

By: Senator(s) Burton

To: Public Health and Welfare

SENATE BILL NO. 2850

1 AN ACT ENTITLED THE "RURAL HEALTH AVAILABILITY ACT" TO
 2 ESTABLISH A PROCEDURE FOR HOSPITALS AND OTHER BUSINESS ENTITIES TO
 3 ENTER INTO COOPERATIVE AGREEMENTS TO ENHANCE HOSPITAL CARE,
 4 PROVIDE COST EFFICIENCIES AND PRESERVE HOSPITAL FACILITIES; TO
 5 AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO ISSUE A CERTIFICATE OF
 6 PUBLIC ADVANTAGE TO APPROVE SUCH COOPERATIVE AGREEMENTS; TO
 7 PROVIDE THAT SUCH COOPERATIVE AGREEMENTS ARE EXEMPT FROM
 8 ANTI-TRUST STATUTES BUT NOT EXEMPT FROM CERTIFICATE OF NEED
 9 STATUTES; TO PROVIDE FOR JUDICIAL REVIEW OF DECISIONS OF THE
 10 DEPARTMENT OF HEALTH; TO PROVIDE IMMUNITY FOR HOSPITAL OFFICERS
 11 FOR ACTING IN GOOD FAITH PURSUANT TO THIS ACT; AND FOR RELATED
 12 PURPOSES.

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

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

16 **SECTION 2. Definitions.** For the purposes of this act, the
 17 following words shall have the meanings ascribed herein, unless
 18 the context otherwise requires:

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

20 (b) "Affected person" with respect to any application
 21 for a certificate of public advantage, means (i) the applicant(s);
 22 (ii) any person residing within the geographic service area of an
 23 applicant; (iii) health care purchasers who reimburse health care
 24 facilities located in the geographic service area of an applicant;
 25 (iv) any other person furnishing goods and services to, or in
 26 competition with, an applicant; and (v) any other person who has
 27 notified the department, in writing, or his interest in
 28 applications for certificates of public advantage and has a direct
 29 economic interest in the decision. Notwithstanding the foregoing,
 30 other than health care purchasers licensed to do business in
 31 Mississippi, persons from other states who would otherwise be
 32 considered "affected persons" are not included unless that other

33 state provides for similar involvement of persons from Mississippi
34 in a similar process in that state.

35 (c) "Board of Health" means the State Board of Health
36 established pursuant to Section 41-3-1.

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

40 (e) "Cooperative agreement" means a contract, business
41 or financial arrangement, or other activities or practices among
42 two or more rural hospitals for the sharing, allocation or
43 referral of patients or the sharing or allocation of personnel,
44 instructional programs, support services and facilities, medical,
45 diagnostic or laboratory facilities, procedures, equipment or
46 other health care services, or the acquisition or merger of assets
47 among or by two or more rural hospitals, and includes agreements
48 to negotiate jointly with respect to price or other competitive
49 terms with suppliers and health care purchasers and agreements to
50 set collective fee schedules with respect to health care
51 purchasers. The term "cooperative agreement" shall include any
52 amendments thereto with respect to which a certificate of public
53 advantage has been issued or applied for or with respect to which
54 a certificate of public advantage is not required, unless the
55 context clearly requires otherwise.

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

58 (g) "Federal and state antitrust laws" means federal
59 and state laws prohibiting monopolies, agreements in restraint of
60 trade or unfair trade practices, including the Federal Sherman Act
61 and Clayton Act, the Federal Trade Commission Act.

62 (h) "Health care purchaser" means a person or
63 organization that purchases health care services on behalf of an
64 identified group of persons, regardless of whether the cost of

65 coverage of services is paid for by the purchaser or by the person
66 receiving coverage or services.

67 (i) "Hospital" shall have the meaning set forth in
68 Section 41-9-3.

69 (j) "Rural area" means an area with a population
70 density of less than 100 individuals per square mile, a
71 municipality or county with a population of less than 7,500
72 individuals, or an area defined by the most recent United States
73 Census as rural.

74 (k) "Rural hospital" means a private or community
75 hospital with at least one but no more than 75 licensed acute-care
76 beds that is located in a rural area.

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

78 (m) "State Health Officer" means the State Health
79 Officer elected by the State Board of Health pursuant to Section
80 41-3-5.

81 The use of a singular term herein shall include the plural of
82 such term and use of a plural term herein shall include the
83 singular of such term unless the context clearly requires another
84 connotation.

85 **SECTION 3. Cooperative Agreements - Certificate of public**

86 **advantage.** (1) A rural hospital and any corporation,
87 partnership, joint venture or other entity all of whose principals
88 are rural hospitals may negotiate and enter into cooperative
89 agreements with other such persons in the state subject to receipt
90 of a certificate of public advantage governing the agreement as
91 provided in this Act.

92 (2) Parties to a cooperative agreement may apply to the
93 department for a certificate of public advantage governing that
94 cooperative agreement. The application must include an executed
95 written copy of the cooperative agreement and describe the nature
96 and scope of the cooperation in the agreement and any
97 consideration passing to any party under the agreement. Within

98 thirty (30) days of receipt of the application, the department may
99 request additional information as may be necessary to complete the
100 application. The applicant has thirty (30) days from the date of
101 the request to submit the additional information. If the
102 applicant fails to submit the requested information within the
103 thirty-day period, or any extension of time granted by the
104 department, the application is deemed withdrawn. The department
105 may require an application fee from the submitting parties
106 sufficient to cover the cost of processing the application.

107 (3) The department shall review the application in
108 accordance with the standards set forth in subsection (4). The
109 department shall give notice of the application to members of the
110 public who reside in the service areas of the applicant hospitals,
111 which may be provided through newspapers of general circulation or
112 public information channels and, if requested by an affected
113 person within thirty (30) days of the giving of such public
114 notice, may hold a public hearing in accordance with the rules
115 adopted by the department. The department shall grant or deny the
116 application within sixty (60) days after receipt of a completed
117 application or from the date of the public hearing, if one is
118 held, and that decision, along with any conditions of approval,
119 must be in writing and must set forth the basis for the decision.
120 The department may establish conditions for approval that are
121 reasonably necessary to ensure that the cooperative agreement and
122 the activities engaged under it are consistent with the intent of
123 this Act and to ensure that the activity is appropriately
124 supervised and regulated by the State. The department shall
125 furnish a copy of the decision to the applicants and any affected
126 persons who have asked in writing to be notified.

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

129 (a) each of the parties to the cooperative agreement is
130 a rural hospital or is a corporation, partnership, joint venture
131 or other entity all of whose principals are rural hospitals.

132 (b) the geographic service area of the rural hospitals
133 who are parties to the agreement do not overlap significantly.

134 (c) the cooperative agreement is likely to result in one
135 or more of the following benefits:

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

138 (ii) Preservation of hospital facilities and
139 health care in rural areas;

140 (iii) Gains in the cost-efficiency of services
141 provided by the hospital involved;

142 (iv) Encouragement of cost-sharing among the
143 hospitals involved;

144 (v) Improvements in the utilization of hospital
145 resources and equipment;

146 (vi) Avoidance or reduction of duplication of
147 hospital resources or expenses, including administrative expenses;

148 or

149 (vii) Improvement in rural hospitals' ability to
150 receive reimbursement or payment for their reasonable fees and
151 charges.

152 (5) The department shall actively monitor and regulate
153 agreements approved under this Act and may request information
154 whenever necessary to ensure that the agreements remain in
155 compliance with the conditions of approval. The department may
156 charge an annual fee to cover the cost of monitoring and
157 regulating these agreements. During the time the certificate is
158 in effect, a report on the activities pursuant to the cooperative
159 agreement must be filed with the department every two years. The
160 department shall review such report in order to determine that the

161 cooperative agreement continues to comply with the terms of the
162 certificate of public advantage.

163 (6) The department shall revoke a certificate of public
164 advantage by giving written notice to each party to a cooperative
165 agreement with respect to which such certificate is being revoked,
166 if it finds that:

167 (a) The cooperative agreement or activities undertaken
168 pursuant to it are not in substantial compliance with the terms of
169 the application or the conditions of approval;

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

172 (c) The department's approval was obtained as a result
173 of intentional material misrepresentation to the department or as
174 the result of coercion, threats or intimidation toward any party
175 to the cooperative agreement.

176 (7) The department shall maintain on file all cooperative
177 agreements for which certificates of public advantage remain in
178 effect. A party to a cooperative agreement who terminates or
179 withdraws from the agreement shall notify the department within
180 fifteen (15) days of the termination or withdrawal. If all
181 parties terminate their participation in the cooperative
182 agreement, the department shall revoke the certificate of public
183 advantage for the agreement.

184 (8) The parties to a cooperative agreement with respect to
185 which a certificate of advantage is in effect must notify the
186 department of any proposed amendment to the cooperative agreement,
187 including an amendment to add an additional party (but excluding
188 an amendment to remove or to reflect the withdrawal of a party),
189 prior to such amendment taking effect. The parties must apply to
190 the department for a certificate of public advantage governing the
191 amendment and the department shall consider and rule on such
192 application in accordance with the procedures applicable to
193 cooperative agreements generally.

194 (9) The department may promulgate rules and regulations in
195 accordance with the Administrative Procedures Law as in effect
196 from time to time to implement the provisions of this Act,
197 including any fees and application costs associated with the
198 monitoring and oversight of cooperative agreements approved under
199 this article.

200 (10) A dispute among the parties to a cooperative agreement
201 concerning its meaning or terms is governed by the principles of
202 contract or other law that is otherwise applicable.

203 **SECTION 4. Judicial review.** Any applicant aggrieved by a
204 decision of the department pursuant to this Act shall be entitled
205 to judicial review thereof in the Circuit Court of Hinds County,
206 First Judicial District. In such review, the decision of the
207 department shall be affirmed unless it is arbitrary, capricious,
208 or it is not in compliance with this Act.

209 **SECTION 5. Immunity.** Any rural hospital, and any
210 corporation, partnership, joint venture or other entity all of
211 whose principals are rural hospitals, and their respective
212 officers, directors, employees, attorneys, consultants or other
213 agents, that negotiate, enter into or conduct business in
214 accordance with a cooperative agreement with respect to which a
215 certificate of public advantage is issued and in effect, or that
216 in good faith participate in discussions or negotiations with a
217 view to entering into a cooperative agreement and applying for a
218 certificate of public advantage, will be immune from civil
219 liability and criminal prosecution to which they might otherwise
220 be subject to state antitrust law as a result of such activity.
221 It is the intent of the Legislature that the state direction,
222 supervision, regulation and control of cooperative agreements
223 pursuant to this Act will likewise provide immunity to the
224 described persons for the described activities under federal
225 antitrust law. Revocation of a certificate of public advantage
226 will not revoke the immunity hereby granted to any person for

227 described activities occurring prior to that person's receipt of
228 notice of the revocation.

229 **SECTION 6. Exemption.** Nothing in this Act exempts hospitals
230 from compliance with the provisions of Section 41-7-171 et seq.
231 concerning certificates of need.

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