

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2515

1 AN ACT TO AMEND SECTIONS 41-75-1 AND 41-7-173, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE DEFINITION OF AMBULATORY SURGICAL
3 FACILITY FOR LICENSURE AND CERTIFICATE OF NEED PURPOSES; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** Section 41-75-1, Mississippi Code of 1972, is
7 amended as follows:

8 41-75-1. (a) "Ambulatory surgical facility" shall mean a
9 publicly or privately owned institution which is primarily
10 organized, constructed, renovated or otherwise established for the
11 purpose of providing elective surgical treatment of "outpatients"
12 whose recovery, under normal and routine circumstances, will not
13 require "inpatient" care. Such facility as herein defined does
14 not include the offices of private physicians or dentists whether
15 practicing individually or in groups, which perform office
16 procedures, but does include organizations or facilities primarily
17 engaged in such outpatient surgery whether using the name
18 "ambulatory surgical facility" or a similar or different name.
19 "Office procedure" shall mean a procedure or surgery performed by
20 a physician or dentist licensed in the State of Mississippi which
21 procedure (i) is performed on an outpatient in the physician's or
22 dentist's office, and (ii) does not require general anesthesia.
23 An office procedure is not a procedure or surgery performed in an
24 ambulatory surgical facility licensed by the Mississippi State
25 Department of Health and/or certified in accordance with 42 CFR
26 Part 416. Such office procedure is not "ambulatory surgery,"
27 defined in Section 41-75-1(d) or "ambulatory surgical services"
28 designated as requiring a certificate of need in Section

29 41-7-191(d). Such organization or facility, if in any manner
30 considered to be operated or owned by a hospital or a hospital
31 holding, leasing or management company, either for profit or not
32 for profit, is required to comply with all licensing agency
33 ambulatory surgical licensure standards governing a "hospital
34 affiliated" facility as adopted under Section 41-9-1 et seq.,
35 Mississippi Code of 1972; provided that such organization or
36 facility does not intend to seek federal certification as an
37 ambulatory surgical facility as provided for at 42 CFR, Parts 405
38 and 416. Further, if such organization or facility is to be
39 operated or owned by a hospital or a hospital holding, leasing or
40 management company and intends to seek federal certification as an
41 ambulatory facility, then such facility is considered to be
42 "freestanding" and must comply with all licensing agency
43 ambulatory surgical licensure standards governing a "freestanding"
44 facility.

45 If such organization or facility is to be owned or operated
46 by an entity or person other than a hospital or hospital holding,
47 leasing or management company, then such organization or facility
48 must comply with all licensing agency ambulatory surgical facility
49 standards governing a "freestanding" facility.

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

58 (c) "Freestanding" ambulatory surgical facility shall mean a
59 separate and distinct facility or a separate and distinct
60 organized unit of a hospital owned, leased, rented or utilized by
61 a hospital or other persons for the primary purpose of performing

62 ambulatory surgery procedures. Such facility must be separately
63 licensed as herein defined and must comply with all licensing
64 standards promulgated by the licensing agency under this statute
65 regarding a "freestanding" ambulatory surgical facility. Further,
66 such facility must be a separate, identifiable entity and must be
67 physically, administratively and financially independent and
68 distinct from other operations of any other health facility, and
69 shall maintain a separate organized medical and administrative
70 staff. Furthermore, once licensed as a "freestanding" ambulatory
71 surgical facility, such facility shall not become a component of
72 any other health facility without securing a certificate of need
73 to do such.

74 (d) "Ambulatory surgery" shall mean surgical procedures that
75 are more complex than office procedures, as defined above in
76 paragraph (a), performed under local anesthesia, but less complex
77 than major procedures requiring prolonged postoperative monitoring
78 and hospital care to ensure safe recovery and desirable results,
79 (i) regardless of whether such ambulatory surgery is performed in
80 a facility that allows the performance of ambulatory surgeries
81 involving one (1) or multiple surgical specialties, and (ii) for
82 which the performance of such ambulatory surgical service the
83 facility or entity may or does seek Medicare certification under
84 42 CFR, Part 416. General anesthesia is used in most cases. The
85 patient must arrive at the facility and expect to be discharged on
86 the same day. Ambulatory surgery shall only be performed by
87 physicians or dentists licensed to practice in the State of
88 Mississippi.

89 (e) "Abortion" means the use or prescription of any
90 instrument, medicine, drug or any other substances or device to
91 terminate the pregnancy of a woman known to be pregnant with an
92 intention other than to increase the probability of a live birth,
93 to preserve the life or health of the child after live birth or to
94 remove a dead fetus. Abortion procedures on a fetus aged sixteen

95 (16) weeks or more shall only be performed at an ambulatory
96 surgical facility or hospital licensed to perform such service.

97 (f) "Abortion facility" means a facility operating
98 substantially for the purpose of performing abortions and is a
99 separate identifiable legal entity from any other health care
100 facility. Abortions shall only be performed by physicians
101 licensed to practice in the State of Mississippi. The term
102 "abortion facility" includes physicians' offices which are used
103 substantially for the purpose of performing abortions. An
104 abortion facility operates substantially for the purpose of
105 performing abortions if any of the following conditions are met:

106 (i) The abortion facility is a provider for performing
107 ten (10) or more abortion procedures per calendar month during any
108 month of a calendar year, or one hundred (100) or more in a
109 calendar year.

110 (ii) The abortion facility, if operating less than
111 twenty (20) days per calendar month, is a provider for performing
112 ten (10) or more abortion procedures, or performing a number of
113 abortion procedures which would be equivalent to ten (10)
114 procedures per month, if the facility were operating twenty (20)
115 or more days per calendar month, in any month of a calendar year.

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

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

122 (g) "Licensing agency" shall mean the State Department of
123 Health.

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

128 Any abortion facility that begins operation after June 30,
129 1996, shall not be located within fifteen hundred (1500) feet from
130 the property on which any church, school or kindergarten is
131 located. An abortion facility shall not be in violation of this
132 paragraph if it is in compliance with this paragraph on the date
133 it begins operation and the property on which a church, school or
134 kindergarten is located is subsequently within fifteen hundred
135 (1500) feet from the facility.

136 **SECTION 2.** Section 41-7-173, Mississippi Code of 1972, is
137 amended as follows:

138 41-7-173. For the purposes of Section 41-7-171 et seq., the
139 following words shall have the meanings ascribed herein, unless
140 the context otherwise requires:

141 (a) "Affected person" means (i) the applicant; (ii) a
142 person residing within the geographic area to be served by the
143 applicant's proposal; (iii) a person who regularly uses health
144 care facilities or HMO's located in the geographic area of the
145 proposal which provide similar service to that which is proposed;
146 (iv) health care facilities and HMO's which have, prior to receipt
147 of the application under review, formally indicated an intention
148 to provide service similar to that of the proposal being
149 considered at a future date; (v) third-party payers who reimburse
150 health care facilities located in the geographical area of the
151 proposal; or (vi) any agency that establishes rates for health
152 care services or HMO's located in the geographic area of the
153 proposal.

154 (b) "Certificate of need" means a written order of the
155 State Department of Health setting forth the affirmative finding
156 that a proposal in prescribed application form, sufficiently
157 satisfies the plans, standards and criteria prescribed for such
158 service or other project by Section 41-7-171 et seq., and by rules
159 and regulations promulgated thereunder by the State Department of
160 Health.

161 (c) (i) "Capital expenditure" when pertaining to
162 defined major medical equipment, shall mean an expenditure which,
163 under generally accepted accounting principles consistently
164 applied, is not properly chargeable as an expense of operation and
165 maintenance and which exceeds One Million Five Hundred Thousand
166 Dollars (\$1,500,000.00).

167 (ii) "Capital expenditure," when pertaining to
168 other than major medical equipment, shall mean any expenditure
169 which under generally accepted accounting principles consistently
170 applied is not properly chargeable as an expense of operation and
171 maintenance and which exceeds Two Million Dollars (\$2,000,000.00).

172 (iii) A "capital expenditure" shall include the
173 acquisition, whether by lease, sufferance, gift, devise, legacy,
174 settlement of a trust or other means, of any facility or part
175 thereof, or equipment for a facility, the expenditure for which
176 would have been considered a capital expenditure if acquired by
177 purchase. Transactions which are separated in time but are
178 planned to be undertaken within twelve (12) months of each other
179 and are components of an overall plan for meeting patient care
180 objectives shall, for purposes of this definition, be viewed in
181 their entirety without regard to their timing.

182 (iv) In those instances where a health care
183 facility or other provider of health services proposes to provide
184 a service in which the capital expenditure for major medical
185 equipment or other than major medical equipment or a combination
186 of the two (2) may have been split between separate parties, the
187 total capital expenditure required to provide the proposed service
188 shall be considered in determining the necessity of certificate of
189 need review and in determining the appropriate certificate of need
190 review fee to be paid. The capital expenditure associated with
191 facilities and equipment to provide services in Mississippi shall
192 be considered regardless of where the capital expenditure was
193 made, in state or out of state, and regardless of the domicile of

194 the party making the capital expenditure, in state or out of
195 state.

196 (d) "Change of ownership" includes, but is not limited
197 to, inter vivos gifts, purchases, transfers, lease arrangements,
198 cash and/or stock transactions or other comparable arrangements
199 whenever any person or entity acquires or controls a majority
200 interest of the facility or service. Changes of ownership from
201 partnerships, single proprietorships or corporations to another
202 form of ownership are specifically included. However, "change of
203 ownership" shall not include any inherited interest acquired as a
204 result of a testamentary instrument or under the laws of descent
205 and distribution of the State of Mississippi.

206 (e) "Commencement of construction" means that all of
207 the following have been completed with respect to a proposal or
208 project proposing construction, renovating, remodeling or
209 alteration:

210 (i) A legally binding written contract has been
211 consummated by the proponent and a lawfully licensed contractor to
212 construct and/or complete the intent of the proposal within a
213 specified period of time in accordance with final architectural
214 plans which have been approved by the licensing authority of the
215 State Department of Health;

216 (ii) Any and all permits and/or approvals deemed
217 lawfully necessary by all authorities with responsibility for such
218 have been secured; and

219 (iii) Actual bona fide undertaking of the subject
220 proposal has commenced, and a progress payment of at least one
221 percent (1%) of the total cost price of the contract has been paid
222 to the contractor by the proponent, and the requirements of this
223 paragraph (e) have been certified to in writing by the State
224 Department of Health.

225 Force account expenditures, such as deposits, securities,
226 bonds, et cetera, may, in the discretion of the State Department

227 of Health, be excluded from any or all of the provisions of
228 defined commencement of construction.

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

232 (g) "Develop," when used in connection with health
233 services, means to undertake those activities which, on their
234 completion, will result in the offering of a new institutional
235 health service or the incurring of a financial obligation as
236 defined under applicable state law in relation to the offering of
237 such services.

238 (h) "Health care facility" includes hospitals,
239 psychiatric hospitals, chemical dependency hospitals, skilled
240 nursing facilities, end stage renal disease (ESRD) facilities,
241 including freestanding hemodialysis units, intermediate care
242 facilities, ambulatory surgical facilities, intermediate care
243 facilities for the mentally retarded, home health agencies,
244 psychiatric residential treatment facilities, pediatric skilled
245 nursing facilities, long-term care hospitals, comprehensive
246 medical rehabilitation facilities, including facilities owned or
247 operated by the state or a political subdivision or
248 instrumentality of the state, but does not include Christian
249 Science sanatoriums operated or listed and certified by the First
250 Church of Christ, Scientist, Boston, Massachusetts. This
251 definition shall not apply to facilities for the private practice,
252 either independently or by incorporated medical groups, of
253 physicians, dentists or health care professionals except where
254 such facilities are an integral part of an institutional health
255 service. The various health care facilities listed in this
256 paragraph shall be defined as follows:

257 (i) "Hospital" means an institution which is
258 primarily engaged in providing to inpatients, by or under the
259 supervision of physicians, diagnostic services and therapeutic

260 services for medical diagnosis, treatment and care of injured,
261 disabled or sick persons, or rehabilitation services for the
262 rehabilitation of injured, disabled or sick persons. Such term
263 does not include psychiatric hospitals.

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

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

273 (iv) "Skilled nursing facility" means an
274 institution or a distinct part of an institution which is
275 primarily engaged in providing to inpatients skilled nursing care
276 and related services for patients who require medical or nursing
277 care or rehabilitation services for the rehabilitation of injured,
278 disabled or sick persons.

279 (v) "End stage renal disease (ESRD) facilities"
280 means kidney disease treatment centers, which includes
281 freestanding hemodialysis units and limited care facilities. The
282 term "limited care facility" generally refers to an
283 off-hospital-premises facility, regardless of whether it is
284 provider or nonprovider operated, which is engaged primarily in
285 furnishing maintenance hemodialysis services to stabilized
286 patients.

287 (vi) "Intermediate care facility" means an
288 institution which provides, on a regular basis, health related
289 care and services to individuals who do not require the degree of
290 care and treatment which a hospital or skilled nursing facility is
291 designed to provide, but who, because of their mental or physical

292 condition, require health related care and services (above the
293 level of room and board).

294 (vii) "Ambulatory surgical facility" means a
295 facility primarily organized or established for the purpose of
296 performing ambulatory surgical services for outpatients and is a
297 separate identifiable legal entity from any other health care
298 facility. "Ambulatory surgical services" or "ambulatory surgery
299 services" shall mean the provision or performance of ambulatory
300 surgery, as defined in Section 41-75-1(d), performed in an
301 ambulatory surgical facility on an outpatient 1. that is more
302 complex than office procedures, but less complex than major
303 procedures requiring prolonged postoperative monitoring and
304 hospital care to ensure safe recovery and desirable results,
305 regardless of whether such ambulatory surgical service is
306 performed in a facility that allows the performance of ambulatory
307 surgeries involving only one (1) or multiple surgical specialties,
308 and 2. for which the performance of such ambulatory surgical
309 service the facility or entity may or does seek Medicare
310 certification under 42 CFR, Part 416. Ambulatory surgical
311 services shall be performed only in an ambulatory surgical
312 facility licensed by the Mississippi State Department of Health.
313 An ambulatory surgical facility does not include the offices of
314 private physicians or dentists, whether for individual or group
315 practice, which perform office procedures and does not include any
316 abortion facility as defined in Section 41-75-1(e). "Office
317 procedure" shall mean a procedure or surgery performed by a
318 physician or dentist licensed to practice in the State of
319 Mississippi, which procedure 1. is performed on an outpatient in
320 the physician's or dentist's office, and 2. does not require
321 general anesthesia. An office procedure is not a procedure or
322 surgery performed in an ambulatory surgical facility licensed by
323 the Mississippi State Department of Health and/or certified in
324 accordance with 42 CFR, Part 416. Such office procedure is not

325 "ambulatory surgery," defined in Section 41-75-1(d), or
326 "ambulatory surgical services" designated as requiring a
327 certificate of need in Section 41-7-191(d).

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

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

- 344 1. Physical, occupational or speech therapy;
- 345 2. Medical social services;
- 346 3. Part-time or intermittent services of a
347 home health aide;
- 348 4. Other services as approved by the
349 licensing agency for home health agencies;
- 350 5. Medical supplies, other than drugs and
351 biologicals, and the use of medical appliances; or
- 352 6. Medical services provided by an intern or
353 resident-in-training at a hospital under a teaching program of
354 such hospital.

355 Further, all skilled nursing services and those services
356 listed in items 1. through 4. of this subparagraph (ix) must be
357 provided directly by the licensed home health agency. For

358 purposes of this subparagraph, "directly" means either through an
359 agency employee or by an arrangement with another individual not
360 defined as a health care facility.

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

364 (x) "Psychiatric residential treatment facility"
365 means any nonhospital establishment with permanent licensed
366 facilities which provides a twenty-four-hour program of care by
367 qualified therapists including, but not limited to, duly licensed
368 mental health professionals, psychiatrists, psychologists,
369 psychotherapists and licensed certified social workers, for
370 emotionally disturbed children and adolescents referred to such
371 facility by a court, local school district or by the Department of
372 Human Services, who are not in an acute phase of illness requiring
373 the services of a psychiatric hospital, and are in need of such
374 restorative treatment services. For purposes of this paragraph,
375 the term "emotionally disturbed" means a condition exhibiting one
376 or more of the following characteristics over a long period of
377 time and to a marked degree, which adversely affects educational
378 performance:

- 379 1. An inability to learn which cannot be
380 explained by intellectual, sensory or health factors;
- 381 2. An inability to build or maintain
382 satisfactory relationships with peers and teachers;
- 383 3. Inappropriate types of behavior or
384 feelings under normal circumstances;
- 385 4. A general pervasive mood of unhappiness or
386 depression; or
- 387 5. A tendency to develop physical symptoms or
388 fears associated with personal or school problems. An
389 establishment furnishing primarily domiciliary care is not within
390 this definition.

391 (xi) "Pediatric skilled nursing facility" means an
392 institution or a distinct part of an institution that is primarily
393 engaged in providing to inpatients skilled nursing care and
394 related services for persons under twenty-one (21) years of age
395 who require medical or nursing care or rehabilitation services for
396 the rehabilitation of injured, disabled or sick persons.

397 (xii) "Long-term care hospital" means a
398 freestanding, Medicare-certified hospital that has an average
399 length of inpatient stay greater than twenty-five (25) days, which
400 is primarily engaged in providing chronic or long-term medical
401 care to patients who do not require more than three (3) hours of
402 rehabilitation or comprehensive rehabilitation per day, and has a
403 transfer agreement with an acute care medical center and a
404 comprehensive medical rehabilitation facility. Long-term care
405 hospitals shall not use rehabilitation, comprehensive medical
406 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
407 nursing home, skilled nursing facility, or sub-acute care facility
408 in association with its name.

409 (xiii) "Comprehensive medical rehabilitation
410 facility" means a hospital or hospital unit that is licensed
411 and/or certified as a comprehensive medical rehabilitation
412 facility which provides specialized programs that are accredited
413 by the Commission on Accreditation of Rehabilitation Facilities
414 and supervised by a physician board certified or board eligible in
415 Physiatry or other doctor of medicine or osteopathy with at least
416 two (2) years of training in the medical direction of a
417 comprehensive rehabilitation program that:

418 1. Includes evaluation and treatment of
419 individuals with physical disabilities;

420 2. Emphasizes education and training of
421 individuals with disabilities;

422 3. Incorporates at least the following core
423 disciplines:

- 424 (i) Physical Therapy;
425 (ii) Occupational Therapy;
426 (iii) Speech and Language Therapy;
427 (iv) Rehabilitation Nursing; and

428 4. Incorporates at least three (3) of the
429 following disciplines:

- 430 (i) Psychology;
431 (ii) Audiology;
432 (iii) Respiratory Therapy;
433 (iv) Therapeutic Recreation;
434 (v) Orthotics;
435 (vi) Prosthetics;
436 (vii) Special Education;
437 (viii) Vocational Rehabilitation;
438 (ix) Psychotherapy;
439 (x) Social Work;
440 (xi) Rehabilitation Engineering.

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

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

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

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

456 (iii) Provides physician services primarily:

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

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

462 (j) "Health service area" means a geographic area of
463 the state designated in the State Health Plan as the area to be
464 used in planning for specified health facilities and services and
465 to be used when considering certificate of need applications to
466 provide health facilities and services.

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

470 (l) "Institutional health services" shall mean health
471 services provided in or through health care facilities and shall
472 include the entities in or through which such services are
473 provided.

474 (m) "Major medical equipment" means medical equipment
475 designed for providing medical or any health related service which
476 costs in excess of One Million Five Hundred Thousand Dollars
477 (\$1,500,000.00). However, this definition shall not be applicable
478 to clinical laboratories if they are determined by the State
479 Department of Health to be independent of any physician's office,
480 hospital or other health care facility or otherwise not so defined
481 by federal or state law, or rules and regulations promulgated
482 thereunder.

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

487 (o) "Offer," when used in connection with health
488 services, means that it has been determined by the State

489 Department of Health that the health care facility is capable of
490 providing specified health services.

491 (p) "Person" means an individual, a trust or estate,
492 partnership, corporation (including associations, joint stock
493 companies and insurance companies), the state or a political
494 subdivision or instrumentality of the state.

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

499 (r) "Secretary" means the Secretary of Health and Human
500 Services, and any officer or employee of the Department of Health
501 and Human Services to whom the authority involved has been
502 delegated.

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

508 (t) "State Health Planning and Development Agency"
509 means the agency of state government designated to perform health
510 planning and resource development programs for the State of
511 Mississippi.

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