

By: Representative Flaggs

To: Public Health and Human
Services

HOUSE BILL NO. 1233

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT OFFICES OF PRIVATE PHYSICIANS OR DENTISTS THAT SEEK
3 MEDICARE CERTIFICATION OR MEDICAID REIMBURSEMENT AS AN AMBULATORY
4 SURGICAL FACILITY OR FOR AMBULATORY SURGICAL SERVICES SHALL BE
5 SUBJECT TO THE AMBULATORY SURGICAL FACILITY LICENSURE LAW; TO
6 EXTEND THE DATE OF THE REPEALER ON THE SECTION; AND FOR RELATED
7 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 unless the office seeks
20 Medicare certification or Medicaid reimbursement as an ambulatory
21 surgical facility or for ambulatory surgical services, but does
22 include organizations or facilities primarily engaged in that
23 outpatient surgery, whether using the name "ambulatory surgical
24 facility" or a similar or different name. That organization or
25 facility, if in any manner considered to be operated or owned by a
26 hospital or a hospital holding, leasing or management company,
27 either for profit or not for profit, is required to comply with
28 all licensing agency ambulatory surgical licensure standards
29 governing a "hospital affiliated" facility as adopted under

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

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

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

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

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

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

77 (e) "Abortion" means the use or prescription of any
78 instrument, medicine, drug or any other substances or device to
79 terminate the pregnancy of a woman known to be pregnant with an
80 intention other than to increase the probability of a live birth,
81 to preserve the life or health of the child after live birth or to
82 remove a dead fetus. Abortion procedures after the first
83 trimester shall only be performed at a Level I abortion facility
84 or an ambulatory surgical facility or hospital licensed to perform
85 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 An abortion facility may apply to be licensed as a Level I
118 facility or a Level II facility by the licensing agency. Level II
119 abortion facilities shall be required to meet minimum standards
120 for abortion facilities as established by the licensing agency.
121 Level I abortion facilities shall be required to meet minimum
122 standards for abortion facilities and minimum standards for
123 ambulatory surgical facilities as established by the licensing
124 agency.

125 Any abortion facility that begins operation after June 30,
126 1996, shall not be located within fifteen hundred (1500) feet from
127 the property on which any church, school or kindergarten is

128 located. An abortion facility shall not be in violation of this
129 paragraph if it is in compliance with this paragraph on the date
130 it begins operation and the property on which a church, school or
131 kindergarten is located is later within fifteen hundred (1500)
132 feet from the facility.

133 This section shall stand repealed on June 30, 2007.

134 **SECTION 2.** This act shall take effect and be in force from
135 and after June 30, 2006.