

By: Senator(s) Kirby, Burton, Parker

To: Public Health and Welfare; Appropriations

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2408

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,  
2 TO DEFINE "RADIATION THERAPY SERVICES" FOR PURPOSES OF THE HEALTH  
3 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 HMOs located in the geographic area of the  
14 proposal which provide similar service to that which is proposed;  
15 (iv) health care facilities and HMOs 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 HMOs 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 for a single diagnostic, therapeutic, rehabilitative, preventive  
42 or palliative procedure service, or series of such procedures, or



43 which exceeds Five Million Dollars (\$5,000,000.00) for any other  
44 type of expenditure.

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

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



67 the party making the capital expenditure, in state or out of  
68 state.

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

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

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

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



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

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

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

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

111 (h) "Health care facility" includes hospitals,  
112 psychiatric hospitals, chemical dependency hospitals, skilled  
113 nursing facilities, end-stage renal disease (ESRD) facilities,  
114 including freestanding hemodialysis units, intermediate care  
115 facilities, ambulatory surgical facilities, intermediate care  
116 facilities for the mentally retarded, home health agencies,



117 psychiatric residential treatment facilities, pediatric skilled  
118 nursing facilities, long-term care hospitals, comprehensive  
119 medical rehabilitation facilities, including facilities owned or  
120 operated by the state or a political subdivision or  
121 instrumentality of the state, but does not include Christian  
122 Science sanatoriums operated or listed and certified by the First  
123 Church of Christ, Scientist, Boston, Massachusetts. This  
124 definition shall not apply to facilities for the private practice,  
125 either independently or by incorporated medical groups, of  
126 physicians, dentists or health care professionals except where  
127 such facilities are an integral part of an institutional health  
128 service. The various health care facilities listed in this  
129 paragraph 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 persons with mental illness.



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, and does not include any  
173 abortion facility as defined in Section 41-75-1(f).

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

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





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

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

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

210                   (x) "Psychiatric residential treatment facility"  
211 means any nonhospital establishment with permanent licensed  
212 facilities which provides a twenty-four-hour program of care by  
213 qualified therapists, including, but not limited to, duly licensed  
214 mental health professionals, psychiatrists, psychologists,



215 psychotherapists and licensed certified social workers, for  
216 emotionally disturbed children and adolescents referred to such  
217 facility by a court, local school district or by the Department of  
218 Human Services, who are not in an acute phase of illness requiring  
219 the services of a psychiatric hospital, and are in need of such  
220 restorative treatment services. For purposes of this  
221 subparagraph, the term "emotionally disturbed" means a condition  
222 exhibiting one or more of the following characteristics over a  
223 long period of time and to a marked degree, which adversely  
224 affects educational performance:

- 225                   1. An inability to learn which cannot be  
226 explained by intellectual, sensory or health factors;
- 227                   2. An inability to build or maintain  
228 satisfactory relationships with peers and teachers;
- 229                   3. Inappropriate types of behavior or  
230 feelings under normal circumstances;
- 231                   4. A general pervasive mood of unhappiness or  
232 depression; or
- 233                   5. A tendency to develop physical symptoms or  
234 fears associated with personal or school problems. An  
235 establishment furnishing primarily domiciliary care is not within  
236 this definition.

237                   (xi) "Pediatric skilled nursing facility" means an  
238 institution or a distinct part of an institution that is primarily  
239 engaged in providing to inpatients skilled nursing care and



240 related services for persons under twenty-one (21) years of age  
241 who require medical or nursing care or rehabilitation services for  
242 the rehabilitation of injured, disabled or sick persons.

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

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



- 264                   1. Includes evaluation and treatment of  
265 individuals with physical disabilities;
- 266                   2. Emphasizes education and training of  
267 individuals with disabilities;
- 268                   3. Incorporates at least the following core  
269 disciplines:
- 270                   (i) Physical Therapy;
- 271                   (ii) Occupational Therapy;
- 272                   (iii) Speech and Language Therapy;
- 273                   (iv) Rehabilitation Nursing; and
- 274                   4. Incorporates at least three (3) of the  
275 following disciplines:
- 276                   (i) Psychology;
- 277                   (ii) Audiology;
- 278                   (iii) Respiratory Therapy;
- 279                   (iv) Therapeutic Recreation;
- 280                   (v) Orthotics;
- 281                   (vi) Prosthetics;
- 282                   (vii) Special Education;
- 283                   (viii) Vocational Rehabilitation;
- 284                   (ix) Psychotherapy;
- 285                   (x) Social Work;
- 286                   (xi) Rehabilitation Engineering.



287           These specialized programs include, but are not limited to:  
288 spinal cord injury programs, head injury programs and infant and  
289 early childhood development programs.

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

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

298                   (ii) Is compensated (except for copayments) for  
299 the provision of the basic health care services listed in  
300 subparagraph (i) of this paragraph to enrolled participants on a  
301 predetermined basis; and

302                   (iii) Provides physician services primarily:

303                           1. Directly through physicians who are either  
304 employees or partners of such organization; or

305                           2. Through arrangements with individual  
306 physicians or one or more groups of physicians (organized on a  
307 group practice or individual practice basis).

308           (j) "Health service area" means a geographic area of  
309 the state designated in the State Health Plan as the area to be  
310 used in planning for specified health facilities and services and



311 to be used when considering certificate of need applications to  
312 provide health facilities and services.

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

316 (l) "Institutional health services" shall mean health  
317 services provided in or through health care facilities and shall  
318 include the entities in or through which such services are  
319 provided.

320 (m) "Major medical equipment" means medical equipment  
321 designed for providing medical or any health-related service which  
322 costs in excess of One Million Five Hundred Thousand Dollars  
323 (\$1,500,000.00). However, this definition shall not be applicable  
324 to clinical laboratories if they are determined by the State  
325 Department of Health to be independent of any physician's office,  
326 hospital or other health care facility or otherwise not so defined  
327 by federal or state law, or rules and regulations promulgated  
328 thereunder.

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

333 (o) "Offer," when used in connection with health  
334 services, means that it has been determined by the State



335 Department of Health that the health care facility is capable of  
336 providing specified health services.

337 (p) "Person" means an individual, a trust or estate,  
338 partnership, corporation (including associations, joint-stock  
339 companies and insurance companies), the state or a political  
340 subdivision or instrumentality of the state.

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

345 (r) "Radiation therapy services" means the treatment of  
346 cancer and other diseases using ionizing radiation of either high  
347 energy photons (x-rays or gamma rays) or charged particles  
348 (electrons, protons or heavy nuclei). However, for purposes of a  
349 certificate of need, radiation therapy services shall not include  
350 low energy, superficial, external beam x-ray treatment of  
351 superficial skin lesions.

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

356 ( \* \* \*t) "State Health Plan" means the sole and  
357 official statewide health plan for Mississippi which identifies  
358 priority state health needs and establishes standards and criteria



359 for health-related activities which require certificate of need  
360 review in compliance with Section 41-7-191.

361 ( \* \* \*u) "State Health Planning and Development  
362 Agency" means the agency of state government designated to perform  
363 health 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, 2014.

