

By: Senator(s) Suber, Jackson (11th),
McCaughn, McLendon, Sparks

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2735

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF FREESTANDING EMERGENCY ROOM TO INCLUDE
3 RURAL EMERGENCY HOSPITALS AND TO ESTABLISH THAT IN ORDER TO BE
4 ELIGIBLE FOR LICENSURE, THE HOSPITALS AND EMERGENCY ROOMS SHALL BE
5 LOCATED AT LEAST 15 MILES FROM THE NEAREST HOSPITAL-BASED
6 EMERGENCY ROOM IN ANY RURAL COMMUNITY WHERE THE FEDERAL CMMS HAS
7 DESIGNATED AS A MEDICALLY UNDERSERVED AREA IN A COUNTY WITHOUT A
8 EMERGENCY HOSPITAL THAT IS OPEN 24 HOURS A DAY AND THE OWNER OR
9 MANAGER IS A HOSPITAL OPERATOR OF AN EXISTING RURAL MISSISSIPPI
10 HOSPITAL AT THE TIME OF LICENSURE; TO BRING FORWARD SECTION
11 41-75-13, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE
12 AMENDMENT; AND FOR RELATED PURPOSES.

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

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

16 41-75-1. For the purpose of this chapter:

17 (a) "Ambulatory surgical facility" means a publicly or
18 privately owned institution that is primarily organized,
19 constructed, renovated or otherwise established for the purpose of
20 providing elective surgical treatment of "outpatients" whose
21 recovery, under normal and routine circumstances, will not require
22 "inpatient" care. The facility defined in this paragraph does not
23 include the offices of private physicians or dentists, whether



24 practicing individually or in groups, but does include
25 organizations or facilities primarily engaged in that outpatient
26 surgery, whether using the name "ambulatory surgical facility" or
27 a similar or different name. That organization or facility, if in
28 any manner considered to be operated or owned by a hospital or a
29 hospital holding, leasing or management company, either for profit
30 or not for profit, is required to comply with all licensing agency
31 ambulatory surgical licensure standards governing a "hospital
32 affiliated" facility as adopted under Section 41-9-1 et seq.,
33 provided that the organization or facility does not intend to seek
34 federal certification as an ambulatory surgical facility as
35 provided for at 42 CFR, Parts 405 and 416. If the organization or
36 facility is to be operated or owned by a hospital or a hospital
37 holding, leasing or management company and intends to seek federal
38 certification as an ambulatory facility, then the facility is
39 considered to be "freestanding" and must comply with all licensing
40 agency ambulatory surgical licensure standards governing a
41 "freestanding" facility.

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

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



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

55 (c) "Freestanding" ambulatory surgical facility means a
56 separate and distinct facility or a separate and distinct
57 organized unit of a hospital owned, leased, rented or utilized by
58 a hospital or other persons for the primary purpose of performing
59 ambulatory surgery procedures. The facility must be separately
60 licensed as defined in this section and must comply with all
61 licensing standards promulgated by the licensing agency under this
62 chapter regarding a "freestanding" ambulatory surgical facility.
63 Further, the facility must be a separate, identifiable entity and
64 must be physically, administratively and financially independent
65 and distinct from other operations of any other health facility,
66 and shall maintain a separate organized medical and administrative
67 staff. Furthermore, once licensed as a "freestanding" ambulatory
68 surgical facility, the facility shall not become a component of
69 any other health facility without securing a certificate of need
70 to do that.

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



74 prolonged postoperative monitoring and hospital care to ensure
75 safe recovery and desirable results. General anesthesia is used
76 in most cases. The patient must arrive at the facility and expect
77 to be discharged on the same day. Ambulatory surgery shall only
78 be performed by physicians or dentists licensed to practice in the
79 State of Mississippi.

80 (e) "Abortion" means the use or prescription of any
81 instrument, medicine, drug or any other substances or device to
82 terminate the pregnancy of a woman known to be pregnant with an
83 intention other than to increase the probability of a live birth,
84 to preserve the life or health of the child after live birth or to
85 remove a dead fetus. Abortion procedures after the first
86 trimester shall only be performed at a Level I abortion facility
87 or an ambulatory surgical facility or hospital licensed to perform
88 that service.

89 (f) "Abortion facility" means a facility operating
90 substantially for the purpose of performing abortions and is a
91 separate identifiable legal entity from any other health care
92 facility. Abortions shall only be performed by physicians
93 licensed to practice in the State of Mississippi. All physicians
94 associated with the abortion facility must have admitting
95 privileges at a local hospital and staff privileges to replace
96 local hospital on-staff physicians. All physicians associated
97 with an abortion facility must be board certified or eligible in
98 obstetrics and gynecology, and a staff member trained in CPR shall



99 always be present at the abortion facility when it is open. The
100 term "abortion facility" includes physicians' offices that are
101 used substantially for the purpose of performing abortions. An
102 abortion facility operates substantially for the purpose of
103 performing abortions if any of the following conditions are met:

104 (i) The abortion facility is a provider for
105 performing ten (10) or more abortion procedures per calendar month
106 during any month of a calendar year, or one hundred (100) or more
107 in a calendar year.

108 (ii) The abortion facility, if operating less than
109 twenty (20) days per calendar month, is a provider for performing
110 ten (10) or more abortion procedures, or performing a number of
111 abortion procedures that would be equivalent to ten (10)
112 procedures per month, if the facility were operating twenty (20)
113 or more days per calendar month, in any month of a calendar year.

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

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

120 (g) "Licensing agency" means the State Department of
121 Health.

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



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

126 An abortion facility may apply to be licensed as a Level I
127 facility or a Level II facility by the licensing agency. Level II
128 abortion facilities shall be required to meet minimum standards
129 for abortion facilities as established by the licensing agency.
130 Level I abortion facilities shall be required to meet minimum
131 standards for abortion facilities and minimum standards for
132 ambulatory surgical facilities as established by the licensing
133 agency.

134 Any abortion facility that begins operation after June 30,
135 1996, shall not be located within one thousand five hundred
136 (1,500) feet from the property on which any church, school or
137 kindergarten is located. An abortion facility shall not be in
138 violation of this paragraph if it is in compliance with this
139 paragraph on the date it begins operation and the property on
140 which a church, school or kindergarten is located within one
141 thousand five hundred (1,500) feet from the facility.

142 (i) "Freestanding emergency room," also identified as a
143 "rural emergency hospital," is a facility open twenty-four (24)
144 hours a day for the treatment of urgent and emergent medical
145 conditions which is not located on a hospital campus. In order to
146 be eligible for licensure under this chapter, the freestanding
147 emergency room shall be located at least fifteen (15) miles from
148 the nearest hospital-based emergency room in any rural community



149 where the federal CMMS * * * has previously designated * * * as a
150 medically underserved area in a county without emergency hospital
151 care that is open twenty-four (24) hours a day and the owner or
152 manager is a hospital operator of an existing rural Mississippi
153 hospital at the time of licensure.

154 (j) "Post-acute residential brain injury rehabilitation
155 facility" is a facility containing no more than twelve (12) beds
156 providing medically directed long-term but nonacute rehabilitation
157 to patients who have acquired brain injury. In order to be
158 eligible for licensure under this chapter, the post-acute
159 residential brain injury rehabilitation facility shall be located
160 at least twenty-five (25) miles from the nearest acute care
161 rehabilitation hospital and at least five (5) miles from the
162 boundaries of any municipality having a population of ten thousand
163 (10,000) or more, according to the most recent federal decennial
164 census, at the time that facility is established.

165 **SECTION 2.** Section 41-75-13, Mississippi Code of 1972, is
166 brought forward as follows:

167 41-75-13. The licensing agency shall adopt, amend,
168 promulgate and enforce rules, regulations and standards, including
169 classifications, with respect to ambulatory surgical facilities
170 and abortion facilities, freestanding emergency rooms and
171 post-acute residential brain injury rehabilitation facilities
172 licensed, or which may be licensed, to further the accomplishment
173 of the purpose of this chapter in protecting and promoting the



174 health, safety and welfare of the public by ensuring adequate care
175 of individuals receiving services from such facilities. The
176 licensing agency also shall adopt, amend, promulgate and enforce
177 rules, regulations and standards with respect to the enforcement
178 of the informed consent requirements of Sections 41-41-31 through
179 41-41-39 at abortion facilities. Such rules, regulations and
180 standards for freestanding emergency rooms shall include a patient
181 transfer policy under which the freestanding emergency room enters
182 into an agreement with a general hospital for a protocol for
183 patient transfers. Such rules, regulations and standards shall be
184 adopted and promulgated by the licensing agency in accordance with
185 the provisions of Section 25-43-1 et seq., and shall be recorded
186 and indexed in a book to be maintained by the licensing agency in
187 its main office in the State of Mississippi, entitled "Rules and
188 Regulations for Operation of Ambulatory Surgical Facilities and
189 Abortion Facilities, Freestanding Emergency Room Facilities and
190 Post-Acute Residential Brain Injury Rehabilitation Facilities."
191 The book shall be open and available to all ambulatory surgical
192 facilities and abortion facilities, freestanding emergency rooms
193 and post-acute residential brain injury rehabilitation facilities
194 and the public during regular business hours.

195 **SECTION 3.** This act shall take effect and be in force from
196 and after July 1, 2022.

