

By: Representative Montgomery

To: Public Health and
Welfare;
Appropriations

HOUSE BILL NO. 1338

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO REMOVE HOSPITALS FROM THE DEFINITION OF "HEALTH CARE FACILITY"
3 IN THE CERTIFICATE OF NEED LAW, SO THAT HOSPITALS WILL NOT REQUIRE
4 A CERTIFICATE OF NEED OR BE SUBJECT TO CERTIFICATE OF NEED REVIEW;
5 AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 41-7-173, Mississippi Code of 1972, is
8 amended as follows:

9 41-7-173. For the purposes of Section 41-7-171 et seq., the
10 following words shall have the meanings ascribed herein, unless
11 the context otherwise requires:

12 (a) "Affected person" means (i) the applicant; (ii) a
13 person residing within the geographic area to be served by the
14 applicant's proposal; (iii) a person who regularly uses health
15 care facilities or HMO's located in the geographic area of the
16 proposal which provide similar service to that which is proposed;
17 (iv) health care facilities and HMO's which have, prior to receipt
18 of the application under review, formally indicated an intention
19 to provide service similar to that of the proposal being
20 considered at a future date; (v) third-party payers who reimburse
21 health care facilities located in the geographical area of the
22 proposal; or (vi) any agency that establishes rates for health
23 care services or HMO's located in the geographic area of the
24 proposal.

25 (b) "Certificate of need" means a written order of the
26 State Department of Health setting forth the affirmative finding
27 that a proposal in prescribed application form, sufficiently

28 satisfies the plans, standards and criteria prescribed for such
29 service or other project by Section 41-7-171 et seq., and by rules
30 and regulations promulgated thereunder by the State Department of
31 Health.

32 (c) (i) "Capital expenditure" when pertaining to
33 defined major medical equipment, shall mean an expenditure which,
34 under generally accepted accounting principles consistently
35 applied, is not properly chargeable as an expense of operation and
36 maintenance and which exceeds One Million Dollars (\$1,000,000.00).

37 (ii) "Capital expenditure," when pertaining to
38 other than major medical equipment, shall mean any expenditure
39 which under generally accepted accounting principles consistently
40 applied is not properly chargeable as an expense of operation and
41 maintenance and which exceeds One Million Dollars (\$1,000,000.00).

42 (iii) A "capital expenditure" shall include the
43 acquisition, whether by lease, sufferance, gift, devise, legacy,
44 settlement of a trust or other means, of any facility or part
45 thereof, or equipment for a facility, the expenditure for which
46 would have been considered a capital expenditure if acquired by
47 purchase. Transactions which are separated in time but are
48 planned to be undertaken within twelve (12) months of each other
49 and are components of an overall plan for meeting patient care
50 objectives shall, for purposes of this definition, be viewed in
51 their entirety without regard to their timing.

52 (iv) In those instances where a health care
53 facility or other provider of health services proposes to provide
54 a service in which the capital expenditure for major medical
55 equipment or other than major medical equipment or a combination
56 of the two (2) may have been split between separate parties, the
57 total capital expenditure required to provide the proposed service
58 shall be considered in determining the necessity of certificate of
59 need review and in determining the appropriate certificate of need
60 review fee to be paid. The capital expenditure associated with
61 facilities and equipment to provide services in Mississippi shall
62 be considered regardless of where the capital expenditure was
63 made, in state or out of state, and regardless of the domicile of
64 the party making the capital expenditure, in state or out of

65 state.

66 (d) "Change of ownership" includes, but is not limited
67 to, inter vivos gifts, purchases, transfers, lease arrangements,
68 cash and/or stock transactions or other comparable arrangements
69 whenever any person or entity acquires or controls a majority
70 interest of the facility or service. Changes of ownership from
71 partnerships, single proprietorships or corporations to another
72 form of ownership are specifically included. Provided, however,
73 "change of ownership" shall not include any inherited interest
74 acquired as a result of a testamentary instrument or under the
75 laws of descent and distribution of the State of Mississippi.

76 (e) "Commencement of construction" means that all of
77 the following have been completed with respect to a proposal or
78 project proposing construction, renovating, remodeling or
79 alteration:

80 (i) A legally binding written contract has been
81 consummated by the proponent and a lawfully licensed contractor to
82 construct and/or complete the intent of the proposal within a
83 specified period of time in accordance with final architectural
84 plans which have been approved by the licensing authority of the
85 State Department of Health;

86 (ii) Any and all permits and/or approvals deemed
87 lawfully necessary by all authorities with responsibility for such
88 have been secured; and

89 (iii) Actual bona fide undertaking of the subject
90 proposal has commenced, and a progress payment of at least one
91 percent (1%) of the total cost price of the contract has been paid
92 to the contractor by the proponent, and the requirements of this
93 paragraph (e) have been certified to in writing by the State
94 Department of Health.

95 Force account expenditures, such as deposits, securities,
96 bonds, et cetera, may, in the discretion of the State Department
97 of Health, be excluded from any or all of the provisions of

98 defined commencement of construction.

99 (f) "Consumer" means an individual who is not a
100 provider of health care as defined in paragraph (q) of this
101 section.

102 (g) "Develop," when used in connection with health
103 services, means to undertake those activities which, on their
104 completion, will result in the offering of a new institutional
105 health service or the incurring of a financial obligation as
106 defined under applicable state law in relation to the offering of
107 such services.

108 (h) "Health care facility" includes * * *, psychiatric
109 hospitals, chemical dependency hospitals, skilled nursing
110 facilities, end stage renal disease (ESRD) facilities, including
111 freestanding hemodialysis units, intermediate care facilities,
112 ambulatory surgical facilities, intermediate care facilities for
113 the mentally retarded, home health agencies, psychiatric
114 residential treatment facilities, pediatric skilled nursing
115 facilities, long-term care hospitals, comprehensive medical
116 rehabilitation facilities, including facilities owned or operated
117 by the state or a political subdivision or instrumentality of the
118 state, but does not include Christian Science sanatoriums operated
119 or listed and certified by the First Church of Christ, Scientist,
120 Boston, Massachusetts. This definition does not include any
121 hospital except for those specialized hospitals that are defined
122 in this paragraph (h). This definition shall not apply to
123 facilities for the private practice, either independently or by
124 incorporated medical groups, of physicians, dentists or health
125 care professionals except where such facilities are an integral
126 part of an institutional health service. The various health care
127 facilities listed in this paragraph shall be defined as follows:

128 * * *

129 (i) "Psychiatric hospital" means an institution
130 which is primarily engaged in providing to inpatients, by or under

131 the supervision of a physician, psychiatric services for the
132 diagnosis and treatment of mentally ill persons.

133 (ii) "Chemical dependency hospital" means an
134 institution which is primarily engaged in providing to inpatients,
135 by or under the supervision of a physician, medical and related
136 services for the diagnosis and treatment of chemical dependency
137 such as alcohol and drug abuse.

138 (iii) "Skilled nursing facility" means an
139 institution or a distinct part of an institution which is
140 primarily engaged in providing to inpatients skilled nursing care
141 and related services for patients who require medical or nursing
142 care or rehabilitation services for the rehabilitation of injured,
143 disabled or sick persons.

144 (iv) "End stage renal disease (ESRD) facilities"
145 means kidney disease treatment centers, which includes
146 freestanding hemodialysis units and limited care facilities. The
147 term "limited care facility" generally refers to an
148 off-hospital-premises facility, regardless of whether it is
149 provider or nonprovider operated, which is engaged primarily in
150 furnishing maintenance hemodialysis services to stabilized
151 patients.

152 (v) "Intermediate care facility" means an
153 institution which provides, on a regular basis, health related
154 care and services to individuals who do not require the degree of
155 care and treatment which a hospital or skilled nursing facility is
156 designed to provide, but who, because of their mental or physical
157 condition, require health related care and services (above the
158 level of room and board).

159 (vi) "Ambulatory surgical facility" means a
160 facility primarily organized or established for the purpose of
161 performing surgery for outpatients and is a separate identifiable
162 legal entity from any other health care facility. Such term does
163 not include the offices of private physicians or dentists, whether

164 for individual or group practice, and does not include any
165 abortion facility as defined in Section 41-75-1(e).

166 (vii) "Intermediate care facility for the mentally
167 retarded" means an intermediate care facility that provides health
168 or rehabilitative services in a planned program of activities to
169 the mentally retarded, also including, but not limited to,
170 cerebral palsy and other conditions covered by the Federal
171 Developmentally Disabled Assistance and Bill of Rights Act, Public
172 Law 94-103.

173 (viii) "Home health agency" means a public or
174 privately owned agency or organization, or a subdivision of such
175 an agency or organization, properly authorized to conduct business
176 in Mississippi, which is primarily engaged in providing to
177 individuals at the written direction of a licensed physician, in
178 the individual's place of residence, skilled nursing services
179 provided by or under the supervision of a registered nurse
180 licensed to practice in Mississippi, and one or more of the
181 following services or items:

- 182 1. Physical, occupational or speech therapy;
- 183 2. Medical social services;
- 184 3. Part-time or intermittent services of a
185 home health aide;
- 186 4. Other services as approved by the
187 licensing agency for home health agencies;
- 188 5. Medical supplies, other than drugs and
189 biologicals, and the use of medical appliances; or
- 190 6. Medical services provided by an intern or
191 resident-in-training at a hospital under a teaching program of
192 such hospital.

193 Further, all skilled nursing services and those services
194 listed in items 1. through 4. of this subparagraph (viii) must be
195 provided directly by the licensed home health agency. For
196 purposes of this subparagraph, "directly" means either through an

197 agency employee or by an arrangement with another individual not
198 defined as a health care facility.

199 This subparagraph (viii) shall not apply to health care
200 facilities which had contracts for the above services with a home
201 health agency on January 1, 1990.

202 (ix) "Psychiatric residential treatment facility"
203 means any nonhospital establishment with permanent licensed
204 facilities which provides a twenty-four (24) hour program of care
205 by qualified therapists including, but not limited to, duly
206 licensed mental health professionals, psychiatrists,
207 psychologists, psychotherapists and licensed certified social
208 workers, for emotionally disturbed children and adolescents
209 referred to such facility by a court, local school district or by
210 the Department of Human Services, who are not in an acute phase of
211 illness requiring the services of a psychiatric hospital, and are
212 in need of such restorative treatment services. For purposes of
213 this paragraph, the term "emotionally disturbed" means a condition
214 exhibiting one or more of the following characteristics over a
215 long period of time and to a marked degree, which adversely
216 affects educational performance:

217 1. An inability to learn which cannot be
218 explained by intellectual, sensory or health factors;

219 2. An inability to build or maintain
220 satisfactory relationships with peers and teachers;

221 3. Inappropriate types of behavior or
222 feelings under normal circumstances;

223 4. A general pervasive mood of unhappiness or
224 depression; or

225 5. A tendency to develop physical symptoms or
226 fears associated with personal or school problems. An
227 establishment furnishing primarily domiciliary care is not within
228 this definition.

229 (x) "Pediatric skilled nursing facility" means an

230 institution or a distinct part of an institution that is primarily
231 engaged in providing to inpatients skilled nursing care and
232 related services for persons under twenty-one (21) years of age
233 who require medical or nursing care or rehabilitation services for
234 the rehabilitation of injured, disabled or sick persons.

235 (xi) "Long-term care hospital" means a
236 freestanding, Medicare-certified hospital that has an average
237 length of inpatient stay greater than twenty-five (25) days, which
238 is primarily engaged in providing chronic or long-term medical
239 care to patients who do not require more than three (3) hours of
240 rehabilitation or comprehensive rehabilitation per day, and has a
241 transfer agreement with an acute care medical center and a
242 comprehensive medical rehabilitation facility. Long-term care
243 hospitals shall not use rehabilitation, comprehensive medical
244 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
245 nursing home, skilled nursing facility, or sub-acute care facility
246 in association with its name.

247 (xii) "Comprehensive medical rehabilitation
248 facility" means a hospital or hospital unit that is licensed
249 and/or certified as a comprehensive medical rehabilitation
250 facility which provides specialized programs that are accredited
251 by the Commission on Accreditation of Rehabilitation Facilities
252 and supervised by a physician board certified or board eligible in
253 Physiatry or other doctor of medicine or osteopathy with at least
254 two (2) years of training in the medical direction of a
255 comprehensive rehabilitation program that:

- 256 1. Includes evaluation and treatment of
257 individuals with physical disabilities;
- 258 2. Emphasizes education and training of
259 individuals with disabilities;
- 260 3. Incorporates at least the following core
261 disciplines:

- 262 (i) Physical Therapy;

- 263 (ii) Occupational Therapy;
- 264 (iii) Speech and Language Therapy;
- 265 (iv) Rehabilitation Nursing; and
- 266 4. Incorporates at least three (3) of the
- 267 following disciplines:
- 268 (i) Psychology;
- 269 (ii) Audiology;
- 270 (iii) Respiratory Therapy;
- 271 (iv) Therapeutic Recreation;
- 272 (v) Orthotics;
- 273 (vi) Prosthetics;
- 274 (vii) Special Education;
- 275 (viii) Vocational Rehabilitation;
- 276 (ix) Psychotherapy;
- 277 (x) Social Work;
- 278 (xi) Rehabilitation Engineering.

279 These specialized programs include, but are not limited to:

280 spinal cord injury programs, head injury programs and infant and

281 early childhood development programs.

282 (i) "Health maintenance organization" or "HMO" means a

283 public or private organization organized under the laws of this

284 state or the federal government which:

285 (i) Provides or otherwise makes available to

286 enrolled participants health care services, including

287 substantially the following basic health care services: usual

288 physician services, hospitalization, laboratory, X-ray, emergency

289 and preventive services, and out-of-area coverage;

290 (ii) Is compensated (except for copayments) for

291 the provision of the basic health care services listed in

292 subparagraph (i) of this paragraph to enrolled participants on a

293 predetermined basis; and

294 (iii) Provides physician services primarily:

295 1. Directly through physicians who are either

296 employees or partners of such organization; or

297 2. Through arrangements with individual
298 physicians or one or more groups of physicians (organized on a
299 group practice or individual practice basis).

300 (j) "Health service area" means a geographic area of
301 the state designated in the State Health Plan as the area to be
302 used in planning for specified health facilities and services and
303 to be used when considering certificate of need applications to
304 provide health facilities and services.

305 (k) "Health services" means clinically related (i.e.,
306 diagnostic, treatment or rehabilitative) services and includes
307 alcohol, drug abuse, mental health and home health care services.

308 (l) "Institutional health services" shall mean health
309 services provided in or through health care facilities and shall
310 include the entities in or through which such services are
311 provided. However, this term shall not include any hospital that
312 is not subject to certificate of need review.

313 (m) "Major medical equipment" means medical equipment
314 designed for providing medical or any health related service which
315 costs in excess of One Million Dollars (\$1,000,000.00). However,
316 this definition shall not be applicable to clinical laboratories
317 if they are determined by the State Department of Health to be
318 independent of any physician's office, hospital or other health
319 care facility or otherwise not so defined by federal or state law,
320 or rules and regulations promulgated thereunder.

321 (n) "State Department of Health" shall mean the state
322 agency created under Section 41-3-15, which shall be considered to
323 be the State Health Planning and Development Agency, as defined in
324 paragraph (t) of this section.

325 (o) "Offer," when used in connection with health
326 services, means that it has been determined by the State
327 Department of Health that the health care facility is capable of
328 providing specified health services.

329 (p) "Person" means an individual, a trust or estate,
330 partnership, corporation (including associations, joint stock
331 companies and insurance companies), the state or a political
332 subdivision or instrumentality of the state.

333 (q) "Provider" shall mean any person who is a provider
334 or representative of a provider of health care services requiring
335 a certificate of need under Section 41-7-171 et seq., or who has
336 any financial or indirect interest in any provider of services.

337 (r) "Secretary" means the Secretary of Health and Human
338 Services, and any officer or employee of the Department of Health
339 and Human Services to whom the authority involved has been
340 delegated.

341 (s) "State health plan" means the sole and official
342 statewide health plan for Mississippi which identifies priority
343 state health needs and establishes standards and criteria for
344 health related activities which require certificate of need review
345 in compliance with Section 41-7-191.

346 (t) "State Health Planning and Development Agency"
347 means the agency of state government designated to perform health
348 planning and resource development programs for the State of
349 Mississippi.

350 (u) "Hospital" means an institution that is primarily
351 engaged in providing to inpatients, by or under the supervision of
352 physicians, diagnostic services and therapeutic services for
353 medical diagnosis, treatment and care of injured, disabled or sick
354 persons, or rehabilitation services for the rehabilitation of
355 injured, disabled or sick persons.

356 SECTION 2. This act shall take effect and be in force from
357 and after its passage.