

By: Representative Fleming

To: Public Health and Welfare; Appropriations

HOUSE BILL NO. 161

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 35-1-19,
4 41-9-11, 41-9-23, 41-9-209, 41-71-7, 41-71-19, 41-73-5, 41-75-1,
5 41-75-5, 41-75-9, 41-75-25, 41-77-1, 41-77-5, 41-77-21, 41-77-23,
6 41-77-25, 41-95-3, 43-11-9 AND 43-11-19, MISSISSIPPI CODE OF 1972,
7 TO CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Sections 41-7-171, 41-7-173, 41-7-175, 41-7-183,
10 41-7-185, 41-7-187, 41-7-189, 41-7-190, 41-7-191, 41-7-193,
11 41-7-195, 41-7-197, 41-7-201, 41-7-202, 41-7-205, 41-7-207 and
12 41-7-209, Mississippi Code of 1972, which are the Mississippi
13 Health Care Certificate of Need Law of 1979, are repealed.

14 SECTION 2. Section 35-1-19, Mississippi Code of 1972, is
15 amended as follows:

16 35-1-19. There is * * * authorized to be established by the
17 State Veterans Affairs Board, the Mississippi State Veterans Home
18 on a site to be determined by the State Veterans Affairs Board,
19 with the approval of the Bureau of Building, Grounds and Real
20 Property Management of the Department of Finance and
21 Administration, when funds are made available for such purpose by
22 any agency of the federal government or other sources. The object
23 and purpose of the establishment of the Mississippi State Veterans
24 Home shall be to provide domiciliary care and other related
25 services for eligible veterans of the State of Mississippi.

26 One or more additional veterans homes or domiciliaries are
27 hereby authorized to be established by the State Veterans Affairs
28 Board on sites in northern, central or southern Mississippi, to be
29 determined by the State Veterans Affairs Board, with the approval



30 of the Department of Finance and Administration, when funds are
31 made available for such purpose by any agency of the federal
32 government or other sources. The Veterans Affairs Board shall
33 give the three (3) regions, northern, southern and central
34 priority as to where the veterans home shall be located, with the
35 northern region having first priority, the southern region having
36 the next level priority and the central region being third in
37 order of priority. The object and purpose of the establishment of
38 such additional homes or domiciliaries shall be to provide
39 domiciliary care and other related services for eligible veterans
40 of the State of Mississippi. * * *

41 **SECTION 3.** Section 41-9-11, Mississippi Code of 1972, is
42 amended as follows:

43 41-9-11. Upon receipt of an application for license and the
44 license fee, the licensing agency shall issue a license if the
45 applicant and hospital facilities meet the requirements
46 established under Sections 41-9-1 through 41-9-35 * * *. A
47 license, unless suspended or revoked, shall be renewable annually,
48 upon filing by the licensee, and approval by the licensing agency
49 of an annual report upon such uniform dates and containing such
50 information in such form as the licensing agency prescribes by
51 regulation and upon paying the annual fee for such license as
52 determined by the schedule and provisions of Section 41-9-9. Each
53 license shall be issued only for the premises and persons or
54 governmental units named in the application and shall not be
55 transferable or assignable except with the written approval of the
56 licensing agency. Licenses shall be posted in a conspicuous place
57 on the licensed premises.

58 **SECTION 4.** Section 41-9-23, Mississippi Code of 1972, is
59 amended as follows:

60 41-9-23. Information received by the licensing agency
61 through filed reports, inspection, or as otherwise authorized
62 under Sections 41-9-1 through 41-9-35 shall not be disclosed



63 publicly in such manner as to identify individuals, except in a
64 proceeding involving the questions of licensure; however, the
65 licensing agency may utilize statistical data concerning types of
66 services and the utilization of these services for hospitals in
67 performing the statutory duties imposed upon it * * * by Section
68 41-9-29.

69 **SECTION 5.** Section 41-9-209, Mississippi Code of 1972, is
70 amended as follows:

71 41-9-209. (1) Any hospital is authorized to seek
72 designation as a critical access hospital. There shall be no
73 requirement or limitation regarding the distance that a critical
74 access hospital must be located from another hospital. The
75 bed-size limit for a critical access hospital is fifteen (15)
76 operational beds, and the maximum length of stay for a patient in
77 a critical access hospital is ninety-six (96) hours, unless a
78 longer period is required because of inclement weather or other
79 emergency conditions, or a peer review organization or other
80 equivalent entity, or request, waives the ninety-six-hour
81 restriction. An exception to the bed-size requirement is made for
82 swing-bed facilities, which may have up to twenty-five (25)
83 inpatient beds, provided that not more than fifteen (15) beds are
84 used at any one (1) time for acute care.

85 (2) A critical access hospital (a) must make available
86 twenty-four-hour emergency care services, as described in the
87 state rural health care plan, for ensuring access to emergency
88 care services in the rural area served by the critical access
89 hospital, and (b) must be a member of a rural health network. Any
90 hospital that has a distinct-part skilled nursing facility,
91 certified under Title XVIII of the federal Social Security Act, at
92 the time it applies for designation as critical access hospital,
93 is not required to count the beds in the distinct-part skilled
94 nursing facility for purposes of the allowed fifteen (15) acute
95 care inpatient beds * * *.



96 (3) The distinct-part skilled nursing facility beds of such
97 hospital applying for designation as a critical access hospital
98 shall be deemed licensed under state law as distinct-part skilled
99 nursing facility beds, which licensure designation will remain in
100 effect as long as (a) such hospital is applying for or is
101 designated and functions as a critical access hospital and (b)
102 such beds are certified as distinct-part skilled nursing facility
103 beds under Title XVIII of the federal Social Security Act.

104 (4) The distinct-part geriatric psychiatric unit beds of a
105 hospital applying for designation as a critical access hospital
106 shall be deemed licensed under state law as psychiatric beds,
107 which licensure designation will remain in effect as long as (a)
108 such hospital is applying for or is designated and functions as a
109 critical access hospital and (b) such beds are certified as
110 distinct-part geriatric psychiatric unit beds under Title XVIII of
111 the federal Social Security Act. * * *

112 **SECTION 6.** Section 41-71-7, Mississippi Code of 1972, is
113 amended as follows:

114 41-71-7. Upon receipt of an application for a license and
115 the license fee, and a determination by the licensing agency that
116 the application is * * * in compliance with the provisions of this
117 chapter, such license shall be issued. A license, unless
118 suspended or revoked, shall be renewable annually upon payment by
119 the licensee of a renewal fee of One Thousand Dollars (\$1,000.00)
120 and approval by the licensing agency of an annual report, required
121 to be submitted by the licensee, containing such information in
122 such form and at such time as the licensing agency prescribes by
123 rule or regulation. Each license shall be issued only for the
124 home health agency and person or persons or other legal entity or
125 entities named in the application and shall not be transferable or
126 assignable except with the written approval of the licensing
127 agency. Licenses shall be posted in a conspicuous place in the
128 designated business office of the licensee. Each licensee shall



129 designate, in writing, one (1) individual person as the
130 responsible party for the conducting of the business of the home
131 health agency with the licensing agency.

132 **SECTION 7.** Section 41-71-19, Mississippi Code of 1972, is
133 amended as follows:

134 41-71-19. Information received by the licensing agency
135 through filed reports, inspection, or as otherwise authorized
136 under this chapter, shall not be disclosed publicly in such manner
137 as to identify individuals, except in proceedings involving the
138 question of licensure; however, the licensing agency may utilize
139 statistical data concerning types of services and the utilization
140 of those services for home health care agencies in performing
141 the * * * duties imposed upon it by * * * regulations necessarily
142 promulgated for participation in the Medicare or Medicaid
143 programs.

144 **SECTION 8.** Section 41-73-5, Mississippi Code of 1972, is
145 amended as follows:

146 41-73-5. When used in this act, unless the context requires
147 a different definition, the following terms shall have the
148 following meanings:

149 (a) "Act" means the Mississippi Hospital Equipment and
150 Facilities Authority Act.

151 (b) "Authority" means the Mississippi Hospital
152 Equipment and Facilities Authority created by this act and any
153 successor to its functions.

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

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



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

163 (ii) The cost of any property interest in such
164 hospital equipment including an option to purchase or leasehold
165 interest;

166 (iii) The cost of architectural, engineering,
167 legal and related services; the cost of the preparation of plans,
168 specifications, studies, surveys and estimates of cost and of
169 revenue; and all other expenses necessary or incident to planning,
170 providing or determining the need for or the feasibility and
171 practicability of such hospital equipment; and the cost of
172 providing or establishing a reasonable reserve fund for the
173 payment of principal and interest on bonds;

174 (iv) The cost of financing charges, including
175 premiums or prepayment penalties, if any, and interest accrued
176 prior to the acquisition and installation or refinancing of such
177 hospital equipment and after such acquisition and installation or
178 refinancing and start-up costs related to hospital equipment;

179 (v) Any and all costs paid or incurred in
180 connection with the financing of such hospital equipment,
181 including out-of-pocket expenses, the cost of financing, legal,
182 accounting, financial advisory and consulting fees, expenses and
183 disbursements; the cost of any policy of insurance; the cost of
184 printing, engraving and reproduction services; and the cost of the
185 initial or acceptance fee of any trustee or paying agent;

186 (vi) All direct or indirect costs of the authority
187 incurred in connection with providing such hospital equipment,
188 including, without limitation, reasonable sums to reimburse the
189 authority for time spent by its agents or employees with respect
190 to providing such hospital equipment and the financing thereof;
191 and



192 (vii) Any and all costs paid or incurred for the
193 administration of any program for the purchase or lease of or the
194 making of loans for hospital equipment, by the authority and any
195 program for the sale or lease of or the making of loans for such
196 hospital equipment to any participating hospital institution.

197 (e) "Cost" as applied to hospital facilities, means any
198 and all costs of such hospital facilities and, without limiting
199 the generality of the foregoing, shall include the following:

200 (i) All costs of the establishment, demolition,
201 site development of new and rehabilitated buildings,
202 rehabilitation, reconstruction repair, erection, building,
203 construction, remodeling, adding to and furnishing of any such
204 hospital facilities and all costs incident or related thereto;

205 (ii) The cost of acquiring any property interest
206 in such hospital facilities including the purchase thereof, the
207 cost of an option to purchase or the cost of any leasehold
208 interest;

209 (iii) The cost of architectural, engineering,
210 legal and related services; the cost of the preparation of plans,
211 specifications, studies, surveys and estimates of cost and of
212 revenue; all other expenses necessary or incident to planning,
213 providing or determining the need for or the feasibility and
214 practicability of such hospital facilities or the acquisition
215 thereof; and the cost of providing or establishing a reasonable
216 reserve fund for the payment of principal of and interest on
217 bonds;

218 (iv) The cost of financing charges, including
219 premiums or prepayment penalties, if any, and interest accrued
220 prior to the acquisition and completion or refinancing of such
221 hospital facilities and after such acquisition and completion or
222 refinancing and start-up costs related to hospital facilities;

223 (v) Any and all costs paid or incurred in
224 connection with the financing of such hospital facilities,



225 including out-of-pocket expenses, the cost of financing, legal,
226 accounting, financial advisory and consulting fees, expenses and
227 disbursement; the cost of any policy of insurance; the cost of
228 printing, engraving and reproduction services; and the cost of the
229 initial or acceptance fee of any trustee or paying agent;

230 (vi) All direct or indirect costs of the authority
231 incurred in connection with providing such hospital facilities,
232 including, without limitation, reasonable sums to reimburse the
233 authority for time spent by its agents or employees with respect
234 to providing such hospital facilities and the financing thereof;

235 (vii) Any and all costs paid or incurred for the
236 administration of any program for the purchase or lease of or the
237 making of loans for hospital facilities, by the authority and any
238 program for the sale or lease of or the making of loans for such
239 hospital facilities to any participating hospital institution; and

240 (viii) The cost of providing for the payment or
241 the making provision for the payment of, by the appropriate
242 escrowing of moneys or securities, the principal of and interest
243 on which when due will be adequate to make such payment, any
244 indebtedness encumbering the revenues or property of a
245 participating hospital institution, whether such payment is to be
246 effected by redemption of such indebtedness prior to maturity or
247 not.

248 (f) "Hospital equipment" means any personal property
249 which is found and determined by the authority to be required or
250 necessary or helpful for medical care, research, training or
251 teaching, any one (1) or all, in hospital facilities located in
252 the state, irrespective of whether such property is in existence
253 at the time of, or is to be provided after the making of, such
254 finding. * * *

255 (g) "Hospital facility" or "hospital facilities" means
256 buildings and structures of any and all types used or useful, in
257 the discretion of the authority, for providing any types of care



258 to the sick, wounded, infirmed, needy, mentally incompetent or
259 elderly and shall include, without limiting the generality of the
260 foregoing, out-patient clinics, laboratories, laundries, nurses',
261 doctors' or interns' residences, administration buildings, office
262 buildings, facilities for research directly involved with hospital
263 care, maintenance, storage or utility facilities, parking lots,
264 and garages and all necessary, useful, or related furnishings, and
265 appurtenances and all lands necessary or convenient as a site for
266 the foregoing.

267 (h) "Participating hospital institution" or "hospital
268 institution" means a public or private corporation, association,
269 foundation, trust, cooperative, agency, body politic, or other
270 person or organization which provides or operates or proposes to
271 provide or operate hospital facilities not for profit, and which,
272 pursuant to the provisions of this act, contracts with the
273 authority for the financing or refinancing of the lease or other
274 acquisition of hospital equipment or hospital facilities, or both.

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

276 The use of singular terms herein shall also include the
277 plural of such term and the use of a plural term herein shall also
278 include the singular of such term unless the context clearly
279 requires a different connotation.

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

282 41-75-1. (a) "Ambulatory surgical facility" shall mean a
283 publicly or privately owned institution which is primarily
284 organized, constructed, renovated or otherwise established for the
285 purpose of providing elective surgical treatment of "outpatients"
286 whose recovery, under normal and routine circumstances, will not
287 require "inpatient" care. Such facility as herein defined does
288 not include the offices of private physicians or dentists whether
289 practicing individually or in groups, but does include
290 organizations or facilities primarily engaged in such outpatient



291 surgery whether using the name "ambulatory surgical facility" or a
292 similar or different name. Such organization or facility, if in
293 any manner considered to be operated or owned by a hospital or a
294 hospital holding, leasing or management company, either for profit
295 or not for profit, is required to comply with all licensing agency
296 ambulatory surgical licensure standards governing a "hospital
297 affiliated" facility as adopted under Section 41-9-1 et seq.,
298 Mississippi Code of 1972; provided that such organization or
299 facility does not intend to seek federal certification as an
300 ambulatory surgical facility as provided for at 42 CFR, Parts 405
301 and 416. Further, if such organization or facility is to be
302 operated or owned by a hospital or a hospital holding, leasing or
303 management company and intends to seek federal certification as an
304 ambulatory facility, then such facility is considered to be
305 "freestanding" and must comply with all licensing agency
306 ambulatory surgical licensure standards governing a "freestanding"
307 facility.

308 If such organization or facility is to be owned or operated
309 by an entity or person other than a hospital or hospital holding,
310 leasing or management company, then such organization or facility
311 must comply with all licensing agency ambulatory surgical facility
312 standards governing a "freestanding" facility.

313 (b) "Hospital affiliated" ambulatory surgical facility shall
314 mean a separate and distinct organized unit of a hospital or a
315 building owned, leased, rented or utilized by a hospital and
316 located in the same county in which the hospital is located, for
317 the primary purpose of performing ambulatory surgery procedures.
318 Such facility is not required to be separately licensed under this
319 statute and may operate under the hospital's license in compliance
320 with all applicable requirements of Section 41-9-1 et seq.

321 (c) "Freestanding" ambulatory surgical facility shall mean a
322 separate and distinct facility or a separate and distinct
323 organized unit of a hospital owned, leased, rented or utilized by



324 a hospital or other persons for the primary purpose of performing
325 ambulatory surgery procedures. Such facility must be separately
326 licensed as herein defined and must comply with all licensing
327 standards promulgated by the licensing agency under this statute
328 regarding a "freestanding" ambulatory surgical facility. Further,
329 such facility must be a separate, identifiable entity and must be
330 physically, administratively and financially independent and
331 distinct from other operations of any other health facility, and
332 shall maintain a separate organized medical and administrative
333 staff. * * *

334 (d) "Ambulatory surgery" shall mean surgical procedures that
335 are more complex than office procedures performed under local
336 anesthesia, but less complex than major procedures requiring
337 prolonged postoperative monitoring and hospital care to ensure
338 safe recovery and desirable results. General anesthesia is used
339 in most cases. The patient must arrive at the facility and expect
340 to be discharged on the same day. Ambulatory surgery shall only
341 be performed by physicians or dentists licensed to practice in the
342 State of Mississippi.

343 (e) "Abortion" means the use or prescription of any
344 instrument, medicine, drug or any other substances or device to
345 terminate the pregnancy of a woman known to be pregnant with an
346 intention other than to increase the probability of a live birth,
347 to preserve the life or health of the child after live birth or to
348 remove a dead fetus. Abortion procedures on a fetus aged sixteen
349 (16) weeks or more shall only be performed at an ambulatory
350 surgical facility or hospital licensed to perform such service.

351 (f) "Abortion facility" means a facility operating
352 substantially for the purpose of performing abortions and is a
353 separate identifiable legal entity from any other health care
354 facility. Abortions shall only be performed by physicians
355 licensed to practice in the State of Mississippi. The term
356 "abortion facility" includes physicians' offices which are used



357 substantially for the purpose of performing abortions. An
358 abortion facility operates substantially for the purpose of
359 performing abortions if any of the following conditions are met:

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

364 (ii) The abortion facility, if operating less than
365 twenty (20) days per calendar month, is a provider for performing
366 ten (10) or more abortion procedures, or performing a number of
367 abortion procedures which would be equivalent to ten (10)
368 procedures per month, if the facility were operating twenty (20)
369 or more days per calendar month, in any month of a calendar year.

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

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

376 (g) "Licensing agency" shall mean the State Department of
377 Health.

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

382 Any abortion facility that begins operation after June 30,
383 1996, shall not be located within fifteen hundred (1500) feet from
384 the property on which any church, school or kindergarten is
385 located. An abortion facility shall not be in violation of this
386 paragraph if it is in compliance with this paragraph on the date
387 it begins operation and the property on which a church, school or
388 kindergarten is located is subsequently within fifteen hundred
389 (1500) feet from the facility.



390 **SECTION 10.** Section 41-75-5, Mississippi Code of 1972, is
391 amended as follows:

392 41-75-5. No person * * * acting severally or jointly with
393 any other person, shall establish, conduct, operate or maintain an
394 ambulatory surgical facility or an abortion facility in this state
395 without a license under this chapter.

396 **SECTION 11.** Section 41-75-9, Mississippi Code of 1972, is
397 amended as follows:

398 41-75-9. Upon receipt of an application for license and the
399 license fee, the licensing agency shall issue a license if the
400 applicant and the institutional facilities meet the requirements
401 established under this chapter * * *. A license, unless suspended
402 or revoked, shall be renewable annually upon payment of a renewal
403 fee of Three Thousand Dollars (\$3,000.00), which shall be paid to
404 the licensing agency, and upon filing by the licensee and approval
405 by the licensing agency of an annual report upon such uniform
406 dates and containing such information in such form as the
407 licensing agency requires. Each license shall be issued only for
408 the premises and person or persons named in the application and
409 shall not be transferable or assignable. Licenses shall be posted
410 in a conspicuous place on the licensed premises.

411 **SECTION 12.** Section 41-75-25, Mississippi Code of 1972, is
412 amended as follows:

413 41-75-25. Any person or persons or other entity or entities
414 establishing, managing or operating an ambulatory surgical
415 facility or conducting the business of an ambulatory surgical
416 facility without the required license, or which otherwise violate
417 any of the provisions of this chapter * * * or the rules,
418 regulations or standards promulgated in furtherance of any law in
419 which the licensing agency has authority therefor, shall be
420 subject to the following penalties and sanctions:

421 (a) Revocation of the license of the ambulatory surgical
422 facility or a designated section, component or service thereof; or



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

425 In addition, any violation of any provision of this chapter
426 or any rules or regulations promulgated in furtherance thereof by
427 intent, fraud, deceit, unlawful design, willful and/or deliberate
428 misrepresentation, or by careless, negligent or incautious
429 disregard for such statutes or rules and regulations, either by
430 persons acting individually or in concert with others, shall
431 constitute a misdemeanor and shall be punishable by a fine not to
432 exceed One Thousand Dollars (\$1,000.00) for each such offense.
433 Each day of continuing violation shall be considered a separate
434 offense. The venue for prosecution of any such violation shall be
435 in any county of the state in which any such violation, or portion
436 thereof, occurred.

437 **SECTION 13.** Section 41-77-1, Mississippi Code of 1972, is
438 amended as follows:

439 41-77-1. For purposes of this chapter:

440 (a) "Birthing center" shall mean a publicly or
441 privately owned facility, place or institution constructed,
442 renovated, leased or otherwise established where nonemergency
443 births are planned to occur away from the mother's usual residence
444 following a documented period of prenatal care for a normal
445 uncomplicated pregnancy which has been determined to be low risk
446 through a formal risk scoring examination. Care provided in a
447 birthing center shall be provided by a licensed physician, or
448 certified nurse midwife, and a registered nurse. Services
449 provided in a birthing center shall be limited in the following
450 manner: (i) surgical services shall be limited to those normally
451 performed during uncomplicated childbirth, such as episiotomy and
452 repair, and shall not include operative obstetrics or caesarean
453 sections; (ii) labor shall not be inhibited, stimulated or
454 augmented with chemical agents during the first or second stage of
455 labor; (iii) systemic analgesia may be administered and local



456 anesthesia for pudendal block and episiotomy repair may be
457 performed. General and conductive anesthesia shall not be
458 administered at birthing centers; (iv) patients shall not remain
459 in the facility in excess of twenty-four (24) hours.

460 Hospitals are excluded from the definition of a "birthing
461 center" unless they choose to and are qualified to designate a
462 portion or part of the hospital as a birthing center, and nothing
463 herein shall be construed as referring to the usual service
464 provided the pregnant female in the obstetric-gynecology service
465 of an acute care hospital. Such facility or center, as heretofore
466 stated, shall include the offices of physicians in private
467 practice alone or in groups of two (2) or more; and such facility
468 or center rendering service to pregnant female persons, as stated
469 heretofore and by the rules and regulations promulgated by the
470 licensing agency in furtherance thereof, shall be deemed to be a
471 "birthing center" whether using a similar or different name. Such
472 center or facility if in any manner is deemed to be or considered
473 to be operated or owned by a hospital or a hospital holding
474 leasing or management company, for profit or not for profit, is
475 required to comply with all birthing center standards governing a
476 "hospital affiliated" birthing center as adopted by the licensing
477 authority.

478 (b) "Hospital affiliated" birthing center shall mean a
479 separate and distinct unit of a hospital or a building owned,
480 leased, rented or utilized by a hospital and located in the same
481 county as the hospital for the purpose of providing the service of
482 a "birthing center." Such center or facility is not required to
483 be licensed separately, and may operate under the license issued
484 to the hospital if it is in compliance with Section 41-9-1 et
485 seq., where applicable, and the rules and regulations promulgated
486 by the licensing agency in furtherance thereof.

487 (c) "Freestanding" birthing center shall mean a
488 separate and distinct facility or center or a separate and



489 distinct organized unit of a hospital or other * * * person * * *
490 for the purpose of performing the service of a "birthing center."
491 Such facility or center must be separately licensed and must
492 comply with all licensing standards promulgated by the licensing
493 agency by virtue of this chapter. Further, such facility or
494 center must be a separate, identifiable entity and must be
495 physically, administratively and financially independent from
496 other operations of any hospital or other health care facility or
497 service and shall maintain a separate and required staff,
498 including administrative staff. * * *

499 (d) "Licensing agency" shall mean the State Department
500 of Health.

501 **SECTION 14.** Section 41-77-5, Mississippi Code of 1972, is
502 amended as follows:

503 41-77-5. No person * * *, acting severally or jointly with
504 any other person, shall establish, conduct or maintain a "birthing
505 center" in this state without a license under this chapter.

506 **SECTION 15.** Section 41-77-21, Mississippi Code of 1972, is
507 amended as follows:

508 41-77-21. Any applicant or licensee aggrieved by the
509 decision of the licensing agency after a hearing may, within
510 thirty (30) days after the mailing or serving of notice of the
511 decision as provided in Section 43-11-11, file a notice of appeal
512 to the Chancery Court of the First Judicial District of Hinds
513 County or in the chancery court of the county in which the
514 institution is located or proposed to be located. * * * Thereupon,
515 the licensing agency shall * * * certify and file with the court a
516 copy of the record and decision, including the transcript of the
517 hearings in which the decision is based. No new or additional
518 evidence shall be introduced in court; the case shall be
519 determined upon the record certified to the court. The court may
520 sustain or dismiss the appeal, modify or vacate the order
521 complained of in whole or in part, as the case may be; but in case



522 the order is wholly or partly vacated, the court may also, in its
523 discretion, remand the matter to the licensing agency for such
524 further proceedings, not inconsistent with the court's order, as,
525 in the opinion of the court, justice may require. The order may
526 not be vacated or set aside, either in whole or in part, except
527 for errors of law, unless the court finds that the order of the
528 licensing agency is not supported by substantial evidence, is
529 contrary to the manifest weight of the evidence, is in excess of
530 the statutory authority or jurisdiction of the licensing agency,
531 or violates any vested constitutional rights of any party involved
532 in the appeal. Pending final disposition of the matter, the
533 status quo of the applicant or licensee shall be preserved, except
534 as the court otherwise orders in the public interest. Rules with
535 respect to court costs in other cases in chancery shall apply
536 equally to cases hereunder. Appeals in accordance with law may be
537 had to the Supreme Court of the State of Mississippi from any
538 final judgment of the chancery court.

539 **SECTION 16.** Section 41-77-23, Mississippi Code of 1972, is
540 amended as follows:

541 41-77-23. Any person or persons or other entity or entities
542 establishing, managing or operating a "birthing center" or
543 conducting the business of a "birthing center" without the
544 required license, or which otherwise violate any of the provisions
545 of this chapter * * * or the rules, regulations or standards
546 promulgated in furtherance of any law in which the licensing
547 agency has authority therefor, shall be subject to the following
548 penalties and sanctions:

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

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

553 In addition, any violation of any provision of this chapter
554 or any rules or regulations promulgated in furtherance thereof by



555 intent, fraud, deceit, unlawful design, willful and/or deliberate
556 misrepresentation, or by careless, negligent or incautious
557 disregard for such statutes or rules and regulations, either by
558 persons acting individually or in concert with others, shall
559 constitute a misdemeanor and shall be punishable by a fine not to
560 exceed One Thousand Dollars (\$1,000.00) for each such offense.
561 Each day of continuing violation shall be considered a separate
562 offense. The venue for prosecution of any such violation shall be
563 in any county of the state in which any such violation, or portion
564 thereof, occurred.

565 **SECTION 17.** Section 41-77-25, Mississippi Code of 1972, is
566 amended as follows:

567 41-77-25. Upon receipt of an application for license and the
568 license fee, the licensing agency shall issue a license if the
569 applicant and the institutional facilities meet the requirements
570 established under this chapter * * *. A license, unless suspended
571 or revoked, shall be renewable annually upon payment of a renewal
572 fee of Three Hundred Dollars (\$300.00), which shall be paid to the
573 licensing agency, and upon filing by the licensee and approval by
574 the licensing agency of an annual report upon such uniform dates
575 and containing such information in such form as the licensing
576 agency requires. Each license shall be issued only for the
577 premises and person or persons named in the application and shall
578 not be transferable or assignable. Licenses shall be posted in a
579 conspicuous place on the licensed premises.

580 **SECTION 18.** Section 41-95-3, Mississippi Code of 1972, is
581 amended as follows:

582 41-95-3. As used in this chapter:

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

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



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

591 (d) "Health care provider" means a person, partnership
592 or corporation, other than a facility or institution, licensed or
593 certified or authorized by state or federal law to provide
594 professional health care service in this state to an individual
595 during that individual's health care, treatment or confinement.

596 (e) "Health insurer" means any health insurance
597 company, nonprofit hospital and medical service corporation,
598 health maintenance organization and, to the extent permitted under
599 federal law, any administrator of an insured, self-insured or
600 publicly funded health care benefit plan offered by public and
601 private entities.

602 (f) "Resident" means a person who is domiciled in
603 Mississippi as evidenced by an intent to maintain a principal
604 dwelling place in Mississippi indefinitely and to return to
605 Mississippi if temporarily absent, coupled with an act or acts
606 consistent with that intent.

607 (g) "Primary care" or "primary health care" includes
608 those health care services provided to individuals, families and
609 communities, at a first level of care, which preserve and improve
610 health, and encompasses services which promote health, prevent
611 disease, treat and cure illness. It is delivered by various
612 health care providers in a variety of settings including hospital
613 outpatient clinics, private provider offices, group practices,
614 health maintenance organizations, public health departments and
615 community health centers. A primary care system is characterized
616 by coordination of comprehensive services, cultural sensitivity,
617 community orientation, continuity, prevention, the absence of
618 barriers to receive and provide services, and quality assurance.



619 **SECTION 19.** Section 43-11-9, Mississippi Code of 1972, is
620 amended as follows:

621 43-11-9. (1) Upon receipt of an application for license and
622 the license fee, the licensing agency shall issue a license if the
623 applicant and the institutional facilities meet the requirements
624 established under this chapter * * *. A license, unless suspended
625 or revoked, shall be renewable annually upon payment by (a) the
626 licensee of an institution for the aged or infirm, except for
627 personal care homes, of a renewal fee of Twenty Dollars (\$20.00)
628 for each bed in the institution, with a minimum fee per
629 institution of Two Hundred Dollars (\$200.00), or (b) the licensee
630 of a personal care home of a renewal fee of Fifteen Dollars
631 (\$15.00) for each bed in the institution, with a minimum fee per
632 institution of One Hundred Dollars (\$100.00), which shall be paid
633 to the licensing agency, and upon filing by the licensee and
634 approval by the licensing agency of an annual report upon such
635 uniform dates and containing such information in such form as the
636 licensing agency prescribes by regulation. Each license shall be
637 issued only for the premises and person or persons or other legal
638 entity or entities named in the application and shall not be
639 transferable or assignable except with the written approval of the
640 licensing agency. Licenses shall be posted in a conspicuous place
641 on the licensed premises.

642 (2) A fee known as a "User Fee" shall be applicable and
643 shall be paid to the licensing agency as set out in subsection (1)
644 hereof. This user fee shall be assessed for the purpose of the
645 required reviewing and inspections of the proposal of any
646 institution in which there are additions, renovations,
647 modernizations, expansion, alterations, conversions, modifications
648 or replacement of the entire facility involved in such proposal.
649 This fee includes the reviewing of architectural plans in all
650 steps required. There shall be a minimum user fee of Fifty



651 Dollars (\$50.00) and a maximum user fee of Five Thousand Dollars
652 (\$5,000.00).

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

655 **SECTION 20.** Section 43-11-19, Mississippi Code of 1972, is
656 amended as follows:

657 43-11-19. Information received by the licensing agency
658 through filed reports, inspection, or as otherwise authorized
659 under this chapter, shall not be disclosed publicly in such manner
660 as to identify individuals, except in a proceeding involving the
661 questions of licensure; however, the licensing agency may utilize
662 statistical data concerning types of services and the utilization
663 of those services for institutions for the aged or infirm in
664 performing the statutory duties imposed upon it * * * by Section
665 43-11-21.

666 **SECTION 21.** This act shall take effect and be in force from
667 and after July 1, 2002.

