

By: Representative Baker

To: Public Health and Human Services

HOUSE BILL NO. 362

1 AN ACT TO REPEAL SECTIONS 41-7-171 THROUGH 41-7-209,  
 2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI HEALTH CARE  
 3 CERTIFICATE OF NEED LAW OF 1979; TO AMEND SECTIONS 23-15-625,  
 4 25-41-7, 35-1-19, 41-3-15, 41-4-18, 41-9-11, 41-9-23, 41-9-68,  
 5 41-9-209, 41-9-210, 41-71-7, 41-71-19, 41-73-5, 41-75-1, 41-75-5,  
 6 41-75-9, 41-75-25, 41-77-1, 41-77-5, 41-77-21, 41-77-23, 41-77-25,  
 7 41-95-3, 43-11-9, 43-11-19 AND 57-117-5, MISSISSIPPI CODE OF 1972,  
 8 AND TO REPEAL SECTION 41-9-311, MISSISSIPPI CODE OF 1972, TO  
 9 CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Sections 41-7-171, 41-7-173, 41-7-175, 41-7-183,  
 12 41-7-185, 41-7-187, 41-7-188, 41-7-189, 41-7-190, 41-7-191,  
 13 41-7-193, 41-7-195, 41-7-197, 41-7-201, 41-7-202, 41-7-205,  
 14 41-7-207 and 41-7-209, Mississippi Code of 1972, which are the  
 15 Mississippi Health Care Certificate of Need Law of 1979, are  
 16 repealed.

17 **SECTION 2.** Section 23-15-625, Mississippi Code of 1972, is  
 18 amended as follows:

19 23-15-625. (1) The registrar shall be responsible for  
 20 providing applications for absentee voting as provided in this  
 21 section. At least sixty (60) days prior to any election in which



22 absentee voting is provided for by law, the registrar shall  
23 provide a sufficient number of applications. In the event a  
24 special election is called and set at a date which makes it  
25 impractical or impossible to prepare applications for absent  
26 elector's ballot sixty (60) days prior to the election, the  
27 registrar shall provide applications as soon as practicable after  
28 the election is called. The registrar shall fill in the date of  
29 the particular election on the application for which the  
30 application will be used.

31 (2) The registrar shall be authorized to disburse  
32 applications for absentee ballots to any qualified elector within  
33 the county where he serves. Any person who presents to the  
34 registrar an oral or written request for an absentee ballot  
35 application for a voter entitled to vote absentee by mail, other  
36 than the elector who seeks to vote by absentee ballot, shall, in  
37 the presence of the registrar, sign the application and print on  
38 the application his or her name and address and the name of the  
39 elector for whom the application is being requested in the place  
40 provided for on the application for that purpose. However, if for  
41 any reason such person is unable to write the information  
42 required, then the registrar shall write the information on a  
43 printed form which has been prescribed by the Secretary of State.  
44 The form shall provide a place for such person to place his mark  
45 after the form has been filled out by the registrar.



46 (3) It shall be unlawful for any person to solicit absentee  
47 ballot applications or absentee ballots for persons staying in any  
48 skilled nursing facility \* \* \*. This prohibition shall not apply  
49 to:

50 (a) A family member of the person staying in the  
51 skilled nursing facility; or

52 (b) A person designated by the person for whom the  
53 absentee ballot application or absentee ballot is sought, the  
54 registrar or the deputy registrar.

55 As used in this subsection, "family member" means a spouse,  
56 parent, grandparent, sibling, adult child, grandchild or legal  
57 guardian.

58 (4) The registrar in the county wherein a voter is qualified  
59 to vote upon receiving the envelope containing the absentee  
60 ballots shall keep an accurate list of all persons preparing such  
61 ballots, which list shall be kept in a conspicuous place  
62 accessible to the public near the entrance to his office. The  
63 registrar shall also furnish to each precinct manager a list of  
64 the names of all persons in each respective precinct voting  
65 absentee ballots to be posted in a conspicuous place at the  
66 polling place for public notice. The application on file with the  
67 registrar and the envelopes containing the ballots shall be kept  
68 by the registrar and deposited in the proper precinct ballot boxes  
69 before such boxes are delivered to the election commissioners or  
70 managers. At the time such boxes are delivered to the election



71 commissioners or managers, the registrar shall also turn over a  
72 list of all such persons who have voted and whose ballots are in  
73 the box.

74 (5) The registrar shall also be authorized to mail one (1)  
75 application to any qualified elector of the county for use in a  
76 particular election.

77 (6) The registrar shall process all applications for  
78 absentee ballots by using the Statewide Election Management  
79 System. The registrar shall account for all absentee ballots  
80 delivered to and received from qualified voters by processing such  
81 ballots using the Statewide Election Management System.

82 **SECTION 3.** Section 35-1-19, Mississippi Code of 1972, is  
83 amended as follows:

84 35-1-19. There is \* \* \* authorized to be established by the  
85 State Veterans Affairs Board, the Mississippi State Veterans Home  
86 on a site to be determined by the State Veterans Affairs Board,  
87 with the approval of the Bureau of Building, Grounds and Real  
88 Property Management of the \* \* \* Department of Finance and  
89 Administration, when funds are made available for such purpose by  
90 any agency of the federal government or other sources. The object  
91 and purpose of the establishment of the Mississippi State Veterans  
92 Home shall be to provide domiciliary care and other related  
93 services for eligible veterans of the State of Mississippi.

94 One or more additional veterans homes or domiciliaries are  
95 hereby authorized to be established by the State Veterans Affairs



96 Board on sites in northern, central or southern Mississippi, to be  
97 determined by the State Veterans Affairs Board, with the approval  
98 of the Department of Finance and Administration, when funds are  
99 made available for such purpose by any agency of the federal  
100 government or other sources. The Veterans Affairs Board shall  
101 give the three (3) regions, northern, southern and central  
102 priority as to where the veterans home shall be located, with the  
103 northern region having first priority, the southern region having  
104 the next level priority and the central region being third in  
105 order of priority. The object and purpose of the establishment of  
106 such additional homes or domiciliaries shall be to provide  
107 domiciliary care and other related services for eligible veterans  
108 of the State of Mississippi. \* \* \*

109 **SECTION 4.** Section 25-41-7, Mississippi Code of 1972, is  
110 amended as follows:

111 25-41-7. (1) Any public body may enter into executive  
112 session for the transaction of public business; however, all  
113 meetings of any public body shall commence as an open meeting, and  
114 an affirmative vote of three-fifths (3/5) of all members present  
115 shall be required to declare an executive session.

116 (2) The procedure to be followed by any public body in  
117 declaring an executive session shall be as follows: Any member  
118 shall have the right to request by motion a closed determination  
119 upon the issue of whether or not to declare an executive session.  
120 The motion, by majority vote, shall require the meeting to be



121 closed for a preliminary determination of the necessity for  
122 executive session. No other business shall be transacted until  
123 the discussion of the nature of the matter requiring executive  
124 session has been completed and a vote, as required in subsection  
125 (1) hereof, has been taken on the issue.

126 (3) An executive session shall be limited to matters allowed  
127 to be exempted from open meetings by subsection (4) of this  
128 section. The reason for holding an executive session shall be  
129 stated in an open meeting, and the reason so stated shall be  
130 recorded in the minutes of the meeting. Nothing in this section  
131 shall be construed to require that any meeting be closed to the  
132 public, nor shall any executive session be used to circumvent or  
133 to defeat the purposes of this chapter.

134 (4) A public body may hold an executive session pursuant to  
135 this section for one or more of the following reasons:

136 (a) Transaction of business and discussion of personnel  
137 matters relating to the job performance, character, professional  
138 competence, or physical or mental health of a person holding a  
139 specific position, or matters relating to the terms of any  
140 potential or current employment or services agreement with any  
141 physicians or other employees of public hospitals, including any  
142 discussion of any person applying for medical staff privileges or  
143 membership with a public hospital.

144 (b) Strategy sessions or negotiations with respect to  
145 prospective litigation, litigation or issuance of an appealable



146 order when an open meeting would have a detrimental effect on the  
147 litigating position of the public body.

148 (c) Transaction of business and discussion regarding  
149 the report, development or course of action regarding security  
150 personnel, plans or devices.

151 (d) Investigative proceedings by any public body  
152 regarding allegations of misconduct or violation of law.

153 (e) Any body of the Legislature which is meeting on  
154 matters within the jurisdiction of that body.

155 (f) Cases of extraordinary emergency which would pose  
156 immediate or irrevocable harm or damage to persons or property, or  
157 both, within the jurisdiction of the public body.

158 (g) Transaction of business and discussion regarding  
159 the prospective purchase, sale or leasing of lands.

160 (h) Discussions between a school board and individual  
161 students who attend a school within the jurisdiction of the school  
162 board or the parents or teachers of the students regarding  
163 problems of the students or their parents or teachers.

164 (i) Transaction of business and discussion concerning  
165 the preparation of tests for admission to practice in recognized  
166 professions.

167 (j) Transaction of business and discussions or  
168 negotiations regarding the location, relocation or expansion of a  
169 business, medical service or an industry.



170           (k) Transaction of business and discussions regarding  
171 employment or job performance of a person in a specific position  
172 or termination of an employee holding a specific position. The  
173 exemption provided by this paragraph includes transaction of  
174 business and discussion in executive session by the board of  
175 trustees of a public hospital regarding any employee or medical  
176 staff member or applicant for medical staff privileges and any  
177 such individual's credentialing, health, performance, salary,  
178 raises or disciplinary action. The exemption provided by this  
179 paragraph includes the right to enter into executive session  
180 concerning a line item in a budget which might affect the  
181 termination of an employee or employees. All other budget items  
182 shall be considered in open meetings and final budgetary adoption  
183 shall not be taken in executive session.

184           (l) Discussions regarding material or data exempt from  
185 the Mississippi Public Records Act of 1983 pursuant to Section  
186 25-11-121.

187           (m) Transaction of business and discussion regarding  
188 prospective strategic business decisions of public hospitals,  
189 including without limitation, decisions to open a new service  
190 line \* \* \* or implement capital improvements \* \* \*.

191           (n) Transaction of business of the boards of trustees  
192 of public hospitals that would require discussion of any  
193 identifiable patient information, including without limitation,





194 patient complaints, patients' accounts, patients receiving charity  
195 care, or treatment that could be identified to a patient.

196 (5) The total vote on the question of entering into an  
197 executive session shall be recorded and spread upon the minutes of  
198 the public body.

199 (6) Any vote whereby an executive session is declared shall  
200 be applicable only to that particular meeting on that particular  
201 day.

202 **SECTION 5.** Section 41-3-15, Mississippi Code of 1972, is  
203 amended as follows:

204 41-3-15. (1) (a) There shall be a State Department of  
205 Health.

206 (b) The State Board of Health shall have the following  
207 powers and duties:

208 (i) To formulate the policy of the State  
209 Department of Health regarding public health matters within the  
210 jurisdiction of the department;

211 (ii) To adopt, modify, repeal and promulgate,  
212 after due notice and hearing, and enforce rules and regulations  
213 implementing or effectuating the powers and duties of the  
214 department under any and all statutes within the department's  
215 jurisdiction, and as the board may deem necessary;

216 (iii) To apply for, receive, accept and expend any  
217 federal or state funds or contributions, gifts, trusts, devises,



218 bequests, grants, endowments or funds from any other source or  
219 transfers of property of any kind;

220           (iv) To enter into, and to authorize the executive  
221 officer to execute contracts, grants and cooperative agreements  
222 with any federal or state agency or subdivision thereof, or any  
223 public or private institution located inside or outside the State  
224 of Mississippi, or any person, corporation or association in  
225 connection with carrying out the provisions of this chapter, if it  
226 finds those actions to be in the public interest and the contracts  
227 or agreements do not have a financial cost that exceeds the  
228 amounts appropriated for those purposes by the Legislature;

229           (v) To appoint, upon recommendation of the  
230 Executive Officer of the State Department of Health, a Director of  
231 Internal Audit who shall be either a Certified Public Accountant  
232 or Certified Internal Auditor, and whose employment shall be  
233 continued at the discretion of the board, and who shall report  
234 directly to the board, or its designee; and

235           (vi) To discharge such other duties,  
236 responsibilities and powers as are necessary to implement the  
237 provisions of this chapter.

238           (c) The Executive Officer of the State Department of  
239 Health shall have the following powers and duties:

240           (i) To administer the policies of the State Board  
241 of Health within the authority granted by the board;



242 (ii) To supervise and direct all administrative  
243 and technical activities of the department, except that the  
244 department's internal auditor shall be subject to the sole  
245 supervision and direction of the board;

246 (iii) To organize the administrative units of the  
247 department in accordance with the plan adopted by the board and,  
248 with board approval, alter the organizational plan and reassign  
249 responsibilities as he or she may deem necessary to carry out the  
250 policies of the board;

251 (iv) To coordinate the activities of the various  
252 offices of the department;

253 (v) To employ, subject to regulations of the State  
254 Personnel Board, qualified professional personnel in the subject  
255 matter or fields of each office, and such other technical and  
256 clerical staff as may be required for the operation of the  
257 department. The executive officer shall be the appointing  
258 authority for the department, and shall have the power to delegate  
259 the authority to appoint or dismiss employees to appropriate  
260 subordinates, subject to the rules and regulations of the State  
261 Personnel Board;

262 (vi) To recommend to the board such studies and  
263 investigations as he or she may deem appropriate, and to carry out  
264 the approved recommendations in conjunction with the various  
265 offices;



266 (vii) To prepare and deliver to the Legislature  
267 and the Governor on or before January 1 of each year, and at such  
268 other times as may be required by the Legislature or Governor, a  
269 full report of the work of the department and the offices thereof,  
270 including a detailed statement of expenditures of the department  
271 and any recommendations the board may have;

272 (viii) To prepare and deliver to the Chairmen of  
273 the Public Health and Welfare/Human Services Committees of the  
274 Senate and House on or before January 1 of each year, a plan for  
275 monitoring infant mortality in Mississippi and a full report of  
276 the work of the department on reducing Mississippi's infant  
277 mortality and morbidity rates and improving the status of maternal  
278 and infant health; and

279 (ix) To enter into contracts, grants and  
280 cooperative agreements with any federal or state agency or  
281 subdivision thereof, or any public or private institution located  
282 inside or outside the State of Mississippi, or any person,  
283 corporation or association in connection with carrying out the  
284 provisions of this chapter, if he or she finds those actions to be  
285 in the public interest and the contracts or agreements do not have  
286 a financial cost that exceeds the amounts appropriated for those  
287 purposes by the Legislature. Each contract or agreement entered  
288 into by the executive officer shall be submitted to the board  
289 before its next meeting.



290 (2) The State Board of Health shall have the authority to  
291 establish an Office of Rural Health within the department. The  
292 duties and responsibilities of this office shall include the  
293 following:

294 (a) To collect and evaluate data on rural health  
295 conditions and needs;

296 (b) To engage in policy analysis, policy development  
297 and economic impact studies with regard to rural health issues;

298 (c) To develop and implement plans and provide  
299 technical assistance to enable community health systems to respond  
300 to various changes in their circumstances;

301 (d) To plan and assist in professional recruitment and  
302 retention of medical professionals and assistants; and

303 (e) To establish information clearinghouses to improve  
304 access to and sharing of rural health care information.

305 (3) The State Board of Health shall have general supervision  
306 of the health interests of the people of the state and to exercise  
307 the rights, powers and duties of those acts which it is authorized  
308 by law to enforce.

309 (4) The State Board of Health shall have authority:

310 (a) To make investigations and inquiries with respect  
311 to the causes of disease and death, and to investigate the effect  
312 of environment, including conditions of employment and other  
313 conditions that may affect health, and to make such other



314 investigations as it may deem necessary for the preservation and  
315 improvement of health.

316 (b) To make such sanitary investigations as it may,  
317 from time to time, deem necessary for the protection and  
318 improvement of health and to investigate nuisance questions that  
319 affect the security of life and health within the state.

320 (c) To direct and control sanitary and quarantine  
321 measures for dealing with all diseases within the state possible  
322 to suppress same and prevent their spread.

323 (d) To obtain, collect and preserve such information  
324 relative to mortality, morbidity, disease and health as may be  
325 useful in the discharge of its duties or may contribute to the  
326 prevention of disease or the promotion of health in this state.

327 (e) To charge and collect reasonable fees for health  
328 services, including immunizations, inspections and related  
329 activities, and the board shall charge fees for those services;  
330 however, if it is determined that a person receiving services is  
331 unable to pay the total fee, the board shall collect any amount  
332 that the person is able to pay. Any increase in the fees charged  
333 by the board under this paragraph shall be in accordance with the  
334 provisions of Section 41-3-65.

335 (f) (i) To establish standards for, issue permits and  
336 exercise control over, any cafes, restaurants, food or drink  
337 stands, sandwich manufacturing establishments, and all other  
338 establishments, other than churches, church-related and private



339 schools, and other nonprofit or charitable organizations, where  
340 food or drink is regularly prepared, handled and served for pay;  
341 and

342 (ii) To require that a permit be obtained from the  
343 Department of Health before those persons begin operation. If any  
344 such person fails to obtain the permit required in this  
345 subparagraph (ii), the State Board of Health, after due notice and  
346 opportunity for a hearing, may impose a monetary penalty not to  
347 exceed One Thousand Dollars (\$1,000.00) for each violation.  
348 However, the department is not authorized to impose a monetary  
349 penalty against any person whose gross annual prepared food sales  
350 are less than Five Thousand Dollars (\$5,000.00). Money collected  
351 by the board under this subparagraph (ii) shall be deposited to  
352 the credit of the State General Fund of the State Treasury.

353 (g) To promulgate rules and regulations and exercise  
354 control over the production and sale of milk pursuant to the  
355 provisions of Sections 75-31-41 through 75-31-49.

356 (h) On presentation of proper authority, to enter into  
357 and inspect any public place or building where the State Health  
358 Officer or his representative deems it necessary and proper to  
359 enter for the discovery and suppression of disease and for the  
360 enforcement of any health or sanitary laws and regulations in the  
361 state.

362 (i) To conduct investigations, inquiries and hearings,  
363 and to issue subpoenas for the attendance of witnesses and the



364 production of books and records at any hearing when authorized and  
365 required by statute to be conducted by the State Health Officer or  
366 the State Board of Health.

367 (j) To promulgate rules and regulations, and to collect  
368 data and information, on (i) the delivery of services through the  
369 practice of telemedicine; and (ii) the use of electronic records  
370 for the delivery of telemedicine services.

371 (k) To enforce and regulate domestic and imported fish  
372 as authorized under Section 69-7-601 et seq.

373 (5) (a) The State Board of Health shall have the authority,  
374 in its discretion, to establish programs to promote the public  
375 health, to be administered by the State Department of Health.  
376 Specifically, those programs may include, but shall not be limited  
377 to, programs in the following areas:

- 378 (i) Maternal and child health;  
379 (ii) Family planning;  
380 (iii) Pediatric services;  
381 (iv) Services to crippled and disabled children;  
382 (v) Control of communicable and noncommunicable  
383 disease;  
384 (vi) Chronic disease;  
385 (vii) Accidental deaths and injuries;  
386 (viii) Child care licensure;  
387 (ix) Radiological health;  
388 (x) Dental health;





- 389                   (xi) Milk sanitation;
- 390                   (xii) Occupational safety and health;
- 391                   (xiii) Food, vector control and general  
392 sanitation;
- 393                   (xiv) Protection of drinking water;
- 394                   (xv) Sanitation in food handling establishments  
395 open to the public;
- 396                   (xvi) Registration of births and deaths and other  
397 vital events;
- 398                   (xvii) Such public health programs and services as  
399 may be assigned to the State Board of Health by the Legislature or  
400 by executive order; and
- 401                   (xviii) Regulation of domestic and imported fish  
402 for human consumption.

403                   (b) The State Board of Health and State Department of  
404 Health shall not be authorized to sell, transfer, alienate or  
405 otherwise dispose of any of the home health agencies owned and  
406 operated by the department on January 1, 1995, and shall not be  
407 authorized to sell, transfer, assign, alienate or otherwise  
408 dispose of the license of any of those home health agencies,  
409 except upon the specific authorization of the Legislature by an  
410 amendment to this section. However, this paragraph (b) shall not  
411 prevent the board or the department from closing or terminating  
412 the operation of any home health agency owned and operated by the  
413 department, or closing or terminating any office, branch office or



414 clinic of any such home health agency, or otherwise discontinuing  
415 the providing of home health services through any such home health  
416 agency, office, branch office or clinic, if the board first  
417 demonstrates that there are other providers of home health  
418 services in the area being served by the department's home health  
419 agency, office, branch office or clinic that will be able to  
420 provide adequate home health services to the residents of the area  
421 if the department's home health agency, office, branch office or  
422 clinic is closed or otherwise discontinues the providing of home  
423 health services. This demonstration by the board that there are  
424 other providers of adequate home health services in the area shall  
425 be spread at length upon the minutes of the board at a regular or  
426 special meeting of the board at least thirty (30) days before a  
427 home health agency, office, branch office or clinic is proposed to  
428 be closed or otherwise discontinue the providing of home health  
429 services.

430 (c) The State Department of Health may undertake such  
431 technical programs and activities as may be required for the  
432 support and operation of those programs, including maintaining  
433 physical, chemical, bacteriological and radiological laboratories,  
434 and may make such diagnostic tests for diseases and tests for the  
435 evaluation of health hazards as may be deemed necessary for the  
436 protection of the people of the state.



437           (6)   (a)   The State Board of Health shall administer the  
438 local governments and rural water systems improvements loan  
439 program in accordance with the provisions of Section 41-3-16.

440                   (b)   The State Board of Health shall have authority:

441                           (i)   To enter into capitalization grant agreements  
442 with the United States Environmental Protection Agency, or any  
443 successor agency thereto;

444                           (ii)   To accept capitalization grant awards made  
445 under the federal Safe Drinking Water Act, as amended;

446                           (iii)   To provide annual reports and audits to the  
447 United States Environmental Protection Agency, as may be required  
448 by federal capitalization grant agreements; and

449                           (iv)   To establish and collect fees to defray the  
450 reasonable costs of administering the revolving fund or emergency  
451 fund if the State Board of Health determines that those costs will  
452 exceed the limitations established in the federal Safe Drinking  
453 Water Act, as amended. The administration fees may be included in  
454 loan amounts to loan recipients for the purpose of facilitating  
455 payment to the board; however, those fees may not exceed five  
456 percent (5%) of the loan amount.

457           (7)   Notwithstanding any other provision to the contrary, the  
458 State Department of Health shall have the following specific  
459 powers: The department shall issue a license to Alexander Milne  
460 Home for Women, Inc., a 501(c)(3) nonprofit corporation, for the  
461 construction, conversion, expansion and operation of not more than



462 forty-five (45) beds for developmentally disabled adults who have  
463 been displaced from New Orleans, Louisiana, with the beds to be  
464 located in a certified ICF-MR facility in the City of Laurel,  
465 Mississippi. There shall be no prohibition or restrictions on  
466 participation in the Medicaid program for the person receiving the  
467 license under this subsection (7). The license described in this  
468 subsection shall expire five (5) years from the date of its issue.  
469 The license authorized by this subsection shall be issued upon the  
470 initial payment by the licensee of an application fee of  
471 Sixty-seven Thousand Dollars (\$67,000.00) and a monthly fee of  
472 Sixty-seven Thousand Dollars (\$67,000.00) after the issuance of  
473 the license, to be paid as long as the licensee continues to  
474 operate. \* \* \*

475 (8) Notwithstanding any other provision to the contrary, the  
476 State Department of Health shall have the following specific  
477 powers: The State Department of Health is authorized to issue a  
478 license to an existing home health agency for the transfer of a  
479 county from that agency to another existing home health agency,  
480 and to charge a fee for reviewing and making a determination on  
481 the application for such transfer not to exceed one-half (1/2) of  
482 the authorized fee assessed for the original application for the  
483 home health agency \* \* \*.

484 \* \* \*

485 ( \* \* \*9) Notwithstanding any other provision to the  
486 contrary, the State Department of Health shall have the following



487 specific powers: The State Department of Health is authorized and  
488 empowered, to revoke, immediately, the license and require closure  
489 of any institution for the aged or infirm, including any other  
490 remedy less than closure to protect the health and safety of the  
491 residents of said institution or the health and safety of the  
492 general public.

493 ( \* \* \* 10) Notwithstanding any other provision to the  
494 contrary, the State Department of Health shall have the following  
495 specific powers: The State Department of Health is authorized and  
496 empowered \* \* \* to require the temporary detainment of individuals  
497 for disease control purposes based upon violation of any order of  
498 the State Health Officer, as provided in Section 41-23-5. For the  
499 purpose of enforcing such orders of the State Health Officer,  
500 persons employed by the department as investigators shall have  
501 general arrest powers. All law enforcement officers are  
502 authorized and directed to assist in the enforcement of such  
503 orders of the State Health Officer.

504 **SECTION 6.** Section 41-4-18, Mississippi Code of 1972, is  
505 amended as follows:

506 41-4-18. (1) Notwithstanding \* \* \* any other section of  
507 law, the Department of Mental Health shall have the authority to  
508 contract with private and/or public entities to transfer beds  
509 within Intermediate Care Facilities for the Mentally Retarded  
510 owned and operated by the Department of Mental Health to locations  
511 owned and operated by private and/or public entities for the



512 purpose of serving individuals with intellectual disabilities in  
513 the settings most appropriate to meet their needs.

514 (2) Any license granted to the Department of Mental Health  
515 by the Department of Health for the operation of transferred  
516 Intermediate Care Facility for the Mentally Retarded beds shall  
517 remain in the name of the Department of Mental Health \* \* \*.

518 **SECTION 7.** Section 41-9-11, Mississippi Code of 1972, is  
519 amended as follows:

520 41-9-11. Upon receipt of an application for license and the  
521 license fee, the licensing agency shall issue a license if the  
522 applicant and hospital facilities meet the requirements  
523 established under Sections 41-9-1 through 41-9-35 \* \* \*. A  
524 license, unless suspended or revoked, shall be renewable annually,  
525 upon filing by the licensee, and approval by the licensing agency  
526 of an annual report upon such uniform dates and containing such  
527 information in such form as the licensing agency prescribes by  
528 regulation and upon paying the annual fee for such license as  
529 determined by the schedule and provisions of Section 41-9-9. Each  
530 license shall be issued only for the premises and persons or  
531 governmental units named in the application and shall not be  
532 transferable or assignable except with the written approval of the  
533 licensing agency. Licenses shall be posted in a conspicuous place  
534 on the licensed premises.

535 **SECTION 8.** Section 41-9-23, Mississippi Code of 1972, is  
536 amended as follows:



537 41-9-23. Information received by the licensing agency  
538 through filed reports, inspection, or as otherwise authorized  
539 under Sections 41-9-1 through 41-9-35 shall not be disclosed  
540 publicly in such manner as to identify individuals, except in a  
541 proceeding involving the questions of licensure; however, the  
542 licensing agency may utilize statistical data concerning types of  
543 services and the utilization of these services for hospitals in  
544 performing the \* \* \* duties imposed upon it \* \* \* by Section  
545 41-9-29.

546 **SECTION 9.** Section 41-9-68, Mississippi Code of 1972, is  
547 amended as follows:

548 41-9-68. (1) Except as otherwise provided in subsection (2)  
549 of this section, records maintained by public hospitals shall be  
550 exempt from the provisions of the Mississippi Public Records Act  
551 of 1983.

552 (2) The following records of public hospitals shall not be  
553 exempt from the Mississippi Public Records Act of 1983:

554 (a) The official minutes of the board of trustees of a  
555 public hospital;

556 (b) Financial reports not otherwise exempt that are  
557 required by state or federal statute or regulation to be filed  
558 with the owner of the public hospital or with any other agency of  
559 state or federal government; and

560 (c) Any other record maintained by a public hospital  
561 that does not fall within the definition of the term "hospital



562 records" as that term is defined in Section 41-9-61, except for  
563 the following records, which shall be exempt:

564 (i) Records directly relating to the terms of any  
565 potential or current employment or services agreement with any  
566 physicians or other employees of a public hospital, including any  
567 application for medical staff privileges or membership with a  
568 public hospital;

569 (ii) Records directly relating to the  
570 credentialing, health, performance, salary, raises or disciplinary  
571 action of any employee or medical staff member or applicant for  
572 medical staff privileges at a public hospital;

573 (iii) Records directly relating to prospective  
574 strategic business decisions of a public hospital, including  
575 without limitation, decisions to open a new service line \* \* \* or  
576 implement capital improvements \* \* \*; and

577 (iv) Records directly relating to individual  
578 patient billing and collection information.

579 **SECTION 10.** Section 41-9-209, Mississippi Code of 1972, is  
580 amended as follows:

581 41-9-209. (1) Any hospital is authorized to seek  
582 designation as a critical access hospital. Subject to federal  
583 law, there shall be no requirement or limitation regarding the  
584 distance that a critical access hospital must be located from  
585 another hospital. The bed-size limit for a critical access  
586 hospital is twenty-five (25) operational acute care beds, and the





587 average maximum length of stay for patients in a critical access  
588 hospital is ninety-six (96) hours, unless a longer period is  
589 required because of inclement weather or other emergency  
590 conditions. \* \* \* If the critical access hospital is a swing bed  
591 facility, any of the twenty-five (25) acute care beds allowed in a  
592 critical access hospital may be used for the provision of extended  
593 care services or acute care inpatient services so long as the  
594 furnishing of such services does not exceed twenty-five (25) beds  
595 and so long as the hospital does not seek Medicaid reimbursement  
596 for more than fifteen (15) acute care inpatient beds.

597       (2) A critical access hospital (a) must make available  
598 twenty-four-hour emergency care services, as described in the  
599 state rural health care plan, for ensuring access to emergency  
600 care services in the rural area served by the critical access  
601 hospital, and (b) must be a member of a rural health network. Any  
602 hospital that has a distinct-part skilled nursing facility,  
603 certified under Title XVIII of the federal Social Security Act, at  
604 the time it applies for designation as a critical access hospital,  
605 may continue its operation of the distinct-part skilled nursing  
606 facility and is not required to count the beds in the  
607 distinct-part skilled nursing facility for purposes of the allowed  
608 twenty-five (25) acute care inpatient beds.

609       (3) \* \* \* A critical access hospital may establish a  
610 distinct-part psychiatric unit and a distinct-part rehabilitation  
611 unit, each of which must be certified under Title XVIII of the



612 federal Social Security Act and each of which may consist of no  
613 more than ten (10) beds. No bed in the critical access hospital's  
614 distinct-part psychiatric unit or distinct-part rehabilitation  
615 unit shall be counted for purposes of the twenty-five (25) bed  
616 limitation. Each distinct-part unit in a critical access hospital  
617 must comply with all applicable state licensure laws and federal  
618 certification laws.

619 **SECTION 11.** Section 41-9-210, Mississippi Code of 1972, is  
620 amended as follows:

621 41-9-210. If a hospital seeks a new license from the  
622 department in order to be designated as a critical access  
623 hospital, the department shall maintain a record of the acute care  
624 beds of that hospital that have been delicensed as a result of  
625 that designation and continue counting those beds as part of the  
626 state's total acute care bed count for health care planning  
627 purposes. If a critical access hospital later desires to  
628 relicense some or all of its delicensed acute care beds, it shall  
629 notify the department of its intent to increase the number of its  
630 licensed acute care beds. The department shall survey the  
631 hospital within thirty (30) days of that notice and, if  
632 appropriate, issue the hospital a new license reflecting the new  
633 contingent of beds. \* \* \*

634 This section shall apply to all hospitals that are designated  
635 as critical access hospitals on July 1, 2003, and all hospitals



636 that may become designated as critical access hospitals after July  
637 1, 2003.

638 **SECTION 12.** Section 41-71-7, Mississippi Code of 1972, is  
639 amended as follows:

640 41-71-7. Upon receipt of an application for a license and  
641 the license fee, and a determination by the licensing agency that  
642 the application is \* \* \* in compliance with the provisions of this  
643 chapter, such license shall be issued. A license, unless  
644 suspended or revoked, shall be renewable annually upon payment by  
645 the licensee of a renewal fee of One Thousand Dollars (\$1,000.00)  
646 and upon approval by the licensing agency of an annual report,  
647 required to be submitted by the licensee, containing such  
648 information in such form and at such time as the licensing agency  
649 prescribes by rule or regulation. Any increase in the fee charged  
650 by the licensing agency under this section shall be in accordance  
651 with the provisions of Section 41-3-65. Each license shall be  
652 issued only for the home health agency and person or persons or  
653 other legal entity or entities named in the application and shall  
654 not be transferable or assignable except with the written approval  
655 of the licensing agency. Licenses shall be posted in a  
656 conspicuous place in the designated business office of the  
657 licensee. Each licensee shall designate, in writing, one (1)  
658 individual person as the responsible party for the conducting of  
659 the business of the home health agency with the licensing agency.



660           **SECTION 13.** Section 41-71-19, Mississippi Code of 1972, is  
661 amended as follows:

662           41-71-19. Information received by the licensing agency  
663 through filed reports, inspection, or as otherwise authorized  
664 under this chapter, shall not be disclosed publicly in such manner  
665 as to identify individuals, except in proceedings involving the  
666 question of licensure; however, the licensing agency may utilize  
667 statistical data concerning types of services and the utilization  
668 of those services for home health care agencies in performing  
669 the \* \* \* duties imposed upon it by \* \* \* regulations necessarily  
670 promulgated for participation in the Medicare or Medicaid  
671 programs.

672           **SECTION 14.** Section 41-73-5, Mississippi Code of 1972, is  
673 amended as follows:

674           41-73-5. When used in this act, unless the context requires  
675 a different definition, the following terms shall have the  
676 following meanings:

677                   (a) "Act" means the Mississippi Hospital Equipment and  
678 Facilities Authority Act.

679                   (b) "Authority" means the Mississippi Hospital  
680 Equipment and Facilities Authority created by this act and any  
681 successor to its functions.

682                   (c) "Bonds" means bonds, notes or other evidences of  
683 indebtedness of the authority issued pursuant to this act,  
684 including refunding bonds.



685 (d) "Cost" as applied to hospital equipment means any  
686 and all costs of such hospital equipment and, without limiting the  
687 generality of the foregoing, shall include the following:

688 (i) All costs of the acquisition, repair,  
689 restoration, reconditioning, refinancing or installation of any  
690 such hospital equipment and all costs incident or related thereto;

691 (ii) The cost of any property interest in such  
692 hospital equipment including an option to purchase or leasehold  
693 interest;

694 (iii) The cost of architectural, engineering,  
695 legal and related services; the cost of the preparation of plans,  
696 specifications, studies, surveys and estimates of cost and of  
697 revenue; and all other expenses necessary or incident to planning,  
698 providing or determining the need for or the feasibility and  
699 practicability of such hospital equipment; and the cost of  
700 providing or establishing a reasonable reserve fund for the  
701 payment of principal and interest on bonds;

702 (iv) The cost of financing charges, including  
703 premiums or prepayment penalties, if any, and interest accrued  
704 prior to the acquisition and installation or refinancing of such  
705 hospital equipment and after such acquisition and installation or  
706 refinancing and start-up costs related to hospital equipment;

707 (v) Any and all costs paid or incurred in  
708 connection with the financing of such hospital equipment,  
709 including out-of-pocket expenses, the cost of financing, legal,



710 accounting, financial advisory and consulting fees, expenses and  
711 disbursements; the cost of any policy of insurance; the cost of  
712 printing, engraving and reproduction services; and the cost of the  
713 initial or acceptance fee of any trustee or paying agent;

714 (vi) All direct or indirect costs of the authority  
715 incurred in connection with providing such hospital equipment,  
716 including, without limitation, reasonable sums to reimburse the  
717 authority for time spent by its agents or employees with respect  
718 to providing such hospital equipment and the financing thereof;  
719 and

720 (vii) Any and all costs paid or incurred for the  
721 administration of any program for the purchase or lease of or the  
722 making of loans for hospital equipment, by the authority and any  
723 program for the sale or lease of or the making of loans for such  
724 hospital equipment to any participating hospital institution.

725 (e) "Cost," as applied to hospital facilities, means  
726 any and all costs of such hospital facilities and, without  
727 limiting the generality of the foregoing, shall include the  
728 following:

729 (i) All costs of the establishment, demolition,  
730 site development of new and rehabilitated buildings,  
731 rehabilitation, reconstruction repair, erection, building,  
732 construction, remodeling, adding to and furnishing of any such  
733 hospital facilities and all costs incident or related thereto;



734                   (ii) The cost of acquiring any property interest  
735 in such hospital facilities including the purchase thereof, the  
736 cost of an option to purchase or the cost of any leasehold  
737 interest;

738                   (iii) The cost of architectural, engineering,  
739 legal and related services; the cost of the preparation of plans,  
740 specifications, studies, surveys and estimates of cost and of  
741 revenue; all other expenses necessary or incident to planning,  
742 providing or determining the need for or the feasibility and  
743 practicability of such hospital facilities or the acquisition  
744 thereof; and the cost of providing or establishing a reasonable  
745 reserve fund for the payment of principal of and interest on  
746 bonds;

747                   (iv) The cost of financing charges, including  
748 premiums or prepayment penalties, if any, and interest accrued  
749 prior to the acquisition and completion or refinancing of such  
750 hospital facilities and after such acquisition and completion or  
751 refinancing and start-up costs related to hospital facilities;

752                   (v) Any and all costs paid or incurred in  
753 connection with the financing of such hospital facilities,  
754 including out-of-pocket expenses, the cost of financing, legal,  
755 accounting, financial advisory and consulting fees, expenses and  
756 disbursement; the cost of any policy of insurance; the cost of  
757 printing, engraving and reproduction services; and the cost of the  
758 initial or acceptance fee of any trustee or paying agent;



759 (vi) All direct or indirect costs of the authority  
760 incurred in connection with providing such hospital facilities,  
761 including, without limitation, reasonable sums to reimburse the  
762 authority for time spent by its agents or employees with respect  
763 to providing such hospital facilities and the financing thereof;

764 (vii) Any and all costs paid or incurred for the  
765 administration of any program for the purchase or lease of or the  
766 making of loans for hospital facilities, by the authority and any  
767 program for the sale or lease of or the making of loans for such  
768 hospital facilities to any participating hospital institution; and

769 (viii) The cost of providing for the payment or  
770 the making provision for the payment of, by the appropriate  
771 escrowing of monies or securities, the principal of and interest  
772 on which when due will be adequate to make such payment, any  
773 indebtedness encumbering the revenues or property of a  
774 participating hospital institution, whether such payment is to be  
775 effected by redemption of such indebtedness prior to maturity or  
776 not.

777 (f) "Hospital equipment" means any personal property  
778 which is found and determined by the authority to be required or  
779 necessary or helpful for medical care, research, training or  
780 teaching, any one (1) or all, in hospital facilities located in  
781 the state, irrespective of whether such property is in existence  
782 at the time of, or is to be provided after the making of, such  
783 finding. \* \* \*





784 (g) "Hospital facility" or "hospital facilities" means  
785 buildings and structures of any and all types used or useful, in  
786 the discretion of the authority, for providing any types of care  
787 to the sick, wounded, infirmed, needy, mentally incompetent or  
788 elderly and shall include, without limiting the generality of the  
789 foregoing, out-patient clinics, laboratories, laundries, nurses',  
790 doctors' or interns' residences, administration buildings, office  
791 buildings, facilities for research directly involved with hospital  
792 care, maintenance, storage or utility facilities, parking lots,  
793 and garages and all necessary, useful, or related furnishings, and  
794 appurtenances and all lands necessary or convenient as a site for  
795 the foregoing.

796 (h) "Participating hospital institution" or "hospital  
797 institution" means a public or private corporation, association,  
798 foundation, trust, cooperative, agency, body politic, or other  
799 person or organization which provides or operates or proposes to  
800 provide or operate hospital facilities not for profit, and which,  
801 pursuant to the provisions of this act, contracts with the  
802 authority for the financing or refinancing of the lease or other  
803 acquisition of hospital equipment or hospital facilities, or both.

804 (i) "State" means the State of Mississippi.

805 The use of singular terms herein shall also include the  
806 plural of such term and the use of a plural term herein shall also  
807 include the singular of such term unless the context clearly  
808 requires a different connotation.



809           **SECTION 15.** Section 41-75-1, Mississippi Code of 1972, is  
810 amended as follows:

811           41-75-1. For the purpose of this chapter:

812                   (a) "Ambulatory surgical facility" means a publicly or  
813 privately owned institution that is primarily organized,  
814 constructed, renovated or otherwise established for the purpose of  
815 providing elective surgical treatment of "outpatients" whose  
816 recovery, under normal and routine circumstances, will not require  
817 "inpatient" care. The facility defined in this paragraph does not  
818 include the offices of private physicians or dentists, whether  
819 practicing individually or in groups, but does include  
820 organizations or facilities primarily engaged in that outpatient  
821 surgery, whether using the name "ambulatory surgical facility" or  
822 a similar or different name. That organization or facility, if in  
823 any manner considered to be operated or owned by a hospital or a  
824 hospital holding, leasing or management company, either for profit  
825 or not for profit, is required to comply with all licensing agency  
826 ambulatory surgical licensure standards governing a "hospital  
827 affiliated" facility as adopted under Section 41-9-1 et seq.,  
828 provided that the organization or facility does not intend to seek  
829 federal certification as an ambulatory surgical facility as  
830 provided for at 42 CFR, Parts 405 and 416. If the organization or  
831 facility is to be operated or owned by a hospital or a hospital  
832 holding, leasing or management company and intends to seek federal  
833 certification as an ambulatory facility, then the facility is



834 considered to be "freestanding" and must comply with all licensing  
835 agency ambulatory surgical licensure standards governing a  
836 "freestanding" facility.

837         If the organization or facility is to be owned or operated by  
838 an entity or person other than a hospital or hospital holding,  
839 leasing or management company, then the organization or facility  
840 must comply with all licensing agency ambulatory surgical facility  
841 standards governing a "freestanding" facility.

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

850                 (c) "Freestanding" ambulatory surgical facility means a  
851 separate and distinct facility or a separate and distinct  
852 organized unit of a hospital owned, leased, rented or utilized by  
853 a hospital or other persons for the primary purpose of performing  
854 ambulatory surgery procedures. The facility must be separately  
855 licensed as defined in this section and must comply with all  
856 licensing standards promulgated by the licensing agency under this  
857 chapter regarding a "freestanding" ambulatory surgical facility.  
858 Further, the facility must be a separate, identifiable entity and



859 must be physically, administratively and financially independent  
860 and distinct from other operations of any other health facility,  
861 and shall maintain a separate organized medical and administrative  
862 staff. \* \* \*

863 (d) "Ambulatory surgery" means surgical procedures that  
864 are more complex than office procedures performed under local  
865 anesthesia, but less complex than major procedures requiring  
866 prolonged postoperative monitoring and hospital care to ensure  
867 safe recovery and desirable results. General anesthesia is used  
868 in most cases. The patient must arrive at the facility and expect  
869 to be discharged on the same day. Ambulatory surgery shall only  
870 be performed by physicians or dentists licensed to practice in the  
871 State of Mississippi.

872 (e) "Abortion" means the use or prescription of any  
873 instrument, medicine, drug or any other substances or device to  
874 terminate the pregnancy of a woman known to be pregnant with an  
875 intention other than to increase the probability of a live birth,  
876 to preserve the life or health of the child after live birth or to  
877 remove a dead fetus. Abortion procedures after the first  
878 trimester shall only be performed at a Level I abortion facility  
879 or an ambulatory surgical facility or hospital licensed to perform  
880 that service.

881 (f) "Abortion facility" means a facility operating  
882 substantially for the purpose of performing abortions and is a  
883 separate identifiable legal entity from any other health care



884 facility. Abortions shall only be performed by physicians  
885 licensed to practice in the State of Mississippi. All physicians  
886 associated with the abortion facility must have admitting  
887 privileges at a local hospital and staff privileges to replace  
888 local hospital on-staff physicians. All physicians associated  
889 with an abortion facility must be board certified or eligible in  
890 obstetrics and gynecology, and a staff member trained in CPR shall  
891 always be present at the abortion facility when it is open. The  
892 term "abortion facility" includes physicians' offices that are  
893 used substantially for the purpose of performing abortions. An  
894 abortion facility operates substantially for the purpose of  
895 performing abortions if any of the following conditions are met:

896 (i) The abortion facility is a provider for  
897 performing ten (10) or more abortion procedures per calendar month  
898 during any month of a calendar year, or one hundred (100) or more  
899 in a calendar year.

900 (ii) The abortion facility, if operating less than  
901 twenty (20) days per calendar month, is a provider for performing  
902 ten (10) or more abortion procedures, or performing a number of  
903 abortion procedures that would be equivalent to ten (10)  
904 procedures per month, if the facility were operating twenty (20)  
905 or more days per calendar month, in any month of a calendar year.

906 (iii) The abortion facility holds itself out to  
907 the public as an abortion provider by advertising by any public



908 means, such as newspaper, telephone directory, magazine or  
909 electronic media, that it performs abortions.

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

912 (g) "Licensing agency" means the State Department of  
913 Health.

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

918 An abortion facility may apply to be licensed as a Level I  
919 facility or a Level II facility by the licensing agency. Level II  
920 abortion facilities shall be required to meet minimum standards  
921 for abortion facilities as established by the licensing agency.  
922 Level I abortion facilities shall be required to meet minimum  
923 standards for abortion facilities and minimum standards for  
924 ambulatory surgical facilities as established by the licensing  
925 agency.

926 Any abortion facility that begins operation after June 30,  
927 1996, shall not be located within one thousand five hundred  
928 (1,500) feet from the property on which any church, school or  
929 kindergarten is located. An abortion facility shall not be in  
930 violation of this paragraph if it is in compliance with this  
931 paragraph on the date it begins operation and the property on



932 which a church, school or kindergarten is located within one  
933 thousand five hundred (1,500) feet from the facility.

934 (i) "Freestanding emergency room" is a facility open  
935 twenty-four (24) hours a day for the treatment of urgent and  
936 emergent medical conditions which is not located on a hospital  
937 campus. In order to be eligible for licensure under this chapter,  
938 the freestanding emergency room shall be located at least fifteen  
939 (15) miles from the nearest hospital-based emergency room in any  
940 rural community where the federal CMMS had previously designated a  
941 rural hospital as a critical access hospital and that designation  
942 has been revoked.

943 **SECTION 16.** Section 41-75-5, Mississippi Code of 1972, is  
944 amended as follows:

945 41-75-5. No person \* \* \* or other entity, acting severally  
946 or jointly with any other person or entity, shall establish,  
947 conduct, operate or maintain an ambulatory surgical facility or an  
948 abortion facility or a freestanding emergency room in this state  
949 without a license under this chapter.

950 **SECTION 17.** Section 41-75-9, Mississippi Code of 1972, is  
951 amended as follows:

952 41-75-9. Upon receipt of an application for license and the  
953 license fee, the licensing agency shall issue a license if the  
954 applicant and the institutional facilities meet the requirements  
955 established under this chapter \* \* \*. A license, unless suspended  
956 or revoked, shall be renewable annually upon payment of a renewal



957 fee of Three Thousand Dollars (\$3,000.00), which shall be paid to  
958 the licensing agency, and upon filing by the licensee and approval  
959 by the licensing agency of an annual report upon such uniform  
960 dates and containing such information in such form as the  
961 licensing agency requires. Any increase in the fee charged by the  
962 licensing agency under this section shall be in accordance with  
963 the provisions of Section 41-3-65. Each license shall be issued  
964 only for the premises and person or persons named in the  
965 application and shall not be transferable or assignable. Licenses  
966 shall be posted in a conspicuous place on the licensed premises.

967 **SECTION 18.** Section 41-75-25, Mississippi Code of 1972, is  
968 amended as follows:

969 41-75-25. Any person or persons or other entity or entities  
970 establishing, managing or operating an ambulatory surgical  
971 facility or conducting the business of an ambulatory surgical  
972 facility without the required license, or which otherwise violate  
973 any of the provisions of this chapter \* \* \* or the rules,  
974 regulations or standards promulgated in furtherance of any law in  
975 which the \* \* \* licensing agency has authority therefor shall be  
976 subject to the following penalties and sanctions \* \* \*:

977 (a) Revocation of the license of the ambulatory  
978 surgical facility or a designated section, component or service  
979 thereof; or

980 (b) Nonlicensure of a specific or designated service  
981 offered by the ambulatory surgical facility.





982       In addition, any violation of any provision of this chapter  
983 or any rules or regulations promulgated in furtherance thereof by  
984 intent, fraud, deceit, unlawful design, willful and/or deliberate  
985 misrepresentation, or by careless, negligent or incautious  
986 disregard for such statutes or rules and regulations, either by  
987 persons acting individually or in concert with others, shall  
988 constitute a misdemeanor and shall be punishable by a fine not to  
989 exceed One Thousand Dollars (\$1,000.00) for each such offense.  
990 Each day of continuing violation shall be considered a separate  
991 offense. The venue for prosecution of any such violation shall be  
992 in any county of the state in which any such violation, or portion  
993 thereof, occurred.

994       **SECTION 19.** Section 41-77-1, Mississippi Code of 1972, is  
995 amended as follows:

996       41-77-1. For purposes of this chapter:

997           (a) "Birthing center" \* \* \* means a publicly or  
998 privately owned facility, place or institution constructed,  
999 renovated, leased or otherwise established where nonemergency  
1000 births are planned to occur away from the mother's usual residence  
1001 following a documented period of prenatal care for a normal  
1002 uncomplicated pregnancy which has been determined to be low risk  
1003 through a formal risk scoring examination. Care provided in a  
1004 birthing center shall be provided by a licensed physician, or  
1005 certified nurse midwife, and a registered nurse. Services  
1006 provided in a birthing center shall be limited in the following



1007 manner: (i) surgical services shall be limited to those normally  
1008 performed during uncomplicated childbirth, such as episiotomy and  
1009 repair, and shall not include operative obstetrics or caesarean  
1010 sections; (ii) labor shall not be inhibited, stimulated or  
1011 augmented with chemical agents during the first or second stage of  
1012 labor; (iii) systemic analgesia may be administered and local  
1013 anesthesia for pudental block and episiotomy repair may be  
1014 performed. General and conductive anesthesia shall not be  
1015 administered at birthing centers; (iv) patients shall not remain  
1016 in the facility in excess of twenty-four (24) hours.

1017 Hospitals are excluded from the definition of a "birthing  
1018 center" unless they choose to and are qualified to designate a  
1019 portion or part of the hospital as a birthing center, and nothing  
1020 herein shall be construed as referring to the usual service  
1021 provided the pregnant female in the obstetric-gynecology service  
1022 of an acute care hospital. Such facility or center, as heretofore  
1023 stated, shall include the offices of physicians in private  
1024 practice alone or in groups of two (2) or more; and such facility  
1025 or center rendering service to pregnant female persons, as stated  
1026 heretofore and by the rules and regulations promulgated by the  
1027 licensing agency in furtherance thereof, shall be deemed to be a  
1028 "birthing center" whether using a similar or different name. Such  
1029 center or facility if in any manner is deemed to be or considered  
1030 to be operated or owned by a hospital or a hospital holding  
1031 leasing or management company, for profit or not for profit, is



1032 required to comply with all birthing center standards governing a  
1033 "hospital affiliated" birthing center as adopted by the licensing  
1034 authority.

1035 (b) "Hospital affiliated" birthing center \* \* \* means a  
1036 separate and distinct unit of a hospital or a building owned,  
1037 leased, rented or utilized by a hospital and located in the same  
1038 county as the hospital for the purpose of providing the service of  
1039 a "birthing center." Such center or facility is not required to  
1040 be licensed separately, and may operate under the license issued  
1041 to the hospital if it is in compliance with Section 41-9-1 et  
1042 seq., where applicable, and the rules and regulations promulgated  
1043 by the licensing agency in furtherance thereof.

1044 (c) "Freestanding" birthing center \* \* \* means a  
1045 separate and distinct facility or center or a separate and  
1046 distinct organized unit of a hospital or other \* \* \* entity for  
1047 the purpose of performing the service of a "birthing center."  
1048 Such facility or center must be separately licensed and must  
1049 comply with all licensing standards promulgated by the licensing  
1050 agency by virtue of this chapter. Further, such facility or  
1051 center must be a separate, identifiable entity and must be  
1052 physically, administratively and financially independent from  
1053 other operations of any hospital or other health care facility or  
1054 service and shall maintain a separate and required staff,  
1055 including administrative staff. \* \* \*



1056 (d) "Licensing agency" \* \* \* means the State Department  
1057 of Health.

1058 **SECTION 20.** Section 41-77-5, Mississippi Code of 1972, is  
1059 amended as follows:

1060 41-77-5. No person \* \* \* or other entity, acting severally  
1061 or jointly with any other person or entity, shall establish,  
1062 conduct or maintain a "birthing center" in this state without a  
1063 license under this chapter.

1064 **SECTION 21.** Section 41-77-21, Mississippi Code of 1972, is  
1065 amended as follows:

1066 41-77-21. Any applicant or licensee aggrieved by the  
1067 decision of the licensing agency after a hearing may, within  
1068 thirty (30) days after the mailing or serving of notice of the  
1069 decision as provided in Section 43-11-11, \* \* \* file a notice of  
1070 appeal to the Chancery Court of the First Judicial District of  
1071 Hinds County or in the chancery court of the county in which the  
1072 institution is located or proposed to be located. \* \* \*  
1073 Thereupon, the licensing agency shall \* \* \* certify and file with  
1074 the court a copy of the record and decision, including the  
1075 transcript of the hearings in which the decision is based. No new  
1076 or additional evidence shall be introduced in court; the case  
1077 shall be determined upon the record certified to the court. The  
1078 court may sustain or dismiss the appeal, modify or vacate the  
1079 order complained of in whole or in part, as the case may be; but  
1080 in case the order is wholly or partly vacated, the court may also,



1081 in its discretion, remand the matter to the licensing agency for  
1082 such further proceedings, not inconsistent with the court's order,  
1083 as, in the opinion of the court, justice may require. The order  
1084 may not be vacated or set aside, either in whole or in part,  
1085 except for errors of law, unless the court finds that the order of  
1086 the licensing agency is not supported by substantial evidence, is  
1087 contrary to the manifest weight of the evidence, is in excess of  
1088 the statutory authority or jurisdiction of the licensing agency,  
1089 or violates any vested constitutional rights of any party involved  
1090 in the appeal. Pending final disposition of the matter, the  
1091 status quo of the applicant or licensee shall be preserved, except  
1092 as the court otherwise orders in the public interest. Rules with  
1093 respect to court costs in other cases in chancery shall apply  
1094 equally to cases hereunder. Appeals in accordance with law may be  
1095 had to the Supreme Court of the State of Mississippi from any  
1096 final judgment of the chancery court.

1097 **SECTION 22.** Section 41-77-23, Mississippi Code of 1972, is  
1098 amended as follows:

1099 41-77-23. Any person or persons or other entity or entities  
1100 establishing, managing or operating a "birthing center" or  
1101 conducting the business of a "birthing center" without the  
1102 required license, or which otherwise violate any of the provisions  
1103 of this chapter \* \* \* or the rules, regulations or standards  
1104 promulgated in furtherance of any law in which the \* \* \* licensing



1105 agency has authority therefor, shall be subject to the following  
1106 penalties and sanctions \* \* \*:

1107 (a) Revocation of the license of the birthing center or  
1108 a designated section, component or service thereof; or

1109 (b) Nonlicensure of a specific or designated service  
1110 offered by the birthing center.

1111 In addition, any violation of any provision of this chapter  
1112 or any rules or regulations promulgated in furtherance thereof by  
1113 intent, fraud, deceit, unlawful design, willful and/or deliberate  
1114 misrepresentation, or by careless, negligent or incautious  
1115 disregard for such statutes or rules and regulations, either by  
1116 persons acting individually or in concert with others, shall  
1117 constitute a misdemeanor and shall be punishable by a fine not to  
1118 exceed One Thousand Dollars (\$1,000.00) for each such offense.  
1119 Each day of continuing violation shall be considered a separate  
1120 offense. The venue for prosecution of any such violation shall be  
1121 in any county of the state in which any such violation, or portion  
1122 thereof, occurred.

1123 **SECTION 23.** Section 41-77-25, Mississippi Code of 1972, is  
1124 amended as follows:

1125 41-77-25. Upon receipt of an application for license and the  
1126 license fee, the licensing agency shall issue a license if the  
1127 applicant and the institutional facilities meet the requirements  
1128 established under this chapter \* \* \*. A license, unless suspended  
1129 or revoked, shall be renewable annually upon payment of a renewal



1130 fee of Three Hundred Dollars (\$300.00), which shall be paid to the  
1131 licensing agency, and upon filing by the licensee and approval by  
1132 the licensing agency of an annual report upon such uniform dates  
1133 and containing such information in such form as the licensing  
1134 agency requires. Any increase in the fee charged by the licensing  
1135 agency under this section shall be in accordance with the  
1136 provisions of Section 41-3-65. Each license shall be issued only  
1137 for the premises and person or persons named in the application  
1138 and shall not be transferable or assignable. Licenses shall be  
1139 posted in a conspicuous place on the licensed premises.

1140       **SECTION 24.** Section 41-95-3, Mississippi Code of 1972, is  
1141 amended as follows:

1142       41-95-3. As used in this chapter:

1143           (a) "Authority" means the Mississippi Health Finance  
1144 Authority created under Section 41-95-5.

1145           (b) "Board" means the Mississippi Health Finance  
1146 Authority Board created under Section 41-95-5.

1147           (c) "Health care facility" means all facilities and  
1148 institutions, whether public or private, proprietary or nonprofit,  
1149 which offer diagnosis, treatment, inpatient or ambulatory care to  
1150 two (2) or more unrelated persons \* \* \*.

1151           (d) "Health care provider" means a person, partnership  
1152 or corporation, other than a facility or institution, licensed or  
1153 certified or authorized by state or federal law to provide



1154 professional health care service in this state to an individual  
1155 during that individual's health care, treatment or confinement.

1156 (e) "Health insurer" means any health insurance  
1157 company, nonprofit hospital and medical service corporation,  
1158 health maintenance organization and, to the extent permitted under  
1159 federal law, any administrator of an insured, self-insured or  
1160 publicly funded health care benefit plan offered by public and  
1161 private entities.

1162 (f) "Resident" means a person who is domiciled in  
1163 Mississippi as evidenced by an intent to maintain a principal  
1164 dwelling place in Mississippi indefinitely and to return to  
1165 Mississippi if temporarily absent, coupled with an act or acts  
1166 consistent with that intent.

1167 (g) "Primary care" or "primary health care" includes  
1168 those health care services provided to individuals, families and  
1169 communities, at a first level of care, which preserve and improve  
1170 health, and encompasses services which promote health, prevent  
1171 disease, treat and cure illness. It is delivered by various  
1172 health care providers in a variety of settings including hospital  
1173 outpatient clinics, private provider offices, group practices,  
1174 health maintenance organizations, public health departments and  
1175 community health centers. A primary care system is characterized  
1176 by coordination of comprehensive services, cultural sensitivity,  
1177 community orientation, continuity, prevention, the absence of  
1178 barriers to receive and provide services, and quality assurance.





1179           **SECTION 25.** Section 43-11-9, Mississippi Code of 1972, is  
1180 amended as follows:  
1181           43-11-9. (1) Upon receipt of an application for license and  
1182 the license fee, the licensing agency shall issue a license if the  
1183 applicant and the institutional facilities meet the requirements  
1184 established under this chapter \* \* \*. A license, unless suspended  
1185 or revoked, shall be renewable annually upon payment by (a) the  
1186 licensee of an institution for the aged or infirm, except for  
1187 personal care homes, of a renewal fee of Twenty Dollars (\$20.00)  
1188 for each bed in the institution, with a minimum fee per  
1189 institution of Two Hundred Dollars (\$200.00), or (b) the licensee  
1190 of a personal care home of a renewal fee of Fifteen Dollars  
1191 (\$15.00) for each bed in the institution, with a minimum fee per  
1192 institution of One Hundred Dollars (\$100.00), which shall be paid  
1193 to the licensing agency, and upon filing by the licensee and  
1194 approval by the licensing agency of an annual report upon such  
1195 uniform dates and containing such information in such form as the  
1196 licensing agency prescribes by regulation. Any increase in the  
1197 fee charged by the licensing agency under this subsection shall be  
1198 in accordance with the provisions of Section 41-3-65. Each  
1199 license shall be issued only for the premises and person or  
1200 persons or other legal entity or entities named in the application  
1201 and shall not be transferable or assignable except with the  
1202 written approval of the licensing agency. Licenses shall be  
1203 posted in a conspicuous place on the licensed premises.



1204 (2) A fee known as a "User Fee" shall be applicable and  
1205 shall be paid to the licensing agency as set out in subsection (1)  
1206 of this section. Any increase in the fee charged by the licensing  
1207 agency under this subsection shall be in accordance with the  
1208 provisions of Section 41-3-65. This user fee shall be assessed  
1209 for the purpose of the required reviewing and inspections of the  
1210 proposal of any institution in which there are additions,  
1211 renovations, modernizations, expansion, alterations, conversions,  
1212 modifications or replacement of the entire facility involved in  
1213 such proposal. This fee includes the reviewing of architectural  
1214 plans in all steps required. There shall be a minimum user fee of  
1215 Fifty Dollars (\$50.00) and a maximum user fee of Five Thousand  
1216 Dollars (\$5,000.00).

1217 (3) No governmental entity or agency shall be required to  
1218 pay the fee or fees set forth in this section.

1219 **SECTION 26.** Section 43-11-19, Mississippi Code of 1972, is  
1220 amended as follows:

1221 43-11-19. Information received by the licensing agency  
1222 through filed reports, inspection, or as otherwise authorized  
1223 under this chapter, shall not be disclosed publicly in such manner  
1224 as to identify individuals, except in a proceeding involving the  
1225 questions of licensure; however, the licensing agency may utilize  
1226 statistical data concerning types of services and the utilization  
1227 of those services for institutions for the aged or infirm in



1228 performing the \* \* \* duties imposed upon it \* \* \* by Section  
1229 43-11-21.

1230 **SECTION 27.** Section 57-117-5, Mississippi Code of 1972, is  
1231 amended as follows:

1232 57-117-5. (1) The MDA may certify an area as a health care  
1233 industry zone if the following requirements are met:

1234 (a) The area is located within:

1235 (i) Three (3) contiguous counties which have \* \* \*  
1236 hospitals located within the counties that have more than three  
1237 hundred seventy-five (375) acute care hospital beds; and/or

1238 (ii) A county which has a hospital with a minimum  
1239 capital investment of Two Hundred Fifty Million Dollars  
1240 (\$250,000,000.00) and for which construction is completed before  
1241 July 1, 2017;

1242 (b) The health care industry facility is located within  
1243 a five-mile radius of:

1244 (i) A facility with a \* \* \* license for hospital  
1245 beds; and/or

1246 (ii) A university or college that is:

1247 1. Accredited by the Southern Association of  
1248 Colleges and Schools and awards degrees and/or trains workers for  
1249 jobs in health care or pharmaceutical fields of study and/or work,  
1250 and



1251                   2. Located along or near Mississippi Highway  
1252 67 within a master planned community as defined in Section  
1253 19-5-10; and

1254                   (c) The zoning of the local government unit, if  
1255 applicable, allows the construction or operation in the proposed  
1256 health care industry zone of the health care industry facility.

1257       \* \* \*

1258                   ( \* \* \*2) The MDA may adopt and promulgate such rules and  
1259 regulations, in compliance with the Mississippi Administrative  
1260 Procedures Law, as are necessary for the efficient and effective  
1261 administration of this section in keeping with the purposes for  
1262 which it is enacted.

1263                   **SECTION 28.** Section 41-9-311, Mississippi Code of 1972,  
1264 which provides that nothing in the Rural Health Availability Act  
1265 exempts hospitals from compliance with the certificate of need  
1266 law, is repealed.

1267                   **SECTION 29.** This act shall take effect and be in force from  
1268 and after July 1, 2017.

