

By: White (29th)

To: Public Health and  
Welfare

SENATE BILL NO. 2045

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,  
2 TO DELETE HOSPITALS FROM THE REQUIREMENTS OF THE HEALTH CARE  
3 FACILITY CERTIFICATE OF NEED LAW; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 41-7-173, Mississippi Code of 1972, is  
6 amended as follows:[RDD1]

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

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

22 proposal.

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

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

36 (ii) "Capital expenditure," when pertaining to  
37 other than major medical equipment, shall mean any expenditure  
38 which under generally accepted accounting principles consistently  
39 applied is not properly chargeable as an expense of operation and  
40 maintenance and which exceeds Two Million Dollars (\$2,000,000.00).

41 (iii) A "capital expenditure" shall include the  
42 acquisition, whether by lease, sufferance, gift, devise, legacy,  
43 settlement of a trust or other means, of any facility or part  
44 thereof, or equipment for a facility, the expenditure for which  
45 would have been considered a capital expenditure if acquired by  
46 purchase. Transactions which are separated in time but are  
47 planned to be undertaken within twelve (12) months of each other  
48 and are components of an overall plan for meeting patient care  
49 objectives shall, for purposes of this definition, be viewed in  
50 their entirety without regard to their timing.

51 (iv) In those instances where a health care  
52 facility or other provider of health services proposes to provide

53 a service in which the capital expenditure for major medical  
54 equipment or other than major medical equipment or a combination  
55 of the two (2) may have been split between separate parties, the  
56 total capital expenditure required to provide the proposed service  
57 shall be considered in determining the necessity of certificate of  
58 need review and in determining the appropriate certificate of need  
59 review fee to be paid. The capital expenditure associated with  
60 facilities and equipment to provide services in Mississippi shall  
61 be considered regardless of where the capital expenditure was  
62 made, in state or out of state, and regardless of the domicile of  
63 the party making the capital expenditure, in state or out of  
64 state.

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

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

79 (i) A legally binding written contract has been  
80 consummated by the proponent and a lawfully licensed contractor to

81 construct and/or complete the intent of the proposal within a  
82 specified period of time in accordance with final architectural  
83 plans which have been approved by the licensing authority of the  
84 State Department of Health;

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

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

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

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

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

107 (h) "Health care facility" includes \* \* \* skilled  
108 nursing facilities, end stage renal disease (ESRD) facilities,

109 including freestanding hemodialysis units, intermediate care  
110 facilities, ambulatory surgical facilities, intermediate care  
111 facilities for the mentally retarded, home health agencies,  
112 psychiatric residential treatment facilities, pediatric skilled  
113 nursing facilities, long-term care hospitals, comprehensive  
114 medical rehabilitation facilities, including facilities owned or  
115 operated by the state or a political subdivision or  
116 instrumentality of the state, but does not include Christian  
117 Science sanatoriums operated or listed and certified by the First  
118 Church of Christ, Scientist, Boston, Massachusetts. This  
119 definition shall not apply to facilities for the private practice,  
120 either independently or by incorporated medical groups, of  
121 physicians, dentists or health care professionals except where  
122 such facilities are an integral part of an institutional health  
123 service. The various health care facilities listed in this  
124 paragraph shall be defined as follows:

125 (i) \* \* \*

126 (ii) \* \* \*

127 (iii) \* \* \*

128 (iv) "Skilled nursing facility" means an  
129 institution or a distinct part of an institution which is  
130 primarily engaged in providing to inpatients skilled nursing care  
131 and related services for patients who require medical or nursing  
132 care or rehabilitation services for the rehabilitation of injured,  
133 disabled or sick persons.

134 (v) "End stage renal disease (ESRD) facilities"

135 means kidney disease treatment centers, which includes

136 freestanding hemodialysis units and limited care facilities. The

137 term "limited care facility" generally refers to an  
138 off-hospital-premises facility, regardless of whether it is  
139 provider or nonprovider operated, which is engaged primarily in  
140 furnishing maintenance hemodialysis services to stabilized  
141 patients.

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

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

156 (viii) "Intermediate care facility for the  
157 mentally retarded" means an intermediate care facility that  
158 provides health or rehabilitative services in a planned program of  
159 activities to the mentally retarded, also including, but not  
160 limited to, cerebral palsy and other conditions covered by the  
161 Federal Developmentally Disabled Assistance and Bill of Rights  
162 Act, Public Law 94-103.

163 (ix) "Home health agency" means a public or  
164 privately owned agency or organization, or a subdivision of such

165 an agency or organization, properly authorized to conduct business  
166 in Mississippi, which is primarily engaged in providing to  
167 individuals at the written direction of a licensed physician, in  
168 the individual's place of residence, skilled nursing services  
169 provided by or under the supervision of a registered nurse  
170 licensed to practice in Mississippi, and one or more of the  
171 following services or items:

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

183 Further, all skilled nursing services and those services  
184 listed in items 1. through 4. of this subparagraph (ix) must be  
185 provided directly by the licensed home health agency. For  
186 purposes of this subparagraph, "directly" means either through an  
187 agency employee or by an arrangement with another individual not  
188 defined as a health care facility.

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

192 (x) "Psychiatric residential treatment facility"

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

- 207                   1. An inability to learn which cannot be  
208 explained by intellectual, sensory or health factors;
- 209                   2. An inability to build or maintain  
210 satisfactory relationships with peers and teachers;
- 211                   3. Inappropriate types of behavior or  
212 feelings under normal circumstances;
- 213                   4. A general pervasive mood of unhappiness or  
214 depression; or
- 215                   5. A tendency to develop physical symptoms or  
216 fears associated with personal or school problems. An  
217 establishment furnishing primarily domiciliary care is not within  
218 this definition.

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



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

225 (xii) "Long-term care hospital" means a  
226 freestanding, Medicare-certified hospital that has an average  
227 length of inpatient stay greater than twenty-five (25) days, which  
228 is primarily engaged in providing chronic or long-term medical  
229 care to patients who do not require more than three (3) hours of  
230 rehabilitation or comprehensive rehabilitation per day, and has a  
231 transfer agreement with an acute care medical center and a  
232 comprehensive medical rehabilitation facility. Long-term care  
233 hospitals shall not use rehabilitation, comprehensive medical  
234 rehabilitation, medical rehabilitation, sub-acute rehabilitation,  
235 nursing home, skilled nursing facility, or sub-acute care facility  
236 in association with its name.

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

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

248 2. Emphasizes education and training of

249 individuals with disabilities;

250                   3. Incorporates at least the following core  
251 disciplines:

252                   (i) Physical Therapy;

253                   (ii) Occupational Therapy;

254                   (iii) Speech and Language Therapy;

255                   (iv) Rehabilitation Nursing; and

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

258                   (i) Psychology;

259                   (ii) Audiology;

260                   (iii) Respiratory Therapy;

261                   (iv) Therapeutic Recreation;

262                   (v) Orthotics;

263                   (vi) Prosthetics;

264                   (vii) Special Education;

265                   (viii) Vocational Rehabilitation;

266                   (ix) Psychotherapy;

267                   (x) Social Work;

268                   (xi) Rehabilitation Engineering.

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

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

275                   (i) Provides or otherwise makes available to  
276 enrolled participants health care services, including

277 substantially the following basic health care services: usual  
278 physician services, hospitalization, laboratory, x-ray, emergency  
279 and preventive services, and out-of-area coverage;

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

284 (iii) Provides physician services primarily:

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

287 2. Through arrangements with individual  
288 physicians or one or more groups of physicians (organized on a  
289 group practice or individual practice basis).

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

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

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

302 (m) "Major medical equipment" means medical equipment  
303 designed for providing medical or any health related service which  
304 costs in excess of One Million Five Hundred Thousand Dollars

305 (\$1,500,000.00). However, this definition shall not be applicable  
306 to clinical laboratories if they are determined by the State  
307 Department of Health to be independent of any physician's office,  
308 hospital or other health care facility or otherwise not so defined  
309 by federal or state law, or rules and regulations promulgated  
310 thereunder.

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

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

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

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

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

331 (s) "State Health Plan" means the sole and official  
332 statewide health plan for Mississippi which identifies priority

333 state health needs and establishes standards and criteria for  
334 health-related activities which require certificate of need review  
335 in compliance with Section 41-7-191.

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

340           SECTION 2. This act shall take effect and be in force from  
341 and after July 1, 2000.