

By: Representative Fillingane

To: Public Health and Human Services; Appropriations

HOUSE BILL NO. 457

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13 Health Care Certificate of Need Law of 1979, are repealed.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 a Level I abortion facility  
349 or an ambulatory surgical facility or hospital licensed to perform  
350 that service.

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

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

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

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

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

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

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

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

382 An abortion facility may apply to be licensed as a Level I  
383 facility or a Level II facility by the licensing agency. Level II  
384 abortion facilities shall be required to meet minimum standards  
385 for abortion facilities as established by the licensing agency.  
386 Level I abortion facilities shall be required to meet minimum  
387 standards for abortion facilities and minimum standards for  
388 ambulatory surgical facilities as established by the licensing  
389 agency.

390 Any abortion facility that begins operation after June 30,  
391 1996, shall not be located within fifteen hundred (1500) feet from  
392 the property on which any church, school or kindergarten is  
393 located. An abortion facility shall not be in violation of this  
394 paragraph if it is in compliance with this paragraph on the date  
395 it begins operation and the property on which a church, school or  
396 kindergarten is located is later within fifteen hundred (1500)  
397 feet from the facility.

398 This section shall stand repealed on June 30, 2006.

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

401 41-75-5. No person \* \* \* acting severally or jointly with  
402 any other person, shall establish, conduct, operate or maintain an  
403 ambulatory surgical facility or an abortion facility in this state  
404 without a license under this chapter.

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

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

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

422           41-75-25. Any person or persons or other entity or entities  
423 establishing, managing or operating an ambulatory surgical  
424 facility or conducting the business of an ambulatory surgical  
425 facility without the required license, or which otherwise violate  
426 any of the provisions of this chapter \* \* \* or the rules,  
427 regulations or standards promulgated in furtherance of any law in  
428 which the licensing agency has authority therefor, shall be  
429 subject to the following penalties and sanctions:

430           (a) Revocation of the license of the ambulatory  
431 surgical facility or a designated section, component or service  
432 thereof; or

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

435           In addition, any violation of any provision of this chapter  
436 or any rules or regulations promulgated in furtherance thereof by  
437 intent, fraud, deceit, unlawful design, willful and/or deliberate  
438 misrepresentation, or by careless, negligent or incautious  
439 disregard for such statutes or rules and regulations, either by  
440 persons acting individually or in concert with others, shall  
441 constitute a misdemeanor and shall be punishable by a fine not to  
442 exceed One Thousand Dollars (\$1,000.00) for each such offense.  
443 Each day of continuing violation shall be considered a separate  
444 offense. The venue for prosecution of any such violation shall be  
445 in any county of the state in which any such violation, or portion  
446 thereof, occurred.

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

449           41-77-1. For purposes of this chapter:

450           (a) "Birthing center" shall mean a publicly or  
451 privately owned facility, place or institution constructed,  
452 renovated, leased or otherwise established where nonemergency  
453 births are planned to occur away from the mother's usual residence  
454 following a documented period of prenatal care for a normal

455 uncomplicated pregnancy which has been determined to be low risk  
456 through a formal risk scoring examination. Care provided in a  
457 birthing center shall be provided by a licensed physician, or  
458 certified nurse midwife, and a registered nurse. Services  
459 provided in a birthing center shall be limited in the following  
460 manner: (i) surgical services shall be limited to those normally  
461 performed during uncomplicated childbirth, such as episiotomy and  
462 repair, and shall not include operative obstetrics or caesarean  
463 sections; (ii) labor shall not be inhibited, stimulated or  
464 augmented with chemical agents during the first or second stage of  
465 labor; (iii) systemic analgesia may be administered and local  
466 anesthesia for pudendal block and episiotomy repair may be  
467 performed. General and conductive anesthesia shall not be  
468 administered at birthing centers; (iv) patients shall not remain  
469 in the facility in excess of twenty-four (24) hours.

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

488           (b) "Hospital affiliated" birthing center shall mean a  
489 separate and distinct unit of a hospital or a building owned,  
490 leased, rented or utilized by a hospital and located in the same  
491 county as the hospital for the purpose of providing the service of  
492 a "birthing center." Such center or facility is not required to  
493 be licensed separately, and may operate under the license issued  
494 to the hospital if it is in compliance with Section 41-9-1 et  
495 seq., where applicable, and the rules and regulations promulgated  
496 by the licensing agency in furtherance thereof.

497           (c) "Freestanding" birthing center shall mean a  
498 separate and distinct facility or center or a separate and  
499 distinct organized unit of a hospital or other \* \* \* person \* \* \*  
500 for the purpose of performing the service of a "birthing center."  
501 Such facility or center must be separately licensed and must  
502 comply with all licensing standards promulgated by the licensing  
503 agency by virtue of this chapter. Further, such facility or  
504 center must be a separate, identifiable entity and must be  
505 physically, administratively and financially independent from  
506 other operations of any hospital or other health care facility or  
507 service and shall maintain a separate and required staff,  
508 including administrative staff. \* \* \*

509           (d) "Licensing agency" shall mean the State Department  
510 of Health.

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

513           41-77-5. No person \* \* \*, acting severally or jointly with  
514 any other person, shall establish, conduct or maintain a "birthing  
515 center" in this state without a license under this chapter.

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

518           41-77-21. Any applicant or licensee aggrieved by the  
519 decision of the licensing agency after a hearing may, within  
520 thirty (30) days after the mailing or serving of notice of the



521 decision as provided in Section 43-11-11, file a notice of appeal  
522 to the Chancery Court of the First Judicial District of Hinds  
523 County or in the chancery court of the county in which the  
524 institution is located or proposed to be located. \* \* \* Thereupon,  
525 the licensing agency shall \* \* \* certify and file with the court a  
526 copy of the record and decision, including the transcript of the  
527 hearings in which the decision is based. No new or additional  
528 evidence shall be introduced in court; the case shall be  
529 determined upon the record certified to the court. The court may  
530 sustain or dismiss the appeal, modify or vacate the order  
531 complained of in whole or in part, as the case may be; but in case  
532 the order is wholly or partly vacated, the court may also, in its  
533 discretion, remand the matter to the licensing agency for such  
534 further proceedings, not inconsistent with the court's order, as,  
535 in the opinion of the court, justice may require. The order may  
536 not be vacated or set aside, either in whole or in part, except  
537 for errors of law, unless the court finds that the order of the  
538 licensing agency is not supported by substantial evidence, is  
539 contrary to the manifest weight of the evidence, is in excess of  
540 the statutory authority or jurisdiction of the licensing agency,  
541 or violates any vested constitutional rights of any party involved  
542 in the appeal. Pending final disposition of the matter, the  
543 status quo of the applicant or licensee shall be preserved, except  
544 as the court otherwise orders in the public interest. Rules with  
545 respect to court costs in other cases in chancery shall apply  
546 equally to cases hereunder. Appeals in accordance with law may be  
547 had to the Supreme Court of the State of Mississippi from any  
548 final judgment of the chancery court.

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

551       41-77-23. Any person or persons or other entity or entities  
552 establishing, managing or operating a "birthing center" or  
553 conducting the business of a "birthing center" without the

554 required license, or which otherwise violate any of the provisions  
555 of this chapter \* \* \* or the rules, regulations or standards  
556 promulgated in furtherance of any law in which the licensing  
557 agency has authority therefor, shall be subject to the following  
558 penalties and sanctions:

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

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

563 In addition, any violation of any provision of this chapter  
564 or any rules or regulations promulgated in furtherance thereof by  
565 intent, fraud, deceit, unlawful design, willful and/or deliberate  
566 misrepresentation, or by careless, negligent or incautious  
567 disregard for such statutes or rules and regulations, either by  
568 persons acting individually or in concert with others, shall  
569 constitute a misdemeanor and shall be punishable by a fine not to  
570 exceed One Thousand Dollars (\$1,000.00) for each such offense.  
571 Each day of continuing violation shall be considered a separate  
572 offense. The venue for prosecution of any such violation shall be  
573 in any county of the state in which any such violation, or portion  
574 thereof, occurred.

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

577 41-77-25. Upon receipt of an application for license and the  
578 license fee, the licensing agency shall issue a license if the  
579 applicant and the institutional facilities meet the requirements  
580 established under this chapter \* \* \*. A license, unless suspended  
581 or revoked, shall be renewable annually upon payment of a renewal  
582 fee of Three Hundred Dollars (\$300.00), which shall be paid to the  
583 licensing agency, and upon filing by the licensee and approval by  
584 the licensing agency of an annual report upon such uniform dates  
585 and containing such information in such form as the licensing  
586 agency requires. Each license shall be issued only for the

587 premises and person or persons named in the application and shall  
588 not be transferable or assignable. Licenses shall be posted in a  
589 conspicuous place on the licensed premises.

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

592 41-95-3. As used in this chapter:

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

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

597 (c) "Health care facility" means all facilities and  
598 institutions, whether public or private, proprietary or nonprofit,  
599 which offer diagnosis, treatment, inpatient or ambulatory care to  
600 two (2) or more unrelated persons \* \* \*.

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

606 (e) "Health insurer" means any health insurance  
607 company, nonprofit hospital and medical service corporation,  
608 health maintenance organization and, to the extent permitted under  
609 federal law, any administrator of an insured, self-insured or  
610 publicly funded health care benefit plan offered by public and  
611 private entities.

612 (f) "Resident" means a person who is domiciled in  
613 Mississippi as evidenced by an intent to maintain a principal  
614 dwelling place in Mississippi indefinitely and to return to  
615 Mississippi if temporarily absent, coupled with an act or acts  
616 consistent with that intent.

617 (g) "Primary care" or "primary health care" includes  
618 those health care services provided to individuals, families and  
619 communities, at a first level of care, which preserve and improve

620 health, and encompasses services which promote health, prevent  
621 disease, treat and cure illness. It is delivered by various  
622 health care providers in a variety of settings including hospital  
623 outpatient clinics, private provider offices, group practices,  
624 health maintenance organizations, public health departments and  
625 community health centers. A primary care system is characterized  
626 by coordination of comprehensive services, cultural sensitivity,  
627 community orientation, continuity, prevention, the absence of  
628 barriers to receive and provide services, and quality assurance.

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

631 43-11-9. (1) Upon receipt of an application for license and  
632 the license fee, the licensing agency shall issue a license if the  
633 applicant and the institutional facilities meet the requirements  
634 established under this chapter \* \* \*. A license, unless suspended  
635 or revoked, shall be renewable annually upon payment by (a) the  
636 licensee of an institution for the aged or infirm, except for  
637 personal care homes, of a renewal fee of Twenty Dollars (\$20.00)  
638 for each bed in the institution, with a minimum fee per  
639 institution of Two Hundred Dollars (\$200.00), or (b) the licensee  
640 of a personal care home of a renewal fee of Fifteen Dollars  
641 (\$15.00) for each bed in the institution, with a minimum fee per  
642 institution of One Hundred Dollars (\$100.00), which shall be paid  
643 to the licensing agency, and upon filing by the licensee and  
644 approval by the licensing agency of an annual report upon such  
645 uniform dates and containing such information in such form as the  
646 licensing agency prescribes by regulation. Each license shall be  
647 issued only for the premises and person or persons or other legal  
648 entity or entities named in the application and shall not be  
649 transferable or assignable except with the written approval of the  
650 licensing agency. Licenses shall be posted in a conspicuous place  
651 on the licensed premises.

652           (2) A fee known as a "User Fee" shall be applicable and  
653 shall be paid to the licensing agency as set out in subsection (1)  
654 hereof. This user fee shall be assessed for the purpose of the  
655 required reviewing and inspections of the proposal of any  
656 institution in which there are additions, renovations,  
657 modernizations, expansion, alterations, conversions, modifications  
658 or replacement of the entire facility involved in such proposal.  
659 This fee includes the reviewing of architectural plans in all  
660 steps required. There shall be a minimum user fee of Fifty  
661 Dollars (\$50.00) and a maximum user fee of Five Thousand Dollars  
662 (\$5,000.00).

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

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

667           43-11-19. Information received by the licensing agency  
668 through filed reports, inspection, or as otherwise authorized  
669 under this chapter, shall not be disclosed publicly in such manner  
670 as to identify individuals, except in a proceeding involving the  
671 questions of licensure; however, the licensing agency may utilize  
672 statistical data concerning types of services and the utilization  
673 of those services for institutions for the aged or infirm in  
674 performing the statutory duties imposed upon it \* \* \* by Section  
675 43-11-21.

676           **SECTION 21.** This act shall take effect and be in force from  
677 and after July 1, 2006.