

By: Senator(s) Carter

To: Public Health and
Welfare;
Appropriations

SENATE BILL NO. 2850

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE DOLLAR AMOUNT OF A CAPITAL EXPENDITURE BY A HEALTH
3 CARE FACILITY WHICH REQUIRES CERTIFICATE OF NEED REVIEW; AND FOR
4 RELATED PURPOSES.

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

6 SECTION 1. Section 41-7-173, Mississippi Code of 1972, is
7 amended as follows:

8 41-7-173. For the purposes of Section 41-7-171 et seq., the
9 following words shall have the meanings ascribed herein, unless
10 the context otherwise requires:

11 (a) "Affected person" means (i) the applicant; (ii) a
12 person residing within the geographic area to be served by the
13 applicant's proposal; (iii) a person who regularly uses health
14 care facilities or HMO's located in the geographic area of the
15 proposal which provide similar service to that which is proposed;
16 (iv) health care facilities and HMO's which have, prior to receipt
17 of the application under review, formally indicated an intention
18 to provide service similar to that of the proposal being
19 considered at a future date; (v) third-party payers who reimburse
20 health care facilities located in the geographical area of the
21 proposal; or (vi) any agency that establishes rates for health
22 care services or HMO's located in the geographic area of the
23 proposal.

24 (b) "Certificate of need" means a written order of the
25 State Department of Health setting forth the affirmative finding
26 that a proposal in prescribed application form, sufficiently
27 satisfies the plans, standards and criteria prescribed for such
28 service or other project by Section 41-7-171 et seq., and by rules

and regulations promulgated thereunder by the State Department of Health.

(c) (i) "Capital expenditure" when pertaining to defined major medical equipment, shall mean an expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds One Million Nine Hundred Thousand Dollars (\$1,900,000.00).

(ii) "Capital expenditure," when pertaining to other than major medical equipment, shall mean any expenditure which under generally accepted accounting principles consistently applied is not properly chargeable as an expense of operation and maintenance and which exceeds One Million Nine Hundred Thousand Dollars (\$1,900,000.00).

(iii) A "capital expenditure" shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within twelve (12) months of each other 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.

67 (d) "Change of ownership" includes, but is not limited
68 to, inter vivos gifts, purchases, transfers, lease arrangements,
69 cash and/or stock transactions or other comparable arrangements
70 whenever any person or entity acquires or controls a majority
71 interest of the facility or service. Changes of ownership from
72 partnerships, single proprietorships or corporations to another
73 form of ownership are specifically included. Provided, however,
74 "change of ownership" shall not include any inherited interest
75 acquired as a result of a testamentary instrument or under the
76 laws of descent and distribution of the State of Mississippi.

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

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

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

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

96 Force account expenditures, such as deposits,
97 securities, bonds, et cetera, may, in the discretion of the State
98 Department of Health, be excluded from any or all of the
99 provisions of defined commencement of construction.

100 (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 the mentally retarded, 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 mentally ill persons.

(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) "End stage renal disease (ESRD) facilities" means kidney disease treatment centers, which includes freestanding hemodialysis units and limited care facilities. The term "limited care facility" generally refers to an off-hospital-premises facility, regardless of whether it is provider or nonprovider operated, which is engaged primarily in furnishing maintenance hemodialysis services to stabilized patients.

(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(e).

(viii) "Intermediate care facility for the mentally retarded" means an intermediate care facility that provides health or rehabilitative services in a planned program of activities to the mentally retarded, 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 paragraph, 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;

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

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

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

(xi) "Pediatric skilled nursing facility" means an institution or a distinct part of an institution that is primarily

engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(xii) "Long-term care hospital" means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days, which is primarily engaged in providing chronic or long-term medical care to patients who do not require more than three (3) hours of rehabilitation or comprehensive rehabilitation per day, and has a transfer agreement with an acute care medical center and a comprehensive medical rehabilitation facility. Long-term care hospitals shall not use rehabilitation, comprehensive medical 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:
 - (i) Physical Therapy;
 - (ii) Occupational Therapy;
 - (iii) Speech and Language Therapy;

(iv) Rehabilitation Nursing; and
4. Incorporates at least three (3) of the following disciplines:

- (i) Psychology;
- (ii) Audiology;
- (iii) Respiratory Therapy;
- (iv) Therapeutic Recreation;
- (v) Orthotics;
- (vi) Prosthetics;
- (vii) Special Education;
- (viii) Vocational Rehabilitation;
- (ix) Psychotherapy;
- (x) Social Work;
- (xi) Rehabilitation Engineering.

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

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

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

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

(iii) Provides physician services primarily:

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

2. Through arrangements with individual physicians or one or more groups of physicians (organized on a

group practice or individual practice basis).

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

(k) "Health services" means clinically related (i.e., diagnostic, treatment or rehabilitative) services and includes alcohol, drug abuse, mental health and home health care services.

(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 Nine Hundred Thousand Dollars (\$1,900,000.00). 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" 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 (t) 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.

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

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

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

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

356 SECTION 2. This act shall take effect and be in force from
357 and after July 1, 1999.