

By: Senator(s) Nunnelee, King, Chassaniol,  
White, Williamson, Browning, Dawkins, Morgan,  
Pickering, Jackson (11th), Flowers, Lee  
(35th), Moffatt, Hyde-Smith, Burton, Jordan,  
Fillingane, Frazier, Clarke, Harden, Gordon,  
Horhn, Thomas, Little, Chaney, Albritton

To: Public Health and  
Welfare; Appropriations

SENATE BILL NO. 2764  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-3-20, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE SECTION CREATING THE STATE BOARD OF HEALTH SHALL  
3 REPEAL ON THE EFFECTIVE DATE OF THIS ACT AND THE SECTION CREATING  
4 THE POSITION OF THE EXECUTIVE OFFICER OF THE STATE DEPARTMENT OF  
5 HEALTH SHALL REPEAL ON JUNE 30, 2007; TO EXTEND UNTIL JUNE 30,  
6 2010, THE REPEALER ON VARIOUS STATUTES THAT CREATE AND EMPOWER THE  
7 STATE BOARD OF HEALTH AND THE STATE DEPARTMENT OF HEALTH AND  
8 ESTABLISH THE POSITION OF EXECUTIVE OFFICER OF THE STATE  
9 DEPARTMENT OF HEALTH; TO CODIFY SECTION 41-3-1.1, MISSISSIPPI CODE  
10 OF 1972, TO RECONSTITUTE THE MEMBERSHIP OF THE STATE BOARD OF  
11 HEALTH AND PROVIDE FOR THE NUMBER, QUALIFICATIONS, APPOINTMENT AND  
12 TERMS OF NEW MEMBERS; TO PROVIDE FOR NONVOTING LEGISLATIVE MEMBERS  
13 TO ATTEND BOARD MEETINGS; TO PROHIBIT MEMBERS OF THE BOARD FROM  
14 PARTICIPATING IN ACTIONS HAVING A MONETARY EFFECT ON THE MEMBER'S  
15 BUSINESS; TO REQUIRE BOARD MEMBERS TO RECUSE THEMSELVES FROM  
16 MATTERS BEFORE THE BOARD IN WHICH THEY MAY NOT PARTICIPATE; TO  
17 AMEND REENACTED SECTION 41-3-4, MISSISSIPPI CODE OF 1972, TO  
18 REQUIRE THE STATE BOARD OF HEALTH TO MEET AT LEAST ONCE EACH  
19 QUARTER; TO CLARIFY THAT THE TERM OF OFFICE OF ANY MEMBER OF THE  
20 BOARD WHO MISSES THREE CONSECUTIVE MEETINGS SHALL BE TERMINATED;  
21 TO CODIFY SECTION 41-3-5.1, MISSISSIPPI CODE OF 1972, TO PROVIDE  
22 FOR THE APPOINTMENT OF THE EXECUTIVE OFFICER OF THE STATE  
23 DEPARTMENT OF HEALTH; TO AMEND REENACTED SECTION 41-3-15,  
24 MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 553, 2007  
25 REGULAR SESSION, TO CLARIFY THE GENERAL AUTHORITY OF THE STATE  
26 BOARD OF HEALTH AND THE STATE HEALTH OFFICER; TO AMEND REENACTED  
27 SECTION 41-3-18, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN FEES  
28 ASSESSED ON RESTAURANTS BY THE STATE DEPARTMENT OF HEALTH; TO  
29 REENACT SECTIONS 41-3-3, 41-3-6, 41-3-16, 41-3-17, 41-3-18 AND  
30 41-3-19, MISSISSIPPI CODE OF 1972, WHICH CREATE AND EMPOWER THE  
31 STATE BOARD OF HEALTH AND THE STATE DEPARTMENT OF HEALTH; TO AMEND  
32 SECTION 41-59-61, MISSISSIPPI CODE OF 1972, TO CLARIFY THE  
33 AUTHORIZED ADMINISTRATIVE COSTS THAT MAY BE PAID FROM THE  
34 EMERGENCY MEDICAL SERVICES OPERATING FUND; TO PROVIDE FOR A  
35 COMPREHENSIVE AND STATEWIDE TOBACCO EDUCATION, PREVENTION AND  
36 CESSATION PROGRAM THAT IS CONSISTENT WITH FEDERAL GUIDELINES; TO  
37 ESTABLISH THE OFFICE OF TOBACCO CONTROL IN THE STATE DEPARTMENT OF  
38 HEALTH; TO CREATE THE MISSISSIPPI TOBACCO CONTROL ADVISORY COUNCIL  
39 TO ADVISE ON THE IMPLEMENTATION OF THE PROGRAM; TO PROVIDE FOR THE  
40 APPOINTMENT OF THE MEMBERSHIP OF THE ADVISORY COUNCIL; TO PROVIDE  
41 FOR A DIRECTOR OF THE OFFICE; TO PRESCRIBE THE MINIMUM COMPONENTS  
42 OF THE PROGRAM; TO PROVIDE GUIDELINES FOR PRIORITY FOR FUNDING THE  
43 COMPONENTS OF THE PROGRAM; TO ESTABLISH IN THE STATE TREASURY A  
44 SPECIAL FUND TO BE KNOWN AS THE TOBACCO CONTROL FUND; TO PROVIDE  
45 THAT A CERTAIN AMOUNT FROM THE TOBACCO SETTLEMENT INSTALLMENT  
46 PAYMENTS RECEIVED BY THE STATE EACH YEAR SHALL BE DEPOSITED INTO  
47 THE SPECIAL FUND; TO PROVIDE THAT THE FUNDS IN THE SPECIAL FUND  
48 SHALL BE EXPENDED SOLELY FOR THE PURPOSES SPECIFIED IN THIS ACT;  
49 TO AMEND SECTION 43-13-405, MISSISSIPPI CODE OF 1972, TO CONFORM  
50 TO THE PRECEDING PROVISION; TO CODIFY NEW SECTION 41-57-31,  
51 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ISSUANCE OF A  
52 "CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH" BY THE BUREAU OF

53 VITAL STATISTICS OF THE STATE DEPARTMENT OF HEALTH UPON THE  
54 REQUEST OF A PARENT OF A STILLBORN CHILD; TO PROVIDE THAT A PARENT  
55 MAY REQUEST THE ISSUANCE OF THIS CERTIFICATE WITHOUT REGARD TO  
56 WHETHER THE DEATH OCCURRED BEFORE OR AFTER THE EFFECTIVE DATE OF  
57 THIS ACT; TO PROVIDE THAT THE PERSON WHO IS REQUIRED TO FILE A  
58 DEATH CERTIFICATE SHALL ADVISE THE PARENT OR PARENTS OF A  
59 STILLBORN CHILD ABOUT THE AVAILABILITY OF THIS CERTIFICATE AND HOW  
60 TO REQUEST THE ISSUANCE OF THE CERTIFICATE; TO PROVIDE THAT THE  
61 STATE DEPARTMENT OF HEALTH SHALL PRESCRIBE THE FORM AND CONTENT OF  
62 THE CERTIFICATE AND SPECIFY THE INFORMATION NECESSARY TO PREPARE  
63 THE CERTIFICATE; TO AUTHORIZE THE STATE BOARD OF HEALTH TO ADOPT  
64 ANY RULES OR REGULATIONS NECESSARY TO ADMINISTER THIS SECTION; TO  
65 AMEND SECTION 41-7-191, MISSISSIPPI CODE OF 1972, TO DIRECT THE  
66 STATE DEPARTMENT OF HEALTH TO ISSUE A CERTIFICATE OF NEED FOR THE  
67 CONSTRUCTION OF AN ACUTE CARE HOSPITAL IN KEMPER COUNTY, NOT TO  
68 EXCEED 25 BEDS, WHICH SHALL BE NAMED THE "JOHN C. STENNIS MEMORIAL  
69 HOSPITAL"; AND FOR RELATED PURPOSES.

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

71 **SECTION 1.** Section 41-3-20, Mississippi Code of 1972, is  
72 amended as follows:

73 41-3-20. (1) Section 41-3-1 \* \* \*, which creates the State  
74 Board of Health \* \* \*, shall stand repealed on the effective date  
75 of this section.

76 (2) Section 41-3-5, which creates the position of the  
77 Executive Officer of the State Department of Health, shall stand  
78 repealed on June 30, 2007.

79 (3) Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6,  
80 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19, which create the  
81 reconstituted State Board of Health, establish the position of  
82 Executive Officer of the State Department of Health and establish  
83 the State Department of Health and prescribe its powers and  
84 duties, shall stand repealed on June 30, 2010.

85 **SECTION 2.** The following shall be codified as Section  
86 41-3-1.1, Mississippi Code of 1972:

87 41-3-1.1. (1) The State Board of Health is continued and  
88 reconstituted as follows:

89 There is created the State Board of Health which, from and  
90 after the effective date of this section, shall consist of eleven  
91 (11) members appointed with the advice and consent of the Senate,  
92 as follows:

93           (a) Five (5) members of the board shall be currently  
94 licensed physicians of good professional standing who have had at  
95 least seven (7) years' experience in the practice of medicine in  
96 this state. Three (3) members shall be appointed by the Governor,  
97 one (1) member shall be appointed by the Lieutenant Governor, and  
98 one (1) member shall be appointed by the Attorney General, in the  
99 manner provided in paragraph (d) of this subsection (1).

100           (b) Six (6) members of the board shall be individuals  
101 who have a background in public health or an interest in public  
102 health who are not currently or formerly licensed physicians.  
103 Four (4) of those members shall be appointed by the Governor, one  
104 (1) of those members shall be appointed by the Lieutenant  
105 Governor, and one (1) of those members shall be appointed by the  
106 Attorney General, in the manner provided in paragraph (d) of this  
107 subsection (1).

108           (c) The Governor, Lieutenant Governor and Attorney  
109 General shall give due regard to geographic distribution, race and  
110 gender in making their appointments to the board. It is the  
111 intent of the Legislature that the membership of the board reflect  
112 the population of the State of Mississippi. Of the Governor's  
113 appointments, one (1) member of the board shall be appointed from  
114 each of the four (4) congressional districts as constituted on  
115 June 30, 2007, and one (1) member of the board shall be appointed  
116 from each of the three (3) Supreme Court districts as constituted  
117 on June 30, 2007. Of the Lieutenant Governor's appointments, one  
118 (1) member of the board shall be appointed from the First  
119 Congressional District and one (1) member of the board shall be  
120 appointed from the Fourth Congressional District as constituted on  
121 June 30, 2007. Of the Attorney General's appointments, one (1)  
122 member of the board shall be appointed from the Second  
123 Congressional District and one (1) member of the board shall be  
124 appointed from the Third Congressional District as constituted on  
125 June 30, 2007.

126           (d) The initial members of the board shall be appointed  
127 for staggered terms, as follows: Of the Governor's appointments,  
128 two (2) members shall be appointed for terms that end on June 30,  
129 2009; two (2) members shall be appointed for terms that end on  
130 June 30, 2011; and three (3) members shall be appointed for terms  
131 that end on June 30, 2013. Of the Lieutenant Governor's  
132 appointments, one (1) member shall be appointed for a term that  
133 ends on June 30, 2009; and one (1) member shall be appointed for a  
134 term that ends on June 30, 2013. Of the Attorney General's  
135 appointments, one (1) member shall be appointed for a term that  
136 ends on June 30, 2009; and one (1) member shall be appointed for a  
137 term that ends on June 30, 2011.

138           A member of the board serving before January 1, 2007, shall  
139 be eligible for reappointment to the reconstituted board unless  
140 the person is disqualified under subsection (4) of this section.

141           (2) At the expiration of the terms of the initial members,  
142 all members of the board shall be appointed by the Governor, in  
143 the same manner and from the same districts prescribed in  
144 subsection (1) of this section, for terms of six (6) years from  
145 the expiration of the previous term and thereafter until his or  
146 her successor is duly appointed. Vacancies in office shall be  
147 filled by appointment in the same manner as the appointment to the  
148 position that becomes vacant, subject to the advice and consent of  
149 the Senate at the next regular session of the Legislature. An  
150 appointment to fill a vacancy other than by expiration of a term  
151 of office shall be for the balance of the unexpired term and  
152 thereafter until his or her successor is duly appointed.

153           (3) The Lieutenant Governor may designate one (1) Senator  
154 and the Speaker of the House of Representatives may designate one  
155 (1) Representative to attend any meeting of the State Board of  
156 Health. The appointing authorities may designate alternate  
157 members from their respective houses to serve when the regular  
158 designees are unable to attend the meetings of the board. Those

159 legislative designees shall have no jurisdiction or vote on any  
160 matter within the jurisdiction of the board. For attending  
161 meetings of the board, the legislators shall receive per diem and  
162 expenses, which shall be paid from the contingent expense funds of  
163 their respective houses in the same amounts as provided for  
164 committee meetings when the Legislature is not in session;  
165 however, no per diem and expenses for attending meetings of the  
166 board will be paid while the Legislature is in session. No per  
167 diem and expenses will be paid except for attending meetings of  
168 the board without prior approval of the proper committee in their  
169 respective houses.

170 (4) (a) All members of the State Board of Health shall file  
171 with the Mississippi Ethics Commission, before the first day of  
172 May each year, the statement of economic interest as required by  
173 Sections 25-4-25 through 25-4-29.

174 (b) No member of the board shall participate in any  
175 action by the board or department if that action could have any  
176 monetary effect on any business with which that member is  
177 associated, as defined in Section 25-4-103.

178 (c) When any matter in which a member may not  
179 participate comes before the board or department, that member must  
180 fully recuse himself or herself from the entire matter. The  
181 member shall avoid debating, discussing or taking action on the  
182 subject matter during official meetings or deliberations by  
183 leaving the meeting room before the matter comes before the board  
184 and by returning only after the discussion, vote or other action  
185 is completed. The member shall not discuss the matter with other  
186 members, department staff or any other person. Any minutes or  
187 other record of the meeting shall accurately reflect the recusal.  
188 If a member is uncertain whether recusal is required, the member  
189 shall follow the determination of the Mississippi Ethics  
190 Commission. The commission may delegate that determination to its  
191 executive director.

192           (d) Upon a determination by the board or by any court  
193 of competent jurisdiction that a member of the board has violated  
194 the provisions of this subsection (4) regarding recusal, the  
195 member shall be removed from office. Any member of the board who  
196 violates the provisions of this section regarding recusal also  
197 shall be subject to the penalties set forth in Sections 25-4-109  
198 through 25-4-117. After removal from office, the member shall not  
199 be eligible for appointment to any agency, board or commission of  
200 the state for a period of two (2) years. Nothing in this section  
201 shall be construed to limit the restrictions codified in Section  
202 25-4-105.

203           **SECTION 3.** Section 41-3-3, Mississippi Code of 1972, is  
204 reenacted as follows:

205           41-3-3. Each person appointed as a member of the State Board  
206 of Health shall immediately take the oath prescribed by Section  
207 268 of the Constitution and file a certificate thereof in the  
208 Office of the Secretary of State. Thereupon a commission shall be  
209 issued to him under the terms as specified in Section 41-3-1.

210           **SECTION 4.** Section 41-3-4, Mississippi Code of 1972, is  
211 reenacted and amended as follows:

212           41-3-4. (1) There shall be a Chairman and Vice Chairman of  
213 the State Board of Health elected by and from its membership at  
214 the first meeting of the board; and the chairman shall be the  
215 presiding officer of the board. The chairman shall always be a  
216 physician member of the board. The board shall adopt rules and  
217 regulations governing times and places for meetings, and governing  
218 the manner of conducting its business. The board shall meet not  
219 less frequently than once each quarter, and at such other times as  
220 determined to be necessary. The term of office of any member who  
221 does not attend three (3) consecutive regular meetings of the  
222 board shall be automatically terminated, and the position shall be  
223 considered as vacant, except in cases of the serious illness of a  
224 board member or of his or her immediate family member. All

225 meetings of the board shall be called by the chairman or by a  
226 majority of the members of the board, except the first meeting of  
227 the initial members of the reconstituted board, which shall be  
228 called by the Governor.

229 (2) The members of the board shall receive no annual salary  
230 but shall receive per diem compensation as is authorized by law  
231 for each day devoted to the discharge of official board duties and  
232 shall be entitled to reimbursement for all actual and necessary  
233 expenses incurred in the discharge of their duties, including  
234 mileage as authorized by Section 25-3-41.

235 **SECTION 5.** The following shall be codified as Section  
236 41-3-5.1, Mississippi Code of 1972:

237 41-3-5.1. The State Department of Health shall be headed by  
238 an executive officer who shall be appointed by the State Board of  
239 Health. The executive officer shall be either a physician who has  
240 earned a graduate degree in public health or health care  
241 administration, or a physician who in the opinion of the board is  
242 fitted and equipped to execute the duties incumbent upon him or  
243 her by law. The executive officer shall not engage in the private  
244 practice of medicine. The term of office of the executive officer  
245 shall be six (6) years, and the executive officer may be removed  
246 for cause by majority vote of the members of the board. The  
247 executive officer shall be subject to such rules and regulations  
248 as may be prescribed by the State Board of Health. The executive  
249 officer shall be the State Health Officer with such authority and  
250 responsibility as is prescribed by law.

251 **SECTION 6.** Section 41-3-6, Mississippi Code of 1972, is  
252 reenacted as follows:

253 41-3-6. It shall be the duty of the State Board of Health to  
254 review the statutes of the State of Mississippi affecting public  
255 health and submit at least thirty (30) days prior to each regular  
256 session of the Legislature any proposed legislation as may be  
257 necessary to enhance the effective and efficient delivery of

258 public health services and to bring existing statutes into  
259 compliance with modern technology and terminology. The board  
260 shall formulate a plan for consolidating and reorganizing existing  
261 state agencies having responsibilities in the field of public  
262 health to eliminate any needless duplication in services which may  
263 be found to exist. In carrying out the provisions of this  
264 section, the State Board of Health shall cooperate with and may  
265 utilize the services, facilities and personnel of any department  
266 or agency of the state, any private citizen task force and the  
267 committees on public health of both houses of the Legislature.  
268 The State Board of Health is authorized to apply for and expend  
269 funds made available to it by grant from any source in order to  
270 perform its responsibilities under this section.

271 **SECTION 7.** Section 41-3-15, Mississippi Code of 1972, as  
272 amended by House Bill No. 553, 2007 Regular Session, is reenacted  
273 and amended as follows:

274 41-3-15. (1) (a) There shall be a State Department of  
275 Health \* \* \*.

276 (b) The State Board of Health shall have the following  
277 powers and duties:

278 (i) To formulate the policy of the State  
279 Department of Health regarding public health matters within the  
280 jurisdiction of the department;

281 (ii) To adopt, modify, repeal and promulgate,  
282 after due notice and hearing, and enforce rules and regulations  
283 implementing or effectuating the powers and duties of the  
284 department under any and all statutes within the department's  
285 jurisdiction, and as the board may deem necessary;

286 (iii) To apply for, receive, accept and expend any  
287 federal or state funds or contributions, gifts, trusts, devises,  
288 bequests, grants, endowments or funds from any other source or  
289 transfers of property of any kind;



290                   (iv) To enter into, and to authorize the executive  
291 officer to execute, contracts, grants and cooperative agreements  
292 with any federal or state agency or subdivision thereof, or any  
293 public or private institution located inside or outside the State  
294 of Mississippi, or any person, corporation or association in  
295 connection with carrying out the provisions of this chapter, if it  
296 finds those actions to be in the public interest and the contracts  
297 or agreements do not have a financial cost that exceeds the  
298 amounts appropriated for those purposes by the Legislature;

299                   (v) To appoint, upon recommendation of the  
300 Executive Officer of the State Department of Health, a Director of  
301 Internal Audit who shall be either a Certified Public Accountant  
302 or Certified Internal Auditor, and whose employment shall be  
303 continued at the discretion of the board, and who shall report  
304 directly to the board, or its designee; and

305                   (vi) To discharge such other duties,  
306 responsibilities and powers as are necessary to implement the  
307 provisions of this chapter.

308                   (c) The Executive Officer of the State Department of  
309 Health shall have the following powers and duties:

310                   (i) To administer the policies of the State Board  
311 of Health within the authority granted by the board;

312                   (ii) To supervise and direct all administrative  
313 and technical activities of the department, except that the  
314 department's internal auditor shall be subject to the sole  
315 supervision and direction of the board;

316                   (iii) To organize the administrative units of the  
317 department in accordance with the plan adopted by the board and,  
318 with board approval, alter the organizational plan and reassign  
319 responsibilities as he or she may deem necessary to carry out the  
320 policies of the board;

321                   (iv) To coordinate the activities of the various  
322 offices of the department;

323                   (v) To employ, subject to regulations of the State  
324 Personnel Board, qualified professional personnel in the subject  
325 matter or fields of each office, and such other technical and  
326 clerical staff as may be required for the operation of the  
327 department. The executive officer shall be the appointing  
328 authority for the department, and shall have the power to delegate  
329 the authority to appoint or dismiss employees to appropriate  
330 subordinates, subject to the rules and regulations of the State  
331 Personnel Board;

332                   (vi) To recommend to the board such studies and  
333 investigations as he or she may deem appropriate, and to carry out  
334 the approved recommendations in conjunction with the various  
335 offices;

336                   (vii) To prepare and deliver to the Legislature  
337 and the Governor on or before January 1 of each year, and at such  
338 other times as may be required by the Legislature or Governor, a  
339 full report of the work of the department and the offices thereof,  
340 including a detailed statement of expenditures of the department  
341 and any recommendations the board may have;

342                   (viii) To prepare and deliver to the Chairmen of  
343 the Public Health and Welfare/Human Services Committees of the  
344 Senate and House on or before January 1 of each year, a plan for  
345 monitoring infant mortality in Mississippi and a full report of  
346 the work of the department on reducing Mississippi's infant  
347 mortality and morbidity rates and improving the status of maternal  
348 and infant health; and

349                   (ix) To enter into contracts, grants and  
350 cooperative agreements with any federal or state agency or  
351 subdivision thereof, or any public or private institution located  
352 inside or outside the State of Mississippi, or any person,  
353 corporation or association in connection with carrying out the  
354 provisions of this chapter, if he or she finds those actions to be  
355 in the public interest and the contracts or agreements do not have

356 a financial cost that exceeds the amounts appropriated for those  
357 purposes by the Legislature. Each contract or agreement entered  
358 into by the executive officer shall be submitted to the board  
359 before its next meeting.

360 (2) The State Board of Health shall have the authority to  
361 establish an Office of Rural Health within the department. The  
362 duties and responsibilities of this office shall include the  
363 following:

364 (a) To collect and evaluate data on rural health  
365 conditions and needs;

366 (b) To engage in policy analysis, policy development  
367 and economic impact studies with regard to rural health issues;

368 (c) To develop and implement plans and provide  
369 technical assistance to enable community health systems to respond  
370 to various changes in their circumstances;

371 (d) To plan and assist in professional recruitment and  
372 retention of medical professionals and assistants; and

373 (e) To establish information clearinghouses to improve  
374 access to and sharing of rural health care information.

375 (3) The State Board of Health shall have general supervision  
376 of the health interests of the people of the state and to exercise  
377 the rights, powers and duties of those acts which it is authorized  
378 by law to enforce.

379 (4) The State Board of Health shall have authority:

380 (a) To make investigations and inquiries with respect  
381 to the causes of disease and death, and to investigate the effect  
382 of environment, including conditions of employment and other  
383 conditions that may affect health, and to make such other  
384 investigations as it may deem necessary for the preservation and  
385 improvement of health.

386 (b) To make such sanitary investigations as it may,  
387 from time to time, deem necessary for the protection and

388 improvement of health and to investigate nuisance questions that  
389 affect the security of life and health within the state.

390 (c) To direct and control sanitary and quarantine  
391 measures for dealing with all diseases within the state possible  
392 to suppress same and prevent their spread.

393 (d) To obtain, collect and preserve such information  
394 relative to mortality, morbidity, disease and health as may be  
395 useful in the discharge of its duties or may contribute to the  
396 prevention of disease or the promotion of health in this state.

397 \* \* \*

398 (e) To charge and collect reasonable fees for health  
399 services, including immunizations, inspections and related  
400 activities, and the board shall charge fees for those services;  
401 provided, however, if it is determined that a person receiving  
402 services is unable to pay the total fee, the board shall collect  
403 any amount that the person is able to pay.

404 \* \* \*

405 (f) (i) To establish standards for, issue permits and  
406 exercise control over, any cafes, restaurants, food or drink  
407 stands, sandwich manufacturing establishments, and all other  
408 establishments, other than churches, church-related and private  
409 schools, and other nonprofit or charitable organizations, where  
410 food or drink is regularly prepared, handled and served for pay;  
411 and

412 (ii) To require that a permit be obtained from the  
413 Department of Health before those persons begin operation. If any  
414 such person fails to obtain the permit required in this  
415 subparagraph (ii), the State Board of Health, after due notice and  
416 opportunity for a hearing, may impose a monetary penalty not to  
417 exceed One Thousand Dollars (\$1,000.00) for each violation.  
418 However, the department is not authorized to impose a monetary  
419 penalty against any person whose gross annual prepared food sales  
420 are less than Five Thousand Dollars (\$5,000.00). Money collected

421 by the board under this subparagraph (ii) shall be deposited to  
422 the credit of the State General Fund of the State Treasury. \* \* \*

423 (g) To promulgate rules and regulations and exercise  
424 control over the production and sale of milk pursuant to the  
425 provisions of Sections 75-31-41 through 75-31-49.

426 (h) On presentation of proper authority, to enter into  
427 and inspect any public place or building where the State Health  
428 Officer or his representative deems it necessary and proper to  
429 enter for the discovery and suppression of disease and for the  
430 enforcement of any health or sanitary laws and regulations in the  
431 state.

432 (i) To conduct investigations, inquiries and hearings,  
433 and to issue subpoenas for the attendance of witnesses and the  
434 production of books and records at any hearing when authorized and  
435 required by statute to be conducted by the State Health Officer or  
436 the State Board of Health.

437 \* \* \*

438 (j) To promulgate rules and regulations, and to collect  
439 data and information, on (i) the delivery of services through the  
440 practice of telemedicine; and (ii) the use of electronic records  
441 for the delivery of telemedicine services.

442 (k) To enforce and regulate domestic and imported fish  
443 as authorized under Section 69-7-601 et seq.

444 (5) (a) The State Board of Health shall have the authority,  
445 in its discretion, to establish programs to promote the public  
446 health, to be administered by the State Department of Health.  
447 Specifically, those programs may include, but shall not be limited  
448 to, programs in the following areas:

449 (i) Maternal and child health;

450 (ii) Family planning;

451 (iii) Pediatric services;

452 (iv) Services to crippled and disabled children;

453 (v) Control of communicable and noncommunicable  
454 disease;  
455 (vi) Chronic disease;  
456 (vii) Accidental deaths and injuries;  
457 (viii) Child care licensure;  
458 (ix) Radiological health;  
459 (x) Dental health;  
460 (xi) Milk sanitation;  
461 (xii) Occupational safety and health;  
462 (xiii) Food, vector control and general  
463 sanitation;  
464 (xiv) Protection of drinking water;  
465 (xv) Sanitation in food handling establishments  
466 open to the public;  
467 (xvi) Registration of births and deaths and other  
468 vital events;  
469 (xvii) Such public health programs and services as  
470 may be assigned to the State Board of Health by the Legislature or  
471 by executive order; and  
472 (xviii) Regulation of domestic and imported fish  
473 for human consumption.

474 (b) The State Board of Health and State Department of  
475 Health shall not be authorized to sell, transfer, alienate or  
476 otherwise dispose of any of the home health agencies owned and  
477 operated by the department on January 1, 1995, and shall not be  
478 authorized to sell, transfer, assign, alienate or otherwise  
479 dispose of the license of any of those home health agencies,  
480 except upon the specific authorization of the Legislature by an  
481 amendment to this section. However, this paragraph (b) shall not  
482 prevent the board or the department from closing or terminating  
483 the operation of any home health agency owned and operated by the  
484 department, or closing or terminating any office, branch office or  
485 clinic of any such home health agency, or otherwise discontinuing

486 the providing of home health services through any such home health  
487 agency, office, branch office or clinic, if the board first  
488 demonstrates that there are other providers of home health  
489 services in the area being served by the department's home health  
490 agency, office, branch office or clinic that will be able to  
491 provide adequate home health services to the residents of the area  
492 if the department's home health agency, office, branch office or  
493 clinic is closed or otherwise discontinues the providing of home  
494 health services. This demonstration by the board that there are  
495 other providers of adequate home health services in the area shall  
496 be spread at length upon the minutes of the board at a regular or  
497 special meeting of the board at least thirty (30) days before a  
498 home health agency, office, branch office or clinic is proposed to  
499 be closed or otherwise discontinue the providing of home health  
500 services.

501 (c) The State Department of Health may undertake such  
502 technical programs and activities as may be required for the  
503 support and operation of those programs, including maintaining  
504 physical, chemical, bacteriological and radiological laboratories,  
505 and may make such diagnostic tests for diseases and tests for the  
506 evaluation of health hazards as may be deemed necessary for the  
507 protection of the people of the state.

508 (6) (a) The State Board of Health shall administer the  
509 local governments and rural water systems improvements loan  
510 program in accordance with the provisions of Section 41-3-16.

511 (b) The State Board of Health shall have authority:

512 (i) To enter into capitalization grant agreements  
513 with the United States Environmental Protection Agency, or any  
514 successor agency thereto;

515 (ii) To accept capitalization grant awards made  
516 under the federal Safe Drinking Water Act, as amended;

517 (iii) To provide annual reports and audits to the  
518 United States Environmental Protection Agency, as may be required  
519 by federal capitalization grant agreements; and

520 (iv) To establish and collect fees to defray the  
521 reasonable costs of administering the revolving fund or emergency  
522 fund if the State Board of Health determines that those costs will  
523 exceed the limitations established in the federal Safe Drinking  
524 Water Act, as amended. The administration fees may be included in  
525 loan amounts to loan recipients for the purpose of facilitating  
526 payment to the board; however, those fees may not exceed five  
527 percent (5%) of the loan amount.

528 **SECTION 8.** Section 41-3-16, Mississippi Code of 1972, is  
529 reenacted as follows:

530 41-3-16. (1) (a) There is established a local governments  
531 and rural water systems improvements revolving loan and grant  
532 program to be administered by the State Department of Health,  
533 referred to in this section as "department," for the purpose of  
534 assisting counties, incorporated municipalities, districts or  
535 other water organizations that have been granted tax exempt status  
536 under either federal or state law, in making improvements to their  
537 water systems, including construction of new water systems or  
538 expansion or repair of existing water systems. Loan and grant  
539 proceeds may be used by the recipient for planning, professional  
540 services, acquisition of interests in land, acquisition of  
541 personal property, construction, construction-related services,  
542 maintenance, and any other reasonable use which the board, in its  
543 discretion, may allow. For purposes of this section, "water  
544 systems" has the same meaning as the term "public water system"  
545 under Section 41-26-3.

546 (b) (i) There is created a board to be known as the  
547 "Local Governments and Rural Water Systems Improvements Board,"  
548 referred to in this section as "board," to be composed of the  
549 following nine (9) members: the State Health Officer, or his



550 designee, who shall serve as chairman of the board; the Executive  
551 Director of the Mississippi Development Authority, or his  
552 designee; the Executive Director of the Department of  
553 Environmental Quality, or his designee; the Executive Director of  
554 the Department of Finance and Administration, or his designee; the  
555 Executive Director of the Mississippi Association of Supervisors,  
556 or his designee; the Executive Director of the Mississippi  
557 Municipal League, or his designee; the Executive Director of the  
558 Consulting Engineers Council, or his designee; the State Director  
559 of the United States Department of Agriculture, Rural Development,  
560 or his designee; and a manager of a rural water system.

561         The Governor shall appoint a manager of a rural water system  
562 from a list of candidates provided by the Executive Director of  
563 the Mississippi Rural Water Association. The Executive Director  
564 of the Mississippi Rural Water Association shall provide the  
565 Governor a list of candidates which shall contain a minimum of  
566 three (3) candidates for each appointment.

567                 (ii) Nonappointed members of the board may  
568 designate another representative of their agency or association to  
569 serve as an alternate.

570                 (iii) The gubernatorial appointee shall serve a  
571 term concurrent with the term of the Governor and until a  
572 successor is appointed and qualified. No member, officer or  
573 employee of the Board of Directors of the Mississippi Rural Water  
574 Association shall be eligible for appointment.

575                 (c) The department, if requested by the board, shall  
576 furnish the board with facilities and staff as needed to  
577 administer this section. The department may contract, upon  
578 approval by the board, for those facilities and staff needed to  
579 administer this section, including routine management, as it deems  
580 necessary. The board may advertise for or solicit proposals from  
581 public or private sources, or both, for administration of this  
582 section or any services required for administration of this

583 section or any portion thereof. It is the intent of the  
584 Legislature that the board endeavor to ensure that the costs of  
585 administration of this section are as low as possible in order to  
586 provide the water consumers of Mississippi safe drinking water at  
587 affordable prices.

588 (d) Members of the board may not receive any salary,  
589 compensation or per diem for the performance of their duties under  
590 this section.

591 (2) (a) There is created a special fund in the State  
592 Treasury to be designated as the "Local Governments and Rural  
593 Water Systems Improvements Revolving Loan Fund," referred to in  
594 this section as "revolving fund," which fund shall consist of  
595 those monies as provided in Sections 6 and 13 of Chapter 521, Laws  
596 of 1995. The revolving fund may receive appropriations, bond  
597 proceeds, grants, gifts, donations or funds from any source,  
598 public or private. The revolving fund shall be credited with all  
599 repayments of principal and interest derived from loans made from  
600 the revolving fund. The monies in the revolving fund may be  
601 expended only in amounts appropriated by the Legislature, and the  
602 different amounts specifically provided for the loan program and  
603 the grant program shall be so designated. Monies in the fund may  
604 only be expended for the grant program from the amount designated  
605 for such program. The revolving fund shall be maintained in  
606 perpetuity for the purposes established in this section and  
607 Sections 6 through 20 of Chapter 521, Laws of 1995. Unexpended  
608 amounts remaining in the revolving fund at the end of a fiscal  
609 year shall not lapse into the State General Fund, and any interest  
610 earned on amounts in the revolving fund shall be deposited to the  
611 credit of the fund. Monies in the revolving fund may not be used  
612 or expended for any purpose except as authorized under this  
613 section and Sections 6 through 20 of Chapter 521, Laws of 1995.  
614 Any monies in the fund may be used to match any federal funds that  
615 are available for the same or related purposes for which funds are

616 used and expended under this section and Sections 6 through 20 of  
617 Chapter 521, Laws of 1995. Any federal funds shall be used and  
618 expended only in accordance with federal laws, rules and  
619 regulations governing the expenditure of those funds. No person  
620 shall use any monies from the revolving fund for the acquisition  
621 of real property or any interest in real property unless that  
622 property is integral to the project funded under this section and  
623 the purchase is made from a willing seller. No county,  
624 incorporated municipality or district shall acquire any real  
625 property or any interest in any real property for a project funded  
626 through the revolving fund by condemnation. The board's  
627 application of Sections 43-37-1 through 43-37-13 shall be no more  
628 stringent or extensive in scope, coverage and effect than federal  
629 property acquisition laws and regulations.

630 (b) There is created a special fund in the State  
631 Treasury to be designated as the "Local Governments and Rural  
632 Water Systems Emergency Loan Fund," hereinafter referred to as  
633 "emergency fund," which fund shall consist of those monies as  
634 provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The  
635 emergency fund may receive appropriations, bond proceeds, grants,  
636 gifts, donations or funds from any source, public or private. The  
637 emergency fund shall be credited with all repayments of principal  
638 and interest derived from loans made from the emergency fund. The  
639 monies in the emergency fund may be expended only in amounts  
640 appropriated by the Legislature. The emergency fund shall be  
641 maintained in perpetuity for the purposes established in this  
642 section and Section 6 of Chapter 521, Laws of 1995. Unexpended  
643 amounts remaining in the emergency fund at the end of a fiscal  
644 year shall not lapse into the State General Fund. Any interest  
645 earned on amounts in the emergency fund shall be deposited to the  
646 credit of the fund. Monies in the emergency fund may not be used  
647 or expended for any purpose except as authorized under this  
648 section and Section 6 of Chapter 521, Laws of 1995.

649 (c) The board created in subsection (1) shall establish  
650 loan and grant programs by which loans and grants may be made  
651 available to counties, incorporated municipalities, districts or  
652 other water organizations that have been granted tax exempt status  
653 under either federal or state law, to assist those counties,  
654 incorporated municipalities, districts or water organizations in  
655 making water systems improvements, including the construction of  
656 new water systems or expansion or repair of existing water  
657 systems. Any entity eligible under this section may receive  
658 either a loan or a grant, or both. No grant awarded under the  
659 program established in this section may be made using funds from  
660 the loan program. Grants may be awarded only when the Legislature  
661 specifically appropriates funds for that particular purpose. The  
662 interest rate on those loans may vary from time to time and from  
663 loan to loan, and will be at or below market interest rates as  
664 determined by the board. The board shall act as quickly as is  
665 practicable and prudent in deciding on any loan request that it  
666 receives. Loans from the revolving fund or emergency fund may be  
667 made to counties, incorporated municipalities, districts or other  
668 water organizations that have been granted tax exempt status under  
669 either federal or state law, as set forth in a loan agreement in  
670 amounts not to exceed one hundred percent (100%) of eligible  
671 project costs as established by the board. The board may require  
672 county, municipal, district or other water organization  
673 participation or funding from other sources, or otherwise limit  
674 the percentage of costs covered by loans from the revolving fund  
675 or the emergency fund. The maximum amount for any loan from the  
676 emergency fund shall be Five Hundred Thousand Dollars  
677 (\$500,000.00), and the maximum amount for any loan from the  
678 revolving fund shall be One Million Five Hundred Thousand Dollars  
679 (\$1,500,000.00).

680 (d) A county that receives a loan from the revolving  
681 fund or the emergency fund shall pledge for repayment of the loan

682 any part of the homestead exemption annual tax loss reimbursement  
683 to which it may be entitled under Section 27-33-77, as may be  
684 required to meet the repayment schedule contained in the loan  
685 agreement. An incorporated municipality that receives a loan from  
686 the revolving fund or the emergency fund shall pledge for  
687 repayment of the loan any part of the sales tax revenue  
688 distribution to which it may be entitled under Section 27-65-75,  
689 as may be required to meet the repayment schedule contained in the  
690 loan agreement. All recipients of such loans shall establish a  
691 dedicated source of revenue for repayment of the loan. Before any  
692 county or incorporated municipality shall receive any loan, it  
693 shall have executed with the State Tax Commission and the board a  
694 loan agreement evidencing that loan. The loan agreement shall not  
695 be construed to prohibit any recipient from prepaying any part or  
696 all of the funds received. The repayment schedule in each loan  
697 agreement shall provide for (i) monthly payments, (ii) semiannual  
698 payments or (iii) other periodic payments, the annual total of  
699 which shall not exceed the annual total for any other year of the  
700 loan by more than fifteen percent (15%). Except as otherwise  
701 provided in subsection (4) of this section, the loan agreement  
702 shall provide for the repayment of all funds received from the  
703 revolving fund within not more than fifteen (15) years or a term  
704 as otherwise allowed by the federal Safe Drinking Water Act, and  
705 all funds received from the emergency fund within not more than  
706 five (5) years from the date of project completion, and any  
707 repayment shall commence not later than one (1) year after project  
708 completion. The State Tax Commission shall withhold semiannually  
709 from counties and monthly from incorporated municipalities from  
710 the amount to be remitted to the county or municipality, a sum  
711 equal to the next repayment as provided in the loan agreement.

712 (e) Any county, incorporated municipality, district or  
713 other water organization desiring to construct a project approved  
714 by the board which receives a loan from the state for that purpose

715 but which is not eligible to pledge for repayment under the  
716 provisions of paragraph (d) of this subsection, shall repay that  
717 loan by making payments each month to the State Treasurer through  
718 the Department of Finance and Administration for and on behalf of  
719 the board according to Section 7-7-15, to be credited to either  
720 the revolving fund or the emergency fund, whichever is  
721 appropriate, in lieu of pledging homestead exemption annual tax  
722 loss reimbursement or sales tax revenue distribution.

723         Loan repayments shall be according to a repayment schedule  
724 contained in each loan agreement as provided in paragraph (d) of  
725 this subsection.

726             (f) Any district created pursuant to Sections 19-5-151  
727 through 19-5-207 that receives a loan from the revolving fund or  
728 the emergency fund shall pledge for repayment of the loan any part  
729 of the revenues received by that district pursuant to Sections  
730 19-5-151 through 19-5-207, as may be required to meet the  
731 repayment schedule contained in the loan agreement.

732             (g) The State Auditor, upon request of the board, shall  
733 audit the receipts and expenditures of a county, an incorporated  
734 municipality, district or other water organization whose loan  
735 repayments appear to be in arrears, and if the Auditor finds that  
736 the county, incorporated municipality, district or other water  
737 organization is in arrears in those repayments, the Auditor shall  
738 immediately notify the chairman of the board who may take any  
739 action as may be necessary to enforce the terms of the loan  
740 agreement, including liquidation and enforcement of the security  
741 given for repayment of the loan, and the Executive Director of the  
742 Department of Finance and Administration who shall withhold all  
743 future payments to the county of homestead exemption annual tax  
744 loss reimbursements under Section 27-33-77 and all sums allocated  
745 to the county or the incorporated municipality under Section  
746 27-65-75 until such time as the county or the incorporated

747 municipality is again current in its loan repayments as certified  
748 by the board.

749           (h) All monies deposited in the revolving fund or the  
750 emergency fund, including loan repayments and interest earned on  
751 those repayments, shall be used only for providing loans or other  
752 financial assistance to water systems as the board deems  
753 appropriate. In addition, any amounts in the revolving fund or  
754 the emergency fund may be used to defray the reasonable costs of  
755 administering the revolving fund or the emergency fund and  
756 conducting activities under this section and Sections 6 through 20  
757 of Chapter 521, Laws of 1995, subject to any limitations  
758 established in the federal Safe Drinking Water Act, as amended and  
759 subject to annual appropriation by the Legislature. The  
760 department is authorized, upon approval by the board, to use  
761 amounts available to it from the revolving fund or the emergency  
762 fund to contract for those facilities and staff needed to  
763 administer and provide routine management for the funds and loan  
764 program.

765           (3) In administering this section and Sections 6 through 20  
766 of Chapter 521, Laws of 1995, the board created in subsection (1)  
767 of this section shall have the following powers and duties:

768           (a) To supervise the use of all funds made available  
769 under this section and Sections 6 through 20 of Chapter 521, Laws  
770 of 1995, for local governments and rural water systems  
771 improvements;

772           (b) To promulgate rules and regulations, to make  
773 variances and exceptions thereto, and to establish procedures in  
774 accordance with this section and Sections 6 through 20 of Chapter  
775 521, Laws of 1995, for the implementation of the local governments  
776 and rural water systems improvements revolving loan program;

777           (c) To require, at the board's discretion, any loan or  
778 grant recipient to impose a per connection fee or surcharge or  
779 amended water rate schedule or tariff on each customer or any

780 class of customers, benefiting from an improvement financed by a  
781 loan or grant made under this section, for repayment of any loan  
782 funds provided under this section and Sections 6 through 20 of  
783 Chapter 521, Laws of 1995. The board may require any loan or  
784 grant recipient to undergo a water system viability analysis and  
785 may require a loan or grant recipient to implement any result of  
786 the viability analysis. If the loan recipient fails to implement  
787 any result of a viability analysis as required by the board, the  
788 board may impose a monetary penalty or increase the interest rate  
789 on the loan, or both. If the grant recipient fails to implement  
790 any result of a viability analysis as required by the board, the  
791 board may impose a monetary penalty on the grant;

792 (d) To review and certify all projects for which funds  
793 are authorized to be made available under this section and  
794 Sections 6 through 20 of Chapter 521, Laws of 1995, for local  
795 governments and rural water systems improvements;

796 (e) To requisition monies in the Local Governments and  
797 Rural Water Systems Improvements Revolving Loan Fund and the Local  
798 Governments and Rural Water Systems Emergency Loan Fund and  
799 distribute those monies on a project-by-project basis in  
800 accordance with this section;

801 (f) To ensure that the funds made available under this  
802 section and Sections 6 through 20 of Chapter 521, Laws of 1995, to  
803 a county, an incorporated municipality, a district or a water  
804 organization that has been granted tax exempt status under either  
805 federal or state law provide for a distribution of projects and  
806 funds among the entities under a priority system established by  
807 the board;

808 (g) To maintain in accordance with generally accepted  
809 government accounting standards an accurate record of all monies  
810 in the revolving fund and the emergency fund made available to  
811 counties, incorporated municipalities, districts or other water



812 organizations under this section and Sections 6 through 20 of  
813 Chapter 521, Laws of 1995, and the costs for each project;

814 (h) To establish policies, procedures and requirements  
815 concerning viability and financial capability to repay loans that  
816 may be used in approving loans available under this section,  
817 including a requirement that all loan recipients have a rate  
818 structure which will be sufficient to cover the costs of  
819 operation, maintenance, major equipment replacement and repayment  
820 of any loans made under this section; and

821 (i) To file annually with the Legislature a report  
822 detailing how monies in the Local Governments and Rural Water  
823 Systems Improvements Revolving Loan Fund and the Local Governments  
824 and Rural Water Systems Emergency Loan Fund were spent during the  
825 preceding fiscal year in each county, incorporated municipality,  
826 district or other water organization, the number of projects  
827 approved and constructed, and the cost of each project.

828 For efficient and effective administration of the loan  
829 program, revolving fund and emergency fund, the board may  
830 authorize the department or the State Health Officer to carry out  
831 any or all of the powers and duties enumerated above.

832 (4) The board may, on a case-by-case basis and to the extent  
833 allowed by federal law, renegotiate the payment of principal and  
834 interest on loans made under this section to the six (6) most  
835 southern counties of the state covered by the Presidential  
836 Declaration of Major Disaster for the State of Mississippi  
837 (FEMA-1604-DR) dated August 29, 2005, and to incorporated  
838 municipalities, districts or other water organizations located in  
839 such counties; however, the interest on the loans shall not be  
840 forgiven for a period of more than twenty-four (24) months and the  
841 maturity of the loans shall not be extended for a period of more  
842 than forty-eight (48) months.

843 **SECTION 9.** Section 41-3-17, Mississippi Code of 1972, is  
844 reenacted as follows:

845 41-3-17. The State Board of Health is authorized to make and  
846 publish all reasonable rules and regulations necessary to enable  
847 it to discharge its duties and powers and to carry out the  
848 purposes and objectives of its creation. It is further authorized  
849 to make reasonable sanitary rules and regulations, to be enforced  
850 in the several counties by the county health officer under the  
851 supervision and control of the State Board of Health. The State  
852 Board of Health shall not make or enforce any rule or regulation  
853 that prohibits consumers from providing their own containers for  
854 the purpose of purchasing or accepting water from any vending  
855 machine or device which filters or treats water that has already  
856 been tested and determined to meet or exceed the minimum health  
857 protection standards prescribed for drinking water under the  
858 Mississippi Safe Drinking Water Law, if that vending machine or  
859 device meets or exceeds United States Environmental Protection  
860 Agency or national automatic merchandising standards.

861 **SECTION 10.** Section 41-3-18, Mississippi Code of 1972, is  
862 reenacted and amended as follows:

863 41-3-18. The board shall assess fees in the following  
864 amounts and for the following purposes:

865 (a) Food establishment annual permit fee, based on the  
866 assessment factors of the establishment as follows:

867	Assessment Category 1.....	\$ <u>30.00</u>
868	Assessment Category 2.....	<u>100.00</u>
869	Assessment Category 3.....	<u>150.00</u>
870	Assessment Category 4 .....	<u>200.00</u>

871 \* \* \*

872 (b) Private water supply approval fee..... \$ 10.00

873 The board may develop such reasonable standards, rules and  
874 regulations to clearly define each assessment category.

875 Assessment categories shall be based upon the factors to the  
876 public health implications of the category and type of food  
877 preparation being utilized by the food establishment, utilizing

878 the model Food Code of 1995, or as may be amended by the federal  
879 Food and Drug Administration.

880 The fee authorized under paragraph (a) of this section shall  
881 not be assessed for food establishments operated by public  
882 schools, public junior and community colleges, or state agencies  
883 or institutions, including without limitation, the state  
884 institutions of higher learning and the State Penitentiary.

885 The fee authorized under paragraph (b) of this section shall  
886 not be assessed for private water supplies used by foster homes  
887 licensed by the Department of Human Services.

888 **SECTION 11.** Section 41-3-19, Mississippi Code of 1972, is  
889 reenacted as follows:

890 41-3-19. It is the duty of the State Board of Health to make  
891 a report, in writing, to the Governor, on or before the first day  
892 of December next preceding each session, not an extraordinary  
893 session of the Legislature, upon the sanitary condition, prospect,  
894 and needs of the state, setting forth the action of said board, of  
895 its officers and agents, the names thereof, and all its  
896 expenditures since the last preceding report, and such other  
897 matters as it may deem proper for the promotion of health or the  
898 prevention of disease. The report shall be laid before the  
899 Legislature by the Governor at its ensuing term.

900 **SECTION 12.** Section 41-59-61, Mississippi Code of 1972, is  
901 amended as follows:

902 41-59-61. (1) The assessments that are collected under  
903 subsections (1) and (2) of Section 99-19-73 shall be deposited in  
904 a special fund that is created in the State Treasury to be  
905 designated the "Emergency Medical Services Operating Fund." The  
906 Legislature may make appropriations from the Emergency Medical  
907 Services Operating Fund to the State Board of Health for the  
908 purpose of defraying costs of administration of the Emergency  
909 Medical Services Operating Fund (EMSOF) and for redistribution of  
910 those funds to the counties, municipalities and organized medical

911 service districts (hereinafter referred to as "governmental  
912 units") for the support of the Emergency Medical Services  
913 programs. The State Board of Health, with the Emergency Medical  
914 Services Advisory Council acting in an advisory capacity, shall  
915 administer the disbursement to those governmental units of any  
916 funds appropriated to the board from the Emergency Medical  
917 Services Operating Fund and the utilization of those funds by the  
918 governmental units.

919 (2) Funds appropriated from the Emergency Medical Services  
920 Operating Fund to the State Board of Health shall be made  
921 available to all such governmental units to support the Emergency  
922 Medical Services programs therein, and those funds shall be  
923 distributed to each governmental unit based upon its general  
924 population relative to the total population of the state.  
925 Disbursement of those funds shall be made on an annual basis at  
926 the end of the fiscal year upon the request of each governmental  
927 unit. Funds distributed to those governmental units shall be used  
928 in addition to existing annual Emergency Medical Services budgets  
929 of the governmental units, and no such funds shall be used for the  
930 payment of any attorney's fees. The Director of the Emergency  
931 Medical Services program or his appointed designee is \* \* \*  
932 authorized to require financial reports from the governmental  
933 units utilizing these funds in order to provide satisfactory proof  
934 of the maintenance of the funding effort by the governmental  
935 units.

936 **SECTION 13.** (1) The Mississippi Legislature recognizes the  
937 devastating impact that tobacco use has on the citizens of our  
938 state. Tobacco use is the single most preventable cause of death  
939 and disease in this country and this state. Each year, thousands  
940 of Mississippians lose their lives to diseases caused by tobacco  
941 use, and the cost to the state is hundreds of millions of dollars.  
942 Tobacco use also is a large burden on the families and businesses  
943 of Mississippi. It is therefore the intent of the Legislature

944 that there be developed, implemented and fully funded a  
945 comprehensive and statewide tobacco education, prevention and  
946 cessation program that is consistent with the Best Practices for  
947 Tobacco Control Programs of the federal Centers for Disease  
948 Control and Prevention, as periodically amended. It is also the  
949 intent of the Legislature that all reasonable efforts be made to  
950 maximize the amount of federal funds available for this program.

951 (2) The goals of the tobacco education, prevention and  
952 cessation program include, but are not limited to, the following:

953 (a) Preventing the initiation of use of tobacco  
954 products by youth;

955 (b) Encouraging and helping smokers to quit and  
956 reducing the numbers of youth and adults who use tobacco products;

957 (c) Assisting in the protection from secondhand smoke;

958 (d) Supporting the enforcement of laws prohibiting  
959 youth access to tobacco products;

960 (e) Eliminating the racial and cultural disparities  
961 related to use of tobacco products; and

962 (f) Educating the public and changing the cultural  
963 perception of use of tobacco products in Mississippi.

964 **SECTION 14.** (1) There is hereby created the Office of  
965 Tobacco Control (office) which shall be an administrative division  
966 of the State Department of Health.

967 (2) The Office of Tobacco Control, with the advice of the  
968 Mississippi Tobacco Control Advisory Board, shall develop and  
969 implement a comprehensive and statewide tobacco education,  
970 prevention and cessation program that is consistent with the  
971 recommendations for effective program components and funding  
972 recommendations in the 1999 Best Practices for Comprehensive  
973 Tobacco Control Programs of the federal Centers for Disease  
974 Control and Prevention, as those Best Practices may be  
975 periodically amended by the Centers for Disease Control and  
976 Prevention.

977           (3) At a minimum, the program shall include the following  
978 components, and may include additional components that are  
979 contained within the Best Practices for Comprehensive Tobacco  
980 Control Programs of the federal Centers for Disease Control and  
981 Prevention, as periodically amended, and that based on scientific  
982 data and research have been shown to be effective at accomplishing  
983 the purposes of this section:

984           (a) The use of mass media, including paid advertising  
985 and other communication tools to discourage the use of tobacco  
986 products and to educate people, especially youth, about the health  
987 hazards from the use of tobacco products, which shall be designed  
988 to be effective at achieving these goals and shall include, but  
989 need not be limited to, television, radio, and print advertising,  
990 as well as sponsorship, exhibits and other opportunities to raise  
991 awareness statewide;

992           (b) Evidence-based curricula and programs implemented  
993 in schools to educate youth about tobacco and to discourage their  
994 use of tobacco products, including, but not limited to, programs  
995 that involve youth, educate youth about the health hazards from  
996 the use of tobacco products, help youth develop skills to refuse  
997 tobacco products, and demonstrate to youth how to stop using  
998 tobacco products;

999           (c) Local community programs, including, but not  
1000 limited to, youth-based partnerships that discourage the use of  
1001 tobacco products and involve community-based organizations in  
1002 tobacco education, prevention and cessation programs in their  
1003 communities;

1004           (d) Enforcement of laws, regulations and policies  
1005 against the sale or other provision of tobacco products to minors,  
1006 and the possession of tobacco products by minors;

1007           (e) Programs to assist and help people to stop using  
1008 tobacco products; and

1009           (f) A surveillance and evaluation system that monitors  
1010 program accountability and results, produces publicly available  
1011 reports that review how monies expended for the program are spent,  
1012 and includes an evaluation of the program's effectiveness in  
1013 reducing and preventing the use of tobacco products, and annual  
1014 recommendations for improvements to enhance the program's  
1015 effectiveness.

1016           (4) All programs or activities funded by the State  
1017 Department of Health through the tobacco education, prevention and  
1018 cessation program, whether part of a component described in  
1019 subsection (2) or an additional component, must be consistent with  
1020 the Best Practices for Comprehensive Tobacco Control Programs of  
1021 the federal Centers for Disease Control and Prevention, as  
1022 periodically amended, and all funds received by any person or  
1023 entity under any such program or activity must be expended for  
1024 purposes that are consistent with those Best Practices.

1025           (5) Funding for the different components of the program  
1026 shall be apportioned between the components based on the  
1027 recommendations in the Best Practices for Comprehensive Tobacco  
1028 Control Programs of the federal Centers for Disease Control and  
1029 Prevention, as periodically amended, to provide adequate program  
1030 development, implementation and evaluation for effective control  
1031 of the use of tobacco products. While the office shall develop  
1032 annual budgets based on strategic planning, components of the  
1033 program shall be funded using the following areas as guidelines  
1034 for priority:

- 1035           (a) School nurses and school programs;
- 1036           (b) Mass media (counter-marketing);
- 1037           (c) Cessation programs (including media promotions);
- 1038           (d) Community programs;
- 1039           (e) Surveillance and evaluation;
- 1040           (f) Law enforcement; and

1041 (g) Administration and management; however, not more  
1042 than five percent (5%) of the total budget may be expended for  
1043 administration and management purposes.

1044 (6) In funding the components of the program, the State  
1045 Department of Health may provide funding for health care programs  
1046 at the University of Mississippi Medical Center that are related  
1047 to the prevention and cessation of the use of tobacco products and  
1048 the treatment of illnesses that are related to the use of tobacco  
1049 products.

1050 (7) No statewide, district, local, county or municipal  
1051 elected official shall take part as a public official in mass  
1052 media advertising under the provisions of Sections 13 through 17  
1053 of this act.

1054 **SECTION 15.** (1) The Office of Tobacco Control shall be  
1055 under the management of a director, who shall be appointed by the  
1056 State Health Officer. The responsibility for implementation of  
1057 the comprehensive and statewide tobacco education, prevention and  
1058 cessation program shall be vested in the director. The director  
1059 shall be an individual who has knowledge and experience in public  
1060 health, medical care, health care services, preventive health  
1061 measures or tobacco use control. The director shall be the  
1062 administrative officer of the Office of Tobacco Control, and shall  
1063 perform the duties that are required of him or her by law and such  
1064 other duties as may be assigned to him or her by the State Board  
1065 of Health. The director shall receive such compensation as may be  
1066 fixed by the State Board of Health, subject to the approval of the  
1067 State Personnel Board.

1068 (2) The State Health Officer may employ such other persons  
1069 as may be necessary to carry out the provisions of Sections 13  
1070 through 17 of this act. The compensation and the terms and  
1071 conditions of their employment shall be determined by the State  
1072 Board of Health in accordance with applicable state law and rules  
1073 and regulations of the State Personnel Board.



1074           **SECTION 16.** The Office of Tobacco Control shall perform the  
1075 following duties, with the advice of the Mississippi Tobacco  
1076 Control Advisory Council:

1077           (a) Develop and implement appropriate policies and  
1078 procedures for the operation of the tobacco education, prevention  
1079 and cessation program;

1080           (b) Develop and implement a five-year strategic plan  
1081 for the tobacco education, prevention and cessation program;

1082           (c) Develop and maintain an annual operating budget and  
1083 oversee fiscal management of the tobacco education, prevention and  
1084 cessation program;

1085           (d) Execute any contracts, agreements or other  
1086 documents with any governmental agency or any person, corporation,  
1087 association, partnership or other organization or entity that are  
1088 necessary to accomplish the purposes of Sections 13 through 17 of  
1089 this act;

1090           (e) Receive grants, bequeaths, gifts, donations or any  
1091 other contributions made to the office to be used for specific  
1092 purposes related to the goals of Sections 13 through 17 of this  
1093 act;

1094           (f) Submit an annual report to the Legislature  
1095 regarding the operation of the office;

1096           (g) Submit to the State Auditor any financial records  
1097 that are necessary for the Auditor to perform an annual audit of  
1098 the office as required by law; and

1099           (h) Take any other actions that are necessary to carry  
1100 out the purposes of Sections 13 through 17 of this act.

1101           **SECTION 17.** (1) There is created the Mississippi Tobacco  
1102 Control Advisory Council, which shall consist of thirteen (13)  
1103 members. The thirteen (13) members of the advisory council shall  
1104 consist of the following:

1105           (a) Four (4) members appointed by the Governor, with  
1106 one (1) member from a list of three (3) physicians recommended by

1107 the Mississippi State Medical Association, one (1) member from a  
1108 list of three (3) individuals recommended by the Mississippi  
1109 Chapter of the American Heart Association, and two (2) individuals  
1110 who are not affiliated with the tobacco industry who possess  
1111 knowledge, skill, and prior experience in scientifically proven  
1112 smoking prevention, reduction and cessation programs, health care  
1113 services or preventive health measures;

1114 (b) Two (2) members appointed by the Lieutenant  
1115 Governor, with one (1) member from a list of three (3) nurses  
1116 recommended by the Mississippi Nurses' Association, and one (1)  
1117 member from a list of three (3) individuals recommended by the  
1118 Mississippi Chapter of the American Lung Association;

1119 (c) Two (2) members approved by the Speaker of the  
1120 House of Representatives, with one (1) member from a list of three  
1121 (3) social workers recommended by the Mississippi Chapter of the  
1122 National Association of Social Workers (NASW), and one (1) member  
1123 from a list of three (3) individuals recommended by the  
1124 Mississippi Chapter of the American Cancer Society;

1125 (d) The Attorney General, or his or her designee;

1126 (e) The State Superintendent of Public Education, or  
1127 his or her designee;

1128 (f) The Vice-Chancellor of Health Affairs of the  
1129 University of Mississippi Medical Center, or his or her designee;

1130 (g) The Dean of the College of Health at the University  
1131 of Southern Mississippi, or his or her designee; and

1132 (h) The Administrator of the School of Health Sciences  
1133 of the College of Public Service at Jackson State University, or  
1134 his or her designee.

1135 (2) The Lieutenant Governor shall appoint one (1) member of  
1136 the Senate and the Speaker of the House shall appoint one (1)  
1137 Representative to attend meetings of the Tobacco Control Advisory  
1138 Council.

1139           (3) For those members that are required to be appointed from  
1140 lists of individuals recommended by certain nominating groups, if  
1141 none of the recommended names are acceptable to the appointing  
1142 official, then the nominating group shall submit another list of  
1143 three (3) different individuals until an acceptable individual is  
1144 submitted to the appointing official.

1145           (4) The members who are state officials or university  
1146 officials shall serve as members for as long as they hold the  
1147 designated office or university position. The appointed members  
1148 shall serve for terms that are concurrent with the terms of the  
1149 appointing officials, or until their successors are appointed and  
1150 qualified.

1151           (5) Any vacancy in an appointed member position shall be  
1152 filled within thirty (30) days of the vacancy by the original  
1153 appointing official, and the individual appointed to fill the  
1154 vacancy shall meet the same qualifications as required for the  
1155 former member.

1156           (6) The initial appointments to the advisory council shall  
1157 be made not later than forty-five (45) days after the effective  
1158 date of this act, and the first meeting of the advisory council  
1159 shall be held within sixty (60) days after the effective date of  
1160 this act at a time, date and location specified by the State Board  
1161 of Health.

1162           (7) The advisory council shall annually elect a chairman  
1163 from among its members. The advisory council shall meet at least  
1164 quarterly. A quorum for meetings of the advisory council shall be  
1165 a majority of the voting members of the advisory council. The  
1166 members of the advisory council shall receive the per diem  
1167 compensation provided under Section 25-3-69 plus expense  
1168 reimbursement as provided under Section 25-3-41 for attending  
1169 meetings and necessary business of the advisory council.

1170 (8) The Mississippi Tobacco Advisory Council shall advise  
1171 and make recommendations to the State Board of Health regarding  
1172 rules and regulations promulgated pursuant to this program.

1173 **SECTION 18.** (1) There is established in the State Treasury  
1174 a special fund to be known as the Tobacco Control Program Fund,  
1175 which shall be comprised of the funds specified in subsection (2)  
1176 of this section and any other funds that are authorized or  
1177 required to be deposited into the special fund.

1178 (2) From the tobacco settlement installment payments that  
1179 the State of Mississippi receives during each calendar year, the  
1180 sum of Twenty Million Dollars (\$20,000,000.00) shall be deposited  
1181 into the special fund.

1182 (3) Monies in the fund shall be expended solely for the  
1183 purposes specified in Sections 13 through 17 of this act. None of  
1184 the funds in the special fund may be transferred to any other fund  
1185 or appropriated or expended for any other purpose.

1186 (4) All income from the investment of the funds in the  
1187 special fund shall be credited to the account of the special fund.  
1188 Any funds in the special fund at the end of a fiscal year shall  
1189 not lapse into the State General Fund.

1190 **SECTION 19.** Section 43-13-405, Mississippi Code of 1972, is  
1191 amended as follows:

1192 43-13-405. (1) In accordance with the purposes of this  
1193 article, there is established in the State Treasury the Health  
1194 Care Trust Fund, into which shall be deposited Two Hundred Eighty  
1195 Million Dollars (\$280,000,000.00) of the funds received by the  
1196 State of Mississippi as a result of the tobacco settlement as of  
1197 the end of fiscal year 1999, and all tobacco settlement  
1198 installment payments made in subsequent years for which the use or  
1199 purpose for expenditure is not restricted by the terms of the  
1200 settlement, except as otherwise provided in Section 43-13-407(2)  
1201 and (3) and Section 18 of this act. All income from the  
1202 investment of the funds in the Health Care Trust Fund shall be

1203 credited to the account of the Health Care Trust Fund. The funds  
1204 in the Health Care Trust Fund at the end of a fiscal year shall  
1205 not lapse into the State General Fund.

1206 (2) The Health Care Trust Fund shall remain inviolate and  
1207 shall never be expended, except as provided in this article. The  
1208 Legislature shall appropriate from the Health Care Trust Fund such  
1209 sums as are necessary to recoup any funds lost as a result of any  
1210 of the following actions:

1211 (a) The federal Centers for Medicare and Medicaid  
1212 Services, or other agency of the federal government, is successful  
1213 in recouping tobacco settlement funds from the State of  
1214 Mississippi;

1215 (b) The federal share of funds for the support of the  
1216 Mississippi Medicaid Program is reduced directly or indirectly as  
1217 a result of the tobacco settlement;

1218 (c) Federal funding for any other program is reduced as  
1219 a result of the tobacco settlement; or

1220 (d) Tobacco cessation programs are mandated by the  
1221 federal government or court order.

1222 (3) This section shall stand repealed on July 1, 2010.

1223 **SECTION 20.** The following shall be codified as Section  
1224 41-57-31, Mississippi Code of 1972:

1225 41-57-31. (1) As used in this section, the following terms  
1226 shall be defined as provided in this section, unless the context  
1227 otherwise requires:

1228 (a) "Certificate of birth resulting in stillbirth"  
1229 means a birth certificate issued to record and memorialize the  
1230 birth of a stillborn child.

1231 (b) "Stillbirth" or "stillborn" means an unintended,  
1232 intrauterine fetal death occurring in this state after a  
1233 gestational age of not less than twenty (20) completed weeks.

1234 (2) For any stillborn child in this state, the Bureau of  
1235 Vital Statistics shall issue a certificate of birth resulting in

1236 stillbirth upon the request of a parent named on the death  
1237 certificate, within sixty (60) days of the date of the request. A  
1238 parent may request the Bureau of Vital Statistics to issue a  
1239 certificate of birth resulting in stillbirth without regard to  
1240 whether the death occurred on, before, or after July 1, 2007, and  
1241 without regard to the date on which the death certificate was  
1242 issued.

1243 (3) The person who is required to file a death certificate  
1244 under this chapter shall advise the parent or parents of a  
1245 stillborn child:

1246 (a) That a parent may, but is not required to, request  
1247 the preparation of a certificate of birth resulting in stillbirth;

1248 (b) That a parent may obtain a certificate of birth  
1249 resulting in stillbirth by contacting the Bureau of Vital  
1250 Statistics to request the certificate and paying the required fee;  
1251 and

1252 (c) How a parent may contact the Bureau of Vital  
1253 Statistics to request a certificate of birth resulting in  
1254 stillbirth.

1255 (4) A parent may provide a name for a stillborn child on the  
1256 request for a certificate of birth resulting in stillbirth. The  
1257 name of the stillborn child provided on or later added by  
1258 amendment to the certificate shall be the same name as placed on  
1259 the original or amended death certificate. If the requesting  
1260 parent does not wish to provide a name, the Bureau of Vital  
1261 Statistics shall fill in the certificate with the name "baby boy"  
1262 or "baby girl" and the last name of the parent.

1263 (5) Not later than September 1, 2007, the State Department  
1264 of Health shall prescribe the form and content of a certificate of  
1265 birth resulting in stillbirth and shall specify the information  
1266 necessary to prepare the certificate. In addition to any other  
1267 information required to be on the certificate, the certificate  
1268 shall include:

1269           (a) The date of the stillbirth;  
1270           (b) The county in which the stillbirth occurred;  
1271           (c) The state file number of the corresponding death  
1272 certificate; and

1273           (d) The following statement: "This certificate is not  
1274 proof of live birth."

1275           (6) Upon issuance of a certificate of birth resulting in  
1276 stillbirth to a parent, the Bureau of Vital Statistics shall file  
1277 an exact copy of the certificate with the local registrar of the  
1278 registration district in which the stillbirth occurred. The local  
1279 registrar shall file the certificate of birth resulting in  
1280 stillbirth with the death certificate.

1281           (7) The Bureau of Vital Statistics may not use a certificate  
1282 of birth resulting in stillbirth to calculate live birth  
1283 statistics.

1284           (8) The State Board of Health may adopt any rules or  
1285 regulations necessary to administer this section.

1286           **SECTION 21.** Section 41-7-191, Mississippi Code of 1972, is  
1287 amended as follows:

1288           41-7-191. (1) No person shall engage in any of the  
1289 following activities without obtaining the required certificate of  
1290 need:

1291           (a) The construction, development or other  
1292 establishment of a new health care facility, which establishment  
1293 shall include the reopening of a health care facility that has  
1294 ceased to operate for a period of sixty (60) months or more;

1295           (b) The relocation of a health care facility or portion  
1296 thereof, or major medical equipment, unless such relocation of a  
1297 health care facility or portion thereof, or major medical  
1298 equipment, which does not involve a capital expenditure by or on  
1299 behalf of a health care facility, is within five thousand two  
1300 hundred eighty (5,280) feet from the main entrance of the health  
1301 care facility;

1302 (c) Any change in the existing bed complement of any  
1303 health care facility through the addition or conversion of any  
1304 beds or the alteration, modernizing or refurbishing of any unit or  
1305 department in which the beds may be located; however, if a health  
1306 care facility has voluntarily delicensed some of its existing bed  
1307 complement, it may later relicense some or all of its delicensed  
1308 beds without the necessity of having to acquire a certificate of  
1309 need. The State Department of Health shall maintain a record of  
1310 the delicensing health care facility and its voluntarily  
1311 delicensed beds and continue counting those beds as part of the  
1312 state's total bed count for health care planning purposes. If a  
1313 health care facility that has voluntarily delicensed some of its  
1314 beds later desires to relicense some or all of its voluntarily  
1315 delicensed beds, it shall notify the State Department of Health of  
1316 its intent to increase the number of its licensed beds. The State  
1317 Department of Health shall survey the health care facility within  
1318 thirty (30) days of that notice and, if appropriate, issue the  
1319 health care facility a new license reflecting the new contingent  
1320 of beds. However, in no event may a health care facility that has  
1321 voluntarily delicensed some of its beds be reissued a license to  
1322 operate beds in excess of its bed count before the voluntary  
1323 delicensure of some of its beds without seeking certificate of  
1324 need approval;

1325 (d) Offering of the following health services if those  
1326 services have not been provided on a regular basis by the proposed  
1327 provider of such services within the period of twelve (12) months  
1328 prior to the time such services would be offered:

- 1329 (i) Open heart surgery services;
- 1330 (ii) Cardiac catheterization services;
- 1331 (iii) Comprehensive inpatient rehabilitation  
1332 services;
- 1333 (iv) Licensed psychiatric services;
- 1334 (v) Licensed chemical dependency services;



1335 (vi) Radiation therapy services;

1336 (vii) Diagnostic imaging services of an invasive  
1337 nature, i.e. invasive digital angiography;

1338 (viii) Nursing home care as defined in  
1339 subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);

1340 (ix) Home health services;

1341 (x) Swing-bed services;

1342 (xi) Ambulatory surgical services;

1343 (xii) Magnetic resonance imaging services;

1344 (xiii) [Deleted]

1345 (xiv) Long-term care hospital services;

1346 (xv) Positron Emission Tomography (PET) services;

1347 (e) The relocation of one or more health services from  
1348 one physical facility or site to another physical facility or  
1349 site, unless such relocation, which does not involve a capital  
1350 expenditure by or on behalf of a health care facility, (i) is to a  
1351 physical facility or site within five thousand two hundred eighty  
1352 (5,280) feet from the main entrance of the health care facility  
1353 where the health care service is located, or (ii) is the result of  
1354 an order of a court of appropriate jurisdiction or a result of  
1355 pending litigation in such court, or by order of the State  
1356 Department of Health, or by order of any other agency or legal  
1357 entity of the state, the federal government, or any political  
1358 subdivision of either, whose order is also approved by the State  
1359 Department of Health;

1360 (f) The acquisition or otherwise control of any major  
1361 medical equipment for the provision of medical services; provided,  
1362 however, (i) the acquisition of any major medical equipment used  
1363 only for research purposes, and (ii) the acquisition of major  
1364 medical equipment to replace medical equipment for which a  
1365 facility is already providing medical services and for which the  
1366 State Department of Health has been notified before the date of  
1367 such acquisition shall be exempt from this paragraph; an

1368 acquisition for less than fair market value must be reviewed, if  
1369 the acquisition at fair market value would be subject to review;

1370 (g) Changes of ownership of existing health care  
1371 facilities in which a notice of intent is not filed with the State  
1372 Department of Health at least thirty (30) days prior to the date  
1373 such change of ownership occurs, or a change in services or bed  
1374 capacity as prescribed in paragraph (c) or (d) of this subsection  
1375 as a result of the change of ownership; an acquisition for less  
1376 than fair market value must be reviewed, if the acquisition at  
1377 fair market value would be subject to review;

1378 (h) The change of ownership of any health care facility  
1379 defined in subparagraphs (iv), (vi) and (viii) of Section  
1380 41-7-173(h), in which a notice of intent as described in paragraph  
1381 (g) has not been filed and if the Executive Director, Division of  
1382 Medicaid, Office of the Governor, has not certified in writing  
1383 that there will be no increase in allowable costs to Medicaid from  
1384 revaluation of the assets or from increased interest and  
1385 depreciation as a result of the proposed change of ownership;

1386 (i) Any activity described in paragraphs (a) through  
1387 (h) if undertaken by any person if that same activity would  
1388 require certificate of need approval if undertaken by a health  
1389 care facility;

1390 (j) Any capital expenditure or deferred capital  
1391 expenditure by or on behalf of a health care facility not covered  
1392 by paragraphs (a) through (h);

1393 (k) The contracting of a health care facility as  
1394 defined in subparagraphs (i) through (viii) of Section 41-7-173(h)  
1395 to establish a home office, subunit, or branch office in the space  
1396 operated as a health care facility through a formal arrangement  
1397 with an existing health care facility as defined in subparagraph  
1398 (ix) of Section 41-7-173(h);

1399 (l) The replacement or relocation of a health care  
1400 facility designated as a critical access hospital shall be exempt

1401 from this Section 41-7-191(1) so long as the critical access  
1402 hospital complies with all applicable federal law and regulations  
1403 regarding such replacement or relocation;

1404 (m) Reopening a health care facility that has ceased to  
1405 operate for a period of sixty (60) months or more, which reopening  
1406 requires a certificate of need for the establishment of a new  
1407 health care facility.

1408 (2) The State Department of Health shall not grant approval  
1409 for or issue a certificate of need to any person proposing the new  
1410 construction of, addition to, or expansion of any health care  
1411 facility defined in subparagraphs (iv) (skilled nursing facility)  
1412 and (vi) (intermediate care facility) of Section 41-7-173(h) or  
1413 the conversion of vacant hospital beds to provide skilled or  
1414 intermediate nursing home care, except as hereinafter authorized:

1415 (a) The department may issue a certificate of need to  
1416 any person proposing the new construction of any health care  
1417 facility defined in subparagraphs (iv) and (vi) of Section  
1418 41-7-173(h) as part of a life care retirement facility, in any  
1419 county bordering on the Gulf of Mexico in which is located a  
1420 National Aeronautics and Space Administration facility, not to  
1421 exceed forty (40) beds. From and after July 1, 1999, there shall  
1422 be no prohibition or restrictions on participation in the Medicaid  
1423 program (Section 43-13-101 et seq.) for the beds in the health  
1424 care facility that were authorized under this paragraph (a).

1425 (b) The department may issue certificates of need in  
1426 Harrison County to provide skilled nursing home care for  
1427 Alzheimer's disease patients and other patients, not to exceed one  
1428 hundred fifty (150) beds. From and after July 1, 1999, there  
1429 shall be no prohibition or restrictions on participation in the  
1430 Medicaid program (Section 43-13-101 et seq.) for the beds in the  
1431 nursing facilities that were authorized under this paragraph (b).

1432 (c) The department may issue a certificate of need for  
1433 the addition to or expansion of any skilled nursing facility that

1434 is part of an existing continuing care retirement community  
1435 located in Madison County, provided that the recipient of the  
1436 certificate of need agrees in writing that the skilled nursing  
1437 facility will not at any time participate in the Medicaid program  
1438 (Section 43-13-101 et seq.) or admit or keep any patients in the  
1439 skilled nursing facility who are participating in the Medicaid  
1440 program. This written agreement by the recipient of the  
1441 certificate of need shall be fully binding on any subsequent owner  
1442 of the skilled nursing facility, if the ownership of the facility  
1443 is transferred at any time after the issuance of the certificate  
1444 of need. Agreement that the skilled nursing facility will not  
1445 participate in the Medicaid program shall be a condition of the  
1446 issuance of a certificate of need to any person under this  
1447 paragraph (c), and if such skilled nursing facility at any time  
1448 after the issuance of the certificate of need, regardless of the  
1449 ownership of the facility, participates in the Medicaid program or  
1450 admits or keeps any patients in the facility who are participating  
1451 in the Medicaid program, the State Department of Health shall  
1452 revoke the certificate of need, if it is still outstanding, and  
1453 shall deny or revoke the license of the skilled nursing facility,  
1454 at the time that the department determines, after a hearing  
1455 complying with due process, that the facility has failed to comply  
1456 with any of the conditions upon which the certificate of need was  
1457 issued, as provided in this paragraph and in the written agreement  
1458 by the recipient of the certificate of need. The total number of  
1459 beds that may be authorized under the authority of this paragraph  
1460 (c) shall not exceed sixty (60) beds.

1461 (d) The State Department of Health may issue a  
1462 certificate of need to any hospital located in DeSoto County for  
1463 the new construction of a skilled nursing facility, not to exceed  
1464 one hundred twenty (120) beds, in DeSoto County. From and after  
1465 July 1, 1999, there shall be no prohibition or restrictions on  
1466 participation in the Medicaid program (Section 43-13-101 et seq.)

1467 for the beds in the nursing facility that were authorized under  
1468 this paragraph (d).

1469 (e) The State Department of Health may issue a  
1470 certificate of need for the construction of a nursing facility or  
1471 the conversion of beds to nursing facility beds at a personal care  
1472 facility for the elderly in Lowndes County that is owned and  
1473 operated by a Mississippi nonprofit corporation, not to exceed  
1474 sixty (60) beds. From and after July 1, 1999, there shall be no  
1475 prohibition or restrictions on participation in the Medicaid  
1476 program (Section 43-13-101 et seq.) for the beds in the nursing  
1477 facility that were authorized under this paragraph (e).

1478 (f) The State Department of Health may issue a  
1479 certificate of need for conversion of a county hospital facility  
1480 in Itawamba County to a nursing facility, not to exceed sixty (60)  
1481 beds, including any necessary construction, renovation or  
1482 expansion. From and after July 1, 1999, there shall be no  
1483 prohibition or restrictions on participation in the Medicaid  
1484 program (Section 43-13-101 et seq.) for the beds in the nursing  
1485 facility that were authorized under this paragraph (f).

1486 (g) The State Department of Health may issue a  
1487 certificate of need for the construction or expansion of nursing  
1488 facility beds or the conversion of other beds to nursing facility  
1489 beds in either Hinds, Madison or Rankin County, not to exceed  
1490 sixty (60) beds. From and after July 1, 1999, there shall be no  
1491 prohibition or restrictions on participation in the Medicaid  
1492 program (Section 43-13-101 et seq.) for the beds in the nursing  
1493 facility that were authorized under this paragraph (g).

1494 (h) The State Department of Health may issue a  
1495 certificate of need for the construction or expansion of nursing  
1496 facility beds or the conversion of other beds to nursing facility  
1497 beds in either Hancock, Harrison or Jackson County, not to exceed  
1498 sixty (60) beds. From and after July 1, 1999, there shall be no  
1499 prohibition or restrictions on participation in the Medicaid

1500 program (Section 43-13-101 et seq.) for the beds in the facility  
1501 that were authorized under this paragraph (h).

1502 (i) The department may issue a certificate of need for  
1503 the new construction of a skilled nursing facility in Leake  
1504 County, provided that the recipient of the certificate of need  
1505 agrees in writing that the skilled nursing facility will not at  
1506 any time participate in the Medicaid program (Section 43-13-101 et  
1507 seq.) or admit or keep any patients in the skilled nursing  
1508 facility who are participating in the Medicaid program. This  
1509 written agreement by the recipient of the certificate of need  
1510 shall be fully binding on any subsequent owner of the skilled  
1511 nursing facility, if the ownership of the facility is transferred  
1512 at any time after the issuance of the certificate of need.

1513 Agreement that the skilled nursing facility will not participate  
1514 in the Medicaid program shall be a condition of the issuance of a  
1515 certificate of need to any person under this paragraph (i), and if  
1516 such skilled nursing facility at any time after the issuance of  
1517 the certificate of need, regardless of the ownership of the  
1518 facility, participates in the Medicaid program or admits or keeps  
1519 any patients in the facility who are participating in the Medicaid  
1520 program, the State Department of Health shall revoke the  
1521 certificate of need, if it is still outstanding, and shall deny or  
1522 revoke the license of the skilled nursing facility, at the time  
1523 that the department determines, after a hearing complying with due  
1524 process, that the facility has failed to comply with any of the  
1525 conditions upon which the certificate of need was issued, as  
1526 provided in this paragraph and in the written agreement by the  
1527 recipient of the certificate of need. The provision of Section  
1528 43-7-193(1) regarding substantial compliance of the projection of  
1529 need as reported in the current State Health Plan is waived for  
1530 the purposes of this paragraph. The total number of nursing  
1531 facility beds that may be authorized by any certificate of need  
1532 issued under this paragraph (i) shall not exceed sixty (60) beds.

1533 If the skilled nursing facility authorized by the certificate of  
1534 need issued under this paragraph is not constructed and fully  
1535 operational within eighteen (18) months after July 1, 1994, the  
1536 State Department of Health, after a hearing complying with due  
1537 process, shall revoke the certificate of need, if it is still  
1538 outstanding, and shall not issue a license for the skilled nursing  
1539 facility at any time after the expiration of the eighteen-month  
1540 period.

1541 (j) The department may issue certificates of need to  
1542 allow any existing freestanding long-term care facility in  
1543 Tishomingo County and Hancock County that on July 1, 1995, is  
1544 licensed with fewer than sixty (60) beds. For the purposes of  
1545 this paragraph (j), the provision of Section 41-7-193(1) requiring  
1546 substantial compliance with the projection of need as reported in  
1547 the current State Health Plan is waived. From and after July 1,  
1548 1999, there shall be no prohibition or restrictions on  
1549 participation in the Medicaid program (Section 43-13-101 et seq.)  
1550 for the beds in the long-term care facilities that were authorized  
1551 under this paragraph (j).

1552 (k) The department may issue a certificate of need for  
1553 the construction of a nursing facility at a continuing care  
1554 retirement community in Lowndes County. The total number of beds  
1555 that may be authorized under the authority of this paragraph (k)  
1556 shall not exceed sixty (60) beds. From and after July 1, 2001,  
1557 the prohibition on the facility participating in the Medicaid  
1558 program (Section 43-13-101 et seq.) that was a condition of  
1559 issuance of the certificate of need under this paragraph (k) shall  
1560 be revised as follows: The nursing facility may participate in  
1561 the Medicaid program from and after July 1, 2001, if the owner of  
1562 the facility on July 1, 2001, agrees in writing that no more than  
1563 thirty (30) of the beds at the facility will be certified for  
1564 participation in the Medicaid program, and that no claim will be  
1565 submitted for Medicaid reimbursement for more than thirty (30)

1566 patients in the facility in any month or for any patient in the  
1567 facility who is in a bed that is not Medicaid-certified. This  
1568 written agreement by the owner of the facility shall be a  
1569 condition of licensure of the facility, and the agreement shall be  
1570 fully binding on any subsequent owner of the facility if the  
1571 ownership of the facility is transferred at any time after July 1,  
1572 2001. After this written agreement is executed, the Division of  
1573 Medicaid and the State Department of Health shall not certify more  
1574 than thirty (30) of the beds in the facility for participation in  
1575 the Medicaid program. If the facility violates the terms of the  
1576 written agreement by admitting or keeping in the facility on a  
1577 regular or continuing basis more than thirty (30) patients who are  
1578 participating in the Medicaid program, the State Department of  
1579 Health shall revoke the license of the facility, at the time that  
1580 the department determines, after a hearing complying with due  
1581 process, that the facility has violated the written agreement.

1582 (l) Provided that funds are specifically appropriated  
1583 therefor by the Legislature, the department may issue a  
1584 certificate of need to a rehabilitation hospital in Hinds County  
1585 for the construction of a sixty-bed long-term care nursing  
1586 facility dedicated to the care and treatment of persons with  
1587 severe disabilities including persons with spinal cord and  
1588 closed-head injuries and ventilator-dependent patients. The  
1589 provision of Section 41-7-193(1) regarding substantial compliance  
1590 with projection of need as reported in the current State Health  
1591 Plan is hereby waived for the purpose of this paragraph.

1592 (m) The State Department of Health may issue a  
1593 certificate of need to a county-owned hospital in the Second  
1594 Judicial District of Panola County for the conversion of not more  
1595 than seventy-two (72) hospital beds to nursing facility beds,  
1596 provided that the recipient of the certificate of need agrees in  
1597 writing that none of the beds at the nursing facility will be  
1598 certified for participation in the Medicaid program (Section



1599 43-13-101 et seq.), and that no claim will be submitted for  
1600 Medicaid reimbursement in the nursing facility in any day or for  
1601 any patient in the nursing facility. This written agreement by  
1602 the recipient of the certificate of need shall be a condition of  
1603 the issuance of the certificate of need under this paragraph, and  
1604 the agreement shall be fully binding on any subsequent owner of  
1605 the nursing facility if the ownership of the nursing facility is  
1606 transferred at any time after the issuance of the certificate of  
1607 need. After this written agreement is executed, the Division of  
1608 Medicaid and the State Department of Health shall not certify any  
1609 of the beds in the nursing facility for participation in the  
1610 Medicaid program. If the nursing facility violates the terms of  
1611 the written agreement by admitting or keeping in the nursing  
1612 facility on a regular or continuing basis any patients who are  
1613 participating in the Medicaid program, the State Department of  
1614 Health shall revoke the license of the nursing facility, at the  
1615 time that the department determines, after a hearing complying  
1616 with due process, that the nursing facility has violated the  
1617 condition upon which the certificate of need was issued, as  
1618 provided in this paragraph and in the written agreement. If the  
1619 certificate of need authorized under this paragraph is not issued  
1620 within twelve (12) months after July 1, 2001, the department shall  
1621 deny the application for the certificate of need and shall not  
1622 issue the certificate of need at any time after the twelve-month  
1623 period, unless the issuance is contested. If the certificate of  
1624 need is issued and substantial construction of the nursing  
1625 facility beds has not commenced within eighteen (18) months after  
1626 July 1, 2001, the State Department of Health, after a hearing  
1627 complying with due process, shall revoke the certificate of need  
1628 if it is still outstanding, and the department shall not issue a  
1629 license for the nursing facility at any time after the  
1630 eighteen-month period. Provided, however, that if the issuance of  
1631 the certificate of need is contested, the department shall require

1632 substantial construction of the nursing facility beds within six  
1633 (6) months after final adjudication on the issuance of the  
1634 certificate of need.

1635 (n) The department may issue a certificate of need for  
1636 the new construction, addition or conversion of skilled nursing  
1637 facility beds in Madison County, provided that the recipient of  
1638 the certificate of need agrees in writing that the skilled nursing  
1639 facility will not at any time participate in the Medicaid program  
1640 (Section 43-13-101 et seq.) or admit or keep any patients in the  
1641 skilled nursing facility who are participating in the Medicaid  
1642 program. This written agreement by the recipient of the  
1643 certificate of need shall be fully binding on any subsequent owner  
1644 of the skilled nursing facility, if the ownership of the facility  
1645 is transferred at any time after the issuance of the certificate  
1646 of need. Agreement that the skilled nursing facility will not  
1647 participate in the Medicaid program shall be a condition of the  
1648 issuance of a certificate of need to any person under this  
1649 paragraph (n), and if such skilled nursing facility at any time  
1650 after the issuance of the certificate of need, regardless of the  
1651 ownership of the facility, participates in the Medicaid program or  
1652 admits or keeps any patients in the facility who are participating  
1653 in the Medicaid program, the State Department of Health shall  
1654 revoke the certificate of need, if it is still outstanding, and  
1655 shall deny or revoke the license of the skilled nursing facility,  
1656 at the time that the department determines, after a hearing  
1657 complying with due process, that the facility has failed to comply  
1658 with any of the conditions upon which the certificate of need was  
1659 issued, as provided in this paragraph and in the written agreement  
1660 by the recipient of the certificate of need. The total number of  
1661 nursing facility beds that may be authorized by any certificate of  
1662 need issued under this paragraph (n) shall not exceed sixty (60)  
1663 beds. If the certificate of need authorized under this paragraph  
1664 is not issued within twelve (12) months after July 1, 1998, the

1665 department shall deny the application for the certificate of need  
1666 and shall not issue the certificate of need at any time after the  
1667 twelve-month period, unless the issuance is contested. If the  
1668 certificate of need is issued and substantial construction of the  
1669 nursing facility beds has not commenced within eighteen (18)  
1670 months after the effective date of July 1, 1998, the State  
1671 Department of Health, after a hearing complying with due process,  
1672 shall revoke the certificate of need if it is still outstanding,  
1673 and the department shall not issue a license for the nursing  
1674 facility at any time after the eighteen-month period. Provided,  
1675 however, that if the issuance of the certificate of need is  
1676 contested, the department shall require substantial construction  
1677 of the nursing facility beds within six (6) months after final  
1678 adjudication on the issuance of the certificate of need.

1679           (o) The department may issue a certificate of need for  
1680 the new construction, addition or conversion of skilled nursing  
1681 facility beds in Leake County, provided that the recipient of the  
1682 certificate of need agrees in writing that the skilled nursing  
1683 facility will not at any time participate in the Medicaid program  
1684 (Section 43-13-101 et seq.) or admit or keep any patients in the  
1685 skilled nursing facility who are participating in the Medicaid  
1686 program. This written agreement by the recipient of the  
1687 certificate of need shall be fully binding on any subsequent owner  
1688 of the skilled nursing facility, if the ownership of the facility  
1689 is transferred at any time after the issuance of the certificate  
1690 of need. Agreement that the skilled nursing facility will not  
1691 participate in the Medicaid program shall be a condition of the  
1692 issuance of a certificate of need to any person under this  
1693 paragraph (o), and if such skilled nursing facility at any time  
1694 after the issuance of the certificate of need, regardless of the  
1695 ownership of the facility, participates in the Medicaid program or  
1696 admits or keeps any patients in the facility who are participating  
1697 in the Medicaid program, the State Department of Health shall

1698 revoke the certificate of need, if it is still outstanding, and  
1699 shall deny or revoke the license of the skilled nursing facility,  
1700 at the time that the department determines, after a hearing  
1701 complying with due process, that the facility has failed to comply  
1702 with any of the conditions upon which the certificate of need was  
1703 issued, as provided in this paragraph and in the written agreement  
1704 by the recipient of the certificate of need. The total number of  
1705 nursing facility beds that may be authorized by any certificate of  
1706 need issued under this paragraph (o) shall not exceed sixty (60)  
1707 beds. If the certificate of need authorized under this paragraph  
1708 is not issued within twelve (12) months after July 1, 2001, the  
1709 department shall deny the application for the certificate of need  
1710 and shall not issue the certificate of need at any time after the  
1711 twelve-month period, unless the issuance is contested. If the  
1712 certificate of need is issued and substantial construction of the  
1713 nursing facility beds has not commenced within eighteen (18)  
1714 months after the effective date of July 1, 2001, the State  
1715 Department of Health, after a hearing complying with due process,  
1716 shall revoke the certificate of need if it is still outstanding,  
1717 and the department shall not issue a license for the nursing  
1718 facility at any time after the eighteen-month period. Provided,  
1719 however, that if the issuance of the certificate of need is  
1720 contested, the department shall require substantial construction  
1721 of the nursing facility beds within six (6) months after final  
1722 adjudication on the issuance of the certificate of need.

1723           (p) The department may issue a certificate of need for  
1724 the construction of a municipally owned nursing facility within  
1725 the Town of Belmont in Tishomingo County, not to exceed sixty (60)  
1726 beds, provided that the recipient of the certificate of need  
1727 agrees in writing that the skilled nursing facility will not at  
1728 any time participate in the Medicaid program (Section 43-13-101 et  
1729 seq.) or admit or keep any patients in the skilled nursing  
1730 facility who are participating in the Medicaid program. This

1731 written agreement by the recipient of the certificate of need  
1732 shall be fully binding on any subsequent owner of the skilled  
1733 nursing facility, if the ownership of the facility is transferred  
1734 at any time after the issuance of the certificate of need.  
1735 Agreement that the skilled nursing facility will not participate  
1736 in the Medicaid program shall be a condition of the issuance of a  
1737 certificate of need to any person under this paragraph (p), and if  
1738 such skilled nursing facility at any time after the issuance of  
1739 the certificate of need, regardless of the ownership of the  
1740 facility, participates in the Medicaid program or admits or keeps  
1741 any patients in the facility who are participating in the Medicaid  
1742 program, the State Department of Health shall revoke the  
1743 certificate of need, if it is still outstanding, and shall deny or  
1744 revoke the license of the skilled nursing facility, at the time  
1745 that the department determines, after a hearing complying with due  
1746 process, that the facility has failed to comply with any of the  
1747 conditions upon which the certificate of need was issued, as  
1748 provided in this paragraph and in the written agreement by the  
1749 recipient of the certificate of need. The provision of Section  
1750 43-7-193(1) regarding substantial compliance of the projection of  
1751 need as reported in the current State Health Plan is waived for  
1752 the purposes of this paragraph. If the certificate of need  
1753 authorized under this paragraph is not issued within twelve (12)  
1754 months after July 1, 1998, the department shall deny the  
1755 application for the certificate of need and shall not issue the  
1756 certificate of need at any time after the twelve-month period,  
1757 unless the issuance is contested. If the certificate of need is  
1758 issued and substantial construction of the nursing facility beds  
1759 has not commenced within eighteen (18) months after July 1, 1998,  
1760 the State Department of Health, after a hearing complying with due  
1761 process, shall revoke the certificate of need if it is still  
1762 outstanding, and the department shall not issue a license for the  
1763 nursing facility at any time after the eighteen-month period.

1764 Provided, however, that if the issuance of the certificate of need  
1765 is contested, the department shall require substantial  
1766 construction of the nursing facility beds within six (6) months  
1767 after final adjudication on the issuance of the certificate of  
1768 need.

1769 (q) (i) Beginning on July 1, 1999, the State  
1770 Department of Health shall issue certificates of need during each  
1771 of the next four (4) fiscal years for the construction or  
1772 expansion of nursing facility beds or the conversion of other beds  
1773 to nursing facility beds in each county in the state having a need  
1774 for fifty (50) or more additional nursing facility beds, as shown  
1775 in the fiscal year 1999 State Health Plan, in the manner provided  
1776 in this paragraph (q). The total number of nursing facility beds  
1777 that may be authorized by any certificate of need authorized under  
1778 this paragraph (q) shall not exceed sixty (60) beds.

1779 (ii) Subject to the provisions of subparagraph  
1780 (v), during each of the next four (4) fiscal years, the department  
1781 shall issue six (6) certificates of need for new nursing facility  
1782 beds, as follows: During fiscal years 2000, 2001 and 2002, one  
1783 (1) certificate of need shall be issued for new nursing facility  
1784 beds in the county in each of the four (4) Long-Term Care Planning  
1785 Districts designated in the fiscal year 1999 State Health Plan  
1786 that has the highest need in the district for those beds; and two  
1787 (2) certificates of need shall be issued for new nursing facility  
1788 beds in the two (2) counties from the state at large that have the  
1789 highest need in the state for those beds, when considering the  
1790 need on a statewide basis and without regard to the Long-Term Care  
1791 Planning Districts in which the counties are located. During  
1792 fiscal year 2003, one (1) certificate of need shall be issued for  
1793 new nursing facility beds in any county having a need for fifty  
1794 (50) or more additional nursing facility beds, as shown in the  
1795 fiscal year 1999 State Health Plan, that has not received a  
1796 certificate of need under this paragraph (q) during the three (3)

1797 previous fiscal years. During fiscal year 2000, in addition to  
1798 the six (6) certificates of need authorized in this subparagraph,  
1799 the department also shall issue a certificate of need for new  
1800 nursing facility beds in Amite County and a certificate of need  
1801 for new nursing facility beds in Carroll County.

1802 (iii) Subject to the provisions of subparagraph  
1803 (v), the certificate of need issued under subparagraph (ii) for  
1804 nursing facility beds in each Long-Term Care Planning District  
1805 during each fiscal year shall first be available for nursing  
1806 facility beds in the county in the district having the highest  
1807 need for those beds, as shown in the fiscal year 1999 State Health  
1808 Plan. If there are no applications for a certificate of need for  
1809 nursing facility beds in the county having the highest need for  
1810 those beds by the date specified by the department, then the  
1811 certificate of need shall be available for nursing facility beds  
1812 in other counties in the district in descending order of the need  
1813 for those beds, from the county with the second highest need to  
1814 the county with the lowest need, until an application is received  
1815 for nursing facility beds in an eligible county in the district.

1816 (iv) Subject to the provisions of subparagraph  
1817 (v), the certificate of need issued under subparagraph (ii) for  
1818 nursing facility beds in the two (2) counties from the state at  
1819 large during each fiscal year shall first be available for nursing  
1820 facility beds in the two (2) counties that have the highest need  
1821 in the state for those beds, as shown in the fiscal year 1999  
1822 State Health Plan, when considering the need on a statewide basis  
1823 and without regard to the Long-Term Care Planning Districts in  
1824 which the counties are located. If there are no applications for  
1825 a certificate of need for nursing facility beds in either of the  
1826 two (2) counties having the highest need for those beds on a  
1827 statewide basis by the date specified by the department, then the  
1828 certificate of need shall be available for nursing facility beds  
1829 in other counties from the state at large in descending order of

1830 the need for those beds on a statewide basis, from the county with  
1831 the second highest need to the county with the lowest need, until  
1832 an application is received for nursing facility beds in an  
1833 eligible county from the state at large.

1834                   (v) If a certificate of need is authorized to be  
1835 issued under this paragraph (q) for nursing facility beds in a  
1836 county on the basis of the need in the Long-Term Care Planning  
1837 District during any fiscal year of the four-year period, a  
1838 certificate of need shall not also be available under this  
1839 paragraph (q) for additional nursing facility beds in that county  
1840 on the basis of the need in the state at large, and that county  
1841 shall be excluded in determining which counties have the highest  
1842 need for nursing facility beds in the state at large for that  
1843 fiscal year. After a certificate of need has been issued under  
1844 this paragraph (q) for nursing facility beds in a county during  
1845 any fiscal year of the four-year period, a certificate of need  
1846 shall not be available again under this paragraph (q) for  
1847 additional nursing facility beds in that county during the  
1848 four-year period, and that county shall be excluded in determining  
1849 which counties have the highest need for nursing facility beds in  
1850 succeeding fiscal years.

1851                   (vi) If more than one (1) application is made for  
1852 a certificate of need for nursing home facility beds available  
1853 under this paragraph (q), in Yalobusha, Newton or Tallahatchie  
1854 County, and one (1) of the applicants is a county-owned hospital  
1855 located in the county where the nursing facility beds are  
1856 available, the department shall give priority to the county-owned  
1857 hospital in granting the certificate of need if the following  
1858 conditions are met:

1859                   1. The county-owned hospital fully meets all  
1860 applicable criteria and standards required to obtain a certificate  
1861 of need for the nursing facility beds; and



1862                               2. The county-owned hospital's qualifications  
1863 for the certificate of need, as shown in its application and as  
1864 determined by the department, are at least equal to the  
1865 qualifications of the other applicants for the certificate of  
1866 need.

1867                               (r) (i) Beginning on July 1, 1999, the State  
1868 Department of Health shall issue certificates of need during each  
1869 of the next two (2) fiscal years for the construction or expansion  
1870 of nursing facility beds or the conversion of other beds to  
1871 nursing facility beds in each of the four (4) Long-Term Care  
1872 Planning Districts designated in the fiscal year 1999 State Health  
1873 Plan, to provide care exclusively to patients with Alzheimer's  
1874 disease.

1875                               (ii) Not more than twenty (20) beds may be  
1876 authorized by any certificate of need issued under this paragraph  
1877 (r), and not more than a total of sixty (60) beds may be  
1878 authorized in any Long-Term Care Planning District by all  
1879 certificates of need issued under this paragraph (r). However,  
1880 the total number of beds that may be authorized by all  
1881 certificates of need issued under this paragraph (r) during any  
1882 fiscal year shall not exceed one hundred twenty (120) beds, and  
1883 the total number of beds that may be authorized in any Long-Term  
1884 Care Planning District during any fiscal year shall not exceed  
1885 forty (40) beds. Of the certificates of need that are issued for  
1886 each Long-Term Care Planning District during the next two (2)  
1887 fiscal years, at least one (1) shall be issued for beds in the  
1888 northern part of the district, at least one (1) shall be issued  
1889 for beds in the central part of the district, and at least one (1)  
1890 shall be issued for beds in the southern part of the district.

1891                               (iii) The State Department of Health, in  
1892 consultation with the Department of Mental Health and the Division  
1893 of Medicaid, shall develop and prescribe the staffing levels,  
1894 space requirements and other standards and requirements that must

1895 be met with regard to the nursing facility beds authorized under  
1896 this paragraph (r) to provide care exclusively to patients with  
1897 Alzheimer's disease.

1898 (s) The State Department of Health may issue a  
1899 certificate of need to a nonprofit skilled nursing facility using  
1900 the Green House model of skilled nursing care and located in Yazoo  
1901 City, Yazoo County, Mississippi, for the construction, expansion  
1902 or conversion of not more than nineteen (19) nursing facility  
1903 beds. For purposes of this paragraph (s), the provisions of  
1904 Section 41-7-193(1) requiring substantial compliance with the  
1905 projection of need as reported in the current State Health Plan  
1906 and the provisions of Section 41-7-197 requiring a formal  
1907 certificate of need hearing process are waived. There shall be no  
1908 prohibition or restrictions on participation in the Medicaid  
1909 program for the person receiving the certificate of need  
1910 authorized under this paragraph (s).

1911 (t) The State Department of Health shall issue  
1912 certificates of need to the owner of a nursing facility in  
1913 operation at the time of Hurricane Katrina in Hancock County that  
1914 was not operational on December 31, 2005, because of damage  
1915 sustained from Hurricane Katrina to authorize the following: (i)  
1916 the construction of a new nursing facility in Harrison County;  
1917 (ii) the relocation of forty-nine (49) nursing facility beds from  
1918 the Hancock County facility to the new Harrison County facility;  
1919 (iii) the establishment of not more than twenty (20) non-Medicaid  
1920 nursing facility beds at the Hancock County facility; and (iv) the  
1921 establishment of not more than twenty (20) non-Medicaid beds at  
1922 the new Harrison County facility. The certificates of need that  
1923 authorize the non-Medicaid nursing facility beds under  
1924 subparagraphs (iii) and (iv) of this paragraph (t) shall be  
1925 subject to the following conditions: The owner of the Hancock  
1926 County facility and the new Harrison County facility must agree in  
1927 writing that no more than fifty (50) of the beds at the Hancock

1928 County facility and no more than forty-nine (49) of the beds at  
1929 the Harrison County facility will be certified for participation  
1930 in the Medicaid program, and that no claim will be submitted for  
1931 Medicaid reimbursement for more than fifty (50) patients in the  
1932 Hancock County facility in any month, or for more than forty-nine  
1933 (49) patients in the Harrison County facility in any month, or for  
1934 any patient in either facility who is in a bed that is not  
1935 Medicaid-certified. This written agreement by the owner of the  
1936 nursing facilities shall be a condition of the issuance of the  
1937 certificates of need under this paragraph (t), and the agreement  
1938 shall be fully binding on any later owner or owners of either  
1939 facility if the ownership of either facility is transferred at any  
1940 time after the certificates of need are issued. After this  
1941 written agreement is executed, the Division of Medicaid and the  
1942 State Department of Health shall not certify more than fifty (50)  
1943 of the beds at the Hancock County facility or more than forty-nine  
1944 (49) of the beds at the Harrison County facility for participation  
1945 in the Medicaid program. If the Hancock County facility violates  
1946 the terms of the written agreement by admitting or keeping in the  
1947 facility on a regular or continuing basis more than fifty (50)  
1948 patients who are participating in the Medicaid program, or if the  
1949 Harrison County facility violates the terms of the written  
1950 agreement by admitting or keeping in the facility on a regular or  
1951 continuing basis more than forty-nine (49) patients who are  
1952 participating in the Medicaid program, the State Department of  
1953 Health shall revoke the license of the facility that is in  
1954 violation of the agreement, at the time that the department  
1955 determines, after a hearing complying with due process, that the  
1956 facility has violated the agreement.

1957 (3) The State Department of Health may grant approval for  
1958 and issue certificates of need to any person proposing the new  
1959 construction of, addition to, conversion of beds of or expansion  
1960 of any health care facility defined in subparagraph (x)

1961 (psychiatric residential treatment facility) of Section  
1962 41-7-173(h). The total number of beds which may be authorized by  
1963 such certificates of need shall not exceed three hundred  
1964 thirty-four (334) beds for the entire state.

1965 (a) Of the total number of beds authorized under this  
1966 subsection, the department shall issue a certificate of need to a  
1967 privately-owned psychiatric residential treatment facility in  
1968 Simpson County for the conversion of sixteen (16) intermediate  
1969 care facility for the mentally retarded (ICF-MR) beds to  
1970 psychiatric residential treatment facility beds, provided that  
1971 facility agrees in writing that the facility shall give priority  
1972 for the use of those sixteen (16) beds to Mississippi residents  
1973 who are presently being treated in out-of-state facilities.

1974 (b) Of the total number of beds authorized under this  
1975 subsection, the department may issue a certificate or certificates  
1976 of need for the construction or expansion of psychiatric  
1977 residential treatment facility beds or the conversion of other  
1978 beds to psychiatric residential treatment facility beds in Warren  
1979 County, not to exceed sixty (60) psychiatric residential treatment  
1980 facility beds, provided that the facility agrees in writing that  
1981 no more than thirty (30) of the beds at the psychiatric  
1982 residential treatment facility will be certified for participation  
1983 in the Medicaid program (Section 43-13-101 et seq.) for the use of  
1984 any patients other than those who are participating only in the  
1985 Medicaid program of another state, and that no claim will be  
1986 submitted to the Division of Medicaid for Medicaid reimbursement  
1987 for more than thirty (30) patients in the psychiatric residential  
1988 treatment facility in any day or for any patient in the  
1989 psychiatric residential treatment facility who is in a bed that is  
1990 not Medicaid-certified. This written agreement by the recipient  
1991 of the certificate of need shall be a condition of the issuance of  
1992 the certificate of need under this paragraph, and the agreement  
1993 shall be fully binding on any subsequent owner of the psychiatric

1994 residential treatment facility if the ownership of the facility is  
1995 transferred at any time after the issuance of the certificate of  
1996 need. After this written agreement is executed, the Division of  
1997 Medicaid and the State Department of Health shall not certify more  
1998 than thirty (30) of the beds in the psychiatric residential  
1999 treatment facility for participation in the Medicaid program for  
2000 the use of any patients other than those who are participating  
2001 only in the Medicaid program of another state. If the psychiatric  
2002 residential treatment facility violates the terms of the written  
2003 agreement by admitting or keeping in the facility on a regular or  
2004 continuing basis more than thirty (30) patients who are  
2005 participating in the Mississippi Medicaid program, the State  
2006 Department of Health shall revoke the license of the facility, at  
2007 the time that the department determines, after a hearing complying  
2008 with due process, that the facility has violated the condition  
2009 upon which the certificate of need was issued, as provided in this  
2010 paragraph and in the written agreement.

2011 The State Department of Health, on or before July 1, 2002,  
2012 shall transfer the certificate of need authorized under the  
2013 authority of this paragraph (b), or reissue the certificate of  
2014 need if it has expired, to River Region Health System.

2015 (c) Of the total number of beds authorized under this  
2016 subsection, the department shall issue a certificate of need to a  
2017 hospital currently operating Medicaid-certified acute psychiatric  
2018 beds for adolescents in DeSoto County, for the establishment of a  
2019 forty-bed psychiatric residential treatment facility in DeSoto  
2020 County, provided that the hospital agrees in writing (i) that the  
2021 hospital shall give priority for the use of those forty (40) beds  
2022 to Mississippi residents who are presently being treated in  
2023 out-of-state facilities, and (ii) that no more than fifteen (15)  
2024 of the beds at the psychiatric residential treatment facility will  
2025 be certified for participation in the Medicaid program (Section  
2026 43-13-101 et seq.), and that no claim will be submitted for

2027 Medicaid reimbursement for more than fifteen (15) patients in the  
2028 psychiatric residential treatment facility in any day or for any  
2029 patient in the psychiatric residential treatment facility who is  
2030 in a bed that is not Medicaid-certified. This written agreement  
2031 by the recipient of the certificate of need shall be a condition  
2032 of the issuance of the certificate of need under this paragraph,  
2033 and the agreement shall be fully binding on any subsequent owner  
2034 of the psychiatric residential treatment facility if the ownership  
2035 of the facility is transferred at any time after the issuance of  
2036 the certificate of need. After this written agreement is  
2037 executed, the Division of Medicaid and the State Department of  
2038 Health shall not certify more than fifteen (15) of the beds in the  
2039 psychiatric residential treatment facility for participation in  
2040 the Medicaid program. If the psychiatric residential treatment  
2041 facility violates the terms of the written agreement by admitting  
2042 or keeping in the facility on a regular or continuing basis more  
2043 than fifteen (15) patients who are participating in the Medicaid  
2044 program, the State Department of Health shall revoke the license  
2045 of the facility, at the time that the department determines, after  
2046 a hearing complying with due process, that the facility has  
2047 violated the condition upon which the certificate of need was  
2048 issued, as provided in this paragraph and in the written  
2049 agreement.

2050 (d) Of the total number of beds authorized under this  
2051 subsection, the department may issue a certificate or certificates  
2052 of need for the construction or expansion of psychiatric  
2053 residential treatment facility beds or the conversion of other  
2054 beds to psychiatric treatment facility beds, not to exceed thirty  
2055 (30) psychiatric residential treatment facility beds, in either  
2056 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,  
2057 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

2058 (e) Of the total number of beds authorized under this  
2059 subsection (3) the department shall issue a certificate of need to

2060 a privately-owned, nonprofit psychiatric residential treatment  
2061 facility in Hinds County for an eight-bed expansion of the  
2062 facility, provided that the facility agrees in writing that the  
2063 facility shall give priority for the use of those eight (8) beds  
2064 to Mississippi residents who are presently being treated in  
2065 out-of-state facilities.

2066 (f) The department shall issue a certificate of need to  
2067 a one-hundred-thirty-four-bed specialty hospital located on  
2068 twenty-nine and forty-four one-hundredths (29.44) commercial acres  
2069 at 5900 Highway 39 North in Meridian (Lauderdale County),  
2070 Mississippi, for the addition, construction or expansion of  
2071 child/adolescent psychiatric residential treatment facility beds  
2072 in Lauderdale County. As a condition of issuance of the  
2073 certificate of need under this paragraph, the facility shall give  
2074 priority in admissions to the child/adolescent psychiatric  
2075 residential treatment facility beds authorized under this  
2076 paragraph to patients who otherwise would require out-of-state  
2077 placement. The Division of Medicaid, in conjunction with the  
2078 Department of Human Services, shall furnish the facility a list of  
2079 all out-of-state patients on a quarterly basis. Furthermore,  
2080 notice shall also be provided to the parent, custodial parent or  
2081 guardian of each out-of-state patient notifying them of the  
2082 priority status granted by this paragraph. For purposes of this  
2083 paragraph, the provisions of Section 41-7-193(1) requiring  
2084 substantial compliance with the projection of need as reported in  
2085 the current State Health Plan are waived. The total number of  
2086 child/adolescent psychiatric residential treatment facility beds  
2087 that may be authorized under the authority of this paragraph shall  
2088 be sixty (60) beds. There shall be no prohibition or restrictions  
2089 on participation in the Medicaid program (Section 43-13-101 et  
2090 seq.) for the person receiving the certificate of need authorized  
2091 under this paragraph or for the beds converted pursuant to the  
2092 authority of that certificate of need.

2093           (4) (a) From and after July 1, 1993, the department shall  
2094 not issue a certificate of need to any person for the new  
2095 construction of any hospital, psychiatric hospital or chemical  
2096 dependency hospital that will contain any child/adolescent  
2097 psychiatric or child/adolescent chemical dependency beds, or for  
2098 the conversion of any other health care facility to a hospital,  
2099 psychiatric hospital or chemical dependency hospital that will  
2100 contain any child/adolescent psychiatric or child/adolescent  
2101 chemical dependency beds, or for the addition of any  
2102 child/adolescent psychiatric or child/adolescent chemical  
2103 dependency beds in any hospital, psychiatric hospital or chemical  
2104 dependency hospital, or for the conversion of any beds of another  
2105 category in any hospital, psychiatric hospital or chemical  
2106 dependency hospital to child/adolescent psychiatric or  
2107 child/adolescent chemical dependency beds, except as hereinafter  
2108 authorized:

2109                       (i) The department may issue certificates of need  
2110 to any person for any purpose described in this subsection,  
2111 provided that the hospital, psychiatric hospital or chemical  
2112 dependency hospital does not participate in the Medicaid program  
2113 (Section 43-13-101 et seq.) at the time of the application for the  
2114 certificate of need and the owner of the hospital, psychiatric  
2115 hospital or chemical dependency hospital agrees in writing that  
2116 the hospital, psychiatric hospital or chemical dependency hospital  
2117 will not at any time participate in the Medicaid program or admit  
2118 or keep any patients who are participating in the Medicaid program  
2119 in the hospital, psychiatric hospital or chemical dependency  
2120 hospital. This written agreement by the recipient of the  
2121 certificate of need shall be fully binding on any subsequent owner  
2122 of the hospital, psychiatric hospital or chemical dependency  
2123 hospital, if the ownership of the facility is transferred at any  
2124 time after the issuance of the certificate of need. Agreement  
2125 that the hospital, psychiatric hospital or chemical dependency



2126 hospital will not participate in the Medicaid program shall be a  
2127 condition of the issuance of a certificate of need to any person  
2128 under this subparagraph \* \* \* (i), and if such hospital,  
2129 psychiatric hospital or chemical dependency hospital at any time  
2130 after the issuance of the certificate of need, regardless of the  
2131 ownership of the facility, participates in the Medicaid program or  
2132 admits or keeps any patients in the hospital, psychiatric hospital  
2133 or chemical dependency hospital who are participating in the  
2134 Medicaid program, the State Department of Health shall revoke the  
2135 certificate of need, if it is still outstanding, and shall deny or  
2136 revoke the license of the hospital, psychiatric hospital or  
2137 chemical dependency hospital, at the time that the department  
2138 determines, after a hearing complying with due process, that the  
2139 hospital, psychiatric hospital or chemical dependency hospital has  
2140 failed to comply with any of the conditions upon which the  
2141 certificate of need was issued, as provided in this subparagraph  
2142 (i) and in the written agreement by the recipient of the  
2143 certificate of need.

2144                   (ii) The department may issue a certificate of  
2145 need for the conversion of existing beds in a county hospital in  
2146 Choctaw County from acute care beds to child/adolescent chemical  
2147 dependency beds. For purposes of this subparagraph (ii), the  
2148 provisions of Section 41-7-193(1) requiring substantial compliance  
2149 with the projection of need as reported in the current State  
2150 Health Plan is waived. The total number of beds that may be  
2151 authorized under authority of this subparagraph shall not exceed  
2152 twenty (20) beds. There shall be no prohibition or restrictions  
2153 on participation in the Medicaid program (Section 43-13-101 et  
2154 seq.) for the hospital receiving the certificate of need  
2155 authorized under this subparagraph \* \* \* or for the beds converted  
2156 pursuant to the authority of that certificate of need.

2157                   (iii) The department may issue a certificate or  
2158 certificates of need for the construction or expansion of

2159 child/adolescent psychiatric beds or the conversion of other beds  
2160 to child/adolescent psychiatric beds in Warren County. For  
2161 purposes of this subparagraph (iii), the provisions of Section  
2162 41-7-193(1) requiring substantial compliance with the projection  
2163 of need as reported in the current State Health Plan are waived.  
2164 The total number of beds that may be authorized under the  
2165 authority of this subparagraph shall not exceed twenty (20) beds.  
2166 There shall be no prohibition or restrictions on participation in  
2167 the Medicaid program (Section 43-13-101 et seq.) for the person  
2168 receiving the certificate of need authorized under this  
2169 subparagraph \* \* \* or for the beds converted pursuant to the  
2170 authority of that certificate of need.

2171 If by January 1, 2002, there has been no significant  
2172 commencement of construction of the beds authorized under this  
2173 subparagraph \* \* \* (iii), or no significant action taken to  
2174 convert existing beds to the beds authorized under this  
2175 subparagraph, then the certificate of need that was previously  
2176 issued under this subparagraph shall expire. If the previously  
2177 issued certificate of need expires, the department may accept  
2178 applications for issuance of another certificate of need for the  
2179 beds authorized under this subparagraph, and may issue a  
2180 certificate of need to authorize the construction, expansion or  
2181 conversion of the beds authorized under this subparagraph.

2182 (iv) The department shall issue a certificate of  
2183 need to the Region 7 Mental Health/Retardation Commission for the  
2184 construction or expansion of child/adolescent psychiatric beds or  
2185 the conversion of other beds to child/adolescent psychiatric beds  
2186 in any of the counties served by the commission. For purposes of  
2187 this subparagraph (iv), the provisions of Section 41-7-193(1)  
2188 requiring substantial compliance with the projection of need as  
2189 reported in the current State Health Plan is waived. The total  
2190 number of beds that may be authorized under the authority of this  
2191 subparagraph shall not exceed twenty (20) beds. There shall be no

2192 prohibition or restrictions on participation in the Medicaid  
2193 program (Section 43-13-101 et seq.) for the person receiving the  
2194 certificate of need authorized under this subparagraph \* \* \* or  
2195 for the beds converted pursuant to the authority of that  
2196 certificate of need.

2197                   (v) The department may issue a certificate of need  
2198 to any county hospital located in Leflore County for the  
2199 construction or expansion of adult psychiatric beds or the  
2200 conversion of other beds to adult psychiatric beds, not to exceed  
2201 twenty (20) beds, provided that the recipient of the certificate  
2202 of need agrees in writing that the adult psychiatric beds will not  
2203 at any time be certified for participation in the Medicaid program  
2204 and that the hospital will not admit or keep any patients who are  
2205 participating in the Medicaid program in any of such adult  
2206 psychiatric beds. This written agreement by the recipient of the  
2207 certificate of need shall be fully binding on any subsequent owner  
2208 of the hospital if the ownership of the hospital is transferred at  
2209 any time after the issuance of the certificate of need. Agreement  
2210 that the adult psychiatric beds will not be certified for  
2211 participation in the Medicaid program shall be a condition of the  
2212 issuance of a certificate of need to any person under this  
2213 subparagraph \* \* \* (v), and if such hospital at any time after the  
2214 issuance of the certificate of need, regardless of the ownership  
2215 of the hospital, has any of such adult psychiatric beds certified  
2216 for participation in the Medicaid program or admits or keeps any  
2217 Medicaid patients in such adult psychiatric beds, the State  
2218 Department of Health shall revoke the certificate of need, if it  
2219 is still outstanding, and shall deny or revoke the license of the  
2220 hospital at the time that the department determines, after a  
2221 hearing complying with due process, that the hospital has failed  
2222 to comply with any of the conditions upon which the certificate of  
2223 need was issued, as provided in this subparagraph and in the  
2224 written agreement by the recipient of the certificate of need.

2225                   (vi) The department may issue a certificate or  
2226 certificates of need for the expansion of child psychiatric beds  
2227 or the conversion of other beds to child psychiatric beds at the  
2228 University of Mississippi Medical Center. For purposes of this  
2229 subparagraph \* \* \* (vi), the provision of Section 41-7-193(1)  
2230 requiring substantial compliance with the projection of need as  
2231 reported in the current State Health Plan is waived. The total  
2232 number of beds that may be authorized under the authority of this  
2233 subparagraph \* \* \* shall not exceed fifteen (15) beds. There  
2234 shall be no prohibition or restrictions on participation in the  
2235 Medicaid program (Section 43-13-101 et seq.) for the hospital  
2236 receiving the certificate of need authorized under this  
2237 subparagraph \* \* \* or for the beds converted pursuant to the  
2238 authority of that certificate of need.

2239                   (b) From and after July 1, 1990, no hospital,  
2240 psychiatric hospital or chemical dependency hospital shall be  
2241 authorized to add any child/adolescent psychiatric or  
2242 child/adolescent chemical dependency beds or convert any beds of  
2243 another category to child/adolescent psychiatric or  
2244 child/adolescent chemical dependency beds without a certificate of  
2245 need under the authority of subsection (1)(c) of this section.

2246                   (5) The department may issue a certificate of need to a  
2247 county hospital in Winston County for the conversion of fifteen  
2248 (15) acute care beds to geriatric psychiatric care beds.

2249                   (6) The State Department of Health shall issue a certificate  
2250 of need to a Mississippi corporation qualified to manage a  
2251 long-term care hospital as defined in Section 41-7-173(h)(xii) in  
2252 Harrison County, not to exceed eighty (80) beds, including any  
2253 necessary renovation or construction required for licensure and  
2254 certification, provided that the recipient of the certificate of  
2255 need agrees in writing that the long-term care hospital will not  
2256 at any time participate in the Medicaid program (Section 43-13-101  
2257 et seq.) or admit or keep any patients in the long-term care

2258 hospital who are participating in the Medicaid program. This  
2259 written agreement by the recipient of the certificate of need  
2260 shall be fully binding on any subsequent owner of the long-term  
2261 care hospital, if the ownership of the facility is transferred at  
2262 any time after the issuance of the certificate of need. Agreement  
2263 that the long-term care hospital will not participate in the  
2264 Medicaid program shall be a condition of the issuance of a  
2265 certificate of need to any person under this subsection (6), and  
2266 if such long-term care hospital at any time after the issuance of  
2267 the certificate of need, regardless of the ownership of the  
2268 facility, participates in the Medicaid program or admits or keeps  
2269 any patients in the facility who are participating in the Medicaid  
2270 program, the State Department of Health shall revoke the  
2271 certificate of need, if it is still outstanding, and shall deny or  
2272 revoke the license of the long-term care hospital, at the time  
2273 that the department determines, after a hearing complying with due  
2274 process, that the facility has failed to comply with any of the  
2275 conditions upon which the certificate of need was issued, as  
2276 provided in this subsection and in the written agreement by the  
2277 recipient of the certificate of need. For purposes of this  
2278 subsection, the provision of Section 41-7-193(1) requiring  
2279 substantial compliance with the projection of need as reported in  
2280 the current State Health Plan is hereby waived.

2281 (7) The State Department of Health may issue a certificate  
2282 of need to any hospital in the state to utilize a portion of its  
2283 beds for the "swing-bed" concept. Any such hospital must be in  
2284 conformance with the federal regulations regarding such swing-bed  
2285 concept at the time it submits its application for a certificate  
2286 of need to the State Department of Health, except that such  
2287 hospital may have more licensed beds or a higher average daily  
2288 census (ADC) than the maximum number specified in federal  
2289 regulations for participation in the swing-bed program. Any  
2290 hospital meeting all federal requirements for participation in the

2291 swing-bed program which receives such certificate of need shall  
2292 render services provided under the swing-bed concept to any  
2293 patient eligible for Medicare (Title XVIII of the Social Security  
2294 Act) who is certified by a physician to be in need of such  
2295 services, and no such hospital shall permit any patient who is  
2296 eligible for both Medicaid and Medicare or eligible only for  
2297 Medicaid to stay in the swing beds of the hospital for more than  
2298 thirty (30) days per admission unless the hospital receives prior  
2299 approval for such patient from the Division of Medicaid, Office of  
2300 the Governor. Any hospital having more licensed beds or a higher  
2301 average daily census (ADC) than the maximum number specified in  
2302 federal regulations for participation in the swing-bed program  
2303 which receives such certificate of need shall develop a procedure  
2304 to insure that before a patient is allowed to stay in the swing  
2305 beds of the hospital, there are no vacant nursing home beds  
2306 available for that patient located within a fifty-mile radius of  
2307 the hospital. When any such hospital has a patient staying in the  
2308 swing beds of the hospital and the hospital receives notice from a  
2309 nursing home located within such radius that there is a vacant bed  
2310 available for that patient, the hospital shall transfer the  
2311 patient to the nursing home within a reasonable time after receipt  
2312 of the notice. Any hospital which is subject to the requirements  
2313 of the two (2) preceding sentences of this subsection may be  
2314 suspended from participation in the swing-bed program for a  
2315 reasonable period of time by the State Department of Health if the  
2316 department, after a hearing complying with due process, determines  
2317 that the hospital has failed to comply with any of those  
2318 requirements.

2319 (8) The Department of Health shall not grant approval for or  
2320 issue a certificate of need to any person proposing the new  
2321 construction of, addition to or expansion of a health care  
2322 facility as defined in subparagraph (viii) of Section 41-7-173(h),  
2323 except as hereinafter provided: The department may issue a

2324 certificate of need to a nonprofit corporation located in Madison  
2325 County, Mississippi, for the construction, expansion or conversion  
2326 of not more than twenty (20) beds in a community living program  
2327 for developmentally disabled adults in a facility as defined in  
2328 subparagraph (viii) of Section 41-7-173(h). For purposes of this  
2329 subsection (8), the provisions of Section 41-7-193(1) requiring  
2330 substantial compliance with the projection of need as reported in  
2331 the current State Health Plan and the provisions of Section  
2332 41-7-197 requiring a formal certificate of need hearing process  
2333 are waived. There shall be no prohibition or restrictions on  
2334 participation in the Medicaid program for the person receiving the  
2335 certificate of need authorized under this subsection (8).

2336 (9) The Department of Health shall not grant approval for or  
2337 issue a certificate of need to any person proposing the  
2338 establishment of, or expansion of the currently approved territory  
2339 of, or the contracting to establish a home office, subunit or  
2340 branch office within the space operated as a health care facility  
2341 as defined in Section 41-7-173(h)(i) through (viii) by a health  
2342 care facility as defined in subparagraph (ix) of Section  
2343 41-7-173(h).

2344 (10) Health care facilities owned and/or operated by the  
2345 state or its agencies are exempt from the restraints in this  
2346 section against issuance of a certificate of need if such addition  
2347 or expansion consists of repairing or renovation necessary to  
2348 comply with the state licensure law. This exception shall not  
2349 apply to the new construction of any building by such state  
2350 facility. This exception shall not apply to any health care  
2351 facilities owned and/or operated by counties, municipalities,  
2352 districts, unincorporated areas, other defined persons, or any  
2353 combination thereof.

2354 (11) The new construction, renovation or expansion of or  
2355 addition to any health care facility defined in subparagraph (ii)  
2356 (psychiatric hospital), subparagraph (iv) (skilled nursing

2357 facility), subparagraph (vi) (intermediate care facility),  
2358 subparagraph (viii) (intermediate care facility for the mentally  
2359 retarded) and subparagraph (x) (psychiatric residential treatment  
2360 facility) of Section 41-7-173(h) which is owned by the State of  
2361 Mississippi and under the direction and control of the State  
2362 Department of Mental Health, and the addition of new beds or the  
2363 conversion of beds from one category to another in any such  
2364 defined health care facility which is owned by the State of  
2365 Mississippi and under the direction and control of the State  
2366 Department of Mental Health, shall not require the issuance of a  
2367 certificate of need under Section 41-7-171 et seq.,  
2368 notwithstanding any provision in Section 41-7-171 et seq. to the  
2369 contrary.

2370 (12) The new construction, renovation or expansion of or  
2371 addition to any veterans homes or domiciliaries for eligible  
2372 veterans of the State of Mississippi as authorized under Section  
2373 35-1-19 shall not require the issuance of a certificate of need,  
2374 notwithstanding any provision in Section 41-7-171 et seq. to the  
2375 contrary.

2376 (13) The new construction of a nursing facility or nursing  
2377 facility beds or the conversion of other beds to nursing facility  
2378 beds shall not require the issuance of a certificate of need,  
2379 notwithstanding any provision in Section 41-7-171 et seq. to the  
2380 contrary, if the conditions of this subsection are met.

2381 (a) Before any construction or conversion may be  
2382 undertaken without a certificate of need, the owner of the nursing  
2383 facility, in the case of an existing facility, or the applicant to  
2384 construct a nursing facility, in the case of new construction,  
2385 first must file a written notice of intent and sign a written  
2386 agreement with the State Department of Health that the entire  
2387 nursing facility will not at any time participate in or have any  
2388 beds certified for participation in the Medicaid program (Section  
2389 43-13-101 et seq.), will not admit or keep any patients in the



2390 nursing facility who are participating in the Medicaid program,  
2391 and will not submit any claim for Medicaid reimbursement for any  
2392 patient in the facility. This written agreement by the owner or  
2393 applicant shall be a condition of exercising the authority under  
2394 this subsection without a certificate of need, and the agreement  
2395 shall be fully binding on any subsequent owner of the nursing  
2396 facility if the ownership of the facility is transferred at any  
2397 time after the agreement is signed. After the written agreement  
2398 is signed, the Division of Medicaid and the State Department of  
2399 Health shall not certify any beds in the nursing facility for  
2400 participation in the Medicaid program. If the nursing facility  
2401 violates the terms of the written agreement by participating in  
2402 the Medicaid program, having any beds certified for participation  
2403 in the Medicaid program, admitting or keeping any patient in the  
2404 facility who is participating in the Medicaid program, or  
2405 submitting any claim for Medicaid reimbursement for any patient in  
2406 the facility, the State Department of Health shall revoke the  
2407 license of the nursing facility at the time that the department  
2408 determines, after a hearing complying with due process, that the  
2409 facility has violated the terms of the written agreement.

2410           (b) For the purposes of this subsection, participation  
2411 in the Medicaid program by a nursing facility includes Medicaid  
2412 reimbursement of coinsurance and deductibles for recipients who  
2413 are qualified Medicare beneficiaries and/or those who are dually  
2414 eligible. Any nursing facility exercising the authority under  
2415 this subsection may not bill or submit a claim to the Division of  
2416 Medicaid for services to qualified Medicare beneficiaries and/or  
2417 those who are dually eligible.

2418           (c) The new construction of a nursing facility or  
2419 nursing facility beds or the conversion of other beds to nursing  
2420 facility beds described in this section must be either a part of a  
2421 completely new continuing care retirement community, as described  
2422 in the latest edition of the Mississippi State Health Plan, or an

2423 addition to existing personal care and independent living  
2424 components, and so that the completed project will be a continuing  
2425 care retirement community, containing (i) independent living  
2426 accommodations, (ii) personal care beds, and (iii) the nursing  
2427 home facility beds. The three (3) components must be located on a  
2428 single site and be operated as one (1) inseparable facility. The  
2429 nursing facility component must contain a minimum of thirty (30)  
2430 beds. Any nursing facility beds authorized by this section will  
2431 not be counted against the bed need set forth in the State Health  
2432 Plan, as identified in Section 41-7-171 et seq.

2433 This subsection (13) shall stand repealed from and after July  
2434 1, 2005.

2435 (14) The State Department of Health shall issue a  
2436 certificate of need to any hospital which is currently licensed  
2437 for two hundred fifty (250) or more acute care beds and is located  
2438 in any general hospital service area not having a comprehensive  
2439 cancer center, for the establishment and equipping of such a  
2440 center which provides facilities and services for outpatient  
2441 radiation oncology therapy, outpatient medical oncology therapy,  
2442 and appropriate support services including the provision of  
2443 radiation therapy services. The provision of Section 41-7-193(1)  
2444 regarding substantial compliance with the projection of need as  
2445 reported in the current State Health Plan is waived for the  
2446 purpose of this subsection.

2447 (15) The State Department of Health may authorize the  
2448 transfer of hospital beds, not to exceed sixty (60) beds, from the  
2449 North Panola Community Hospital to the South Panola Community  
2450 Hospital. The authorization for the transfer of those beds shall  
2451 be exempt from the certificate of need review process.

2452 (16) The State Department of Health shall issue any  
2453 certificates of need necessary for Mississippi State University  
2454 and a public or private health care provider to jointly acquire  
2455 and operate a linear accelerator and a magnetic resonance imaging

2456 unit. Those certificates of need shall cover all capital  
2457 expenditures related to the project between Mississippi State  
2458 University and the health care provider, including, but not  
2459 limited to, the acquisition of the linear accelerator, the  
2460 magnetic resonance imaging unit and other radiological modalities;  
2461 the offering of linear accelerator and magnetic resonance imaging  
2462 services; and the cost of construction of facilities in which to  
2463 locate these services. The linear accelerator and the magnetic  
2464 resonance imaging unit shall be (a) located in the City of  
2465 Starkville, Oktibbeha County, Mississippi; (b) operated jointly by  
2466 Mississippi State University and the public or private health care  
2467 provider selected by Mississippi State University through a  
2468 request for proposals (RFP) process in which Mississippi State  
2469 University selects, and the Board of Trustees of State  
2470 Institutions of Higher Learning approves, the health care provider  
2471 that makes the best overall proposal; (c) available to Mississippi  
2472 State University for research purposes two-thirds (2/3) of the  
2473 time that the linear accelerator and magnetic resonance imaging  
2474 unit are operational; and (d) available to the public or private  
2475 health care provider selected by Mississippi State University and  
2476 approved by the Board of Trustees of State Institutions of Higher  
2477 Learning one-third (1/3) of the time for clinical, diagnostic and  
2478 treatment purposes. For purposes of this subsection, the  
2479 provisions of Section 41-7-193(1) requiring substantial compliance  
2480 with the projection of need as reported in the current State  
2481 Health Plan are waived.

2482       (17) The State Department of Health shall issue a  
2483 certificate of need for the construction of an acute care hospital  
2484 in Kemper County, not to exceed twenty-five (25) beds, which shall  
2485 be named the "John C. Stennis Memorial Hospital." In issuing the  
2486 certificate of need under this subsection, the department shall  
2487 give priority to a hospital located in Lauderdale County that has  
2488 two hundred fifteen (215) beds. For purposes of this subsection,

2489 the provisions of Section 41-7-193(1) requiring substantial  
2490 compliance with the projection of need as reported in the current  
2491 State Health Plan and the provisions of Section 41-7-197 requiring  
2492 a formal certificate of need hearing process are waived. There  
2493 shall be no prohibition or restrictions on participation in the  
2494 Medicaid program (Section 43-13-101 et seq.) for the person or  
2495 entity receiving the certificate of need authorized under this  
2496 subsection or for the beds constructed under the authority of that  
2497 certificate of need.

2498       (18) Nothing in this section or in any other provision of  
2499 Section 41-7-171 et seq. shall prevent any nursing facility from  
2500 designating an appropriate number of existing beds in the facility  
2501 as beds for providing care exclusively to patients with  
2502 Alzheimer's disease.

2503       **SECTION 22.** This act shall take effect and be in force from  
2504 and after June 30, 2007, except for Sections 1 and 2 and Sections  
2505 13 through 18, which shall take effect and be in force from and  
2506 after the passage of this act.