

By: Senator(s) Huggins

To: Public Health and  
Welfare; Appropriations

SENATE BILL NO. 2375

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,  
2 TO DEFINE "COMPREHENSIVE INPATIENT REHABILITATION SERVICES" FOR  
3 PURPOSES OF HEALTH CARE FACILITY CERTIFICATE OF NEED REQUIREMENTS;  
4 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, intermediate care  
112 facilities, ambulatory surgical facilities, intermediate care  
113 facilities for the mentally retarded, home health agencies,  
114 psychiatric residential treatment facilities, pediatric skilled  
115 nursing facilities, long-term care hospitals, comprehensive  
116 medical rehabilitation facilities, including facilities owned or  
117 operated by the state or a political subdivision or  
118 instrumentality of the state, but does not include Christian  
119 Science sanatoriums operated or listed and certified by the First  
120 Church of Christ, Scientist, Boston, Massachusetts. This  
121 definition shall not apply to facilities for the private practice,  
122 either independently or by incorporated medical groups, of  
123 physicians, dentists or health care professionals except where  
124 such facilities are an integral part of an institutional health  
125 service. The various health care facilities listed in this  
126 paragraph shall be defined as follows:



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

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

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

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

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

157 (vi) "Intermediate care facility" means an  
158 institution which provides, on a regular basis, health related  
159 care and services to individuals who do not require the degree of



160 care and treatment which a hospital or skilled nursing facility is  
161 designed to provide, but who, because of their mental or physical  
162 condition, require health related care and services (above the  
163 level of room and board).

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

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

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

- 187 1. Physical, occupational or speech therapy;
- 188 2. Medical social services;
- 189 3. Part-time or intermittent services of a  
190 home health aide;
- 191 4. Other services as approved by the  
192 licensing agency for home health agencies;



193                   5. Medical supplies, other than drugs and  
194 biologicals, and the use of medical appliances; or

195                   6. Medical services provided by an intern or  
196 resident-in-training at a hospital under a teaching program of  
197 such hospital.

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

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

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

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

224                   2. An inability to build or maintain  
225 satisfactory relationships with peers and teachers;



226                   3. Inappropriate types of behavior or  
227 feelings under normal circumstances;  
228                   4. A general pervasive mood of unhappiness or  
229 depression; or  
230                   5. A tendency to develop physical symptoms or  
231 fears associated with personal or school problems. An  
232 establishment furnishing primarily domiciliary care is not within  
233 this definition.

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

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

252                   (xiii) "Comprehensive medical rehabilitation  
253 facility" means a hospital or hospital unit that is licensed  
254 and/or certified as a comprehensive medical rehabilitation  
255 facility which provides specialized programs that are accredited  
256 by the Commission on Accreditation of Rehabilitation Facilities  
257 and supervised by a physician board certified or board eligible in  
258 Physiatry or other doctor of medicine or osteopathy with at least





259 two (2) years of training in the medical direction of a  
260 comprehensive rehabilitation program that:

261 1. Includes evaluation and treatment of  
262 individuals with physical disabilities;  
263 2. Emphasizes education and training of  
264 individuals with disabilities;  
265 3. Incorporates at least the following core  
266 disciplines:

267 (i) Physical Therapy;  
268 (ii) Occupational Therapy;  
269 (iii) Speech and Language Therapy;  
270 (iv) Rehabilitation Nursing; and

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

273 (i) Psychology;  
274 (ii) Audiology;  
275 (iii) Respiratory Therapy;  
276 (iv) Therapeutic Recreation;  
277 (v) Orthotics;  
278 (vi) Prosthetics;  
279 (vii) Special Education;  
280 (viii) Vocational Rehabilitation;  
281 (ix) Psychotherapy;  
282 (x) Social Work;  
283 (xi) Rehabilitation Engineering.

284 These specialized programs include, but are not limited to:  
285 spinal cord injury programs, head injury programs and infant and  
286 early childhood development programs. Notwithstanding anything to  
287 the contrary, a hospital is not considered to be a comprehensive  
288 medical rehabilitation facility providing comprehensive inpatient  
289 rehabilitation services if it provides to its inpatients Level II  
290 rehabilitation services, which services are defined as services  
291 provided for the treatment of all rehabilitation diagnostic



292 categories except: 1. spinal cord injuries, 2. congenital  
293 deformity, 3. major medical trauma, 4. brain injury, and 5.  
294 neurological disorders, including multiple sclerosis, motor neuron  
295 disease, polyneuropathy, muscular dystrophy and Parkinson's  
296 Disease. Level II rehabilitation services may be provided to  
297 inpatients in beds licensed by the state as acute care beds and  
298 certified by the Center for Medicare and Medicaid Services (CMS)  
299 as rehabilitation beds. A hospital providing such Level II  
300 rehabilitation services need not, for purposes of state law, be  
301 licensed as a comprehensive inpatient rehabilitation facility, nor  
302 does such hospital need to acquire a certificate of need to  
303 provide Level II rehabilitation services. Nevertheless, such  
304 hospital may seek certification under CMS as a provider of  
305 rehabilitation services in a distinct-part unit. For purposes of  
306 this paragraph, "comprehensive inpatient rehabilitation services"  
307 means rehabilitation services provided by a comprehensive medical  
308 rehabilitation facility.

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

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

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

321 (iii) Provides physician services primarily:

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



324                               2. Through arrangements with individual  
325 physicians or one or more groups of physicians (organized on a  
326 group practice or individual practice basis).

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

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

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

339                               (m) "Major medical equipment" means medical equipment  
340 designed for providing medical or any health related service which  
341 costs in excess of One Million Five Hundred Thousand Dollars  
342 (\$1,500,000.00). However, this definition shall not be applicable  
343 to clinical laboratories if they are determined by the State  
344 Department of Health to be independent of any physician's office,  
345 hospital or other health care facility or otherwise not so defined  
346 by federal or state law, or rules and regulations promulgated  
347 thereunder.

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

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



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

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

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

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

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

377 **SECTION 2.** This act shall take effect and be in force from  
378 and after July 1, 2003.

