

By: Senator(s) Suber

To: Public Health and
Welfare

SENATE BILL NO. 2759

1 AN ACT TO ALLOW LICENSED INSTITUTIONS FOR THE AGED OR INFIRM
2 TO ALLOW END-STAGE RENAL DIALYSIS FACILITIES TO PROVIDE MOBILE
3 DIALYSIS SERVICES ON SITE TO PATIENTS IN THE INSTITUTION SUBJECT
4 TO CERTAIN CONDITIONS; TO AMEND SECTION 41-7-173, MISSISSIPPI CODE
5 OF 1972, TO REMOVE END-STAGE RENAL DISEASE FACILITIES FROM THE
6 APPLICATION OF THE HEALTH CARE CERTIFICATE OF NEED LAW; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** An institution for the aged or infirm licensed
10 under Section 43-11-1 et seq. may allow end-stage renal dialysis
11 facilities to provide mobile dialysis services on site to patients
12 in the institution, provided that the facility (a) provides its
13 own staff and does not require the services of any staff of the
14 institution for providing the dialysis; (b) provides the
15 appropriate level of care for the patient considering the
16 patient's physical condition; and (c) does not provide dialysis
17 services at any one time for more patients than the authorized
18 number of dialysis stations in the certificate of need issued to
19 the facility.



20 **SECTION 2.** Section 41-7-173, Mississippi Code of 1972, is
21 amended as follows:

22 41-7-173. For the purposes of Section 41-7-171 et seq., the
23 following words shall have the meanings ascribed herein, unless
24 the context otherwise requires:

25 (a) "Affected person" means (i) the applicant; (ii) a
26 person residing within the geographic area to be served by the
27 applicant's proposal; (iii) a person who regularly uses health
28 care facilities or HMOs located in the geographic area of the
29 proposal which provide similar service to that which is proposed;
30 (iv) health care facilities and HMOs which have, prior to receipt
31 of the application under review, formally indicated an intention
32 to provide service similar to that of the proposal being
33 considered at a future date; (v) third-party payers who reimburse
34 health care facilities located in the geographical area of the
35 proposal; or (vi) any agency that establishes rates for health
36 care services or HMOs located in the geographic area of the
37 proposal.

38 (b) "Certificate of need" means a written order of the
39 State Department of Health setting forth the affirmative finding
40 that a proposal in prescribed application form, sufficiently
41 satisfies the plans, standards and criteria prescribed for such
42 service or other project by Section 41-7-171 et seq., and by rules
43 and regulations promulgated thereunder by the State Department of
44 Health.



45 (c) (i) "Capital expenditure," when pertaining to
46 defined major medical equipment, shall mean an expenditure which,
47 under generally accepted accounting principles consistently
48 applied, is not properly chargeable as an expense of operation and
49 maintenance and which exceeds One Million Five Hundred Thousand
50 Dollars (\$1,500,000.00).

51 (ii) "Capital expenditure," when pertaining to
52 other than major medical equipment, shall mean any expenditure
53 which under generally accepted accounting principles consistently
54 applied is not properly chargeable as an expense of operation and
55 maintenance and which exceeds, for clinical health services, as
56 defined in paragraph (k) below, Five Million Dollars
57 (\$5,000,000.00), adjusted for inflation as published by the State
58 Department of Health or which exceeds, for nonclinical health
59 services, as defined in paragraph (k) below, Ten Million Dollars
60 (\$10,000,000.00), adjusted for inflation as published by the State
61 Department of Health.

62 (iii) A "capital expenditure" shall include the
63 acquisition, whether by lease, sufferance, gift, devise, legacy,
64 settlement of a trust or other means, of any facility or part
65 thereof, or equipment for a facility, the expenditure for which
66 would have been considered a capital expenditure if acquired by
67 purchase. Transactions which are separated in time but are
68 planned to be undertaken within twelve (12) months of each other
69 and are components of an overall plan for meeting patient care



objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

(iv) In those instances where a health care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two (2) may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of certificate of need review and in determining the appropriate certificate of need review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

(d) "Change of ownership" includes, but is not limited to, inter vivos gifts, purchases, transfers, lease arrangements, cash and/or stock transactions or other comparable arrangements whenever any person or entity acquires or controls a majority interest of an existing health care facility, and/or the change of ownership of major medical equipment, a health service, or an institutional health service. Changes of ownership from partnerships, single proprietorships or corporations to another form of ownership are specifically included. However, "change of



ownership" shall not include any inherited interest acquired as a result of a testamentary instrument or under the laws of descent and distribution of the State of Mississippi.

(e) "Commencement of construction" means that all of the following have been completed with respect to a proposal or project proposing construction, renovating, remodeling or alteration:

(i) A legally binding written contract has been consummated by the proponent and a lawfully licensed contractor to construct and/or complete the intent of the proposal within a specified period of time in accordance with final architectural plans which have been approved by the licensing authority of the State Department of Health;

(ii) Any and all permits and/or approvals deemed lawfully necessary by all authorities with responsibility for such have been secured; and

(iii) Actual bona fide undertaking of the subject proposal has commenced, and a progress payment of at least one percent (1%) of the total cost price of the contract has been paid to the contractor by the proponent, and the requirements of this paragraph (e) have been certified to in writing by the State Department of Health.

Force account expenditures, such as deposits, securities, bonds, et cetera, may, in the discretion of the State Department



of Health, be excluded from any or all of the provisions of defined commencement of construction.

(f) "Consumer" means an individual who is not a provider of health care as defined in paragraph (q) of this section.

(g) "Develop," when used in connection with health services, means to undertake those activities which, on their completion, will result in the offering of a new institutional health service or the incurring of a financial obligation as defined under applicable state law in relation to the offering of such services.

(h) "Health care facility" includes hospitals, psychiatric hospitals, chemical dependency hospitals, skilled nursing facilities, end-stage renal disease (ESRD) facilities, including freestanding hemodialysis units, intermediate care facilities, ambulatory surgical facilities, intermediate care facilities for individuals with intellectual disabilities, home health agencies, psychiatric residential treatment facilities, pediatric skilled nursing facilities, long-term care hospitals, comprehensive medical rehabilitation facilities, including facilities owned or operated by the state or a political subdivision or instrumentality of the state, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts. This definition shall not apply to facilities for the private



practice, either independently or by incorporated medical groups, of physicians, dentists or health care professionals except where such facilities are an integral part of an institutional health service. The various health care facilities listed in this paragraph shall be defined as follows:

(i) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. Such term does not include psychiatric hospitals.

(ii) "Psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of persons with mental illness.

(iii) "Chemical dependency hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical and related services for the diagnosis and treatment of chemical dependency such as alcohol and drug abuse.

(iv) "Skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing



care or rehabilitation services for the rehabilitation of injured,
disabled or sick persons.

(v) * * * [Deleted]

(vi) "Intermediate care facility" means an
institution which provides, on a regular basis, health-related
care and services to individuals who do not require the degree of
care and treatment which a hospital or skilled nursing facility is
designed to provide, but who, because of their mental or physical
condition, require health-related care and services (above the
level of room and board).

(vii) "Ambulatory surgical facility" means a
facility primarily organized or established for the purpose of
performing surgery for outpatients and is a separate identifiable
legal entity from any other health care facility. Such term does
not include the offices of private physicians or dentists, whether
for individual or group practice, and does not include any
abortion facility as defined in Section 41-75-1(f).

(viii) "Intermediate care facility for individuals
with intellectual disabilities" means an intermediate care
facility that provides health or rehabilitative services in a
planned program of activities to persons with an intellectual
disability, also including, but not limited to, cerebral palsy and
other conditions covered by the Federal Developmentally Disabled
Assistance and Bill of Rights Act, Public Law 94-103.



(ix) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a home health aide;
4. Other services as approved by the licensing agency for home health agencies;
5. Medical supplies, other than drugs and biologicals, and the use of medical appliances; or
6. Medical services provided by an intern or resident-in-training at a hospital under a teaching program of such hospital.

Further, all skilled nursing services and those services listed in items 1 through 4 of this subparagraph (ix) must be provided directly by the licensed home health agency. For purposes of this subparagraph, "directly" means either through an



agency employee or by an arrangement with another individual not defined as a health care facility.

This subparagraph (ix) shall not apply to health care facilities which had contracts for the above services with a home health agency on January 1, 1990.

(x) "Psychiatric residential treatment facility" means any nonhospital establishment with permanent licensed facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such facility by a court, local school district or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric hospital, and are in need of such restorative treatment services. For purposes of this subparagraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory or health factors;
2. An inability to build or maintain satisfactory relationships with peers and teachers;



241 3. Inappropriate types of behavior or
242 feelings under normal circumstances;

243 4. A general pervasive mood of unhappiness or
244 depression; or

245 5. A tendency to develop physical symptoms or
246 fears associated with personal or school problems. An
247 establishment furnishing primarily domiciliary care is not within
248 this definition.

249 (xi) "Pediatric skilled nursing facility" means an
250 institution or a distinct part of an institution that is primarily
251 engaged in providing to inpatients skilled nursing care and
252 related services for persons under twenty-one (21) years of age
253 who require medical or nursing care or rehabilitation services for
254 the rehabilitation of injured, disabled or sick persons.

255 (xii) "Long-term care hospital" means a
256 freestanding, Medicare-certified hospital that has an average
257 length of inpatient stay greater than twenty-five (25) days, which
258 is primarily engaged in providing chronic or long-term medical
259 care to patients who do not require more than three (3) hours of
260 rehabilitation or comprehensive rehabilitation per day, and has a
261 transfer agreement with an acute care medical center and a
262 comprehensive medical rehabilitation facility. Long-term care
263 hospitals shall not use rehabilitation, comprehensive medical
264 rehabilitation, medical rehabilitation, sub-acute rehabilitation,



nursing home, skilled nursing facility or sub-acute care facility
in association with its name.

(xiii) "Comprehensive medical rehabilitation
facility" means a hospital or hospital unit that is licensed
and/or certified as a comprehensive medical rehabilitation
facility which provides specialized programs that are accredited
by the Commission on Accreditation of Rehabilitation Facilities
and supervised by a physician board certified or board eligible in
physiatry or other doctor of medicine or osteopathy with at least
two (2) years of training in the medical direction of a
comprehensive rehabilitation program that:

1. Includes evaluation and treatment of
individuals with physical disabilities;

2. Emphasizes education and training of
individuals with disabilities;

3. Incorporates at least the following core
disciplines:

a. Physical Therapy;

b. Occupational Therapy;

c. Speech and Language Therapy;

d. Rehabilitation Nursing; and

4. Incorporates at least three (3) of the
following disciplines:

a. Psychology;

b. Audiology;



- 290 c. Respiratory Therapy;
- 291 d. Therapeutic Recreation;
- 292 e. Orthotics;
- 293 f. Prosthetics;
- 294 g. Special Education;
- 295 h. Vocational Rehabilitation;
- 296 i. Psychotherapy;
- 297 j. Social Work;
- 298 k. Rehabilitation Engineering.

299 These specialized programs include, but are not limited to:
300 spinal cord injury programs, head injury programs and infant and
301 early childhood development programs.

302 (i) "Health maintenance organization" or "HMO" means a
303 public or private organization organized under the laws of this
304 state or the federal government which:

305 (i) Provides or otherwise makes available to
306 enrolled participants health care services, including
307 substantially the following basic health care services: usual
308 physician services, hospitalization, laboratory, x-ray, emergency
309 and preventive services, and out-of-area coverage;

310 (ii) Is compensated (except for copayments) for
311 the provision of the basic health care services listed in
312 subparagraph (i) of this paragraph to enrolled participants on a
313 predetermined basis; and

314 (iii) Provides physician services primarily:



315 1. Directly through physicians who are either
316 employees or partners of such organization; or

317 2. Through arrangements with individual
318 physicians or one or more groups of physicians (organized on a
319 group practice or individual practice basis).

320 (j) "Health service area" means a geographic area of
321 the state designated in the State Health Plan as the area to be
322 used in planning for specified health facilities and services and
323 to be used when considering certificate of need applications to
324 provide health facilities and services.

325 (k) "Health services" means clinically related (i.e.,
326 diagnostic, treatment or rehabilitative) services and includes
327 alcohol, drug abuse, mental health and home health care services.
328 "Clinical health services" shall only include those activities
329 which contemplate any change in the existing bed complement of any
330 health care facility through the addition or conversion of any
331 beds, under Section 41-7-191(1)(c) or propose to offer any health
332 services if those services have not been provided on a regular
333 basis by the proposed provider of such services within the period
334 of twelve (12) months prior to the time such services would be
335 offered, under Section 41-7-191(1)(d). "Nonclinical health
336 services" shall be all other services which do not involve any
337 change in the existing bed complement or offering health services
338 as described above.



(l) "Institutional health services" shall mean health services provided in or through health care facilities and shall include the entities in or through which such services are provided.

(m) "Major medical equipment" means medical equipment designed for providing medical or any health-related service which costs in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00). However, this definition shall not be applicable to clinical laboratories if they are determined by the State Department of Health to be independent of any physician's office, hospital or other health care facility or otherwise not so defined by federal or state law, or rules and regulations promulgated thereunder.

(n) "State Department of Health" or "department" shall mean the state agency created under Section 41-3-15, which shall be considered to be the State Health Planning and Development Agency, as defined in paragraph (u) of this section.

(o) "Offer," when used in connection with health services, means that it has been determined by the State Department of Health that the health care facility is capable of providing specified health services.

(p) "Person" means an individual, a trust or estate, partnership, corporation (including associations, joint-stock companies and insurance companies), the state or a political subdivision or instrumentality of the state.



(q) "Provider" shall mean any person who is a provider or representative of a provider of health care services requiring a certificate of need under Section 41-7-171 et seq., or who has any financial or indirect interest in any provider of services.

(r) "Radiation therapy services" means the treatment of cancer and other diseases using ionizing radiation of either high energy photons (x-rays or gamma rays) or charged particles (electrons, protons or heavy nuclei). However, for purposes of a certificate of need, radiation therapy services shall not include low energy, superficial, external beam x-ray treatment of superficial skin lesions.

(s) "Secretary" means the Secretary of Health and Human Services, and any officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(t) "State Health Plan" means the sole and official statewide health plan for Mississippi which identifies priority state health needs and establishes standards and criteria for health-related activities which require certificate of need review in compliance with Section 41-7-191.

(u) "State Health Planning and Development Agency" means the agency of state government designated to perform health planning and resource development programs for the State of Mississippi.



388 **SECTION 3.** This act shall take effect and be in force from
389 and after July 1, 2025.

