

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2028

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THAT THE TERM "HEALTH CARE FACILITY" DOES NOT INCLUDE A
3 PERITONEAL DIALYSIS TRAINING FACILITY FOR PURPOSES OF THE
4 CERTIFICATE OF NEED REQUIREMENT; AND FOR 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



29 and regulations promulgated thereunder by the State Department of
30 Health.

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

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

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

52 (iv) In those instances where a health care
53 facility or other provider of health services proposes to provide
54 a service in which the capital expenditure for major medical
55 equipment or other than major medical equipment or a combination
56 of the two (2) may have been split between separate parties, the
57 total capital expenditure required to provide the proposed service
58 shall be considered in determining the necessity of certificate of
59 need review and in determining the appropriate certificate of need
60 review fee to be paid. The capital expenditure associated with
61 facilities and equipment to provide services in Mississippi shall



62 be considered regardless of where the capital expenditure was
63 made, in state or out of state, and regardless of the domicile of
64 the party making the capital expenditure, in state or out of
65 state.

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

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

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

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

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



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

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

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

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



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

135 (ii) "Psychiatric hospital" means an institution
136 which is primarily engaged in providing to inpatients, by or under
137 the supervision of a physician, psychiatric services for the
138 diagnosis and treatment of mentally ill persons.

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

144 (iv) "Skilled nursing facility" means an
145 institution or a distinct part of an institution which is
146 primarily engaged in providing to inpatients skilled nursing care
147 and related services for patients who require medical or nursing
148 care or rehabilitation services for the rehabilitation of injured,
149 disabled or sick persons.

150 (v) "End stage renal disease (ESRD) facilities"
151 means kidney disease treatment centers, which includes
152 freestanding hemodialysis units and limited care facilities. The
153 term "limited care facility" generally refers to an
154 off-hospital-premises facility, regardless of whether it is
155 provider or nonprovider operated, which is engaged primarily in
156 furnishing maintenance hemodialysis services to stabilized
157 patients. The term "ESRD facility" or "limited care facility"
158 does not include peritoneal dialysis training facilities which
159 operate solely for the purpose of training patients to begin to



160 dialyze at home and to serve as a back-up dialysis facility during
161 their training.

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

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

176 (viii) "Intermediate care facility for the
177 mentally retarded" means an intermediate care facility that
178 provides health or rehabilitative services in a planned program of
179 activities to the mentally retarded, also including, but not
180 limited to, cerebral palsy and other conditions covered by the
181 Federal Developmentally Disabled Assistance and Bill of Rights
182 Act, Public Law 94-103.

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

192 1. Physical, occupational or speech therapy;



- 193 2. Medical social services;
- 194 3. Part-time or intermittent services of a
195 home health aide;
- 196 4. Other services as approved by the
197 licensing agency for home health agencies;
- 198 5. Medical supplies, other than drugs and
199 biologicals, and the use of medical appliances; or
- 200 6. Medical services provided by an intern or
201 resident-in-training at a hospital under a teaching program of
202 such hospital.

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

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

212 (x) "Psychiatric residential treatment facility"
213 means any nonhospital establishment with permanent licensed
214 facilities which provides a twenty-four-hour program of care by
215 qualified therapists including, but not limited to, duly licensed
216 mental health professionals, psychiatrists, psychologists,
217 psychotherapists and licensed certified social workers, for
218 emotionally disturbed children and adolescents referred to such
219 facility by a court, local school district or by the Department of
220 Human Services, who are not in an acute phase of illness requiring
221 the services of a psychiatric hospital, and are in need of such
222 restorative treatment services. For purposes of this paragraph,
223 the term "emotionally disturbed" means a condition exhibiting one
224 or more of the following characteristics over a long period of



225 time and to a marked degree, which adversely affects educational
226 performance:

227 1. An inability to learn which cannot be
228 explained by intellectual, sensory or health factors;

229 2. An inability to build or maintain
230 satisfactory relationships with peers and teachers;

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

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

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

239 (xi) "Pediatric skilled nursing facility" means an
240 institution or a distinct part of an institution that is primarily
241 engaged in providing to inpatients skilled nursing care and
242 related services for persons under twenty-one (21) years of age
243 who require medical or nursing care or rehabilitation services for
244 the rehabilitation of injured, disabled or sick persons.

245 (xii) "Long-term care hospital" means a
246 freestanding, Medicare-certified hospital that has an average
247 length of inpatient stay greater than twenty-five (25) days, which
248 is primarily engaged in providing chronic or long-term medical
249 care to patients who do not require more than three (3) hours of
250 rehabilitation or comprehensive rehabilitation per day, and has a
251 transfer agreement with an acute care medical center and a
252 comprehensive medical rehabilitation facility. Long-term care
253 hospitals shall not use rehabilitation, comprehensive medical
254 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
255 nursing home, skilled nursing facility, or sub-acute care facility
256 in association with its name.



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

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

268 2. Emphasizes education and training of
269 individuals with disabilities;

270 3. Incorporates at least the following core
271 disciplines:

- 272 (i) Physical Therapy;
273 (ii) Occupational Therapy;
274 (iii) Speech and Language Therapy;
275 (iv) Rehabilitation Nursing; and

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

- 278 (i) Psychology;
279 (ii) Audiology;
280 (iii) Respiratory Therapy;
281 (iv) Therapeutic Recreation;
282 (v) Orthotics;
283 (vi) Prosthetics;
284 (vii) Special Education;
285 (viii) Vocational Rehabilitation;
286 (ix) Psychotherapy;
287 (x) Social Work;
288 (xi) Rehabilitation Engineering.



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

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

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

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

304 (iii) Provides physician services primarily:

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

307 2. Through arrangements with individual
308 physicians or one or more groups of physicians (organized on a
309 group practice or individual practice basis).

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

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

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



322 (m) "Major medical equipment" means medical equipment
323 designed for providing medical or any health related service which
324 costs in excess of One Million Five Hundred Thousand Dollars
325 (\$1,500,000.00). However, this definition shall not be applicable
326 to clinical laboratories if they are determined by the State
327 Department of Health to be independent of any physician's office,
328 hospital or other health care facility or otherwise not so defined
329 by federal or state law, or rules and regulations promulgated
330 thereunder.

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

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

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

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

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

351 (s) "State Health Plan" means the sole and official
352 statewide health plan for Mississippi which identifies priority
353 state health needs and establishes standards and criteria for



354 health-related activities which require certificate of need review
355 in compliance with Section 41-7-191.

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

360 **SECTION 2.** This act shall take effect and be in force from
361 and after July 1, 2002.

