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To: Public Health and Welfare

SENATE BILL NO. 2850
(As Sent to Governor)

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.** The Legislature finds and declares the following:

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

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

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

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

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

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

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

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

35 (i) The applicant(s);

36 (ii) Any person residing within the geographic
37 service area of an applicant;

38 (iii) Health care purchasers who reimburse health
39 care facilities located in the geographic service area of an
40 applicant;

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

43 (v) Any other person who has notified the
44 department in writing of his interest in applications for
45 certificates of public advantage and has a direct economic
46 interest in the decision.

47 Notwithstanding the foregoing, persons from other states who
48 would otherwise be considered "affected persons" are not included,
49 unless that other state provides for similar involvement of
50 persons from Mississippi in a similar process in that state.

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

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

56 (e) "Cooperative agreement" means a contract, business
57 or financial arrangement, or any other activities or practices
58 among two (2) or more rural hospitals for the sharing, allocation,
59 or referral of patients; the sharing or allocation of personnel,
60 instructional programs, support services and facilities, medical,
61 diagnostic or laboratory facilities, procedures, equipment or
62 other health care services; the acquisition or merger of assets

63 among or by two (2) or more rural hospitals, including agreements
64 to negotiate jointly with respect to price or other competitive
65 terms with suppliers. The term "cooperative agreement" includes
66 any amendments thereto with respect to which a certificate of
67 public advantage has been issued or applied for or with respect to
68 which a certificate of public advantage is not required, unless
69 the context clearly requires otherwise.

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

72 (g) "Hospital" has the meaning set forth in Section
73 41-9-3.

74 (h) "Rural area" means an area with a population
75 density of less than one hundred (100) individuals per square
76 mile; a municipality or county with a population of less than
77 seven thousand five hundred (7,500) individuals; or an area
78 defined by the most recent United States Census as rural.

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

82 (j) "State" means the State of Mississippi.

83 (k) "State Health Officer" means the State Health
84 Officer elected by the State Board of Health under Section 41-3-5.

85 The use of a singular term in this section includes the
86 plural of that term, and the use of a plural term in this section
87 includes the singular of that term, unless the context clearly
88 requires another connotation.

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

95 (2) Parties to a cooperative agreement may apply to the
96 department for a certificate of public advantage governing that
97 cooperative agreement. The application must include an executed
98 written copy of the cooperative agreement and describe the nature
99 and scope of the cooperation in the agreement and any
100 consideration passing to any party under the agreement. Within
101 thirty (30) days of receipt of the application, the department may
102 request additional information as may be necessary to complete the
103 application. The applicant has thirty (30) days from the date of
104 the request to submit the additional information. If the
105 applicant fails to submit the requested information within the
106 thirty-day period, or any extension of time granted by the
107 department, the application is deemed withdrawn. The department
108 may require an application fee from the submitting parties
109 sufficient to cover the cost of processing the application.

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

128 The department shall furnish a copy of the decision to the
129 applicants and any affected persons who have asked in writing to
130 be notified.

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

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

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

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

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

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

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

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

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

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

153 (5) The department shall actively monitor and regulate
154 agreements approved under this act and may request information
155 whenever necessary to ensure that the agreements remain in
156 compliance with the conditions of approval. The department may
157 charge an annual fee to cover the cost of monitoring and
158 regulating these agreements. During the time the certificate is
159 in effect, a report on the activities under the cooperative
160 agreement must be filed with the department every two (2) years.

161 The department shall review the report in order to determine that
162 the cooperative agreement continues to comply with the terms of
163 the certificate of public advantage.

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

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

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

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

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

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

193 application in accordance with the procedures applicable to
194 cooperative agreements generally.

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

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

204 **SECTION 5.** Any applicant aggrieved by a decision of the
205 department under this act shall be entitled to judicial review
206 thereof in the Circuit Court of Hinds County, First Judicial
207 District. In the review, the decision of the department shall be
208 affirmed unless it is arbitrary, capricious, or it is not in
209 compliance with this act.

210 **SECTION 6.** Nothing in this act exempts hospitals from
211 compliance with the provisions of Section 41-7-171 et seq.
212 concerning certificates of need.

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