

By: Senator(s) White (29th)

To: Public Health and
Welfare

SENATE BILL NO. 2729

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO DELETE HOSPITALS FROM THE REQUIREMENTS OF THE HEALTH CARE
3 FACILITY CERTIFICATE OF NEED LAW; AND FOR RELATED PURPOSES.

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

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

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

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

23 (b) "Certificate of need" means a written order of the
24 State Department of Health setting forth the affirmative finding
25 that a proposal in prescribed application form, sufficiently
26 satisfies the plans, standards and criteria prescribed for such
27 service or other project by Section 41-7-171 et seq., and by rules

28 and regulations promulgated thereunder by the State Department of
29 Health.

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

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

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

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

64 (d) "Change of ownership" includes, but is not limited
65 to, inter vivos gifts, purchases, transfers, lease arrangements,

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

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

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

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

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

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

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

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

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

124 (i) * * *

125 (ii) * * *

126 (iii) * * *

127 (iv) "Skilled nursing facility" means an
128 institution or a distinct part of an institution which is
129 primarily engaged in providing to inpatients skilled nursing care
130 and related services for patients who require medical or nursing
131 care or rehabilitation services for the rehabilitation of injured,
132 disabled or sick persons.

133 (v) "End stage renal disease (ESRD) facilities"

134 means kidney disease treatment centers, which includes
135 freestanding hemodialysis units and limited care facilities. The
136 term "limited care facility" generally refers to an
137 off-hospital-premises facility, regardless of whether it is
138 provider or nonprovider operated, which is engaged primarily in
139 furnishing maintenance hemodialysis services to stabilized
140 patients.

141 (vi) "Intermediate care facility" means an
142 institution which provides, on a regular basis, health related
143 care and services to individuals who do not require the degree of
144 care and treatment which a hospital or skilled nursing facility is
145 designed to provide, but who, because of their mental or physical
146 condition, require health related care and services (above the
147 level of room and board).

148 (vii) "Ambulatory surgical facility" means a
149 facility primarily organized or established for the purpose of
150 performing surgery for outpatients and is a separate identifiable
151 legal entity from any other health care facility. Such term does
152 not include the offices of private physicians or dentists, whether
153 for individual or group practice, and does not include any
154 abortion facility as defined in Section 41-75-1(e).

155 (viii) "Intermediate care facility for the
156 mentally retarded" means an intermediate care facility that
157 provides health or rehabilitative services in a planned program of
158 activities to the mentally retarded, also including, but not
159 limited to, cerebral palsy and other conditions covered by the
160 Federal Developmentally Disabled Assistance and Bill of Rights
161 Act, Public Law 94-103.

162 (ix) "Home health agency" means a public or
163 privately owned agency or organization, or a subdivision of such
164 an agency or organization, properly authorized to conduct business
165 in Mississippi, which is primarily engaged in providing to
166 individuals at the written direction of a licensed physician, in
167 the individual's place of residence, skilled nursing services

168 provided by or under the supervision of a registered nurse
169 licensed to practice in Mississippi, and one or more of the
170 following services or items:

- 171 1. Physical, occupational or speech therapy;
- 172 2. Medical social services;
- 173 3. Part-time or intermittent services of a
174 home health aide;
- 175 4. Other services as approved by the
176 licensing agency for home health agencies;
- 177 5. Medical supplies, other than drugs and
178 biologicals, and the use of medical appliances; or
- 179 6. Medical services provided by an intern or
180 resident-in-training at a hospital under a teaching program of
181 such hospital.

182 Further, all skilled nursing services and those
183 services listed in items 1. through 4. of this subparagraph (ix)
184 must be provided directly by the licensed home health agency. For
185 purposes of this subparagraph, "directly" means either through an
186 agency employee or by an arrangement with another individual not
187 defined as a health care facility.

188 This subparagraph (ix) shall not apply to health
189 care facilities which had contracts for the above services with a
190 home health agency on January 1, 1990.

191 (x) "Psychiatric residential treatment facility"
192 means any nonhospital establishment with permanent licensed
193 facilities which provides a twenty-four-hour program of care by
194 qualified therapists including, but not limited to, duly licensed
195 mental health professionals, psychiatrists, psychologists,
196 psychotherapists and licensed certified social workers, for
197 emotionally disturbed children and adolescents referred to such
198 facility by a court, local school district or by the Department of
199 Human Services, who are not in an acute phase of illness requiring
200 the services of a psychiatric hospital, and are in need of such
201 restorative treatment services. For purposes of this paragraph,

202 the term "emotionally disturbed" means a condition exhibiting one
203 or more of the following characteristics over a long period of
204 time and to a marked degree, which adversely affects educational
205 performance:

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

208 2. An inability to build or maintain
209 satisfactory relationships with peers and teachers;

210 3. Inappropriate types of behavior or
211 feelings under normal circumstances;

212 4. A general pervasive mood of unhappiness or
213 depression; or

214 5. A tendency to develop physical symptoms or
215 fears associated with personal or school problems. An
216 establishment furnishing primarily domiciliary care is not within
217 this definition.

218 (xi) "Pediatric skilled nursing facility" means an
219 institution or a distinct part of an institution that is primarily
220 engaged in providing to inpatients skilled nursing care and
221 related services for persons under twenty-one (21) years of age
222 who require medical or nursing care or rehabilitation services for
223 the rehabilitation of injured, disabled or sick persons.

224 (xii) "Long-term care hospital" means a
225 freestanding, Medicare-certified hospital that has an average
226 length of inpatient stay greater than twenty-five (25) days, which
227 is primarily engaged in providing chronic or long-term medical
228 care to patients who do not require more than three (3) hours of
229 rehabilitation or comprehensive rehabilitation per day, and has a
230 transfer agreement with an acute care medical center and a
231 comprehensive medical rehabilitation facility. Long-term care
232 hospitals shall not use rehabilitation, comprehensive medical
233 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
234 nursing home, skilled nursing facility, or sub-acute care facility
235 in association with its name.

236 (xiii) "Comprehensive medical rehabilitation
237 facility" means a hospital or hospital unit that is licensed
238 and/or certified as a comprehensive medical rehabilitation
239 facility which provides specialized programs that are accredited
240 by the Commission on Accreditation of Rehabilitation Facilities
241 and supervised by a physician board certified or board eligible in
242 Physiatry or other doctor of medicine or osteopathy with at least
243 two (2) years of training in the medical direction of a
244 comprehensive rehabilitation program that:

245 1. Includes evaluation and treatment of
246 individuals with physical disabilities;

247 2. Emphasizes education and training of
248 individuals with disabilities;

249 3. Incorporates at least the following core
250 disciplines:

251 (i) Physical Therapy;

252 (ii) Occupational Therapy;

253 (iii) Speech and Language Therapy;

254 (iv) Rehabilitation Nursing; and

255 4. Incorporates at least three (3) of the
256 following disciplines:

257 (i) Psychology;

258 (ii) Audiology;

259 (iii) Respiratory Therapy;

260 (iv) Therapeutic Recreation;

261 (v) Orthotics;

262 (vi) Prosthetics;

263 (vii) Special Education;

264 (viii) Vocational Rehabilitation;

265 (ix) Psychotherapy;

266 (x) Social Work;

267 (xi) Rehabilitation Engineering.

268 These specialized programs include, but are not limited
269 to: spinal cord injury programs, head injury programs and infant

270 and early childhood development programs.

271 (i) "Health maintenance organization" or "HMO" means a
272 public or private organization organized under the laws of this
273 state or the federal government which:

274 (i) Provides or otherwise makes available to
275 enrolled participants health care services, including
276 substantially the following basic health care services: usual
277 physician services, hospitalization, laboratory, X-ray, emergency
278 and preventive services, and out-of-area coverage;

279 (ii) Is compensated (except for copayments) for
280 the provision of the basic health care services listed in
281 subparagraph (i) of this paragraph to enrolled participants on a
282 predetermined basis; and

283 (iii) Provides physician services primarily:

284 1. Directly through physicians who are either
285 employees or partners of such organization; or

286 2. Through arrangements with individual
287 physicians or one or more groups of physicians (organized on a
288 group practice or individual practice basis).

289 (j) "Health service area" means a geographic area of
290 the state designated in the State Health Plan as the area to be
291 used in planning for specified health facilities and services and
292 to be used when considering certificate of need applications to
293 provide health facilities and services.

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

297 (l) "Institutional health services" shall mean health
298 services provided in or through health care facilities and shall
299 include the entities in or through which such services are
300 provided.

301 (m) "Major medical equipment" means medical equipment
302 designed for providing medical or any health related service which
303 costs in excess of One Million Dollars (\$1,000,000.00). However,

304 this definition shall not be applicable to clinical laboratories
305 if they are determined by the State Department of Health to be
306 independent of any physician's office, hospital or other health
307 care facility or otherwise not so defined by federal or state law,
308 or rules and regulations promulgated thereunder.

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

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

317 (p) "Person" means an individual, a trust or estate,
318 partnership, corporation (including associations, joint stock
319 companies and insurance companies), the state or a political
320 subdivision or instrumentality of the state.

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

325 (r) "Secretary" means the Secretary of Health and Human
326 Services, and any officer or employee of the Department of Health
327 and Human Services to whom the authority involved has been
328 delegated.

329 (s) "State health plan" means the sole and official
330 statewide health plan for Mississippi which identifies priority
331 state health needs and establishes standards and criteria for
332 health-related activities which require certificate of need review
333 in compliance with Section 41-7-191.

334 (t) "State Health Planning and Development Agency"
335 means the agency of state government designated to perform health
336 planning and resource development programs for the State of
337 Mississippi.

338 SECTION 2. This act shall take effect and be in force from
339 and after July 1, 1999.