

By: Ketchings

To: Public Health and
Welfare;
Appropriations

HOUSE BILL NO. 692

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE MINIMUM AMOUNT OF A CAPITAL EXPENDITURE THAT
3 REQUIRES REVIEW UNDER THE CERTIFICATE OF NEED LAW FROM ONE MILLION
4 DOLLARS TO FIVE MILLION DOLLARS; AND FOR RELATED PURPOSES.

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

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

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

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

23 proposal.

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

31 (c) (i) "Capital expenditure" when pertaining to
32 defined major medical equipment, shall mean an expenditure which,
33 under generally accepted accounting principles consistently
34 applied, is not properly chargeable as an expense of operation and
35 maintenance and which exceeds Five Million Dollars
36 (\$5,000,000.00).

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 Five Million Dollars
42 (\$5,000,000.00).

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

53 (iv) In those instances where a health care

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

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

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

81 (i) A legally binding written contract has been

82 consummated by the proponent and a lawfully licensed contractor to
83 construct and/or complete the intent of the proposal within a
84 specified period of time in accordance with final architectural
85 plans which have been approved by the licensing authority of the
86 State Department of Health;

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

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

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

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

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

109 (h) "Health care facility" includes hospitals,

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

128 (i) "Hospital" means an institution which is
129 primarily engaged in providing to inpatients, by or under the
130 supervision of physicians, diagnostic services and therapeutic
131 services for medical diagnosis, treatment and care of injured,
132 disabled or sick persons, or rehabilitation services for the
133 rehabilitation of injured, disabled or sick persons. Such term
134 does not include psychiatric hospitals.

135 (ii) "Psychiatric hospital" means an institution
136 which is primarily engaged in providing to inpatients, by or under
137 the supervision of a physician, psychiatric services for the

138 diagnosis and treatment of mentally ill persons.

139 (iii) "Chemical dependency hospital" means an
140 institution which is primarily engaged in providing to inpatients,
141 by or under the supervision of a physician, medical and related
142 services for the diagnosis and treatment of chemical dependency
143 such as alcohol and drug abuse.

144 (iv) "Skilled nursing facility" means an
145 institution or a distinct part of an institution which is
146 primarily engaged in providing to inpatients skilled nursing care
147 and related services for patients who require medical or nursing
148 care or rehabilitation services for the rehabilitation of injured,
149 disabled or sick persons.

150 (v) "End stage renal disease (ESRD) facilities"
151 means kidney disease treatment centers, which includes
152 freestanding hemodialysis units and limited care facilities. The
153 term "limited care facility" generally refers to an
154 off-hospital-premises facility, regardless of whether it is
155 provider or nonprovider operated, which is engaged primarily in
156 furnishing maintenance hemodialysis services to stabilized
157 patients.

158 (vi) "Intermediate care facility" means an
159 institution which provides, on a regular basis, health related
160 care and services to individuals who do not require the degree of
161 care and treatment which a hospital or skilled nursing facility is
162 designed to provide, but who, because of their mental or physical
163 condition, require health related care and services (above the
164 level of room and board).

165 (vii) "Ambulatory surgical facility" means a

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

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

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

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a home health aide;
4. Other services as approved by the licensing agency for home health agencies;

194 5. Medical supplies, other than drugs and
195 biologicals, and the use of medical appliances; or

196 6. Medical services provided by an intern or
197 resident-in-training at a hospital under a teaching program of
198 such hospital.

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

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

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

222 performance:

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

225 2. An inability to build or maintain
226 satisfactory relationships with peers and teachers;

227 3. Inappropriate types of behavior or
228 feelings under normal circumstances;

229 4. A general pervasive mood of unhappiness or
230 depression; or

231 5. A tendency to develop physical symptoms or
232 fears associated with personal or school problems. An
233 establishment furnishing primarily domiciliary care is not within
234 this definition.

235 (xi) "Pediatric skilled nursing facility" means an
236 institution or a distinct part of an institution that is primarily
237 engaged in providing to inpatients skilled nursing care and
238 related services for persons under twenty-one (21) years of age
239 who require medical or nursing care or rehabilitation services for
240 the rehabilitation of injured, disabled or sick persons.

241 (xii) "Long-term care hospital" means a
242 freestanding, Medicare-certified hospital that has an average
243 length of inpatient stay greater than twenty-five (25) days, which
244 is primarily engaged in providing chronic or long-term medical
245 care to patients who do not require more than three (3) hours of
246 rehabilitation or comprehensive rehabilitation per day, and has a
247 transfer agreement with an acute care medical center and a
248 comprehensive medical rehabilitation facility. Long-term care
249 hospitals shall not use rehabilitation, comprehensive medical

250 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
251 nursing home, skilled nursing facility, or sub-acute care facility
252 in association with its name.

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

262 1. Includes evaluation and treatment of
263 individuals with physical disabilities;

264 2. Emphasizes education and training of
265 individuals with disabilities;

266 3. Incorporates at least the following core
267 disciplines:

268 (i) Physical Therapy;

269 (ii) Occupational Therapy;

270 (iii) Speech and Language Therapy;

271 (iv) Rehabilitation Nursing; and

272 4. Incorporates at least three (3) of the
273 following disciplines:

274 (i) Psychology;

275 (ii) Audiology;

276 (iii) Respiratory Therapy;

277 (iv) Therapeutic Recreation;

- (v) Orthotics;
- (vi) Prosthetics;
- (vii) Special Education;
- (viii) Vocational Rehabilitation;
- (ix) Psychotherapy;
- (x) Social Work;
- (xi) Rehabilitation Engineering.

These specialized programs include, but are not limited to: spinal cord injury programs, head injury programs and infant and early childhood development programs.

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

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

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

(iii) Provides physician services primarily:

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

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

306 (j) "Health service area" means a geographic area of
307 the state designated in the State Health Plan as the area to be
308 used in planning for specified health facilities and services and
309 to be used when considering certificate of need applications to
310 provide health facilities and services.

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

314 (l) "Institutional health services" shall mean health
315 services provided in or through health care facilities and shall
316 include the entities in or through which such services are
317 provided.

318 (m) "Major medical equipment" means medical equipment
319 designed for providing medical or any health related service which
320 costs in excess of Five Million Dollars (\$5,000,000.00). However,
321 this definition shall not be applicable to clinical laboratories
322 if they are determined by the State Department of Health to be
323 independent of any physician's office, hospital or other health
324 care facility or otherwise not so defined by federal or state law,
325 or rules and regulations promulgated thereunder.

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

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

334 (p) "Person" means an individual, a trust or estate,
335 partnership, corporation (including associations, joint stock
336 companies and insurance companies), the state or a political
337 subdivision or instrumentality of the state.

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

342 (r) "Secretary" means the Secretary of Health and Human
343 Services, and any officer or employee of the Department of Health
344 and Human Services to whom the authority involved has been
345 delegated.

346 (s) "State Health Plan" means the sole and official
347 statewide health plan for Mississippi which identifies priority
348 state health needs and establishes standards and criteria for
349 health-related activities which require certificate of need review
350 in compliance with Section 41-7-191.

351 (t) "State Health Planning and Development Agency"
352 means the agency of state government designated to perform health
353 planning and resource development programs for the State of
354 Mississippi.

355 SECTION 2. This act shall take effect and be in force from
356 and after July 1, 2000.