

By: Senator(s) Suber, Jackson (11th),
McCaughn, McLendon, Sparks, Simmons (12th),
Thomas

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2735
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF FREESTANDING EMERGENCY ROOM; TO CREATE A
3 NEW DEFINITION FOR PILOT FREESTANDING EMERGENCY ROOM; TO AMEND
4 SECTION 41-75-13, MISSISSIPPI CODE OF 1972, TO REQUIRE THE STATE
5 DEPARTMENT OF HEALTH TO AUTHORIZE NO MORE THAN FIVE FREESTANDING
6 EMERGENCY ROOMS; AND FOR RELATED PURPOSES.

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

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

10 41-75-1. For the purpose of this chapter:

11 (a) "Ambulatory surgical facility" means a publicly or
12 privately owned institution that is primarily organized,
13 constructed, renovated or otherwise established for the purpose of
14 providing elective surgical treatment of "outpatients" whose
15 recovery, under normal and routine circumstances, will not require
16 "inpatient" care. The facility defined in this paragraph does not
17 include the offices of private physicians or dentists, whether
18 practicing individually or in groups, but does include
19 organizations or facilities primarily engaged in that outpatient
20 surgery, whether using the name "ambulatory surgical facility" or



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

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

41 (b) "Hospital affiliated" ambulatory surgical facility
42 means a separate and distinct organized unit of a hospital or a
43 building owned, leased, rented or utilized by a hospital and
44 located in the same county in which the hospital is located, for
45 the primary purpose of performing ambulatory surgery procedures.



46 The facility is not required to be separately licensed under this
47 chapter and may operate under the hospital's license in compliance
48 with all applicable requirements of Section 41-9-1 et seq.

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

65 (d) "Ambulatory surgery" means surgical procedures that
66 are more complex than office procedures performed under local
67 anesthesia, but less complex than major procedures requiring
68 prolonged postoperative monitoring and hospital care to ensure
69 safe recovery and desirable results. General anesthesia is used
70 in most cases. The patient must arrive at the facility and expect



71 to be discharged on the same day. Ambulatory surgery shall only
72 be performed by physicians or dentists licensed to practice in the
73 State of Mississippi.

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

83 (f) "Abortion facility" means a facility operating
84 substantially for the purpose of performing abortions and is a
85 separate identifiable legal entity from any other health care
86 facility. Abortions shall only be performed by physicians
87 licensed to practice in the State of Mississippi. All physicians
88 associated with the abortion facility must have admitting
89 privileges at a local hospital and staff privileges to replace
90 local hospital on-staff physicians. All physicians associated
91 with an abortion facility must be board certified or eligible in
92 obstetrics and gynecology, and a staff member trained in CPR shall
93 always be present at the abortion facility when it is open. The
94 term "abortion facility" includes physicians' offices that are
95 used substantially for the purpose of performing abortions. An



96 abortion facility operates substantially for the purpose of
97 performing abortions if any of the following conditions are met:

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

102 (ii) The abortion facility, if operating less than
103 twenty (20) days per calendar month, is a provider for performing
104 ten (10) or more abortion procedures, or performing a number of
105 abortion procedures that would be equivalent to ten (10)
106 procedures per month, if the facility were operating twenty (20)
107 or more days per calendar month, in any month of a calendar year.

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

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

114 (g) "Licensing agency" means the State Department of
115 Health.

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



120 An abortion facility may apply to be licensed as a Level I
121 facility or a Level II facility by the licensing agency. Level II
122 abortion facilities shall be required to meet minimum standards
123 for abortion facilities as established by the licensing agency.
124 Level I abortion facilities shall be required to meet minimum
125 standards for abortion facilities and minimum standards for
126 ambulatory surgical facilities as established by the licensing
127 agency.

128 Any abortion facility that begins operation after June 30,
129 1996, shall not be located within one thousand five hundred
130 (1,500) feet from the property on which any church, school or
131 kindergarten is located. An abortion facility shall not be in
132 violation of this paragraph if it is in compliance with this
133 paragraph on the date it begins operation and the property on
134 which a church, school or kindergarten is located within one
135 thousand five hundred (1,500) feet from the facility.

136 (i) "Freestanding emergency room" is a facility open
137 twenty-four (24) hours a day for the treatment of urgent and
138 emergent medical conditions which is not located on a hospital
139 campus. In order to be eligible for licensure under this chapter,
140 the freestanding emergency room shall be located at least fifteen
141 (15) miles from the nearest hospital-based emergency room in any
142 rural community where the federal CMMS had previously designated a
143 rural hospital as a critical access hospital and that designation
144 has been revoked.



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

156 (k) "Pilot freestanding emergency room" is a facility
157 open twenty-four (24) hours a day for the treatment of urgent and
158 emergent medical conditions which is not located on a hospital
159 campus. In order to be eligible for licensure under this chapter,
160 the pilot freestanding emergency room shall be located at least
161 fifteen (15) miles from the nearest hospital-based emergency room
162 in any rural community where the federal CMMS has previously
163 designated as a medically underserved area in a county without
164 emergency hospital care that is open twenty-four (24) hours a day,
165 or a county with less than twenty-five thousand (25,000)
166 residents, and the owner or manager is a hospital operator of an
167 existing rural Mississippi hospital at the time of licensure.

168 **SECTION 2.** Section 41-75-13, Mississippi Code of 1972, is
169 amended as follows:



170 41-75-13. (1) The licensing agency shall adopt, amend,
171 promulgate and enforce rules, regulations and standards, including
172 classifications, with respect to ambulatory surgical facilities
173 and abortion facilities, freestanding emergency rooms and
174 post-acute residential brain injury rehabilitation facilities
175 licensed, or which may be licensed, to further the accomplishment
176 of the purpose of this chapter in protecting and promoting the
177 health, safety and welfare of the public by ensuring adequate care
178 of individuals receiving services from such facilities. The
179 licensing agency also shall adopt, amend, promulgate and enforce
180 rules, regulations and standards with respect to the enforcement
181 of the informed consent requirements of Sections 41-41-31 through
182 41-41-39 at abortion facilities. Such rules, regulations and
183 standards for freestanding emergency rooms shall include a patient
184 transfer policy under which the freestanding emergency room enters
185 into an agreement with a general hospital for a protocol for
186 patient transfers. Such rules, regulations and standards shall be
187 adopted and promulgated by the licensing agency in accordance with
188 the provisions of Section 25-43-1 et seq., and shall be recorded
189 and indexed in a book to be maintained by the licensing agency in
190 its main office in the State of Mississippi, entitled "Rules and
191 Regulations for Operation of Ambulatory Surgical Facilities and
192 Abortion Facilities, Freestanding Emergency Room Facilities and
193 Post-Acute Residential Brain Injury Rehabilitation Facilities."
194 The book shall be open and available to all ambulatory surgical



195 facilities and abortion facilities, freestanding emergency rooms
196 and post-acute residential brain injury rehabilitation facilities
197 and the public during regular business hours.

198 (2) The licensing agency shall authorize no more than five
199 (5) facilities as provided for in Section 41-75-1(k).

200 **SECTION 3.** This act shall take effect and be in force from
201 and after July 1, 2022, and shall stand repealed on June 30, 2022.

