SENATE BILL NO. 2428

AN ACT TO AMEND SECTION 41-7-191, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE STATE DEPARTMENT OF HEALTH SHALL ISSUE A CERTIFICATE OF NEED FOR THE CONSTRUCTION OF A NEW ACUTE CARE HOSPITAL IN THE CITY OF OLIVE BRANCH IN DESOTO COUNTY, NOT TO EXCEED ONE HUNDRED ACUTE CARE BEDS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-7-191, Mississippi Code of 1972, is amended as follows:

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

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

(b) The relocation of a health care facility or portion thereof, or major medical equipment, unless such relocation of a health care facility or portion thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health care facility, is within five thousand two hundred eighty (5,280) feet from the main entrance of the health care facility;

(c) Any change in the existing bed complement of any health care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located;

(d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered:
(i) Open heart surgery services;
(ii) Cardiac catheterization services;
(iii) Comprehensive inpatient rehabilitation services;
(iv) Licensed psychiatric services;
(v) Licensed chemical dependency services;
(vi) Radiation therapy services;
(vii) Diagnostic imaging services of an invasive nature, i.e. invasive digital angiography;
(viii) Nursing home care as defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);
(ix) Home health services;
(x) Swing-bed services;
(xi) Ambulatory surgical services;
(xii) Magnetic resonance imaging services;
(xiii) Extracorporeal shock wave lithotripsy services;
(xiv) Long-term care hospital services;
(xv) Positron Emission Tomography (PET) services;
(e) The relocation of one or more health services from one physical facility or site to another physical facility or site, unless such relocation, which does not involve a capital expenditure by or on behalf of a health care facility, (i) is to a physical facility or site within one thousand three hundred twenty (1,320) feet from the main entrance of the health care facility where the health care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such court, or by order of the State Department of Health, or by order of any other agency or legal entity of the state, the federal government, or any political subdivision of either, whose order is also approved by the State Department of Health;
(f) The acquisition or otherwise control of any major medical equipment for the provision of medical services; provided, however, (i) the acquisition of any major medical equipment used only for research purposes, and (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

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

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

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

(j) Any capital expenditure or deferred capital expenditure by or on behalf of a health care facility not covered by paragraphs (a) through (h);
(k) The contracting of a health care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h) to establish a home office, subunit, or branch office in the space operated as a health care facility through a formal arrangement with an existing health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

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

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

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

(c) The department may issue a certificate of need for the addition to or expansion of any skilled nursing facility that is part of an existing continuing care retirement community.
located in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (c), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of beds that may be authorized under the authority of this paragraph (c) shall not exceed sixty (60) beds.

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

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

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

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

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

(i) The department may issue a certificate of need for the new construction of a skilled nursing facility in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (i), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 43-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (i) shall not exceed sixty (60) beds.
If the skilled nursing facility authorized by the certificate of need issued under this paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

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

(k) The department may issue a certificate of need for the construction of a nursing facility at a continuing care retirement community in Lowndes County. The total number of beds that may be authorized under the authority of this paragraph (k) shall not exceed sixty (60) beds. From and after July 1, 2001, the prohibition on the facility participating in the Medicaid program (Section 43-13-101 et seq.) that was a condition of issuance of the certificate of need under this paragraph (k) shall be revised as follows: The nursing facility may participate in the Medicaid program from and after July 1, 2001, if the owner of the facility on July 1, 2001, agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than thirty (30)
patients in the facility in any month or for any patient in the facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the facility shall be a condition of licensure of the facility, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after July 1, 2001. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the facility for participation in the Medicaid program. If the facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the written agreement.

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

(m) The State Department of Health may issue a certificate of need to a county-owned hospital in the Second Judicial District of Panola County for the conversion of not more than seventy-two (72) hospital beds to nursing facility beds, provided that the recipient of the certificate of need agrees in writing that none of the beds at the nursing facility will be certified for participation in the Medicaid program (Section
and that no claim will be submitted for Medicaid reimbursement in the nursing facility in any day or for any patient in the nursing facility. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the nursing facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify any of the beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by admitting or keeping in the nursing facility on a regular or continuing basis any patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the nursing facility, at the time that the department determines, after a hearing complying with due process, that the nursing facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require
substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(n) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (n), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (n) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the
department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after the effective date of July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(o) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (o), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall
revoke the certificate of need, if it is still outstanding, and
shall deny or revoke the license of the skilled nursing facility,
at the time that the department determines, after a hearing
complying with due process, that the facility has failed to comply
with any of the conditions upon which the certificate of need was
issued, as provided in this paragraph and in the written agreement
by the recipient of the certificate of need. The total number of
nursing facility beds that may be authorized by any certificate of
need issued under this paragraph (o) shall not exceed sixty (60)
beds. If the certificate of need authorized under this paragraph
is not issued within twelve (12) months after July 1, 2001, the
department shall deny the application for the certificate of need
and shall not issue the certificate of need at any time after the
twelve-month period, unless the issuance is contested. If the
certificate of need is issued and substantial construction of the
nursing facility beds has not commenced within eighteen (18)
months after the effective date of July 1, 2001, the State
Department of Health, after a hearing complying with due process,
shall revoke the certificate of need if it is still outstanding,
and the department shall not issue a license for the nursing
facility at any time after the eighteen-month period. Provided,
however, that if the issuance of the certificate of need is
contested, the department shall require substantial construction
of the nursing facility beds within six (6) months after final
adjudication on the issuance of the certificate of need.

(p) The department may issue a certificate of need for
the construction of a municipally-owned nursing facility within
the Town of Belmont in Tishomingo County, not to exceed sixty (60)
beds, provided that the recipient of the certificate of need
agrees in writing that the skilled nursing facility will not at
any time participate in the Medicaid program (Section 43-13-101 et
seq.) or admit or keep any patients in the skilled nursing
facility who are participating in the Medicaid program. This
written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (p), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 43-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period.
Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

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

(ii) Subject to the provisions of subparagraph (v), during each of the next four (4) fiscal years, the department shall issue six (6) certificates of need for new nursing facility beds, as follows: During fiscal years 2000, 2001 and 2002, one (1) certificate of need shall be issued for new nursing facility beds in the county in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan that has the highest need in the district for those beds; and two (2) certificates of need shall be issued for new nursing facility beds in the two (2) counties from the state at large that have the highest need in the state for those beds, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. During fiscal year 2003, one (1) certificate of need shall be issued for new nursing facility beds in any county having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, that has not received a certificate of need under this paragraph (q) during the three (3)
previous fiscal years. During fiscal year 2000, in addition to
the six (6) certificates of need authorized in this subparagraph,
the department also shall issue a certificate of need for new
nursing facility beds in Amite County and a certificate of need
for new nursing facility beds in Carroll County.

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

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

(v) If a certificate of need is authorized to be
issued under this paragraph (q) for nursing facility beds in a
county on the basis of the need in the Long-Term Care Planning
District during any fiscal year of the four-year period, a
certificate of need shall not also be available under this
paragraph (q) for additional nursing facility beds in that county
on the basis of the need in the state at large, and that county
shall be excluded in determining which counties have the highest
need for nursing facility beds in the state at large for that
fiscal year. After a certificate of need has been issued under
this paragraph (q) for nursing facility beds in a county during
any fiscal year of the four-year period, a certificate of need
shall not be available again under this paragraph (q) for
additional nursing facility beds in that county during the
four-year period, and that county shall be excluded in determining
which counties have the highest need for nursing facility beds in
succeeding fiscal years.

(vi) If more than one (1) application is made for
a certificate of need for nursing home facility beds available
under this paragraph (q), in Yalobusha, Newton or Tallahatchie
County, and one (1) of the applicants is a county-owned hospital
located in the county where the nursing facility beds are
available, the department shall give priority to the county-owned
hospital in granting the certificate of need if the following
conditions are met:

1. The county-owned hospital fully meets all
applicable criteria and standards required to obtain a certificate
of need for the nursing facility beds; and
2. The county-owned hospital's qualifications for the certificate of need, as shown in its application and as determined by the department, are at least equal to the qualifications of the other applicants for the certificate of need.

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

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

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

(3) The State Department of Health may grant approval for and issue certificates of need to any person proposing the new construction of, addition to, conversion of beds of or expansion of any health care facility defined in subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h). The total number of beds which may be authorized by such certificates of need shall not exceed three hundred thirty-four (334) beds for the entire state.

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

(b) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric residential treatment facility beds in Warren County, not to exceed sixty (60) psychiatric residential treatment facility beds, provided that the facility agrees in writing that no more than thirty (30) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.) for the use of any patients other than those who are participating only in the Medicaid program of another state, and that no claim will be submitted to the Division of Medicaid for Medicaid reimbursement.
for more than thirty (30) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program for the use of any patients other than those who are participating only in the Medicaid program of another state. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Mississippi Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

The State Department of Health, on or before July 1, 2002, shall transfer the certificate of need authorized under the authority of this paragraph (b), or reissue the certificate of need if it has expired, to River Region Health System.

(c) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a hospital currently operating Medicaid-certified acute psychiatric beds for adolescents in DeSoto County, for the establishment of a forty-bed psychiatric residential treatment facility in DeSoto
County, provided that the hospital agrees in writing (i) that the
hospital shall give priority for the use of those forty (40) beds
to Mississippi residents who are presently being treated in
out-of-state facilities, and (ii) that no more than fifteen (15)
of the beds at the psychiatric residential treatment facility will
be certified for participation in the Medicaid program (Section
43-13-101 et seq.), and that no claim will be submitted for
Medicaid reimbursement for more than fifteen (15) patients in the
psychiatric residential treatment facility in any day or for any
patient in the psychiatric residential treatment facility who is
in a bed that is not Medicaid-certified. This written agreement
by the recipient of the certificate of need shall be a condition
of the issuance of the certificate of need under this paragraph,
and the agreement shall be fully binding on any subsequent owner
of the psychiatric residential treatment facility if the ownership
of the facility is transferred at any time after the issuance of
the certificate of need. After this written agreement is
executed, the Division of Medicaid and the State Department of
Health shall not certify more than fifteen (15) of the beds in the
psychiatric residential treatment facility for participation in
the Medicaid program. If the psychiatric residential treatment
facility violates the terms of the written agreement by admitting
or keeping in the facility on a regular or continuing basis more
than fifteen (15) patients who are participating in the Medicaid
program, the State Department of Health shall revoke the license
of the facility, at the time that the department determines, after
a hearing complying with due process, that the facility has
violated the condition upon which the certificate of need was
issued, as provided in this paragraph and in the written
agreement.

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

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

(f) The department shall issue a certificate of need to a one-hundred-thirty-four-bed specialty hospital located on twenty-nine and forty-four one-hundredths (29.44) commercial acres at 5900 Highway 39 North in Meridian (Lauderdale County), Mississippi, for the addition, construction or expansion of child/adolescent psychiatric residential treatment facility beds in Lauderdale County. As a condition of issuance of the certificate of need under this paragraph, the facility shall give priority in admissions to the child/adolescent psychiatric residential treatment facility beds authorized under this paragraph to patients who otherwise would require out-of-state placement. The Division of Medicaid, in conjunction with the Department of Human Services, shall furnish the facility a list of all out-of-state patients on a quarterly basis. Furthermore, notice shall also be provided to the parent, custodial parent or guardian of each out-of-state patient notifying them of the priority status granted by this paragraph. For purposes of this paragraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of
child/adolescent psychiatric residential treatment facility beds that may be authorized under the authority of this paragraph shall be sixty (60) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this paragraph or for the beds converted pursuant to the authority of that certificate of need.

(4) (a) From and after July 1, 1993, the department shall not issue a certificate of need to any person for the new construction of any hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the conversion of any other health care facility to a hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the addition of any child/adolescent psychiatric or child/adolescent chemical dependency beds in any hospital, psychiatric hospital or chemical dependency hospital, or for the conversion of any beds of another category in any hospital, psychiatric hospital or chemical dependency hospital to child/adolescent psychiatric or child/adolescent chemical dependency beds, except as hereinafter authorized:

(i) The department may issue certificates of need to any person for any purpose described in this subsection, provided that the hospital, psychiatric hospital or chemical dependency hospital does not participate in the Medicaid program (Section 43-13-101 et seq.) at the time of the application for the certificate of need and the owner of the hospital, psychiatric hospital or chemical dependency hospital agrees in writing that the hospital, psychiatric hospital or chemical dependency hospital will not at any time participate in the Medicaid program or admit or keep any patients who are participating in the Medicaid program.
in the hospital, psychiatric hospital or chemical dependency hospital. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital, psychiatric hospital or chemical dependency hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the hospital, psychiatric hospital or chemical dependency hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (a)(i), and if such hospital, psychiatric hospital or chemical dependency hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the hospital, psychiatric hospital or chemical dependency hospital who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital, psychiatric hospital or chemical dependency hospital, at the time that the department determines, after a hearing complying with due process, that the hospital, psychiatric hospital or chemical dependency hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph and in the written agreement by the recipient of the certificate of need.

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

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

If by January 1, 2002, there has been no significant commencement of construction of the beds authorized under this subparagraph (a)(iii), or no significant action taken to convert existing beds to the beds authorized under this subparagraph, then the certificate of need that was previously issued under this subparagraph shall expire. If the previously issued certificate of need expires, the department may accept applications for issuance of another certificate of need for the beds authorized under this subparagraph, and may issue a certificate of need to authorize the construction, expansion or conversion of the beds authorized under this subparagraph.

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

(v) The department may issue a certificate of need to any county hospital located in Leflore County for the construction or expansion of adult psychiatric beds or the conversion of other beds to adult psychiatric beds, not to exceed twenty (20) beds, provided that the recipient of the certificate of need agrees in writing that the adult psychiatric beds will not at any time be certified for participation in the Medicaid program and that the hospital will not admit or keep any patients who are participating in the Medicaid program in any of such adult psychiatric beds. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital if the ownership of the hospital is transferred at any time after the issuance of the certificate of need. Agreement that the adult psychiatric beds will not be certified for participation in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (a)(v), and if such hospital at any time after the issuance of the certificate of need, regardless of the ownership of the hospital, has any of such adult psychiatric beds certified for participation in the Medicaid program or admits or keeps any Medicaid patients in such adult psychiatric beds, the State Department of Health shall revoke the certificate of need, if it
is still outstanding, and shall deny or revoke the license of the
hospital at the time that the department determines, after a
hearing complying with due process, that the hospital has failed
to comply with any of the conditions upon which the certificate of
need was issued, as provided in this subparagraph and in the
written agreement by the recipient of the certificate of need.

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

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

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

(6) The State Department of Health shall issue a certificate
of need to a Mississippi corporation qualified to manage a
long-term care hospital as defined in Section 41-7-173(h)(xii) in
Harrison County, not to exceed eighty (80) beds, including any necessary renovation or construction required for licensure and certification, provided that the recipient of the certificate of need agrees in writing that the long-term care hospital will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the long-term care hospital who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the long-term care hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the long-term care hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subsection (6), and if such long-term care hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the long-term care hospital, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subsection and in the written agreement by the recipient of the certificate of need. For purposes of this subsection, the provision of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan is hereby waived.

(7) The State Department of Health may issue a certificate of need to any hospital in the state to utilize a portion of its beds for the "swing-bed" concept. Any such hospital must be in conformance with the federal regulations regarding such swing-bed
concept at the time it submits its application for a certificate of need to the State Department of Health, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program. Any hospital meeting all federal requirements for participation in the swing-bed program which receives such certificate of need shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such certificate of need shall develop a procedure to insure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient located within a fifty-mile radius of the hospital. When any such hospital has a patient staying in the swing beds of the hospital and the hospital receives notice from a nursing home located within such radius that there is a vacant bed available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital which is subject to the requirements of the two (2) preceding sentences of this subsection may be suspended from participation in the swing-bed program for a reasonable period of time by the State Department of Health if the department, after a hearing complying with due process, determines
that the hospital has failed to comply with any of those
requirements.

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

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

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

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

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

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

(a) Before any construction or conversion may be
undertaken without a certificate of need, the owner of the nursing
facility, in the case of an existing facility, or the applicant to
construct a nursing facility, in the case of new construction,
first must file a written notice of intent and sign a written
agreement with the State Department of Health that the entire
nursing facility will not at any time participate in or have any
beds certified for participation in the Medicaid program (Section
43-13-101 et seq.), will not admit or keep any patients in the
nursing facility who are participating in the Medicaid program,
and will not submit any claim for Medicaid reimbursement for any
patient in the facility. This written agreement by the owner or
applicant shall be a condition of exercising the authority under
this subsection without a certificate of need, and the agreement
shall be fully binding on any subsequent owner of the nursing
facility if the ownership of the facility is transferred at any
time after the agreement is signed. After the written agreement
is signed, the Division of Medicaid and the State Department of
Health shall not certify any beds in the nursing facility for
participation in the Medicaid program. If the nursing facility
violates the terms of the written agreement by participating in
the Medicaid program, having any beds certified for participation
in the Medicaid program, admitting or keeping any patient in the
facility who is participating in the Medicaid program, or
submitting any claim for Medicaid reimbursement for any patient in
the facility, the State Department of Health shall revoke the
license of the nursing facility at the time that the department
determines, after a hearing complying with due process, that the
facility has violated the terms of the written agreement.

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

(c) The new construction of a nursing facility or
nursing facility beds or the conversion of other beds to nursing
facility beds described in this section must be either a part of a
completely new continuing care retirement community, as described
in the latest edition of the Mississippi State Health Plan, or an
addition to existing personal care and independent living
components, and so that the completed project will be a continuing
care retirement community, containing (i) independent living
accommodations, (ii) personal care beds, and (iii) the nursing
home facility beds. The three (3) components must be located on a
single site and be operated as one (1) inseparable facility. The
nursing facility component must contain a minimum of thirty (30) beds. Any nursing facility beds authorized by this section will not be counted against the bed need set forth in the State Health Plan, as identified in Section 41-7-171 et seq. This subsection (13) shall stand repealed from and after July 1, 2005.

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

(15) The State Department of Health may authorize the transfer of hospital beds, not to exceed sixty (60) beds, from the North Panola Community Hospital to the South Panola Community Hospital. The authorization for the transfer of those beds shall be exempt from the certificate of need review process.

(16) The State Department of Health shall issue a certificate of need for the construction of a new acute care hospital in the City of Olive Branch in DeSoto County, not to exceed one hundred (100) acute care beds.

(17) Nothing in this section or in any other provision of Section 41-7-171 et seq. shall prevent any nursing facility from designating an appropriate number of existing beds in the facility as beds for providing care exclusively to patients with Alzheimer's disease.
SECTION 2. This act shall take effect and be in force from and after July 1, 2003.