MISSISSIPPI LEGISLATURE REGULAR SESSION 2020

By: Representative Williams-Barnes

To: Workforce Development; Public Health and Human Services

HOUSE BILL NO. 1197

AN ACT TO CREATE THE "2020 WOMEN'S ECONOMIC SECURITY ACT"; TO REQUIRE MINIMUM SPENDING LEVELS ON THE CHILD CARE PAYMENT PROGRAM (CCPP) FROM THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT; TO AMEND SECTION 43-13-115, MISSISSIPPI CODE OF 1972, TO REVISE MEDICAID ELIGIBILITY TO INCLUDE THOSE INDIVIDUALS WHO ARE ENTITLED TO BENEFITS UNDER THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (ACA) BEGINNING JULY 1, 2020; TO AMEND SECTION 43-13-117, MISSISSIPPI CODE OF 1972, TO INCLUDE ESSENTIAL HEALTH BENEFITS FOR INDIVIDUALS ELIGIBLE FOR MEDICAID UNDER THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (ACA); TO AMEND SECTION 37-153-7, MISSISSIPPI CODE OF 1972, TO EXPAND THE MISSISSIPPI STATE WORKFORCE INVESTMENT BOARD TO INCLUDE A WOMAN WITH EXPERTISE IN ASSISTING WOMEN IN JOB TRAINING AND SECURING EMPLOYMENT IN NONTRADITIONAL OCCUPATIONS; TO AMEND SECTION 7-1-355, MISSISSIPPI CODE OF 1972, TO REQUIRE THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY TO ACHIEVE GENDER EQUITY IN THE WORKFORCE INVESTMENT ACT OR WORKFORCE INNOVATION OPPORTUNITY ACT WORKFORCE DEVELOPMENT SYSTEM; TO REQUIRE CERTAIN INFORMATION TO BE INCLUDED IN AN ANNUAL REPORT TO THE LEGISLATURE; TO REQUIRE EQUAL PAY CERTIFICATES OF COMPLIANCE; TO CREATE WOMEN AND HIGH-WAGE, HIGH-DEMAND, NONTRADITIONAL JOBS GRANT PROGRAM; TO ESTABLISH THE MISSISSIPPI PAID FAMILY LEAVE ACT; TO PROHIBIT DISCRIMINATION IN EMPLOYMENT BASED ON PREGNANCY, CHILDBIRTH, OR A RELATED CONDITION; TO PROVIDE FOR PAID SICK AND SAFE LEAVE TIME; TO INCREASE THE STATE MINIMUM WAGE; TO AMEND SECTIONS 17-1-51 AND 25-3-40, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; TO ENACT THE EVELYN GANDY FAIR PAY ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the "2020 Mississippi Women's Economic Security Act."

SECTION 2. (1) This section shall be known and cited as the "Mississippi Affordable Child Care Act."

(2) Each federal fiscal year, the Mississippi Department of Human Services (MDHS) and/or any state agency receiving and administering the federal Temporary Assistance for Needy Families (TANF) Block Grant shall spend no less than Twenty Million Dollars ($20,000,000.00) of federal TANF funds and/or state TANF Maintenance of Effort (MOE) funds on the Child Care Payment Program (CCPP). The Mississippi Department of Human Services (MDHS) and/or any state agency receiving and administering the federal TANF Block Grant shall transfer no less than twenty percent (20%) of the state's fixed basic block grant amount for its annual TANF Block Grant to the Child Care and Development Fund (CCDF) for purposes of serving eligible families through the Child Care Payment Program (CCPP).

SECTION 3. Section 43-13-115, Mississippi Code of 1972, is amended as follows:

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

(1) Those who are qualified for public assistance grants under provisions of Title IV-A and E of the federal Social Security Act, as amended, including those statutorily deemed to be IV-A and low-income families and children under Section 1931 of the federal Social Security Act. For the purposes of this paragraph (1) and paragraphs (8), (17) and (18) of this section,

any reference to Title IV-A or to Part A of Title IV of the federal Social Security Act, as amended, or the state plan under Title IV-A or Part A of Title IV, shall be considered as a reference to Title IV-A of the federal Social Security Act, as amended, and the state plan under Title IV-A, including the income and resource standards and methodologies under Title IV-A and the state plan, as they existed on July 16, 1996. The Department of Human Services shall determine Medicaid eligibility for children receiving public assistance grants under Title IV-E. The division shall determine eligibility for low-income families under Section 1931 of the federal Social Security Act and shall redetermine eligibility for those continuing under Title IV-A grants.

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

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

(4) [Deleted]

(5) A child born on or after October 1, 1984, to a woman eligible for and receiving Medicaid under the state plan on the date of the child's birth shall be deemed to have applied for Medicaid and to have been found eligible for Medicaid under the plan on the date of that birth, and will remain eligible for Medicaid for a period of one (1) year so long as the child is a member of the woman's household and the woman remains eligible for Medicaid or would be eligible for Medicaid if pregnant. The eligibility of individuals covered in this paragraph shall be determined by the Division of Medicaid.

(6) Children certified by the State Department of Human Services to the Division of Medicaid of whom the state and county departments of human services have custody and financial responsibility, and children who are in adoptions subsidized in full or part by the Department of Human Services, including special needs children in non-Title IV-E adoption assistance, who are approvable under Title XIX of the Medicaid program. The eligibility of the children covered under this paragraph shall be determined by the State Department of Human Services.

(7) Persons certified by the Division of Medicaid who are patients in a medical facility (nursing home, hospital, tuberculosis sanatorium or institution for treatment of mental diseases), and who, except for the fact that they are patients in that medical facility, would qualify for grants under Title IV, Supplementary Security Income (SSI) benefits under Title XVI or

state supplements, and those aged, blind and disabled persons who would not be eligible for Supplemental Security Income (SSI) benefits under Title XVI or state supplements if they were not 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 medical institution, for SSI or a state supplemental payment under Title XVI of the federal Social Security Act, as amended, and therefore for Medicaid under the plan, and for whom the state has made a determination as required under Section 1902(e)(3)(b) of the federal Social Security Act, as amended. The eligibility of individuals under this paragraph shall be determined by the Division of Medicaid.

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

Any individual who applied for Medicaid during the period from July 1, 2004, through March 31, 2005, who otherwise would

have been eligible for coverage under this paragraph (11) if it had been in effect at the time the individual submitted his or her application and is still eligible for coverage under this paragraph (11) on March 31, 2005, shall be eligible for Medicaid coverage under this paragraph (11) from March 31, 2005, through December 31, 2005. The division shall give priority in processing the applications for those individuals to determine their eligibility under this paragraph (11).

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

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

(13) (a) Individuals who are entitled to Medicare Part A as defined in Section 4501 of the Omnibus Budget Reconciliation Act of 1990, and whose income does not exceed one hundred twenty percent (120%) of the nonfarm official poverty level as defined by

the Office of Management and Budget and revised annually. Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums.

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

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

(14) [Deleted]

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

(16) In accordance with the terms and conditions of approved Title XIX waiver from the United States Department of Health and Human Services, persons provided home- and community-based services who are physically disabled and certified by the Division of Medicaid as eligible due to applying the income and deeming requirements as if they were institutionalized.

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

(18) Persons who become ineligible for assistance under Title IV-A of the federal Social Security Act, as amended, as a result, in whole or in part, of the collection or increased collection of child or spousal support under Title IV-D of the federal Social Security Act, as amended, who were eligible for Medicaid for at least three (3) of the six (6) months immediately preceding the month in which the ineligibility begins, shall be

eligible for Medicaid for an additional four (4) months beginning with the month in which the ineligibility begins. The eligibility of the individuals covered under this paragraph shall be determined by the division.

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

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

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

provision, in addition to family planning services covered under Section 43-13-117(13).

The Division of Medicaid shall apply to the United States Secretary of Health and Human Services for a federal waiver of the 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 Human Services for whom the state and county departments of human services have custody and financial responsibility who are in foster care on their eighteenth birthday as reported by the Mississippi Department of Human Services shall be certified Medicaid eligible by the Division of Medicaid until their twenty-first birthday.

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

(25) The division shall apply to the Centers for Medicare and Medicaid Services (CMS) for any necessary waivers to provide services to individuals who are sixty-five (65) years of age or older or are disabled as determined under Section 1614(a)(3) of the federal Social Security Act, as amended, and whose income does not exceed one hundred thirty-five percent

(135%) of the nonfarm official poverty level as defined by the Office of Management and Budget and revised annually, and whose resources do not exceed those established by the Division of Medicaid, and who are not otherwise covered by Medicare. Nothing contained in this paragraph (25) shall entitle an individual to benefits. The eligibility of individuals covered under this paragraph shall be determined by the Division of Medicaid.

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

(27) Individuals who are entitled to Medicare Part D and whose income does not exceed one hundred fifty percent (150%) of the nonfarm official poverty level as defined by the Office of

Management and Budget and revised annually. Eligibility for payment of the Medicare Part D subsidy under this paragraph shall be determined by the division.

(28) Under the federal Patient Protection and Affordable Care Act of 2010 and as amended, beginning July 1, 2020, individuals who are sixty-five (65) years of age, not pregnant, not entitled to nor enrolled for benefits in Part A of Title XVIII of the federal Social Security Act, are not described in any other part of this section, and whose income does not exceed one hundred thirty-three percent (133%) of the Federal Poverty Level applicable to a family of the size involved. The eligibility of individuals covered under this paragraph (28) shall be determined by the Division of Medicaid, and those individuals determined eligible shall only receive essential health benefits as described in the federal Patient Protection and Affordable Care Act of 2010 as amended.

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 4. Section 43-13-117, Mississippi Code of 1972, is amended as follows:

43-13-117. (A) Medicaid as authorized by this article shall include payment of part or all of the costs, at the discretion of the division, with approval of the Governor and the Centers for Medicare and Medicaid Services, of the following types of care and

services rendered to eligible applicants who have been determined to be eligible for that care and services, within the limits of state appropriations and federal matching funds:

(1) Inpatient hospital services.

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

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

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

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

(e) No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or Ambulatory Payment Classification (APC) model or a managed care program or similar model described in subsection (H) of this section unless specifically authorized by the division.

(2) Outpatient hospital services.

(a) Emergency services.

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

(c) The division is authorized to implement an Ambulatory Payment Classification (APC) methodology for outpatient hospital services. The division may give rural hospitals that have fifty (50) or fewer licensed beds the option to not be reimbursed for outpatient hospital services using the APC methodology, but reimbursement for outpatient hospital services provided by those hospitals shall be based on one hundred one percent (101%) of the rate established under Medicare for outpatient hospital services. Those hospitals choosing to not be reimbursed under the APC methodology shall remain under cost-based reimbursement for a two-year period.

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

(3) Laboratory and x-ray services.

(4) Nursing facility services.

(a) The division shall make full payment to nursing facilities for each day, not exceeding forty-two (42) 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 forty-two-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

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

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

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

(e) The division shall develop and implement, not later than January 1, 2001, a case-mix payment add-on determined by time studies and other valid statistical data that will reimburse a nursing facility for the additional cost of caring for

a resident who has a diagnosis of Alzheimer's or other related dementia and exhibits symptoms that require special care. Any such case-mix add-on payment shall be supported by a determination of additional cost. The division shall also develop and implement as part of the fair rental reimbursement system for nursing facility beds, an Alzheimer's resident bed depreciation enhanced reimbursement system that will provide an incentive to encourage nursing facilities to convert or construct beds for residents with Alzheimer's or other related dementia.

(f) The division shall develop and implement an assessment process for long-term care services. The division may provide the assessment and related functions directly or through contract with the area agencies on aging.

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

(5) Periodic screening and diagnostic services for individuals under age twenty-one (21) years as are needed to identify physical and mental defects and to provide health care treatment and other measures designed to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services, regardless of whether these services are included in the state plan. The division may include in its periodic screening and diagnostic program those discretionary

services authorized under the federal regulations adopted to implement Title XIX of the federal Social Security Act, as amended. The division, in obtaining physical therapy services, occupational therapy services, and services for individuals with speech, hearing and language disorders, may enter into a cooperative agreement with the State Department of Education for the provision of those services to handicapped students by public school districts using state funds that are provided from the appropriation to the Department of Education to obtain federal matching funds through the division. The division, in obtaining medical and mental health assessments, treatment, care and services for children who are in, or at risk of being put in, the custody of the Mississippi Department of Human Services may enter into a cooperative agreement with the Mississippi Department of Human Services for the provision of those services using state funds that are provided from the appropriation to the Department of Human Services to obtain federal matching funds through the division.

(6) Physician's services. Physician visits as determined by the division and in accordance with federal laws and regulations. The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians based at an academic health care center and by physicians at rural health centers that are associated with an academic health care center. From and after January 1, 2010, all

fees for physician's services that are covered only by Medicaid shall be increased to ninety percent (90%) of the rate established on January 1, 2018, and as may be adjusted each July thereafter, under Medicare. The division may provide for a reimbursement rate for physician's services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division. The division may reimburse eligible providers as determined by the Patient Protection and Affordable Care Act for certain primary care services as defined by the act at one hundred percent (100%) of the rate established under Medicare. Additionally, the division shall reimburse obstetricians and gynecologists for certain primary care services as defined by the division at one hundred percent (100%) of the rate established under Medicare.

(7) (a) Home health services for eligible persons, not to exceed in cost the prevailing cost of nursing facility services. All home health visits must be precertified as required by the division.

(b) [Repealed]

(8) Emergency medical transportation services as determined by the division.

(9) Prescription drugs and other covered drugs and services as may be determined by the division.

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

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

The division may allow for a combination of prescriptions for single-source and innovator multiple-source drugs and generic drugs to meet the needs of the beneficiaries.

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

Drugs prescribed for a resident of a psychiatric residential treatment facility must be provided in true unit doses when available. The division may require that drugs not covered by Medicare Part D for a resident of a long-term care facility be provided in true unit doses when available. Those drugs that were originally billed to the division but are not used by a resident

in any of those facilities shall be returned to the billing pharmacy for credit to the division, in accordance with the guidelines of the State Board of Pharmacy and any requirements of federal law and regulation. Drugs shall be dispensed to a recipient and only one (1) dispensing fee per month may be charged. The division shall develop a methodology for reimbursing for restocked drugs, which shall include a restock fee as determined by the division not exceeding Seven Dollars and Eighty-two Cents ($7.82).

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

The division is authorized to develop and implement a program of payment for additional pharmacist services as may be determined by the division.

All claims for drugs for dually eligible Medicare/Medicaid beneficiaries that are paid for by Medicare must be submitted to Medicare for payment before they may be processed by the division's online payment system.

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

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

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

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

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

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

The division may allow certain drugs, implantable drug system devices, and medical supplies, with limited distribution or limited access for beneficiaries and administered in an appropriate clinical setting, to be reimbursed as either a medical claim or pharmacy claim, as determined by the division.

Notwithstanding any other provision of this article, the division shall allow physician-administered drugs to be billed and reimbursed as either a medical claim or pharmacy point-of-sale to allow greater access to care.

It is the intent of the Legislature that the division and any managed care entity described in subsection (H) of this section encourage the use of Alpha-Hydroxyprogesterone Caproate (17P) to prevent recurrent preterm birth.

(10) Dental and orthodontic services to be determined by the division.

This dental services program under this paragraph shall be known as the "James Russell Dumas Medicaid Dental Services Program."

The Medical Care Advisory Committee, assisted by the Division of Medicaid, shall annually determine the effect of this incentive by evaluating the number of dentists who are Medicaid providers, the number who and the degree to which they are actively billing Medicaid, the geographic trends of where dentists are offering what types of Medicaid services and other statistics pertinent to the goals of this legislative intent. This data shall annually be

presented to the Chair of the Senate Medicaid Committee and the Chair of the House Medicaid Committee.

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

(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 sixty-three (63) 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 sixty-three-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 in a facility that is not a part of a hospital but that is organized and operated to provide medical care to outpatients. Clinic services shall include any services reimbursed as outpatient hospital services that may be rendered in such a facility, including those that become so after July 1, 1991. On July 1, 1999, all fees for physicians' services reimbursed under authority of this paragraph (14) shall be reimbursed at ninety percent (90%) of the rate established on January 1, 1999, and as may be adjusted each July thereafter, under Medicare (Title XVIII of the federal Social Security Act, as amended). The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians based at an academic health care center and by physicians at rural health

centers that are associated with an academic health care center. The division may provide for a reimbursement rate for physician's clinic services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division.

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

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

(16) Mental health services. Certain services provided by a psychiatrist shall be reimbursed at up to one hundred percent (100%) of the Medicare rate. Approved therapeutic and case management services (a) provided by an approved regional mental health/intellectual disability center established under Sections 41-19-31 through 41-19-39, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/intellectual disability center if determined necessary by the Department of Mental Health, using state funds that are provided in the

appropriation to the division to match federal funds, or (b) provided by a facility that is certified by the State Department of Mental Health to provide therapeutic and case management services, to be reimbursed on a fee for service basis, or (c) provided in the community by a facility or program operated by the Department of Mental Health. Any such services provided by a facility described in subparagraph (b) must have the prior approval of the division to be reimbursable under this section.

(17) Durable medical equipment services and medical supplies. Precertification of durable medical equipment and medical supplies must be obtained as required by the division. The Division of Medicaid may require durable medical equipment providers to obtain a surety bond in the amount and to the specifications as established by the Balanced Budget Act of 1997.

(18) (a) Notwithstanding any other provision of this section to the contrary, as provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals that serve a disproportionate share of low-income patients and that meet the federal requirements for those payments as provided in Section 1923 of the federal Social Security Act and any applicable regulations. It is the intent of the Legislature that the division shall draw down all available federal funds allotted to the state for disproportionate share hospitals. However, from and after January 1, 1999, public hospitals participating in the

Medicaid disproportionate share program may be required to participate in an intergovernmental transfer program as provided in Section 1903 of the federal Social Security Act and any applicable regulations.

(b) The division may establish a Medicare Upper Payment Limits Program, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations, for hospitals, and may establish a Medicare Upper Payment Limits Program for nursing facilities, and may establish a Medicare Upper Payment Limits Program for physicians employed or contracted by public hospitals. Upon successful implementation of a Medicare Upper Payment Limits Program for physicians employed by public hospitals, the division may develop a plan for implementing an Upper Payment Limits Program for physicians employed by other classes of hospitals. The division shall assess each hospital and, if the program is established for nursing facilities, shall assess each nursing facility, for the sole purpose of financing the state portion of the Medicare Upper Payment Limits Program. The hospital assessment shall be as provided in Section 43-13-145(4)(a) and the nursing facility assessment, if established, shall be based on Medicaid utilization or other appropriate method consistent with federal regulations. The assessment will remain in effect as long as the state participates in the Medicare Upper Payment Limits Program. Public hospitals with physicians participating in the Medicare Upper Payment Limits

Program shall be required to participate in an intergovernmental transfer program for the purpose of financing the state portion of the physician UPL payments. As provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals and, if the program is established for nursing facilities, shall make additional reimbursement to nursing facilities, for the Medicare Upper Payment Limits, and, if the program is established for physicians, shall make additional reimbursement for physicians, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations. Notwithstanding any other provision of this article to the contrary, effective upon implementation of the Mississippi Hospital Access Program (MHAP) provided in subparagraph (c)(i) below, the hospital portion of the inpatient Upper Payment Limits Program shall transition into and be replaced by the MHAP program. However, the division is authorized to develop and implement an alternative fee-for-service Upper Payment Limits model in accordance with federal laws and regulations if necessary to preserve supplemental funding. Further, the division, in consultation with the Mississippi Hospital Association and a governmental hospital located in a county bordering the Gulf of Mexico and the State of Alabama shall develop alternative models for distribution of medical claims and supplemental payments for inpatient and outpatient hospital services, and such models may include, but shall not be limited to

the following: increasing rates for inpatient and outpatient services; creating a low-income utilization pool of funds to reimburse hospitals for the costs of uncompensated care, charity care and bad debts as permitted and approved pursuant to federal regulations and the Centers for Medicare and Medicaid Services; supplemental payments based upon Medicaid utilization, quality, service lines and/or costs of providing such services to Medicaid beneficiaries and to uninsured patients. The goals of such payment models shall be to ensure access to inpatient and outpatient care and to maximize any federal funds that are available to reimburse hospitals for services provided. Any such documents required to achieve the goals described in this paragraph shall be submitted to the Centers for Medicare and Medicaid Services, with a proposed effective date of July 1, 2019, to the extent possible, but in no event shall the effective date of such payment models be later than July 1, 2020. The Chairmen of the Senate and House Medicaid Committees shall be provided a copy of the proposed payment model(s) prior to submission. Effective July 1, 2018, and until such time as any payment model(s) as described above become effective, the division, in consultation with the Mississippi Hospital Association and a governmental hospital located in a county bordering the Gulf of Mexico and the State of Alabama is authorized to implement a transitional program for inpatient and outpatient payments and/or supplemental payments (including, but not limited to, MHAP and

directed payments), to redistribute available supplemental funds among hospital providers, provided that when compared to a hospital's prior year supplemental payments, supplemental payments made pursuant to any such transitional program shall not result in a decrease of more than five percent (5%) and shall not increase by more than the amount needed to maximize the distribution of the available funds.

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

(ii) Subject only to approval by the Centers for Medicare and Medicaid Services (CMS) where required, the MHAP shall provide increased inpatient capitation (PMPM) payments to

managed care entities contracting with the division pursuant to subsection (H) of this section to support availability of hospital services or such other payments permissible under federal law necessary to accomplish the intent of this subsection.

(iii) The intent of this subparagraph (c) is that effective for all inpatient hospital Medicaid services during state fiscal year 2016, and so long as this provision shall remain in effect hereafter, the division shall to the fullest extent feasible replace the additional reimbursement for hospital inpatient services under the inpatient Medicare Upper Payment Limits (UPL) Program with additional reimbursement under the MHAP and other payment programs for inpatient and/or outpatient payments which may be developed under the authority of this paragraph.

(iv) The division shall assess each hospital as provided in Section 43-13-145(4)(a) for the purpose of financing the state portion of the MHAP, supplemental payments and such other purposes as specified in Section 43-13-145. The assessment will remain in effect as long as the MHAP and supplemental payments are in effect.

(19) (a) Perinatal risk management services. The division shall promulgate regulations to be effective from and after October 1, 1988, to establish a comprehensive perinatal system for risk assessment of all pregnant and infant Medicaid recipients and for management, education and follow-up for those

who are determined to be at risk. Services to be performed include case management, nutrition assessment/counseling, psychosocial assessment/counseling and health education. The division shall contract with the State Department of Health to provide the services within this paragraph (Perinatal High Risk Management/Infant Services System (PHRM/ISS)). The State Department of Health as the agency for PHRM/ISS for the Division of Medicaid shall be reimbursed on a full reasonable cost basis.

(b) Early intervention system services. The division shall cooperate with the State Department of Health, acting as lead agency, in the development and implementation of a statewide system of delivery of early intervention services, under Part C of the Individuals with Disabilities Education Act (IDEA). The State Department of Health shall certify annually in writing to the executive director of the division the dollar amount of state early intervention funds available that will be utilized as a certified match for Medicaid matching funds. Those funds then shall be used to provide expanded targeted case management services for Medicaid eligible children with special needs who are eligible for the state's early intervention system. Qualifications for persons providing service coordination shall be determined by the State Department of Health and the Division of Medicaid.

(20) Home- and community-based services for physically disabled approved services as allowed by a waiver from the United

States Department of Health and Human Services for home- and community-based services for physically disabled people using state funds that are provided from the appropriation to the State Department of Rehabilitation Services and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Rehabilitation Services.

(21) Nurse practitioner services. Services furnished by a registered nurse who is licensed and certified by the Mississippi Board of Nursing as a nurse practitioner, including, but not limited to, nurse anesthetists, nurse midwives, family nurse practitioners, family planning nurse practitioners, pediatric nurse practitioners, obstetrics-gynecology nurse practitioners and neonatal nurse practitioners, under regulations adopted by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician. The division may provide for a reimbursement rate for nurse practitioner services of up to one hundred percent (100%) of the reimbursement rate for comparable services rendered by a physician for nurse practitioner services that are provided after the normal working hours of the nurse practitioner, as determined in accordance with regulations of the division.

(22) Ambulatory services delivered in federally qualified health centers, rural health centers and clinics of the local health departments of the State Department of Health for individuals eligible for Medicaid under this article based on reasonable costs as determined by the division. Federally qualified health centers shall be reimbursed by the Medicaid prospective payment system as approved by the Centers for Medicare and Medicaid Services.

(23) Inpatient psychiatric services. Inpatient psychiatric services to be determined by the division for recipients under age twenty-one (21) that are provided under the direction of a physician in an inpatient program in a licensed acute care psychiatric facility or in a licensed psychiatric residential treatment facility, before the recipient reaches age twenty-one (21) or, if the recipient was receiving the services immediately before he or she reached age twenty-one (21), before the earlier of the date he or she no longer requires the services or the date he or she reaches age twenty-two (22), as provided by federal regulations. From and after January 1, 2015, the division shall update the fair rental reimbursement system for psychiatric residential treatment facilities. Precertification of inpatient days and residential treatment days must be obtained as required by the division. From and after July 1, 2009, all state-owned and state-operated facilities that provide inpatient psychiatric services to persons under age twenty-one (21) who are eligible for

Medicaid reimbursement shall be reimbursed for those services on a full reasonable cost basis.

(24) [Deleted]

(25) [Deleted]

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

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

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

(29) The Division of Medicaid may apply for a waiver from the United States Department of Health and Human Services for home- and community-based services for developmentally disabled

people using state funds that are provided from the appropriation to the State Department of Mental Health and/or funds transferred to the department by a political subdivision or instrumentality of the state and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Mental Health and/or transferred to the department by a political subdivision or instrumentality of the state.

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

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

(32) Care and services provided in Christian Science Sanatoria listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., rendered in connection with treatment by prayer or spiritual means to the extent that those services are subject to reimbursement under Section 1903 of the federal Social Security Act.

(33) Podiatrist services.

(34) Assisted living services as provided through home- and community-based services under Title XIX of the federal

Social Security Act, as amended, subject to the availability of funds specifically appropriated for that purpose by the Legislature.

(35) Services and activities authorized in Sections 43-27-101 and 43-27-103, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the division and the department.

(36) Nonemergency transportation services for Medicaid-eligible persons, to be provided by the Division of Medicaid. The division may contract with additional entities to administer nonemergency transportation services as it deems necessary. All providers shall have a valid driver's license, valid vehicle license tags and a standard liability insurance policy covering the vehicle. The division may pay providers a flat fee based on mileage tiers, or in the alternative, may reimburse on actual miles traveled. The division may apply to the Center for Medicare and Medicaid Services (CMS) for a waiver to draw federal matching funds for nonemergency transportation services as a covered service instead of an administrative cost. The PEER Committee shall conduct a performance evaluation of the nonemergency transportation program to evaluate the administration of the program and the providers of transportation services to determine the most cost-effective ways of providing nonemergency transportation services to the patients served under the program.

The performance evaluation shall be completed and provided to the members of the Senate Medicaid Committee and the House Medicaid Committee not later than January 1, 2019, and every two (2) years thereafter.

(37) [Deleted]

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

(39) Dually eligible Medicare/Medicaid beneficiaries. The division shall pay the Medicare deductible and coinsurance amounts for services available under Medicare, as determined by the division. From and after July 1, 2009, the division shall reimburse crossover claims for inpatient hospital services and crossover claims covered under Medicare Part B in the same manner that was in effect on January 1, 2008, unless specifically authorized by the Legislature to change this method.

(40) [Deleted]

(41) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons with spinal cord injuries or traumatic brain injuries, as allowed

under waivers from the United States Department of Health and Human Services, using up to seventy-five percent (75%) of the funds that are appropriated to the Department of Rehabilitation Services from the Spinal Cord and Head Injury Trust Fund established under Section 37-33-261 and used to match federal funds under a cooperative agreement between the division and the department.

(42) [Deleted]

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

(44) Nursing facility services for the severely disabled.

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

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

(45) Physician assistant services. Services furnished by a physician assistant who is licensed by the State Board of Medical Licensure and is practicing with physician supervision under regulations adopted by the board, under regulations adopted

by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician. The division may provide for a reimbursement rate for physician assistant services of up to one hundred percent (100%) or the reimbursement rate for comparable services rendered by a physician for physician assistant services that are provided after the normal working hours of the physician assistant, as determined in accordance with regulations of the division.

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

(47) (a) The division may develop and implement disease management programs for individuals with high-cost chronic diseases and conditions, including the use of grants, waivers, demonstrations or other projects as necessary.

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

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

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

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

(49) The division shall establish copayments and/or coinsurance for all Medicaid services for which copayments and/or coinsurance are allowable under federal law or regulation.

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

(51) Upon determination of Medicaid eligibility and in association with annual redetermination of Medicaid eligibility, beneficiaries shall be encouraged to undertake a physical examination that will establish a base-line level of health and identification of a usual and customary source of care (a medical home) to aid utilization of disease management tools. This physical examination and utilization of these disease management tools shall be consistent with current United States Preventive Services Task Force or other recognized authority recommendations.

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

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

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

(54) [Deleted]

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

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

(57) No Medicaid benefit shall restrict coverage for medically appropriate treatment prescribed by a physician and agreed to by a fully informed individual, or if the individual lacks legal capacity to consent by a person who has legal authority to consent on his or her behalf, based on an individual's diagnosis with a terminal condition. As used in this paragraph (57), "terminal condition" means any aggressive

malignancy, chronic end-stage cardiovascular or cerebral vascular disease, or any other disease, illness or condition which a physician diagnoses as terminal.

(58) Treatment services for persons with opioid dependency or other highly addictive substance use disorders. The division is authorized to reimburse eligible providers for treatment of opioid dependency and other highly addictive substance use disorders, as determined by the division. Treatment related to these conditions shall not count against any physician visit limit imposed under this section.

(59) The division shall allow beneficiaries between the ages of ten (10) and eighteen (18) years to receive vaccines through a pharmacy venue.

(60) Beginning July 1, 2020, essential health benefits as described in the federal Patient Protection and Affordable Care Act of 2010 and as amended, for individuals eligible for Medicaid under the federal Patient Protection and Affordable Care Act of 2010 as amended, as described in Section 43-13-115(28).

(B) Notwithstanding any other provision of this article to the contrary, the division shall reduce the rate of reimbursement to providers for any service provided under this section by five percent (5%) of the allowed amount for that service. However, the reduction in the reimbursement rates required by this subsection (B) shall not apply to inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care

facility services, psychiatric residential treatment facility services, pharmacy services provided under subsection (A)(9) of this section, or any service provided by the University of Mississippi Medical Center or a state agency, a state facility or a public agency that either provides its own state match through intergovernmental transfer or certification of funds to the division, or a service for which the federal government sets the reimbursement methodology and rate. From and after January 1, 2010, the reduction in the reimbursement rates required by this subsection (B) shall not apply to physicians' services. In addition, the reduction in the reimbursement rates required by this subsection (B) shall not apply to case management services and home-delivered meals provided under the home- and community-based services program for the elderly and disabled by a planning and development district (PDD). Planning and development districts participating in the home- and community-based services program for the elderly and disabled as case management providers shall be reimbursed for case management services at the maximum rate approved by the Centers for Medicare and Medicaid Services (CMS). The Medical Care Advisory Committee established in Section 43-13-107(3)(a) shall develop a study and advise the division with respect to (1) determining the effect of any across-the-board five percent (5%) reduction in the rate of reimbursement to providers authorized under this subsection (B), and (2) comparing provider reimbursement rates to those applicable in other states in order

to establish a fair and equitable provider reimbursement structure that encourages participation in the Medicaid program, and (3) comparing dental and orthodontic services reimbursement rates to those applicable in other states in fee-for-service and in managed care programs in order to establish a fair and equitable dental provider reimbursement structure that encourages participation in the Medicaid program, and (4) make a report thereon with any legislative recommendations to the Chairmen of the Senate and House Medicaid Committees prior to January 1, 2019.

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

(D) [Deleted]

(E) Notwithstanding any provision of this article, no new groups or categories of recipients and new types of care and services may be added without enabling legislation from the Mississippi Legislature, except that the division may authorize

those changes without enabling legislation when the addition of recipients or services is ordered by a court of proper authority.

(F) The executive director shall keep the Governor advised on a timely basis of the funds available for expenditure and the projected expenditures. Notwithstanding any other provisions of this article, if current or projected expenditures of the division are reasonably anticipated to exceed the amount of funds appropriated to the division for any fiscal year, the Governor, after consultation with the executive director, shall take all appropriate measures to reduce costs, which may include, but are not limited to:

(1) Reducing or discontinuing any or all services that are deemed to be optional under Title XIX of the Social Security Act;

(2) Reducing reimbursement rates for any or all service types;

(3) Imposing additional assessments on health care providers; or

(4) Any additional cost-containment measures deemed appropriate by the Governor.

Beginning in fiscal year 2010 and in fiscal years thereafter, when Medicaid expenditures are projected to exceed funds available for the fiscal year, the division shall submit the expected shortfall information to the PEER Committee not later than December 1 of the year in which the shortfall is projected to

occur. PEER shall review the computations of the division and report its findings to the Legislative Budget Office not later than January 7 in any year.

(G) Notwithstanding any other provision of this article, it shall be the duty of each provider participating in the Medicaid program to keep and maintain books, documents and other records as prescribed by the Division of Medicaid in substantiation of its cost reports for a period of three (3) years after the date of submission to the Division of Medicaid of an original cost report, or three (3) years after the date of submission to the Division of Medicaid of an amended cost report.

(H) (1) Notwithstanding any other provision of this article, the division is authorized to implement (a) a managed care program, (b) a coordinated care program, (c) a coordinated care organization program, (d) a health maintenance organization program, (e) a patient-centered medical home program, (f) an accountable care organization program, (g) provider-sponsored health plan, or (h) any combination of the above programs. Managed care programs, coordinated care programs, coordinated care organization programs, health maintenance organization programs, patient-centered medical home programs, accountable care organization programs, provider-sponsored health plans, or any combination of the above programs or other similar programs implemented by the division under this section shall be limited to the greater of (i) forty-five percent (45%) of the total

enrollment of Medicaid beneficiaries, or (ii) the categories of beneficiaries participating in the program as of January 1, 2014, plus the categories of beneficiaries composed primarily of persons younger than nineteen (19) years of age, and the division is authorized to enroll categories of beneficiaries in such program(s) as long as the appropriate limitations are not exceeded in the aggregate. As a condition for the approval of any program under this subsection (H)(1), the division shall require that no program may:

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

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

(c) Pay providers at a rate that is less than the normal Medicaid reimbursement rate. It is the intent of the Legislature that all managed care entities described in this subsection (H), in collaboration with the division, develop and implement innovative payment models that incentivize improvements

in health care quality, outcomes, or value, as determined by the division. Participation in the provider network of any managed care, coordinated care, provider-sponsored health plan, or similar contractor shall not be conditioned on the provider's agreement to accept such alternative payment models;

(d) Implement a prior authorization program for prescription drugs that is more stringent than the prior authorization processes used by the division in its administration of the Medicaid program;

(e) [Deleted]

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

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

(2) Notwithstanding any provision of this section, no expansion of Medicaid managed care program contracts may be implemented by the division without enabling legislation from the Mississippi Legislature. There is hereby established the Commission on Expanding Medicaid Managed Care to develop a recommendation to the Legislature and the Division of Medicaid

relative to authorizing the division to expand Medicaid managed care contracts to include additional categories of Medicaid-eligible beneficiaries, and to study the feasibility of developing an alternative managed care payment model for medically complex children.

(a) The members of the commission shall be as follows:

(i) The Chairmen of the Senate Medicaid Committee and the Senate Appropriations Committee and a member of the Senate appointed by the Lieutenant Governor;

(ii) The Chairmen of the House Medicaid Committee and the House Appropriations Committee and a member of the House of Representatives appointed by the Speaker of the House;

(iii) The Executive Director of the Division of Medicaid, Office of the Governor;

(iv) The Commissioner of the Mississippi Department of Insurance;

(v) A representative of a hospital that operates in Mississippi, appointed by the Speaker of the House;

(vi) A licensed physician appointed by the Lieutenant Governor;

(vii) A licensed pharmacist appointed by the Governor;

(viii) A licensed mental health professional or alcohol and drug counselor appointed by the Governor;

(ix) The Executive Director of the Mississippi State Medical Association (MSMA);

(x) Representatives of each of the current managed care organizations operated in the state appointed by the Governor; and

(xi) A representative of the long-term care industry appointed by the Governor.

(b) The commission shall meet within forty-five (45) days of the effective date of this section, upon the call of the Governor, and shall evaluate the Medicaid managed care program. Specifically, the commission shall:

(i) Review the program's financial metrics;

(ii) Review the program's product offerings;

(iii) Review the program's impact on insurance premiums for individuals and small businesses;

(iv) Make recommendations for future managed care program modifications;

(v) Determine whether the expansion of the Medicaid managed care program may endanger the access to care by vulnerable patients;

(vi) Review the financial feasibility and health outcomes of populations health management as specifically provided in paragraph (2) above;

(vii) Make recommendations regarding a pilot program to evaluate an alternative managed care payment model for medically complex children;

(viii) The commission may request the assistance of the PEER Committee in making its evaluation; and

(ix) The commission shall solicit information from any person or entity the commission deems relevant to its study.

(c) The members of the commission shall elect a chair from among the members. The commission shall develop and report its findings and any recommendations for proposed legislation to the Governor and the Legislature on or before December 1, 2018. A quorum of the membership shall be required to approve any final report and recommendation. Members of the commission shall be reimbursed for necessary travel expense in the same manner as public employees are reimbursed for official duties and members of the Legislature shall be reimbursed in the same manner as for attending out-of-session committee meetings.

(d) Upon making its report, the commission shall be dissolved.

(3) Any contractors providing direct patient care under a managed care program established in this section shall provide to the Legislature and the division statistical data to be shared with provider groups in order to improve patient access, appropriate utilization, cost savings and health outcomes not

later than October 1 of each year. The division and the contractors participating in the managed care program, a coordinated care program or a provider-sponsored health plan shall be subject to annual program audits performed by the Office of the State Auditor, the PEER Committee and/or an independent third party that has no existing contractual relationship with the division. Those audits shall determine among other items, the financial benefit to the State of Mississippi of the managed care program, the difference between the premiums paid to the managed care contractors and the payments made by those contractors to health care providers, compliance with performance measures required under the contracts, and whether costs have been contained due to improved health care outcomes. In addition, the audit shall review the most common claim denial codes to determine the reasons for the denials. This audit report shall be considered a public document and shall be posted in its entirety on the division's website.

(4) All health maintenance organizations, coordinated care organizations, provider-sponsored health plans, or other organizations paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under this section shall reimburse all providers in those organizations at rates no lower than those provided under this section for beneficiaries who are not participating in those programs.

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

(6) No health maintenance organization, coordinated care organization, provider-sponsored health plan, or other organization paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under this section shall require its providers to be credentialed by the organization in order to receive reimbursement from the organization, but those organizations shall recognize the credentialing of the providers by the division.

(I) [Deleted]

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

(K) This section shall stand repealed on July 1, 2021.

SECTION 5. Section 37-153-7, Mississippi Code of 1972, is amended as follows:

37-153-7. (1) There is created the Mississippi State Workforce Investment Board. The Mississippi State Workforce Investment Board shall be composed of * * * thirty-eight (38) voting members, of which a majority shall be representatives of business and industry in accordance with the federal Workforce Investment Act.

(a) The Governor shall appoint the following members of the board to serve a term of four (4) years:

(i) The Executive Director of the Mississippi Association of Supervisors, or his/her designee;

(ii) The Executive Director of the Mississippi Municipal League;

(iii) One (1) elected mayor;

(iv) One (1) * * * elected county supervisor;

(v) * * * Two (2) representatives of labor organizations, who * * * have been nominated by state labor federations;

(vi) * * * Two (2) representatives of individuals and organizations that * * * have experience with respect to youth activities;

(vii) One (1) representative of the Mississippi Association of Planning and Development Districts;

(viii) One (1) representative from each of the four (4) workforce areas in the state, who has been nominated by the community colleges in each respective area, with the consent of the elected county supervisors within the respective workforce area;

*** * ***

(*** * ***ix) *** * *** Nineteen (19) representatives of business owners nominated by business and industry organizations, which may include representatives of the various planning and development districts in Mississippi *** * ***; and

(x) One (1) woman with expertise in assisting women in job training and securing employment in nontraditional occupations.

(b) The following state officials shall be members of the board:

(i) The Executive Director of the Mississippi Department of Employment Security;

(ii) The Executive Director of the Department of Rehabilitation Services;

(iii) The State Superintendent of Public Education;

(iv) The Executive Director of the Mississippi Development Authority;

(v) The Executive Director of the Mississippi Department of Human Services;

(vi) The Executive Director of the Mississippi Community College Board; and

(vii) The Commissioner of the Institutions of Higher Learning.

(c) The Governor, or his or her designee, shall serve as a member.

(d) Four (4) legislators, who shall serve in a nonvoting capacity, two (2) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate, and two (2) of whom shall be appointed by the Speaker of the House from the membership of the Mississippi House of Representatives.

(e) The membership of the board shall reflect the diversity of the State of Mississippi.

(f) The Governor shall designate the * * * Chair of the Mississippi State Workforce Investment Board from among the voting members of the board, and a quorum of the board shall consist of a majority of the voting members of the board.

(g) The voting members of the board who are not state employees shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(h) The Mississippi Department of Employment Security shall be responsible for providing necessary administrative, clerical and budget support for the State Workforce Investment Board.

(2) The Mississippi Department of Employment Security shall establish limits on administrative costs for each portion of Mississippi's workforce development system consistent with the federal Workforce Investment Act or any future federal workforce legislation.

(3) The Mississippi State Workforce Investment Board shall have the following duties:

(a) Develop and submit to the Governor a strategic plan for an integrated state workforce development system that aligns resources and structures the system to more effectively and efficiently meet the demands of Mississippi's employers and job seekers. This plan will comply with the federal Workforce Investment Act of 1998, as amended, the federal Workforce Innovation and Opportunity Act of 2014 and amendments and successor legislation to these acts;

(b) Assist the Governor in the development and continuous improvement of the statewide workforce investment system that shall include:

(i) Development of linkages in order to assure coordination and nonduplication among programs and activities; and

(ii) Review local workforce development plans that reflect the use of funds from the federal Workforce Investment Act, * * * the Wagner-Peyser Act and the * * * Mississippi Comprehensive Workforce Training and Education Consolidation Act;

(c) Recommend the designation of local workforce investment areas as required in Section 116 of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014. There shall be four (4) workforce investment areas that are generally aligned with the planning and development district structure in Mississippi. Planning and development districts will serve as the fiscal agents to manage Workforce Investment Act funds, oversee and support the local workforce investment boards aligned with the area and the local programs and activities as delivered by the one-stop employment and training system. The planning and development districts will perform this function through the provisions of the county cooperative service districts created under Sections 19-3-101 through 19-3-115; however, planning and development districts currently performing this function under the Interlocal Cooperation Act of 1974, Sections 17-13-1 through 17-13-17, may continue to do so;

(d) Assist the Governor in the development of an allocation formula for the distribution of funds for adult employment and training activities and youth activities to local workforce investment areas;

(e) Recommend comprehensive, results-oriented measures that shall be applied to all of Mississippi's workforce development system programs;

(f) Assist the Governor in the establishment and management of a one-stop employment and training system conforming to the requirements of the federal Workforce Investment Act of 1998 and the Workforce Innovation and Opportunity Act of 2014, as amended, recommending policy for implementing the Governor's approved plan for employment and training activities and services within the state. In developing this one-stop career operating system, the Mississippi State Workforce Investment Board, in conjunction with local workforce investment boards, shall:

(i) Design broad guidelines for the delivery of workforce development programs;

(ii) Identify all existing delivery agencies and other resources;

(iii) Define appropriate roles of the various agencies to include an analysis of service providers' strengths and weaknesses;

(iv) Determine the best way to * * * use the various agencies to deliver services to recipients; and

(v) Develop a financial plan to support the delivery system that shall, at a minimum, include an accountability system;

(g) Assist the Governor in reducing duplication of services by urging the local workforce investment boards to designate the local community/junior college as the operator of the WIN Job Center. Incentive grants of Two Hundred Thousand

Dollars ($200,000.00) from federal Workforce Investment Act funds may be awarded to the local workforce boards where the community/junior college district is designated as the WIN Job Center. These grants must be provided to the community and junior colleges for the extraordinary costs of coordinating with the Workforce Investment Act, advanced technology centers and advanced skills centers. In no case shall these funds be used to supplant state resources being used for operation of workforce development programs;

(h) To provide authority, in accordance with any executive order of the Governor, for developing the necessary collaboration among state agencies at the highest level for accomplishing the purposes of this chapter;

(i) To monitor the effectiveness of the workforce development centers and WIN job centers;

(j) To advise the Governor, public schools, community/junior colleges and institutions of higher learning on effective school-to-work transition policies and programs that link students moving from high school to higher education and students moving between community colleges and four-year institutions in pursuit of academic and technical skills training;

(k) To work with industry to identify barriers that inhibit the delivery of quality workforce education and the responsiveness of educational institutions to the needs of industry;

(l) To provide periodic assessments on effectiveness and results of the overall Mississippi comprehensive workforce development system and district councils; and

(m) To assist the Governor in carrying out any other responsibility required by the federal Workforce Investment Act of 1998, as amended and the Workforce Innovation and Opportunity Act, successor legislation and amendments.

(4) The Mississippi State Workforce Investment Board shall coordinate all training programs and funds in the State of Mississippi.

Each state agency director responsible for workforce training activities shall advise the Mississippi State Workforce Investment Board of appropriate federal and state requirements. Each such state agency director shall remain responsible for the actions of his or her agency; however, each state agency and director shall work cooperatively, and shall be individually and collectively responsible to the Governor for the successful implementation of the statewide workforce investment system. The Governor, as the Chief Executive Officer of the state, shall have complete authority to enforce cooperation among all entities within the state that * * * use federal or state funding for the conduct of workforce development activities.

(5) The State Workforce Investment Board shall establish a Rules Committee. The Rules Committee, in consultation with the full board, shall be designated as the body with the sole

authority to promulgate rules and regulations for distribution of Mississippi Works Funds created in Section 71-5-353. The State Workforce Investment Board Rules Committee shall develop and submit rules and regulations in accordance with the Mississippi Administrative Procedures Act, within sixty (60) days of March 21, 2016. The State Workforce Investment Board Rules Committee shall consist of the following State Workforce Investment Board members:

(a) The Executive Director of the Mississippi Development Authority;

(b) The Executive Director of the Mississippi Department of Employment Security;

(c) The Executive Director of the Mississippi Community College Board;

(d) The Chair of the Mississippi Association of Community and Junior Colleges;

(e) The Chair of the State Workforce Investment Board;

(f) A representative from the workforce areas selected by the Mississippi Association of Workforce Areas, Inc.;

(g) A business representative currently serving on the board, selected by the *** * *** Chair of the State Workforce Investment Board; and

(h) Two (2) legislators, who shall serve in a nonvoting capacity, one (1) of whom shall be appointed by the Lieutenant Governor from the membership of the Mississippi Senate and one (1) of whom shall be appointed by the Speaker of the House of

Representatives from the membership of the Mississippi House of Representatives.

(6) The Mississippi State Workforce Investment Board shall create and implement performance metrics for the Mississippi Works Fund to determine the added value to the local and state economy and the contribution to the future growth of the state economy. A report on the performance of the fund shall be made to the Governor, Lieutenant Governor and Speaker of the House of Representatives annually, throughout the life of the fund.

SECTION 6. Section 7-1-355, Mississippi Code of 1972, is amended as follows:

7-1-355. (1) The Mississippi Department of Employment Security, Office of the Governor, is designated as the sole administrator of all programs for which the state is the prime sponsor under Title 1(B) of Public Law 105-220, Workforce Investment Act of 1998, and the Workforce Innovation Opportunity Act (Public Law 113-128) and the regulations promulgated thereunder, and may take all necessary action to secure to this state the benefits of that legislation. The Mississippi Department of Employment Security, Office of the Governor, may receive and disburse funds for those programs that become available to it from any source.

(2) The Mississippi Department of Employment Security, Office of the Governor, shall establish guidelines on the amount and/or percentage of indirect and/or administrative expenses by

the local fiscal agent or the Workforce Development Center operator. The Mississippi Department of Employment Security, Office of the Governor, shall develop an accountability system and make an annual report to the Legislature before December 31 of each year on Workforce Investment Act activities. The report shall include, but is not limited to, the following:

(a) The total number of individuals served through the Workforce Development Centers and the percentage and number of individuals for which a quarterly follow-up is provided;

(b) The number of individuals who receive core services by each center;

(c) The number of individuals who receive intensive services by each center;

(d) The number of Workforce Investment Act vouchers issued by the Workforce Development Centers including:

(i) A list of schools and colleges to which these vouchers were issued and the average cost per school of the vouchers; and

(ii) A list of the types of programs for which these vouchers were issued;

(e) The number of individuals placed in a job through Workforce Development Centers;

(f) The monies and the amount retained for administrative and other costs received from Workforce Investment Act or Workforce Innovation Opportunity Act funds for each agency

or organization that Workforce Investment Act or Workforce Innovation Opportunity Act funds flow through as a percentage and actual dollar amount of all Workforce Investment Act or Workforce Innovation Opportunity Act funds received.

(3) The Mississippi Department of Employment Security shall achieve gender pay equity in the Workforce Investment Act or Workforce Innovation Opportunity Act workforce development system. The department shall include in the annual report required by subsection (2) of this section:

(a) The gender and race of those seeking employment services;

(b) Training by training provider extended to each participant by gender; and

(c) Earnings for each participant by gender as verification of pay equity in the workforce system.

SECTION 7. Equal pay certificate. (1) No department or agency of the state shall execute a contract or agreement in excess of One Hundred Thousand Dollars ($100,000.00) with a business that has forty (40) or more full-time employees in this state or a state where the business has its primary place of business on a single day during the prior twelve (12) months, unless the business has an equal pay certificate or it has certified in writing that it is exempt. A certificate is valid for four (4) years.

(2) This section does not apply to a business with respect to a specific contract if the Executive Director of the Department of Finance and Administration determines that application of this section would cause undue hardship to the contracting entity.

(3) A business shall apply for an equal pay certificate by paying a One Hundred Fifty Dollar ($150.00) filing fee and submitting an equal pay compliance statement to the Department of Finance and Administration. The proceeds from the fees collected under this section shall be deposited in an equal pay certificate special revenue account. The Department of Finance and Administration shall issue an equal pay certificate of compliance to a business that submits to the department a statement signed by the chairperson of the board or chief executive officer of the business:

(a) That the business is in compliance with Title VII of the Civil Rights Act of 1964;

(b) That the average compensation for its female employees is not consistently below the average compensation for its male employees within each of the major job categories in the EEO-1 Employer Information Report for which an employee is expected to perform work under the contract, taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, or other mitigating factors;

(c) That the business does not restrict employees of one (1) sex to certain job classifications and makes retention and promotion decisions without regard to sex;

(d) That wage and benefit disparities are corrected when identified to ensure compliance with the laws cited in paragraph (a) and with paragraph (b) of this subsection; and

(e) How often wages and benefits are evaluated to ensure compliance with the laws cited in paragraph (a) and with paragraph (b) of this subsection.

(4) The equal pay compliance statement shall also indicate whether the business, in setting compensation and benefits, uses:

(a) A market pricing approach;

(b) State prevailing wage or union contract requirements;

(c) A performance pay system;

(d) An internal analysis; or

(e) An alternative approach to determine what level of wages and benefits to pay its employees. If the business uses an alternative approach, the business must provide a description of its approach.

Receipt of the equal pay compliance statement by the commissioner does not establish compliance with the laws set forth in subsection (3)(a) of this section.

(5) The Department of Finance and Administration must issue an equal pay certificate, or a statement of why the application

was rejected, within fifteen (15) days of receipt of the application. An application may be rejected only if it does not comply with the requirements of subsection (3) of this section.

(6) An equal pay certificate for a business may be suspended or revoked by the Department of Finance and Administration when the business fails to make a good-faith effort to comply with the laws identified in subsection (3) of this section, fails to make a good-faith effort to comply with this section, or has multiple violations of this section or the laws identified in subsection (3) of this section. Before suspending or revoking a certificate, the Department of Finance and Administration must first have sought to conciliate with the business regarding wages and benefits due to employees.

(7) If a contract is awarded to a business that does not have an equal pay certificate as required under this section, or that is not in compliance with subsection (3) of this section, the Department of Finance and Administration may void the contract on behalf of the state. The contract award entity that is a party to the agreement must be notified by the Department of Finance and Administration before the Department of Finance and Administration takes action to void the contract.

A contract may be abridged or terminated by the contract award entity identified upon notice that the Department of Finance and Administration has suspended or revoked the certificate of the business.

(8) A business may obtain an administrative hearing before the suspension or revocation of its certificate is effective by filing a written request for a hearing twenty (20) days after service of notice by the Department of Finance and Administration. A business may obtain an administrative hearing before the contract award entity's abridgement or termination of a contract is effective by filing a written request for a hearing twenty (20) days after service of notice by the contract award entity.

(9) The Department of Finance and Administration must provide technical assistance to any business that requests assistance regarding this section.

(10) The State Auditor may audit the business's compliance with this section. As part of an audit, upon request, a business must provide the State Auditor the following information with respect to employees expected to perform work under the contract in each of the major job categories in the EEO-1 Employer Information Report:

(a) Number of male employees;

(b) Number of female employees;

(c) Average annualized salaries paid to male employees and to female employees, in the manner most consistent with the employer's compensation system, within each major job category;

(d) Information on performance payments, benefits, or other elements of compensation, in the manner most consistent with the employer's compensation system, if requested by the State

Auditor as part of a determination as to whether these elements of compensation are different for male and female employees;

(e) Average length of service for male and female employees in each major job category; and

(f) Other information identified by the business or by the Department of Finance and Administration, as needed, to determine compliance.

(11) Data submitted to the Department of Finance and Administration related to equal pay certificates are private data on individuals or nonpublic data with respect to persons other than department employees. The Department of Finance and Administration's decision to issue, not issue, revoke or suspend an equal pay certificate is public data.

(12) The Department of Finance and Administration shall report to the Governor and the Legislature by January 31 of every year, beginning January 31, 2021. The report shall indicate the number of equal pay certificates issued, the number of audits conducted, the processes used by contractors to ensure compliance with subsection (3) of this section, and a summary of its auditing efforts. The Department of Finance and Administration shall consult with the Committee on the Status of Women in preparing the report.

SECTION 8. It is declared to be the public policy of the State of Mississippi to establish fair minimum wages for workers in order to safeguard their health, efficiency and general

well-being and to protect those workers as well as their employers from the effects of unfair competition resulting from wage levels detrimental to their health, efficiency and well-being.

SECTION 9. (1) Except as otherwise provided in this act, every employer shall pay each of its employees a fair minimum wage as provided in this section.

(2) The state minimum wage shall be as follows:

(a) Beginning January 1, 2021, the rate of not less than Seven Dollars and Fifty Cents ($7.50) per hour;

(b) Beginning January 1, 2022, the rate of not less than Seven Dollars and Seventy-five Cents ($7.75) per hour;

(c) Beginning January 1, 2023, the rate of not less than Eight Dollars ($8.00) per hour; and

(d) Beginning January 1, 2024, the rate of not less than Ten Dollars ($10.00) per hour.

(3) Whenever the highest federal minimum wage is increased, the minimum wage established under this section shall be increased to the amount of the federal minimum wage plus one-half of one percent (1/2 of 1%) more than the federal rate, rounded to the nearest whole cent, effective on the same date as the increase in the highest federal minimum wage, and shall apply to all wage orders and administrative regulations then in force.

(4) The rates for learners, beginners, and persons under the age of eighteen (18) years shall be not less than eighty-five percent (85%) of the state minimum wage for the first two hundred

(200) hours of their employment and equal to the applicable state minimum wage thereafter, except institutional training programs specifically exempted by the director.

SECTION 10. As used in this act, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Director" means the Executive Director of the Mississippi Department of Employment Security.

(b) "Department" means the Mississippi Department of Employment Security, Office of the Governor, established under Section 71-5-101.

(c) "Wage" means compensation due to an employee by reason of his or her employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to any deductions, charges or allowances as may be permitted by this act or by regulations of the department under this act.

(d) "Employ" means to suffer or to permit to work.

(e) "Employer" means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. The term "employer" does not mean:

(i) Any individual, partnership, association, corporation, business trust, or any person or group of persons

acting directly or indirectly in the interest of an employer in relation to an employee that employs fewer than five (5) employees in a regular employment relationship; or

(ii) Any person, firm or corporation, or other entity subject to the provisions of the federal Fair Labor Standards Act of 1938.

(f) "Independent contractor" means any individual who contracts to perform certain work away from the premises of his or her employer, uses his or her own methods to accomplish the work, and is subject to the control of the employer only as to the result of his or her work.

(g) "Employee" means any individual employed by an employer but does not mean:

(i) Any individual employed in a bona fide executive, administrative or professional capacity, or as an outside commission-paid salesperson, who customarily performs his or her services away from his or her employer's premises, taking orders for goods or services;

(ii) Any student performing services for any school, college or university in which he or she is enrolled and is regularly attending classes;

(iii) Any individual employed by the United States or by the state or any political subdivision of the state, except public schools and school districts;

(iv) Any individual engaged in an activity of any educational, charitable, religious or nonprofit organization where the employer/employee relationship does not in fact exist or where the service is rendered to the organization gratuitously;

(v) Any bona fide independent contractor;

(vi) Any individual employed by an agricultural employer who did not use more than five hundred (500) man-days of agricultural labor in any calendar quarter of the preceding calendar year;

(vii) The parent, spouse, child or other member of an agricultural employer's immediate family;

(viii) An individual who:

1. Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

2. Commutes daily from his or her permanent residence to the farm on which he or she is so employed; and

3. Has been employed in agriculture less than thirteen (13) weeks during the preceding calendar year;

(ix) A migrant who:

1. Is sixteen (16) years of age or under and is employed as a hand harvest laborer;

2. Is paid on a piece-rate basis in an operation which has been, and is customarily and generally

recognized as having been, paid on a piece-rate basis in the region of employment;

3. Is employed on the same farm as his or her parents; and

4. Is paid the same piece-rate as employees over age sixteen (16) are paid on the same farm;

(x) Any employee principally engaged in the range production of livestock; or

(xi) Any employee employed in planting or tending trees, cruising, surveying or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plants, or railroad or other transportation terminal if the number of employees employed by his or her employer in the forestry or lumbering operations does not exceed eight (8).

(h) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(i) "Gratuities" means voluntary monetary contributions received by an employee from a guest, patron or customer for services rendered.

(j) "Man-day" means any day during any portion of which an employee performs any agricultural labor.

SECTION 11. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of employers and employees to bargain collectively through representatives of their

own choosing in order to establish wages or other conditions of work.

SECTION 12. (1) Any employer who willfully:

(a) Hinders or delays the department or its authorized representative in the performance of its duties in the enforcement of this act;

(b) Refuses to admit the department or its authorized representative to any place of employment;

(c) Fails to make, keep and preserve any records as required under the provisions of this act or to make the record accessible to the department or its authorized representative upon demand;

(d) Refuses to furnish a sworn statement of the record or any other information required for the proper enforcement of this act to the department or its authorized representative upon demand; or

(e) Fails to post a summary of this act or a copy of any applicable regulations as required by this act shall be deemed in violation of this act and shall, upon conviction, be fined not less than One Hundred Dollars ($100.00) nor more than Four Hundred Dollars ($400.00). For the purposes of this subsection, each violation shall constitute a separate offense.

(2) Any employer who pays or agrees to pay minimum wages at a rate less than the rate applicable under this act shall be guilty of a felony and the employer shall:

(a) Be fined not less than Four Thousand Dollars ($4,000.00) nor more than Ten Thousand Dollars ($10,000.00) for each offense if the total amount of all unpaid wages owed to an employee is more than Two Thousand Dollars ($2,000.00);

(b) Be fined not less than Two Thousand Dollars ($2,000.00) nor more than Four Thousand Dollars ($4,000.00) or the agent or officer of the employer shall be imprisoned not more than one (1) year, or both, for each offense if the total amount of all unpaid wages owed to an employee is more than One Thousand Dollars ($1,000.00) but not more than Two Thousand Dollars ($2,000.00);

(c) Be fined not less than One Thousand Dollars ($1,000.00) nor more than Two Thousand Dollars ($2,000.00) or the agent or officer of the employer shall be imprisoned not more than six (6) months, or both, for each offense if the total amount of all unpaid wages owed to an employee is more than Five Hundred Dollars ($500.00) but not more than One Thousand Dollars ($1,000.00); or

(d) Be fined not less than Four Hundred Dollars ($400.00) nor more than One Thousand Dollars ($1,000.00) or the agent or officer of the employer shall be imprisoned not more than three (3) months, or both, for each offense if the total amount of all unpaid wages owed to an employee is Five Hundred Dollars ($500.00) or less.

(3) Any employer who willfully discharges or in any other manner willfully discriminates against any employee because:

(a) The employee has made any complaint to his or her employer, to the department, or to the director or his or her authorized representative that he or she has not been paid minimum wages in accordance with the provisions of this act;

(b) The employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act; or

(c) The employee has testified or is about to testify in any such proceeding;

Shall be deemed in violation of this act and shall, upon conviction, be fined not more than One Hundred Dollars ($100.00).

SECTION 13. (1) For any occupation, the department shall make and revise any administrative regulations, including definitions of terms, as it may deem appropriate to carry out the purposes of this act or necessary to prevent the circumvention or evasion of those purposes and to safeguard the minimum wage rates established.

(2) The regulations may include, but are not limited to, regulations governing:

(a) Outside or commission salespeople;

(b) Learners and apprentices, their number, proportion or length of service;

(c) Part-time pay, bonuses or fringe benefits;

(d) Special pay for special or extra work;

(e) Permitted charges to employees or allowances for board, lodging, apparel or other facilities or services customarily furnished by employers to employees;

(f) Allowances for gratuities; or

(g) Allowances for other special conditions or circumstances that may be usual in a particular employer/employee relationship.

(3) Regulations or revisions issued by the department under this section shall be made only after a public hearing, at which any person may be heard by the department, at least ten (10) days subsequent to publication of notice of the hearing in a newspaper of general circulation throughout the State of Mississippi.

SECTION 14. The director or his or her authorized representatives shall:

(a) Have authority to enter and inspect the place of business or employment of any employer in the state for the purpose of examining and inspecting any books, registers, payrolls and other records of any employer that in any way relate to or have a bearing upon the question of wages, hours or other conditions of employment of any employees; copy any of the books, registers, payrolls or other records as he or she may deem necessary or appropriate; and question employees to ascertain whether the provisions of this act and regulations issued under this act have been and are being complied with;

(b) Have authority to require from the employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses and any information pertaining to his or her employees as the director or his or her authorized representative may deem necessary or appropriate;

(c) Publish all regulations made by the department; and

(d) Otherwise implement and enforce the regulations and decisions of the department.

SECTION 15. Except as otherwise provided in this section, no employer shall employ any of his or her employees for a workweek longer than forty (40) hours unless the employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half (1-1/2) times the regular rate of pay at which he or she is employed.

SECTION 16. (1) Every employer of an employee engaged in any occupation in which gratuities have been customarily and usually constituted and have been recognized as a part of remuneration for hiring purposes shall be entitled to an allowance for gratuities as a part of the hourly wage rate provided in Section 9 of this act in an amount not to exceed fifty percent (50%) of the minimum wage established by Section 9 of this act, provided that the employee actually received that amount in gratuities and that the application of the foregoing gratuity allowances results in payment of wages other than gratuities to tipped employees, including full-time students, subject to the

provisions of this act, of not less than fifty percent (50%) of the minimum wage prescribed by this act.

(2) In determining whether an employee received in gratuities the amount claimed, the director may require the employee to show to the satisfaction of the director that the actual amount of gratuities received by him or her during any workweek was less than the amount determined by the employer as the amount by which the wage paid the employee was deemed to be increased under this section.

SECTION 17. (1) Every employer subject to any provisions of this act shall keep a summary of this act, approved by the department, and copies of any applicable regulations issued under this act posted in a conspicuous and accessible place in or about the premises where any person subject to this act is employed.

(2) Employers shall be furnished copies of the summaries of this statute and regulations by the director on request without charge.

SECTION 18. (1) Every employer subject to any provision of this act or of any regulation issued under this act shall make and keep for a period of not less than three (3) years, in or about the premises where any employee is employed, a record of the name, address and occupation of each of his or her employees, the rate of pay and the amount paid each pay period to each employee and any other information as the department prescribes by regulation

as necessary or appropriate for the enforcement of the provisions of this act or of the regulations under this act.

(2) The records shall be open for inspection or transcription by the director or his or her authorized representative at any reasonable time.

(3) Every employer shall furnish to the director or to his or her authorized representative on demand a sworn statement of the records and information upon forms prescribed or approved by the director.

SECTION 19. (1) Any employer who pays any employee less than minimum wages to which the employee is entitled under or by virtue of this act shall be liable to the employee affected for the full amount of the wages, less any amount actually paid to the employee by the employer, and for costs and reasonable attorney's fees as may be allowed by the court.

(2) Any agreement between the employee and employer to work for less than minimum wages shall be no defense to the action.

(3) The venue of the action shall lie in the circuit court of any county in which the services which are the subject of the employment were performed.

(4) The director shall have the authority to fully enforce this act by instituting legal action to recover any wages which he or she determines to be due to employees under this act.

SECTION 20. Section 17-1-51, Mississippi Code of 1972, is amended as follows:

17-1-51. (1) No county, board of supervisors of a county, municipality or governing authority of a municipality is authorized to establish a mandatory, minimum living wage rate that is lower than the rate provided in this act, minimum number of vacation or sick days, whether paid or unpaid, that would regulate how a private employer pays its employees. Each county, board of supervisors of a county, municipality or governing authority of a municipality shall be prohibited from establishing a mandatory, minimum living wage rate that is lower than the rate provided in this act, minimum number of vacation or sick days, whether paid or unpaid, that would regulate how a private employer pays its employees.

(2) The Legislature finds that the prohibitions of subsection (1) of this section are necessary to ensure an economic climate conducive to new business development and job growth in the State of Mississippi while protecting the health and well-being of workers. * * *

* * *

(* * *3) The Legislature concludes from * * * this finding that, in order for a business to remain competitive and yet attract and retain the highest possible caliber of employees, and thereby remain sound, an enterprise must work in * * * an environment * * * that respects its workers and that encourages the payment of fair minimum wage rates * * *. The net impact of any local * * * wages that are greater than the rate provided in

this act * * * will be economically * * * stable and create a * * * rise and * * * increase in the standard of living for the citizens of the state. * * *

SECTION 21. Section 25-3-40, Mississippi Code of 1972, is amended as follows:

25-3-40. On July 1, 1978, and each year thereafter, the Mississippi Compensation Plan shall be amended to provide salary increases in such amounts and percentages as might be recommended by the Legislative Budget Office and as may be authorized by funds appropriated by the Legislature for the purpose of granting incentive salary increases as deemed possible dependent upon the availability of general and special funds.

It is hereby declared to be the intent of the Mississippi Legislature to implement the minimum wage as enacted by statutory law of the United States Congress subject to funds being available for that purpose. It is further the intent of the Legislature to implement the state minimum wage as provided in this act. It is the intent and purpose of this section to maximize annual salary increases consistent with the availability of funds as might be determined by the Mississippi Legislature at its regular annual session and that all salary increases hereafter be made consistent with the provisions of this section.

SECTION 22. (1) **Definitions.** The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is: (i) Under eighteen (18) years of age; (ii) or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

(b) "Department" means the Mississippi Department of Employment Security.

(c) "Director" means the director of the department.

(d) "Employee" means a person who has been employed: (i) for at least twelve (12) months by the employer with respect to whom leave is requested; and (ii) for at least one thousand two hundred fifty (1,250) hours of service with the employer during the previous twelve-month period.

"Employee" does not mean a person who is employed at a worksite at which the employer employs less than fifty (50) employees if the total number of employees employed by that employer within seventy-five (75) miles of that worksite is less than fifty (50).

(e) "Employer" means: (i) any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which employs fifty (50) or more employees

for each working day during each of twenty (20) or more calendar workweeks in the current or preceding calendar year; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(f) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions except benefits that are provided by a practice or written policy of an employer or through an employee benefit plan as defined in 29 USC Section 1002(3).

(g) "Family member" means a child, parent, spouse, or state registered domestic partner of an employee.

(h) "Health care provider" means: (i) a person licensed as a physician or an osteopathic physician and surgeon; (ii) a person licensed as an advanced registered nurse practitioner; or (iii) any other person determined by the director to be capable of providing health care services.

(i) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

(j) "Leave for a family member's serious health condition" means leave as defined in subsection (3) of this section.

(k) "Leave for the birth or placement of a child" means leave as defined in subsection (3) of this section.

(l) "Leave for the employee's serious health condition" means leave as defined in subsection (3) of this section.

(m) "Parent" means the biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(n) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(o) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(p) (i) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

1. A period of incapacity of more than three (3) consecutive calendar days, and any subsequent treatment or

period of incapacity relating to the same condition, that also involves:

a. Treatment two (2) or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

b. Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

2. Any period of incapacity due to pregnancy, or for prenatal care;

3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

a. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

b. Continues over an extended period of time, including recurring episodes of a single underlying condition; and

c. May cause episodic rather than a continuing period of incapacity;

4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider; or

5. Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(ii) Treatment for purposes of subparagraph (i) of this paragraph (p) includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition.

Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under subparagraph (i)1.b. of this paragraph (p), a regimen of continuing treatment includes, but is not limited to, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin,

antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this act.

(iii) Conditions for which cosmetic treatments are administered are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease are examples of conditions that do not meet the definition of a "serious health condition" and do not qualify for leave under this act. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met.

Mental illness resulting from stress or allergies may be serious health conditions provided all the other conditions of this section are met.

(iv) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services upon referral by a health care provider. Absence from work because of

the employee's use of the substance, rather than for treatment, does not qualify for leave under this act.

(v) Absences attributable to incapacity under subparagraph (i)1. or 3. of this paragraph (p) qualify for leave under this act even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three (3) days.

(q) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(2) **Administration.** The Mississippi Department of Employment Security shall administer the provisions of this act.

(3) **Entitlement to paid leave.** (a) An employee is entitled to a total of twelve (12) workweeks of paid leave during any twe1ve-month period for one or more of the following:

(i) Because of the birth of a child of the employee and in order to care for the child;

(ii) Because of the placement of a child with the employee for adoption or foster care;

(iii) In order to care for a family member of the employee, if the family member has a serious health condition; or

(iv) Because of a serious health condition that makes the employee unable to perform the functions of the position of the employee.

(b) The entitlement to leave for the birth or placement of a child expires at the end of the twelve-month period beginning on the date of such birth or placement.

(4) **Leave taken intermittently or on reduced leave schedule.**

(a) When paid leave is taken after the birth or placement of a child for adoption or foster care, an employee may take paid leave intermittently or on a reduced paid leave schedule with the employers' agreement. The employers' agreement is not required, however, for paid leave during which the employee has a serious health condition in connection with the birth of a child or if the newborn child has a serious health condition.

(b) Paid leave may be taken intermittently or on a reduced leave schedule when medically necessary for medical treatment of a serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(i) Intermittent paid leave may be taken for a serious health condition that requires treatment by a health care provider periodically, rather than for one (1) continuous period of time, and may include leave of periods from an hour or more to several weeks.

(ii) Intermittent or reduced schedule paid leave may be taken for absences where the employee or family member is

incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

(c) There is no limit on the size of an increment of paid leave when an employee takes intermittent paid leave or paid leave on a reduced paid leave schedule. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one (1) hour or less.

(d) The taking of paid leave intermittently or on a reduced leave schedule under this section may not result in a reduction in the total amount of leave to which the employee is entitled beyond the amount of leave actually taken.

(e) If an employee requests intermittent paid leave, or leave on a reduced leave schedule, for a family member's serious health condition or the employees' serious health condition when the condition is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that:

(i) Has equivalent pay and benefits; and

(ii) Better accommodates recurring periods of leave than the regular employment position of the employee.

(5) **Foreseeable paid leave.** (a) If the necessity for paid leave for the birth or placement of a child is foreseeable based

on an expected birth or placement, the employee shall provide the employer with not less than thirty (30) days notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable.

(b) If the necessity for paid leave for a family member's serious health condition or the employee's serious health condition is foreseeable based on planned medical treatment, the employee:

(i) Must make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member, as appropriate; and

(ii) Must provide the employer with not less than thirty (30) days notice, before the date the leave is to begin, of the employee's intention to take leave for a family member's serious health condition or the employee's serious health condition, except that if the date of the treatment requires leave to begin in less than thirty (30) days, the employee must provide such notice as is practicable.

(6) **Spouses employed by same employer.** If spouses entitled to leave under this act are employed by the same employer, the

aggregate number of workweeks of paid leave to which both may be entitled may be limited to twelve (12) workweeks during any twelve-month period, if such leave is taken: (a) for the birth or placement of a child; or (b) for a parent's serious health condition.

(7) **Certification.** (a) An employer may require that a request for paid leave for a family member's serious health condition or the employee's serious health condition be supported by a certification issued by the health care provider of the employee or of the family member, as appropriate. The employee must provide, in a timely manner, a copy of the certification to the employer.

(b) Certification provided under paragraph (a) of this subsection is sufficient if it states:

(i) The date on which the serious health condition commenced;

(ii) The probable duration of the condition;

(iii) The appropriate medical facts within the knowledge of the health care provider regarding the condition;

(iv) 1. For purposes of leave for a family member's serious health condition, a statement that the employee is needed to care for the family member and an estimate of the amount of time that such employee is needed to care for the family member; and

2. For purposes of leave for the employee's serious health condition, a statement that the employee is unable to perform the functions of the position of the employee;

(v) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment;

(vi) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for the employee's serious health condition, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(vii) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for a family member's serious health condition, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the family member who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) If the employer has reason to doubt the validity of the certification provided under paragraph (a) of this subsection (7) for leave for a family member's serious health condition or the employee's serious health condition, the employer may require,

at the expense of the employer, that the employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under paragraph (b) of this subsection (7) for the leave. The second health care provider may not be employed on a regular basis by the employer.

(d) If the second opinion described in paragraph (c) of this subsection (7) differs from the opinion in the original certification provided under paragraph (a) of this subsection (7), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under paragraph (b) of this subsection (7). The opinion of the third health care provider concerning the information certified under paragraph (b) of this subsection (7) is considered to be final and is binding on the employer and the employee.

(e) The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

(8) **Employment protection.** (a) Except as provided in paragraph (b) of this subsection, any employee who takes paid leave for the intended purpose of the leave is entitled, on return from the leave:

(i) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(ii) To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment at a workplace within twenty (20) miles of the employee's workplace when leave commenced.

(b) The taking of leave may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(c) Nothing in this section entitles any restored employee to (i) the accrual of any seniority or employment benefits during any period of leave; or (ii) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) As a condition of restoration under paragraph (a) of this subsection for an employee who has taken leave for the employee's serious health condition, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph (d) supersedes a valid local law or a collective bargaining agreement that governs the return to work of such employees.

(e) Nothing in this subsection prohibits an employer from requiring an employee on leave to report periodically to the

employer on the status and intention of the employee to return to work.

An employer may deny restoration under this subsection to any salaried employee who is among the highest paid ten percent (10%) of the employees employed by the employer within seventy-five (75) miles of the facility at which the employee is employed if:

(i) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(ii) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and

(iii) The leave has commenced and the employee elects not to return to employment after receiving the notice.

(9) **Employment benefits.** During any period of paid leave taken, if the employee is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, including any spouse and dependent coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent (102%) of the applicable premium for the leave period.

(10) **Prohibited acts.** (a) It is unlawful for any employer to:

(i) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this act; or

(ii) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this act.

(b) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

(i) Filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this act;

(ii) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this act; or

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this act.

(11) **Complaint investigations by director.** Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this act and the rules adopted under this act. If the investigation indicates that a violation may have occurred, a hearing must be held. The director must issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination

may be taken, with the prevailing party entitled to recover reasonable costs and attorney's fees.

(12) **Civil penalty.** An employer who is found to have violated a requirement of this act and the rules adopted under this act, is subject to a civil penalty of not less than One Thousand Dollars ($1,000.00) for each violation. Civil penalties must be collected by the department and deposited into the family and medical leave enforcement account.

(13) **Civil action by employees.** (a) Any employer who violates a requirement of this act is liable:

(i) For damages equal to:

1. The amount of:

a. Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

b. In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve (12) weeks of wages or salary for the employee;

2. The interest on the amount described in subparagraph (i)1 of this paragraph (a) calculated at the prevailing rate; and

3. An additional amount as liquidated damages equal to the sum of the amount described in subparagraph (i)1 of this paragraph (a) and the interest described in subparagraph (i)2 of this paragraph (a), except that if an employer who has violated proves to the satisfaction of the court that the act or omission which violated was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under subparagraph (i)1 and 2 of this paragraph (a), respectively; and

(ii) For such equitable relief as may be appropriate, including employment, reinstatement and promotion.

(b) An action to recover the damages or equitable relief prescribed in subsection (1) of this section may be maintained against any employer in any court of competent jurisdiction by any one or more employees for and on behalf of:

(i) The employees; or

(ii) The employees and other employees similarly situated.

(c) The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorney's fees, reasonable expert witness fees and other costs of the action to be paid by the defendant.

(14) **Notice—Penalties.** Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the director, setting forth excerpts from, or summaries of, the pertinent provisions of this act and information pertaining to the filing of a charge. Any employer that willfully violates this section may be subject to a civil penalty of not more than One Hundred Dollars ($100.00) for each separate offense. Any penalties collected by the department under this subsection shall be deposited into the family and medical leave enforcement account.

(15) **Effect on other laws.** Nothing in this act shall be construed to: (a) modify or affect any state or local law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability; or (b) supersede any provision of any local law that provides greater family or medical leave rights than the rights established under this act.

(16) **Effect on existing employment benefits.** Nothing in this act diminishes the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this act. The rights established for employees under this act may not be

diminished by any collective bargaining agreement or any employment benefit program or plan.

(17) **Encouragement of more generous leave policies.** Nothing in this act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this act.

(18) **Relationship to federal Family and Medical Leave Act.**

(a) Leave under this section and leave under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, Public Law 103-3, 107 Stat. 6) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth;

(b) Leave taken under this act must be taken concurrently with any leave taken under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, Public Law 103-3, 107 Stat. 6).

(19) **Construction.** This must be construed to the extent possible in a manner that is consistent with similar provisions, if any, of the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, Public Law 103-3, 107 Stat. 6), and that gives consideration to the rules, precedents and practices of the federal Department of Labor relevant to the federal act.

SECTION 23. Women in High-Wage, High-Demand, Nontraditional Jobs Grant Program. (1) The following words and phrases shall

have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Commissioner" means the Executive Director of the Mississippi Department of Employment Security.

(b) "Eligible organization" includes, but is not limited to:

(i) Community-based organizations experienced in serving women;

(ii) Employers;

(iii) Business and trade associations;

(iv) Labor unions and employee organizations;

(v) Registered apprenticeship programs;

(vi) Secondary and postsecondary education institutions located in Mississippi; and

(vii) Workforce and economic development agencies.

(c) "High-wage, high-demand" means occupations that represent at least one-tenth of one percent (0.1%) of total employment in the base year, have an annual median salary which is higher than the average for the current year, and are projected to have more total openings as a share of employment than the average.

(d) "Low-income" means income less than two hundred percent (200%) of the federal poverty guideline adjusted for a family size of four (4).

(e) "Nontraditional occupations" mean those occupations in which women make up less than twenty-five percent (25%) of the workforce as defined under United States Code, Title 20, Section 2302.

(2) **Grant program.** The Executive Director of the Mississippi Department of Employment Security shall establish the Women in High-Wage, High-Demand, Nontraditional Jobs Grant Program to increase the number of women in high-wage, high-demand, nontraditional occupations. The Executive Director of the Mississippi Department of Employment Security shall make grants to eligible organizations for programs that encourage and assist women to enter high-wage, high-demand, nontraditional occupations, including, but not limited to, those in the skilled trades, science, technology, engineering and math (STEM) occupations.

(3) **Use of funds.** Grant funds awarded under this section may be used for:

(a) Recruitment, preparation, placement and retention of women, including low-income women and women over fifty (50) years old, in registered apprenticeships, postsecondary education programs, on-the-job training and permanent employment in high-wage, high-demand, nontraditional occupations;

(b) Secondary or postsecondary education or other training to prepare women to succeed in high-wage, high-demand, nontraditional occupations. Activities under this section may be conducted by the grantee or in collaboration with another

institution, including, but not limited to, a public or private secondary or postsecondary school;

(c) Innovative, hands-on best practices that stimulate interest in high-wage, high-demand, nontraditional occupations among women, increase awareness among women about opportunities in high-wage, high-demand, nontraditional occupations or increase access to secondary programming leading to jobs in high-wage, high-demand, nontraditional occupations. Best practices include, but are not limited to, mentoring, internships or apprenticeships for women in high-wage, high-demand, nontraditional occupations;

(d) Training and other staff development for job seeker counselors and Mississippi Family Investment Program (MFIP) caseworkers on opportunities in high-wage, high-demand, nontraditional occupations;

(e) Incentives for employers and sponsors of registered apprenticeship programs to retain women in high-wage, high-demand, nontraditional occupations for more than one (1) year;

(f) Training and technical assistance for employers to create a safe and healthy workplace environment designed to retain and advance women, including best practices for addressing sexual harassment, and to overcome gender inequity among employers and registered apprenticeship programs;

(g) Public education and outreach activities to overcome stereotypes about women in high-wage, high-demand,

nontraditional occupations, including the development of educational and marketing materials; and

(h) Support for women in high-wage, high-demand, nontraditional occupations including, but not limited to, assistance with workplace issues resolution and access to advocacy assistance and services.

(4) Grant applications must include detailed information about how the applicant plans to:

(a) Increase women's participation in high-wage, high-demand occupations in which women are currently underrepresented in the workforce;

(b) Comply with the requirements under subsection (3) of this section; and

(c) Use grant funds in conjunction with funding from other public or private sources.

(5) In awarding grants under this section, the executive director shall give priority to eligible organizations:

(a) With demonstrated success in recruiting and preparing women, especially low-income women and women over fifty (50) years old, for high-wage, high-demand, nontraditional occupations; and

(b) That leverage additional public and private resources.

(6) At least fifty percent (50%) of total grant funds must be awarded to programs providing services and activities targeted to low-income women.

(7) The executive director shall monitor the use of funds under this section, collect and compile information on the activities of other state agencies and public or private entities that have purposes similar to those under this section, and identify other public and private funding available for these purposes.

SECTION 24. Sections 24 through 28 of this act shall be known and may be cited as the "Mississippi Pregnant Workers Fairness Act."

SECTION 25. It is the intent of the Legislature to combat pregnancy discrimination, promote public health and ensure full and equal participation for women in the labor force by requiring employers to provide reasonable accommodations to employees with conditions related to pregnancy, childbirth or a related condition. Mississippi currently has no current workplace laws to protect pregnant women from being forced out or fired when they need a simple, reasonable accommodation in order to stay on the job. Many pregnant women are single mothers or the primary breadwinners for their families — if they lose their jobs then the whole family will suffer. This is not an outcome that families can afford in today's difficult economy.

SECTION 26. (1) No employer may:

(a) Refuse to make reasonable accommodations for any condition of a job applicant or employee related to pregnancy, childbirth, or a related condition, including, but not limited to, the need to express breast milk for a nursing child, if the employee or applicant so requests, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise or business;

(b) Take adverse action against an employee who requests or uses an accommodation in terms, conditions or privileges of employment, including, but not limited to, failing to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when her need for reasonable accommodations ceases;

(c) Deny employment opportunities to an otherwise qualified job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known conditions related to the pregnancy, childbirth or related conditions of the applicant or employee; or

(d) Require an employee to take leave if another reasonable accommodation can be provided to the known conditions related to the pregnancy, childbirth or related conditions of an employee.

(2) The employer shall engage in a timely, good faith and interactive process with the employee to determine effective reasonable accommodations.

(3) The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Reasonable accommodations" shall include, but not be limited to: more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private nonbathroom space for expressing breast milk, assistance with manual labor, or modified work schedules, provided that:

(i) No employer shall be required by this section to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation, and

(ii) The employer shall not be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need it.

(b) "Related conditions" includes, but is not limited to, lactation or the need to express breast milk for a nursing child.

(c) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth as follows:

(i) The employer shall have the burden of proving undue hardship. In making a determination of undue hardship, the factors that may be considered include, but shall not be limited to:

1. The nature and cost of the accommodation;

2. The overall financial resources of the employer;

3. The overall size of the business of the employer with respect to the number of employees;

4. The number, type and location of the facilities of the employer; and

5. The effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.

(ii) The fact that the employer provides or would be required to provide a similar accommodation to other classes of employees who need it shall create a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.

SECTION 27. An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth and related conditions, including the right to

reasonable accommodations for conditions related to pregnancy, childbirth or related conditions, pursuant to the Mississippi Pregnant Workers Fairness Act to:

(a) New employees at the commencement of employment;

(b) Existing employees within one hundred twenty (120) days after July 1, 2021; and

(c) Any employee who notifies the employer of her pregnancy within ten (10) days of such notification.

Such notice must also be conspicuously posted at an employer's place of business in an area accessible to employees.

SECTION 28. (1) An actionable right is hereby created for any person who is an employee and who believes that such person's employer has violated the provisions of the Mississippi Pregnant Workers Fairness Act. Any such employee who is aggrieved under the act may file a petition in the proper circuit court in Mississippi.

(2) If an employer is found to have violated the provisions of the Mississippi Pregnant Workers Fairness Act, the employee shall be awarded reasonable remedies, which shall include attorney's fees, prejudgment interest, back pay, liquidated damages and one hundred percent (100%) of the difference of unpaid wages. If the employer is found to have willfully violated the provisions of subsection (1), the employee shall be awarded three hundred percent (300%) of reasonable remedies.

SECTION 29. (1) This section shall be known and cited as the "Mississippi Sick and Safe Leave Act."

(2) The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Department" means the Mississippi Department of Employment Security.

(b) "Domestic violence" means the same as defined in Section 97-3-7.

(c) "Earned paid sick time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in subsection (3) of this section but in no case shall this hourly amount be less than that provided under 29 U.S.C. Section 206(a)(1).

(d) "Employee" is as defined in the Fair Labor Standards Act 29 U.S.C. Section 203(e).

(e) "Employer" is as defined in the Fair Labor Standards Act 29 U.S.C. Section 203(d).

(f) "Family member" means:

(i) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or

an individual to whom the employee stood in loco parentis when the individual was a minor;

(ii) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child;

(iii) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;

(iv) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner;

(v) A person for whom the employee is responsible for providing or arranging care, including, but not limited to, helping that individual obtain diagnostic, preventive, routine or therapeutic health treatment; or

(vi) Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

(g) "Health care professional" means any person licensed under federal or state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

(h) "Retaliatory personnel action" means denial of any right guaranteed under this section and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee's suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this section. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this section.

(i) "Sexual assault" means the same as defined in Section 97-3-95.

(j) "Stalking" means the same as defined in Section 97-3-107.

(k) "Year" means a regular and consecutive twelve-month period as determined by the employer.

(3) (a) All employees shall accrue a minimum of one (1) hour of earned paid sick time for every thirty (30) hours worked. Employees shall not use more than forty (40) hours of earned paid sick time in a year, unless the employer selects a higher limit.

(b) Employees who are exempt from overtime requirements under 29 U.S.C. Section 213(a)(1) of the Federal Fair Labor

Standards Act will be assumed to work forty (40) hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than forty (40) hours, in which case earned paid sick time accrues based upon that normal work week.

(c) Earned paid sick time as provided in this section shall begin to accrue at the commencement of employment or on the date this law goes into effect, whichever is later. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year.

(d) Employees shall not be entitled to use accrued earned paid sick time until the ninetieth calendar day following commencement of their employment unless otherwise permitted by the employer. On and after the ninetieth calendar day of employment, employees may use earned paid sick time as it is accrued.

(e) Earned paid sick time shall be carried over to the following year. Alternatively, in lieu of carryover of unused earned paid sick time from one (1) year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of paid sick time that meets or exceeds the requirements of this section that is available for the employee's immediate use at the beginning of the next year.

(f) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave

sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this section is not required to provide additional paid sick time.

(g) Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.

(h) If an employee is transferred to a separate division, entity or location, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued at the prior division, entity or location and is entitled to use all earned paid sick time as provided in this section. When there is a separation from employment and the employee is rehired within six (6) months of separation by the same employer, previously accrued earned paid sick time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

(i) When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed

by the original employer, and are entitled to use earned paid sick time previously accrued.

(j) At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

(4) (a) Earned paid sick time shall be provided to an employee by an employer for:

(i) An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

(ii) Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care; or in the case of a child, to attend a school meeting or a meeting at a place where the child is receiving care necessitated by the child's health condition or disability, domestic violence, sexual assault, harassment or stalking;

(iii) Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it

has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

(iv) Absence necessary due to domestic violence, sexual assault or stalking, provided the leave is to allow the employee to obtain for the employee or the employee's family member:

1. Medical attention needed to recover from physical or psychological injury or disability caused by domestic violence, sexual assault, harassment or stalking;

2. Services from a victim services organization;

3. Psychological or other counseling;

4. Relocation or taking steps to secure an existing home due to the domestic violence, sexual assault, harassment or stalking; or

5. Legal services, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, sexual assault, harassment or stalking.

(b) Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in

writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

(c) When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

(d) An employer that requires notice of the need to use earned paid sick time shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on noncompliance with such a policy.

(e) An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

(f) Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(g) For earned paid sick time of three (3) or more consecutive work days, an employer may require reasonable

documentation that the earned paid sick time has been used for a purpose covered by paragraph (a) of this subsection. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual assault, or stalking, one (1) of the following types of documentation selected by the employee shall be considered reasonable documentation: (i) a police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, harassment or stalking; (ii) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or (iii) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault, harassment or stalking. An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence, sexual assault, harassment or stalking.

(5) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this section. An employer shall not take retaliatory personnel action or discriminate against an employee or former employee because the person has exercised rights protected under this section. Such

rights include, but are not limited to, the right to request or use earned paid sick time pursuant to this section; the right to file a complaint with the agency or courts or inform any person about any employer's alleged violation of this section; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the agency in its investigations of alleged violations of this section; and the right to inform any person of his or her potential rights under this section. It shall be unlawful for an employer's absence control policy to count earned paid sick time taken under this section as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this section.

(6) (a) Employers shall give employees written notice of the following at the commencement of employment: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed under this section, that retaliatory personnel action against employees who request or use earned paid sick time is prohibited, that each employee has the right to file a complaint or bring a civil action if earned paid sick time as required by this section is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick time, and the

contact information for the agency where questions about rights and responsibilities under this section can be answered.

(b) The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.

(7) Employers shall retain records documenting hours worked by employees and earned paid sick time taken by employees, for a period of three (3) years and shall allow the department access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this section. When an issue arises as to an employee's entitlement to earned paid sick time under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned paid sick time taken by the employee, or does not allow the department reasonable access to such records, it shall be presumed that the employer has violated the section, absent clear and convincing evidence otherwise.

(8) The department shall be authorized to coordinate implementation and enforcement of this section and shall promulgate appropriate guidelines or regulations for such purposes.

(9) (a) The department shall have the authority to take complaints, investigate those complaints and seek penalties under

this section and to bring charges for noncompliance against any employer or employee.

(b) (i) The department, the Attorney General, any person aggrieved by a violation of this section, or any entity a member of which is aggrieved by a violation of this section may bring a civil action in a court of competent jurisdiction against an employer violating this section. Such action may be brought by a person aggrieved by a violation of this section without first filing an administrative complaint.

(ii) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall recover the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of this section plus an equal amount of liquidated damages. Aggrieved persons shall also be entitled to reasonable attorney's fees.

(iii) Upon prevailing in an action brought pursuant to this section, aggrieved persons shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, reinstatement to employment, back pay and injunctive relief.

(iv) Any person aggrieved by a violation of this section may file a complaint with the Attorney General. The filing of a complaint with the Attorney General will not preclude the filing of a civil action.

(v) The Attorney General may bring a civil action to enforce this section.

(10) An employer may not require disclosure of details relating to domestic violence, sexual assault or stalking or the details of an employee's or an employee's family member's health information as a condition of providing earned paid sick time under this section. If an employer possesses health information or information pertaining to domestic violence, sexual assault, or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee.

(11) (a) Nothing in this section shall be construed to discourage or prohibit an employer from the adoption or retention of an earned paid sick time policy more generous than the one required herein.

(b) Nothing in this section shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous paid sick time to an employee than required herein. Nothing in this section shall be construed as diminishing the rights of public employees regarding paid sick time or use of paid sick time as provided in Mississippi.

(12) This section provides minimum requirements pertaining to earned paid sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy or standard that provides for greater accrual or use by employees of earned paid sick time or that extends other protections to employees.

(13) If any provision of this section or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared severable.

SECTION 30. Sections 30 through 32 shall be known and may be cited as the "Evelyn Gandy Fair Pay Act."

SECTION 31. The Mississippi Legislature finds that the existence of wage differentials based on sex in industries engaged in commerce or in the production of goods for commerce:

(a) Depresses the wages and living standards for employees that are necessary for their health and efficiency, thereby increasing the poverty rate in Mississippi;

(b) Prevents the maximum utilization of the available labor resources, thereby depressing the growth of the state GDP;

(c) Tends to cause labor disputes, thereby burdening, affecting and obstructing commerce;

(d) Burdens commerce and the free flow of goods in commerce; and

(e) Constitutes an unfair method of competition.

SECTION 32. (1) No employer shall discriminate in any way against any employee on the basis of sex by paying a salary or wage to any employee at a rate less than the rate paid to its employees of the opposite sex for equal work on jobs that require equal skill, effort and responsibility to perform, and which are performed under similar working conditions, except where such payment is made pursuant to:

(a) A seniority system; however, time spent on leave due to a pregnancy-related condition and parental, family and medical leave, shall not reduce the seniority-level of an employee;

(b) A merit system;

(c) A system which measures earnings by quantity or quality of production; or

(d) A differential based on any bona fide factor other than sex if the factor:

(i) Is not based on or derived from a differential in wage based on sex;

(ii) Is job-related with respect to the position and necessary for the business; and

(iii) Accounts for the entire differential.

An employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) (a) No labor organization, or its agents, representing employees of an employer whose employees are subject to the provisions of this section, shall cause or attempt to cause the employer to discriminate against an employee in violation of subsection (1) of this section.

(b) As used in this subsection (2), the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(3) For purposes of administration and enforcement, any amounts owed to an employee that have been withheld in violation of this section shall be deemed to be unpaid minimum wages or unpaid overtime compensation.

(4) (a) An employer that has been charged with unlawful sex discrimination under this section shall be entitled to a rebuttable presumption that the employer has not engaged in unlawful sex discrimination in violation of this section if:

(i) The charge is made by an employee who holds a job predominantly occupied by members of one (1) sex, which means

that at least seventy-five percent (75%) of the occupants of the job are of the same sex, and the employee alleges he or she is being paid less than an employee who does a different job;

(ii) The employer has, within two (2) years of the commencement of the action, completed a self-evaluation that meets the standards set forth in paragraph (d) of this subsection; and

(iii) The employer makes an affirmative showing that it has made reasonable and substantial progress towards eliminating wage differentials, including implementing any required remediation plan, between jobs of equivalent value, including the job of the employee making the charge, in accordance with the self-evaluation required in subparagraph (ii) of this paragraph.

(b) In such cases, the court must give the aggrieved party an opportunity to rebut this presumption through evidence that reasonably demonstrates that, notwithstanding the employer's self-evaluation, the employer has violated this section. In rebutting this presumption, the aggrieved party may provide all relevant information including, but not limited to, evidence that:

(i) The employer's job analysis devalues attributes associated with jobs occupied predominantly by members of one (1) sex and/or over-values attributes associated with jobs occupied predominantly by members of the opposite sex;

(ii) The job the aggrieved party occupies was not adequately evaluated; or

(iii) A job evaluation process has been completed and, if necessary, a remediation process is in progress or has been completed, but the self-evaluation has not been reviewed and updated at reasonable intervals to adjust for changes in the work environment over time.

(c) An employer wishing to be availed of this presumption must produce documentation that describes the self-evaluation process in detail sufficient to show that the employer has met the standards under paragraph (d).

(d) In order to be eligible for the presumption of compliance, the self-evaluation must:

(i) Clearly define the employer's establishment;

(ii) Analyze the employee population to identify differentials in wages, including raises, bonuses, incentive payments and other forms of remuneration, based on sex;

(iii) Establish a job evaluation plan to determine the value of jobs within the establishment. The plan must:

1. Be free of any bias based on a person's sex;

2. Allow for the comparison of all jobs; and

3. Fully and accurately measure the skill, effort, responsibility and working conditions of each job based on the actual work performance requirements of the jobs evaluated;

(iv) Apply the job evaluation plan to all jobs;

(v) Create a salary structure or have an identifying salary group system where jobs of equal value are placed in the same level or grouping;

(vi) Determine for each salary grouping, or for each total job evaluation score, the pay differential between jobs that are predominantly occupied by one (1) sex and other jobs, including those predominantly occupied by the opposite sex, in order to identify any wage rate discrimination; and

(vii) Remedy any pay differential identified in subsection (vi); however, such remediation may not reduce the pay of any employee or class of employees.

The presumption of compliance may be strengthened where, through the self-evaluation, including any needed remediation, the employer maintains communication with and keeps employees apprised of the process. The method and procedure for that communication may vary according to the size and organizational structure of the establishment, but any method or procedure chosen should be adequate to reach all employees at the establishment.

(5) It shall be an unlawful employment practice for an employer to:

(a) Require, as a condition of employment, that an employee refrain from inquiring about, discussing or disclosing his or her wages or the wages of another employee;

(b) Require an employee to sign a waiver or other document which purports to deny an employee the right to disclose or discuss his or her wages;

(c) Discharge, formally discipline or otherwise discriminate against an employee for inquiring about, discussing or disclosing his or her wages or the wages of another employee; however, nothing in this subsection (5) creates an obligation for an employer or employee to disclose wages;

(d) Retaliate or in any other manner discriminate against an employee or applicant for employment because that individual has opposed a practice made unlawful by this act or because that individual has made a charge, filed a complaint or instituted or caused to be instituted any investigation, proceeding, hearing or action under or related to this act, including an investigation conducted by the employer, or has testified or is planning to testify, or has assisted, or participated in any manner in any such investigation, proceeding, or hearing under this act.

(6) (a) A civil action asserting a violation of this section may be maintained against any employer in any court of competent jurisdiction by any one (1) or more employees for or on behalf of the employee, a group of employees and other employees similarly situated. Any such action shall commence no later than two (2) years after the discriminatory practice declared unlawful by this section has occurred. A discriminatory practice occurs

when a discriminatory compensation decision or other practice is adopted, when an employee is subjected to a discriminatory compensation decision or other practice, or when an employee is affected by the application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid based on the discriminatory compensation decision or other practice.

(b) If an employer is found in violation of this section, the employee may recover in a civil action the amount of their unpaid wages; liquidated damages; compensatory damages; punitive damages as may be appropriate, where the employee demonstrates that the employer acted with malice or reckless indifference; other equitable relief as may be appropriate; and the costs of the action and reasonable attorney's fees.

SECTION 33. This act shall take effect and be in force from and after July 1, 2021.