

By: Senator(s) Nunnelee, Burton

To: Public Health and Welfare

SENATE BILL NO. 2661

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE DEFINITION OF "AMBULATORY SURGICAL FACILITY" UNDER
3 THE HEALTH CARE CERTIFICATE OF NEED LAW; AND FOR RELATED PURPOSES.

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

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

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

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

23 (b) "Certificate of need" means a written order of the
24 State Department of Health setting forth the affirmative finding
25 that a proposal in prescribed application form, sufficiently
26 satisfies the plans, standards and criteria prescribed for such
27 service or other project by Section 41-7-171 et seq., and by rules

28 and regulations promulgated thereunder by the State Department of
29 Health.

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

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

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

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

61 be considered regardless of where the capital expenditure was
62 made, in state or out of state, and regardless of the domicile of
63 the party making the capital expenditure, in state or out of
64 state.

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

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

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

85 (ii) Any and all permits and/or approvals deemed
86 lawfully necessary by all authorities with responsibility for such
87 have been secured; and

88 (iii) Actual bona fide undertaking of the subject
89 proposal has commenced, and a progress payment of at least one
90 percent (1%) of the total cost price of the contract has been paid
91 to the contractor by the proponent, and the requirements of this
92 paragraph (e) have been certified to in writing by the State
93 Department of Health.

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

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

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

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

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

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

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

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

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

157 (vi) "Intermediate care facility" means an
158 institution which provides, on a regular basis, health related
159 care and services to individuals who do not require the degree of

160 care and treatment which a hospital or skilled nursing facility is
161 designed to provide, but who, because of their mental or physical
162 condition, require health related care and services (above the
163 level of room and board).

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

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

185 (ix) "Home health agency" means a public or
186 privately owned agency or organization, or a subdivision of such
187 an agency or organization, properly authorized to conduct business
188 in Mississippi, which is primarily engaged in providing to
189 individuals at the written direction of a licensed physician, in
190 the individual's place of residence, skilled nursing services
191 provided by or under the supervision of a registered nurse

192 licensed to practice in Mississippi, and one or more of the
193 following services or items:

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

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

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

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

225 the term "emotionally disturbed" means a condition exhibiting one
226 or more of the following characteristics over a long period of
227 time and to a marked degree, which adversely affects educational
228 performance:

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

231 2. An inability to build or maintain
232 satisfactory relationships with peers and teachers;

233 3. Inappropriate types of behavior or
234 feelings under normal circumstances;

235 4. A general pervasive mood of unhappiness or
236 depression; or

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

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

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

257 nursing home, skilled nursing facility, or sub-acute care facility
258 in association with its name.

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

268 1. Includes evaluation and treatment of
269 individuals with physical disabilities;

270 2. Emphasizes education and training of
271 individuals with disabilities;

272 3. Incorporates at least the following core
273 disciplines:

274 (i) Physical Therapy;

275 (ii) Occupational Therapy;

276 (iii) Speech and Language Therapy;

277 (iv) Rehabilitation Nursing; and

278 4. Incorporates at least three (3) of the
279 following disciplines:

280 (i) Psychology;

281 (ii) Audiology;

282 (iii) Respiratory Therapy;

283 (iv) Therapeutic Recreation;

284 (v) Orthotics;

285 (vi) Prosthetics;

286 (vii) Special Education;

287 (viii) Vocational Rehabilitation;

288 (ix) Psychotherapy;

289 (x) Social Work;

290 (xi) Rehabilitation Engineering.

291 These specialized programs include, but are not limited to:
292 spinal cord injury programs, head injury programs and infant and
293 early childhood development programs.

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

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

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

306 (iii) Provides physician services primarily:

307 1. Directly through physicians who are either
308 employees or partners of such organization; or

309 2. Through arrangements with individual
310 physicians or one or more groups of physicians (organized on a
311 group practice or individual practice basis).

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

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

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

322 include the entities in or through which such services are
323 provided.

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

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

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

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

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

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

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

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

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

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