

By: Senator(s) Burton

To: Public Health and
Welfare

SENATE BILL NO. 2883

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF "AMBULATORY SURGICAL FACILITY" FOR
3 PURPOSES OF LICENSURE BY THE STATE DEPARTMENT OF HEALTH; AND FOR
4 RELATED PURPOSES.

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

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

8 41-75-1. For the purpose of this chapter:

9 (a) "Ambulatory surgical facility" means a publicly or
10 privately owned institution that is primarily organized,
11 constructed, renovated or otherwise established for the purpose of
12 providing elective surgical treatment of "outpatients" whose
13 recovery, under normal and routine circumstances, will not require
14 "inpatient" care. The facility defined in this paragraph does not
15 include the offices of private physicians or dentists, whether
16 practicing individually or in groups, if such office does not seek
17 Medicare certification under 42 CFR Part 416 or reimbursement
18 under Medicaid as an ambulatory surgical facility, but does
19 include organizations or facilities primarily engaged in that
20 outpatient surgery, whether using the name "ambulatory surgical
21 facility" or a similar or different name. That organization or
22 facility, if in any manner considered to be operated or owned by a
23 hospital or a hospital holding, leasing or management company,
24 either for profit or not for profit, is required to comply with
25 all licensing agency ambulatory surgical licensure standards
26 governing a "hospital affiliated" facility as adopted under
27 Section 41-9-1 et seq., provided that the organization or facility
28 does not intend to seek federal certification as an ambulatory

29 surgical facility as provided for at 42 CFR, Parts 405 and 416.
30 If the organization or facility is to be operated or owned by a
31 hospital or a hospital holding, leasing or management company and
32 intends to seek federal certification as an ambulatory facility,
33 then the facility is considered to be "freestanding" and must
34 comply with all licensing agency ambulatory surgical licensure
35 standards governing a "freestanding" facility.

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

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

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

surgical facility, the facility shall not become a component of any other health facility without securing a certificate of need to do that.

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

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

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

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

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

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

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

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

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

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

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