

By: Representative Holland

To: Public Health and Human Services; Judiciary A

HOUSE BILL NO. 826
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-7-201, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT APPEALS OF ORDERS OF THE STATE DEPARTMENT OF
3 HEALTH PERTAINING TO CERTIFICATES OF NEED FOR HEALTH CARE
4 FACILITIES SHALL BE MADE DIRECTLY TO THE MISSISSIPPI SUPREME
5 COURT; TO AMEND SECTION 41-7-205, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE THAT A REQUEST FOR CERTAIN EXPENDITURES BY A HEALTH CARE
7 FACILITY THAT EXCEED THE CAPITAL EXPENDITURE MINIMUM SHALL BE
8 AUTHORIZED FOR EXPEDITED REVIEW; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 41-7-201, Mississippi Code of 1972, is
11 amended as follows:

12 41-7-201. * * * The provisions of this section shall apply to
13 any party appealing any final order of the State Department of
14 Health pertaining to a certificate of need for any health care
15 facility as defined in Section 41-7-173(h) * * *:

16 (a) There shall be a "stay of proceedings" of any final
17 order issued by the State Department of Health pertaining to the
18 issuance of a certificate of need for the establishment,
19 construction, expansion or replacement of a health care facility
20 for a period of thirty (30) days from the date of the order, if an
21 existing provider located in the same service area where the
22 health care facility is or will be located has requested a hearing
23 during the course of review in opposition to the issuance of the
24 certificate of need. The stay of proceedings shall expire at the
25 termination of thirty (30) days; however, no construction,
26 renovation or other capital expenditure that is the subject of the
27 order shall be undertaken, no license to operate any facility that
28 is the subject of the order shall be issued by the licensing
29 agency, and no certification to participate in the Title XVIII or



30 Title XIX programs of the Social Security Act shall be granted,
31 until all statutory appeals have been exhausted or the time for
32 those appeals has expired. Notwithstanding the foregoing, the
33 filing of an appeal from a final order of the State Department of
34 Health * * * for the issuance of a certificate of need shall not
35 prevent the purchase of medical equipment or development or
36 offering of institutional health services granted in a certificate
37 of need issued by the State Department of Health.

38 (b) In addition to other remedies now available at law
39 or in equity, any party aggrieved by any such final order of the
40 State Department of Health shall have the right of direct appeal
41 to the Mississippi Supreme Court, which appeal must be filed
42 within twenty (20) days after the date of the final order. * * *
43 Any appeal shall state briefly the nature of the proceedings
44 before the State Department of Health and shall specify the order
45 complained of.

46 (c) Upon the filing of such an appeal, the Clerk of the
47 Supreme Court shall serve notice thereof upon the State Department
48 of Health, whereupon the State Department of Health shall, within
49 thirty (30) days of the date of the filing of the appeal, certify
50 to the * * * court the record in the case, which records shall
51 include a transcript of all testimony, together with all exhibits
52 or copies thereof, all pleadings, proceedings, orders, findings
53 and opinions entered in the case; * * * however, * * * the parties
54 and the State Department of Health may stipulate that a specified
55 portion only of the record shall be certified to the court as the
56 record on appeal. * * *

57 (d) Any appeal of a final order by the State Department
58 of Health in a certificate of need proceeding shall require the
59 giving of a bond by the appellant(s) sufficient to secure the
60 appellee against the loss of costs, fees, expenses and attorney's
61 fees incurred in defense of the appeal, approved by the Supreme
62 Court within five (5) days of the date of filing the appeal.



63 (e) No new or additional evidence shall be introduced
64 in the Supreme Court, but the case shall be determined upon the
65 record certified to the court.

66 (f) The Supreme Court * * * may sustain or dismiss the
67 appeal, modify or vacate the order complained of, in whole or in
68 part, and may make an award of costs, fees, expenses and
69 attorney's fees, as the case may be; but in case the order is
70 wholly or partly vacated, the court may also, in its discretion,
71 remand the matter to the State Department of Health for any
72 further proceedings, not inconsistent with the court's order, as,
73 in the opinion of the court, justice may require. The court, as
74 part of the final order, shall make an award of costs, fees,
75 reasonable expenses and attorney's fees incurred in favor of
76 appellee payable by the appellant(s) if the court affirms the
77 order of the State Department of Health. The order shall not be
78 vacated or set aside, either in whole or in part, except for
79 errors of law, unless the court finds that the order of the State
80 Department of Health is not supported by substantial evidence, is
81 contrary to the manifest weight of the evidence, is in excess of
82 the statutory authority or jurisdiction of the State Department of
83 Health, or violates any vested constitutional rights of any party
84 involved in the appeal. * * *

85 * * *

86 (g) Within thirty (30) days from the date of a final
87 order by the Supreme Court * * * that modifies or wholly or partly
88 vacates the final order of the State Department of Health granting
89 a certificate of need, the State Department of Health shall issue
90 another order in conformity with the final order of the Supreme
91 Court * * *.

92 **SECTION 2.** Section 41-7-205, Mississippi Code of 1972, is
93 amended as follows:

94 41-7-205. The State Department of Health shall provide an
95 expedited review for those projects which it determines to warrant



96 such action. All requests for such an expedited review by the
97 applicant must be made in writing to the State Department of
98 Health. The State Department of Health shall make a determination
99 as to whether expedited review is appropriate within fifteen (15)
100 days after receipt of a written request. The State Department of
101 Health shall render its decision concerning the issuance of a
102 certificate of need within ninety (90) days after the receipt of a
103 completed application. A project is subject to expedited review
104 only if it meets one (1) of the following criteria:

105 (a) A transfer or change of ownership of a health care
106 facility wherein the facility continues to operate under the same
107 category of license or permit as it possessed prior to the date of
108 the proposed change of ownership and none of the other activities
109 described in Section 41-7-191(1) take place in conjunction with
110 such transfer;

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

114 (c) A request for project cost overruns that exceed the
115 rate of inflation as determined by the State Department of Health;

116 (d) A request for relocation of services or facilities
117 if the relocation of such services or facilities (i) involves a
118 capital expenditure by or on behalf of a health care facility, or
119 (ii) is more than one thousand three hundred twenty (1,320) feet
120 from the main entrance of the health care facility or the facility
121 where the service is located;

122 (e) A request for a certificate of need to comply with
123 duly recognized fire, building, or life safety codes, or to comply
124 with state licensure standards or accreditation standards required
125 for reimbursements; and

126 (f) A request for a certificate of need for an
127 expenditure that is not for a single diagnostic, therapeutic,
128 rehabilitative, preventive or palliative procedure service or



129 series of those procedures, and that exceeds the capital
130 expenditure minimum specified under Section 41-7-173.

131 **SECTION 3.** This act shall take effect and be in force from
132 and after July 1, 2011.

