

By: Representative Moody

To: Public Health and
Welfare

HOUSE BILL NO. 860

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972,
2 AND TO CODIFY NEW SECTION 41-75-6, MISSISSIPPI CODE OF 1972, TO
3 PROVIDE THAT IF A SINGLE-SPECIALTY AMBULATORY SURGICAL FACILITY IS
4 NOT FEDERALLY CERTIFIED, IT SHALL BE SUBJECT TO LICENSURE BY THE
5 STATE DEPARTMENT OF HEALTH; AND FOR RELATED PURPOSES. BE IT
6 ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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8 SECTION 1. Section 41-75-1, Mississippi Code of 1972, is
9 amended as follows:

10 41-75-1. (a) "Ambulatory surgical facility" shall mean a
11 publicly or privately owned institution which is primarily
12 organized, constructed, renovated or otherwise established for the
13 purpose of providing elective surgical treatment of "outpatients"
14 whose recovery, under normal and routine circumstances, will not
15 require "inpatient" care. Such facility as herein defined does
16 not include the offices of private physicians or dentists whether
17 practicing individually or in groups, but does include
18 organizations or facilities primarily engaged in such outpatient
19 surgery whether using the name "ambulatory surgical facility" or a
20 similar or different name. Such organization or facility, if in
21 any manner considered to be operated or owned by a hospital or a
22 hospital holding, leasing or management company, either for profit
23 or not for profit, is required to comply with all licensing agency
24 ambulatory surgical licensure standards governing a "hospital
25 affiliated" facility as adopted under Section 41-9-1 et seq.,
26 provided that such organization or facility does not intend to
27 seek federal certification as an ambulatory surgical facility as
28 provided for at 42 CFR, Parts 405 and 416. Further, if such

29 organization or facility is to be operated or owned by a hospital
30 or a hospital holding, leasing or management company and intends
31 to seek federal certification as an ambulatory facility, then such
32 facility is considered to be "freestanding" and must comply with
33 all licensing agency ambulatory surgical licensure standards
34 governing a "freestanding" facility.

35 If such organization or facility is to be owned or operated
36 by an entity or person other than a hospital or hospital holding,
37 leasing or management company, then such organization or facility
38 must comply with all licensing agency ambulatory surgical facility
39 standards governing a "freestanding" facility.

40 (b) "Hospital affiliated" ambulatory surgical facility shall
41 mean a separate and distinct organized unit of a hospital or a
42 building owned, leased, rented or utilized by a hospital and
43 located in the same county in which the hospital is located, for
44 the primary purpose of performing ambulatory surgery procedures.
45 Such facility is not required to be separately licensed under this
46 statute and may operate under the hospital's license in compliance
47 with all applicable requirements of Section 41-9-1 et seq.

48 (c) "Freestanding" ambulatory surgical facility shall mean a
49 separate and distinct facility or a separate and distinct
50 organized unit of a hospital owned, leased, rented or utilized by
51 a hospital or other persons for the primary purpose of performing
52 ambulatory surgery procedures. Such facility must be separately
53 licensed as herein defined and must comply with all licensing
54 standards promulgated by the licensing agency under this statute
55 regarding a "freestanding" ambulatory surgical facility. Further,
56 such facility must be a separate, identifiable entity and must be
57 physically, administratively and financially independent and
58 distinct from other operations of any other health facility, and
59 shall maintain a separate organized medical and administrative
60 staff. Furthermore, once licensed as a "freestanding" ambulatory
61 surgical facility, such facility shall not become a component of
62 any other health facility without securing a certificate of need
63 to do such.

64 (d) "Ambulatory surgery" shall mean surgical procedures that
65 are more complex than office procedures performed under local

66 anesthesia, but less complex than major procedures requiring
67 prolonged postoperative monitoring and hospital care to ensure
68 safe recovery and desirable results. General anesthesia is used
69 in most cases. The patient must arrive at the facility and expect
70 to be discharged on the same day. Ambulatory surgery shall only
71 be performed by physicians or dentists licensed to practice in the
72 State of Mississippi.

73 (e) "Abortion" means the use or prescription of any
74 instrument, medicine, drug or any other substances or device to
75 terminate the pregnancy of a woman known to be pregnant with an
76 intention other than to increase the probability of a live birth,
77 to preserve the life or health of the child after live birth or to
78 remove a dead fetus. Abortion procedures on a fetus aged sixteen
79 (16) weeks or more shall only be performed at an ambulatory
80 surgical facility or hospital licensed to perform such service.

81 (f) "Abortion facility" means a facility operating
82 substantially for the purpose of performing abortions and is a
83 separate identifiable legal entity from any other health care
84 facility. Abortions shall only be performed by physicians
85 licensed to practice in the State of Mississippi. The term
86 "abortion facility" includes physicians' offices which are used
87 substantially for the purpose of performing abortions. An
88 abortion facility operates substantially for the purpose of
89 performing abortions if any of the following conditions are met:

90 (i) The abortion facility is a provider for performing
91 ten (10) or more abortion procedures per calendar month during any
92 month of a calendar year, or one hundred (100) or more in a
93 calendar year.

94 (ii) The abortion facility, if operating less than
95 twenty (20) days per calendar month, is a provider for performing
96 ten (10) or more abortion procedures, or performing a number of
97 abortion procedures which would be equivalent to ten (10)
98 procedures per month, if the facility were operating twenty (20)

99 or more days per calendar month, in any month of a calendar year.

100 (iii) The abortion facility holds itself out to the
101 public as an abortion provider by advertising by any public means,
102 such as newspaper, telephone directory, magazine or electronic
103 media, that it performs abortions.

104 (iv) The facility applies to the licensing agency for
105 licensure as an abortion facility.

106 (g) "Licensing agency" shall mean the State Department of
107 Health.

108 (h) "Operating" an abortion facility means that the facility
109 is open for any period of time during a day and has on site at the
110 facility or on call a physician licensed to practice in the State
111 of Mississippi available to provide abortions.

112 Any abortion facility that begins operation after June 30,
113 1996, shall not be located within fifteen hundred (1500) feet from
114 the property on which any church, school or kindergarten is
115 located. An abortion facility shall not be in violation of this
116 paragraph if it is in compliance with this paragraph on the date
117 it begins operation and the property on which a church, school or
118 kindergarten is located is subsequently within fifteen hundred
119 (1500) feet from the facility.

120 (i) "Single-specialty ambulatory surgical facility" means a
121 facility that is (i) exempt from the certificate of need laws,
122 Section 41-7-171 et seq., because the surgical operations
123 performed in such facility for treatment of outpatients are
124 limited to only one (1) type of surgical specialty and (ii)
125 qualified for certification under Title XVIII of the Social
126 Security Act as an ambulatory surgery facility.

127 SECTION 2. The following provision shall be codified as
128 Section 41-75-6, Mississippi Code of 1972:

129 41-75-6. If a facility defined in Section 41-75-1(i) does
130 not intend or does not seek federal certification as an ambulatory
131 surgical facility as provided for at 42 CFR, Parts 405 and 416,

132 such facility shall not operate in this state without having first
133 received a license under this chapter, which licensing
134 requirements must be consistent with certification requirements
135 under Title XVIII of the Social Security Act for an ambulatory
136 surgery facility.

137 SECTION 3. This act shall take effect and be in force from
138 and after July 1, 1999.