

By: Representatives Powell, Dixon

To: Public Health and Human Services; Revenue and Expenditure General Bills

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1083

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITIONS OF "CAPITAL EXPENDITURE," "CHANGE OF
3 OWNERSHIP," AND "HEALTH SERVICES" FOR THE PURPOSES OF THE HEALTH
4 CARE CERTIFICATE OF NEED LAW; TO AMEND SECTIONS 41-7-193 AND
5 41-7-197, MISSISSIPPI CODE OF 1972, TO REQUIRE THE STATE
6 DEPARTMENT OF HEALTH TO REVIEW APPLICATIONS FOR A CERTIFICATE OF
7 NEED AND THE STATE HEALTH OFFICER TO ISSUE A FINAL ORDER REGARDING
8 THE APPLICATION WITHIN CERTAIN TIME PERIODS; TO AMEND SECTION
9 41-7-201, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS FOR
10 APPEALS OF FINAL ORDERS OF THE DEPARTMENT REGARDING A CERTIFICATE
11 OF NEED; TO AMEND SECTION 41-7-205, MISSISSIPPI CODE OF 1972, TO
12 PROVIDE FOR A DETERMINATION OF REVIEWABILITY BY THE DEPARTMENT
13 UPON APPLICATIONS FOR CERTAIN SERVICES OR ACTIVITIES FOR WHICH THE
14 CERTIFICATE OF NEED LAW IS POTENTIALLY APPLICABLE; AND FOR RELATED
15 PURPOSES.

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

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

19 41-7-173. For the purposes of Section 41-7-171 et seq., the
20 following words shall have the meanings ascribed herein, unless
21 the context otherwise requires:

22 (a) "Affected person" means (i) the applicant; (ii) a
23 person residing within the geographic area to be served by the
24 applicant's proposal; (iii) a person who regularly uses health



25 care facilities or HMOs located in the geographic area of the
26 proposal which provide similar service to that which is proposed;
27 (iv) health care facilities and HMOs which have, prior to receipt
28 of the application under review, formally indicated an intention
29 to provide service similar to that of the proposal being
30 considered at a future date; (v) third-party payers who reimburse
31 health care facilities located in the geographical area of the
32 proposal; or (vi) any agency that establishes rates for health
33 care services or HMOs located in the geographic area of the
34 proposal.

35 (b) "Certificate of need" means a written order of the
36 State Department of Health setting forth the affirmative finding
37 that a proposal in prescribed application form, sufficiently
38 satisfies the plans, standards and criteria prescribed for such
39 service or other project by Section 41-7-171 et seq., and by rules
40 and regulations promulgated thereunder by the State Department of
41 Health.

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

48 (ii) "Capital expenditure," when pertaining to
49 other than major medical equipment, shall mean any expenditure



50 which under generally accepted accounting principles consistently
51 applied is not properly chargeable as an expense of operation and
52 maintenance and which exceeds, for clinical health services, * * *
53 Five Million Dollars (\$5,000,000.00), which amount shall be
54 indexed using the inflation rate as published by the United States
55 Government at the time of the application, * * * or which exceeds,
56 for nonclinical health services, * * * Ten Million Dollars
57 (\$10,000,000.00), which amount shall be indexed using the
58 inflation rate as published by the United States Government at the
59 time of the application * * *.

60 (iii) A "capital expenditure" shall include the
61 acquisition, whether by lease, sufferance, gift, devise, legacy,
62 settlement of a trust or other means, of any facility or part
63 thereof, or equipment for a facility, the expenditure for which
64 would have been considered a capital expenditure if acquired by
65 purchase. Transactions which are separated in time but are
66 planned to be undertaken within twelve (12) months of each other
67 and are components of an overall plan for meeting patient care
68 objectives shall, for purposes of this definition, be viewed in
69 their entirety without regard to their timing.

70 (iv) In those instances where a health care
71 facility or other provider of health services proposes to provide
72 a service in which the capital expenditure for major medical
73 equipment or other than major medical equipment or a combination
74 of the two (2) may have been split between separate parties, the



75 total capital expenditure required to provide the proposed service
76 shall be considered in determining the necessity of certificate of
77 need review and in determining the appropriate certificate of need
78 review fee to be paid. The capital expenditure associated with
79 facilities and equipment to provide services in Mississippi shall
80 be considered regardless of where the capital expenditure was
81 made, in state or out of state, and regardless of the domicile of
82 the party making the capital expenditure, in state or out of
83 state.

84 (d) "Change of ownership" includes, but is not limited
85 to, inter vivos gifts, purchases, transfers, lease arrangements,
86 cash and/or stock transactions or other comparable arrangements
87 whenever any person or entity acquires or controls a majority
88 interest of * * * an existing health care facility, and/or the
89 change of ownership of a health service or an institutional health
90 service. Changes of ownership from partnerships, single
91 proprietorships or corporations to another form of ownership are
92 specifically included. However, "change of ownership" shall not
93 include any inherited interest acquired as a result of a
94 testamentary instrument or under the laws of descent and
95 distribution of the State of Mississippi.

96 (e) "Commencement of construction" means that all of
97 the following have been completed with respect to a proposal or
98 project proposing construction, renovating, remodeling or
99 alteration:



100 (i) A legally binding written contract has been
101 consummated by the proponent and a lawfully licensed contractor to
102 construct and/or complete the intent of the proposal within a
103 specified period of time in accordance with final architectural
104 plans which have been approved by the licensing authority of the
105 State Department of Health;

106 (ii) Any and all permits and/or approvals deemed
107 lawfully necessary by all authorities with responsibility for such
108 have been secured; and

109 (iii) Actual bona fide undertaking of the subject
110 proposal has commenced, and a progress payment of at least one
111 percent (1%) of the total cost price of the contract has been paid
112 to the contractor by the proponent, and the requirements of this
113 paragraph (e) have been certified to in writing by the State
114 Department of Health.

115 Force account expenditures, such as deposits, securities,
116 bonds, et cetera, may, in the discretion of the State Department
117 of Health, be excluded from any or all of the provisions of
118 defined commencement of construction.

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

122 (g) "Develop," when used in connection with health
123 services, means to undertake those activities which, on their
124 completion, will result in the offering of a new institutional



125 health service or the incurring of a financial obligation as
126 defined under applicable state law in relation to the offering of
127 such services.

128 (h) "Health care facility" includes hospitals,
129 psychiatric hospitals, chemical dependency hospitals, skilled
130 nursing facilities, end-stage renal disease (ESRD) facilities,
131 including freestanding hemodialysis units, intermediate care
132 facilities, ambulatory surgical facilities, intermediate care
133 facilities for the mentally retarded, home health agencies,
134 psychiatric residential treatment facilities, pediatric skilled
135 nursing facilities, long-term care hospitals, comprehensive
136 medical rehabilitation facilities, including facilities owned or
137 operated by the state or a political subdivision or
138 instrumentality of the state, but does not include Christian
139 Science sanatoriums operated or listed and certified by the First
140 Church of Christ, Scientist, Boston, Massachusetts. This
141 definition shall not apply to facilities for the private practice,
142 either independently or by incorporated medical groups, of
143 physicians, dentists or health care professionals except where
144 such facilities are an integral part of an institutional health
145 service. The various health care facilities listed in this
146 paragraph shall be defined as follows:

147 (i) "Hospital" means an institution which is
148 primarily engaged in providing to inpatients, by or under the
149 supervision of physicians, diagnostic services and therapeutic



150 services for medical diagnosis, treatment and care of injured,
151 disabled or sick persons, or rehabilitation services for the
152 rehabilitation of injured, disabled or sick persons. Such term
153 does not include psychiatric hospitals.

154 (ii) "Psychiatric hospital" means an institution
155 which is primarily engaged in providing to inpatients, by or under
156 the supervision of a physician, psychiatric services for the
157 diagnosis and treatment of persons with mental illness.

158 (iii) "Chemical dependency hospital" means an
159 institution which is primarily engaged in providing to inpatients,
160 by or under the supervision of a physician, medical and related
161 services for the diagnosis and treatment of chemical dependency
162 such as alcohol and drug abuse.

163 (iv) "Skilled nursing facility" means an
164 institution or a distinct part of an institution which is
165 primarily engaged in providing to inpatients skilled nursing care
166 and related services for patients who require medical or nursing
167 care or rehabilitation services for the rehabilitation of injured,
168 disabled or sick persons.

169 (v) "End-stage renal disease (ESRD) facilities"
170 means kidney disease treatment centers, which includes
171 freestanding hemodialysis units and limited care facilities. The
172 term "limited care facility" generally refers to an
173 off-hospital-premises facility, regardless of whether it is
174 provider or nonprovider operated, which is engaged primarily in



175 furnishing maintenance hemodialysis services to stabilized
176 patients.

177 (vi) "Intermediate care facility" means an
178 institution which provides, on a regular basis, health-related
179 care and services to individuals who do not require the degree of
180 care and treatment which a hospital or skilled nursing facility is
181 designed to provide, but who, because of their mental or physical
182 condition, require health-related care and services (above the
183 level of room and board).

184 (vii) "Ambulatory surgical facility" means a
185 facility primarily organized or established for the purpose of
186 performing surgery for outpatients and is a separate identifiable
187 legal entity from any other health care facility. Such term does
188 not include the offices of private physicians or dentists, whether
189 for individual or group practice, and does not include any
190 abortion facility as defined in Section 41-75-1(f).

191 (viii) "Intermediate care facility for the
192 mentally retarded" means an intermediate care facility that
193 provides health or rehabilitative services in a planned program of
194 activities to persons with an intellectual disability, also
195 including, but not limited to, cerebral palsy and other conditions
196 covered by the Federal Developmentally Disabled Assistance and
197 Bill of Rights Act, Public Law 94-103.

198 (ix) "Home health agency" means a public or
199 privately owned agency or organization, or a subdivision of such



200 an agency or organization, properly authorized to conduct business
201 in Mississippi, which is primarily engaged in providing to
202 individuals at the written direction of a licensed physician, in
203 the individual's place of residence, skilled nursing services
204 provided by or under the supervision of a registered nurse
205 licensed to practice in Mississippi, and one or more of the
206 following services or items:

- 207 1. Physical, occupational or speech therapy;
- 208 2. Medical social services;
- 209 3. Part-time or intermittent services of a
210 home health aide;
- 211 4. Other services as approved by the
212 licensing agency for home health agencies;
- 213 5. Medical supplies, other than drugs and
214 biologicals, and the use of medical appliances; or
- 215 6. Medical services provided by an intern or
216 resident-in-training at a hospital under a teaching program of
217 such hospital.

218 Further, all skilled nursing services and those services
219 listed in items 1 through 4 of this subparagraph (ix) must be
220 provided directly by the licensed home health agency. For
221 purposes of this subparagraph, "directly" means either through an
222 agency employee or by an arrangement with another individual not
223 defined as a health care facility.



224 This subparagraph (ix) shall not apply to health care
225 facilities which had contracts for the above services with a home
226 health agency on January 1, 1990.

227 (x) "Psychiatric residential treatment facility"
228 means any nonhospital establishment with permanent licensed
229 facilities which provides a twenty-four-hour program of care by
230 qualified therapists, including, but not limited to, duly licensed
231 mental health professionals, psychiatrists, psychologists,
232 psychotherapists and licensed certified social workers, for
233 emotionally disturbed children and adolescents referred to such
234 facility by a court, local school district or by the Department of
235 Human Services, who are not in an acute phase of illness requiring
236 the services of a psychiatric hospital, and are in need of such
237 restorative treatment services. For purposes of this
238 subparagraph, the term "emotionally disturbed" means a condition
239 exhibiting one or more of the following characteristics over a
240 long period of time and to a marked degree, which adversely
241 affects educational performance:

242 1. An inability to learn which cannot be
243 explained by intellectual, sensory or health factors;

244 2. An inability to build or maintain
245 satisfactory relationships with peers and teachers;

246 3. Inappropriate types of behavior or
247 feelings under normal circumstances;



248 4. A general pervasive mood of unhappiness or
249 depression; or

250 5. A tendency to develop physical symptoms or
251 fears associated with personal or school problems. An
252 establishment furnishing primarily domiciliary care is not within
253 this definition.

254 (xi) "Pediatric skilled nursing facility" means an
255 institution or a distinct part of an institution that is primarily
256 engaged in providing to inpatients skilled nursing care and
257 related services for persons under twenty-one (21) years of age
258 who require medical or nursing care or rehabilitation services for
259 the rehabilitation of injured, disabled or sick persons.

260 (xii) "Long-term care hospital" means a
261 freestanding, Medicare-certified hospital that has an average
262 length of inpatient stay greater than twenty-five (25) days, which
263 is primarily engaged in providing chronic or long-term medical
264 care to patients who do not require more than three (3) hours of
265 rehabilitation or comprehensive rehabilitation per day, and has a
266 transfer agreement with an acute care medical center and a
267 comprehensive medical rehabilitation facility. Long-term care
268 hospitals shall not use rehabilitation, comprehensive medical
269 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
270 nursing home, skilled nursing facility or sub-acute care facility
271 in association with its name.



272 (xiii) "Comprehensive medical rehabilitation
273 facility" means a hospital or hospital unit that is licensed
274 and/or certified as a comprehensive medical rehabilitation
275 facility which provides specialized programs that are accredited
276 by the Commission on Accreditation of Rehabilitation Facilities
277 and supervised by a physician board certified or board eligible in
278 physiatry or other doctor of medicine or osteopathy with at least
279 two (2) years of training in the medical direction of a
280 comprehensive rehabilitation program that:

281 1. Includes evaluation and treatment of
282 individuals with physical disabilities;

283 2. Emphasizes education and training of
284 individuals with disabilities;

285 3. Incorporates at least the following core
286 disciplines:

- 287 (i) Physical Therapy;
- 288 (ii) Occupational Therapy;
- 289 (iii) Speech and Language Therapy;
- 290 (iv) Rehabilitation Nursing; and

291 4. Incorporates at least three (3) of the
292 following disciplines:

- 293 (i) Psychology;
- 294 (ii) Audiology;
- 295 (iii) Respiratory Therapy;
- 296 (iv) Therapeutic Recreation;



- 297 (v) Orthotics;
- 298 (vi) Prosthetics;
- 299 (vii) Special Education;
- 300 (viii) Vocational Rehabilitation;
- 301 (ix) Psychotherapy;
- 302 (x) Social Work;
- 303 (xi) Rehabilitation Engineering.

304 These specialized programs include, but are not limited to:
305 spinal cord injury programs, head injury programs and infant and
306 early childhood development programs.

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

310 (i) Provides or otherwise makes available to
311 enrolled participants health care services, including
312 substantially the following basic health care services: usual
313 physician services, hospitalization, laboratory, x-ray, emergency
314 and preventive services, and out-of-area coverage;

315 (ii) Is compensated (except for copayments) for
316 the provision of the basic health care services listed in
317 subparagraph (i) of this paragraph to enrolled participants on a
318 predetermined basis; and

319 (iii) Provides physician services primarily:

320 1. Directly through physicians who are either
321 employees or partners of such organization; or



322 2. Through arrangements with individual
323 physicians or one or more groups of physicians (organized on a
324 group practice or individual practice basis).

325 (j) "Health service area" means a geographic area of
326 the state designated in the State Health Plan as the area to be
327 used in planning for specified health facilities and services and
328 to be used when considering certificate of need applications to
329 provide health facilities and services.

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

333 "Clinical health services" are those services for which a capital
334 expenditure is made to increase the number of beds at a health
335 care facility or to obtain a certificate of need under Section
336 41-7-191(1) (d). "Nonclinical health services" are all other
337 services or expenditures that do not involve an increase in the
338 number of beds at a health care facility or involve obtaining a
339 certificate of need under Section 41-7-191(1) (d).

340 (l) "Institutional health services" shall mean health
341 services provided in or through health care facilities and shall
342 include the entities in or through which such services are
343 provided.

344 (m) "Major medical equipment" means medical equipment
345 designed for providing medical or any health-related service which
346 costs in excess of One Million Five Hundred Thousand Dollars



347 (\$1,500,000.00). However, this definition shall not be applicable
348 to clinical laboratories if they are determined by the State
349 Department of Health to be independent of any physician's office,
350 hospital or other health care facility or otherwise not so defined
351 by federal or state law, or rules and regulations promulgated
352 thereunder.

353 (n) "State Department of Health" shall mean the state
354 agency created under Section 41-3-15, which shall be considered to
355 be the State Health Planning and Development Agency, as defined in
356 paragraph (u) of this section.

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

361 (p) "Person" means an individual, a trust or estate,
362 partnership, corporation (including associations, joint-stock
363 companies and insurance companies), the state or a political
364 subdivision or instrumentality of the state.

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

369 (r) "Radiation therapy services" means the treatment of
370 cancer and other diseases using ionizing radiation of either high
371 energy photons (x-rays or gamma rays) or charged particles



372 (electrons, protons or heavy nuclei). However, for purposes of a
373 certificate of need, radiation therapy services shall not include
374 low energy, superficial, external beam x-ray treatment of
375 superficial skin lesions.

376 (s) "Secretary" means the Secretary of Health and Human
377 Services, and any officer or employee of the Department of Health
378 and Human Services to whom the authority involved has been
379 delegated.

380 (t) "State Health Plan" means the sole and official
381 statewide health plan for Mississippi which identifies priority
382 state health needs and establishes standards and criteria for
383 health-related activities which require certificate of need review
384 in compliance with Section 41-7-191.

385 (u) "State Health Planning and Development Agency"
386 means the agency of state government designated to perform health
387 planning and resource development programs for the State of
388 Mississippi.

389 **SECTION 2.** Section 41-7-193, Mississippi Code of 1972, is
390 amended as follows:

391 41-7-193. (1) No person may enter into any financing
392 arrangement or commitment for financing a new institutional health
393 service or any other project requiring a certificate of need
394 unless such certificate has been granted for such purpose. A
395 certificate of need shall not be granted or issued to any person
396 for any proposal, cause or reason, unless the proposal has been



397 reviewed for consistency with the specifications and the criteria
398 established by the State Department of Health and substantially
399 complies with the projection of need as reported in the state
400 health plan in effect at the time the application for the proposal
401 was submitted.

402 (2) An application for a certificate of need for an
403 institutional health service, medical equipment or any proposal
404 requiring a certificate of need shall specify the time, within
405 that granted, such shall be functional or operational according to
406 a time schedule submitted with the application. Each certificate
407 of need shall specify the maximum amount of capital expenditure
408 that may be obligated. The State Department of Health shall
409 periodically review the progress and time schedule of any person
410 issued or granted a certificate of need for any purpose.

411 (3) An application for a certificate of need may be filed at
412 any time with the department after the applicant has given the
413 department fifteen (15) days written notice of its intent to apply
414 for a certificate of need. The department shall not delay review
415 of an application and shall make its recommendation approving or
416 disapproving an application within forty-five (45) days of the
417 date the application was filed. Unless a hearing is requested per
418 Section 41-7-197, the State Health Officer's final order approving
419 or disapproving an application shall be issued within sixty (60)
420 days of the date the application was filed.



421 **SECTION 3.** Section 41-7-197, Mississippi Code of 1972, is
422 amended as follows:

423 41-7-197. (1) The State Department of Health shall adopt
424 and utilize procedures for conducting certificate of need reviews.
425 Such procedures shall include, inter alia, the following: (a)
426 written notification to the applicant; (b) written notification to
427 health care facilities in the same health service area as the
428 proposed service; (c) written notification to other persons who
429 prior to the receipt of the application have filed a formal notice
430 of intent to provide the proposed services in the same service
431 area; and (d) notification to members of the public who reside in
432 the service area where the service is proposed, which may be
433 provided through newspapers or public information channels.

434 (2) All notices provided shall include, inter alia, the
435 following: (a) the proposed schedule for the review; (b) written
436 notification of the period within which a public hearing during
437 the course of the review may be requested in writing by one or
438 more affected persons, such request to be made within * * * ten
439 (10) days of * * * the department's staff recommendation for
440 approval or disapproval of an application; and (c) the manner in
441 which notification will be provided of the time and place of any
442 hearing so requested. Any such hearing shall be conducted
443 by * * * an independent hearing officer designated by the State
444 Department of Health and shall be commenced within sixty (60) days
445 of the filing of the hearing request. At such hearing, the



446 hearing officer and any person affected by the proposal being
447 reviewed may conduct reasonable questioning of persons who make
448 relevant factual allegations concerning the proposal. The hearing
449 officer shall require that all persons be sworn before they may
450 offer any testimony at the hearing, and the hearing officer is
451 authorized to administer oaths. Any person so choosing may be
452 represented by counsel at the hearing. A record of the hearing
453 shall be made, which shall consist of a transcript of all
454 testimony received, all documents and other material introduced by
455 any interested person, the staff report and recommendation and
456 such other material as the hearing officer considers relevant,
457 including his or her own recommendation, which he or she shall
458 make, after reviewing, studying and analyzing the evidence
459 presented during the hearing, within a reasonable period of time
460 after the hearing is closed * * *, which shall not exceed
461 forty-five (45) days. The completed record shall be certified to
462 the State Health Officer, who shall consider only the record in
463 making his or her decision, and shall not consider any evidence or
464 material which is not included therein. All final decisions
465 regarding the issuance of a certificate of need shall be made by
466 the State Health Officer. The State Health Officer shall make,
467 within sixty (60) days of the conclusion of the hearing, his or
468 her written findings and issue his or her order after
469 reviewing * * * the record. The findings and decision of the



470 State Health Officer shall not be deferred to any later
471 date * * *.

472 (3) If review of a filed certificate of need application by
473 the State Department of Health concerning the issuance of a
474 certificate of need is not complete within * * * forty-five (45)
475 days * * * from the date of the application, the application shall
476 be deemed approved by the staff. In such event, any affected
477 person may, within ten (10) days, request a hearing during the
478 course of review. If no such hearing is requested, the State
479 Health Officer shall make his or her written findings and issue an
480 order within five (5) days.

481 (4) If the State Health Officer has not issued an order on a
482 certificate of need application within fifteen (15) days of
483 receipt of the recommendation, either from the department's staff,
484 whether made or deemed approved, or from the hearing officer if
485 applicable, the proponent of the proposal may * * * commence such
486 legal action as is necessary * * * in the Chancery Court of the
487 First Judicial District of Hinds County or in the chancery court
488 of the county in which the new institutional health service is
489 proposed to be provided, to compel the State Health Officer to
490 issue written findings and a written order approving or
491 disapproving the proposal in question.

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



494 41-7-201. * * * (1) The provisions of this subsection (1)
495 shall apply to any party appealing any final order of the State
496 Department of Health pertaining to a certificate of need for a
497 home health agency, as defined in Section 41-7-173(h) (ix):

498 (a) In addition to other remedies now available at law
499 or in equity, any party aggrieved by any such final order of the
500 State Department of Health shall have the right of appeal to the
501 Chancery Court of the First Judicial District of Hinds County,
502 Mississippi, which appeal must be filed within thirty (30) days
503 after the date of the final order. However, any appeal of an
504 order disapproving an application for such a certificate of need
505 may be made to the chancery court of the county where the proposed
506 construction, expansion or alteration was to be located or the new
507 service or purpose of the capital expenditure was to be located.
508 Such appeal must be filed in accordance with the thirty (30) days
509 for filing as provided in this paragraph. Any appeal shall state
510 briefly the nature of the proceedings before the State Department
511 of Health and shall specify the order complained of. Any person
512 whose rights may be materially affected by the action of the State
513 Department of Health may appear and become a party or the court
514 may, upon motion, order that any such person, organization or
515 entity be joined as a necessary party.

516 (b) Upon the filing of such an appeal, the clerk of the
517 chancery court shall serve notice thereof upon the State
518 Department of Health, after which the State Department of Health



519 shall, within thirty (30) days or within such additional time as
520 the court may by order for cause allow from the service of such
521 notice, certify to the chancery court the record in the case,
522 which records shall include a transcript of all testimony,
523 together with all exhibits or copies thereof, all pleadings,
524 proceedings, orders, findings and opinions entered in the case;
525 however, the parties and the State Department of Health may
526 stipulate that a specified portion only of the record shall be
527 certified to the court as the record on appeal.

528 (c) No new or additional evidence shall be introduced
529 in the chancery court, but the case shall be determined upon the
530 record certified to the court.

531 (d) The court may dispose of the appeal in term time or
532 vacation and may sustain or dismiss the appeal, modify or vacate
533 the order complained of, in whole or in part, as the case may be;
534 but in case the order is wholly or partly vacated, the court may
535 also, in its discretion, remand the matter to the State Department
536 of Health for such further proceedings, not inconsistent with the
537 court's order, as, in the opinion of the court, justice may
538 require. The order shall not be vacated or set aside, either in
539 whole or in part, except for errors of law, unless the court finds
540 that the order of the State Department of Health is not supported
541 by substantial evidence, is contrary to the manifest weight of the
542 evidence, is in excess of the statutory authority or jurisdiction
543 of the State Department of Health, or violates any vested



544 constitutional rights of any party involved in the appeal.
545 However, an order of the chancery court reversing the denial of a
546 certificate of need by the State Department of Health shall not
547 entitle the applicant to effectuate the certificate of need until
548 either:

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

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

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

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

561 (a) There shall be a "stay of proceedings" of any final
562 order issued by the State Department of Health pertaining to the
563 issuance of a certificate of need for the establishment,
564 construction, expansion or replacement of a health care facility
565 for a period of thirty (30) days from the date of the order, if an
566 existing provider located in the same service area where the
567 health care facility is or will be located has requested a hearing
568 during the course of review in opposition to the issuance of the



569 certificate of need. The stay of proceedings shall expire at the
570 termination of thirty (30) days; however, no construction,
571 renovation or other capital expenditure that is the subject of the
572 order shall be undertaken, no license to operate any facility that
573 is the subject of the order shall be issued by the licensing
574 agency, and no certification to participate in the Title XVIII or
575 Title XIX programs of the Social Security Act shall be granted,
576 until all statutory appeals have been exhausted or the time for
577 such appeals has expired. Notwithstanding the foregoing, the
578 filing of an appeal from a final order of the State Department of
579 Health or the chancery court for the issuance of a certificate of
580 need shall not prevent the purchase of medical equipment or
581 development or offering of institutional health services granted
582 in a certificate of need issued by the State Department of Health.

583 (b) In addition to other remedies now available at law
584 or in equity, any party aggrieved by any such final order of the
585 State Department of Health shall have the right of appeal to the
586 Chancery Court of the First Judicial District of Hinds County,
587 Mississippi, which appeal must be filed within twenty (20) days
588 after the date of the final order. However, any appeal of an
589 order disapproving an application for such a certificate of need
590 may be made to the chancery court of the county where the proposed
591 construction, expansion or alteration was to be located or the new
592 service or purpose of the capital expenditure was to be located.
593 Such appeal must be filed in accordance with the twenty (20) days



594 for filing as provided in this paragraph. Any appeal shall state
595 briefly the nature of the proceedings before the State Department
596 of Health and shall specify the order complained of.

597 (c) Upon the filing of such an appeal, the clerk of the
598 chancery court shall serve notice thereof upon the State
599 Department of Health, after which the State Department of Health
600 shall, within thirty (30) days of the date of the filing of the
601 appeal, certify to the chancery court the record in the case,
602 which records shall include a transcript of all testimony,
603 together with all exhibits or copies thereof, all pleadings,
604 proceedings, orders, findings and opinions entered in the case;
605 however, the parties and the State Department of Health may
606 stipulate that a specified portion only of the record shall be
607 certified to the court as the record on appeal. The chancery
608 court shall give preference to any such appeal from a final order
609 by the State Department of Health in a certificate of need
610 proceeding, and shall render a final order regarding such appeal
611 no later than one hundred twenty (120) days from the date of the
612 final order by the State Department of Health. If the chancery
613 court has not rendered a final order within this one-hundred-
614 twenty (120) day period, then the final order of the State
615 Department of Health shall be deemed to have been affirmed by the
616 chancery court, and any party to the appeal shall have the right
617 to appeal from the chancery court to the Supreme Court on the
618 record certified by the State Department of Health as otherwise



619 provided in paragraph (g) of this subsection. If the chancery
620 court has not rendered a final order within the one-hundred-twenty
621 (120) day period and an appeal is made to the Supreme Court as
622 provided in this section, the Supreme Court shall remand the case
623 to the chancery court to make an award of costs, fees, reasonable
624 expenses and attorney's fees incurred in favor of appellee payable
625 by the appellant(s) should the Supreme Court affirm the order of
626 the State Department of Health.

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

633 (e) No new or additional evidence shall be introduced
634 in the chancery court, but the case shall be determined upon the
635 record certified to the court.

636 (f) The court may dispose of the appeal in term time or
637 vacation and may sustain or dismiss the appeal, modify or vacate
638 the order complained of, in whole or in part, and may make an
639 award of costs, fees, expenses and attorney's fees, as the case
640 may be; but in case the order is wholly or partly vacated, the
641 court may also, in its discretion, remand the matter to the State
642 Department of Health for such further proceedings, not
643 inconsistent with the court's order, as, in the opinion of the



644 court, justice may require. The court, as part of the final
645 order, shall make an award of costs, fees, reasonable expenses and
646 attorney's fees incurred in favor of appellee payable by the
647 appellant(s) should the court affirm the order of the State
648 Department of Health. The order shall not be vacated or set
649 aside, either in whole or in part, except for errors of law,
650 unless the court finds that the order of the State Department of
651 Health is not supported by substantial evidence, is contrary to
652 the manifest weight of the evidence, is in excess of the statutory
653 authority or jurisdiction of the State Department of Health, or
654 violates any vested constitutional rights of any party involved in
655 the appeal. However, an order of the chancery court reversing the
656 denial of a certificate of need by the State Department of Health
657 shall not entitle the applicant to effectuate the certificate of
658 need until either:

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

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

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

666 (h) Within thirty (30) days from the date of a final
667 order by the Supreme Court or a final order of the chancery court
668 not appealed to the Supreme Court that modifies or wholly or



669 partly vacates the final order of the State Department of Health
670 granting a certificate of need, the State Department of Health
671 shall issue another order in conformity with the final order of
672 the Supreme Court, or the final order of the chancery court not
673 appealed to the Supreme Court.

674 **SECTION 5.** Section 41-7-205, Mississippi Code of 1972, is
675 amended as follows:

676 41-7-205. * * * (1) An applicant proposing:

677 (a) A capital expenditure that is One Million Dollars
678 (\$1,000,000.00) or more;

679 (b) A single specialty ambulatory surgery center, a
680 distinct part skilled nursing facility distinct part unit, or a
681 gero-psychiatric distinct part unit;

682 (c) Any capital expenditure of any amount that would
683 require a review of the Division of Health Facilities Licensure
684 and Certification;

685 (d) Expansion of an end-stage renal disease facility;

686 (e) Relocation of a health care facility or service
687 less than five thousand two hundred eighty (5,280) feet;

688 (f) An addition of health services;

689 (g) A change of ownership;

690 (h) A bed conversion; or

691 (i) Any other activity in which the provisions of

692 Section 41-7-171 et seq. are potentially applicable, shall submit



693 a written request to the department for a determination of
694 reviewability.

695 (2) The fee charged by the department for the determination
696 of reviewability request and review shall not exceed Five Hundred
697 Dollars (\$500.00). The department shall provide its response to a
698 determination request within forty-five (45) days of its filing.
699 If the department has not responded within this time, the
700 applicant may proceed with its proposal as contained in the
701 determination of reviewability filing.

702 (3) If the department has not responded within forty-five
703 (45) days and if the proposal requires a review by the Division of
704 Health Facilities Licensure and Certification, the division shall
705 accept a copy of the applicant's determination of reviewability
706 filing as written approval from the department's Health Policy and
707 Planning Division that no certificate of need is required.

708 (4) If the department determines formal certificate of need
709 review is required, the applicant may file its certificate of need
710 application immediately, without filing a written notice of
711 intent, and the State Health Officer shall issue his or her final
712 order on the application within the time frames set forth in
713 Section 41-7-171 et seq.

714 **SECTION 6.** This act shall take effect and be in force from
715 and after July 1, 2016.

