

By: Representative Moody

To: Public Health and Human
Services

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; TO PROVIDE THAT CERTAIN
10 PARTIES TO THE AGREEMENT ARE IMMUNE FROM CIVIL LIABILITY AND
11 CRIMINAL PROSECUTION WITH REGARD TO STATE ANTITRUST LAWS; TO AMEND
12 SECTIONS 75-21-1 AND 75-24-7, MISSISSIPPI CODE OF 1972, TO CONFORM
13 TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

17 **SECTION 2.** (1) The Legislature finds and declares the
18 following:

19 (a) In rural areas, access to health care is limited
20 and the quality of health care is adversely affected by inadequate
21 reimbursement and collection rates and difficulty in recruiting
22 and retaining skilled health professionals.

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

25 (c) Rural hospitals' financial stability is threatened
26 by patient migration to general acute care and specialty hospitals
27 in urban areas.

28 (d) The availability of quality health care in rural
29 areas is essential to the economic and social viability of rural
30 communities.

31 (e) Cooperative agreements among rural hospitals would
32 improve the availability and quality of health care for

33 Mississippians in rural areas and enhance the likelihood that
34 rural hospitals can remain open.

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

38 (2) It is the intent of the Legislature to supplant federal
39 and state antitrust laws that may otherwise be applicable to
40 cooperative agreements among rural hospitals by establishing and
41 maintaining a state regulatory program that will provide
42 direction, supervision and control over cooperative agreements
43 through the State Department of Health. In addition, it is the
44 intent of the Legislature that this regulatory program shall
45 provide immunity from federal and state antitrust laws for rural
46 hospitals that participate in discussions or negotiations related
47 to or entered into, cooperative agreements authorized by this act.

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

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

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

53 (i) The applicant(s);

54 (ii) Any person residing within the geographic
55 service area of an applicant;

56 (iii) Health care purchasers who reimburse health
57 care facilities located in the geographic service area of an
58 applicant;

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

61 (v) Any other person who has notified the
62 department in writing of his interest in applications for
63 certificates of public advantage and has a direct economic
64 interest in the decision.

65 Notwithstanding the foregoing, other than health care
66 purchasers licensed to do business in Mississippi, persons from
67 other states who would otherwise be considered "affected persons"
68 are not included, unless that other state provides for similar
69 involvement of persons from Mississippi in a similar process in
70 that state.

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

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

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

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

94 (g) "Federal and state antitrust laws" means federal
95 and state laws prohibiting monopolies, agreements in restraint of
96 trade or unfair trade practices, including the Federal Sherman

97 Antitrust Act and Clayton Act, the Federal Trade Commission Act,
98 Sections 75-21-1 et seq. and Sections 75-24-1 et seq.

99 (h) "Health care purchaser" means a person or
100 organization that purchases health care services on behalf of an
101 identified group of persons, regardless of whether the cost of
102 coverage of services is paid for by the purchaser or by the person
103 receiving coverage or services.

104 (i) "Hospital" has the meaning set forth in Section
105 41-9-3.

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

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

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

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

117 The use of a singular term in this section includes the
118 plural of that term, and the use of a plural term in this section
119 includes the singular of that term, unless the context clearly
120 requires another connotation.

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

127 (2) Parties to a cooperative agreement may apply to the
128 department for a certificate of public advantage governing that
129 cooperative agreement. The application must include an executed

130 written copy of the cooperative agreement and describe the nature
131 and scope of the cooperation in the agreement and any
132 consideration passing to any party under the agreement. Within
133 thirty (30) days of receipt of the application, the department may
134 request additional information as may be necessary to complete the
135 application. The applicant has thirty (30) days from the date of
136 the request to submit the additional information. If the
137 applicant fails to submit the requested information within the
138 thirty (30) day period, or any extension of time granted by the
139 department, the application is deemed withdrawn. The department
140 may require an application fee from the submitting parties
141 sufficient to cover the cost of processing the application.

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

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

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

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

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

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

175 (ii) Preservation of hospital facilities and
176 health care in rural areas;

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

179 (iv) Encouragement of cost-sharing among the
180 hospitals involved;

181 (v) Improvements in the utilization of hospital
182 resources and equipment;

183 (vi) Avoidance or reduction of duplication of
184 hospital resources or expenses, including administrative expenses;
185 or

186 (vii) Improvement in rural hospitals' ability to
187 receive reimbursement or payment for their reasonable fees and
188 charges.

189 (5) The department shall actively monitor and regulate
190 agreements approved under this act and may request information
191 whenever necessary to ensure that the agreements remain in
192 compliance with the conditions of approval. The department may
193 charge an annual fee to cover the cost of monitoring and
194 regulating these agreements. During the time the certificate is
195 in effect, a report on the activities under the cooperative

196 agreement must be filed with the department every two (2) years.
197 The department shall review the report in order to determine that
198 the cooperative agreement continues to comply with the terms of
199 the certificate of public advantage.

200 (6) The department shall revoke a certificate of public
201 advantage by giving written notice to each party to a cooperative
202 agreement with respect to which the certificate is being revoked,
203 if it finds that:

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

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

209 (c) The department's approval was obtained as a result
210 of intentional material misrepresentation to the department or as
211 the result of coercion, threats, or intimidation toward any party
212 to the cooperative agreement.

213 (7) The department shall maintain on file all cooperative
214 agreements for which certificates of public advantage remain in
215 effect. A party to a cooperative agreement who terminates or
216 withdraws from the agreement shall notify the department within
217 fifteen (15) days of the termination or withdrawal. If all
218 parties terminate their participation in the cooperative
219 agreement, the department shall revoke the certificate of public
220 advantage for the agreement.

221 (8) The parties to a cooperative agreement with respect to
222 which a certificate of advantage is in effect must notify the
223 department of any proposed amendment to the cooperative agreement,
224 including an amendment to add an additional party but excluding an
225 amendment to remove or to reflect the withdrawal of a party,
226 before the amendment takes effect. The parties must apply to the
227 department for a certificate of public advantage governing the
228 amendment and the department shall consider and rule on the

229 application in accordance with the procedures applicable to
230 cooperative agreements generally.

231 (9) The department may promulgate rules and regulations in
232 accordance with the Administrative Procedures Law as in effect
233 from time to time to implement the provisions of this act,
234 including any fees and application costs associated with the
235 monitoring and oversight of cooperative agreements approved under
236 this act.

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

240 **SECTION 5.** Any applicant aggrieved by a decision of the
241 department under this act shall be entitled to judicial review
242 thereof in the Circuit Court of Hinds County, First Judicial
243 District. In the review, the decision of the department shall be
244 affirmed unless it is arbitrary, capricious, or it is not in
245 compliance with this act.

246 **SECTION 6.** Any rural hospital, and any corporation,
247 partnership, joint venture or any other entity all of whose
248 principals are rural hospitals, and their respective officers,
249 directors, employees, attorneys, consultants or any other agents,
250 that negotiate, enter into or conduct business in accordance with
251 a cooperative agreement with respect to which a certificate of
252 public advantage is issued and in effect, or that in good faith
253 participate in discussions or negotiations with a view to entering
254 into a cooperative agreement and applying for a certificate of
255 public advantage, will be immune from civil liability and criminal
256 prosecution to which they might otherwise be subject to under
257 state antitrust law as a result of that activity. It is the
258 intent of the Legislature that the state direction, supervision,
259 regulation and control of cooperative agreements under this act
260 will likewise provide immunity to the described persons for the
261 described activities under federal antitrust laws. Revocation of

262 a certificate of public advantage will not revoke the immunity
263 granted by this section to any person for described activities
264 occurring before that person's receipt of notice of the
265 revocation.

266 **SECTION 7.** Nothing in this act exempts hospitals from
267 compliance with the provisions of Sections 41-7-171 et seq.
268 concerning certificates of need.

269 **SECTION 8.** Section 75-21-1, Mississippi Code of 1972, is
270 amended as follows:

271 75-21-1. (1) A trust or combine is a combination, contract,
272 understanding or agreement, expressed or implied, between two (2)
273 or more persons, corporations or firms or association of persons
274 or between any one or more of either with one or more of the
275 others, when inimical to public welfare and the effect of which
276 would be:

277 (a) To restrain trade;

278 (b) To limit, increase or reduce the price of a
279 commodity;

280 (c) To limit, increase or reduce the production or
281 output of a commodity;

282 (d) To hinder competition in the production,
283 importation, manufacture, transportation, sale or purchase of a
284 commodity;

285 (e) To engross or forestall a commodity;

286 (f) To issue, own or hold the certificate of stock of
287 any trust and combine within the spirit of this chapter knowing it
288 to be such at the time of the issue or the acquisition or holding
289 such certificate; or

290 (g) To place the control to any extent of business or
291 of the proceeds or earnings thereof, contrary to the spirit and
292 meaning of this chapter, in the power of trustees, by whatever
293 name called; or

294 (h) To enable or empower any other person than
295 themselves, their proper officers, agents and employees to dictate
296 or control the management of business, contrary to the spirit and
297 meaning of this chapter; or

298 (i) To unite or pool interest in the importation,
299 manufacture, production, transportation, or price of a commodity,
300 contrary to the spirit and meaning of this chapter.

301 Any corporation, domestic or foreign, or any partnership, or
302 individual, or other association, or person whatsoever, who are
303 now, or shall hereafter create, enter into, become a member of, or
304 a party to any trust or combine as hereinabove defined shall be
305 deemed and adjudged guilty of a conspiracy to defraud and shall be
306 subject to the penalties hereinafter provided. Any person,
307 association of persons, corporation, or corporations, domestic or
308 foreign, who shall be a party or belong to a trust and combine
309 shall be guilty of crime and upon conviction thereof shall, for a
310 first offense be fined in any sum not less than One Hundred
311 Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00)
312 and for a second or subsequent offense not less than Two Hundred
313 Dollars (\$200.00) nor more than Ten Thousand Dollars (\$10,000.00),
314 and may be enjoined by a final decree of the chancery court, in a
315 suit by the state on the relation of the Attorney General, from
316 the further prosecution of or doing of the acts constituting the
317 trust and combine as defined in this chapter.

318 (2) This chapter shall not apply to activities that are
319 conducted in accordance with cooperative agreements authorized
320 under Sections 1 through 7 of this act.

321 **SECTION 9.** Section 75-24-7, Mississippi Code of 1972, is
322 amended as follows:

323 75-24-7. Nothing in this chapter shall apply to acts done
324 by:

325 (a) The publisher, owner, agent or employee of a
326 newspaper, periodical, printing shop, directory or radio or

327 television station in the publication or dissemination of an
328 advertisement, when the owner, agent or employee did not have
329 knowledge of the false, misleading or deceptive character of the
330 advertisement and did not have a direct financial interest in the
331 sale or distribution of the advertised product or service.

332 (b) Any officer acting under the orders of any court.

333 (c) Entities in accordance with cooperative agreements
334 authorized under Sections 1 through 7 of this act.

335 **SECTION 10.** This act shall take effect and be in force from
336 and after July 1, 2004.