

By: Representative Eubanks

To: Public Health and Human
Services; Revenue and
Expenditure General Bills

HOUSE BILL NO. 1102

1 AN ACT TO CREATE THE "WHOLE WOMEN'S HEALTHCARE FUNDING ACT";
2 TO PROVIDE FOR LEGISLATIVE FINDINGS; TO PROVIDE DEFINITIONS; TO
3 PROVIDE THE PRIORITY THAT PUBLIC FUNDS EXPENDED FOR FAMILY
4 PLANNING SERVICES ARE TO BE DISTRIBUTED BY THE STATE DEPARTMENT OF
5 HEALTH; TO AUTHORIZE ENFORCEMENT OF THIS ACT BY THE ATTORNEY
6 GENERAL AND ANY ENTITY THAT RECEIVES PUBLIC FUNDS; TO AUTHORIZE
7 THE LEGISLATURE TO INTERVENE IF THE CONSTITUTIONALITY OF THIS ACT
8 IS CHALLENGED; TO PROVIDE FOR THE REVISION OF APPROPRIATE FUNDS
9 UPON THE EFFECTIVE DATE OF THIS ACT; TO BRING FORWARD SECTIONS
10 41-41-91, 41-41-97, 41-41-99 AND 41-75-1, MISSISSIPPI CODE OF
11 1972, WHICH PROHIBIT PUBLIC FUNDS TO BE USED TO PROVIDE ABORTIONS,
12 FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** This act shall be known and may be cited as the
15 "Whole Women's Healthcare Funding Act."

16 **SECTION 2.** (1) The Legislature finds that limited federal
17 and state public funding exists for family planning and preventive
18 health services for women generally, and for maternal and fetal
19 patients in particular. Fiscal constraints mandate that the state
20 allocate available funding efficiently. The principal means by
21 which the state may fulfill its duty to steward these funds is to
22 ensure that funds are distributed by priority to the most
23 effective point-of-service health care providers.



24 (2) The Legislature further finds that public and private
25 providers of primary and preventive care use public funds more
26 effectively than providers of health care services that are
27 specialized to particular medical services or discrete patient
28 populations. Consequently, the Legislature intends, through the
29 policies established in this act, to prioritize the distribution
30 and utilization of public funds for family planning, reproductive
31 health care and maternal and fetal care to such public and private
32 primary and preventive care providers. The prioritization of
33 public health care funding to primary and preventive care also
34 furthers sound health care policy. Individuals who have a primary
35 care clinician are more likely to access health care services,
36 leading to more favorable long-term outcomes. Health care costs
37 are lowered when primary and preventive care is provided by such
38 primary care clinicians in a setting that addresses the whole
39 person by emphasizing counseling, screening and early detection of
40 leading causes of morbidity and mortality, which includes
41 diabetes, hypertension, obesity, cardiovascular and renal
42 diseases, and asthma. Indirect costs such as lost worker
43 productivity and employer health care are also reduced. Most
44 importantly, individual citizens will lead longer, healthier and
45 happier lives as a result of having less fragmented health care.

46 (3) The Legislature further finds that the public policy of
47 this state is to ensure delivery of comprehensive preconception
48 and prenatal care for maternal and fetal patients in order to



49 reduce maternal and fetal morbidity and mortality. According to
50 the United States Centers for Disease Control, comprehensive
51 preconception and prenatal care includes encouraging women to stop
52 smoking, refrain from using alcohol and other drugs, eat a healthy
53 diet, take folic acid supplements, maintain a healthy weight,
54 control high blood pressure and diabetes, and reduce exposure to
55 workplace and environmental hazards. In addition, screening and
56 providing services to prevent intimate partner violence and
57 infections such as HIV, sexually transmitted infections and viral
58 hepatitis help to improve the health of the mother and the baby.
59 Delivery of these critical services is best accomplished through a
60 single point-of-service provider such as a primary care provider,
61 and directed by a primary care clinician who has knowledge of the
62 patient's medical history and personal, familial and environmental
63 health factors. Medical intervention models that emphasize the
64 provision of services to discrete patient sub-populations, such as
65 women of child-bearing age, to address discrete patient conditions
66 or provide particular therapies conflict with the utilization of
67 public funding to maximize effective delivery of holistic prenatal
68 and maternal health care.

69 (4) Federal law and the laws of the State of Mississippi
70 provide that nontherapeutic or elective abortion shall not be
71 subsidized with public funds. Moreover, it is also the public
72 policy of this state that public funds shall not be provided for
73 the direct or indirect costs, such as overhead, rent and



74 utilities, of nontherapeutic abortion procedures by providing
75 funds to state contractors or grantees that regularly provide such
76 procedures.

77 **SECTION 3.** The following terms, when used in this act,
78 unless a different meaning is plainly required by the context,
79 shall have the following meanings:

80 (a) "Federally Qualified Abortion" means an abortion
81 qualified for federal matching funds under the Medicaid program.

82 (b) "Public Funds" means state funds from whatever source,
83 including without limitation state general revenue funds, state
84 special account and limited purpose grants or loans and federal
85 funds administered by state agencies provided pursuant to federal
86 law.

87 (c) "Federally Qualified Health Center" means a health care
88 provider that is eligible to receive federal funds.

89 (d) "Rural Health Clinic" means a health care provider that
90 is eligible to receive federal funds.

91 (e) "Hospital" means a primary or tertiary care facility
92 licensed under the state laws of Mississippi.

93 (f) "Department" means the State Department of Health.

94 **SECTION 4.** (1) Subject to any applicable requirements of
95 federal statutes, rules, regulations or guidelines, any
96 expenditures or grants of public funds for family planning
97 services by the state by and through the department shall be made
98 in the following order of priority:



- 99 (a) To public entities;
- 100 (b) To nonpublic hospitals and federally qualified
101 health centers;
- 102 (c) To rural health clinics;
- 103 (d) To nonpublic health providers that have as their
104 primary purpose the federal primary health care services;
- 105 (e) To nonpublic health providers that do not have as
106 their primary purpose the federal primary health care services.

107 (2) The department shall not enter into a contract with, or
108 make a grant to, any entity that performs nonfederally qualified
109 abortions or maintains or operates a facility where nonfederally
110 qualified abortions are performed.

111 **SECTION 5.** (1) The Attorney General shall have the
112 authority to bring an action in law or equity to enforce the
113 provisions of this act, and relief shall be available in
114 appropriate circumstances including recoupment and declaratory and
115 injunctive relief, including without limitation suspension or
116 debarment.

117 (2) Any entity eligible to receive public funds shall
118 possess standing to bring any action that the Attorney General has
119 authority to bring under the provisions of subsection (1) of this
120 section, and shall in appropriate circumstances be entitled to the
121 same relief, if an expenditure or grant of public funds made in
122 violation of this act has resulted in the reduction of public
123 funds available to that entity. Any award of monetary relief



124 shall be made to the appropriate public officer for deposit into
125 one or more accounts maintained by the state for public funds.

126 (3) In an action brought under subsection (2) of this
127 section, a prevailing plaintiff shall be entitled to an award of
128 reasonable attorney's fees and costs.

129 **SECTION 6.** The Legislature, through one or more sponsors of
130 this act duly appointed by resolution of their respective chamber,
131 may intervene as a matter of right in any case in which the
132 constitutionality of this act is challenged.

133 **SECTION 7.** It is the intent of the Legislature that every
134 provision of this act shall operate with equal force and shall be
135 severable one from the other, and that in the event that any
136 provision of this act shall be held invalid or unenforceable by a
137 court of competent jurisdiction, the provision shall be severed
138 with the other provisions remaining fully enforceable.

139 **SECTION 8.** Any appropriation of public funds made by the
140 department in derogation of the provisions of Section 4 of this
141 act shall be null and void as of July 1, 2016, and the funds
142 allocated under the appropriations shall be transferred to the
143 eligible entities.

144 **SECTION 9.** Section 41-41-91, Mississippi Code of 1972, is
145 brought forward as follows:

146 41-41-91. Notwithstanding any other provision of law to the
147 contrary, no public funds that are made available to any
148 institution, board, commission, department, agency, official, or



149 employee of the State of Mississippi, or of any local political
150 subdivision of the state, whether those funds are made available
151 by the government of the United States, the State of Mississippi,
152 or a local governmental subdivision, or from any other public
153 source, shall be used in any way for, to assist in, or to provide
154 facilities for abortion, except:

155 (a) When the abortion is medically necessary to prevent
156 the death of the mother; or

157 (b) When the abortion is being sought to terminate a
158 pregnancy resulting from an alleged act of rape or incest; or

159 (c) When there is a fetal malformation that is
160 incompatible with the baby being born alive.

161 **SECTION 10.** Section 41-41-97, Mississippi Code of 1972, is
162 brought forward as follows:

163 41-41-97. **Legislative findings and purposes.** (1) The
164 Legislature of the State of Mississippi finds that under Section
165 1303 of the federal Patient Protection and Affordable Care Act,
166 states are explicitly permitted to pass laws prohibiting qualified
167 health plans offered through an exchange in their state from
168 offering abortion coverage.

169 (2) It is the purpose of Sections 41-41-95 through 41-41-99
170 to affirmatively opt out of allowing qualified health plans that
171 cover abortions to participate in exchanges within the State of
172 Mississippi.



173 **SECTION 11.** Section 41-41-99, Mississippi Code of 1972, is
174 brought forward as follows:

175 41-41-99. **Opt-Out.** (1) No abortion coverage may be
176 provided by a qualified health plan offered through an exchange
177 created pursuant to the federal Patient Protection and Affordable
178 Care Act within the State of Mississippi.

179 (2) This limitation shall not apply to an abortion performed
180 (a) when the life of the mother is endangered by a physical
181 disorder, physical illness or physical injury, including a
182 life-endangering physical condition caused by or arising from the
183 pregnancy itself, or (b) when the pregnancy is the result of an
184 alleged act of rape or incest. The physician is required to
185 maintain sufficient documentation in the medical record that
186 supports the medical necessity for the abortion for one (1) of the
187 reasons outlined in this subsection (2).

188 **SECTION 12.** Section 41-75-1, Mississippi Code of 1972, is
189 brought forward as follows:

190 41-75-1. For the purpose of this chapter:

191 (a) "Ambulatory surgical facility" means a publicly or
192 privately owned institution that is primarily organized,
193 constructed, renovated or otherwise established for the purpose of
194 providing elective surgical treatment of "outpatients" whose
195 recovery, under normal and routine circumstances, will not require
196 "inpatient" care. The facility defined in this paragraph does not
197 include the offices of private physicians or dentists, whether



198 practicing individually or in groups, but does include
199 organizations or facilities primarily engaged in that outpatient
200 surgery, whether using the name "ambulatory surgical facility" or
201 a similar or different name. That organization or facility, if in
202 any manner considered to be operated or owned by a hospital or a
203 hospital holding, leasing or management company, either for profit
204 or not for profit, is required to comply with all licensing agency
205 ambulatory surgical licensure standards governing a "hospital
206 affiliated" facility as adopted under Section 41-9-1 et seq.,
207 provided that the organization or facility does not intend to seek
208 federal certification as an ambulatory surgical facility as
209 provided for at 42 CFR, Parts 405 and 416. If the organization or
210 facility is to be operated or owned by a hospital or a hospital
211 holding, leasing or management company and intends to seek federal
212 certification as an ambulatory facility, then the facility is
213 considered to be "freestanding" and must comply with all licensing
214 agency ambulatory surgical licensure standards governing a
215 "freestanding" facility.

216 If the organization or facility is to be owned or operated by
217 an entity or person other than a hospital or hospital holding,
218 leasing or management company, then the organization or facility
219 must comply with all licensing agency ambulatory surgical facility
220 standards governing a "freestanding" facility.

221 (b) "Hospital affiliated" ambulatory surgical facility
222 means a separate and distinct organized unit of a hospital or a



223 building owned, leased, rented or utilized by a hospital and
224 located in the same county in which the hospital is located, for
225 the primary purpose of performing ambulatory surgery procedures.
226 The facility is not required to be separately licensed under this
227 chapter and may operate under the hospital's license in compliance
228 with all applicable requirements of Section 41-9-1 et seq.

229 (c) "Freestanding" ambulatory surgical facility means a
230 separate and distinct facility or a separate and distinct
231 organized unit of a hospital owned, leased, rented or utilized by
232 a hospital or other persons for the primary purpose of performing
233 ambulatory surgery procedures. The facility must be separately
234 licensed as defined in this section and must comply with all
235 licensing standards promulgated by the licensing agency under this
236 chapter regarding a "freestanding" ambulatory surgical facility.
237 Further, the facility must be a separate, identifiable entity and
238 must be physically, administratively and financially independent
239 and distinct from other operations of any other health facility,
240 and shall maintain a separate organized medical and administrative
241 staff. Furthermore, once licensed as a "freestanding" ambulatory
242 surgical facility, the facility shall not become a component of
243 any other health facility without securing a certificate of need
244 to do that.

245 (d) "Ambulatory surgery" means surgical procedures that
246 are more complex than office procedures performed under local
247 anesthesia, but less complex than major procedures requiring



248 prolonged postoperative monitoring and hospital care to ensure
249 safe recovery and desirable results. General anesthesia is used
250 in most cases. The patient must arrive at the facility and expect
251 to be discharged on the same day. Ambulatory surgery shall only
252 be performed by physicians or dentists licensed to practice in the
253 State of Mississippi.

254 (e) "Abortion" means the use or prescription of any
255 instrument, medicine, drug or any other substances or device to
256 terminate the pregnancy of a woman known to be pregnant with an
257 intention other than to increase the probability of a live birth,
258 to preserve the life or health of the child after live birth or to
259 remove a dead fetus. Abortion procedures after the first
260 trimester shall only be performed at a Level I abortion facility
261 or an ambulatory surgical facility or hospital licensed to perform
262 that service.

263 (f) "Abortion facility" means a facility operating
264 substantially for the purpose of performing abortions and is a
265 separate identifiable legal entity from any other health care
266 facility. Abortions shall only be performed by physicians
267 licensed to practice in the State of Mississippi. All physicians
268 associated with the abortion facility must have admitting
269 privileges at a local hospital and staff privileges to replace
270 local hospital on-staff physicians. All physicians associated
271 with an abortion facility must be board certified or eligible in
272 obstetrics and gynecology, and a staff member trained in CPR shall



273 always be present at the abortion facility when it is open. The
274 term "abortion facility" includes physicians' offices that are
275 used substantially for the purpose of performing abortions. An
276 abortion facility operates substantially for the purpose of
277 performing abortions if any of the following conditions are met:

278 (i) The abortion facility is a provider for
279 performing ten (10) or more abortion procedures per calendar month
280 during any month of a calendar year, or one hundred (100) or more
281 in a calendar year.

282 (ii) The abortion facility, if operating less than
283 twenty (20) days per calendar month, is a provider for performing
284 ten (10) or more abortion procedures, or performing a number of
285 abortion procedures that would be equivalent to ten (10)
286 procedures per month, if the facility were operating twenty (20)
287 or more days per calendar month, in any month of a calendar year.

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

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

294 (g) "Licensing agency" means the State Department of
295 Health.

296 (h) "Operating" an abortion facility means that the
297 facility is open for any period of time during a day and has on



298 site at the facility or on call a physician licensed to practice
299 in the State of Mississippi available to provide abortions.

300 An abortion facility may apply to be licensed as a Level I
301 facility or a Level II facility by the licensing agency. Level II
302 abortion facilities shall be required to meet minimum standards
303 for abortion facilities as established by the licensing agency.
304 Level I abortion facilities shall be required to meet minimum
305 standards for abortion facilities and minimum standards for
306 ambulatory surgical facilities as established by the licensing
307 agency.

308 Any abortion facility that begins operation after June 30,
309 1996, shall not be located within fifteen hundred (1,500) feet
310 from the property on which any church, school or kindergarten is
311 located. An abortion facility shall not be in violation of this
312 paragraph if it is in compliance with this paragraph on the date
313 it begins operation and the property on which a church, school or
314 kindergarten is located is later within fifteen hundred (1,500)
315 feet from the facility.

316 **SECTION 13.** This act shall take effect and be in force from
317 and after July 1, 2016.

