

By: Representative Holland

To: Public Health and Human Services

HOUSE BILL NO. 1297

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE TERM "AMBULATORY SURGICAL FACILITY," FOR THE  
3 PURPOSE OF LICENSURE OF THOSE FACILITIES, DOES NOT INCLUDE THE  
4 OFFICES OF PRIVATE PHYSICIANS OR DENTISTS, WHETHER PRACTICING  
5 INDIVIDUALLY OR IN GROUPS, SO LONG AS THE OFFICE DOES NOT SEEK  
6 MEDICARE CERTIFICATION OR REIMBURSEMENT UNDER MEDICAID AS AN  
7 AMBULATORY SURGICAL FACILITY; AND FOR RELATED PURPOSES.

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

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

11 41-75-1. For the purpose of this chapter:

12 (a) "Ambulatory surgical facility" means a publicly or  
13 privately owned institution that is primarily organized,  
14 constructed, renovated or otherwise established for the purpose of  
15 providing elective surgical treatment of "outpatients" whose  
16 recovery, under normal and routine circumstances, will not require  
17 "inpatient" care. The facility defined in this paragraph does not  
18 include the offices of private physicians or dentists, whether  
19 practicing individually or in groups, so long as the office does  
20 not seek Medicare certification under 42 CFR Part 416 or  
21 reimbursement under Medicaid as an ambulatory surgical facility,  
22 but does include organizations or facilities primarily engaged in  
23 that outpatient surgery, whether using the name "ambulatory  
24 surgical facility" or a similar or different name. That  
25 organization or facility, if in any manner considered to be  
26 operated or owned by a hospital or a hospital holding, leasing or  
27 management company, either for profit or not for profit, is  
28 required to comply with all licensing agency ambulatory surgical  
29 licensure standards governing a "hospital affiliated" facility as

30 adopted under Section 41-9-1 et seq., provided that the  
31 organization or facility does not intend to seek federal  
32 certification as an ambulatory surgical facility as provided for  
33 at 42 CFR, Parts 405 and 416. If the organization or facility is  
34 to be operated or owned by a hospital or a hospital holding,  
35 leasing or management company and intends to seek federal  
36 certification as an ambulatory facility, then the facility is  
37 considered to be "freestanding" and must comply with all licensing  
38 agency ambulatory surgical licensure standards governing a  
39 "freestanding" facility.

40 If the organization or facility is to be owned or operated by  
41 an entity or person other than a hospital or hospital holding,  
42 leasing or management company, then the organization or facility  
43 must comply with all licensing agency ambulatory surgical facility  
44 standards governing a "freestanding" facility.

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

53 (c) "Freestanding" ambulatory surgical facility means a  
54 separate and distinct facility or a separate and distinct  
55 organized unit of a hospital owned, leased, rented or utilized by  
56 a hospital or other persons for the primary purpose of performing  
57 ambulatory surgery procedures. The facility must be separately  
58 licensed as defined in this section and must comply with all  
59 licensing standards promulgated by the licensing agency under this  
60 chapter regarding a "freestanding" ambulatory surgical facility.  
61 Further, the facility must be a separate, identifiable entity and  
62 must be physically, administratively and financially independent

63 and distinct from other operations of any other health facility,  
64 and shall maintain a separate organized medical and administrative  
65 staff. Furthermore, once licensed as a "freestanding" ambulatory  
66 surgical facility, the facility shall not become a component of  
67 any other health facility without securing a certificate of need  
68 to do that.

69 (d) "Ambulatory surgery" means surgical procedures that  
70 are more complex than office procedures performed under local  
71 anesthesia, but less complex than major procedures requiring  
72 prolonged postoperative monitoring and hospital care to ensure  
73 safe recovery and desirable results. General anesthesia is used  
74 in most cases. The patient must arrive at the facility and expect  
75 to be discharged on the same day. Ambulatory surgery shall only  
76 be performed by physicians or dentists licensed to practice in the  
77 State of Mississippi.

78 (e) "Abortion" means the use or prescription of any  
79 instrument, medicine, drug or any other substances or device to  
80 terminate the pregnancy of a woman known to be pregnant with an  
81 intention other than to increase the probability of a live birth,  
82 to preserve the life or health of the child after live birth or to  
83 remove a dead fetus. Abortion procedures after the first  
84 trimester shall only be performed at an ambulatory surgical  
85 facility or hospital licensed to perform that service.

86 (f) "Abortion facility" means a facility operating  
87 substantially for the purpose of performing abortions and is a  
88 separate identifiable legal entity from any other health care  
89 facility. Abortions shall only be performed by physicians  
90 licensed to practice in the State of Mississippi. The term  
91 "abortion facility" includes physicians' offices that are used  
92 substantially for the purpose of performing abortions. An  
93 abortion facility operates substantially for the purpose of  
94 performing abortions if any of the following conditions are met:

95 (i) The abortion facility is a provider for  
96 performing ten (10) or more abortion procedures per calendar month  
97 during any month of a calendar year, or one hundred (100) or more  
98 in a calendar year.

99 (ii) The abortion facility, if operating less than  
100 twenty (20) days per calendar month, is a provider for performing  
101 ten (10) or more abortion procedures, or performing a number of  
102 abortion procedures that would be equivalent to ten (10)  
103 procedures per month, if the facility were operating twenty (20)  
104 or more days per calendar month, in any month of a calendar year.

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

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

111 (g) "Licensing agency" means the State Department of  
112 Health.

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

117 Any abortion facility that begins operation after June 30,  
118 1996, shall not be located within fifteen hundred (1500) feet from  
119 the property on which any church, school or kindergarten is  
120 located. An abortion facility shall not be in violation of this  
121 paragraph if it is in compliance with this paragraph on the date  
122 it begins operation and the property on which a church, school or  
123 kindergarten is located is later within fifteen hundred (1500)  
124 feet from the facility.

125 **SECTION 2.** This act shall take effect and be in force from  
126 and after July 1, 2005.