

By: Representative Moody

To: Public Health and
Welfare;
Appropriations

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 AMEND
8 SECTION 41-7-197, MISSISSIPPI CODE OF 1972, TO DEFINE THOSE
9 PERSONS WHO MAY REQUEST A HEARING DURING THE COURSE OF A
10 CERTIFICATE OF NEED REVIEW; TO AMEND SECTION 41-7-201, MISSISSIPPI
11 CODE OF 1972, TO CLARIFY THOSE PERSONS WITH STANDING TO APPEAL
12 FINAL ORDERS REGARDING THE ISSUANCE OF A CERTIFICATE OF NEED; TO
13 AMEND SECTION 41-7-205, MISSISSIPPI CODE OF 1972, TO DEFINE THOSE
14 NONSUBSTANTIVE PROJECTS WHICH ARE EXEMPT FROM FORMAL CERTIFICATE
15 OF NEED REVIEW; AND FOR RELATED PURPOSES.

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

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

19 41-7-173. For the purposes of Section 41-7-171 et seq., the
20 following words shall have the meanings ascribed herein, unless
21 the context otherwise requires:

22 (a) "Affected person" means (i) the applicant; (ii) a
23 person residing within the geographic area to be served by the
24 applicant's proposal; (iii) a person who regularly uses health
25 care facilities or HMO's located in the geographic area of the
26 proposal which provide similar service to that which is proposed;
27 (iv) health care facilities and HMO's which have, prior to receipt
28 of the application under review, formally indicated an intention
29 to provide service similar to that of the proposal being
30 considered at a future date; (v) third-party payers who reimburse
31 health care facilities located in the geographical area of the
32 proposal; or (vi) any agency that establishes rates for health
33 care services or HMO's located in the geographic area of the

34 proposal.

35 (b) "Certificate of need" means a written order of the
36 State Department of Health setting forth the affirmative finding
37 that a proposal in prescribed application form, sufficiently
38 satisfies the plans, standards and criteria prescribed for such
39 service or other project by Section 41-7-171 et seq., and by rules
40 and regulations promulgated thereunder by the State Department of
41 Health.

42 (c) (i) "Capital expenditure" when pertaining to
43 defined major medical equipment, shall mean an expenditure which,
44 under generally accepted accounting principles consistently
45 applied, is not properly chargeable as an expense of operation and
46 maintenance and which exceeds Two Million Dollars (\$2,000,000.00).

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

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

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

72 be considered regardless of where the capital expenditure was
73 made, in state or out of state, and regardless of the domicile of
74 the party making the capital expenditure, in state or out of
75 state.

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

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

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

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

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

105 Force account expenditures, such as deposits,

106 securities, bonds, et cetera, may, in the discretion of the State
107 Department of Health, be excluded from any or all of the
108 provisions of defined commencement of construction.

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

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

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

137 (i) "Hospital" means an institution which is
138 primarily engaged in providing to inpatients, by or under the
139 supervision of physicians, diagnostic services and therapeutic

140 services for medical diagnosis, treatment and care of injured,
141 disabled or sick persons, or rehabilitation services for the
142 rehabilitation of injured, disabled or sick persons. Such term
143 does not include psychiatric hospitals.

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

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

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

159 (v) "End stage renal disease (ESRD) facilities"
160 means kidney disease treatment centers, which includes
161 freestanding hemodialysis units and limited care facilities. The
162 term "limited care facility" generally refers to an
163 off-hospital-premises facility, regardless of whether it is
164 provider or nonprovider operated, which is engaged primarily in
165 furnishing maintenance hemodialysis services to stabilized
166 patients.

167 (vi) "Intermediate care facility" means an
168 institution which provides, on a regular basis, health related
169 care and services to individuals who do not require the degree of
170 care and treatment which a hospital or skilled nursing facility is
171 designed to provide, but who, because of their mental or physical
172 condition, require health related care and services (above the
173 level of room and board).

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

181 (viii) "Intermediate care facility for the
182 mentally retarded" means an intermediate care facility that
183 provides health or rehabilitative services in a planned program of
184 activities to the mentally retarded, also including, but not
185 limited to, cerebral palsy and other conditions covered by the
186 Federal Developmentally Disabled Assistance and Bill of Rights
187 Act, Public Law 94-103.

188 (ix) "Home health agency" means a public or
189 privately owned agency or organization, or a subdivision of such
190 an agency or organization, properly authorized to conduct business
191 in Mississippi, which is primarily engaged in providing to
192 individuals at the written direction of a licensed physician, in
193 the individual's place of residence, skilled nursing services
194 provided by or under the supervision of a registered nurse
195 licensed to practice in Mississippi, and one or more of the
196 following services or items:

- 197 1. Physical, occupational or speech therapy;
- 198 2. Medical social services;
- 199 3. Part-time or intermittent services of a
200 home health aide;
- 201 4. Other services as approved by the
202 licensing agency for home health agencies;
- 203 5. Medical supplies, other than drugs and
204 biologicals, and the use of medical appliances; or
- 205 6. Medical services provided by an intern or
206 resident-in-training at a hospital under a teaching program of
207 such hospital.

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

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

217 (x) "Psychiatric residential treatment facility"
218 means any nonhospital establishment with permanent licensed
219 facilities which provides a twenty-four-hour program of care by
220 qualified therapists including, but not limited to, duly licensed
221 mental health professionals, psychiatrists, psychologists,
222 psychotherapists and licensed certified social workers, for
223 emotionally disturbed children and adolescents referred to such
224 facility by a court, local school district or by the Department of
225 Human Services, who are not in an acute phase of illness requiring
226 the services of a psychiatric hospital, and are in need of such
227 restorative treatment services. For purposes of this paragraph,
228 the term "emotionally disturbed" means a condition exhibiting one
229 or more of the following characteristics over a long period of
230 time and to a marked degree, which adversely affects educational
231 performance:

- 232 1. An inability to learn which cannot be
233 explained by intellectual, sensory or health factors;
- 234 2. An inability to build or maintain
235 satisfactory relationships with peers and teachers;
- 236 3. Inappropriate types of behavior or
237 feelings under normal circumstances;
- 238 4. A general pervasive mood of unhappiness or
239 depression; or
- 240 5. A tendency to develop physical symptoms or
241 fears associated with personal or school problems. An

242 establishment furnishing primarily domiciliary care is not within
243 this definition.

244 (xi) "Pediatric skilled nursing facility" means an
245 institution or a distinct part of an institution that is primarily
246 engaged in providing to inpatients skilled nursing care and
247 related services for persons under twenty-one (21) years of age
248 who require medical or nursing care or rehabilitation services for
249 the rehabilitation of injured, disabled or sick persons.

250 (xii) "Long-term care hospital" means a
251 freestanding, Medicare-certified hospital that has an average
252 length of inpatient stay greater than twenty-five (25) days, which
253 is primarily engaged in providing chronic or long-term medical
254 care to patients who do not require more than three (3) hours of
255 rehabilitation or comprehensive rehabilitation per day, and has a
256 transfer agreement with an acute care medical center and a
257 comprehensive medical rehabilitation facility. Long-term care
258 hospitals shall not use rehabilitation, comprehensive medical
259 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
260 nursing home, skilled nursing facility, or sub-acute care facility
261 in association with its name.

262 (xiii) "Comprehensive medical rehabilitation
263 facility" means a hospital or hospital unit that is licensed
264 and/or certified as a comprehensive medical rehabilitation
265 facility which provides specialized programs that are accredited
266 by the Commission on Accreditation of Rehabilitation Facilities
267 and supervised by a physician board certified or board eligible in
268 Physiatry or other doctor of medicine or osteopathy with at least
269 two (2) years of training in the medical direction of a
270 comprehensive rehabilitation program that:

271 1. Includes evaluation and treatment of
272 individuals with physical disabilities;

273 2. Emphasizes education and training of
274 individuals with disabilities;

275 3. Incorporates at least the following core

276 disciplines:

- 277 (i) Physical Therapy;
- 278 (ii) Occupational Therapy;
- 279 (iii) Speech and Language Therapy;
- 280 (iv) Rehabilitation Nursing; and

281 4. Incorporates at least three (3) of the
282 following disciplines:

- 283 (i) Psychology;
- 284 (ii) Audiology;
- 285 (iii) Respiratory Therapy;
- 286 (iv) Therapeutic Recreation;
- 287 (v) Orthotics;
- 288 (vi) Prosthetics;
- 289 (vii) Special Education;
- 290 (viii) Vocational Rehabilitation;
- 291 (ix) Psychotherapy;
- 292 (x) Social Work;
- 293 (xi) Rehabilitation Engineering.

294 These specialized programs include, but are not limited
295 to: spinal cord injury programs, head injury programs and infant
296 and early childhood development programs.

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

300 (i) Provides or otherwise makes available to
301 enrolled participants health care services, including
302 substantially the following basic health care services: usual
303 physician services, hospitalization, laboratory, x-ray, emergency
304 and preventive services, and out-of-area coverage;

305 (ii) Is compensated (except for copayments) for
306 the provision of the basic health care services listed in
307 subparagraph (i) of this paragraph to enrolled participants on a
308 predetermined basis; and

309 (iii) Provides physician services primarily:

310 1. Directly through physicians who are either
311 employees or partners of such organization; or

312 2. Through arrangements with individual
313 physicians or one or more groups of physicians (organized on a
314 group practice or individual practice basis).

315 (j) "Health service area" means a geographic area of
316 the state designated in the State Health Plan as the area to be
317 used in planning for specified health facilities and services and
318 to be used when considering certificate of need applications to
319 provide health facilities and services.

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

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

327 (m) "Major medical equipment" means medical equipment
328 designed for providing medical or any health related service which
329 costs in excess of Two Million Dollars (\$2,000,000.00). However,
330 this definition shall not be applicable to clinical laboratories
331 if they are determined by the State Department of Health to be
332 independent of any physician's office, hospital or other health
333 care facility or otherwise not so defined by federal or state law,
334 or rules and regulations promulgated thereunder.

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

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

343 (p) "Person" means an individual, a trust or estate,

344 partnership, corporation (including associations, joint stock
345 companies and insurance companies), the state or a political
346 subdivision or instrumentality of the state.

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

351 (r) "Secretary" means the Secretary of Health and Human
352 Services, and any officer or employee of the Department of Health
353 and Human Services to whom the authority involved has been
354 delegated.

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

360 (t) "State Health Planning and Development Agency"
361 means the agency of state government designated to perform health
362 planning and resource development programs for the State of
363 Mississippi.

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

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

372 41-7-191. (1) No person shall engage in any of the
373 following activities without obtaining the required certificate of
374 need:

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

377 (b) The relocation of a health care facility or portion

378 thereof, or major medical equipment, unless such relocation of a
379 health care facility or portion thereof, or major medical
380 equipment, which does not involve a capital expenditure by or on
381 behalf of a health care facility, is within a one-quarter-mile
382 radius of the campus where such health care facility or portion
383 thereof, or major medical equipment, is located;

384 (c) A change over a period of two (2) years' time, as
385 established by the State Department of Health, in existing bed
386 complement through the addition of more than ten (10) beds or more
387 than ten percent (10%) of the total bed capacity of a designated
388 licensed category or subcategory of any health care facility,
389 whichever is less, from one physical facility or site to another;
390 the conversion over a period of two (2) years' time, as
391 established by the State Department of Health, of existing bed
392 complement of more than ten (10) beds or more than ten percent
393 (10%) of the total bed capacity of a designated licensed category
394 or subcategory of any such health care facility, whichever is
395 less; or the alteration, modernizing or refurbishing of any unit
396 or department wherein such beds may be located; provided, however,
397 that from and after July 1, 1994, no health care facility shall be
398 authorized to add any beds or convert any beds to another category
399 of beds without a certificate of need under the authority of
400 subsection (1)(c) of this section unless there is a projected need
401 for such beds in the planning district in which the facility is
402 located, as reported in the most current State Health Plan;

403 (d) Offering of the following health services if those
404 services have not been provided on a regular basis by the proposed
405 provider of such services within the period of twelve (12) months
406 prior to the time such services would be offered:

- 407 (i) Open heart surgery services;
- 408 (ii) Cardiac catheterization services;
- 409 (iii) Comprehensive inpatient rehabilitation
410 services;
- 411 (iv) Licensed psychiatric services;

412 (v) Licensed chemical dependency services;
413 (vi) Radiation therapy services;
414 (vii) Diagnostic imaging services of an invasive
415 nature, i.e. invasive digital angiography;
416 (viii) Nursing home care as defined in
417 subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);
418 (ix) Home health services;
419 (x) Swing-bed services;
420 (xi) Ambulatory surgical services;
421 (xii) Magnetic resonance imaging services;
422 (xiii) Extracorporeal shock wave lithotripsy
423 services;
424 (xiv) Long-term care hospital services;
425 (xv) Positron Emission Tomography (PET) Services;
426 (e) The relocation of one or more health services from
427 one physical facility or site to another physical facility or
428 site, unless such relocation, which does not involve a capital
429 expenditure by or on behalf of a health care facility, (i) is to a
430 physical facility or site within a one-quarter-mile radius of the
431 physical facility or site where the health care service is
432 located, or (ii) is the result of an order of a court of
433 appropriate jurisdiction or a result of pending litigation in such
434 court, or by order of the State Department of Health, or by order
435 of any other agency or legal entity of the state, the federal
436 government, or any political subdivision of either, whose order is
437 also approved by the State Department of Health;
438 (f) The acquisition or otherwise control of any major
439 medical equipment for the provision of medical services; * * *
440 however, (i) the acquisition of any major medical equipment used
441 only for research purposes, and (ii) the acquisition of new major
442 medical equipment to replace medical equipment for which a
443 facility is already providing medical services and for which the
444 State Department of Health has been notified before the date of
445 such acquisition shall be exempt from this paragraph; an

446 acquisition for less than fair market value must be reviewed, if
447 the acquisition at fair market value would be subject to review;

448 (g) Changes of ownership of existing health care
449 facilities in which a notice of intent is not filed with the State
450 Department of Health at least thirty (30) days prior to the date
451 such change of ownership occurs, or a change in services or bed
452 capacity as prescribed in paragraph (c) or (d) of this subsection
453 as a result of the change of ownership; an acquisition for less
454 than fair market value must be reviewed, if the acquisition at
455 fair market value would be subject to review;

456 (h) The change of ownership of any health care facility
457 defined in subparagraphs (iv), (vi) and (viii) of Section
458 41-7-173(h), in which a notice of intent as described in paragraph
459 (g) has not been filed and if the Executive Director, Division of
460 Medicaid, Office of the Governor, has not certified in writing
461 that there will be no increase in allowable costs to Medicaid from
462 revaluation of the assets or from increased interest and
463 depreciation as a result of the proposed change of ownership;

464 (i) Any activity described in paragraphs (a) through
465 (h) if undertaken by any person if that same activity would
466 require certificate of need approval if undertaken by a health
467 care facility;

468 (j) Any capital expenditure or deferred capital
469 expenditure by or on behalf of a health care facility not covered
470 by paragraphs (a) through (h);

471 (k) The contracting of a health care facility as
472 defined in subparagraphs (i) through (viii) of Section 41-7-173(h)
473 to establish a home office, subunit, or branch office in the space
474 operated as a health care facility through a formal arrangement
475 with an existing health care facility as defined in subparagraph
476 (ix) of Section 41-7-173(h).

477 (2) The State Department of Health shall not grant approval
478 for or issue a certificate of need to any person proposing the new
479 construction of, addition to, or expansion of any health care

480 facility defined in subparagraphs (iv) (skilled nursing facility)
481 and (vi) (intermediate care facility) of Section 41-7-173(h) or
482 the conversion of vacant hospital beds to provide skilled or
483 intermediate nursing home care, except as hereinafter authorized:

484 (a) The total number of nursing home beds as defined in
485 subparagraphs (iv) and (vi) of Section 41-7-173(h) which may be
486 authorized by such certificates of need issued during the period
487 beginning on July 1, 1989, and ending on June 30, 1999, shall not
488 exceed one thousand four hundred seventy (1,470) beds. The number
489 of nursing home beds authorized under paragraphs (z), (cc), (dd),
490 (ee) and (ff) of this subsection (2) shall not be counted in the
491 limit on the total number of beds provided for in this paragraph
492 (a).

493 (b) The department may issue a certificate of need to
494 any of the hospitals in the state which have a distinct part
495 component of the hospital that was constructed for extended care
496 use (nursing home care) but is not currently licensed to provide
497 nursing home care, which certificate of need will authorize the
498 distinct part component to be operated to provide nursing home
499 care after a license is obtained. The six (6) hospitals which
500 currently have these distinct part components and which are
501 eligible for a certificate of need under this section are:
502 Webster General Hospital in Webster County, Tippah County General
503 Hospital in Tippah County, Tishomingo County Hospital in
504 Tishomingo County, North Sunflower County Hospital in Sunflower
505 County, H.C. Watkins Hospital in Clarke County and Northwest
506 Regional Medical Center in Coahoma County. Because the facilities
507 to be considered currently exist and no new construction is
508 required, the provision of Section 41-7-193(1) regarding
509 substantial compliance with the projection of need as reported in
510 the 1989 State Health Plan is waived. The total number of nursing
511 home care beds that may be authorized by certificates of need
512 issued under this paragraph shall not exceed one hundred
513 fifty-four (154) beds.

514 (c) The department may issue a certificate of need to
515 any person proposing the new construction of any health care
516 facility defined in subparagraphs (iv) and (vi) of Section
517 41-7-173(h) as part of a life care retirement facility, in any
518 county bordering on the Gulf of Mexico in which is located a
519 National Aeronautics and Space Administration facility, not to
520 exceed forty (40) beds, provided that the owner of the health care
521 facility on July 1, 1994, agrees in writing that no more than
522 twenty (20) of the beds in the health care facility will be
523 certified for participation in the Medicaid program (Section
524 43-13-101 et seq.), and that no claim will be submitted for
525 Medicaid reimbursement for more than twenty (20) patients in the
526 health care facility in any day or for any patient in the health
527 care facility who is in a bed that is not Medicaid-certified.
528 This written agreement by the owner of the health care facility on
529 July 1, 1994, shall be fully binding on any subsequent owner of
530 the health care facility if the ownership of the health care
531 facility is transferred at any time after July 1, 1994. After
532 this written agreement is executed, the Division of Medicaid and
533 the State Department of Health shall not certify more than twenty
534 (20) of the beds in the health care facility for participation in
535 the Medicaid program. If the health care facility violates the
536 terms of the written agreement by admitting or keeping in the
537 health care facility on a regular or continuing basis more than
538 twenty (20) patients who are participating in the Medicaid
539 program, the State Department of Health shall revoke the license
540 of the health care facility, at the time that the department
541 determines, after a hearing complying with due process, that the
542 health care facility has violated the terms of the written
543 agreement as provided in this paragraph.

544 (d) The department may issue a certificate of need for
545 the conversion of existing beds in a county district hospital or
546 in a personal care home in Holmes County to provide nursing home
547 care in the county. Because the facilities to be considered

548 currently exist, no new construction shall be authorized by such
549 certificate of need. Because the facilities to be considered
550 currently exist and no new construction is required, the provision
551 of Section 41-7-193(1) regarding substantial compliance with the
552 projection of need as reported in the 1989 State Health Plan is
553 waived. The total number of nursing home care beds that may be
554 authorized by any certificate of need issued under this paragraph
555 shall not exceed sixty (60) beds.

556 (e) The department may issue a certificate of need for
557 the conversion of existing hospital beds to provide nursing home
558 care in a county hospital in Jasper County that has its own
559 licensed nursing home located adjacent to the hospital. The total
560 number of nursing home care beds that may be authorized by any
561 certificate of need issued under this paragraph shall not exceed
562 twenty (20) beds.

563 (f) The department may issue a certificate of need for
564 the conversion of existing hospital beds in a hospital in Calhoun
565 County to provide nursing home care in the county. The total
566 number of nursing home care beds that may be authorized by any
567 certificate of need issued under this paragraph shall not exceed
568 twenty (20) beds.

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

572 (h) Provided all criteria specified in the 1989 State
573 Health Plan are met and the proposed nursing home is within no
574 more than a fifteen-minute transportation time to an existing
575 hospital, the department may issue a certificate of need for the
576 construction of one (1) sixty-bed nursing home in Benton County.

577 (i) The department may issue a certificate of need to
578 provide nursing home care in Neshoba County, not to exceed a total
579 of twenty (20) beds. The provision of Section 41-7-193(1)
580 regarding substantial compliance with the projection of need as
581 reported in the current State Health Plan is waived for the

582 purposes of this paragraph.

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

587 (k) The department may issue certificates of need in
588 Harrison County to provide skilled nursing home care for
589 Alzheimer's Disease patients and other patients, not to exceed one
590 hundred fifty (150) beds, provided that (i) the owner of the
591 health care facility issued a certificate of need for sixty (60)
592 beds agrees in writing that no more than thirty (30) of the beds
593 in the health care facility will be certified for participation in
594 the Medicaid program (Section 43-13-101 et seq.), (ii) the owner
595 of one (1) of the health care facilities issued a certificate of
596 need for forty-five (45) beds agrees in writing that no more than
597 twenty-three (23) of the beds in the health care facility will be
598 certified for participation in the Medicaid program, and (iii) the
599 owner of the other health care facility issued a certificate of
600 need for forty-five (45) beds agrees in writing that no more than
601 twenty-two (22) of the beds in the health care facility will be
602 certified for participation in the Medicaid program, and that no
603 claim will be submitted for Medicaid reimbursement for a number of
604 patients in the health care facility in any day that is greater
605 than the number of beds certified for participation in the
606 Medicaid program or for any patient in the health care facility
607 who is in a bed that is not Medicaid-certified. These written
608 agreements by the owners of the health care facilities on July 1,
609 1995, shall be fully binding on any subsequent owner of any of the
610 health care facilities if the ownership of any of the health care
611 facilities is transferred at any time after July 1, 1995. After
612 these written agreements are executed, the Division of Medicaid
613 and the State Department of Health shall not certify for
614 participation in the Medicaid program more than the number of beds
615 authorized for participation in the Medicaid program under this

616 paragraph (k) for each respective facility. If any of the health
617 care facilities violates the terms of the written agreement by
618 admitting or keeping in the health care facility on a regular or
619 continuing basis a number of patients that is greater than the
620 number of beds certified for participation in the Medicaid
621 program, the State Department of Health shall revoke the license
622 of the health care facility, at the time that the department
623 determines, after a hearing complying with due process, that the
624 health care facility has violated the terms of the written
625 agreement as provided in this paragraph.

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

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

636 (n) The department may issue a certificate of need to
637 any intermediate care facility as defined in Section
638 41-7-173(h)(vi) in Marion County which has fewer than sixty (60)
639 beds, for making additions to or expansion or replacement of the
640 existing facility in order to increase the number of its beds to
641 not more than sixty (60) beds. For the purposes of this
642 paragraph, the provision of Section 41-7-193(1) requiring
643 substantial compliance with the projection of need as reported in
644 the current State Health Plan is waived. The total number of
645 nursing home beds that may be authorized by any certificate of
646 need issued under this paragraph shall not exceed twenty-five (25)
647 beds.

648 (o) The department may issue a certificate of need for
649 the conversion of nursing home beds, not to exceed thirteen (13)

650 beds, in Winston County. The provision of Section 41-7-193(1)
651 regarding substantial compliance with the projection of need as
652 reported in the current State Health Plan is hereby waived as to
653 such construction or expansion.

654 (p) The department shall issue a certificate of need
655 for the construction, expansion or conversion of nursing home
656 care, not to exceed thirty-three (33) beds, in Pontotoc County.
657 The provisions of Section 41-7-193(1) regarding substantial
658 compliance with the projection of need as reported in the current
659 State Health Plan are hereby waived as to such construction,
660 expansion or conversion.

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

667 (r) The department may issue a certificate of need for
668 the addition to or expansion of any skilled nursing facility that
669 is part of an existing continuing care retirement community
670 located in Madison County, provided that the recipient of the
671 certificate of need agrees in writing that the skilled nursing
672 facility will not at any time participate in the Medicaid program
673 (Section 43-13-101 et seq.) or admit or keep any patients in the
674 skilled nursing facility who are participating in the Medicaid
675 program. This written agreement by the recipient of the
676 certificate of need shall be fully binding on any subsequent owner
677 of the skilled nursing facility, if the ownership of the facility
678 is transferred at any time after the issuance of the certificate
679 of need. Agreement that the skilled nursing facility will not
680 participate in the Medicaid program shall be a condition of the
681 issuance of a certificate of need to any person under this
682 paragraph (r), and if such skilled nursing facility at any time
683 after the issuance of the certificate of need, regardless of the

684 ownership of the facility, participates in the Medicaid program or
685 admits or keeps any patients in the facility who are participating
686 in the Medicaid program, the State Department of Health shall
687 revoke the certificate of need, if it is still outstanding, and
688 shall deny or revoke the license of the skilled nursing facility,
689 at the time that the department determines, after a hearing
690 complying with due process, that the facility has failed to comply
691 with any of the conditions upon which the certificate of need was
692 issued, as provided in this paragraph and in the written agreement
693 by the recipient of the certificate of need. The total number of
694 beds that may be authorized under the authority of this paragraph
695 (r) shall not exceed sixty (60) beds.

696 (s) The State Department of Health may issue a
697 certificate of need to any hospital located in DeSoto County for
698 the new construction of a skilled nursing facility, not to exceed
699 one hundred twenty (120) beds, in DeSoto County, provided that the
700 recipient of the certificate of need agrees in writing that no
701 more than thirty (30) of the beds in the skilled nursing facility
702 will be certified for participation in the Medicaid program
703 (Section 43-13-101 et seq.), and that no claim will be submitted
704 for Medicaid reimbursement for more than thirty (30) patients in
705 the facility in any day or for any patient in the facility who is
706 in a bed that is not Medicaid-certified. This written agreement
707 by the recipient of the certificate of need shall be a condition
708 of the issuance of the certificate of need under this paragraph,
709 and the agreement shall be fully binding on any subsequent owner
710 of the skilled nursing facility if the ownership of the facility
711 is transferred at any time after the issuance of the certificate
712 of need. After this written agreement is executed, the Division
713 of Medicaid and the State Department of Health shall not certify
714 more than thirty (30) of the beds in the skilled nursing facility
715 for participation in the Medicaid program. If the skilled nursing
716 facility violates the terms of the written agreement by admitting
717 or keeping in the facility on a regular or continuing basis more

718 than thirty (30) patients who are participating in the Medicaid
719 program, the State Department of Health shall revoke the license
720 of the facility, at the time that the department determines, after
721 a hearing complying with due process, that the facility has
722 violated the condition upon which the certificate of need was
723 issued, as provided in this paragraph and in the written
724 agreement. If the skilled nursing facility authorized by the
725 certificate of need issued under this paragraph is not constructed
726 and fully operational within eighteen (18) months after July 1,
727 1994, the State Department of Health, after a hearing complying
728 with due process, shall revoke the certificate of need, if it is
729 still outstanding, and shall not issue a license for the facility
730 at any time after the expiration of the eighteen-month period.

731 (t) The State Department of Health may issue a
732 certificate of need for the construction of a nursing facility or
733 the conversion of beds to nursing facility beds at a personal care
734 facility for the elderly in Lowndes County that is owned and
735 operated by a Mississippi nonprofit corporation, not to exceed
736 sixty (60) beds, provided that the recipient of the certificate of
737 need agrees in writing that no more than thirty (30) of the beds
738 at the facility will be certified for participation in the
739 Medicaid program (Section 43-13-101 et seq.), and that no claim
740 will be submitted for Medicaid reimbursement for more than thirty
741 (30) patients in the facility in any month or for any patient in
742 the facility who is in a bed that is not Medicaid-certified. This
743 written agreement by the recipient of the certificate of need
744 shall be a condition of the issuance of the certificate of need
745 under this paragraph, and the agreement shall be fully binding on
746 any subsequent owner of the facility if the ownership of the
747 facility is transferred at any time after the issuance of the
748 certificate of need. After this written agreement is executed,
749 the Division of Medicaid and the State Department of Health shall
750 not certify more than thirty (30) of the beds in the facility for
751 participation in the Medicaid program. If the facility violates

752 the terms of the written agreement by admitting or keeping in the
753 facility on a regular or continuing basis more than thirty (30)
754 patients who are participating in the Medicaid program, the State
755 Department of Health shall revoke the license of the facility, at
756 the time that the department determines, after a hearing complying
757 with due process, that the facility has violated the condition
758 upon which the certificate of need was issued, as provided in this
759 paragraph and in the written agreement. If the nursing facility
760 or nursing facility beds authorized by the certificate of need
761 issued under this paragraph are not constructed or converted and
762 fully operational within eighteen (18) months after July 1, 1994,
763 the State Department of Health, after a hearing complying with due
764 process, shall revoke the certificate of need, if it is still
765 outstanding, and shall not issue a license for the nursing
766 facility or nursing facility beds at any time after the expiration
767 of the eighteen-month period.

768 (u) The State Department of Health may issue a
769 certificate of need for conversion of a county hospital facility
770 in Itawamba County to a nursing facility, not to exceed sixty (60)
771 beds, including any necessary construction, renovation or
772 expansion, provided that the recipient of the certificate of need
773 agrees in writing that no more than thirty (30) of the beds at the
774 facility will be certified for participation in the Medicaid
775 program (Section 43-13-101 et seq.), and that no claim will be
776 submitted for Medicaid reimbursement for more than thirty (30)
777 patients in the facility in any day or for any patient in the
778 facility who is in a bed that is not Medicaid-certified. This
779 written agreement by the recipient of the certificate of need
780 shall be a condition of the issuance of the certificate of need
781 under this paragraph, and the agreement shall be fully binding on
782 any subsequent owner of the facility if the ownership of the
783 facility is transferred at any time after the issuance of the
784 certificate of need. After this written agreement is executed,
785 the Division of Medicaid and the State Department of Health shall

786 not certify more than thirty (30) of the beds in the facility for
787 participation in the Medicaid program. If the facility violates
788 the terms of the written agreement by admitting or keeping in the
789 facility on a regular or continuing basis more than thirty (30)
790 patients who are participating in the Medicaid program, the State
791 Department of Health shall revoke the license of the facility, at
792 the time that the department determines, after a hearing complying
793 with due process, that the facility has violated the condition
794 upon which the certificate of need was issued, as provided in this
795 paragraph and in the written agreement. If the beds authorized by
796 the certificate of need issued under this paragraph are not
797 converted to nursing facility beds and fully operational within
798 eighteen (18) months after July 1, 1994, the State Department of
799 Health, after a hearing complying with due process, shall revoke
800 the certificate of need, if it is still outstanding, and shall not
801 issue a license for the facility at any time after the expiration
802 of the eighteen-month period.

803 (v) The State Department of Health may issue a
804 certificate of need for the construction or expansion of nursing
805 facility beds or the conversion of other beds to nursing facility
806 beds in either Hinds, Madison or Rankin Counties, not to exceed
807 sixty (60) beds, provided that the recipient of the certificate of
808 need agrees in writing that no more than thirty (30) of the beds
809 at the nursing facility will be certified for participation in the
810 Medicaid program (Section 43-13-101 et seq.), and that no claim
811 will be submitted for Medicaid reimbursement for more than thirty
812 (30) patients in the nursing facility in any day or for any
813 patient in the nursing facility who is in a bed that is not
814 Medicaid-certified. This written agreement by the recipient of
815 the certificate of need shall be a condition of the issuance of
816 the certificate of need under this paragraph, and the agreement
817 shall be fully binding on any subsequent owner of the nursing
818 facility if the ownership of the nursing facility is transferred
819 at any time after the issuance of the certificate of need. After

820 this written agreement is executed, the Division of Medicaid and
821 the State Department of Health shall not certify more than thirty
822 (30) of the beds in the nursing facility for participation in the
823 Medicaid program. If the nursing facility violates the terms of
824 the written agreement by admitting or keeping in the nursing
825 facility on a regular or continuing basis more than thirty (30)
826 patients who are participating in the Medicaid program, the State
827 Department of Health shall revoke the license of the nursing
828 facility, at the time that the department determines, after a
829 hearing complying with due process, that the nursing facility has
830 violated the condition upon which the certificate of need was
831 issued, as provided in this paragraph and in the written
832 agreement. If the nursing facility or nursing facility beds
833 authorized by the certificate of need issued under this paragraph
834 are not constructed, expanded or converted and fully operational
835 within thirty-six (36) months after July 1, 1994, the State
836 Department of Health, after a hearing complying with due process,
837 shall revoke the certificate of need, if it is still outstanding,
838 and shall not issue a license for the nursing facility or nursing
839 facility beds at any time after the expiration of the
840 thirty-six-month period.

841 (w) The State Department of Health may issue a
842 certificate of need for the construction or expansion of nursing
843 facility beds or the conversion of other beds to nursing facility
844 beds in either Hancock, Harrison or Jackson Counties, not to
845 exceed sixty (60) beds, provided that the recipient of the
846 certificate of need agrees in writing that no more than thirty
847 (30) of the beds at the nursing facility will be certified for
848 participation in the Medicaid program (Section 43-13-101 et seq.),
849 and that no claim will be submitted for Medicaid reimbursement for
850 more than thirty (30) patients in the nursing facility in any day
851 or for any patient in the nursing facility who is in a bed that is
852 not Medicaid-certified. This written agreement by the recipient
853 of the certificate of need shall be a condition of the issuance of

854 the certificate of need under this paragraph, and the agreement
855 shall be fully binding on any subsequent owner of the nursing
856 facility if the ownership of the nursing facility is transferred
857 at any time after the issuance of the certificate of need. After
858 this written agreement is executed, the Division of Medicaid and
859 the State Department of Health shall not certify more than thirty
860 (30) of the beds in the nursing facility for participation in the
861 Medicaid program. If the nursing facility violates the terms of
862 the written agreement by admitting or keeping in the nursing
863 facility on a regular or continuing basis more than thirty (30)
864 patients who are participating in the Medicaid program, the State
865 Department of Health shall revoke the license of the nursing
866 facility, at the time that the department determines, after a
867 hearing complying with due process, that the nursing facility has
868 violated the condition upon which the certificate of need was
869 issued, as provided in this paragraph and in the written
870 agreement. If the nursing facility or nursing facility beds
871 authorized by the certificate of need issued under this paragraph
872 are not constructed, expanded or converted and fully operational
873 within thirty-six (36) months after July 1, 1994, the State
874 Department of Health, after a hearing complying with due process,
875 shall revoke the certificate of need, if it is still outstanding,
876 and shall not issue a license for the nursing facility or nursing
877 facility beds at any time after the expiration of the
878 thirty-six-month period.

879 (x) The department may issue a certificate of need for
880 the new construction of a skilled nursing facility in Leake
881 County, provided that the recipient of the certificate of need
882 agrees in writing that the skilled nursing facility will not at
883 any time participate in the Medicaid program (Section 43-13-101 et
884 seq.) or admit or keep any patients in the skilled nursing
885 facility who are participating in the Medicaid program. This
886 written agreement by the recipient of the certificate of need
887 shall be fully binding on any subsequent owner of the skilled

888 nursing facility, if the ownership of the facility is transferred
889 at any time after the issuance of the certificate of need.
890 Agreement that the skilled nursing facility will not participate
891 in the Medicaid program shall be a condition of the issuance of a
892 certificate of need to any person under this paragraph (x), and if
893 such skilled nursing facility at any time after the issuance of
894 the certificate of need, regardless of the ownership of the
895 facility, participates in the Medicaid program or admits or keeps
896 any patients in the facility who are participating in the Medicaid
897 program, the State Department of Health shall revoke the
898 certificate of need, if it is still outstanding, and shall deny or
899 revoke the license of the skilled nursing facility, at the time
900 that the department determines, after a hearing complying with due
901 process, that the facility has failed to comply with any of the
902 conditions upon which the certificate of need was issued, as
903 provided in this paragraph and in the written agreement by the
904 recipient of the certificate of need. The provision of Section
905 43-7-193(1) regarding substantial compliance of the projection of
906 need as reported in the current State Health Plan is waived for
907 the purposes of this paragraph. The total number of nursing
908 facility beds that may be authorized by any certificate of need
909 issued under this paragraph (x) shall not exceed sixty (60) beds.
910 If the skilled nursing facility authorized by the certificate of
911 need issued under this paragraph is not constructed and fully
912 operational within eighteen (18) months after July 1, 1994, the
913 State Department of Health, after a hearing complying with due
914 process, shall revoke the certificate of need, if it is still
915 outstanding, and shall not issue a license for the skilled nursing
916 facility at any time after the expiration of the eighteen-month
917 period.

918 (y) The department may issue a certificate of need in
919 Jones County for making additions to or expansion or replacement
920 of an existing forty-bed facility in order to increase the number
921 of its beds to not more than sixty (60) beds. For the purposes of

922 this paragraph, the provision of Section 41-7-193(1) requiring
923 substantial compliance with the projection of need as reported in
924 the current State Health Plan is waived. The total number of
925 nursing home beds that may be authorized by any certificate of
926 need issued under this paragraph shall not exceed twenty (20)
927 beds.

928 (z) The department may issue certificates of need to
929 allow any existing freestanding long-term care facility in
930 Tishomingo County and Hancock County that on July 1, 1995, is
931 licensed with fewer than sixty (60) beds to increase the number of
932 its beds to not more than sixty (60) beds, provided that the
933 recipient of the certificate of need agrees in writing that none
934 of the additional beds authorized by this paragraph (z) at the
935 nursing facility will be certified for participation in the
936 Medicaid program (Section 43-13-101 et seq.), and that no claim
937 will be submitted for Medicaid reimbursement in the nursing
938 facility for a number of patients in the nursing facility in any
939 day that is greater than the number of licensed beds in the
940 facility on July 1, 1995. This written agreement by the recipient
941 of the certificate of need shall be a condition of the issuance of
942 the certificate of need under this paragraph, and the agreement
943 shall be fully binding on any subsequent owner of the nursing
944 facility if the ownership of the nursing facility is transferred
945 at any time after the issuance of the certificate of need. After
946 this agreement is executed, the Division of Medicaid and the State
947 Department of Health shall not certify more beds in the nursing
948 facility for participation in the Medicaid program than the number
949 of licensed beds in the facility on July 1, 1995. If the nursing
950 facility violates the terms of the written agreement by admitting
951 or keeping in the nursing facility on a regular or continuing
952 basis a number of patients who are participating in the Medicaid
953 program that is greater than the number of licensed beds in the
954 facility on July 1, 1995, the State Department of Health shall
955 revoke the license of the nursing facility, at the time that the

956 department determines, after a hearing complying with due process,
957 that the nursing facility has violated the condition upon which
958 the certificate of need was issued, as provided in this paragraph
959 and in the written agreement. For the purposes of this paragraph
960 (z), the provision of Section 41-7-193(1) requiring substantial
961 compliance with the projection of need as reported in the current
962 State Health Plan is waived.

963 (aa) The department may issue a certificate of need for
964 the construction of a nursing facility at a continuing care
965 retirement community in Lowndes County, provided that the
966 recipient of the certificate of need agrees in writing that the
967 nursing facility will not at any time participate in the Medicaid
968 program (Section 43-13-101 et seq.) or admit or keep any patients
969 in the nursing facility who are participating in the Medicaid
970 program. This written agreement by the recipient of the
971 certificate of need shall be fully binding on any subsequent owner
972 of the nursing facility, if the ownership of the facility is
973 transferred at any time after the issuance of the certificate of
974 need. Agreement that the nursing facility will not participate in
975 the Medicaid program shall be a condition of the issuance of a
976 certificate of need to any person under this paragraph (aa), and
977 if such nursing facility at any time after the issuance of the
978 certificate of need, regardless of the ownership of the facility,
979 participates in the Medicaid program or admits or keeps any
980 patients in the facility who are participating in the Medicaid
981 program, the State Department of Health shall revoke the
982 certificate of need, if it is still outstanding, and shall deny or
983 revoke the license of the nursing facility, at the time that the
984 department determines, after a hearing complying with due process,
985 that the facility has failed to comply with any of the conditions
986 upon which the certificate of need was issued, as provided in this
987 paragraph and in the written agreement by the recipient of the
988 certificate of need. The total number of beds that may be
989 authorized under the authority of this paragraph (aa) shall not

990 exceed sixty (60) beds.

991 (bb) Provided that funds are specifically appropriated
992 therefor by the Legislature, the department may issue a
993 certificate of need to a rehabilitation hospital in Hinds County
994 for the construction of a sixty-bed long-term care nursing
995 facility dedicated to the care and treatment of persons with
996 severe disabilities including persons with spinal cord and
997 closed-head injuries and ventilator-dependent patients. The
998 provision of Section 41-7-193(1) regarding substantial compliance
999 with projection of need as reported in the current State Health
1000 Plan is hereby waived for the purpose of this paragraph.

1001 (cc) The State Department of Health may issue a
1002 certificate of need to a county-owned hospital in the Second
1003 Judicial District of Panola County for the conversion of not more
1004 than seventy-two (72) hospital beds to nursing facility beds,
1005 provided that the recipient of the certificate of need agrees in
1006 writing that none of the beds at the nursing facility will be
1007 certified for participation in the Medicaid program (Section
1008 43-13-101 et seq.), and that no claim will be submitted for
1009 Medicaid reimbursement in the nursing facility in any day or for
1010 any patient in the nursing facility. This written agreement by
1011 the recipient of the certificate of need shall be a condition of
1012 the issuance of the certificate of need under this paragraph, and
1013 the agreement shall be fully binding on any subsequent owner of
1014 the nursing facility if the ownership of the nursing facility is
1015 transferred at any time after the issuance of the certificate of
1016 need. After this written agreement is executed, the Division of
1017 Medicaid and the State Department of Health shall not certify any
1018 of the beds in the nursing facility for participation in the
1019 Medicaid program. If the nursing facility violates the terms of
1020 the written agreement by admitting or keeping in the nursing
1021 facility on a regular or continuing basis any patients who are
1022 participating in the Medicaid program, the State Department of
1023 Health shall revoke the license of the nursing facility, at the

1024 time that the department determines, after a hearing complying
1025 with due process, that the nursing facility has violated the
1026 condition upon which the certificate of need was issued, as
1027 provided in this paragraph and in the written agreement. If the
1028 certificate of need authorized under this paragraph is not issued
1029 within twelve (12) months after July 1, 1998, the department shall
1030 deny the application for the certificate of need and shall not
1031 issue the certificate of need at any time after the twelve-month
1032 period, unless the issuance is contested. If the certificate of
1033 need is issued and substantial construction of the nursing
1034 facility beds has not commenced within eighteen (18) months after
1035 July 1, 1998, the State Department of Health, after a hearing
1036 complying with due process, shall revoke the certificate of need
1037 if it is still outstanding, and the department shall not issue a
1038 license for the nursing facility at any time after the
1039 eighteen-month period. Provided, however, that if the issuance of
1040 the certificate of need is contested, the department shall require
1041 substantial construction of the nursing facility beds within six
1042 (6) months after final adjudication on the issuance of the
1043 certificate of need.

1044 (dd) The department may issue a certificate of need for
1045 the new construction, addition or conversion of skilled nursing
1046 facility beds in Madison County, provided that the recipient of
1047 the certificate of need agrees in writing that the skilled nursing
1048 facility will not at any time participate in the Medicaid program
1049 (Section 43-13-101 et seq.) or admit or keep any patients in the
1050 skilled nursing facility who are participating in the Medicaid
1051 program. This written agreement by the recipient of the
1052 certificate of need shall be fully binding on any subsequent owner
1053 of the skilled nursing facility, if the ownership of the facility
1054 is transferred at any time after the issuance of the certificate
1055 of need. Agreement that the skilled nursing facility will not
1056 participate in the Medicaid program shall be a condition of the
1057 issuance of a certificate of need to any person under this

1058 paragraph (dd), and if such skilled nursing facility at any time
1059 after the issuance of the certificate of need, regardless of the
1060 ownership of the facility, participates in the Medicaid program or
1061 admits or keeps any patients in the facility who are participating
1062 in the Medicaid program, the State Department of Health shall
1063 revoke the certificate of need, if it is still outstanding, and
1064 shall deny or revoke the license of the skilled nursing facility,
1065 at the time that the department determines, after a hearing
1066 complying with due process, that the facility has failed to comply
1067 with any of the conditions upon which the certificate of need was
1068 issued, as provided in this paragraph and in the written agreement
1069 by the recipient of the certificate of need. The total number of
1070 nursing facility beds that may be authorized by any certificate of
1071 need issued under this paragraph (dd) shall not exceed sixty (60)
1072 beds. If the certificate of need authorized under this paragraph
1073 is not issued within twelve (12) months after July 1, 1998, the
1074 department shall deny the application for the certificate of need
1075 and shall not issue the certificate of need at any time after the
1076 twelve-month period, unless the issuance is contested. If the
1077 certificate of need is issued and substantial construction of the
1078 nursing facility beds has not commenced within eighteen (18)
1079 months after July 1, 1998, the State Department of Health, after a
1080 hearing complying with due process, shall revoke the certificate
1081 of need if it is still outstanding, and the department shall not
1082 issue a license for the nursing facility at any time after the
1083 eighteen-month period. Provided, however, that if the issuance of
1084 the certificate of need is contested, the department shall require
1085 substantial construction of the nursing facility beds within six
1086 (6) months after final adjudication on the issuance of the
1087 certificate of need.

1088 (ee) The department may issue a certificate of need for
1089 the new construction, addition or conversion of skilled nursing
1090 facility beds in Leake County, provided that the recipient of the
1091 certificate of need agrees in writing that the skilled nursing

1092 facility will not at any time participate in the Medicaid program
1093 (Section 43-13-101 et seq.) or admit or keep any patients in the
1094 skilled nursing facility who are participating in the Medicaid
1095 program. This written agreement by the recipient of the
1096 certificate of need shall be fully binding on any subsequent owner
1097 of the skilled nursing facility, if the ownership of the facility
1098 is transferred at any time after the issuance of the certificate
1099 of need. Agreement that the skilled nursing facility will not
1100 participate in the Medicaid program shall be a condition of the
1101 issuance of a certificate of need to any person under this
1102 paragraph (ee), and if such skilled nursing facility at any time
1103 after the issuance of the certificate of need, regardless of the
1104 ownership of the facility, participates in the Medicaid program or
1105 admits or keeps any patients in the facility who are participating
1106 in the Medicaid program, the State Department of Health shall
1107 revoke the certificate of need, if it is still outstanding, and
1108 shall deny or revoke the license of the skilled nursing facility,
1109 at the time that the department determines, after a hearing
1110 complying with due process, that the facility has failed to comply
1111 with any of the conditions upon which the certificate of need was
1112 issued, as provided in this paragraph and in the written agreement
1113 by the recipient of the certificate of need. The total number of
1114 nursing facility beds that may be authorized by any certificate of
1115 need issued under this paragraph (ee) shall not exceed sixty (60)
1116 beds. If the certificate of need authorized under this paragraph
1117 is not issued within twelve (12) months after July 1, 1998, the
1118 department shall deny the application for the certificate of need
1119 and shall not issue the certificate of need at any time after the
1120 twelve-month period, unless the issuance is contested. If the
1121 certificate of need is issued and substantial construction of the
1122 nursing facility beds has not commenced within eighteen (18)
1123 months after July 1, 1998, the State Department of Health, after a
1124 hearing complying with due process, shall revoke the certificate
1125 of need if it is still outstanding, and the department shall not

1126 issue a license for the nursing facility at any time after the
1127 eighteen-month period. Provided, however, that if the issuance of
1128 the certificate of need is contested, the department shall require
1129 substantial construction of the nursing facility beds within six
1130 (6) months after final adjudication on the issuance of the
1131 certificate of need.

1132 (ff) The department may issue a certificate of need for
1133 the construction of a municipally-owned nursing facility within
1134 the Town of Belmont in Tishomingo County, not to exceed sixty (60)
1135 beds, provided that the recipient of the certificate of need
1136 agrees in writing that the skilled nursing facility will not at
1137 any time participate in the Medicaid program (Section 43-13-101 et
1138 seq.) or admit or keep any patients in the skilled nursing
1139 facility who are participating in the Medicaid program. This
1140 written agreement by the recipient of the certificate of need
1141 shall be fully binding on any subsequent owner of the skilled
1142 nursing facility, if the ownership of the facility is transferred
1143 at any time after the issuance of the certificate of need.

1144 Agreement that the skilled nursing facility will not participate
1145 in the Medicaid program shall be a condition of the issuance of a
1146 certificate of need to any person under this paragraph (ff), and
1147 if such skilled nursing facility at any time after the issuance of
1148 the certificate of need, regardless of the ownership of the
1149 facility, participates in the Medicaid program or admits or keeps
1150 any patients in the facility who are participating in the Medicaid
1151 program, the State Department of Health shall revoke the
1152 certificate of need, if it is still outstanding, and shall deny or
1153 revoke the license of the skilled nursing facility, at the time
1154 that the department determines, after a hearing complying with due
1155 process, that the facility has failed to comply with any of the
1156 conditions upon which the certificate of need was issued, as
1157 provided in this paragraph and in the written agreement by the
1158 recipient of the certificate of need. The provision of Section
1159 43-7-193(1) regarding substantial compliance of the projection of

1160 need as reported in the current State Health Plan is waived for
1161 the purposes of this paragraph. If the certificate of need
1162 authorized under this paragraph is not issued within twelve (12)
1163 months after July 1, 1998, the department shall deny the
1164 application for the certificate of need and shall not issue the
1165 certificate of need at any time after the twelve-month period,
1166 unless the issuance is contested. If the certificate of need is
1167 issued and substantial construction of the nursing facility beds
1168 has not commenced within eighteen (18) months after July 1, 1998,
1169 the State Department of Health, after a hearing complying with due
1170 process, shall revoke the certificate of need if it is still
1171 outstanding, and the department shall not issue a license for the
1172 nursing facility at any time after the eighteen-month period.
1173 Provided, however, that if the issuance of the certificate of need
1174 is contested, the department shall require substantial
1175 construction of the nursing facility beds within six (6) months
1176 after final adjudication on the issuance of the certificate of
1177 need.

1178 (3) If the holder of the certificate of need that was issued
1179 before January 1, 1990, for the construction of a nursing home in
1180 Claiborne County has not substantially undertaken commencement of
1181 construction by completing site works and pouring foundations and
1182 the floor slab of a nursing home in Claiborne County before May 1,
1183 1990, as determined by the department, then the department shall
1184 transfer such certificate of need to the Board of Supervisors of
1185 Claiborne County upon the effective date of this subsection (3).
1186 If the certificate of need is transferred to the board of
1187 supervisors, it shall be valid for a period of twelve (12) months
1188 and shall authorize the construction of a sixty-bed nursing home
1189 on county-owned property or the conversion of vacant hospital beds
1190 in the county hospital not to exceed sixty (60) beds.

1191 (4) The State Department of Health may grant approval for
1192 and issue certificates of need to any person proposing the new
1193 construction of, addition to, conversion of beds of or expansion

1194 of any health care facility defined in subparagraph (x)
1195 (psychiatric residential treatment facility) of Section
1196 41-7-173(h). The total number of beds which may be authorized by
1197 such certificates of need shall not exceed two hundred
1198 seventy-four (274) beds for the entire state.

1199 (a) Of the total number of beds authorized under this
1200 subsection, the department shall issue a certificate of need to a
1201 privately owned psychiatric residential treatment facility in
1202 Simpson County for the conversion of sixteen (16) intermediate
1203 care facility for the mentally retarded (ICF-MR) beds to
1204 psychiatric residential treatment facility beds, provided that
1205 facility agrees in writing that the facility shall give priority
1206 for the use of those sixteen (16) beds to Mississippi residents
1207 who are presently being treated in out-of-state facilities.

1208 (b) Of the total number of beds authorized under this
1209 subsection, the department may issue a certificate or certificates
1210 of need for the construction or expansion of psychiatric
1211 residential treatment facility beds or the conversion of other
1212 beds to psychiatric residential treatment facility beds in Warren
1213 County, not to exceed sixty (60) psychiatric residential treatment
1214 facility beds, provided that the facility agrees in writing that
1215 no more than thirty (30) of the beds at the psychiatric
1216 residential treatment facility will be certified for participation
1217 in the Medicaid program (Section 43-13-101 et seq.) for the use of
1218 any patients other than those who are participating only in the
1219 Medicaid program of another state, and that no claim will be
1220 submitted to the Division of Medicaid for Medicaid reimbursement
1221 for more than thirty (30) patients in the psychiatric residential
1222 treatment facility in any day or for any patient in the
1223 psychiatric residential treatment facility who is in a bed that is
1224 not Medicaid-certified. This written agreement by the recipient
1225 of the certificate of need shall be a condition of the issuance of
1226 the certificate of need under this paragraph, and the agreement
1227 shall be fully binding on any subsequent owner of the psychiatric

1228 residential treatment facility if the ownership of the facility is
1229 transferred at any time after the issuance of the certificate of
1230 need. After this written agreement is executed, the Division of
1231 Medicaid and the State Department of Health shall not certify more
1232 than thirty (30) of the beds in the psychiatric residential
1233 treatment facility for participation in the Medicaid program for
1234 the use of any patients other than those who are participating
1235 only in the Medicaid program of another state. If the psychiatric
1236 residential treatment facility violates the terms of the written
1237 agreement by admitting or keeping in the facility on a regular or
1238 continuing basis more than thirty (30) patients who are
1239 participating in the Mississippi Medicaid program, the State
1240 Department of Health shall revoke the license of the facility, at
1241 the time that the department determines, after a hearing complying
1242 with due process, that the facility has violated the condition
1243 upon which the certificate of need was issued, as provided in this
1244 paragraph and in the written agreement.

1245 (c) Of the total number of beds authorized under this
1246 subsection, the department shall issue a certificate of need to a
1247 hospital currently operating Medicaid-certified acute psychiatric
1248 beds for adolescents in DeSoto County, for the establishment of a
1249 forty-bed psychiatric residential treatment facility in DeSoto
1250 County, provided that the hospital agrees in writing (i) that the
1251 hospital shall give priority for the use of those forty (40) beds
1252 to Mississippi residents who are presently being treated in
1253 out-of-state facilities, and (ii) that no more than fifteen (15)
1254 of the beds at the psychiatric residential treatment facility will
1255 be certified for participation in the Medicaid program (Section
1256 43-13-101 et seq.), and that no claim will be submitted for
1257 Medicaid reimbursement for more than fifteen (15) patients in the
1258 psychiatric residential treatment facility in any day or for any
1259 patient in the psychiatric residential treatment facility who is
1260 in a bed that is not Medicaid-certified. This written agreement
1261 by the recipient of the certificate of need shall be a condition

1262 of the issuance of the certificate of need under this paragraph,
1263 and the agreement shall be fully binding on any subsequent owner
1264 of the psychiatric residential treatment facility if the ownership
1265 of the facility is transferred at any time after the issuance of
1266 the certificate of need. After this written agreement is
1267 executed, the Division of Medicaid and the State Department of
1268 Health shall not certify more than fifteen (15) of the beds in the
1269 psychiatric residential treatment facility for participation in
1270 the Medicaid program. If the psychiatric residential treatment
1271 facility violates the terms of the written agreement by admitting
1272 or keeping in the facility on a regular or continuing basis more
1273 than fifteen (15) patients who are participating in the Medicaid
1274 program, the State Department of Health shall revoke the license
1275 of the facility, at the time that the department determines, after
1276 a hearing complying with due process, that the facility has
1277 violated the condition upon which the certificate of need was
1278 issued, as provided in this paragraph and in the written
1279 agreement.

1280 (d) Of the total number of beds authorized under this
1281 subsection, the department may issue a certificate or certificates
1282 of need for the construction or expansion of psychiatric
1283 residential treatment facility beds or the conversion of other
1284 beds to psychiatric treatment facility beds, not to exceed thirty
1285 (30) psychiatric residential treatment facility beds, in either
1286 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,
1287 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah Counties.

1288 (e) Of the total number of beds authorized under this
1289 subsection (4) the department shall issue a certificate of need to
1290 a privately owned, nonprofit psychiatric residential treatment
1291 facility in Hinds County for an eight-bed expansion of the
1292 facility, provided that the facility agrees in writing that the
1293 facility shall give priority for the use of those eight (8) beds
1294 to Mississippi residents who are presently being treated in
1295 out-of-state facilities.

1296 (5) (a) From and after July 1, 1993, the department shall
1297 not issue a certificate of need to any person for the new
1298 construction of any hospital, psychiatric hospital or chemical
1299 dependency hospital that will contain any child/adolescent
1300 psychiatric or child/adolescent chemical dependency beds, or for
1301 the conversion of any other health care facility to a hospital,
1302 psychiatric hospital or chemical dependency hospital that will
1303 contain any child/adolescent psychiatric or child/adolescent
1304 chemical dependency beds, or for the addition of any
1305 child/adolescent psychiatric or child/adolescent chemical
1306 dependency beds in any hospital, psychiatric hospital or chemical
1307 dependency hospital, or for the conversion of any beds of another
1308 category in any hospital, psychiatric hospital or chemical
1309 dependency hospital to child/adolescent psychiatric or
1310 child/adolescent chemical dependency beds, except as hereinafter
1311 authorized:

1312 (i) The department may issue certificates of need
1313 to any person for any purpose described in this subsection,
1314 provided that the hospital, psychiatric hospital or chemical
1315 dependency hospital does not participate in the Medicaid program
1316 (Section 43-13-101 et seq.) at the time of the application for the
1317 certificate of need and the owner of the hospital, psychiatric
1318 hospital or chemical dependency hospital agrees in writing that
1319 the hospital, psychiatric hospital or chemical dependency hospital
1320 will not at any time participate in the Medicaid program or admit
1321 or keep any patients who are participating in the Medicaid program
1322 in the hospital, psychiatric hospital or chemical dependency
1323 hospital. This written agreement by the recipient of the
1324 certificate of need shall be fully binding on any subsequent owner
1325 of the hospital, psychiatric hospital or chemical dependency
1326 hospital, if the ownership of the facility is transferred at any
1327 time after the issuance of the certificate of need. Agreement
1328 that the hospital, psychiatric hospital or chemical dependency
1329 hospital will not participate in the Medicaid program shall be a

1330 condition of the issuance of a certificate of need to any person
1331 under this subparagraph (a)(i), and if such hospital, psychiatric
1332 hospital or chemical dependency hospital at any time after the
1333 issuance of the certificate of need, regardless of the ownership
1334 of the facility, participates in the Medicaid program or admits or
1335 keeps any patients in the hospital, psychiatric hospital or
1336 chemical dependency hospital who are participating in the Medicaid
1337 program, the State Department of Health shall revoke the
1338 certificate of need, if it is still outstanding, and shall deny or
1339 revoke the license of the hospital, psychiatric hospital or
1340 chemical dependency hospital, at the time that the department
1341 determines, after a hearing complying with due process, that the
1342 hospital, psychiatric hospital or chemical dependency hospital has
1343 failed to comply with any of the conditions upon which the
1344 certificate of need was issued, as provided in this subparagraph
1345 and in the written agreement by the recipient of the certificate
1346 of need.

1347 (ii) The department may issue a certificate of
1348 need for the conversion of existing beds in a county hospital in
1349 Choctaw County from acute care beds to child/adolescent chemical
1350 dependency beds. For purposes of this paragraph, the provisions
1351 of Section 41-7-193(1) requiring substantial compliance with the
1352 projection of need as reported in the current State Health Plan is
1353 waived. The total number of beds that may be authorized under
1354 authority of this paragraph shall not exceed twenty (20) beds.
1355 There shall be no prohibition or restrictions on participation in
1356 the Medicaid program (Section 43-13-101 et seq.) for the hospital
1357 receiving the certificate of need authorized under this
1358 subparagraph (a)(ii) or for the beds converted pursuant to the
1359 authority of that certificate of need.

1360 (iii) The department may issue a certificate or
1361 certificates of need for the construction or expansion of
1362 child/adolescent psychiatric beds or the conversion of other beds
1363 to child/adolescent psychiatric beds in Warren County. For

1364 purposes of this subparagraph, the provisions of Section
1365 41-7-193(1) requiring substantial compliance with the projection
1366 of need as reported in the current State Health Plan are waived.
1367 The total number of beds that may be authorized under the
1368 authority of this subparagraph 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 person
1371 receiving the certificate of need authorized under this
1372 subparagraph (a)(iii) or for the beds converted pursuant to the
1373 authority of that certificate of need.

1374 (iv) The department shall issue a certificate of
1375 need to the Region 7 Mental Health/Retardation Commission for the
1376 construction or expansion of child/adolescent psychiatric beds or
1377 the conversion of other beds to child/adolescent psychiatric beds
1378 in any of the counties served by the commission. For purposes of
1379 this subparagraph, the provisions of Section 41-7-193(1) requiring
1380 substantial compliance with the projection of need as reported in
1381 the current State Health Plan is waived. The total number of beds
1382 that may be authorized under the authority of this subparagraph
1383 shall not exceed twenty (20) beds. There shall be no prohibition
1384 or restrictions on participation in the Medicaid program (Section
1385 43-13-101 et seq.) for the person receiving the certificate of
1386 need authorized under this subparagraph (a)(iv) or for the beds
1387 converted pursuant to the authority of that certificate of need.

1388 (v) The department may issue a certificate of need
1389 to any county hospital located in Leflore County for the
1390 construction or expansion of adult psychiatric beds or the
1391 conversion of other beds to adult psychiatric beds, not to exceed
1392 twenty (20) beds, provided that the recipient of the certificate
1393 of need agrees in writing that the adult psychiatric beds will not
1394 at any time be certified for participation in the Medicaid program
1395 and that the hospital will not admit or keep any patients who are
1396 participating in the Medicaid program in any of such adult
1397 psychiatric beds. This written agreement by the recipient of the

1398 certificate of need shall be fully binding on any subsequent owner
1399 of the hospital if the ownership of the hospital is transferred at
1400 any time after the issuance of the certificate of need. Agreement
1401 that the adult psychiatric beds will not be certified for
1402 participation in the Medicaid program shall be a condition of the
1403 issuance of a certificate of need to any person under this
1404 subparagraph (a)(v), and if such hospital at any time after the
1405 issuance of the certificate of need, regardless of the ownership
1406 of the hospital, has any of such adult psychiatric beds certified
1407 for participation in the Medicaid program or admits or keeps any
1408 Medicaid patients in such adult psychiatric beds, the State
1409 Department of Health shall revoke the certificate of need, if it
1410 is still outstanding, and shall deny or revoke the license of the
1411 hospital at the time that the department determines, after a
1412 hearing complying with due process, that the hospital has failed
1413 to comply with any of the conditions upon which the certificate of
1414 need was issued, as provided in this subparagraph and in the
1415 written agreement by the recipient of the certificate of need.

1416 (b) From and after July 1, 1990, no hospital,
1417 psychiatric hospital or chemical dependency hospital shall be
1418 authorized to add any child/adolescent psychiatric or
1419 child/adolescent chemical dependency beds or convert any beds of
1420 another category to child/adolescent psychiatric or
1421 child/adolescent chemical dependency beds without a certificate of
1422 need under the authority of subsection (1)(c) of this section.

1423 (6) The department may issue a certificate of need to a
1424 county hospital in Winston County for the conversion of fifteen
1425 (15) acute care beds to geriatric psychiatric care beds.

1426 (7) The State Department of Health shall issue a certificate
1427 of need to a Mississippi corporation qualified to manage a
1428 long-term care hospital as defined in Section 41-7-173(h)(xii) in
1429 Harrison County, not to exceed eighty (80) beds, including any
1430 necessary renovation or construction required for licensure and
1431 certification, provided that the recipient of the certificate of

1432 need agrees in writing that the long-term care hospital will not
1433 at any time participate in the Medicaid program (Section 43-13-101
1434 et seq.) or admit or keep any patients in the long-term care
1435 hospital who are participating in the Medicaid program. This
1436 written agreement by the recipient of the certificate of need
1437 shall be fully binding on any subsequent owner of the long-term
1438 care hospital, if the ownership of the facility is transferred at
1439 any time after the issuance of the certificate of need. Agreement
1440 that the long-term care hospital will not participate in the
1441 Medicaid program shall be a condition of the issuance of a
1442 certificate of need to any person under this subsection (7), and
1443 if such long-term care hospital at any time after the issuance of
1444 the certificate of need, regardless of the ownership of the
1445 facility, participates in the Medicaid program or admits or keeps
1446 any patients in the facility who are participating in the Medicaid
1447 program, the State Department of Health shall revoke the
1448 certificate of need, if it is still outstanding, and shall deny or
1449 revoke the license of the long-term care hospital, at the time
1450 that the department determines, after a hearing complying with due
1451 process, that the facility has failed to comply with any of the
1452 conditions upon which the certificate of need was issued, as
1453 provided in this paragraph and in the written agreement by the
1454 recipient of the certificate of need. For purposes of this
1455 paragraph, the provision of Section 41-7-193(1) requiring
1456 substantial compliance with the projection of need as reported in
1457 the current State Health Plan is hereby waived.

1458 (8) The State Department of Health may issue a certificate
1459 of need to any hospital in the state to utilize a portion of its
1460 beds for the "swing-bed" concept. Any such hospital must be in
1461 conformance with the federal regulations regarding such swing-bed
1462 concept at the time it submits its application for a certificate
1463 of need to the State Department of Health, except that such
1464 hospital may have more licensed beds or a higher average daily
1465 census (ADC) than the maximum number specified in federal

1466 regulations for participation in the swing-bed program. Any
1467 hospital meeting all federal requirements for participation in the
1468 swing-bed program which receives such certificate of need shall
1469 render services provided under the swing-bed concept to any
1470 patient eligible for Medicare (Title XVIII of the Social Security
1471 Act) who is certified by a physician to be in need of such
1472 services, and no such hospital shall permit any patient who is
1473 eligible for both Medicaid and Medicare or eligible only for
1474 Medicaid to stay in the swing beds of the hospital for more than
1475 thirty (30) days per admission unless the hospital receives prior
1476 approval for such patient from the Division of Medicaid, Office of
1477 the Governor. Any hospital having more licensed beds or a higher
1478 average daily census (ADC) than the maximum number specified in
1479 federal regulations for participation in the swing-bed program
1480 which receives such certificate of need shall develop a procedure
1481 to insure that before a patient is allowed to stay in the swing
1482 beds of the hospital, there are no vacant nursing home beds
1483 available for that patient located within a fifty-mile radius of
1484 the hospital. When any such hospital has a patient staying in the
1485 swing beds of the hospital and the hospital receives notice from a
1486 nursing home located within such radius that there is a vacant bed
1487 available for that patient, the hospital shall transfer the
1488 patient to the nursing home within a reasonable time after receipt
1489 of the notice. Any hospital which is subject to the requirements
1490 of the two (2) preceding sentences of this paragraph may be
1491 suspended from participation in the swing-bed program for a
1492 reasonable period of time by the State Department of Health if the
1493 department, after a hearing complying with due process, determines
1494 that the hospital has failed to comply with any of those
1495 requirements.

1496 (9) The Department of Health shall not grant approval for or
1497 issue a certificate of need to any person proposing the new
1498 construction of, addition to or expansion of a health care
1499 facility as defined in subparagraph (viii) of Section 41-7-173(h).

1500 (10) The Department of Health shall not grant approval for
1501 or issue a certificate of need to any person proposing the
1502 establishment of, or expansion of the currently approved territory
1503 of, or the contracting to establish a home office, subunit or
1504 branch office within the space operated as a health care facility
1505 as defined in Section 41-7-173(h)(i) through (viii) by a health
1506 care facility as defined in subparagraph (ix) of Section
1507 41-7-173(h).

1508 (11) Health care facilities owned and/or operated by the
1509 state or its agencies are exempt from the restraints in this
1510 section against issuance of a certificate of need if such addition
1511 or expansion consists of repairing or renovation necessary to
1512 comply with the state licensure law. This exception shall not
1513 apply to the new construction of any building by such state
1514 facility. This exception shall not apply to any health care
1515 facilities owned and/or operated by counties, municipalities,
1516 districts, unincorporated areas, other defined persons, or any
1517 combination thereof.

1518 (12) The new construction, renovation or expansion of or
1519 addition to any health care facility defined in subparagraph (ii)
1520 (psychiatric hospital), subparagraph (iv) (skilled nursing
1521 facility), subparagraph (vi) (intermediate care facility),
1522 subparagraph (viii) (intermediate care facility for the mentally
1523 retarded) and subparagraph (x) (psychiatric residential treatment
1524 facility) of Section 41-7-173(h) which is owned by the State of
1525 Mississippi and under the direction and control of the State
1526 Department of Mental Health, and the addition of new beds or the
1527 conversion of beds from one category to another in any such
1528 defined health care facility which is owned by the State of
1529 Mississippi and under the direction and control of the State
1530 Department of Mental Health, shall not require the issuance of a
1531 certificate of need under Section 41-7-171 et seq.,
1532 notwithstanding any provision in Section 41-7-171 et seq. to the
1533 contrary.

1534 (13) The new construction, renovation or expansion of or
1535 addition to any veterans homes or domiciliaries for eligible
1536 veterans of the State of Mississippi as authorized under Section
1537 35-1-19 shall not require the issuance of a certificate of need,
1538 notwithstanding any provision in Section 41-7-171 et seq. to the
1539 contrary.

1540 (14) The new construction of a nursing facility or nursing
1541 facility beds or the conversion of other beds to nursing facility
1542 beds shall not require the issuance of a certificate of need,
1543 notwithstanding any provision in Section 41-7-171 et seq. to the
1544 contrary, if the conditions of this subsection are met.

1545 (a) Before any construction or conversion may be
1546 undertaken without a certificate of need, the owner of the nursing
1547 facility, in the case of an existing facility, or the applicant to
1548 construct a nursing facility, in the case of new construction,
1549 first must file a written notice of intent and sign a written
1550 agreement with the State Department of Health that the entire
1551 nursing facility will not at any time participate in or have any
1552 beds certified for participation in the Medicaid program (Section
1553 43-13-101 et seq.), will not admit or keep any patients in the
1554 nursing facility who are participating in the Medicaid program,
1555 and will not submit any claim for Medicaid reimbursement for any
1556 patient in the facility. This written agreement by the owner or
1557 applicant shall be a condition of exercising the authority under
1558 this subsection without a certificate of need, and the agreement
1559 shall be fully binding on any subsequent owner of the nursing
1560 facility if the ownership of the facility is transferred at any
1561 time after the agreement is signed. After the written agreement
1562 is signed, the Division of Medicaid and the State Department of
1563 Health shall not certify any beds in the nursing facility for
1564 participation in the Medicaid program. If the nursing facility
1565 violates the terms of the written agreement by participating in
1566 the Medicaid program, having any beds certified for participation
1567 in the Medicaid program, admitting or keeping any patient in the

1568 facility who is participating in the Medicaid program, or
1569 submitting any claim for Medicaid reimbursement for any patient in
1570 the facility, the State Department of Health shall revoke the
1571 license of the nursing facility at the time that the department
1572 determines, after a hearing complying with due process, that the
1573 facility has violated the terms of the written agreement.

1574 (b) For the purposes of this subsection, participation
1575 in the Medicaid program by a nursing facility includes Medicaid
1576 reimbursement of coinsurance and deductibles for recipients who
1577 are qualified Medicare beneficiaries and/or those who are dually
1578 eligible. Any nursing facility exercising the authority under
1579 this subsection may not bill or submit a claim to the Division of
1580 Medicaid for services to qualified Medicare beneficiaries and/or
1581 those who are dually eligible.

1582 (c) The new construction of a nursing facility or
1583 nursing facility beds or the conversion of other beds to nursing
1584 facility beds described in this section must be either a part of a
1585 completely new continuing care retirement community, as described
1586 in the latest edition of the Mississippi State Health Plan, or an
1587 addition to existing personal care and independent living
1588 components, and so that the completed project will be a continuing
1589 care retirement community, containing (i) independent living
1590 accommodations, (ii) personal care beds, and (iii) the nursing
1591 home facility beds. The three (3) components must be located on a
1592 single site and be operated as one (1) inseparable facility. The
1593 nursing facility component must contain a minimum of thirty (30)
1594 beds. Any nursing facility beds authorized by this section will
1595 not be counted against the bed need set forth in the State Health
1596 Plan, as identified in Section 41-7-171 et seq.

1597 This subsection (14) shall stand repealed from and after July
1598 1, 2001.

1599 (15) The provision of preventive care services, developed
1600 and provided by a health care facility defined in Section
1601 41-7-173(h), and the program such facility utilizes to provide

1602 such preventive care services, are specifically exempt from the
1603 Certificate of Need Law of 1979. Included in such exemption is
1604 any construction or renovation undertaken by the health care
1605 facility to provide such services, regardless of the cost of such
1606 construction or renovation; provided that if such construction or
1607 renovation includes aspects other than those directly related to
1608 the provision of preventive care services, those aspects of the
1609 construction or renovation project not directly related to the
1610 provision of preventive care services shall be considered
1611 separately in the determination of the reviewability under the
1612 Certificate of Need Law of 1979.

1613 SECTION 3. Section 41-7-197, Mississippi Code of 1972, is
1614 amended as follows:

1615 41-7-197. (1) The State Department of Health shall adopt
1616 and utilize procedures for conducting certificate of need reviews.

1617 Such procedures shall include, inter alia, the following: (a)
1618 written notification to the applicant; (b) written notification to
1619 health care facilities in the same health service area as the
1620 proposed service; (c) written notification to other persons who
1621 prior to the receipt of the application have filed a formal notice
1622 of intent to provide the proposed services in the same service
1623 area; and (d) notification to members of the public who reside in
1624 the service area where the service is proposed, which may be
1625 provided through newspapers or public information channels.

1626 (2) All notices provided shall include, inter alia, the
1627 following: (a) the proposed schedule for the review; (b) written
1628 notification of the period within which a public hearing during
1629 the course of the review may be requested in writing by any one or
1630 more of (i) the applicant, (ii) a person who has filed an
1631 application to provide the proposed services in the same service
1632 area and whose application is scheduled for review during the same
1633 review cycle as the applicant's application, or (iii) a person who
1634 before the receipt of the application by the State Department of
1635 Health has filed a formal notice of intent to provide the proposed

1636 services in the same service area, such request to be made within
1637 twenty (20) days of the notification; and (c) the manner in which
1638 notification will be provided of the time and place of any hearing
1639 so requested. Any such hearing shall be conducted by a hearing
1640 officer designated by the State Department of Health. At such
1641 hearing, the hearing officer and any person requesting a public
1642 hearing during the course of review on the proposal being reviewed
1643 may conduct reasonable questioning of persons who make relevant
1644 factual allegations concerning the proposal. The hearing officer
1645 shall require that all persons be sworn before they may offer any
1646 testimony at the hearing, and the hearing officer is authorized to
1647 administer oaths. Any person so choosing may be represented by
1648 counsel at the hearing. A record of the hearing shall be made,
1649 which shall consist of a transcript of all testimony received, all
1650 documents and other material introduced by any interested person,
1651 the staff report and recommendation and such other material as the
1652 hearing officer considers relevant, including his own
1653 recommendation, which he shall make within a reasonable period of
1654 time after the hearing is closed and after he has had an
1655 opportunity to review, study and analyze the evidence presented
1656 during the hearing. The completed record shall be certified to
1657 the State Health Officer, who shall consider only the record in
1658 making his decision, and shall not consider any evidence or
1659 material which is not included therein. All final decisions
1660 regarding the issuance of a certificate of need shall be made by
1661 the State Health Officer. The State Health Officer shall make his
1662 written findings and issue his order after reviewing said record.
1663 The findings and decision of the State Health Officer shall not
1664 be deferred to any later date, and any deferral shall result in an
1665 automatic order of disapproval.

1666 (3) If review by the State Department of Health concerning
1667 the issuance of a certificate of need is not complete within the
1668 time specified by rule or regulation, which shall not, to the
1669 extent practicable, exceed ninety (90) days, the certificate of

1670 need shall not be granted. The proponent of the proposal may,
1671 within thirty (30) days, after the expiration of the specified
1672 time for review, commence such legal action as is necessary, in
1673 the Chancery Court of the First Judicial District of Hinds County
1674 or in the chancery court of the county in which the new
1675 institutional health service is proposed to be provided, to compel
1676 the State Health Officer to issue written findings and written
1677 order approving or disapproving the proposal in question.

1678 SECTION 4. Section 41-7-201, Mississippi Code of 1972, is
1679 amended as follows:

1680 41-7-201. (1) The provisions of this subsection (1) shall
1681 apply to any party appealing any final order of the State
1682 Department of Health pertaining to a certificate of need for a
1683 home health agency, as defined in Section 41-7-173(h)(ix):

1684 (a) In addition to other remedies now available at law
1685 or in equity, any party aggrieved by any such final order of the
1686 State Department of Health shall have the right of appeal to the
1687 Chancery Court of the First Judicial District of Hinds County,
1688 Mississippi, which appeal must be filed within thirty (30) days
1689 after the date of the final order. Provided, however, that any
1690 appeal of an order disapproving an application for such a
1691 certificate of need may be made to the chancery court of the
1692 county where the proposed construction, expansion or alteration
1693 was to be located or the new service or purpose of the capital
1694 expenditure was to be located. Such appeal must be filed in
1695 accordance with the thirty (30) days for filing as heretofore
1696 provided. Any appeal shall state briefly the nature of the
1697 proceedings before the State Department of Health and shall
1698 specify the order complained of. Any person whose rights may be
1699 materially affected by the action of the State Department of
1700 Health may appear and become a party or the court may, upon
1701 motion, order that any such person, organization or entity be
1702 joined as a necessary party.

1703 (b) Upon the filing of such an appeal, the clerk of the

1704 chancery court shall serve notice thereof upon the State
1705 Department of Health, whereupon the State Department of Health
1706 shall, within fifty (50) days or within such additional time as
1707 the court may by order for cause allow from the service of such
1708 notice, certify to the chancery court the record in the case,
1709 which records shall include a transcript of all testimony,
1710 together with all exhibits or copies thereof, all pleadings,
1711 proceedings, orders, findings and opinions entered in the case;
1712 provided, however, that the parties and the State Department of
1713 Health may stipulate that a specified portion only of the record
1714 shall be certified to the court as the record on appeal.

1715 (c) No new or additional evidence shall be introduced
1716 in the chancery court but the case shall be determined upon the
1717 record certified to the court.

1718 (d) The court may dispose of the appeal in termtime or
1719 vacation and may sustain or dismiss the appeal, modify or vacate
1720 the order complained of in whole or in part as the case may be;
1721 but in case the order is wholly or partly vacated, the court may
1722 also, in its discretion, remand the matter to the State Department
1723 of Health for such further proceedings, not inconsistent with the
1724 court's order, as, in the opinion of the court, justice may
1725 require. The order shall not be vacated or set aside, either in
1726 whole or in part, except for errors of law, unless the court finds
1727 that the order of the State Department of Health is not supported
1728 by substantial evidence, is contrary to the manifest weight of the
1729 evidence, is in excess of the statutory authority or jurisdiction
1730 of the State Department of Health, or violates any vested
1731 constitutional rights of any party involved in the appeal.
1732 Provided, however, an order of the chancery court reversing the
1733 denial of a certificate of need by the State Department of Health
1734 shall not entitle the applicant to effectuate the certificate of
1735 need until either:

1736 (i) Such order of the chancery court has become
1737 final and has not been appealed to the Supreme Court; or

1738 (ii) The Supreme Court has entered a final order
1739 affirming the chancery court.

1740 (e) Appeals in accordance with law may be had to the
1741 Supreme Court of the State of Mississippi from any final judgment
1742 of the chancery court.

1743 (2) The provisions of this subsection (2) shall apply to any
1744 party appealing any final order of the State Department of Health
1745 pertaining to a certificate of need for any health care facility
1746 as defined in Section 41-7-173(h), with the exception of any home
1747 health agency as defined in Section 41-7-173(h)(ix):

1748 (a) The filing of such appeal from a final order of the
1749 State Department of Health or the chancery court for the issuance
1750 of a certificate of need in a certificate of need proceeding shall
1751 not stop the purchase of medical equipment or development or
1752 offering of institutional health services granted in a certificate
1753 of need issued by the State Department of Health. A certificate
1754 of need issued by the State Department of Health shall take effect
1755 immediately upon issuance.

1756 (b) In addition to other remedies now available at law
1757 or in equity, any person named as a party in a hearing during the
1758 course of review aggrieved by any such final order of the State
1759 Department of Health shall have the right of appeal to the
1760 Chancery Court of the First Judicial District of Hinds County,
1761 Mississippi, which appeal must be filed within twenty (20) days
1762 after the date of the final order. Provided, however, that any
1763 appeal of an order disapproving an application for such a
1764 certificate of need may be made to the chancery court of the
1765 county where the proposed construction, expansion or alteration
1766 was to be located or the new service or purpose of the capital
1767 expenditure was to be located. Such appeal must be filed in
1768 accordance with the twenty (20) days for filing as heretofore
1769 provided. Any appeal shall state briefly the nature of the
1770 proceedings before the State Department of Health and shall
1771 specify the order complained of.

1772 (c) Upon the filing of such an appeal, the clerk of the
1773 chancery court shall serve notice thereof upon the State
1774 Department of Health, whereupon the State Department of Health
1775 shall, within thirty (30) days of the date of the filing of the
1776 appeal, certify to the chancery court the record in the case,
1777 which records shall include a transcript of all testimony,
1778 together with all exhibits or copies thereof, all pleadings,
1779 proceedings, orders, findings and opinions entered in the case;
1780 provided, however, that the parties and the State Department of
1781 Health may stipulate that a specified portion only of the record
1782 shall be certified to the court as the record on appeal. The
1783 chancery court shall give preference to any such appeal from a
1784 final order by the State Department of Health in a certificate of
1785 need proceeding, and shall render a final order regarding such
1786 appeal no later than one hundred twenty (120) days from the date
1787 of the final order by the State Department of Health. If the
1788 chancery court has not rendered a final order within this 120-day
1789 period, then the final order of the State Department of Health
1790 shall be deemed to have been affirmed by the chancery court, and
1791 any party to the appeal shall have the right to appeal from the
1792 chancery court to the Supreme Court on the record certified by the
1793 State Department of Health as otherwise provided in paragraph (g)
1794 of this subsection. In the event the chancery court has not
1795 rendered a final order within the 120-day period and an appeal is
1796 made to the Supreme Court as provided herein, the Supreme Court
1797 shall remand the case to the chancery court to make an award of
1798 costs, fees, reasonable expenses and attorney's fees incurred in
1799 favor of appellee payable by the appellant(s) should the Supreme
1800 Court affirm the order of the State Department of Health.

1801 (d) Any appeal of a final order by the State Department
1802 of Health in a certificate of need proceeding shall require the
1803 giving of a bond by the appellant(s) sufficient to secure the
1804 appellee against the loss of costs, fees, expenses and attorney's
1805 fees incurred in defense of the appeal, approved by the chancery

1806 court within five (5) days of the date of filing the appeal.

1807 (e) No new or additional evidence shall be introduced
1808 in the chancery court but the case shall be determined upon the
1809 record certified to the court.

1810 (f) The court may dispose of the appeal in termtime or
1811 vacation and may sustain or dismiss the appeal, modify or vacate
1812 the order complained of in whole or in part and may make an award
1813 of costs, fees, expenses and attorney's fees, as the case may be;
1814 but in case the order is wholly or partly vacated, the court may
1815 also, in its discretion, remand the matter to the State Department
1816 of Health for such further proceedings, not inconsistent with the
1817 court's order, as, in the opinion of the court, justice may
1818 require. The court, as part of the final order, shall make an
1819 award of costs, fees, reasonable expenses and attorney's fees
1820 incurred in favor of appellee payable by the appellant(s) should
1821 the court affirm the order of the State Department of Health. The
1822 order shall not be vacated or set aside, either in whole or in
1823 part, except for errors of law, unless the court finds that the
1824 order of the State Department of Health is not supported by
1825 substantial evidence, is contrary to the manifest weight of the
1826 evidence, is in excess of the statutory authority or jurisdiction
1827 of the State Department of Health, or violates any vested
1828 constitutional rights of any party involved in the appeal.
1829 Provided, however, an order of the chancery court reversing the
1830 denial of a certificate of need by the State Department of Health
1831 shall not entitle the applicant to effectuate the certificate of
1832 need until either:

1833 (i) Such order of the chancery court has become
1834 final and has not been appealed to the Supreme Court; or

1835 (ii) The Supreme Court has entered a final order
1836 affirming the chancery court.

1837 (g) Appeals in accordance with law may be had to the
1838 Supreme Court of the State of Mississippi from any final judgment
1839 of the chancery court.

1840 (h) Within thirty (30) days from the date of a final
1841 order by the Supreme Court or a final order of the chancery court
1842 not appealed to the Supreme Court that modifies or wholly or
1843 partly vacates the final order of the State Department of Health
1844 granting a certificate of need, the State Department of Health
1845 shall issue another order in conformity with the final order of
1846 the Supreme Court, or the final order of the chancery court not
1847 appealed to the Supreme Court.

1848 SECTION 5. Section 41-7-205, Mississippi Code of 1972, is
1849 amended as follows:

1850 41-7-205. The State Department of Health shall provide an
1851 expedited review for those projects which it determines to warrant
1852 such action. All requests for such an expedited review by the
1853 applicant must be made in writing to the State Department of
1854 Health. The State Department of Health shall make a determination
1855 as to whether expedited review is appropriate within fifteen (15)
1856 days after receipt of a written request. The State Department of
1857 Health shall render its decision concerning the issuance of a
1858 certificate of need within ninety (90) days after the receipt of a
1859 completed application. A project is subject to expedited review
1860 only if it meets one (1) of the following criteria:

1861 (a) A transfer or change of ownership of a health care
1862 facility wherein the facility continues to operate under the same
1863 category of license or permit as it possessed prior to the date of
1864 the proposed change of ownership and none of the other activities
1865 described in Section 41-7-191(1) take place in conjunction with
1866 such transfer;

1867 (b) Replacement of equipment with used equipment of
1868 similar capability if the equipment is included in the facility's
1869 annual capital expenditure budget or plan;

1870 (c) A request for project cost overruns that exceed the
1871 rate of inflation as determined by the State Department of Health;

1872 (d) A request for relocation of services or facilities
1873 if the relocation of such services or facilities (i) involves a

1874 capital expenditure by or on behalf of a health care facility, or
1875 (ii) is more than a one-quarter (1/4) mile radius from the campus
1876 of the facility where such health care facility or service is
1877 located;

1878 (e) A request for a certificate of need to comply with
1879 duly recognized fire, building, or life safety codes, or to comply
1880 with state licensure standards or accreditation standards required
1881 for reimbursements;

1882 (f) Any proposal in which the proposed capital
1883 expenditure, if for major medical equipment does not exceed One
1884 Million Five Hundred Thousand Dollars (\$1,500,000.00), and if for
1885 any other proposed capital expenditure does not exceed One Million
1886 Seven Hundred Thousand Dollars (\$1,700,000.00).

1887 SECTION 6. Section 41-7-207, Mississippi Code of 1972, is
1888 amended as follows:

1889 41-7-207. Notwithstanding any other provisions of Sections
1890 41-7-171 to 41-7-209, when the need for any emergency replacement
1891 occurs, the certificate of need review process may be expedited by
1892 promulgation of administrative procedures for expenditures
1893 necessary to alleviate an emergency condition. Emergency
1894 replacement means the replacement of partial facilities or
1895 equipment the replacement of which is not exempt from certificate
1896 of need review pursuant to the medical equipment replacement
1897 exemption provided in Section 41-7-191(1)(f), without which the
1898 operation of the facility and the health and safety of patients
1899 would be immediately jeopardized. Expenditures under this section
1900 shall be limited to the replacement of those necessary facilities
1901 or equipment, the loss of which constitutes an emergency.

1902 SECTION 7. This act shall take effect and be in force from
1903 and after July 1, 1999.