

By: Senator(s) Bean

To: Public Health and
Welfare;
AppropriationsSENATE BILL NO. 2537
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE AMOUNT OF CAPITAL EXPENDITURES OR MAJOR MEDICAL
3 EQUIPMENT EXPENDITURES BY HEALTH CARE FACILITIES WHICH REQUIRE A
4 CERTIFICATE OF NEED REVIEW; TO AMEND SECTION 41-7-191, MISSISSIPPI
5 CODE OF 1972, AS AMENDED BY SENATE BILL NO. 2486, 1999 REGULAR
6 SESSION, AND SECTION 41-7-207, MISSISSIPPI CODE OF 1972, TO EXEMPT
7 THE RELOCATION OF CERTAIN HEALTH CARE FACILITIES, SERVICES AND
8 REPLACEMENT EQUIPMENT FROM THE REQUIREMENT OF A CERTIFICATE OF
9 NEED REVIEW; TO AMEND SECTION 41-7-201, MISSISSIPPI CODE OF 1972,
10 TO CLARIFY THOSE PERSONS WITH STANDING TO REQUEST A "STAY OF
11 PROCEEDINGS" OF ANY FINAL ORDER OF THE STATE DEPARTMENT OF HEALTH
12 FOR A PERIOD OF 30 DAYS FROM THE DATE OF THE ORDER; TO PROVIDE
13 THAT NO CONSTRUCTION OR RENOVATION THAT IS THE SUBJECT OF THE
14 ORDER SHALL BE UNDERTAKEN, AND NO LICENSE TO OPERATE ANY FACILITY
15 THAT IS THE SUBJECT OF THE ORDER SHALL BE ISSUED, UNTIL ALL
16 STATUTORY APPEALS HAVE BEEN EXHAUSTED OR THE TIME FOR SUCH APPEALS
17 HAS EXPIRED; TO PROVIDE THAT NOTWITHSTANDING THE FOREGOING, THE
18 FILING OF SUCH APPEAL SHALL NOT PREVENT THE PURCHASE OF MEDICAL
19 EQUIPMENT OR THE PROVISION OF INSTITUTIONAL SERVICES THAT ARE
20 AUTHORIZED BY A CERTIFICATE OF NEED ISSUED BY THE DEPARTMENT; TO
21 AMEND SECTION 41-7-205, MISSISSIPPI CODE OF 1972, TO DEFINE THOSE
22 NONSUBSTANTIVE PROJECTS WHICH ARE EXEMPT FROM FORMAL CERTIFICATE
23 OF NEED REVIEW; AND FOR RELATED PURPOSES.

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

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

27 41-7-173. For the purposes of Section 41-7-171 et seq., the
28 following words shall have the meanings ascribed herein, unless
29 the context otherwise requires:

30 (a) "Affected person" means (i) the applicant; (ii) a
31 person residing within the geographic area to be served by the
32 applicant's proposal; (iii) a person who regularly uses health
33 care facilities or HMO's located in the geographic area of the
34 proposal which provide similar service to that which is proposed;
35 (iv) health care facilities and HMO's which have, prior to receipt
36 of the application under review, formally indicated an intention
37 to provide service similar to that of the proposal being

38 considered at a future date; (v) third-party payers who reimburse
39 health care facilities located in the geographical area of the
40 proposal; or (vi) any agency that establishes rates for health
41 care services or HMO's located in the geographic area of the
42 proposal.

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

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

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

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

71 (iv) In those instances where a health care
72 facility or other provider of health services proposes to provide
73 a service in which the capital expenditure for major medical
74 equipment or other than major medical equipment or a combination
75 of the two (2) may have been split between separate parties, the

76 total capital expenditure required to provide the proposed service
77 shall be considered in determining the necessity of certificate of
78 need review and in determining the appropriate certificate of need
79 review fee to be paid. The capital expenditure associated with
80 facilities and equipment to provide services in Mississippi shall
81 be considered regardless of where the capital expenditure was
82 made, in state or out of state, and regardless of the domicile of
83 the party making the capital expenditure, in state or out of
84 state.

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

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

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

105 (ii) Any and all permits and/or approvals deemed
106 lawfully necessary by all authorities with responsibility for such
107 have been secured; and

108 (iii) Actual bona fide undertaking of the subject
109 proposal has commenced, and a progress payment of at least one

110 percent (1%) of the total cost price of the contract has been paid
111 to the contractor by the proponent, and the requirements of this
112 paragraph (e) have been certified to in writing by the State
113 Department of Health.

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

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

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

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

144 service. The various health care facilities listed in this
145 paragraph shall be defined as follows:

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

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

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

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

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

176 (vi) "Intermediate care facility" means an
177 institution which provides, on a regular basis, health related

178 care and services to individuals who do not require the degree of
179 care and treatment which a hospital or skilled nursing facility is
180 designed to provide, but who, because of their mental or physical
181 condition, require health related care and services (above the
182 level of room and board).

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

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

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

- 206 1. Physical, occupational or speech therapy;
- 207 2. Medical social services;
- 208 3. Part-time or intermittent services of a
209 home health aide;
- 210 4. Other services as approved by the
211 licensing agency for home health agencies;

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

214 6. Medical services provided by an intern or
215 resident-in-training at a hospital under a teaching program of
216 such hospital.

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

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

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

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

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

245 3. Inappropriate types of behavior or

246 feelings under normal circumstances;

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

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

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

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

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

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

303 These specialized programs include, but are not limited to:
304 spinal cord injury programs, head injury programs and infant and
305 early childhood development programs.

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

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

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

318 (iii) Provides physician services primarily:

319 1. Directly through physicians who are either
320 employees or partners of such organization; or

321 2. Through arrangements with individual
322 physicians or one or more groups of physicians (organized on a
323 group practice or individual practice basis).

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

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

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

336 (m) "Major medical equipment" means medical equipment
337 designed for providing medical or any health related service which
338 costs in excess of One Million Five Hundred Thousand Dollars
339 (\$1,500,000.00). However, this definition shall not be applicable
340 to clinical laboratories if they are determined by the State
341 Department of Health to be independent of any physician's office,
342 hospital or other health care facility or otherwise not so defined
343 by federal or state law, or rules and regulations promulgated
344 thereunder.

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

348 paragraph (t) of this section.

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

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

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

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

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

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

374 SECTION 2. Section 41-7-191, Mississippi Code of 1972, as
375 amended by Senate Bill No. 2486, 1999 Regular Session, is amended
376 as follows:

377 41-7-191. (1) No person shall engage in any of the
378 following activities without obtaining the required certificate of
379 need:

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

382 (b) The relocation of a health care facility or portion
383 thereof, or major medical equipment, unless such relocation of a
384 health care facility or portion thereof, or major medical
385 equipment, which does not involve a capital expenditure by or on
386 behalf of a health care facility, is within one thousand three
387 hundred twenty (1,320) feet from the main entrance of the health
388 care facility;

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

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

- 412 (i) Open heart surgery services;
 - 413 (ii) Cardiac catheterization services;
 - 414 (iii) Comprehensive inpatient rehabilitation
- 415 services;

416 (iv) Licensed psychiatric services;

417 (v) Licensed chemical dependency services;

418 (vi) Radiation therapy services;

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

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

423 (ix) Home health services;

424 (x) Swing-bed services;

425 (xi) Ambulatory surgical services;

426 (xii) Magnetic resonance imaging services;

427 (xiii) Extracorporeal shock wave lithotripsy
428 services;

429 (xiv) Long-term care hospital services;

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

431 (e) The relocation of one or more health services from
432 one physical facility or site to another physical facility or
433 site, unless such relocation, which does not involve a capital
434 expenditure by or on behalf of a health care facility, (i) is to a
435 physical facility or site within one thousand three hundred twenty
436 (1,320) feet from the main entrance of the health care facility
437 where the health care service is located, or (ii) is the result of
438 an order of a court of appropriate jurisdiction or a result of
439 pending litigation in such court, or by order of the State
440 Department of Health, or by order of any other agency or legal
441 entity of the state, the federal government, or any political
442 subdivision of either, whose order is also approved by the State
443 Department of Health;

444 (f) The acquisition or otherwise control of any major
445 medical equipment for the provision of medical services; provided,
446 however, (i) the acquisition of any major medical equipment used
447 only for research purposes, and (ii) the acquisition of major
448 medical equipment to replace medical equipment for which a
449 facility is already providing medical services and for which the

450 State Department of Health has been notified before the date of
451 such acquisition shall be exempt from this paragraph; an
452 acquisition for less than fair market value must be reviewed, if
453 the acquisition at fair market value would be subject to review;

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

462 (h) The change of ownership of any health care facility
463 defined in subparagraphs (iv), (vi) and (viii) of Section
464 41-7-173(h), in which a notice of intent as described in paragraph
465 (g) has not been filed and if the Executive Director, Division of
466 Medicaid, Office of the Governor, has not certified in writing
467 that there will be no increase in allowable costs to Medicaid from
468 revaluation of the assets or from increased interest and
469 depreciation as a result of the proposed change of ownership;

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

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

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

483 (2) The State Department of Health shall not grant approval

484 for or issue a certificate of need to any person proposing the new
485 construction of, addition to, or expansion of any health care
486 facility defined in subparagraphs (iv) (skilled nursing facility)
487 and (vi) (intermediate care facility) of Section 41-7-173(h) or
488 the conversion of vacant hospital beds to provide skilled or
489 intermediate nursing home care, except as hereinafter authorized:

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

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

518 issued under this paragraph shall not exceed one hundred
519 fifty-four (154) beds.

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

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

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

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

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

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

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

583 (i) The department may issue a certificate of need to
584 provide nursing home care in Neshoba County, not to exceed a total
585 of twenty (20) beds. The provision of Section 41-7-193(1)

586 regarding substantial compliance with the projection of need as
587 reported in the current State Health Plan is waived for the
588 purposes of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

885 (x) The department may issue a certificate of need for
886 the new construction of a skilled nursing facility in Leake
887 County, provided that the recipient of the certificate of need
888 agrees in writing that the skilled nursing facility will not at
889 any time participate in the Medicaid program (Section 43-13-101 et
890 seq.) or admit or keep any patients in the skilled nursing
891 facility who are participating in the Medicaid program. This

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

924 (y) The department may issue a certificate of need in
925 Jones County for making additions to or expansion or replacement

926 of an existing forty-bed facility in order to increase the number
927 of its beds to not more than sixty (60) beds. For the purposes of
928 this paragraph, the provision of Section 41-7-193(1) requiring
929 substantial compliance with the projection of need as reported in
930 the current State Health Plan is waived. The total number of
931 nursing home beds that may be authorized by any certificate of
932 need issued under this paragraph shall not exceed twenty (20)
933 beds.

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

960 facility on July 1, 1995, the State Department of Health shall
961 revoke the license of the nursing facility, at the time that the
962 department determines, after a hearing complying with due process,
963 that the nursing facility has violated the condition upon which
964 the certificate of need was issued, as provided in this paragraph
965 and in the written agreement. For the purposes of this paragraph
966 (z), the provision of Section 41-7-193(1) requiring substantial
967 compliance with the projection of need as reported in the current
968 State Health Plan is waived.

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

994 certificate of need. The total number of beds that may be
995 authorized under the authority of this paragraph (aa) shall not
996 exceed sixty (60) beds.

997 (bb) Provided that funds are specifically appropriated
998 therefor by the Legislature, the department may issue a
999 certificate of need to a rehabilitation hospital in Hinds County
1000 for the construction of a sixty-bed long-term care nursing
1001 facility dedicated to the care and treatment of persons with
1002 severe disabilities including persons with spinal cord and
1003 closed-head injuries and ventilator-dependent patients. The
1004 provision of Section 41-7-193(1) regarding substantial compliance
1005 with projection of need as reported in the current State Health
1006 Plan is hereby waived for the purpose of this paragraph.

1007 (cc) The State Department of Health may issue a
1008 certificate of need to a county-owned hospital in the Second
1009 Judicial District of Panola County for the conversion of not more
1010 than seventy-two (72) hospital beds to nursing facility beds,
1011 provided that the recipient of the certificate of need agrees in
1012 writing that none of the beds at the nursing facility will be
1013 certified for participation in the Medicaid program (Section
1014 43-13-101 et seq.), and that no claim will be submitted for
1015 Medicaid reimbursement in the nursing facility in any day or for
1016 any patient in the nursing facility. This written agreement by
1017 the recipient of the certificate of need shall be a condition of
1018 the issuance of the certificate of need under this paragraph, and
1019 the agreement shall be fully binding on any subsequent owner of
1020 the nursing facility if the ownership of the nursing facility is
1021 transferred at any time after the issuance of the certificate of
1022 need. After this written agreement is executed, the Division of
1023 Medicaid and the State Department of Health shall not certify any
1024 of the beds in the nursing facility for participation in the
1025 Medicaid program. If the nursing facility violates the terms of
1026 the written agreement by admitting or keeping in the nursing
1027 facility on a regular or continuing basis any patients who are

1028 participating in the Medicaid program, the State Department of
1029 Health shall revoke the license of the nursing facility, at the
1030 time that the department determines, after a hearing complying
1031 with due process, that the nursing facility has violated the
1032 condition upon which the certificate of need was issued, as
1033 provided in this paragraph and in the written agreement. If the
1034 certificate of need authorized under this paragraph is not issued
1035 within twelve (12) months after July 1, 1998, the department shall
1036 deny the application for the certificate of need and shall not
1037 issue the certificate of need at any time after the twelve-month
1038 period, unless the issuance is contested. If the certificate of
1039 need is issued and substantial construction of the nursing
1040 facility beds has not commenced within eighteen (18) months after
1041 July 1, 1998, the State Department of Health, after a hearing
1042 complying with due process, shall revoke the certificate of need
1043 if it is still outstanding, and the department shall not issue a
1044 license for the nursing facility at any time after the
1045 eighteen-month period. Provided, however, that if the issuance of
1046 the certificate of need is contested, the department shall require
1047 substantial construction of the nursing facility beds within six
1048 (6) months after final adjudication on the issuance of the
1049 certificate of need.

1050 (dd) The department may issue a certificate of need for
1051 the new construction, addition or conversion of skilled nursing
1052 facility beds in Madison County, provided that the recipient of
1053 the certificate of need agrees in writing that the skilled nursing
1054 facility will not at any time participate in the Medicaid program
1055 (Section 43-13-101 et seq.) or admit or keep any patients in the
1056 skilled nursing facility who are participating in the Medicaid
1057 program. This written agreement by the recipient of the
1058 certificate of need shall be fully binding on any subsequent owner
1059 of the skilled nursing facility, if the ownership of the facility
1060 is transferred at any time after the issuance of the certificate
1061 of need. Agreement that the skilled nursing facility will not

1062 participate in the Medicaid program shall be a condition of the
1063 issuance of a certificate of need to any person under this
1064 paragraph (dd), and if such skilled nursing facility at any time
1065 after the issuance of the certificate of need, regardless of the
1066 ownership of the facility, participates in the Medicaid program or
1067 admits or keeps any patients in the facility who are participating
1068 in the Medicaid program, the State Department of Health shall
1069 revoke the certificate of need, if it is still outstanding, and
1070 shall deny or revoke the license of the skilled nursing facility,
1071 at the time that the department determines, after a hearing
1072 complying with due process, that the facility has failed to comply
1073 with any of the conditions upon which the certificate of need was
1074 issued, as provided in this paragraph and in the written agreement
1075 by the recipient of the certificate of need. The total number of
1076 nursing facility beds that may be authorized by any certificate of
1077 need issued under this paragraph (dd) shall not exceed sixty (60)
1078 beds. If the certificate of need authorized under this paragraph
1079 is not issued within twelve (12) months after July 1, 1998, the
1080 department shall deny the application for the certificate of need
1081 and shall not issue the certificate of need at any time after the
1082 twelve-month period, unless the issuance is contested. If the
1083 certificate of need is issued and substantial construction of the
1084 nursing facility beds has not commenced within eighteen (18)
1085 months after July 1, 1998, the State Department of Health, after a
1086 hearing complying with due process, shall revoke the certificate
1087 of need if it is still outstanding, and the department shall not
1088 issue a license for the nursing facility at any time after the
1089 eighteen-month period. Provided, however, that if the issuance of
1090 the certificate of need is contested, the department shall require
1091 substantial construction of the nursing facility beds within six
1092 (6) months after final adjudication on the issuance of the
1093 certificate of need.

1094 (ee) The department may issue a certificate of need for
1095 the new construction, addition or conversion of skilled nursing

1096 facility beds in Leake County, provided that the recipient of the
1097 certificate of need agrees in writing that the skilled nursing
1098 facility will not at any time participate in the Medicaid program
1099 (Section 43-13-101 et seq.) or admit or keep any patients in the
1100 skilled nursing facility who are participating in the Medicaid
1101 program. This written agreement by the recipient of the
1102 certificate of need shall be fully binding on any subsequent owner
1103 of the skilled nursing facility, if the ownership of the facility
1104 is transferred at any time after the issuance of the certificate
1105 of need. Agreement that the skilled nursing facility will not
1106 participate in the Medicaid program shall be a condition of the
1107 issuance of a certificate of need to any person under this
1108 paragraph (ee), and if such skilled nursing facility at any time
1109 after the issuance of the certificate of need, regardless of the
1110 ownership of the facility, participates in the Medicaid program or
1111 admits or keeps any patients in the facility who are participating
1112 in the Medicaid program, the State Department of Health shall
1113 revoke the certificate of need, if it is still outstanding, and
1114 shall deny or revoke the license of the skilled nursing facility,
1115 at the time that the department determines, after a hearing
1116 complying with due process, that the facility has failed to comply
1117 with any of the conditions upon which the certificate of need was
1118 issued, as provided in this paragraph and in the written agreement
1119 by the recipient of the certificate of need. The total number of
1120 nursing facility beds that may be authorized by any certificate of
1121 need issued under this paragraph (ee) shall not exceed sixty (60)
1122 beds. If the certificate of need authorized under this paragraph
1123 is not issued within twelve (12) months after July 1, 1998, the
1124 department shall deny the application for the certificate of need
1125 and shall not issue the certificate of need at any time after the
1126 twelve-month period, unless the issuance is contested. If the
1127 certificate of need is issued and substantial construction of the
1128 nursing facility beds has not commenced within eighteen (18)
1129 months after July 1, 1998, the State Department of Health, after a

1130 hearing complying with due process, shall revoke the certificate
1131 of need if it is still outstanding, and the department shall not
1132 issue a license for the nursing facility at any time after the
1133 eighteen-month period. Provided, however, that if the issuance of
1134 the certificate of need is contested, the department shall require
1135 substantial construction of the nursing facility beds within six
1136 (6) months after final adjudication on the issuance of the
1137 certificate of need.

1138 (ff) The department may issue a certificate of need for
1139 the construction of a municipally-owned nursing facility within
1140 the Town of Belmont in Tishomingo County, not to exceed sixty (60)
1141 beds, provided that the recipient of the certificate of need
1142 agrees in writing that the skilled nursing facility will not at
1143 any time participate in the Medicaid program (Section 43-13-101 et
1144 seq.) or admit or keep any patients in the skilled nursing
1145 facility who are participating in the Medicaid program. This
1146 written agreement by the recipient of the certificate of need
1147 shall be fully binding on any subsequent owner of the skilled
1148 nursing facility, if the ownership of the facility is transferred
1149 at any time after the issuance of the certificate of need.

1150 Agreement that the skilled nursing facility will not participate
1151 in the Medicaid program shall be a condition of the issuance of a
1152 certificate of need to any person under this paragraph (ff), and
1153 if such skilled nursing facility at any time after the issuance of
1154 the certificate of need, regardless of the ownership of the
1155 facility, participates in the Medicaid program or admits or keeps
1156 any patients in the facility who are participating in the Medicaid
1157 program, the State Department of Health shall revoke the
1158 certificate of need, if it is still outstanding, and shall deny or
1159 revoke the license of the skilled nursing facility, at the time
1160 that the department determines, after a hearing complying with due
1161 process, that the facility has failed to comply with any of the
1162 conditions upon which the certificate of need was issued, as
1163 provided in this paragraph and in the written agreement by the

1164 recipient of the certificate of need. The provision of Section
1165 43-7-193(1) regarding substantial compliance of the projection of
1166 need as reported in the current State Health Plan is waived for
1167 the purposes of this paragraph. If the certificate of need
1168 authorized under this paragraph is not issued within twelve (12)
1169 months after July 1, 1998, the department shall deny the
1170 application for the certificate of need and shall not issue the
1171 certificate of need at any time after the twelve-month period,
1172 unless the issuance is contested. If the certificate of need is
1173 issued and substantial construction of the nursing facility beds
1174 has not commenced within eighteen (18) months after July 1, 1998,
1175 the State Department of Health, after a hearing complying with due
1176 process, shall revoke the certificate of need if it is still
1177 outstanding, and the department shall not issue a license for the
1178 nursing facility at any time after the eighteen-month period.
1179 Provided, however, that if the issuance of the certificate of need
1180 is contested, the department shall require substantial
1181 construction of the nursing facility beds within six (6) months
1182 after final adjudication on the issuance of the certificate of
1183 need.

1184 (3) If the holder of the certificate of need that was issued
1185 before January 1, 1990, for the construction of a nursing home in
1186 Claiborne County has not substantially undertaken commencement of
1187 construction by completing site works and pouring foundations and
1188 the floor slab of a nursing home in Claiborne County before May 1,
1189 1990, as determined by the department, then the department shall
1190 transfer such certificate of need to the Board of Supervisors of
1191 Claiborne County upon the effective date of this subsection (3).
1192 If the certificate of need is transferred to the board of
1193 supervisors, it shall be valid for a period of twelve (12) months
1194 and shall authorize the construction of a sixty-bed nursing home
1195 on county-owned property or the conversion of vacant hospital beds
1196 in the county hospital not to exceed sixty (60) beds.

1197 (4) The State Department of Health may grant approval for

1198 and issue certificates of need to any person proposing the new
1199 construction of, addition to, conversion of beds of or expansion
1200 of any health care facility defined in subparagraph (x)
1201 (psychiatric residential treatment facility) of Section
1202 41-7-173(h). The total number of beds which may be authorized by
1203 such certificates of need shall not exceed two hundred
1204 seventy-four (274) beds for the entire state.

1205 (a) Of the total number of beds authorized under this
1206 subsection, the department shall issue a certificate of need to a
1207 privately owned psychiatric residential treatment facility in
1208 Simpson County for the conversion of sixteen (16) intermediate
1209 care facility for the mentally retarded (ICF-MR) beds to
1210 psychiatric residential treatment facility beds, provided that
1211 facility agrees in writing that the facility shall give priority
1212 for the use of those sixteen (16) beds to Mississippi residents
1213 who are presently being treated in out-of-state facilities.

1214 (b) Of the total number of beds authorized under this
1215 subsection, the department may issue a certificate or certificates
1216 of need for the construction or expansion of psychiatric
1217 residential treatment facility beds or the conversion of other
1218 beds to psychiatric residential treatment facility beds in Warren
1219 County, not to exceed sixty (60) psychiatric residential treatment
1220 facility beds, provided that the facility agrees in writing that
1221 no more than thirty (30) of the beds at the psychiatric
1222 residential treatment facility will be certified for participation
1223 in the Medicaid program (Section 43-13-101 et seq.) for the use of
1224 any patients other than those who are participating only in the
1225 Medicaid program of another state, and that no claim will be
1226 submitted to the Division of Medicaid for Medicaid reimbursement
1227 for more than thirty (30) patients in the psychiatric residential
1228 treatment facility in any day or for any patient in the
1229 psychiatric residential treatment facility who is in a bed that is
1230 not Medicaid-certified. This written agreement by the recipient
1231 of the certificate of need shall be a condition of the issuance of

1232 the certificate of need under this paragraph, and the agreement
1233 shall be fully binding on any subsequent owner of the psychiatric
1234 residential treatment facility if the ownership of the facility is
1235 transferred at any time after the issuance of the certificate of
1236 need. After this written agreement is executed, the Division of
1237 Medicaid and the State Department of Health shall not certify more
1238 than thirty (30) of the beds in the psychiatric residential
1239 treatment facility for participation in the Medicaid program for
1240 the use of any patients other than those who are participating
1241 only in the Medicaid program of another state. If the psychiatric
1242 residential treatment facility violates the terms of the written
1243 agreement by admitting or keeping in the facility on a regular or
1244 continuing basis more than thirty (30) patients who are
1245 participating in the Mississippi Medicaid program, the State
1246 Department of Health shall revoke the license of the facility, at
1247 the time that the department determines, after a hearing complying
1248 with due process, that the facility has violated the condition
1249 upon which the certificate of need was issued, as provided in this
1250 paragraph and in the written agreement.

1251 (c) Of the total number of beds authorized under this
1252 subsection, the department shall issue a certificate of need to a
1253 hospital currently operating Medicaid-certified acute psychiatric
1254 beds for adolescents in DeSoto County, for the establishment of a
1255 forty-bed psychiatric residential treatment facility in DeSoto
1256 County, provided that the hospital agrees in writing (i) that the
1257 hospital shall give priority for the use of those forty (40) beds
1258 to Mississippi residents who are presently being treated in
1259 out-of-state facilities, and (ii) that no more than fifteen (15)
1260 of the beds at the psychiatric residential treatment facility will
1261 be certified for participation in the Medicaid program (Section
1262 43-13-101 et seq.), and that no claim will be submitted for
1263 Medicaid reimbursement for more than fifteen (15) patients in the
1264 psychiatric residential treatment facility in any day or for any
1265 patient in the psychiatric residential treatment facility who is

1266 in a bed that is not Medicaid-certified. This written agreement
1267 by the recipient of the certificate of need shall be a condition
1268 of the issuance of the certificate of need under this paragraph,
1269 and the agreement shall be fully binding on any subsequent owner
1270 of the psychiatric residential treatment facility if the ownership
1271 of the facility is transferred at any time after the issuance of
1272 the certificate of need. After this written agreement is
1273 executed, the Division of Medicaid and the State Department of
1274 Health shall not certify more than fifteen (15) of the beds in the
1275 psychiatric residential treatment facility for participation in
1276 the Medicaid program. If the psychiatric residential treatment
1277 facility violates the terms of the written agreement by admitting
1278 or keeping in the facility on a regular or continuing basis more
1279 than fifteen (15) patients who are participating in the Medicaid
1280 program, the State Department of Health shall revoke the license
1281 of the facility, at the time that the department determines, after
1282 a hearing complying with due process, that the facility has
1283 violated the condition upon which the certificate of need was
1284 issued, as provided in this paragraph and in the written
1285 agreement.

1286 (d) Of the total number of beds authorized under this
1287 subsection, the department may issue a certificate or certificates
1288 of need for the construction or expansion of psychiatric
1289 residential treatment facility beds or the conversion of other
1290 beds to psychiatric treatment facility beds, not to exceed thirty
1291 (30) psychiatric residential treatment facility beds, in either
1292 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,
1293 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah Counties.

1294 (e) Of the total number of beds authorized under this
1295 subsection (4) the department shall issue a certificate of need to
1296 a privately owned, nonprofit psychiatric residential treatment
1297 facility in Hinds County for an eight-bed expansion of the
1298 facility, provided that the facility agrees in writing that the
1299 facility shall give priority for the use of those eight (8) beds

1300 to Mississippi residents who are presently being treated in
1301 out-of-state facilities.

1302 (5) (a) From and after July 1, 1993, the department shall
1303 not issue a certificate of need to any person for the new
1304 construction of any hospital, psychiatric hospital or chemical
1305 dependency hospital that will contain any child/adolescent
1306 psychiatric or child/adolescent chemical dependency beds, or for
1307 the conversion of any other health care facility to a hospital,
1308 psychiatric hospital or chemical dependency hospital that will
1309 contain any child/adolescent psychiatric or child/adolescent
1310 chemical dependency beds, or for the addition of any
1311 child/adolescent psychiatric or child/adolescent chemical
1312 dependency beds in any hospital, psychiatric hospital or chemical
1313 dependency hospital, or for the conversion of any beds of another
1314 category in any hospital, psychiatric hospital or chemical
1315 dependency hospital to child/adolescent psychiatric or
1316 child/adolescent chemical dependency beds, except as hereinafter
1317 authorized:

1318 (i) The department may issue certificates of need
1319 to any person for any purpose described in this subsection,
1320 provided that the hospital, psychiatric hospital or chemical
1321 dependency hospital does not participate in the Medicaid program
1322 (Section 43-13-101 et seq.) at the time of the application for the
1323 certificate of need and the owner of the hospital, psychiatric
1324 hospital or chemical dependency hospital agrees in writing that
1325 the hospital, psychiatric hospital or chemical dependency hospital
1326 will not at any time participate in the Medicaid program or admit
1327 or keep any patients who are participating in the Medicaid program
1328 in the hospital, psychiatric hospital or chemical dependency
1329 hospital. This written agreement by the recipient of the
1330 certificate of need shall be fully binding on any subsequent owner
1331 of the hospital, psychiatric hospital or chemical dependency
1332 hospital, if the ownership of the facility is transferred at any
1333 time after the issuance of the certificate of need. Agreement

1334 that the hospital, psychiatric hospital or chemical dependency
1335 hospital will not participate in the Medicaid program shall be a
1336 condition of the issuance of a certificate of need to any person
1337 under this subparagraph (a)(i), and if such hospital, psychiatric
1338 hospital or chemical dependency hospital at any time after the
1339 issuance of the certificate of need, regardless of the ownership
1340 of the facility, participates in the Medicaid program or admits or
1341 keeps any patients in the hospital, psychiatric hospital or
1342 chemical dependency hospital who are participating in the Medicaid
1343 program, the State Department of Health shall revoke the
1344 certificate of need, if it is still outstanding, and shall deny or
1345 revoke the license of the hospital, psychiatric hospital or
1346 chemical dependency hospital, at the time that the department
1347 determines, after a hearing complying with due process, that the
1348 hospital, psychiatric hospital or chemical dependency hospital has
1349 failed to comply with any of the conditions upon which the
1350 certificate of need was issued, as provided in this subparagraph
1351 and in the written agreement by the recipient of the certificate
1352 of need.

1353 (ii) The department may issue a certificate of
1354 need for the conversion of existing beds in a county hospital in
1355 Choctaw County from acute care beds to child/adolescent chemical
1356 dependency beds. For purposes of this paragraph, the provisions
1357 of Section 41-7-193(1) requiring substantial compliance with the
1358 projection of need as reported in the current State Health Plan is
1359 waived. The total number of beds that may be authorized under
1360 authority of this paragraph shall not exceed twenty (20) beds.
1361 There shall be no prohibition or restrictions on participation in
1362 the Medicaid program (Section 43-13-101 et seq.) for the hospital
1363 receiving the certificate of need authorized under this
1364 subparagraph (a)(ii) or for the beds converted pursuant to the
1365 authority of that certificate of need.

1366 (iii) The department may issue a certificate or
1367 certificates of need for the construction or expansion of

1368 child/adolescent psychiatric beds or the conversion of other beds
1369 to child/adolescent psychiatric beds in Warren County. For
1370 purposes of this subparagraph, the provisions of Section
1371 41-7-193(1) requiring substantial compliance with the projection
1372 of need as reported in the current State Health Plan are waived.

1373 The total number of beds that may be authorized under the
1374 authority of this subparagraph shall not exceed twenty (20) beds.

1375 There shall be no prohibition or restrictions on participation in
1376 the Medicaid program (Section 43-13-101 et seq.) for the person
1377 receiving the certificate of need authorized under this
1378 subparagraph (a)(iii) or for the beds converted pursuant to the
1379 authority of that certificate of need.

1380 (iv) The department shall issue a certificate of
1381 need to the Region 7 Mental Health/Retardation Commission for the
1382 construction or expansion of child/adolescent psychiatric beds or
1383 the conversion of other beds to child/adolescent psychiatric beds
1384 in any of the counties served by the commission. For purposes of
1385 this subparagraph, the provisions of Section 41-7-193(1) requiring
1386 substantial compliance with the projection of need as reported in
1387 the current State Health Plan is waived. The total number of beds
1388 that may be authorized under the authority of this subparagraph
1389 shall not exceed twenty (20) beds. There shall be no prohibition
1390 or restrictions on participation in the Medicaid program (Section
1391 43-13-101 et seq.) for the person receiving the certificate of
1392 need authorized under this subparagraph (a)(iv) or for the beds
1393 converted pursuant to the authority of that certificate of need.

1394 (v) The department may issue a certificate of need
1395 to any county hospital located in Leflore County for the
1396 construction or expansion of adult psychiatric beds or the
1397 conversion of other beds to adult psychiatric beds, not to exceed
1398 twenty (20) beds, provided that the recipient of the certificate
1399 of need agrees in writing that the adult psychiatric beds will not
1400 at any time be certified for participation in the Medicaid program
1401 and that the hospital will not admit or keep any patients who are

1402 participating in the Medicaid program in any of such adult
1403 psychiatric beds. This written agreement by the recipient of the
1404 certificate of need shall be fully binding on any subsequent owner
1405 of the hospital if the ownership of the hospital is transferred at
1406 any time after the issuance of the certificate of need. Agreement
1407 that the adult psychiatric beds will not be certified for
1408 participation in the Medicaid program shall be a condition of the
1409 issuance of a certificate of need to any person under this
1410 subparagraph (a)(v), and if such hospital at any time after the
1411 issuance of the certificate of need, regardless of the ownership
1412 of the hospital, has any of such adult psychiatric beds certified
1413 for participation in the Medicaid program or admits or keeps any
1414 Medicaid patients in such adult psychiatric beds, the State
1415 Department of Health shall revoke the certificate of need, if it
1416 is still outstanding, and shall deny or revoke the license of the
1417 hospital at the time that the department determines, after a
1418 hearing complying with due process, that the hospital has failed
1419 to comply with any of the conditions upon which the certificate of
1420 need was issued, as provided in this subparagraph and in the
1421 written agreement by the recipient of the certificate of need.

1422 (b) From and after July 1, 1990, no hospital,
1423 psychiatric hospital or chemical dependency hospital shall be
1424 authorized to add any child/adolescent psychiatric or
1425 child/adolescent chemical dependency beds or convert any beds of
1426 another category to child/adolescent psychiatric or
1427 child/adolescent chemical dependency beds without a certificate of
1428 need under the authority of subsection (1)(c) of this section.

1429 (6) The department may issue a certificate of need to a
1430 county hospital in Winston County for the conversion of fifteen
1431 (15) acute care beds to geriatric psychiatric care beds.

1432 (7) The State Department of Health shall issue a certificate
1433 of need to a Mississippi corporation qualified to manage a
1434 long-term care hospital as defined in Section 41-7-173(h)(xii) in
1435 Harrison County, not to exceed eighty (80) beds, including any

1436 necessary renovation or construction required for licensure and
1437 certification, provided that the recipient of the certificate of
1438 need agrees in writing that the long-term care hospital will not
1439 at any time participate in the Medicaid program (Section 43-13-101
1440 et seq.) or admit or keep any patients in the long-term care
1441 hospital who are participating in the Medicaid program. This
1442 written agreement by the recipient of the certificate of need
1443 shall be fully binding on any subsequent owner of the long-term
1444 care hospital, if the ownership of the facility is transferred at
1445 any time after the issuance of the certificate of need. Agreement
1446 that the long-term care hospital will not participate in the
1447 Medicaid program shall be a condition of the issuance of a
1448 certificate of need to any person under this subsection (7), and
1449 if such long-term care hospital at any time after the issuance of
1450 the certificate of need, regardless of the ownership of the
1451 facility, participates in the Medicaid program or admits or keeps
1452 any patients in the facility who are participating in the Medicaid
1453 program, the State Department of Health shall revoke the
1454 certificate of need, if it is still outstanding, and shall deny or
1455 revoke the license of the long-term care hospital, at the time
1456 that the department determines, after a hearing complying with due
1457 process, that the facility has failed to comply with any of the
1458 conditions upon which the certificate of need was issued, as
1459 provided in this paragraph and in the written agreement by the
1460 recipient of the certificate of need. For purposes of this
1461 paragraph, the provision of Section 41-7-193(1) requiring
1462 substantial compliance with the projection of need as reported in
1463 the current State Health Plan is hereby waived.

1464 (8) The State Department of Health may issue a certificate
1465 of need to any hospital in the state to utilize a portion of its
1466 beds for the "swing-bed" concept. Any such hospital must be in
1467 conformance with the federal regulations regarding such swing-bed
1468 concept at the time it submits its application for a certificate
1469 of need to the State Department of Health, except that such

1470 hospital may have more licensed beds or a higher average daily
1471 census (ADC) than the maximum number specified in federal
1472 regulations for participation in the swing-bed program. Any
1473 hospital meeting all federal requirements for participation in the
1474 swing-bed program which receives such certificate of need shall
1475 render services provided under the swing-bed concept to any
1476 patient eligible for Medicare (Title XVIII of the Social Security
1477 Act) who is certified by a physician to be in need of such
1478 services, and no such hospital shall permit any patient who is
1479 eligible for both Medicaid and Medicare or eligible only for
1480 Medicaid to stay in the swing beds of the hospital for more than
1481 thirty (30) days per admission unless the hospital receives prior
1482 approval for such patient from the Division of Medicaid, Office of
1483 the Governor. Any hospital having more licensed beds or a higher
1484 average daily census (ADC) than the maximum number specified in
1485 federal regulations for participation in the swing-bed program
1486 which receives such certificate of need shall develop a procedure
1487 to insure that before a patient is allowed to stay in the swing
1488 beds of the hospital, there are no vacant nursing home beds
1489 available for that patient located within a fifty-mile radius of
1490 the hospital. When any such hospital has a patient staying in the
1491 swing beds of the hospital and the hospital receives notice from a
1492 nursing home located within such radius that there is a vacant bed
1493 available for that patient, the hospital shall transfer the
1494 patient to the nursing home within a reasonable time after receipt
1495 of the notice. Any hospital which is subject to the requirements
1496 of the two (2) preceding sentences of this paragraph may be
1497 suspended from participation in the swing-bed program for a
1498 reasonable period of time by the State Department of Health if the
1499 department, after a hearing complying with due process, determines
1500 that the hospital has failed to comply with any of those
1501 requirements.

1502 (9) The Department of Health shall not grant approval for or
1503 issue a certificate of need to any person proposing the new

1504 construction of, addition to or expansion of a health care
1505 facility as defined in subparagraph (viii) of Section 41-7-173(h).

1506 (10) The Department of Health shall not grant approval for
1507 or issue a certificate of need to any person proposing the
1508 establishment of, or expansion of the currently approved territory
1509 of, or the contracting to establish a home office, subunit or
1510 branch office within the space operated as a health care facility
1511 as defined in Section 41-7-173(h)(i) through (viii) by a health
1512 care facility as defined in subparagraph (ix) of Section
1513 41-7-173(h).

1514 (11) Health care facilities owned and/or operated by the
1515 state or its agencies are exempt from the restraints in this
1516 section against issuance of a certificate of need if such addition
1517 or expansion consists of repairing or renovation necessary to
1518 comply with the state licensure law. This exception shall not
1519 apply to the new construction of any building by such state
1520 facility. This exception shall not apply to any health care
1521 facilities owned and/or operated by counties, municipalities,
1522 districts, unincorporated areas, other defined persons, or any
1523 combination thereof.

1524 (12) The new construction, renovation or expansion of or
1525 addition to any health care facility defined in subparagraph (ii)
1526 (psychiatric hospital), subparagraph (iv) (skilled nursing
1527 facility), subparagraph (vi) (intermediate care facility),
1528 subparagraph (viii) (intermediate care facility for the mentally
1529 retarded) and subparagraph (x) (psychiatric residential treatment
1530 facility) of Section 41-7-173(h) which is owned by the State of
1531 Mississippi and under the direction and control of the State
1532 Department of Mental Health, and the addition of new beds or the
1533 conversion of beds from one category to another in any such
1534 defined health care facility which is owned by the State of
1535 Mississippi and under the direction and control of the State
1536 Department of Mental Health, shall not require the issuance of a
1537 certificate of need under Section 41-7-171 et seq.,

1538 notwithstanding any provision in Section 41-7-171 et seq. to the
1539 contrary.

1540 (13) The new construction, renovation or expansion of or
1541 addition to any veterans homes or domiciliaries for eligible
1542 veterans of the State of Mississippi as authorized under Section
1543 35-1-19 shall not require the issuance of a certificate of need,
1544 notwithstanding any provision in Section 41-7-171 et seq. to the
1545 contrary.

1546 (14) The new construction of a nursing facility or nursing
1547 facility beds or the conversion of other beds to nursing facility
1548 beds shall not require the issuance of a certificate of need,
1549 notwithstanding any provision in Section 41-7-171 et seq. to the
1550 contrary, if the conditions of this subsection are met.

1551 (a) Before any construction or conversion may be
1552 undertaken without a certificate of need, the owner of the nursing
1553 facility, in the case of an existing facility, or the applicant to
1554 construct a nursing facility, in the case of new construction,
1555 first must file a written notice of intent and sign a written
1556 agreement with the State Department of Health that the entire
1557 nursing facility will not at any time participate in or have any
1558 beds certified for participation in the Medicaid program (Section
1559 43-13-101 et seq.), will not admit or keep any patients in the
1560 nursing facility who are participating in the Medicaid program,
1561 and will not submit any claim for Medicaid reimbursement for any
1562 patient in the facility. This written agreement by the owner or
1563 applicant shall be a condition of exercising the authority under
1564 this subsection without a certificate of need, and the agreement
1565 shall be fully binding on any subsequent owner of the nursing
1566 facility if the ownership of the facility is transferred at any
1567 time after the agreement is signed. After the written agreement
1568 is signed, the Division of Medicaid and the State Department of
1569 Health shall not certify any beds in the nursing facility for
1570 participation in the Medicaid program. If the nursing facility
1571 violates the terms of the written agreement by participating in

1572 the Medicaid program, having any beds certified for participation
1573 in the Medicaid program, admitting or keeping any patient in the
1574 facility who is participating in the Medicaid program, or
1575 submitting any claim for Medicaid reimbursement for any patient in
1576 the facility, the State Department of Health shall revoke the
1577 license of the nursing facility at the time that the department
1578 determines, after a hearing complying with due process, that the
1579 facility has violated the terms of the written agreement.

1580 (b) For the purposes of this subsection, participation
1581 in the Medicaid program by a nursing facility includes Medicaid
1582 reimbursement of coinsurance and deductibles for recipients who
1583 are qualified Medicare beneficiaries and/or those who are dually
1584 eligible. Any nursing facility exercising the authority under
1585 this subsection may not bill or submit a claim to the Division of
1586 Medicaid for services to qualified Medicare beneficiaries and/or
1587 those who are dually eligible.

1588 (c) The new construction of a nursing facility or
1589 nursing facility beds or the conversion of other beds to nursing
1590 facility beds described in this section must be either a part of a
1591 completely new continuing care retirement community, as described
1592 in the latest edition of the Mississippi State Health Plan, or an
1593 addition to existing personal care and independent living
1594 components, and so that the completed project will be a continuing
1595 care retirement community, containing (i) independent living
1596 accommodations, (ii) personal care beds, and (iii) the nursing
1597 home facility beds. The three (3) components must be located on a
1598 single site and be operated as one (1) inseparable facility. The
1599 nursing facility component must contain a minimum of thirty (30)
1600 beds. Any nursing facility beds authorized by this section will
1601 not be counted against the bed need set forth in the State Health
1602 Plan, as identified in Section 41-7-171 et seq.

1603 This subsection (14) shall stand repealed from and after July
1604 1, 2001.

1605 (15) The State Department of Health shall issue a

1606 certificate of need to any hospital which is currently licensed
1607 for two hundred fifty (250) or more acute care beds and is located
1608 in any general hospital service area not having a comprehensive
1609 cancer center, for the establishment and equipping of such a
1610 center which provides facilities and services for outpatient
1611 radiation oncology therapy, outpatient medical oncology therapy,
1612 and appropriate support services including the provision of
1613 radiation therapy services. The provision of Section 41-7-193(1)
1614 regarding substantial compliance with the projection of need as
1615 reported in the current State Health Plan is waived for the
1616 purpose of this subsection.

1617 SECTION 3. Section 41-7-201, Mississippi Code of 1972, is
1618 amended as follows:

1619 41-7-201. (1) The provisions of this subsection (1) shall
1620 apply to any party appealing any final order of the State
1621 Department of Health pertaining to a certificate of need for a
1622 home health agency, as defined in Section 41-7-173(h)(ix):

1623 (a) In addition to other remedies now available at law
1624 or in equity, any party aggrieved by any such final order of the
1625 State Department of Health shall have the right of appeal to the
1626 Chancery Court of the First Judicial District of Hinds County,
1627 Mississippi, which appeal must be filed within thirty (30) days
1628 after the date of the final order. Provided, however, that any
1629 appeal of an order disapproving an application for such a
1630 certificate of need may be made to the chancery court of the
1631 county where the proposed construction, expansion or alteration
1632 was to be located or the new service or purpose of the capital
1633 expenditure was to be located. Such appeal must be filed in
1634 accordance with the thirty (30) days for filing as heretofore
1635 provided. Any appeal shall state briefly the nature of the
1636 proceedings before the State Department of Health and shall
1637 specify the order complained of. Any person whose rights may be
1638 materially affected by the action of the State Department of
1639 Health may appear and become a party or the court may, upon

1640 motion, order that any such person, organization or entity be
1641 joined as a necessary party.

1642 (b) Upon the filing of such an appeal, the clerk of the
1643 chancery court shall serve notice thereof upon the State
1644 Department of Health, whereupon the State Department of Health
1645 shall, within fifty (50) days or within such additional time as
1646 the court may by order for cause allow from the service of such
1647 notice, certify to the chancery court the record in the case,
1648 which records shall include a transcript of all testimony,
1649 together with all exhibits or copies thereof, all pleadings,
1650 proceedings, orders, findings and opinions entered in the case;
1651 provided, however, that the parties and the State Department of
1652 Health may stipulate that a specified portion only of the record
1653 shall be certified to the court as the record on appeal.

1654 (c) No new or additional evidence shall be introduced
1655 in the chancery court but the case shall be determined upon the
1656 record certified to the court.

1657 (d) The court may dispose of the appeal in termtime or
1658 vacation and may sustain or dismiss the appeal, modify or vacate
1659 the order complained of in whole or in part as the case may be;
1660 but in case the order is wholly or partly vacated, the court may
1661 also, in its discretion, remand the matter to the State Department
1662 of Health for such further proceedings, not inconsistent with the
1663 court's order, as, in the opinion of the court, justice may
1664 require. The order shall not be vacated or set aside, either in
1665 whole or in part, except for errors of law, unless the court finds
1666 that the order of the State Department of Health is not supported
1667 by substantial evidence, is contrary to the manifest weight of the
1668 evidence, is in excess of the statutory authority or jurisdiction
1669 of the State Department of Health, or violates any vested
1670 constitutional rights of any party involved in the appeal.

1671 Provided, however, an order of the chancery court reversing the
1672 denial of a certificate of need by the State Department of Health
1673 shall not entitle the applicant to effectuate the certificate of

1674 need until either:

1675 (i) Such order of the chancery court has become
1676 final and has not been appealed to the Supreme Court; or

1677 (ii) The Supreme Court has entered a final order
1678 affirming the chancery court.

1679 (e) Appeals in accordance with law may be had to the
1680 Supreme Court of the State of Mississippi from any final judgment
1681 of the chancery court.

1682 (2) The provisions of this subsection (2) shall apply to any
1683 party appealing any final order of the State Department of Health
1684 pertaining to a certificate of need for any health care facility
1685 as defined in Section 41-7-173(h), with the exception of any home
1686 health agency as defined in Section 41-7-173(h)(ix):

1687 (a) There shall be a "stay of proceedings" of any final
1688 order issued by the State Department of Health pertaining to the
1689 issuance of a certificate of need for the establishment,
1690 construction, expansion or replacement of a health care facility
1691 for a period of thirty (30) days from the date of the order, if an
1692 existing provider located in the same service area where the
1693 health care facility is or will be located has requested a hearing
1694 during the course of review in opposition to the issuance of the
1695 certificate of need. The stay of proceedings shall expire at the
1696 termination of thirty (30) days; however, no construction,
1697 renovation or other capital expenditure that is the subject of the
1698 order shall be undertaken, no license to operate any facility that
1699 is the subject of the order shall be issued by the licensing
1700 agency, and no certification to participate in the Title XVIII or
1701 Title XIX programs of the Social Security Act shall be granted,
1702 until all statutory appeals have been exhausted or the time for
1703 such appeals has expired. Notwithstanding the foregoing, the
1704 filing of an appeal from a final order of the State Department of
1705 Health or the chancery court for the issuance of a certificate of
1706 need * * * shall not prevent the purchase of medical equipment or
1707 development or offering of institutional health services granted

1708 in a certificate of need issued by the State Department of
1709 Health. * * *

1710 (b) In addition to other remedies now available at law
1711 or in equity, any party aggrieved by any such final order of the
1712 State Department of Health shall have the right of appeal to the
1713 Chancery Court of the First Judicial District of Hinds County,
1714 Mississippi, which appeal must be filed within twenty (20) days
1715 after the date of the final order. Provided, however, that any
1716 appeal of an order disapproving an application for such a
1717 certificate of need may be made to the chancery court of the
1718 county where the proposed construction, expansion or alteration
1719 was to be located or the new service or purpose of the capital
1720 expenditure was to be located. Such appeal must be filed in
1721 accordance with the twenty (20) days for filing as heretofore
1722 provided. Any appeal shall state briefly the nature of the
1723 proceedings before the State Department of Health and shall
1724 specify the order complained of.

1725 (c) Upon the filing of such an appeal, the clerk of the
1726 chancery court shall serve notice thereof upon the State
1727 Department of Health, whereupon the State Department of Health
1728 shall, within thirty (30) days of the date of the filing of the
1729 appeal, certify to the chancery court the record in the case,
1730 which records shall include a transcript of all testimony,
1731 together with all exhibits or copies thereof, all pleadings,
1732 proceedings, orders, findings and opinions entered in the case;
1733 provided, however, that the parties and the State Department of
1734 Health may stipulate that a specified portion only of the record
1735 shall be certified to the court as the record on appeal. The
1736 chancery court shall give preference to any such appeal from a
1737 final order by the State Department of Health in a certificate of
1738 need proceeding, and shall render a final order regarding such
1739 appeal no later than one hundred twenty (120) days from the date
1740 of the final order by the State Department of Health. If the
1741 chancery court has not rendered a final order within this 120-day

1742 period, then the final order of the State Department of Health
1743 shall be deemed to have been affirmed by the chancery court, and
1744 any party to the appeal shall have the right to appeal from the
1745 chancery court to the Supreme Court on the record certified by the
1746 State Department of Health as otherwise provided in paragraph (g)
1747 of this subsection. In the event the chancery court has not
1748 rendered a final order within the 120-day period and an appeal is
1749 made to the Supreme Court as provided herein, the Supreme Court
1750 shall remand the case to the chancery court to make an award of
1751 costs, fees, reasonable expenses and attorney's fees incurred in
1752 favor of appellee payable by the appellant(s) should the Supreme
1753 Court affirm the order of the State Department of Health.

1754 (d) Any appeal of a final order by the State Department
1755 of Health in a certificate of need proceeding shall require the
1756 giving of a bond by the appellant(s) sufficient to secure the
1757 appellee against the loss of costs, fees, expenses and attorney's
1758 fees incurred in defense of the appeal, approved by the chancery
1759 court within five (5) days of the date of filing the appeal.

1760 (e) No new or additional evidence shall be introduced
1761 in the chancery court but the case shall be determined upon the
1762 record certified to the court.

1763 (f) The court may dispose of the appeal in termtime or
1764 vacation and may sustain or dismiss the appeal, modify or vacate
1765 the order complained of in whole or in part and may make an award
1766 of costs, fees, expenses and attorney's fees, as the case may be;
1767 but in case the order is wholly or partly vacated, the court may
1768 also, in its discretion, remand the matter to the State Department
1769 of Health for such further proceedings, not inconsistent with the
1770 court's order, as, in the opinion of the court, justice may
1771 require. The court, as part of the final order, shall make an
1772 award of costs, fees, reasonable expenses and attorney's fees
1773 incurred in favor of appellee payable by the appellant(s) should
1774 the court affirm the order of the State Department of Health. The
1775 order shall not be vacated or set aside, either in whole or in

1776 part, except for errors of law, unless the court finds that the
1777 order of the State Department of Health is not supported by
1778 substantial evidence, is contrary to the manifest weight of the
1779 evidence, is in excess of the statutory authority or jurisdiction
1780 of the State Department of Health, or violates any vested
1781 constitutional rights of any party involved in the appeal.

1782 Provided, however, an order of the chancery court reversing the
1783 denial of a certificate of need by the State Department of Health
1784 shall not entitle the applicant to effectuate the certificate of
1785 need until either:

1786 (i) Such order of the chancery court has become
1787 final and has not been appealed to the Supreme Court; or

1788 (ii) The Supreme Court has entered a final order
1789 affirming the chancery court.

1790 (g) Appeals in accordance with law may be had to the
1791 Supreme Court of the State of Mississippi from any final judgment
1792 of the chancery court.

1793 (h) Within thirty (30) days from the date of a final
1794 order by the Supreme Court or a final order of the chancery court
1795 not appealed to the Supreme Court that modifies or wholly or
1796 partly vacates the final order of the State Department of Health
1797 granting a certificate of need, the State Department of Health
1798 shall issue another order in conformity with the final order of
1799 the Supreme Court, or the final order of the chancery court not
1800 appealed to the Supreme Court.

1801 SECTION 5. Section 41-7-205, Mississippi Code of 1972, is
1802 amended as follows:

1803 41-7-205. The State Department of Health shall provide an
1804 expedited review for those projects which it determines to warrant
1805 such action. All requests for such an expedited review by the
1806 applicant must be made in writing to the State Department of
1807 Health. The State Department of Health shall make a determination
1808 as to whether expedited review is appropriate within fifteen (15)
1809 days after receipt of a written request. The State Department of

1810 Health shall render its decision concerning the issuance of a
1811 certificate of need within ninety (90) days after the receipt of a
1812 completed application. A project is subject to expedited review
1813 only if it meets one (1) of the following criteria:

1814 (a) A transfer or change of ownership of a health care
1815 facility wherein the facility continues to operate under the same
1816 category of license or permit as it possessed prior to the date of
1817 the proposed change of ownership and none of the other activities
1818 described in Section 41-7-191(1) take place in conjunction with
1819 such transfer;

1820 (b) Replacement of equipment with used equipment of
1821 similar capability if the equipment is included in the facility's
1822 annual capital expenditure budget or plan;

1823 (c) A request for project cost overruns that exceed the
1824 rate of inflation as determined by the State Department of Health;

1825 (d) A request for relocation of services or facilities
1826 if the relocation of such services or facilities (i) involves a
1827 capital expenditure by or on behalf of a health care facility, or
1828 (ii) is more than one thousand three hundred twenty (1,320) feet
1829 from the main entrance of the health care facility or the facility
1830 where the service is located;

1831 (e) A request for a certificate of need to comply with
1832 duly recognized fire, building, or life safety codes, or to comply
1833 with state licensure standards or accreditation standards required
1834 for reimbursements.

1835 * * *

1836 SECTION 6. Section 41-7-207, Mississippi Code of 1972, is
1837 amended as follows:

1838 41-7-207. Notwithstanding any other provisions of Sections
1839 41-7-171 to 41-7-209, when the need for any emergency replacement
1840 occurs, the certificate of need review process may be expedited by
1841 promulgation of administrative procedures for expenditures
1842 necessary to alleviate an emergency condition. Emergency
1843 replacement means the replacement of partial facilities or

1844 equipment the replacement of which is not exempt from certificate
1845 of need review pursuant to the medical equipment replacement
1846 exemption provided in Section 41-7-191(1)(f), without which the
1847 operation of the facility and the health and safety of patients
1848 would be immediately jeopardized. Expenditures under this section
1849 shall be limited to the replacement of those necessary facilities
1850 or equipment, the loss of which constitutes an emergency.

1851 SECTION 7. This act shall take effect and be in force from
1852 and after June 30, 1999.