

By: Representative Bain

To: Drug Policy

HOUSE BILL NO. 1495

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 16 repealed.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.



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

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

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

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

58 (4) The registrar in the county wherein a voter is qualified
59 to vote upon receiving by mail the envelope containing the
60 absentee ballots shall keep an accurate list of all persons
61 preparing such ballots. The list shall be kept in a conspicuous
62 place accessible to the public near the entrance to the
63 registrar's office. The registrar shall also furnish to each
64 precinct manager a list of the names of all persons in each
65 respective precinct voting absentee by mail and in person to be
66 posted in a conspicuous place at the polling place for public
67 notice. The application on file with the registrar and the
68 envelopes containing the ballots that voters mailed to the
69 registrar shall be kept by the registrar in his or her office in a
70 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.



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

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

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

118 (2) The procedure to be followed by any public body in
119 declaring an executive session shall be as follows: Any member
120 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.



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

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

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

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

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

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

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

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



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

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

186 (l) Discussions regarding material or data exempt from
187 the Mississippi Public Records Act of 1983 pursuant to Section
188 25-11-121.

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



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

198 (o) Investigative discussions, investigative
199 strategies, probative strategies related to identifiable instances
200 of human trafficking or commercial sexual exploitation, and
201 discussions involving locations of shelters or safe-houses for
202 victims of human trafficking or commercial sexual exploitation.

203 (p) Transaction of business of committees,
204 subcommittees or boards that would require discussion of any
205 identifiable information of victims of human trafficking or
206 children under eighteen (18) years old who are victims of
207 commercial sexual exploitation.

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

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

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

216 41-3-15. (1) (a) There shall be a State Department of
217 Health.



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

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

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

228 (iii) To apply for, receive, accept and expend any
229 federal or state funds or contributions, gifts, trusts, devises,
230 bequests, grants, endowments or funds from any other source or
231 transfers of property of any kind;

232 (iv) To enter into, and to authorize the executive
233 officer to execute contracts, grants and cooperative agreements
234 with any federal or state agency or subdivision thereof, or any
235 public or private institution located inside or outside the State
236 of Mississippi, or any person, corporation or association in
237 connection with carrying out the provisions of this chapter, if it
238 finds those actions to be in the public interest and the contracts
239 or agreements do not have a financial cost that exceeds the
240 amounts appropriated for those purposes by the Legislature;

241 (v) To appoint, upon recommendation of the
242 Executive Officer of the State Department of Health, a Director of



243 Internal Audit who shall be either a Certified Public Accountant
244 or Certified Internal Auditor, and whose employment shall be
245 continued at the discretion of the board, and who shall report
246 directly to the board, or its designee; and

247 (vi) To discharge such other duties,
248 responsibilities and powers as are necessary to implement the
249 provisions of this chapter.

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

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

254 (ii) To supervise and direct all administrative
255 and technical activities of the department, except that the
256 department's internal auditor shall be subject to the sole
257 supervision and direction of the board;

258 (iii) To organize the administrative units of the
259 department in accordance with the plan adopted by the board and,
260 with board approval, alter the organizational plan and reassign
261 responsibilities as he or she may deem necessary to carry out the
262 policies of the board;

263 (iv) To coordinate the activities of the various
264 offices of the department;

265 (v) To employ, subject to regulations of the State
266 Personnel Board, qualified professional personnel in the subject
267 matter or fields of each office, and such other technical and



268 clerical staff as may be required for the operation of the
269 department. The executive officer shall be the appointing
270 authority for the department, and shall have the power to delegate
271 the authority to appoint or dismiss employees to appropriate
272 subordinates, subject to the rules and regulations of the State
273 Personnel Board;

274 (vi) To recommend to the board such studies and
275 investigations as he or she may deem appropriate, and to carry out
276 the approved recommendations in conjunction with the various
277 offices;

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

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

291 (ix) To enter into contracts, grants and
292 cooperative agreements with any federal or state agency or



293 subdivision thereof, or any public or private institution located
294 inside or outside the State of Mississippi, or any person,
295 corporation or association in connection with carrying out the
296 provisions of this chapter, if he or she finds those actions to be
297 in the public interest and the contracts or agreements do not have
298 a financial cost that exceeds the amounts appropriated for those
299 purposes by the Legislature. Each contract or agreement entered
300 into by the executive officer shall be submitted to the board
301 before its next meeting.

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

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

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

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

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

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



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

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

322 (a) To make investigations and inquiries with respect
323 to the causes of disease and death, and to investigate the effect
324 of environment, including conditions of employment and other
325 conditions that may affect health, and to make such other
326 investigations as it may deem necessary for the preservation and
327 improvement of health.

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

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

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

339 (e) To charge and collect reasonable fees for health
340 services, including immunizations, inspections and related
341 activities, and the board shall charge fees for those services;



342 however, if it is determined that a person receiving services is
343 unable to pay the total fee, the board shall collect any amount
344 that the person is able to pay. Any increase in the fees charged
345 by the board under this paragraph shall be in accordance with the
346 provisions of Section 41-3-65.

347 (f) (i) To establish standards for, issue permits and
348 exercise control over, any cafes, restaurants, food or drink
349 stands, sandwich manufacturing establishments, and all other
350 establishments, other than churches, church-related and private
351 schools, and other nonprofit or charitable organizations, where
352 food or drink is regularly prepared, handled and served for pay;
353 and

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



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

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

374 (i) To conduct investigations, inquiries and hearings,
375 and to issue subpoenas for the attendance of witnesses and the
376 production of books and records at any hearing when authorized and
377 required by statute to be conducted by the State Health Officer or
378 the State Board of Health.

379 (j) To promulgate rules and regulations, and to collect
380 data and information, on (i) the delivery of services through the
381 practice of telemedicine; and (ii) the use of electronic records
382 for the delivery of telemedicine services.

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

385 (5) (a) The State Board of Health shall have the authority,
386 in its discretion, to establish programs to promote the public
387 health, to be administered by the State Department of Health.
388 Specifically, those programs may include, but shall not be limited
389 to, programs in the following areas:



- 390 (i) Maternal and child health;
- 391 (ii) Family planning;
- 392 (iii) Pediatric services;
- 393 (iv) Services to crippled and disabled children;
- 394 (v) Control of communicable and noncommunicable
- 395 disease;
- 396 (vi) Chronic disease;
- 397 (vii) Accidental deaths and injuries;
- 398 (viii) Child care licensure;
- 399 (ix) Radiological health;
- 400 (x) Dental health;
- 401 (xi) Milk sanitation;
- 402 (xii) Occupational safety and health;
- 403 (xiii) Food, vector control and general
- 404 sanitation;
- 405 (xiv) Protection of drinking water;
- 406 (xv) Sanitation in food handling establishments
- 407 open to the public;
- 408 (xvi) Registration of births and deaths and other
- 409 vital events;
- 410 (xvii) Such public health programs and services as
- 411 may be assigned to the State Board of Health by the Legislature or
- 412 by executive order; and
- 413 (xviii) Regulation of domestic and imported fish
- 414 for human consumption.



415 (b) The State Board of Health and State Department of
416 Health shall not be authorized to sell, transfer, alienate or
417 otherwise dispose of any of the home health agencies owned and
418 operated by the department on January 1, 1995, and shall not be
419 authorized to sell, transfer, assign, alienate or otherwise
420 dispose of the license of any of those home health agencies,
421 except upon the specific authorization of the Legislature by an
422 amendment to this section. However, this paragraph (b) shall not
423 prevent the board or the department from closing or terminating
424 the operation of any home health agency owned and operated by the
425 department, or closing or terminating any office, branch office or
426 clinic of any such home health agency, or otherwise discontinuing
427 the providing of home health services through any such home health
428 agency, office, branch office or clinic, if the board first
429 demonstrates that there are other providers of home health
430 services in the area being served by the department's home health
431 agency, office, branch office or clinic that will be able to
432 provide adequate home health services to the residents of the area
433 if the department's home health agency, office, branch office or
434 clinic is closed or otherwise discontinues the providing of home
435 health services. This demonstration by the board that there are
436 other providers of adequate home health services in the area shall
437 be spread at length upon the minutes of the board at a regular or
438 special meeting of the board at least thirty (30) days before a
439 home health agency, office, branch office or clinic is proposed to



440 be closed or otherwise discontinue the providing of home health
441 services.

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

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

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

453 (i) To enter into capitalization grant agreements
454 with the United States Environmental Protection Agency, or any
455 successor agency thereto;

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

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

461 (iv) To establish and collect fees to defray the
462 reasonable costs of administering the revolving fund or emergency
463 fund if the State Board of Health determines that those costs will
464 exceed the limitations established in the federal Safe Drinking



465 Water Act, as amended. The administration fees may be included in
466 loan amounts to loan recipients for the purpose of facilitating
467 payment to the board; however, those fees may not exceed five
468 percent (5%) of the loan amount.

469 (7) Notwithstanding any other provision to the contrary, the
470 State Department of Health shall have the following specific
471 powers: The department shall issue a license to Alexander Milne
472 Home for Women, Inc., a 501(c)(3) nonprofit corporation, for the
473 construction, conversion, expansion and operation of not more than
474 forty-five (45) beds for developmentally disabled adults who have
475 been displaced from New Orleans, Louisiana, with the beds to be
476 located in a certified ICF-MR facility in the City of Laurel,
477 Mississippi. There shall be no prohibition or restrictions on
478 participation in the Medicaid program for the person receiving the
479 license under this subsection (7). The license described in this
480 subsection shall expire five (5) years from the date of its issue.
481 The license authorized by this subsection shall be issued upon the
482 initial payment by the licensee of an application fee of
483 Sixty-seven Thousand Dollars (\$67,000.00) and a monthly fee of
484 Sixty-seven Thousand Dollars (\$67,000.00) after the issuance of
485 the license, to be paid as long as the licensee continues to
486 operate. * * *

487 (8) Notwithstanding any other provision to the contrary, the
488 State Department of Health shall have the following specific
489 powers: The State Department of Health is authorized to issue a



490 license to an existing home health agency for the transfer of a
491 county from that agency to another existing home health agency,
492 and to charge a fee for reviewing and making a determination on
493 the application for such transfer not to exceed one-half (1/2) of
494 the authorized fee assessed for the original application for the
495 home health agency * * *.

496 * * *

497 (* * *9) Notwithstanding any other provision to the
498 contrary, the State Department of Health shall have the following
499 specific powers: The State Department of Health is authorized and
500 empowered, to revoke, immediately, the license and require closure
501 of any institution for the aged or infirm, including any other
502 remedy less than closure to protect the health and safety of the
503 residents of * * * the institution or the health and safety of the
504 general public.

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



514 authorized and directed to assist in the enforcement of such
515 orders of the State Health Officer.

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

518 41-4-18. (1) Notwithstanding * * * any other section of
519 law, the Department of Mental Health shall have the authority to
520 contract with private and/or public entities to transfer beds
521 within Intermediate Care Facilities for the Mentally Retarded
522 owned and operated by the Department of Mental Health to locations
523 owned and operated by private and/or public entities for the
524 purpose of serving individuals with intellectual disabilities in
525 the settings most appropriate to meet their needs.

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

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

532 41-9-11. Upon receipt of an application for license and the
533 license fee, the licensing agency shall issue a license if the
534 applicant and hospital facilities meet the requirements
535 established under Sections 41-9-1 through 41-9-35 * * *. A
536 license, unless suspended or revoked, shall be renewable annually,
537 upon filing by the licensee, and approval by the licensing agency
538 of an annual report upon such uniform dates and containing such



539 information in such form as the licensing agency prescribes by
540 regulation and upon paying the annual fee for such license as
541 determined by the schedule and provisions of Section 41-9-9. Each
542 license shall be issued only for the premises and persons or
543 governmental units named in the application and shall not be
544 transferable or assignable except with the written approval of the
545 licensing agency. Licenses shall be posted in a conspicuous place
546 on the licensed premises.

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

549 41-9-23. Information received by the licensing agency
550 through filed reports, inspection, or as otherwise authorized
551 under Sections 41-9-1 through 41-9-35 shall not be disclosed
552 publicly in such manner as to identify individuals, except in a
553 proceeding involving the questions of licensure; however, the
554 licensing agency may utilize statistical data concerning types of
555 services and the utilization of these services for hospitals in
556 performing the * * * duties imposed upon it * * * by Section
557 41-9-29.

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

560 41-9-68. (1) Except as otherwise provided in subsection (2)
561 of this section, records maintained by public hospitals shall be
562 exempt from the provisions of the Mississippi Public Records Act
563 of 1983.



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

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

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

572 (c) Any other record maintained by a public hospital
573 that does not fall within the definition of the term "hospital
574 records" as that term is defined in Section 41-9-61, except for
575 the following records, which shall be exempt:

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

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

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



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

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

593 41-9-209. (1) Any hospital is authorized to seek
594 designation as a critical access hospital. Subject to federal
595 law, there shall be no requirement or limitation regarding the
596 distance that a critical access hospital must be located from
597 another hospital. The bed-size limit for a critical access
598 hospital is twenty-five (25) operational acute care beds, and the
599 average maximum length of stay for patients in a critical access
600 hospital is ninety-six (96) hours, unless a longer period is
601 required because of inclement weather or other emergency
602 conditions. * * * If the critical access hospital is a swing bed
603 facility, any of the twenty-five (25) acute care beds allowed in a
604 critical access hospital may be used for the provision of extended
605 care services or acute care inpatient services so long as the
606 furnishing of such services does not exceed twenty-five (25) beds
607 and so long as the hospital does not seek Medicaid reimbursement
608 for more than fifteen (15) acute care inpatient beds.

609 (2) A critical access hospital (a) must make available
610 twenty-four-hour emergency care services, as described in the
611 state rural health care plan, for ensuring access to emergency
612 care services in the rural area served by the critical access
613 hospital, and (b) must be a member of a rural health network. Any



614 hospital that has a distinct-part skilled nursing facility,
615 certified under Title XVIII of the federal Social Security Act, at
616 the time it applies for designation as a critical access hospital,
617 may continue its operation of the distinct-part skilled nursing
618 facility and is not required to count the beds in the
619 distinct-part skilled nursing facility for purposes of the allowed
620 twenty-five (25) acute care inpatient beds.

621 (3) * * * A critical access hospital may establish a
622 distinct-part psychiatric unit and a distinct-part rehabilitation
623 unit, each of which must be certified under Title XVIII of the
624 federal Social Security Act and each of which may consist of no
625 more than ten (10) beds. No bed in the critical access hospital's
626 distinct-part psychiatric unit or distinct-part rehabilitation
627 unit shall be counted for purposes of the twenty-five (25) bed
628 limitation. Each distinct-part unit in a critical access hospital
629 must comply with all applicable state licensure laws and federal
630 certification laws.

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

633 41-9-210. If a hospital seeks a new license from the
634 department in order to be designated as a critical access
635 hospital, the department shall maintain a record of the acute care
636 beds of that hospital that have been delicensed as a result of
637 that designation and continue counting those beds as part of the
638 state's total acute care bed count for health care planning



639 purposes. If a critical access hospital later desires to
640 relicense some or all of its delicensed acute care beds, it shall
641 notify the department of its intent to increase the number of its
642 licensed acute care beds. The department shall survey the
643 hospital within thirty (30) days of that notice and, if
644 appropriate, issue the hospital a new license reflecting the new
645 contingent of beds. * * *

646 This section shall apply to all hospitals that are designated
647 as critical access hospitals on July 1, 2003, and all hospitals
648 that may become designated as critical access hospitals after July
649 1, 2003.

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

652 41-71-7. Upon receipt of an application for a license and
653 the license fee, and a determination by the licensing agency that
654 the application is * * * in compliance with the provisions of this
655 chapter, such license shall be issued. A license, unless
656 suspended or revoked, shall be renewable annually upon payment by
657 the licensee of a renewal fee of One Thousand Dollars (\$1,000.00)
658 and upon approval by the licensing agency of an annual report,
659 required to be submitted by the licensee, containing such
660 information in such form and at such time as the licensing agency
661 prescribes by rule or regulation. Any increase in the fee charged
662 by the licensing agency under this section shall be in accordance
663 with the provisions of Section 41-3-65. Each license shall be



664 issued only for the home health agency and person or persons or
665 other legal entity or entities named in the application and shall
666 not be transferable or assignable except with the written approval
667 of the licensing agency. Licenses shall be posted in a
668 conspicuous place in the designated business office of the
669 licensee. Each licensee shall designate, in writing, one (1)
670 individual person as the responsible party for the conducting of
671 the business of the home health agency with the licensing agency.

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

674 41-71-19. Information received by the licensing agency
675 through filed reports, inspection, or as otherwise authorized
676 under this chapter, shall not be disclosed publicly in such manner
677 as to identify individuals, except in proceedings involving the
678 question of licensure; however, the licensing agency may utilize
679 statistical data concerning types of services and the utilization
680 of those services for home health care agencies in performing
681 the * * * duties imposed upon it by * * * regulations necessarily
682 promulgated for participation in the Medicare or Medicaid
683 programs.

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

686 41-73-5. When used in this act, unless the context requires
687 a different definition, the following terms shall have the
688 following meanings:



689 (a) "Act" means the Mississippi Hospital Equipment and
690 Facilities Authority Act.

691 (b) "Authority" means the Mississippi Hospital
692 Equipment and Facilities Authority created by this act and any
693 successor to its functions.

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

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

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

703 (ii) The cost of any property interest in such
704 hospital equipment including an option to purchase or leasehold
705 interest;

706 (iii) The cost of architectural, engineering,
707 legal and related services; the cost of the preparation of plans,
708 specifications, studies, surveys and estimates of cost and of
709 revenue; and all other expenses necessary or incident to planning,
710 providing or determining the need for or the feasibility and
711 practicability of such hospital equipment; and the cost of
712 providing or establishing a reasonable reserve fund for the
713 payment of principal and interest on bonds;



714 (iv) The cost of financing charges, including
715 premiums or prepayment penalties, if any, and interest accrued
716 prior to the acquisition and installation or refinancing of such
717 hospital equipment and after such acquisition and installation or
718 refinancing and start-up costs related to hospital equipment;

719 (v) Any and all costs paid or incurred in
720 connection with the financing of such hospital equipment,
721 including out-of-pocket expenses, the cost of financing, legal,
722 accounting, financial advisory and consulting fees, expenses and
723 disbursements; the cost of any policy of insurance; the cost of
724 printing, engraving and reproduction services; and the cost of the
725 initial or acceptance fee of any trustee or paying agent;

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

732 (vii) Any and all costs paid or incurred for the
733 administration of any program for the purchase or lease of or the
734 making of loans for hospital equipment, by the authority and any
735 program for the sale or lease of or the making of loans for such
736 hospital equipment to any participating hospital institution.

737 (e) "Cost," as applied to hospital facilities, means
738 any and all costs of such hospital facilities and, without



739 limiting the generality of the foregoing, shall include the
740 following:

741 (i) All costs of the establishment, demolition,
742 site development of new and rehabilitated buildings,
743 rehabilitation, reconstruction repair, erection, building,
744 construction, remodeling, adding to and furnishing of any such
745 hospital facilities and all costs incident or related thereto;

746 (ii) The cost of acquiring any property interest
747 in such hospital facilities including the purchase thereof, the
748 cost of an option to purchase or the cost of any leasehold
749 interest;

750 (iii) The cost of architectural, engineering,
751 legal and related services; the cost of the preparation of plans,
752 specifications, studies, surveys and estimates of cost and of
753 revenue; all other expenses necessary or incident to planning,
754 providing or determining the need for or the feasibility and
755 practicability of such hospital facilities or the acquisition
756 thereof; and the cost of providing or establishing a reasonable
757 reserve fund for the payment of principal of and interest on
758 bonds;

759 (iv) The cost of financing charges, including
760 premiums or prepayment penalties, if any, and interest accrued
761 prior to the acquisition and completion or refinancing of such
762 hospital facilities and after such acquisition and completion or
763 refinancing and start-up costs related to hospital facilities;



764 (v) Any and all costs paid or incurred in
765 connection with the financing of such hospital facilities,
766 including out-of-pocket expenses, the cost of financing, legal,
767 accounting, financial advisory and consulting fees, expenses and
768 disbursement; the cost of any policy of insurance; the cost of
769 printing, engraving and reproduction services; and the cost of the
770 initial or acceptance fee of any trustee or paying agent;

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

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

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



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

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

808 (h) "Participating hospital institution" or "hospital
809 institution" means a public or private corporation, association,
810 foundation, trust, cooperative, agency, body politic, or other
811 person or organization which provides or operates or proposes to
812 provide or operate hospital facilities not for profit, and which,
813 pursuant to the provisions of this act, contracts with the



814 authority for the financing or refinancing of the lease or other
815 acquisition of hospital equipment or hospital facilities, or both.

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

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

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

823 41-75-1. For the purpose of this chapter:

824 (a) "Ambulatory surgical facility" means a publicly or
825 privately owned institution that is primarily organized,
826 constructed, renovated or otherwise established for the purpose of
827 providing elective surgical treatment of "outpatients" whose
828 recovery, under normal and routine circumstances, will not require
829 "inpatient" care. The facility defined in this paragraph does not
830 include the offices of private physicians or dentists, whether
831 practicing individually or in groups, but does include
832 organizations or facilities primarily engaged in that outpatient
833 surgery, whether using the name "ambulatory surgical facility" or
834 a similar or different name. That organization or facility, if in
835 any manner considered to be operated or owned by a hospital or a
836 hospital holding, leasing or management company, either for profit
837 or not for profit, is required to comply with all licensing agency
838 ambulatory surgical licensure standards governing a "hospital



839 affiliated" facility as adopted under Section 41-9-1 et seq.,
840 provided that the organization or facility does not intend to seek
841 federal certification as an ambulatory surgical facility as
842 provided for at 42 CFR, Parts 405 and 416. If the organization or
843 facility is to be operated or owned by a hospital or a hospital
844 holding, leasing or management company and intends to seek federal
845 certification as an ambulatory facility, then the facility is
846 considered to be "freestanding" and must comply with all licensing
847 agency ambulatory surgical licensure standards governing a
848 "freestanding" facility.

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

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

862 (c) "Freestanding" ambulatory surgical facility means a
863 separate and distinct facility or a separate and distinct



864 organized unit of a hospital owned, leased, rented or utilized by
865 a hospital or other persons for the primary purpose of performing
866 ambulatory surgery procedures. The facility must be separately
867 licensed as defined in this section and must comply with all
868 licensing standards promulgated by the licensing agency under this
869 chapter regarding a "freestanding" ambulatory surgical facility.
870 Further, the facility must be a separate, identifiable entity and
871 must be physically, administratively and financially independent
872 and distinct from other operations of any other health facility,
873 and shall maintain a separate organized medical and administrative
874 staff. * * *

875 (d) "Ambulatory surgery" means surgical procedures that
876 are more complex than office procedures performed under local
877 anesthesia, but less complex than major procedures requiring
878 prolonged postoperative monitoring and hospital care to ensure
879 safe recovery and desirable results. General anesthesia is used
880 in most cases. The patient must arrive at the facility and expect
881 to be discharged on the same day. Ambulatory surgery shall only
882 be performed by physicians or dentists licensed to practice in the
883 State of Mississippi.

884 (e) "Abortion" means the use or prescription of any
885 instrument, medicine, drug or any other substances or device to
886 terminate the pregnancy of a woman known to be pregnant with an
887 intention other than to increase the probability of a live birth,
888 to preserve the life or health of the child after live birth or to



889 remove a dead fetus. Abortion procedures after the first
890 trimester shall only be performed at a Level I abortion facility
891 or an ambulatory surgical facility or hospital licensed to perform
892 that service.

893 (f) "Abortion facility" means a facility operating
894 substantially for the purpose of performing abortions and is a
895 separate identifiable legal entity from any other health care
896 facility. Abortions shall only be performed by physicians
897 licensed to practice in the State of Mississippi. All physicians
898 associated with the abortion facility must have admitting
899 privileges at a local hospital and staff privileges to replace
900 local hospital on-staff physicians. All physicians associated
901 with an abortion facility must be board certified or eligible in
902 obstetrics and gynecology, and a staff member trained in CPR shall
903 always be present at the abortion facility when it is open. The
904 term "abortion facility" includes physicians' offices that are
905 used substantially for the purpose of performing abortions. An
906 abortion facility operates substantially for the purpose of
907 performing abortions if any of the following conditions are met:

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

912 (ii) The abortion facility, if operating less than
913 twenty (20) days per calendar month, is a provider for performing



914 ten (10) or more abortion procedures, or performing a number of
915 abortion procedures that would be equivalent to ten (10)
916 procedures per month, if the facility were operating twenty (20)
917 or more days per calendar month, in any month of a calendar year.

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

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

924 (g) "Licensing agency" means the State Department of
925 Health.

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

930 An abortion facility may apply to be licensed as a Level I
931 facility or a Level II facility by the licensing agency. Level II
932 abortion facilities shall be required to meet minimum standards
933 for abortion facilities as established by the licensing agency.
934 Level I abortion facilities shall be required to meet minimum
935 standards for abortion facilities and minimum standards for
936 ambulatory surgical facilities as established by the licensing
937 agency.



938 Any abortion facility that begins operation after June 30,
939 1996, shall not be located within one thousand five hundred
940 (1,500) feet from the property on which any church, school or
941 kindergarten is located. An abortion facility shall not be in
942 violation of this paragraph if it is in compliance with this
943 paragraph on the date it begins operation and the property on
944 which a church, school or kindergarten is located within one
945 thousand five hundred (1,500) feet from the facility.

946 (i) "Freestanding emergency room" is a facility open
947 twenty-four (24) hours a day for the treatment of urgent and
948 emergent medical conditions and that is not located on a hospital
949 campus. In order to be eligible for licensure under this chapter,
950 the freestanding emergency room shall be located at least fifteen
951 (15) miles from the nearest hospital-based emergency room in any
952 rural community where the federal CMMS had previously designated a
953 rural hospital as a critical access hospital and that designation
954 has been revoked.

955 (j) "Post-acute residential brain injury rehabilitation
956 facility" is a facility containing no more than twelve (12) beds
957 providing medically directed long-term but nonacute rehabilitation
958 to patients who have acquired brain injury. In order to be
959 eligible for licensure under this chapter, the post-acute
960 residential brain injury rehabilitation facility shall be located
961 at least twenty-five (25) miles from the nearest acute care
962 rehabilitation hospital and at least five (5) miles from the



963 boundaries of any municipality having a population of ten thousand
964 (10,000) or more, according to the most recent federal decennial
965 census, at the time that facility is established.

966 (k) "Pilot freestanding emergency room" is a facility
967 open twenty-four (24) hours a day for the treatment of urgent and
968 emergent medical conditions and that is not located on a hospital
969 campus. In order to be eligible for licensure under this chapter,
970 the pilot freestanding emergency room shall be located at least
971 fifteen (15) miles from the nearest hospital-based emergency room
972 in a county without emergency hospital care that is open
973 twenty-four (24) hours a day.

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

976 41-75-5. No person * * * or other entity, acting severally
977 or jointly with any other person or entity, shall establish,
978 conduct, operate or maintain an ambulatory surgical facility or an
979 abortion facility or a freestanding emergency room or a post-acute
980 residential brain injury rehabilitation facility in this state
981 without a license under this chapter.

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

984 41-75-9. Upon receipt of an application for license and the
985 license fee, the licensing agency shall issue a license if the
986 applicant and the institutional facilities meet the requirements
987 established under this chapter * * *. A license, unless suspended



988 or revoked, shall be renewable annually upon payment of a renewal
989 fee of Three Thousand Dollars (\$3,000.00), which shall be paid to
990 the licensing agency, and upon filing by the licensee and approval
991 by the licensing agency of an annual report upon such uniform
992 dates and containing such information in such form as the
993 licensing agency requires. Any increase in the fee charged by the
994 licensing agency under this section shall be in accordance with
995 the provisions of Section 41-3-65. Each license shall be issued
996 only for the premises and person or persons named in the
997 application and shall not be transferable or assignable. Licenses
998 shall be posted in a conspicuous place on the licensed premises.

999 **SECTION 18.** Section 41-75-25, Mississippi Code of 1972, is
1000 amended as follows:

1001 41-75-25. Any person or persons or other entity or entities
1002 establishing, managing or operating an ambulatory surgical
1003 facility or conducting the business of an ambulatory surgical
1004 facility without the required license, or which otherwise violate
1005 any of the provisions of this chapter * * * or the rules,
1006 regulations or standards promulgated in furtherance of any law in
1007 which the * * * licensing agency has authority therefor shall be
1008 subject to the following penalties and sanctions * * *:

1009 (a) Revocation of the license of the ambulatory
1010 surgical facility or a designated section, component or service
1011 thereof; or



1012 (b) Nonlicensure of a specific or designated service
1013 offered by the ambulatory surgical facility.

1014 In addition, any violation of any provision of this chapter
1015 or any rules or regulations promulgated in furtherance thereof by
1016 intent, fraud, deceit, unlawful design, willful and/or deliberate
1017 misrepresentation, or by careless, negligent or incautious
1018 disregard for such statutes or rules and regulations, either by
1019 persons acting individually or in concert with others, shall
1020 constitute a misdemeanor and shall be punishable by a fine not to
1021 exceed One Thousand Dollars (\$1,000.00) for each such offense.
1022 Each day of continuing violation shall be considered a separate
1023 offense. The venue for prosecution of any such violation shall be
1024 in any county of the state in which any such violation, or portion
1025 thereof, occurred.

1026 **SECTION 19.** Section 41-77-1, Mississippi Code of 1972, is
1027 amended as follows:

1028 41-77-1. For purposes of this chapter:

1029 (a) "Birthing center" * * * means a publicly or
1030 privately owned facility, place or institution constructed,
1031 renovated, leased or otherwise established where nonemergency
1032 births are planned to occur away from the mother's usual residence
1033 following a documented period of prenatal care for a normal
1034 uncomplicated pregnancy which has been determined to be low risk
1035 through a formal risk scoring examination. Care provided in a
1036 birthing center shall be provided by a licensed physician, or



1037 certified nurse midwife, and a registered nurse. Services
1038 provided in a birthing center shall be limited in the following
1039 manner: (i) surgical services shall be limited to those normally
1040 performed during uncomplicated childbirth, such as episiotomy and
1041 repair, and shall not include operative obstetrics or caesarean
1042 sections; (ii) labor shall not be inhibited, stimulated or
1043 augmented with chemical agents during the first or second stage of
1044 labor; (iii) systemic analgesia may be administered and local
1045 anesthesia for pudental block and episiotomy repair may be
1046 performed. General and conductive anesthesia shall not be
1047 administered at birthing centers; (iv) patients shall not remain
1048 in the facility in excess of twenty-four (24) hours.

1049 Hospitals are excluded from the definition of a "birthing
1050 center" unless they choose to and are qualified to designate a
1051 portion or part of the hospital as a birthing center, and nothing
1052 herein shall be construed as referring to the usual service
1053 provided the pregnant female in the obstetric-gynecology service
1054 of an acute care hospital. Such facility or center, as heretofore
1055 stated, shall include the offices of physicians in private
1056 practice alone or in groups of two (2) or more; and such facility
1057 or center rendering service to pregnant female persons, as stated
1058 heretofore and by the rules and regulations promulgated by the
1059 licensing agency in furtherance thereof, shall be deemed to be a
1060 "birthing center" whether using a similar or different name. Such
1061 center or facility if in any manner is deemed to be or considered



1062 to be operated or owned by a hospital or a hospital holding
1063 leasing or management company, for profit or not for profit, is
1064 required to comply with all birthing center standards governing a
1065 "hospital affiliated" birthing center as adopted by the licensing
1066 authority.

1067 (b) "Hospital affiliated" birthing center * * * means a
1068 separate and distinct unit of a hospital or a building owned,
1069 leased, rented or utilized by a hospital and located in the same
1070 county as the hospital for the purpose of providing the service of
1071 a "birthing center." Such center or facility is not required to
1072 be licensed separately, and may operate under the license issued
1073 to the hospital if it is in compliance with Section 41-9-1 et
1074 seq., where applicable, and the rules and regulations promulgated
1075 by the licensing agency in furtherance thereof.

1076 (c) "Freestanding" birthing center * * * means a
1077 separate and distinct facility or center or a separate and
1078 distinct organized unit of a hospital or other * * * entity for
1079 the purpose of performing the service of a "birthing center."
1080 Such facility or center must be separately licensed and must
1081 comply with all licensing standards promulgated by the licensing
1082 agency by virtue of this chapter. Further, such facility or
1083 center must be a separate, identifiable entity and must be
1084 physically, administratively and financially independent from
1085 other operations of any hospital or other health care facility or



1086 service and shall maintain a separate and required staff,
1087 including administrative staff. * * *

1088 (d) "Licensing agency" * * * means the State Department
1089 of Health.

1090 **SECTION 20.** Section 41-77-5, Mississippi Code of 1972, is
1091 amended as follows:

1092 41-77-5. No person * * * or other entity, acting severally
1093 or jointly with any other person or entity, shall establish,
1094 conduct or maintain a "birthing center" in this state without a
1095 license under this chapter.

1096 **SECTION 21.** Section 41-77-21, Mississippi Code of 1972, is
1097 amended as follows:

1098 41-77-21. Any applicant or licensee aggrieved by the
1099 decision of the licensing agency after a hearing may, within
1100 thirty (30) days after the mailing or serving of notice of the
1101 decision as provided in Section 43-11-11, * * * file a notice of
1102 appeal to the Chancery Court of the First Judicial District of
1103 Hinds County or in the chancery court of the county in which the
1104 institution is located or proposed to be located. * * *
1105 Thereupon, the licensing agency shall * * * certify and file with
1106 the court a copy of the record and decision, including the
1107 transcript of the hearings in which the decision is based. No new
1108 or additional evidence shall be introduced in court; the case
1109 shall be determined upon the record certified to the court. The
1110 court may sustain or dismiss the appeal, modify or vacate the



1111 order complained of in whole or in part, as the case may be; but
1112 in case the order is wholly or partly vacated, the court may also,
1113 in its discretion, remand the matter to the licensing agency for
1114 such further proceedings, not inconsistent with the court's order,
1115 as, in the opinion of the court, justice may require. The order
1116 may not be vacated or set aside, either in whole or in part,
1117 except for errors of law, unless the court finds that the order of
1118 the licensing agency is not supported by substantial evidence, is
1119 contrary to the manifest weight of the evidence, is in excess of
1120 the statutory authority or jurisdiction of the licensing agency,
1121 or violates any vested constitutional rights of any party involved
1122 in the appeal. Pending final disposition of the matter, the
1123 status quo of the applicant or licensee shall be preserved, except
1124 as the court otherwise orders in the public interest. Rules with
1125 respect to court costs in other cases in chancery shall apply
1126 equally to cases hereunder. Appeals in accordance with law may be
1127 had to the Supreme Court of the State of Mississippi from any
1128 final judgment of the chancery court.

1129 **SECTION 22.** Section 41-77-23, Mississippi Code of 1972, is
1130 amended as follows:

1131 41-77-23. Any person or persons or other entity or entities
1132 establishing, managing or operating a "birthing center" or
1133 conducting the business of a "birthing center" without the
1134 required license, or which otherwise violate any of the provisions
1135 of this chapter * * * or the rules, regulations or standards



1136 promulgated in furtherance of any law in which the * * * licensing
1137 agency has authority therefor, shall be subject to the following
1138 penalties and sanctions * * *:

1139 (a) Revocation of the license of the birthing center or
1140 a designated section, component or service thereof; or

1141 (b) Nonlicensure of a specific or designated service
1142 offered by the birthing center.

1143 In addition, any violation of any provision of this chapter
1144 or any rules or regulations promulgated in furtherance thereof by
1145 intent, fraud, deceit, unlawful design, willful and/or deliberate
1146 misrepresentation, or by careless, negligent or incautious
1147 disregard for such statutes or rules and regulations, either by
1148 persons acting individually or in concert with others, shall
1149 constitute a misdemeanor and shall be punishable by a fine not to
1150 exceed One Thousand Dollars (\$1,000.00) for each such offense.
1151 Each day of continuing violation shall be considered a separate
1152 offense. The venue for prosecution of any such violation shall be
1153 in any county of the state in which any such violation, or portion
1154 thereof, occurred.

1155 **SECTION 23.** Section 41-77-25, Mississippi Code of 1972, is
1156 amended as follows:

1157 41-77-25. Upon receipt of an application for license and the
1158 license fee, the licensing agency shall issue a license if the
1159 applicant and the institutional facilities meet the requirements
1160 established under this chapter * * *. A license, unless suspended



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

1172 **SECTION 24.** Section 41-95-3, Mississippi Code of 1972, is
1173 amended as follows:

1174 41-95-3. As used in this chapter:

1175 (a) "Authority" means the Mississippi Health Finance
1176 Authority created under Section 41-95-5.

1177 (b) "Board" means the Mississippi Health Finance
1178 Authority Board created under Section 41-95-5.

1179 (c) "Health care facility" means all facilities and
1180 institutions, whether public or private, proprietary or nonprofit,
1181 which offer diagnosis, treatment, inpatient or ambulatory care to
1182 two (2) or more unrelated persons * * *.

1183 (d) "Health care provider" means a person, partnership
1184 or corporation, other than a facility or institution, licensed or
1185 certified or authorized by state or federal law to provide



1186 professional health care service in this state to an individual
1187 during that individual's health care, treatment or confinement.

1188 (e) "Health insurer" means any health insurance
1189 company, nonprofit hospital and medical service corporation,
1190 health maintenance organization and, to the extent permitted under
1191 federal law, any administrator of an insured, self-insured or
1192 publicly funded health care benefit plan offered by public and
1193 private entities.

1194 (f) "Resident" means a person who is domiciled in
1195 Mississippi as evidenced by an intent to maintain a principal
1196 dwelling place in Mississippi indefinitely and to return to
1197 Mississippi if temporarily absent, coupled with an act or acts
1198 consistent with that intent.

1199 (g) "Primary care" or "primary health care" includes
1200 those health care services provided to individuals, families and
1201 communities, at a first level of care, which preserve and improve
1202 health, and encompasses services which promote health, prevent
1203 disease, treat and cure illness. It is delivered by various
1204 health care providers in a variety of settings including hospital
1205 outpatient clinics, private provider offices, group practices,
1206 health maintenance organizations, public health departments and
1207 community health centers. A primary care system is characterized
1208 by coordination of comprehensive services, cultural sensitivity,
1209 community orientation, continuity, prevention, the absence of
1210 barriers to receive and provide services, and quality assurance.



1211 **SECTION 25.** Section 43-11-9, Mississippi Code of 1972, is
1212 amended as follows:

1213 43-11-9. (1) Upon receipt of an application for license and
1214 the license fee, the licensing agency shall issue a license if the
1215 applicant and the institutional facilities meet the requirements
1216 established under this chapter * * *. A license, unless suspended
1217 or revoked, shall be renewable annually upon payment by (a) the
1218 licensee of an institution for the aged or infirm, except for
1219 personal care homes, of a renewal fee of Twenty Dollars (\$20.00)
1220 for each bed in the institution, with a minimum fee per
1221 institution of Two Hundred Dollars (\$200.00), or (b) the licensee
1222 of a personal care home of a renewal fee of Fifteen Dollars
1223 (\$15.00) for each bed in the institution, with a minimum fee per
1224 institution of One Hundred Dollars (\$100.00), which shall be paid
1225 to the licensing agency, and upon filing by the licensee and
1226 approval by the licensing agency of an annual report upon such
1227 uniform dates and containing such information in such form as the
1228 licensing agency prescribes by regulation. Any increase in the
1229 fee charged by the licensing agency under this subsection shall be
1230 in accordance with the provisions of Section 41-3-65. Each
1231 license shall be issued only for the premises and person or
1232 persons or other legal entity or entities named in the application
1233 and shall not be transferable or assignable except with the
1234 written approval of the licensing agency. Licenses shall be
1235 posted in a conspicuous place on the licensed premises.



1236 (2) A fee known as a "User Fee" shall be applicable and
1237 shall be paid to the licensing agency as set out in subsection (1)
1238 of this section. Any increase in the fee charged by the licensing
1239 agency under this subsection shall be in accordance with the
1240 provisions of Section 41-3-65. This user fee shall be assessed
1241 for the purpose of the required reviewing and inspections of the
1242 proposal of any institution in which there are additions,
1243 renovations, modernizations, expansion, alterations, conversions,
1244 modifications or replacement of the entire facility involved in
1245 such proposal. This fee includes the reviewing of architectural
1246 plans in all steps required. There shall be a minimum user fee of
1247 Fifty Dollars (\$50.00) and a maximum user fee of Five Thousand
1248 Dollars (\$5,000.00).

1249 (3) No governmental entity or agency shall be required to
1250 pay the fee or fees set forth in this section.

1251 **SECTION 26.** Section 43-11-19, Mississippi Code of 1972, is
1252 amended as follows:

1253 43-11-19. Information received by the licensing agency
1254 through filed reports, inspection, or as otherwise authorized
1255 under this chapter, shall not be disclosed publicly in such manner
1256 as to identify individuals, except in a proceeding involving the
1257 questions of licensure; however, the licensing agency may utilize
1258 statistical data concerning types of services and the utilization
1259 of those services for institutions for the aged or infirm in



1260 performing the * * * duties imposed upon it * * * by Section
1261 43-11-21.

1262 **SECTION 27.** Section 57-117-5, Mississippi Code of 1972, is
1263 amended as follows:

1264 57-117-5. (1) The MDA may certify an area as a health care
1265 industry zone if the following requirements are met:

1266 (a) The area is located within:

1267 (i) Three (3) contiguous counties which have * * *
1268 hospitals located within the counties that have more than three
1269 hundred seventy-five (375) acute care hospital beds; and/or

1270 (ii) A county which has a hospital with a minimum
1271 capital investment of Two Hundred Fifty Million Dollars
1272 (\$250,000,000.00) and for which construction is completed before
1273 July 1, 2017;

1274 (b) The health care industry facility is located within
1275 a five-mile radius of:

1276 (i) A facility with a * * * license for hospital
1277 beds; and/or

1278 (ii) A university or college that is:

1279 1. Accredited by the Southern Association of
1280 Colleges and Schools and awards degrees and/or trains workers for
1281 jobs in health care or pharmaceutical fields of study and/or work,
1282 and



1283 2. Located along or near Mississippi Highway
1284 67 within a master planned community as defined in Section
1285 19-5-10; and

1286 (c) The zoning of the local government unit, if
1287 applicable, allows the construction or operation in the proposed
1288 health care industry zone of the health care industry facility.

1289 * * *

1290 (* * *2) The MDA may adopt and promulgate such rules and
1291 regulations, in compliance with the Mississippi Administrative
1292 Procedures Law, as are necessary for the efficient and effective
1293 administration of this section in keeping with the purposes for
1294 which it is enacted.

1295 **SECTION 28.** Section 41-9-311, Mississippi Code of 1972,
1296 which provides that nothing in the Rural Health Availability Act
1297 exempts hospitals from compliance with the certificate of need
1298 law, is repealed.

1299 **SECTION 29.** This act shall take effect and be in force from
1300 and after July 1, 2023.

