

By: Representatives Moody, Scott (80th)

To: Public Health and  
Welfare;  
AppropriationsCOMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 849

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE AMOUNT OF CAPITAL EXPENDITURES BY HEALTH CARE  
3 FACILITIES WHICH REQUIRE A CERTIFICATE OF NEED REVIEW, AND TO  
4 DEFINE "PREVENTIVE CARE SERVICES"; TO AMEND SECTIONS 41-7-191 AND  
5 41-7-207, MISSISSIPPI CODE OF 1972, TO EXEMPT THE RELOCATION OF  
6 CERTAIN HEALTH CARE FACILITIES, SERVICES AND REPLACEMENT EQUIPMENT  
7 FROM THE REQUIREMENT OF A CERTIFICATE OF NEED REVIEW; TO EXEMPT  
8 FROM CERTIFICATE OF NEED REVIEW THE PROVISION OF PREVENTIVE CARE  
9 SERVICES, SUBJECT TO CERTAIN CONDITIONS; TO AMEND SECTION  
10 41-7-197, MISSISSIPPI CODE OF 1972, WHICH DEFINES THOSE PERSONS  
11 WHO MAY REQUEST A HEARING DURING THE COURSE OF A CERTIFICATE OF  
12 NEED REVIEW; TO AMEND SECTION 41-7-201, MISSISSIPPI CODE OF 1972,  
13 TO CLARIFY THOSE PERSONS WITH STANDING TO APPEAL FINAL ORDERS  
14 REGARDING THE ISSUANCE OF A CERTIFICATE OF NEED; TO PROVIDE THERE  
15 SHALL BE A "STAY OF PROCEEDINGS" OF ANY FINAL ORDER OF THE STATE  
16 DEPARTMENT OF HEALTH FOR A PERIOD OF 30 DAYS FROM THE DATE OF THE  
17 ORDER; TO PROVIDE THAT NO CONSTRUCTION OR RENOVATION THAT IS THE  
18 SUBJECT OF THE ORDER SHALL BE UNDERTAKEN, AND NO LICENSE TO  
19 OPERATE ANY FACILITY THAT IS THE SUBJECT OF THE ORDER SHALL BE  
20 ISSUED, UNTIL ALL STATUTORY APPEALS HAVE BEEN EXHAUSTED OR THE  
21 TIME FOR SUCH APPEALS HAS EXPIRED; TO PROVIDE THAT NOTWITHSTANDING  
22 THE FOREGOING, THE FILING OF SUCH APPEAL SHALL NOT PREVENT THE  
23 PURCHASE OF MEDICAL EQUIPMENT OR THE DEVELOPMENT OR OFFERING OF  
24 INSTITUTIONAL HEALTH SERVICES THAT IS AUTHORIZED BY A CERTIFICATE  
25 OF NEED ISSUED BY THE DEPARTMENT; TO AMEND SECTION 41-7-205,  
26 MISSISSIPPI CODE OF 1972, TO DEFINE THOSE NONSUBSTANTIVE PROJECTS  
27 WHICH ARE EXEMPT FROM FORMAL CERTIFICATE OF NEED REVIEW; AND FOR  
28 RELATED PURPOSES.

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

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

32 41-7-173. For the purposes of Section 41-7-171 et seq., the  
33 following words shall have the meanings ascribed herein, unless  
34 the context otherwise requires:

35 (a) "Affected person" means (i) the applicant; (ii) a  
36 person residing within the geographic area to be served by the  
37 applicant's proposal; (iii) a person who regularly uses health  
38 care facilities or HMO's located in the geographic area of the  
39 proposal which provide similar service to that which is proposed;  
40 (iv) health care facilities and HMO's which have, prior to receipt

41 of the application under review, formally indicated an intention  
42 to provide service similar to that of the proposal being  
43 considered at a future date; (v) third-party payers who reimburse  
44 health care facilities located in the geographical area of the  
45 proposal; or (vi) any agency that establishes rates for health  
46 care services or HMO's located in the geographic area of the  
47 proposal.

48 (b) "Certificate of need" means a written order of the  
49 State Department of Health setting forth the affirmative finding  
50 that a proposal in prescribed application form, sufficiently  
51 satisfies the plans, standards and criteria prescribed for such  
52 service or other project by Section 41-7-171 et seq., and by rules  
53 and regulations promulgated thereunder by the State Department of  
54 Health.

55 (c) (i) "Capital expenditure" when pertaining to  
56 defined major medical equipment, shall mean an expenditure which,  
57 under generally accepted accounting principles consistently  
58 applied, is not properly chargeable as an expense of operation and  
59 maintenance and which exceeds One Million Dollars (\$1,000,000.00).

60 (ii) "Capital expenditure," when pertaining to  
61 other than major medical equipment, shall mean any expenditure  
62 which under generally accepted accounting principles consistently  
63 applied is not properly chargeable as an expense of operation and  
64 maintenance and which exceeds Two Million Dollars (\$2,000,000.00).

65 (iii) A "capital expenditure" shall include the  
66 acquisition, whether by lease, sufferance, gift, devise, legacy,  
67 settlement of a trust or other means, of any facility or part  
68 thereof, or equipment for a facility, the expenditure for which  
69 would have been considered a capital expenditure if acquired by  
70 purchase. Transactions which are separated in time but are  
71 planned to be undertaken within twelve (12) months of each other  
72 and are components of an overall plan for meeting patient care  
73 objectives shall, for purposes of this definition, be viewed in  
74 their entirety without regard to their timing.

75 (iv) In those instances where a health care  
76 facility or other provider of health services proposes to provide  
77 a service in which the capital expenditure for major medical  
78 equipment or other than major medical equipment or a combination

79 of the two (2) may have been split between separate parties, the  
80 total capital expenditure required to provide the proposed service  
81 shall be considered in determining the necessity of certificate of  
82 need review and in determining the appropriate certificate of need  
83 review fee to be paid. The capital expenditure associated with  
84 facilities and equipment to provide services in Mississippi shall  
85 be considered regardless of where the capital expenditure was  
86 made, in state or out of state, and regardless of the domicile of  
87 the party making the capital expenditure, in state or out of  
88 state.

89 (d) "Change of ownership" includes, but is not limited  
90 to, inter vivos gifts, purchases, transfers, lease arrangements,  
91 cash and/or stock transactions or other comparable arrangements  
92 whenever any person or entity acquires or controls a majority  
93 interest of the facility or service. Changes of ownership from  
94 partnerships, single proprietorships or corporations to another  
95 form of ownership are specifically included. \* \* \* However,  
96 "change of ownership" shall not include any inherited interest  
97 acquired as a result of a testamentary instrument or under the  
98 laws of descent and distribution of the State of Mississippi.

99 (e) "Commencement of construction" means that all of  
100 the following have been completed with respect to a proposal or  
101 project proposing construction, renovating, remodeling or  
102 alteration:

103 (i) A legally binding written contract has been  
104 consummated by the proponent and a lawfully licensed contractor to  
105 construct and/or complete the intent of the proposal within a  
106 specified period of time in accordance with final architectural  
107 plans which have been approved by the licensing authority of the  
108 State Department of Health;

109 (ii) Any and all permits and/or approvals deemed  
110 lawfully necessary by all authorities with responsibility for such  
111 have been secured; and

112 (iii) Actual bona fide undertaking of the subject

113 proposal has commenced, and a progress payment of at least one  
114 percent (1%) of the total cost price of the contract has been paid  
115 to the contractor by the proponent, and the requirements of this  
116 paragraph (e) have been certified to in writing by the State  
117 Department of Health.

118 Force account expenditures, such as deposits,  
119 securities, bonds, et cetera, may, in the discretion of the State  
120 Department of Health, be excluded from any or all of the  
121 provisions of defined commencement of construction.

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

125 (g) "Develop," when used in connection with health  
126 services, means to undertake those activities which, on their  
127 completion, will result in the offering of a new institutional  
128 health service or the incurring of a financial obligation as  
129 defined under applicable state law in relation to the offering of  
130 such services.

131 (h) "Health care facility" includes hospitals,  
132 psychiatric hospitals, chemical dependency hospitals, skilled  
133 nursing facilities, end stage renal disease (ESRD) facilities,  
134 including freestanding hemodialysis units, intermediate care  
135 facilities, ambulatory surgical facilities, intermediate care  
136 facilities for the mentally retarded, home health agencies,  
137 psychiatric residential treatment facilities, pediatric skilled  
138 nursing facilities, long-term care hospitals, comprehensive  
139 medical rehabilitation facilities, including facilities owned or  
140 operated by the state or a political subdivision or  
141 instrumentality of the state, but does not include Christian  
142 Science sanatoriums operated or listed and certified by the First  
143 Church of Christ, Scientist, Boston, Massachusetts. This  
144 definition shall not apply to facilities for the private practice,  
145 either independently or by incorporated medical groups, of  
146 physicians, dentists or health care professionals except where

147 such facilities are an integral part of an institutional health  
148 service. The various health care facilities listed in this  
149 paragraph shall be defined as follows:

150 (i) "Hospital" means an institution which is  
151 primarily engaged in providing to inpatients, by or under the  
152 supervision of physicians, diagnostic services and therapeutic  
153 services for medical diagnosis, treatment and care of injured,  
154 disabled or sick persons, or rehabilitation services for the  
155 rehabilitation of injured, disabled or sick persons. Such term  
156 does not include psychiatric hospitals.

157 (ii) "Psychiatric hospital" means an institution  
158 which is primarily engaged in providing to inpatients, by or under  
159 the supervision of a physician, psychiatric services for the  
160 diagnosis and treatment of mentally ill persons.

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

166 (iv) "Skilled nursing facility" means an  
167 institution or a distinct part of an institution which is  
168 primarily engaged in providing to inpatients skilled nursing care  
169 and related services for patients who require medical or nursing  
170 care or rehabilitation services for the rehabilitation of injured,  
171 disabled or sick persons.

172 (v) "End stage renal disease (ESRD) facilities"  
173 means kidney disease treatment centers, which includes  
174 freestanding hemodialysis units and limited care facilities. The  
175 term "limited care facility" generally refers to an  
176 off-hospital-premises facility, regardless of whether it is  
177 provider or nonprovider operated, which is engaged primarily in  
178 furnishing maintenance hemodialysis services to stabilized  
179 patients.

180 (vi) "Intermediate care facility" means an

181 institution which provides, on a regular basis, health related  
182 care and services to individuals who do not require the degree of  
183 care and treatment which a hospital or skilled nursing facility is  
184 designed to provide, but who, because of their mental or physical  
185 condition, require health related care and services (above the  
186 level of room and board).

187 (vii) "Ambulatory surgical facility" means a  
188 facility primarily organized or established for the purpose of  
189 performing surgery for outpatients and is a separate identifiable  
190 legal entity from any other health care facility. Such term does  
191 not include the offices of private physicians or dentists, whether  
192 for individual or group practice, and does not include any  
193 abortion facility as defined in Section 41-75-1(e).

194 (viii) "Intermediate care facility for the  
195 mentally retarded" means an intermediate care facility that  
196 provides health or rehabilitative services in a planned program of  
197 activities to the mentally retarded, also including, but not  
198 limited to, cerebral palsy and other conditions covered by the  
199 Federal Developmentally Disabled Assistance and Bill of Rights  
200 Act, Public Law 94-103.

201 (ix) "Home health agency" means a public or  
202 privately owned agency or organization, or a subdivision of such  
203 an agency or organization, properly authorized to conduct business  
204 in Mississippi, which is primarily engaged in providing to  
205 individuals at the written direction of a licensed physician, in  
206 the individual's place of residence, skilled nursing services  
207 provided by or under the supervision of a registered nurse  
208 licensed to practice in Mississippi, and one or more of the  
209 following services or items:

- 210 1. Physical, occupational or speech therapy;
- 211 2. Medical social services;
- 212 3. Part-time or intermittent services of a  
213 home health aide;
- 214 4. Other services as approved by the

215 licensing agency for home health agencies;

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

218                   6. Medical services provided by an intern or  
219 resident-in-training at a hospital under a teaching program of  
220 such hospital.

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

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

230                   (x) "Psychiatric residential treatment facility"  
231 means any nonhospital establishment with permanent licensed  
232 facilities which provides a twenty-four-hour program of care by  
233 qualified therapists including, but not limited to, duly licensed  
234 mental health professionals, psychiatrists, psychologists,  
235 psychotherapists and licensed certified social workers, for  
236 emotionally disturbed children and adolescents referred to such  
237 facility by a court, local school district or by the Department of  
238 Human Services, who are not in an acute phase of illness requiring  
239 the services of a psychiatric hospital, and are in need of such  
240 restorative treatment services. For purposes of this paragraph,  
241 the term "emotionally disturbed" means a condition exhibiting one  
242 or more of the following characteristics over a long period of  
243 time and to a marked degree, which adversely affects educational  
244 performance:

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

247                   2. An inability to build or maintain  
248 satisfactory relationships with peers and teachers;

249                   3. Inappropriate types of behavior or  
250 feelings under normal circumstances;  
251                   4. A general pervasive mood of unhappiness or  
252 depression; or  
253                   5. A tendency to develop physical symptoms or  
254 fears associated with personal or school problems. An  
255 establishment furnishing primarily domiciliary care is not within  
256 this definition.

257                   (xi) "Pediatric skilled nursing facility" means an  
258 institution or a distinct part of an institution that is primarily  
259 engaged in providing to inpatients skilled nursing care and  
260 related services for persons under twenty-one (21) years of age  
261 who require medical or nursing care or rehabilitation services for  
262 the rehabilitation of injured, disabled or sick persons.

263                   (xii) "Long-term care hospital" means a  
264 freestanding, Medicare-certified hospital that has an average  
265 length of inpatient stay greater than twenty-five (25) days, which  
266 is primarily engaged in providing chronic or long-term medical  
267 care to patients who do not require more than three (3) hours of  
268 rehabilitation or comprehensive rehabilitation per day, and has a  
269 transfer agreement with an acute care medical center and a  
270 comprehensive medical rehabilitation facility. Long-term care  
271 hospitals shall not use rehabilitation, comprehensive medical  
272 rehabilitation, medical rehabilitation, sub-acute rehabilitation,  
273 nursing home, skilled nursing facility, or sub-acute care facility  
274 in association with its name.

275                   (xiii) "Comprehensive medical rehabilitation  
276 facility" means a hospital or hospital unit that is licensed  
277 and/or certified as a comprehensive medical rehabilitation  
278 facility which provides specialized programs that are accredited  
279 by the Commission on Accreditation of Rehabilitation Facilities  
280 and supervised by a physician board certified or board eligible in  
281 Physiatry or other doctor of medicine or osteopathy with at least  
282 two (2) years of training in the medical direction of a



283 comprehensive rehabilitation program that:

- 284 1. Includes evaluation and treatment of  
285 individuals with physical disabilities;
- 286 2. Emphasizes education and training of  
287 individuals with disabilities;
- 288 3. Incorporates at least the following core  
289 disciplines:
  - 290 (i) Physical Therapy;
  - 291 (ii) Occupational Therapy;
  - 292 (iii) Speech and Language Therapy;
  - 293 (iv) Rehabilitation Nursing; and
- 294 4. Incorporates at least three (3) of the  
295 following disciplines:
  - 296 (i) Psychology;
  - 297 (ii) Audiology;
  - 298 (iii) Respiratory Therapy;
  - 299 (iv) Therapeutic Recreation;
  - 300 (v) Orthotics;
  - 301 (vi) Prosthetics;
  - 302 (vii) Special Education;
  - 303 (viii) Vocational Rehabilitation;
  - 304 (ix) Psychotherapy;
  - 305 (x) Social Work;
  - 306 (xi) Rehabilitation Engineering.

307 These specialized programs include, but are not limited to:  
308 spinal cord injury programs, head injury programs and infant and  
309 early childhood development programs.

310 (i) "Health maintenance organization" or "HMO" means a  
311 public or private organization organized under the laws of this  
312 state or the federal government which:

- 313 (i) Provides or otherwise makes available to  
314 enrolled participants health care services, including  
315 substantially the following basic health care services: usual  
316 physician services, hospitalization, laboratory, x-ray, emergency

317 and preventive services, and out-of-area coverage;

318 (ii) Is compensated (except for copayments) for  
319 the provision of the basic health care services listed in  
320 subparagraph (i) of this paragraph to enrolled participants on a  
321 predetermined basis; and

322 (iii) Provides physician services primarily:

323 1. Directly through physicians who are either  
324 employees or partners of such organization; or

325 2. Through arrangements with individual  
326 physicians or one or more groups of physicians (organized on a  
327 group practice or individual practice basis).

328 (j) "Health service area" means a geographic area of  
329 the state designated in the State Health Plan as the area to be  
330 used in planning for specified health facilities and services and  
331 to be used when considering certificate of need applications to  
332 provide health facilities and services.

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

336 (l) "Institutional health services" shall mean health  
337 services provided in or through health care facilities and shall  
338 include the entities in or through which such services are  
339 provided.

340 (m) "Major medical equipment" means medical equipment  
341 designed for providing medical or any health related service which  
342 costs in excess of One Million Dollars (\$1,000,000.00). However,  
343 this definition shall not be applicable to clinical laboratories  
344 if they are determined by the State Department of Health to be  
345 independent of any physician's office, hospital or other health  
346 care facility or otherwise not so defined by federal or state law,  
347 or rules and regulations promulgated thereunder.

348 (n) "State Department of Health" shall mean the state  
349 agency created under Section 41-3-15, which shall be considered to  
350 be the State Health Planning and Development Agency, as defined in

351 paragraph (t) of this section.

352 (o) "Offer," when used in connection with health  
353 services, means that it has been determined by the State  
354 Department of Health that the health care facility is capable of  
355 providing specified health services.

356 (p) "Person" means an individual, a trust or estate,  
357 partnership, corporation (including associations, joint stock  
358 companies and insurance companies), the state or a political  
359 subdivision or instrumentality of the state.

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

364 (r) "Secretary" means the Secretary of Health and Human  
365 Services, and any officer or employee of the Department of Health  
366 and Human Services to whom the authority involved has been  
367 delegated.

368 (s) "State Health Plan" means the sole and official  
369 statewide health plan for Mississippi which identifies priority  
370 state health needs and establishes standards and criteria for  
371 health-related activities which require certificate of need review  
372 in compliance with Section 41-7-191.

373 (t) "State Health Planning and Development Agency"  
374 means the agency of state government designated to perform health  
375 planning and resource development programs for the State of  
376 Mississippi.

377 (u) "Preventive care services" means nonclinically  
378 related services that are provided in an effort to educate, teach  
379 or train individuals how to avoid, eliminate, lessen or correct  
380 certain illnesses, sicknesses, diseases or other debilitating or  
381 unhealthy conditions and specifically excludes health services as  
382 defined in paragraph (k) of this section.

383 SECTION 2. Section 41-7-191, Mississippi Code of 1972, is  
384 amended as follows:

385 41-7-191. (1) No person shall engage in any of the  
386 following activities without obtaining the required certificate of  
387 need:

388 (a) The construction, development or other  
389 establishment of a new health care facility;

390 (b) The relocation of a health care facility or portion  
391 thereof, or major medical equipment, unless such relocation of a  
392 health care facility or portion thereof, or major medical  
393 equipment, which does not involve a capital expenditure by or on  
394 behalf of a health care facility, is within one thousand three  
395 hundred twenty (1,320) linear feet from the main entrance of the  
396 health care facility;

397 (c) A change over a period of two (2) years' time, as  
398 established by the State Department of Health, in existing bed  
399 complement through the addition of more than ten (10) beds or more  
400 than ten percent (10%) of the total bed capacity of a designated  
401 licensed category or subcategory of any health care facility,  
402 whichever is less, from one physical facility or site to another;  
403 the conversion over a period of two (2) years' time, as  
404 established by the State Department of Health, of existing bed  
405 complement of more than ten (10) beds or more than ten percent  
406 (10%) of the total bed capacity of a designated licensed category  
407 or subcategory of any such health care facility, whichever is  
408 less; or the alteration, modernizing or refurbishing of any unit  
409 or department wherein such beds may be located; \* \* \* however,  
410 \* \* \* from and after July 1, 1994, no health care facility shall  
411 be authorized to add any beds or convert any beds to another  
412 category of beds without a certificate of need under the authority  
413 of subsection (1)(c) of this section unless there is a projected  
414 need for such beds in the planning district in which the facility  
415 is located, as reported in the most current State Health Plan;

416 (d) Offering of the following health services if those  
417 services have not been provided on a regular basis by the proposed  
418 provider of such services within the period of twelve (12) months

419 prior to the time such services would be offered:

420 (i) Open heart surgery services;

421 (ii) Cardiac catheterization services;

422 (iii) Comprehensive inpatient rehabilitation  
423 services;

424 (iv) Licensed psychiatric services;

425 (v) Licensed chemical dependency services;

426 (vi) Radiation therapy services;

427 (vii) Diagnostic imaging services of an invasive  
428 nature, i.e. invasive digital angiography;

429 (viii) Nursing home care as defined in  
430 subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);

431 (ix) Home health services;

432 (x) Swing-bed services;

433 (xi) Ambulatory surgical services;

434 (xii) Magnetic resonance imaging services;

435 (xiii) Extracorporeal shock wave lithotripsy  
436 services;

437 (xiv) Long-term care hospital services;

438 (xv) Positron Emission Tomography (PET) Services;

439 (e) The relocation of one or more health services from  
440 one physical facility or site to another physical facility or  
441 site, unless such relocation, which does not involve a capital  
442 expenditure by or on behalf of a health care facility, (i) is to a  
443 physical facility or site within one thousand three hundred twenty  
444 (1,320) feet from the main entrance of the health care facility  
445 where the health care service is located, or (ii) is the result of  
446 an order of a court of appropriate jurisdiction or a result of  
447 pending litigation in such court, or by order of the State  
448 Department of Health, or by order of any other agency or legal  
449 entity of the state, the federal government, or any political  
450 subdivision of either, whose order is also approved by the State  
451 Department of Health;

452 (f) The acquisition or otherwise control of any major

453 medical equipment for the provision of medical services; \* \* \*  
454 however, (i) the acquisition of any major medical equipment used  
455 only for research purposes, and (ii) the acquisition of new major  
456 medical equipment to replace medical equipment for which a  
457 facility is already providing medical services and for which the  
458 State Department of Health has been notified before the date of  
459 such acquisition shall be exempt from this paragraph; an  
460 acquisition for less than fair market value must be reviewed, if  
461 the acquisition at fair market value would be subject to review;

462 (g) Changes of ownership of existing health care  
463 facilities in which a notice of intent is not filed with the State  
464 Department of Health at least thirty (30) days prior to the date  
465 such change of ownership occurs, or a change in services or bed  
466 capacity as prescribed in paragraph (c) or (d) of this subsection  
467 as a result of the change of ownership; an acquisition for less  
468 than fair market value must be reviewed, if the acquisition at  
469 fair market value would be subject to review;

470 (h) The change of ownership of any health care facility  
471 defined in subparagraphs (iv), (vi) and (viii) of Section  
472 41-7-173(h), in which a notice of intent as described in paragraph  
473 (g) has not been filed and if the Executive Director, Division of  
474 Medicaid, Office of the Governor, has not certified in writing  
475 that there will be no increase in allowable costs to Medicaid from  
476 revaluation of the assets or from increased interest and  
477 depreciation as a result of the proposed change of ownership;

478 (i) Any activity described in paragraphs (a) through  
479 (h) if undertaken by any person if that same activity would  
480 require certificate of need approval if undertaken by a health  
481 care facility;

482 (j) Any capital expenditure or deferred capital  
483 expenditure by or on behalf of a health care facility not covered  
484 by paragraphs (a) through (h);

485 (k) The contracting of a health care facility as  
486 defined in subparagraphs (i) through (viii) of Section 41-7-173(h)

487 to establish a home office, subunit, or branch office in the space  
488 operated as a health care facility through a formal arrangement  
489 with an existing health care facility as defined in subparagraph  
490 (ix) of Section 41-7-173(h).

491 (2) The State Department of Health shall not grant approval  
492 for or issue a certificate of need to any person proposing the new  
493 construction of, addition to, or expansion of any health care  
494 facility defined in subparagraphs (iv) (skilled nursing facility)  
495 and (vi) (intermediate care facility) of Section 41-7-173(h) or  
496 the conversion of vacant hospital beds to provide skilled or  
497 intermediate nursing home care, except as hereinafter authorized:

498 (a) The total number of nursing home beds as defined in  
499 subparagraphs (iv) and (vi) of Section 41-7-173(h) which may be  
500 authorized by such certificates of need issued during the period  
501 beginning on July 1, 1989, and ending on June 30, 1999, shall not  
502 exceed one thousand four hundred seventy (1,470) beds. The number  
503 of nursing home beds authorized under paragraphs (z), (cc), (dd),  
504 (ee) and (ff) of this subsection (2) shall not be counted in the  
505 limit on the total number of beds provided for in this paragraph  
506 (a).

507 (b) The department may issue a certificate of need to  
508 any of the hospitals in the state which have a distinct part  
509 component of the hospital that was constructed for extended care  
510 use (nursing home care) but is not currently licensed to provide  
511 nursing home care, which certificate of need will authorize the  
512 distinct part component to be operated to provide nursing home  
513 care after a license is obtained. The six (6) hospitals which  
514 currently have these distinct part components and which are  
515 eligible for a certificate of need under this section are:  
516 Webster General Hospital in Webster County, Tippah County General  
517 Hospital in Tippah County, Tishomingo County Hospital in  
518 Tishomingo County, North Sunflower County Hospital in Sunflower  
519 County, H.C. Watkins Hospital in Clarke County and Northwest  
520 Regional Medical Center in Coahoma County. Because the facilities

521 to be considered currently exist and no new construction is  
522 required, the provision of Section 41-7-193(1) regarding  
523 substantial compliance with the projection of need as reported in  
524 the 1989 State Health Plan is waived. The total number of nursing  
525 home care beds that may be authorized by certificates of need  
526 issued under this paragraph shall not exceed one hundred  
527 fifty-four (154) beds.

528 (c) The department may issue a certificate of need to  
529 any person proposing the new construction of any health care  
530 facility defined in subparagraphs (iv) and (vi) of Section  
531 41-7-173(h) as part of a life care retirement facility, in any  
532 county bordering on the Gulf of Mexico in which is located a  
533 National Aeronautics and Space Administration facility, not to  
534 exceed forty (40) beds, provided that the owner of the health care  
535 facility on July 1, 1994, agrees in writing that no more than  
536 twenty (20) of the beds in the health care facility will be  
537 certified for participation in the Medicaid program (Section  
538 43-13-101 et seq.), and that no claim will be submitted for  
539 Medicaid reimbursement for more than twenty (20) patients in the  
540 health care facility in any day or for any patient in the health  
541 care facility who is in a bed that is not Medicaid-certified.  
542 This written agreement by the owner of the health care facility on  
543 July 1, 1994, shall be fully binding on any subsequent owner of  
544 the health care facility if the ownership of the health care  
545 facility is transferred at any time after July 1, 1994. After  
546 this written agreement is executed, the Division of Medicaid and  
547 the State Department of Health shall not certify more than twenty  
548 (20) of the beds in the health care facility for participation in  
549 the Medicaid program. If the health care facility violates the  
550 terms of the written agreement by admitting or keeping in the  
551 health care facility on a regular or continuing basis more than  
552 twenty (20) patients who are participating in the Medicaid  
553 program, the State Department of Health shall revoke the license  
554 of the health care facility, at the time that the department



555 determines, after a hearing complying with due process, that the  
556 health care facility has violated the terms of the written  
557 agreement as provided in this paragraph.

558 (d) The department may issue a certificate of need for  
559 the conversion of existing beds in a county district hospital or  
560 in a personal care home in Holmes County to provide nursing home  
561 care in the county. Because the facilities to be considered  
562 currently exist, no new construction shall be authorized by such  
563 certificate of need. Because the facilities to be considered  
564 currently exist and no new construction is required, the provision  
565 of Section 41-7-193(1) regarding substantial compliance with the  
566 projection of need as reported in the 1989 State Health Plan is  
567 waived. The total number of nursing home care beds that may be  
568 authorized by any certificate of need issued under this paragraph  
569 shall not exceed sixty (60) beds.

570 (e) The department may issue a certificate of need for  
571 the conversion of existing hospital beds to provide nursing home  
572 care in a county hospital in Jasper County that has its own  
573 licensed nursing home located adjacent to the hospital. The total  
574 number of nursing home care beds that may be authorized by any  
575 certificate of need issued under this paragraph shall not exceed  
576 twenty (20) beds.

577 (f) The department may issue a certificate of need for  
578 the conversion of existing hospital beds in a hospital in Calhoun  
579 County to provide nursing home care in the county. The total  
580 number of nursing home care beds that may be authorized by any  
581 certificate of need issued under this paragraph shall not exceed  
582 twenty (20) beds.

583 (g) The department may issue a certificate of need for  
584 the conversion of existing hospital beds to provide nursing home  
585 care, not to exceed twenty-five (25) beds, in George County.

586 (h) Provided all criteria specified in the 1989 State  
587 Health Plan are met and the proposed nursing home is within no  
588 more than a fifteen-minute transportation time to an existing

589 hospital, the department may issue a certificate of need for the  
590 construction of one (1) sixty-bed nursing home in Benton County.

591 (i) The department may issue a certificate of need to  
592 provide nursing home care in Neshoba County, not to exceed a total  
593 of twenty (20) beds. The provision of Section 41-7-193(1)  
594 regarding substantial compliance with the projection of need as  
595 reported in the current State Health Plan is waived for the  
596 purposes of this paragraph.

597 (j) The department may issue certificates of need on a  
598 pilot-program basis for county-owned hospitals in Kemper and  
599 Chickasaw Counties to convert vacant hospital beds to nursing home  
600 beds, not to exceed fifty (50) beds statewide.

601 (k) The department may issue certificates of need in  
602 Harrison County to provide skilled nursing home care for  
603 Alzheimer's Disease patients and other patients, not to exceed one  
604 hundred fifty (150) beds, provided that (i) the owner of the  
605 health care facility issued a certificate of need for sixty (60)  
606 beds agrees in writing that no more than thirty (30) of the beds  
607 in the health care facility will be certified for participation in  
608 the Medicaid program (Section 43-13-101 et seq.), (ii) the owner  
609 of one (1) of the health care facilities issued a certificate of  
610 need for forty-five (45) beds agrees in writing that no more than  
611 twenty-three (23) of the beds in the health care facility will be  
612 certified for participation in the Medicaid program, and (iii) the  
613 owner of the other health care facility issued a certificate of  
614 need for forty-five (45) beds agrees in writing that no more than  
615 twenty-two (22) of the beds in the health care facility will be  
616 certified for participation in the Medicaid program, and that no  
617 claim will be submitted for Medicaid reimbursement for a number of  
618 patients in the health care facility in any day that is greater  
619 than the number of beds certified for participation in the  
620 Medicaid program or for any patient in the health care facility  
621 who is in a bed that is not Medicaid-certified. These written  
622 agreements by the owners of the health care facilities on July 1,

623 1995, shall be fully binding on any subsequent owner of any of the  
624 health care facilities if the ownership of any of the health care  
625 facilities is transferred at any time after July 1, 1995. After  
626 these written agreements are executed, the Division of Medicaid  
627 and the State Department of Health shall not certify for  
628 participation in the Medicaid program more than the number of beds  
629 authorized for participation in the Medicaid program under this  
630 paragraph (k) for each respective facility. If any of the health  
631 care facilities violates the terms of the written agreement by  
632 admitting or keeping in the health care facility on a regular or  
633 continuing basis a number of patients that is greater than the  
634 number of beds certified for participation in the Medicaid  
635 program, the State Department of Health shall revoke the license  
636 of the health care facility, at the time that the department  
637 determines, after a hearing complying with due process, that the  
638 health care facility has violated the terms of the written  
639 agreement as provided in this paragraph.

640 (l) The department may issue certificates of need for  
641 the new construction of, addition to, or expansion of any skilled  
642 nursing facility or intermediate care facility in Jackson County,  
643 not to exceed a total of sixty (60) beds.

644 (m) The department may issue a certificate of need for  
645 the new construction of, addition to, or expansion of a nursing  
646 home, or the conversion of existing hospital beds to provide  
647 nursing home care, in Hancock County. The total number of nursing  
648 home care beds that may be authorized by any certificate of need  
649 issued under this paragraph shall not exceed sixty (60) beds.

650 (n) The department may issue a certificate of need to  
651 any intermediate care facility as defined in Section  
652 41-7-173(h)(vi) in Marion County which has fewer than sixty (60)  
653 beds, for making additions to or expansion or replacement of the  
654 existing facility in order to increase the number of its beds to  
655 not more than sixty (60) beds. For the purposes of this  
656 paragraph, the provision of Section 41-7-193(1) requiring

657 substantial compliance with the projection of need as reported in  
658 the current State Health Plan is waived. The total number of  
659 nursing home beds that may be authorized by any certificate of  
660 need issued under this paragraph shall not exceed twenty-five (25)  
661 beds.

662 (o) The department may issue a certificate of need for  
663 the conversion of nursing home beds, not to exceed thirteen (13)  
664 beds, in Winston County. The provision of Section 41-7-193(1)  
665 regarding substantial compliance with the projection of need as  
666 reported in the current State Health Plan is hereby waived as to  
667 such construction or expansion.

668 (p) The department shall issue a certificate of need  
669 for the construction, expansion or conversion of nursing home  
670 care, not to exceed thirty-three (33) beds, in Pontotoc County.  
671 The provisions of Section 41-7-193(1) regarding substantial  
672 compliance with the projection of need as reported in the current  
673 State Health Plan are hereby waived as to such construction,  
674 expansion or conversion.

675 (q) The department may issue a certificate of need for  
676 the construction of a pediatric skilled nursing facility in  
677 Harrison County, not to exceed sixty (60) new beds. For the  
678 purposes of this paragraph, the provision of Section 41-7-193(1)  
679 requiring substantial compliance with the projection of need as  
680 reported in the current State Health Plan is waived.

681 (r) The department may issue a certificate of need for  
682 the addition to or expansion of any skilled nursing facility that  
683 is part of an existing continuing care retirement community  
684 located in Madison County, provided that the recipient of the  
685 certificate of need agrees in writing that the skilled nursing  
686 facility will not at any time participate in the Medicaid program  
687 (Section 43-13-101 et seq.) or admit or keep any patients in the  
688 skilled nursing facility who are participating in the Medicaid  
689 program. This written agreement by the recipient of the  
690 certificate of need shall be fully binding on any subsequent owner

691 of the skilled nursing facility, if the ownership of the facility  
692 is transferred at any time after the issuance of the certificate  
693 of need. Agreement that the skilled nursing facility will not  
694 participate in the Medicaid program shall be a condition of the  
695 issuance of a certificate of need to any person under this  
696 paragraph (r), and if such skilled nursing facility at any time  
697 after the issuance of the certificate of need, regardless of the  
698 ownership of the facility, participates in the Medicaid program or  
699 admits or keeps any patients in the facility who are participating  
700 in the Medicaid program, the State Department of Health shall  
701 revoke the certificate of need, if it is still outstanding, and  
702 shall deny or revoke the license of the skilled nursing facility,  
703 at the time that the department determines, after a hearing  
704 complying with due process, that the facility has failed to comply  
705 with any of the conditions upon which the certificate of need was  
706 issued, as provided in this paragraph and in the written agreement  
707 by the recipient of the certificate of need. The total number of  
708 beds that may be authorized under the authority of this paragraph  
709 (r) shall not exceed sixty (60) beds.

710 (s) The State Department of Health may issue a  
711 certificate of need to any hospital located in DeSoto County for  
712 the new construction of a skilled nursing facility, not to exceed  
713 one hundred twenty (120) beds, in DeSoto County, provided that the  
714 recipient of the certificate of need agrees in writing that no  
715 more than thirty (30) of the beds in the skilled nursing facility  
716 will be certified for participation in the Medicaid program  
717 (Section 43-13-101 et seq.), and that no claim will be submitted  
718 for Medicaid reimbursement for more than thirty (30) patients in  
719 the facility in any day or for any patient in the facility who is  
720 in a bed that is not Medicaid-certified. This written agreement  
721 by the recipient of the certificate of need shall be a condition  
722 of the issuance of the certificate of need under this paragraph,  
723 and the agreement shall be fully binding on any subsequent owner  
724 of the skilled nursing facility if the ownership of the facility

725 is transferred at any time after the issuance of the certificate  
726 of need. After this written agreement is executed, the Division  
727 of Medicaid and the State Department of Health shall not certify  
728 more than thirty (30) of the beds in the skilled nursing facility  
729 for participation in the Medicaid program. If the skilled nursing  
730 facility violates the terms of the written agreement by admitting  
731 or keeping in the facility on a regular or continuing basis more  
732 than thirty (30) patients who are participating in the Medicaid  
733 program, the State Department of Health shall revoke the license  
734 of the facility, at the time that the department determines, after  
735 a hearing complying with due process, that the facility has  
736 violated the condition upon which the certificate of need was  
737 issued, as provided in this paragraph and in the written  
738 agreement. If the skilled nursing facility authorized by the  
739 certificate of need issued under this paragraph is not constructed  
740 and fully operational within eighteen (18) months after July 1,  
741 1994, the State Department of Health, after a hearing complying  
742 with due process, shall revoke the certificate of need, if it is  
743 still outstanding, and shall not issue a license for the facility  
744 at any time after the expiration of the eighteen-month period.

745 (t) The State Department of Health may issue a  
746 certificate of need for the construction of a nursing facility or  
747 the conversion of beds to nursing facility beds at a personal care  
748 facility for the elderly in Lowndes County that is owned and  
749 operated by a Mississippi nonprofit corporation, not to exceed  
750 sixty (60) beds, provided that the recipient of the certificate of  
751 need agrees in writing that no more than thirty (30) of the beds  
752 at the facility will be certified for participation in the  
753 Medicaid program (Section 43-13-101 et seq.), and that no claim  
754 will be submitted for Medicaid reimbursement for more than thirty  
755 (30) patients in the facility in any month or for any patient in  
756 the facility who is in a bed that is not Medicaid-certified. This  
757 written agreement by the recipient of the certificate of need  
758 shall be a condition of the issuance of the certificate of need

759 under this paragraph, and the agreement shall be fully binding on  
760 any subsequent owner of the facility if the ownership of the  
761 facility is transferred at any time after the issuance of the  
762 certificate of need. After this written agreement is executed,  
763 the Division of Medicaid and the State Department of Health shall  
764 not certify more than thirty (30) of the beds in the facility for  
765 participation in the Medicaid program. If the facility violates  
766 the terms of the written agreement by admitting or keeping in the  
767 facility on a regular or continuing basis more than thirty (30)  
768 patients who are participating in the Medicaid program, the State  
769 Department of Health shall revoke the license of the facility, at  
770 the time that the department determines, after a hearing complying  
771 with due process, that the facility has violated the condition  
772 upon which the certificate of need was issued, as provided in this  
773 paragraph and in the written agreement. If the nursing facility  
774 or nursing facility beds authorized by the certificate of need  
775 issued under this paragraph are not constructed or converted and  
776 fully operational within eighteen (18) months after July 1, 1994,  
777 the State Department of Health, after a hearing complying with due  
778 process, shall revoke the certificate of need, if it is still  
779 outstanding, and shall not issue a license for the nursing  
780 facility or nursing facility beds at any time after the expiration  
781 of the eighteen-month period.

782 (u) The State Department of Health may issue a  
783 certificate of need for conversion of a county hospital facility  
784 in Itawamba County to a nursing facility, not to exceed sixty (60)  
785 beds, including any necessary construction, renovation or  
786 expansion, provided that the recipient of the certificate of need  
787 agrees in writing that no more than thirty (30) of the beds at the  
788 facility will be certified for participation in the Medicaid  
789 program (Section 43-13-101 et seq.), and that no claim will be  
790 submitted for Medicaid reimbursement for more than thirty (30)  
791 patients in the facility in any day or for any patient in the  
792 facility who is in a bed that is not Medicaid-certified. This

793 written agreement by the recipient of the certificate of need  
794 shall be a condition of the issuance of the certificate of need  
795 under this paragraph, and the agreement shall be fully binding on  
796 any subsequent owner of the facility if the ownership of the  
797 facility is transferred at any time after the issuance of the  
798 certificate of need. After this written agreement is executed,  
799 the Division of Medicaid and the State Department of Health shall  
800 not certify more than thirty (30) of the beds in the facility for  
801 participation in the Medicaid program. If the facility violates  
802 the terms of the written agreement by admitting or keeping in the  
803 facility on a regular or continuing basis more than thirty (30)  
804 patients who are participating in the Medicaid program, the State  
805 Department of Health shall revoke the license of the facility, at  
806 the time that the department determines, after a hearing complying  
807 with due process, that the facility has violated the condition  
808 upon which the certificate of need was issued, as provided in this  
809 paragraph and in the written agreement. If the beds authorized by  
810 the certificate of need issued under this paragraph are not  
811 converted to nursing facility beds and fully operational within  
812 eighteen (18) months after July 1, 1994, the State Department of  
813 Health, after a hearing complying with due process, shall revoke  
814 the certificate of need, if it is still outstanding, and shall not  
815 issue a license for the facility at any time after the expiration  
816 of the eighteen-month period.

817 (v) The State Department of Health may issue a  
818 certificate of need for the construction or expansion of nursing  
819 facility beds or the conversion of other beds to nursing facility  
820 beds in either Hinds, Madison or Rankin Counties, not to exceed  
821 sixty (60) beds, provided that the recipient of the certificate of  
822 need agrees in writing that no more than thirty (30) of the beds  
823 at the nursing facility will be certified for participation in the  
824 Medicaid program (Section 43-13-101 et seq.), and that no claim  
825 will be submitted for Medicaid reimbursement for more than thirty  
826 (30) patients in the nursing facility in any day or for any



827 patient in the nursing facility who is in a bed that is not  
828 Medicaid-certified. This written agreement by the recipient of  
829 the certificate of need shall be a condition of the issuance of  
830 the certificate of need under this paragraph, and the agreement  
831 shall be fully binding on any subsequent owner of the nursing  
832 facility if the ownership of the nursing facility is transferred  
833 at any time after the issuance of the certificate of need. After  
834 this written agreement is executed, the Division of Medicaid and  
835 the State Department of Health shall not certify more than thirty  
836 (30) of the beds in the nursing facility for participation in the  
837 Medicaid program. If the nursing facility violates the terms of  
838 the written agreement by admitting or keeping in the nursing  
839 facility on a regular or continuing basis more than thirty (30)  
840 patients who are participating in the Medicaid program, the State  
841 Department of Health shall revoke the license of the nursing  
842 facility, at the time that the department determines, after a  
843 hearing complying with due process, that the nursing facility has  
844 violated the condition upon which the certificate of need was  
845 issued, as provided in this paragraph and in the written  
846 agreement. If the nursing facility or nursing facility beds  
847 authorized by the certificate of need issued under this paragraph  
848 are not constructed, expanded or converted and fully operational  
849 within thirty-six (36) months after July 1, 1994, the State  
850 Department of Health, after a hearing complying with due process,  
851 shall revoke the certificate of need, if it is still outstanding,  
852 and shall not issue a license for the nursing facility or nursing  
853 facility beds at any time after the expiration of the  
854 thirty-six-month period.

855 (w) The State Department of Health may issue a  
856 certificate of need for the construction or expansion of nursing  
857 facility beds or the conversion of other beds to nursing facility  
858 beds in either Hancock, Harrison or Jackson Counties, not to  
859 exceed sixty (60) beds, provided that the recipient of the  
860 certificate of need agrees in writing that no more than thirty

861 (30) of the beds at the nursing facility will be certified for  
862 participation in the Medicaid program (Section 43-13-101 et seq.),  
863 and that no claim will be submitted for Medicaid reimbursement for  
864 more than thirty (30) patients in the nursing facility in any day  
865 or for any patient in the nursing facility who is in a bed that is  
866 not Medicaid-certified. This written agreement by the recipient  
867 of the certificate of need shall be a condition of the issuance of  
868 the certificate of need under this paragraph, and the agreement  
869 shall be fully binding on any subsequent owner of the nursing  
870 facility if the ownership of the nursing facility is transferred  
871 at any time after the issuance of the certificate of need. After  
872 this written agreement is executed, the Division of Medicaid and  
873 the State Department of Health shall not certify more than thirty  
874 (30) of the beds in the nursing facility for participation in the  
875 Medicaid program. If the nursing facility violates the terms of  
876 the written agreement by admitting or keeping in the nursing  
877 facility on a regular or continuing basis more than thirty (30)  
878 patients who are participating in the Medicaid program, the State  
879 Department of Health shall revoke the license of the nursing  
880 facility, at the time that the department determines, after a  
881 hearing complying with due process, that the nursing facility has  
882 violated the condition upon which the certificate of need was  
883 issued, as provided in this paragraph and in the written  
884 agreement. If the nursing facility or nursing facility beds  
885 authorized by the certificate of need issued under this paragraph  
886 are not constructed, expanded or converted and fully operational  
887 within thirty-six (36) months after July 1, 1994, the State  
888 Department of Health, after a hearing complying with due process,  
889 shall revoke the certificate of need, if it is still outstanding,  
890 and shall not issue a license for the nursing facility or nursing  
891 facility beds at any time after the expiration of the  
892 thirty-six-month period.

893 (x) The department may issue a certificate of need for  
894 the new construction of a skilled nursing facility in Leake

895 County, provided that the recipient of the certificate of need  
896 agrees in writing that the skilled nursing facility will not at  
897 any time participate in the Medicaid program (Section 43-13-101 et  
898 seq.) or admit or keep any patients in the skilled nursing  
899 facility who are participating in the Medicaid program. This  
900 written agreement by the recipient of the certificate of need  
901 shall be fully binding on any subsequent owner of the skilled  
902 nursing facility, if the ownership of the facility is transferred  
903 at any time after the issuance of the certificate of need.  
904 Agreement that the skilled nursing facility will not participate  
905 in the Medicaid program shall be a condition of the issuance of a  
906 certificate of need to any person under this paragraph (x), and if  
907 such skilled nursing facility at any time after the issuance of  
908 the certificate of need, regardless of the ownership of the  
909 facility, participates in the Medicaid program or admits or keeps  
910 any patients in the facility who are participating in the Medicaid  
911 program, the State Department of Health shall revoke the  
912 certificate of need, if it is still outstanding, and shall deny or  
913 revoke the license of the skilled nursing facility, at the time  
914 that the department determines, after a hearing complying with due  
915 process, that the facility has failed to comply with any of the  
916 conditions upon which the certificate of need was issued, as  
917 provided in this paragraph and in the written agreement by the  
918 recipient of the certificate of need. The provision of Section  
919 43-7-193(1) regarding substantial compliance of the projection of  
920 need as reported in the current State Health Plan is waived for  
921 the purposes of this paragraph. The total number of nursing  
922 facility beds that may be authorized by any certificate of need  
923 issued under this paragraph (x) shall not exceed sixty (60) beds.  
924 If the skilled nursing facility authorized by the certificate of  
925 need issued under this paragraph is not constructed and fully  
926 operational within eighteen (18) months after July 1, 1994, the  
927 State Department of Health, after a hearing complying with due  
928 process, shall revoke the certificate of need, if it is still

929 outstanding, and shall not issue a license for the skilled nursing  
930 facility at any time after the expiration of the eighteen-month  
931 period.

932           (y) The department may issue a certificate of need in  
933 Jones County for making additions to or expansion or replacement  
934 of an existing forty-bed facility in order to increase the number  
935 of its beds to not more than sixty (60) beds. For the purposes of  
936 this paragraph, the provision of Section 41-7-193(1) requiring  
937 substantial compliance with the projection of need as reported in  
938 the current State Health Plan is waived. The total number of  
939 nursing home beds that may be authorized by any certificate of  
940 need issued under this paragraph shall not exceed twenty (20)  
941 beds.

942           (z) The department may issue certificates of need to  
943 allow any existing freestanding long-term care facility in  
944 Tishomingo County and Hancock County that on July 1, 1995, is  
945 licensed with fewer than sixty (60) beds to increase the number of  
946 its beds to not more than sixty (60) beds, provided that the  
947 recipient of the certificate of need agrees in writing that none  
948 of the additional beds authorized by this paragraph (z) at the  
949 nursing facility will be certified for participation in the  
950 Medicaid program (Section 43-13-101 et seq.), and that no claim  
951 will be submitted for Medicaid reimbursement in the nursing  
952 facility for a number of patients in the nursing facility in any  
953 day that is greater than the number of licensed beds in the  
954 facility on July 1, 1995. This written agreement by the recipient  
955 of the certificate of need shall be a condition of the issuance of  
956 the certificate of need under this paragraph, and the agreement  
957 shall be fully binding on any subsequent owner of the nursing  
958 facility if the ownership of the nursing facility is transferred  
959 at any time after the issuance of the certificate of need. After  
960 this agreement is executed, the Division of Medicaid and the State  
961 Department of Health shall not certify more beds in the nursing  
962 facility for participation in the Medicaid program than the number

963 of licensed beds in the facility on July 1, 1995. If the nursing  
964 facility violates the terms of the written agreement by admitting  
965 or keeping in the nursing facility on a regular or continuing  
966 basis a number of patients who are participating in the Medicaid  
967 program that is greater than the number of licensed beds in the  
968 facility on July 1, 1995, the State Department of Health shall  
969 revoke the license of the nursing facility, at the time that the  
970 department determines, after a hearing complying with due process,  
971 that the nursing facility has violated the condition upon which  
972 the certificate of need was issued, as provided in this paragraph  
973 and in the written agreement. For the purposes of this paragraph  
974 (z), the provision of Section 41-7-193(1) requiring substantial  
975 compliance with the projection of need as reported in the current  
976 State Health Plan is waived.

977 (aa) The department may issue a certificate of need for  
978 the construction of a nursing facility at a continuing care  
979 retirement community in Lowndes County, provided that the  
980 recipient of the certificate of need agrees in writing that the  
981 nursing facility will not at any time participate in the Medicaid  
982 program (Section 43-13-101 et seq.) or admit or keep any patients  
983 in the nursing facility who are participating in the Medicaid  
984 program. This written agreement by the recipient of the  
985 certificate of need shall be fully binding on any subsequent owner  
986 of the nursing facility, if the ownership of the facility is  
987 transferred at any time after the issuance of the certificate of  
988 need. Agreement that the nursing facility will not participate in  
989 the Medicaid program shall be a condition of the issuance of a  
990 certificate of need to any person under this paragraph (aa), and  
991 if such nursing facility at any time after the issuance of the  
992 certificate of need, regardless of the ownership of the facility,  
993 participates in the Medicaid program or admits or keeps any  
994 patients in the facility who are participating in the Medicaid  
995 program, the State Department of Health shall revoke the  
996 certificate of need, if it is still outstanding, and shall deny or

997 revoke the license of the nursing facility, at the time that the  
998 department determines, after a hearing complying with due process,  
999 that the facility has failed to comply with any of the conditions  
1000 upon which the certificate of need was issued, as provided in this  
1001 paragraph and in the written agreement by the recipient of the  
1002 certificate of need. The total number of beds that may be  
1003 authorized under the authority of this paragraph (aa) shall not  
1004 exceed sixty (60) beds.

1005 (bb) Provided that funds are specifically appropriated  
1006 therefor by the Legislature, the department may issue a  
1007 certificate of need to a rehabilitation hospital in Hinds County  
1008 for the construction of a sixty-bed long-term care nursing  
1009 facility dedicated to the care and treatment of persons with  
1010 severe disabilities including persons with spinal cord and  
1011 closed-head injuries and ventilator-dependent patients. The  
1012 provision of Section 41-7-193(1) regarding substantial compliance  
1013 with projection of need as reported in the current State Health  
1014 Plan is hereby waived for the purpose of this paragraph.

1015 (cc) The State Department of Health may issue a  
1016 certificate of need to a county-owned hospital in the Second  
1017 Judicial District of Panola County for the conversion of not more  
1018 than seventy-two (72) hospital beds to nursing facility beds,  
1019 provided that the recipient of the certificate of need agrees in  
1020 writing that none of the beds at the nursing facility will be  
1021 certified for participation in the Medicaid program (Section  
1022 43-13-101 et seq.), and that no claim will be submitted for  
1023 Medicaid reimbursement in the nursing facility in any day or for  
1024 any patient in the nursing facility. This written agreement by  
1025 the recipient of the certificate of need shall be a condition of  
1026 the issuance of the certificate of need under this paragraph, and  
1027 the agreement shall be fully binding on any subsequent owner of  
1028 the nursing facility if the ownership of the nursing facility is  
1029 transferred at any time after the issuance of the certificate of  
1030 need. After this written agreement is executed, the Division of

1031 Medicaid and the State Department of Health shall not certify any  
1032 of the beds in the nursing facility for participation in the  
1033 Medicaid program. If the nursing facility violates the terms of  
1034 the written agreement by admitting or keeping in the nursing  
1035 facility on a regular or continuing basis any patients who are  
1036 participating in the Medicaid program, the State Department of  
1037 Health shall revoke the license of the nursing facility, at the  
1038 time that the department determines, after a hearing complying  
1039 with due process, that the nursing facility has violated the  
1040 condition upon which the certificate of need was issued, as  
1041 provided in this paragraph and in the written agreement. If the  
1042 certificate of need authorized under this paragraph is not issued  
1043 within twelve (12) months after July 1, 1998, the department shall  
1044 deny the application for the certificate of need and shall not  
1045 issue the certificate of need at any time after the twelve-month  
1046 period, unless the issuance is contested. If the certificate of  
1047 need is issued and substantial construction of the nursing  
1048 facility beds has not commenced within eighteen (18) months after  
1049 July 1, 1998, the State Department of Health, after a hearing  
1050 complying with due process, shall revoke the certificate of need  
1051 if it is still outstanding, and the department shall not issue a  
1052 license for the nursing facility at any time after the  
1053 eighteen-month period. \* \* \* However, \* \* \* if the issuance of  
1054 the certificate of need is contested, the department shall require  
1055 substantial construction of the nursing facility beds within six  
1056 (6) months after final adjudication on the issuance of the  
1057 certificate of need.

1058 (dd) The department may issue a certificate of need for  
1059 the new construction, addition or conversion of skilled nursing  
1060 facility beds in Madison County, provided that the recipient of  
1061 the certificate of need agrees in writing that the skilled nursing  
1062 facility will not at any time participate in the Medicaid program  
1063 (Section 43-13-101 et seq.) or admit or keep any patients in the  
1064 skilled nursing facility who are participating in the Medicaid

1065 program. This written agreement by the recipient of the  
1066 certificate of need shall be fully binding on any subsequent owner  
1067 of the skilled nursing facility, if the ownership of the facility  
1068 is transferred at any time after the issuance of the certificate  
1069 of need. Agreement that the skilled nursing facility will not  
1070 participate in the Medicaid program shall be a condition of the  
1071 issuance of a certificate of need to any person under this  
1072 paragraph (dd), and if such skilled nursing facility at any time  
1073 after the issuance of the certificate of need, regardless of the  
1074 ownership of the facility, participates in the Medicaid program or  
1075 admits or keeps any patients in the facility who are participating  
1076 in the Medicaid program, the State Department of Health shall  
1077 revoke the certificate of need, if it is still outstanding, and  
1078 shall deny or revoke the license of the skilled nursing facility,  
1079 at the time that the department determines, after a hearing  
1080 complying with due process, that the facility has failed to comply  
1081 with any of the conditions upon which the certificate of need was  
1082 issued, as provided in this paragraph and in the written agreement  
1083 by the recipient of the certificate of need. The total number of  
1084 nursing facility beds that may be authorized by any certificate of  
1085 need issued under this paragraph (dd) shall not exceed sixty (60)  
1086 beds. If the certificate of need authorized under this paragraph  
1087 is not issued within twelve (12) months after July 1, 1998, the  
1088 department shall deny the application for the certificate of need  
1089 and shall not issue the certificate of need at any time after the  
1090 twelve-month period, unless the issuance is contested. If the  
1091 certificate of need is issued and substantial construction of the  
1092 nursing facility beds has not commenced within eighteen (18)  
1093 months after July 1, 1998, the State Department of Health, after a  
1094 hearing complying with due process, shall revoke the certificate  
1095 of need if it is still outstanding, and the department shall not  
1096 issue a license for the nursing facility at any time after the  
1097 eighteen-month period. \* \* \* However, \* \* \* if the issuance of  
1098 the certificate of need is contested, the department shall require



1099 substantial construction of the nursing facility beds within six  
1100 (6) months after final adjudication on the issuance of the  
1101 certificate of need.

1102 (ee) The department may issue a certificate of need for  
1103 the new construction, addition or conversion of skilled nursing  
1104 facility beds in Leake County, provided that the recipient of the  
1105 certificate of need agrees in writing that the skilled nursing  
1106 facility will not at any time participate in the Medicaid program  
1107 (Section 43-13-101 et seq.) or admit or keep any patients in the  
1108 skilled nursing facility who are participating in the Medicaid  
1109 program. This written agreement by the recipient of the  
1110 certificate of need shall be fully binding on any subsequent owner  
1111 of the skilled nursing facility, if the ownership of the facility  
1112 is transferred at any time after the issuance of the certificate  
1113 of need. Agreement that the skilled nursing facility will not  
1114 participate in the Medicaid program shall be a condition of the  
1115 issuance of a certificate of need to any person under this  
1116 paragraph (ee), and if such skilled nursing facility at any time  
1117 after the issuance of the certificate of need, regardless of the  
1118 ownership of the facility, participates in the Medicaid program or  
1119 admits or keeps any patients in the facility who are participating  
1120 in the Medicaid program, the State Department of Health shall  
1121 revoke the certificate of need, if it is still outstanding, and  
1122 shall deny or revoke the license of the skilled nursing facility,  
1123 at the time that the department determines, after a hearing  
1124 complying with due process, that the facility has failed to comply  
1125 with any of the conditions upon which the certificate of need was  
1126 issued, as provided in this paragraph and in the written agreement  
1127 by the recipient of the certificate of need. The total number of  
1128 nursing facility beds that may be authorized by any certificate of  
1129 need issued under this paragraph (ee) shall not exceed sixty (60)  
1130 beds. If the certificate of need authorized under this paragraph  
1131 is not issued within twelve (12) months after July 1, 1998, the  
1132 department shall deny the application for the certificate of need

1133 and shall not issue the certificate of need at any time after the  
1134 twelve-month period, unless the issuance is contested. If the  
1135 certificate of need is issued and substantial construction of the  
1136 nursing facility beds has not commenced within eighteen (18)  
1137 months after July 1, 1998, the State Department of Health, after a  
1138 hearing complying with due process, shall revoke the certificate  
1139 of need if it is still outstanding, and the department shall not  
1140 issue a license for the nursing facility at any time after the  
1141 eighteen-month period. \* \* \* However, \* \* \* if the issuance of  
1142 the certificate of need is contested, the department shall require  
1143 substantial construction of the nursing facility beds within six  
1144 (6) months after final adjudication on the issuance of the  
1145 certificate of need.

1146 (ff) The department may issue a certificate of need for  
1147 the construction of a municipally-owned nursing facility within  
1148 the Town of Belmont in Tishomingo County, not to exceed sixty (60)  
1149 beds, provided that the recipient of the certificate of need  
1150 agrees in writing that the skilled nursing facility will not at  
1151 any time participate in the Medicaid program (Section 43-13-101 et  
1152 seq.) or admit or keep any patients in the skilled nursing  
1153 facility who are participating in the Medicaid program. This  
1154 written agreement by the recipient of the certificate of need  
1155 shall be fully binding on any subsequent owner of the skilled  
1156 nursing facility, if the ownership of the facility is transferred  
1157 at any time after the issuance of the certificate of need.

1158 Agreement that the skilled nursing facility will not participate  
1159 in the Medicaid program shall be a condition of the issuance of a  
1160 certificate of need to any person under this paragraph (ff), and  
1161 if such skilled nursing facility at any time after the issuance of  
1162 the certificate of need, regardless of the ownership of the  
1163 facility, participates in the Medicaid program or admits or keeps  
1164 any patients in the facility who are participating in the Medicaid  
1165 program, the State Department of Health shall revoke the  
1166 certificate of need, if it is still outstanding, and shall deny or

1167 revoke the license of the skilled nursing facility, at the time  
1168 that the department determines, after a hearing complying with due  
1169 process, that the facility has failed to comply with any of the  
1170 conditions upon which the certificate of need was issued, as  
1171 provided in this paragraph and in the written agreement by the  
1172 recipient of the certificate of need. The provision of Section  
1173 43-7-193(1) regarding substantial compliance of the projection of  
1174 need as reported in the current State Health Plan is waived for  
1175 the purposes of this paragraph. If the certificate of need  
1176 authorized under this paragraph is not issued within twelve (12)  
1177 months after July 1, 1998, the department shall deny the  
1178 application for the certificate of need and shall not issue the  
1179 certificate of need at any time after the twelve-month period,  
1180 unless the issuance is contested. If the certificate of need is  
1181 issued and substantial construction of the nursing facility beds  
1182 has not commenced within eighteen (18) months after July 1, 1998,  
1183 the State Department of Health, after a hearing complying with due  
1184 process, shall revoke the certificate of need if it is still  
1185 outstanding, and the department shall not issue a license for the  
1186 nursing facility at any time after the eighteen-month period.

1187 \* \* \* However, \* \* \* if the issuance of the certificate of need  
1188 is contested, the department shall require substantial  
1189 construction of the nursing facility beds within six (6) months  
1190 after final adjudication on the issuance of the certificate of  
1191 need.

1192 (3) If the holder of the certificate of need that was issued  
1193 before January 1, 1990, for the construction of a nursing home in  
1194 Claiborne County has not substantially undertaken commencement of  
1195 construction by completing site works and pouring foundations and  
1196 the floor slab of a nursing home in Claiborne County before May 1,  
1197 1990, as determined by the department, then the department shall  
1198 transfer such certificate of need to the Board of Supervisors of  
1199 Claiborne County upon the effective date of this subsection (3).

1200 If the certificate of need is transferred to the board of

1201 supervisors, it shall be valid for a period of twelve (12) months  
1202 and shall authorize the construction of a sixty-bed nursing home  
1203 on county-owned property or the conversion of vacant hospital beds  
1204 in the county hospital not to exceed sixty (60) beds.

1205 (4) The State Department of Health may grant approval for  
1206 and issue certificates of need to any person proposing the new  
1207 construction of, addition to, conversion of beds of or expansion  
1208 of any health care facility defined in subparagraph (x)  
1209 (psychiatric residential treatment facility) of Section  
1210 41-7-173(h). The total number of beds which may be authorized by  
1211 such certificates of need shall not exceed two hundred  
1212 seventy-four (274) beds for the entire state.

1213 (a) Of the total number of beds authorized under this  
1214 subsection, the department shall issue a certificate of need to a  
1215 privately owned psychiatric residential treatment facility in  
1216 Simpson County for the conversion of sixteen (16) intermediate  
1217 care facility for the mentally retarded (ICF-MR) beds to  
1218 psychiatric residential treatment facility beds, provided that  
1219 facility agrees in writing that the facility shall give priority  
1220 for the use of those sixteen (16) beds to Mississippi residents  
1221 who are presently being treated in out-of-state facilities.

1222 (b) Of the total number of beds authorized under this  
1223 subsection, the department may issue a certificate or certificates  
1224 of need for the construction or expansion of psychiatric  
1225 residential treatment facility beds or the conversion of other  
1226 beds to psychiatric residential treatment facility beds in Warren  
1227 County, not to exceed sixty (60) psychiatric residential treatment  
1228 facility beds, provided that the facility agrees in writing that  
1229 no more than thirty (30) of the beds at the psychiatric  
1230 residential treatment facility will be certified for participation  
1231 in the Medicaid program (Section 43-13-101 et seq.) for the use of  
1232 any patients other than those who are participating only in the  
1233 Medicaid program of another state, and that no claim will be  
1234 submitted to the Division of Medicaid for Medicaid reimbursement

1235 for more than thirty (30) patients in the psychiatric residential  
1236 treatment facility in any day or for any patient in the  
1237 psychiatric residential treatment facility who is in a bed that is  
1238 not Medicaid-certified. This written agreement by the recipient  
1239 of the certificate of need shall be a condition of the issuance of  
1240 the certificate of need under this paragraph, and the agreement  
1241 shall be fully binding on any subsequent owner of the psychiatric  
1242 residential treatment facility if the ownership of the facility is  
1243 transferred at any time after the issuance of the certificate of  
1244 need. After this written agreement is executed, the Division of  
1245 Medicaid and the State Department of Health shall not certify more  
1246 than thirty (30) of the beds in the psychiatric residential  
1247 treatment facility for participation in the Medicaid program for  
1248 the use of any patients other than those who are participating  
1249 only in the Medicaid program of another state. If the psychiatric  
1250 residential treatment facility violates the terms of the written  
1251 agreement by admitting or keeping in the facility on a regular or  
1252 continuing basis more than thirty (30) patients who are  
1253 participating in the Mississippi Medicaid program, the State  
1254 Department of Health shall revoke the license of the facility, at  
1255 the time that the department determines, after a hearing complying  
1256 with due process, that the facility has violated the condition  
1257 upon which the certificate of need was issued, as provided in this  
1258 paragraph and in the written agreement.

1259 (c) Of the total number of beds authorized under this  
1260 subsection, the department shall issue a certificate of need to a  
1261 hospital currently operating Medicaid-certified acute psychiatric  
1262 beds for adolescents in DeSoto County, for the establishment of a  
1263 forty-bed psychiatric residential treatment facility in DeSoto  
1264 County, provided that the hospital agrees in writing (i) that the  
1265 hospital shall give priority for the use of those forty (40) beds  
1266 to Mississippi residents who are presently being treated in  
1267 out-of-state facilities, and (ii) that no more than fifteen (15)  
1268 of the beds at the psychiatric residential treatment facility will

1269 be certified for participation in the Medicaid program (Section  
1270 43-13-101 et seq.), and that no claim will be submitted for  
1271 Medicaid reimbursement for more than fifteen (15) patients in the  
1272 psychiatric residential treatment facility in any day or for any  
1273 patient in the psychiatric residential treatment facility who is  
1274 in a bed that is not Medicaid-certified. This written agreement  
1275 by the recipient of the certificate of need shall be a condition  
1276 of the issuance of the certificate of need under this paragraph,  
1277 and the agreement shall be fully binding on any subsequent owner  
1278 of the psychiatric residential treatment facility if the ownership  
1279 of the facility is transferred at any time after the issuance of  
1280 the certificate of need. After this written agreement is  
1281 executed, the Division of Medicaid and the State Department of  
1282 Health shall not certify more than fifteen (15) of the beds in the  
1283 psychiatric residential treatment facility for participation in  
1284 the Medicaid program. If the psychiatric residential treatment  
1285 facility violates the terms of the written agreement by admitting  
1286 or keeping in the facility on a regular or continuing basis more  
1287 than fifteen (15) patients who are participating in the Medicaid  
1288 program, the State Department of Health shall revoke the license  
1289 of the facility, at the time that the department determines, after  
1290 a hearing complying with due process, that the facility has  
1291 violated the condition upon which the certificate of need was  
1292 issued, as provided in this paragraph and in the written  
1293 agreement.

1294 (d) Of the total number of beds authorized under this  
1295 subsection, the department may issue a certificate or certificates  
1296 of need for the construction or expansion of psychiatric  
1297 residential treatment facility beds or the conversion of other  
1298 beds to psychiatric treatment facility beds, not to exceed thirty  
1299 (30) psychiatric residential treatment facility beds, in either  
1300 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,  
1301 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah Counties.

1302 (e) Of the total number of beds authorized under this

1303 subsection (4) the department shall issue a certificate of need to  
1304 a privately owned, nonprofit psychiatric residential treatment  
1305 facility in Hinds County for an eight-bed expansion of the  
1306 facility, provided that the facility agrees in writing that the  
1307 facility shall give priority for the use of those eight (8) beds  
1308 to Mississippi residents who are presently being treated in  
1309 out-of-state facilities.

1310 (5) (a) From and after July 1, 1993, the department shall  
1311 not issue a certificate of need to any person for the new  
1312 construction of any hospital, psychiatric hospital or chemical  
1313 dependency hospital that will contain any child/adolescent  
1314 psychiatric or child/adolescent chemical dependency beds, or for  
1315 the conversion of any other health care facility to a hospital,  
1316 psychiatric hospital or chemical dependency hospital that will  
1317 contain any child/adolescent psychiatric or child/adolescent  
1318 chemical dependency beds, or for the addition of any  
1319 child/adolescent psychiatric or child/adolescent chemical  
1320 dependency beds in any hospital, psychiatric hospital or chemical  
1321 dependency hospital, or for the conversion of any beds of another  
1322 category in any hospital, psychiatric hospital or chemical  
1323 dependency hospital to child/adolescent psychiatric or  
1324 child/adolescent chemical dependency beds, except as hereinafter  
1325 authorized:

1326 (i) The department may issue certificates of need  
1327 to any person for any purpose described in this subsection,  
1328 provided that the hospital, psychiatric hospital or chemical  
1329 dependency hospital does not participate in the Medicaid program  
1330 (Section 43-13-101 et seq.) at the time of the application for the  
1331 certificate of need and the owner of the hospital, psychiatric  
1332 hospital or chemical dependency hospital agrees in writing that  
1333 the hospital, psychiatric hospital or chemical dependency hospital  
1334 will not at any time participate in the Medicaid program or admit  
1335 or keep any patients who are participating in the Medicaid program  
1336 in the hospital, psychiatric hospital or chemical dependency

1337 hospital. This written agreement by the recipient of the  
1338 certificate of need shall be fully binding on any subsequent owner  
1339 of the hospital, psychiatric hospital or chemical dependency  
1340 hospital, if the ownership of the facility is transferred at any  
1341 time after the issuance of the certificate of need. Agreement  
1342 that the hospital, psychiatric hospital or chemical dependency  
1343 hospital will not participate in the Medicaid program shall be a  
1344 condition of the issuance of a certificate of need to any person  
1345 under this subparagraph (a)(i), and if such hospital, psychiatric  
1346 hospital or chemical dependency hospital at any time after the  
1347 issuance of the certificate of need, regardless of the ownership  
1348 of the facility, participates in the Medicaid program or admits or  
1349 keeps any patients in the hospital, psychiatric hospital or  
1350 chemical dependency hospital who are participating in the Medicaid  
1351 program, the State Department of Health shall revoke the  
1352 certificate of need, if it is still outstanding, and shall deny or  
1353 revoke the license of the hospital, psychiatric hospital or  
1354 chemical dependency hospital, at the time that the department  
1355 determines, after a hearing complying with due process, that the  
1356 hospital, psychiatric hospital or chemical dependency hospital has  
1357 failed to comply with any of the conditions upon which the  
1358 certificate of need was issued, as provided in this subparagraph  
1359 and in the written agreement by the recipient of the certificate  
1360 of need.

1361           (ii) The department may issue a certificate of  
1362 need for the conversion of existing beds in a county hospital in  
1363 Choctaw County from acute care beds to child/adolescent chemical  
1364 dependency beds. For purposes of this paragraph, the provisions  
1365 of Section 41-7-193(1) requiring substantial compliance with the  
1366 projection of need as reported in the current State Health Plan is  
1367 waived. The total number of beds that may be authorized under  
1368 authority of this paragraph shall not exceed twenty (20) beds.  
1369 There shall be no prohibition or restrictions on participation in  
1370 the Medicaid program (Section 43-13-101 et seq.) for the hospital



1371 receiving the certificate of need authorized under this  
1372 subparagraph (a)(ii) or for the beds converted pursuant to the  
1373 authority of that certificate of need.

1374           (iii) The department may issue a certificate or  
1375 certificates of need for the construction or expansion of  
1376 child/adolescent psychiatric beds or the conversion of other beds  
1377 to child/adolescent psychiatric beds in Warren County. For  
1378 purposes of this subparagraph, the provisions of Section  
1379 41-7-193(1) requiring substantial compliance with the projection  
1380 of need as reported in the current State Health Plan are waived.  
1381 The total number of beds that may be authorized under the  
1382 authority of this subparagraph shall not exceed twenty (20) beds.

1383 There shall be no prohibition or restrictions on participation in  
1384 the Medicaid program (Section 43-13-101 et seq.) for the person  
1385 receiving the certificate of need authorized under this  
1386 subparagraph (a)(iii) or for the beds converted pursuant to the  
1387 authority of that certificate of need.

1388           (iv) The department shall issue a certificate of  
1389 need to the Region 7 Mental Health/Retardation Commission for the  
1390 construction or expansion of child/adolescent psychiatric beds or  
1391 the conversion of other beds to child/adolescent psychiatric beds  
1392 in any of the counties served by the commission. For purposes of  
1393 this subparagraph, the provisions of Section 41-7-193(1) requiring  
1394 substantial compliance with the projection of need as reported in  
1395 the current State Health Plan is waived. The total number of beds  
1396 that may be authorized under the authority of this subparagraph  
1397 shall not exceed twenty (20) beds. There shall be no prohibition  
1398 or restrictions on participation in the Medicaid program (Section  
1399 43-13-101 et seq.) for the person receiving the certificate of  
1400 need authorized under this subparagraph (a)(iv) or for the beds  
1401 converted pursuant to the authority of that certificate of need.

1402           (v) The department may issue a certificate of need  
1403 to any county hospital located in Leflore County for the  
1404 construction or expansion of adult psychiatric beds or the

1405 conversion of other beds to adult psychiatric beds, not to exceed  
1406 twenty (20) beds, provided that the recipient of the certificate  
1407 of need agrees in writing that the adult psychiatric beds will not  
1408 at any time be certified for participation in the Medicaid program  
1409 and that the hospital will not admit or keep any patients who are  
1410 participating in the Medicaid program in any of such adult  
1411 psychiatric beds. This written agreement by the recipient of the  
1412 certificate of need shall be fully binding on any subsequent owner  
1413 of the hospital if the ownership of the hospital is transferred at  
1414 any time after the issuance of the certificate of need. Agreement  
1415 that the adult psychiatric beds will not be certified for  
1416 participation in the Medicaid program shall be a condition of the  
1417 issuance of a certificate of need to any person under this  
1418 subparagraph (a)(v), and if such hospital at any time after the  
1419 issuance of the certificate of need, regardless of the ownership  
1420 of the hospital, has any of such adult psychiatric beds certified  
1421 for participation in the Medicaid program or admits or keeps any  
1422 Medicaid patients in such adult psychiatric beds, the State  
1423 Department of Health shall revoke the certificate of need, if it  
1424 is still outstanding, and shall deny or revoke the license of the  
1425 hospital at the time that the department determines, after a  
1426 hearing complying with due process, that the hospital has failed  
1427 to comply with any of the conditions upon which the certificate of  
1428 need was issued, as provided in this subparagraph and in the  
1429 written agreement by the recipient of the certificate of need.

1430 (b) From and after July 1, 1990, no hospital,  
1431 psychiatric hospital or chemical dependency hospital shall be  
1432 authorized to add any child/adolescent psychiatric or  
1433 child/adolescent chemical dependency beds or convert any beds of  
1434 another category to child/adolescent psychiatric or  
1435 child/adolescent chemical dependency beds without a certificate of  
1436 need under the authority of subsection (1)(c) of this section.

1437 (6) The department may issue a certificate of need to a  
1438 county hospital in Winston County for the conversion of fifteen

1439 (15) acute care beds to geriatric psychiatric care beds.

1440 (7) The State Department of Health shall issue a certificate  
1441 of need to a Mississippi corporation qualified to manage a  
1442 long-term care hospital as defined in Section 41-7-173(h)(xii) in  
1443 Harrison County, not to exceed eighty (80) beds, including any  
1444 necessary renovation or construction required for licensure and  
1445 certification, provided that the recipient of the certificate of  
1446 need agrees in writing that the long-term care hospital will not  
1447 at any time participate in the Medicaid program (Section 43-13-101  
1448 et seq.) or admit or keep any patients in the long-term care  
1449 hospital who are participating in the Medicaid program. This  
1450 written agreement by the recipient of the certificate of need  
1451 shall be fully binding on any subsequent owner of the long-term  
1452 care hospital, if the ownership of the facility is transferred at  
1453 any time after the issuance of the certificate of need. Agreement  
1454 that the long-term care hospital will not participate in the  
1455 Medicaid program shall be a condition of the issuance of a  
1456 certificate of need to any person under this subsection (7), and  
1457 if such long-term care hospital at any time after the issuance of  
1458 the certificate of need, regardless of the ownership of the  
1459 facility, participates in the Medicaid program or admits or keeps  
1460 any patients in the facility who are participating in the Medicaid  
1461 program, the State Department of Health shall revoke the  
1462 certificate of need, if it is still outstanding, and shall deny or  
1463 revoke the license of the long-term care hospital, at the time  
1464 that the department determines, after a hearing complying with due  
1465 process, that the facility has failed to comply with any of the  
1466 conditions upon which the certificate of need was issued, as  
1467 provided in this paragraph and in the written agreement by the  
1468 recipient of the certificate of need. For purposes of this  
1469 paragraph, the provision of Section 41-7-193(1) requiring  
1470 substantial compliance with the projection of need as reported in  
1471 the current State Health Plan is hereby waived.

1472 (8) The State Department of Health may issue a certificate

1473 of need to any hospital in the state to utilize a portion of its  
1474 beds for the "swing-bed" concept. Any such hospital must be in  
1475 conformance with the federal regulations regarding such swing-bed  
1476 concept at the time it submits its application for a certificate  
1477 of need to the State Department of Health, except that such  
1478 hospital may have more licensed beds or a higher average daily  
1479 census (ADC) than the maximum number specified in federal  
1480 regulations for participation in the swing-bed program. Any  
1481 hospital meeting all federal requirements for participation in the  
1482 swing-bed program which receives such certificate of need shall  
1483 render services provided under the swing-bed concept to any  
1484 patient eligible for Medicare (Title XVIII of the Social Security  
1485 Act) who is certified by a physician to be in need of such  
1486 services, and no such hospital shall permit any patient who is  
1487 eligible for both Medicaid and Medicare or eligible only for  
1488 Medicaid to stay in the swing beds of the hospital for more than  
1489 thirty (30) days per admission unless the hospital receives prior  
1490 approval for such patient from the Division of Medicaid, Office of  
1491 the Governor. Any hospital having more licensed beds or a higher  
1492 average daily census (ADC) than the maximum number specified in  
1493 federal regulations for participation in the swing-bed program  
1494 which receives such certificate of need shall develop a procedure  
1495 to insure that before a patient is allowed to stay in the swing  
1496 beds of the hospital, there are no vacant nursing home beds  
1497 available for that patient located within a fifty-mile radius of  
1498 the hospital. When any such hospital has a patient staying in the  
1499 swing beds of the hospital and the hospital receives notice from a  
1500 nursing home located within such radius that there is a vacant bed  
1501 available for that patient, the hospital shall transfer the  
1502 patient to the nursing home within a reasonable time after receipt  
1503 of the notice. Any hospital which is subject to the requirements  
1504 of the two (2) preceding sentences of this paragraph may be  
1505 suspended from participation in the swing-bed program for a  
1506 reasonable period of time by the State Department of Health if the

1507 department, after a hearing complying with due process, determines  
1508 that the hospital has failed to comply with any of those  
1509 requirements.

1510 (9) The Department of Health shall not grant approval for or  
1511 issue a certificate of need to any person proposing the new  
1512 construction of, addition to or expansion of a health care  
1513 facility as defined in subparagraph (viii) of Section 41-7-173(h).

1514 (10) The Department of Health shall not grant approval for  
1515 or issue a certificate of need to any person proposing the  
1516 establishment of, or expansion of the currently approved territory  
1517 of, or the contracting to establish a home office, subunit or  
1518 branch office within the space operated as a health care facility  
1519 as defined in Section 41-7-173(h)(i) through (viii) by a health  
1520 care facility as defined in subparagraph (ix) of Section  
1521 41-7-173(h).

1522 (11) Health care facilities owned and/or operated by the  
1523 state or its agencies are exempt from the restraints in this  
1524 section against issuance of a certificate of need if such addition  
1525 or expansion consists of repairing or renovation necessary to  
1526 comply with the state licensure law. This exception shall not  
1527 apply to the new construction of any building by such state  
1528 facility. This exception shall not apply to any health care  
1529 facilities owned and/or operated by counties, municipalities,  
1530 districts, unincorporated areas, other defined persons, or any  
1531 combination thereof.

1532 (12) The new construction, renovation or expansion of or  
1533 addition to any health care facility defined in subparagraph (ii)  
1534 (psychiatric hospital), subparagraph (iv) (skilled nursing  
1535 facility), subparagraph (vi) (intermediate care facility),  
1536 subparagraph (viii) (intermediate care facility for the mentally  
1537 retarded) and subparagraph (x) (psychiatric residential treatment  
1538 facility) of Section 41-7-173(h) which is owned by the State of  
1539 Mississippi and under the direction and control of the State  
1540 Department of Mental Health, and the addition of new beds or the

1541 conversion of beds from one category to another in any such  
1542 defined health care facility which is owned by the State of  
1543 Mississippi and under the direction and control of the State  
1544 Department of Mental Health, shall not require the issuance of a  
1545 certificate of need under Section 41-7-171 et seq.,  
1546 notwithstanding any provision in Section 41-7-171 et seq. to the  
1547 contrary.

1548 (13) The new construction, renovation or expansion of or  
1549 addition to any veterans homes or domiciliaries for eligible  
1550 veterans of the State of Mississippi as authorized under Section  
1551 35-1-19 shall not require the issuance of a certificate of need,  
1552 notwithstanding any provision in Section 41-7-171 et seq. to the  
1553 contrary.

1554 (14) The new construction of a nursing facility or nursing  
1555 facility beds or the conversion of other beds to nursing facility  
1556 beds shall not require the issuance of a certificate of need,  
1557 notwithstanding any provision in Section 41-7-171 et seq. to the  
1558 contrary, if the conditions of this subsection are met.

1559 (a) Before any construction or conversion may be  
1560 undertaken without a certificate of need, the owner of the nursing  
1561 facility, in the case of an existing facility, or the applicant to  
1562 construct a nursing facility, in the case of new construction,  
1563 first must file a written notice of intent and sign a written  
1564 agreement with the State Department of Health that the entire  
1565 nursing facility will not at any time participate in or have any  
1566 beds certified for participation in the Medicaid program (Section  
1567 43-13-101 et seq.), will not admit or keep any patients in the  
1568 nursing facility who are participating in the Medicaid program,  
1569 and will not submit any claim for Medicaid reimbursement for any  
1570 patient in the facility. This written agreement by the owner or  
1571 applicant shall be a condition of exercising the authority under  
1572 this subsection without a certificate of need, and the agreement  
1573 shall be fully binding on any subsequent owner of the nursing  
1574 facility if the ownership of the facility is transferred at any

1575 time after the agreement is signed. After the written agreement  
1576 is signed, the Division of Medicaid and the State Department of  
1577 Health shall not certify any beds in the nursing facility for  
1578 participation in the Medicaid program. If the nursing facility  
1579 violates the terms of the written agreement by participating in  
1580 the Medicaid program, having any beds certified for participation  
1581 in the Medicaid program, admitting or keeping any patient in the  
1582 facility who is participating in the Medicaid program, or  
1583 submitting any claim for Medicaid reimbursement for any patient in  
1584 the facility, the State Department of Health shall revoke the  
1585 license of the nursing facility at the time that the department  
1586 determines, after a hearing complying with due process, that the  
1587 facility has violated the terms of the written agreement.

1588 (b) For the purposes of this subsection, participation  
1589 in the Medicaid program by a nursing facility includes Medicaid  
1590 reimbursement of coinsurance and deductibles for recipients who  
1591 are qualified Medicare beneficiaries and/or those who are dually  
1592 eligible. Any nursing facility exercising the authority under  
1593 this subsection may not bill or submit a claim to the Division of  
1594 Medicaid for services to qualified Medicare beneficiaries and/or  
1595 those who are dually eligible.

1596 (c) The new construction of a nursing facility or  
1597 nursing facility beds or the conversion of other beds to nursing  
1598 facility beds described in this section must be either a part of a  
1599 completely new continuing care retirement community, as described  
1600 in the latest edition of the Mississippi State Health Plan, or an  
1601 addition to existing personal care and independent living  
1602 components, and so that the completed project will be a continuing  
1603 care retirement community, containing (i) independent living  
1604 accommodations, (ii) personal care beds, and (iii) the nursing  
1605 home facility beds. The three (3) components must be located on a  
1606 single site and be operated as one (1) inseparable facility. The  
1607 nursing facility component must contain a minimum of thirty (30)  
1608 beds. Any nursing facility beds authorized by this section will

1609 not be counted against the bed need set forth in the State Health  
1610 Plan, as identified in Section 41-7-171 et seq.

1611 This subsection (14) shall stand repealed from and after July  
1612 1, 2001.

1613 (15) The provision of preventive care services, developed  
1614 and provided by a health care facility defined in Section  
1615 41-7-173(h), and the program that the facility utilizes to provide  
1616 such preventive care services, are specifically exempt from the  
1617 Certificate of Need Law of 1979, subject to the conditions  
1618 specified in this subsection. Included in such exemption is any  
1619 construction or renovation undertaken by the health care facility  
1620 to provide such services, provided that the cost of such  
1621 construction or renovation does not exceed Two Million Dollars  
1622 (\$2,000,000.00); however, if such construction or renovation  
1623 includes aspects other than those directly related to the  
1624 provision of preventive care services, those aspects of the  
1625 construction or renovation project not directly related to the  
1626 provision of preventive care services shall be considered  
1627 separately in the determination of the reviewability under the  
1628 Certificate of Need Law of 1979. Any construction or renovation  
1629 costs incurred by the health care facility related to the  
1630 provision of preventive care services shall be reported to the  
1631 Division of Medicaid separately from any other construction or  
1632 renovation costs incurred by the health care facility, to enable  
1633 the Division of Medicaid to accurately determine the costs that  
1634 are allowable costs for Medicaid reimbursement purposes.

1635 SECTION 3. Section 41-7-197, Mississippi Code of 1972, is  
1636 amended as follows:

1637 41-7-197. (1) The State Department of Health shall adopt  
1638 and utilize procedures for conducting certificate of need reviews.

1639 Such procedures shall include, inter alia, the following: (a)  
1640 written notification to the applicant; (b) written notification to  
1641 health care facilities in the same health service area as the  
1642 proposed service; (c) written notification to other persons who



1643 prior to the receipt of the application have filed a formal notice  
1644 of intent to provide the proposed services in the same service  
1645 area; and (d) notification to members of the public who reside in  
1646 the service area where the service is proposed, which may be  
1647 provided through newspapers or public information channels.

1648 (2) All notices provided shall include, inter alia, the  
1649 following: (a) the proposed schedule for the review; (b) written  
1650 notification of the period within which a public hearing during  
1651 the course of the review may be requested in writing by one or  
1652 more affected persons, such request to be made within twenty (20)  
1653 days of the notification; and (c) the manner in which notification  
1654 will be provided of the time and place of any hearing so  
1655 requested. Any such hearing shall be conducted by a hearing  
1656 officer designated by the State Department of Health. At such  
1657 hearing, the hearing officer and any person affected by the  
1658 proposal being reviewed may conduct reasonable questioning of  
1659 persons who make relevant factual allegations concerning the  
1660 proposal. The hearing officer shall require that all persons be  
1661 sworn before they may offer any testimony at the hearing, and the  
1662 hearing officer is authorized to administer oaths. Any person so  
1663 choosing may be represented by counsel at the hearing. A record  
1664 of the hearing shall be made, which shall consist of a transcript  
1665 of all testimony received, all documents and other material  
1666 introduced by any interested person, the staff report and  
1667 recommendation and such other material as the hearing officer  
1668 considers relevant, including his own recommendation, which he  
1669 shall make within a reasonable period of time after the hearing is  
1670 closed and after he has had an opportunity to review, study and  
1671 analyze the evidence presented during the hearing. The completed  
1672 record shall be certified to the State Health Officer, who shall  
1673 consider only the record in making his decision, and shall not  
1674 consider any evidence or material which is not included therein.  
1675 All final decisions regarding the issuance of a certificate of  
1676 need shall be made by the State Health Officer. The State Health

1677 Officer shall make his written findings and issue his order after  
1678 reviewing the record. The findings and decision of the State  
1679 Health Officer shall not be deferred to any later date, and any  
1680 deferral shall result in an automatic order of disapproval.

1681 (3) If review by the State Department of Health concerning  
1682 the issuance of a certificate of need is not complete within the  
1683 time specified by rule or regulation, which shall not, to the  
1684 extent practicable, exceed ninety (90) days, the certificate of  
1685 need shall not be granted. The proponent of the proposal may,  
1686 within thirty (30) days, after the expiration of the specified  
1687 time for review, commence such legal action as is necessary, in  
1688 the Chancery Court of the First Judicial District of Hinds County  
1689 or in the chancery court of the county in which the new  
1690 institutional health service is proposed to be provided, to compel  
1691 the State Health Officer to issue written findings and written  
1692 order approving or disapproving the proposal in question.

1693 SECTION 4. Section 41-7-201, Mississippi Code of 1972, is  
1694 amended as follows:

1695 41-7-201. (1) The provisions of this subsection (1) shall  
1696 apply to any party appealing any final order of the State  
1697 Department of Health pertaining to a certificate of need for a  
1698 home health agency, as defined in Section 41-7-173(h)(ix):

1699 (a) In addition to other remedies now available at law  
1700 or in equity, any party aggrieved by any such final order of the  
1701 State Department of Health shall have the right of appeal to the  
1702 Chancery Court of the First Judicial District of Hinds County,  
1703 Mississippi, which appeal must be filed within thirty (30) days  
1704 after the date of the final order. \* \* \* However, \* \* \* any  
1705 appeal of an order disapproving an application for such a  
1706 certificate of need may be made to the chancery court of the  
1707 county where the proposed construction, expansion or alteration  
1708 was to be located or the new service or purpose of the capital  
1709 expenditure was to be located. Such appeal must be filed in  
1710 accordance with the thirty (30) days for filing as heretofore

1711 provided. Any appeal shall state briefly the nature of the  
1712 proceedings before the State Department of Health and shall  
1713 specify the order complained of. Any person whose rights may be  
1714 materially affected by the action of the State Department of  
1715 Health may appear and become a party or the court may, upon  
1716 motion, order that any such person, organization or entity be  
1717 joined as a necessary party.

1718 (b) Upon the filing of such an appeal, the clerk of the  
1719 chancery court shall serve notice thereof upon the State  
1720 Department of Health, whereupon the State Department of Health  
1721 shall, within fifty (50) days or within such additional time as  
1722 the court may by order for cause allow from the service of such  
1723 notice, certify to the chancery court the record in the case,  
1724 which records shall include a transcript of all testimony,  
1725 together with all exhibits or copies thereof, all pleadings,  
1726 proceedings, orders, findings and opinions entered in the case;  
1727 \* \* \* however, \* \* \* the parties and the State Department of  
1728 Health may stipulate that a specified portion only of the record  
1729 shall be certified to the court as the record on appeal.

1730 (c) No new or additional evidence shall be introduced  
1731 in the chancery court but the case shall be determined upon the  
1732 record certified to the court.

1733 (d) The court may dispose of the appeal in termtime or  
1734 vacation and may sustain or dismiss the appeal, modify or vacate  
1735 the order complained of in whole or in part as the case may be;  
1736 but in case the order is wholly or partly vacated, the court may  
1737 also, in its discretion, remand the matter to the State Department  
1738 of Health for such further proceedings, not inconsistent with the  
1739 court's order, as, in the opinion of the court, justice may  
1740 require. The order shall not be vacated or set aside, either in  
1741 whole or in part, except for errors of law, unless the court finds  
1742 that the order of the State Department of Health is not supported  
1743 by substantial evidence, is contrary to the manifest weight of the  
1744 evidence, is in excess of the statutory authority or jurisdiction

1745 of the State Department of Health, or violates any vested  
1746 constitutional rights of any party involved in the appeal. \* \* \*  
1747 However, an order of the chancery court reversing the denial of a  
1748 certificate of need by the State Department of Health shall not  
1749 entitle the applicant to effectuate the certificate of need until  
1750 either:

1751 (i) Such order of the chancery court has become  
1752 final and has not been appealed to the Supreme Court; or

1753 (ii) The Supreme Court has entered a final order  
1754 affirming the chancery court.

1755 (e) Appeals in accordance with law may be had to the  
1756 Supreme Court of the State of Mississippi from any final judgment  
1757 of the chancery court.

1758 (2) The provisions of this subsection (2) shall apply to any  
1759 party appealing any final order of the State Department of Health  
1760 pertaining to a certificate of need for any health care facility  
1761 as defined in Section 41-7-173(h), with the exception of any home  
1762 health agency as defined in Section 41-7-173(h)(ix):

1763 (a) There shall be a "stay of proceedings" of any final  
1764 order of the State Department of Health for a period of thirty  
1765 (30) days from the date of that order. The stay of proceedings  
1766 shall expire at the termination of thirty (30) days; however, no  
1767 construction, renovation or other capital expenditure that is the  
1768 subject of the order shall be undertaken, no license to operate  
1769 any facility that is the subject of the order shall be issued by  
1770 the licensing agency, and no certification to participate in the  
1771 Title XVIII or Title XIX programs of the Social Security Act shall  
1772 be granted, until all statutory appeals have been exhausted or the  
1773 time for such appeals has expired. Notwithstanding the foregoing,  
1774 the filing of an appeal from a final order of the State Department  
1775 of Health or the chancery court for the issuance of a certificate  
1776 of need \* \* \* shall not prevent the purchase of medical equipment  
1777 or the development or offering of institutional health services  
1778 that is authorized by a certificate of need issued by the State

1779 Department of Health. \* \* \*

1780 (b) In addition to other remedies now available at law  
1781 or in equity, any person named as a party in a hearing during the  
1782 course of review aggrieved by any such final order of the State  
1783 Department of Health shall have the right of appeal to the  
1784 Chancery Court of the First Judicial District of Hinds County,  
1785 Mississippi, which appeal must be filed within twenty (20) days  
1786 after the date of the final order. \* \* \* However, \* \* \* any  
1787 appeal of an order disapproving an application for such a  
1788 certificate of need may be made to the chancery court of the  
1789 county where the proposed construction, expansion or alteration  
1790 was to be located or the new service or purpose of the capital  
1791 expenditure was to be located. Such appeal must be filed in  
1792 accordance with the twenty (20) days for filing as heretofore  
1793 provided. Any appeal shall state briefly the nature of the  
1794 proceedings before the State Department of Health and shall  
1795 specify the order complained of.

1796 (c) Upon the filing of such an appeal, the clerk of the  
1797 chancery court shall serve notice thereof upon the State  
1798 Department of Health, whereupon the State Department of Health  
1799 shall, within thirty (30) days of the date of the filing of the  
1800 appeal, certify to the chancery court the record in the case,  
1801 which records shall include a transcript of all testimony,  
1802 together with all exhibits or copies thereof, all pleadings,  
1803 proceedings, orders, findings and opinions entered in the case;  
1804 \* \* \* however, \* \* \* the parties and the State Department of  
1805 Health may stipulate that a specified portion only of the record  
1806 shall be certified to the court as the record on appeal. The  
1807 chancery court shall give preference to any such appeal from a  
1808 final order by the State Department of Health in a certificate of  
1809 need proceeding, and shall render a final order regarding such  
1810 appeal no later than one hundred twenty (120) days from the date  
1811 of the final order by the State Department of Health. If the  
1812 chancery court has not rendered a final order within this 120-day

1813 period, then the final order of the State Department of Health  
1814 shall be deemed to have been affirmed by the chancery court, and  
1815 any party to the appeal shall have the right to appeal from the  
1816 chancery court to the Supreme Court on the record certified by the  
1817 State Department of Health as otherwise provided in paragraph (g)  
1818 of this subsection. In the event the chancery court has not  
1819 rendered a final order within the 120-day period and an appeal is  
1820 made to the Supreme Court as provided herein, the Supreme Court  
1821 shall remand the case to the chancery court to make an award of  
1822 costs, fees, reasonable expenses and attorney's fees incurred in  
1823 favor of appellee payable by the appellant(s) should the Supreme  
1824 Court affirm the order of the State Department of Health.

1825 (d) Any appeal of a final order by the State Department  
1826 of Health in a certificate of need proceeding shall require the  
1827 giving of a bond by the appellant(s) sufficient to secure the  
1828 appellee against the loss of costs, fees, expenses and attorney's  
1829 fees incurred in defense of the appeal, approved by the chancery  
1830 court within five (5) days of the date of filing the appeal.

1831 (e) No new or additional evidence shall be introduced  
1832 in the chancery court but the case shall be determined upon the  
1833 record certified to the court.

1834 (f) The court may dispose of the appeal in termtime or  
1835 vacation and may sustain or dismiss the appeal, modify or vacate  
1836 the order complained of in whole or in part and may make an award  
1837 of costs, fees, expenses and attorney's fees, as the case may be;  
1838 but in case the order is wholly or partly vacated, the court may  
1839 also, in its discretion, remand the matter to the State Department  
1840 of Health for such further proceedings, not inconsistent with the  
1841 court's order, as, in the opinion of the court, justice may  
1842 require. The court, as part of the final order, shall make an  
1843 award of costs, fees, reasonable expenses and attorney's fees  
1844 incurred in favor of appellee payable by the appellant(s) should  
1845 the court affirm the order of the State Department of Health. The  
1846 order shall not be vacated or set aside, either in whole or in

1847 part, except for errors of law, unless the court finds that the  
1848 order of the State Department of Health is not supported by  
1849 substantial evidence, is contrary to the manifest weight of the  
1850 evidence, is in excess of the statutory authority or jurisdiction  
1851 of the State Department of Health, or violates any vested  
1852 constitutional rights of any party involved in the appeal. \* \* \*

1853 However, an order of the chancery court reversing the denial of a  
1854 certificate of need by the State Department of Health shall not  
1855 entitle the applicant to effectuate the certificate of need until  
1856 either:

1857 (i) Such order of the chancery court has become  
1858 final and has not been appealed to the Supreme Court; or

1859 (ii) The Supreme Court has entered a final order  
1860 affirming the chancery court.

1861 (g) Appeals in accordance with law may be had to the  
1862 Supreme Court of the State of Mississippi from any final judgment  
1863 of the chancery court.

1864 (h) Within thirty (30) days from the date of a final  
1865 order by the Supreme Court or a final order of the chancery court  
1866 not appealed to the Supreme Court that modifies or wholly or  
1867 partly vacates the final order of the State Department of Health  
1868 granting a certificate of need, the State Department of Health  
1869 shall issue another order in conformity with the final order of  
1870 the Supreme Court, or the final order of the chancery court not  
1871 appealed to the Supreme Court.

1872 SECTION 5. Section 41-7-205, Mississippi Code of 1972, is  
1873 amended as follows:

1874 41-7-205. The State Department of Health shall provide an  
1875 expedited review for those projects which it determines to warrant  
1876 such action. All requests for such an expedited review by the  
1877 applicant must be made in writing to the State Department of  
1878 Health. The State Department of Health shall make a determination  
1879 as to whether expedited review is appropriate within fifteen (15)  
1880 days after receipt of a written request. The State Department of

1881 Health shall render its decision concerning the issuance of a  
1882 certificate of need within ninety (90) days after the receipt of a  
1883 completed application. A project is subject to expedited review  
1884 only if it meets one (1) of the following criteria:

1885 (a) A transfer or change of ownership of a health care  
1886 facility wherein the facility continues to operate under the same  
1887 category of license or permit as it possessed prior to the date of  
1888 the proposed change of ownership and none of the other activities  
1889 described in Section 41-7-191(1) take place in conjunction with  
1890 such transfer;

1891 (b) Replacement of equipment with used equipment of  
1892 similar capability if the equipment is included in the facility's  
1893 annual capital expenditure budget or plan;

1894 (c) A request for project cost overruns that exceed the  
1895 rate of inflation as determined by the State Department of Health;

1896 (d) A request for relocation of services or facilities  
1897 if the relocation of such services or facilities (i) involves a  
1898 capital expenditure by or on behalf of a health care facility, or  
1899 (ii) is more than one thousand three hundred twenty (1,320) linear  
1900 feet from the main entrance of the health care facility or the  
1901 facility where the service is located;

1902 (e) A request for a certificate of need to comply with  
1903 duly recognized fire, building, or life safety codes, or to comply  
1904 with state licensure standards or accreditation standards required  
1905 for reimbursements.

1906 \* \* \*

1907 SECTION 6. Section 41-7-207, Mississippi Code of 1972, is  
1908 amended as follows:

1909 41-7-207. Notwithstanding any other provisions of Sections  
1910 41-7-171 to 41-7-209, when the need for any emergency replacement  
1911 occurs, the certificate of need review process may be expedited by  
1912 promulgation of administrative procedures for expenditures  
1913 necessary to alleviate an emergency condition. Emergency  
1914 replacement means the replacement of partial facilities or



1915 equipment the replacement of which is not exempt from certificate  
1916 of need review pursuant to the medical equipment replacement  
1917 exemption provided in Section 41-7-191(1)(f), without which the  
1918 operation of the facility and the health and safety of patients  
1919 would be immediately jeopardized. Expenditures under this section  
1920 shall be limited to the replacement of those necessary facilities  
1921 or equipment, the loss of which constitutes an emergency.

1922 SECTION 7. This act shall take effect and be in force from  
1923 and after July 1, 1999.