

By: Senator(s) Flowers

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2648

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO REMOVE ALL HOSPITALS OTHER THAN SPECIALTY HOSPITALS FROM THE
3 APPLICATION OF THE HEALTH CARE CERTIFICATE OF NEED LAW; TO AMEND
4 SECTIONS 41-7-190, 41-7-191, 41-7-201, 41-7-202, 41-9-210 AND
5 41-63-4, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
6 PROVISION; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 41-7-173, Mississippi Code of 1972, is
9 amended as follows:

10 41-7-173. For the purposes of Section 41-7-171 et seq., the
11 following words shall have the meanings ascribed in this section,
12 unless the context otherwise requires:

13 (a) "Affected person" means (i) the applicant; (ii) a
14 person residing within the geographic area to be served by the
15 applicant's proposal; (iii) a person who regularly uses health
16 care facilities or HMO's located in the geographic area of the
17 proposal which provide similar service to that which is proposed;
18 (iv) health care facilities and HMO's which have, prior to receipt
19 of the application under review, formally indicated an intention
20 to provide service similar to that of the proposal being
21 considered at a future date; (v) third-party payers who reimburse
22 health care facilities located in the geographical area of the
23 proposal; or (vi) any agency that establishes rates for health
24 care services or HMO's located in the geographic area of the
25 proposal.

26 (b) "Certificate of need" means a written order of the
27 State Department of Health setting forth the affirmative finding
28 that a proposal in prescribed application form, sufficiently
29 satisfies the plans, standards and criteria prescribed for such

30 service or other project by Section 41-7-171 et seq., and by rules
31 and regulations promulgated thereunder by the State Department of
32 Health.

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

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

44 (iii) A "capital expenditure" shall include the
45 acquisition, whether by lease, sufferance, gift, devise, legacy,
46 settlement of a trust or other means, of any facility or part
47 thereof, or equipment for a facility, the expenditure for which
48 would have been considered a capital expenditure if acquired by
49 purchase. Transactions which are separated in time but are
50 planned to be undertaken within twelve (12) months of each other
51 and are components of an overall plan for meeting patient care
52 objectives shall, for purposes of this definition, be viewed in
53 their entirety without regard to their timing.

54 (iv) In those instances where a health care
55 facility or other provider of health services proposes to provide
56 a service in which the capital expenditure for major medical
57 equipment or other than major medical equipment or a combination
58 of the two (2) may have been split between separate parties, the
59 total capital expenditure required to provide the proposed service
60 shall be considered in determining the necessity of certificate of
61 need review and in determining the appropriate certificate of need
62 review fee to be paid. The capital expenditure associated with

63 facilities and equipment to provide services in Mississippi shall
64 be considered regardless of where the capital expenditure was
65 made, in state or out of state, and regardless of the domicile of
66 the party making the capital expenditure, in state or out of
67 state.

68 (d) "Change of ownership" includes, but is not limited
69 to, inter vivos gifts, purchases, transfers, lease arrangements,
70 cash and/or stock transactions or other comparable arrangements
71 whenever any person or entity acquires or controls a majority
72 interest of the facility or service. Changes of ownership from
73 partnerships, single proprietorships or corporations to another
74 form of ownership are specifically included. However, "change of
75 ownership" shall not include any inherited interest acquired as a
76 result of a testamentary instrument or under the laws of descent
77 and distribution of the State of Mississippi.

78 (e) "Commencement of construction" means that all of
79 the following have been completed with respect to a proposal or
80 project proposing construction, renovating, remodeling or
81 alteration:

82 (i) A legally binding written contract has been
83 consummated by the proponent and a lawfully licensed contractor to
84 construct and/or complete the intent of the proposal within a
85 specified period of time in accordance with final architectural
86 plans which have been approved by the licensing authority of the
87 State Department of Health;

88 (ii) Any and all permits and/or approvals deemed
89 lawfully necessary by all authorities with responsibility for such
90 have been secured; and

91 (iii) Actual bona fide undertaking of the subject
92 proposal has commenced, and a progress payment of at least one
93 percent (1%) of the total cost price of the contract has been paid
94 to the contractor by the proponent, and the requirements of this

95 paragraph (e) have been certified to in writing by the State
96 Department of Health.

97 Force account expenditures, such as deposits, securities,
98 bonds, et cetera, may, in the discretion of the State Department
99 of Health, be excluded from any or all of the provisions of
100 defined commencement of construction.

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

104 (g) "Develop," when used in connection with health
105 services, means to undertake those activities which, on their
106 completion, will result in the offering of a new institutional
107 health service or the incurring of a financial obligation as
108 defined under applicable state law in relation to the offering of
109 such services.

110 (h) "Health care facility" includes * * * psychiatric
111 hospitals, chemical dependency hospitals, skilled nursing
112 facilities, end stage renal disease (ESRD) facilities, including
113 freestanding hemodialysis units, intermediate care facilities,
114 ambulatory surgical facilities, intermediate care facilities for
115 the mentally retarded, home health agencies, psychiatric
116 residential treatment facilities, pediatric skilled nursing
117 facilities, long-term care hospitals, comprehensive medical
118 rehabilitation facilities, including facilities owned or operated
119 by the state or a political subdivision or instrumentality of the
120 state, but does not include Christian Science sanatoriums operated
121 or listed and certified by the First Church of Christ, Scientist,
122 Boston, Massachusetts, and does not include hospitals other than
123 those types of hospitals defined in this paragraph (h). This
124 definition shall not apply to facilities for the private practice,
125 either independently or by incorporated medical groups, of
126 physicians, dentists or health care professionals except where
127 those facilities are an integral part of an institutional health

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

130 * * *

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

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

140 (iii) "Skilled nursing facility" means an
141 institution or a distinct part of an institution that is primarily
142 engaged in providing to inpatients skilled nursing care and
143 related services for patients who require medical or nursing care
144 or rehabilitation services for the rehabilitation of injured,
145 disabled or sick persons.

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

154 (v) "Intermediate care facility" means an
155 institution that provides, on a regular basis, health related care
156 and services to individuals who do not require the degree of care
157 and treatment that a hospital or skilled nursing facility is
158 designed to provide, but who, because of their mental or physical
159 condition, require health related care and services (above the
160 level of room and board).

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

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

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

- 184 1. Physical, occupational or speech therapy;
- 185 2. Medical social services;
- 186 3. Part-time or intermittent services of a
187 home health aide;
- 188 4. Other services as approved by the
189 licensing agency for home health agencies;
- 190 5. Medical supplies, other than drugs and
191 biologicals, and the use of medical appliances; or

192 6. Medical services provided by an intern or
193 resident-in-training at a hospital under a teaching program of
194 the hospital.

195 Further, all skilled nursing services and those services
196 listed in items 1. through 4. of this subparagraph (viii) must be
197 provided directly by the licensed home health agency. For
198 purposes of this subparagraph, "directly" means either through an
199 agency employee or by an arrangement with another individual not
200 defined as a health care facility.

201 This subparagraph (viii) shall not apply to health care
202 facilities that had contracts for the above services with a home
203 health agency on January 1, 1990.

204 (ix) "Psychiatric residential treatment facility"
205 means any nonhospital establishment with permanent licensed
206 facilities that provides a twenty-four-hour program of care by
207 qualified therapists including, but not limited to, duly licensed
208 mental health professionals, psychiatrists, psychologists,
209 psychotherapists and licensed certified social workers, for
210 emotionally disturbed children and adolescents referred to the
211 facility by a court, local school district or by the Department of
212 Human Services, who are not in an acute phase of illness requiring
213 the services of a psychiatric hospital, and are in need of those
214 restorative treatment services. For purposes of this paragraph,
215 the term "emotionally disturbed" means a condition exhibiting one
216 or more of the following characteristics over a long period of
217 time and to a marked degree, that adversely affects educational
218 performance:

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

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

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

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

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

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

237 (xi) "Long-term care hospital" means a
238 freestanding, Medicare-certified hospital that has an average
239 length of inpatient stay greater than twenty-five (25) days, that
240 is primarily engaged in providing chronic or long-term medical
241 care to patients who do not require more than three (3) hours of
242 rehabilitation or comprehensive rehabilitation per day, and has a
243 transfer agreement with an acute care medical center and a
244 comprehensive medical rehabilitation facility. Long-term care
245 hospitals shall not use rehabilitation, comprehensive medical
246 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
247 nursing home, skilled nursing facility, or sub-acute care facility
248 in association with its name.

249 (xii) "Comprehensive medical rehabilitation
250 facility" means a hospital or hospital unit that is licensed
251 and/or certified as a comprehensive medical rehabilitation
252 facility that provides specialized programs that are accredited by
253 the Commission on Accreditation of Rehabilitation Facilities and
254 supervised by a physician board certified or board eligible in
255 Physiatry or other doctor of medicine or osteopathy with at least
256 two (2) years of training in the medical direction of a
257 comprehensive rehabilitation program that:

- 258 1. Includes evaluation and treatment of
259 individuals with physical disabilities;
- 260 2. Emphasizes education and training of
261 individuals with disabilities;
- 262 3. Incorporates at least the following core
263 disciplines:
- 264 (i) Physical Therapy;
- 265 (ii) Occupational Therapy;
- 266 (iii) Speech and Language Therapy;
- 267 (iv) Rehabilitation Nursing; and
- 268 4. Incorporates at least three (3) of the
269 following disciplines:
- 270 (i) Psychology;
- 271 (ii) Audiology;
- 272 (iii) Respiratory Therapy;
- 273 (iv) Therapeutic Recreation;
- 274 (v) Orthotics;
- 275 (vi) Prosthetics;
- 276 (vii) Special Education;
- 277 (viii) Vocational Rehabilitation;
- 278 (ix) Psychotherapy;
- 279 (x) Social Work;
- 280 (xi) Rehabilitation Engineering.

281 These specialized programs include, but are not limited to:
282 spinal cord injury programs, head injury programs and infant and
283 early childhood development programs.

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

287 (i) Provides or otherwise makes available to
288 enrolled participants health care services, including
289 substantially the following basic health care services: usual

290 physician services, hospitalization, laboratory, x-ray, emergency
291 and preventive services, and out-of-area coverage;

292 (ii) Is compensated (except for copayments) for
293 the provision of the basic health care services listed in
294 subparagraph (i) of this paragraph to enrolled participants on a
295 predetermined basis; and

296 (iii) Provides physician services primarily:

297 1. Directly through physicians who are either
298 employees or partners of such organization; or

299 2. Through arrangements with individual
300 physicians or one or more groups of physicians (organized on a
301 group practice or individual practice basis).

302 (j) "Health service area" means a geographic area of
303 the state designated in the State Health Plan as the area to be
304 used in planning for specified health facilities and services and
305 to be used when considering certificate of need applications to
306 provide health facilities and services.

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

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

314 (m) "Major medical equipment" means medical equipment
315 designed for providing medical or any health related service which
316 costs in excess of One Million Five Hundred Thousand Dollars
317 (\$1,500,000.00). However, this definition shall not be applicable
318 to clinical laboratories if they are determined by the State
319 Department of Health to be independent of any physician's office,
320 hospital or other health care facility or otherwise not so defined
321 by federal or state law, or rules and regulations promulgated
322 thereunder.

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

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

331 (p) "Person" means an individual, a trust or estate,
332 partnership, corporation (including associations, joint stock
333 companies and insurance companies), the state or a political
334 subdivision or instrumentality of the state.

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

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

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

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

352 **SECTION 2.** Section 41-7-190, Mississippi Code of 1972, is
353 amended as follows:

354 41-7-190. No corporation, foreign or domestic, partnership,
355 individual(s) or association of those entities or of persons

356 whatsoever, or any combination thereof, shall own, possess or
357 exercise control over, in any manner, more than twenty percent
358 (20%) of the beds in health care facilities defined in Section
359 41-7-173(h)(iii) and (v) in the defined health service area of the
360 State of Mississippi.

361 Health care facilities owned, operated or under control of
362 the United States government, the state government or political
363 subdivision of either are excluded from the limitation of this
364 section.

365 **SECTION 3.** Section 41-7-191, Mississippi Code of 1972, is
366 amended as follows:

367 41-7-191. (1) No person shall engage in any of the
368 following activities without obtaining the required certificate of
369 need:

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

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

379 (c) Any change in the existing bed complement of any
380 health care facility through the addition or conversion of any
381 beds or the alteration, modernizing or refurbishing of any unit or
382 department in which the beds may be located; however, if a health
383 care facility has voluntarily delicensed some of its existing bed
384 complement, it may later relicense some or all of its delicensed
385 beds without the necessity of having to acquire a certificate of
386 need. The State Department of Health shall maintain a record of
387 the delicensing health care facility and its voluntarily
388 delicensed beds and continue counting those beds as part of the

389 state's total bed count for health care planning purposes. If a
390 health care facility that has voluntarily delicensed some of its
391 beds later desires to relicense some or all of its voluntarily
392 delicensed beds, it shall notify the State Department of Health of
393 its intent to increase the number of its licensed beds. The State
394 Department of Health shall survey the health care facility within
395 thirty (30) days of that notice and, if appropriate, issue the
396 health care facility a new license reflecting the new contingent
397 of beds. However, in no event may a health care facility that has
398 voluntarily delicensed some of its beds be reissued a license to
399 operate beds in excess of its bed count before the voluntary
400 delicensure of some of its beds without seeking certificate of
401 need approval;

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

- 406 (i) Open heart surgery services;
- 407 (ii) Cardiac catheterization services;
- 408 (iii) Comprehensive inpatient rehabilitation
409 services;
- 410 (iv) Licensed psychiatric services;
- 411 (v) Licensed chemical dependency services;
- 412 (vi) Radiation therapy services;
- 413 (vii) Diagnostic imaging services of an invasive
414 nature, i.e. invasive digital angiography;
- 415 (viii) Nursing home care as defined in
416 subparagraphs (iii), (v) and (vii) of Section 41-7-173(h);
- 417 (ix) Home health services;
- 418 (x) Swing-bed services;
- 419 (xi) Ambulatory surgical services;
- 420 (xii) Magnetic resonance imaging services;

421 (xiii) Extracorporeal shock wave lithotripsy
422 services;

423 (xiv) Long-term care hospital services;

424 (xv) Positron Emission Tomography (PET) services;

425 (e) The relocation of one or more health services from
426 one physical facility or site to another physical facility or
427 site, unless such relocation, which does not involve a capital
428 expenditure by or on behalf of a health care facility, (i) is to a
429 physical facility or site within one thousand three hundred twenty
430 (1,320) feet from the main entrance of the health care facility
431 where the health care service is located, or (ii) is the result of
432 an order of a court of appropriate jurisdiction or a result of
433 pending litigation in such court, or by order of the State
434 Department of Health, or by order of any other agency or legal
435 entity of the state, the federal government, or any political
436 subdivision of either, whose order is also approved by the State
437 Department of Health;

438 (f) The acquisition or otherwise control of any major
439 medical equipment for the provision of medical services; * * *
440 however, (i) the acquisition of any major medical equipment used
441 only for research purposes, and (ii) the acquisition of major
442 medical equipment to replace medical equipment for which a
443 facility is already providing medical services and for which the
444 State Department of Health has been notified before the date of
445 such acquisition shall be exempt from this paragraph; an
446 acquisition for less than fair market value must be reviewed, if
447 the acquisition at fair market value would be subject to review;

448 (g) Changes of ownership of existing health care
449 facilities in which a notice of intent is not filed with the State
450 Department of Health at least thirty (30) days prior to the date
451 such change of ownership occurs, or a change in services or bed
452 capacity as prescribed in paragraph (c) or (d) of this subsection
453 as a result of the change of ownership; an acquisition for less

454 than fair market value must be reviewed, if the acquisition at
455 fair market value would be subject to review;

456 (h) The change of ownership of any health care facility
457 defined in subparagraphs (iii), (v) and (vii) of Section
458 41-7-173(h), in which a notice of intent as described in paragraph
459 (g) has not been filed and if the Executive Director, Division of
460 Medicaid, Office of the Governor, has not certified in writing
461 that there will be no increase in allowable costs to Medicaid from
462 revaluation of the assets or from increased interest and
463 depreciation as a result of the proposed change of ownership;

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

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

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

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

484 (a) The department may issue a certificate of need to
485 any person proposing the new construction of any health care
486 facility defined in subparagraphs (iii) and (v) of Section

487 41-7-173(h) as part of a life care retirement facility, in any
488 county bordering on the Gulf of Mexico in which is located a
489 National Aeronautics and Space Administration facility, not to
490 exceed forty (40) beds. From and after July 1, 1999, there shall
491 be no prohibition or restrictions on participation in the Medicaid
492 program (Section 43-13-101 et seq.) for the beds in the health
493 care facility that were authorized under this paragraph (a).

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

501 (c) The department may issue a certificate of need for
502 the addition to or expansion of any skilled nursing facility that
503 is part of an existing continuing care retirement community
504 located in Madison County, provided that the recipient of the
505 certificate of need agrees in writing that the skilled nursing
506 facility will not at any time participate in the Medicaid program
507 (Section 43-13-101 et seq.) or admit or keep any patients in the
508 skilled nursing facility who are participating in the Medicaid
509 program. This written agreement by the recipient of the
510 certificate of need shall be fully binding on any subsequent owner
511 of the skilled nursing facility, if the ownership of the facility
512 is transferred at any time after the issuance of the certificate
513 of need. Agreement that the skilled nursing facility will not
514 participate in the Medicaid program shall be a condition of the
515 issuance of a certificate of need to any person under this
516 paragraph (c), and if such skilled nursing facility at any time
517 after the issuance of the certificate of need, regardless of the
518 ownership of the facility, participates in the Medicaid program or
519 admits or keeps any patients in the facility who are participating

520 in the Medicaid program, the State Department of Health shall
521 revoke the certificate of need, if it is still outstanding, and
522 shall deny or revoke the license of the skilled nursing facility,
523 at the time that the department determines, after a hearing
524 complying with due process, that the facility has failed to comply
525 with any of the conditions upon which the certificate of need was
526 issued, as provided in this paragraph and in the written agreement
527 by the recipient of the certificate of need. The total number of
528 beds that may be authorized under the authority of this paragraph
529 (c) shall not exceed sixty (60) beds.

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

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

547 (f) The State Department of Health may issue a
548 certificate of need for conversion of a county hospital facility
549 in Itawamba County to a nursing facility, not to exceed sixty (60)
550 beds, including any necessary construction, renovation or
551 expansion. From and after July 1, 1999, there shall be no
552 prohibition or restrictions on participation in the Medicaid

553 program (Section 43-13-101 et seq.) for the beds in the nursing
554 facility that were authorized under this paragraph (f).

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

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

571 (i) The department may issue a certificate of need for
572 the new construction of a skilled nursing facility in Leake
573 County, provided that the recipient of the certificate of need
574 agrees in writing that the skilled nursing facility will not at
575 any time participate in the Medicaid program (Section 43-13-101 et
576 seq.) or admit or keep any patients in the skilled nursing
577 facility who are participating in the Medicaid program. This
578 written agreement by the recipient of the certificate of need
579 shall be fully binding on any subsequent owner of the skilled
580 nursing facility, if the ownership of the facility is transferred
581 at any time after the issuance of the certificate of need.
582 Agreement that the skilled nursing facility will not participate
583 in the Medicaid program shall be a condition of the issuance of a
584 certificate of need to any person under this paragraph (i), and if
585 such skilled nursing facility at any time after the issuance of

586 the certificate of need, regardless of the ownership of the
587 facility, participates in the Medicaid program or admits or keeps
588 any patients in the facility who are participating in the Medicaid
589 program, the State Department of Health shall revoke the
590 certificate of need, if it is still outstanding, and shall deny or
591 revoke the license of the skilled nursing facility, at the time
592 that the department determines, after a hearing complying with due
593 process, that the facility has failed to comply with any of the
594 conditions upon which the certificate of need was issued, as
595 provided in this paragraph and in the written agreement by the
596 recipient of the certificate of need. The provision of Section
597 43-7-193(1) regarding substantial compliance of the projection of
598 need as reported in the current State Health Plan is waived for
599 the purposes of this paragraph. The total number of nursing
600 facility beds that may be authorized by any certificate of need
601 issued under this paragraph (i) shall not exceed sixty (60) beds.
602 If the skilled nursing facility authorized by the certificate of
603 need issued under this paragraph is not constructed and fully
604 operational within eighteen (18) months after July 1, 1994, the
605 State Department of Health, after a hearing complying with due
606 process, shall revoke the certificate of need, if it is still
607 outstanding, and shall not issue a license for the skilled nursing
608 facility at any time after the expiration of the eighteen-month
609 period.

610 (j) The department may issue certificates of need to
611 allow any existing freestanding long-term care facility in
612 Tishomingo County and Hancock County that on July 1, 1995, is
613 licensed with fewer than sixty (60) beds. For the purposes of
614 this paragraph (j), the provision of Section 41-7-193(1) requiring
615 substantial compliance with the projection of need as reported in
616 the current State Health Plan is waived. From and after July 1,
617 1999, there shall be no prohibition or restrictions on
618 participation in the Medicaid program (Section 43-13-101 et seq.)

619 for the beds in the long-term care facilities that were authorized
620 under this paragraph (j).

621 (k) The department may issue a certificate of need for
622 the construction of a nursing facility at a continuing care
623 retirement community in Lowndes County. The total number of beds
624 that may be authorized under the authority of this paragraph (k)
625 shall not exceed sixty (60) beds. From and after July 1, 2001,
626 the prohibition on the facility participating in the Medicaid
627 program (Section 43-13-101 et seq.) that was a condition of
628 issuance of the certificate of need under this paragraph (k) shall
629 be revised as follows: The nursing facility may participate in
630 the Medicaid program from and after July 1, 2001, if the owner of
631 the facility on July 1, 2001, agrees in writing that no more than
632 thirty (30) of the beds at the facility will be certified for
633 participation in the Medicaid program, and that no claim will be
634 submitted for Medicaid reimbursement for more than thirty (30)
635 patients in the facility in any month or for any patient in the
636 facility who is in a bed that is not Medicaid-certified. This
637 written agreement by the owner of the facility shall be a
638 condition of licensure of the facility, and the agreement shall be
639 fully binding on any subsequent owner of the facility if the
640 ownership of the facility is transferred at any time after July 1,
641 2001. After this written agreement is executed, the Division of
642 Medicaid and the State Department of Health shall not certify more
643 than thirty (30) of the beds in the facility for participation in
644 the Medicaid program. If the facility violates the terms of the
645 written agreement by admitting or keeping in the facility on a
646 regular or continuing basis more than thirty (30) patients who are
647 participating in the Medicaid program, the State Department of
648 Health shall revoke the license of the facility, at the time that
649 the department determines, after a hearing complying with due
650 process, that the facility has violated the written agreement.

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

661 (m) The State Department of Health may issue a
662 certificate of need to a county-owned hospital in the Second
663 Judicial District of Panola County for the conversion of not more
664 than seventy-two (72) hospital beds to nursing facility beds,
665 provided that the recipient of the certificate of need agrees in
666 writing that none of the beds at the nursing facility will be
667 certified for participation in the Medicaid program (Section
668 43-13-101 et seq.), and that no claim will be submitted for
669 Medicaid reimbursement in the nursing facility in any day or for
670 any patient in the nursing facility. This written agreement by
671 the recipient of the certificate of need shall be a condition of
672 the issuance of the certificate of need under this paragraph, and
673 the agreement shall be fully binding on any subsequent owner of
674 the nursing facility if the ownership of the nursing facility is
675 transferred at any time after the issuance of the certificate of
676 need. After this written agreement is executed, the Division of
677 Medicaid and the State Department of Health shall not certify any
678 of the beds in the nursing facility for participation in the
679 Medicaid program. If the nursing facility violates the terms of
680 the written agreement by admitting or keeping in the nursing
681 facility on a regular or continuing basis any patients who are
682 participating in the Medicaid program, the State Department of
683 Health shall revoke the license of the nursing facility, at the

684 time that the department determines, after a hearing complying
685 with due process, that the nursing facility has violated the
686 condition upon which the certificate of need was issued, as
687 provided in this paragraph and in the written agreement. If the
688 certificate of need authorized under this paragraph is not issued
689 within twelve (12) months after July 1, 2001, the department shall
690 deny the application for the certificate of need and shall not
691 issue the certificate of need at any time after the twelve-month
692 period, unless the issuance is contested. If the certificate of
693 need is issued and substantial construction of the nursing
694 facility beds has not commenced within eighteen (18) months after
695 July 1, 2001, the State Department of Health, after a hearing
696 complying with due process, shall revoke the certificate of need
697 if it is still outstanding, and the department shall not issue a
698 license for the nursing facility at any time after the
699 eighteen-month period. * * * However, * * * if the issuance of
700 the certificate of need is contested, the department shall require
701 substantial construction of the nursing facility beds within six
702 (6) months after final adjudication on the issuance of the
703 certificate of need.

704 (n) The department may issue a certificate of need for
705 the new construction, addition or conversion of skilled nursing
706 facility beds in Madison County, provided that the recipient of
707 the certificate of need agrees in writing that the skilled nursing
708 facility will not at any time participate in the Medicaid program
709 (Section 43-13-101 et seq.) or admit or keep any patients in the
710 skilled nursing facility who are participating in the Medicaid
711 program. This written agreement by the recipient of the
712 certificate of need shall be fully binding on any subsequent owner
713 of the skilled nursing facility, if the ownership of the facility
714 is transferred at any time after the issuance of the certificate
715 of need. Agreement that the skilled nursing facility will not
716 participate in the Medicaid program shall be a condition of the

717 issuance of a certificate of need to any person under this
718 paragraph (n), and if such skilled nursing facility at any time
719 after the issuance of the certificate of need, regardless of the
720 ownership of the facility, participates in the Medicaid program or
721 admits or keeps any patients in the facility who are participating
722 in the Medicaid program, the State Department of Health shall
723 revoke the certificate of need, if it is still outstanding, and
724 shall deny or revoke the license of the skilled nursing facility,
725 at the time that the department determines, after a hearing
726 complying with due process, that the facility has failed to comply
727 with any of the conditions upon which the certificate of need was
728 issued, as provided in this paragraph and in the written agreement
729 by the recipient of the certificate of need. The total number of
730 nursing facility beds that may be authorized by any certificate of
731 need issued under this paragraph (n) shall not exceed sixty (60)
732 beds. If the certificate of need authorized under this paragraph
733 is not issued within twelve (12) months after July 1, 1998, the
734 department shall deny the application for the certificate of need
735 and shall not issue the certificate of need at any time after the
736 twelve-month period, unless the issuance is contested. If the
737 certificate of need is issued and substantial construction of the
738 nursing facility beds has not commenced within eighteen (18)
739 months after the effective date of July 1, 1998, the State
740 Department of Health, after a hearing complying with due process,
741 shall revoke the certificate of need if it is still outstanding,
742 and the department shall not issue a license for the nursing
743 facility at any time after the eighteen-month period. * * *
744 However, * * * if the issuance of the certificate of need is
745 contested, the department shall require substantial construction
746 of the nursing facility beds within six (6) months after final
747 adjudication on the issuance of the certificate of need.

748 (o) The department may issue a certificate of need for
749 the new construction, addition or conversion of skilled nursing

750 facility beds in Leake County, provided that the recipient of the
751 certificate of need agrees in writing that the skilled nursing
752 facility will not at any time participate in the Medicaid program
753 (Section 43-13-101 et seq.) or admit or keep any patients in the
754 skilled nursing facility who are participating in the Medicaid
755 program. This written agreement by the recipient of the
756 certificate of need shall be fully binding on any subsequent owner
757 of the skilled nursing facility, if the ownership of the facility
758 is transferred at any time after the issuance of the certificate
759 of need. Agreement that the skilled nursing facility will not
760 participate in the Medicaid program shall be a condition of the
761 issuance of a certificate of need to any person under this
762 paragraph (o), and if such skilled nursing facility at any time
763 after the issuance of the certificate of need, regardless of the
764 ownership of the facility, participates in the Medicaid program or
765 admits or keeps any patients in the facility who are participating
766 in the Medicaid program, the State Department of Health shall
767 revoke the certificate of need, if it is still outstanding, and
768 shall deny or revoke the license of the skilled nursing facility,
769 at the time that the department determines, after a hearing
770 complying with due process, that the facility has failed to comply
771 with any of the conditions upon which the certificate of need was
772 issued, as provided in this paragraph and in the written agreement
773 by the recipient of the certificate of need. The total number of
774 nursing facility beds that may be authorized by any certificate of
775 need issued under this paragraph (o) shall not exceed sixty (60)
776 beds. If the certificate of need authorized under this paragraph
777 is not issued within twelve (12) months after July 1, 2001, the
778 department shall deny the application for the certificate of need
779 and shall not issue the certificate of need at any time after the
780 twelve-month period, unless the issuance is contested. If the
781 certificate of need is issued and substantial construction of the
782 nursing facility beds has not commenced within eighteen (18)

783 months after the effective date of July 1, 2001, the State
784 Department of Health, after a hearing complying with due process,
785 shall revoke the certificate of need if it is still outstanding,
786 and the department shall not issue a license for the nursing
787 facility at any time after the eighteen-month period. * * *
788 However, * * * if the issuance of the certificate of need is
789 contested, the department shall require substantial construction
790 of the nursing facility beds within six (6) months after final
791 adjudication on the issuance of the certificate of need.

792 (p) The department may issue a certificate of need for
793 the construction of a municipally-owned nursing facility within
794 the Town of Belmont in Tishomingo County, not to exceed sixty (60)
795 beds, provided that the recipient of the certificate of need
796 agrees in writing that the skilled nursing facility will not at
797 any time participate in the Medicaid program (Section 43-13-101 et
798 seq.) or admit or keep any patients in the skilled nursing
799 facility who are participating in the Medicaid program. This
800 written agreement by the recipient of the certificate of need
801 shall be fully binding on any subsequent owner of the skilled
802 nursing facility, if the ownership of the facility is transferred
803 at any time after the issuance of the certificate of need.

804 Agreement that the skilled nursing facility will not participate
805 in the Medicaid program shall be a condition of the issuance of a
806 certificate of need to any person under this paragraph (p), and if
807 such skilled nursing facility at any time after the issuance of
808 the certificate of need, regardless of the ownership of the
809 facility, participates in the Medicaid program or admits or keeps
810 any patients in the facility who are participating in the Medicaid
811 program, the State Department of Health shall revoke the
812 certificate of need, if it is still outstanding, and shall deny or
813 revoke the license of the skilled nursing facility, at the time
814 that the department determines, after a hearing complying with due
815 process, that the facility has failed to comply with any of the

816 conditions upon which the certificate of need was issued, as
817 provided in this paragraph and in the written agreement by the
818 recipient of the certificate of need. The provision of Section
819 43-7-193(1) regarding substantial compliance of the projection of
820 need as reported in the current State Health Plan is waived for
821 the purposes of this paragraph. If the certificate of need
822 authorized under this paragraph is not issued within twelve (12)
823 months after July 1, 1998, the department shall deny the
824 application for the certificate of need and shall not issue the
825 certificate of need at any time after the twelve-month period,
826 unless the issuance is contested. If the certificate of need is
827 issued and substantial construction of the nursing facility beds
828 has not commenced within eighteen (18) months after July 1, 1998,
829 the State Department of Health, after a hearing complying with due
830 process, shall revoke the certificate of need if it is still
831 outstanding, and the department shall not issue a license for the
832 nursing facility at any time after the eighteen-month
833 period. * * * However, * * * if the issuance of the certificate
834 of need is contested, the department shall require substantial
835 construction of the nursing facility beds within six (6) months
836 after final adjudication on the issuance of the certificate of
837 need.

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

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

871 (iii) Subject to the provisions of subparagraph
872 (v), the certificate of need issued under subparagraph (ii) for
873 nursing facility beds in each Long-Term Care Planning District
874 during each fiscal year shall first be available for nursing
875 facility beds in the county in the district having the highest
876 need for those beds, as shown in the fiscal year 1999 State Health
877 Plan. If there are no applications for a certificate of need for
878 nursing facility beds in the county having the highest need for
879 those beds by the date specified by the department, then the
880 certificate of need shall be available for nursing facility beds

881 in other counties in the district in descending order of the need
882 for those beds, from the county with the second highest need to
883 the county with the lowest need, until an application is received
884 for nursing facility beds in an eligible county in the district.

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

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

914 any fiscal year of the four-year period, a certificate of need
915 shall not be available again under this paragraph (q) for
916 additional nursing facility beds in that county during the
917 four-year period, and that county shall be excluded in determining
918 which counties have the highest need for nursing facility beds in
919 succeeding fiscal years.

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

928 1. The county-owned hospital fully meets all
929 applicable criteria and standards required to obtain a certificate
930 of need for the nursing facility beds; and

931 2. The county-owned hospital's qualifications
932 for the certificate of need, as shown in its application and as
933 determined by the department, are at least equal to the
934 qualifications of the other applicants for the certificate of
935 need.

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

944 (ii) Not more than twenty (20) beds may be
945 authorized by any certificate of need issued under this paragraph
946 (r), and not more than a total of sixty (60) beds may be

947 authorized in any Long-Term Care Planning District by all
948 certificates of need issued under this paragraph (r). However,
949 the total number of beds that may be authorized by all
950 certificates of need issued under this paragraph (r) during any
951 fiscal year shall not exceed one hundred twenty (120) beds, and
952 the total number of beds that may be authorized in any Long-Term
953 Care Planning District during any fiscal year shall not exceed
954 forty (40) beds. Of the certificates of need that are issued for
955 each Long-Term Care Planning District during the next two (2)
956 fiscal years, at least one (1) shall be issued for beds in the
957 northern part of the district, at least one (1) shall be issued
958 for beds in the central part of the district, and at least one (1)
959 shall be issued for beds in the southern part of the district.

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

967 (3) The State Department of Health may grant approval for
968 and issue certificates of need to any person proposing the new
969 construction of, addition to, conversion of beds of or expansion
970 of any health care facility defined in subparagraph (ix)
971 (psychiatric residential treatment facility) of Section
972 41-7-173(h). The total number of beds which may be authorized by
973 such certificates of need shall not exceed three hundred
974 thirty-four (334) beds for the entire state.

975 (a) Of the total number of beds authorized under this
976 subsection, the department shall issue a certificate of need to a
977 privately-owned psychiatric residential treatment facility in
978 Simpson County for the conversion of sixteen (16) intermediate
979 care facility for the mentally retarded (ICF-MR) beds to

980 psychiatric residential treatment facility beds, provided that
981 facility agrees in writing that the facility shall give priority
982 for the use of those sixteen (16) beds to Mississippi residents
983 who are presently being treated in out-of-state facilities.

984 (b) Of the total number of beds authorized under this
985 subsection, the department may issue a certificate or certificates
986 of need for the construction or expansion of psychiatric
987 residential treatment facility beds or the conversion of other
988 beds to psychiatric residential treatment facility beds in Warren
989 County, not to exceed sixty (60) psychiatric residential treatment
990 facility beds, provided that the facility agrees in writing that
991 no more than thirty (30) of the beds at the psychiatric
992 residential treatment facility will be certified for participation
993 in the Medicaid program (Section 43-13-101 et seq.) for the use of
994 any patients other than those who are participating only in the
995 Medicaid program of another state, and that no claim will be
996 submitted to the Division of Medicaid for Medicaid reimbursement
997 for more than thirty (30) patients in the psychiatric residential
998 treatment facility in any day or for any patient in the
999 psychiatric residential treatment facility who is in a bed that is
1000 not Medicaid-certified. This written agreement by the recipient
1001 of the certificate of need shall be a condition of the issuance of
1002 the certificate of need under this paragraph, and the agreement
1003 shall be fully binding on any subsequent owner of the psychiatric
1004 residential treatment facility if the ownership of the facility is
1005 transferred at any time after the issuance of the certificate of
1006 need. After this written agreement is executed, the Division of
1007 Medicaid and the State Department of Health shall not certify more
1008 than thirty (30) of the beds in the psychiatric residential
1009 treatment facility for participation in the Medicaid program for
1010 the use of any patients other than those who are participating
1011 only in the Medicaid program of another state. If the psychiatric
1012 residential treatment facility violates the terms of the written

1013 agreement by admitting or keeping in the facility on a regular or
1014 continuing basis more than thirty (30) patients who are
1015 participating in the Mississippi Medicaid program, the State
1016 Department of Health shall revoke the license of the facility, at
1017 the time that the department determines, after a hearing complying
1018 with due process, that the facility has violated the condition
1019 upon which the certificate of need was issued, as provided in this
1020 paragraph and in the written agreement.

1021 The State Department of Health, on or before July 1, 2002,
1022 shall transfer the certificate of need authorized under the
1023 authority of this paragraph (b), or reissue the certificate of
1024 need if it has expired, to River Region Health System.

1025 (c) Of the total number of beds authorized under this
1026 subsection, the department shall issue a certificate of need to a
1027 hospital currently operating Medicaid-certified acute psychiatric
1028 beds for adolescents in DeSoto County, for the establishment of a
1029 forty-bed psychiatric residential treatment facility in DeSoto
1030 County, provided that the hospital agrees in writing (i) that the
1031 hospital shall give priority for the use of those forty (40) beds
1032 to Mississippi residents who are presently being treated in
1033 out-of-state facilities, and (ii) that no more than fifteen (15)
1034 of the beds at the psychiatric residential treatment facility will
1035 be certified for participation in the Medicaid program (Section
1036 43-13-101 et seq.), and that no claim will be submitted for
1037 Medicaid reimbursement for more than fifteen (15) patients in the
1038 psychiatric residential treatment facility in any day or for any
1039 patient in the psychiatric residential treatment facility who is
1040 in a bed that is not Medicaid-certified. This written agreement
1041 by the recipient of the certificate of need shall be a condition
1042 of the issuance of the certificate of need under this paragraph,
1043 and the agreement shall be fully binding on any subsequent owner
1044 of the psychiatric residential treatment facility if the ownership
1045 of the facility is transferred at any time after the issuance of

1046 the certificate of need. After this written agreement is
1047 executed, the Division of Medicaid and the State Department of
1048 Health shall not certify more than fifteen (15) of the beds in the
1049 psychiatric residential treatment facility for participation in
1050 the Medicaid program. If the psychiatric residential treatment
1051 facility violates the terms of the written agreement by admitting
1052 or keeping in the facility on a regular or continuing basis more
1053 than fifteen (15) patients who are participating in the Medicaid
1054 program, the State Department of Health shall revoke the license
1055 of the facility, at the time that the department determines, after
1056 a hearing complying with due process, that the facility has
1057 violated the condition upon which the certificate of need was
1058 issued, as provided in this paragraph and in the written
1059 agreement.

1060 (d) Of the total number of beds authorized under this
1061 subsection, the department may issue a certificate or certificates
1062 of need for the construction or expansion of psychiatric
1063 residential treatment facility beds or the conversion of other
1064 beds to psychiatric treatment facility beds, not to exceed thirty
1065 (30) psychiatric residential treatment facility beds, in either
1066 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,
1067 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

1068 (e) Of the total number of beds authorized under this
1069 subsection (3) the department shall issue a certificate of need to
1070 a privately-owned, nonprofit psychiatric residential treatment
1071 facility in Hinds County for an eight-bed expansion of the
1072 facility, provided that the facility agrees in writing that the
1073 facility shall give priority for the use of those eight (8) beds
1074 to Mississippi residents who are presently being treated in
1075 out-of-state facilities.

1076 (f) The department shall issue a certificate of need to
1077 a one-hundred-thirty-four-bed specialty hospital located on
1078 twenty-nine and forty-four one-hundredths (29.44) commercial acres

1079 at 5900 Highway 39 North in Meridian (Lauderdale County),
1080 Mississippi, for the addition, construction or expansion of
1081 child/adolescent psychiatric residential treatment facility beds
1082 in Lauderdale County. As a condition of issuance of the
1083 certificate of need under this paragraph, the facility shall give
1084 priority in admissions to the child/adolescent psychiatric
1085 residential treatment facility beds authorized under this
1086 paragraph to patients who otherwise would require out-of-state
1087 placement. The Division of Medicaid, in conjunction with the
1088 Department of Human Services, shall furnish the facility a list of
1089 all out-of-state patients on a quarterly basis. Furthermore,
1090 notice shall also be provided to the parent, custodial parent or
1091 guardian of each out-of-state patient notifying them of the
1092 priority status granted by this paragraph. For purposes of this
1093 paragraph, the provisions of Section 41-7-193(1) requiring
1094 substantial compliance with the projection of need as reported in
1095 the current State Health Plan are waived. The total number of
1096 child/adolescent psychiatric residential treatment facility beds
1097 that may be authorized under the authority of this paragraph shall
1098 be sixty (60) beds. There shall be no prohibition or restrictions
1099 on participation in the Medicaid program (Section 43-13-101 et
1100 seq.) for the person receiving the certificate of need authorized
1101 under this paragraph or for the beds converted pursuant to the
1102 authority of that certificate of need.

1103 (4) (a) From and after July 1, 1993, the department shall
1104 not issue a certificate of need to any person for the new
1105 construction of any * * * psychiatric hospital or chemical
1106 dependency hospital that will contain any child/adolescent
1107 psychiatric or child/adolescent chemical dependency beds, or for
1108 the conversion of any other health care facility to a * * *
1109 psychiatric hospital or chemical dependency hospital that will
1110 contain any child/adolescent psychiatric or child/adolescent
1111 chemical dependency beds, or for the addition of any

1112 child/adolescent psychiatric or child/adolescent chemical
1113 dependency beds in any hospital, psychiatric hospital or chemical
1114 dependency hospital, or for the conversion of any beds of another
1115 category in any hospital, psychiatric hospital or chemical
1116 dependency hospital to child/adolescent psychiatric or
1117 child/adolescent chemical dependency beds, except as hereinafter
1118 authorized:

1119 (i) The department may issue certificates of need
1120 to any person for any purpose described in this subsection,
1121 provided that the hospital, psychiatric hospital or chemical
1122 dependency hospital does not participate in the Medicaid program
1123 (Section 43-13-101 et seq.) at the time of the application for the
1124 certificate of need and the owner of the hospital, psychiatric
1125 hospital or chemical dependency hospital agrees in writing that
1126 the hospital, psychiatric hospital or chemical dependency hospital
1127 will not at any time participate in the Medicaid program or admit
1128 or keep any patients who are participating in the Medicaid program
1129 in the hospital, psychiatric hospital or chemical dependency
1130 hospital. This written agreement by the recipient of the
1131 certificate of need shall be fully binding on any subsequent owner
1132 of the hospital, psychiatric hospital or chemical dependency
1133 hospital, if the ownership of the facility is transferred at any
1134 time after the issuance of the certificate of need. Agreement
1135 that the hospital, psychiatric hospital or chemical dependency
1136 hospital will not participate in the Medicaid program shall be a
1137 condition of the issuance of a certificate of need to any person
1138 under this subparagraph (a)(i), and if such hospital, psychiatric
1139 hospital or chemical dependency hospital at any time after the
1140 issuance of the certificate of need, regardless of the ownership
1141 of the facility, participates in the Medicaid program or admits or
1142 keeps any patients in the hospital, psychiatric hospital or
1143 chemical dependency hospital who are participating in the Medicaid
1144 program, the State Department of Health shall revoke the

1145 certificate of need, if it is still outstanding, and shall deny or
1146 revoke the license of the hospital, psychiatric hospital or
1147 chemical dependency hospital, at the time that the department
1148 determines, after a hearing complying with due process, that the
1149 hospital, psychiatric hospital or chemical dependency hospital has
1150 failed to comply with any of the conditions upon which the
1151 certificate of need was issued, as provided in this subparagraph
1152 and in the written agreement by the recipient of the certificate
1153 of need.

1154 (ii) The department may issue a certificate of
1155 need for the conversion of existing beds in a county hospital in
1156 Choctaw County from acute care beds to child/adolescent chemical
1157 dependency beds. For purposes of this subparagraph, the
1158 provisions of Section 41-7-193(1) requiring substantial compliance
1159 with the projection of need as reported in the current State
1160 Health Plan is waived. The total number of beds that may be
1161 authorized under authority of this subparagraph shall not exceed
1162 twenty (20) beds. There shall be no prohibition or restrictions
1163 on participation in the Medicaid program (Section 43-13-101 et
1164 seq.) for the hospital receiving the certificate of need
1165 authorized under this subparagraph (a)(ii) or for the beds
1166 converted pursuant to the authority of that certificate of need.

1167 (iii) The department may issue a certificate or
1168 certificates of need for the construction or expansion of
1169 child/adolescent psychiatric beds or the conversion of other beds
1170 to child/adolescent psychiatric beds in Warren County. For
1171 purposes of this subparagraph, the provisions of Section
1172 41-7-193(1) requiring substantial compliance with the projection
1173 of need as reported in the current State Health Plan are waived.
1174 The total number of beds that may be authorized under the
1175 authority of this subparagraph shall not exceed twenty (20) beds.
1176 There shall be no prohibition or restrictions on participation in
1177 the Medicaid program (Section 43-13-101 et seq.) for the person

1178 receiving the certificate of need authorized under this
1179 subparagraph (a)(iii) or for the beds converted pursuant to the
1180 authority of that certificate of need.

1181 If by January 1, 2002, there has been no significant
1182 commencement of construction of the beds authorized under this
1183 subparagraph (a)(iii), or no significant action taken to convert
1184 existing beds to the beds authorized under this subparagraph, then
1185 the certificate of need that was previously issued under this
1186 subparagraph shall expire. If the previously issued certificate
1187 of need expires, the department may accept applications for
1188 issuance of another certificate of need for the beds authorized
1189 under this subparagraph, and may issue a certificate of need to
1190 authorize the construction, expansion or conversion of the beds
1191 authorized under this subparagraph.

1192 (iv) The department shall issue a certificate of
1193 need to the Region 7 Mental Health/Retardation Commission for the
1194 construction or expansion of child/adolescent psychiatric beds or
1195 the conversion of other beds to child/adolescent psychiatric beds
1196 in any of the counties served by the commission. For purposes of
1197 this subparagraph, the provisions of Section 41-7-193(1) requiring
1198 substantial compliance with the projection of need as reported in
1199 the current State Health Plan is waived. The total number of beds
1200 that may be authorized under the authority of this subparagraph
1201 shall not exceed twenty (20) beds. There shall be no prohibition
1202 or restrictions on participation in the Medicaid program (Section
1203 43-13-101 et seq.) for the person receiving the certificate of
1204 need authorized under this subparagraph (a)(iv) or for the beds
1205 converted pursuant to the authority of that certificate of need.

1206 (v) The department may issue a certificate of need
1207 to any county hospital located in Leflore County for the
1208 construction or expansion of adult psychiatric beds or the
1209 conversion of other beds to adult psychiatric beds, not to exceed
1210 twenty (20) beds, provided that the recipient of the certificate

1211 of need agrees in writing that the adult psychiatric beds will not
1212 at any time be certified for participation in the Medicaid program
1213 and that the hospital will not admit or keep any patients who are
1214 participating in the Medicaid program in any of such adult
1215 psychiatric beds. This written agreement by the recipient of the
1216 certificate of need shall be fully binding on any subsequent owner
1217 of the hospital if the ownership of the hospital is transferred at
1218 any time after the issuance of the certificate of need. Agreement
1219 that the adult psychiatric beds will not be certified for
1220 participation in the Medicaid program shall be a condition of the
1221 issuance of a certificate of need to any person under this
1222 subparagraph (a)(v), and if such hospital at any time after the
1223 issuance of the certificate of need, regardless of the ownership
1224 of the hospital, has any of such adult psychiatric beds certified
1225 for participation in the Medicaid program or admits or keeps any
1226 Medicaid patients in such adult psychiatric beds, the State
1227 Department of Health shall revoke the certificate of need, if it
1228 is still outstanding, and shall deny or revoke the license of the
1229 hospital at the time that the department determines, after a
1230 hearing complying with due process, that the hospital has failed
1231 to comply with any of the conditions upon which the certificate of
1232 need was issued, as provided in this subparagraph and in the
1233 written agreement by the recipient of the certificate of need.

1234 (vi) The department may issue a certificate or
1235 certificates of need for the expansion of child psychiatric beds
1236 or the conversion of other beds to child psychiatric beds at the
1237 University of Mississippi Medical Center. For purposes of this
1238 subparagraph (a)(vi), the provision of Section 41-7-193(1)
1239 requiring substantial compliance with the projection of need as
1240 reported in the current State Health Plan is waived. The total
1241 number of beds that may be authorized under the authority of this
1242 subparagraph (a)(vi) shall not exceed fifteen (15) beds. There
1243 shall be no prohibition or restrictions on participation in the

1244 Medicaid program (Section 43-13-101 et seq.) for the hospital
1245 receiving the certificate of need authorized under this
1246 subparagraph (a)(vi) or for the beds converted pursuant to the
1247 authority of that certificate of need.

1248 (b) From and after July 1, 1990, no hospital,
1249 psychiatric hospital or chemical dependency hospital shall be
1250 authorized to add any child/adolescent psychiatric or
1251 child/adolescent chemical dependency beds or convert any beds of
1252 another category to child/adolescent psychiatric or
1253 child/adolescent chemical dependency beds without a certificate of
1254 need under the authority of subsection (1)(c) of this section.

1255 (5) The department may issue a certificate of need to a
1256 county hospital in Winston County for the conversion of fifteen
1257 (15) acute care beds to geriatric psychiatric care beds.

1258 (6) The State Department of Health shall issue a certificate
1259 of need to a Mississippi corporation qualified to manage a
1260 long-term care hospital as defined in Section 41-7-173(h)(xi) in
1261 Harrison County, not to exceed eighty (80) beds, including any
1262 necessary renovation or construction required for licensure and
1263 certification, provided that the recipient of the certificate of
1264 need agrees in writing that the long-term care hospital will not
1265 at any time participate in the Medicaid program (Section 43-13-101
1266 et seq.) or admit or keep any patients in the long-term care
1267 hospital who are participating in the Medicaid program. This
1268 written agreement by the recipient of the certificate of need
1269 shall be fully binding on any subsequent owner of the long-term
1270 care hospital, if the ownership of the facility is transferred at
1271 any time after the issuance of the certificate of need. Agreement
1272 that the long-term care hospital will not participate in the
1273 Medicaid program shall be a condition of the issuance of a
1274 certificate of need to any person under this subsection (6), and
1275 if such long-term care hospital at any time after the issuance of
1276 the certificate of need, regardless of the ownership of the

1277 facility, participates in the Medicaid program or admits or keeps
1278 any patients in the facility who are participating in the Medicaid
1279 program, the State Department of Health shall revoke the
1280 certificate of need, if it is still outstanding, and shall deny or
1281 revoke the license of the long-term care hospital, at the time
1282 that the department determines, after a hearing complying with due
1283 process, that the facility has failed to comply with any of the
1284 conditions upon which the certificate of need was issued, as
1285 provided in this subsection and in the written agreement by the
1286 recipient of the certificate of need. For purposes of this
1287 subsection, the provision of Section 41-7-193(1) requiring
1288 substantial compliance with the projection of need as reported in
1289 the current State Health Plan is * * * waived.

1290 (7) The State Department of Health may issue a certificate
1291 of need to any hospital in the state to utilize a portion of its
1292 beds for the "swing-bed" concept. Any such hospital must be in
1293 conformance with the federal regulations regarding such swing-bed
1294 concept at the time it submits its application for a certificate
1295 of need to the State Department of Health, except that such
1296 hospital may have more licensed beds or a higher average daily
1297 census (ADC) than the maximum number specified in federal
1298 regulations for participation in the swing-bed program. Any
1299 hospital meeting all federal requirements for participation in the
1300 swing-bed program which receives such certificate of need shall
1301 render services provided under the swing-bed concept to any
1302 patient eligible for Medicare (Title XVIII of the Social Security
1303 Act) who is certified by a physician to be in need of such
1304 services, and no such hospital shall permit any patient who is
1305 eligible for both Medicaid and Medicare or eligible only for
1306 Medicaid to stay in the swing beds of the hospital for more than
1307 thirty (30) days per admission unless the hospital receives prior
1308 approval for such patient from the Division of Medicaid, Office of
1309 the Governor. Any hospital having more licensed beds or a higher

1310 average daily census (ADC) than the maximum number specified in
1311 federal regulations for participation in the swing-bed program
1312 which receives such certificate of need shall develop a procedure
1313 to insure that before a patient is allowed to stay in the swing
1314 beds of the hospital, there are no vacant nursing home beds
1315 available for that patient located within a fifty-mile radius of
1316 the hospital. When any such hospital has a patient staying in the
1317 swing beds of the hospital and the hospital receives notice from a
1318 nursing home located within such radius that there is a vacant bed
1319 available for that patient, the hospital shall transfer the
1320 patient to the nursing home within a reasonable time after receipt
1321 of the notice. Any hospital which is subject to the requirements
1322 of the two (2) preceding sentences of this subsection may be
1323 suspended from participation in the swing-bed program for a
1324 reasonable period of time by the State Department of Health if the
1325 department, after a hearing complying with due process, determines
1326 that the hospital has failed to comply with any of those
1327 requirements.

1328 (8) The Department of Health shall not grant approval for or
1329 issue a certificate of need to any person proposing the new
1330 construction of, addition to or expansion of a health care
1331 facility as defined in subparagraph (vii) of Section 41-7-173(h).

1332 (9) The Department of Health shall not grant approval for or
1333 issue a certificate of need to any person proposing the
1334 establishment of, or expansion of the currently approved territory
1335 of, or the contracting to establish a home office, subunit or
1336 branch office within the space operated as a health care facility
1337 as defined in Section 41-7-173(h)(i) through (vii) by a health
1338 care facility as defined in subparagraph (viii) of Section
1339 41-7-173(h).

1340 (10) Health care facilities owned and/or operated by the
1341 state or its agencies are exempt from the restraints in this
1342 section against issuance of a certificate of need if such addition

1343 or expansion consists of repairing or renovation necessary to
1344 comply with the state licensure law. This exception shall not
1345 apply to the new construction of any building by such state
1346 facility. This exception shall not apply to any health care
1347 facilities owned and/or operated by counties, municipalities,
1348 districts, unincorporated areas, other defined persons, or any
1349 combination thereof.

1350 (11) The new construction, renovation or expansion of or
1351 addition to any health care facility defined in subparagraph (i)
1352 (psychiatric hospital), subparagraph (iii) (skilled nursing
1353 facility), subparagraph (v) (intermediate care facility),
1354 subparagraph (vii) (intermediate care facility for the mentally
1355 retarded) and subparagraph (ix) (psychiatric residential treatment
1356 facility) of Section 41-7-173(h) which is owned by the State of
1357 Mississippi and under the direction and control of the State
1358 Department of Mental Health, and the addition of new beds or the
1359 conversion of beds from one category to another in any such
1360 defined health care facility which is owned by the State of
1361 Mississippi and under the direction and control of the State
1362 Department of Mental Health, shall not require the issuance of a
1363 certificate of need under Section 41-7-171 et seq.,
1364 notwithstanding any provision in Section 41-7-171 et seq. to the
1365 contrary.

1366 (12) The new construction, renovation or expansion of or
1367 addition to any veterans homes or domiciliaries for eligible
1368 veterans of the State of Mississippi as authorized under Section
1369 35-1-19 shall not require the issuance of a certificate of need,
1370 notwithstanding any provision in Section 41-7-171 et seq. to the
1371 contrary.

1372 (13) The new construction of a nursing facility or nursing
1373 facility beds or the conversion of other beds to nursing facility
1374 beds shall not require the issuance of a certificate of need,

1375 notwithstanding any provision in Section 41-7-171 et seq. to the
1376 contrary, if the conditions of this subsection are met.

1377 (a) Before any construction or conversion may be
1378 undertaken without a certificate of need, the owner of the nursing
1379 facility, in the case of an existing facility, or the applicant to
1380 construct a nursing facility, in the case of new construction,
1381 first must file a written notice of intent and sign a written
1382 agreement with the State Department of Health that the entire
1383 nursing facility will not at any time participate in or have any
1384 beds certified for participation in the Medicaid program (Section
1385 43-13-101 et seq.), will not admit or keep any patients in the
1386 nursing facility who are participating in the Medicaid program,
1387 and will not submit any claim for Medicaid reimbursement for any
1388 patient in the facility. This written agreement by the owner or
1389 applicant shall be a condition of exercising the authority under
1390 this subsection without a certificate of need, and the agreement
1391 shall be fully binding on any subsequent owner of the nursing
1392 facility if the ownership of the facility is transferred at any
1393 time after the agreement is signed. After the written agreement
1394 is signed, the Division of Medicaid and the State Department of
1395 Health shall not certify any beds in the nursing facility for
1396 participation in the Medicaid program. If the nursing facility
1397 violates the terms of the written agreement by participating in
1398 the Medicaid program, having any beds certified for participation
1399 in the Medicaid program, admitting or keeping any patient in the
1400 facility who is participating in the Medicaid program, or
1401 submitting any claim for Medicaid reimbursement for any patient in
1402 the facility, the State Department of Health shall revoke the
1403 license of the nursing facility at the time that the department
1404 determines, after a hearing complying with due process, that the
1405 facility has violated the terms of the written agreement.

1406 (b) For the purposes of this subsection, participation
1407 in the Medicaid program by a nursing facility includes Medicaid

1408 reimbursement of coinsurance and deductibles for recipients who
1409 are qualified Medicare beneficiaries and/or those who are dually
1410 eligible. Any nursing facility exercising the authority under
1411 this subsection may not bill or submit a claim to the Division of
1412 Medicaid for services to qualified Medicare beneficiaries and/or
1413 those who are dually eligible.

1414 (c) The new construction of a nursing facility or
1415 nursing facility beds or the conversion of other beds to nursing
1416 facility beds described in this section must be either a part of a
1417 completely new continuing care retirement community, as described
1418 in the latest edition of the Mississippi State Health Plan, or an
1419 addition to existing personal care and independent living
1420 components, and so that the completed project will be a continuing
1421 care retirement community, containing (i) independent living
1422 accommodations, (ii) personal care beds, and (iii) the nursing
1423 home facility beds. The three (3) components must be located on a
1424 single site and be operated as one (1) inseparable facility. The
1425 nursing facility component must contain a minimum of thirty (30)
1426 beds. Any nursing facility beds authorized by this section will
1427 not be counted against the bed need set forth in the State Health
1428 Plan, as identified in Section 41-7-171 et seq.

1429 This subsection (13) shall stand repealed from and after July
1430 1, 2005.

1431 (14) The State Department of Health shall issue a
1432 certificate of need to any hospital which is currently licensed
1433 for two hundred fifty (250) or more acute care beds and is located
1434 in any general hospital service area not having a comprehensive
1435 cancer center, for the establishment and equipping of such a
1436 center which provides facilities and services for outpatient
1437 radiation oncology therapy, outpatient medical oncology therapy,
1438 and appropriate support services including the provision of
1439 radiation therapy services. The provision of Section 41-7-193(1)
1440 regarding substantial compliance with the projection of need as

1441 reported in the current State Health Plan is waived for the
1442 purpose of this subsection.

1443 (15) The State Department of Health may authorize the
1444 transfer of hospital beds, not to exceed sixty (60) beds, from the
1445 North Panola Community Hospital to the South Panola Community
1446 Hospital. The authorization for the transfer of those beds shall
1447 be exempt from the certificate of need review process.

1448 (16) The State Department of Health shall issue any
1449 certificates of need necessary for Mississippi State University
1450 and a public or private health care provider to jointly acquire
1451 and operate a linear accelerator and a magnetic resonance imaging
1452 unit. Those certificates of need shall cover all capital
1453 expenditures related to the project between Mississippi State
1454 University and the health care provider, including, but not
1455 limited to, the acquisition of the linear accelerator, the
1456 magnetic resonance imaging unit and other radiological modalities;
1457 the offering of linear accelerator and magnetic resonance imaging
1458 services; and the cost of construction of facilities in which to
1459 locate these services. The linear accelerator and the magnetic
1460 resonance imaging unit shall be (a) located in the City of
1461 Starkville, Oktibbeha County, Mississippi; (b) operated jointly by
1462 Mississippi State University and the public or private health care
1463 provider selected by Mississippi State University through a
1464 request for proposals (RFP) process in which Mississippi State
1465 University selects, and the Board of Trustees of State
1466 Institutions of Higher Learning approves, the health care provider
1467 that makes the best overall proposal; (c) available to Mississippi
1468 State University for research purposes two-thirds (2/3) of the
1469 time that the linear accelerator and magnetic resonance imaging
1470 unit are operational; and (d) available to the public or private
1471 health care provider selected by Mississippi State University and
1472 approved by the Board of Trustees of State Institutions of Higher
1473 Learning one-third (1/3) of the time for clinical, diagnostic and

1474 treatment purposes. For purposes of this subsection, the
1475 provisions of Section 41-7-193(1) requiring substantial compliance
1476 with the projection of need as reported in the current State
1477 Health Plan are waived.

1478 (17) Nothing in this section or in any other provision of
1479 Section 41-7-171 et seq. shall prevent any nursing facility from
1480 designating an appropriate number of existing beds in the facility
1481 as beds for providing care exclusively to patients with
1482 Alzheimer's disease.

1483 **SECTION 4.** Section 41-7-201, Mississippi Code of 1972, is
1484 amended as follows:

1485 41-7-201. (1) The provisions of this subsection (1) shall
1486 apply to any party appealing any final order of the State
1487 Department of Health pertaining to a certificate of need for a
1488 home health agency, as defined in Section 41-7-173(h)(viii):

1489 (a) In addition to other remedies now available at law
1490 or in equity, any party aggrieved by any such final order of the
1491 State Department of Health shall have the right of appeal to the
1492 Chancery Court of the First Judicial District of Hinds County,
1493 Mississippi, which appeal must be filed within thirty (30) days
1494 after the date of the final order. * * * However, * * * any
1495 appeal of an order disapproving an application for such a
1496 certificate of need may be made to the chancery court of the
1497 county where the proposed construction, expansion or alteration
1498 was to be located or the new service or purpose of the capital
1499 expenditure was to be located. Such appeal must be filed in
1500 accordance with the thirty (30) days for filing as heretofore
1501 provided. Any appeal shall state briefly the nature of the
1502 proceedings before the State Department of Health and shall
1503 specify the order complained of. Any person whose rights may be
1504 materially affected by the action of the State Department of
1505 Health may appear and become a party or the court may, upon

1506 motion, order that any such person, organization or entity be
1507 joined as a necessary party.

1508 (b) Upon the filing of such an appeal, the clerk of the
1509 chancery court shall serve notice thereof upon the State
1510 Department of Health, whereupon the State Department of Health
1511 shall, within fifty (50) days or within such additional time as
1512 the court may by order for cause allow from the service of such
1513 notice, certify to the chancery court the record in the case,
1514 which records shall include a transcript of all testimony,
1515 together with all exhibits or copies thereof, all pleadings,
1516 proceedings, orders, findings and opinions entered in the
1517 case; * * * however, * * * the parties and the State Department of
1518 Health may stipulate that a specified portion only of the record
1519 shall be certified to the court as the record on appeal.

1520 (c) No new or additional evidence shall be introduced
1521 in the chancery court but the case shall be determined upon the
1522 record certified to the court.

1523 (d) The court may dispose of the appeal in termtime or
1524 vacation and may sustain or dismiss the appeal, modify or vacate
1525 the order complained of in whole or in part as the case may be;
1526 but in case the order is wholly or partly vacated, the court may
1527 also, in its discretion, remand the matter to the State Department
1528 of Health for such further proceedings, not inconsistent with the
1529 court's order, as, in the opinion of the court, justice may
1530 require. The order shall not be vacated or set aside, either in
1531 whole or in part, except for errors of law, unless the court finds
1532 that the order of the State Department of Health is not supported
1533 by substantial evidence, is contrary to the manifest weight of the
1534 evidence, is in excess of the statutory authority or jurisdiction
1535 of the State Department of Health, or violates any vested
1536 constitutional rights of any party involved in the appeal. * * *
1537 However, an order of the chancery court reversing the denial of a
1538 certificate of need by the State Department of Health shall not

1539 entitle the applicant to effectuate the certificate of need until
1540 either:

1541 (i) Such order of the chancery court has become
1542 final and has not been appealed to the Supreme Court; or

1543 (ii) The Supreme Court has entered a final order
1544 affirming the chancery court.

1545 (e) Appeals in accordance with law may be had to the
1546 Supreme Court of the State of Mississippi from any final judgment
1547 of the chancery court.

1548 (2) The provisions of this subsection (2) shall apply to any
1549 party appealing any final order of the State Department of Health
1550 pertaining to a certificate of need for any health care facility
1551 as defined in Section 41-7-173(h), with the exception of any home
1552 health agency as defined in Section 41-7-173(h)(viii):

1553 (a) There shall be a "stay of proceedings" of any final
1554 order issued by the State Department of Health pertaining to the
1555 issuance of a certificate of need for the establishment,
1556 construction, expansion or replacement of a health care facility
1557 for a period of thirty (30) days from the date of the order, if an
1558 existing provider located in the same service area where the
1559 health care facility is or will be located has requested a hearing
1560 during the course of review in opposition to the issuance of the
1561 certificate of need. The stay of proceedings shall expire at the
1562 termination of thirty (30) days; however, no construction,
1563 renovation or other capital expenditure that is the subject of the
1564 order shall be undertaken, no license to operate any facility that
1565 is the subject of the order shall be issued by the licensing
1566 agency, and no certification to participate in the Title XVIII or
1567 Title XIX programs of the Social Security Act shall be granted,
1568 until all statutory appeals have been exhausted or the time for
1569 such appeals has expired. Notwithstanding the foregoing, the
1570 filing of an appeal from a final order of the State Department of
1571 Health or the chancery court for the issuance of a certificate of

1572 need shall not prevent the purchase of medical equipment or
1573 development or offering of institutional health services granted
1574 in a certificate of need issued by the State Department of Health.

1575 (b) In addition to other remedies now available at law
1576 or in equity, any party aggrieved by any such final order of the
1577 State Department of Health shall have the right of appeal to the
1578 Chancery Court of the First Judicial District of Hinds County,
1579 Mississippi, which appeal must be filed within twenty (20) days
1580 after the date of the final order. * * * However, * * * any
1581 appeal of an order disapproving an application for such a
1582 certificate of need may be made to the chancery court of the
1583 county where the proposed construction, expansion or alteration
1584 was to be located or the new service or purpose of the capital
1585 expenditure was to be located. Such appeal must be filed in
1586 accordance with the twenty (20) days for filing as heretofore
1587 provided. Any appeal shall state briefly the nature of the
1588 proceedings before the State Department of Health and shall
1589 specify the order complained of.

1590 (c) Upon the filing of such an appeal, the clerk of the
1591 chancery court shall serve notice thereof upon the State
1592 Department of Health, whereupon the State Department of Health
1593 shall, within thirty (30) days of the date of the filing of the
1594 appeal, certify to the chancery court the record in the case,
1595 which records shall include a transcript of all testimony,
1596 together with all exhibits or copies thereof, all pleadings,
1597 proceedings, orders, findings and opinions entered in the
1598 case; * * * however, * * * the parties and the State Department of
1599 Health may stipulate that a specified portion only of the record
1600 shall be certified to the court as the record on appeal. The
1601 chancery court shall give preference to any such appeal from a
1602 final order by the State Department of Health in a certificate of
1603 need proceeding, and shall render a final order regarding such
1604 appeal no later than one hundred twenty (120) days from the date

1605 of the final order by the State Department of Health. If the
1606 chancery court has not rendered a final order within this 120-day
1607 period, then the final order of the State Department of Health
1608 shall be deemed to have been affirmed by the chancery court, and
1609 any party to the appeal shall have the right to appeal from the
1610 chancery court to the Supreme Court on the record certified by the
1611 State Department of Health as otherwise provided in paragraph (g)
1612 of this subsection. If the chancery court has not rendered a
1613 final order within the 120-day period and an appeal is made to the
1614 Supreme Court as provided in this section, the Supreme Court shall
1615 remand the case to the chancery court to make an award of costs,
1616 fees, reasonable expenses and attorney's fees incurred in favor of
1617 appellee payable by the appellant(s) if the Supreme Court affirms
1618 the order of the State Department of Health.

1619 (d) Any appeal of a final order by the State Department
1620 of Health in a certificate of need proceeding shall require the
1621 giving of a bond by the appellant(s) sufficient to secure the
1622 appellee against the loss of costs, fees, expenses and attorney's
1623 fees incurred in defense of the appeal, approved by the chancery
1624 court within five (5) days of the date of filing the appeal.

1625 (e) No new or additional evidence shall be introduced
1626 in the chancery court but the case shall be determined upon the
1627 record certified to the court.

1628 (f) The court may dispose of the appeal in termtime or
1629 vacation and may sustain or dismiss the appeal, modify or vacate
1630 the order complained of in whole or in part and may make an award
1631 of costs, fees, expenses and attorney's fees, as the case may be;
1632 but in case the order is wholly or partly vacated, the court may
1633 also, in its discretion, remand the matter to the State Department
1634 of Health for such further proceedings, not inconsistent with the
1635 court's order, as, in the opinion of the court, justice may
1636 require. The court, as part of the final order, shall make an
1637 award of costs, fees, reasonable expenses and attorney's fees

1638 incurred in favor of appellee payable by the appellant(s) should
1639 the court affirm the order of the State Department of Health. The
1640 order shall not be vacated or set aside, either in whole or in
1641 part, except for errors of law, unless the court finds that the
1642 order of the State Department of Health is not supported by
1643 substantial evidence, is contrary to the manifest weight of the
1644 evidence, is in excess of the statutory authority or jurisdiction
1645 of the State Department of Health, or violates any vested
1646 constitutional rights of any party involved in the appeal. * * *
1647 However, an order of the chancery court reversing the denial of a
1648 certificate of need by the State Department of Health shall not
1649 entitle the applicant to effectuate the certificate of need until
1650 either:

1651 (i) Such order of the chancery court has become
1652 final and has not been appealed to the Supreme Court; or

1653 (ii) The Supreme Court has entered a final order
1654 affirming the chancery court.

1655 (g) Appeals in accordance with law may be had to the
1656 Supreme Court of the State of Mississippi from any final judgment
1657 of the chancery court.

1658 (h) Within thirty (30) days from the date of a final
1659 order by the Supreme Court or a final order of the chancery court
1660 not appealed to the Supreme Court that modifies or wholly or
1661 partly vacates the final order of the State Department of Health
1662 granting a certificate of need, the State Department of Health
1663 shall issue another order in conformity with the final order of
1664 the Supreme Court, or the final order of the chancery court not
1665 appealed to the Supreme Court.

1666 **SECTION 5.** Section 41-7-202, Mississippi Code of 1972, is
1667 amended as follows:

1668 41-7-202. There shall be a "stay of proceedings" of any
1669 written decision of the State Department of Health pertaining to a
1670 certificate of need for a home health agency, as defined in

1671 Section 41-7-173(h)(viii), for a period of thirty (30) days from
1672 the date of that decision. The stay of proceedings shall expire
1673 at the termination of thirty (30) days; however, no license to
1674 operate any such home health agency that is the subject of the
1675 decision shall be issued by the licensing agency, and no
1676 certification for such home health agency to participate in the
1677 Title XVIII or Title XIX programs of the Social Security Act shall
1678 be granted until all statutory appeals have been exhausted or the
1679 time for such appeals has expired. The stay of proceedings
1680 provided for in this section shall not apply to any party
1681 appealing any final order of the State Department of Health
1682 pertaining to a certificate of need for any health care facility
1683 as defined in Section 41-7-173(h), with the exception of any home
1684 health agency as defined in Section 41-7-173(h)(viii).

1685 **SECTION 6.** Section 41-9-210, Mississippi Code of 1972, is
1686 amended as follows:

1687 41-9-210. If a hospital seeks a new license from the
1688 department in order to be designated as a critical access
1689 hospital, the department shall maintain a record of the acute care
1690 beds of that hospital that have been delicensed as a result of
1691 that designation and continue counting those beds as part of the
1692 state's total acute care bed count for health care planning
1693 purposes. If a critical access hospital later desires to
1694 relicense some or all of its delicensed acute care beds, it shall
1695 notify the department of its intent to increase the number of its
1696 licensed acute care beds. The department shall survey the
1697 hospital within thirty (30) days of that notice and, if
1698 appropriate, issue the hospital a new license reflecting the new
1699 contingent of beds. * * *

1700 This section shall apply to all hospitals that are designated
1701 as critical access hospitals on July 1, 2003, and all hospitals
1702 that may become designated as critical access hospitals after July
1703 1, 2003.

1704 **SECTION 7.** Section 41-63-4, Mississippi Code of 1972, is
1705 amended as follows:

1706 41-63-4. (1) In order to improve the quality and efficiency
1707 of medical care, the State Department of Health shall design and
1708 establish a registry program of the condition and treatment of
1709 persons seeking medical care that will provide the following:

1710 (a) Information in a central data bank system of
1711 accurate, precise and current information regarding the diagnostic
1712 services and therapeutic services for medical diagnosis, treatment
1713 and care of injured, disabled or sick persons, or rehabilitation
1714 services for the rehabilitation of injured, disabled or sick
1715 persons provided in an acute care hospital * * *;

1716 (b) Collection of that data;

1717 (c) Dissemination of that data; and

1718 (d) Analysis of that data for the purposes of the
1719 evaluation and improvement of the quality and efficiency of
1720 medical care provided in a health care facility.

1721 (2) The State Board of Health shall adopt rules, regulations
1722 and procedures to govern the operation of the registry program and
1723 to carry out the intent of this section.

1724 (3) The State Department of Health shall specify the types
1725 of information to be provided to the registry.

1726 (4) Information collected and analyzed by the State
1727 Department of Health under this section shall be placed in a
1728 central health data registry system maintained by the Mississippi
1729 Hospital Association, acting under the direction of the State
1730 Department of Health.

1731 (5) The information, data and records shall not divulge the
1732 identity of any patient.

1733 (6) Notwithstanding any conflicting statute, court rule or
1734 other law, the data maintained in the registry shall be
1735 confidential and shall not be subject to discovery or introduction
1736 into evidence in any civil action. However, information and data

1737 otherwise discoverable or admissible from original sources are not
1738 to be construed as immune from discovery or use in any civil
1739 action merely because they were provided to the registry.

1740 **SECTION 8.** This act shall take effect and be in force from
1741 and after July 1, 2005.