

By: Senator(s) Nunnelee, Burton

To: Public Health and Welfare

SENATE BILL NO. 2675

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF AMBULATORY SURGICAL FACILITY FOR
3 PURPOSES OF CERTIFICATE OF NEED REQUIREMENTS; TO AMEND SECTION
4 41-75-1, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
5 AMBULATORY SURGICAL FACILITY FOR LICENSURE REQUIREMENTS; AND FOR
6 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 below. The various

128 health care facilities listed in this paragraph shall be defined
129 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 such 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, which obtained Medicare certification or Medicaid
178 reimbursement as an ambulatory surgical facility or for ambulatory
179 surgical services prior to 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.** Section 41-75-1, Mississippi Code of 1972, is
366 amended as follows:

367 41-75-1. For the purpose of this chapter:

368 (a) "Ambulatory surgical facility" means a publicly- or
369 privately-owned institution that is primarily organized,
370 constructed, renovated or otherwise established for the purpose of
371 providing elective surgical treatment of "outpatients" whose
372 recovery, under normal and routine circumstances, will not require
373 "inpatient" care. The facility defined in this paragraph does not
374 include the offices of private physicians or dentists, whether
375 practicing individually or in groups unless such office seeks
376 Medicare certification or Medicaid reimbursement as an ambulatory
377 surgical facility or for ambulatory surgical services, but does
378 include organizations or facilities primarily engaged in that
379 outpatient surgery, whether using the name "ambulatory surgical
380 facility" or a similar or different name. That organization or
381 facility, if in any manner considered to be operated or owned by a
382 hospital or a hospital holding, leasing or management company,
383 either for profit or not for profit, is required to comply with
384 all licensing agency ambulatory surgical licensure standards
385 governing a "hospital affiliated" facility as adopted under
386 Section 41-9-1 et seq., provided that the organization or facility
387 does not intend to seek federal certification as an ambulatory
388 surgical facility as provided for at 42 CFR, Parts 405 and 416.
389 If the organization or facility is to be operated or owned by a
390 hospital or a hospital holding, leasing or management company and

391 intends to seek federal certification as an ambulatory facility,
392 then the facility is considered to be "freestanding" and must
393 comply with all licensing agency ambulatory surgical licensure
394 standards governing a "freestanding" facility.

395 If the organization or facility is to be owned or operated by
396 an entity or person other than a hospital or hospital holding,
397 leasing or management company, then the organization or facility
398 must comply with all licensing agency ambulatory surgical facility
399 standards governing a "freestanding" facility.

400 (b) "Hospital affiliated" ambulatory surgical facility
401 means a separate and distinct organized unit of a hospital or a
402 building owned, leased, rented or utilized by a hospital and
403 located in the same county in which the hospital is located, for
404 the primary purpose of performing ambulatory surgery procedures.
405 The facility is not required to be separately licensed under this
406 chapter and may operate under the hospital's license in compliance
407 with all applicable requirements of Section 41-9-1 et seq.

408 (c) "Freestanding" ambulatory surgical facility means a
409 separate and distinct facility or a separate and distinct
410 organized unit of a hospital owned, leased, rented or utilized by
411 a hospital or other persons for the primary purpose of performing
412 ambulatory surgery procedures. The facility must be separately
413 licensed as defined in this section and must comply with all
414 licensing standards promulgated by the licensing agency under this
415 chapter regarding a "freestanding" ambulatory surgical facility.
416 Further, the facility must be a separate, identifiable entity and
417 must be physically, administratively and financially independent
418 and distinct from other operations of any other health facility,
419 and shall maintain a separate organized medical and administrative
420 staff. Furthermore, once licensed as a "freestanding" ambulatory
421 surgical facility, the facility shall not become a component of
422 any other health facility without securing a certificate of need
423 to do that.

424 (d) "Ambulatory surgery" means surgical procedures that
425 are more complex than office procedures performed under local
426 anesthesia, but less complex than major procedures requiring
427 prolonged postoperative monitoring and hospital care to ensure
428 safe recovery and desirable results. General anesthesia is used
429 in most cases. The patient must arrive at the facility and expect
430 to be discharged on the same day. Ambulatory surgery shall only
431 be performed by physicians or dentists licensed to practice in the
432 State of Mississippi.

433 (e) "Abortion" means the use or prescription of any
434 instrument, medicine, drug or any other substances or device to
435 terminate the pregnancy of a woman known to be pregnant with an
436 intention other than to increase the probability of a live birth,
437 to preserve the life or health of the child after live birth or to
438 remove a dead fetus. Abortion procedures after the first
439 trimester shall only be performed at a Level I abortion facility
440 or an ambulatory surgical facility or hospital licensed to perform
441 that service.

442 (f) "Abortion facility" means a facility operating
443 substantially for the purpose of performing abortions and is a
444 separate identifiable legal entity from any other health care
445 facility. Abortions shall only be performed by physicians
446 licensed to practice in the State of Mississippi. The term
447 "abortion facility" includes physicians' offices that are used
448 substantially for the purpose of performing abortions. An
449 abortion facility operates substantially for the purpose of
450 performing abortions if any of the following conditions are met:

451 (i) The abortion facility is a provider for
452 performing ten (10) or more abortion procedures per calendar month
453 during any month of a calendar year, or one hundred (100) or more
454 in a calendar year.

455 (ii) The abortion facility, if operating less than
456 twenty (20) days per calendar month, is a provider for performing

457 ten (10) or more abortion procedures, or performing a number of
458 abortion procedures that would be equivalent to ten (10)
459 procedures per month, if the facility were operating twenty (20)
460 or more days per calendar month, in any month of a calendar year.

461 (iii) The abortion facility holds itself out to
462 the public as an abortion provider by advertising by any public
463 means, such as newspaper, telephone directory, magazine or
464 electronic media, that it performs abortions.

465 (iv) The facility applies to the licensing agency
466 for licensure as an abortion facility.

467 (g) "Licensing agency" means the State Department of
468 Health.

469 (h) "Operating" an abortion facility means that the
470 facility is open for any period of time during a day and has on
471 site at the facility or on call a physician licensed to practice
472 in the State of Mississippi available to provide abortions.

473 An abortion facility may apply to be licensed as a Level I
474 facility or a Level II facility by the licensing agency. Level II
475 abortion facilities shall be required to meet minimum standards
476 for abortion facilities as established by the licensing agency.
477 Level I abortion facilities shall be required to meet minimum
478 standards for abortion facilities and minimum standards for
479 ambulatory surgical facilities as established by the licensing
480 agency.

481 Any abortion facility that begins operation after June 30,
482 1996, shall not be located within fifteen hundred (1500) feet from
483 the property on which any church, school or kindergarten is
484 located. An abortion facility shall not be in violation of this
485 paragraph if it is in compliance with this paragraph on the date
486 it begins operation and the property on which a church, school or
487 kindergarten is located is later within fifteen hundred (1500)
488 feet from the facility.

489 This section shall stand repealed on June 30, 2006.

490 **SECTION 3.** This act shall take effect and be in force from
491 and after July 1, 2006.