

By: Representative Fillingane

To: Public Health and Human
Services; Appropriations

HOUSE BILL NO. 871

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13 Health Care Certificate of Need Law of 1979, are repealed.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. Subject to federal
73 law, there shall be no requirement or limitation regarding the
74 distance that a critical access hospital must be located from
75 another hospital. The bed-size limit for a critical access
76 hospital is twenty-five (25) operational acute care beds, and the
77 average maximum length of stay for patients in a critical access
78 hospital is ninety-six (96) hours, unless a longer period is
79 required because of inclement weather or other emergency
80 conditions. In the event the critical access hospital is a swing
81 bed facility, any of the twenty-five (25) acute care beds allowed
82 in a critical access hospital may be used for the provision of
83 extended care services or acute care inpatient services so long as
84 the furnishing of such services does not exceed twenty-five (25)
85 beds and so long as the hospital does not seek Medicaid
86 reimbursement for more than fifteen (15) acute care inpatient
87 beds.

88 (2) A critical access hospital (a) must make available
89 twenty-four-hour emergency care services, as described in the
90 state rural health care plan, for ensuring access to emergency
91 care services in the rural area served by the critical access
92 hospital, and (b) must be a member of a rural health network. Any
93 hospital that has a distinct-part skilled nursing facility,
94 certified under Title XVIII of the federal Social Security Act, at
95 the time it applies for designation as a critical access hospital,

96 may continue its operation of the distinct-part skilled nursing
97 facility and is not required to count the beds in the
98 distinct-part skilled nursing facility for purposes of the allowed
99 twenty-five (25) acute care inpatient beds. * * *

100 (3) A critical access hospital may establish a distinct-part
101 psychiatric unit and a distinct-part rehabilitation unit, each of
102 which must be certified under Title XVIII of the federal Social
103 Security Act and each of which may consist of no more than ten
104 (10) beds. No bed in the critical access hospital's distinct-part
105 psychiatric unit or distinct-part rehabilitation unit shall be
106 counted for purposes of the twenty-five (25) bed limitation. Each
107 distinct-part unit in a critical access hospital must comply with
108 all applicable state licensure laws and federal certification
109 laws.

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

112 41-71-7. Upon receipt of an application for a license and
113 the license fee, and a determination by the licensing agency that
114 the application is * * * in compliance with the provisions of this
115 chapter, such license shall be issued. A license, unless
116 suspended or revoked, shall be renewable annually upon payment by
117 the licensee of a renewal fee of One Thousand Dollars (\$1,000.00)
118 and approval by the licensing agency of an annual report, required
119 to be submitted by the licensee, containing such information in
120 such form and at such time as the licensing agency prescribes by
121 rule or regulation. Each license shall be issued only for the
122 home health agency and person or persons or other legal entity or
123 entities named in the application and shall not be transferable or
124 assignable except with the written approval of the licensing
125 agency. Licenses shall be posted in a conspicuous place in the
126 designated business office of the licensee. Each licensee shall
127 designate, in writing, one (1) individual person as the

128 responsible party for the conducting of the business of the home
129 health agency with the licensing agency.

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

132 41-71-19. Information received by the licensing agency
133 through filed reports, inspection, or as otherwise authorized
134 under this chapter, shall not be disclosed publicly in such manner
135 as to identify individuals, except in proceedings involving the
136 question of licensure; however, the licensing agency may utilize
137 statistical data concerning types of services and the utilization
138 of those services for home health care agencies in performing
139 the * * * duties imposed upon it by * * * regulations necessarily
140 promulgated for participation in the Medicare or Medicaid
141 programs.

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

144 41-73-5. When used in this act, unless the context requires
145 a different definition, the following terms shall have the
146 following meanings:

147 (a) "Act" means the Mississippi Hospital Equipment and
148 Facilities Authority Act.

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

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

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

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

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

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

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

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

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

190 (vii) Any and all costs paid or incurred for the
191 administration of any program for the purchase or lease of or the
192 making of loans for hospital equipment, by the authority and any

193 program for the sale or lease of or the making of loans for such
194 hospital equipment to any participating hospital institution.

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

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

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

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

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

222 (v) Any and all costs paid or incurred in
223 connection with the financing of such hospital facilities,
224 including out-of-pocket expenses, the cost of financing, legal,
225 accounting, financial advisory and consulting fees, expenses and

226 disbursement; the cost of any policy of insurance; the cost of
227 printing, engraving and reproduction services; and the cost of the
228 initial or acceptance fee of any trustee or paying agent;

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

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

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

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

254 (g) "Hospital facility" or "hospital facilities" means
255 buildings and structures of any and all types used or useful, in
256 the discretion of the authority, for providing any types of care
257 to the sick, wounded, infirmed, needy, mentally incompetent or
258 elderly and shall include, without limiting the generality of the

259 foregoing, out-patient clinics, laboratories, laundries, nurses',
260 doctors' or interns' residences, administration buildings, office
261 buildings, facilities for research directly involved with hospital
262 care, maintenance, storage or utility facilities, parking lots,
263 and garages and all necessary, useful, or related furnishings, and
264 appurtenances and all lands necessary or convenient as a site for
265 the foregoing.

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

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

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

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

281 41-75-1. For the purpose of this chapter:

282 (a) "Ambulatory surgical facility" means a publicly or
283 privately owned institution that is primarily organized,
284 constructed, renovated or otherwise established for the purpose of
285 providing elective surgical treatment of "outpatients" whose
286 recovery, under normal and routine circumstances, will not require
287 "inpatient" care. The facility defined in this paragraph does not
288 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 that outpatient
291 surgery, whether using the name "ambulatory surgical facility" or

292 a similar or different name. That 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 provided that the organization or facility does not intend to seek
299 federal certification as an ambulatory surgical facility as
300 provided for at 42 CFR, Parts 405 and 416. If the organization or
301 facility is to be operated or owned by a hospital or a hospital
302 holding, leasing or management company and intends to seek federal
303 certification as an ambulatory facility, then the facility is
304 considered to be "freestanding" and must comply with all licensing
305 agency ambulatory surgical licensure standards governing a
306 "freestanding" facility.

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

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

320 (c) "Freestanding" ambulatory surgical facility means a
321 separate and distinct facility or a separate and distinct
322 organized unit of a hospital owned, leased, rented or utilized by
323 a hospital or other persons for the primary purpose of performing
324 ambulatory surgery procedures. The facility must be separately

325 licensed as defined in this section and must comply with all
326 licensing standards promulgated by the licensing agency under this
327 chapter regarding a "freestanding" ambulatory surgical facility.
328 Further, the facility must be a separate, identifiable entity and
329 must be physically, administratively and financially independent
330 and distinct from other operations of any other health facility,
331 and shall maintain a separate organized medical and administrative
332 staff. * * *

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

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

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

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

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

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

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

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

375 (g) "Licensing agency" means the State Department of
376 Health.

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

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

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

391 41-75-5. No person * * * acting severally or jointly with
392 any other person, shall establish, conduct, operate or maintain an
393 ambulatory surgical facility or an abortion facility in this state
394 without a license under this chapter.

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

397 41-75-9. Upon receipt of an application for license and the
398 license fee, the licensing agency shall issue a license if the
399 applicant and the institutional facilities meet the requirements
400 established under this chapter * * *. A license, unless suspended
401 or revoked, shall be renewable annually upon payment of a renewal
402 fee of Three Thousand Dollars (\$3,000.00), which shall be paid to
403 the licensing agency, and upon filing by the licensee and approval
404 by the licensing agency of an annual report upon such uniform
405 dates and containing such information in such form as the
406 licensing agency requires. Each license shall be issued only for
407 the premises and person or persons named in the application and
408 shall not be transferable or assignable. Licenses shall be posted
409 in a conspicuous place on the licensed premises.

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

412 41-75-25. Any person or persons or other entity or entities
413 establishing, managing or operating an ambulatory surgical
414 facility or conducting the business of an ambulatory surgical
415 facility without the required license, or which otherwise violate
416 any of the provisions of this chapter * * * or the rules,
417 regulations or standards promulgated in furtherance of any law in
418 which the licensing agency has authority therefor, shall be
419 subject to the following penalties and sanctions:

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

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

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

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

438 41-77-1. For purposes of this chapter:

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

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

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

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

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

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

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

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

502 41-77-5. No person * * *, acting severally or jointly with
503 any other person, shall establish, conduct or maintain a "birthing
504 center" in this state without a license under this chapter.

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

507 41-77-21. Any applicant or licensee aggrieved by the
508 decision of the licensing agency after a hearing may, within
509 thirty (30) days after the mailing or serving of notice of the
510 decision as provided in Section 43-11-11, file a notice of appeal
511 to the Chancery Court of the First Judicial District of Hinds
512 County or in the chancery court of the county in which the
513 institution is located or proposed to be located. * * * Thereupon,
514 the licensing agency shall * * * certify and file with the court a
515 copy of the record and decision, including the transcript of the
516 hearings in which the decision is based. No new or additional
517 evidence shall be introduced in court; the case shall be
518 determined upon the record certified to the court. The court may
519 sustain or dismiss the appeal, modify or vacate the order
520 complained of in whole or in part, as the case may be; but in case

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

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

540 41-77-23. Any person or persons or other entity or entities
541 establishing, managing or operating a "birthing center" or
542 conducting the business of a "birthing center" without the
543 required license, or which otherwise violate any of the provisions
544 of this chapter * * * or the rules, regulations or standards
545 promulgated in furtherance of any law in which the licensing
546 agency has authority therefor, shall be subject to the following
547 penalties and sanctions:

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

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

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

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

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

566 41-77-25. Upon receipt of an application for license and the
567 license fee, the licensing agency shall issue a license if the
568 applicant and the institutional facilities meet the requirements
569 established under this chapter * * *. A license, unless suspended
570 or revoked, shall be renewable annually upon payment of a renewal
571 fee of Three Hundred Dollars (\$300.00), which shall be paid to the
572 licensing agency, and upon filing by the licensee and approval by
573 the licensing agency of an annual report upon such uniform dates
574 and containing such information in such form as the licensing
575 agency requires. Each license shall be issued only for the
576 premises and person or persons named in the application and shall
577 not be transferable or assignable. Licenses shall be posted in a
578 conspicuous place on the licensed premises.

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

581 41-95-3. As used in this chapter:

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

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

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

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

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

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

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

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

620 43-11-9. (1) Upon receipt of an application for license and
621 the license fee, the licensing agency shall issue a license if the
622 applicant and the institutional facilities meet the requirements
623 established under this chapter * * *. A license, unless suspended
624 or revoked, shall be renewable annually upon payment by (a) the
625 licensee of an institution for the aged or infirm, except for
626 personal care homes, of a renewal fee of Twenty Dollars (\$20.00)
627 for each bed in the institution, with a minimum fee per
628 institution of Two Hundred Dollars (\$200.00), or (b) the licensee
629 of a personal care home of a renewal fee of Fifteen Dollars
630 (\$15.00) for each bed in the institution, with a minimum fee per
631 institution of One Hundred Dollars (\$100.00), which shall be paid
632 to the licensing agency, and upon filing by the licensee and
633 approval by the licensing agency of an annual report upon such
634 uniform dates and containing such information in such form as the
635 licensing agency prescribes by regulation. Each license shall be
636 issued only for the premises and person or persons or other legal
637 entity or entities named in the application and shall not be
638 transferable or assignable except with the written approval of the
639 licensing agency. Licenses shall be posted in a conspicuous place
640 on the licensed premises.

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

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

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

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

656 43-11-19. Information received by the licensing agency
657 through filed reports, inspection, or as otherwise authorized
658 under this chapter, shall not be disclosed publicly in such manner
659 as to identify individuals, except in a proceeding involving the
660 questions of licensure; however, the licensing agency may utilize
661 statistical data concerning types of services and the utilization
662 of those services for institutions for the aged or infirm in
663 performing the statutory duties imposed upon it * * * by Section
664 43-11-21.

665 **SECTION 21.** This act shall take effect and be in force from
666 and after July 1, 2005.