

By: Representative Clark

To: Public Health and Human Services

HOUSE BILL NO. 36

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO REMOVE END-STAGE RENAL DISEASE FACILITIES FROM THE APPLICATION
3 OF THE HEALTH CARE CERTIFICATE OF NEED LAW; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 41-7-173, Mississippi Code of 1972, is
7 amended as follows:

8 41-7-173. For the purposes of Section 41-7-171 et seq., the
9 following words shall have the meanings ascribed herein, unless
10 the context otherwise requires:

11 (a) "Affected person" means (i) the applicant; (ii) a
12 person residing within the geographic area to be served by the
13 applicant's proposal; (iii) a person who regularly uses health
14 care facilities or HMOs located in the geographic area of the
15 proposal which provide similar service to that which is proposed;
16 (iv) health care facilities and HMOs which have, prior to receipt
17 of the application under review, formally indicated an intention
18 to provide service similar to that of the proposal being
19 considered at a future date; (v) third-party payers who reimburse



20 health care facilities located in the geographical area of the
21 proposal; or (vi) any agency that establishes rates for health
22 care services or HMOs located in the geographic area of the
23 proposal.

24 (b) "Certificate of need" means a written order of the
25 State Department of Health setting forth the affirmative finding
26 that a proposal in prescribed application form, sufficiently
27 satisfies the plans, standards and criteria prescribed for such
28 service or other project by Section 41-7-171 et seq., and by rules
29 and regulations promulgated thereunder by the State Department of
30 Health.

31 (c) (i) "Capital expenditure," when pertaining to
32 defined major medical equipment, shall mean an expenditure which,
33 under generally accepted accounting principles consistently
34 applied, is not properly chargeable as an expense of operation and
35 maintenance and which exceeds One Million Five Hundred Thousand
36 Dollars (\$1,500,000.00).

37 (ii) "Capital expenditure," when pertaining to
38 other than major medical equipment, shall mean any expenditure
39 which under generally accepted accounting principles consistently
40 applied is not properly chargeable as an expense of operation and
41 maintenance and which exceeds, for clinical health services, as
42 defined in * * * paragraph (k) below, Five Million Dollars
43 (\$5,000,000.00), adjusted for inflation as published by the State
44 Department of Health or which exceeds, for nonclinical health



45 services, as defined in * * * paragraph (k) below, Ten Million
46 Dollars (\$10,000,000.00), adjusted for inflation as published by
47 the State Department of Health.

48 (iii) A "capital expenditure" shall include the
49 acquisition, whether by lease, sufferance, gift, devise, legacy,
50 settlement of a trust or other means, of any facility or part
51 thereof, or equipment for a facility, the expenditure for which
52 would have been considered a capital expenditure if acquired by
53 purchase. Transactions which are separated in time but are
54 planned to be undertaken within twelve (12) months of each other
55 and are components of an overall plan for meeting patient care
56 objectives shall, for purposes of this definition, be viewed in
57 their entirety without regard to their timing.

58 (iv) In those instances where a health care
59 facility or other provider of health services proposes to provide
60 a service in which the capital expenditure for major medical
61 equipment or other than major medical equipment or a combination
62 of the two (2) may have been split between separate parties, the
63 total capital expenditure required to provide the proposed service
64 shall be considered in determining the necessity of certificate of
65 need review and in determining the appropriate certificate of need
66 review fee to be paid. The capital expenditure associated with
67 facilities and equipment to provide services in Mississippi shall
68 be considered regardless of where the capital expenditure was
69 made, in state or out of state, and regardless of the domicile of



70 the party making the capital expenditure, in state or out of
71 state.

72 (d) "Change of ownership" includes, but is not limited
73 to, inter vivos gifts, purchases, transfers, lease arrangements,
74 cash and/or stock transactions or other comparable arrangements
75 whenever any person or entity acquires or controls a majority
76 interest of an existing health care facility, and/or the change of
77 ownership of major medical equipment, a health service, or an
78 institutional health service. Changes of ownership from
79 partnerships, single proprietorships or corporations to another
80 form of ownership are specifically included. However, "change of
81 ownership" shall not include any inherited interest acquired as a
82 result of a testamentary instrument or under the laws of descent
83 and distribution of the State of Mississippi.

84 (e) "Commencement of construction" means that all of
85 the following have been completed with respect to a proposal or
86 project proposing construction, renovating, remodeling or
87 alteration:

88 (i) A legally binding written contract has been
89 consummated by the proponent and a lawfully licensed contractor to
90 construct and/or complete the intent of the proposal within a
91 specified period of time in accordance with final architectural
92 plans which have been approved by the licensing authority of the
93 State Department of Health;



94 (ii) Any and all permits and/or approvals deemed
95 lawfully necessary by all authorities with responsibility for such
96 have been secured; and

97 (iii) Actual bona fide undertaking of the subject
98 proposal has commenced, and a progress payment of at least one
99 percent (1%) of the total cost price of the contract has been paid
100 to the contractor by the proponent, and the requirements of this
101 paragraph (e) have been certified to in writing by the State
102 Department of Health.

103 Force account expenditures, such as deposits, securities,
104 bonds, et cetera, may, in the discretion of the State Department
105 of Health, be excluded from any or all of the provisions of
106 defined commencement of construction.

107 (f) "Consumer" means an individual who is not a
108 provider of health care as defined in paragraph (q) of this
109 section.

110 (g) "Develop," when used in connection with health
111 services, means to undertake those activities which, on their
112 completion, will result in the offering of a new institutional
113 health service or the incurring of a financial obligation as
114 defined under applicable state law in relation to the offering of
115 such services.

116 (h) "Health care facility" includes hospitals,
117 psychiatric hospitals, chemical dependency hospitals, skilled
118 nursing facilities, * * * intermediate care facilities, ambulatory



119 surgical facilities, intermediate care facilities for the mentally
120 retarded, home health agencies, psychiatric residential treatment
121 facilities, pediatric skilled nursing facilities, long-term care
122 hospitals, comprehensive medical rehabilitation facilities,
123 including facilities owned or operated by the state or a political
124 subdivision or instrumentality of the state, but does not include
125 Christian Science sanatoriums operated or listed and certified by
126 the First Church of Christ, Scientist, Boston, Massachusetts.
127 This definition shall not apply to facilities for the private
128 practice, either independently or by incorporated medical groups,
129 of physicians, dentists or health care professionals except where
130 such facilities are an integral part of an institutional health
131 service. The various health care facilities listed in this
132 paragraph shall be defined as follows:

133 (i) "Hospital" means an institution which is
134 primarily engaged in providing to inpatients, by or under the
135 supervision of physicians, diagnostic services and therapeutic
136 services for medical diagnosis, treatment and care of injured,
137 disabled or sick persons, or rehabilitation services for the
138 rehabilitation of injured, disabled or sick persons. Such term
139 does not include psychiatric hospitals.

140 (ii) "Psychiatric hospital" means an institution
141 which is primarily engaged in providing to inpatients, by or under
142 the supervision of a physician, psychiatric services for the
143 diagnosis and treatment of persons with mental illness.



144 (iii) "Chemical dependency hospital" means an
145 institution which is primarily engaged in providing to inpatients,
146 by or under the supervision of a physician, medical and related
147 services for the diagnosis and treatment of chemical dependency
148 such as alcohol and drug abuse.

149 (iv) "Skilled nursing facility" means an
150 institution or a distinct part of an institution which is
151 primarily engaged in providing to inpatients skilled nursing care
152 and related services for patients who require medical or nursing
153 care or rehabilitation services for the rehabilitation of injured,
154 disabled or sick persons.

155 (v) * * * [Deleted]

156 (vi) "Intermediate care facility" means an
157 institution which provides, on a regular basis, health-related
158 care and services to individuals who do not require the degree of
159 care and treatment which a hospital or skilled nursing facility is
160 designed to provide, but who, because of their mental or physical
161 condition, require health-related care and services (above the
162 level of room and board).

163 (vii) "Ambulatory surgical facility" means a
164 facility primarily organized or established for the purpose of
165 performing surgery for outpatients and is a separate identifiable
166 legal entity from any other health care facility. Such term does
167 not include the offices of private physicians or dentists, whether



168 for individual or group practice, and does not include any
169 abortion facility as defined in Section 41-75-1(f).

170 (viii) "Intermediate care facility for the
171 mentally retarded" means an intermediate care facility that
172 provides health or rehabilitative services in a planned program of
173 activities to persons with an intellectual disability, also
174 including, but not limited to, cerebral palsy and other conditions
175 covered by the Federal Developmentally Disabled Assistance and
176 Bill of Rights Act, Public Law 94-103.

177 (ix) "Home health agency" means a public or
178 privately owned agency or organization, or a subdivision of such
179 an agency or organization, properly authorized to conduct business
180 in Mississippi, which is primarily engaged in providing to
181 individuals at the written direction of a licensed physician, in
182 the individual's place of residence, skilled nursing services
183 provided by or under the supervision of a registered nurse
184 licensed to practice in Mississippi, and one or more of the
185 following services or items:

- 186 1. Physical, occupational or speech therapy;
- 187 2. Medical social services;
- 188 3. Part-time or intermittent services of a
189 home health aide;
- 190 4. Other services as approved by the
191 licensing agency for home health agencies;



192 5. Medical supplies, other than drugs and
193 biologicals, and the use of medical appliances; or

194 6. Medical services provided by an intern or
195 resident-in-training at a hospital under a teaching program of
196 such hospital.

197 Further, all skilled nursing services and those services
198 listed in items 1 through 4 of this subparagraph (ix) must be
199 provided directly by the licensed home health agency. For
200 purposes of this subparagraph, "directly" means either through an
201 agency employee or by an arrangement with another individual not
202 defined as a health care facility.

203 This subparagraph (ix) shall not apply to health care
204 facilities which had contracts for the above services with a home
205 health agency on January 1, 1990.

206 (x) "Psychiatric residential treatment facility"
207 means any nonhospital establishment with permanent licensed
208 facilities which provides a twenty-four-hour program of care by
209 qualified therapists, including, but not limited to, duly licensed
210 mental health professionals, psychiatrists, psychologists,
211 psychotherapists and licensed certified social workers, for
212 emotionally disturbed children and adolescents referred to such
213 facility by a court, local school district or by the Department of
214 Human Services, who are not in an acute phase of illness requiring
215 the services of a psychiatric hospital, and are in need of such
216 restorative treatment services. For purposes of this



217 subparagraph, the term "emotionally disturbed" means a condition
218 exhibiting one or more of the following characteristics over a
219 long period of time and to a marked degree, which adversely
220 affects educational performance:

221 1. An inability to learn which cannot be
222 explained by intellectual, sensory or health factors;

223 2. An inability to build or maintain
224 satisfactory relationships with peers and teachers;

225 3. Inappropriate types of behavior or
226 feelings under normal circumstances;

227 4. A general pervasive mood of unhappiness or
228 depression; or

229 5. A tendency to develop physical symptoms or
230 fears associated with personal or school problems. An
231 establishment furnishing primarily domiciliary care is not within
232 this definition.

233 (xi) "Pediatric skilled nursing facility" means an
234 institution or a distinct part of an institution that is primarily
235 engaged in providing to inpatients skilled nursing care and
236 related services for persons under twenty-one (21) years of age
237 who require medical or nursing care or rehabilitation services for
238 the rehabilitation of injured, disabled or sick persons.

239 (xii) "Long-term care hospital" means a
240 freestanding, Medicare-certified hospital that has an average
241 length of inpatient stay greater than twenty-five (25) days, which



242 is primarily engaged in providing chronic or long-term medical
243 care to patients who do not require more than three (3) hours of
244 rehabilitation or comprehensive rehabilitation per day, and has a
245 transfer agreement with an acute care medical center and a
246 comprehensive medical rehabilitation facility. Long-term care
247 hospitals shall not use rehabilitation, comprehensive medical
248 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
249 nursing home, skilled nursing facility or sub-acute care facility
250 in association with its name.

251 (xiii) "Comprehensive medical rehabilitation
252 facility" means a hospital or hospital unit that is licensed
253 and/or certified as a comprehensive medical rehabilitation
254 facility which provides specialized programs that are accredited
255 by the Commission on Accreditation of Rehabilitation Facilities
256 and supervised by a physician board certified or board eligible in
257 physiatry or other doctor of medicine or osteopathy with at least
258 two (2) years of training in the medical direction of a
259 comprehensive rehabilitation program that:

260 1. Includes evaluation and treatment of
261 individuals with physical disabilities;

262 2. Emphasizes education and training of
263 individuals with disabilities;

264 3. Incorporates at least the following core
265 disciplines:

266 * * *a. Physical Therapy;



- 267 * * *b. Occupational Therapy;
- 268 * * *c. Speech and Language Therapy;
- 269 * * *d. Rehabilitation Nursing; and
- 270 4. Incorporates at least three (3) of the
- 271 following disciplines:
- 272 * * *a. Psychology;
- 273 * * *b. Audiology;
- 274 * * *c. Respiratory Therapy;
- 275 * * *d. Therapeutic Recreation;
- 276 * * *e. Orthotics;
- 277 * * *f. Prosthetics;
- 278 * * *g. Special Education;
- 279 * * *h. Vocational Rehabilitation;
- 280 * * *i. Psychotherapy;
- 281 * * *j. Social Work;
- 282 * * *k. Rehabilitation Engineering.

283 These specialized programs include, but are not limited to:

284 spinal cord injury programs, head injury programs and infant and

285 early childhood development programs.

286 (i) "Health maintenance organization" or "HMO" means a

287 public or private organization organized under the laws of this

288 state or the federal government which:

289 (i) Provides or otherwise makes available to

290 enrolled participants health care services, including

291 substantially the following basic health care services: usual



292 physician services, hospitalization, laboratory, x-ray, emergency
293 and preventive services, and out-of-area coverage;

294 (ii) Is compensated (except for copayments) for
295 the provision of the basic health care services listed in
296 subparagraph (i) of this paragraph to enrolled participants on a
297 predetermined basis; and

298 (iii) Provides physician services primarily:

299 1. Directly through physicians who are either
300 employees or partners of such organization; or

301 2. Through arrangements with individual
302 physicians or one or more groups of physicians (organized on a
303 group practice or individual practice basis).

304 (j) "Health service area" means a geographic area of
305 the state designated in the State Health Plan as the area to be
306 used in planning for specified health facilities and services and
307 to be used when considering certificate of need applications to
308 provide health facilities and services.

309 (k) "Health services" means clinically related (i.e.,
310 diagnostic, treatment or rehabilitative) services and includes
311 alcohol, drug abuse, mental health and home health care services.

312 "Clinical health services" shall only include those activities
313 which contemplate any change in the existing bed complement of any
314 health care facility through the addition or conversion of any
315 beds, under Section 41-7-191(1)(c) or propose to offer any health
316 services if those services have not been provided on a regular



317 basis by the proposed provider of such services within the period
318 of twelve (12) months prior to the time such services would be
319 offered, under Section 41-7-191(1)(d). "Nonclinical health
320 services" shall be all other services which do not involve any
321 change in the existing bed complement or offering health services
322 as described above.

323 (l) "Institutional health services" shall mean health
324 services provided in or through health care facilities and shall
325 include the entities in or through which such services are
326 provided.

327 (m) "Major medical equipment" means medical equipment
328 designed for providing medical or any health-related service which
329 costs in excess of One Million Five Hundred Thousand Dollars
330 (\$1,500,000.00). However, this definition shall not be applicable
331 to clinical laboratories if they are determined by the State
332 Department of Health to be independent of any physician's office,
333 hospital or other health care facility or otherwise not so defined
334 by federal or state law, or rules and regulations promulgated
335 thereunder.

336 (n) "State Department of Health" or "department" shall
337 mean the state agency created under Section 41-3-15, which shall
338 be considered to be the State Health Planning and Development
339 Agency, as defined in paragraph (u) of this section.

340 (o) "Offer," when used in connection with health
341 services, means that it has been determined by the State



342 Department of Health that the health care facility is capable of
343 providing specified health services.

344 (p) "Person" means an individual, a trust or estate,
345 partnership, corporation (including associations, joint-stock
346 companies and insurance companies), the state or a political
347 subdivision or instrumentality of the state.

348 (q) "Provider" shall mean any person who is a provider
349 or representative of a provider of health care services requiring
350 a certificate of need under Section 41-7-171 et seq., or who has
351 any financial or indirect interest in any provider of services.

352 (r) "Radiation therapy services" means the treatment of
353 cancer and other diseases using ionizing radiation of either high
354 energy photons (x-rays or gamma rays) or charged particles
355 (electrons, protons or heavy nuclei). However, for purposes of a
356 certificate of need, radiation therapy services shall not include
357 low energy, superficial, external beam x-ray treatment of
358 superficial skin lesions.

359 (s) "Secretary" means the Secretary of Health and Human
360 Services, and any officer or employee of the Department of Health
361 and Human Services to whom the authority involved has been
362 delegated.

363 (t) "State Health Plan" means the sole and official
364 statewide health plan for Mississippi which identifies priority
365 state health needs and establishes standards and criteria for



366 health-related activities which require certificate of need review
367 in compliance with Section 41-7-191.

368 (u) "State Health Planning and Development Agency"
369 means the agency of state government designated to perform health
370 planning and resource development programs for the State of
371 Mississippi.

372 **SECTION 2.** This act shall take effect and be in force from
373 and after July 1, 2024.

