

By: Senator(s) Johnson (38th)

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2636

1 AN ACT TO AUTHORIZE THE MISSISSIPPI COMMISSIONER OF INSURANCE
 2 TO CONTRACT WITH AN INSURANCE COMPANY TO PROVIDE MEDICAL
 3 MALPRACTICE INSURANCE BENEFITS FOR PHYSICIANS WHO PROVIDE SERVICES
 4 TO MEDICAID AND/OR MEDICARE BENEFICIARIES; TO PROVIDE THAT THE
 5 COST OF SUCH COVERAGE SHALL BE PAID FROM THE HEALTH CARE
 6 EXPENDABLE FUND; TO PROVIDE FOR THE OPERATION OF THE MEDICAL
 7 MALPRACTICE INSURANCE PLAN FOR SUCH PHYSICIANS, TO AUTHORIZE THE
 8 COMMISSIONER OF INSURANCE TO APPROVE RATES AND PREMIUMS FOR THE
 9 PLAN AND EXAMINE THE AFFAIRS OF THE INSURER; TO CREATE A MEDICAL
 10 MALPRACTICE FUND TO RECEIVE FUNDS APPROPRIATED BY THE LEGISLATURE
 11 FOR THE PAYMENT OF SUCH INSURANCE PREMIUMS; TO AMEND SECTIONS
 12 43-13-407 AND 43-13-405, MISSISSIPPI CODE OF 1972, TO DIRECT THE
 13 STATE TREASURER TO TRANSFER \$10 MILLION OF THE 2002 TOBACCO
 14 SETTLEMENT INSTALLMENT PAYMENT AND ANNUALLY THEREAFTER INTO THE
 15 HEALTH CARE EXPENDABLE FUND TO BE APPROPRIATED FOR THE MEDICAID
 16 PHYSICIAN MEDICAL MALPRACTICE INSURANCE BENEFIT PROGRAM CREATED
 17 UNDER THIS ACT; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** (1) The purpose of this section is to make
 20 necessary medical malpractice insurance available for duly
 21 licensed physicians who provide patient services to Medicaid,
 22 Medicare and dually eligible recipients who are residents of the
 23 State of Mississippi.

24 (2) As used in this section:

25 (a) "Commissioner" shall mean the Mississippi
 26 Commissioner of Insurance.

27 (b) "Medical malpractice insurance" shall mean
 28 insurance coverage against the legal liability of the insured and
 29 against loss, damage or expense incident to a claim arising out of
 30 the death or injury of any person as the result of negligence or
 31 malpractice in rendering professional service by any physician who
 32 provides patient services for Medicaid, Medicare or dually
 33 eligible beneficiaries.



34 (c) "Net direct premiums" shall mean gross direct
35 premiums written on the lines of insurance set forth in this act,
36 as computed by the commissioner, less return premiums for the
37 unused or unabsorbed portions of premium deposits.

38 (d) "Physician" means a person who is fully licensed
39 under Section 73-25-1 et seq., whose license is current and who is
40 not under any restriction by the State Board of Medical Licensure.

41 (3) The commissioner is authorized to enter into a contract
42 with an insurer authorized to write, and engaged in writing,
43 within this state on any basis, medical malpractice insurance as
44 reported in the company's annual statement. The purpose of the
45 contract shall be to provide a market for medical malpractice
46 insurance for physicians who provide patient services to Medicaid,
47 Medicare or dually eligible beneficiaries with the premium to be
48 subsidized by the state from tobacco litigation payments from the
49 Health Care Expendable Fund established under Section 43-13-407,
50 Mississippi Code of 1972, subject to specific appropriation by the
51 Legislature. The contract shall not be entered into until the
52 commissioner, after due hearing and investigation, has determined
53 that medical malpractice insurance is not readily available for
54 hospitals or for physicians licensed to practice in a hospital or
55 other health care facility licensed by the State of Mississippi in
56 which Medicaid, Medicare or duly eligible beneficiaries receive
57 care. A determination that insurance is not readily available for
58 physicians shall be necessary before the contract is entered into
59 by the commissioner. For the purposes of this section, if
60 premiums for medical malpractice insurance for physicians or
61 hospitals or other licensed facilities in which physicians
62 practice shall increase by one hundred percent (100%) within a
63 period of thirty-six (36) months or less immediately preceding the
64 hearing, the commissioner shall determine that medical malpractice
65 insurance is not readily available in this state.



66 (4) Upon determination, the commissioner shall be authorized
67 to enter into a contract with an insurer to issue policies of
68 medical malpractice insurance to physicians who provide patient
69 services to Medicaid, Medicare or dually eligible beneficiaries.
70 The premium cost for this coverage shall be subsidized by the
71 state in direct proportion to the number of patient days
72 reimbursed to such physician by the Medicaid program and/or the
73 Medicare program, as compared to the number of patient days
74 reimbursed to such physician by private insurance companies or
75 from other private payment sources. The amount of subsidy shall
76 be calculated over a six-month period or other monthly basis
77 selected by agreement between the commissioner and the insurer.
78 In the event a physician provides more than fifty percent (50%) of
79 his patient day services to Medicaid, Medicare or dually eligible
80 beneficiaries over a six-month period, or other period selected by
81 agreement between the commissioner and the insurer, the state
82 shall subsidize one hundred percent (100%) of the cost of the
83 premium for such physician.

84 (5) This section shall not preclude any physician from
85 procuring medical malpractice insurance from any source other than
86 that contracted by the commissioner under this section.

87 (6) The contract with the insurer shall provide that if the
88 commissioner determines at any time that medical malpractice
89 insurance can be made readily available in the voluntary market
90 for physicians, the commissioner may cease all activities and
91 close all accounts with the insurer as agreed upon, until the time
92 that it is necessary to reinstate the plan under like terms and
93 conditions.

94 (7) All policies issued by the insurer shall provide for a
95 continuous period of coverage beginning on their respective
96 effective dates and terminating automatically three (3) years
97 after the effective date unless sooner terminated according to
98 terms of the policy or the contract with the insurer. Policies



99 shall provide that premiums shall be payable annually and may be
100 adjusted during the coverage period.

101 (8) The plan shall include policies of insurance to
102 applicants, including incidental coverage, subject to limits,
103 deductibles and coinsurance amounts specified in the plan of
104 operation but not to exceed One Million Dollars (\$1,000,000.00)
105 for each claimant under one (1) policy and Twenty Million Dollars
106 (\$20,000,000.00) for all claimants under one (1) policy in any one
107 (1) year; and shall include the authority to underwrite the
108 insurance, and to adjust and pay losses with respect thereto, or
109 to appoint service companies to perform those functions; and shall
110 include the authority to provide for reinsurance.

111 (9) The contract shall be subject to approval by the
112 commissioner after consultation with the Mississippi State Medical
113 Association, representatives of the public and other affected
114 individuals and organizations. The contract shall become
115 effective upon order of the commissioner as agreed to by the
116 insurer. Amendments to the contract may be made by the
117 commissioner as agreed to by the insurer.

118 (10) The rates, rating plans, rating rules, rating
119 classifications and territories applicable to the insurance
120 written under the contract shall be on an actuarially sound basis,
121 giving due consideration to the past and prospective loss and
122 expense experience for medical malpractice insurance written and
123 to be written in this state, trends in the frequency and severity
124 of losses, the investment income of the insurer and such other
125 information as the commissioner may require, to be based on the
126 experience of loss within the State of Mississippi only.

127 (11) In the event that sufficient funds are not available
128 for the sound financial operation of the plan, the commissioner
129 shall, on a temporary basis, contribute to the financial
130 requirements of the insurer from funds made available from the
131 Medical Malpractice Insurance Fund created hereunder, and any such



132 contribution shall be reimbursed to the fund if recouped by the
133 insurer.

134 (12) There is hereby created a Medical Malpractice Insurance
135 Fund which shall be administered by the commissioner, which shall
136 be used for the purpose of discharging, when due, premium charges
137 payable by policyholders of the medical malpractice insurance
138 contracted with the insurer under this section. All monies
139 received by the fund shall be subject to appropriation by the
140 Legislature from the Health Care Expendable Fund or from any other
141 source, and shall be held in trust by the commissioner or a
142 trustee selected by the commissioner. The trustee may invest the
143 trust fund, subject to the approval of the commissioner, and all
144 investment income shall be credited to the fund, and all expenses
145 of administration of the fund shall be charged against the fund.

146 (13) Any licensed physician qualified under the provisions
147 of this section shall, on or after the effective date of the plan
148 of operation, be entitled to apply to the insurer for medical
149 malpractice insurance coverage. Such application shall be made on
150 behalf of an applicant by a duly licensed agent authorized by the
151 applicant. The Division of Medicaid shall provide necessary
152 information to the commissioner in order to determine the
153 eligibility of the physician to participate in the plan, and the
154 portion of the premium cost to be subsidized by the state.

155 (14) The insurer, for each year or portion thereof that is
156 in operation, shall file in the office of the commissioner, on or
157 before January 1, a statement containing information with respect
158 to its transactions, condition, operations and affairs during the
159 preceding year. Such statement shall contain such matters and
160 information as are prescribed, and shall be in such form as is
161 approved by the commissioner. The commissioner may, at any time,
162 require the insurer to furnish additional information with respect
163 to its transactions, condition, or any matter connected therewith



164 considered to be material and of assistance in evaluating the
165 operation of the plan.

166 (15) There shall be no liability on the part of, and no
167 cause of action of any nature shall arise against, the
168 commissioner or his authorized representatives for any statements
169 made in good faith by them during any proceedings or concerning
170 any matters within the scope of this section.

171 **SECTION 2.** Section 43-13-407, Mississippi Code of 1972, is
172 amended as follows:

173 43-13-407. (1) In accordance with the purposes of this
174 article, there is established in the State Treasury the Health
175 Care Expendable Fund, into which shall be transferred from the
176 Health Care Trust Fund the following sums:

177 (a) In fiscal year 2000, Fifty Million Dollars
178 (\$50,000,000.00);

179 (b) In fiscal year 2001, Fifty-five Million Dollars
180 (\$55,000,000.00);

181 (c) In fiscal year 2002, Sixty Million Five Hundred
182 Thousand Dollars (\$60,500,000.00);

183 (d) In fiscal year 2003, Sixty-six Million Five Hundred
184 Fifty Thousand Dollars (\$66,550,000.00);

185 (e) In fiscal year 2004 and each subsequent fiscal
186 year, a sum equal to the average annual amount of the income from
187 the investment of the funds in the Health Care Trust Fund since
188 July 1, 1999.

189 (2) In any fiscal year in which interest and dividends from
190 the investment of the funds in the Health Care Trust Fund are not
191 sufficient to fund the full amount of the annual transfer into the
192 Health Care Expendable Fund as required in subsection (1) of this
193 section, the State Treasurer shall transfer from tobacco
194 settlement installment payments an amount that is sufficient to
195 fully fund the amount of the annual transfer.



196 (3) The State Treasurer shall transfer Ten Million Dollars
197 (\$10,000,000.00) of the 2002 tobacco settlement installment
198 payment, and annually thereafter, into the Health Care Expendable
199 Fund, and said monies shall be appropriated by the Legislature
200 into the Medical Malpractice Insurance Fund to fund the state's
201 portion of the medical malpractice insurance plan for physicians
202 who provide patient services to Medicaid, Medicare and dually
203 eligible beneficiaries, as authorized in Section 1 of this act.

204 (4) All income from the investment of the funds in the
205 Health Care Expendable Fund shall be credited to the account of
206 the Health Care Expendable Fund. Any funds in the Health Care
207 Expendable Fund at the end of a fiscal year shall not lapse into
208 the State General Fund.

209 (5) The funds in the Health Care Expendable Fund shall be
210 available for expenditure pursuant to specific appropriation by
211 the Legislature beginning in fiscal year 2000, and shall be
212 expended exclusively for health care purposes.

213 **SECTION 3.** Section 43-13-405, Mississippi Code of 1972, is
214 amended as follows:

215 43-13-405. (1) In accordance with the purposes of this
216 article, there is established in the State Treasury the Health
217 Care Trust Fund, into which shall be deposited Two Hundred Eighty
218 Million Dollars (\$280,000,000.00) of the funds received by the
219 State of Mississippi as a result of the tobacco settlement as of
220 the end of fiscal year 1999, and all tobacco settlement
221 installment payments made in subsequent years for which the use or
222 purpose for expenditure is not restricted by the terms of the
223 settlement, except as otherwise provided in Section 43-13-407(2)
224 and 43-13-407(3). All income from the investment of the funds in
225 the Health Care Trust Fund shall be credited to the account of the
226 Health Care Trust Fund. The funds in the Health Care Trust Fund
227 at the end of a fiscal year shall not lapse into the State General
228 Fund.



229 (2) The Health Care Trust Fund shall remain inviolate and
230 shall never be expended, except as provided in this article. The
231 Legislature shall appropriate from the Health Care Trust Fund such
232 sums as are necessary to recoup any funds lost as a result of any
233 of the following actions:

234 (a) The federal Health Care Finance Administration, or
235 other agency of the federal government, is successful in recouping
236 tobacco settlement funds from the State of Mississippi;

237 (b) The federal share of funds for the support of the
238 Mississippi Medicaid Program is reduced directly or indirectly as
239 a result of the tobacco settlement;

240 (c) Federal funding for any other program is reduced as
241 a result of the tobacco settlement; or

242 (d) Tobacco cessation programs are mandated by the
243 federal government or court order.

244 **SECTION 4.** This act shall take effect and be in force from
245 and after July 1, 2002.

