

By: Representative Moody

To: Public Health and Human  
ServicesCOMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1454

1 AN ACT TO CREATE THE RURAL HEALTH AVAILABILITY ACT; TO  
2 PROVIDE THAT RURAL HOSPITALS MAY ENTER INTO COOPERATIVE AGREEMENTS  
3 FOR CERTAIN PURPOSES; TO REQUIRE PARTIES TO THOSE COOPERATIVE  
4 AGREEMENTS TO APPLY FOR A CERTIFICATE OF PUBLIC ADVANTAGE  
5 GOVERNING THE COOPERATIVE AGREEMENT; TO PROVIDE STANDARDS OF  
6 REVIEW FOR THE STATE DEPARTMENT OF HEALTH WITH REGARD TO THOSE  
7 APPLICATIONS AND ISSUANCE OF CERTIFICATES; TO REQUIRE THE  
8 DEPARTMENT TO MONITOR AND REGULATE THOSE AGREEMENTS; TO AUTHORIZE  
9 THE DEPARTMENT TO REVOKE A CERTIFICATE; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** This act shall be known and may be cited as the  
12 "Rural Health Availability Act."

13 **SECTION 2.** (1) The Legislature finds and declares the  
14 following:

15 (a) In rural areas, access to health care is limited  
16 and the quality of health care is adversely affected by inadequate  
17 reimbursement and collection rates and difficulty in recruiting  
18 and retaining skilled health professionals.

19 (b) There is limited, if any, overlap in the geographic  
20 service areas of Mississippi rural hospitals.

21 (c) Rural hospitals' financial stability is threatened  
22 by patient migration to general acute care and specialty hospitals  
23 in urban areas.

24 (d) The availability of quality health care in rural  
25 areas is essential to the economic and social viability of rural  
26 communities.

27 (e) Cooperative agreements among rural hospitals would  
28 improve the availability and quality of health care for  
29 Mississippians in rural areas and enhance the likelihood that  
30 rural hospitals can remain open.

31 (f) Federal or state antitrust laws may prohibit or  
32 discourage cooperative agreements that are beneficial to  
33 Mississippians and those agreements should be encouraged.

34 (2) It is the intent of the Legislature to supplant federal  
35 and state antitrust laws that may otherwise be applicable to  
36 cooperative agreements among rural hospitals by establishing and  
37 maintaining a state regulatory program that will provide  
38 direction, supervision and control over cooperative agreements  
39 through the State Department of Health.

40 **SECTION 3.** For the purposes of this act, the following terms  
41 shall have the following meanings:

42 (a) "Act" means the Rural Health Availability Act.

43 (b) "Affected person," with respect to any application  
44 for a certificate of public advantage, means:

45 (i) The applicant(s);

46 (ii) Any person residing within the geographic  
47 service area of an applicant;

48 (iii) Health care purchasers who reimburse health  
49 care facilities located in the geographic service area of an  
50 applicant;

51 (iv) Any other person furnishing goods or services  
52 to, or in competition with, an applicant; or

53 (v) Any other person who has notified the  
54 department in writing of his interest in applications for  
55 certificates of public advantage and has a direct economic  
56 interest in the decision.

57 Notwithstanding the foregoing, other than health care  
58 purchasers licensed to do business in Mississippi, persons from  
59 other states who would otherwise be considered "affected persons"  
60 are not included, unless that other state provides for similar  
61 involvement of persons from Mississippi in a similar process in  
62 that state.

63                   (c) "Board" means the State Board of Health established  
64 under Section 41-3-1.

65                   (d) "Certificate of public advantage" means the formal  
66 written approval, including any conditions or modifications of a  
67 cooperative agreement by the department.

68                   (e) "Cooperative agreement" means a contract, business  
69 or financial arrangement, or any other activities or practices  
70 among two (2) or more rural hospitals for the sharing, allocation,  
71 or referral of patients; the sharing or allocation of personnel,  
72 instructional programs, support services and facilities, medical,  
73 diagnostic or laboratory facilities, procedures, equipment, or  
74 other health care services; the acquisition or merger of assets  
75 among or by two (2) or more rural hospitals, including agreements  
76 to negotiate jointly with respect to price or other competitive  
77 terms with suppliers and health care purchasers and agreements to  
78 set collective fee schedules with respect to health care  
79 purchasers. The term "cooperative agreement" includes any  
80 amendments thereto with respect to which a certificate of public  
81 advantage has been issued or applied for or with respect to which  
82 a certificate of public advantage is not required, unless the  
83 context clearly requires otherwise.

84                   (f) "Department" means the State Department of Health  
85 created under Section 41-3-15.

86                   (g) "Federal and state antitrust laws" means federal  
87 and state laws prohibiting monopolies, agreements in restraint of  
88 trade or unfair trade practices, including the Federal Sherman  
89 Antitrust Act and Clayton Act, the Federal Trade Commission Act,  
90 Sections 75-21-1 et seq. and Sections 75-24-1 et seq.

91                   (h) "Health care purchaser" means a person or  
92 organization that purchases health care services on behalf of an  
93 identified group of persons, regardless of whether the cost of  
94 coverage of services is paid for by the purchaser or by the person  
95 receiving coverage or services.

96           (i) "Hospital" has the meaning set forth in Section  
97 41-9-3.

98           (j) "Rural area" means an area with a population  
99 density of less than one hundred (100) individuals per square  
100 mile; a municipality or county with a population of less than  
101 seven thousand five hundred (7,500) individuals; or an area  
102 defined by the most recent United States Census as rural.

103           (k) "Rural hospital" means a private or community  
104 hospital having at least one (1) but no more than seventy-five  
105 (75) licensed acute-care beds that is located in a rural area.

106           (l) "State" means the State of Mississippi.

107           (m) "State Health Officer" means the State Health  
108 Officer elected by the State Board of Health under Section 41-3-5.

109       The use of a singular term in this section includes the  
110 plural of that term, and the use of a plural term in this section  
111 includes the singular of that term, unless the context clearly  
112 requires another connotation.

113       **SECTION 4.** (1) A rural hospital and any corporation,  
114 partnership, joint venture or any other entity, all of whose  
115 principals are rural hospitals, may negotiate and enter into  
116 cooperative agreements with other such persons in the state,  
117 subject to receipt of a certificate of public advantage governing  
118 the agreement as provided in this act.

119       (2) Parties to a cooperative agreement may apply to the  
120 department for a certificate of public advantage governing that  
121 cooperative agreement. The application must include an executed  
122 written copy of the cooperative agreement and describe the nature  
123 and scope of the cooperation in the agreement and any  
124 consideration passing to any party under the agreement. Within  
125 thirty (30) days of receipt of the application, the department may  
126 request additional information as may be necessary to complete the  
127 application. The applicant has thirty (30) days from the date of  
128 the request to submit the additional information. If the

applicant fails to submit the requested information within the thirty (30) day period, or any extension of time granted by the department, the application is deemed withdrawn. The department may require an application fee from the submitting parties sufficient to cover the cost of processing the application.

(3) The department shall review the application in accordance with the standards set forth in subsection (4) of this section. The department shall give notice of the application to members of the public who reside in the service areas of the applicant hospitals, which may be provided through newspapers of general circulation or public information channels. If requested by an affected person within thirty (30) days of the giving of the public notice, the department may hold a public hearing in accordance with the rules adopted by the board. The department shall grant or deny the application within sixty (60) days after receipt of a completed application or from the date of the public hearing, if one is held, and that decision, along with any conditions of approval, must be in writing and must set forth the basis for the decision. The department may establish conditions for approval that are reasonably necessary to ensure that the cooperative agreement and the activities engaged under it are consistent with the intent of this act and to ensure that the activity is appropriately supervised and regulated by the state. The department shall furnish a copy of the decision to the applicants and any affected persons who have asked in writing to be notified.

(4) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that:

(a) Each of the parties to the cooperative agreement is a rural hospital or is a corporation, partnership, joint venture or other entity all of whose principals are rural hospitals;

161 (b) The geographic service area of the rural hospitals  
162 who are parties to the agreement do not overlap significantly; and

163 (c) The cooperative agreement is likely to result in  
164 one or more of the following benefits:

165 (i) Enhancement of the quality of hospital and  
166 hospital-related care provided to Mississippi citizens;

167 (ii) Preservation of hospital facilities and  
168 health care in rural areas;

169 (iii) Gains in the cost-efficiency of services  
170 provided by the hospitals involved;

171 (iv) Encouragement of cost-sharing among the  
172 hospitals involved;

173 (v) Improvements in the utilization of hospital  
174 resources and equipment;

175 (vi) Avoidance or reduction of duplication of  
176 hospital resources or expenses, including administrative expenses;  
177 or

178 (vii) Improvement in rural hospitals' ability to  
179 receive reimbursement or payment for their reasonable fees and  
180 charges.

181 (5) The department shall actively monitor and regulate  
182 agreements approved under this act and may request information  
183 whenever necessary to ensure that the agreements remain in  
184 compliance with the conditions of approval. The department may  
185 charge an annual fee to cover the cost of monitoring and  
186 regulating these agreements. During the time the certificate is  
187 in effect, a report on the activities under the cooperative  
188 agreement must be filed with the department every two (2) years.  
189 The department shall review the report in order to determine that  
190 the cooperative agreement continues to comply with the terms of  
191 the certificate of public advantage.

192 (6) The department shall revoke a certificate of public  
193 advantage by giving written notice to each party to a cooperative

194 agreement with respect to which the certificate is being revoked,  
195 if it finds that:

196           (a) The cooperative agreement or activities undertaken  
197 by it are not in substantial compliance with the terms of the  
198 application or the conditions of approval;

199           (b) The likely benefits resulting from the cooperative  
200 agreement no longer exist; or

201           (c) The department's approval was obtained as a result  
202 of intentional material misrepresentation to the department or as  
203 the result of coercion, threats, or intimidation toward any party  
204 to the cooperative agreement.

205       (7) The department shall maintain on file all cooperative  
206 agreements for which certificates of public advantage remain in  
207 effect. A party to a cooperative agreement who terminates or  
208 withdraws from the agreement shall notify the department within  
209 fifteen (15) days of the termination or withdrawal. If all  
210 parties terminate their participation in the cooperative  
211 agreement, the department shall revoke the certificate of public  
212 advantage for the agreement.

213       (8) The parties to a cooperative agreement with respect to  
214 which a certificate of advantage is in effect must notify the  
215 department of any proposed amendment to the cooperative agreement,  
216 including an amendment to add an additional party but excluding an  
217 amendment to remove or to reflect the withdrawal of a party,  
218 before the amendment takes effect. The parties must apply to the  
219 department for a certificate of public advantage governing the  
220 amendment and the department shall consider and rule on the  
221 application in accordance with the procedures applicable to  
222 cooperative agreements generally.

223       (9) The department may promulgate rules and regulations in  
224 accordance with the Administrative Procedures Law as in effect  
225 from time to time to implement the provisions of this act,  
226 including any fees and application costs associated with the

227 monitoring and oversight of cooperative agreements approved under  
228 this act.

229 (10) A dispute among the parties to a cooperative agreement  
230 concerning its meaning or terms is governed by the principles of  
231 contract law or any other applicable law.

232 **SECTION 5.** Any applicant aggrieved by a decision of the  
233 department under this act shall be entitled to judicial review  
234 thereof in the Circuit Court of Hinds County, First Judicial  
235 District. In the review, the decision of the department shall be  
236 affirmed unless it is arbitrary, capricious, or it is not in  
237 compliance with this act.

238 **SECTION 6.** Nothing in this act exempts hospitals from  
239 compliance with the provisions of Sections 41-7-171 et seq.  
240 concerning certificates of need.

241 **SECTION 7.** This act shall take effect and be in force from  
242 and after July 1, 2004.