

By: Representative Ketchings

To: Public Health and  
Welfare; Appropriations

HOUSE BILL NO. 1396

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE MINIMUM AMOUNT OF ANY CAPITAL EXPENDITURE THAT  
3 REQUIRES REVIEW UNDER THE CERTIFICATE OF NEED LAW TO FIVE MILLION  
4 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  
166 facility primarily organized or established for the purpose of  
167 performing surgery for outpatients and is a separate identifiable  
168 legal entity from any other health care facility. Such term does  
169 not include the offices of private physicians or dentists, whether  
170 for individual or group practice, and does not include any  
171 abortion facility as defined in Section 41-75-1(e).

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

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

- 188 1. Physical, occupational or speech therapy;
- 189 2. Medical social services;

- 190                   3. Part-time or intermittent services of a  
191 home health aide;
- 192                   4. Other services as approved by the  
193 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;

278                               (v) Orthotics;

279                               (vi) Prosthetics;

280                               (vii) Special Education;

281                               (viii) Vocational Rehabilitation;

282                               (ix) Psychotherapy;

283                               (x) Social Work;

284                               (xi) Rehabilitation Engineering.

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

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

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

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

300 (iii) Provides physician services primarily:

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

303 2. Through arrangements with individual  
304 physicians or one or more groups of physicians (organized on a  
305 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, 2001.