

AMENDMENT PROPOSED TO

HOUSE BILL NO. 13

By Rep. Bondurant

#11  
Improperly  
before the  
House

Strike the language contained in Section 24 Medical  
review Panel from lines 957 through line 1194  
and insert in lieu thereof the attached language:  
and renumber accordingly.

AMEND TITLE (to conform) (as follows):

(u) Definitions. For purposes of this section:

- 812 (i) "Board" means the Tort Claims Board  
813 established by Section 11-46-18, Mississippi Code of 1972.
- 814 (ii) "Health care provider" means a person,  
815 partnership, limited liability partnership, limited liability  
816 company, corporation, facility, or institution licensed by this  
817 state to provide health care or professional services as a  
818 physician, hospital, institution for the aged or infirm, community  
819 blood center, tissue bank, dentist, registered or licensed  
820 practical nurse or certified nurse assistant, ambulance service,  
821 certified registered nurse anesthetist, nurse-midwife, licensed  
822 midwife, pharmacist, optometrist, podiatrist, chiropractor,  
823 physical therapist, occupational therapist, psychologist, social  
824 worker, licensed professional counselor, or any nonprofit facility  
825 considered tax-exempt under Section 501(c)(3), Internal Revenue  
826 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and  
827 treatment of cancer or cancer-related diseases, whether or not  
828 such a facility is required to be licensed by this state, or any  
829 professional corporation a health care provider is authorized to  
830 form under the Mississippi Code of 1972, or any partnership,  
831 limited liability partnership, limited liability company, or  
832 corporation whose business is conducted principally by health care

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833 providers, or an officer, employee, partner, member, shareholder,  
834 or agent thereof acting in the course and scope of his employment.

835 (iii) "Malpractice" means any unintentional tort  
836 or any breach of contract based on health care or professional  
837 services rendered, or which should have been rendered, by a health  
838 care provider, to a patient, including failure to render services  
839 timely and the handling of a patient, including loading and  
840 unloading of a patient, and also includes all legal responsibility  
841 of a health care provider arising from acts or omissions in the  
842 training or supervision of health care providers, or from defects  
843 in blood, tissue, transplants, drugs and medicines, or from  
844 defects in or failures of prosthetic devices, implanted in or used  
845 on or in the person of a patient.

846 (b) (i) All malpractice claims against health care  
847 providers, other than claims validly agreed for submission to a  
848 lawfully binding arbitration procedure, shall be reviewed by a  
849 medical review panel as provided in this section unless all  
850 parties specifically waive the use of the medical review panel.

851 (ii) An action against a health care provider or  
852 his insurer commenced in any court shall be presented to a medical  
853 review panel and an opinion rendered by the panel pursuant to this  
854 section, and the court's request for review shall constitute a  
855 stay pending the panel's decision.

856 (iii) The request for review of a malpractice  
857 claim under this section shall be made by the court on its own  
858 motion or on the motion of any party.

859 (c) (i) The request for review must be in writing,  
860 delivered to the board in person or by certified or registered  
861 United States mail, and include as an exhibit the complaint filed.

862 (ii) Each defendant shall file a written answer  
863 within thirty (30) days of service of the request. If the  
864 defendant fails to file an answer as required, the board shall  
865 notify the defendant of the obligation to file and penalty for

866 failure to file; notice shall be by certified or registered United  
867 States mail. If the defendant has not filed within thirty (30)  
868 days of the receipt of the notice specified in this subparagraph  
869 (ii), the request for review shall be dismissed; the panel, if  
870 formed, shall be dissolved, and the plaintiff shall be allowed to  
871 proceed in court upon the complaint filed.

872 (2) Dismissal of review; dissolution of panel.

873 (a) During the pendency of proceedings under this  
874 section, a health care provider against whom a claim has been  
875 filed may raise any exception or defenses available pursuant to  
876 Mississippi law, whether a procedural, statute of limitations or  
877 other exception or defense, at any time without need for  
878 completion of the review process by the medical review panel.

879 (b) If the court finds for the party raising the  
880 exception or defense, that party shall be dismissed. If there are  
881 no defendants remaining, the panel, if established, shall be  
882 dissolved.

883 (3) Composition and selection of panel.

884 (a) The medical review panel shall consist of three (3)  
885 physicians who each hold an unlimited license to practice medicine  
886 in Mississippi and one (1) attorney who shall be the nonvoting  
887 chair of the panel. The parties may agree on the attorney member  
888 of the medical review panel within thirty (30) days after the  
889 filing of the answer; if no agreement can be reached, then the  
890 attorney member of the medical review panel shall be selected as  
891 follows:

892 (i) The board shall draw five (5) names at random  
893 from the list of attorneys maintained by the board who have  
894 medical malpractice experience. The names of judges, magistrates,  
895 district attorneys and assistant district attorneys shall be  
896 excluded if drawn and new names drawn in their place. After  
897 selection of the attorney names, the board shall notify the  
898 parties of the attorney names from which the parties, within five

899 (5) days, may choose the attorney member of the panel. If no  
900 agreement can be reached within five (5) days, the parties shall  
901 immediately initiate a procedure of selecting the attorney by each  
902 striking two (2) names alternately, with the plaintiff striking  
903 first and so advising the defendant of the name of the attorney so  
904 stricken; thereafter, the defendant and the plaintiff shall  
905 alternately strike until both sides have stricken two (2) names  
906 and the remaining name shall be the attorney member of the panel.  
907 If either the plaintiff or defendant fails to strike, the board  
908 shall strike for that party within five (5) additional days.

909 (ii) After the striking, the board shall notify  
910 the attorney and all parties of the name of the selected attorney.  
911 An attorney who has a conflict of interest shall decline to serve.

912 (b) The attorney shall act as chairman of the panel and  
913 shall have no vote. The chairman shall preside at panel meetings,  
914 advise the panel as to questions of law, and shall prepare the  
915 opinion of the panel as required in subsection (7) of this  
916 section. It is the duty of the chairman to expedite the selection  
917 of the other panel members, to convene the panel and expedite the  
918 panel's review of the proposed complaint. The attorney chairman  
919 shall establish, by order, a reasonable schedule for submission of  
920 evidence to the medical review panel, but must allow sufficient  
921 time for the parties to make full and adequate presentation of  
922 related facts and authorities within one hundred twenty (120) days  
923 following selection of the panel.

924 (c) The qualification and selection of physician  
925 members of the medical review panel shall be as follows:

926 (i) All physicians who hold a license to practice  
927 medicine in the State of Mississippi and who are engaged in the  
928 active practice of medicine in this state, whether in the teaching  
929 profession or otherwise, shall be available for selection and,  
930 unless excused for cause, required to serve upon selection.

931 (ii) Each party to the action shall have the right

932 to select one (1) physician and upon selection the physician shall  
933 be required to serve.

934 (iii) When there are multiple plaintiffs or  
935 defendants, there shall be only one (1) physician selected per  
936 side. The plaintiff, whether single or multiple, shall have the  
937 right to select one (1) physician, and the defendant, whether  
938 single or multiple, shall have the right to select one (1)  
939 physician. The two (2) physicians so chosen shall jointly select

940 the third physician. *IF THE TWO PHYSICIANS CANNOT AGREE ON THE  
SELECTION OF THE THIRD PHYSICIAN WITHIN THIRTY DAYS THEN THE THIRD  
PHYSICIAN SHALL*

941 (iv) If any defendant is a physician, the  
942 physicians selected must be of the same specialty as at least one  
943 (1) physician defendant.

944 (v) Parties and their attorneys are absolutely  
945 prohibited from contact with the physician whose name is  
946 submitted, either before or after submission. No physician may be  
947 informed of the method of any panel member's selection.

948 (vi) No physician may be selected to serve on more  
949 than four (4) medical review panels in a twelve-month period.

950 (vii) The physician selection process shall be  
951 completed within thirty (30) days of the selection of the attorney  
952 chairman.

953 (d) Attorneys and physicians selected shall disclose  
954 any financial, employment, or personal or family ties to any party  
955 or attorney for a party. Any conflict that cannot be resolved  
956 shall be decided by the court upon the motion of any party.

957 (4) Evidence.

958 (a) The evidence to be considered by the medical review  
959 panel shall be promptly submitted by the respective parties in  
960 written form only.

961 (b) The evidence may consist of:

- 962 (i) Medical records;  
963 (ii) Sworn statements;  
964 (iii) Expert reports signed by experts;

*BE SELECTED  
BY THE  
TORT CLAIMS  
BOARD.*

965 (iv) Deposition transcripts;  
966 (v) Any other evidence allowed by the medical  
967 review panel or submitted by the parties.  
968 (c) Depositions of the parties only may be taken, and  
969 may be taken prior to the convening of the panel.  
970 (d) Upon request of any party or panel member, the  
971 board shall issue subpoenas and subpoenas duces tecum in aid of  
972 the taking of depositions and the production of documentary  
973 evidence for inspection, copying or both.  
974 (e) The plaintiff must sign a valid authorization  
975 allowing defendants to obtain the plaintiff's medical records.  
976 The defendant shall treat all medical records in a confidential  
977 manner and shall not disclose the contents of the records to  
978 anyone other than the panel or other experts; all other experts  
979 must treat the plaintiff's records as confidential.  
980 (f) The board shall send a copy of the evidence to each  
981 member of the panel.  
982 (5) **Hearings.** (a) After submission of all evidence and  
983 upon ten (10) days' notice to the other side, either party or the  
984 panel shall have the right to convene the panel at a time and  
985 place agreeable to the members of the panel; each party is  
986 entitled to request only one (1) hearing. The panel may hold as  
987 many hearings as it chooses. The purpose of a hearing is to ask  
988 questions as to additional evidence needed and to afford an  
989 opportunity to make oral presentation of the facts. The chairman  
990 of the panel shall preside at all hearings, which shall be  
991 informal.  
992 (b) The following are locations where hearings may be  
993 held:  
994 (i) At a courthouse or other available public  
995 building in the county where the act or omission is alleged to  
996 have occurred.

997 (ii) The attorney chairman shall decide the  
998 location in the event of any dispute.

999 (iii) Private offices in the county where the act  
1000 or omission is alleged to have occurred may be used if there is no  
1001 cost or if the parties pay for the cost.

1002 (6) **Panel deliberations and decision.** After receiving all  
1003 evidence from the parties, the panel shall convene to discuss the  
1004 evidence presented not less than one (1) time, and, not later than  
1005 sixty (60) days after receiving all evidence from the parties,  
1006 shall render a written decision signed by the panelists, together  
1007 with written reasons for their conclusions, as follows:

1008 (a) There was a breach of the appropriate standard of  
1009 care;

1010 (b) There was not a breach of the appropriate standard  
1011 of care; or

1012 (c) Whether the defendant or defendants failed to  
1013 comply with the appropriate standard of care cannot be determined.

1014 (7) **Form of decision.** The decision reached by the medical  
1015 review panel shall be in writing, shall state the facts upon which  
1016 it is based, shall be of public record, and shall be admissible as  
1017 evidence in the civil case filed.

1018 (8) **Panelist immunity.** A panelist shall have absolute  
1019 immunity from civil liability for all communications, findings,  
1020 opinions and conclusions made in the course and scope of duties  
1021 prescribed by this section.

1022 (9) **Panelist compensation.**

1023 (a) (i) Each physician member of the medical review  
1024 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for  
1025 all work performed as a member of the panel, and in addition  
1026 thereto, per diem as provided in Section 25-3-69, Mississippi Code  
1027 of 1972, and travel expenses as would be calculated for a state  
1028 employee pursuant to Section 25-3-41, Mississippi Code of 1972.



1029 (ii) The attorney chairman of the medical review  
1030 panel shall be paid at the rate of One Hundred Fifty Dollars  
1031 (\$150.00) per hour, not to exceed a total of Three Thousand  
1032 Dollars (\$3,000.00), for all work performed as a member of the  
1033 panel, and in addition thereto, per diem as provided in Section  
1034 25-3-69, Mississippi Code of 1972, and travel expenses as would be  
1035 calculated for a state employee pursuant to Section 25-3-41,  
1036 Mississippi Code of 1972.

1037 (b) The costs of the medical review panel shall be  
1038 split between the parties. The panel members shall by affidavit  
1039 request the payment due under this subsection (9) from the board,  
1040 which in turn shall bill the parties for the proportionate share  
1041 of each party.

1042 (10) **Delivery and effect of decision.** The chairman shall  
1043 submit a copy of the panel's report to the board and all parties  
1044 and attorneys by registered or certified mail within five (5) days  
1045 after the panel renders its opinion. The panel's report shall be  
1046 of public record.

1047 (11) **Allocation of attorney fees and expenses.**

1048 (a) If the decision of the panel finds for the  
1049 defendant and the defendant prevails in court, the plaintiff shall  
1050 pay reasonable attorney fees and expenses of the defendant to be  
1051 determined by the court.

1052 (b) If the decision of the panel finds for the  
1053 plaintiff:

1054 (i) The plaintiff may submit a written settlement  
1055 offer for a sum certain to the defendant. If the defendant  
1056 rejects the settlement offer, the plaintiff prevails in court, and  
1057 the judgment is equal to or greater than the settlement offer, the  
1058 defendant shall pay reasonable attorney fees and expenses of the  
1059 plaintiff to be determined by the court.

1060 (ii) The defendant also may submit a written  
1061 settlement offer for a sum certain to the plaintiff. If the

1062 plaintiff rejects the settlement offer and the defendant prevails  
1063 in the subsequent court action, or the plaintiff prevails but the  
1064 judgment is less than the defendant's settlement offer, the  
1065 plaintiff shall pay reasonable attorney fees and expenses of the  
1066 defendant to be determined by the court.  
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