

By: Senator(s) Bean

To: Public Health and
Welfare

SENATE BILL NO. 2511

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

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

11 41-75-1. (a) "Ambulatory surgical facility" shall mean a
12 publicly or privately owned institution which is primarily
13 organized, constructed, renovated or otherwise established for the
14 purpose of providing elective surgical treatment of "outpatients"
15 whose recovery, under normal and routine circumstances, will not
16 require "inpatient" care. Such facility as herein defined does
17 not include the offices of private physicians or dentists whether
18 practicing individually or in groups, but does include
19 organizations or facilities primarily engaged in such outpatient
20 surgery whether using the name "ambulatory surgical facility" or a
21 similar or different name. Such organization or facility, if in
22 any manner considered to be operated or owned by a hospital or a
23 hospital holding, leasing or management company, either for profit
24 or not for profit, is required to comply with all licensing agency
25 ambulatory surgical licensure standards governing a "hospital
26 affiliated" facility as adopted under Section 41-9-1 et seq.,
27 Mississippi Code of 1972; provided that such organization or
28 facility does not intend to seek federal certification as an
29 ambulatory surgical facility as provided for at 42 CFR, Parts 405

30 and 416. Further, if such organization or facility is to be
31 operated or owned by a hospital or a hospital holding, leasing or
32 management company and intends to seek federal certification as an
33 ambulatory facility, then such facility is considered to be
34 "freestanding" and must comply with all licensing agency
35 ambulatory surgical licensure standards governing a "freestanding"
36 facility.

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

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

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

66 (d) "Ambulatory surgery" shall mean surgical procedures that

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

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

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

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

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

100 procedures per month, if the facility were operating twenty (20)
101 or more days per calendar month, in any month of a calendar year.

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

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

108 (g) "Licensing agency" shall mean the State Department of
109 Health.

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

114 Any abortion facility that begins operation after June 30,
115 1996, shall not be located within fifteen hundred (1500) feet from
116 the property on which any church, school or kindergarten is
117 located. An abortion facility shall not be in violation of this
118 paragraph if it is in compliance with this paragraph on the date
119 it begins operation and the property on which a church, school or
120 kindergarten is located is subsequently within fifteen hundred
121 (1500) feet from the facility.

122 (i) "Single specialty ambulatory surgical facility" shall
123 mean a facility that is (i) exempt from the Certificate of Need
124 laws, Section 41-7-171 et seq., Mississippi Code of 1972, because
125 the surgical operations performed in such facility for treatment
126 of outpatients are limited to only one (1) type of surgical
127 specialty and (ii) qualified for certification under Title XVIII
128 of the Social Security Act as an ambulatory surgery facility.

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

131 41-75-6. In the event a facility as defined in Section
132 41-75-1(i) does not intend or does not seek federal certification

133 as an ambulatory surgical facility as provided for at 42 CFR,
134 Parts 405 and 416, such facility shall not operate in this state
135 without having first received a license under this chapter, which
136 licensing requirements must be consistent with certification
137 requirements under Title XVIII of the Social Security Act for an
138 ambulatory surgery facility.

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