any of the powers regarding the care and  
5349 custody of the child other than the following:

5350                   (i) The power to consent to marriage or adoption  
5351 of the child;

5352                   (ii) The performance or inducement of an abortion  
5353 on or for the child; or

5354                   (iii) The termination of parental rights to the  
5355 child.

5356           (b) A delegation of powers under this section does not:

5357                   (i) Change or modify any parental or legal rights,  
5358 obligations, or authority established by an existing court order;

5359                   (ii) Deprive any custodial or noncustodial parent  
5360 or legal guardian of any parental or legal rights, obligations, or  
5361 authority regarding the custody, visitation, or support of the  
5362 child; or

5363                   (iii) Affect a court's ability to determine the  
5364 best interests of a child.

5365           (c) If both parents are living and have shared custody  
5366 as a matter of law or under an existing court order, both parents  
5367 must execute the power of attorney.

5368           (d) A power of attorney under this chapter must be  
5369 facilitated by either a child welfare agency that is licensed to



5370 place children for adoption and that is operating under the Safe  
5371 Families for Children model or another charitable organization  
5372 that is operating under the Safe Families for Children model. A  
5373 full criminal history and child abuse and neglect background check  
5374 must be conducted on any person who is not a grandparent, aunt,  
5375 uncle, or sibling of the child if the person is:

5376 (i) Designated or proposed to be designated as the  
5377 attorney-in-fact; or

5378 (ii) Is a person over the age of fifteen (15) who  
5379 resides in the home of the designated attorney-in-fact.

5380 (2) A power of attorney executed under this chapter shall  
5381 not be used for the sole purposes of enrolling a child in a school  
5382 to participate in the academic or interscholastic athletic  
5383 programs provided by that school or for any other unlawful  
5384 purposes, except as may be permitted by the federal Every Student  
5385 Succeeds Act (Public Law 114-95).

5386 (3) The parent or legal custodian of the child has the  
5387 authority to revoke or withdraw the power of attorney authorized  
5388 by this section at any time. Upon the termination, expiration, or  
5389 revocation of the power of attorney, the child must be returned to  
5390 the custody of the parent or legal custodian as soon as reasonably  
5391 possible.

5392 (4) Until the authority expires or is revoked or withdrawn  
5393 by the parent or legal custodian, the attorney-in-fact shall



5394 exercise parental or legal authority on a continuous basis without  
5395 compensation for the duration of the power of attorney.

5396 (5) The execution of a power of attorney by a parent or  
5397 legal custodian does not, in the absence of other evidence,  
5398 constitute abandonment, desertion, abuse, neglect, or any evidence  
5399 of unfitness as a parent unless the parent or legal custodian  
5400 fails to take custody of the child or execute a new power of  
5401 attorney after the one-year time limit, or after a longer time  
5402 period as allowed for a serving parent, has elapsed. Nothing in  
5403 this subsection prevents the Department of \* \* \* Child Protection  
5404 Services or law enforcement from investigating allegations of  
5405 abuse, abandonment, desertion, neglect or other mistreatment of a  
5406 child.

5407 (6) When the custody of a child is transferred by a power of  
5408 attorney under this chapter, the child is not considered to have  
5409 been placed in foster care and the attorney-in-fact will not be  
5410 subject to any of the requirements or licensing regulations for  
5411 foster care or other regulations relating to out-of-home care for  
5412 children and will not be subject to any statutes or regulations  
5413 dealing with the licensing or regulation of foster care homes.

5414 (7) (a) "Serving parent" means a parent who is a member of  
5415 the Armed Forces of the United States, including any reserve  
5416 component thereof, or the National Oceanic and Atmospheric  
5417 Administration Commissioned Officer Corps or the Public Health  
5418 Service of the United States Department of Health and Human



5419 Services detailed by proper authority for duty with the Armed  
5420 Forces of the United States, or who is required to enter or serve  
5421 in the active military service of the United States under a call  
5422 or order of the President of the United States or to serve on  
5423 state active duty.

5424 (b) A serving parent may delegate the powers designated  
5425 in subsection (1) of this section for longer than one (1) year if  
5426 on active-duty service or if scheduled to be on active-duty  
5427 service. The term of delegation, however, may not exceed the term  
5428 of active-duty service plus thirty (30) days.

5429 **SECTION 67.** Section 97-3-54.1, Mississippi Code of 1972, is  
5430 amended as follows:

5431 97-3-54.1. (1) (a) A person who coerces, recruits,  
5432 entices, harbors, transports, provides or obtains by any means, or  
5433 attempts to coerce, recruit, entice, harbor, transport, provide or  
5434 obtain by any means, another person, intending or knowing that the  
5435 person will be subjected to forced labor or services, or who  
5436 benefits, whether financially or by receiving anything of value  
5437 from participating in an enterprise that he knows or reasonably  
5438 should have known has engaged in such acts, shall be guilty of the  
5439 crime of human-trafficking.

5440 (b) A person who knowingly purchases the forced labor  
5441 or services of a trafficked person or who otherwise knowingly  
5442 subjects, or attempts to subject, another person to forced labor  
5443 or services or who benefits, whether financially or by receiving



5444 anything of value from participating in an enterprise that he  
5445 knows or reasonably should have known has engaged in such acts,  
5446 shall be guilty of the crime of procuring involuntary servitude.

5447           (c) A person who knowingly subjects, or attempts to  
5448 subject, or who recruits, entices, harbors, transports, provides  
5449 or obtains by any means, or attempts to recruit, entice, harbor,  
5450 transport, provide or obtain by any means, a minor, knowing that  
5451 the minor will engage in commercial sexual activity, sexually  
5452 explicit performance, or the production of sexually oriented  
5453 material, or causes or attempts to cause a minor to engage in  
5454 commercial sexual activity, sexually explicit performance, or the  
5455 production of sexually oriented material, shall be guilty of  
5456 procuring sexual servitude of a minor and shall be punished by  
5457 commitment to the custody of the Department of Corrections for not  
5458 less than five (5) nor more than thirty (30) years, or by a fine  
5459 of not less than Fifty Thousand Dollars (\$50,000.00) nor more than  
5460 Five Hundred Thousand Dollars (\$500,000.00), or both. It is not a  
5461 defense in a prosecution under this section that a minor consented  
5462 to engage in the commercial sexual activity, sexually explicit  
5463 performance, or the production of sexually oriented material, or  
5464 that the defendant reasonably believed that the minor was eighteen  
5465 (18) years of age or older.

5466           (2) If the victim is not a minor, a person who is convicted  
5467 of an offense set forth in subsection (1)(a) or (b) of this  
5468 section shall be committed to the custody of the Department of



5469 Corrections for not less than two (2) years nor more than twenty  
5470 (20) years, or by a fine of not less than Ten Thousand Dollars  
5471 (\$10,000.00) nor more than One Hundred Thousand Dollars  
5472 (\$100,000.00), or both. If the victim of the offense is a minor,  
5473 a person who is convicted of an offense set forth in subsection  
5474 (1)(a) or (b) of this section shall be committed to the custody of  
5475 the Department of Corrections for not less than five (5) years nor  
5476 more than twenty (20) years, or by a fine of not less than Twenty  
5477 Thousand Dollars (\$20,000.00) nor more than One Hundred Thousand  
5478 Dollars (\$100,000.00), or both.

5479 (3) An enterprise may be prosecuted for an offense under  
5480 this chapter if:

5481 (a) An agent of the enterprise knowingly engages in  
5482 conduct that constitutes an offense under this chapter while  
5483 acting within the scope of employment and for the benefit of the  
5484 entity.

5485 (b) An employee of the enterprise engages in conduct  
5486 that constitutes an offense under this chapter and the commission  
5487 of the offense was part of a pattern of illegal activity for the  
5488 benefit of the enterprise, which an agent of the enterprise either  
5489 knew was occurring or recklessly disregarded, and the agent failed  
5490 to take effective action to stop the illegal activity.

5491 (c) It is an affirmative defense to a prosecution of an  
5492 enterprise that the enterprise had in place adequate procedures,  
5493 including an effective complaint procedure, designed to prevent



5494 persons associated with the enterprise from engaging in the  
5495 unlawful conduct and to promptly correct any violations of this  
5496 chapter.

5497           (d) The court may consider the severity of the  
5498 enterprise's offense and order penalties, including: (i) a fine  
5499 of not more than One Million Dollars (\$1,000,000.00); (ii)  
5500 disgorgement of profit; and (iii) debarment from government  
5501 contracts. Additionally, the court may order any of the relief  
5502 provided in Section 97-3-54.7.

5503           (4) In addition to the mandatory reporting provisions  
5504 contained in Sections 43-21-353 and, 97-5-51, any person who has  
5505 reasonable cause to suspect that a minor under the age of eighteen  
5506 (18) is a trafficked person shall immediately make a report \* \* \*  
5507 to the Statewide Human Trafficking Coordinator. \* \* \* A minor who  
5508 has been identified as a victim of trafficking shall not be liable  
5509 for criminal activity in violation of this section.

5510           (5) It is an affirmative defense in a prosecution under this  
5511 act that the defendant:

5512                   (a) Is a victim; and

5513                   (b) Committed the offense under a reasonable  
5514 apprehension created by a person that, if the defendant did not  
5515 commit the act, the person would inflict serious harm on the  
5516 defendant, a member of the defendant's family, or a close  
5517 associate.



5518           **SECTION 68.** Section 97-5-24, Mississippi Code of 1972, is  
5519 amended as follows:

5520           97-5-24. If any person eighteen (18) years or older who is  
5521 employed by any public school district or private school in this  
5522 state is accused of fondling or having any type of sexual  
5523 involvement with any child under the age of eighteen (18) years  
5524 who is enrolled in such school, the principal of such school and  
5525 the superintendent of such school district shall timely notify the  
5526 district attorney with jurisdiction where the school is located of  
5527 such accusation, the Mississippi Department of Education and the  
5528 Department of \* \* \* Child Protection Services, provided that such  
5529 accusation is reported to the principal and to the school  
5530 superintendent and that there is a reasonable basis to believe  
5531 that such accusation is true. Any superintendent, or his  
5532 designee, who fails to make a report required by this section  
5533 shall be subject to the penalties provided in Section 37-11-35.  
5534 Any superintendent, principal, teacher or other school personnel  
5535 participating in the making of a required report pursuant to this  
5536 section or participating in any judicial proceeding resulting  
5537 therefrom shall be presumed to be acting in good faith. Any  
5538 person reporting in good faith shall be immune from any civil  
5539 liability that might otherwise be incurred or imposed.

5540           **SECTION 69.** Section 97-5-51, Mississippi Code of 1972, is  
5541 amended as follows:





5542           97-5-51. (1) **Definitions.** For the purposes of this  
5543 section:

5544           (a) "Sex crime against a minor" means any offense under  
5545 at least one (1) of the following statutes when committed by an  
5546 adult against a minor who is under the age of sixteen (16):

5547                   (i) Section 97-3-65 relating to rape;

5548                   (ii) Section 97-3-71 relating to rape and assault  
5549 with intent to ravish;

5550                   (iii) Section 97-3-95 relating to sexual battery;

5551                   (iv) Section 97-5-23 relating to the touching of a  
5552 child, mentally defective or incapacitated person or physically  
5553 helpless person for lustful purposes;

5554                   (v) Section 97-5-41 relating to the carnal  
5555 knowledge of a stepchild, adopted child or child of a cohabiting  
5556 partner;

5557                   (vi) Section 97-5-33 relating to exploitation of  
5558 children;

5559                   (vii) Section 97-3-54.1(1)(c) relating to  
5560 procuring sexual servitude of a minor;

5561                   (viii) Section 43-47-18 relating to sexual abuse  
5562 of a vulnerable person;

5563                   (ix) Section 97-1-7 relating to the attempt to  
5564 commit any of the offenses listed in this subsection.

5565           (b) "Mandatory reporter" means any of the following  
5566 individuals performing their occupational duties: health care



5567 practitioner, clergy member, teaching or child care provider, law  
5568 enforcement officer, or commercial image processor.

5569 (c) "Health care practitioner" means any individual who  
5570 provides health care services, including a physician, surgeon,  
5571 physical therapist, psychiatrist, psychologist, medical resident,  
5572 medical intern, hospital staff member, licensed nurse, midwife and  
5573 emergency medical technician or paramedic.

5574 (d) "Clergy member" means any priest, rabbi or duly  
5575 ordained deacon or minister.

5576 (e) "Teaching or child care provider" means anyone who  
5577 provides training or supervision of a minor under the age of  
5578 sixteen (16), including a teacher, teacher's aide, principal or  
5579 staff member of a public or private school, social worker,  
5580 probation officer, foster home parent, group home or other child  
5581 care institutional staff member, personnel of residential home  
5582 facilities, a licensed or unlicensed day care provider.

5583 (f) "Commercial image processor" means any person who,  
5584 for compensation: (i) develops exposed photographic film into  
5585 negatives, slides or prints; (ii) makes prints from negatives or  
5586 slides; or (iii) processes or stores digital media or images from  
5587 any digital process, including, but not limited to, website  
5588 applications, photography, live streaming of video, posting,  
5589 creation of power points or any other means of intellectual  
5590 property communication or media including conversion or



5591 manipulation of still shots or video into a digital show stored on  
5592 a photography site or a media storage site.

5593 (g) "Caretaker" means any person legally obligated to  
5594 provide or secure adequate care for a minor under the age of  
5595 sixteen (16), including a parent, guardian, tutor, legal custodian  
5596 or foster home parent.

5597 (2) (a) **Mandatory reporter requirement.** A mandatory  
5598 reporter shall make a report if it would be reasonable for the  
5599 mandatory reporter to suspect that a sex crime against a minor has  
5600 occurred.

5601 (b) Failure to file a mandatory report shall be  
5602 punished as provided in this section.

5603 (c) Reports made under this section and the identity of  
5604 the mandatory reporter are confidential except when the court  
5605 determines the testimony of the person reporting to be material to  
5606 a judicial proceeding or when the identity of the reporter is  
5607 released to law enforcement agencies and the appropriate  
5608 prosecutor. The identity of the reporting party shall not be  
5609 disclosed to anyone other than law enforcement or prosecutors  
5610 except under court order; violation of this requirement is a  
5611 misdemeanor. Reports made under this section are for the purpose  
5612 of criminal investigation and prosecution only and information  
5613 from these reports is not a public record. Disclosure of any  
5614 information by the prosecutor shall conform to the Mississippi  
5615 Uniform Rules of Circuit and County Court Procedure.



5616           (d) Any mandatory reporter who makes a required report  
5617 under this section or participates in a judicial proceeding  
5618 resulting from a mandatory report shall be presumed to be acting  
5619 in good faith. Any person or institution reporting in good faith  
5620 shall be immune from any liability, civil or criminal, that might  
5621 otherwise be incurred or imposed.

5622           (3) (a) **Mandatory reporting procedure.** A report required  
5623 under subsection (2) must be made immediately to the law  
5624 enforcement agency in whose jurisdiction the reporter believes the  
5625 sex crime against the minor occurred. Except as otherwise  
5626 provided in this subsection (3), a mandatory reporter may not  
5627 delegate to any other person the responsibility to report, but  
5628 shall make the report personally.

5629           (i) The reporting requirement under this  
5630 subsection (3) is satisfied if a mandatory reporter in good faith  
5631 reports a suspected sex crime against a minor to the Department  
5632 of \* \* \* Child Protection Services under Section 43-21-353 if the  
5633 reporter reasonably suspects the sex crime constitutes abuse or  
5634 neglect.

5635           (ii) The reporting requirement under this  
5636 subsection (3) is satisfied if a mandatory reporter reports a  
5637 suspected sex crime against a minor by following a reporting  
5638 procedure that is imposed:

5639           1. By state agency rule as part of licensure  
5640 of any person or entity holding a state license to provide



5641 services that include the treatment or education of abused or  
5642 neglected children; or

5643 2. By statute.

5644 (b) **Contents of the report.** The report shall identify,  
5645 to the extent known to the reporter, the following:

5646 (i) The name and address of the minor victim;

5647 (ii) The name and address of the minor's  
5648 caretaker;

5649 (iii) Any other pertinent information known to the  
5650 reporter.

5651 (4) A law enforcement officer who receives a mandated report  
5652 under this section shall file an affidavit against the offender on  
5653 behalf of the State of Mississippi if there is probable cause to  
5654 believe that the offender has committed a sex crime against a  
5655 minor.

5656 (5) **Collection of forensic samples.** (a) (i) When an  
5657 abortion is performed on a minor who is less than fourteen (14)  
5658 years of age at the time of the abortion procedure, fetal tissue  
5659 extracted during the abortion shall be collected in accordance  
5660 with rules and regulations adopted pursuant to this section if it  
5661 would be reasonable to suspect that the pregnancy being terminated  
5662 is the result of a sex crime against a minor.

5663 (ii) When a minor who is under sixteen (16) years  
5664 of age gives birth to an infant, umbilical cord blood shall be  
5665 collected, if possible, in accordance with rules and regulations



5666 adopted pursuant to this section if it would be reasonable to  
5667 suspect that the minor's pregnancy resulted from a sex crime  
5668 against a minor.

5669 (iii) It shall be reasonable to suspect that a sex  
5670 crime against a minor has occurred if the mother of an infant was  
5671 less than sixteen (16) years of age at the time of conception and  
5672 at least one (1) of the following conditions also applies:

5673 1. The mother of the infant will not identify  
5674 the father of the infant;

5675 2. The mother of the infant lists the father  
5676 of the infant as unknown;

5677 3. The person the mother identifies as the  
5678 father of the infant disputes his fatherhood;

5679 4. The person the mother identifies as the  
5680 father of the infant is twenty-one (21) years of age or older; or

5681 5. The person the mother identifies as the  
5682 father is deceased.

5683 (b) The State Medical Examiner shall adopt rules and  
5684 regulations consistent with Section 99-49-1 that prescribe:

5685 (i) The amount and type of fetal tissue or  
5686 umbilical cord blood to be collected pursuant to this section;

5687 (ii) Procedures for the proper preservation of the  
5688 tissue or blood for the purpose of DNA testing and examination;

5689 (iii) Procedures for documenting the chain of  
5690 custody of such tissue or blood for use as evidence;



5691 (iv) Procedures for proper disposal of fetal  
5692 tissue or umbilical cord blood collected pursuant to this section;  
5693 (v) A uniform reporting instrument mandated to be  
5694 utilized, which shall include the complete residence address and  
5695 name of the parent or legal guardian of the minor who is the  
5696 subject of the report required under this subsection (5); and  
5697 (vi) Procedures for communication with law  
5698 enforcement agencies regarding evidence and information obtained  
5699 pursuant to this section.

5700 (6) **Penalties.** (a) A person who is convicted of a first  
5701 offense under this section shall be guilty of a misdemeanor and  
5702 fined not more than Five Hundred Dollars (\$500.00).

5703 (b) A person who is convicted of a second offense under  
5704 this section shall be guilty of a misdemeanor and fined not more  
5705 than One Thousand Dollars (\$1,000.00), or imprisoned for not more  
5706 than thirty (30) days, or both.

5707 (c) A person who is convicted of a third or subsequent  
5708 offense under this section shall be guilty of a misdemeanor and  
5709 fined not more than Five Thousand Dollars (\$5,000.00), or  
5710 imprisoned for not more than one (1) year, or both.

5711 (7) A health care practitioner or health care facility shall  
5712 be immune from any penalty, civil or criminal, for good-faith  
5713 compliance with any rules and regulations adopted pursuant to this  
5714 section.



5715           **SECTION 70.** Section 97-29-49, Mississippi Code of 1972, is  
5716 amended as follows:

5717           97-29-49. (1) A person commits the misdemeanor of  
5718 prostitution if the person knowingly or intentionally performs, or  
5719 offers or agrees to perform, sexual intercourse or sexual conduct  
5720 for money or other property. "Sexual conduct" includes  
5721 cunnilingus, fellatio, masturbation of another, anal intercourse  
5722 or the causing of penetration to any extent and with any object or  
5723 body part of the genital or anal opening of another.

5724           (2) Any person violating the provisions of this section  
5725 shall, upon conviction, be punished by a fine not exceeding Two  
5726 Hundred Dollars (\$200.00) or by confinement in the county jail for  
5727 not more than six (6) months, or both.

5728           (3) In addition to the mandatory reporting provisions  
5729 contained in Section 97-5-51, any law enforcement officer who  
5730 takes a minor under eighteen (18) years of age into custody for  
5731 suspected prostitution shall immediately make a report to the  
5732 Department of \* \* \* Child Protection Services as required in  
5733 Section 43-21-353 for suspected child sexual abuse or neglect, and  
5734 the department shall commence an initial investigation into  
5735 suspected child sexual abuse or neglect as required in Section  
5736 43-21-353.

5737           (4) If it is determined that a person suspected of or  
5738 charged with engaging in prostitution is engaging in those acts as  
5739 a direct result of being a trafficked person, as defined by





5740 Section 97-3-54.4, that person shall be immune from prosecution  
5741 for prostitution as a juvenile or adult and, if a minor, the  
5742 provisions of Section 97-3-54.1(4) shall be applicable.

5743       **SECTION 71.** Section 25-9-127, Mississippi Code of 1972, is  
5744 amended as follows:

5745       25-9-127. (1) No employee of any department, agency or  
5746 institution who is included under this chapter or hereafter  
5747 included under its authority, and who is subject to the rules and  
5748 regulations prescribed by the state personnel system, may be  
5749 dismissed or otherwise adversely affected as to compensation or  
5750 employment status except for inefficiency or other good cause, and  
5751 after written notice and hearing within the department, agency or  
5752 institution as shall be specified in the rules and regulations of  
5753 the State Personnel Board complying with due process of law; and  
5754 any employee who has by written notice of dismissal or action  
5755 adversely affecting his compensation or employment status shall,  
5756 on hearing and on any appeal of any decision made in such action,  
5757 be required to furnish evidence that the reasons stated in the  
5758 notice of dismissal or action adversely affecting his compensation  
5759 or employment status are not true or are not sufficient grounds  
5760 for the action taken; provided, however, that this provision shall  
5761 not apply (a) to persons separated from any department, agency or  
5762 institution due to curtailment of funds or reduction in staff when  
5763 such separation is in accordance with rules and regulations of the  
5764 state personnel system; (b) during the probationary period of



5765 state service of twelve (12) months; and (c) to an executive  
5766 officer of any state agency who serves at the will and pleasure of  
5767 the Governor, board, commission or other appointing authority.

5768 (2) The operation of a state-owned motor vehicle without a  
5769 valid Mississippi driver's license by an employee of any  
5770 department, agency or institution that is included under this  
5771 chapter and that is subject to the rules and regulations of the  
5772 state personnel system shall constitute good cause for dismissal  
5773 of such person from employment.

5774 (3) Beginning July 1, 1999, every male between the ages of  
5775 eighteen (18) and twenty-six (26) who is required to register  
5776 under the federal Military Selective Service Act, 50 USCS App.  
5777 453, and who is an employee of the state shall not be promoted to  
5778 any higher position of employment with the state until he submits  
5779 to the person, commission, board or agency by which he is employed  
5780 satisfactory documentation of his compliance with the draft  
5781 registration requirements of the Military Selective Service Act.  
5782 The documentation shall include a signed affirmation under penalty  
5783 of perjury that the male employee has complied with the  
5784 requirements of the Military Selective Service Act.

5785 (4) For a period of two (2) years beginning July 1, 2014,  
5786 the provisions of subsection (1) shall not apply to the personnel  
5787 actions of the State Department of Education that are subject to  
5788 the rules and regulations of the State Personnel Board, and all  
5789 employees of the department shall be classified as nonstate



5790 service during that period. However, any employee hired after  
5791 July 1, 2014, by the department shall meet the criteria of the  
5792 State Personnel Board as it presently exists for employment. The  
5793 State Superintendent of Public Education and the State Board of  
5794 Education shall consult with the Office of the Attorney General  
5795 before taking personnel actions authorized by this section to  
5796 review those actions for compliance with applicable state and  
5797 federal law.

5798 It is not the intention or effect of this section to include  
5799 any school attendance officer in any exemption from coverage under  
5800 the State Personnel Board policy or regulations, including, but  
5801 not limited to, termination and conditions of employment.

5802 (5) (a) For a period of two (2) years beginning July 1,  
5803 2015, the provisions of subsection (1) shall not apply to the  
5804 personnel actions of the Department of Corrections, and all  
5805 employees of the department shall be classified as nonstate  
5806 service during that period. However, any employee hired after  
5807 July 1, 2015, by the department shall meet the criteria of the  
5808 State Personnel Board as it presently exists for employment.

5809 (b) Additionally, for a period of one (1) year  
5810 beginning July 1, 2016, the personnel actions of the Commissioner  
5811 of the Department of Corrections shall be exempt from State  
5812 Personnel Board rules, regulations and procedures in order to give  
5813 the commissioner flexibility in making an orderly, effective and  
5814 timely reorganization and realignment of the department.



5815           (c) The Commissioner of Corrections shall consult with  
5816 the Office of the Attorney General before personnel actions  
5817 authorized by this section to review those actions for compliance  
5818 with applicable state and federal law.

5819           (6) Through July 1, 2019, the provisions of subsection (1)  
5820 of this section shall not apply to the personnel actions of the  
5821 Department of Human Services that are subject to the rules and  
5822 regulations of the State Personnel Board, and all employees of the  
5823 department shall be classified as nonstate service during that  
5824 period. Any employee hired on or after July 1, 2019, by the  
5825 department shall meet the criteria of the State Personnel Board as  
5826 it presently exists for employment. The Executive Director of  
5827 Human Services shall consult with the Office of the Attorney  
5828 General before taking personnel actions authorized by this section  
5829 to review those actions for compliance with applicable state and  
5830 federal law.

5831           (7) Through July 1, 2019, the provisions of subsection (1)  
5832 of this section shall not apply to the personnel actions of the  
5833 Department of Child Protection Services that are subject to the  
5834 rules and regulations of the State Personnel Board, and all  
5835 employees of the department shall be classified as nonstate  
5836 service during that period. Any employee hired on or after July  
5837 1, 2019, by the division shall meet the criteria of the State  
5838 Personnel Board as it presently exists for employment. Further,  
5839 for a period of one (1) year beginning July 1, 2017, the personnel



5840 actions of the Department of Child Protection Services shall be  
5841 exempt from State Personnel Board rules, regulation and procedures  
5842 in order to give the department flexibility in making an orderly,  
5843 effective and timely reorganization and realignment of the  
5844 department. The Commissioner of Child Protection Services shall  
5845 consult with the Office of the Attorney General before taking  
5846 personnel actions authorized by this section to review those  
5847 actions for compliance with applicable state and federal law.

5848 (8) Any state agency whose personnel actions are exempted in  
5849 this section from the rules, regulations and procedures of the  
5850 State Personnel Board shall file with the Lieutenant Governor, the  
5851 Speaker of the House of Representatives, and the members of the  
5852 Senate and House Accountability, Efficiency \* \* \* and Transparency  
5853 Committees an annual report no later than July 1, 2016, and each  
5854 year thereafter while under the exemption. Such annual report  
5855 shall contain the following information:

5856 (a) The number of current employees who received an  
5857 increase in salary during the past fiscal year and the amount of  
5858 the increase;

5859 (b) The number of employees who were dismissed from the  
5860 agency or otherwise adversely affected as to compensation or  
5861 employment status during the past fiscal year, including a  
5862 description of such adverse effects; and

5863 (c) The number of new employees hired during the past  
5864 fiscal year and the starting salaries of each new employee.



5865           **SECTION 72.**   The following shall be codified as Section  
5866   43-26-5, Mississippi Code of 1972:

5867           43-26-5.   (1)   In addition to all other powers and duties  
5868   provided by law, the Department of Child Protection Services is  
5869   authorized to:

5870                   (a)   Provide protective services for children as will  
5871   conserve home life;

5872                   (b)   Assume responsibility for the care and support of  
5873   dependent children needing public care away from their homes;

5874                   (c)   Place children found by the department to be  
5875   dependent or without proper care in suitable institutions or  
5876   private homes and cooperate with public and private institutions  
5877   in placing such children; and

5878                   (d)   Accept custody or guardianship, through one (1) of  
5879   its designated employees, of any child, when appointed as  
5880   custodian or guardian in the manner provided by law.

5881           The grant of authority in this subsection (1) shall not be  
5882   construed as diminishing any other authority granted to the  
5883   department by any other law.

5884           (2)   The board of supervisors in each county is empowered, in  
5885   its discretion, to set aside and appropriate any money necessary  
5886   to carry out the provisions of this section to the county office  
5887   of the Department of Child Protection Services.   Such money may  
5888   come out of the tax levied and collected to support the poor of  
5889   the county or out of the county general fund.



5890           **SECTION 73.** The following shall be codified as Section  
5891 43-26-3, Mississippi Code of 1972:

5892           43-26-3. The Commissioner of the Department of Child  
5893 Protection Services is authorized to:

5894                   (a) Formulate the policy of the department;

5895                   (b) Adopt, modify, repeal and promulgate, after due  
5896 notice and hearing, and where not otherwise prohibited by federal  
5897 or state law, to make exceptions to and grant exemptions and  
5898 variances from, and to enforce rules and regulations implementing  
5899 or effectuating the powers and duties of the department under any  
5900 and all statutes within the department's jurisdiction;

5901                   (c) Employ personnel;

5902                   (d) Apply for, receive and expend any federal or state  
5903 funds or contributions, gifts, devises, bequests or funds from any  
5904 other source;

5905                   (e) Fingerprint and perform a criminal history check on  
5906 every employee or volunteer who, by virtue of such position has  
5907 direct access to children or is in a position of fiduciary  
5908 responsibility; and

5909                   (f) Discharge such other duties, responsibilities and  
5910 powers as are necessary to implement the programs of the  
5911 department.

5912           **SECTION 74.** Sections 1 through 70 of this act shall take  
5913 effect and be in force from and after July 1, 2017. Section 71 of



5914 this act shall take effect and be in force from and after its  
5915 passage.

