

By: Representative Yancey

To: Public Health and Human
Services

HOUSE BILL NO. 1305

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16 repealed.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 before 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 before 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 or she 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 or her
45 mark after the form has been filled out by the registrar.



(3) It shall be unlawful for any person to solicit absentee ballot applications or absentee ballots for persons staying in any skilled nursing facility * * * unless the person soliciting the absentee ballot applications or absentee ballots is:

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

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

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

(4) The registrar in the county wherein a voter is qualified to vote upon receiving by mail the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots. The list shall be kept in a conspicuous place accessible to the public near the entrance to the registrar's office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee by mail and in person to be posted in a conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots that voters mailed to the registrar shall be kept by the registrar in his or her office in a secure location. At the time such boxes are delivered to the



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

74 (5) The registrar shall also be authorized to mail one (1)
75 application to any qualified elector of the county, who is
76 eligible to vote by absentee ballot, for use in a particular
77 election.

78 (6) The registrar shall process all applications for
79 absentee ballots by using the Statewide Election Management
80 System. The registrar shall account for all absentee ballots
81 delivered to and received by mail as well as those who voted
82 absentee in person from qualified voters by processing such
83 ballots using the Statewide Election Management System.

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

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



One or more additional veterans homes or domiciliaries are hereby authorized to be established by the State Veterans Affairs Board on sites in northern, central or southern Mississippi, to be determined by the State Veterans Affairs Board, with the approval of the Department of Finance and Administration, when funds are made available for such purpose by any agency of the federal government or other sources. The Veterans Affairs Board shall give the three (3) regions, northern, southern and central priority as to where the veterans home shall be located, with the northern region having first priority, the southern region having the next level priority and the central region being third in order of priority. The object and purpose of the establishment of such additional homes or domiciliaries shall be to provide domiciliary care and other related services for eligible veterans of the State of Mississippi. * * *

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

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

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination



121 upon the issue of whether or not to declare an executive session.
122 The motion, by majority vote, shall require the meeting to be
123 closed for a preliminary determination of the necessity for
124 executive session. No other business shall be transacted until
125 the discussion of the nature of the matter requiring executive
126 session has been completed and a vote, as required in subsection
127 (1) hereof, has been taken on the issue.

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

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

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



(b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.

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

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

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

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

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

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

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



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

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

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

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



(n) Transaction of business of the boards of trustees of public hospitals that would require discussion of any identifiable patient information, including without limitation, patient complaints, patients' accounts, patients receiving charity care, or treatment that could be identified to a patient.

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

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

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

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

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

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

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



218 (iii) To apply for, receive, accept and expend any
219 federal or state funds or contributions, gifts, trusts, devises,
220 bequests, grants, endowments or funds from any other source or
221 transfers of property of any kind;

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

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

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

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



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

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

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

253 (iv) To coordinate the activities of the various
254 offices of the department;

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

264 (vi) To recommend to the board such studies and
265 investigations as he or she may deem appropriate, and to carry out



the approved recommendations in conjunction with the various
offices;

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

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

(ix) To enter into contracts, grants and
cooperative agreements with any federal or state agency or
subdivision thereof, or any public or private institution located
inside or outside the State of Mississippi, or any person,
corporation or association in connection with carrying out the
provisions of this chapter, if he or she finds those actions to be
in the public interest and the contracts or agreements do not have
a financial cost that exceeds the amounts appropriated for those
purposes by the Legislature. Each contract or agreement entered



into by the executive officer shall be submitted to the board before its next meeting.

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

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

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

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

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

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

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

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

(a) To make investigations and inquiries with respect to the causes of disease and death, and to investigate the effect of environment, including conditions of employment and other



conditions that may affect health, and to make such other investigations as it may deem necessary for the preservation and improvement of health.

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

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

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

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

(f) (i) To establish standards for, issue permits and exercise control over, any cafes, restaurants, food or drink stands, sandwich manufacturing establishments, and all other



establishments, other than churches, church-related and private schools, and other nonprofit or charitable organizations, where food or drink is regularly prepared, handled and served for pay; and

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

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

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



364 (i) To conduct investigations, inquiries and hearings,
365 and to issue subpoenas for the attendance of witnesses and the
366 production of books and records at any hearing when authorized and
367 required by statute to be conducted by the State Health Officer or
368 the State Board of Health.

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

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

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

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



389 (ix) Radiological health;
390 (x) Dental health;
391 (xi) Milk sanitation;
392 (xii) Occupational safety and health;
393 (xiii) Food, vector control and general
394 sanitation;
395 (xiv) Protection of drinking water;
396 (xv) Sanitation in food handling establishments
397 open to the public;
398 (xvi) Registration of births and deaths and other
399 vital events;
400 (xvii) Such public health programs and services as
401 may be assigned to the State Board of Health by the Legislature or
402 by executive order; and
403 (xviii) Regulation of domestic and imported fish
404 for human consumption.
405 (b) The State Board of Health and State Department of
406 Health shall not be authorized to sell, transfer, alienate or
407 otherwise dispose of any of the home health agencies owned and
408 operated by the department on January 1, 1995, and shall not be
409 authorized to sell, transfer, assign, alienate or otherwise
410 dispose of the license of any of those home health agencies,
411 except upon the specific authorization of the Legislature by an
412 amendment to this section. However, this paragraph (b) shall not
413 prevent the board or the department from closing or terminating



the operation of any home health agency owned and operated by the department, or closing or terminating any office, branch office or clinic of any such home health agency, or otherwise discontinuing the providing of home health services through any such home health agency, office, branch office or clinic, if the board first demonstrates that there are other providers of home health services in the area being served by the department's home health agency, office, branch office or clinic that will be able to provide adequate home health services to the residents of the area if the department's home health agency, office, branch office or clinic is closed or otherwise discontinues the providing of home health services. This demonstration by the board that there are other providers of adequate home health services in the area shall be spread at length upon the minutes of the board at a regular or special meeting of the board at least thirty (30) days before a home health agency, office, branch office or clinic is proposed to be closed or otherwise discontinue the providing of home health services.

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



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

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

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

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

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

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

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



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

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

486 * * *

487 (* * *9) Notwithstanding any other provision to the
488 contrary, the State Department of Health shall have the following



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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



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

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

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

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



638 that may become designated as critical access hospitals after July
639 1, 2003.

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

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



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

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

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

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

679 (a) "Act" means the Mississippi Hospital Equipment and
680 Facilities Authority Act.

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

813 41-75-1. For the purpose of this chapter:

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

914 (g) "Licensing agency" means the State Department of
915 Health.

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

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

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



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

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

945 (j) "Post-acute residential brain injury rehabilitation
946 facility" is a facility containing no more than twelve (12) beds
947 providing medically directed long-term but nonacute rehabilitation
948 to patients who have acquired brain injury. In order to be
949 eligible for licensure under this chapter, the post-acute
950 residential brain injury rehabilitation facility shall be located
951 at least twenty-five (25) miles from the nearest acute care
952 rehabilitation hospital and at least five (5) miles from the
953 boundaries of any municipality having a population of ten thousand
954 (10,000) or more, according to the most recent federal decennial
955 census, at the time that facility is established.

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



41-75-5. No person * * * or other entity, acting severally or jointly with any other person or entity, shall establish, conduct, operate or maintain an ambulatory surgical facility or an abortion facility or a freestanding emergency room or a post-acute residential brain injury rehabilitation facility in this state without a license under this chapter.

In order to receive a license for a post-acute residential brain injury rehabilitation facility under this chapter, the recipient of the license must agree in writing that the facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the facility who are participating in the Medicaid program. This written agreement by the recipient of the license shall be fully binding on any later owner of the facility, if the ownership of the facility is transferred at any time after the issuance of the license. Agreement that the facility will not participate in the Medicaid program shall be a condition of the issuance of a license for a post-acute residential brain injury rehabilitation facility to any person under this chapter, and if such facility at any time after the issuance of the license, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the licensing agency shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed



to comply with any of the conditions upon which the license was issued, as provided in this section and in the written agreement by the recipient of the license.

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

41-75-9. Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter * * *. A license, unless suspended or revoked, shall be renewable annually upon payment of a renewal fee of Three Thousand Dollars (\$3,000.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency requires. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65. Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

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

41-75-25. Any person or persons or other entity or entities establishing, managing or operating an ambulatory surgical facility or conducting the business of an ambulatory surgical



facility without the required license, or which otherwise violate any of the provisions of this chapter * * * or the rules, regulations or standards promulgated in furtherance of any law in which the * * * licensing agency has authority therefor shall be subject to the following penalties and sanctions * * *:

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

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

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

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

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



1033 (a) "Birthing center" * * * means a publicly or
1034 privately owned facility, place or institution constructed,
1035 renovated, leased or otherwise established where nonemergency
1036 births are planned to occur away from the mother's usual residence
1037 following a documented period of prenatal care for a normal
1038 uncomplicated pregnancy which has been determined to be low risk
1039 through a formal risk scoring examination. Care provided in a
1040 birthing center shall be provided by a licensed physician, or
1041 certified nurse midwife, and a registered nurse. Services
1042 provided in a birthing center shall be limited in the following
1043 manner: (i) surgical services shall be limited to those normally
1044 performed during uncomplicated childbirth, such as episiotomy and
1045 repair, and shall not include operative obstetrics or caesarean
1046 sections; (ii) labor shall not be inhibited, stimulated or
1047 augmented with chemical agents during the first or second stage of
1048 labor; (iii) systemic analgesia may be administered and local
1049 anesthesia for pudental block and episiotomy repair may be
1050 performed. General and conductive anesthesia shall not be
1051 administered at birthing centers; (iv) patients shall not remain
1052 in the facility in excess of twenty-four (24) hours.

1053 Hospitals are excluded from the definition of a "birthing
1054 center" unless they choose to and are qualified to designate a
1055 portion or part of the hospital as a birthing center, and nothing
1056 herein shall be construed as referring to the usual service
1057 provided the pregnant female in the obstetric-gynecology service



1058 of an acute care hospital. Such facility or center, as heretofore
1059 stated, shall include the offices of physicians in private
1060 practice alone or in groups of two (2) or more; and such facility
1061 or center rendering service to pregnant female persons, as stated
1062 heretofore and by the rules and regulations promulgated by the
1063 licensing agency in furtherance thereof, shall be deemed to be a
1064 "birthing center" whether using a similar or different name. Such
1065 center or facility if in any manner is deemed to be or considered
1066 to be operated or owned by a hospital or a hospital holding
1067 leasing or management company, for profit or not for profit, is
1068 required to comply with all birthing center standards governing a
1069 "hospital affiliated" birthing center as adopted by the licensing
1070 authority.

1071 (b) "Hospital affiliated" birthing center * * * means a
1072 separate and distinct unit of a hospital or a building owned,
1073 leased, rented or utilized by a hospital and located in the same
1074 county as the hospital for the purpose of providing the service of
1075 a "birthing center." Such center or facility is not required to
1076 be licensed separately, and may operate under the license issued
1077 to the hospital if it is in compliance with Section 41-9-1 et
1078 seq., where applicable, and the rules and regulations promulgated
1079 by the licensing agency in furtherance thereof.

1080 (c) "Freestanding" birthing center * * * means a
1081 separate and distinct facility or center or a separate and
1082 distinct organized unit of a hospital or other * * * entity for



the purpose of performing the service of a "birthing center."
Such facility or center must be separately licensed and must
comply with all licensing standards promulgated by the licensing
agency by virtue of this chapter. Further, such facility or
center must be a separate, identifiable entity and must be
physically, administratively and financially independent from
other operations of any hospital or other health care facility or
service and shall maintain a separate and required staff,
including administrative staff. * * *

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

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

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

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

41-77-21. Any applicant or licensee aggrieved by the
decision of the licensing agency after a hearing may, within
thirty (30) days after the mailing or serving of notice of the
decision as provided in Section 43-11-11, * * * file a notice of
appeal to the Chancery Court of the First Judicial District of
Hinds County or in the chancery court of the county in which the



1108 institution is located or proposed to be located. * * *
1109 Thereupon, the licensing agency shall * * * certify and file with
1110 the court a copy of the record and decision, including the
1111 transcript of the hearings in which the decision is based. No new
1112 or additional evidence shall be introduced in court; the case
1113 shall be determined upon the record certified to the court. The
1114 court may sustain or dismiss the appeal, modify or vacate the
1115 order complained of in whole or in part, as the case may be; but
1116 in case the order is wholly or partly vacated, the court may also,
1117 in its discretion, remand the matter to the licensing agency for
1118 such further proceedings, not inconsistent with the court's order,
1119 as, in the opinion of the court, justice may require. The order
1120 may not be vacated or set aside, either in whole or in part,
1121 except for errors of law, unless the court finds that the order of
1122 the licensing agency is not supported by substantial evidence, is
1123 contrary to the manifest weight of the evidence, is in excess of
1124 the statutory authority or jurisdiction of the licensing agency,
1125 or violates any vested constitutional rights of any party involved
1126 in the appeal. Pending final disposition of the matter, the
1127 status quo of the applicant or licensee shall be preserved, except
1128 as the court otherwise orders in the public interest. Rules with
1129 respect to court costs in other cases in chancery shall apply
1130 equally to cases hereunder. Appeals in accordance with law may be
1131 had to the Supreme Court of the State of Mississippi from any
1132 final judgment of the chancery court.



1133 **SECTION 22.** Section 41-77-23, Mississippi Code of 1972, is
1134 amended as follows:

1135 41-77-23. Any person or persons or other entity or entities
1136 establishing, managing or operating a "birthing center" or
1137 conducting the business of a "birthing center" without the
1138 required license, or which otherwise violate any of the provisions
1139 of this chapter * * * or the rules, regulations or standards
1140 promulgated in furtherance of any law in which the * * * licensing
1141 agency has authority therefor, shall be subject to the following
1142 penalties and sanctions * * *:

1143 (a) Revocation of the license of the birthing center or
1144 a designated section, component or service thereof; or

1145 (b) Nonlicensure of a specific or designated service
1146 offered by the birthing center.

1147 In addition, any violation of any provision of this chapter
1148 or any rules or regulations promulgated in furtherance thereof by
1149 intent, fraud, deceit, unlawful design, willful and/or deliberate
1150 misrepresentation, or by careless, negligent or incautious
1151 disregard for such statutes or rules and regulations, either by
1152 persons acting individually or in concert with others, shall
1153 constitute a misdemeanor and shall be punishable by a fine not to
1154 exceed One Thousand Dollars (\$1,000.00) for each such offense.
1155 Each day of continuing violation shall be considered a separate
1156 offense. The venue for prosecution of any such violation shall be



1157 in any county of the state in which any such violation, or portion
1158 thereof, occurred.

1159 **SECTION 23.** Section 41-77-25, Mississippi Code of 1972, is
1160 amended as follows:

1161 41-77-25. Upon receipt of an application for license and the
1162 license fee, the licensing agency shall issue a license if the
1163 applicant and the institutional facilities meet the requirements
1164 established under this chapter * * *. A license, unless suspended
1165 or revoked, shall be renewable annually upon payment of a renewal
1166 fee of Three Hundred Dollars (\$300.00), which shall be paid to the
1167 licensing agency, and upon filing by the licensee and approval by
1168 the licensing agency of an annual report upon such uniform dates
1169 and containing such information in such form as the licensing
1170 agency requires. Any increase in the fee charged by the licensing
1171 agency under this section shall be in accordance with the
1172 provisions of Section 41-3-65. Each license shall be issued only
1173 for the premises and person or persons named in the application
1174 and shall not be transferable or assignable. Licenses shall be
1175 posted in a conspicuous place on the licensed premises.

1176 **SECTION 24.** Section 41-95-3, Mississippi Code of 1972, is
1177 amended as follows:

1178 41-95-3. As used in this chapter:

1179 (a) "Authority" means the Mississippi Health Finance
1180 Authority created under Section 41-95-5.



1181 (b) "Board" means the Mississippi Health Finance
1182 Authority Board created under Section 41-95-5.

1183 (c) "Health care facility" means all facilities and
1184 institutions, whether public or private, proprietary or nonprofit,
1185 which offer diagnosis, treatment, inpatient or ambulatory care to
1186 two (2) or more unrelated persons * * *.

1187 (d) "Health care provider" means a person, partnership
1188 or corporation, other than a facility or institution, licensed or
1189 certified or authorized by state or federal law to provide
1190 professional health care service in this state to an individual
1191 during that individual's health care, treatment or confinement.

1192 (e) "Health insurer" means any health insurance
1193 company, nonprofit hospital and medical service corporation,
1194 health maintenance organization and, to the extent permitted under
1195 federal law, any administrator of an insured, self-insured or
1196 publicly funded health care benefit plan offered by public and
1197 private entities.

1198 (f) "Resident" means a person who is domiciled in
1199 Mississippi as evidenced by an intent to maintain a principal
1200 dwelling place in Mississippi indefinitely and to return to
1201 Mississippi if temporarily absent, coupled with an act or acts
1202 consistent with that intent.

1203 (g) "Primary care" or "primary health care" includes
1204 those health care services provided to individuals, families and
1205 communities, at a first level of care, which preserve and improve



1206 health, and encompasses services which promote health, prevent
1207 disease, treat and cure illness. It is delivered by various
1208 health care providers in a variety of settings including hospital
1209 outpatient clinics, private provider offices, group practices,
1210 health maintenance organizations, public health departments and
1211 community health centers. A primary care system is characterized
1212 by coordination of comprehensive services, cultural sensitivity,
1213 community orientation, continuity, prevention, the absence of
1214 barriers to receive and provide services, and quality assurance.

1215 **SECTION 25.** Section 43-11-9, Mississippi Code of 1972, is
1216 amended as follows:

1217 43-11-9. (1) Upon receipt of an application for license and
1218 the license fee, the licensing agency shall issue a license if the
1219 applicant and the institutional facilities meet the requirements
1220 established under this chapter * * *. A license, unless suspended
1221 or revoked, shall be renewable annually upon payment by (a) the
1222 licensee of an institution for the aged or infirm, except for
1223 personal care homes, of a renewal fee of Twenty Dollars (\$20.00)
1224 for each bed in the institution, with a minimum fee per
1225 institution of Two Hundred Dollars (\$200.00), or (b) the licensee
1226 of a personal care home of a renewal fee of Fifteen Dollars
1227 (\$15.00) for each bed in the institution, with a minimum fee per
1228 institution of One Hundred Dollars (\$100.00), which shall be paid
1229 to the licensing agency, and upon filing by the licensee and
1230 approval by the licensing agency of an annual report upon such



1231 uniform dates and containing such information in such form as the
1232 licensing agency prescribes by regulation. Any increase in the
1233 fee charged by the licensing agency under this subsection shall be
1234 in accordance with the provisions of Section 41-3-65. Each
1235 license shall be issued only for the premises and person or
1236 persons or other legal entity or entities named in the application
1237 and shall not be transferable or assignable except with the
1238 written approval of the licensing agency. Licenses shall be
1239 posted in a conspicuous place on the licensed premises.

1240 (2) A fee known as a "User Fee" shall be applicable and
1241 shall be paid to the licensing agency as set out in subsection (1)
1242 of this section. Any increase in the fee charged by the licensing
1243 agency under this subsection shall be in accordance with the
1244 provisions of Section 41-3-65. This user fee shall be assessed
1245 for the purpose of the required reviewing and inspections of the
1246 proposal of any institution in which there are additions,
1247 renovations, modernizations, expansion, alterations, conversions,
1248 modifications or replacement of the entire facility involved in
1249 such proposal. This fee includes the reviewing of architectural
1250 plans in all steps required. There shall be a minimum user fee of
1251 Fifty Dollars (\$50.00) and a maximum user fee of Five Thousand
1252 Dollars (\$5,000.00).

1253 (3) No governmental entity or agency shall be required to
1254 pay the fee or fees set forth in this section.



1255 **SECTION 26.** Section 43-11-19, Mississippi Code of 1972, is
1256 amended as follows:

1257 43-11-19. Information received by the licensing agency
1258 through filed reports, inspection, or as otherwise authorized
1259 under this chapter, shall not be disclosed publicly in such manner
1260 as to identify individuals, except in a proceeding involving the
1261 questions of licensure; however, the licensing agency may utilize
1262 statistical data concerning types of services and the utilization
1263 of those services for institutions for the aged or infirm in
1264 performing the * * * duties imposed upon it * * * by Section
1265 43-11-21.

1266 **SECTION 27.** Section 57-117-5, Mississippi Code of 1972, is
1267 amended as follows:

1268 57-117-5. (1) The MDA may certify an area as a health care
1269 industry zone if the following requirements are met:

1270 (a) The area is located within:

1271 (i) Three (3) contiguous counties which have * * *
1272 hospitals located within the counties that have more than three
1273 hundred seventy-five (375) acute care hospital beds; and/or

1274 (ii) A county which has a hospital with a minimum
1275 capital investment of Two Hundred Fifty Million Dollars
1276 (\$250,000,000.00) and for which construction is completed before
1277 July 1, 2017;

1278 (b) The health care industry facility is located within
1279 a five-mile radius of:



1280 (i) A facility with a * * * license for hospital
1281 beds; and/or

1282 (ii) A university or college that is:

1283 1. Accredited by the Southern Association of
1284 Colleges and Schools and awards degrees and/or trains workers for
1285 jobs in health care or pharmaceutical fields of study and/or work,
1286 and

1287 2. Located along or near Mississippi Highway
1288 67 within a master planned community as defined in Section
1289 19-5-10; and

1290 (c) The zoning of the local government unit, if
1291 applicable, allows the construction or operation in the proposed
1292 health care industry zone of the health care industry facility.

1293 * * *

1294 (* * *2) The MDA may adopt and promulgate such rules and
1295 regulations, in compliance with the Mississippi Administrative
1296 Procedures Law, as are necessary for the efficient and effective
1297 administration of this section in keeping with the purposes for
1298 which it is enacted.

1299 **SECTION 28.** Section 41-9-311, Mississippi Code of 1972,
1300 which provides that nothing in the Rural Health Availability Act
1301 exempts hospitals from compliance with the certificate of need
1302 law, is repealed.

1303 **SECTION 29.** This act shall take effect and be in force from
1304 and after July 1, 2021.

