

By: Senator(s) Burton, Albritton, Browning,
Butler, Carmichael, Chamberlin, Chaney,
Clarke, Dearing, Harvey, Hyde-Smith, Jackson
(32nd), Jordan, King, Lee (35th), Little,
Mettetal, Morgan, Thomas, Tollison,
Williamson, Posey

To: Public Health and
Welfare

SENATE BILL NO. 2850
(As Passed the Senate)

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 NOT EXEMPT FROM
8 CERTIFICATE OF NEED STATUTES; TO PROVIDE FOR JUDICIAL REVIEW OF
9 DECISIONS OF THE DEPARTMENT OF HEALTH; 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. Definitions.** For the purposes of this act, the
14 following words shall have the meanings ascribed herein, unless
15 the context otherwise requires:

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

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

30 state provides for similar involvement of persons from Mississippi
31 in a similar process in that state.

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

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

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

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

53 (g) "Federal and state antitrust laws" means federal
54 and state laws prohibiting monopolies, agreements in restraint of
55 trade or unfair trade practices, including the Federal Sherman Act
56 and Clayton Act, the Federal Trade Commission Act.

57 (h) "Hospital" shall have the meaning set forth in
58 Section 41-9-3.

59 (i) "Rural area" means an area with a population
60 density of less than one hundred (100) individuals per square
61 mile, a municipality or county with a population of less than

62 seven thousand five hundred (7,500) individuals, or an area
63 defined by the most recent United States Census as rural.

64 (j) "Rural hospital" means a private or community
65 hospital with at least one (1) but no more than seventy-five (75)
66 licensed acute-care beds that is located in a rural area.

67 (k) "State" means the State of Mississippi.

68 (l) "State Health Officer" means the State Health
69 Officer elected by the State Board of Health pursuant to Section
70 41-3-5.

71 The use of a singular term herein shall include the plural of
72 such term and use of a plural term herein shall include the
73 singular of such term unless the context clearly requires another
74 connotation.

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

76 **advantage.** (1) A rural hospital and any corporation,
77 partnership, joint venture or other entity all of whose principals
78 are rural hospitals may negotiate and enter into cooperative
79 agreements with other such persons in the state subject to receipt
80 of a certificate of public advantage governing the agreement as
81 provided in this act.

82 (2) Parties to a cooperative agreement may apply to the
83 department for a certificate of public advantage governing that
84 cooperative agreement. The application must include an executed
85 written copy of the cooperative agreement and describe the nature
86 and scope of the cooperation in the agreement and any
87 consideration passing to any party under the agreement. Within
88 thirty (30) days of receipt of the application, the department may
89 request additional information as may be necessary to complete the
90 application. The applicant has thirty (30) days from the date of
91 the request to submit the additional information. If the
92 applicant fails to submit the requested information within the
93 thirty-day period, or any extension of time granted by the
94 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). 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 and, if requested by an affected person within thirty (30) days of the giving of such public notice, may hold a public hearing in accordance with the rules adopted by the department. 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.

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

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

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

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

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

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

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

(vi) Avoidance or reduction of duplication of hospital resources or expenses, including administrative expenses.

(5) The department shall actively monitor and regulate agreements approved under this act and may request information whenever necessary to ensure that the agreements remain in compliance with the conditions of approval. During the time the certificate is in effect, a report on the activities pursuant to the cooperative agreement must be filed with the department every two (2) years. The department shall review such report in order to determine that the cooperative agreement continues to comply with the terms of the certificate of public advantage.

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

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

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

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

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

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

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

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

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

193 **SECTION 5.** **Exemption.** Nothing in this act exempts hospitals
194 from compliance with the provisions of Section 41-7-171 et seq.
195 concerning certificates of need.

196 **SECTION 6.** This act shall take effect and be in force from
197 and after July 1, 2004.