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To: Public Health and
Welfare;
Appropriations

HOUSE BILL NO. 738

1 AN ACT TO AMEND SECTION 41-7-191, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR THE ISSUANCE OF A CERTIFICATE OF NEED FOR THE
3 REOPENING AND CONTINUED OPERATION OF A HEALTH CARE FACILITY IN A
4 CERTAIN COUNTY THAT WAS LICENSED AND OPERATED AS AN ACUTE CARE
5 HOSPITAL BUT HAS CLOSED AND CEASED OPERATIONS; TO AMEND SECTIONS
6 41-7-193 AND 41-7-201, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
7 PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 41-7-191, Mississippi Code of 1972, is
10 amended as follows:[RF1]

11 41-7-191. (1) No person shall engage in any of the
12 following activities without obtaining the required certificate of
13 need:

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

16 (b) The relocation of a health care facility or portion
17 thereof, or major medical equipment, unless such relocation of a
18 health care facility or portion thereof, or major medical
19 equipment, which does not involve a capital expenditure by or on
20 behalf of a health care facility, is within one thousand three
21 hundred twenty (1,320) feet from the main entrance of the health
22 care facility;

23 (c) A change over a period of two (2) years' time, as

24 established by the State Department of Health, in existing bed
25 complement through the addition of more than ten (10) beds or more
26 than ten percent (10%) of the total bed capacity of a designated
27 licensed category or subcategory of any health care facility,
28 whichever is less, from one physical facility or site to another;
29 the conversion over a period of two (2) years' time, as
30 established by the State Department of Health, of existing bed
31 complement of more than ten (10) beds or more than ten percent
32 (10%) of the total bed capacity of a designated licensed category
33 or subcategory of any such health care facility, whichever is
34 less; or the alteration, modernizing or refurbishing of any unit
35 or department wherein such beds may be located; provided, however,
36 that from and after July 1, 1994, no health care facility shall be
37 authorized to add any beds or convert any beds to another category
38 of beds without a certificate of need under the authority of
39 subsection (1)(c) of this section unless there is a projected need
40 for such beds in the planning district in which the facility is
41 located, as reported in the most current State Health Plan;

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

- 46 (i) Open heart surgery services;
- 47 (ii) Cardiac catheterization services;
- 48 (iii) Comprehensive inpatient rehabilitation
49 services;
- 50 (iv) Licensed psychiatric services;
- 51 (v) Licensed chemical dependency services;
- 52 (vi) Radiation therapy services;
- 53 (vii) Diagnostic imaging services of an invasive
54 nature, i.e. invasive digital angiography;

55 (viii) Nursing home care as defined in
56 subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);
57 (ix) Home health services;
58 (x) Swing-bed services;
59 (xi) Ambulatory surgical services;
60 (xii) Magnetic resonance imaging services;
61 (xiii) Extracorporeal shock wave lithotripsy
62 services;
63 (xiv) Long-term care hospital services;
64 (xv) Positron Emission Tomography (PET) Services;
65 (e) The relocation of one or more health services from
66 one physical facility or site to another physical facility or
67 site, unless such relocation, which does not involve a capital
68 expenditure by or on behalf of a health care facility, (i) is to a
69 physical facility or site within one thousand three hundred twenty
70 (1,320) feet from the main entrance of the health care facility
71 where the health care service is located, or (ii) is the result of
72 an order of a court of appropriate jurisdiction or a result of
73 pending litigation in such court, or by order of the State
74 Department of Health, or by order of any other agency or legal
75 entity of the state, the federal government, or any political
76 subdivision of either, whose order is also approved by the State
77 Department of Health;
78 (f) The acquisition or otherwise control of any major
79 medical equipment for the provision of medical services; provided,
80 however, (i) the acquisition of any major medical equipment used
81 only for research purposes, and (ii) the acquisition of major
82 medical equipment to replace medical equipment for which a

83 facility is already providing medical services and for which the
84 State Department of Health has been notified before the date of
85 such acquisition shall be exempt from this paragraph; an
86 acquisition for less than fair market value must be reviewed, if
87 the acquisition at fair market value would be subject to review;

88 (g) Changes of ownership of existing health care
89 facilities in which a notice of intent is not filed with the State
90 Department of Health at least thirty (30) days prior to the date
91 such change of ownership occurs, or a change in services or bed
92 capacity as prescribed in paragraph (c) or (d) of this subsection
93 as a result of the change of ownership; an acquisition for less
94 than fair market value must be reviewed, if the acquisition at
95 fair market value would be subject to review;

96 (h) The change of ownership of any health care facility
97 defined in subparagraphs (iv), (vi) and (viii) of Section
98 41-7-173(h), in which a notice of intent as described in paragraph
99 (g) has not been filed and if the Executive Director, Division of
100 Medicaid, Office of the Governor, has not certified in writing
101 that there will be no increase in allowable costs to Medicaid from
102 revaluation of the assets or from increased interest and
103 depreciation as a result of the proposed change of ownership;

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

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

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

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

124 (a) The department may issue a certificate of need to
125 any person proposing the new construction of any health care
126 facility defined in subparagraphs (iv) and (vi) of Section
127 41-7-173(h) as part of a life care retirement facility, in any
128 county bordering on the Gulf of Mexico in which is located a
129 National Aeronautics and Space Administration facility, not to
130 exceed forty (40) beds. From and after July 1, 1999, there shall
131 be no prohibition or restrictions on participation in the Medicaid
132 program (Section 43-13-101 et seq.) for the beds in the health
133 care facility that were authorized under this paragraph (a).

134 (b) The department may issue certificates of need in
135 Harrison County to provide skilled nursing home care for
136 Alzheimer's Disease patients and other patients, not to exceed one
137 hundred fifty (150) beds. From and after July 1, 1999, there
138 shall be no prohibition or restrictions on participation in the

139 Medicaid program (Section 43-13-101 et seq.) for the beds in the
140 nursing facilities that were authorized under this paragraph (b).

141 (c) The department may issue a certificate of need for
142 the addition to or expansion of any skilled nursing facility that
143 is part of an existing continuing care retirement community
144 located in Madison County, provided that the recipient of the
145 certificate of need agrees in writing that the skilled nursing
146 facility will not at any time participate in the Medicaid program
147 (Section 43-13-101 et seq.) or admit or keep any patients in the
148 skilled nursing facility who are participating in the Medicaid
149 program. This written agreement by the recipient of the
150 certificate of need shall be fully binding on any subsequent owner
151 of the skilled nursing facility, if the ownership of the facility
152 is transferred at any time after the issuance of the certificate
153 of need. Agreement that the skilled nursing facility will not
154 participate in the Medicaid program shall be a condition of the
155 issuance of a certificate of need to any person under this
156 paragraph (c), and if such skilled nursing facility at any time
157 after the issuance of the certificate of need, regardless of the
158 ownership of the facility, participates in the Medicaid program or
159 admits or keeps any patients in the facility who are participating
160 in the Medicaid program, the State Department of Health shall
161 revoke the certificate of need, if it is still outstanding, and
162 shall deny or revoke the license of the skilled nursing facility,
163 at the time that the department determines, after a hearing
164 complying with due process, that the facility has failed to comply
165 with any of the conditions upon which the certificate of need was
166 issued, as provided in this paragraph and in the written agreement

167 by the recipient of the certificate of need. The total number of
168 beds that may be authorized under the authority of this paragraph
169 (c) shall not exceed sixty (60) beds.

170 (d) The State Department of Health may issue a
171 certificate of need to any hospital located in DeSoto County for
172 the new construction of a skilled nursing facility, not to exceed
173 one hundred twenty (120) beds, in DeSoto County. From and after
174 July 1, 1999, there shall be no prohibition or restrictions on
175 participation in the Medicaid program (Section 43-13-101 et seq.)
176 for the beds in the nursing facility that were authorized under
177 this paragraph (d).

178 (e) The State Department of Health may issue a
179 certificate of need for the construction of a nursing facility or
180 the conversion of beds to nursing facility beds at a personal care
181 facility for the elderly in Lowndes County that is owned and
182 operated by a Mississippi nonprofit corporation, not to exceed
183 sixty (60) beds. From and after July 1, 1999, there shall be no
184 prohibition or restrictions on participation in the Medicaid
185 program (Section 43-13-101 et seq.) for the beds in the nursing
186 facility that were authorized under this paragraph (e).

187 (f) The State Department of Health may issue a
188 certificate of need for conversion of a county hospital facility
189 in Itawamba County to a nursing facility, not to exceed sixty (60)
190 beds, including any necessary construction, renovation or
191 expansion. From and after July 1, 1999, there shall be no
192 prohibition or restrictions on participation in the Medicaid
193 program (Section 43-13-101 et seq.) for the beds in the nursing
194 facility that were authorized under this paragraph (f).

195 (g) The State Department of Health may issue a
196 certificate of need for the construction or expansion of nursing
197 facility beds or the conversion of other beds to nursing facility
198 beds in either Hinds, Madison or Rankin Counties, not to exceed
199 sixty (60) beds. From and after July 1, 1999, there shall be no
200 prohibition or restrictions on participation in the Medicaid
201 program (Section 43-13-101 et seq.) for the beds in the nursing
202 facility that were authorized under this paragraph (g).

203 (h) The State Department of Health may issue a
204 certificate of need for the construction or expansion of nursing
205 facility beds or the conversion of other beds to nursing facility
206 beds in either Hancock, Harrison or Jackson Counties, not to
207 exceed sixty (60) beds. From and after July 1, 1999, there shall
208 be no prohibition or restrictions on participation in the Medicaid
209 program (Section 43-13-101 et seq.) for the beds in the facility
210 that were authorized under this paragraph (h).

211 (i) The department may issue a certificate of need for
212 the new construction of a skilled nursing facility in Leake
213 County, provided that the recipient of the certificate of need
214 agrees in writing that the skilled nursing facility will not at
215 any time participate in the Medicaid program (Section 43-13-101 et
216 seq.) or admit or keep any patients in the skilled nursing
217 facility who are participating in the Medicaid program. This
218 written agreement by the recipient of the certificate of need
219 shall be fully binding on any subsequent owner of the skilled
220 nursing facility, if the ownership of the facility is transferred
221 at any time after the issuance of the certificate of need.
222 Agreement that the skilled nursing facility will not participate

223 in the Medicaid program shall be a condition of the issuance of a
224 certificate of need to any person under this paragraph (i), and if
225 such skilled nursing facility at any time after the issuance of
226 the certificate of need, regardless of the ownership of the
227 facility, participates in the Medicaid program or admits or keeps
228 any patients in the facility who are participating in the Medicaid
229 program, the State Department of Health shall revoke the
230 certificate of need, if it is still outstanding, and shall deny or
231 revoke the license of the skilled nursing facility, at the time
232 that the department determines, after a hearing complying with due
233 process, that the facility has failed to comply with any of the
234 conditions upon which the certificate of need was issued, as
235 provided in this paragraph and in the written agreement by the
236 recipient of the certificate of need. The provision of Section
237 43-7-193(1) regarding substantial compliance of the projection of
238 need as reported in the current State Health Plan is waived for
239 the purposes of this paragraph. The total number of nursing
240 facility beds that may be authorized by any certificate of need
241 issued under this paragraph (i) shall not exceed sixty (60) beds.
242 If the skilled nursing facility authorized by the certificate of
243 need issued under this paragraph is not constructed and fully
244 operational within eighteen (18) months after July 1, 1994, the
245 State Department of Health, after a hearing complying with due
246 process, shall revoke the certificate of need, if it is still
247 outstanding, and shall not issue a license for the skilled nursing
248 facility at any time after the expiration of the eighteen-month
249 period.

250 (j) The department may issue certificates of need to

251 allow any existing freestanding long-term care facility in
252 Tishomingo County and Hancock County that on July 1, 1995, is
253 licensed with fewer than sixty (60) beds. For the purposes of
254 this paragraph (j), the provision of Section 41-7-193(1) requiring
255 substantial compliance with the projection of need as reported in
256 the current State Health Plan is waived. From and after July 1,
257 1999, there shall be no prohibition or restrictions on
258 participation in the Medicaid program (Section 43-13-101 et seq.)
259 for the beds in the long-term care facilities that were authorized
260 under this paragraph (j).

261 (k) The department may issue a certificate of need for
262 the construction of a nursing facility at a continuing care
263 retirement community in Lowndes County, provided that the
264 recipient of the certificate of need agrees in writing that the
265 nursing facility will not at any time participate in the Medicaid
266 program (Section 43-13-101 et seq.) or admit or keep any patients
267 in the nursing facility who are participating in the Medicaid
268 program. This written agreement by the recipient of the
269 certificate of need shall be fully binding on any subsequent owner
270 of the nursing facility, if the ownership of the facility is
271 transferred at any time after the issuance of the certificate of
272 need. Agreement that the nursing facility will not participate in
273 the Medicaid program shall be a condition of the issuance of a
274 certificate of need to any person under this paragraph (k), and if
275 such nursing facility at any time after the issuance of the
276 certificate of need, regardless of the ownership of the facility,
277 participates in the Medicaid program or admits or keeps any
278 patients in the facility who are participating in the Medicaid

279 program, the State Department of Health shall revoke the
280 certificate of need, if it is still outstanding, and shall deny or
281 revoke the license of the nursing facility, at the time that the
282 department determines, after a hearing complying with due process,
283 that the facility has failed to comply with any of the conditions
284 upon which the certificate of need was issued, as provided in this
285 paragraph and in the written agreement by the recipient of the
286 certificate of need. The total number of beds that may be
287 authorized under the authority of this paragraph (k) shall not
288 exceed sixty (60) beds.

289 (l) Provided that funds are specifically appropriated
290 therefor by the Legislature, the department may issue a
291 certificate of need to a rehabilitation hospital in Hinds County
292 for the construction of a sixty-bed long-term care nursing
293 facility dedicated to the care and treatment of persons with
294 severe disabilities including persons with spinal cord and
295 closed-head injuries and ventilator-dependent patients. The
296 provision of Section 41-7-193(1) regarding substantial compliance
297 with projection of need as reported in the current State Health
298 Plan is hereby waived for the purpose of this paragraph.

299 (m) The State Department of Health may issue a
300 certificate of need to a county-owned hospital in the Second
301 Judicial District of Panola County for the conversion of not more
302 than seventy-two (72) hospital beds to nursing facility beds,
303 provided that the recipient of the certificate of need agrees in
304 writing that none of the beds at the nursing facility will be
305 certified for participation in the Medicaid program (Section
306 43-13-101 et seq.), and that no claim will be submitted for

307 Medicaid reimbursement in the nursing facility in any day or for
308 any patient in the nursing facility. This written agreement by
309 the recipient of the certificate of need shall be a condition of
310 the issuance of the certificate of need under this paragraph, and
311 the agreement shall be fully binding on any subsequent owner of
312 the nursing facility if the ownership of the nursing facility is
313 transferred at any time after the issuance of the certificate of
314 need. After this written agreement is executed, the Division of
315 Medicaid and the State Department of Health shall not certify any
316 of the beds in the nursing facility for participation in the
317 Medicaid program. If the nursing facility violates the terms of
318 the written agreement by admitting or keeping in the nursing
319 facility on a regular or continuing basis any patients who are
320 participating in the Medicaid program, the State Department of
321 Health shall revoke the license of the nursing facility, at the
322 time that the department determines, after a hearing complying
323 with due process, that the nursing facility has violated the
324 condition upon which the certificate of need was issued, as
325 provided in this paragraph and in the written agreement. If the
326 certificate of need authorized under this paragraph is not issued
327 within twelve (12) months after July 1, 2001, the department shall
328 deny the application for the certificate of need and shall not
329 issue the certificate of need at any time after the twelve-month
330 period, unless the issuance is contested. If the certificate of
331 need is issued and substantial construction of the nursing
332 facility beds has not commenced within eighteen (18) months after
333 July 1, 2001, the State Department of Health, after a hearing
334 complying with due process, shall revoke the certificate of need

335 if it is still outstanding, and the department shall not issue a
336 license for the nursing facility at any time after the
337 eighteen-month period. Provided, however, that if the issuance of
338 the certificate of need is contested, the department shall require
339 substantial construction of the nursing facility beds within six
340 (6) months after final adjudication on the issuance of the
341 certificate of need.

342 (n) The department may issue a certificate of need for
343 the new construction, addition or conversion of skilled nursing
344 facility beds in Madison County, provided that the recipient of
345 the certificate of need agrees in writing that the skilled nursing
346 facility will not at any time participate in the Medicaid program
347 (Section 43-13-101 et seq.) or admit or keep any patients in the
348 skilled nursing facility who are participating in the Medicaid
349 program. This written agreement by the recipient of the
350 certificate of need shall be fully binding on any subsequent owner
351 of the skilled nursing facility, if the ownership of the facility
352 is transferred at any time after the issuance of the certificate
353 of need. Agreement that the skilled nursing facility will not
354 participate in the Medicaid program shall be a condition of the
355 issuance of a certificate of need to any person under this
356 paragraph (n), and if such skilled nursing facility at any time
357 after the issuance of the certificate of need, regardless of the
358 ownership of the facility, participates in the Medicaid program or
359 admits or keeps any patients in the facility who are participating
360 in the Medicaid program, the State Department of Health shall
361 revoke the certificate of need, if it is still outstanding, and
362 shall deny or revoke the license of the skilled nursing facility,

363 at the time that the department determines, after a hearing
364 complying with due process, that the facility has failed to comply
365 with any of the conditions upon which the certificate of need was
366 issued, as provided in this paragraph and in the written agreement
367 by the recipient of the certificate of need. The total number of
368 nursing facility beds that may be authorized by any certificate of
369 need issued under this paragraph (n) shall not exceed sixty (60)
370 beds. If the certificate of need authorized under this paragraph
371 is not issued within twelve (12) months after July 1, 1998, the
372 department shall deny the application for the certificate of need
373 and shall not issue the certificate of need at any time after the
374 twelve-month period, unless the issuance is contested. If the
375 certificate of need is issued and substantial construction of the
376 nursing facility beds has not commenced within eighteen (18)
377 months after the effective date of July 1, 1998, the State
378 Department of Health, after a hearing complying with due process,
379 shall revoke the certificate of need if it is still outstanding,
380 and the department shall not issue a license for the nursing
381 facility at any time after the eighteen-month period. Provided,
382 however, that if the issuance of the certificate of need is
383 contested, the department shall require substantial construction
384 of the nursing facility beds within six (6) months after final
385 adjudication on the issuance of the certificate of need.

386 (o) The department may issue a certificate of need for
387 the new construction, addition or conversion of skilled nursing
388 facility beds in Leake County, provided that the recipient of the
389 certificate of need agrees in writing that the skilled nursing
390 facility will not at any time participate in the Medicaid program

391 (Section 43-13-101 et seq.) or admit or keep any patients in the
392 skilled nursing facility who are participating in the Medicaid
393 program. This written agreement by the recipient of the
394 certificate of need shall be fully binding on any subsequent owner
395 of the skilled nursing facility, if the ownership of the facility
396 is transferred at any time after the issuance of the certificate
397 of need. Agreement that the skilled nursing facility will not
398 participate in the Medicaid program shall be a condition of the
399 issuance of a certificate of need to any person under this
400 paragraph (o), and if such skilled nursing facility at any time
401 after the issuance of the certificate of need, regardless of the
402 ownership of the facility, participates in the Medicaid program or
403 admits or keeps any patients in the facility who are participating
404 in the Medicaid program, the State Department of Health shall
405 revoke the certificate of need, if it is still outstanding, and
406 shall deny or revoke the license of the skilled nursing facility,
407 at the time that the department determines, after a hearing
408 complying with due process, that the facility has failed to comply
409 with any of the conditions upon which the certificate of need was
410 issued, as provided in this paragraph and in the written agreement
411 by the recipient of the certificate of need. The total number of
412 nursing facility beds that may be authorized by any certificate of
413 need issued under this paragraph (o) shall not exceed sixty (60)
414 beds. If the certificate of need authorized under this paragraph
415 is not issued within twelve (12) months after July 1, 2001, the
416 department shall deny the application for the certificate of need
417 and shall not issue the certificate of need at any time after the
418 twelve-month period, unless the issuance is contested. If the

419 certificate of need is issued and substantial construction of the
420 nursing facility beds has not commenced within eighteen (18)
421 months after the effective date of July 1, 2001, the State
422 Department of Health, after a hearing complying with due process,
423 shall revoke the certificate of need if it is still outstanding,
424 and the department shall not issue a license for the nursing
425 facility at any time after the eighteen-month period. Provided,
426 however, that if the issuance of the certificate of need is
427 contested, the department shall require substantial construction
428 of the nursing facility beds within six (6) months after final
429 adjudication on the issuance of the certificate of need.

430 (p) The department may issue a certificate of need for
431 the construction of a municipally owned nursing facility within
432 the Town of Belmont in Tishomingo County, not to exceed sixty (60)
433 beds, provided that the recipient of the certificate of need
434 agrees in writing that the skilled nursing facility will not at
435 any time participate in the Medicaid program (Section 43-13-101 et
436 seq.) or admit or keep any patients in the skilled nursing
437 facility who are participating in the Medicaid program. This
438 written agreement by the recipient of the certificate of need
439 shall be fully binding on any subsequent owner of the skilled
440 nursing facility, if the ownership of the facility is transferred
441 at any time after the issuance of the certificate of need.

442 Agreement that the skilled nursing facility will not participate
443 in the Medicaid program shall be a condition of the issuance of a
444 certificate of need to any person under this paragraph (p), and if
445 such skilled nursing facility at any time after the issuance of
446 the certificate of need, regardless of the ownership of the

447 facility, participates in the Medicaid program or admits or keeps
448 any patients in the facility who are participating in the Medicaid
449 program, the State Department of Health shall revoke the
450 certificate of need, if it is still outstanding, and shall deny or
451 revoke the license of the skilled nursing facility, at the time
452 that the department determines, after a hearing complying with due
453 process, that the facility has failed to comply with any of the
454 conditions upon which the certificate of need was issued, as
455 provided in this paragraph and in the written agreement by the
456 recipient of the certificate of need. The provision of Section
457 43-7-193(1) regarding substantial compliance of the projection of
458 need as reported in the current State Health Plan is waived for
459 the purposes of this paragraph. If the certificate of need
460 authorized under this paragraph is not issued within twelve (12)
461 months after July 1, 1998, the department shall deny the
462 application for the certificate of need and shall not issue the
463 certificate of need at any time after the twelve-month period,
464 unless the issuance is contested. If the certificate of need is
465 issued and substantial construction of the nursing facility beds
466 has not commenced within eighteen (18) months after July 1, 1998,
467 the State Department of Health, after a hearing complying with due
468 process, shall revoke the certificate of need if it is still
469 outstanding, and the department shall not issue a license for the
470 nursing facility at any time after the eighteen-month period.
471 Provided, however, that if the issuance of the certificate of need
472 is contested, the department shall require substantial
473 construction of the nursing facility beds within six (6) months
474 after final adjudication on the issuance of the certificate of

475 need.

476 (q) (i) Beginning on July 1, 1999, the State
477 Department of Health shall issue certificates of need during each
478 of the next four (4) fiscal years for the construction or
479 expansion of nursing facility beds or the conversion of other beds
480 to nursing facility beds in each county in the state having a need
481 for fifty (50) or more additional nursing facility beds, as shown
482 in the fiscal year 1999 State Health Plan, in the manner provided
483 in this paragraph (q). The total number of nursing facility beds
484 that may be authorized by any certificate of need authorized under
485 this paragraph (q) shall not exceed sixty (60) beds.

486 (ii) Subject to the provisions of subparagraph
487 (v), during each of the next four (4) fiscal years, the department
488 shall issue six (6) certificates of need for new nursing facility
489 beds, as follows: During fiscal years 2000, 2001 and 2002, one
490 (1) certificate of need shall be issued for new nursing facility
491 beds in the county in each of the four (4) Long-Term Care Planning
492 Districts designated in the fiscal year 1999 State Health Plan
493 that has the highest need in the district for those beds; and two
494 (2) certificates of need shall be issued for new nursing facility
495 beds in the two (2) counties from the state at large that have the
496 highest need in the state for those beds, when considering the
497 need on a statewide basis and without regard to the Long-Term Care
498 Planning Districts in which the counties are located. During
499 fiscal year 2003, one (1) certificate of need shall be issued for
500 new nursing facility beds in any county having a need for fifty
501 (50) or more additional nursing facility beds, as shown in the
502 fiscal year 1999 State Health Plan, that has not received a

503 certificate of need under this paragraph (q) during the three (3)
504 previous fiscal years. During fiscal year 2000, in addition to
505 the six (6) certificates of need authorized in this subparagraph,
506 the department also shall issue a certificate of need for new
507 nursing facility beds in Amite County and a certificate of need
508 for new nursing facility beds in Carroll County.

509 (iii) Subject to the provisions of subparagraph
510 (v), the certificate of need issued under subparagraph (ii) for
511 nursing facility beds in each Long-Term Care Planning District
512 during each fiscal year shall first be available for nursing
513 facility beds in the county in the district having the highest
514 need for those beds, as shown in the fiscal year 1999 State Health
515 Plan. If there are no applications for a certificate of need for
516 nursing facility beds in the county having the highest need for
517 those beds by the date specified by the department, then the
518 certificate of need shall be available for nursing facility beds
519 in other counties in the district in descending order of the need
520 for those beds, from the county with the second highest need to
521 the county with the lowest need, until an application is received
522 for nursing facility beds in an eligible county in the district.

523 (iv) Subject to the provisions of subparagraph
524 (v), the certificate of need issued under subparagraph (ii) for
525 nursing facility beds in the two (2) counties from the state at
526 large during each fiscal year shall first be available for nursing
527 facility beds in the two (2) counties that have the highest need
528 in the state for those beds, as shown in the fiscal year 1999
529 State Health Plan, when considering the need on a statewide basis
530 and without regard to the Long-Term Care Planning Districts in

531 which the counties are located. If there are no applications for
532 a certificate of need for nursing facility beds in either of the
533 two (2) counties having the highest need for those beds on a
534 statewide basis by the date specified by the department, then the
535 certificate of need shall be available for nursing facility beds
536 in other counties from the state at large in descending order of
537 the need for those beds on a statewide basis, from the county with
538 the second highest need to the county with the lowest need, until
539 an application is received for nursing facility beds in an
540 eligible county from the state at large.

541 (v) If a certificate of need is authorized to be
542 issued under this paragraph (q) for nursing facility beds in a
543 county on the basis of the need in the Long-Term Care Planning
544 District during any fiscal year of the four-year period, a
545 certificate of need shall not also be available under this
546 paragraph (q) for additional nursing facility beds in that county
547 on the basis of the need in the state at large, and that county
548 shall be excluded in determining which counties have the highest
549 need for nursing facility beds in the state at large for that
550 fiscal year. After a certificate of need has been issued under
551 this paragraph (q) for nursing facility beds in a county during
552 any fiscal year of the four-year period, a certificate of need
553 shall not be available again under this paragraph (q) for
554 additional nursing facility beds in that county during the
555 four-year period, and that county shall be excluded in determining
556 which counties have the highest need for nursing facility beds in
557 succeeding fiscal years.

558 (r) (i) Beginning on July 1, 1999, the State

559 Department of Health shall issue certificates of need during each
560 of the next two (2) fiscal years for the construction or expansion
561 of nursing facility beds or the conversion of other beds to
562 nursing facility beds in each of the four (4) Long-Term Care
563 Planning Districts designated in the fiscal year 1999 State Health
564 Plan, to provide care exclusively to patients with Alzheimer's
565 disease.

566 (ii) Not more than twenty (20) beds may be authorized
567 by any certificate of need issued under this paragraph (r), and
568 not more than a total of sixty (60) beds may be authorized in any
569 Long-Term Care Planning District by all certificates of need
570 issued under this paragraph (r). However, the total number of
571 beds that may be authorized by all certificates of need issued
572 under this paragraph (r) during any fiscal year shall not exceed
573 one hundred twenty (120) beds, and the total number of beds that
574 may be authorized in any Long-Term Care Planning District during
575 any fiscal year shall not exceed forty (40) beds. Of the
576 certificates of need that are issued for each Long-Term Care
577 Planning District during the next two (2) fiscal years, at least
578 one (1) shall be issued for beds in the northern part of the
579 district, at least one (1) shall be issued for beds in the central
580 part of the district, and at least one (1) shall be issued for
581 beds in the southern part of the district.

582 (iii) The State Department of Health, in
583 consultation with the Department of Mental Health and the Division
584 of Medicaid, shall develop and prescribe the staffing levels,
585 space requirements and other standards and requirements that must
586 be met with regard to the nursing facility beds authorized under

587 this paragraph (r) to provide care exclusively to patients with
588 Alzheimer's disease.

589 (3) The State Department of Health may grant approval for
590 and issue certificates of need to any person proposing the new
591 construction of, addition to, conversion of beds of or expansion
592 of any health care facility defined in subparagraph (x)
593 (psychiatric residential treatment facility) of Section
594 41-7-173(h). The total number of beds which may be authorized by
595 such certificates of need shall not exceed two hundred
596 seventy-four (274) beds for the entire state.

597 (a) Of the total number of beds authorized under this
598 subsection, the department shall issue a certificate of need to a
599 privately owned psychiatric residential treatment facility in
600 Simpson County for the conversion of sixteen (16) intermediate
601 care facility for the mentally retarded (ICF-MR) beds to
602 psychiatric residential treatment facility beds, provided that
603 facility agrees in writing that the facility shall give priority
604 for the use of those sixteen (16) beds to Mississippi residents
605 who are presently being treated in out-of-state facilities.

606 (b) Of the total number of beds authorized under this
607 subsection, the department may issue a certificate or certificates
608 of need for the construction or expansion of psychiatric
609 residential treatment facility beds or the conversion of other
610 beds to psychiatric residential treatment facility beds in Warren
611 County, not to exceed sixty (60) psychiatric residential treatment
612 facility beds, provided that the facility agrees in writing that
613 no more than thirty (30) of the beds at the psychiatric
614 residential treatment facility will be certified for participation

615 in the Medicaid program (Section 43-13-101 et seq.) for the use of
616 any patients other than those who are participating only in the
617 Medicaid program of another state, and that no claim will be
618 submitted to the Division of Medicaid for Medicaid reimbursement
619 for more than thirty (30) patients in the psychiatric residential
620 treatment facility in any day or for any patient in the
621 psychiatric residential treatment facility who is in a bed that is
622 not Medicaid-certified. This written agreement by the recipient
623 of the certificate of need shall be a condition of the issuance of
624 the certificate of need under this paragraph, and the agreement
625 shall be fully binding on any subsequent owner of the psychiatric
626 residential treatment facility if the ownership of the facility is
627 transferred at any time after the issuance of the certificate of
628 need. After this written agreement is executed, the Division of
629 Medicaid and the State Department of Health shall not certify more
630 than thirty (30) of the beds in the psychiatric residential
631 treatment facility for participation in the Medicaid program for
632 the use of any patients other than those who are participating
633 only in the Medicaid program of another state. If the psychiatric
634 residential treatment facility violates the terms of the written
635 agreement by admitting or keeping in the facility on a regular or
636 continuing basis more than thirty (30) patients who are
637 participating in the Mississippi Medicaid program, the State
638 Department of Health shall revoke the license of the facility, at
639 the time that the department determines, after a hearing complying
640 with due process, that the facility has violated the condition
641 upon which the certificate of need was issued, as provided in this
642 paragraph and in the written agreement.

643 (c) Of the total number of beds authorized under this
644 subsection, the department shall issue a certificate of need to a
645 hospital currently operating Medicaid-certified acute psychiatric
646 beds for adolescents in DeSoto County, for the establishment of a
647 forty-bed psychiatric residential treatment facility in DeSoto
648 County, provided that the hospital agrees in writing (i) that the
649 hospital shall give priority for the use of those forty (40) beds
650 to Mississippi residents who are presently being treated in
651 out-of-state facilities, and (ii) that no more than fifteen (15)
652 of the beds at the psychiatric residential treatment facility will
653 be certified for participation in the Medicaid program (Section
654 43-13-101 et seq.), and that no claim will be submitted for
655 Medicaid reimbursement for more than fifteen (15) patients in the
656 psychiatric residential treatment facility in any day or for any
657 patient in the psychiatric residential treatment facility who is
658 in a bed that is not Medicaid-certified. This written agreement
659 by the recipient of the certificate of need shall be a condition
660 of the issuance of the certificate of need under this paragraph,
661 and the agreement shall be fully binding on any subsequent owner
662 of the psychiatric residential treatment facility if the ownership
663 of the facility is transferred at any time after the issuance of
664 the certificate of need. After this written agreement is
665 executed, the Division of Medicaid and the State Department of
666 Health shall not certify more than fifteen (15) of the beds in the
667 psychiatric residential treatment facility for participation in
668 the Medicaid program. If the psychiatric residential treatment
669 facility violates the terms of the written agreement by admitting
670 or keeping in the facility on a regular or continuing basis more

671 than fifteen (15) patients who are participating in the Medicaid
672 program, the State Department of Health shall revoke the license
673 of the facility, at the time that the department determines, after
674 a hearing complying with due process, that the facility has
675 violated the condition upon which the certificate of need was
676 issued, as provided in this paragraph and in the written
677 agreement.

678 (d) Of the total number of beds authorized under this
679 subsection, the department may issue a certificate or certificates
680 of need for the construction or expansion of psychiatric
681 residential treatment facility beds or the conversion of other
682 beds to psychiatric treatment facility beds, not to exceed thirty
683 (30) psychiatric residential treatment facility beds, in either
684 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,
685 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah Counties.

686 (e) Of the total number of beds authorized under this
687 subsection (3) the department shall issue a certificate of need to
688 a privately owned, nonprofit psychiatric residential treatment
689 facility in Hinds County for an eight-bed expansion of the
690 facility, provided that the facility agrees in writing that the
691 facility shall give priority for the use of those eight (8) beds
692 to Mississippi residents who are presently being treated in
693 out-of-state facilities.

694 (4) (a) From and after July 1, 1993, the department shall
695 not issue a certificate of need to any person for the new
696 construction of any hospital, psychiatric hospital or chemical
697 dependency hospital that will contain any child/adolescent
698 psychiatric or child/adolescent chemical dependency beds, or for

699 the conversion of any other health care facility to a hospital,
700 psychiatric hospital or chemical dependency hospital that will
701 contain any child/adolescent psychiatric or child/adolescent
702 chemical dependency beds, or for the addition of any
703 child/adolescent psychiatric or child/adolescent chemical
704 dependency beds in any hospital, psychiatric hospital or chemical
705 dependency hospital, or for the conversion of any beds of another
706 category in any hospital, psychiatric hospital or chemical
707 dependency hospital to child/adolescent psychiatric or
708 child/adolescent chemical dependency beds, except as hereinafter
709 authorized:

710 (i) The department may issue certificates of need
711 to any person for any purpose described in this subsection,
712 provided that the hospital, psychiatric hospital or chemical
713 dependency hospital does not participate in the Medicaid program
714 (Section 43-13-101 et seq.) at the time of the application for the
715 certificate of need and the owner of the hospital, psychiatric
716 hospital or chemical dependency hospital agrees in writing that
717 the hospital, psychiatric hospital or chemical dependency hospital
718 will not at any time participate in the Medicaid program or admit
719 or keep any patients who are participating in the Medicaid program
720 in the hospital, psychiatric hospital or chemical dependency
721 hospital. This written agreement by the recipient of the
722 certificate of need shall be fully binding on any subsequent owner
723 of the hospital, psychiatric hospital or chemical dependency
724 hospital, if the ownership of the facility is transferred at any
725 time after the issuance of the certificate of need. Agreement
726 that the hospital, psychiatric hospital or chemical dependency

727 hospital will not participate in the Medicaid program shall be a
728 condition of the issuance of a certificate of need to any person
729 under this subparagraph (a)(i), and if such hospital, psychiatric
730 hospital or chemical dependency hospital at any time after the
731 issuance of the certificate of need, regardless of the ownership
732 of the facility, participates in the Medicaid program or admits or
733 keeps any patients in the hospital, psychiatric hospital or
734 chemical dependency hospital who are participating in the Medicaid
735 program, the State Department of Health shall revoke the
736 certificate of need, if it is still outstanding, and shall deny or
737 revoke the license of the hospital, psychiatric hospital or
738 chemical dependency hospital, at the time that the department
739 determines, after a hearing complying with due process, that the
740 hospital, psychiatric hospital or chemical dependency hospital has
741 failed to comply with any of the conditions upon which the
742 certificate of need was issued, as provided in this subparagraph
743 and in the written agreement by the recipient of the certificate
744 of need.

745 (ii) The department may issue a certificate of
746 need for the conversion of existing beds in a county hospital in
747 Choctaw County from acute care beds to child/adolescent chemical
748 dependency beds. For purposes of this subparagraph, the
749 provisions of Section 41-7-193(1) requiring substantial compliance
750 with the projection of need as reported in the current State
751 Health Plan is waived. The total number of beds that may be
752 authorized under authority of this subparagraph shall not exceed
753 twenty (20) beds. There shall be no prohibition or restrictions
754 on participation in the Medicaid program (Section 43-13-101 et

755 seq.) for the hospital receiving the certificate of need
756 authorized under this subparagraph (a)(ii) or for the beds
757 converted pursuant to the authority of that certificate of need.

758 (iii) The department may issue a certificate or
759 certificates of need for the construction or expansion of
760 child/adolescent psychiatric beds or the conversion of other beds
761 to child/adolescent psychiatric beds in Warren County. For
762 purposes of this subparagraph, the provisions of Section
763 41-7-193(1) requiring substantial compliance with the projection
764 of need as reported in the current State Health Plan are waived.

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

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

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

783 43-13-101 et seq.) for the person receiving the certificate of
784 need authorized under this subparagraph (a)(iv) or for the beds
785 converted pursuant to the authority of that certificate of need.

786 (v) The department may issue a certificate of need
787 to any county hospital located in Leflore County for the
788 construction or expansion of adult psychiatric beds or the
789 conversion of other beds to adult psychiatric beds, not to exceed
790 twenty (20) beds, provided that the recipient of the certificate
791 of need agrees in writing that the adult psychiatric beds will not
792 at any time be certified for participation in the Medicaid program
793 and that the hospital will not admit or keep any patients who are
794 participating in the Medicaid program in any of such adult
795 psychiatric beds. This written agreement by the recipient of the
796 certificate of need shall be fully binding on any subsequent owner
797 of the hospital if the ownership of the hospital is transferred at
798 any time after the issuance of the certificate of need. Agreement
799 that the adult psychiatric beds will not be certified for
800 participation in the Medicaid program shall be a condition of the
801 issuance of a certificate of need to any person under this
802 subparagraph (a)(v), and if such hospital at any time after the
803 issuance of the certificate of need, regardless of the ownership
804 of the hospital, has any of such adult psychiatric beds certified
805 for participation in the Medicaid program or admits or keeps any
806 Medicaid patients in such adult psychiatric beds, the State
807 Department of Health shall revoke the certificate of need, if it
808 is still outstanding, and shall deny or revoke the license of the
809 hospital at the time that the department determines, after a
810 hearing complying with due process, that the hospital has failed

811 to comply with any of the conditions upon which the certificate of
812 need was issued, as provided in this subparagraph and in the
813 written agreement by the recipient of the certificate of need.

814 (vi) The department may issue a certificate or
815 certificates of need for the expansion of child psychiatric beds
816 or the conversion of other beds to child psychiatric beds at the
817 University of Mississippi Medical Center. For purposes of this
818 subparagraph (a)(vi), the provision of Section 41-7-193(1)
819 requiring substantial compliance with the projection of need as
820 reported in the current State Health Plan is waived. The total
821 number of beds that may be authorized under the authority of this
822 subparagraph (a)(vi) shall not exceed fifteen (15) beds. There
823 shall be no prohibition or restrictions on participation in the
824 Medicaid program (Section 43-13-101 et seq.) for the hospital
825 receiving the certificate of need authorized under this
826 subparagraph (a)(vi) or for the beds converted pursuant to the
827 authority of that certificate of need.

828 (b) From and after July 1, 1990, no hospital,
829 psychiatric hospital or chemical dependency hospital shall be
830 authorized to add any child/adolescent psychiatric or
831 child/adolescent chemical dependency beds or convert any beds of
832 another category to child/adolescent psychiatric or
833 child/adolescent chemical dependency beds without a certificate of
834 need under the authority of subsection (1)(c) of this section.

835 (5) The department may issue a certificate of need to a
836 county hospital in Winston County for the conversion of fifteen
837 (15) acute care beds to geriatric psychiatric care beds.

838 (6) The State Department of Health shall issue a certificate

839 of need to a Mississippi corporation qualified to manage a
840 long-term care hospital as defined in Section 41-7-173(h)(xii) in
841 Harrison County, not to exceed eighty (80) beds, including any
842 necessary renovation or construction required for licensure and
843 certification, provided that the recipient of the certificate of
844 need agrees in writing that the long-term care hospital will not
845 at any time participate in the Medicaid program (Section 43-13-101
846 et seq.) or admit or keep any patients in the long-term care
847 hospital who are participating in the Medicaid program. This
848 written agreement by the recipient of the certificate of need
849 shall be fully binding on any subsequent owner of the long-term
850 care hospital, if the ownership of the facility is transferred at
851 any time after the issuance of the certificate of need. Agreement
852 that the long-term care hospital will not participate in the
853 Medicaid program shall be a condition of the issuance of a
854 certificate of need to any person under this subsection (6), and
855 if such long-term care hospital at any time after the issuance of
856 the certificate of need, regardless of the ownership of the
857 facility, participates in the Medicaid program or admits or keeps
858 any patients in the facility who are participating in the Medicaid
859 program, the State Department of Health shall revoke the
860 certificate of need, if it is still outstanding, and shall deny or
861 revoke the license of the long-term care hospital, at the time
862 that the department determines, after a hearing complying with due
863 process, that the facility has failed to comply with any of the
864 conditions upon which the certificate of need was issued, as
865 provided in this subsection and in the written agreement by the
866 recipient of the certificate of need. For purposes of this

867 subsection, the provision of Section 41-7-193(1) requiring
868 substantial compliance with the projection of need as reported in
869 the current State Health Plan is hereby waived.

870 (7) The State Department of Health may issue a certificate
871 of need to any hospital in the state to utilize a portion of its
872 beds for the "swing-bed" concept. Any such hospital must be in
873 conformance with the federal regulations regarding such swing-bed
874 concept at the time it submits its application for a certificate
875 of need to the State Department of Health, except that such
876 hospital may have more licensed beds or a higher average daily
877 census (ADC) than the maximum number specified in federal
878 regulations for participation in the swing-bed program. Any
879 hospital meeting all federal requirements for participation in the
880 swing-bed program which receives such certificate of need shall
881 render services provided under the swing-bed concept to any
882 patient eligible for Medicare (Title XVIII of the Social Security
883 Act) who is certified by a physician to be in need of such
884 services, and no such hospital shall permit any patient who is
885 eligible for both Medicaid and Medicare or eligible only for
886 Medicaid to stay in the swing beds of the hospital for more than
887 thirty (30) days per admission unless the hospital receives prior
888 approval for such patient from the Division of Medicaid, Office of
889 the Governor. Any hospital having more licensed beds or a higher
890 average daily census (ADC) than the maximum number specified in
891 federal regulations for participation in the swing-bed program
892 which receives such certificate of need shall develop a procedure
893 to insure that before a patient is allowed to stay in the swing
894 beds of the hospital, there are no vacant nursing home beds

895 available for that patient located within a fifty-mile radius of
896 the hospital. When any such hospital has a patient staying in the
897 swing beds of the hospital and the hospital receives notice from a
898 nursing home located within such radius that there is a vacant bed
899 available for that patient, the hospital shall transfer the
900 patient to the nursing home within a reasonable time after receipt
901 of the notice. Any hospital which is subject to the requirements
902 of the two (2) preceding sentences of this subsection may be
903 suspended from participation in the swing-bed program for a
904 reasonable period of time by the State Department of Health if the
905 department, after a hearing complying with due process, determines
906 that the hospital has failed to comply with any of those
907 requirements.

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

912 (9) The Department of Health shall not grant approval for or
913 issue a certificate of need to any person proposing the
914 establishment of, or expansion of the currently approved territory
915 of, or the contracting to establish a home office, subunit or
916 branch office within the space operated as a health care facility
917 as defined in Section 41-7-173(h)(i) through (viii) by a health
918 care facility as defined in subparagraph (ix) of Section
919 41-7-173(h).

920 (10) Health care facilities owned and/or operated by the
921 state or its agencies are exempt from the restraints in this
922 section against issuance of a certificate of need if such addition

923 or expansion consists of repairing or renovation necessary to
924 comply with the state licensure law. This exception shall not
925 apply to the new construction of any building by such state
926 facility. This exception shall not apply to any health care
927 facilities owned and/or operated by counties, municipalities,
928 districts, unincorporated areas, other defined persons, or any
929 combination thereof.

930 (11) The new construction, renovation or expansion of or
931 addition to any health care facility defined in subparagraph (ii)
932 (psychiatric hospital), subparagraph (iv) (skilled nursing
933 facility), subparagraph (vi) (intermediate care facility),
934 subparagraph (viii) (intermediate care facility for the mentally
935 retarded) and subparagraph (x) (psychiatric residential treatment
936 facility) of Section 41-7-173(h) which is owned by the State of
937 Mississippi and under the direction and control of the State
938 Department of Mental Health, and the addition of new beds or the
939 conversion of beds from one category to another in any such
940 defined health care facility which is owned by the State of
941 Mississippi and under the direction and control of the State
942 Department of Mental Health, shall not require the issuance of a
943 certificate of need under Section 41-7-171 et seq.,
944 notwithstanding any provision in Section 41-7-171 et seq. to the
945 contrary.

946 (12) The new construction, renovation or expansion of or
947 addition to any veterans homes or domiciliaries for eligible
948 veterans of the State of Mississippi as authorized under Section
949 35-1-19 shall not require the issuance of a certificate of need,
950 notwithstanding any provision in Section 41-7-171 et seq. to the

951 contrary.

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

957 (a) Before any construction or conversion may be
958 undertaken without a certificate of need, the owner of the nursing
959 facility, in the case of an existing facility, or the applicant to
960 construct a nursing facility, in the case of new construction,
961 first must file a written notice of intent and sign a written
962 agreement with the State Department of Health that the entire
963 nursing facility will not at any time participate in or have any
964 beds certified for participation in the Medicaid program (Section
965 43-13-101 et seq.), will not admit or keep any patients in the
966 nursing facility who are participating in the Medicaid program,
967 and will not submit any claim for Medicaid reimbursement for any
968 patient in the facility. This written agreement by the owner or
969 applicant shall be a condition of exercising the authority under
970 this subsection without a certificate of need, and the agreement
971 shall be fully binding on any subsequent owner of the nursing
972 facility if the ownership of the facility is transferred at any
973 time after the agreement is signed. After the written agreement
974 is signed, the Division of Medicaid and the State Department of
975 Health shall not certify any beds in the nursing facility for
976 participation in the Medicaid program. If the nursing facility
977 violates the terms of the written agreement by participating in
978 the Medicaid program, having any beds certified for participation

979 in the Medicaid program, admitting or keeping any patient in the
980 facility who is participating in the Medicaid program, or
981 submitting any claim for Medicaid reimbursement for any patient in
982 the facility, the State Department of Health shall revoke the
983 license of the nursing facility at the time that the department
984 determines, after a hearing complying with due process, that the
985 facility has violated the terms of the written agreement.

986 (b) For the purposes of this subsection, participation
987 in the Medicaid program by a nursing facility includes Medicaid
988 reimbursement of coinsurance and deductibles for recipients who
989 are qualified Medicare beneficiaries and/or those who are dually
990 eligible. Any nursing facility exercising the authority under
991 this subsection may not bill or submit a claim to the Division of
992 Medicaid for services to qualified Medicare beneficiaries and/or
993 those who are dually eligible.

994 (c) The new construction of a nursing facility or
995 nursing facility beds or the conversion of other beds to nursing
996 facility beds described in this section must be either a part of a
997 completely new continuing care retirement community, as described
998 in the latest edition of the Mississippi State Health Plan, or an
999 addition to existing personal care and independent living
1000 components, and so that the completed project will be a continuing
1001 care retirement community, containing (i) independent living
1002 accommodations, (ii) personal care beds, and (iii) the nursing
1003 home facility beds. The three (3) components must be located on a
1004 single site and be operated as one (1) inseparable facility. The
1005 nursing facility component must contain a minimum of thirty (30)
1006 beds. Any nursing facility beds authorized by this section will

1007 not be counted against the bed need set forth in the State Health
1008 Plan, as identified in Section 41-7-171, et seq.

1009 This subsection (13) shall stand repealed from and after July
1010 1, 2001.

1011 (14) The State Department of Health shall issue a
1012 certificate of need to any hospital which is currently licensed
1013 for two hundred fifty (250) or more acute care beds and is located
1014 in any general hospital service area not having a comprehensive
1015 cancer center, for the establishment and equipping of such a
1016 center which provides facilities and services for outpatient
1017 radiation oncology therapy, outpatient medical oncology therapy,
1018 and appropriate support services including the provision of
1019 radiation therapy services. The provision of Section 41-7-193(1)
1020 regarding substantial compliance with the projection of need as
1021 reported in the current State Health Plan is waived for the
1022 purpose of this subsection.

1023 (15) Nothing in this section or in any other provision of
1024 Section 41-7-171 et seq. shall prevent any nursing facility from
1025 designating an appropriate number of existing beds in the facility
1026 as beds for providing care exclusively to patients with
1027 Alzheimer's disease.

1028 (16) Notwithstanding any provisions in Section 41-7-171 et
1029 seq. to the contrary, the State Department of Health shall issue a
1030 certificate of need for the reopening and continued operation of
1031 any health care facility located in any county having a population
1032 in excess of one hundred thousand (100,000), which was licensed
1033 and operated as an acute care hospital, or as part of an acute
1034 care hospital, before January 1, 2000, but which closed and ceased

1035 operations, for any reason, as an acute care hospital, or as part
1036 of an acute care hospital, at any time after January 1, 1999, and
1037 before January 1, 2000.

1038 The provisions of Section 41-7-193(1) regarding substantial
1039 compliance with the projection of need as reported in the State
1040 Health Plan are waived for the purpose of this subsection. In
1041 addition, the provisions of Section 41-7-201(2)(a) shall not apply
1042 to the final order or certificate of need issued under the
1043 authority of this subsection. Notwithstanding any other statute
1044 or regulation, there shall be no prohibition on the licensure,
1045 certification or operation of the health care facility approved by
1046 the final order granting the certificate of need issued under this
1047 subsection, during the pendency of any appeals of that final
1048 order.

1049 SECTION 2. Section 41-7-193, Mississippi Code of 1972, is
1050 amended as follows:[RF2]

1051 41-7-193. (1) No person may enter into any financing
1052 arrangement or commitment for financing a new institutional health
1053 service or any other project requiring a certificate of need
1054 unless such certificate has been granted for such purpose. Except
1055 as otherwise provided by law, a certificate of need shall not be
1056 granted or issued to any person for any proposal, cause or reason,
1057 unless the proposal has been reviewed for consistency with the
1058 specifications and the criteria established by the State
1059 Department of Health and substantially complies with the
1060 projection of need as reported in the state health plan in effect
1061 at the time the application for the proposal was submitted.

1062 (2) An application for a certificate of need for an

1063 institutional health service, medical equipment or any proposal
1064 requiring a certificate of need shall specify the time, within
1065 that granted, such shall be functional or operational according to
1066 a time schedule submitted with the application. Each certificate
1067 of need shall specify the maximum amount of capital expenditure
1068 that may be obligated. The State Department of Health shall
1069 periodically review the progress and time schedule of any person
1070 issued or granted a certificate of need for any purpose.

1071 SECTION 3. Section 41-7-201, Mississippi Code of 1972, is
1072 amended as follows:[RF3]

1073 41-7-201. (1) The provisions of this subsection (1) shall
1074 apply to any party appealing any final order of the State
1075 Department of Health pertaining to a certificate of need for a
1076 home health agency, as defined in Section 41-7-173(h)(ix):

1077 (a) In addition to other remedies now available at law
1078 or in equity, any party aggrieved by any such final order of the
1079 State Department of Health shall have the right of appeal to the
1080 Chancery Court of the First Judicial District of Hinds County,
1081 Mississippi, which appeal must be filed within thirty (30) days
1082 after the date of the final order. Provided, however, that any
1083 appeal of an order disapproving an application for such a
1084 certificate of need may be made to the chancery court of the
1085 county where the proposed construction, expansion or alteration
1086 was to be located or the new service or purpose of the capital
1087 expenditure was to be located. Such appeal must be filed in
1088 accordance with the thirty (30) days for filing as heretofore
1089 provided. Any appeal shall state briefly the nature of the
1090 proceedings before the State Department of Health and shall

1091 specify the order complained of. Any person whose rights may be
1092 materially affected by the action of the State Department of
1093 Health may appear and become a party or the court may, upon
1094 motion, order that any such person, organization or entity be
1095 joined as a necessary party.

1096 (b) Upon the filing of such an appeal, the clerk of the
1097 chancery court shall serve notice thereof upon the State
1098 Department of Health, whereupon the State Department of Health
1099 shall, within fifty (50) days or within such additional time as
1100 the court may by order for cause allow from the service of such
1101 notice, certify to the chancery court the record in the case,
1102 which records shall include a transcript of all testimony,
1103 together with all exhibits or copies thereof, all pleadings,
1104 proceedings, orders, findings and opinions entered in the case;
1105 provided, however, that the parties and the State Department of
1106 Health may stipulate that a specified portion only of the record
1107 shall be certified to the court as the record on appeal.

1108 (c) No new or additional evidence shall be introduced
1109 in the chancery court but the case shall be determined upon the
1110 record certified to the court.

1111 (d) The court may dispose of the appeal in termtime or
1112 vacation and may sustain or dismiss the appeal, modify or vacate
1113 the order complained of in whole or in part as the case may be;
1114 but in case the order is wholly or partly vacated, the court may
1115 also, in its discretion, remand the matter to the State Department
1116 of Health for such further proceedings, not inconsistent with the
1117 court's order, as, in the opinion of the court, justice may
1118 require. The order shall not be vacated or set aside, either in

1119 whole or in part, except for errors of law, unless the court finds
1120 that the order of the State Department of Health is not supported
1121 by substantial evidence, is contrary to the manifest weight of the
1122 evidence, is in excess of the statutory authority or jurisdiction
1123 of the State Department of Health, or violates any vested
1124 constitutional rights of any party involved in the appeal.

1125 Provided, however, an order of the chancery court reversing the
1126 denial of a certificate of need by the State Department of Health
1127 shall not entitle the applicant to effectuate the certificate of
1128 need until either:

1129 (i) Such order of the chancery court has become
1130 final and has not been appealed to the Supreme Court; or

1131 (ii) The Supreme Court has entered a final order
1132 affirming the chancery court.

1133 (e) Appeals in accordance with law may be had to the
1134 Supreme Court of the State of Mississippi from any final judgment
1135 of the chancery court.

1136 (2) The provisions of this subsection (2) shall apply to any
1137 party appealing any final order of the State Department of Health
1138 pertaining to a certificate of need for any health care facility
1139 as defined in Section 41-7-173(h), with the exception of any home
1140 health agency as defined in Section 41-7-173(h)(ix):

1141 (a) There shall be a "stay of proceedings" of any final
1142 order issued by the State Department of Health pertaining to the
1143 issuance of a certificate of need for the establishment,
1144 construction, expansion or replacement of a health care facility
1145 for a period of thirty (30) days from the date of the order, if an
1146 existing provider located in the same service area where the

1147 health care facility is or will be located has requested a hearing
1148 during the course of review in opposition to the issuance of the
1149 certificate of need. The stay of proceedings shall expire at the
1150 termination of thirty (30) days; however, except as otherwise
1151 provided by law, no construction, renovation or other capital
1152 expenditure that is the subject of the order shall be undertaken,
1153 no license to operate any facility that is the subject of the
1154 order shall be issued by the licensing agency, and no
1155 certification to participate in the Title XVIII or Title XIX
1156 programs of the Social Security Act shall be granted, until all
1157 statutory appeals have been exhausted or the time for such appeals
1158 has expired. Notwithstanding the foregoing, the filing of an
1159 appeal from a final order of the State Department of Health or the
1160 chancery court for the issuance of a certificate of need shall not
1161 prevent the purchase of medical equipment or development or
1162 offering of institutional health services granted in a certificate
1163 of need issued by the State Department of Health.

1164 (b) In addition to other remedies now available at law
1165 or in equity, any party aggrieved by any such final order of the
1166 State Department of Health shall have the right of appeal to the
1167 Chancery Court of the First Judicial District of Hinds County,
1168 Mississippi, which appeal must be filed within twenty (20) days
1169 after the date of the final order. Provided, however, that any
1170 appeal of an order disapproving an application for such a
1171 certificate of need may be made to the chancery court of the
1172 county where the proposed construction, expansion or alteration
1173 was to be located or the new service or purpose of the capital
1174 expenditure was to be located. Such appeal must be filed in

1175 accordance with the twenty (20) days for filing as heretofore
1176 provided. Any appeal shall state briefly the nature of the
1177 proceedings before the State Department of Health and shall
1178 specify the order complained of.

1179 (c) Upon the filing of such an appeal, the clerk of the
1180 chancery court shall serve notice thereof upon the State
1181 Department of Health, whereupon the State Department of Health
1182 shall, within thirty (30) days of the date of the filing of the
1183 appeal, certify to the chancery court the record in the case,
1184 which records shall include a transcript of all testimony,
1185 together with all exhibits or copies thereof, all pleadings,
1186 proceedings, orders, findings and opinions entered in the case;
1187 provided, however, that the parties and the State Department of
1188 Health may stipulate that a specified portion only of the record
1189 shall be certified to the court as the record on appeal. The
1190 chancery court shall give preference to any such appeal from a
1191 final order by the State Department of Health in a certificate of
1192 need proceeding, and shall render a final order regarding such
1193 appeal no later than one hundred twenty (120) days from the date
1194 of the final order by the State Department of Health. If the
1195 chancery court has not rendered a final order within this 120-day
1196 period, then the final order of the State Department of Health
1197 shall be deemed to have been affirmed by the chancery court, and
1198 any party to the appeal shall have the right to appeal from the
1199 chancery court to the Supreme Court on the record certified by the
1200 State Department of Health as otherwise provided in paragraph (g)
1201 of this subsection. In the event the chancery court has not
1202 rendered a final order within the 120-day period and an appeal is

1203 made to the Supreme Court as provided herein, the Supreme Court
1204 shall remand the case to the chancery court to make an award of
1205 costs, fees, reasonable expenses and attorney's fees incurred in
1206 favor of appellee payable by the appellant(s) should the Supreme
1207 Court affirm the order of the State Department of Health.

1208 (d) Any appeal of a final order by the State Department
1209 of Health in a certificate of need proceeding shall require the
1210 giving of a bond by the appellant(s) sufficient to secure the
1211 appellee against the loss of costs, fees, expenses and attorney's
1212 fees incurred in defense of the appeal, approved by the chancery
1213 court within five (5) days of the date of filing the appeal.

1214 (e) No new or additional evidence shall be introduced
1215 in the chancery court but the case shall be determined upon the
1216 record certified to the court.

1217 (f) The court may dispose of the appeal in termtime or
1218 vacation and may sustain or dismiss the appeal, modify or vacate
1219 the order complained of in whole or in part and may make an award
1220 of costs, fees, expenses and attorney's fees, as the case may be;
1221 but in case the order is wholly or partly vacated, the court may
1222 also, in its discretion, remand the matter to the State Department
1223 of Health for such further proceedings, not inconsistent with the
1224 court's order, as, in the opinion of the court, justice may
1225 require. The court, as part of the final order, shall make an
1226 award of costs, fees, reasonable expenses and attorney's fees
1227 incurred in favor of appellee payable by the appellant(s) should
1228 the court affirm the order of the State Department of Health. The
1229 order shall not be vacated or set aside, either in whole or in
1230 part, except for errors of law, unless the court finds that the

1231 order of the State Department of Health is not supported by
1232 substantial evidence, is contrary to the manifest weight of the
1233 evidence, is in excess of the statutory authority or jurisdiction
1234 of the State Department of Health, or violates any vested
1235 constitutional rights of any party involved in the appeal.

1236 Provided, however, an order of the chancery court reversing the
1237 denial of a certificate of need by the State Department of Health
1238 shall not entitle the applicant to effectuate the certificate of
1239 need until either:

1240 (i) Such order of the chancery court has become
1241 final and has not been appealed to the Supreme Court; or

1242 (ii) The Supreme Court has entered a final order
1243 affirming the chancery court.

1244 (g) Appeals in accordance with law may be had to the
1245 Supreme Court of the State of Mississippi from any final judgment
1246 of the chancery court.

1247 (h) Within thirty (30) days from the date of a final
1248 order by the Supreme Court or a final order of the chancery court
1249 not appealed to the Supreme Court that modifies or wholly or
1250 partly vacates the final order of the State Department of Health
1251 granting a certificate of need, the State Department of Health
1252 shall issue another order in conformity with the final order of
1253 the Supreme Court, or the final order of the chancery court not
1254 appealed to the Supreme Court.

1255 SECTION 4. This act shall take effect and be in force from
1256 and after its passage.