

By: Representatives Smith (39th), Reeves

To: Public Health and Human Services; Appropriations

HOUSE BILL NO. 1038

1 AN ACT TO AMEND SECTIONS 41-7-173 AND 41-75-1, MISSISSIPPI  
2 CODE OF 1972, TO REVISE THE DEFINITION OF AMBULATORY SURGICAL  
3 FACILITY WITH REGARD TO THE CERTIFICATE OF NEED AND LICENSURE  
4 LAWS; 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 One Million Five Hundred Thousand  
36 Dollars (\$1,500,000.00).

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 Two Million Dollars (\$2,000,000.00).

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

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

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

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

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

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

157                   (vi) "Intermediate care facility" means an  
158 institution which provides, on a regular basis, health related  
159 care and services to individuals who do not require the degree of

160 care and treatment which a hospital or skilled nursing facility is  
161 designed to provide, but who, because of their mental or physical  
162 condition, require health related care and services (above the  
163 level of room and board).

164 (vii) "Ambulatory surgical facility" means a  
165 facility primarily organized or established for the purpose of  
166 performing ambulatory surgical services for outpatients and is a  
167 separate identifiable legal entity from any other health care  
168 facility. "Ambulatory surgical services" or "ambulatory surgery  
169 services" means the provision or performance of ambulatory  
170 surgery, as defined in Section 41-75-1(d), performed in an  
171 ambulatory surgical facility on an outpatient (1.) that is more  
172 complex than office procedures, but less complex than major  
173 procedures requiring prolonged postoperative monitoring and  
174 hospital care to ensure safe recovery and desirable results,  
175 regardless of whether the ambulatory surgical service is performed  
176 in a facility that allows the performance of ambulatory surgeries  
177 involving only one or multiple surgical specialties, and (2.) for  
178 which the performance of the ambulatory surgical service the  
179 facility or entity may seek Medicare certification under 42 CFR,  
180 Part 416. Ambulatory surgical services shall be performed only in  
181 an ambulatory surgical facility licensed by the State Department  
182 of Health. An ambulatory surgical facility does not include the  
183 offices of private physicians or dentists, whether for individual  
184 or group practice, that perform office procedures and does not  
185 include any abortion facility as defined in Section 41-75-1(e).  
186 "Office procedure" means a procedure or surgery performed by a  
187 physician or dentist licensed to practice in the State of  
188 Mississippi, which procedure is performed on an outpatient in the  
189 physician's or dentist's office and does not require general  
190 anesthesia. An office procedure is not a procedure or surgery  
191 performed in an ambulatory surgical facility licensed by the State  
192 Department of Health and/or certified in accordance with 42 CFR,

193 Part 416. That office procedure is not "ambulatory surgery," as  
194 defined in Section 41-75-1(d) or "ambulatory surgical services"  
195 designated as requiring a certificate of need in Section  
196 41-7-191(d).

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

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

- 213 1. Physical, occupational or speech therapy;
- 214 2. Medical social services;
- 215 3. Part-time or intermittent services of a  
216 home health aide;
- 217 4. Other services as approved by the  
218 licensing agency for home health agencies;
- 219 5. Medical supplies, other than drugs and  
220 biologicals, and the use of medical appliances; or
- 221 6. Medical services provided by an intern or  
222 resident-in-training at a hospital under a teaching program of  
223 such hospital.

224 Further, all skilled nursing services and those services  
225 listed in items 1. through 4. of this subparagraph (ix) must be

226 provided directly by the licensed home health agency. For  
227 purposes of this subparagraph, "directly" means either through an  
228 agency employee or by an arrangement with another individual not  
229 defined as a health care facility.

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

233 (x) "Psychiatric residential treatment facility"  
234 means any nonhospital establishment with permanent licensed  
235 facilities which provides a twenty-four-hour program of care by  
236 qualified therapists including, but not limited to, duly licensed  
237 mental health professionals, psychiatrists, psychologists,  
238 psychotherapists and licensed certified social workers, for  
239 emotionally disturbed children and adolescents referred to such  
240 facility by a court, local school district or by the Department of  
241 Human Services, who are not in an acute phase of illness requiring  
242 the services of a psychiatric hospital, and are in need of such  
243 restorative treatment services. For purposes of this paragraph,  
244 the term "emotionally disturbed" means a condition exhibiting one  
245 or more of the following characteristics over a long period of  
246 time and to a marked degree, which adversely affects educational  
247 performance:

- 248 1. An inability to learn which cannot be  
249 explained by intellectual, sensory or health factors;
- 250 2. An inability to build or maintain  
251 satisfactory relationships with peers and teachers;
- 252 3. Inappropriate types of behavior or  
253 feelings under normal circumstances;
- 254 4. A general pervasive mood of unhappiness or  
255 depression; or
- 256 5. A tendency to develop physical symptoms or  
257 fears associated with personal or school problems. An



258 establishment furnishing primarily domiciliary care is not within  
259 this definition.

260 (xi) "Pediatric skilled nursing facility" means an  
261 institution or a distinct part of an institution that is primarily  
262 engaged in providing to inpatients skilled nursing care and  
263 related services for persons under twenty-one (21) years of age  
264 who require medical or nursing care or rehabilitation services for  
265 the rehabilitation of injured, disabled or sick persons.

266 (xii) "Long-term care hospital" means a  
267 freestanding, Medicare-certified hospital that has an average  
268 length of inpatient stay greater than twenty-five (25) days, which  
269 is primarily engaged in providing chronic or long-term medical  
270 care to patients who do not require more than three (3) hours of  
271 rehabilitation or comprehensive rehabilitation per day, and has a  
272 transfer agreement with an acute care medical center and a  
273 comprehensive medical rehabilitation facility. Long-term care  
274 hospitals shall not use rehabilitation, comprehensive medical  
275 rehabilitation, medical rehabilitation, sub-acute rehabilitation,  
276 nursing home, skilled nursing facility, or sub-acute care facility  
277 in association with its name.

278 (xiii) "Comprehensive medical rehabilitation  
279 facility" means a hospital or hospital unit that is licensed  
280 and/or certified as a comprehensive medical rehabilitation  
281 facility which provides specialized programs that are accredited  
282 by the Commission on Accreditation of Rehabilitation Facilities  
283 and supervised by a physician board certified or board eligible in  
284 Physiatry or other doctor of medicine or osteopathy with at least  
285 two (2) years of training in the medical direction of a  
286 comprehensive rehabilitation program that:

287 1. Includes evaluation and treatment of  
288 individuals with physical disabilities;

289 2. Emphasizes education and training of  
290 individuals with disabilities;

291                                   3. Incorporates at least the following core  
292 disciplines:

- 293                                   (i) Physical Therapy;
- 294                                   (ii) Occupational Therapy;
- 295                                   (iii) Speech and Language Therapy;
- 296                                   (iv) Rehabilitation Nursing; and

297                                   4. Incorporates at least three (3) of the  
298 following disciplines:

- 299                                   (i) Psychology;
- 300                                   (ii) Audiology;
- 301                                   (iii) Respiratory Therapy;
- 302                                   (iv) Therapeutic Recreation;
- 303                                   (v) Orthotics;
- 304                                   (vi) Prosthetics;
- 305                                   (vii) Special Education;
- 306                                   (viii) Vocational Rehabilitation;
- 307                                   (ix) Psychotherapy;
- 308                                   (x) Social Work;
- 309                                   (xi) Rehabilitation Engineering.

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

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

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

321                                   (ii) Is compensated (except for copayments) for  
322 the provision of the basic health care services listed in

323 subparagraph (i) of this paragraph to enrolled participants on a  
324 predetermined basis; and

325 (iii) Provides physician services primarily:

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

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

331 (j) "Health service area" means a geographic area of  
332 the state designated in the State Health Plan as the area to be  
333 used in planning for specified health facilities and services and  
334 to be used when considering certificate of need applications to  
335 provide health facilities and services.

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

339 (l) "Institutional health services" shall mean health  
340 services provided in or through health care facilities and shall  
341 include the entities in or through which such services are  
342 provided.

343 (m) "Major medical equipment" means medical equipment  
344 designed for providing medical or any health related service which  
345 costs in excess of One Million Five Hundred Thousand Dollars  
346 (\$1,500,000.00). However, this definition shall not be applicable  
347 to clinical laboratories if they are determined by the State  
348 Department of Health to be independent of any physician's office,  
349 hospital or other health care facility or otherwise not so defined  
350 by federal or state law, or rules and regulations promulgated  
351 thereunder.

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

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

360 (p) "Person" means an individual, a trust or estate,  
361 partnership, corporation (including associations, joint stock  
362 companies and insurance companies), the state or a political  
363 subdivision or instrumentality of the state.

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

368 (r) "Secretary" means the Secretary of Health and Human  
369 Services, and any officer or employee of the Department of Health  
370 and Human Services to whom the authority involved has been  
371 delegated.

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

377 (t) "State Health Planning and Development Agency"  
378 means the agency of state government designated to perform health  
379 planning and resource development programs for the State of  
380 Mississippi.

381 **SECTION 2.** Section 41-75-1, Mississippi Code of 1972, is  
382 amended as follows:

383 41-75-1. (a) "Ambulatory surgical facility" shall mean a  
384 publicly or privately owned institution which is primarily  
385 organized, constructed, renovated or otherwise established for the  
386 purpose of providing elective surgical treatment of "outpatients"  
387 whose recovery, under normal and routine circumstances, will not  
388 require "inpatient" care. Such facility as herein defined does

389 not include the offices of private physicians or dentists, whether  
390 practicing individually or in groups, that perform office  
391 procedures, but does include organizations or facilities primarily  
392 engaged in such outpatient surgery whether using the name  
393 "ambulatory surgical facility" or a similar or different name.  
394 "Office procedure" means a procedure or surgery performed by a  
395 physician or dentist licensed to practice in the State of  
396 Mississippi, which procedure (i) is performed on an outpatient in  
397 the physician's or dentist's office and (ii) does not require  
398 general anesthesia. An office procedure is not a procedure or  
399 surgery performed in an ambulatory surgical facility licensed by  
400 the State Department of Health and/or certified in accordance with  
401 42 CFR, Part 416. That office procedure is not "ambulatory  
402 surgery," as defined in Section 41-75-1(d) or "ambulatory surgical  
403 services" designated as requiring a certificate of need in Section  
404 41-7-191(d). Such organization or facility, if in any manner  
405 considered to be operated or owned by a hospital or a hospital  
406 holding, leasing or management company, either for profit or not  
407 for profit, is required to comply with all licensing agency  
408 ambulatory surgical licensure standards governing a "hospital  
409 affiliated" facility as adopted under Section 41-9-1 et seq.,  
410 Mississippi Code of 1972; provided that such organization or  
411 facility does not intend to seek federal certification as an  
412 ambulatory surgical facility as provided for at 42 CFR, Parts 405  
413 and 416. Further, if such organization or facility is to be  
414 operated or owned by a hospital or a hospital holding, leasing or  
415 management company and intends to seek federal certification as an  
416 ambulatory facility, then such facility is considered to be  
417 "freestanding" and must comply with all licensing agency  
418 ambulatory surgical licensure standards governing a "freestanding"  
419 facility.

420 If such organization or facility is to be owned or operated  
421 by an entity or person other than a hospital or hospital holding,

422 leasing or management company, then such organization or facility  
423 must comply with all licensing agency ambulatory surgical facility  
424 standards governing a "freestanding" facility.

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

433 (c) "Freestanding" ambulatory surgical facility shall mean a  
434 separate and distinct facility or a separate and distinct  
435 organized unit of a hospital owned, leased, rented or utilized by  
436 a hospital or other persons for the primary purpose of performing  
437 ambulatory surgery procedures. Such facility must be separately  
438 licensed as herein defined and must comply with all licensing  
439 standards promulgated by the licensing agency under this statute  
440 regarding a "freestanding" ambulatory surgical facility. Further,  
441 such facility must be a separate, identifiable entity and must be  
442 physically, administratively and financially independent and  
443 distinct from other operations of any other health facility, and  
444 shall maintain a separate organized medical and administrative  
445 staff. Furthermore, once licensed as a "freestanding" ambulatory  
446 surgical facility, such facility shall not become a component of  
447 any other health facility without securing a certificate of need  
448 to do such.

449 (d) "Ambulatory surgery" shall mean surgical procedures that  
450 are more complex than office procedures, as defined in paragraph  
451 (a) of this section, performed under local anesthesia, but less  
452 complex than major procedures requiring prolonged postoperative  
453 monitoring and hospital care to ensure safe recovery and desirable  
454 results, regardless of whether the ambulatory surgery is performed

455 in a facility that allows the performance of ambulatory surgeries  
456 involving one or multiple surgical specialties and for which the  
457 performance of the ambulatory surgical service the facility or  
458 entity may seek Medicare certification under 42 CFR, Part 416.

459 General anesthesia is used in most cases. The patient must arrive  
460 at the facility and expect to be discharged on the same day.

461 Ambulatory surgery shall only be performed by physicians or  
462 dentists licensed to practice in the State of Mississippi.

463 (e) "Abortion" means the use or prescription of any  
464 instrument, medicine, drug or any other substances or device to  
465 terminate the pregnancy of a woman known to be pregnant with an  
466 intention other than to increase the probability of a live birth,  
467 to preserve the life or health of the child after live birth or to  
468 remove a dead fetus. Abortion procedures on a fetus aged sixteen  
469 (16) weeks or more shall only be performed at an ambulatory  
470 surgical facility or hospital licensed to perform such service.

471 (f) "Abortion facility" means a facility operating  
472 substantially for the purpose of performing abortions and is a  
473 separate identifiable legal entity from any other health care  
474 facility. Abortions shall only be performed by physicians  
475 licensed to practice in the State of Mississippi. The term  
476 "abortion facility" includes physicians' offices which are used  
477 substantially for the purpose of performing abortions. An  
478 abortion facility operates substantially for the purpose of  
479 performing abortions if any of the following conditions are met:

480 (i) The abortion facility is a provider for performing  
481 ten (10) or more abortion procedures per calendar month during any  
482 month of a calendar year, or one hundred (100) or more in a  
483 calendar year.

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

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

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

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

496 (g) "Licensing agency" shall mean the State Department of  
497 Health.

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

502 Any abortion facility that begins operation after June 30,  
503 1996, shall not be located within fifteen hundred (1500) feet from  
504 the property on which any church, school or kindergarden is  
505 located. An abortion facility shall not be in violation of this  
506 paragraph if it is in compliance with this paragraph on the date  
507 it begins operation and the property on which a church, school or  
508 kindergarden is located is subsequently within fifteen hundred  
509 (1500) feet from the facility.

510 **SECTION 3.** This act shall take effect and be in force from  
511 and after July 1, 2004.