

By: Holland

To: Public Health and  
Welfare;  
Appropriations

HOUSE BILL NO. 699

1 AN ACT TO AMEND SECTION 41-7-175, MISSISSIPPI CODE OF 1972,  
2 TO CREATE THE MISSISSIPPI HEALTH PLANNING AND DEVELOPMENT  
3 COMMISSION TO ADMINISTER THE HEALTH CARE CERTIFICATE OF NEED  
4 PROGRAM; TO PROVIDE FOR THE APPOINTMENT OF THE MEMBERS OF THE  
5 COMMISSION; TO TRANSFER ALL OF THE POWERS, DUTIES, PROPERTY AND  
6 EMPLOYEES OF THE STATE DEPARTMENT OF HEALTH RELATING TO THE HEALTH  
7 PLANNING AND CERTIFICATE OF NEED PROGRAM TO THE MISSISSIPPI HEALTH  
8 PLANNING AND DEVELOPMENT COMMISSION; TO CREATE NEW SECTION  
9 41-7-179, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE APPOINTMENT  
10 OF AN EXECUTIVE DIRECTOR OF THE COMMISSION; TO AMEND SECTIONS  
11 41-7-173, 41-7-183, 41-7-185, 41-7-187, 41-7-189, 41-7-191,  
12 41-7-193, 41-7-195, 41-7-197, 41-7-201, 41-7-202, 41-7-205,  
13 41-7-207 AND 41-7-209, MISSISSIPPI CODE OF 1972, AND SECTION 9 OF  
14 CHAPTER 482, LAWS OF 1982, AS LAST AMENDED BY SECTION 10 OF  
15 CHAPTER 515, LAWS OF 1987, TO CONFORM TO THE PRECEDING PROVISIONS;  
16 TO REPEAL SECTION 8 OF CHAPTER 482, LAWS OF 1982, AS LAST AMENDED  
17 BY SECTION 32 OF CHAPTER 500, LAWS OF 1986, WHICH AUTHORIZES THE  
18 CHARGING OF CERTAIN FEES FOR CERTIFICATE OF NEED HEARINGS; AND FOR  
19 RELATED PURPOSES.

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

21 SECTION 1. Section 41-7-175, Mississippi Code of 1972, is  
22 amended as follows:[RF1]

23 41-7-175. (1) There is created the Mississippi Health  
24 Planning and Development Commission, which shall be the sole and  
25 official agency of the State of Mississippi to administer and  
26 supervise, as prescribed by the Legislature, all responsibilities  
27 of the State Health Planning and Development Agency. The  
28 commission shall consist of nine (9) members, seven (7) of which  
29 shall be appointed by the Governor, and two (2) ex officio

30 members. The Governor shall appoint one (1) member of the  
31 commission from each congressional district as constituted on July  
32 1, 2000, and two (2) members of the commission from the state at  
33 large, each with the advice and consent of the Senate. The  
34 Executive Officer of the State Department of Health and the  
35 Executive Director of the Division of Medicaid shall be ex officio  
36 members of the commission, with full voting authority. At least  
37 three (3) of the appointed members of the commission shall be  
38 persons who are not providers or representative of any provider of  
39 health care services or have any financial or other interest in  
40 any provider of health care services. All appointed members of  
41 the commission shall be persons who have some knowledge or  
42 experience in matters under the jurisdiction of the commission.

43 (2) The initial members of the commission shall be appointed  
44 for staggered terms, as follows: Two (2) members shall be  
45 appointed for terms that end on June 30, 2002; three (3) members  
46 shall be appointed for terms that end on June 30, 2004; and two  
47 (2) members shall be appointed for terms that end on June 30,  
48 2006. All subsequent appointments to the commission shall be for  
49 terms of six (6) years from the expiration date of the previous  
50 term. No person shall be appointed to the commission for more  
51 than two (2) consecutive terms. Any vacancy on the commission  
52 shall be filled by appointment of the Governor, with the advice  
53 and consent of the Senate, and the person appointed to fill the  
54 vacancy shall serve for the remainder of the unexpired term.

55 (3) The members of the commission shall select one (1)  
56 member to serve as chairman of the commission. The commission  
57 shall select a chairman once every two (2) years, and any person  
58 who has previously served as chairman may be reelected as  
59 chairman.

60 (4) Five (5) members of the commission shall constitute a

61 quorum for the transaction of any business. The commission shall  
62 hold regular monthly meetings, and other meetings as may be  
63 necessary for the purpose of conducting such business as may be  
64 required. Members of the commission shall receive the per diem  
65 authorized under Section 25-3-69 for each day actually spent  
66 discharging their official duties, and shall receive reimbursement  
67 for mileage and necessary travel expenses incurred as provided in  
68 Section 25-3-41.

69 (5) All of the powers and duties of the State Department of  
70 Health relating to the health planning and certificate of need  
71 program under Section 41-7-171 et seq. are transferred to the  
72 Mississippi Health Planning and Development Commission.  
73 Employees of the State Department of Health whose primary duties  
74 relate to the health planning and certificate of need program  
75 under Section 41-7-171 et seq. and who hold positions on June 30,  
76 2000, shall be employees of the Mississippi Health Planning and  
77 Development Commission on July 1, 2000. Any property, contractual  
78 rights and obligations and unexpended funds of the State  
79 Department of Health relating to the health planning and  
80 certificate of need program under Section 41-7-171 et seq. are  
81 transferred to the Mississippi Health Planning and Development  
82 Commission.

83 SECTION 2. The following shall be codified as Section  
84 41-7-179, Mississippi Code of 1972:

85 41-7-179. The commission shall appoint a full-time executive  
86 director who shall hold a graduate degree in medical care  
87 administration, public health, hospital administration or the  
88 equivalent, and who shall have no financial or other interest in

89 any health care provider. The executive director shall serve for  
90 a term of four (4) years and may only be removed for good cause  
91 shown by a majority vote of the commission, but only after a  
92 hearing before the commission. The executive director shall be  
93 the agent of the commission for the purpose of receiving all  
94 services of process, summonses and notices directed to the  
95 commission, shall direct the daily operations of the commission,  
96 and shall perform such other duties as the commission may delegate  
97 to him under the provisions of Section 41-7-171 et seq., or any  
98 other law of the state, the federal government, or any political  
99 subdivision or either, under which the commission is empowered  
100 with authority. Once appointed by the commission, the executive  
101 director shall have the authority to hire and, for just cause,  
102 discharge all other staff of the commission. All new positions,  
103 before staff is hired to fill them, must be authorized and  
104 approved by the commission itself in accordance with the laws and  
105 regulations as set by the State Personnel Board. The executive  
106 director shall employ such professional, administrative,  
107 stenographic, secretarial, clerical and technical assistance as  
108 may be necessary to perform the duties required by the commission  
109 in administering all laws and regulations over which the  
110 commission has authority, and set the compensation therefor, all  
111 in accordance with the state personnel system. The organizational  
112 structure of the staff shall provide for the performance of  
113 assigned functions and shall be subject to the approval of the  
114 commission.

115 SECTION 3. Section 41-7-173, Mississippi Code of 1972, is  
116 amended as follows:[RF2]

117 41-7-173. For the purposes of Section 41-7-171 et seq., the  
118 following words shall have the meanings ascribed herein, unless  
119 the context otherwise requires:

120 (a) "Affected person" means (i) the applicant; (ii) a  
121 person residing within the geographic area to be served by the  
122 applicant's proposal; (iii) a person who regularly uses health  
123 care facilities or HMO's located in the geographic area of the  
124 proposal that provide similar service to that which is proposed;  
125 (iv) health care facilities and HMO's that have, before receipt of  
126 the application under review, formally indicated an intention to  
127 provide service similar to that of the proposal being considered  
128 at a future date; (v) third-party payers who reimburse health care  
129 facilities located in the geographical area of the proposal; or  
130 (vi) any agency that establishes rates for health care services or  
131 HMO's located in the geographic area of the proposal.

132 (b) "Certificate of need" means a written order of the  
133 commission setting forth the affirmative finding that a proposal  
134 in prescribed application form, sufficiently satisfies the plans,  
135 standards and criteria prescribed for that service or other  
136 project by Section 41-7-171 et seq., and by rules and regulations  
137 promulgated under those sections by the commission.

138 (c) (i) "Capital expenditure" when pertaining to  
139 defined major medical equipment, \* \* \* means an expenditure that,  
140 under generally accepted accounting principles consistently  
141 applied, is not properly chargeable as an expense of operation and  
142 maintenance and that exceeds One Million Five Hundred Thousand  
143 Dollars (\$1,500,000.00).

144 (ii) "Capital expenditure," when pertaining to

145 other than major medical equipment, \* \* \* means any expenditure  
146 that under generally accepted accounting principles consistently  
147 applied is not properly chargeable as an expense of operation and  
148 maintenance and that exceeds Two Million Dollars (\$2,000,000.00).

149 (iii) A "capital expenditure" \* \* \* includes the  
150 acquisition, whether by lease, sufferance, gift, devise, legacy,  
151 settlement of a trust or other means, of any facility or part  
152 thereof, or equipment for a facility, the expenditure for which  
153 would have been considered a capital expenditure if acquired by  
154 purchase. Transactions that are separated in time but are planned  
155 to be undertaken within twelve (12) months of each other and are  
156 components of an overall plan for meeting patient care objectives  
157 shall, for purposes of this definition, be viewed in their  
158 entirety without regard to their timing.

159 (iv) In those instances where a health care  
160 facility or other provider of health services proposes to provide  
161 a service in which the capital expenditure for major medical  
162 equipment or other than major medical equipment or a combination  
163 of the two (2) may have been split between separate parties, the  
164 total capital expenditure required to provide the proposed service  
165 shall be considered in determining the necessity of certificate of  
166 need review and in determining the appropriate certificate of need  
167 review fee to be paid. The capital expenditure associated with  
168 facilities and equipment to provide services in Mississippi shall  
169 be considered regardless of where the capital expenditure was  
170 made, in state or out of state, and regardless of the domicile of  
171 the party making the capital expenditure, in state or out of  
172 state.

173           (d) "Change of ownership" includes, but is not limited  
174 to, inter vivos gifts, purchases, transfers, lease arrangements,  
175 cash and/or stock transactions or other comparable arrangements  
176 whenever any person or entity acquires or controls a majority  
177 interest of the facility or service. Changes of ownership from  
178 partnerships, single proprietorships or corporations to another  
179 form of ownership are specifically included. However, "change of  
180 ownership" shall not include any inherited interest acquired as a  
181 result of a testamentary instrument or under the laws of descent  
182 and distribution of the State of Mississippi.

183           (e) "Commencement of construction" means that all of  
184 the following have been completed with respect to a proposal or  
185 project proposing construction, renovating, remodeling or  
186 alteration:

187           (i) A legally binding written contract has been  
188 consummated by the proponent and a lawfully licensed contractor to  
189 construct and/or complete the intent of the proposal within a  
190 specified period of time in accordance with final architectural  
191 plans that have been approved by the licensing authority of the  
192 State Department of Health;

193           (ii) Any and all permits and/or approvals deemed  
194 lawfully necessary by all authorities with responsibility for such  
195 have been secured; and

196           (iii) Actual bona fide undertaking of the subject  
197 proposal has commenced, and a progress payment of at least one  
198 percent (1%) of the total cost price of the contract has been paid  
199 to the contractor by the proponent, and the requirements of this  
200 paragraph (e) have been certified to in writing by the commission.

201 Force account expenditures, such as deposits, securities,  
202 bonds, et cetera, may, in the discretion of the commission, be  
203 excluded from any or all of the provisions of defined commencement  
204 of construction.

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

208 (g) "Develop," when used in connection with health  
209 services, means to undertake those activities that, on their  
210 completion, will result in the offering of a new institutional  
211 health service or the incurring of a financial obligation as  
212 defined under applicable state law in relation to the offering of  
213 those services.

214 (h) "Health care facility" includes hospitals,  
215 psychiatric hospitals, chemical dependency hospitals, skilled  
216 nursing facilities, end stage renal disease (ESRD) facilities,  
217 including freestanding hemodialysis units, intermediate care  
218 facilities, ambulatory surgical facilities, intermediate care  
219 facilities for the mentally retarded, home health agencies,  
220 psychiatric residential treatment facilities, pediatric skilled  
221 nursing facilities, long-term care hospitals, comprehensive  
222 medical rehabilitation facilities, including facilities owned or  
223 operated by the state or a political subdivision or  
224 instrumentality of the state, but does not include Christian  
225 Science sanatoriums operated or listed and certified by the First  
226 Church of Christ, Scientist, Boston, Massachusetts. This  
227 definition shall not apply to facilities for the private practice,  
228 either independently or by incorporated medical groups, of



229 physicians, dentists or health care professionals except where  
230 those facilities are an integral part of an institutional health  
231 service. The various health care facilities listed in this  
232 paragraph shall be defined as follows:

233 (i) "Hospital" means an institution that is  
234 primarily engaged in providing to inpatients, by or under the  
235 supervision of physicians, diagnostic services and therapeutic  
236 services for medical diagnosis, treatment and care of injured,  
237 disabled or sick persons, or rehabilitation services for the  
238 rehabilitation of injured, disabled or sick persons. This term  
239 does not include psychiatric hospitals.

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

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

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

255 (v) "End stage renal disease (ESRD) facilities"  
256 means kidney disease treatment centers, which includes

257 freestanding hemodialysis units and limited care facilities. The  
258 term "limited care facility" generally refers to an  
259 off-hospital-premises facility, regardless of whether it is  
260 provider or nonprovider operated, that is engaged primarily in  
261 furnishing maintenance hemodialysis services to stabilized  
262 patients.

263 (vi) "Intermediate care facility" means an  
264 institution that provides, on a regular basis, health related care  
265 and services to individuals who do not require the degree of care  
266 and treatment that a hospital or skilled nursing facility is  
267 designed to provide, but who, because of their mental or physical  
268 condition, require health related care and services (above the  
269 level of room and board).

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

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

284 (ix) "Home health agency" means a public or

285 privately owned agency or organization, or a subdivision of such  
286 an agency or organization, properly authorized to conduct business  
287 in Mississippi, that is primarily engaged in providing to  
288 individuals at the written direction of a licensed physician, in  
289 the individual's place of residence, skilled nursing services  
290 provided by or under the supervision of a registered nurse  
291 licensed to practice in Mississippi, and one or more of the  
292 following services or items:

- 293 1. Physical, occupational or speech therapy;
- 294 2. Medical social services;
- 295 3. Part-time or intermittent services of a  
296 home health aide;
- 297 4. Other services as approved by the  
298 licensing agency for home health agencies;
- 299 5. Medical supplies, other than drugs and  
300 biologicals, and the use of medical appliances; or
- 301 6. Medical services provided by an intern or  
302 resident-in-training at a hospital under a teaching program of  
303 the hospital.

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

310 This subparagraph (ix) shall not apply to health care  
311 facilities that had contracts for the above services with a home  
312 health agency on January 1, 1990.

313                   (x) "Psychiatric residential treatment facility"  
314 means any nonhospital establishment with permanent licensed  
315 facilities that provides a twenty-four-hour program of care by  
316 qualified therapists including, but not limited to, duly licensed  
317 mental health professionals, psychiatrists, psychologists,  
318 psychotherapists and licensed certified social workers, for  
319 emotionally disturbed children and adolescents referred to the  
320 facility by a court, local school district or by the Department of  
321 Human Services, who are not in an acute phase of illness requiring  
322 the services of a psychiatric hospital, and are in need of those  
323 restorative treatment services. For purposes of this paragraph,  
324 the term "emotionally disturbed" means a condition exhibiting one  
325 or more of the following characteristics over a long period of  
326 time and to a marked degree, which adversely affects educational  
327 performance:

- 328                   1. An inability to learn that cannot be  
329 explained by intellectual, sensory or health factors;
- 330                   2. An inability to build or maintain  
331 satisfactory relationships with peers and teachers;
- 332                   3. Inappropriate types of behavior or  
333 feelings under normal circumstances;
- 334                   4. A general pervasive mood of unhappiness or  
335 depression; or
- 336                   5. A tendency to develop physical symptoms or  
337 fears associated with personal or school problems. An  
338 establishment furnishing primarily domiciliary care is not within  
339 this definition.

340                   (xi) "Pediatric skilled nursing facility" means an

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

346 (xii) "Long-term care hospital" means a  
347 freestanding, Medicare-certified hospital that has an average  
348 length of inpatient stay greater than twenty-five (25) days, that  
349 is primarily engaged in providing chronic or long-term medical  
350 care to patients who do not require more than three (3) hours of  
351 rehabilitation or comprehensive rehabilitation per day, and has a  
352 transfer agreement with an acute care medical center and a  
353 comprehensive medical rehabilitation facility. Long-term care  
354 hospitals shall not use rehabilitation, comprehensive medical  
355 rehabilitation, medical rehabilitation, sub-acute rehabilitation,  
356 nursing home, skilled nursing facility, or sub-acute care facility  
357 in association with its name.

358 (xiii) "Comprehensive medical rehabilitation  
359 facility" means a hospital or hospital unit that is licensed  
360 and/or certified as a comprehensive medical rehabilitation  
361 facility that provides specialized programs that are accredited by  
362 the Commission on Accreditation of Rehabilitation Facilities and  
363 supervised by a physician board certified or board eligible in  
364 Physiatry or other doctor of medicine or osteopathy with at least  
365 two (2) years of training in the medical direction of a  
366 comprehensive rehabilitation program that:

367 1. Includes evaluation and treatment of  
368 individuals with physical disabilities;

- 369                   2. Emphasizes education and training of  
370 individuals with disabilities;
- 371                   3. Incorporates at least the following core  
372 disciplines:
- 373                   (i) Physical Therapy;
  - 374                   (ii) Occupational Therapy;
  - 375                   (iii) Speech and Language Therapy;
  - 376                   (iv) Rehabilitation Nursing; and
- 377                   4. Incorporates at least three (3) of the  
378 following disciplines:
- 379                   (i) Psychology;
  - 380                   (ii) Audiology;
  - 381                   (iii) Respiratory Therapy;
  - 382                   (iv) Therapeutic Recreation;
  - 383                   (v) Orthotics;
  - 384                   (vi) Prosthetics;
  - 385                   (vii) Special Education;
  - 386                   (viii) Vocational Rehabilitation;
  - 387                   (ix) Psychotherapy;
  - 388                   (x) Social Work;
  - 389                   (xi) Rehabilitation Engineering.

390           These specialized programs include, but are not limited to:  
391 spinal cord injury programs, head injury programs and infant and  
392 early childhood development programs.

393           (i) "Health maintenance organization" or "HMO" means a  
394 public or private organization organized under the laws of this  
395 state or the federal government that:

396           (i) Provides or otherwise makes available to

397 enrolled participants health care services, including  
398 substantially the following basic health care services: usual  
399 physician services, hospitalization, laboratory, x-ray, emergency  
400 and preventive services, and out-of-area coverage;

401 (ii) Is compensated (except for copayments) for  
402 the provision of the basic health care services listed in  
403 subparagraph (i) of this paragraph to enrolled participants on a  
404 predetermined basis; and

405 (iii) Provides physician services primarily:

406 1. Directly through physicians who are either  
407 employees or partners of that organization; or

408 2. Through arrangements with individual  
409 physicians or one or more groups of physicians (organized on a  
410 group practice or individual practice basis).

411 (j) "Health service area" means a geographic area of  
412 the state designated in the State Health Plan as the area to be  
413 used in planning for specified health facilities and services and  
414 to be used when considering certificate of need applications to  
415 provide health facilities and services.

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

419 (l) "Institutional health services" shall mean health  
420 services provided in or through health care facilities and shall  
421 include the entities in or through which those services are  
422 provided.

423 (m) "Major medical equipment" means medical equipment  
424 designed for providing medical or any health related service that

425 costs in excess of One Million Five Hundred Thousand Dollars  
426 (\$1,500,000.00). However, this definition shall not be applicable  
427 to clinical laboratories if they are determined by the commission  
428 to be independent of any physician's office, hospital or other  
429 health care facility or otherwise not so defined by federal or  
430 state law, or rules and regulations promulgated under those laws.

431 (n) "Commission" \* \* \* means the Mississippi Health  
432 Planning and Development Commission created under Section  
433 41-7-175, which shall be considered to be the State Health  
434 Planning and Development Agency, as defined in paragraph (t) of  
435 this section. Whenever the term "State Department of Health" or  
436 "department," when referring to the State Department of Health, is  
437 used in any law of the State of Mississippi or in any rule,  
438 regulation or document in connection with the department's former  
439 powers and duties relating to the health planning and certificate  
440 of need program under Section 41-7-171 et seq., it shall mean the  
441 Mississippi Health Planning and Development Commission.

442 (o) "Offer," when used in connection with health  
443 services, means that it has been determined by the commission that  
444 the health care facility is capable of providing specified health  
445 services.

446 (p) "Person" means an individual, a trust or estate,  
447 partnership, corporation (including associations, joint stock  
448 companies and insurance companies), the state or a political  
449 subdivision or instrumentality of the state.

450 (q) "Provider" \* \* \* means any person who is a provider  
451 or representative of a provider of health care services requiring  
452 a certificate of need under Section 41-7-171 et seq., or who has



453 any financial or indirect interest in any provider of services.

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

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

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

467 SECTION 4. Section 41-7-183, Mississippi Code of 1972, is  
468 amended as follows:[RF3]

469 41-7-183. The commission shall have the duty of  
470 administering all functions and responsibilities of the designated  
471 State Health Planning and Development Agency as prescribed by the  
472 Legislature, and shall serve as the designated planning agency of  
473 the state for purposes of Section 1122 of Public Law 92-603 for  
474 the period of time that a contract is in effect between the  
475 secretary and the commission for those purposes.

476 SECTION 5. Section 41-7-185, Mississippi Code of 1972, is  
477 amended as follows:[RF4]

478 41-7-185. In carrying out its functions under Section  
479 41-7-171 et seq., the commission may:

480 (a) Make applications for and accept funds from any

481 federal and state agencies and \* \* \* receive and administer such  
482 other funds for the planning or provision of health facilities or  
483 health care as are appropriate to the accomplishment of the  
484 purposes of Section 41-7-171 et seq.; and may contract with any  
485 federal and state agencies to accept funds to administer planning  
486 activities on the community, regional or state level;

487 (b) \* \* \* Delegate to or contract with any mutually  
488 agreeable department, division or agency of the state, the federal  
489 government, or any political subdivision of either, or any private  
490 corporation, organization or association chartered by the  
491 Secretary of State of Mississippi, authority for administering any  
492 programs, duties or functions provided for in Section 41-7-171 et  
493 seq.;

494 (c) Prescribe and promulgate such reasonable rules and  
495 regulations as may be necessary to the implementation of the  
496 purposes of Section 41-7-171 et seq., complying with the  
497 Administrative Procedures Law (Section 25-43-1 et seq.);

498 (d) Require providers of institutional health services  
499 and home health care services provided through a home health  
500 agency and any other provider of health care requiring a  
501 certificate of need to submit or make available statistical  
502 information or such other information requested by the commission,  
503 but not information that would constitute an unwarranted invasion  
504 of the personal privacy of any individual person or place the  
505 provider in jeopardy of legal action by a third party;

506 (e) Conduct such other hearing or hearings in addition  
507 to those provided for in Section 41-7-197, and enter such further  
508 order or orders, and \* \* \* enter into such agreement or agreements

509 with any federal agencies as may be reasonably necessary to the  
510 realization by the people of Mississippi of the full benefits of  
511 acts of Congress;

512 (f) In its discretion, contract with the secretary, or  
513 terminate any such contract, for the administration of the  
514 provisions, programs, duties and functions of Section 1122 of  
515 Public Law 92-603; but the commission shall not be relieved of  
516 matters of accountability, obligation or responsibility that  
517 accrued to the commission by virtue of prior contracts and/or  
518 statutes;

519 (g) Prepare, review at least triennially, and revise,  
520 as necessary, a State Health Plan, as defined in Section  
521 41-7-173 \* \* \*.

522 SECTION 6. Section 41-7-187, Mississippi Code of 1972, is  
523 amended as follows:[RF5]

524 41-7-187. The commission shall develop and implement a  
525 statewide health certificate of need program. The commission  
526 shall adopt by rule and regulation:

527 (a) Criteria, standards and plans to be used in  
528 evaluating applications for certificates of need;

529 (b) Effective standards to determine when a person,  
530 facility or organization must apply for a certificate of need;

531 (c) Standards to determine when a change of ownership  
532 has occurred or will occur; and

533 (d) Review procedures for conducting reviews of  
534 applications for certificates of need.

535 SECTION 7. Section 41-7-189, Mississippi Code of 1972, is  
536 amended as follows:[RF6]

537           41-7-189. (1) Before review of new institutional health  
538 services or other proposals requiring a certificate of need, the  
539 commission shall disseminate to all health care facilities \* \* \*  
540 within the state, and shall publish in one or more newspapers of  
541 general circulation in the state, a description of the scope of  
542 coverage of the commission's certificate of need program.  
543 Whenever the scope of that coverage is revised, the commission  
544 shall disseminate and publish a revised description of the scope  
545 of the coverage in the same manner.

546           (2) Selected statistical data and information obtained by  
547 the State Department of Health as the licensing agency for health  
548 care facilities requiring licensure by the state and as the agency  
549 that provides certification for the Medicaid and/or Medicare  
550 program, may be utilized by the commission in performing the  
551 statutory duties imposed upon it by any law over which it has  
552 authority, and regulations necessarily promulgated for those  
553 facilities to participate in the Medicaid and/or Medicare  
554 program; \* \* \* however, \* \* \* the names of individual patients  
555 shall not be revealed except in hearings or judicial proceedings  
556 regarding questions of licensure.

557           SECTION 8. Section 41-7-191, Mississippi Code of 1972, is  
558 amended as follows:[RF7]

559           41-7-191. (1) No person shall engage in any of the  
560 following activities without obtaining the required certificate of  
561 need:

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

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

565 thereof, or major medical equipment, unless the relocation of a  
566 health care facility or portion of the facility, or major medical  
567 equipment, which does not involve a capital expenditure by or on  
568 behalf of a health care facility, is within one thousand three  
569 hundred twenty (1,320) feet from the main entrance of the health  
570 care facility;

571 (c) A change over a period of two (2) years' time, as  
572 established by the commission, in existing bed complement through  
573 the addition of more than ten (10) beds or more than ten percent  
574 (10%) of the total bed capacity of a designated licensed category  
575 or subcategory of any health care facility, whichever is less,  
576 from one physical facility or site to another; the conversion over  
577 a period of two (2) years' time, as established by the commission,  
578 of existing bed complement of more than ten (10) beds or more than  
579 ten percent (10%) of the total bed capacity of a designated  
580 licensed category or subcategory of any such health care facility,  
581 whichever is less; or the alteration, modernizing or refurbishing  
582 of any unit or department in which those beds may be  
583 located; \* \* \* however, \* \* \* from and after July 1, 1994, no  
584 health care facility shall be authorized to add any beds or  
585 convert any beds to another category of beds without a certificate  
586 of need under the authority of subsection (1)(c) of this section  
587 unless there is a projected need for those beds in the planning  
588 district in which the facility is located, as reported in the most  
589 current State Health Plan;

590 (d) Offering of the following health services if those  
591 services have not been provided on a regular basis by the proposed  
592 provider of those services within the period of twelve (12) months

593 before the time the services would be offered:

594 (i) Open heart surgery services;

595 (ii) Cardiac catheterization services;

596 (iii) Comprehensive inpatient rehabilitation  
597 services;

598 (iv) Licensed psychiatric services;

599 (v) Licensed chemical dependency services;

600 (vi) Radiation therapy services;

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

603 (viii) Nursing home care as defined in

604 subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);

605 (ix) Home health services;

606 (x) Swing-bed services;

607 (xi) Ambulatory surgical services;

608 (xii) Magnetic resonance imaging services;

609 (xiii) Extracorporeal shock wave lithotripsy

610 services;

611 (xiv) Long-term care hospital services;

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

613 (e) The relocation of one or more health services from  
614 one physical facility or site to another physical facility or  
615 site, unless the relocation, which does not involve a capital  
616 expenditure by or on behalf of a health care facility, (i) is to a  
617 physical facility or site within one thousand three hundred twenty  
618 (1,320) feet from the main entrance of the health care facility  
619 where the health care service is located, or (ii) is the result of  
620 an order of a court of appropriate jurisdiction or a result of

621 pending litigation in that court, or by order of the commission,  
622 or by order of any other agency or legal entity of the state, the  
623 federal government, or any political subdivision of either, whose  
624 order is also approved by the commission;

625 (f) The acquisition or otherwise control of any major  
626 medical equipment for the provision of medical services; \* \* \*  
627 however, (i) the acquisition of any major medical equipment used  
628 only for research purposes, and (ii) the acquisition of major  
629 medical equipment to replace medical equipment for which a  
630 facility is already providing medical services and for which the  
631 commission has been notified before the date of the acquisition  
632 shall be exempt from this paragraph; an acquisition for less than  
633 fair market value must be reviewed, if the acquisition at fair  
634 market value would be subject to review;

635 (g) Changes of ownership of existing health care  
636 facilities in which a notice of intent is not filed with the  
637 commission at least thirty (30) days before the date that the  
638 change of ownership occurs, or a change in services or bed  
639 capacity as prescribed in paragraph (c) or (d) of this subsection  
640 as a result of the change of ownership; an acquisition for less  
641 than fair market value must be reviewed, if the acquisition at  
642 fair market value would be subject to review;

643 (h) The change of ownership of any health care facility  
644 defined in subparagraphs (iv), (vi) and (viii) of Section  
645 41-7-173(h), in which a notice of intent as described in paragraph  
646 (g) has not been filed and if the Executive Director of the  
647 Division of Medicaid, Office of the Governor, has not certified in  
648 writing that there will be no increase in allowable costs to

649 Medicaid from revaluation of the assets or from increased interest  
650 and depreciation as a result of the proposed change of ownership;

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

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

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

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

671 (a) The commission may issue a certificate of need to  
672 any person proposing the new construction of any health care  
673 facility defined in subparagraphs (iv) and (vi) of Section  
674 41-7-173(h) as part of a life care retirement facility, in any  
675 county bordering on the Gulf of Mexico in which is located a  
676 National Aeronautics and Space Administration facility, not to



677 exceed forty (40) beds. From and after July 1, 1999, there shall  
678 be no prohibition or restrictions on participation in the Medicaid  
679 program (Section 43-13-101 et seq.) for the beds in the health  
680 care facility that were authorized under this paragraph (a).

681 (b) The commission may issue certificates of need in  
682 Harrison County to provide skilled nursing home care for  
683 Alzheimer's Disease patients and other patients, not to exceed one  
684 hundred fifty (150) beds. From and after July 1, 1999, there  
685 shall be no prohibition or restrictions on participation in the  
686 Medicaid program (Section 43-13-101 et seq.) for the beds in the  
687 nursing facilities that were authorized under this paragraph (b).

688 (c) The commission may issue a certificate of need for  
689 the addition to or expansion of any skilled nursing facility that  
690 is part of an existing continuing care retirement community  
691 located in Madison County, provided that the recipient of the  
692 certificate of need agrees in writing that the skilled nursing  
693 facility will not at any time participate in the Medicaid program  
694 (Section 43-13-101 et seq.) or admit or keep any patients in the  
695 skilled nursing facility who are participating in the Medicaid  
696 program. This written agreement by the recipient of the  
697 certificate of need shall be fully binding on any subsequent owner  
698 of the skilled nursing facility, if the ownership of the facility  
699 is transferred at any time after the issuance of the certificate  
700 of need. Agreement that the skilled nursing facility will not  
701 participate in the Medicaid program shall be a condition of the  
702 issuance of a certificate of need to any person under this  
703 paragraph (c), and if the skilled nursing facility at any time  
704 after the issuance of the certificate of need, regardless of the

705 ownership of the facility, participates in the Medicaid program or  
706 admits or keeps any patients in the facility who are participating  
707 in the Medicaid program, the commission shall revoke the  
708 certificate of need, if it is still outstanding, and the State  
709 Department of Health shall deny or revoke the license of the  
710 skilled nursing facility, at the time that the department  
711 receives notification from the commission that it has determined,  
712 after a hearing complying with due process, that the facility has  
713 failed to comply with any of the conditions upon which the  
714 certificate of need was issued, as provided in this paragraph and  
715 in the written agreement by the recipient of the certificate of  
716 need. The total number of beds that may be authorized under the  
717 authority of this paragraph (c) shall not exceed sixty (60) beds.

718 (d) The commission may issue a certificate of need to  
719 any hospital located in DeSoto County for the new construction of  
720 a skilled nursing facility, not to exceed one hundred twenty (120)  
721 beds, in DeSoto County. From and after July 1, 1999, there shall  
722 be no prohibition or restrictions on participation in the Medicaid  
723 program (Section 43-13-101 et seq.) for the beds in the nursing  
724 facility that were authorized under this paragraph (d).

725 (e) The commission may issue a certificate of need for  
726 the construction of a nursing facility or the conversion of beds  
727 to nursing facility beds at a personal care facility for the  
728 elderly in Lowndes County that is owned and operated by a  
729 Mississippi nonprofit corporation, not to exceed sixty (60) beds.

730 From and after July 1, 1999, there shall be no prohibition or  
731 restrictions on participation in the Medicaid program (Section  
732 43-13-101 et seq.) for the beds in the nursing facility that were

733 authorized under this paragraph (e).

734           (f) The commission may issue a certificate of need for  
735 conversion of a county hospital facility in Itawamba County to a  
736 nursing facility, not to exceed sixty (60) beds, including any  
737 necessary construction, renovation or expansion. From and after  
738 July 1, 1999, there shall be no prohibition or restrictions on  
739 participation in the Medicaid program (Section 43-13-101 et seq.)  
740 for the beds in the nursing facility that were authorized under  
741 this paragraph (f).

742           (g) The commission may issue a certificate of need for  
743 the construction or expansion of nursing facility beds or the  
744 conversion of other beds to nursing facility beds in either Hinds,  
745 Madison or Rankin Counties, not to exceed sixty (60) beds. From  
746 and after July 1, 1999, there shall be no prohibition or  
747 restrictions on participation in the Medicaid program (Section  
748 43-13-101 et seq.) for the beds in the nursing facility that were  
749 authorized under this paragraph (g).

750           (h) The commission may issue a certificate of need for  
751 the construction or expansion of nursing facility beds or the  
752 conversion of other beds to nursing facility beds in either  
753 Hancock, Harrison or Jackson Counties, not to exceed sixty (60)  
754 beds. From and after July 1, 1999, there shall be no prohibition  
755 or restrictions on participation in the Medicaid program (Section  
756 43-13-101 et seq.) for the beds in the facility that were  
757 authorized under this paragraph (h).

758           (i) The commission may issue a certificate of need for  
759 the new construction of a skilled nursing facility in Leake  
760 County, provided that the recipient of the certificate of need

761 agrees in writing that the skilled nursing facility will not at  
762 any time participate in the Medicaid program (Section 43-13-101 et  
763 seq.) or admit or keep any patients in the skilled nursing  
764 facility who are participating in the Medicaid program. This  
765 written agreement by the recipient of the certificate of need  
766 shall be fully binding on any subsequent owner of the skilled  
767 nursing facility, if the ownership of the facility is transferred  
768 at any time after the issuance of the certificate of need.

769 Agreement that the skilled nursing facility will not participate  
770 in the Medicaid program shall be a condition of the issuance of a  
771 certificate of need to any person under this paragraph (i), and if  
772 the skilled nursing facility at any time after the issuance of the  
773 certificate of need, regardless of the ownership of the facility,  
774 participates in the Medicaid program or admits or keeps any  
775 patients in the facility who are participating in the Medicaid  
776 program, the commission shall revoke the certificate of need, if  
777 it is still outstanding, and the State Department of Health shall  
778 deny or revoke the license of the skilled nursing facility, at the  
779 time that the department receives notification from the commission  
780 that it has determined, after a hearing complying with due  
781 process, that the facility has failed to comply with any of the  
782 conditions upon which the certificate of need was issued, as  
783 provided in this paragraph and in the written agreement by the  
784 recipient of the certificate of need. The provision of Section  
785 43-7-193(1) regarding substantial compliance of the projection of  
786 need as reported in the current State Health Plan is waived for  
787 the purposes of this paragraph. The total number of nursing  
788 facility beds that may be authorized by any certificate of need

789 issued under this paragraph (i) shall not exceed sixty (60) beds.  
790 If the skilled nursing facility authorized by the certificate of  
791 need issued under this paragraph is not constructed and fully  
792 operational within eighteen (18) months after July 1, 1994, the  
793 commission, after a hearing complying with due process, shall  
794 revoke the certificate of need, if it is still outstanding, and  
795 the State Department of Health shall not issue a license for the  
796 skilled nursing facility at any time after the expiration of the  
797 eighteen-month period.

798 (j) The commission may issue certificates of need to  
799 allow any existing freestanding long-term care facility in  
800 Tishomingo County and Hancock County that on July 1, 1995, is  
801 licensed with fewer than sixty (60) beds. For the purposes of  
802 this paragraph (j), the provision of Section 41-7-193(1) requiring  
803 substantial compliance with the projection of need as reported in  
804 the current State Health Plan is waived. From and after July 1,  
805 1999, there shall be no prohibition or restrictions on  
806 participation in the Medicaid program (Section 43-13-101 et seq.)  
807 for the beds in the long-term care facilities that were authorized  
808 under this paragraph (j).

809 (k) The commission may issue a certificate of need for  
810 the construction of a nursing facility at a continuing care  
811 retirement community in Lowndes County, provided that the  
812 recipient of the certificate of need agrees in writing that the  
813 nursing facility will not at any time participate in the Medicaid  
814 program (Section 43-13-101 et seq.) or admit or keep any patients  
815 in the nursing facility who are participating in the Medicaid  
816 program. This written agreement by the recipient of the

817 certificate of need shall be fully binding on any subsequent owner  
818 of the nursing facility, if the ownership of the facility is  
819 transferred at any time after the issuance of the certificate of  
820 need. Agreement that the nursing facility will not participate in  
821 the Medicaid program shall be a condition of the issuance of a  
822 certificate of need to any person under this paragraph (k), and if  
823 the nursing facility at any time after the issuance of the  
824 certificate of need, regardless of the ownership of the facility,  
825 participates in the Medicaid program or admits or keeps any  
826 patients in the facility who are participating in the Medicaid  
827 program, the commission shall revoke the certificate of need, if  
828 it is still outstanding, and the State Department of Health shall  
829 deny or revoke the license of the nursing facility, at the time  
830 that the department receives notification from the commission that  
831 it has determined, after a hearing complying with due process,  
832 that the facility has failed to comply with any of the conditions  
833 upon which the certificate of need was issued, as provided in this  
834 paragraph and in the written agreement by the recipient of the  
835 certificate of need. The total number of beds that may be  
836 authorized under the authority of this paragraph (k) shall not  
837 exceed sixty (60) beds.

838 (1) Provided that funds are specifically appropriated  
839 therefor by the Legislature, the commission may issue a  
840 certificate of need to a rehabilitation hospital in Hinds County  
841 for the construction of a sixty-bed long-term care nursing  
842 facility dedicated to the care and treatment of persons with  
843 severe disabilities including persons with spinal cord and  
844 closed-head injuries and ventilator-dependent patients. The

845 provision of Section 41-7-193(1) regarding substantial compliance  
846 with projection of need as reported in the current State Health  
847 Plan is \* \* \* waived for the purpose of this paragraph.

848 (m) The commission may issue a certificate of need to a  
849 county-owned hospital in the Second Judicial District of Panola  
850 County for the conversion of not more than seventy-two (72)  
851 hospital beds to nursing facility beds, provided that the  
852 recipient of the certificate of need agrees in writing that none  
853 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 in  
856 the nursing facility in any day or for any patient in the nursing  
857 facility. This written agreement by the recipient of the  
858 certificate of need shall be a condition of the issuance of the  
859 certificate of need under this paragraph, and the agreement shall  
860 be fully binding on any subsequent owner of the nursing facility  
861 if the ownership of the nursing facility is transferred at any  
862 time after the issuance of the certificate of need. After this  
863 written agreement is executed, the Division of Medicaid and the  
864 State Department of Health shall not certify any of the beds in  
865 the nursing facility for participation in the Medicaid program.  
866 If the nursing facility violates the terms of the written  
867 agreement by admitting or keeping in the nursing facility on a  
868 regular or continuing basis any patients who are participating in  
869 the Medicaid program, the State Department of Health shall revoke  
870 the license of the nursing facility, at the time that the  
871 department receives notification from the commission that it has  
872 determined, after a hearing complying with due process, that the

873 nursing facility has violated the condition upon which the  
874 certificate of need was issued, as provided in this paragraph and  
875 in the written agreement. If the certificate of need authorized  
876 under this paragraph is not issued within twelve (12) months after  
877 July 1, 2001, the commission shall deny the application for the  
878 certificate of need and shall not issue the certificate of need at  
879 any time after the twelve-month period, unless the issuance is  
880 contested. If the certificate of need is issued and substantial  
881 construction of the nursing facility beds has not commenced within  
882 eighteen (18) months after July 1, 2001, the commission, after a  
883 hearing complying with due process, shall revoke the certificate  
884 of need if it is still outstanding, and the State Department of  
885 Health shall not issue a license for the nursing facility at any  
886 time after the eighteen-month period. \* \* \* However, \* \* \* if the  
887 issuance of the certificate of need is contested, the commission  
888 shall require substantial construction of the nursing facility  
889 beds within six (6) months after final adjudication on the  
890 issuance of the certificate of need.

891 (n) The commission may issue a certificate of need for  
892 the new construction, addition or conversion of skilled nursing  
893 facility beds in Madison County, provided that the recipient of  
894 the certificate of need agrees in writing that the skilled nursing  
895 facility will not at any time participate in the Medicaid program  
896 (Section 43-13-101 et seq.) or admit or keep any patients in the  
897 skilled nursing facility who are participating in the Medicaid  
898 program. This written agreement by the recipient of the  
899 certificate of need shall be fully binding on any subsequent owner  
900 of the skilled nursing facility, if the ownership of the facility



901 is transferred at any time after the issuance of the certificate  
902 of need. Agreement that the skilled nursing facility will not  
903 participate in the Medicaid program shall be a condition of the  
904 issuance of a certificate of need to any person under this  
905 paragraph (n), and if the skilled nursing facility at any time  
906 after the issuance of the certificate of need, regardless of the  
907 ownership of the facility, participates in the Medicaid program or  
908 admits or keeps any patients in the facility who are participating  
909 in the Medicaid program, the commission shall revoke the  
910 certificate of need, if it is still outstanding, and the State  
911 Department of Health shall deny or revoke the license of the  
912 skilled nursing facility, at the time that the department  
913 receives notification from the commission that it has determined,  
914 after a hearing complying with due process, that the facility has  
915 failed to comply with any of the conditions upon which the  
916 certificate of need was issued, as provided in this paragraph and  
917 in the written agreement by the recipient of the certificate of  
918 need. The total number of nursing facility beds that may be  
919 authorized by any certificate of need issued under this paragraph  
920 (n) shall not exceed sixty (60) beds. If the certificate of need  
921 authorized under this paragraph is not issued within twelve (12)  
922 months after July 1, 1998, the commission shall deny the  
923 application for the certificate of need and shall not issue the  
924 certificate of need at any time after the twelve-month period,  
925 unless the issuance is contested. If the certificate of need is  
926 issued and substantial construction of the nursing facility beds  
927 has not commenced within eighteen (18) months after the effective  
928 date of July 1, 1998, the commission, after a hearing complying

929 with due process, shall revoke the certificate of need if it is  
930 still outstanding, and the State Department of Health shall not  
931 issue a license for the nursing facility at any time after the  
932 eighteen-month period. \* \* \* However, \* \* \* if the issuance of  
933 the certificate of need is contested, the commission shall require  
934 substantial construction of the nursing facility beds within six  
935 (6) months after final adjudication on the issuance of the  
936 certificate of need.

937           (o) The commission may issue a certificate of need for  
938 the new construction, addition or conversion of skilled nursing  
939 facility beds in Leake County, provided that the recipient of the  
940 certificate of need agrees in writing that the skilled nursing  
941 facility will not at any time participate in the Medicaid program  
942 (Section 43-13-101 et seq.) or admit or keep any patients in the  
943 skilled nursing facility who are participating in the Medicaid  
944 program. This written agreement by the recipient of the  
945 certificate of need shall be fully binding on any subsequent owner  
946 of the skilled nursing facility, if the ownership of the facility  
947 is transferred at any time after the issuance of the certificate  
948 of need. Agreement that the skilled nursing facility will not  
949 participate in the Medicaid program shall be a condition of the  
950 issuance of a certificate of need to any person under this  
951 paragraph (o), and if the skilled nursing facility at any time  
952 after the issuance of the certificate of need, regardless of the  
953 ownership of the facility, participates in the Medicaid program or  
954 admits or keeps any patients in the facility who are participating  
955 in the Medicaid program, the commission shall revoke the  
956 certificate of need, if it is still outstanding, and the State

957 Department of Health shall deny or revoke the license of the  
958 skilled nursing facility, at the time that the department  
959 receives notification from the commission that it has determined,  
960 after a hearing complying with due process, that the facility has  
961 failed to comply with any of the conditions upon which the  
962 certificate of need was issued, as provided in this paragraph and  
963 in the written agreement by the recipient of the certificate of  
964 need. The total number of nursing facility beds that may be  
965 authorized by any certificate of need issued under this paragraph  
966 (o) shall not exceed sixty (60) beds. If the certificate of need  
967 authorized under this paragraph is not issued within twelve (12)  
968 months after July 1, 2001, the commission shall deny the  
969 application for the certificate of need and shall not issue the  
970 certificate of need at any time after the twelve-month period,  
971 unless the issuance is contested. If the certificate of need is  
972 issued and substantial construction of the nursing facility beds  
973 has not commenced within eighteen (18) months after the effective  
974 date of July 1, 2001, the commission, after a hearing complying  
975 with due process, shall revoke the certificate of need if it is  
976 still outstanding, and the State Department of Health shall not  
977 issue a license for the nursing facility at any time after the  
978 eighteen-month period. \* \* \* However, \* \* \* if the issuance of  
979 the certificate of need is contested, the commission shall require  
980 substantial construction of the nursing facility beds within six  
981 (6) months after final adjudication on the issuance of the  
982 certificate of need.

983 (p) The commission may issue a certificate of need for  
984 the construction of a municipally owned nursing facility within

985 the Town of Belmont in Tishomingo County, not to exceed sixty (60)  
986 beds, provided that the recipient of the certificate of need  
987 agrees in writing that the skilled nursing facility will not at  
988 any time participate in the Medicaid program (Section 43-13-101 et  
989 seq.) or admit or keep any patients in the skilled nursing  
990 facility who are participating in the Medicaid program. This  
991 written agreement by the recipient of the certificate of need  
992 shall be fully binding on any subsequent owner of the skilled  
993 nursing facility, if the ownership of the facility is transferred  
994 at any time after the issuance of the certificate of need.  
995 Agreement that the skilled nursing facility will not participate  
996 in the Medicaid program shall be a condition of the issuance of a  
997 certificate of need to any person under this paragraph (p), and if  
998 the skilled nursing facility at any time after the issuance of  
999 the certificate of need, regardless of the ownership of the  
1000 facility, participates in the Medicaid program or admits or keeps  
1001 any patients in the facility who are participating in the Medicaid  
1002 program, the commission shall revoke the certificate of need, if  
1003 it is still outstanding, and the State Department of Health shall  
1004 deny or revoke the license of the skilled nursing facility, at the  
1005 time that the department receives notification from the commission  
1006 that it has determined, after a hearing complying with due  
1007 process, that the facility has failed to comply with any of the  
1008 conditions upon which the certificate of need was issued, as  
1009 provided in this paragraph and in the written agreement by the  
1010 recipient of the certificate of need. The provision of Section  
1011 43-7-193(1) regarding substantial compliance of the projection of  
1012 need as reported in the current State Health Plan is waived for

1013 the purposes of this paragraph. If the certificate of need  
1014 authorized under this paragraph is not issued within twelve (12)  
1015 months after July 1, 1998, the commission shall deny the  
1016 application for the certificate of need and shall not issue the  
1017 certificate of need at any time after the twelve-month period,  
1018 unless the issuance is contested. If the certificate of need is  
1019 issued and substantial construction of the nursing facility beds  
1020 has not commenced within eighteen (18) months after July 1, 1998,  
1021 the commission, after a hearing complying with due process, shall  
1022 revoke the certificate of need if it is still outstanding, and the  
1023 State Department of Health shall not issue a license for the  
1024 nursing facility at any time after the eighteen-month  
1025 period. \* \* \* However, \* \* \* if the issuance of the certificate  
1026 of need is contested, the commission shall require substantial  
1027 construction of the nursing facility beds within six (6) months  
1028 after final adjudication on the issuance of the certificate of  
1029 need.

1030 (q) (i) Beginning on July 1, 1999, the commission  
1031 shall issue certificates of need during each of the next four (4)  
1032 fiscal years for the construction or expansion of nursing facility  
1033 beds or the conversion of other beds to nursing facility beds in  
1034 each county in the state having a need for fifty (50) or more  
1035 additional nursing facility beds, as shown in the fiscal year 1999  
1036 State Health Plan, in the manner provided in this paragraph (q).  
1037 The total number of nursing facility beds that may be authorized  
1038 by any certificate of need authorized under this paragraph (q)  
1039 shall not exceed sixty (60) beds.

1040 (ii) Subject to the provisions of subparagraph

1041 (v), during each of the next four (4) fiscal years, the commission  
1042 shall issue six (6) certificates of need for new nursing facility  
1043 beds, as follows: During fiscal years 2000, 2001 and 2002, one  
1044 (1) certificate of need shall be issued for new nursing facility  
1045 beds in the county in each of the four (4) Long-Term Care Planning  
1046 Districts designated in the fiscal year 1999 State Health Plan  
1047 that has the highest need in the district for those beds; and two  
1048 (2) certificates of need shall be issued for new nursing facility  
1049 beds in the two (2) counties from the state at large that have the  
1050 highest need in the state for those beds, when considering the  
1051 need on a statewide basis and without regard to the Long-Term Care  
1052 Planning Districts in which the counties are located. During  
1053 fiscal year 2003, one (1) certificate of need shall be issued for  
1054 new nursing facility beds in any county having a need for fifty  
1055 (50) or more additional nursing facility beds, as shown in the  
1056 fiscal year 1999 State Health Plan, that has not received a  
1057 certificate of need under this paragraph (q) during the three (3)  
1058 previous fiscal years. During fiscal year 2000, in addition to  
1059 the six (6) certificates of need authorized in this subparagraph,  
1060 the commission also shall issue a certificate of need for new  
1061 nursing facility beds in Amite County and a certificate of need  
1062 for new nursing facility beds in Carroll County.

1063 (iii) Subject to the provisions of subparagraph  
1064 (v), the certificate of need issued under subparagraph (ii) for  
1065 nursing facility beds in each Long-Term Care Planning District  
1066 during each fiscal year shall first be available for nursing  
1067 facility beds in the county in the district having the highest  
1068 need for those beds, as shown in the fiscal year 1999 State Health

1069 Plan. If there are no applications for a certificate of need for  
1070 nursing facility beds in the county having the highest need for  
1071 those beds by the date specified by the commission, then the  
1072 certificate of need shall be available for nursing facility beds  
1073 in other counties in the district in descending order of the need  
1074 for those beds, from the county with the second highest need to  
1075 the county with the lowest need, until an application is received  
1076 for nursing facility beds in an eligible county in the district.

1077 (iv) Subject to the provisions of subparagraph  
1078 (v), the certificate of need issued under subparagraph (ii) for  
1079 nursing facility beds in the two (2) counties from the state at  
1080 large during each fiscal year shall first be available for nursing  
1081 facility beds in the two (2) counties that have the highest need  
1082 in the state for those beds, as shown in the fiscal year 1999  
1083 State Health Plan, when considering the need on a statewide basis  
1084 and without regard to the Long-Term Care Planning Districts in  
1085 which the counties are located. If there are no applications for  
1086 a certificate of need for nursing facility beds in either of the  
1087 two (2) counties having the highest need for those beds on a  
1088 statewide basis by the date specified by the commission, then the  
1089 certificate of need shall be available for nursing facility beds  
1090 in other counties from the state at large in descending order of  
1091 the need for those beds on a statewide basis, from the county with  
1092 the second highest need to the county with the lowest need, until  
1093 an application is received for nursing facility beds in an  
1094 eligible county from the state at large.

1095 (v) If a certificate of need is authorized to be  
1096 issued under this paragraph (q) for nursing facility beds in a

1097 county on the basis of the need in the Long-Term Care Planning  
1098 District during any fiscal year of the four-year period, a  
1099 certificate of need shall not also be available under this  
1100 paragraph (q) for additional nursing facility beds in that county  
1101 on the basis of the need in the state at large, and that county  
1102 shall be excluded in determining which counties have the highest  
1103 need for nursing facility beds in the state at large for that  
1104 fiscal year. After a certificate of need has been issued under  
1105 this paragraph (q) for nursing facility beds in a county during  
1106 any fiscal year of the four-year period, a certificate of need  
1107 shall not be available again under this paragraph (q) for  
1108 additional nursing facility beds in that county during the  
1109 four-year period, and that county shall be excluded in determining  
1110 which counties have the highest need for nursing facility beds in  
1111 succeeding fiscal years.

1112 (r) (i) Beginning on July 1, 1999, the commission  
1113 shall issue certificates of need during each of the next two (2)  
1114 fiscal years for the construction or expansion of nursing facility  
1115 beds or the conversion of other beds to nursing facility beds in  
1116 each of the four (4) Long-Term Care Planning Districts designated  
1117 in the fiscal year 1999 State Health Plan, to provide care  
1118 exclusively to patients with Alzheimer's disease.

1119 (ii) Not more than twenty (20) beds may be authorized  
1120 by any certificate of need issued under this paragraph (r), and  
1121 not more than a total of sixty (60) beds may be authorized in any  
1122 Long-Term Care Planning District by all certificates of need  
1123 issued under this paragraph (r). However, the total number of  
1124 beds that may be authorized by all certificates of need issued



1125 under this paragraph (r) during any fiscal year shall not exceed  
1126 one hundred twenty (120) beds, and the total number of beds that  
1127 may be authorized in any Long-Term Care Planning District during  
1128 any fiscal year shall not exceed forty (40) beds. Of the  
1129 certificates of need that are issued for each Long-Term Care  
1130 Planning District during the next two (2) fiscal years, at least  
1131 one (1) shall be issued for beds in the northern part of the  
1132 district, at least one (1) shall be issued for beds in the central  
1133 part of the district, and at least one (1) shall be issued for  
1134 beds in the southern part of the district.

1135 (iii) The State Department of Health, in  
1136 consultation with the Department of Mental Health and the Division  
1137 of Medicaid, shall develop and prescribe the staffing levels,  
1138 space requirements and other standards and requirements that must  
1139 be met with regard to the nursing facility beds authorized under  
1140 this paragraph (r) to provide care exclusively to patients with  
1141 Alzheimer's disease.

1142 (3) The commission may grant approval for and issue  
1143 certificates of need to any person proposing the new construction  
1144 of, addition to, conversion of beds of or expansion of any health  
1145 care facility defined in subparagraph (x) (psychiatric residential  
1146 treatment facility) of Section 41-7-173(h). The total number of  
1147 beds that may be authorized by such certificates of need shall not  
1148 exceed two hundred seventy-four (274) beds for the entire state.

1149 (a) Of the total number of beds authorized under this  
1150 subsection, the commission shall issue a certificate of need to a  
1151 privately owned psychiatric residential treatment facility in  
1152 Simpson County for the conversion of sixteen (16) intermediate

1153 care facility for the mentally retarded (ICF-MR) beds to  
1154 psychiatric residential treatment facility beds, provided that  
1155 facility agrees in writing that the facility shall give priority  
1156 for the use of those sixteen (16) beds to Mississippi residents  
1157 who are presently being treated in out-of-state facilities.

1158 (b) Of the total number of beds authorized under this  
1159 subsection, the commission may issue a certificate or certificates  
1160 of need for the construction or expansion of psychiatric  
1161 residential treatment facility beds or the conversion of other  
1162 beds to psychiatric residential treatment facility beds in Warren  
1163 County, not to exceed sixty (60) psychiatric residential treatment  
1164 facility beds, provided that the facility agrees in writing that  
1165 no more than thirty (30) of the beds at the psychiatric  
1166 residential treatment facility will be certified for participation  
1167 in the Medicaid program (Section 43-13-101 et seq.) for the use of  
1168 any patients other than those who are participating only in the  
1169 Medicaid program of another state, and that no claim will be  
1170 submitted to the Division of Medicaid for Medicaid reimbursement  
1171 for more than thirty (30) patients in the psychiatric residential  
1172 treatment facility in any day or for any patient in the  
1173 psychiatric residential treatment facility who is in a bed that is  
1174 not Medicaid-certified. This written agreement by the recipient  
1175 of the certificate of need shall be a condition of the issuance of  
1176 the certificate of need under this paragraph, and the agreement  
1177 shall be fully binding on any subsequent owner of the psychiatric  
1178 residential treatment facility if the ownership of the facility is  
1179 transferred at any time after the issuance of the certificate of  
1180 need. After this written agreement is executed, the Division of

1181 Medicaid and the State Department of Health shall not certify more  
1182 than thirty (30) of the beds in the psychiatric residential  
1183 treatment facility for participation in the Medicaid program for  
1184 the use of any patients other than those who are participating  
1185 only in the Medicaid program of another state. If the psychiatric  
1186 residential treatment facility violates the terms of the written  
1187 agreement by admitting or keeping in the facility on a regular or  
1188 continuing basis more than thirty (30) patients who are  
1189 participating in the Mississippi Medicaid program, the State  
1190 Department of Health shall revoke the license of the facility, at  
1191 the time that the department receives notification from the  
1192 commission that it has determined, after a hearing complying with  
1193 due process, that the facility has violated the condition upon  
1194 which the certificate of need was issued, as provided in this  
1195 paragraph and in the written agreement.

1196 (c) Of the total number of beds authorized under this  
1197 subsection, the commission shall issue a certificate of need to a  
1198 hospital currently operating Medicaid-certified acute psychiatric  
1199 beds for adolescents in DeSoto County, for the establishment of a  
1200 forty-bed psychiatric residential treatment facility in DeSoto  
1201 County, provided that the hospital agrees in writing (i) that the  
1202 hospital shall give priority for the use of those forty (40) beds  
1203 to Mississippi residents who are presently being treated in  
1204 out-of-state facilities, and (ii) that no more than fifteen (15)  
1205 of the beds at the psychiatric residential treatment facility will  
1206 be certified for participation in the Medicaid program (Section  
1207 43-13-101 et seq.), and that no claim will be submitted for  
1208 Medicaid reimbursement for more than fifteen (15) patients in the

1209 psychiatric residential treatment facility in any day or for any  
1210 patient in the psychiatric residential treatment facility who is  
1211 in a bed that is not Medicaid-certified. This written agreement  
1212 by the recipient of the certificate of need shall be a condition  
1213 of the issuance of the certificate of need under this paragraph,  
1214 and the agreement shall be fully binding on any subsequent owner  
1215 of the psychiatric residential treatment facility if the ownership  
1216 of the facility is transferred at any time after the issuance of  
1217 the certificate of need. After this written agreement is  
1218 executed, the Division of Medicaid and the State Department of  
1219 Health shall not certify more than fifteen (15) of the beds in the  
1220 psychiatric residential treatment facility for participation in  
1221 the Medicaid program. If the psychiatric residential treatment  
1222 facility violates the terms of the written agreement by admitting  
1223 or keeping in the facility on a regular or continuing basis more  
1224 than fifteen (15) patients who are participating in the Medicaid  
1225 program, the State Department of Health shall revoke the license  
1226 of the facility, at the time that the department receives  
1227 notification from the commission that it has determined, after a  
1228 hearing complying with due process, that the facility has violated  
1229 the condition upon which the certificate of need was issued, as  
1230 provided in this paragraph and in the written agreement.

1231 (d) Of the total number of beds authorized under this  
1232 subsection, the commission may issue a certificate or certificates  
1233 of need for the construction or expansion of psychiatric  
1234 residential treatment facility beds or the conversion of other  
1235 beds to psychiatric treatment facility beds, not to exceed thirty  
1236 (30) psychiatric residential treatment facility beds, in either

1237 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,  
1238 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah Counties.

1239 (e) Of the total number of beds authorized under this  
1240 subsection (3) the commission shall issue a certificate of need to  
1241 a privately owned, nonprofit psychiatric residential treatment  
1242 facility in Hinds County for an eight-bed expansion of the  
1243 facility, provided that the facility agrees in writing that the  
1244 facility shall give priority for the use of those eight (8) beds  
1245 to Mississippi residents who are presently being treated in  
1246 out-of-state facilities.

1247 (4) (a) From and after July 1, 1993, the commission shall  
1248 not issue a certificate of need to any person for the new  
1249 construction of any hospital, psychiatric hospital or chemical  
1250 dependency hospital that will contain any child/adolescent  
1251 psychiatric or child/adolescent chemical dependency beds, or for  
1252 the conversion of any other health care facility to a hospital,  
1253 psychiatric hospital or chemical dependency hospital that will  
1254 contain any child/adolescent psychiatric or child/adolescent  
1255 chemical dependency beds, or for the addition of any  
1256 child/adolescent psychiatric or child/adolescent chemical  
1257 dependency beds in any hospital, psychiatric hospital or chemical  
1258 dependency hospital, or for the conversion of any beds of another  
1259 category in any hospital, psychiatric hospital or chemical  
1260 dependency hospital to child/adolescent psychiatric or  
1261 child/adolescent chemical dependency beds, except as hereinafter  
1262 authorized:

1263 (i) The commission may issue certificates of need  
1264 to any person for any purpose described in this subsection,

1265 provided that the hospital, psychiatric hospital or chemical  
1266 dependency hospital does not participate in the Medicaid program  
1267 (Section 43-13-101 et seq.) at the time of the application for the  
1268 certificate of need and the owner of the hospital, psychiatric  
1269 hospital or chemical dependency hospital agrees in writing that  
1270 the hospital, psychiatric hospital or chemical dependency hospital  
1271 will not at any time participate in the Medicaid program or admit  
1272 or keep any patients who are participating in the Medicaid program  
1273 in the hospital, psychiatric hospital or chemical dependency  
1274 hospital. This written agreement by the recipient of the  
1275 certificate of need shall be fully binding on any subsequent owner  
1276 of the hospital, psychiatric hospital or chemical dependency  
1277 hospital, if the ownership of the facility is transferred at any  
1278 time after the issuance of the certificate of need. Agreement  
1279 that the hospital, psychiatric hospital or chemical dependency  
1280 hospital will not participate in the Medicaid program shall be a  
1281 condition of the issuance of a certificate of need to any person  
1282 under this subparagraph (a)(i), and if the hospital, psychiatric  
1283 hospital or chemical dependency hospital at any time after the  
1284 issuance of the certificate of need, regardless of the ownership  
1285 of the facility, participates in the Medicaid program or admits or  
1286 keeps any patients in the hospital, psychiatric hospital or  
1287 chemical dependency hospital who are participating in the Medicaid  
1288 program, the commission shall revoke the certificate of need, if  
1289 it is still outstanding, and the State Department of Health shall  
1290 deny or revoke the license of the hospital, psychiatric hospital  
1291 or chemical dependency hospital, at the time that the department  
1292 receives notification from the commission that it has determined,

1293 after a hearing complying with due process, that the hospital,  
1294 psychiatric hospital or chemical dependency hospital has failed to  
1295 comply with any of the conditions upon which the certificate of  
1296 need was issued, as provided in this subparagraph and in the  
1297 written agreement by the recipient of the certificate of need.

1298 (ii) The commission may issue a certificate of  
1299 need for the conversion of existing beds in a county hospital in  
1300 Choctaw County from acute care beds to child/adolescent chemical  
1301 dependency beds. For purposes of this subparagraph, the  
1302 provisions of Section 41-7-193(1) requiring substantial compliance  
1303 with the projection of need as reported in the current State  
1304 Health Plan is waived. The total number of beds that may be  
1305 authorized under authority of this subparagraph shall not exceed  
1306 twenty (20) beds. There shall be no prohibition or restrictions  
1307 on participation in the Medicaid program (Section 43-13-101 et  
1308 seq.) for the hospital receiving the certificate of need  
1309 authorized under this subparagraph (a)(ii) or for the beds  
1310 converted under the authority of that certificate of need.

1311 (iii) The commission may issue a certificate or  
1312 certificates of need for the construction or expansion of  
1313 child/adolescent psychiatric beds or the conversion of other beds  
1314 to child/adolescent psychiatric beds in Warren County. For  
1315 purposes of this subparagraph, the provisions of Section  
1316 41-7-193(1) requiring substantial compliance with the projection  
1317 of need as reported in the current State Health Plan are waived.  
1318 The total number of beds that may be authorized under the  
1319 authority of this subparagraph shall not exceed twenty (20) beds.

1320 There shall be no prohibition or restrictions on participation in

1321 the Medicaid program (Section 43-13-101 et seq.) for the person  
1322 receiving the certificate of need authorized under this  
1323 subparagraph (a)(iii) or for the beds converted under the  
1324 authority of that certificate of need.

1325 (iv) The commission shall issue a certificate of  
1326 need to the Region 7 Mental Health/Retardation Commission for the  
1327 construction or expansion of child/adolescent psychiatric beds or  
1328 the conversion of other beds to child/adolescent psychiatric beds  
1329 in any of the counties served by the commission. For purposes of  
1330 this subparagraph, the provisions of Section 41-7-193(1) requiring  
1331 substantial compliance with the projection of need as reported in  
1332 the current State Health Plan is waived. The total number of beds  
1333 that may be authorized under the authority of this subparagraph  
1334 shall not exceed twenty (20) beds. There shall be no prohibition  
1335 or restrictions on participation in the Medicaid program (Section  
1336 43-13-101 et seq.) for the person receiving the certificate of  
1337 need authorized under this subparagraph (a)(iv) or for the beds  
1338 converted under the authority of that certificate of need.

1339 (v) The commission may issue a certificate of need  
1340 to any county hospital located in Leflore County for the  
1341 construction or expansion of adult psychiatric beds or the  
1342 conversion of other beds to adult psychiatric beds, not to exceed  
1343 twenty (20) beds, provided that the recipient of the certificate  
1344 of need agrees in writing that the adult psychiatric beds will not  
1345 at any time be certified for participation in the Medicaid program  
1346 and that the hospital will not admit or keep any patients who are  
1347 participating in the Medicaid program in any of those adult  
1348 psychiatric beds. This written agreement by the recipient of the



1349 certificate of need shall be fully binding on any subsequent owner  
1350 of the hospital if the ownership of the hospital is transferred at  
1351 any time after the issuance of the certificate of need. Agreement  
1352 that the adult psychiatric beds will not be certified for  
1353 participation in the Medicaid program shall be a condition of the  
1354 issuance of a certificate of need to any person under this  
1355 subparagraph (a)(v), and if the hospital at any time after the  
1356 issuance of the certificate of need, regardless of the ownership  
1357 of the hospital, has any of those adult psychiatric beds certified  
1358 for participation in the Medicaid program or admits or keeps any  
1359 Medicaid patients in those adult psychiatric beds, the commission  
1360 shall revoke the certificate of need, if it is still outstanding,  
1361 and the State Department of Health shall deny or revoke the  
1362 license of the hospital at the time that the department receives  
1363 notification from the commission that it has determined, after a  
1364 hearing complying with due process, that the hospital has failed  
1365 to comply with any of the conditions upon which the certificate of  
1366 need was issued, as provided in this subparagraph and in the  
1367 written agreement by the recipient of the certificate of need.

1368           (vi) The commission may issue a certificate or  
1369 certificates of need for the expansion of child psychiatric beds  
1370 or the conversion of other beds to child psychiatric beds at the  
1371 University of Mississippi Medical Center. For purposes of this  
1372 subparagraph (a)(vi), the provision of Section 41-7-193(1)  
1373 requiring substantial compliance with the projection of need as  
1374 reported in the current State Health Plan is waived. The total  
1375 number of beds that may be authorized under the authority of this  
1376 subparagraph (a)(vi) shall not exceed fifteen (15) beds. There

1377 shall be no prohibition or restrictions on participation in the  
1378 Medicaid program (Section 43-13-101 et seq.) for the hospital  
1379 receiving the certificate of need authorized under this  
1380 subparagraph (a)(vi) or for the beds converted under the authority  
1381 of that certificate of need.

1382 (b) From and after July 1, 1990, no hospital,  
1383 psychiatric hospital or chemical dependency hospital shall be  
1384 authorized to add any child/adolescent psychiatric or  
1385 child/adolescent chemical dependency beds or convert any beds of  
1386 another category to child/adolescent psychiatric or  
1387 child/adolescent chemical dependency beds without a certificate of  
1388 need under the authority of subsection (1)(c) of this section.

1389 (5) The commission may issue a certificate of need to a  
1390 county hospital in Winston County for the conversion of fifteen  
1391 (15) acute care beds to geriatric psychiatric care beds.

1392 (6) The commission shall issue a certificate of need to a  
1393 Mississippi corporation qualified to manage a long-term care  
1394 hospital as defined in Section 41-7-173(h)(xii) in Harrison  
1395 County, not to exceed eighty (80) beds, including any necessary  
1396 renovation or construction required for licensure and  
1397 certification, provided that the recipient of the certificate of  
1398 need agrees in writing that the long-term care hospital will not  
1399 at any time participate in the Medicaid program (Section 43-13-101  
1400 et seq.) or admit or keep any patients in the long-term care  
1401 hospital who are participating in the Medicaid program. This  
1402 written agreement by the recipient of the certificate of need  
1403 shall be fully binding on any subsequent owner of the long-term  
1404 care hospital, if the ownership of the facility is transferred at

1405 any time after the issuance of the certificate of need. Agreement  
1406 that the long-term care hospital will not participate in the  
1407 Medicaid program shall be a condition of the issuance of a  
1408 certificate of need to any person under this subsection (6), and  
1409 if the long-term care hospital at any time after the issuance of  
1410 the certificate of need, regardless of the ownership of the  
1411 facility, participates in the Medicaid program or admits or keeps  
1412 any patients in the facility who are participating in the Medicaid  
1413 program, the commission shall revoke the certificate of need, if  
1414 it is still outstanding, and the State Department of Health shall  
1415 deny or revoke the license of the long-term care hospital, at the  
1416 time that the department receives notification from the commission  
1417 that it has determined, after a hearing complying with due  
1418 process, that the facility has failed to comply with any of the  
1419 conditions upon which the certificate of need was issued, as  
1420 provided in this subsection and in the written agreement by the  
1421 recipient of the certificate of need. For purposes of this  
1422 subsection, the provision of Section 41-7-193(1) requiring  
1423 substantial compliance with the projection of need as reported in  
1424 the current State Health Plan is \* \* \* waived.

1425 (7) The commission may issue a certificate of need to any  
1426 hospital in the state to utilize a portion of its beds for the  
1427 "swing-bed" concept. Any such hospital must be in conformance  
1428 with the federal regulations regarding the swing-bed concept at  
1429 the time it submits its application for a certificate of need to  
1430 the commission, except that the hospital may have more licensed  
1431 beds or a higher average daily census (ADC) than the maximum  
1432 number specified in federal regulations for participation in the

1433 swing-bed program. Any hospital meeting all federal requirements  
1434 for participation in the swing-bed program that receives a  
1435 certificate of need under this subsection shall render services  
1436 provided under the swing-bed concept to any patient eligible for  
1437 Medicare (Title XVIII of the Social Security Act) who is certified  
1438 by a physician to be in need of those services, and no such  
1439 hospital shall permit any patient who is eligible for both  
1440 Medicaid and Medicare or eligible only for Medicaid to stay in the  
1441 swing beds of the hospital for more than thirty (30) days per  
1442 admission unless the hospital receives prior approval for the  
1443 patient from the Division of Medicaid, Office of the Governor.  
1444 Any hospital having more licensed beds or a higher average daily  
1445 census (ADC) than the maximum number specified in federal  
1446 regulations for participation in the swing-bed program that  
1447 receives a certificate of need under this subsection shall develop  
1448 a procedure to insure that before a patient is allowed to stay in  
1449 the swing beds of the hospital, there are no vacant nursing home  
1450 beds available for that patient located within a fifty-mile radius  
1451 of the hospital. When any such hospital has a patient staying in  
1452 the swing beds of the hospital and the hospital receives notice  
1453 from a nursing home located within that radius that there is a  
1454 vacant bed available for that patient, the hospital shall transfer  
1455 the patient to the nursing home within a reasonable time after  
1456 receipt of the notice. Any hospital that is subject to the  
1457 requirements of the two (2) preceding sentences of this subsection  
1458 may be suspended from participation in the swing-bed program for a  
1459 reasonable period of time by the commission if the commission,  
1460 after a hearing complying with due process, determines that the

1461 hospital has failed to comply with any of those requirements.

1462 (8) The commission shall not grant approval for or issue a  
1463 certificate of need to any person proposing the new construction  
1464 of, addition to or expansion of a health care facility as defined  
1465 in subparagraph (viii) of Section 41-7-173(h).

1466 (9) The commission shall not grant approval for or issue a  
1467 certificate of need to any person proposing the establishment of,  
1468 or expansion of the currently approved territory of, or the  
1469 contracting to establish a home office, subunit or branch office  
1470 within the space operated as a health care facility as defined in  
1471 Section 41-7-173(h)(i) through (viii) by a health care facility as  
1472 defined in subparagraph (ix) of Section 41-7-173(h).

1473 (10) Health care facilities owned and/or operated by the  
1474 state or its agencies are exempt from the restraints in this  
1475 section against issuance of a certificate of need if the addition  
1476 or expansion consists of repairing or renovation necessary to  
1477 comply with the state licensure law. This exception shall not  
1478 apply to the new construction of any building by the state  
1479 facility. This exception shall not apply to any health care  
1480 facilities owned and/or operated by counties, municipalities,  
1481 districts, unincorporated areas, other defined persons, or any  
1482 combination thereof.

1483 (11) The new construction, renovation or expansion of or  
1484 addition to any health care facility defined in subparagraph (ii)  
1485 (psychiatric hospital), subparagraph (iv) (skilled nursing  
1486 facility), subparagraph (vi) (intermediate care facility),  
1487 subparagraph (viii) (intermediate care facility for the mentally  
1488 retarded) and subparagraph (x) (psychiatric residential treatment

1489 facility) of Section 41-7-173(h) that is owned by the State of  
1490 Mississippi and under the direction and control of the State  
1491 Department of Mental Health, and the addition of new beds or the  
1492 conversion of beds from one category to another in any such  
1493 defined health care facility that is owned by the State of  
1494 Mississippi and under the direction and control of the State  
1495 Department of Mental Health, shall not require the issuance of a  
1496 certificate of need under Section 41-7-171 et seq.,  
1497 notwithstanding any provision in Section 41-7-171 et seq. to the  
1498 contrary.

1499       (12) The new construction, renovation or expansion of or  
1500 addition to any veterans homes or domiciliaries for eligible  
1501 veterans of the State of Mississippi as authorized under Section  
1502 35-1-19 shall not require the issuance of a certificate of need,  
1503 notwithstanding any provision in Section 41-7-171 et seq. to the  
1504 contrary.

1505       (13) The new construction of a nursing facility or nursing  
1506 facility beds or the conversion of other beds to nursing facility  
1507 beds shall not require the issuance of a certificate of need,  
1508 notwithstanding any provision in Section 41-7-171 et seq. to the  
1509 contrary, if the conditions of this subsection are met.

1510       (a) Before any construction or conversion may be  
1511 undertaken without a certificate of need, the owner of the nursing  
1512 facility, in the case of an existing facility, or the applicant to  
1513 construct a nursing facility, in the case of new construction,  
1514 first must file a written notice of intent and sign a written  
1515 agreement with the commission that the entire nursing facility  
1516 will not at any time participate in or have any beds certified for

1517 participation in the Medicaid program (Section 43-13-101 et seq.),  
1518 will not admit or keep any patients in the nursing facility who  
1519 are participating in the Medicaid program, and will not submit any  
1520 claim for Medicaid reimbursement for any patient in the facility.

1521 This written agreement by the owner or applicant shall be a  
1522 condition of exercising the authority under this subsection  
1523 without a certificate of need, and the agreement shall be fully  
1524 binding on any subsequent owner of the nursing facility if the  
1525 ownership of the facility is transferred at any time after the  
1526 agreement is signed. After the written agreement is signed, the  
1527 Division of Medicaid and the State Department of Health shall not  
1528 certify any beds in the nursing facility for participation in the  
1529 Medicaid program. If the nursing facility violates the terms of  
1530 the written agreement by participating in the Medicaid program,  
1531 having any beds certified for participation in the Medicaid  
1532 program, admitting or keeping any patient in the facility who is  
1533 participating in the Medicaid program, or submitting any claim for  
1534 Medicaid reimbursement for any patient in the facility, the State  
1535 Department of Health shall revoke the license of the nursing  
1536 facility at the time that the department receives notification  
1537 from the commission that it has determined, after a hearing  
1538 complying with due process, that the facility has violated the  
1539 terms of the written agreement.

1540 (b) For the purposes of this subsection, participation  
1541 in the Medicaid program by a nursing facility includes Medicaid  
1542 reimbursement of coinsurance and deductibles for recipients who  
1543 are qualified Medicare beneficiaries and/or those who are dually  
1544 eligible. Any nursing facility exercising the authority under

1545 this subsection may not bill or submit a claim to the Division of  
1546 Medicaid for services to qualified Medicare beneficiaries and/or  
1547 those who are dually eligible.

1548 (c) The new construction of a nursing facility or  
1549 nursing facility beds or the conversion of other beds to nursing  
1550 facility beds described in this subsection must be either a part  
1551 of a completely new continuing care retirement community, as  
1552 described in the latest edition of the Mississippi State Health  
1553 Plan, or an addition to existing personal care and independent  
1554 living components, and so that the completed project will be a  
1555 continuing care retirement community, containing (i) independent  
1556 living accommodations, (ii) personal care beds, and (iii) the  
1557 nursing home facility beds. The three (3) components must be  
1558 located on a single site and be operated as one (1) inseparable  
1559 facility. The nursing facility component must contain a minimum  
1560 of thirty (30) beds. Any nursing facility beds authorized by this  
1561 subsection will not be counted against the bed need set forth in  
1562 the State Health Plan, as identified in Section 41-7-171 et seq.

1563 This subsection (13) shall stand repealed from and after July  
1564 1, 2001.

1565 (14) The commission shall issue a certificate of need to any  
1566 hospital that is currently licensed for two hundred fifty (250) or  
1567 more acute care beds and is located in any general hospital  
1568 service area not having a comprehensive cancer center, for the  
1569 establishment and equipping of such a center that provides  
1570 facilities and services for outpatient radiation oncology therapy,  
1571 outpatient medical oncology therapy, and appropriate support  
1572 services including the provision of radiation therapy services.



1573 The provision of Section 41-7-193(1) regarding substantial  
1574 compliance with the projection of need as reported in the current  
1575 State Health Plan is waived for the purpose of this subsection.

1576 (15) Nothing in this section or in any other provision of  
1577 Section 41-7-171 et seq. shall prevent any nursing facility from  
1578 designating an appropriate number of existing beds in the facility  
1579 as beds for providing care exclusively to patients with  
1580 Alzheimer's disease.

1581 SECTION 9. Section 41-7-193, Mississippi Code of 1972, is  
1582 amended as follows:[RF8]

1583 41-7-193. (1) No person may enter into any financing  
1584 arrangement or commitment for financing a new institutional health  
1585 service or any other project requiring a certificate of need  
1586 unless the certificate has been granted for that purpose. A  
1587 certificate of need shall not be granted or issued to any person  
1588 for any proposal, cause or reason, unless the proposal has been  
1589 reviewed for consistency with the specifications and the criteria  
1590 established by the commission and substantially complies with the  
1591 projection of need as reported in the State Health Plan in effect  
1592 at the time the application for the proposal was submitted.

1593 (2) An application for a certificate of need for an  
1594 institutional health service, medical equipment or any proposal  
1595 requiring a certificate of need shall specify the time, within  
1596 that granted, when the proposal will be functional or operational  
1597 according to a time schedule submitted with the application. Each  
1598 certificate of need shall specify the maximum amount of capital  
1599 expenditure that may be obligated. The commission shall  
1600 periodically review the progress and time schedule of any person

1601 issued or granted a certificate of need for any purpose.

1602 SECTION 10. Section 41-7-195, Mississippi Code of 1972, is  
1603 amended as follows:[RF9]

1604 41-7-195. (1) A certificate of need shall be valid only for  
1605 the defined scope, physical location and person named in the  
1606 application. A certificate of need shall not be transferable or  
1607 assignable nor shall a project or capital expenditure project be  
1608 transferred from one person to another, except with the approval  
1609 of the commission. A certificate of need shall be valid for the  
1610 period of time specified in the certificate.

1611 (2) A certificate of need shall be issued for a period of  
1612 twelve (12) months, or such other lesser period as specified by  
1613 the commission.

1614 (3) The commission may define by regulation, not to exceed  
1615 six (6) months, the time for which a certificate of need may be  
1616 extended.

1617 (4) If commencement of construction or other preparation is  
1618 not substantially undertaken during a valid certificate of need  
1619 period or the commission determines the applicant is not making a  
1620 good faith effort to obligate the approved expenditure, the  
1621 commission may withdraw, revoke or rescind the certificate.

1622 (5) The commission may approve or disapprove a proposal for  
1623 a certificate of need as originally presented in final form, or it  
1624 may approve a certificate of need by a modification, by reduction  
1625 only, of the proposal if the proponent agrees to the modification.

1626 SECTION 11. Section 41-7-197, Mississippi Code of 1972, is  
1627 amended as follows:[RF10]

1628 41-7-197. (1) The commission shall adopt and utilize

1629 procedures for conducting certificate of need reviews. Those  
1630 procedures shall include, inter alia, the following: (a) written  
1631 notification to the applicant; (b) written notification to health  
1632 care facilities in the same health service area as the proposed  
1633 service; (c) written notification to other persons who before the  
1634 receipt of the application have filed a formal notice of intent to  
1635 provide the proposed services in the same service area; and (d)  
1636 notification to members of the public who reside in the service  
1637 area where the service is proposed, which may be provided through  
1638 newspapers or public information channels.

1639 (2) All notices provided shall include, inter alia, the  
1640 following: (a) the proposed schedule for the review; (b) written  
1641 notification of the period within which a public hearing during  
1642 the course of the review may be requested in writing by one or  
1643 more affected persons, the request to be made within twenty (20)  
1644 days of the notification; and (c) the manner in which notification  
1645 will be provided of the time and place of any hearing so  
1646 requested. Any such hearing shall be conducted by a hearing  
1647 officer designated by the commission. At the hearing, the hearing  
1648 officer and any person affected by the proposal being reviewed may  
1649 conduct reasonable questioning of persons who make relevant  
1650 factual allegations concerning the proposal. The hearing officer  
1651 shall require that all persons be sworn before they may offer any  
1652 testimony at the hearing, and the hearing officer is authorized to  
1653 administer oaths. Any person so choosing may be represented by  
1654 counsel at the hearing. A record of the hearing shall be made,  
1655 which shall consist of a transcript of all testimony received, all  
1656 documents and other material introduced by any interested person,

1657 the staff report and recommendation and such other material as the  
1658 hearing officer considers relevant, including his own  
1659 recommendation, which he shall make within a reasonable period of  
1660 time after the hearing is closed and after he has had an  
1661 opportunity to review, study and analyze the evidence presented  
1662 during the hearing. The completed record shall be certified to  
1663 the commission, who shall consider only the record in making its  
1664 decision, and shall not consider any evidence or material that is  
1665 not included in the record. All final decisions regarding the  
1666 issuance of a certificate of need shall be made by the commission.  
1667 The commission shall make its written findings and issue its  
1668 order after reviewing the record. The findings and decision of  
1669 the commission shall not be deferred to any later date, and any  
1670 deferral shall result in an automatic order of disapproval.

1671 (3) If review by the commission concerning the issuance of a  
1672 certificate of need is not complete within the time specified by  
1673 rule or regulation, which shall not, to the extent practicable,  
1674 exceed ninety (90) days, the certificate of need shall not be  
1675 granted. The proponent of the proposal may, within thirty (30)  
1676 days, after the expiration of the specified time for review,  
1677 commence such legal action as is necessary, in the Chancery Court  
1678 of the First Judicial District of Hinds County or in the chancery  
1679 court of the county in which the new institutional health service  
1680 is proposed to be provided, to compel the commission to issue  
1681 written findings and written order approving or disapproving the  
1682 proposal in question.

1683 SECTION 12. Section 41-7-201, Mississippi Code of 1972, is  
1684 amended as follows:[RF11]

1685           41-7-201. (1) The provisions of this subsection (1) shall  
1686 apply to any party appealing any final order of the commission  
1687 pertaining to a certificate of need for a home health agency, as  
1688 defined in Section 41-7-173(h)(ix):

1689           (a) In addition to other remedies now available at law  
1690 or in equity, any party aggrieved by any such final order of the  
1691 commission shall have the right of appeal to the Chancery Court of  
1692 the First Judicial District of Hinds County, Mississippi, which  
1693 appeal must be filed within thirty (30) days after the date of the  
1694 final order. \* \* \* However, \* \* \* any appeal of an order  
1695 disapproving an application for such a certificate of need may be  
1696 made to the chancery court of the county where the proposed  
1697 construction, expansion or alteration was to be located or the new  
1698 service or purpose of the capital expenditure was to be located.  
1699 The appeal must be filed in accordance with the thirty (30) days  
1700 for filing as heretofore provided. Any appeal shall state briefly  
1701 the nature of the proceedings before the commission and shall  
1702 specify the order complained of. Any person whose rights may be  
1703 materially affected by the action of the commission may appear and  
1704 become a party or the court may, upon motion, order that any such  
1705 person, organization or entity be joined as a necessary party.

1706           (b) Upon the filing of such an appeal, the clerk of the  
1707 chancery court shall serve notice thereof upon the commission,  
1708 after which the commission shall, within fifty (50) days or within  
1709 such additional time as the court may by order for cause allow  
1710 from the service of the notice, certify to the chancery court the  
1711 record in the case, which records shall include a transcript of  
1712 all testimony, together with all exhibits or copies thereof, all

1713 pleadings, proceedings, orders, findings and opinions entered in  
1714 the case; \* \* \* however, \* \* \* the parties and the commission may  
1715 stipulate that a specified portion only of the record shall be  
1716 certified to the court as the record on appeal.

1717 (c) No new or additional evidence shall be introduced  
1718 in the chancery court but the case shall be determined upon the  
1719 record certified to the court.

1720 (d) The court may dispose of the appeal in termtime or  
1721 vacation and may sustain or dismiss the appeal, modify or vacate  
1722 the order complained of in whole or in part as the case may be;  
1723 but in case the order is wholly or partly vacated, the court may  
1724 also, in its discretion, remand the matter to the commission for  
1725 such further proceedings, not inconsistent with the court's order,  
1726 as, in the opinion of the court, justice may require. The order  
1727 shall not be vacated or set aside, either in whole or in part,  
1728 except for errors of law, unless the court finds that the order of  
1729 the commission is not supported by substantial evidence, is  
1730 contrary to the manifest weight of the evidence, is in excess of  
1731 the statutory authority or jurisdiction of the commission, or  
1732 violates any vested constitutional rights of any party involved in  
1733 the appeal. \* \* \* However, an order of the chancery court  
1734 reversing the denial of a certificate of need by the commission  
1735 shall not entitle the applicant to effectuate the certificate of  
1736 need until either:

1737 (i) The order of the chancery court has become  
1738 final and has not been appealed to the Supreme Court; or

1739 (ii) The Supreme Court has entered a final order  
1740 affirming the chancery court.

1741 (e) Appeals in accordance with law may be had to the  
1742 Supreme Court of the State of Mississippi from any final judgment  
1743 of the chancery court.

1744 (2) The provisions of this subsection (2) shall apply to any  
1745 party appealing any final order of the commission pertaining to a  
1746 certificate of need for any health care facility as defined in  
1747 Section 41-7-173(h), with the exception of any home health agency  
1748 as defined in Section 41-7-173(h)(ix):

1749 (a) There shall be a "stay of proceedings" of any final  
1750 order issued by the commission pertaining to the issuance of a  
1751 certificate of need for the establishment, construction, expansion  
1752 or replacement of a health care facility for a period of thirty  
1753 (30) days from the date of the order, if an existing provider  
1754 located in the same service area where the health care facility is  
1755 or will be located has requested a hearing during the course of  
1756 review in opposition to the issuance of the certificate of need.  
1757 The stay of proceedings shall expire at the termination of thirty  
1758 (30) days; however, no construction, renovation or other capital  
1759 expenditure that is the subject of the order shall be undertaken,  
1760 no license to operate any facility that is the subject of the  
1761 order shall be issued by the licensing agency, and no  
1762 certification to participate in the Title XVIII or Title XIX  
1763 programs of the Social Security Act shall be granted, until all  
1764 statutory appeals have been exhausted or the time for those  
1765 appeals has expired. Notwithstanding the foregoing, the filing of  
1766 an appeal from a final order of the commission or the chancery  
1767 court for the issuance of a certificate of need shall not prevent  
1768 the purchase of medical equipment or development or offering of

1769 institutional health services granted in a certificate of need  
1770 issued by the commission.

1771 (b) In addition to other remedies now available at law  
1772 or in equity, any party aggrieved by any such final order of the  
1773 commission shall have the right of appeal to the Chancery Court of  
1774 the First Judicial District of Hinds County, Mississippi, which  
1775 appeal must be filed within twenty (20) days after the date of the  
1776 final order. \* \* \* However, \* \* \* any appeal of an order  
1777 disapproving an application for such a certificate of need may be  
1778 made to the chancery court of the county where the proposed  
1779 construction, expansion or alteration was to be located or the new  
1780 service or purpose of the capital expenditure was to be located.  
1781 The appeal must be filed in accordance with the twenty (20) days  
1782 for filing as \* \* \* provided in this paragraph. Any appeal shall  
1783 state briefly the nature of the proceedings before the commission  
1784 and shall specify the order complained of.

1785 (c) Upon the filing of such an appeal, the clerk of the  
1786 chancery court shall serve notice thereof upon the commission,  
1787 after which the commission shall, within thirty (30) days of the  
1788 date of the filing of the appeal, certify to the chancery court  
1789 the record in the case, which records shall include a transcript  
1790 of all testimony, together with all exhibits or copies thereof,  
1791 all pleadings, proceedings, orders, findings and opinions entered  
1792 in the case; \* \* \* however, \* \* \* the parties and the commission  
1793 may stipulate that a specified portion only of the record shall be  
1794 certified to the court as the record on appeal. The chancery  
1795 court shall give preference to any such appeal from a final order  
1796 by the commission in a certificate of need proceeding, and shall



1797 render a final order regarding the appeal no later than one  
1798 hundred twenty (120) days from the date of the final order by the  
1799 commission. If the chancery court has not rendered a final order  
1800 within this one-hundred-twenty-day period, then the final order of  
1801 the commission shall be deemed to have been affirmed by the  
1802 chancery court, and any party to the appeal shall have the right  
1803 to appeal from the chancery court to the Supreme Court on the  
1804 record certified by the commission as otherwise provided in  
1805 paragraph (g) of this subsection. If the chancery court has not  
1806 rendered a final order within the one-hundred-twenty-day period  
1807 and an appeal is made to the Supreme Court as provided in this  
1808 paragraph, the Supreme Court shall remand the case to the chancery  
1809 court to make an award of costs, fees, reasonable expenses and  
1810 attorney's fees incurred in favor of appellee payable by the  
1811 appellant(s) if the Supreme Court affirms the order of the  
1812 commission.

1813 (d) Any appeal of a final order by the commission in a  
1814 certificate of need proceeding shall require the giving of a bond  
1815 by the appellant(s) sufficient to secure the appellee against the  
1816 loss of costs, fees, expenses and attorney's fees incurred in  
1817 defense of the appeal, approved by the chancery court within five  
1818 (5) days of the date of filing the appeal.

1819 (e) No new or additional evidence shall be introduced  
1820 in the chancery court but the case shall be determined upon the  
1821 record certified to the court.

1822 (f) The court may dispose of the appeal in termtime or  
1823 vacation and may sustain or dismiss the appeal, modify or vacate  
1824 the order complained of in whole or in part and may make an award

1825 of costs, fees, expenses and attorney's fees, as the case may be;  
1826 but in case the order is wholly or partly vacated, the court may  
1827 also, in its discretion, remand the matter to the commission for  
1828 such further proceedings, not inconsistent with the court's order,  
1829 as, in the opinion of the court, justice may require. The court,  
1830 as part of the final order, shall make an award of costs, fees,  
1831 reasonable expenses and attorney's fees incurred in favor of  
1832 appellee payable by the appellant(s) if the court affirms the  
1833 order of the commission. The order shall not be vacated or set  
1834 aside, either in whole or in part, except for errors of law,  
1835 unless the court finds that the order of the commission is not  
1836 supported by substantial evidence, is contrary to the manifest  
1837 weight of the evidence, is in excess of the statutory authority or  
1838 jurisdiction of the commission, or violates any vested  
1839 constitutional rights of any party involved in the appeal. \* \* \*  
1840 However, an order of the chancery court reversing the denial of a  
1841 certificate of need by the commission shall not entitle the  
1842 applicant to effectuate the certificate of need until either:  
1843                   (i) The order of the chancery court has become  
1844 final and has not been appealed to the Supreme Court; or  
1845                   (ii) The Supreme Court has entered a final order  
1846 affirming the chancery court.  
1847                   (g) Appeals in accordance with law may be had to the  
1848 Supreme Court of the State of Mississippi from any final judgment  
1849 of the chancery court.  
1850                   (h) Within thirty (30) days from the date of a final  
1851 order by the Supreme Court or a final order of the chancery court  
1852 not appealed to the Supreme Court that modifies or wholly or

1853 partly vacates the final order of the commission granting a  
1854 certificate of need, the commission shall issue another order in  
1855 conformity with the final order of the Supreme Court, or the final  
1856 order of the chancery court not appealed to the Supreme Court.

1857 SECTION 13. Section 41-7-202, Mississippi Code of 1972, is  
1858 amended as follows:[RF12]

1859 41-7-202. There shall be a "stay of proceedings" of any  
1860 written decision of the commission pertaining to a certificate of  
1861 need for a home health agency, as defined in Section  
1862 41-7-173(h)(ix), for a period of thirty (30) days from the date of  
1863 that decision. The stay of proceedings shall expire at the  
1864 termination of thirty (30) days; however, no license to operate  
1865 any such home health agency that is the subject of the decision  
1866 shall be issued by the State Department of Health, and no  
1867 certification for the home health agency to participate in the  
1868 Title XVIII or Title XIX programs of the Social Security Act shall  
1869 be granted until all statutory appeals have been exhausted or the  
1870 time for the appeals has expired. The stay of proceedings  
1871 provided for in this section shall not apply to any party  
1872 appealing any final order of the commission pertaining to a  
1873 certificate of need for any health care facility as defined in  
1874 Section 41-7-173(h), with the exception of any home health agency  
1875 as defined in Section 41-7-173(h)(ix).

1876 SECTION 14. Section 41-7-205, Mississippi Code of 1972, is  
1877 amended as follows:[RF13]

1878 41-7-205. The commission shall provide an expedited review  
1879 for those projects that it determines to warrant such action. All  
1880 requests for such an expedited review by the applicant must be

1881 made in writing to the commission. The commission shall make a  
1882 determination as to whether expedited review is appropriate within  
1883 fifteen (15) days after receipt of a written request. The  
1884 commission shall render its decision concerning the issuance of a  
1885 certificate of need within ninety (90) days after the receipt of a  
1886 completed application. A project is subject to expedited review  
1887 only if it meets one (1) of the following criteria:

1888 (a) A transfer or change of ownership of a health care  
1889 facility in which the facility continues to operate under the same  
1890 category of license or permit as it possessed before the date of  
1891 the proposed change of ownership and none of the other activities  
1892 described in Section 41-7-191(1) take place in conjunction with  
1893 the transfer;

1894 (b) Replacement of equipment with used equipment of  
1895 similar capability if the equipment is included in the facility's  
1896 annual capital expenditure budget or plan;

1897 (c) A request for project cost overruns that exceed the  
1898 rate of inflation as determined by the commission;

1899 (d) A request for relocation of services or facilities  
1900 if the relocation of those services or facilities (i) involves a  
1901 capital expenditure by or on behalf of a health care facility, or  
1902 (ii) is more than one thousand three hundred twenty (1,320) feet  
1903 from the main entrance of the health care facility or the facility  
1904 where the service is located;

1905 (e) A request for a certificate of need to comply with  
1906 duly recognized fire, building, or life safety codes, or to comply  
1907 with state licensure standards or accreditation standards required  
1908 for reimbursements.

1909 SECTION 15. Section 41-7-207, Mississippi Code of 1972, is  
1910 amended as follows:[RF14]

1911 41-7-207. Notwithstanding any other provisions of Section  
1912 41-7-171 et seq., when the need for any emergency replacement  
1913 occurs, the certificate of need review process may be expedited by  
1914 promulgation of administrative procedures for expenditures  
1915 necessary to alleviate an emergency condition. Emergency  
1916 replacement means the replacement of partial facilities or  
1917 equipment the replacement of which is not exempt from certificate  
1918 of need review under the medical equipment replacement exemption  
1919 provided in Section 41-7-191(1)(f), without which the operation of  
1920 the facility and the health and safety of patients would be  
1921 immediately jeopardized. Expenditures under this section shall be  
1922 limited to the replacement of those necessary facilities or  
1923 equipment, the loss of which constitutes an emergency.

1924 SECTION 16. Section 41-7-209, Mississippi Code of 1972, is  
1925 amended as follows:[RF15]

1926 41-7-209. (1) Any person or entity violating the provisions  
1927 of Section 41-7-171 et seq., or regulations promulgated under  
1928 those sections, by not obtaining a certificate of need, by  
1929 deviating from the provisions of a certificate of need, or by  
1930 refusing or failing to cooperate with the commission in its  
1931 exercise or execution of its functions, responsibilities and  
1932 powers shall be subject to the following:

1933 (a) Revocation of the license of a health care facility  
1934 or a designated section, component or bed service thereof, or  
1935 revocation of the license of any other person by the State  
1936 Department of Health, after the commission shows cause to the

1937 department that the license should be revoked;

1938           (b) Nonlicensure by the State Department of Health of a  
1939 specific or designated bed service offered by the entity or  
1940 person, after the commission shows cause to the department that  
1941 the license should not be issued;

1942           (c) Nonlicensure by the State Department of Health  
1943 where infractions occur concerning the acquisition or control of  
1944 major medical equipment, after the commission shows cause to the  
1945 department that the license should not be issued;

1946           (d) Revoking, rescinding or withdrawing a certificate  
1947 of need previously issued.

1948           (2) Violations of Section 41-7-171 et seq., or any rules or  
1949 regulations promulgated in furtherance of those sections by  
1950 intent, fraud, deceit, unlawful design, willful and/or deliberate  
1951 misrepresentation, or by careless, negligent or incautious  
1952 disregard for those statutes or rules and regulations, either by  
1953 persons acting individually or in concert with others, shall  
1954 constitute a misdemeanor and, upon conviction, shall be punishable  
1955 by a fine not to exceed One Thousand Dollars (\$1,000.00) for each  
1956 such offense. Each day of continuing violation shall be  
1957 considered a separate offense. The venue for prosecution of any  
1958 such violation shall be in any county of the state in which any  
1959 such violation, or portion thereof, occurred.

1960           (3) The Attorney General, upon certification by the  
1961 commission, shall seek injunctive relief in a court of proper  
1962 jurisdiction to prevent violations of Section 41-7-171 et seq. or  
1963 any rules or regulations promulgated in furtherance of those  
1964 sections \* \* \* in cases where other administrative penalties and

1965 legal sanctions imposed have failed to prevent or cause a  
1966 discontinuance of any such violation.

1967 (4) Major third party payers, public or private, shall be  
1968 notified of any violation or infraction under this section and  
1969 shall be requested to take such appropriate punitive action as is  
1970 provided by law.

1971 SECTION 17. Section 9 of Chapter 482, Laws of 1982, as  
1972 amended by Chapter 306, Laws of 1984, as amended by Section 50 of  
1973 Chapter 437, Laws of 1986, as amended by Section 33 of Chapter  
1974 500, Laws of 1986, as amended by Section 10 of Chapter 515, Laws  
1975 of 1987, is amended as follows:

1976 Section 9. (1) The commission may assess fees for  
1977 reviewing applications for certificates of need. The commission  
1978 shall promulgate such rules and regulations as are necessary to  
1979 effectuate the intent of this section in keeping with the  
1980 following standards \* \* \*:

1981 (a) The fees assessed shall be uniform to all  
1982 applicants.

1983 (b) The fees assessed shall be nonrefundable.

1984 (c) The fee shall be five-tenths of one percent (.5 of  
1985 1%) of the amount of a proposed capital expenditure.

1986 (d) The minimum fee shall not be less than Five Hundred  
1987 Dollars (\$500.00), regardless of the amount of the proposed  
1988 capital expenditure, and the maximum fee permitted shall not  
1989 exceed Twenty-five Thousand Dollars (\$25,000.00), regardless of  
1990 category.

1991 (e) No application shall be deemed complete for the  
1992 review process until the required fee is received by the

1993 commission.

1994 (f) The required fee shall be paid to the commission  
1995 and may be paid by check, draft or money order.

1996 (g) There shall be no filing fee requirement for any  
1997 application submitted by an agency, department, institution or  
1998 facility that is operated, owned by and/or controlled by the State  
1999 of Mississippi and that received operating and/or capital  
2000 expenditure funds solely by appropriations from the  
2001 Legislature \* \* \*.

2002 (h) There shall be no filing fee requirement for any  
2003 health care facility submitting an application for repairs or  
2004 renovations determined by the commission, in writing, to be  
2005 necessary in order to avoid revocation of license and/or loss of  
2006 certification for participation in the Medicaid and/or Medicare  
2007 programs. Any proposed expenditure in excess of the amount  
2008 determined by the commission to be necessary to accomplish the  
2009 stated purposes shall be subject to the fee requirements of this  
2010 section.

2011 (2) The commission may impose fees or assess costs to those  
2012 defined persons permitted to and requesting hearings during the  
2013 course of a review as provided for in Section 41-7-197(1), payable  
2014 to the commission, before any such hearing. Those charges, fees  
2015 and/or costs must be applicable to all persons requesting these  
2016 hearings and uniform in all cases.

2017 (3) The revenue derived from the fees imposed in subsections  
2018 (1) and (2) of this section shall be deposited by the commission  
2019 in a special fund that is created in the State Treasury, which  
2020 shall be earmarked for use by the commission in conducting its



2021 health planning and certificate of need review activities under  
2022 Section 41-7-171 et seq.

2023       (4) It is the intent of the Legislature that the health  
2024 planning and certificate of need programs be continued for the  
2025 protection of the individuals within the state requiring health  
2026 care.

2027       \* \* \*

2028       SECTION 18. Section 8 of Chapter 482, Laws of 1982, as  
2029 amended by Section 10 of Chapter 484, Laws of 1983, as amended by  
2030 Section 49 of Chapter 437, Laws of 1986, as amended by Section 32  
2031 of Chapter 500, Laws of 1986, which authorizes the charging of  
2032 certain fees for certificate of need hearings, is repealed.

2033       SECTION 19. Section 17 of this act shall be codified as  
2034 Section 41-7-198, Mississippi Code of 1972.

2035       SECTION 20. This act shall take effect and be in force from  
2036 and after July 1, 2000.