

Senate Bill 149

By: Senators Ligon, Jr. of the 3rd, Williams of the 19th, Albers of the 56th, Carter of the 1st and Goggans of the 7th

A BILL TO BE ENTITLED
AN ACT

1 To establish the "Georgia Medicaid Access Act"; to amend Chapter 4 of Title 49 of the
2 Official Code of Georgia Annotated, relating to public assistance, so as to provide for the
3 filing of a proposed complaint of a medical malpractice claim against a medical assistance
4 provider; to provide for a short title; to provide for legislative intent; to define certain terms;
5 to provide for the appointment and selection of medical review panels; to provide for
6 attorney's fees and court costs; to provide for discovery and hearing procedures; to amend
7 Article 2 of Chapter 9 of Title 9 of the Official Code of Georgia, relating to medical
8 malpractice arbitration, so as to include actions for medical malpractice in the definition of
9 a medical malpractice claim for which arbitration is authorized; to amend Chapter 9 of Title
10 33 of the Official Code of Georgia Annotated, relating to regulation of rates, underwriting
11 rules, and related organizations, so as to require that medical malpractice insurers provide
12 a reduction in premium for medical malpractice policies under certain circumstances; to
13 provide for related matters; to provide for an effective date and applicability; to repeal
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance,
18 is amended by adding a new article to read as follows:

19 style="text-align:center">"ARTICLE 10

20 49-4-195.

21 This article shall be known and may be cited as the 'Georgia Medicaid Access Act.'

22 49-4-195.1.

23 As used in this article, the term:

- 24 (1) 'Action for medical malpractice' means any claim for damages resulting from the
25 death of or injury to any person arising out of:
- 26 (A) Health, medical, dental, or surgical service, diagnosis, prescription, treatment, or
27 care rendered by a person authorized by law to perform such service or by any person
28 acting under the supervision and control of the lawfully authorized person rendered
29 within the scope of duties; or
- 30 (B) Care or service rendered by any public or private hospital, nursing home, clinic,
31 hospital authority, facility, or institution, or by any officer, agent, or employee thereof
32 acting within the scope of his or her employment and rendered within the scope of
33 duties.
- 34 (2) 'Applicant for medical assistance' shall have the same meaning as provided in Code
35 Section 49-4-141.
- 36 (3) 'Claimant' means a person, including a decedent's estate, who seeks or has sought
37 recovery of damages in an action for medical malpractice. All persons claiming to have
38 sustained damages as the result of the bodily injury or death of a single person shall be
39 considered a single claimant.
- 40 (4) 'Commissioner' means the commissioner of the department.
- 41 (5) 'Department' shall have the same meaning as provided in Code Section 49-4-141.
- 42 (6) 'Health care provider' means any person, corporation, facility, or institution licensed
43 by this state or any other state to provide or otherwise lawfully providing health care
44 services, including, but not limited to, a doctor of medicine, doctor of osteopathy,
45 physician assistant, hospital or other health care facility, dentist, nurse, optometrist,
46 podiatrist, physical therapist, psychologist, occupational therapist, professional counselor,
47 pharmacist, chiropractor, marriage and family therapist, or social worker.
- 48 (7) 'Medical assistance' shall have the same meaning as provided in Code Section
49 49-4-141.
- 50 (8) 'Provider of medical assistance' shall have the same meaning as provided in Code
51 Section 49-4-141.
- 52 (9) 'Recipient of medical assistance' shall have the same meaning as provided in Code
53 Section 49-4-141.
- 54 (10) 'Rendered within the scope of duties' means in accordance with such provisions of
55 Title XIX of the federal Social Security Act of 1935, as amended, regulations
56 promulgated pursuant thereto by the secretary of health and human services, all
57 applicable laws of this state, the state plan, and regulations of the department which are
58 in effect on the date on which the items are rendered.
- 59 (11) 'State plan' shall have the same meaning as provided in Code Section 49-4-141.

60 49-4-195.2.

61 Actions against a provider of medical assistance shall be covered under this article for the
 62 provision of medical or remedial care or service to a recipient of medical assistance
 63 regardless of whether such recipient of medical assistance is later to be found ineligible.

64 49-4-195.3.

65 All of the legal requirements for an action for medical malpractice under this article shall
 66 be the same as those for an action for medical malpractice as defined in Code Section
 67 9-3-70, unless specified otherwise in this article.

68 49-4-195.4.

69 (a) The statute of limitations for an action for medical malpractice filed pursuant to this
 70 article shall be the same as the statute of limitations set forth in Article 4 of Chapter 3 of
 71 Title 9.

72 (b) The filing of a proposed complaint tolls the applicable statute of limitations to and
 73 including a period of 90 days following the receipt of the opinion of the medical review
 74 panel by the plaintiff.

75 (c) A proposed complaint under Code Section 49-4-195.5 shall be filed in the same court,
 76 with the same filing fees, and in the same manner as an action for medical malpractice as
 77 defined in Code Section 9-3-70. The proposed complaint shall be served upon the parties
 78 as required for an action for medical malpractice as defined in Code Section 9-3-70. A
 79 copy of the proposed complaint shall be delivered or mailed by registered or certified mail
 80 to the commissioner by the claimant within ten days after filing the proposed complaint.

81 (d) If a claimant meets the criteria stated in subsection (c) of Code Section 49-4-195.8, the
 82 applicable limitations period shall be equal to the period that would otherwise apply to the
 83 claimant under subsection (a) of this Code section plus 180 days.

84

85 49-4-195.5.

86 Except as provided in Code Sections 49-4-195.6 and 49-4-195.7, a recipient of medical
 87 assistance or the representative of a recipient of medical assistance who has a claim against
 88 a provider of medical assistance for bodily injury or death on account of malpractice shall
 89 not commence an action for medical malpractice in a court in this state before:

90 (1) The proposed complaint has been filed with the court;

91 (2) The proposed complaint has been presented to a medical review panel established
 92 under this article; and

93 (3) An opinion is given by the medical review panel.

94 49-4-195.6.
95 Notwithstanding Code Section 49-4-195.5, a claimant may commence an action for
96 medical malpractice in court without the presentation of the claim to a medical review
97 panel if the plaintiff and all parties named as defendants in the action for medical
98 malpractice agree that the claim is not to be presented to a medical review panel. The
99 agreement shall be in writing and shall be signed by each party or an authorized agent of
100 the party. The claimant shall attach a copy of the agreement to the complaint filed with the
101 court in which the action for medical malpractice is commenced.

102 49-4-195.7.

103 (a) Notwithstanding Code Section 49-4-195.5, a claimant may commence an action for
104 medical malpractice in court without submitting a proposed complaint to a medical review
105 panel if the claimant's pleadings include a declaration that the claimant seeks damages from
106 the provider of medical assistance in an amount not greater than \$15,000.00. In an action
107 for medical malpractice commenced under this Code Section, the claimant shall be barred
108 from recovering any amount greater than \$15,000.00, except as provided in subsection (b)
109 of this Code section.

110 (b) A claimant who:

111 (1) Commences an action for medical malpractice under subsection (a) of this Code
112 section in the reasonable belief that damages in an amount not greater than \$15,000.00
113 are adequate compensation for the bodily injury allegedly caused by the provider of
114 medical assistance; and

115 (2) Later learns, during the pendency of the action for medical malpractice, that the
116 bodily injury is more serious than previously believed and that \$15,000.00 is insufficient
117 compensation for the bodily injury

118 may move that the action for medical malpractice be dismissed without prejudice and, upon
119 dismissal of the action for medical malpractice, may file a proposed complaint subject to
120 Code Section 49-4-195.5 based upon the same allegations of medical malpractice as were
121 asserted in the action for medical malpractice dismissed under this subsection. In a second
122 action for medical malpractice commenced in court following the medical review panel's
123 proceeding on the proposed complaint, the claimant may recover an amount greater than
124 \$15,000.00. However, a claimant may move for dismissal without prejudice and, if
125 dismissal without prejudice is granted, may commence a second action for medical
126 malpractice under this subsection only if the claimant's motion for dismissal is filed within
127 two years after commencement of the original action for medical malpractice under
128 subsection (a) of this Code section.

129 (c) If a claimant:

- 130 (1) Commences an action for medical malpractice under subsection (a) of this Code
 131 section;
- 132 (2) Moves under subsection (b) of this Code section for dismissal of that action for
 133 medical malpractice;
- 134 (3) Files a proposed complaint subject to Code Section 49-4-195.5 based upon the same
 135 allegations of malpractice as were asserted in the action for medical malpractice
 136 dismissed under subsection (b) of this Code section; and
- 137 (4) Commences a second action for medical malpractice in court following the medical
 138 review panel proceeding on the proposed complaint
- 139 the timeliness of the second action for medical malpractice shall be governed by subsection
 140 (c) of Code Section 49-4-195.4.
- 141 49-4-195.8.
- 142 (a) Notwithstanding Code Section 49-4-195.5, a claimant may commence an action for
 143 medical malpractice in court at the same time the claimant's proposed complaint is being
 144 considered by a medical review panel.
- 145 (b) In order to comply with subsection (a) of this Code section, the:
- 146 (1) Complaint filed in court shall not contain any information that would allow a third
 147 party to identify the defendant;
- 148 (2) Claimant shall be prohibited from pursuing the action for medical malpractice;
- 149 (3) Claimant shall pay all applicable filing fees; and
- 150 (4) The court shall be prohibited from taking any action except:
- 151 (A) Setting a date for trial;
- 152 (B) An action under Code Section 49-4-195.9; or
- 153 (C) An action under Code Sections 49-4-195.29 through 49-4-195.32
 154 until Code Section 49-4-195.5 has been satisfied.
- 155 (c) Upon satisfaction of section Code Section 49-4-195.5, the identifying information
 156 described in paragraph (1) of subsection (b) of this Code section shall be added to the
 157 complaint by the court.
- 158 49-4-195.9.
- 159 If action has not been taken in a proposed complaint before the court for a period of at least
 160 two years, the court, on the:
- 161 (1) Motion of a party; or
- 162 (2) The court's own motion
 163 may dismiss the case.

164 49-4-195.10.

165 (a) All actions for medical malpractice settled or adjudicated to final judgment against a
166 provider of medical assistance shall be reported to the commissioner by the plaintiff's
167 attorney and by the provider of medical assistance within 60 days following final
168 disposition of the action for medical malpractice.

169 (b) The report to the commissioner required pursuant to subsection (b) of this Code section
170 shall state the following:

171 (1) The nature of the action;

172 (2) The damages asserted and the alleged injury;

173 (3) The attorney's fees and expenses incurred in connection with the claim or defense;
174 and

175 (4) The amount of the settlement or judgment.

176 49-4-195.11.

177 (a) The medical review panel provided for in this article shall make a separate
178 determination, at the time that it renders its opinion under Code Section 49-4-195.24, as
179 to whether the name of the defendant provider of medical assistance should be forwarded
180 to the appropriate board of professional registration for review of the provider of medical
181 assistance's fitness to practice in the provider of medical assistance's profession. The
182 commissioner shall forward the name of the defendant health care provider if the medical
183 review panel unanimously determines that it should be forwarded. The medical review
184 panel's determination concerning the forwarding of the name of the defendant provider of
185 medical assistance shall not be admissible as evidence in a civil action. In each case
186 involving review of a provider of medical assistance's fitness to practice forwarded under
187 this section, the appropriate licensing board may take whatever disciplinary action it deems
188 appropriate.

189 (b) The appropriate board of professional registration and examination shall report to the
190 commissioner the board's findings, the action taken, and the final disposition of each case
191 involving review of a health care provider's fitness to practice forwarded under this Code
192 section.

193

194 49-4-195.12.

195 Not earlier than 20 days after the filing of a proposed complaint, either party may request
196 the formation of a medical review panel by filing such a request and providing notice to all
197 parties.

198 49-4-195.13.

199 (a) A medical review panel shall consist of one attorney and three health care providers.

200 (b) The attorney member of the medical review panel shall act as chairperson of the panel
201 and in an advisory capacity but may not vote.

202 (c) The chairperson of the medical review panel shall expedite the selection of the other
203 panel members, convene the panel, and expedite the panel's review of the proposed
204 complaint. The chairperson may establish a reasonable schedule for submission of
205 evidence to the medical review panel but shall allow sufficient time for the parties to make
206 full and adequate presentation of related facts and authorities.

207 49-4-195.14.

208 (a) A medical review panel shall be selected as provided for in this Code section.

209 (b)(1) Within 15 days after the filing of a request for formation of a medical review
210 panel, the parties shall select a panel chairperson by agreement. If no agreement on a
211 panel chairperson can be reached, either party may request the clerk of the court in which
212 the proposed complaint has been filed to draw at random a list of five names of attorneys
213 who:

214 (A) Are members of the State Bar of Georgia in good standing;

215 (B) Are admitted in the Georgia Supreme Court;

216 (C) Maintain offices in the county of venue designated in the proposed complaint or
217 in a contiguous county; and

218 (D) Have requested that their names be placed on a list of attorneys who desire to serve
219 as a chairperson.

220 (2) The clerk shall notify the parties, and the parties shall then strike names from the
221 random list, alternating with the plaintiff striking first until one name remains. The
222 remaining attorney shall be the chairperson of the panel.

223 (3) After the striking, the plaintiff shall notify the court, the chairperson, and all other
224 parties of the name of the chairperson.

225 (4) If a party does not strike a name within five days after receiving notice from the
226 clerk:

227 (A) The opposing party shall, in writing, request the clerk to strike for the party; and

228 (B) The clerk shall strike for that party.

229 (5) When one name remains, the clerk shall within five days notify the chairperson and
230 all other parties of the name of the chairperson.

231 (6) Within 15 days after being notified by the clerk of being selected as chairperson, the
232 chairperson shall:

233 (A) Send a written acknowledgment of appointment to the clerk; or

234 (B) Show good cause for relief from serving as provided in this Code section.

235 (c)(1) All health care providers in this state, whether in the teaching profession or
 236 otherwise, who hold a license to practice in their profession shall be available for
 237 selection as members of the medical review panel.

238 (2) Each party to the action for medical malpractice shall have the right to select one
 239 health care provider, and upon selection, the two health care providers thus selected shall
 240 select the third panelist.

241 (3) If there are multiple plaintiffs or defendants, only one health care provider shall be
 242 selected per side. The plaintiff, whether single or multiple, shall have the right to select
 243 one health care provider, and the defendant, whether single or multiple, shall have the
 244 right to select one health care provider.

245 (4) If there is only one party defendant who is an individual, two of the panelists selected
 246 shall be health care providers who hold the same type of license to provide health care
 247 services at that of the defendant. If the individual defendant is a health care professional
 248 who specializes in a limited area, two of the panelists selected shall be health care
 249 professionals who specialize in the same area as the defendant.

250 (5) Within 15 days after the chairperson is selected, both parties shall select a health care
 251 provider, and the parties shall notify the other party and the chairperson of their selection.
 252 If a party fails to make a selection within the time provided, the chairperson shall make
 253 the selection and notify both parties. Within 15 days after their selection, the health care
 254 provider members shall select the third member within the time provided and notify the
 255 chairperson and the parties. If the providers fail to make a selection, the chairperson shall
 256 make the selection and notify both parties.

257 (6) Within ten days after the selection of a panel member, written challenge without
 258 cause may be made to such panel member. Upon challenge or excuse, the party whose
 259 appointee was challenged or dismissed shall select another panelist. If the challenged or
 260 dismissed panel member was selected by the other two panel members, the medical
 261 review panel members shall make a new selection. If two such challenges are made and
 262 submitted, the chairperson shall within ten days appoint a panel consisting of three
 263 qualified panelists, and each side shall, within ten days after the appointment, strike one
 264 panelist. The party whose appointment was challenged shall strike last, and the remaining
 265 member shall serve.

266 (d) When a medical review panel is formed, the chairperson shall within five days notify
 267 the court and the parties by registered or certified mail of the following:

268 (1) The names and addresses of the panel members; and

269 (2) The date on which the last member was selected.

270 (e) A member of a medical review panel who is selected under this Code section shall
 271 serve unless:

272 (1) The parties by agreement excuse the panelist; or

273 (2) The panelist is excused as provided in subsection (f) of this Code section for good
 274 cause shown.

275 (f)(1) To show good cause for relief from serving as member of a medical review panel,
 276 the attorney selected as chairperson of the medical review panel shall file an affidavit
 277 with the court. The affidavit shall set out the facts showing that service would constitute
 278 an unreasonable burden or undue hardship. The clerk of court may excuse the attorney
 279 from serving. The attorney shall notify all parties, who shall then select a new chairperson
 280 as provided in subsection (b) of this Code section.

281 (2) To show good cause for relief from serving as a member of a medical review panel,
 282 a health care provider member of a medical review panel shall serve an affidavit upon the
 283 panel chairperson. The affidavit shall set out the facts showing that service would
 284 constitute an unreasonable burden or undue hardship. The chairperson may excuse the
 285 member from serving and notify all parties.

286 49-4-195.15.

287 (a) Except as provided in subsection (b) of this Code section, the medical review panel
 288 shall give its expert opinion within 180 days after the selection of the last member of the
 289 initial panel.

290 (b) The medical review panel shall have 90 days after the selection of the new member to
 291 give an expert opinion, if.

292 (1) The chairperson of the panel or another member of the panel is removed, or any
 293 member of the panel, including the chairperson, is removed by a court order; and

294 (2) A new member is selected to replace the removed member more than 90 days after
 295 the last member of the initial panel is selected.

296 (c) If the panel has not given an opinion within the time allowed under subsection (a) of
 297 this Code section, the medical review panel shall submit a report to the court, stating the
 298 reasons for the delay.

299 49-4-195.16.

300 A party, attorney, or member of the medical review panel who fails to act as required by
 301 this article without good cause shown is subject to mandate or appropriate sanctions upon
 302 application to the court designated in the proposed complaint as having jurisdiction.

303 49-4-195.17.

304 (a) The court may remove the chairperson of the medical review panel if the court
305 determines that the chairperson is not fulfilling the duties imposed upon the chairperson
306 by this article.

307 (b) If the chairperson is removed under this Code section, a new chairperson shall be
308 selected under subsection (b) of Code Section 49-4-195.14.

309 49-4-195.18.

310 (a) The chairperson may remove a member of the panel if the chairperson determines that
311 the member is not fulfilling the duties imposed upon the panel members by this article.

312 (b) If a member is removed under this Code section, a new member shall be selected under
313 subsection (c) of Code Section 49-4-195.14.

314 49-4-195.19.

315 (a) The evidence to be considered by the medical review panel shall be promptly submitted
316 by the respective parties in accordance with a schedule to be established by the
317 chairperson; provided, however, that the parties shall not be required to submit evidence
318 to the panel within 45 days of the formation of the panel unless otherwise agreed by the
319 parties.

320 (b) The evidence may consist of medical charts, X-rays, laboratory tests, excerpts of
321 treatises, applicable standards of care within the licensed profession of the defendant's
322 health care provider, depositions of parties and witnesses, interrogatories, affidavits, reports
323 of medical experts, and any other form of evidence allowable by the medical review panel.

324 (c) The chairperson shall ensure that before the panel gives its expert opinion under Code
325 Section 49-4-195.24, each panel member has the opportunity to review every item of
326 evidence submitted by the parties.

327 (d) Before considering any evidence or deliberating with other panel members, each
328 member of the medical review panel shall take an oath in writing on a form provided by
329 the panel chairperson, which shall read as follows:

330 'I (swear) (affirm) under penalties of perjury that I will well and truly consider the
331 evidence submitted by the parties; that I will render my opinion without bias, based upon
332 the evidence submitted by the parties, and that I have not and will not communicate with
333 any party or representative of a party before rendering my opinion, except as authorized
334 by law.'

335 49-4-195.20.

336 Neither a party, a party's agent, a party's attorney, nor a party's insurance carrier shall
337 communicate with any member of the panel, except as authorized by law, before the giving
338 of the medical review panel's expert opinion under Code Section 49-4-195.24.

339 49-4-195.21.

340 The chairperson of the medical review panel shall advise the panel relative to any legal
341 question involved in the review proceeding and shall prepare the opinion of the panel as
342 provided in Code Section 49-4-195.24.

343 49-4-195.22.

344 (a) Any party, after submission of all evidence and upon ten days notice to the chairperson
345 and to the other parties, shall have the right to convene the medical review panel at a time
346 and place agreeable to the members of the panel. Either party may question the medical
347 review panel concerning any matters relevant to issues to be decided by the panel before
348 the issuance of the panel's report.

349 (b) The chairperson of the medical review panel shall preside at all meetings. Meetings
350 shall be informal.

351 49-4-195.23.

352 (a) The medical review panel shall have the right and duty to request all information
353 necessary to render its expert opinion.

354 (b) The medical review panel may consult with medical authorities.

355 (c) The medical review panel may examine reports of other health care providers
356 necessary to fully inform the panel regarding the issue to be decided.

357 (d) All parties shall have full access to any material submitted to the medical review panel.

358 49-4-195.24.

359 (a) The medical review panel shall have the sole duty to express the panel's expert opinion
360 as to whether or not the evidence supports the conclusion that the defendant or defendants
361 acted or failed to act within the appropriate standards of care as charged in the proposed
362 complaint.

363 (b) After reviewing all evidence and after any examination of the medical review panel by
364 counsel representing either party, the panel shall, within 30 days, give one or more of the
365 following expert opinions, which shall be in writing and signed by the panelists:

366 (1) The evidence supports the conclusion that the defendant or defendants failed to
367 comply with the appropriate standard of care as charged in the complaint;

- 368 (2) The evidence does not support the conclusion that the defendant or defendants failed
 369 to meet the applicable standard of care as charged in the proposed complaint;
 370 (3) There is a material issue of fact, not requiring expert opinion, bearing on liability for
 371 consideration by the court or jury; or
 372 (4) The conduct complained of was or was not a factor of the resultant damages. If such
 373 conduct was a factor, whether the plaintiff suffered:
 374 (A) Any disability and the extent and duration of the disability; and
 375 (B) Any permanent impairment and the percentage of the impairment.

376 49-4-195.25.

377 A report of the expert opinion reached by the medical review panel shall be admissible as
 378 evidence in any action subsequently brought by the plaintiff in a court of law. However,
 379 such expert opinion shall not be conclusive, and any party, at such party's cost, shall have
 380 the right to call any member of the medical review panel as a witness. If called, a witness
 381 shall appear and testify.

382 49-4-195.26.

383 Each member of the medical review panel shall have absolute immunity from civil liability
 384 for all communications, findings, opinions, and conclusions made in the course and scope
 385 of duties prescribed by this article.

386 49-4-195.27.

387 (a) Each health care provider member of the medical review panel shall be entitled to be
 388 paid:

- 389 (1) Up to \$750.00 for all work performed as a member of the panel, exclusive of time
 390 involved if called as a witness to testify in court; and
 391 (2) Reasonable travel expenses.

392 (b) The chairperson of the medical review panel shall be entitled to be paid:

- 393 (1) At the rate of \$350.00 per diem, not to exceed \$2,000.00; and
 394 (2) Reasonable travel expenses.

395 (c) The chairperson of the medical review panel shall keep an accurate record of the time
 396 and expenses of all the members of the panel. The record shall be submitted to the parties
 397 for payment with the panel's report.

398 (d) Fees of the medical review panel, including travel expenses and other expenses of the
 399 review, shall be paid by the side in whose favor the majority opinion is written. If there is
 400 no majority opinion as a result of a determination by the medical review panel that there

401 is a material issue of fact bearing on liability consideration by the court, each side shall pay
402 50 percent of the cost.

403 49-4-195.28.

404 The chairperson of the medical review panel shall submit a copy of the panel's report to:

405 (1) The court;

406 (2) All parties and their attorneys; and

407 (3) The commissioner

408 by registered or certified mail within five days after the panel gives its opinion.

409 49-4-195.29.

410 (a) A court having jurisdiction over the subject matter and the parties to a proposed
411 complaint filed under this article may, upon the filing of a copy of the proposed complaint
412 and a written motion under this article, do one or both of the following:

413 (1) Preliminarily determine an affirmative defense or issue of law or fact that may be
414 preliminarily determined under Chapter 11 of Title 9, the 'Georgia Civil Practice Act;' or

415 (2) Compel discovery in accordance with Chapter 11 of Title 9, the 'Georgia Civil
416 Practice Act.'

417 (b) The court shall have no jurisdiction to rule preliminarily upon any affirmative defense
418 or issue of law or fact reserved for written opinion by the medical review panel under Code
419 Section 49-4-195.24.

420 (c) The court shall have jurisdiction to entertain a motion filed under this article only
421 during that time after a proposed complaint is filed with the court under this article but
422 before the medical review panel gives the panel's written opinion under Code Section
423 49-4-195.24.

424 (d) The failure of any party to move for a preliminary determination or to compel
425 discovery under this chapter before the medical review panel gives the panel's written
426 opinion under Code Section 49-4-195.24 shall not constitute the waiver of any affirmative
427 defense or issue of law or fact.

428 49-4-195.30.

429 The filing of a copy of the proposed complaint with the clerk of court shall confer
430 jurisdiction upon the court over the subject matter and the parties to the proceeding for the
431 limited purposes stated in this article, including, but not limited to, the taxation and
432 assessment of costs or the allowance of expenses, including reasonable attorney's fees, or
433 both.

434 49-4-195.31.

435 (a) Each nonmoving party to the proceeding, including the chairperson of the medical
436 review panel, if any, shall have a period of 20 days after service, or a period of 23 days
437 after service if service is by mail, to appear and file and serve a written response to any
438 motion filed pursuant to this article, unless the court, for cause shown, orders the period
439 enlarged.

440 (b) The court shall enter a ruling on the motion:

441 (1) Within 30 days after the motion is heard; or

442 (2) If no hearing is requested, granted, or ordered, within 30 days after the date on
443 which the last written response to the motion is filed.

444 (c) The court shall order the clerk to serve a copy of the court's ruling on the motion by
445 ordinary mail on each party to the proceeding and the chairperson of the medical review
446 panel, if any.

447 (d) Upon the filing of the motion, all further proceedings before the medical review panel
448 shall be stayed automatically until the court has entered a ruling on the motion.

449 49-4-195.32.

450 The court may enforce its ruling on any motion filed under this article in accordance with
451 Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' subject to the right of appeal.

452 49-4-195.33.

453 (a) In the event a medical review panel renders a unanimous opinion in favor of the
454 provider of medical assistance and the claimant pursues an action in a court of competent
455 jurisdiction and proper venue based on the same claim, which was the subject of the
456 unanimous medical review panel opinion in favor of the provider of medical assistance,
457 and a final judgment is rendered finding the provider of medical assistance has no liability
458 to the claimant, the court shall order that the claimant shall be required to pay the court
459 costs and reasonable attorney's fees of the provider of medical assistance in said action.

460 (b) In the event a medical review panel renders a unanimous opinion against the provider
461 of medical assistance and thereafter, the provider of medical assistance fails to settle the
462 claim with the claimant, resulting in the claimant pursuing an action in a court of
463 competent jurisdiction and proper venue law based on the same claim, which was the
464 subject of the unanimous medical review panel opinion against the provider of medical
465 assistance, and a final judgment is rendered finding the provider of medical assistance
466 liable to the claimant for any damages, the court shall order that the provider of medical
467 assistance shall be required to pay the court costs and reasonable attorney's fees of the
468 claimant in said action."

469 **SECTION 2.**

470 Article 2 of Chapter 9 of Title 9 of the Official Code of Georgia, relating to medical
471 malpractice arbitration, is amended by revising Code Section 9-9-60, relating to "medical
472 malpractice claim" defined, as follows:

473 "9-9-60.

474 (a) For the purposes of this article, the term 'medical malpractice claim' means any claim
475 for damages resulting from the death of or injury to any person arising out of:

476 (1) Health, medical, dental, or surgical service, diagnosis, prescription, treatment, or
477 care, rendered by a person authorized by law to perform such service or by any person
478 acting under the supervision and control of a lawfully authorized person; or

479 (2) Care or service rendered by any public or private hospital, nursing home, clinic,
480 hospital authority, facility, or institution, or by any officer, agent, or employee thereof
481 acting within the scope of his or her employment.

482 (b) The term 'medical malpractice claim' shall also include any action for medical
483 malpractice as defined in Code Section 49-4-195.1."

484 **SECTION 3.**

485 Chapter 9 of Title 33 of the Official Code of Georgia Annotated, relating to regulation of
486 rates, underwriting rules, and related organizations, is amended by adding a new Code
487 section to read as follows:

488 "33-9-45.

489 (a) For each policy of medical malpractice insurance issued, delivered, issued for delivery,
490 or renewed on or after July 1, 2011, there shall be offered by the insurer a reduction in the
491 premium for liability coverage if the named policy holder accepts medical assistance as that
492 term is defined in Code Section 49-4-141.

493 (b) The reduction in premium for such policy shall be a percent reduction equal to the
494 percentage of recipients of medical assistance that make up the total percentage of persons
495 that are rendered and receive medical or remedial care or service by the named policy
496 holder during the year prior to the date the policy of medical malpractice insurance is
497 issued, delivered, issued for delivery, or renewed, subject to a maximum reduction of 20
498 percent.

499 (c) Proof of meeting the requirements for the reduction in premium provided by this Code
500 section shall be provided annually to the insurer by the named policy holder upon such
501 forms as the Commissioner shall prescribe."

502 **SECTION 4.**

503 This Act shall become effective July 1, 2011, and shall apply to acts of malpractice that occur
504 on or after such date.

505 **SECTION 5.**

506 All laws and parts of laws in conflict with this Act are repealed.