

By: Representatives Moody, Scott (80th)

To: Public Health and
Welfare;
Appropriations

HOUSE BILL NO. 849
(As Passed the House)

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

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

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

31 41-7-173. For the purposes of Section 41-7-171 et seq., the
32 following words shall have the meanings ascribed herein, unless
33 the context otherwise requires:

34 (a) "Affected person" means (i) the applicant; (ii) a

35 person residing within the geographic area to be served by the
36 applicant's proposal; (iii) a person who regularly uses health
37 care facilities or HMO's located in the geographic area of the
38 proposal which provide similar service to that which is proposed;
39 (iv) health care facilities and HMO's which have, prior to receipt
40 of the application under review, formally indicated an intention
41 to provide service similar to that of the proposal being
42 considered at a future date; (v) third-party payers who reimburse
43 health care facilities located in the geographical area of the
44 proposal; or (vi) any agency that establishes rates for health
45 care services or HMO's located in the geographic area of the
46 proposal.

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

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

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

64 (iii) A "capital expenditure" shall include the
65 acquisition, whether by lease, sufferance, gift, devise, legacy,
66 settlement of a trust or other means, of any facility or part

67 thereof, or equipment for a facility, the expenditure for which
68 would have been considered a capital expenditure if acquired by
69 purchase. Transactions which are separated in time but are
70 planned to be undertaken within twelve (12) months of each other
71 and are components of an overall plan for meeting patient care
72 objectives shall, for purposes of this definition, be viewed in
73 their entirety without regard to their timing.

74 (iv) In those instances where a health care
75 facility or other provider of health services proposes to provide
76 a service in which the capital expenditure for major medical
77 equipment or other than major medical equipment or a combination
78 of the two (2) may have been split between separate parties, the
79 total capital expenditure required to provide the proposed service
80 shall be considered in determining the necessity of certificate of
81 need review and in determining the appropriate certificate of need
82 review fee to be paid. The capital expenditure associated with
83 facilities and equipment to provide services in Mississippi shall
84 be considered regardless of where the capital expenditure was
85 made, in state or out of state, and regardless of the domicile of
86 the party making the capital expenditure, in state or out of
87 state.

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

96 acquired as a result of a testamentary instrument or under the
97 laws of descent and distribution of the State of Mississippi.

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

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

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

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

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

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

124 (g) "Develop," when used in connection with health

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

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

149 (i) "Hospital" means an institution which is
150 primarily engaged in providing to inpatients, by or under the
151 supervision of physicians, diagnostic services and therapeutic
152 services for medical diagnosis, treatment and care of injured,
153 disabled or sick persons, or rehabilitation services for the

rehabilitation of injured, disabled or sick persons. Such term does not include psychiatric hospitals.

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

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

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

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

(vi) "Intermediate care facility" means an institution which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is

designed to provide, but who, because of their mental or physical condition, require health related care and services (above the level of room and board).

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

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

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

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a

212 home health aide;

213 4. Other services as approved by the
214 licensing agency for home health agencies;

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

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

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

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

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

or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

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

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

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

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

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

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

(xii) "Long-term care hospital" means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days, which is primarily engaged in providing chronic or long-term medical care to patients who do not require more than three (3) hours of rehabilitation or comprehensive rehabilitation per day, and has a transfer agreement with an acute care medical center and a comprehensive medical rehabilitation facility. Long-term care

270 hospitals shall not use rehabilitation, comprehensive medical
271 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
272 nursing home, skilled nursing facility, or sub-acute care facility
273 in association with its name.

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

283 1. Includes evaluation and treatment of
284 individuals with physical disabilities;

285 2. Emphasizes education and training of
286 individuals with disabilities;

287 3. Incorporates at least the following core
288 disciplines:

289 (i) Physical Therapy;

290 (ii) Occupational Therapy;

291 (iii) Speech and Language Therapy;

292 (iv) Rehabilitation Nursing; and

293 4. Incorporates at least three (3) of the
294 following disciplines:

295 (i) Psychology;

296 (ii) Audiology;

297 (iii) Respiratory Therapy;

298 (iv) Therapeutic Recreation;

- 299 (v) Orthotics;
- 300 (vi) Prosthetics;
- 301 (vii) Special Education;
- 302 (viii) Vocational Rehabilitation;
- 303 (ix) Psychotherapy;
- 304 (x) Social Work;
- 305 (xi) Rehabilitation Engineering.

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

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

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

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

321 (iii) Provides physician services primarily:

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

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

327 (j) "Health service area" means a geographic area of

the state designated in the State Health Plan as the area to be used in planning for specified health facilities and services and to be used when considering certificate of need applications to provide health facilities and services.

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

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

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

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

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

(p) "Person" means an individual, a trust or estate, partnership, corporation (including associations, joint stock

companies and insurance companies), the state or a political subdivision or instrumentality of the state.

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

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

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

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

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

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

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

386 need:

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

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

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

415 Health Plan;

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

420 (i) Open heart surgery services;

421 (ii) Cardiac catheterization services;

422 (iii) Comprehensive inpatient rehabilitation
423 services;

424 (iv) Licensed psychiatric services;

425 (v) Licensed chemical dependency services;

426 (vi) Radiation therapy services;

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

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

431 (ix) Home health services;

432 (x) Swing-bed services;

433 (xi) Ambulatory surgical services;

434 (xii) Magnetic resonance imaging services;

435 (xiii) Extracorporeal shock wave lithotripsy
436 services;

437 (xiv) Long-term care hospital services;

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

439 (e) The relocation of one or more health services from
440 one physical facility or site to another physical facility or
441 site, unless such relocation, which does not involve a capital
442 expenditure by or on behalf of a health care facility, (i) is to a
443 physical facility or site within one thousand three hundred twenty

444 (1,320) feet from the main entrance of the health care facility
445 where the health care service is located, or (ii) is the result of
446 an order of a court of appropriate jurisdiction or a result of
447 pending litigation in such court, or by order of the State
448 Department of Health, or by order of any other agency or legal
449 entity of the state, the federal government, or any political
450 subdivision of either, whose order is also approved by the State
451 Department of Health;

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

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

470 (h) The change of ownership of any health care facility
471 defined in subparagraphs (iv), (vi) and (viii) of Section
472 41-7-173(h), in which a notice of intent as described in paragraph

(g) has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership;

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

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

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

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

(a) The total number of nursing home beds as defined in subparagraphs (iv) and (vi) of Section 41-7-173(h) which may be authorized by such certificates of need issued during the period beginning on July 1, 1989, and ending on June 30, 1999, shall not

502 exceed one thousand four hundred seventy (1,470) beds. The number
503 of nursing home beds authorized under paragraphs (z), (cc), (dd),
504 (ee) and (ff) of this subsection (2) shall not be counted in the
505 limit on the total number of beds provided for in this paragraph
506 (a).

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

528 (c) The department may issue a certificate of need to
529 any person proposing the new construction of any health care
530 facility defined in subparagraphs (iv) and (vi) of Section

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

558 (d) The department may issue a certificate of need for
559 the conversion of existing beds in a county district hospital or

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

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

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

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

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

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

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

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

(k) The department may issue certificates of need in Harrison County to provide skilled nursing home care for Alzheimer's Disease patients and other patients, not to exceed one hundred fifty (150) beds, provided that (i) the owner of the health care facility issued a certificate of need for sixty (60) beds agrees in writing that no more than thirty (30) of the beds in the health care facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), (ii) the owner of one (1) of the health care facilities issued a certificate of need for forty-five (45) beds agrees in writing that no more than twenty-three (23) of the beds in the health care facility will be certified for participation in the Medicaid program, and (iii) the owner of the other health care facility issued a certificate of need for forty-five (45) beds agrees in writing that no more than twenty-two (22) of the beds in the health care facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for a number of

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

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

644 (m) The department may issue a certificate of need for
645 the new construction of, addition to, or expansion of a nursing
646 home, or the conversion of existing hospital beds to provide

nursing home care, in Hancock County. The total number of nursing home care beds that may be authorized by any certificate of need issued under this paragraph shall not exceed sixty (60) beds.

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

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

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

(q) The department may issue a certificate of need for

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

681 (r) The department may issue a certificate of need for
682 the addition to or expansion of any skilled nursing facility that
683 is part of an existing continuing care retirement community
684 located in Madison County, provided that the recipient of the
685 certificate of need agrees in writing that the skilled nursing
686 facility will not at any time participate in the Medicaid program
687 (Section 43-13-101 et seq.) or admit or keep any patients in the
688 skilled nursing facility who are participating in the Medicaid
689 program. This written agreement by the recipient of the
690 certificate of need shall be fully binding on any subsequent owner
691 of the skilled nursing facility, if the ownership of the facility
692 is transferred at any time after the issuance of the certificate
693 of need. Agreement that the skilled nursing facility will not
694 participate in the Medicaid program shall be a condition of the
695 issuance of a certificate of need to any person under this
696 paragraph (r), and if such skilled nursing facility at any time
697 after the issuance of the certificate of need, regardless of the
698 ownership of the facility, participates in the Medicaid program or
699 admits or keeps any patients in the facility who are participating
700 in the Medicaid program, the State Department of Health shall
701 revoke the certificate of need, if it is still outstanding, and
702 shall deny or revoke the license of the skilled nursing facility,
703 at the time that the department determines, after a hearing
704 complying with due process, that the facility has failed to comply

705 with any of the conditions upon which the certificate of need was
706 issued, as provided in this paragraph and in the written agreement
707 by the recipient of the certificate of need. The total number of
708 beds that may be authorized under the authority of this paragraph
709 (r) shall not exceed sixty (60) beds.

710 (s) The State Department of Health may issue a
711 certificate of need to any hospital located in DeSoto County for
712 the new construction of a skilled nursing facility, not to exceed
713 one hundred twenty (120) beds, in DeSoto County, provided that the
714 recipient of the certificate of need agrees in writing that no
715 more than thirty (30) of the beds in the skilled nursing facility
716 will be certified for participation in the Medicaid program
717 (Section 43-13-101 et seq.), and that no claim will be submitted
718 for Medicaid reimbursement for more than thirty (30) patients in
719 the facility in any day or for any patient in the facility who is
720 in a bed that is not Medicaid-certified. This written agreement
721 by the recipient of the certificate of need shall be a condition
722 of the issuance of the certificate of need under this paragraph,
723 and the agreement shall be fully binding on any subsequent owner
724 of the skilled nursing facility if the ownership of the facility
725 is transferred at any time after the issuance of the certificate
726 of need. After this written agreement is executed, the Division
727 of Medicaid and the State Department of Health shall not certify
728 more than thirty (30) of the beds in the skilled nursing facility
729 for participation in the Medicaid program. If the skilled nursing
730 facility violates the terms of the written agreement by admitting
731 or keeping in the facility on a regular or continuing basis more
732 than thirty (30) patients who are participating in the Medicaid
733 program, the State Department of Health shall revoke the license

of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the skilled nursing facility authorized by the certificate of need issued under this paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the facility at any time after the expiration of the eighteen-month period.

(t) The State Department of Health may issue a certificate of need for the construction of a nursing facility or the conversion of beds to nursing facility beds at a personal care facility for the elderly in Lowndes County that is owned and operated by a Mississippi nonprofit corporation, not to exceed sixty (60) beds, provided that the recipient of the certificate of need agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement for more than thirty (30) patients in the facility in any month or for any patient in the facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed,

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

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

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

817 (v) The State Department of Health may issue a
818 certificate of need for the construction or expansion of nursing
819 facility beds or the conversion of other beds to nursing facility
820 beds in either Hinds, Madison or Rankin Counties, not to exceed

821 sixty (60) beds, provided that the recipient of the certificate of
822 need agrees in writing that no more than thirty (30) of the beds
823 at the nursing facility will be certified for participation in the
824 Medicaid program (Section 43-13-101 et seq.), and that no claim
825 will be submitted for Medicaid reimbursement for more than thirty
826 (30) patients in the nursing facility in any day or for any
827 patient in the nursing facility who is in a bed that is not
828 Medicaid-certified. This written agreement by the recipient of
829 the certificate of need shall be a condition of the issuance of
830 the certificate of need under this paragraph, and the agreement
831 shall be fully binding on any subsequent owner of the nursing
832 facility if the ownership of the nursing facility is transferred
833 at any time after the issuance of the certificate of need. After
834 this written agreement is executed, the Division of Medicaid and
835 the State Department of Health shall not certify more than thirty
836 (30) of the beds in the nursing facility for participation in the
837 Medicaid program. If the nursing facility violates the terms of
838 the written agreement by admitting or keeping in the nursing
839 facility on a regular or continuing basis more than thirty (30)
840 patients who are participating in the Medicaid program, the State
841 Department of Health shall revoke the license of the nursing
842 facility, at the time that the department determines, after a
843 hearing complying with due process, that the nursing facility has
844 violated the condition upon which the certificate of need was
845 issued, as provided in this paragraph and in the written
846 agreement. If the nursing facility or nursing facility beds
847 authorized by the certificate of need issued under this paragraph
848 are not constructed, expanded or converted and fully operational
849 within thirty-six (36) months after July 1, 1994, the State

850 Department of Health, after a hearing complying with due process,
851 shall revoke the certificate of need, if it is still outstanding,
852 and shall not issue a license for the nursing facility or nursing
853 facility beds at any time after the expiration of the
854 thirty-six-month period.

855 (w) The State Department of Health may issue a
856 certificate of need for the construction or expansion of nursing
857 facility beds or the conversion of other beds to nursing facility
858 beds in either Hancock, Harrison or Jackson Counties, not to
859 exceed sixty (60) beds, provided that the recipient of the
860 certificate of need agrees in writing that no more than thirty
861 (30) of the beds at the nursing facility will be certified for
862 participation in the Medicaid program (Section 43-13-101 et seq.),
863 and that no claim will be submitted for Medicaid reimbursement for
864 more than thirty (30) patients in the nursing facility in any day
865 or for any patient in the nursing facility who is in a bed that is
866 not Medicaid-certified. This written agreement by the recipient
867 of the certificate of need shall be a condition of the issuance of
868 the certificate of need under this paragraph, and the agreement
869 shall be fully binding on any subsequent owner of the nursing
870 facility if the ownership of the nursing facility is transferred
871 at any time after the issuance of the certificate of need. After
872 this written agreement is executed, the Division of Medicaid and
873 the State Department of Health shall not certify more than thirty
874 (30) of the beds in the nursing facility for participation in the
875 Medicaid program. If the nursing facility violates the terms of
876 the written agreement by admitting or keeping in the nursing
877 facility on a regular or continuing basis more than thirty (30)
878 patients who are participating in the Medicaid program, the State

879 Department of Health shall revoke the license of the nursing
880 facility, at the time that the department determines, after a
881 hearing complying with due process, that the nursing facility has
882 violated the condition upon which the certificate of need was
883 issued, as provided in this paragraph and in the written
884 agreement. If the nursing facility or nursing facility beds
885 authorized by the certificate of need issued under this paragraph
886 are not constructed, expanded or converted and fully operational
887 within thirty-six (36) months after July 1, 1994, the State
888 Department of Health, after a hearing complying with due process,
889 shall revoke the certificate of need, if it is still outstanding,
890 and shall not issue a license for the nursing facility or nursing
891 facility beds at any time after the expiration of the
892 thirty-six-month period.

893 (x) The department may issue a certificate of need for
894 the new construction of a skilled nursing facility in Leake
895 County, provided that the recipient of the certificate of need
896 agrees in writing that the skilled nursing facility will not at
897 any time participate in the Medicaid program (Section 43-13-101 et
898 seq.) or admit or keep any patients in the skilled nursing
899 facility who are participating in the Medicaid program. This
900 written agreement by the recipient of the certificate of need
901 shall be fully binding on any subsequent owner of the skilled
902 nursing facility, if the ownership of the facility is transferred
903 at any time after the issuance of the certificate of need.
904 Agreement that the skilled nursing facility will not participate
905 in the Medicaid program shall be a condition of the issuance of a
906 certificate of need to any person under this paragraph (x), and if
907 such skilled nursing facility at any time after the issuance of

the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 43-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (x) shall not exceed sixty (60) beds. If the skilled nursing facility authorized by the certificate of need issued under this paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

(y) The department may issue a certificate of need in Jones County for making additions to or expansion or replacement of an existing forty-bed facility in order to increase the number of its beds to not more than sixty (60) beds. For the purposes of this paragraph, the provision of Section 41-7-193(1) requiring

937 substantial compliance with the projection of need as reported in
938 the current State Health Plan is waived. The total number of
939 nursing home beds that may be authorized by any certificate of
940 need issued under this paragraph shall not exceed twenty (20)
941 beds.

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

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

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

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

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

1015 (cc) The State Department of Health may issue a
1016 certificate of need to a county-owned hospital in the Second
1017 Judicial District of Panola County for the conversion of not more
1018 than seventy-two (72) hospital beds to nursing facility beds,
1019 provided that the recipient of the certificate of need agrees in
1020 writing that none of the beds at the nursing facility will be
1021 certified for participation in the Medicaid program (Section
1022 43-13-101 et seq.), and that no claim will be submitted for
1023 Medicaid reimbursement in the nursing facility in any day or for

1024 any patient in the nursing facility. This written agreement by
1025 the recipient of the certificate of need shall be a condition of
1026 the issuance of the certificate of need under this paragraph, and
1027 the agreement shall be fully binding on any subsequent owner of
1028 the nursing facility if the ownership of the nursing facility is
1029 transferred at any time after the issuance of the certificate of
1030 need. After this written agreement is executed, the Division of
1031 Medicaid and the State Department of Health shall not certify any
1032 of the beds in the nursing facility for participation in the
1033 Medicaid program. If the nursing facility violates the terms of
1034 the written agreement by admitting or keeping in the nursing
1035 facility on a regular or continuing basis any patients who are
1036 participating in the Medicaid program, the State Department of
1037 Health shall revoke the license of the nursing facility, at the
1038 time that the department determines, after a hearing complying
1039 with due process, that the nursing facility has violated the
1040 condition upon which the certificate of need was issued, as
1041 provided in this paragraph and in the written agreement. If the
1042 certificate of need authorized under this paragraph is not issued
1043 within twelve (12) months after July 1, 1998, the department shall
1044 deny the application for the certificate of need and shall not
1045 issue the certificate of need at any time after the twelve-month
1046 period, unless the issuance is contested. If the certificate of
1047 need is issued and substantial construction of the nursing
1048 facility beds has not commenced within eighteen (18) months after
1049 July 1, 1998, the State Department of Health, after a hearing
1050 complying with due process, shall revoke the certificate of need
1051 if it is still outstanding, and the department shall not issue a
1052 license for the nursing facility at any time after the

1053 eighteen-month period. * * * However, * * * if the issuance of
1054 the certificate of need is contested, the department shall require
1055 substantial construction of the nursing facility beds within six
1056 (6) months after final adjudication on the issuance of the
1057 certificate of need.

1058 (dd) The department may issue a certificate of need for
1059 the new construction, addition or conversion of skilled nursing
1060 facility beds in Madison County, provided that the recipient of
1061 the certificate of need agrees in writing that the skilled nursing
1062 facility will not at any time participate in the Medicaid program
1063 (Section 43-13-101 et seq.) or admit or keep any patients in the
1064 skilled nursing facility who are participating in the Medicaid
1065 program. This written agreement by the recipient of the
1066 certificate of need shall be fully binding on any subsequent owner
1067 of the skilled nursing facility, if the ownership of the facility
1068 is transferred at any time after the issuance of the certificate
1069 of need. Agreement that the skilled nursing facility will not
1070 participate in the Medicaid program shall be a condition of the
1071 issuance of a certificate of need to any person under this
1072 paragraph (dd), and if such skilled nursing facility at any time
1073 after the issuance of the certificate of need, regardless of the
1074 ownership of the facility, participates in the Medicaid program or
1075 admits or keeps any patients in the facility who are participating
1076 in the Medicaid program, the State Department of Health shall
1077 revoke the certificate of need, if it is still outstanding, and
1078 shall deny or revoke the license of the skilled nursing facility,
1079 at the time that the department determines, after a hearing
1080 complying with due process, that the facility has failed to comply
1081 with any of the conditions upon which the certificate of need was

1082 issued, as provided in this paragraph and in the written agreement
1083 by the recipient of the certificate of need. The total number of
1084 nursing facility beds that may be authorized by any certificate of
1085 need issued under this paragraph (dd) shall not exceed sixty (60)
1086 beds. If the certificate of need authorized under this paragraph
1087 is not issued within twelve (12) months after July 1, 1998, the
1088 department shall deny the application for the certificate of need
1089 and shall not issue the certificate of need at any time after the
1090 twelve-month period, unless the issuance is contested. If the
1091 certificate of need is issued and substantial construction of the
1092 nursing facility beds has not commenced within eighteen (18)
1093 months after July 1, 1998, the State Department of Health, after a
1094 hearing complying with due process, shall revoke the certificate
1095 of need if it is still outstanding, and the department shall not
1096 issue a license for the nursing facility at any time after the
1097 eighteen-month period. * * * However, * * * if the issuance of
1098 the certificate of need is contested, the department shall require
1099 substantial construction of the nursing facility beds within six
1100 (6) months after final adjudication on the issuance of the
1101 certificate of need.

1102 (ee) The department may issue a certificate of need for
1103 the new construction, addition or conversion of skilled nursing
1104 facility beds in Leake County, provided that the recipient of the
1105 certificate of need agrees in writing that the skilled nursing
1106 facility will not at any time participate in the Medicaid program
1107 (Section 43-13-101 et seq.) or admit or keep any patients in the
1108 skilled nursing facility who are participating in the Medicaid
1109 program. This written agreement by the recipient of the
1110 certificate of need shall be fully binding on any subsequent owner

1111 of the skilled nursing facility, if the ownership of the facility
1112 is transferred at any time after the issuance of the certificate
1113 of need. Agreement that the skilled nursing facility will not
1114 participate in the Medicaid program shall be a condition of the
1115 issuance of a certificate of need to any person under this
1116 paragraph (ee), and if such skilled nursing facility at any time
1117 after the issuance of the certificate of need, regardless of the
1118 ownership of the facility, participates in the Medicaid program or
1119 admits or keeps any patients in the facility who are participating
1120 in the Medicaid program, the State Department of Health shall
1121 revoke the certificate of need, if it is still outstanding, and
1122 shall deny or revoke the license of the skilled nursing facility,
1123 at the time that the department determines, after a hearing
1124 complying with due process, that the facility has failed to comply
1125 with any of the conditions upon which the certificate of need was
1126 issued, as provided in this paragraph and in the written agreement
1127 by the recipient of the certificate of need. The total number of
1128 nursing facility beds that may be authorized by any certificate of
1129 need issued under this paragraph (ee) shall not exceed sixty (60)
1130 beds. If the certificate of need authorized under this paragraph
1131 is not issued within twelve (12) months after July 1, 1998, the
1132 department shall deny the application for the certificate of need
1133 and shall not issue the certificate of need at any time after the
1134 twelve-month period, unless the issuance is contested. If the
1135 certificate of need is issued and substantial construction of the
1136 nursing facility beds has not commenced within eighteen (18)
1137 months after July 1, 1998, the State Department of Health, after a
1138 hearing complying with due process, shall revoke the certificate
1139 of need if it is still outstanding, and the department shall not

1140 issue a license for the nursing facility at any time after the
1141 eighteen-month period. * * * However, * * * if the issuance of
1142 the certificate of need is contested, the department shall require
1143 substantial construction of the nursing facility beds within six
1144 (6) months after final adjudication on the issuance of the
1145 certificate of need.

1146 (ff) The department may issue a certificate of need for
1147 the construction of a municipally-owned nursing facility within
1148 the Town of Belmont in Tishomingo County, not to exceed sixty (60)
1149 beds, provided that the recipient of the certificate of need
1150 agrees in writing that the skilled nursing facility will not at
1151 any time participate in the Medicaid program (Section 43-13-101 et
1152 seq.) or admit or keep any patients in the skilled nursing
1153 facility who are participating in the Medicaid program. This
1154 written agreement by the recipient of the certificate of need
1155 shall be fully binding on any subsequent owner of the skilled
1156 nursing facility, if the ownership of the facility is transferred
1157 at any time after the issuance of the certificate of need.
1158 Agreement that the skilled nursing facility will not participate
1159 in the Medicaid program shall be a condition of the issuance of a
1160 certificate of need to any person under this paragraph (ff), and
1161 if such skilled nursing facility at any time after the issuance of
1162 the certificate of need, regardless of the ownership of the
1163 facility, participates in the Medicaid program or admits or keeps
1164 any patients in the facility who are participating in the Medicaid
1165 program, the State Department of Health shall revoke the
1166 certificate of need, if it is still outstanding, and shall deny or
1167 revoke the license of the skilled nursing facility, at the time
1168 that the department determines, after a hearing complying with due

1169 process, that the facility has failed to comply with any of the
1170 conditions upon which the certificate of need was issued, as
1171 provided in this paragraph and in the written agreement by the
1172 recipient of the certificate of need. The provision of Section
1173 43-7-193(1) regarding substantial compliance of the projection of
1174 need as reported in the current State Health Plan is waived for
1175 the purposes of this paragraph. If the certificate of need
1176 authorized under this paragraph is not issued within twelve (12)
1177 months after July 1, 1998, the department shall deny the
1178 application for the certificate of need and shall not issue the
1179 certificate of need at any time after the twelve-month period,
1180 unless the issuance is contested. If the certificate of need is
1181 issued and substantial construction of the nursing facility beds
1182 has not commenced within eighteen (18) months after July 1, 1998,
1183 the State Department of Health, after a hearing complying with due
1184 process, shall revoke the certificate of need if it is still
1185 outstanding, and the department shall not issue a license for the
1186 nursing facility at any time after the eighteen-month
1187 period. * * * However, * * * if the issuance of the certificate
1188 of need is contested, the department shall require substantial
1189 construction of the nursing facility beds within six (6) months
1190 after final adjudication on the issuance of the certificate of
1191 need.

1192 (3) If the holder of the certificate of need that was issued
1193 before January 1, 1990, for the construction of a nursing home in
1194 Claiborne County has not substantially undertaken commencement of
1195 construction by completing site works and pouring foundations and
1196 the floor slab of a nursing home in Claiborne County before May 1,
1197 1990, as determined by the department, then the department shall

1198 transfer such certificate of need to the Board of Supervisors of
1199 Claiborne County upon the effective date of this subsection (3).
1200 If the certificate of need is transferred to the board of
1201 supervisors, it shall be valid for a period of twelve (12) months
1202 and shall authorize the construction of a sixty-bed nursing home
1203 on county-owned property or the conversion of vacant hospital beds
1204 in the county hospital not to exceed sixty (60) beds.

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

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

1222 (b) Of the total number of beds authorized under this
1223 subsection, the department may issue a certificate or certificates
1224 of need for the construction or expansion of psychiatric
1225 residential treatment facility beds or the conversion of other
1226 beds to psychiatric residential treatment facility beds in Warren

1227 County, not to exceed sixty (60) psychiatric residential treatment
1228 facility beds, provided that the facility agrees in writing that
1229 no more than thirty (30) of the beds at the psychiatric
1230 residential treatment facility will be certified for participation
1231 in the Medicaid program (Section 43-13-101 et seq.) for the use of
1232 any patients other than those who are participating only in the
1233 Medicaid program of another state, and that no claim will be
1234 submitted to the Division of Medicaid for Medicaid reimbursement
1235 for more than thirty (30) patients in the psychiatric residential
1236 treatment facility in any day or for any patient in the
1237 psychiatric residential treatment facility who is in a bed that is
1238 not Medicaid-certified. This written agreement by the recipient
1239 of the certificate of need shall be a condition of the issuance of
1240 the certificate of need under this paragraph, and the agreement
1241 shall be fully binding on any subsequent owner of the psychiatric
1242 residential treatment facility if the ownership of the facility is
1243 transferred at any time after the issuance of the certificate of
1244 need. After this written agreement is executed, the Division of
1245 Medicaid and the State Department of Health shall not certify more
1246 than thirty (30) of the beds in the psychiatric residential
1247 treatment facility for participation in the Medicaid program for
1248 the use of any patients other than those who are participating
1249 only in the Medicaid program of another state. If the psychiatric
1250 residential treatment facility violates the terms of the written
1251 agreement by admitting or keeping in the facility on a regular or
1252 continuing basis more than thirty (30) patients who are
1253 participating in the Mississippi Medicaid program, the State
1254 Department of Health shall revoke the license of the facility, at
1255 the time that the department determines, after a hearing complying

1256 with due process, that the facility has violated the condition
1257 upon which the certificate of need was issued, as provided in this
1258 paragraph and in the written agreement.

1259 (c) Of the total number of beds authorized under this
1260 subsection, the department shall issue a certificate of need to a
1261 hospital currently operating Medicaid-certified acute psychiatric
1262 beds for adolescents in DeSoto County, for the establishment of a
1263 forty-bed psychiatric residential treatment facility in DeSoto
1264 County, provided that the hospital agrees in writing (i) that the
1265 hospital shall give priority for the use of those forty (40) beds
1266 to Mississippi residents who are presently being treated in
1267 out-of-state facilities, and (ii) that no more than fifteen (15)
1268 of the beds at the psychiatric residential treatment facility will
1269 be certified for participation in the Medicaid program (Section
1270 43-13-101 et seq.), and that no claim will be submitted for
1271 Medicaid reimbursement for more than fifteen (15) patients in the
1272 psychiatric residential treatment facility in any day or for any
1273 patient in the psychiatric residential treatment facility who is
1274 in a bed that is not Medicaid-certified. This written agreement
1275 by the recipient of the certificate of need shall be a condition
1276 of the issuance of the certificate of need under this paragraph,
1277 and the agreement shall be fully binding on any subsequent owner
1278 of the psychiatric residential treatment facility if the ownership
1279 of the facility is transferred at any time after the issuance of
1280 the certificate of need. After this written agreement is
1281 executed, the Division of Medicaid and the State Department of
1282 Health shall not certify more than fifteen (15) of the beds in the
1283 psychiatric residential treatment facility for participation in
1284 the Medicaid program. If the psychiatric residential treatment

1285 facility violates the terms of the written agreement by admitting
1286 or keeping in the facility on a regular or continuing basis more
1287 than fifteen (15) patients who are participating in the Medicaid
1288 program, the State Department of Health shall revoke the license
1289 of the facility, at the time that the department determines, after
1290 a hearing complying with due process, that the facility has
1291 violated the condition upon which the certificate of need was
1292 issued, as provided in this paragraph and in the written
1293 agreement.

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

1302 (e) Of the total number of beds authorized under this
1303 subsection (4) the department shall issue a certificate of need to
1304 a privately owned, nonprofit psychiatric residential treatment
1305 facility in Hinds County for an eight-bed expansion of the
1306 facility, provided that the facility agrees in writing that the
1307 facility shall give priority for the use of those eight (8) beds
1308 to Mississippi residents who are presently being treated in
1309 out-of-state facilities.

1310 (5) (a) From and after July 1, 1993, the department shall
1311 not issue a certificate of need to any person for the new
1312 construction of any hospital, psychiatric hospital or chemical
1313 dependency hospital that will contain any child/adolescent

1314 psychiatric or child/adolescent chemical dependency beds, or for
1315 the conversion of any other health care facility to a hospital,
1316 psychiatric hospital or chemical dependency hospital that will
1317 contain any child/adolescent psychiatric or child/adolescent
1318 chemical dependency beds, or for the addition of any
1319 child/adolescent psychiatric or child/adolescent chemical
1320 dependency beds in any hospital, psychiatric hospital or chemical
1321 dependency hospital, or for the conversion of any beds of another
1322 category in any hospital, psychiatric hospital or chemical
1323 dependency hospital to child/adolescent psychiatric or
1324 child/adolescent chemical dependency beds, except as hereinafter
1325 authorized:

1326 (i) The department may issue certificates of need
1327 to any person for any purpose described in this subsection,
1328 provided that the hospital, psychiatric hospital or chemical
1329 dependency hospital does not participate in the Medicaid program
1330 (Section 43-13-101 et seq.) at the time of the application for the
1331 certificate of need and the owner of the hospital, psychiatric
1332 hospital or chemical dependency hospital agrees in writing that
1333 the hospital, psychiatric hospital or chemical dependency hospital
1334 will not at any time participate in the Medicaid program or admit
1335 or keep any patients who are participating in the Medicaid program
1336 in the hospital, psychiatric hospital or chemical dependency
1337 hospital. This written agreement by the recipient of the
1338 certificate of need shall be fully binding on any subsequent owner
1339 of the hospital, psychiatric hospital or chemical dependency
1340 hospital, if the ownership of the facility is transferred at any
1341 time after the issuance of the certificate of need. Agreement
1342 that the hospital, psychiatric hospital or chemical dependency

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

1361 (ii) The department may issue a certificate of
1362 need for the conversion of existing beds in a county hospital in
1363 Choctaw County from acute care beds to child/adolescent chemical
1364 dependency beds. For purposes of this paragraph, the provisions
1365 of Section 41-7-193(1) requiring substantial compliance with the
1366 projection of need as reported in the current State Health Plan is
1367 waived. The total number of beds that may be authorized under
1368 authority of this paragraph shall not exceed twenty (20) beds.
1369 There shall be no prohibition or restrictions on participation in
1370 the Medicaid program (Section 43-13-101 et seq.) for the hospital
1371 receiving the certificate of need authorized under this

subparagraph (a)(ii) or for the beds converted pursuant to the authority of that certificate of need.

(iii) The department may issue a certificate or certificates of need for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in Warren County. For purposes of this subparagraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph (a)(iii) or for the beds converted pursuant to the authority of that certificate of need.

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

1401 converted pursuant to the authority of that certificate of need.

1402 (v) The department may issue a certificate of need
1403 to any county hospital located in Leflore County for the
1404 construction or expansion of adult psychiatric beds or the
1405 conversion of other beds to adult psychiatric beds, not to exceed
1406 twenty (20) beds, provided that the recipient of the certificate
1407 of need agrees in writing that the adult psychiatric beds will not
1408 at any time be certified for participation in the Medicaid program
1409 and that the hospital will not admit or keep any patients who are
1410 participating in the Medicaid program in any of such adult
1411 psychiatric beds. This written agreement by the recipient of the
1412 certificate of need shall be fully binding on any subsequent owner
1413 of the hospital if the ownership of the hospital is transferred at
1414 any time after the issuance of the certificate of need. Agreement
1415 that the adult psychiatric beds will not be certified for
1416 participation in the Medicaid program shall be a condition of the
1417 issuance of a certificate of need to any person under this
1418 subparagraph (a)(v), and if such hospital at any time after the
1419 issuance of the certificate of need, regardless of the ownership
1420 of the hospital, has any of such adult psychiatric beds certified
1421 for participation in the Medicaid program or admits or keeps any
1422 Medicaid patients in such adult psychiatric beds, the State
1423 Department of Health shall revoke the certificate of need, if it
1424 is still outstanding, and shall deny or revoke the license of the
1425 hospital at the time that the department determines, after a
1426 hearing complying with due process, that the hospital has failed
1427 to comply with any of the conditions upon which the certificate of
1428 need was issued, as provided in this subparagraph and in the
1429 written agreement by the recipient of the certificate of need.

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

1437 (6) The department may issue a certificate of need to a
1438 county hospital in Winston County for the conversion of fifteen
1439 (15) acute care beds to geriatric psychiatric care beds.

1440 (7) The State Department of Health shall issue a certificate
1441 of need to a Mississippi corporation qualified to manage a
1442 long-term care hospital as defined in Section 41-7-173(h)(xii) in
1443 Harrison County, not to exceed eighty (80) beds, including any
1444 necessary renovation or construction required for licensure and
1445 certification, provided that the recipient of the certificate of
1446 need agrees in writing that the long-term care hospital will not
1447 at any time participate in the Medicaid program (Section 43-13-101
1448 et seq.) or admit or keep any patients in the long-term care
1449 hospital who are participating in the Medicaid program. This
1450 written agreement by the recipient of the certificate of need
1451 shall be fully binding on any subsequent owner of the long-term
1452 care hospital, if the ownership of the facility is transferred at
1453 any time after the issuance of the certificate of need. Agreement
1454 that the long-term care hospital will not participate in the
1455 Medicaid program shall be a condition of the issuance of a
1456 certificate of need to any person under this subsection (7), and
1457 if such long-term care hospital at any time after the issuance of
1458 the certificate of need, regardless of the ownership of the

1459 facility, participates in the Medicaid program or admits or keeps
1460 any patients in the facility who are participating in the Medicaid
1461 program, the State Department of Health shall revoke the
1462 certificate of need, if it is still outstanding, and shall deny or
1463 revoke the license of the long-term care hospital, at the time
1464 that the department determines, after a hearing complying with due
1465 process, that the facility has failed to comply with any of the
1466 conditions upon which the certificate of need was issued, as
1467 provided in this paragraph and in the written agreement by the
1468 recipient of the certificate of need. For purposes of this
1469 paragraph, the provision of Section 41-7-193(1) requiring
1470 substantial compliance with the projection of need as reported in
1471 the current State Health Plan is hereby waived.

1472 (8) The State Department of Health may issue a certificate
1473 of need to any hospital in the state to utilize a portion of its
1474 beds for the "swing-bed" concept. Any such hospital must be in
1475 conformance with the federal regulations regarding such swing-bed
1476 concept at the time it submits its application for a certificate
1477 of need to the State Department of Health, except that such
1478 hospital may have more licensed beds or a higher average daily
1479 census (ADC) than the maximum number specified in federal
1480 regulations for participation in the swing-bed program. Any
1481 hospital meeting all federal requirements for participation in the
1482 swing-bed program which receives such certificate of need shall
1483 render services provided under the swing-bed concept to any
1484 patient eligible for Medicare (Title XVIII of the Social Security
1485 Act) who is certified by a physician to be in need of such
1486 services, and no such hospital shall permit any patient who is
1487 eligible for both Medicaid and Medicare or eligible only for

1488 Medicaid to stay in the swing beds of the hospital for more than
1489 thirty (30) days per admission unless the hospital receives prior
1490 approval for such patient from the Division of Medicaid, Office of
1491 the Governor. Any hospital having more licensed beds or a higher
1492 average daily census (ADC) than the maximum number specified in
1493 federal regulations for participation in the swing-bed program
1494 which receives such certificate of need shall develop a procedure
1495 to insure that before a patient is allowed to stay in the swing
1496 beds of the hospital, there are no vacant nursing home beds
1497 available for that patient located within a fifty-mile radius of
1498 the hospital. When any such hospital has a patient staying in the
1499 swing beds of the hospital and the hospital receives notice from a
1500 nursing home located within such radius that there is a vacant bed
1501 available for that patient, the hospital shall transfer the
1502 patient to the nursing home within a reasonable time after receipt
1503 of the notice. Any hospital which is subject to the requirements
1504 of the two (2) preceding sentences of this paragraph may be
1505 suspended from participation in the swing-bed program for a
1506 reasonable period of time by the State Department of Health if the
1507 department, after a hearing complying with due process, determines
1508 that the hospital has failed to comply with any of those
1509 requirements.

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

1514 (10) The Department of Health shall not grant approval for
1515 or issue a certificate of need to any person proposing the
1516 establishment of, or expansion of the currently approved territory

1517 of, or the contracting to establish a home office, subunit or
1518 branch office within the space operated as a health care facility
1519 as defined in Section 41-7-173(h)(i) through (viii) by a health
1520 care facility as defined in subparagraph (ix) of Section
1521 41-7-173(h).

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

1532 (12) The new construction, renovation or expansion of or
1533 addition to any health care facility defined in subparagraph (ii)
1534 (psychiatric hospital), subparagraph (iv) (skilled nursing
1535 facility), subparagraph (vi) (intermediate care facility),
1536 subparagraph (viii) (intermediate care facility for the mentally
1537 retarded) and subparagraph (x) (psychiatric residential treatment
1538 facility) of Section 41-7-173(h) which is owned by the State of
1539 Mississippi and under the direction and control of the State
1540 Department of Mental Health, and the addition of new beds or the
1541 conversion of beds from one category to another in any such
1542 defined health care facility which is owned by the State of
1543 Mississippi and under the direction and control of the State
1544 Department of Mental Health, shall not require the issuance of a
1545 certificate of need under Section 41-7-171 et seq.,

1546 notwithstanding any provision in Section 41-7-171 et seq. to the
1547 contrary.

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

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

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

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

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

1596 (c) The new construction of a nursing facility or
1597 nursing facility beds or the conversion of other beds to nursing
1598 facility beds described in this section must be either a part of a
1599 completely new continuing care retirement community, as described
1600 in the latest edition of the Mississippi State Health Plan, or an
1601 addition to existing personal care and independent living
1602 components, and so that the completed project will be a continuing
1603 care retirement community, containing (i) independent living

1604 accommodations, (ii) personal care beds, and (iii) the nursing
1605 home facility beds. The three (3) components must be located on a
1606 single site and be operated as one (1) inseparable facility. The
1607 nursing facility component must contain a minimum of thirty (30)
1608 beds. Any nursing facility beds authorized by this section will
1609 not be counted against the bed need set forth in the State Health
1610 Plan, as identified in Section 41-7-171 et seq.

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

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

the Division of Medicaid to accurately determine the costs that
are allowable costs for Medicaid reimbursement purposes.

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

41-7-197. (1) The State Department of Health shall adopt
and utilize procedures for conducting certificate of need reviews.
Such procedures shall include, inter alia, the following: (a)
written notification to the applicant; (b) written notification to
health care facilities in the same health service area as the
proposed service; (c) written notification to other persons who
prior to the receipt of the application have filed a formal notice
of intent to provide the proposed services in the same service
area; and (d) notification to members of the public who reside in
the service area where the service is proposed, which may be
provided through newspapers or public information channels.

(2) All notices provided shall include, inter alia, the
following: (a) the proposed schedule for the review; (b) written
notification of the period within which a public hearing during
the course of the review may be requested in writing by one or
more affected persons, such request to be made within twenty (20)
days of the notification; and (c) the manner in which notification
will be provided of the time and place of any hearing so
requested. Any such hearing shall be conducted by a hearing
officer designated by the State Department of Health. At such
hearing, the hearing officer and any person affected by the
proposal being reviewed may conduct reasonable questioning of
persons who make relevant factual allegations concerning the
proposal. The hearing officer shall require that all persons be
sworn before they may offer any testimony at the hearing, and the

1662 hearing officer is authorized to administer oaths. Any person so
1663 choosing may be represented by counsel at the hearing. A record
1664 of the hearing shall be made, which shall consist of a transcript
1665 of all testimony received, all documents and other material
1666 introduced by any interested person, the staff report and
1667 recommendation and such other material as the hearing officer
1668 considers relevant, including his own recommendation, which he
1669 shall make within a reasonable period of time after the hearing is
1670 closed and after he has had an opportunity to review, study and
1671 analyze the evidence presented during the hearing. The completed
1672 record shall be certified to the State Health Officer, who shall
1673 consider only the record in making his decision, and shall not
1674 consider any evidence or material which is not included therein.
1675 All final decisions regarding the issuance of a certificate of
1676 need shall be made by the State Health Officer. The State Health
1677 Officer shall make his written findings and issue his order after
1678 reviewing the record. The findings and decision of the State
1679 Health Officer shall not be deferred to any later date, and any
1680 deferral shall result in an automatic order of disapproval.

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

the State Health Officer to issue written findings and written order approving or disapproving the proposal in question.

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

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

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

(b) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State

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

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

1733 (d) The court may dispose of the appeal in termtime or
1734 vacation and may sustain or dismiss the appeal, modify or vacate
1735 the order complained of in whole or in part as the case may be;
1736 but in case the order is wholly or partly vacated, the court may
1737 also, in its discretion, remand the matter to the State Department
1738 of Health for such further proceedings, not inconsistent with the
1739 court's order, as, in the opinion of the court, justice may
1740 require. The order shall not be vacated or set aside, either in
1741 whole or in part, except for errors of law, unless the court finds
1742 that the order of the State Department of Health is not supported
1743 by substantial evidence, is contrary to the manifest weight of the
1744 evidence, is in excess of the statutory authority or jurisdiction
1745 of the State Department of Health, or violates any vested
1746 constitutional rights of any party involved in the appeal. * * *
1747 However, an order of the chancery court reversing the denial of a
1748 certificate of need by the State Department of Health shall not

1749 entitle the applicant to effectuate the certificate of need until
1750 either:

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

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

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

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

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

1778 by the State Department of Health. * * *

1779 (b) In addition to other remedies now available at law
1780 or in equity, any person named as a party in a hearing during the
1781 course of review aggrieved by any such final order of the State
1782 Department of Health shall have the right of appeal to the
1783 Chancery Court of the First Judicial District of Hinds County,
1784 Mississippi, which appeal must be filed within twenty (20) days
1785 after the date of the final order. * * * However, * * * any
1786 appeal of an order disapproving an application for such a
1787 certificate of need may be made to the chancery court of the
1788 county where the proposed construction, expansion or alteration
1789 was to be located or the new service or purpose of the capital
1790 expenditure was to be located. Such appeal must be filed in
1791 accordance with the twenty (20) days for filing as heretofore
1792 provided. Any appeal shall state briefly the nature of the
1793 proceedings before the State Department of Health and shall
1794 specify the order complained of.

1795 (c) Upon the filing of such an appeal, the clerk of the
1796 chancery court shall serve notice thereof upon the State
1797 Department of Health, whereupon the State Department of Health
1798 shall, within thirty (30) days of the date of the filing of the
1799 appeal, certify to the chancery court the record in the case,
1800 which records shall include a transcript of all testimony,
1801 together with all exhibits or copies thereof, all pleadings,
1802 proceedings, orders, findings and opinions entered in the
1803 case; * * * however, * * * the parties and the State Department of
1804 Health may stipulate that a specified portion only of the record
1805 shall be certified to the court as the record on appeal. The
1806 chancery court shall give preference to any such appeal from a

1807 final order by the State Department of Health in a certificate of
1808 need proceeding, and shall render a final order regarding such
1809 appeal no later than one hundred twenty (120) days from the date
1810 of the final order by the State Department of Health. If the
1811 chancery court has not rendered a final order within this 120-day
1812 period, then the final order of the State Department of Health
1813 shall be deemed to have been affirmed by the chancery court, and
1814 any party to the appeal shall have the right to appeal from the
1815 chancery court to the Supreme Court on the record certified by the
1816 State Department of Health as otherwise provided in paragraph (g)
1817 of this subsection. In the event the chancery court has not
1818 rendered a final order within the 120-day period and an appeal is
1819 made to the Supreme Court as provided herein, the Supreme Court
1820 shall remand the case to the chancery court to make an award of
1821 costs, fees, reasonable expenses and attorney's fees incurred in
1822 favor of appellee payable by the appellant(s) should the Supreme
1823 Court affirm the order of the State Department of Health.

1824 (d) Any appeal of a final order by the State Department
1825 of Health in a certificate of need proceeding shall require the
1826 giving of a bond by the appellant(s) sufficient to secure the
1827 appellee against the loss of costs, fees, expenses and attorney's
1828 fees incurred in defense of the appeal, approved by the chancery
1829 court within five (5) days of the date of filing the appeal.

1830 (e) No new or additional evidence shall be introduced
1831 in the chancery court but the case shall be determined upon the
1832 record certified to the court.

1833 (f) The court may dispose of the appeal in termtime or
1834 vacation and may sustain or dismiss the appeal, modify or vacate
1835 the order complained of in whole or in part and may make an award

1836 of costs, fees, expenses and attorney's fees, as the case may be;
1837 but in case the order is wholly or partly vacated, the court may
1838 also, in its discretion, remand the matter to the State Department
1839 of Health for such further proceedings, not inconsistent with the
1840 court's order, as, in the opinion of the court, justice may
1841 require. The court, as part of the final order, shall make an
1842 award of costs, fees, reasonable expenses and attorney's fees
1843 incurred in favor of appellee payable by the appellant(s) should
1844 the court affirm the order of the State Department of Health. The
1845 order shall not be vacated or set aside, either in whole or in
1846 part, except for errors of law, unless the court finds that the
1847 order of the State Department of Health is not supported by
1848 substantial evidence, is contrary to the manifest weight of the
1849 evidence, is in excess of the statutory authority or jurisdiction
1850 of the State Department of Health, or violates any vested
1851 constitutional rights of any party involved in the appeal. * * *
1852 However, an order of the chancery court reversing the denial of a
1853 certificate of need by the State Department of Health shall not
1854 entitle the applicant to effectuate the certificate of need until
1855 either:

1856 (i) Such order of the chancery court has become
1857 final and has not been appealed to the Supreme Court; or

1858 (ii) The Supreme Court has entered a final order
1859 affirming the chancery court.

1860 (g) Appeals in accordance with law may be had to the
1861 Supreme Court of the State of Mississippi from any final judgment
1862 of the chancery court.

1863 (h) Within thirty (30) days from the date of a final
1864 order by the Supreme Court or a final order of the chancery court

1865 not appealed to the Supreme Court that modifies or wholly or
1866 partly vacates the final order of the State Department of Health
1867 granting a certificate of need, the State Department of Health
1868 shall issue another order in conformity with the final order of
1869 the Supreme Court, or the final order of the chancery court not
1870 appealed to the Supreme Court.

1871 SECTION 5. Section 41-7-205, Mississippi Code of 1972, is
1872 amended as follows:

1873 41-7-205. The State Department of Health shall provide an
1874 expedited review for those projects which it determines to warrant
1875 such action. All requests for such an expedited review by the
1876 applicant must be made in writing to the State Department of
1877 Health. The State Department of Health shall make a determination
1878 as to whether expedited review is appropriate within fifteen (15)
1879 days after receipt of a written request. The State Department of
1880 Health shall render its decision concerning the issuance of a
1881 certificate of need within ninety (90) days after the receipt of a
1882 completed application. A project is subject to expedited review
1883 only if it meets one (1) of the following criteria:

1884 (a) A transfer or change of ownership of a health care
1885 facility wherein the facility continues to operate under the same
1886 category of license or permit as it possessed prior to the date of
1887 the proposed change of ownership and none of the other activities
1888 described in Section 41-7-191(1) take place in conjunction with
1889 such transfer;

1890 (b) Replacement of equipment with used equipment of
1891 similar capability if the equipment is included in the facility's
1892 annual capital expenditure budget or plan;

1893 (c) A request for project cost overruns that exceed the

rate of inflation as determined by the State Department of Health;

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

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

* * *

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

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

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