

By: Representative Flaggs

To: Public Health and Human Services; Appropriations

HOUSE BILL NO. 1231

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT OFFICES OF PRIVATE PHYSICIANS OR DENTISTS THAT
3 SEEK MEDICARE CERTIFICATION OR MEDICAID REIMBURSEMENT AS AN
4 AMBULATORY SURGICAL FACILITY OR FOR AMBULATORY SURGICAL SERVICES
5 SHALL BE SUBJECT TO THE REQUIREMENT FOR A CERTIFICATE OF NEED; AND
6 FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 41-7-173, Mississippi Code of 1972, is
9 amended as follows:

10 41-7-173. For the purposes of Section 41-7-171 et seq., the
11 following words shall have the meanings ascribed herein, unless
12 the context otherwise requires:

13 (a) "Affected person" means (i) the applicant; (ii) a
14 person residing within the geographic area to be served by the
15 applicant's proposal; (iii) a person who regularly uses health
16 care facilities or HMO's located in the geographic area of the
17 proposal which provide similar service to that which is proposed;
18 (iv) health care facilities and HMO's which have, prior to receipt
19 of the application under review, formally indicated an intention
20 to provide service similar to that of the proposal being
21 considered at a future date; (v) third-party payers who reimburse
22 health care facilities located in the geographical area of the
23 proposal; or (vi) any agency that establishes rates for health
24 care services or HMO's located in the geographic area of the
25 proposal.

26 (b) "Certificate of need" means a written order of the
27 State Department of Health setting forth the affirmative finding
28 that a proposal in prescribed application form, sufficiently
29 satisfies the plans, standards and criteria prescribed for such

30 service or other project by Section 41-7-171 et seq., and by rules
31 and regulations promulgated thereunder by the State Department of
32 Health.

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

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

44 (iii) A "capital expenditure" shall include the
45 acquisition, whether by lease, sufferance, gift, devise, legacy,
46 settlement of a trust or other means, of any facility or part
47 thereof, or equipment for a facility, the expenditure for which
48 would have been considered a capital expenditure if acquired by
49 purchase. Transactions which are separated in time but are
50 planned to be undertaken within twelve (12) months of each other
51 and are components of an overall plan for meeting patient care
52 objectives shall, for purposes of this definition, be viewed in
53 their entirety without regard to their timing.

54 (iv) In those instances where a health care
55 facility or other provider of health services proposes to provide
56 a service in which the capital expenditure for major medical
57 equipment or other than major medical equipment or a combination
58 of the two (2) may have been split between separate parties, the
59 total capital expenditure required to provide the proposed service
60 shall be considered in determining the necessity of certificate of
61 need review and in determining the appropriate certificate of need
62 review fee to be paid. The capital expenditure associated with

63 facilities and equipment to provide services in Mississippi shall
64 be considered regardless of where the capital expenditure was
65 made, in state or out of state, and regardless of the domicile of
66 the party making the capital expenditure, in state or out of
67 state.

68 (d) "Change of ownership" includes, but is not limited
69 to, inter vivos gifts, purchases, transfers, lease arrangements,
70 cash and/or stock transactions or other comparable arrangements
71 whenever any person or entity acquires or controls a majority
72 interest of the facility or service. Changes of ownership from
73 partnerships, single proprietorships or corporations to another
74 form of ownership are specifically included. However, "change of
75 ownership" shall not include any inherited interest acquired as a
76 result of a testamentary instrument or under the laws of descent
77 and distribution of the State of Mississippi.

78 (e) "Commencement of construction" means that all of
79 the following have been completed with respect to a proposal or
80 project proposing construction, renovating, remodeling or
81 alteration:

82 (i) A legally binding written contract has been
83 consummated by the proponent and a lawfully licensed contractor to
84 construct and/or complete the intent of the proposal within a
85 specified period of time in accordance with final architectural
86 plans which have been approved by the licensing authority of the
87 State Department of Health;

88 (ii) Any and all permits and/or approvals deemed
89 lawfully necessary by all authorities with responsibility for such
90 have been secured; and

91 (iii) Actual bona fide undertaking of the subject
92 proposal has commenced, and a progress payment of at least one
93 percent (1%) of the total cost price of the contract has been paid
94 to the contractor by the proponent, and the requirements of this

95 paragraph (e) have been certified to in writing by the State
96 Department of Health.

97 Force account expenditures, such as deposits, securities,
98 bonds, et cetera, may, in the discretion of the State Department
99 of Health, be excluded from any or all of the provisions of
100 defined commencement of construction.

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

104 (g) "Develop," when used in connection with health
105 services, means to undertake those activities which, on their
106 completion, will result in the offering of a new institutional
107 health service or the incurring of a financial obligation as
108 defined under applicable state law in relation to the offering of
109 such services.

110 (h) "Health care facility" includes hospitals,
111 psychiatric hospitals, chemical dependency hospitals, skilled
112 nursing facilities, end stage renal disease (ESRD) facilities,
113 including freestanding hemodialysis units, intermediate care
114 facilities, ambulatory surgical facilities, intermediate care
115 facilities for the mentally retarded, home health agencies,
116 psychiatric residential treatment facilities, pediatric skilled
117 nursing facilities, long-term care hospitals, comprehensive
118 medical rehabilitation facilities, including facilities owned or
119 operated by the state or a political subdivision or
120 instrumentality of the state, but does not include Christian
121 Science sanatoriums operated or listed and certified by the First
122 Church of Christ, Scientist, Boston, Massachusetts. This
123 definition shall not apply to facilities for the private practice,
124 either independently or by incorporated medical groups, of
125 physicians, dentists or health care professionals except where
126 such facilities are an integral part of an institutional health
127 service and/or meet one (1) of the definitions in this paragraph

128 (h). The various health care facilities listed in this paragraph
129 shall be defined as follows:

130 (i) "Hospital" means an institution which is
131 primarily engaged in providing to inpatients, by or under the
132 supervision of physicians, diagnostic services and therapeutic
133 services for medical diagnosis, treatment and care of injured,
134 disabled or sick persons, or rehabilitation services for the
135 rehabilitation of injured, disabled or sick persons. Such term
136 does not include psychiatric hospitals.

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

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

146 (iv) "Skilled nursing facility" means an
147 institution or a distinct part of an institution which is
148 primarily engaged in providing to inpatients skilled nursing care
149 and related services for patients who require medical or nursing
150 care or rehabilitation services for the rehabilitation of injured,
151 disabled or sick persons.

152 (v) "End stage renal disease (ESRD) facilities"
153 means kidney disease treatment centers, which includes
154 freestanding hemodialysis units and limited care facilities. The
155 term "limited care facility" generally refers to an
156 off-hospital-premises facility, regardless of whether it is
157 provider or nonprovider operated, which is engaged primarily in
158 furnishing maintenance hemodialysis services to stabilized
159 patients.

160 (vi) "Intermediate care facility" means an
161 institution which provides, on a regular basis, health related
162 care and services to individuals who do not require the degree of
163 care and treatment which a hospital or skilled nursing facility is
164 designed to provide, but who, because of their mental or physical
165 condition, require health related care and services (above the
166 level of room and board).

167 (vii) "Ambulatory surgical facility" means a
168 facility primarily organized or established for the purpose of
169 performing surgery for outpatients and is a separate identifiable
170 legal entity from any other health care facility. Such term does
171 not include the offices of private physicians or dentists, whether
172 for individual or group practice unless the office seeks Medicare
173 certification or Medicaid reimbursement as an ambulatory surgical
174 facility or for ambulatory surgical services, and does not include
175 any abortion facility as defined in Section 41-75-1(e). Offices
176 of private physicians or dentists, whether for individual or group
177 practice, that obtained Medicare certification or Medicaid
178 reimbursement as an ambulatory surgical facility or for ambulatory
179 surgical services before July 1, 2006, shall be exempt from the
180 requirements of Section 41-7-191(1)(d)(xi).

181 (viii) "Intermediate care facility for the
182 mentally retarded" means an intermediate care facility that
183 provides health or rehabilitative services in a planned program of
184 activities to the mentally retarded, also including, but not
185 limited to, cerebral palsy and other conditions covered by the
186 Federal Developmentally Disabled Assistance and Bill of Rights
187 Act, Public Law 94-103.

188 (ix) "Home health agency" means a public or
189 privately owned agency or organization, or a subdivision of such
190 an agency or organization, properly authorized to conduct business
191 in Mississippi, which is primarily engaged in providing to
192 individuals at the written direction of a licensed physician, in

193 the individual's place of residence, skilled nursing services
194 provided by or under the supervision of a registered nurse
195 licensed to practice in Mississippi, and one or more of the
196 following services or items:

- 197 1. Physical, occupational or speech therapy;
- 198 2. Medical social services;
- 199 3. Part-time or intermittent services of a
200 home health aide;
- 201 4. Other services as approved by the
202 licensing agency for home health agencies;
- 203 5. Medical supplies, other than drugs and
204 biologicals, and the use of medical appliances; or
- 205 6. Medical services provided by an intern or
206 resident-in-training at a hospital under a teaching program of
207 such hospital.

208 Further, all skilled nursing services and those services
209 listed in items 1. through 4. of this subparagraph (ix) must be
210 provided directly by the licensed home health agency. For
211 purposes of this subparagraph, "directly" means either through an
212 agency employee or by an arrangement with another individual not
213 defined as a health care facility.

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

217 (x) "Psychiatric residential treatment facility"
218 means any nonhospital establishment with permanent licensed
219 facilities which provides a twenty-four-hour program of care by
220 qualified therapists including, but not limited to, duly licensed
221 mental health professionals, psychiatrists, psychologists,
222 psychotherapists and licensed certified social workers, for
223 emotionally disturbed children and adolescents referred to such
224 facility by a court, local school district or by the Department of
225 Human Services, who are not in an acute phase of illness requiring

226 the services of a psychiatric hospital, and are in need of such
227 restorative treatment services. For purposes of this paragraph,
228 the term "emotionally disturbed" means a condition exhibiting one
229 or more of the following characteristics over a long period of
230 time and to a marked degree, which adversely affects educational
231 performance:

232 1. An inability to learn which cannot be
233 explained by intellectual, sensory or health factors;

234 2. An inability to build or maintain
235 satisfactory relationships with peers and teachers;

236 3. Inappropriate types of behavior or
237 feelings under normal circumstances;

238 4. A general pervasive mood of unhappiness or
239 depression; or

240 5. A tendency to develop physical symptoms or
241 fears associated with personal or school problems. An
242 establishment furnishing primarily domiciliary care is not within
243 this definition.

244 (xi) "Pediatric skilled nursing facility" means an
245 institution or a distinct part of an institution that is primarily
246 engaged in providing to inpatients skilled nursing care and
247 related services for persons under twenty-one (21) years of age
248 who require medical or nursing care or rehabilitation services for
249 the rehabilitation of injured, disabled or sick persons.

250 (xii) "Long-term care hospital" means a
251 freestanding, Medicare-certified hospital that has an average
252 length of inpatient stay greater than twenty-five (25) days, which
253 is primarily engaged in providing chronic or long-term medical
254 care to patients who do not require more than three (3) hours of
255 rehabilitation or comprehensive rehabilitation per day, and has a
256 transfer agreement with an acute care medical center and a
257 comprehensive medical rehabilitation facility. Long-term care
258 hospitals shall not use rehabilitation, comprehensive medical

259 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
260 nursing home, skilled nursing facility, or sub-acute care facility
261 in association with its name.

262 (xiii) "Comprehensive medical rehabilitation
263 facility" means a hospital or hospital unit that is licensed
264 and/or certified as a comprehensive medical rehabilitation
265 facility which provides specialized programs that are accredited
266 by the Commission on Accreditation of Rehabilitation Facilities
267 and supervised by a physician board certified or board eligible in
268 Physiatry or other doctor of medicine or osteopathy with at least
269 two (2) years of training in the medical direction of a
270 comprehensive rehabilitation program that:

271 1. Includes evaluation and treatment of
272 individuals with physical disabilities;

273 2. Emphasizes education and training of
274 individuals with disabilities;

275 3. Incorporates at least the following core
276 disciplines:

277 (i) Physical Therapy;

278 (ii) Occupational Therapy;

279 (iii) Speech and Language Therapy;

280 (iv) Rehabilitation Nursing; and

281 4. Incorporates at least three (3) of the
282 following disciplines:

283 (i) Psychology;

284 (ii) Audiology;

285 (iii) Respiratory Therapy;

286 (iv) Therapeutic Recreation;

287 (v) Orthotics;

288 (vi) Prosthetics;

289 (vii) Special Education;

290 (viii) Vocational Rehabilitation;

291 (ix) Psychotherapy;

292 (x) Social Work;

293 (xi) Rehabilitation Engineering.

294 These specialized programs include, but are not limited to:
295 spinal cord injury programs, head injury programs and infant and
296 early childhood development programs.

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

300 (i) Provides or otherwise makes available to
301 enrolled participants health care services, including
302 substantially the following basic health care services: usual
303 physician services, hospitalization, laboratory, x-ray, emergency
304 and preventive services, and out-of-area coverage;

305 (ii) Is compensated (except for copayments) for
306 the provision of the basic health care services listed in
307 subparagraph (i) of this paragraph to enrolled participants on a
308 predetermined basis; and

309 (iii) Provides physician services primarily:

310 1. Directly through physicians who are either
311 employees or partners of such organization; or

312 2. Through arrangements with individual
313 physicians or one or more groups of physicians (organized on a
314 group practice or individual practice basis).

315 (j) "Health service area" means a geographic area of
316 the state designated in the State Health Plan as the area to be
317 used in planning for specified health facilities and services and
318 to be used when considering certificate of need applications to
319 provide health facilities and services.

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

323 (l) "Institutional health services" shall mean health
324 services provided in or through health care facilities and shall

325 include the entities in or through which such services are
326 provided.

327 (m) "Major medical equipment" means medical equipment
328 designed for providing medical or any health related service which
329 costs in excess of One Million Five Hundred Thousand Dollars
330 (\$1,500,000.00). However, this definition shall not be applicable
331 to clinical laboratories if they are determined by the State
332 Department of Health to be independent of any physician's office,
333 hospital or other health care facility or otherwise not so defined
334 by federal or state law, or rules and regulations promulgated
335 thereunder.

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

340 (o) "Offer," when used in connection with health
341 services, means that it has been determined by the State
342 Department of Health that the health care facility is capable of
343 providing specified health services.

344 (p) "Person" means an individual, a trust or estate,
345 partnership, corporation (including associations, joint stock
346 companies and insurance companies), the state or a political
347 subdivision or instrumentality of the state.

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

352 (r) "Secretary" means the Secretary of Health and Human
353 Services, and any officer or employee of the Department of Health
354 and Human Services to whom the authority involved has been
355 delegated.

356 (s) "State Health Plan" means the sole and official
357 statewide health plan for Mississippi which identifies priority

358 state health needs and establishes standards and criteria for
359 health-related activities which require certificate of need review
360 in compliance with Section 41-7-191.

361 (t) "State Health Planning and Development Agency"
362 means the agency of state government designated to perform health
363 planning and resource development programs for the State of
364 Mississippi.

365 **SECTION 2.** This act shall take effect and be in force from
366 and after July 1, 2006.