

By: Representative Bomgar

To: Drug Policy

HOUSE BILL NO. 1130

1 AN ACT TO BE KNOWN AS THE OPIOID CRISIS INTERVENTION ACT; TO
2 AMEND SECTIONS 41-7-173 AND 41-7-191, MISSISSIPPI CODE OF 1972, TO
3 DELETE CHEMICAL DEPENDENCY HOSPITALS AND CHEMICAL DEPENDENCY
4 SERVICES FROM THE REQUIREMENT TO OBTAIN A CERTIFICATE OF NEED; TO
5 AMEND SECTION 41-29-149.1, MISSISSIPPI CODE OF 1972, TO EXPAND THE
6 TYPES OF DRUG VIOLATIONS FOR WHICH A PERSON MAY NOT BE PROSECUTED
7 WHEN COMPLYING WITH THE MISSISSIPPI MEDICAL EMERGENCY GOOD
8 SAMARITAN ACT; TO AMEND SECTION 41-127-1, MISSISSIPPI CODE OF
9 1972, TO PROVIDE THAT TELEMEDICINE PROVIDERS SHALL BE ALLOWED TO
10 PROVIDE TREATMENT FOR SUBSTANCE USE DISORDERS, INCLUDING
11 MEDICATION ASSISTED TREATMENT; TO AMEND SECTION 43-13-117,
12 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE DIVISION OF MEDICAID
13 FROM REQUIRING PRIOR AUTHORIZATION OR APPROVAL FOR ANY DRUGS
14 PRESCRIBED TO TREAT SUBSTANCE USE DISORDERS; TO EXTEND THE DATE OF
15 THE REPEALER ON THAT SECTION; TO AUTHORIZE THE DIVISION OF
16 MEDICAID TO DEVELOP AND IMPLEMENT THE INFECTIOUS DISEASE
17 ELIMINATION PILOT PROGRAM TO PREVENT THE SPREAD OF BLOOD-BORNE
18 PATHOGENS AND INFECTIOUS DISEASES AND REDUCE THE FINANCIAL AND
19 CLINICAL BURDEN OF BLOOD-BORNE ILLNESSES UPON THE MEDICAID PROGRAM
20 AND THE CITIZENS OF MISSISSIPPI; TO AMEND SECTION 41-29-139,
21 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT HYPODERMIC SYRINGES AND
22 NEEDLES POSSESSED, DISTRIBUTED AND EXCHANGED AT THE PROGRAM SHALL
23 NOT BE DEEMED TO BE DRUG PARAPHERNALIA UNDER THE CONTROLLED
24 SUBSTANCES LAW; TO AMEND SECTIONS 41-29-105 AND 41-29-153,
25 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS;
26 TO DIRECT THE STATE BOARD OF MEDICAL LICENSURE TO ADOPT REASONABLE
27 REGULATIONS THAT ALLOW PRIMARY CARE PHYSICIANS TO PROVIDE
28 MAINTENANCE THERAPY FOR PERSONS WITH IDENTIFIED SUBSTANCE USE
29 DISORDERS AND ALLOW THOSE PHYSICIANS TO PROVIDE THAT TREATMENT
30 UNTIL THE PERSON CAN RECEIVE TREATMENT FROM A LICENSED TREATMENT
31 PROVIDER; TO PROHIBIT MUNICIPALITIES, COUNTIES AND OTHER POLITICAL
32 SUBDIVISIONS OF THIS STATE FROM PLACING RULES, REGULATIONS,
33 REQUIREMENTS OR ZONING RESTRICTIONS ON DRUG AND ALCOHOL TREATMENT
34 CENTERS; TO AUTHORIZE MUNICIPALITIES, COUNTIES AND PUBLIC OR



35 PRIVATE EDUCATIONAL INSTITUTIONS TO ADOPT A PRE-ARREST DIVERSION
36 PROGRAM IN WHICH LAW ENFORCEMENT OFFICERS OF THE ENTITY MAY DIVERT
37 ADULTS WHO COMMIT A NONVIOLENT MISDEMEANOR OFFENSE; TO PROVIDE
38 THAT ADULTS WHO ARE DIVERTED SHALL BE PROVIDED APPROPRIATE
39 ASSESSMENT, INTERVENTION, EDUCATION AND BEHAVIORAL HEALTH CARE
40 SERVICES; TO PROVIDE THAT IF THE ADULT DOES NOT PARTICIPATE IN THE
41 PRE-ARREST DIVERSION PROGRAM, THE LAW ENFORCEMENT AGENCY MAY
42 CRIMINALLY CHARGE THE ADULT FOR THE ORIGINAL OFFENSE AND REFER THE
43 CASE TO THE APPROPRIATE PROSECUTING AGENCY TO DETERMINE IF
44 PROSECUTION IS APPROPRIATE; TO PROVIDE THAT IF THE ADULT
45 SUCCESSFULLY COMPLETES THE PROGRAM, AN ARREST RECORD SHALL NOT BE
46 ASSOCIATED WITH THE OFFENSE; AND FOR RELATED PURPOSES.

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

48 **SECTION 1.** This act shall be known and may be cited as the
49 Opioid Crisis Intervention Act.

50 **SECTION 2.** Section 41-7-173, Mississippi Code of 1972, is
51 amended as follows:

52 41-7-173. For the purposes of Section 41-7-171 et seq., the
53 following words shall have the meanings ascribed herein, unless
54 the context otherwise requires:

55 (a) "Affected person" means (i) the applicant; (ii) a
56 person residing within the geographic area to be served by the
57 applicant's proposal; (iii) a person who regularly uses health
58 care facilities or HMOs located in the geographic area of the
59 proposal which provide similar service to that which is proposed;
60 (iv) health care facilities and HMOs which have, prior to receipt
61 of the application under review, formally indicated an intention
62 to provide service similar to that of the proposal being
63 considered at a future date; (v) third-party payers who reimburse
64 health care facilities located in the geographical area of the
65 proposal; or (vi) any agency that establishes rates for health



66 care services or HMOs located in the geographic area of the
67 proposal.

68 (b) "Certificate of need" means a written order of the
69 State Department of Health setting forth the affirmative finding
70 that a proposal in prescribed application form, sufficiently
71 satisfies the plans, standards and criteria prescribed for such
72 service or other project by Section 41-7-171 et seq., and by rules
73 and regulations promulgated thereunder by the State Department of
74 Health.

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

81 (ii) "Capital expenditure," when pertaining to
82 other than major medical equipment, shall mean any expenditure
83 which under generally accepted accounting principles consistently
84 applied is not properly chargeable as an expense of operation and
85 maintenance and which exceeds, for clinical health services, as
86 defined in * * * paragraph (k) below, Five Million Dollars
87 (\$5,000,000.00), adjusted for inflation as published by the State
88 Department of Health or which exceeds, for nonclinical health
89 services, as defined in * * * paragraph (k) below, Ten Million



90 Dollars (\$10,000,000.00), adjusted for inflation as published by
91 the State Department of Health.

92 (iii) A "capital expenditure" shall include the
93 acquisition, whether by lease, sufferance, gift, devise, legacy,
94 settlement of a trust or other means, of any facility or part
95 thereof, or equipment for a facility, the expenditure for which
96 would have been considered a capital expenditure if acquired by
97 purchase. Transactions which are separated in time but are
98 planned to be undertaken within twelve (12) months of each other
99 and are components of an overall plan for meeting patient care
100 objectives shall, for purposes of this definition, be viewed in
101 their entirety without regard to their timing.

102 (iv) In those instances where a health care
103 facility or other provider of health services proposes to provide
104 a service in which the capital expenditure for major medical
105 equipment or other than major medical equipment or a combination
106 of the two (2) may have been split between separate parties, the
107 total capital expenditure required to provide the proposed service
108 shall be considered in determining the necessity of certificate of
109 need review and in determining the appropriate certificate of need
110 review fee to be paid. The capital expenditure associated with
111 facilities and equipment to provide services in Mississippi shall
112 be considered regardless of where the capital expenditure was
113 made, in state or out of state, and regardless of the domicile of



114 the party making the capital expenditure, in state or out of
115 state.

116 (d) "Change of ownership" includes, but is not limited
117 to, inter vivos gifts, purchases, transfers, lease arrangements,
118 cash and/or stock transactions or other comparable arrangements
119 whenever any person or entity acquires or controls a majority
120 interest of an existing health care facility, and/or the change of
121 ownership of major medical equipment, a health service, or an
122 institutional health service. Changes of ownership from
123 partnerships, single proprietorships or corporations to another
124 form of ownership are specifically included. However, "change of
125 ownership" shall not include any inherited interest acquired as a
126 result of a testamentary instrument or under the laws of descent
127 and distribution of the State of Mississippi.

128 (e) "Commencement of construction" means that all of
129 the following have been completed with respect to a proposal or
130 project proposing construction, renovating, remodeling or
131 alteration:

132 (i) A legally binding written contract has been
133 consummated by the proponent and a lawfully licensed contractor to
134 construct and/or complete the intent of the proposal within a
135 specified period of time in accordance with final architectural
136 plans which have been approved by the licensing authority of the
137 State Department of Health;



138 (ii) Any and all permits and/or approvals deemed
139 lawfully necessary by all authorities with responsibility for such
140 have been secured; and

141 (iii) Actual bona fide undertaking of the subject
142 proposal has commenced, and a progress payment of at least one
143 percent (1%) of the total cost price of the contract has been paid
144 to the contractor by the proponent, and the requirements of this
145 paragraph (e) have been certified to in writing by the State
146 Department of Health.

147 Force account expenditures, such as deposits, securities,
148 bonds, et cetera, may, in the discretion of the State Department
149 of Health, be excluded from any or all of the provisions of
150 defined commencement of construction.

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

154 (g) "Develop," when used in connection with health
155 services, means to undertake those activities which, on their
156 completion, will result in the offering of a new institutional
157 health service or the incurring of a financial obligation as
158 defined under applicable state law in relation to the offering of
159 such services.

160 (h) "Health care facility" includes hospitals,
161 psychiatric hospitals, * * * skilled nursing facilities, end-stage
162 renal disease (ESRD) facilities, including freestanding



163 hemodialysis units, intermediate care facilities, ambulatory
164 surgical facilities, intermediate care facilities for the mentally
165 retarded, home health agencies, psychiatric residential treatment
166 facilities, pediatric skilled nursing facilities, long-term care
167 hospitals, comprehensive medical rehabilitation facilities,
168 including facilities owned or operated by the state or a political
169 subdivision or instrumentality of the state, but does not include
170 Christian Science sanatoriums operated or listed and certified by
171 the First Church of Christ, Scientist, Boston, Massachusetts.
172 This definition shall not apply to facilities for the private
173 practice, either independently or by incorporated medical groups,
174 of physicians, dentists or health care professionals except where
175 such facilities are an integral part of an institutional health
176 service. The various health care facilities listed in this
177 paragraph shall be defined as follows:

178 (i) "Hospital" means an institution which is
179 primarily engaged in providing to inpatients, by or under the
180 supervision of physicians, diagnostic services and therapeutic
181 services for medical diagnosis, treatment and care of injured,
182 disabled or sick persons, or rehabilitation services for the
183 rehabilitation of injured, disabled or sick persons. Such term
184 does not include psychiatric hospitals.

185 (ii) "Psychiatric hospital" means an institution
186 which is primarily engaged in providing to inpatients, by or under



187 the supervision of a physician, psychiatric services for the
188 diagnosis and treatment of persons with mental illness.

189 (iii) * * * [Deleted]

190 (iv) "Skilled nursing facility" means an
191 institution or a distinct part of an institution which is
192 primarily engaged in providing to inpatients skilled nursing care
193 and related services for patients who require medical or nursing
194 care or rehabilitation services for the rehabilitation of injured,
195 disabled or sick persons.

196 (v) "End-stage renal disease (ESRD) facilities"
197 means kidney disease treatment centers, which includes
198 freestanding hemodialysis units and limited care facilities. The
199 term "limited care facility" generally refers to an
200 off-hospital-premises facility, regardless of whether it is
201 provider or nonprovider operated, which is engaged primarily in
202 furnishing maintenance hemodialysis services to stabilized
203 patients.

204 (vi) "Intermediate care facility" means an
205 institution which provides, on a regular basis, health-related
206 care and services to individuals who do not require the degree of
207 care and treatment which a hospital or skilled nursing facility is
208 designed to provide, but who, because of their mental or physical
209 condition, require health-related care and services (above the
210 level of room and board).



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

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

225 (ix) "Home health agency" means a public or
226 privately owned agency or organization, or a subdivision of such
227 an agency or organization, properly authorized to conduct business
228 in Mississippi, which is primarily engaged in providing to
229 individuals at the written direction of a licensed physician, in
230 the individual's place of residence, skilled nursing services
231 provided by or under the supervision of a registered nurse
232 licensed to practice in Mississippi, and one or more of the
233 following services or items:

- 234 1. Physical, occupational or speech therapy;
235 2. Medical social services;



236 3. Part-time or intermittent services of a
237 home health aide;

238 4. Other services as approved by the
239 licensing agency for home health agencies;

240 5. Medical supplies, other than drugs and
241 biologicals, and the use of medical appliances; or

242 6. Medical services provided by an intern or
243 resident-in-training at a hospital under a teaching program of
244 such hospital.

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

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

254 (x) "Psychiatric residential treatment facility"
255 means any nonhospital establishment with permanent licensed
256 facilities which provides a twenty-four-hour program of care by
257 qualified therapists, including, but not limited to, duly licensed
258 mental health professionals, psychiatrists, psychologists,
259 psychotherapists and licensed certified social workers, for
260 emotionally disturbed children and adolescents referred to such



261 facility by a court, local school district or by the Department of
262 Human Services, who are not in an acute phase of illness requiring
263 the services of a psychiatric hospital, and are in need of such
264 restorative treatment services. For purposes of this
265 subparagraph, the term "emotionally disturbed" means a condition
266 exhibiting one or more of the following characteristics over a
267 long period of time and to a marked degree, which adversely
268 affects educational performance:

- 269 1. An inability to learn which cannot be
270 explained by intellectual, sensory or health factors;
- 271 2. An inability to build or maintain
272 satisfactory relationships with peers and teachers;
- 273 3. Inappropriate types of behavior or
274 feelings under normal circumstances;
- 275 4. A general pervasive mood of unhappiness or
276 depression; or
- 277 5. A tendency to develop physical symptoms or
278 fears associated with personal or school problems. An
279 establishment furnishing primarily domiciliary care is not within
280 this definition.

281 (xi) "Pediatric skilled nursing facility" means an
282 institution or a distinct part of an institution that is primarily
283 engaged in providing to inpatients skilled nursing care and
284 related services for persons under twenty-one (21) years of age



285 who require medical or nursing care or rehabilitation services for
286 the rehabilitation of injured, disabled or sick persons.

287 (xii) "Long-term care hospital" means a
288 freestanding, Medicare-certified hospital that has an average
289 length of inpatient stay greater than twenty-five (25) days, which
290 is primarily engaged in providing chronic or long-term medical
291 care to patients who do not require more than three (3) hours of
292 rehabilitation or comprehensive rehabilitation per day, and has a
293 transfer agreement with an acute care medical center and a
294 comprehensive medical rehabilitation facility. Long-term care
295 hospitals shall not use rehabilitation, comprehensive medical
296 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
297 nursing home, skilled nursing facility or sub-acute care facility
298 in association with its name.

299 (xiii) "Comprehensive medical rehabilitation
300 facility" means a hospital or hospital unit that is licensed
301 and/or certified as a comprehensive medical rehabilitation
302 facility which provides specialized programs that are accredited
303 by the Commission on Accreditation of Rehabilitation Facilities
304 and supervised by a physician board certified or board eligible in
305 physiatry or other doctor of medicine or osteopathy with at least
306 two (2) years of training in the medical direction of a
307 comprehensive rehabilitation program that:

308 1. Includes evaluation and treatment of
309 individuals with physical disabilities;



- 310 2. Emphasizes education and training of
311 individuals with disabilities;
- 312 3. Incorporates at least the following core
313 disciplines:
- 314 * * *a. Physical Therapy;
- 315 * * *b. Occupational Therapy;
- 316 * * *c. Speech and Language Therapy;
- 317 * * *d. Rehabilitation Nursing; and
- 318 4. Incorporates at least three (3) of the
319 following disciplines:
- 320 * * *a. Psychology;
- 321 * * *b. Audiology;
- 322 * * *c. Respiratory Therapy;
- 323 * * *d. Therapeutic Recreation;
- 324 * * *e. Orthotics;
- 325 * * *f. Prosthetics;
- 326 * * *g. Special Education;
- 327 * * *h. Vocational Rehabilitation;
- 328 * * *i. Psychotherapy;
- 329 * * *j. Social Work;
- 330 * * *k. Rehabilitation Engineering.

331 These specialized programs include, but are not limited to:
332 spinal cord injury programs, head injury programs and infant and
333 early childhood development programs.



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

337 (i) Provides or otherwise makes available to
338 enrolled participants health care services, including
339 substantially the following basic health care services: usual
340 physician services, hospitalization, laboratory, x-ray, emergency
341 and preventive services, and out-of-area coverage;

342 (ii) Is compensated (except for copayments) for
343 the provision of the basic health care services listed in
344 subparagraph (i) of this paragraph to enrolled participants on a
345 predetermined basis; and

346 (iii) Provides physician services primarily:

347 1. Directly through physicians who are either
348 employees or partners of such organization; or

349 2. Through arrangements with individual
350 physicians or one or more groups of physicians (organized on a
351 group practice or individual practice basis).

352 (j) "Health service area" means a geographic area of
353 the state designated in the State Health Plan as the area to be
354 used in planning for specified health facilities and services and
355 to be used when considering certificate of need applications to
356 provide health facilities and services.

357 (k) "Health services" means clinically related (i.e.,
358 diagnostic, treatment or rehabilitative) services and includes



359 alcohol, drug abuse, mental health and home health care services.
360 "Clinical health services" shall only include those activities
361 which contemplate any change in the existing bed complement of any
362 health care facility through the addition or conversion of any
363 beds, under Section 41-7-191(1)(c) or propose to offer any health
364 services if those services have not been provided on a regular
365 basis by the proposed provider of such services within the period
366 of twelve (12) months prior to the time such services would be
367 offered, under Section 41-7-191(1)(d). "Nonclinical health
368 services" shall be all other services which do not involve any
369 change in the existing bed complement or offering health services
370 as described above.

371 (l) "Institutional health services" shall mean health
372 services provided in or through health care facilities and shall
373 include the entities in or through which such services are
374 provided.

375 (m) "Major medical equipment" means medical equipment
376 designed for providing medical or any health-related service which
377 costs in excess of One Million Five Hundred Thousand Dollars
378 (\$1,500,000.00). However, this definition shall not be applicable
379 to clinical laboratories if they are determined by the State
380 Department of Health to be independent of any physician's office,
381 hospital or other health care facility or otherwise not so defined
382 by federal or state law, or rules and regulations promulgated
383 thereunder.



384 (n) "State Department of Health" or "department" shall
385 mean the state agency created under Section 41-3-15, which shall
386 be considered to be the State Health Planning and Development
387 Agency, as defined in paragraph (u) of this section.

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

392 (p) "Person" means an individual, a trust or estate,
393 partnership, corporation (including associations, joint-stock
394 companies and insurance companies), the state or a political
395 subdivision or instrumentality of the state.

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

400 (r) "Radiation therapy services" means the treatment of
401 cancer and other diseases using ionizing radiation of either high
402 energy photons (x-rays or gamma rays) or charged particles
403 (electrons, protons or heavy nuclei). However, for purposes of a
404 certificate of need, radiation therapy services shall not include
405 low energy, superficial, external beam x-ray treatment of
406 superficial skin lesions.

407 (s) "Secretary" means the Secretary of Health and Human
408 Services, and any officer or employee of the Department of Health



409 and Human Services to whom the authority involved has been
410 delegated.

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

416 (u) "State Health Planning and Development Agency"
417 means the agency of state government designated to perform health
418 planning and resource development programs for the State of
419 Mississippi.

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

422 41-7-191. (1) No person shall engage in any of the
423 following activities without obtaining the required certificate of
424 need:

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

429 (b) The relocation of a health care facility or portion
430 thereof, or major medical equipment, unless such relocation of a
431 health care facility or portion thereof, or major medical
432 equipment, which does not involve a capital expenditure by or on
433 behalf of a health care facility, is within five thousand two



434 hundred eighty (5,280) feet from the main entrance of the health
435 care facility;

436 (c) Any change in the existing bed complement of any
437 health care facility through the addition or conversion of any
438 beds or the alteration, modernizing or refurbishing of any unit or
439 department in which the beds may be located; however, if a health
440 care facility has voluntarily delicensed some of its existing bed
441 complement, it may later relicense some or all of its delicensed
442 beds without the necessity of having to acquire a certificate of
443 need. The State Department of Health shall maintain a record of
444 the delicensing health care facility and its voluntarily
445 delicensed beds and continue counting those beds as part of the
446 state's total bed count for health care planning purposes. If a
447 health care facility that has voluntarily delicensed some of its
448 beds later desires to relicense some or all of its voluntarily
449 delicensed beds, it shall notify the State Department of Health of
450 its intent to increase the number of its licensed beds. The State
451 Department of Health shall survey the health care facility within
452 thirty (30) days of that notice and, if appropriate, issue the
453 health care facility a new license reflecting the new contingent
454 of beds. However, in no event may a health care facility that has
455 voluntarily delicensed some of its beds be reissued a license to
456 operate beds in excess of its bed count before the voluntary
457 delicensure of some of its beds without seeking certificate of
458 need approval;



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

- 463 (i) Open-heart surgery services;
- 464 (ii) Cardiac catheterization services;
- 465 (iii) Comprehensive inpatient rehabilitation
466 services;
- 467 (iv) Licensed psychiatric services;
- 468 (v) * * * [Deleted]
- 469 (vi) Radiation therapy services;
- 470 (vii) Diagnostic imaging services of an invasive
471 nature, i.e. invasive digital angiography;
- 472 (viii) Nursing home care as defined in
473 subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);
- 474 (ix) Home health services;
- 475 (x) Swing-bed services;
- 476 (xi) Ambulatory surgical services;
- 477 (xii) Magnetic resonance imaging services;
- 478 (xiii) [Deleted]
- 479 (xiv) Long-term care hospital services;
- 480 (xv) Positron emission tomography (PET) services;

481 (e) The relocation of one or more health services from
482 one physical facility or site to another physical facility or
483 site, unless such relocation, which does not involve a capital



484 expenditure by or on behalf of a health care facility, (i) is to a
485 physical facility or site within five thousand two hundred eighty
486 (5,280) feet from the main entrance of the health care facility
487 where the health care service is located, or (ii) is the result of
488 an order of a court of appropriate jurisdiction or a result of
489 pending litigation in such court, or by order of the State
490 Department of Health, or by order of any other agency or legal
491 entity of the state, the federal government, or any political
492 subdivision of either, whose order is also approved by the State
493 Department of Health;

494 (f) The acquisition or otherwise control of any major
495 medical equipment for the provision of medical services; however,
496 (i) the acquisition of any major medical equipment used only for
497 research purposes, and (ii) the acquisition of major medical
498 equipment to replace medical equipment for which a facility is
499 already providing medical services and for which the State
500 Department of Health has been notified before the date of such
501 acquisition shall be exempt from this paragraph; an acquisition
502 for less than fair market value must be reviewed, if the
503 acquisition at fair market value would be subject to review;

504 (g) Changes of ownership of existing health care
505 facilities in which a notice of intent is not filed with the State
506 Department of Health at least thirty (30) days prior to the date
507 such change of ownership occurs, or a change in services or bed
508 capacity as prescribed in paragraph (c) or (d) of this subsection



509 as a result of the change of ownership; an acquisition for less
510 than fair market value must be reviewed, if the acquisition at
511 fair market value would be subject to review;

512 (h) The change of ownership of any health care facility
513 defined in subparagraphs (iv), (vi) and (viii) of Section
514 41-7-173(h), in which a notice of intent as described in paragraph
515 (g) has not been filed and if the Executive Director, Division of
516 Medicaid, Office of the Governor, has not certified in writing
517 that there will be no increase in allowable costs to Medicaid from
518 revaluation of the assets or from increased interest and
519 depreciation as a result of the proposed change of ownership;

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

524 (j) Any capital expenditure or deferred capital
525 expenditure by or on behalf of a health care facility not covered
526 by paragraphs (a) through (h);

527 (k) The contracting of a health care facility as
528 defined in subparagraphs (i) through (viii) of Section 41-7-173(h)
529 to establish a home office, subunit, or branch office in the space
530 operated as a health care facility through a formal arrangement
531 with an existing health care facility as defined in subparagraph
532 (ix) of Section 41-7-173(h);



533 (1) The replacement or relocation of a health care
534 facility designated as a critical access hospital shall be exempt
535 from subsection (1) of this section so long as the critical access
536 hospital complies with all applicable federal law and regulations
537 regarding such replacement or relocation;

538 (m) Reopening a health care facility that has ceased to
539 operate for a period of sixty (60) months or more, which reopening
540 requires a certificate of need for the establishment of a new
541 health care facility.

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

549 (a) The department may issue a certificate of need to
550 any person proposing the new construction of any health care
551 facility defined in subparagraphs (iv) and (vi) of Section
552 41-7-173(h) as part of a life care retirement facility, in any
553 county bordering on the Gulf of Mexico in which is located a
554 National Aeronautics and Space Administration facility, not to
555 exceed forty (40) beds. From and after July 1, 1999, there shall
556 be no prohibition or restrictions on participation in the Medicaid



557 program (Section 43-13-101 et seq.) for the beds in the health
558 care facility that were authorized under this paragraph (a).

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

566 (c) The department may issue a certificate of need for
567 the addition to or expansion of any skilled nursing facility that
568 is part of an existing continuing care retirement community
569 located in Madison County, provided that the recipient of the
570 certificate of need agrees in writing that the skilled nursing
571 facility will not at any time participate in the Medicaid program
572 (Section 43-13-101 et seq.) or admit or keep any patients in the
573 skilled nursing facility who are participating in the Medicaid
574 program. This written agreement by the recipient of the
575 certificate of need shall be fully binding on any subsequent owner
576 of the skilled nursing facility, if the ownership of the facility
577 is transferred at any time after the issuance of the certificate
578 of need. Agreement that the skilled nursing facility will not
579 participate in the Medicaid program shall be a condition of the
580 issuance of a certificate of need to any person under this
581 paragraph (c), and if such skilled nursing facility at any time



582 after the issuance of the certificate of need, regardless of the
583 ownership of the facility, participates in the Medicaid program or
584 admits or keeps any patients in the facility who are participating
585 in the Medicaid program, the State Department of Health shall
586 revoke the certificate of need, if it is still outstanding, and
587 shall deny or revoke the license of the skilled nursing facility,
588 at the time that the department determines, after a hearing
589 complying with due process, that the facility has failed to comply
590 with any of the conditions upon which the certificate of need was
591 issued, as provided in this paragraph and in the written agreement
592 by the recipient of the certificate of need. The total number of
593 beds that may be authorized under the authority of this paragraph
594 (c) shall not exceed sixty (60) beds.

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

603 (e) The State Department of Health may issue a
604 certificate of need for the construction of a nursing facility or
605 the conversion of beds to nursing facility beds at a personal care
606 facility for the elderly in Lowndes County that is owned and



607 operated by a Mississippi nonprofit corporation, not to exceed
608 sixty (60) beds. From and after July 1, 1999, there shall be no
609 prohibition or restrictions on participation in the Medicaid
610 program (Section 43-13-101 et seq.) for the beds in the nursing
611 facility that were authorized under this paragraph (e).

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

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

628 (h) The State Department of Health may issue a
629 certificate of need for the construction or expansion of nursing
630 facility beds or the conversion of other beds to nursing facility
631 beds in either Hancock, Harrison or Jackson County, not to exceed



632 sixty (60) beds. From and after July 1, 1999, there shall be no
633 prohibition or restrictions on participation in the Medicaid
634 program (Section 43-13-101 et seq.) for the beds in the facility
635 that were authorized under this paragraph (h).

636 (i) The department may issue a certificate of need for
637 the new construction of a skilled nursing facility in Leake
638 County, provided that the recipient of the certificate of need
639 agrees in writing that the skilled nursing facility will not at
640 any time participate in the Medicaid program (Section 43-13-101 et
641 seq.) or admit or keep any patients in the skilled nursing
642 facility who are participating in the Medicaid program. This
643 written agreement by the recipient of the certificate of need
644 shall be fully binding on any subsequent owner of the skilled
645 nursing facility, if the ownership of the facility is transferred
646 at any time after the issuance of the certificate of need.
647 Agreement that the skilled nursing facility will not participate
648 in the Medicaid program shall be a condition of the issuance of a
649 certificate of need to any person under this paragraph (i), and if
650 such skilled nursing facility at any time after the issuance of
651 the certificate of need, regardless of the ownership of the
652 facility, participates in the Medicaid program or admits or keeps
653 any patients in the facility who are participating in the Medicaid
654 program, the State Department of Health shall revoke the
655 certificate of need, if it is still outstanding, and shall deny or
656 revoke the license of the skilled nursing facility, at the time



657 that the department determines, after a hearing complying with due
658 process, that the facility has failed to comply with any of the
659 conditions upon which the certificate of need was issued, as
660 provided in this paragraph and in the written agreement by the
661 recipient of the certificate of need. The provision of Section
662 41-7-193(1) regarding substantial compliance of the projection of
663 need as reported in the current State Health Plan is waived for
664 the purposes of this paragraph. The total number of nursing
665 facility beds that may be authorized by any certificate of need
666 issued under this paragraph (i) shall not exceed sixty (60) beds.
667 If the skilled nursing facility authorized by the certificate of
668 need issued under this paragraph is not constructed and fully
669 operational within eighteen (18) months after July 1, 1994, the
670 State Department of Health, after a hearing complying with due
671 process, shall revoke the certificate of need, if it is still
672 outstanding, and shall not issue a license for the skilled nursing
673 facility at any time after the expiration of the eighteen-month
674 period.

675 (j) The department may issue certificates of need to
676 allow any existing freestanding long-term care facility in
677 Tishomingo County and Hancock County that on July 1, 1995, is
678 licensed with fewer than sixty (60) beds. For the purposes of
679 this paragraph (j), the provisions of Section 41-7-193(1)
680 requiring substantial compliance with the projection of need as
681 reported in the current State Health Plan are waived. From and



682 after July 1, 1999, there shall be no prohibition or restrictions
683 on participation in the Medicaid program (Section 43-13-101 et
684 seq.) for the beds in the long-term care facilities that were
685 authorized under this paragraph (j).

686 (k) The department may issue a certificate of need for
687 the construction of a nursing facility at a continuing care
688 retirement community in Lowndes County. The total number of beds
689 that may be authorized under the authority of this paragraph (k)
690 shall not exceed sixty (60) beds. From and after July 1, 2001,
691 the prohibition on the facility participating in the Medicaid
692 program (Section 43-13-101 et seq.) that was a condition of
693 issuance of the certificate of need under this paragraph (k) shall
694 be revised as follows: The nursing facility may participate in
695 the Medicaid program from and after July 1, 2001, if the owner of
696 the facility on July 1, 2001, agrees in writing that no more than
697 thirty (30) of the beds at the facility will be certified for
698 participation in the Medicaid program, and that no claim will be
699 submitted for Medicaid reimbursement for more than thirty (30)
700 patients in the facility in any month or for any patient in the
701 facility who is in a bed that is not Medicaid-certified. This
702 written agreement by the owner of the facility shall be a
703 condition of licensure of the facility, and the agreement shall be
704 fully binding on any subsequent owner of the facility if the
705 ownership of the facility is transferred at any time after July 1,
706 2001. After this written agreement is executed, the Division of



707 Medicaid and the State Department of Health shall not certify more
708 than thirty (30) of the beds in the facility for participation in
709 the Medicaid program. If the facility violates the terms of the
710 written agreement by admitting or keeping in the facility on a
711 regular or continuing basis more than thirty (30) patients who are
712 participating in the Medicaid program, the State Department of
713 Health shall revoke the license of the facility, at the time that
714 the department determines, after a hearing complying with due
715 process, that the facility has violated the written agreement.

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

726 (m) The State Department of Health may issue a
727 certificate of need to a county-owned hospital in the Second
728 Judicial District of Panola County for the conversion of not more
729 than seventy-two (72) hospital beds to nursing facility beds,
730 provided that the recipient of the certificate of need agrees in
731 writing that none of the beds at the nursing facility will be



732 certified for participation in the Medicaid program (Section
733 43-13-101 et seq.), and that no claim will be submitted for
734 Medicaid reimbursement in the nursing facility in any day or for
735 any patient in the nursing facility. This written agreement by
736 the recipient of the certificate of need shall be a condition of
737 the issuance of the certificate of need under this paragraph, and
738 the agreement shall be fully binding on any subsequent owner of
739 the nursing facility if the ownership of the nursing facility is
740 transferred at any time after the issuance of the certificate of
741 need. After this written agreement is executed, the Division of
742 Medicaid and the State Department of Health shall not certify any
743 of the beds in the nursing facility for participation in the
744 Medicaid program. If the nursing facility violates the terms of
745 the written agreement by admitting or keeping in the nursing
746 facility on a regular or continuing basis any patients who are
747 participating in the Medicaid program, the State Department of
748 Health shall revoke the license of the nursing facility, at the
749 time that the department determines, after a hearing complying
750 with due process, that the nursing facility has violated the
751 condition upon which the certificate of need was issued, as
752 provided in this paragraph and in the written agreement. If the
753 certificate of need authorized under this paragraph is not issued
754 within twelve (12) months after July 1, 2001, the department shall
755 deny the application for the certificate of need and shall not
756 issue the certificate of need at any time after the twelve-month



757 period, unless the issuance is contested. If the certificate of
758 need is issued and substantial construction of the nursing
759 facility beds has not commenced within eighteen (18) months after
760 July 1, 2001, the State Department of Health, after a hearing
761 complying with due process, shall revoke the certificate of need
762 if it is still outstanding, and the department shall not issue a
763 license for the nursing facility at any time after the
764 eighteen-month period. However, if the issuance of the
765 certificate of need is contested, the department shall require
766 substantial construction of the nursing facility beds within six
767 (6) months after final adjudication on the issuance of the
768 certificate of need.

769 (n) The department may issue a certificate of need for
770 the new construction, addition or conversion of skilled nursing
771 facility beds in Madison County, provided that the recipient of
772 the certificate of need agrees in writing that the skilled nursing
773 facility will not at any time participate in the Medicaid program
774 (Section 43-13-101 et seq.) or admit or keep any patients in the
775 skilled nursing facility who are participating in the Medicaid
776 program. This written agreement by the recipient of the
777 certificate of need shall be fully binding on any subsequent owner
778 of the skilled nursing facility, if the ownership of the facility
779 is transferred at any time after the issuance of the certificate
780 of need. Agreement that the skilled nursing facility will not
781 participate in the Medicaid program shall be a condition of the



782 issuance of a certificate of need to any person under this
783 paragraph (n), and if such skilled nursing facility at any time
784 after the issuance of the certificate of need, regardless of the
785 ownership of the facility, participates in the Medicaid program or
786 admits or keeps any patients in the facility who are participating
787 in the Medicaid program, the State Department of Health shall
788 revoke the certificate of need, if it is still outstanding, and
789 shall deny or revoke the license of the skilled nursing facility,
790 at the time that the department determines, after a hearing
791 complying with due process, that the facility has failed to comply
792 with any of the conditions upon which the certificate of need was
793 issued, as provided in this paragraph and in the written agreement
794 by the recipient of the certificate of need. The total number of
795 nursing facility beds that may be authorized by any certificate of
796 need issued under this paragraph (n) shall not exceed sixty (60)
797 beds. If the certificate of need authorized under this paragraph
798 is not issued within twelve (12) months after July 1, 1998, the
799 department shall deny the application for the certificate of need
800 and shall not issue the certificate of need at any time after the
801 twelve-month period, unless the issuance is contested. If the
802 certificate of need is issued and substantial construction of the
803 nursing facility beds has not commenced within eighteen (18)
804 months after July 1, 1998, the State Department of Health, after a
805 hearing complying with due process, shall revoke the certificate
806 of need if it is still outstanding, and the department shall not



807 issue a license for the nursing facility at any time after the
808 eighteen-month period. However, if the issuance of the
809 certificate of need is contested, the department shall require
810 substantial construction of the nursing facility beds within six
811 (6) months after final adjudication on the issuance of the
812 certificate of need.

813 (o) The department may issue a certificate of need for
814 the new construction, addition or conversion of skilled nursing
815 facility beds in Leake County, provided that the recipient of the
816 certificate of need agrees in writing that the skilled nursing
817 facility will not at any time participate in the Medicaid program
818 (Section 43-13-101 et seq.) or admit or keep any patients in the
819 skilled nursing facility who are participating in the Medicaid
820 program. This written agreement by the recipient of the
821 certificate of need shall be fully binding on any subsequent owner
822 of the skilled nursing facility, if the ownership of the facility
823 is transferred at any time after the issuance of the certificate
824 of need. Agreement that the skilled nursing facility will not
825 participate in the Medicaid program shall be a condition of the
826 issuance of a certificate of need to any person under this
827 paragraph (o), and if such skilled nursing facility at any time
828 after the issuance of the certificate of need, regardless of the
829 ownership of the facility, participates in the Medicaid program or
830 admits or keeps any patients in the facility who are participating
831 in the Medicaid program, the State Department of Health shall



832 revoke the certificate of need, if it is still outstanding, and
833 shall deny or revoke the license of the skilled nursing facility,
834 at the time that the department determines, after a hearing
835 complying with due process, that the facility has failed to comply
836 with any of the conditions upon which the certificate of need was
837 issued, as provided in this paragraph and in the written agreement
838 by the recipient of the certificate of need. The total number of
839 nursing facility beds that may be authorized by any certificate of
840 need issued under this paragraph (o) shall not exceed sixty (60)
841 beds. If the certificate of need authorized under this paragraph
842 is not issued within twelve (12) months after July 1, 2001, the
843 department shall deny the application for the certificate of need
844 and shall not issue the certificate of need at any time after the
845 twelve-month period, unless the issuance is contested. If the
846 certificate of need is issued and substantial construction of the
847 nursing facility beds has not commenced within eighteen (18)
848 months after July 1, 2001, the State Department of Health, after a
849 hearing complying with due process, shall revoke the certificate
850 of need if it is still outstanding, and the department shall not
851 issue a license for the nursing facility at any time after the
852 eighteen-month period. However, if the issuance of the
853 certificate of need is contested, the department shall require
854 substantial construction of the nursing facility beds within six
855 (6) months after final adjudication on the issuance of the
856 certificate of need.



857 (p) The department may issue a certificate of need for
858 the construction of a municipally owned nursing facility within
859 the Town of Belmont in Tishomingo County, not to exceed sixty (60)
860 beds, provided that the recipient of the certificate of need
861 agrees in writing that the skilled nursing facility will not at
862 any time participate in the Medicaid program (Section 43-13-101 et
863 seq.) or admit or keep any patients in the skilled nursing
864 facility who are participating in the Medicaid program. This
865 written agreement by the recipient of the certificate of need
866 shall be fully binding on any subsequent owner of the skilled
867 nursing facility, if the ownership of the facility is transferred
868 at any time after the issuance of the certificate of need.
869 Agreement that the skilled nursing facility will not participate
870 in the Medicaid program shall be a condition of the issuance of a
871 certificate of need to any person under this paragraph (p), and if
872 such skilled nursing facility at any time after the issuance of
873 the certificate of need, regardless of the ownership of the
874 facility, participates in the Medicaid program or admits or keeps
875 any patients in the facility who are participating in the Medicaid
876 program, the State Department of Health shall revoke the
877 certificate of need, if it is still outstanding, and shall deny or
878 revoke the license of the skilled nursing facility, at the time
879 that the department determines, after a hearing complying with due
880 process, that the facility has failed to comply with any of the
881 conditions upon which the certificate of need was issued, as



882 provided in this paragraph and in the written agreement by the
883 recipient of the certificate of need. The provision of Section
884 41-7-193(1) regarding substantial compliance of the projection of
885 need as reported in the current State Health Plan is waived for
886 the purposes of this paragraph. If the certificate of need
887 authorized under this paragraph is not issued within twelve (12)
888 months after July 1, 1998, the department shall deny the
889 application for the certificate of need and shall not issue the
890 certificate of need at any time after the twelve-month period,
891 unless the issuance is contested. If the certificate of need is
892 issued and substantial construction of the nursing facility beds
893 has not commenced within eighteen (18) months after July 1, 1998,
894 the State Department of Health, after a hearing complying with due
895 process, shall revoke the certificate of need if it is still
896 outstanding, and the department shall not issue a license for the
897 nursing facility at any time after the eighteen-month period.
898 However, if the issuance of the certificate of need is contested,
899 the department shall require substantial construction of the
900 nursing facility beds within six (6) months after final
901 adjudication on the issuance of the certificate of need.

902 (q) (i) Beginning on July 1, 1999, the State
903 Department of Health shall issue certificates of need during each
904 of the next four (4) fiscal years for the construction or
905 expansion of nursing facility beds or the conversion of other beds
906 to nursing facility beds in each county in the state having a need



907 for fifty (50) or more additional nursing facility beds, as shown
908 in the fiscal year 1999 State Health Plan, in the manner provided
909 in this paragraph (q). The total number of nursing facility beds
910 that may be authorized by any certificate of need authorized under
911 this paragraph (q) shall not exceed sixty (60) beds.

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



932 the department also shall issue a certificate of need for new
933 nursing facility beds in Amite County and a certificate of need
934 for new nursing facility beds in Carroll County.

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

949 (iv) Subject to the provisions of subparagraph
950 (v), the certificate of need issued under subparagraph (ii) for
951 nursing facility beds in the two (2) counties from the state at
952 large during each fiscal year shall first be available for nursing
953 facility beds in the two (2) counties that have the highest need
954 in the state for those beds, as shown in the fiscal year 1999
955 State Health Plan, when considering the need on a statewide basis
956 and without regard to the Long-Term Care Planning Districts in



957 which the counties are located. If there are no applications for
958 a certificate of need for nursing facility beds in either of the
959 two (2) counties having the highest need for those beds on a
960 statewide basis by the date specified by the department, then the
961 certificate of need shall be available for nursing facility beds
962 in other counties from the state at large in descending order of
963 the need for those beds on a statewide basis, from the county with
964 the second highest need to the county with the lowest need, until
965 an application is received for nursing facility beds in an
966 eligible county from the state at large.

967 (v) If a certificate of need is authorized to be
968 issued under this paragraph (q) for nursing facility beds in a
969 county on the basis of the need in the Long-Term Care Planning
970 District during any fiscal year of the four-year period, a
971 certificate of need shall not also be available under this
972 paragraph (q) for additional nursing facility beds in that county
973 on the basis of the need in the state at large, and that county
974 shall be excluded in determining which counties have the highest
975 need for nursing facility beds in the state at large for that
976 fiscal year. After a certificate of need has been issued under
977 this paragraph (q) for nursing facility beds in a county during
978 any fiscal year of the four-year period, a certificate of need
979 shall not be available again under this paragraph (q) for
980 additional nursing facility beds in that county during the
981 four-year period, and that county shall be excluded in determining



982 which counties have the highest need for nursing facility beds in
983 succeeding fiscal years.

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

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

995 2. The county-owned hospital's qualifications
996 for the certificate of need, as shown in its application and as
997 determined by the department, are at least equal to the
998 qualifications of the other applicants for the certificate of
999 need.

1000 (r) (i) Beginning on July 1, 1999, the State
1001 Department of Health shall issue certificates of need during each
1002 of the next two (2) fiscal years for the construction or expansion
1003 of nursing facility beds or the conversion of other beds to
1004 nursing facility beds in each of the four (4) Long-Term Care
1005 Planning Districts designated in the fiscal year 1999 State Health



1006 Plan, to provide care exclusively to patients with Alzheimer's
1007 disease.

1008 (ii) Not more than twenty (20) beds may be
1009 authorized by any certificate of need issued under this paragraph
1010 (r), and not more than a total of sixty (60) beds may be
1011 authorized in any Long-Term Care Planning District by all
1012 certificates of need issued under this paragraph (r). However,
1013 the total number of beds that may be authorized by all
1014 certificates of need issued under this paragraph (r) during any
1015 fiscal year shall not exceed one hundred twenty (120) beds, and
1016 the total number of beds that may be authorized in any Long-Term
1017 Care Planning District during any fiscal year shall not exceed
1018 forty (40) beds. Of the certificates of need that are issued for
1019 each Long-Term Care Planning District during the next two (2)
1020 fiscal years, at least one (1) shall be issued for beds in the
1021 northern part of the district, at least one (1) shall be issued
1022 for beds in the central part of the district, and at least one (1)
1023 shall be issued for beds in the southern part of the district.

1024 (iii) The State Department of Health, in
1025 consultation with the Department of Mental Health and the Division
1026 of Medicaid, shall develop and prescribe the staffing levels,
1027 space requirements and other standards and requirements that must
1028 be met with regard to the nursing facility beds authorized under
1029 this paragraph (r) to provide care exclusively to patients with
1030 Alzheimer's disease.



1031 (s) The State Department of Health may issue a
1032 certificate of need to a nonprofit skilled nursing facility using
1033 the Green House model of skilled nursing care and located in Yazoo
1034 City, Yazoo County, Mississippi, for the construction, expansion
1035 or conversion of not more than nineteen (19) nursing facility
1036 beds. For purposes of this paragraph (s), the provisions of
1037 Section 41-7-193(1) requiring substantial compliance with the
1038 projection of need as reported in the current State Health Plan
1039 and the provisions of Section 41-7-197 requiring a formal
1040 certificate of need hearing process are waived. There shall be no
1041 prohibition or restrictions on participation in the Medicaid
1042 program for the person receiving the certificate of need
1043 authorized under this paragraph (s).

1044 (t) The State Department of Health shall issue
1045 certificates of need to the owner of a nursing facility in
1046 operation at the time of Hurricane Katrina in Hancock County that
1047 was not operational on December 31, 2005, because of damage
1048 sustained from Hurricane Katrina to authorize the following: (i)
1049 the construction of a new nursing facility in Harrison County;
1050 (ii) the relocation of forty-nine (49) nursing facility beds from
1051 the Hancock County facility to the new Harrison County facility;
1052 (iii) the establishment of not more than twenty (20) non-Medicaid
1053 nursing facility beds at the Hancock County facility; and (iv) the
1054 establishment of not more than twenty (20) non-Medicaid beds at
1055 the new Harrison County facility. The certificates of need that



1056 authorize the non-Medicaid nursing facility beds under
1057 subparagraphs (iii) and (iv) of this paragraph (t) shall be
1058 subject to the following conditions: The owner of the Hancock
1059 County facility and the new Harrison County facility must agree in
1060 writing that no more than fifty (50) of the beds at the Hancock
1061 County facility and no more than forty-nine (49) of the beds at
1062 the Harrison County facility will be certified for participation
1063 in the Medicaid program, and that no claim will be submitted for
1064 Medicaid reimbursement for more than fifty (50) patients in the
1065 Hancock County facility in any month, or for more than forty-nine
1066 (49) patients in the Harrison County facility in any month, or for
1067 any patient in either facility who is in a bed that is not
1068 Medicaid-certified. This written agreement by the owner of the
1069 nursing facilities shall be a condition of the issuance of the
1070 certificates of need under this paragraph (t), and the agreement
1071 shall be fully binding on any later owner or owners of either
1072 facility if the ownership of either facility is transferred at any
1073 time after the certificates of need are issued. After this
1074 written agreement is executed, the Division of Medicaid and the
1075 State Department of Health shall not certify more than fifty (50)
1076 of the beds at the Hancock County facility or more than forty-nine
1077 (49) of the beds at the Harrison County facility for participation
1078 in the Medicaid program. If the Hancock County facility violates
1079 the terms of the written agreement by admitting or keeping in the
1080 facility on a regular or continuing basis more than fifty (50)



1081 patients who are participating in the Medicaid program, or if the
1082 Harrison County facility violates the terms of the written
1083 agreement by admitting or keeping in the facility on a regular or
1084 continuing basis more than forty-nine (49) patients who are
1085 participating in the Medicaid program, the State Department of
1086 Health shall revoke the license of the facility that is in
1087 violation of the agreement, at the time that the department
1088 determines, after a hearing complying with due process, that the
1089 facility has violated the agreement.

1090 (u) The State Department of Health shall issue a
1091 certificate of need to a nonprofit venture for the establishment,
1092 construction and operation of a skilled nursing facility of not
1093 more than sixty (60) beds to provide skilled nursing care for
1094 ventilator dependent or otherwise medically dependent pediatric
1095 patients who require medical and nursing care or rehabilitation
1096 services to be located in a county in which an academic medical
1097 center and a children's hospital are located, and for any
1098 construction and for the acquisition of equipment related to those
1099 beds. The facility shall be authorized to keep such ventilator
1100 dependent or otherwise medically dependent pediatric patients
1101 beyond age twenty-one (21) in accordance with regulations of the
1102 State Board of Health. For purposes of this paragraph (u), the
1103 provisions of Section 41-7-193(1) requiring substantial compliance
1104 with the projection of need as reported in the current State
1105 Health Plan are waived, and the provisions of Section 41-7-197



1106 requiring a formal certificate of need hearing process are waived.
1107 The beds authorized by this paragraph shall be counted as
1108 pediatric skilled nursing facility beds for health planning
1109 purposes under Section 41-7-171 et seq. There shall be no
1110 prohibition of or restrictions on participation in the Medicaid
1111 program for the person receiving the certificate of need
1112 authorized by this paragraph.

1113 (3) The State Department of Health may grant approval for
1114 and issue certificates of need to any person proposing the new
1115 construction of, addition to, conversion of beds of or expansion
1116 of any health care facility defined in subparagraph (x)
1117 (psychiatric residential treatment facility) of Section
1118 41-7-173(h). The total number of beds which may be authorized by
1119 such certificates of need shall not exceed three hundred
1120 thirty-four (334) beds for the entire state.

1121 (a) Of the total number of beds authorized under this
1122 subsection, the department shall issue a certificate of need to a
1123 privately owned psychiatric residential treatment facility in
1124 Simpson County for the conversion of sixteen (16) intermediate
1125 care facility for the mentally retarded (ICF-MR) beds to
1126 psychiatric residential treatment facility beds, provided that
1127 facility agrees in writing that the facility shall give priority
1128 for the use of those sixteen (16) beds to Mississippi residents
1129 who are presently being treated in out-of-state facilities.



1130 (b) Of the total number of beds authorized under this
1131 subsection, the department may issue a certificate or certificates
1132 of need for the construction or expansion of psychiatric
1133 residential treatment facility beds or the conversion of other
1134 beds to psychiatric residential treatment facility beds in Warren
1135 County, not to exceed sixty (60) psychiatric residential treatment
1136 facility beds, provided that the facility agrees in writing that
1137 no more than thirty (30) of the beds at the psychiatric
1138 residential treatment facility will be certified for participation
1139 in the Medicaid program (Section 43-13-101 et seq.) for the use of
1140 any patients other than those who are participating only in the
1141 Medicaid program of another state, and that no claim will be
1142 submitted to the Division of Medicaid for Medicaid reimbursement
1143 for more than thirty (30) patients in the psychiatric residential
1144 treatment facility in any day or for any patient in the
1145 psychiatric residential treatment facility who is in a bed that is
1146 not Medicaid-certified. This written agreement by the recipient
1147 of the certificate of need shall be a condition of the issuance of
1148 the certificate of need under this paragraph, and the agreement
1149 shall be fully binding on any subsequent owner of the psychiatric
1150 residential treatment facility if the ownership of the facility is
1151 transferred at any time after the issuance of the certificate of
1152 need. After this written agreement is executed, the Division of
1153 Medicaid and the State Department of Health shall not certify more
1154 than thirty (30) of the beds in the psychiatric residential



1155 treatment facility for participation in the Medicaid program for
1156 the use of any patients other than those who are participating
1157 only in the Medicaid program of another state. If the psychiatric
1158 residential treatment facility violates the terms of the written
1159 agreement by admitting or keeping in the facility on a regular or
1160 continuing basis more than thirty (30) patients who are
1161 participating in the Mississippi Medicaid program, the State
1162 Department of Health shall revoke the license of the facility, at
1163 the time that the department determines, after a hearing complying
1164 with due process, that the facility has violated the condition
1165 upon which the certificate of need was issued, as provided in this
1166 paragraph and in the written agreement.

1167 The State Department of Health, on or before July 1, 2002,
1168 shall transfer the certificate of need authorized under the
1169 authority of this paragraph (b), or reissue the certificate of
1170 need if it has expired, to River Region Health System.

1171 (c) Of the total number of beds authorized under this
1172 subsection, the department shall issue a certificate of need to a
1173 hospital currently operating Medicaid-certified acute psychiatric
1174 beds for adolescents in DeSoto County, for the establishment of a
1175 forty-bed psychiatric residential treatment facility in DeSoto
1176 County, provided that the hospital agrees in writing (i) that the
1177 hospital shall give priority for the use of those forty (40) beds
1178 to Mississippi residents who are presently being treated in
1179 out-of-state facilities, and (ii) that no more than fifteen (15)



1180 of the beds at the psychiatric residential treatment facility will
1181 be certified for participation in the Medicaid program (Section
1182 43-13-101 et seq.), and that no claim will be submitted for
1183 Medicaid reimbursement for more than fifteen (15) patients in the
1184 psychiatric residential treatment facility in any day or for any
1185 patient in the psychiatric residential treatment facility who is
1186 in a bed that is not Medicaid-certified. This written agreement
1187 by the recipient of the certificate of need shall be a condition
1188 of the issuance of the certificate of need under this paragraph,
1189 and the agreement shall be fully binding on any subsequent owner
1190 of the psychiatric residential treatment facility if the ownership
1191 of the facility is transferred at any time after the issuance of
1192 the certificate of need. After this written agreement is
1193 executed, the Division of Medicaid and the State Department of
1194 Health shall not certify more than fifteen (15) of the beds in the
1195 psychiatric residential treatment facility for participation in
1196 the Medicaid program. If the psychiatric residential treatment
1197 facility violates the terms of the written agreement by admitting
1198 or keeping in the facility on a regular or continuing basis more
1199 than fifteen (15) patients who are participating in the Medicaid
1200 program, the State Department of Health shall revoke the license
1201 of the facility, at the time that the department determines, after
1202 a hearing complying with due process, that the facility has
1203 violated the condition upon which the certificate of need was



1204 issued, as provided in this paragraph and in the written
1205 agreement.

1206 (d) Of the total number of beds authorized under this
1207 subsection, the department may issue a certificate or certificates
1208 of need for the construction or expansion of psychiatric
1209 residential treatment facility beds or the conversion of other
1210 beds to psychiatric treatment facility beds, not to exceed thirty
1211 (30) psychiatric residential treatment facility beds, in either
1212 Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw,
1213 Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

1214 (e) Of the total number of beds authorized under this
1215 subsection (3) the department shall issue a certificate of need to
1216 a privately owned, nonprofit psychiatric residential treatment
1217 facility in Hinds County for an eight-bed expansion of the
1218 facility, provided that the facility agrees in writing that the
1219 facility shall give priority for the use of those eight (8) beds
1220 to Mississippi residents who are presently being treated in
1221 out-of-state facilities.

1222 (f) The department shall issue a certificate of need to
1223 a one-hundred-thirty-four-bed specialty hospital located on
1224 twenty-nine and forty-four one-hundredths (29.44) commercial acres
1225 at 5900 Highway 39 North in Meridian (Lauderdale County),
1226 Mississippi, for the addition, construction or expansion of
1227 child/adolescent psychiatric residential treatment facility beds
1228 in Lauderdale County. As a condition of issuance of the



1229 certificate of need under this paragraph, the facility shall give
1230 priority in admissions to the child/adolescent psychiatric
1231 residential treatment facility beds authorized under this
1232 paragraph to patients who otherwise would require out-of-state
1233 placement. The Division of Medicaid, in conjunction with the
1234 Department of Human Services, shall furnish the facility a list of
1235 all out-of-state patients on a quarterly basis. Furthermore,
1236 notice shall also be provided to the parent, custodial parent or
1237 guardian of each out-of-state patient notifying them of the
1238 priority status granted by this paragraph. For purposes of this
1239 paragraph, the provisions of Section 41-7-193(1) requiring
1240 substantial compliance with the projection of need as reported in
1241 the current State Health Plan are waived. The total number of
1242 child/adolescent psychiatric residential treatment facility beds
1243 that may be authorized under the authority of this paragraph shall
1244 be sixty (60) beds. There shall be no prohibition or restrictions
1245 on participation in the Medicaid program (Section 43-13-101 et
1246 seq.) for the person receiving the certificate of need authorized
1247 under this paragraph or for the beds converted pursuant to the
1248 authority of that certificate of need.

1249 (4) * * * [Deleted]

1250 (5) The department may issue a certificate of need to a
1251 county hospital in Winston County for the conversion of fifteen
1252 (15) acute care beds to geriatric psychiatric care beds.



1253 (6) The State Department of Health shall issue a certificate
1254 of need to a Mississippi corporation qualified to manage a
1255 long-term care hospital as defined in Section 41-7-173(h)(xii) in
1256 Harrison County, not to exceed eighty (80) beds, including any
1257 necessary renovation or construction required for licensure and
1258 certification, provided that the recipient of the certificate of
1259 need agrees in writing that the long-term care hospital will not
1260 at any time participate in the Medicaid program (Section 43-13-101
1261 et seq.) or admit or keep any patients in the long-term care
1262 hospital who are participating in the Medicaid program. This
1263 written agreement by the recipient of the certificate of need
1264 shall be fully binding on any subsequent owner of the long-term
1265 care hospital, if the ownership of the facility is transferred at
1266 any time after the issuance of the certificate of need. Agreement
1267 that the long-term care hospital will not participate in the
1268 Medicaid program shall be a condition of the issuance of a
1269 certificate of need to any person under this subsection (6), and
1270 if such long-term care hospital at any time after the issuance of
1271 the certificate of need, regardless of the ownership of the
1272 facility, participates in the Medicaid program or admits or keeps
1273 any patients in the facility who are participating in the Medicaid
1274 program, the State Department of Health shall revoke the
1275 certificate of need, if it is still outstanding, and shall deny or
1276 revoke the license of the long-term care hospital, at the time
1277 that the department determines, after a hearing complying with due



1278 process, that the facility has failed to comply with any of the
1279 conditions upon which the certificate of need was issued, as
1280 provided in this subsection and in the written agreement by the
1281 recipient of the certificate of need. For purposes of this
1282 subsection, the provisions of Section 41-7-193(1) requiring
1283 substantial compliance with the projection of need as reported in
1284 the current State Health Plan are waived.

1285 (7) The State Department of Health may issue a certificate
1286 of need to any hospital in the state to utilize a portion of its
1287 beds for the "swing-bed" concept. Any such hospital must be in
1288 conformance with the federal regulations regarding such swing-bed
1289 concept at the time it submits its application for a certificate
1290 of need to the State Department of Health, except that such
1291 hospital may have more licensed beds or a higher average daily
1292 census (ADC) than the maximum number specified in federal
1293 regulations for participation in the swing-bed program. Any
1294 hospital meeting all federal requirements for participation in the
1295 swing-bed program which receives such certificate of need shall
1296 render services provided under the swing-bed concept to any
1297 patient eligible for Medicare (Title XVIII of the Social Security
1298 Act) who is certified by a physician to be in need of such
1299 services, and no such hospital shall permit any patient who is
1300 eligible for both Medicaid and Medicare or eligible only for
1301 Medicaid to stay in the swing beds of the hospital for more than
1302 thirty (30) days per admission unless the hospital receives prior



1303 approval for such patient from the Division of Medicaid, Office of
1304 the Governor. Any hospital having more licensed beds or a higher
1305 average daily census (ADC) than the maximum number specified in
1306 federal regulations for participation in the swing-bed program
1307 which receives such certificate of need shall develop a procedure
1308 to insure that before a patient is allowed to stay in the swing
1309 beds of the hospital, there are no vacant nursing home beds
1310 available for that patient located within a fifty-mile radius of
1311 the hospital. When any such hospital has a patient staying in the
1312 swing beds of the hospital and the hospital receives notice from a
1313 nursing home located within such radius that there is a vacant bed
1314 available for that patient, the hospital shall transfer the
1315 patient to the nursing home within a reasonable time after receipt
1316 of the notice. Any hospital which is subject to the requirements
1317 of the two (2) preceding sentences of this subsection may be
1318 suspended from participation in the swing-bed program for a
1319 reasonable period of time by the State Department of Health if the
1320 department, after a hearing complying with due process, determines
1321 that the hospital has failed to comply with any of those
1322 requirements.

1323 (8) The Department of Health shall not grant approval for or
1324 issue a certificate of need to any person proposing the new
1325 construction of, addition to or expansion of a health care
1326 facility as defined in subparagraph (viii) of Section 41-7-173(h),
1327 except as hereinafter provided: The department may issue a



1328 certificate of need to a nonprofit corporation located in Madison
1329 County, Mississippi, for the construction, expansion or conversion
1330 of not more than twenty (20) beds in a community living program
1331 for developmentally disabled adults in a facility as defined in
1332 subparagraph (viii) of Section 41-7-173(h). For purposes of this
1333 subsection (8), the provisions of Section 41-7-193(1) requiring
1334 substantial compliance with the projection of need as reported in
1335 the current State Health Plan and the provisions of Section
1336 41-7-197 requiring a formal certificate of need hearing process
1337 are waived. There shall be no prohibition or restrictions on
1338 participation in the Medicaid program for the person receiving the
1339 certificate of need authorized under this subsection (8).

1340 (9) The Department of Health shall not grant approval for or
1341 issue a certificate of need to any person proposing the
1342 establishment of, or expansion of the currently approved territory
1343 of, or the contracting to establish a home office, subunit or
1344 branch office within the space operated as a health care facility
1345 as defined in Section 41-7-173(h) (i) through (viii) by a health
1346 care facility as defined in subparagraph (ix) of Section
1347 41-7-173(h).

1348 (10) Health care facilities owned and/or operated by the
1349 state or its agencies are exempt from the restraints in this
1350 section against issuance of a certificate of need if such addition
1351 or expansion consists of repairing or renovation necessary to
1352 comply with the state licensure law. This exception shall not



1353 apply to the new construction of any building by such state
1354 facility. This exception shall not apply to any health care
1355 facilities owned and/or operated by counties, municipalities,
1356 districts, unincorporated areas, other defined persons, or any
1357 combination thereof.

1358 (11) The new construction, renovation or expansion of or
1359 addition to any health care facility defined in subparagraph (ii)
1360 (psychiatric hospital), subparagraph (iv) (skilled nursing
1361 facility), subparagraph (vi) (intermediate care facility),
1362 subparagraph (viii) (intermediate care facility for the mentally
1363 retarded) and subparagraph (x) (psychiatric residential treatment
1364 facility) of Section 41-7-173(h) which is owned by the State of
1365 Mississippi and under the direction and control of the State
1366 Department of Mental Health, and the addition of new beds or the
1367 conversion of beds from one category to another in any such
1368 defined health care facility which is owned by the State of
1369 Mississippi and under the direction and control of the State
1370 Department of Mental Health, shall not require the issuance of a
1371 certificate of need under Section 41-7-171 et seq.,
1372 notwithstanding any provision in Section 41-7-171 et seq. to the
1373 contrary.

1374 (12) The new construction, renovation or expansion of or
1375 addition to any veterans homes or domiciliaries for eligible
1376 veterans of the State of Mississippi as authorized under Section
1377 35-1-19 shall not require the issuance of a certificate of need,



1378 notwithstanding any provision in Section 41-7-171 et seq. to the
1379 contrary.

1380 (13) The repair or the rebuilding of an existing, operating
1381 health care facility that sustained significant damage from a
1382 natural disaster that occurred after April 15, 2014, in an area
1383 that is proclaimed a disaster area or subject to a state of
1384 emergency by the Governor or by the President of the United States
1385 shall be exempt from all of the requirements of the Mississippi
1386 Certificate of Need Law (Section 41-7-171 et seq.) and any and all
1387 rules and regulations promulgated under that law, subject to the
1388 following conditions:

1389 (a) The repair or the rebuilding of any such damaged
1390 health care facility must be within one (1) mile of the
1391 pre-disaster location of the campus of the damaged health care
1392 facility, except that any temporary post-disaster health care
1393 facility operating location may be within five (5) miles of the
1394 pre-disaster location of the damaged health care facility;

1395 (b) The repair or the rebuilding of the damaged health
1396 care facility (i) does not increase or change the complement of
1397 its bed capacity that it had before the Governor's or the
1398 President's proclamation, (ii) does not increase or change its
1399 levels and types of health care services that it provided before
1400 the Governor's or the President's proclamation, and (iii) does not
1401 rebuild in a different county; however, this paragraph does not
1402 restrict or prevent a health care facility from decreasing its bed



1403 capacity that it had before the Governor's or the President's
1404 proclamation, or from decreasing the levels of or decreasing or
1405 eliminating the types of health care services that it provided
1406 before the Governor's or the President's proclamation, when the
1407 damaged health care facility is repaired or rebuilt;

1408 (c) The exemption from Certificate of Need Law provided
1409 under this subsection (13) is valid for only five (5) years from
1410 the date of the Governor's or the President's proclamation. If
1411 actual construction has not begun within that five-year period,
1412 the exemption provided under this subsection is inapplicable; and

1413 (d) The Division of Health Facilities Licensure and
1414 Certification of the State Department of Health shall provide the
1415 same oversight for the repair or the rebuilding of the damaged
1416 health care facility that it provides to all health care facility
1417 construction projects in the state.

1418 For the purposes of this subsection (13), "significant
1419 damage" to a health care facility means damage to the health care
1420 facility requiring an expenditure of at least One Million Dollars
1421 (\$1,000,000.00).

1422 (14) The State Department of Health shall issue a
1423 certificate of need to any hospital which is currently licensed
1424 for two hundred fifty (250) or more acute care beds and is located
1425 in any general hospital service area not having a comprehensive
1426 cancer center, for the establishment and equipping of such a
1427 center which provides facilities and services for outpatient



1428 radiation oncology therapy, outpatient medical oncology therapy,
1429 and appropriate support services including the provision of
1430 radiation therapy services. The provisions of Section 41-7-193(1)
1431 regarding substantial compliance with the projection of need as
1432 reported in the current State Health Plan are waived for the
1433 purpose of this subsection.

1434 (15) The State Department of Health may authorize the
1435 transfer of hospital beds, not to exceed sixty (60) beds, from the
1436 North Panola Community Hospital to the South Panola Community
1437 Hospital. The authorization for the transfer of those beds shall
1438 be exempt from the certificate of need review process.

1439 (16) The State Department of Health shall issue any
1440 certificates of need necessary for Mississippi State University
1441 and a public or private health care provider to jointly acquire
1442 and operate a linear accelerator and a magnetic resonance imaging
1443 unit. Those certificates of need shall cover all capital
1444 expenditures related to the project between Mississippi State
1445 University and the health care provider, including, but not
1446 limited to, the acquisition of the linear accelerator, the
1447 magnetic resonance imaging unit and other radiological modalities;
1448 the offering of linear accelerator and magnetic resonance imaging
1449 services; and the cost of construction of facilities in which to
1450 locate these services. The linear accelerator and the magnetic
1451 resonance imaging unit shall be (a) located in the City of
1452 Starkville, Oktibbeha County, Mississippi; (b) operated jointly by



1453 Mississippi State University and the public or private health care
1454 provider selected by Mississippi State University through a
1455 request for proposals (RFP) process in which Mississippi State
1456 University selects, and the Board of Trustees of State
1457 Institutions of Higher Learning approves, the health care provider
1458 that makes the best overall proposal; (c) available to Mississippi
1459 State University for research purposes two-thirds (2/3) of the
1460 time that the linear accelerator and magnetic resonance imaging
1461 unit are operational; and (d) available to the public or private
1462 health care provider selected by Mississippi State University and
1463 approved by the Board of Trustees of State Institutions of Higher
1464 Learning one-third (1/3) of the time for clinical, diagnostic and
1465 treatment purposes. For purposes of this subsection, the
1466 provisions of Section 41-7-193(1) requiring substantial compliance
1467 with the projection of need as reported in the current State
1468 Health Plan are waived.

1469 (17) The State Department of Health shall issue a
1470 certificate of need for the construction of an acute care hospital
1471 in Kemper County, not to exceed twenty-five (25) beds, which shall
1472 be named the "John C. Stennis Memorial Hospital." In issuing the
1473 certificate of need under this subsection, the department shall
1474 give priority to a hospital located in Lauderdale County that has
1475 two hundred fifteen (215) beds. For purposes of this subsection,
1476 the provisions of Section 41-7-193(1) requiring substantial
1477 compliance with the projection of need as reported in the current



1478 State Health Plan and the provisions of Section 41-7-197 requiring
1479 a formal certificate of need hearing process are waived. There
1480 shall be no prohibition or restrictions on participation in the
1481 Medicaid program (Section 43-13-101 et seq.) for the person or
1482 entity receiving the certificate of need authorized under this
1483 subsection or for the beds constructed under the authority of that
1484 certificate of need.

1485 (18) The planning, design, construction, renovation,
1486 addition, furnishing and equipping of a clinical research unit at
1487 any health care facility defined in Section 41-7-173(h) that is
1488 under the direction and control of the University of Mississippi
1489 Medical Center and located in Jackson, Mississippi, and the
1490 addition of new beds or the conversion of beds from one (1)
1491 category to another in any such clinical research unit, shall not
1492 require the issuance of a certificate of need under Section
1493 41-7-171 et seq., notwithstanding any provision in Section
1494 41-7-171 et seq. to the contrary.

1495 (19) [Repealed]

1496 (20) Nothing in this section or in any other provision of
1497 Section 41-7-171 et seq. shall prevent any nursing facility from
1498 designating an appropriate number of existing beds in the facility
1499 as beds for providing care exclusively to patients with
1500 Alzheimer's disease.

1501 **SECTION 4.** Section 41-29-149.1, Mississippi Code of 1972, is
1502 amended as follows:



1503 41-29-149.1. (1) This section shall be known as the
1504 "Mississippi Medical Emergency Good Samaritan Act."

1505 (2) As used in this section, the following words shall have
1506 the meanings ascribed:

1507 (a) "Drug overdose" means an acute condition,
1508 including, but not limited to, extreme physical illness, decreased
1509 level of consciousness, respiratory depression, coma, mania, or
1510 death, resulting from the consumption or use of a controlled
1511 substance or dangerous drug in violation of this chapter or that a
1512 layperson would reasonably believe to be resulting from the
1513 consumption or use of a controlled substance or dangerous drug for
1514 which medical assistance is required.

1515 (b) "Drug violation" means * * * a violation of Section
1516 41-29-139 * * *, 41-29-144, 41-29-145, 67-1-17, 67-1-81(2),
1517 67-3-13 or 67-3-70.

1518 (c) "Medical assistance" means aid provided to a person
1519 experiencing or believed to be experiencing a drug overdose by a
1520 health care professional who is licensed, registered, or certified
1521 under the laws of this state and who, acting within the lawful
1522 scope of practice, may provide diagnosis, treatment, or emergency
1523 services relative to the overdose.

1524 (d) "Seeks medical assistance" means accesses or
1525 assists in accessing the E-911 system or otherwise contacts or
1526 assists in contacting law enforcement or a poison control center
1527 or provides care to a person experiencing or believed to be



1528 experiencing a drug overdose while awaiting the arrival of medical
1529 assistance to aid the person.

1530 (3) (a) Any person who in good faith seeks medical
1531 assistance for someone who is experiencing a drug overdose shall
1532 not be arrested, charged, or prosecuted for a drug violation if
1533 there is evidence that the person is under the influence of a
1534 controlled substance or in possession of a controlled substance as
1535 referenced in subsection (2)(b) of this section.

1536 (b) Any person who is experiencing a drug overdose and,
1537 in good faith, seeks medical assistance or is the subject of a
1538 request for medical assistance shall not be arrested, charged, or
1539 prosecuted for a drug violation if there is evidence that the
1540 person is under the influence of a controlled substance or in
1541 possession of a controlled substance as referenced in subsection
1542 (2)(b) of this section.

1543 (c) A person shall also not be subject to, if related
1544 to the seeking of medical assistance:

1545 (i) Penalties for a violation of a permanent or
1546 temporary protective order or restraining order;

1547 (ii) Sanctions for a violation of a condition of
1548 pretrial release, condition of probation, or condition of parole
1549 based on a drug violation; or

1550 (iii) Forfeiture of property pursuant to Section
1551 41-29-153 or 41-29-176 for a drug violation, except that prima
1552 facie contraband shall be subject to forfeiture.



1553 (4) Nothing in this section shall be construed:

1554 (a) To limit the admissibility of any evidence in
1555 connection with the investigation or prosecution of a crime with
1556 regard to a defendant who does not qualify for the protections of
1557 subsection (3) of this section or with regard to other crimes
1558 committed by a person who otherwise qualifies for protection
1559 pursuant to subsection (3) of this section;

1560 (b) To limit any seizure of evidence or contraband
1561 otherwise permitted by law; and

1562 (c) To limit or abridge the authority of a law
1563 enforcement officer to detain or take into custody a person in the
1564 course of an investigation or to effectuate an arrest for any
1565 offense except as provided in subsection (3) of this section.

1566 **SECTION 5.** Section 41-127-1, Mississippi Code of 1972, is
1567 amended as follows:

1568 41-127-1. Subject to the limitations of the license under
1569 which the individual is practicing, a health care practitioner
1570 licensed in this state may prescribe, dispense, or administer
1571 drugs or medical supplies, or otherwise provide treatment
1572 recommendations to a patient after having performed an appropriate
1573 examination of the patient either in person or by the use of
1574 instrumentation and diagnostic equipment through which images and
1575 medical records may be transmitted electronically. Treatment
1576 recommendations made via electronic means, including issuing a
1577 prescription via electronic means, shall be held to the same



1578 standards of appropriate practice as those in traditional
1579 provider-patient settings.

1580 Notwithstanding any other provision of law, rule or
1581 regulation, telemedicine providers shall be authorized to provide
1582 treatment for substance use disorders, including medication
1583 assisted treatment.

1584 **SECTION 6.** Section 43-13-117, Mississippi Code of 1972, is
1585 amended as follows:

1586 43-13-117. (A) Medicaid as authorized by this article shall
1587 include payment of part or all of the costs, at the discretion of
1588 the division, with approval of the Governor, of the following
1589 types of care and services rendered to eligible applicants who
1590 have been determined to be eligible for that care and services,
1591 within the limits of state appropriations and federal matching
1592 funds:

1593 (1) Inpatient hospital services.

1594 (a) The division shall allow thirty (30) days of
1595 inpatient hospital care annually for all Medicaid recipients.
1596 Medicaid recipients requiring transplants shall not have those
1597 days included in the transplant hospital stay count against the
1598 thirty-day limit for inpatient hospital care. Precertification of
1599 inpatient days must be obtained as required by the division.

1600 (b) From and after July 1, 1994, the Executive
1601 Director of the Division of Medicaid shall amend the Mississippi
1602 Title XIX Inpatient Hospital Reimbursement Plan to remove the



1603 occupancy rate penalty from the calculation of the Medicaid
1604 Capital Cost Component utilized to determine total hospital costs
1605 allocated to the Medicaid program.

1606 (c) Hospitals will receive an additional payment
1607 for the implantable programmable baclofen drug pump used to treat
1608 spasticity that is implanted on an inpatient basis. The payment
1609 pursuant to written invoice will be in addition to the facility's
1610 per diem reimbursement and will represent a reduction of costs on
1611 the facility's annual cost report, and shall not exceed Ten
1612 Thousand Dollars (\$10,000.00) per year per recipient.

1613 (d) The division is authorized to implement an
1614 All-Patient Refined-Diagnosis Related Groups (APR-DRG)
1615 reimbursement methodology for inpatient hospital services.

1616 (e) No service benefits or reimbursement
1617 limitations in this section shall apply to payments under an
1618 APR-DRG or Ambulatory Payment Classification (APC) model or a
1619 managed care program or similar model described in subsection (H)
1620 of this section.

1621 (2) Outpatient hospital services.

1622 (a) Emergency services.

1623 (b) Other outpatient hospital services. The
1624 division shall allow benefits for other medically necessary
1625 outpatient hospital services (such as chemotherapy, radiation,
1626 surgery and therapy), including outpatient services in a clinic or
1627 other facility that is not located inside the hospital, but that



1628 has been designated as an outpatient facility by the hospital, and
1629 that was in operation or under construction on July 1, 2009,
1630 provided that the costs and charges associated with the operation
1631 of the hospital clinic are included in the hospital's cost report.
1632 In addition, the Medicare thirty-five-mile rule will apply to
1633 those hospital clinics not located inside the hospital that are
1634 constructed after July 1, 2009. Where the same services are
1635 reimbursed as clinic services, the division may revise the rate or
1636 methodology of outpatient reimbursement to maintain consistency,
1637 efficiency, economy and quality of care.

1638 (c) The division is authorized to implement an
1639 Ambulatory Payment Classification (APC) methodology for outpatient
1640 hospital services.

1641 (d) No service benefits or reimbursement
1642 limitations in this section shall apply to payments under an
1643 APR-DRG or APC model or a managed care program or similar model
1644 described in subsection (H) of this section.

1645 (3) Laboratory and x-ray services.

1646 (4) Nursing facility services.

1647 (a) The division shall make full payment to
1648 nursing facilities for each day, not exceeding fifty-two (52) days
1649 per year, that a patient is absent from the facility on home
1650 leave. Payment may be made for the following home leave days in
1651 addition to the fifty-two-day limitation: Christmas, the day



1652 before Christmas, the day after Christmas, Thanksgiving, the day
1653 before Thanksgiving and the day after Thanksgiving.

1654 (b) From and after July 1, 1997, the division
1655 shall implement the integrated case-mix payment and quality
1656 monitoring system, which includes the fair rental system for
1657 property costs and in which recapture of depreciation is
1658 eliminated. The division may reduce the payment for hospital
1659 leave and therapeutic home leave days to the lower of the case-mix
1660 category as computed for the resident on leave using the
1661 assessment being utilized for payment at that point in time, or a
1662 case-mix score of 1.000 for nursing facilities, and shall compute
1663 case-mix scores of residents so that only services provided at the
1664 nursing facility are considered in calculating a facility's per
1665 diem.

1666 (c) From and after July 1, 1997, all state-owned
1667 nursing facilities shall be reimbursed on a full reasonable cost
1668 basis.

1669 (d) On or after January 1, 2015, the division
1670 shall update the case-mix payment system resource utilization
1671 grouper and classifications and fair rental reimbursement system.
1672 The division shall develop and implement a payment add-on to
1673 reimburse nursing facilities for ventilator dependent resident
1674 services.

1675 (e) The division shall develop and implement, not
1676 later than January 1, 2001, a case-mix payment add-on determined



1677 by time studies and other valid statistical data that will
1678 reimburse a nursing facility for the additional cost of caring for
1679 a resident who has a diagnosis of Alzheimer's or other related
1680 dementia and exhibits symptoms that require special care. Any
1681 such case-mix add-on payment shall be supported by a determination
1682 of additional cost. The division shall also develop and implement
1683 as part of the fair rental reimbursement system for nursing
1684 facility beds, an Alzheimer's resident bed depreciation enhanced
1685 reimbursement system that will provide an incentive to encourage
1686 nursing facilities to convert or construct beds for residents with
1687 Alzheimer's or other related dementia.

1688 (f) The division shall develop and implement an
1689 assessment process for long-term care services. The division may
1690 provide the assessment and related functions directly or through
1691 contract with the area agencies on aging.

1692 The division shall apply for necessary federal waivers to
1693 assure that additional services providing alternatives to nursing
1694 facility care are made available to applicants for nursing
1695 facility care.

1696 (5) Periodic screening and diagnostic services for
1697 individuals under age twenty-one (21) years as are needed to
1698 identify physical and mental defects and to provide health care
1699 treatment and other measures designed to correct or ameliorate
1700 defects and physical and mental illness and conditions discovered
1701 by the screening services, regardless of whether these services



1702 are included in the state plan. The division may include in its
1703 periodic screening and diagnostic program those discretionary
1704 services authorized under the federal regulations adopted to
1705 implement Title XIX of the federal Social Security Act, as
1706 amended. The division, in obtaining physical therapy services,
1707 occupational therapy services, and services for individuals with
1708 speech, hearing and language disorders, may enter into a
1709 cooperative agreement with the State Department of Education for
1710 the provision of those services to handicapped students by public
1711 school districts using state funds that are provided from the
1712 appropriation to the Department of Education to obtain federal
1713 matching funds through the division. The division, in obtaining
1714 medical and mental health assessments, treatment, care and
1715 services for children who are in, or at risk of being put in, the
1716 custody of the Mississippi Department of Human Services may enter
1717 into a cooperative agreement with the Mississippi Department of
1718 Human Services for the provision of those services using state
1719 funds that are provided from the appropriation to the Department
1720 of Human Services to obtain federal matching funds through the
1721 division.

1722 (6) Physician's services. The division shall allow
1723 twelve (12) physician visits annually. The division may develop
1724 and implement a different reimbursement model or schedule for
1725 physician's services provided by physicians based at an academic
1726 health care center and by physicians at rural health centers that



1727 are associated with an academic health care center. From and
1728 after January 1, 2010, all fees for physician's services that are
1729 covered only by Medicaid shall be increased to ninety percent
1730 (90%) of the rate established on January 1, 2010, and as may be
1731 adjusted each July thereafter, under Medicare. The division may
1732 provide for a reimbursement rate for physician's services of up to
1733 one hundred percent (100%) of the rate established under Medicare
1734 for physician's services that are provided after the normal
1735 working hours of the physician, as determined in accordance with
1736 regulations of the division. The division may reimburse eligible
1737 providers as determined by the Patient Protection and Affordable
1738 Care Act for certain primary care services as defined by the act
1739 at one hundred percent (100%) of the rate established under
1740 Medicare.

1741 (7) (a) Home health services for eligible persons, not
1742 to exceed in cost the prevailing cost of nursing facility
1743 services, not to exceed twenty-five (25) visits per year. All
1744 home health visits must be precertified as required by the
1745 division.

1746 (b) [Repealed]

1747 (8) Emergency medical transportation services. On
1748 January 1, 1994, emergency medical transportation services shall
1749 be reimbursed at seventy percent (70%) of the rate established
1750 under Medicare (Title XVIII of the federal Social Security Act, as
1751 amended). "Emergency medical transportation services" shall mean,



1752 but shall not be limited to, the following services by a properly
1753 permitted ambulance operated by a properly licensed provider in
1754 accordance with the Emergency Medical Services Act of 1974
1755 (Section 41-59-1 et seq.): (i) basic life support, (ii) advanced
1756 life support, (iii) mileage, (iv) oxygen, (v) intravenous fluids,
1757 (vi) disposable supplies, (vii) similar services.

1758 (9) (a) Legend and other drugs as may be determined by
1759 the division.

1760 The division shall establish a mandatory preferred drug list.
1761 Drugs not on the mandatory preferred drug list shall be made
1762 available by utilizing prior authorization procedures established
1763 by the division.

1764 The division may seek to establish relationships with other
1765 states in order to lower acquisition costs of prescription drugs
1766 to include single source and innovator multiple source drugs or
1767 generic drugs. In addition, if allowed by federal law or
1768 regulation, the division may seek to establish relationships with
1769 and negotiate with other countries to facilitate the acquisition
1770 of prescription drugs to include single source and innovator
1771 multiple source drugs or generic drugs, if that will lower the
1772 acquisition costs of those prescription drugs.

1773 The division shall allow for a combination of prescriptions
1774 for single source and innovator multiple source drugs and generic
1775 drugs to meet the needs of the beneficiaries, not to exceed five
1776 (5) prescriptions per month for each noninstitutionalized Medicaid



1777 beneficiary, with not more than two (2) of those prescriptions
1778 being for single source or innovator multiple source drugs unless
1779 the single source or innovator multiple source drug is less
1780 expensive than the generic equivalent.

1781 The executive director may approve specific maintenance drugs
1782 for beneficiaries with certain medical conditions, which may be
1783 prescribed and dispensed in three-month supply increments.

1784 Drugs prescribed for a resident of a psychiatric residential
1785 treatment facility must be provided in true unit doses when
1786 available. The division may require that drugs not covered by
1787 Medicare Part D for a resident of a long-term care facility be
1788 provided in true unit doses when available. Those drugs that were
1789 originally billed to the division but are not used by a resident
1790 in any of those facilities shall be returned to the billing
1791 pharmacy for credit to the division, in accordance with the
1792 guidelines of the State Board of Pharmacy and any requirements of
1793 federal law and regulation. Drugs shall be dispensed to a
1794 recipient and only one (1) dispensing fee per month may be
1795 charged. The division shall develop a methodology for reimbursing
1796 for restocked drugs, which shall include a restock fee as
1797 determined by the division not exceeding Seven Dollars and
1798 Eighty-two Cents (\$7.82).

1799 The voluntary preferred drug list shall be expanded to
1800 function in the interim in order to have a manageable prior



1801 authorization system, thereby minimizing disruption of service to
1802 beneficiaries.

1803 Except for those specific maintenance drugs approved by the
1804 executive director, the division shall not reimburse for any
1805 portion of a prescription that exceeds a thirty-one-day supply of
1806 the drug based on the daily dosage.

1807 The division shall develop and implement a program of payment
1808 for additional pharmacist services, with payment to be based on
1809 demonstrated savings, but in no case shall the total payment
1810 exceed twice the amount of the dispensing fee.

1811 All claims for drugs for dually eligible Medicare/Medicaid
1812 beneficiaries that are paid for by Medicare must be submitted to
1813 Medicare for payment before they may be processed by the
1814 division's online payment system.

1815 The division shall develop a pharmacy policy in which drugs
1816 in tamper-resistant packaging that are prescribed for a resident
1817 of a nursing facility but are not dispensed to the resident shall
1818 be returned to the pharmacy and not billed to Medicaid, in
1819 accordance with guidelines of the State Board of Pharmacy.

1820 The division shall develop and implement a method or methods
1821 by which the division will provide on a regular basis to Medicaid
1822 providers who are authorized to prescribe drugs, information about
1823 the costs to the Medicaid program of single source drugs and
1824 innovator multiple source drugs, and information about other drugs
1825 that may be prescribed as alternatives to those single source



1826 drugs and innovator multiple source drugs and the costs to the
1827 Medicaid program of those alternative drugs.

1828 Notwithstanding any law or regulation, information obtained
1829 or maintained by the division regarding the prescription drug
1830 program, including trade secrets and manufacturer or labeler
1831 pricing, is confidential and not subject to disclosure except to
1832 other state agencies.

1833 The division shall not require prior authorization or
1834 approval for any drugs prescribed to treat substance use
1835 disorders.

1836 (b) Payment by the division for covered
1837 multisource drugs shall be limited to the lower of the upper
1838 limits established and published by the Centers for Medicare and
1839 Medicaid Services (CMS) plus a dispensing fee, or the estimated
1840 acquisition cost (EAC) as determined by the division, plus a
1841 dispensing fee, or the providers' usual and customary charge to
1842 the general public.

1843 Payment for other covered drugs, other than multisource drugs
1844 with CMS upper limits, shall not exceed the lower of the estimated
1845 acquisition cost as determined by the division, plus a dispensing
1846 fee or the providers' usual and customary charge to the general
1847 public.

1848 Payment for nonlegend or over-the-counter drugs covered by
1849 the division shall be reimbursed at the lower of the division's



1850 estimated shelf price or the providers' usual and customary charge
1851 to the general public.

1852 The dispensing fee for each new or refill prescription,
1853 including nonlegend or over-the-counter drugs covered by the
1854 division, shall be not less than Three Dollars and Ninety-one
1855 Cents (\$3.91), as determined by the division.

1856 The division shall not reimburse for single source or
1857 innovator multiple source drugs if there are equally effective
1858 generic equivalents available and if the generic equivalents are
1859 the least expensive.

1860 It is the intent of the Legislature that the pharmacists
1861 providers be reimbursed for the reasonable costs of filling and
1862 dispensing prescriptions for Medicaid beneficiaries.

1863 (10) (a) Dental care that is an adjunct to treatment
1864 of an acute medical or surgical condition; services of oral
1865 surgeons and dentists in connection with surgery related to the
1866 jaw or any structure contiguous to the jaw or the reduction of any
1867 fracture of the jaw or any facial bone; and emergency dental
1868 extractions and treatment related thereto. On July 1, 2007, fees
1869 for dental care and surgery under authority of this paragraph (10)
1870 shall be reimbursed as provided in subparagraph (b). It is the
1871 intent of the Legislature that this rate revision for dental
1872 services will be an incentive designed to increase the number of
1873 dentists who actively provide Medicaid services. This dental



1874 services rate revision shall be known as the "James Russell Dumas
1875 Medicaid Dental Incentive Program."

1876 The division shall annually determine the effect of this
1877 incentive by evaluating the number of dentists who are Medicaid
1878 providers, the number who and the degree to which they are
1879 actively billing Medicaid, the geographic trends of where dentists
1880 are offering what types of Medicaid services and other statistics
1881 pertinent to the goals of this legislative intent. This data
1882 shall be presented to the Chair of the Senate Public Health and
1883 Welfare Committee and the Chair of the House Medicaid Committee.

1884 (b) The Division of Medicaid shall establish a fee
1885 schedule, to be effective from and after July 1, 2007, for dental
1886 services. The schedule shall provide for a fee for each dental
1887 service that is equal to a percentile of normal and customary
1888 private provider fees, as defined by the Ingenix Customized Fee
1889 Analyzer Report, which percentile shall be determined by the
1890 division. The schedule shall be reviewed annually by the division
1891 and dental fees shall be adjusted to reflect the percentile
1892 determined by the division.

1893 (c) For fiscal year 2008, the amount of state
1894 funds appropriated for reimbursement for dental care and surgery
1895 shall be increased by ten percent (10%) of the amount of state
1896 fund expenditures for that purpose for fiscal year 2007. For each
1897 of fiscal years 2009 and 2010, the amount of state funds
1898 appropriated for reimbursement for dental care and surgery shall



1899 be increased by ten percent (10%) of the amount of state fund
1900 expenditures for that purpose for the preceding fiscal year.

1901 (d) The division shall establish an annual benefit
1902 limit of Two Thousand Five Hundred Dollars (\$2,500.00) in dental
1903 expenditures per Medicaid-eligible recipient; however, a recipient
1904 may exceed the annual limit on dental expenditures provided in
1905 this paragraph with prior approval of the division.

1906 (e) The division shall include dental services as
1907 a necessary component of overall health services provided to
1908 children who are eligible for services.

1909 (f) This paragraph (10) shall stand repealed on
1910 July 1, 2016.

1911 (11) Eyeglasses for all Medicaid beneficiaries who have
1912 (a) had surgery on the eyeball or ocular muscle that results in a
1913 vision change for which eyeglasses or a change in eyeglasses is
1914 medically indicated within six (6) months of the surgery and is in
1915 accordance with policies established by the division, or (b) one
1916 (1) pair every five (5) years and in accordance with policies
1917 established by the division. In either instance, the eyeglasses
1918 must be prescribed by a physician skilled in diseases of the eye
1919 or an optometrist, whichever the beneficiary may select.

1920 (12) Intermediate care facility services.

1921 (a) The division shall make full payment to all
1922 intermediate care facilities for individuals with intellectual
1923 disabilities for each day, not exceeding eighty-four (84) days per



1924 year, that a patient is absent from the facility on home leave.
1925 Payment may be made for the following home leave days in addition
1926 to the eighty-four-day limitation: Christmas, the day before
1927 Christmas, the day after Christmas, Thanksgiving, the day before
1928 Thanksgiving and the day after Thanksgiving.

1929 (b) All state-owned intermediate care facilities
1930 for individuals with intellectual disabilities shall be reimbursed
1931 on a full reasonable cost basis.

1932 (c) Effective January 1, 2015, the division shall
1933 update the fair rental reimbursement system for intermediate care
1934 facilities for individuals with intellectual disabilities.

1935 (13) Family planning services, including drugs,
1936 supplies and devices, when those services are under the
1937 supervision of a physician or nurse practitioner.

1938 (14) Clinic services. Such diagnostic, preventive,
1939 therapeutic, rehabilitative or palliative services furnished to an
1940 outpatient by or under the supervision of a physician or dentist
1941 in a facility that is not a part of a hospital but that is
1942 organized and operated to provide medical care to outpatients.
1943 Clinic services shall include any services reimbursed as
1944 outpatient hospital services that may be rendered in such a
1945 facility, including those that become so after July 1, 1991. On
1946 July 1, 1999, all fees for physicians' services reimbursed under
1947 authority of this paragraph (14) shall be reimbursed at ninety
1948 percent (90%) of the rate established on January 1, 1999, and as



1949 may be adjusted each July thereafter, under Medicare (Title XVIII
1950 of the federal Social Security Act, as amended). The division may
1951 develop and implement a different reimbursement model or schedule
1952 for physician's services provided by physicians based at an
1953 academic health care center and by physicians at rural health
1954 centers that are associated with an academic health care center.
1955 The division may provide for a reimbursement rate for physician's
1956 clinic services of up to one hundred percent (100%) of the rate
1957 established under Medicare for physician's services that are
1958 provided after the normal working hours of the physician, as
1959 determined in accordance with regulations of the division.

1960 (15) Home- and community-based services for the elderly
1961 and disabled, as provided under Title XIX of the federal Social
1962 Security Act, as amended, under waivers, subject to the
1963 availability of funds specifically appropriated for that purpose
1964 by the Legislature.

1965 The Division of Medicaid is directed to apply for a waiver
1966 amendment to increase payments for all adult day care facilities
1967 based on acuity of individual patients, with a maximum of
1968 Seventy-five Dollars (\$75.00) per day for the most acute patients.

1969 (16) Mental health services. Approved therapeutic and
1970 case management services (a) provided by an approved regional
1971 mental health/intellectual disability center established under
1972 Sections 41-19-31 through 41-19-39, or by another community mental
1973 health service provider meeting the requirements of the Department



1974 of Mental Health to be an approved mental health/intellectual
1975 disability center if determined necessary by the Department of
1976 Mental Health, using state funds that are provided in the
1977 appropriation to the division to match federal funds, or (b)
1978 provided by a facility that is certified by the State Department
1979 of Mental Health to provide therapeutic and case management
1980 services, to be reimbursed on a fee for service basis, or (c)
1981 provided in the community by a facility or program operated by the
1982 Department of Mental Health. Any such services provided by a
1983 facility described in subparagraph (b) must have the prior
1984 approval of the division to be reimbursable under this
1985 section. * * *

1986 (17) Durable medical equipment services and medical
1987 supplies. Precertification of durable medical equipment and
1988 medical supplies must be obtained as required by the division.
1989 The Division of Medicaid may require durable medical equipment
1990 providers to obtain a surety bond in the amount and to the
1991 specifications as established by the Balanced Budget Act of 1997.

1992 (18) (a) Notwithstanding any other provision of this
1993 section to the contrary, as provided in the Medicaid state plan
1994 amendment or amendments as defined in Section 43-13-145(10), the
1995 division shall make additional reimbursement to hospitals that
1996 serve a disproportionate share of low-income patients and that
1997 meet the federal requirements for those payments as provided in
1998 Section 1923 of the federal Social Security Act and any applicable



1999 regulations. It is the intent of the Legislature that the
2000 division shall draw down all available federal funds allotted to
2001 the state for disproportionate share hospitals. However, from and
2002 after January 1, 1999, public hospitals participating in the
2003 Medicaid disproportionate share program may be required to
2004 participate in an intergovernmental transfer program as provided
2005 in Section 1903 of the federal Social Security Act and any
2006 applicable regulations.

2007 (b) The division shall establish a Medicare Upper
2008 Payment Limits Program, as defined in Section 1902(a)(30) of the
2009 federal Social Security Act and any applicable federal
2010 regulations, for hospitals, and may establish a Medicare Upper
2011 Payment Limits Program for nursing facilities, and may establish a
2012 Medicare Upper Payment Limits Program for physicians employed or
2013 contracted by public hospitals. Upon successful implementation of
2014 a Medicare Upper Payment Limits Program for physicians employed by
2015 public hospitals, the division may develop a plan for implementing
2016 an Upper Payment Limits Program for physicians employed by other
2017 classes of hospitals. The division shall assess each hospital
2018 and, if the program is established for nursing facilities, shall
2019 assess each nursing facility, for the sole purpose of financing
2020 the state portion of the Medicare Upper Payment Limits Program.
2021 The hospital assessment shall be as provided in Section
2022 43-13-145(4)(a) and the nursing facility assessment, if
2023 established, shall be based on Medicaid utilization or other



2024 appropriate method consistent with federal regulations. The
2025 assessment will remain in effect as long as the state participates
2026 in the Medicare Upper Payment Limits Program. Public hospitals
2027 with physicians participating in the Medicare Upper Payment Limits
2028 Program shall be required to participate in an intergovernmental
2029 transfer program. As provided in the Medicaid state plan
2030 amendment or amendments as defined in Section 43-13-145(10), the
2031 division shall make additional reimbursement to hospitals and, if
2032 the program is established for nursing facilities, shall make
2033 additional reimbursement to nursing facilities, for the Medicare
2034 Upper Payment Limits, and, if the program is established for
2035 physicians, shall make additional reimbursement for physicians, as
2036 defined in Section 1902(a)(30) of the federal Social Security Act
2037 and any applicable federal regulations. Effective upon
2038 implementation of the Mississippi Hospital Access Program (MHAP)
2039 provided in subparagraph (c)(i) below, the hospital portion of the
2040 inpatient Upper Payment Limits Program shall transition into and
2041 be replaced by the MHAP program.

2042 (c) (i) Not later than December 1, 2015, the
2043 division shall, subject to approval by the Centers for Medicare
2044 and Medicaid Services (CMS), establish, implement and operate a
2045 Mississippi Hospital Access Program (MHAP) for the purpose of
2046 protecting patient access to hospital care through hospital
2047 inpatient reimbursement programs provided in this section designed
2048 to maintain total hospital reimbursement for inpatient services



2049 rendered by in-state hospitals and the out-of-state hospital that
2050 is authorized by federal law to submit intergovernmental transfers
2051 (IGTs) to the State of Mississippi and is classified as Level I
2052 trauma center located in a county contiguous to the state line at
2053 the maximum levels permissible under applicable federal statutes
2054 and regulations, at which time the current inpatient Medicare
2055 Upper Payment Limits (UPL) Program for hospital inpatient services
2056 shall transition to the MHAP.

2057 (ii) Subject only to approval by the Centers
2058 for Medicare and Medicaid Services (CMS) where required, the MHAP
2059 shall provide increased inpatient capitation (PMPM) payments to
2060 managed care entities contracting with the division pursuant to
2061 subsection (H) of this section to support availability of hospital
2062 services or such other payments permissible under federal law
2063 necessary to accomplish the intent of this subsection. For
2064 inpatient services rendered after July 1, 2015, but prior to the
2065 effective date of CMS approval and full implementation of this
2066 program, the division may pay lump-sum enhanced, transition
2067 payments, prorated inpatient UPL payments based upon fiscal year
2068 2015 June distribution levels, enhanced hospital access (PMPM)
2069 payments or such other methodologies as are approved by CMS such
2070 that the level of additional reimbursement required by this
2071 section is paid for all Medicaid hospital inpatient services
2072 delivered in fiscal year 2016.



2073 (iii) The intent of this subparagraph (c) is
2074 that effective for all inpatient hospital Medicaid services during
2075 state fiscal year 2016, and so long as this provision shall remain
2076 in effect hereafter, the division shall to the fullest extent
2077 feasible replace the additional reimbursement for hospital
2078 inpatient services under the inpatient Medicare Upper Payment
2079 Limits (UPL) Program with additional reimbursement under the MHAP.

2080 (iv) The division shall assess each hospital
2081 as provided in Section 43-13-145(4) (a) for the purpose of
2082 financing the state portion of the MHAP and such other purposes as
2083 specified in Section 43-13-145. The assessment will remain in
2084 effect as long as the MHAP is in effect.

2085 (v) In the event that the MHAP program under
2086 this subparagraph (c) is not approved by CMS, the inpatient UPL
2087 program under subparagraph (b) shall immediately become restored
2088 in the manner required to provide the maximum permissible level of
2089 UPL payments to hospital providers for all inpatient services
2090 rendered from and after July 1, 2015.

2091 (19) (a) Perinatal risk management services. The
2092 division shall promulgate regulations to be effective from and
2093 after October 1, 1988, to establish a comprehensive perinatal
2094 system for risk assessment of all pregnant and infant Medicaid
2095 recipients and for management, education and follow-up for those
2096 who are determined to be at risk. Services to be performed
2097 include case management, nutrition assessment/counseling,



2098 psychosocial assessment/counseling and health education. The
2099 division shall contract with the State Department of Health to
2100 provide the services within this paragraph (Perinatal High Risk
2101 Management/Infant Services System (PHRM/ISS)). The State
2102 Department of Health as the agency for PHRM/ISS for the Division
2103 of Medicaid shall be reimbursed on a full reasonable cost basis.

2104 (b) Early intervention system services. The
2105 division shall cooperate with the State Department of Health,
2106 acting as lead agency, in the development and implementation of a
2107 statewide system of delivery of early intervention services, under
2108 Part C of the Individuals with Disabilities Education Act (IDEA).
2109 The State Department of Health shall certify annually in writing
2110 to the executive director of the division the dollar amount of
2111 state early intervention funds available that will be utilized as
2112 a certified match for Medicaid matching funds. Those funds then
2113 shall be used to provide expanded targeted case management
2114 services for Medicaid eligible children with special needs who are
2115 eligible for the state's early intervention system.

2116 Qualifications for persons providing service coordination shall be
2117 determined by the State Department of Health and the Division of
2118 Medicaid.

2119 (20) Home- and community-based services for physically
2120 disabled approved services as allowed by a waiver from the United
2121 States Department of Health and Human Services for home- and
2122 community-based services for physically disabled people using



2123 state funds that are provided from the appropriation to the State
2124 Department of Rehabilitation Services and used to match federal
2125 funds under a cooperative agreement between the division and the
2126 department, provided that funds for these services are
2127 specifically appropriated to the Department of Rehabilitation
2128 Services.

2129 (21) Nurse practitioner services. Services furnished
2130 by a registered nurse who is licensed and certified by the
2131 Mississippi Board of Nursing as a nurse practitioner, including,
2132 but not limited to, nurse anesthetists, nurse midwives, family
2133 nurse practitioners, family planning nurse practitioners,
2134 pediatric nurse practitioners, obstetrics-gynecology nurse
2135 practitioners and neonatal nurse practitioners, under regulations
2136 adopted by the division. Reimbursement for those services shall
2137 not exceed ninety percent (90%) of the reimbursement rate for
2138 comparable services rendered by a physician. The division may
2139 provide for a reimbursement rate for nurse practitioner services
2140 of up to one hundred percent (100%) of the reimbursement rate for
2141 comparable services rendered by a physician for nurse practitioner
2142 services that are provided after the normal working hours of the
2143 nurse practitioner, as determined in accordance with regulations
2144 of the division.

2145 (22) Ambulatory services delivered in federally
2146 qualified health centers, rural health centers and clinics of the
2147 local health departments of the State Department of Health for



2148 individuals eligible for Medicaid under this article based on
2149 reasonable costs as determined by the division.

2150 (23) Inpatient psychiatric services. Inpatient
2151 psychiatric services to be determined by the division for
2152 recipients under age twenty-one (21) that are provided under the
2153 direction of a physician in an inpatient program in a licensed
2154 acute care psychiatric facility or in a licensed psychiatric
2155 residential treatment facility, before the recipient reaches age
2156 twenty-one (21) or, if the recipient was receiving the services
2157 immediately before he or she reached age twenty-one (21), before
2158 the earlier of the date he or she no longer requires the services
2159 or the date he or she reaches age twenty-two (22), as provided by
2160 federal regulations. From and after January 1, 2015, the division
2161 shall update the fair rental reimbursement system for psychiatric
2162 residential treatment facilities. Precertification of inpatient
2163 days and residential treatment days must be obtained as required
2164 by the division. From and after July 1, 2009, all state-owned and
2165 state-operated facilities that provide inpatient psychiatric
2166 services to persons under age twenty-one (21) who are eligible for
2167 Medicaid reimbursement shall be reimbursed for those services on a
2168 full reasonable cost basis.

2169 (24) [Deleted]

2170 (25) [Deleted]

2171 (26) Hospice care. As used in this paragraph, the term
2172 "hospice care" means a coordinated program of active professional



2173 medical attention within the home and outpatient and inpatient
2174 care that treats the terminally ill patient and family as a unit,
2175 employing a medically directed interdisciplinary team. The
2176 program provides relief of severe pain or other physical symptoms
2177 and supportive care to meet the special needs arising out of
2178 physical, psychological, spiritual, social and economic stresses
2179 that are experienced during the final stages of illness and during
2180 dying and bereavement and meets the Medicare requirements for
2181 participation as a hospice as provided in federal regulations.

2182 (27) Group health plan premiums and cost-sharing if it
2183 is cost-effective as defined by the United States Secretary of
2184 Health and Human Services.

2185 (28) Other health insurance premiums that are
2186 cost-effective as defined by the United States Secretary of Health
2187 and Human Services. Medicare eligible must have Medicare Part B
2188 before other insurance premiums can be paid.

2189 (29) The Division of Medicaid may apply for a waiver
2190 from the United States Department of Health and Human Services for
2191 home- and community-based services for developmentally disabled
2192 people using state funds that are provided from the appropriation
2193 to the State Department of Mental Health and/or funds transferred
2194 to the department by a political subdivision or instrumentality of
2195 the state and used to match federal funds under a cooperative
2196 agreement between the division and the department, provided that
2197 funds for these services are specifically appropriated to the



2198 Department of Mental Health and/or transferred to the department
2199 by a political subdivision or instrumentality of the state.

2200 (30) Pediatric skilled nursing services for eligible
2201 persons under twenty-one (21) years of age.

2202 (31) Targeted case management services for children
2203 with special needs, under waivers from the United States
2204 Department of Health and Human Services, using state funds that
2205 are provided from the appropriation to the Mississippi Department
2206 of Human Services and used to match federal funds under a
2207 cooperative agreement between the division and the department.

2208 (32) Care and services provided in Christian Science
2209 Sanatoria listed and certified by the Commission for Accreditation
2210 of Christian Science Nursing Organizations/Facilities, Inc.,
2211 rendered in connection with treatment by prayer or spiritual means
2212 to the extent that those services are subject to reimbursement
2213 under Section 1903 of the federal Social Security Act.

2214 (33) Podiatrist services.

2215 (34) Assisted living services as provided through
2216 home- and community-based services under Title XIX of the federal
2217 Social Security Act, as amended, subject to the availability of
2218 funds specifically appropriated for that purpose by the
2219 Legislature.

2220 (35) Services and activities authorized in Sections
2221 43-27-101 and 43-27-103, using state funds that are provided from
2222 the appropriation to the Mississippi Department of Human Services



2223 and used to match federal funds under a cooperative agreement
2224 between the division and the department.

2225 (36) Nonemergency transportation services for
2226 Medicaid-eligible persons, to be provided by the Division of
2227 Medicaid. The division may contract with additional entities to
2228 administer nonemergency transportation services as it deems
2229 necessary. All providers shall have a valid driver's license,
2230 vehicle inspection sticker, valid vehicle license tags and a
2231 standard liability insurance policy covering the vehicle. The
2232 division may pay providers a flat fee based on mileage tiers, or
2233 in the alternative, may reimburse on actual miles traveled. The
2234 division may apply to the Center for Medicare and Medicaid
2235 Services (CMS) for a waiver to draw federal matching funds for
2236 nonemergency transportation services as a covered service instead
2237 of an administrative cost. The PEER Committee shall conduct a
2238 performance evaluation of the nonemergency transportation program
2239 to evaluate the administration of the program and the providers of
2240 transportation services to determine the most cost-effective ways
2241 of providing nonemergency transportation services to the patients
2242 served under the program. The performance evaluation shall be
2243 completed and provided to the members of the Senate Public Health
2244 and Welfare Committee and the House Medicaid Committee not later
2245 than January 15, 2008.

2246 (37) [Deleted]



2247 (38) Chiropractic services. A chiropractor's manual
2248 manipulation of the spine to correct a subluxation, if x-ray
2249 demonstrates that a subluxation exists and if the subluxation has
2250 resulted in a neuromusculoskeletal condition for which
2251 manipulation is appropriate treatment, and related spinal x-rays
2252 performed to document these conditions. Reimbursement for
2253 chiropractic services shall not exceed Seven Hundred Dollars
2254 (\$700.00) per year per beneficiary.

2255 (39) Dually eligible Medicare/Medicaid beneficiaries.
2256 The division shall pay the Medicare deductible and coinsurance
2257 amounts for services available under Medicare, as determined by
2258 the division. From and after July 1, 2009, the division shall
2259 reimburse crossover claims for inpatient hospital services and
2260 crossover claims covered under Medicare Part B in the same manner
2261 that was in effect on January 1, 2008, unless specifically
2262 authorized by the Legislature to change this method.

2263 (40) [Deleted]

2264 (41) Services provided by the State Department of
2265 Rehabilitation Services for the care and rehabilitation of persons
2266 with spinal cord injuries or traumatic brain injuries, as allowed
2267 under waivers from the United States Department of Health and
2268 Human Services, using up to seventy-five percent (75%) of the
2269 funds that are appropriated to the Department of Rehabilitation
2270 Services from the Spinal Cord and Head Injury Trust Fund
2271 established under Section 37-33-261 and used to match federal



2272 funds under a cooperative agreement between the division and the
2273 department.

2274 (42) Notwithstanding any other provision in this
2275 article to the contrary, the division may develop a population
2276 health management program for women and children health services
2277 through the age of one (1) year. This program is primarily for
2278 obstetrical care associated with low birth weight and preterm
2279 babies. The division may apply to the federal Centers for
2280 Medicare and Medicaid Services (CMS) for a Section 1115 waiver or
2281 any other waivers that may enhance the program. In order to
2282 effect cost savings, the division may develop a revised payment
2283 methodology that may include at-risk capitated payments, and may
2284 require member participation in accordance with the terms and
2285 conditions of an approved federal waiver.

2286 (43) The division shall provide reimbursement,
2287 according to a payment schedule developed by the division, for
2288 smoking cessation medications for pregnant women during their
2289 pregnancy and other Medicaid-eligible women who are of
2290 child-bearing age.

2291 (44) Nursing facility services for the severely
2292 disabled.

2293 (a) Severe disabilities include, but are not
2294 limited to, spinal cord injuries, closed-head injuries and
2295 ventilator dependent patients.



2296 (b) Those services must be provided in a long-term
2297 care nursing facility dedicated to the care and treatment of
2298 persons with severe disabilities.

2299 (45) Physician assistant services. Services furnished
2300 by a physician assistant who is licensed by the State Board of
2301 Medical Licensure and is practicing with physician supervision
2302 under regulations adopted by the board, under regulations adopted
2303 by the division. Reimbursement for those services shall not
2304 exceed ninety percent (90%) of the reimbursement rate for
2305 comparable services rendered by a physician. The division may
2306 provide for a reimbursement rate for physician assistant services
2307 of up to one hundred percent (100%) or the reimbursement rate for
2308 comparable services rendered by a physician for physician
2309 assistant services that are provided after the normal working
2310 hours of the physician assistant, as determined in accordance with
2311 regulations of the division.

2312 (46) The division shall make application to the federal
2313 Centers for Medicare and Medicaid Services (CMS) for a waiver to
2314 develop and provide services for children with serious emotional
2315 disturbances as defined in Section 43-14-1(1), which may include
2316 home- and community-based services, case management services or
2317 managed care services through mental health providers certified by
2318 the Department of Mental Health. The division may implement and
2319 provide services under this waived program only if funds for
2320 these services are specifically appropriated for this purpose by



2321 the Legislature, or if funds are voluntarily provided by affected
2322 agencies.

2323 (47) (a) Notwithstanding any other provision in this
2324 article to the contrary, the division may develop and implement
2325 disease management programs for individuals with high-cost chronic
2326 diseases and conditions, including the use of grants, waivers,
2327 demonstrations or other projects as necessary.

2328 (b) Participation in any disease management
2329 program implemented under this paragraph (47) is optional with the
2330 individual. An individual must affirmatively elect to participate
2331 in the disease management program in order to participate, and may
2332 elect to discontinue participation in the program at any time.

2333 (48) Pediatric long-term acute care hospital services.

2334 (a) Pediatric long-term acute care hospital
2335 services means services provided to eligible persons under
2336 twenty-one (21) years of age by a freestanding Medicare-certified
2337 hospital that has an average length of inpatient stay greater than
2338 twenty-five (25) days and that is primarily engaged in providing
2339 chronic or long-term medical care to persons under twenty-one (21)
2340 years of age.

2341 (b) The services under this paragraph (48) shall
2342 be reimbursed as a separate category of hospital services.

2343 (49) The division shall establish copayments and/or
2344 coinsurance for all Medicaid services for which copayments and/or
2345 coinsurance are allowable under federal law or regulation, and



2346 shall set the amount of the copayment and/or coinsurance for each
2347 of those services at the maximum amount allowable under federal
2348 law or regulation.

2349 (50) Services provided by the State Department of
2350 Rehabilitation Services for the care and rehabilitation of persons
2351 who are deaf and blind, as allowed under waivers from the United
2352 States Department of Health and Human Services to provide
2353 home- and community-based services using state funds that are
2354 provided from the appropriation to the State Department of
2355 Rehabilitation Services or if funds are voluntarily provided by
2356 another agency.

2357 (51) Upon determination of Medicaid eligibility and in
2358 association with annual redetermination of Medicaid eligibility,
2359 beneficiaries shall be encouraged to undertake a physical
2360 examination that will establish a base-line level of health and
2361 identification of a usual and customary source of care (a medical
2362 home) to aid utilization of disease management tools. This
2363 physical examination and utilization of these disease management
2364 tools shall be consistent with current United States Preventive
2365 Services Task Force or other recognized authority recommendations.

2366 For persons who are determined ineligible for Medicaid, the
2367 division will provide information and direction for accessing
2368 medical care and services in the area of their residence.

2369 (52) Notwithstanding any provisions of this article,
2370 the division may pay enhanced reimbursement fees related to trauma



2371 care, as determined by the division in conjunction with the State
2372 Department of Health, using funds appropriated to the State
2373 Department of Health for trauma care and services and used to
2374 match federal funds under a cooperative agreement between the
2375 division and the State Department of Health. The division, in
2376 conjunction with the State Department of Health, may use grants,
2377 waivers, demonstrations, or other projects as necessary in the
2378 development and implementation of this reimbursement program.

2379 (53) Targeted case management services for high-cost
2380 beneficiaries shall be developed by the division for all services
2381 under this section.

2382 (54) Adult foster care services pilot program. Social
2383 and protective services on a pilot program basis in an approved
2384 foster care facility for vulnerable adults who would otherwise
2385 need care in a long-term care facility, to be implemented in an
2386 area of the state with the greatest need for such program, under
2387 the Medicaid Waivers for the Elderly and Disabled program or an
2388 assisted living waiver. The division may use grants, waivers,
2389 demonstrations or other projects as necessary in the development
2390 and implementation of this adult foster care services pilot
2391 program.

2392 (55) Therapy services. The plan of care for therapy
2393 services may be developed to cover a period of treatment for up to
2394 six (6) months, but in no event shall the plan of care exceed a
2395 six-month period of treatment. The projected period of treatment



2396 must be indicated on the initial plan of care and must be updated
2397 with each subsequent revised plan of care. Based on medical
2398 necessity, the division shall approve certification periods for
2399 less than or up to six (6) months, but in no event shall the
2400 certification period exceed the period of treatment indicated on
2401 the plan of care. The appeal process for any reduction in therapy
2402 services shall be consistent with the appeal process in federal
2403 regulations.

2404 (56) Prescribed pediatric extended care centers
2405 services for medically dependent or technologically dependent
2406 children with complex medical conditions that require continual
2407 care as prescribed by the child's attending physician, as
2408 determined by the division.

2409 (57) No Medicaid benefit shall restrict coverage for
2410 medically appropriate treatment prescribed by a physician and
2411 agreed to by a fully informed individual, or if the individual
2412 lacks legal capacity to consent by a person who has legal
2413 authority to consent on his or her behalf, based on an
2414 individual's diagnosis with a terminal condition. As used in this
2415 paragraph (57), "terminal condition" means any aggressive
2416 malignancy, chronic end-stage cardiovascular or cerebral vascular
2417 disease, or any other disease, illness or condition which a
2418 physician diagnoses as terminal.

2419 (B) Notwithstanding any other provision of this article to
2420 the contrary, the division shall reduce the rate of reimbursement



2421 to providers for any service provided under this section by five
2422 percent (5%) of the allowed amount for that service. However, the
2423 reduction in the reimbursement rates required by this subsection
2424 (B) shall not apply to inpatient hospital services, nursing
2425 facility services, intermediate care facility services,
2426 psychiatric residential treatment facility services, pharmacy
2427 services provided under subsection (A)(9) of this section, or any
2428 service provided by the University of Mississippi Medical Center
2429 or a state agency, a state facility or a public agency that either
2430 provides its own state match through intergovernmental transfer or
2431 certification of funds to the division, or a service for which the
2432 federal government sets the reimbursement methodology and rate.
2433 From and after January 1, 2010, the reduction in the reimbursement
2434 rates required by this subsection (B) shall not apply to
2435 physicians' services. In addition, the reduction in the
2436 reimbursement rates required by this subsection (B) shall not
2437 apply to case management services and home-delivered meals
2438 provided under the home- and community-based services program for
2439 the elderly and disabled by a planning and development district
2440 (PDD). Planning and development districts participating in the
2441 home- and community-based services program for the elderly and
2442 disabled as case management providers shall be reimbursed for case
2443 management services at the maximum rate approved by the Centers
2444 for Medicare and Medicaid Services (CMS).



2445 (C) The division may pay to those providers who participate
2446 in and accept patient referrals from the division's emergency room
2447 redirection program a percentage, as determined by the division,
2448 of savings achieved according to the performance measures and
2449 reduction of costs required of that program. Federally qualified
2450 health centers may participate in the emergency room redirection
2451 program, and the division may pay those centers a percentage of
2452 any savings to the Medicaid program achieved by the centers'
2453 accepting patient referrals through the program, as provided in
2454 this subsection (C).

2455 (D) Notwithstanding any provision of this article, except as
2456 authorized in the following subsection and in Section 43-13-139,
2457 neither * * * (1) the limitations on quantity or frequency of use
2458 of or the fees or charges for any of the care or services
2459 available to recipients under this section, nor * * * (2) the
2460 payments, payment methodology as provided below in this subsection
2461 (D), or rates of reimbursement to providers rendering care or
2462 services authorized under this section to recipients, may be
2463 increased, decreased or otherwise changed from the levels in
2464 effect on July 1, 1999, unless they are authorized by an amendment
2465 to this section by the Legislature. However, the restriction in
2466 this subsection shall not prevent the division from changing the
2467 payments, payment methodology as provided below in this subsection
2468 (D), or rates of reimbursement to providers without an amendment
2469 to this section whenever those changes are required by federal law



2470 or regulation, or whenever those changes are necessary to correct
2471 administrative errors or omissions in calculating those payments
2472 or rates of reimbursement. The prohibition on any changes in
2473 payment methodology provided in this subsection (D) shall apply
2474 only to payment methodologies used for determining the rates of
2475 reimbursement for inpatient hospital services, outpatient hospital
2476 services, nursing facility services, and/or pharmacy services,
2477 except as required by federal law, and the federally mandated
2478 rebasing of rates as required by the Centers for Medicare and
2479 Medicaid Services (CMS) shall not be considered payment
2480 methodology for purposes of this subsection (D). No service
2481 benefits or reimbursement limitations in this section shall apply
2482 to payments under an APR-DRG or APC model or a managed care
2483 program or similar model described in subsection (H) of this
2484 section.

2485 (E) Notwithstanding any provision of this article, no new
2486 groups or categories of recipients and new types of care and
2487 services may be added without enabling legislation from the
2488 Mississippi Legislature, except that the division may authorize
2489 those changes without enabling legislation when the addition of
2490 recipients or services is ordered by a court of proper authority.

2491 (F) The executive director shall keep the Governor advised
2492 on a timely basis of the funds available for expenditure and the
2493 projected expenditures. If current or projected expenditures of
2494 the division are reasonably anticipated to exceed the amount of



2495 funds appropriated to the division for any fiscal year, the
2496 Governor, after consultation with the executive director, shall
2497 discontinue any or all of the payment of the types of care and
2498 services as provided in this section that are deemed to be
2499 optional services under Title XIX of the federal Social Security
2500 Act, as amended, and when necessary, shall institute any other
2501 cost containment measures on any program or programs authorized
2502 under the article to the extent allowed under the federal law
2503 governing that program or programs. However, the Governor shall
2504 not be authorized to discontinue or eliminate any service under
2505 this section that is mandatory under federal law, or to
2506 discontinue or eliminate, or adjust income limits or resource
2507 limits for, any eligibility category or group under Section
2508 43-13-115. Beginning in fiscal year 2010 and in fiscal years
2509 thereafter, when Medicaid expenditures are projected to exceed
2510 funds available for any quarter in the fiscal year, the division
2511 shall submit the expected shortfall information to the PEER
2512 Committee, which shall review the computations of the division and
2513 report its findings to the Legislative Budget Office within thirty
2514 (30) days of such notification by the division, and not later than
2515 January 7 in any year. If expenditure reductions or cost
2516 containments are implemented, the Governor may implement a maximum
2517 amount of state share expenditure reductions to providers, of
2518 which hospitals will be responsible for twenty-five percent (25%)
2519 of provider reductions as follows: in fiscal year 2010, the



2520 maximum amount shall be Twenty-four Million Dollars
2521 (\$24,000,000.00); in fiscal year 2011, the maximum amount shall be
2522 Thirty-two Million Dollars (\$32,000,000.00); and in fiscal year
2523 2012 and thereafter, the maximum amount shall be Forty Million
2524 Dollars (\$40,000,000.00). However, instead of implementing cuts,
2525 the hospital share shall be in the form of an additional
2526 assessment not to exceed Ten Million Dollars (\$10,000,000.00) as
2527 provided in Section 43-13-145(4)(a)(ii). If Medicaid expenditures
2528 are projected to exceed the amount of funds appropriated to the
2529 division in any fiscal year in excess of the expenditure
2530 reductions to providers, then funds shall be transferred by the
2531 State Fiscal Officer from the Health Care Trust Fund into the
2532 Health Care Expendable Fund and to the Governor's Office, Division
2533 of Medicaid, from the Health Care Expendable Fund, in the amount
2534 and at such time as requested by the Governor to reconcile the
2535 deficit. If the cost containment measures described above have
2536 been implemented and there are insufficient funds in the Health
2537 Care Trust Fund to reconcile any remaining deficit in any fiscal
2538 year, the Governor shall institute any other additional cost
2539 containment measures on any program or programs authorized under
2540 this article to the extent allowed under federal law. Hospitals
2541 shall be responsible for twenty-five percent (25%) of any
2542 additional imposed provider cuts. However, instead of
2543 implementing hospital expenditure reductions, the hospital
2544 reductions shall be in the form of an additional assessment not to



2545 exceed twenty-five percent (25%) of provider expenditure
2546 reductions as provided in Section 43-13-145(4) (a) (ii). It is the
2547 intent of the Legislature that the expenditures of the division
2548 during any fiscal year shall not exceed the amounts appropriated
2549 to the division for that fiscal year.

2550 (G) Notwithstanding any other provision of this article, it
2551 shall be the duty of each nursing facility, intermediate care
2552 facility for individuals with intellectual disabilities,
2553 psychiatric residential treatment facility, and nursing facility
2554 for the severely disabled that is participating in the Medicaid
2555 program to keep and maintain books, documents and other records as
2556 prescribed by the Division of Medicaid in substantiation of its
2557 cost reports for a period of three (3) years after the date of
2558 submission to the Division of Medicaid of an original cost report,
2559 or three (3) years after the date of submission to the Division of
2560 Medicaid of an amended cost report.

2561 (H) (1) Notwithstanding any other provision of this
2562 article, the division is authorized to implement (a) a managed
2563 care program, (b) a coordinated care program, (c) a coordinated
2564 care organization program, (d) a health maintenance organization
2565 program, (e) a patient-centered medical home program, (f) an
2566 accountable care organization program, (g) provider-sponsored
2567 health plan, or (h) any combination of the above programs.
2568 Managed care programs, coordinated care programs, coordinated care
2569 organization programs, health maintenance organization programs,



2570 patient-centered medical home programs, accountable care
2571 organization programs, provider-sponsored health plans, or any
2572 combination of the above programs or other similar programs
2573 implemented by the division under this section shall be limited to
2574 the greater of (i) forty-five percent (45%) of the total
2575 enrollment of Medicaid beneficiaries, or (ii) the categories of
2576 beneficiaries participating in the program as of January 1, 2014,
2577 plus the categories of beneficiaries composed primarily of persons
2578 younger than nineteen (19) years of age, and the division is
2579 authorized to enroll categories of beneficiaries in such
2580 program(s) as long as the appropriate limitations are not exceeded
2581 in the aggregate. As a condition for the approval of any program
2582 under this subsection (H) (1), the division shall require that no
2583 program may:

2584 (a) Pay providers at a rate that is less than the
2585 Medicaid All-Patient Refined-Diagnosis Related Groups (APR-DRG)
2586 reimbursement rate;

2587 (b) Override the medical decisions of hospital
2588 physicians or staff regarding patients admitted to a hospital for
2589 an emergency medical condition as defined by 42 US Code Section
2590 1395dd. This restriction (b) does not prohibit the retrospective
2591 review of the appropriateness of the determination that an
2592 emergency medical condition exists by chart review or coding
2593 algorithm, nor does it prohibit prior authorization for
2594 nonemergency hospital admissions;



2595 (c) Pay providers at a rate that is less than the
2596 normal Medicaid reimbursement rate; however, the division may
2597 approve use of innovative payment models that recognize
2598 alternative payment models, including quality and value-based
2599 payments, provided both parties mutually agree and the Division of
2600 Medicaid approves of said models. Participation in the provider
2601 network of any managed care, coordinated care, provider-sponsored
2602 health plan, or similar contractor shall not be conditioned on the
2603 provider's agreement to accept such alternative payment models;

2604 (d) Implement a prior authorization program for
2605 prescription drugs that is more stringent than the prior
2606 authorization processes used by the division in its administration
2607 of the Medicaid program;

2608 (e) Implement a policy that does not comply with
2609 the prescription drugs payment requirements established in
2610 subsection (A) (9) of this section;

2611 (f) Implement a preferred drug list that is more
2612 stringent than the mandatory preferred drug list established by
2613 the division under subsection (A) (9) of this section;

2614 (g) Implement a policy which denies beneficiaries
2615 with hemophilia access to the federally funded hemophilia
2616 treatment centers as part of the Medicaid Managed Care network of
2617 providers. All Medicaid beneficiaries with hemophilia shall
2618 receive unrestricted access to anti-hemophilia factor products
2619 through noncapitated reimbursement programs.



2620 (2) Any contractors providing direct patient care under
2621 a managed care program established in this section shall provide
2622 to the Legislature and the division statistical data to be shared
2623 with provider groups in order to improve patient access,
2624 appropriate utilization, cost savings and health outcomes.

2625 (3) All health maintenance organizations, coordinated
2626 care organizations, provider-sponsored health plans, or other
2627 organizations paid for services on a capitated basis by the
2628 division under any managed care program or coordinated care
2629 program implemented by the division under this section shall
2630 reimburse all providers in those organizations at rates no lower
2631 than those provided under this section for beneficiaries who are
2632 not participating in those programs.

2633 (4) No health maintenance organization, coordinated
2634 care organization, provider-sponsored health plan, or other
2635 organization paid for services on a capitated basis by the
2636 division under any managed care program or coordinated care
2637 program implemented by the division under this section shall
2638 require its providers or beneficiaries to use any pharmacy that
2639 ships, mails or delivers prescription drugs or legend drugs or
2640 devices.

2641 (I) [Deleted]

2642 (J) There shall be no cuts in inpatient and outpatient
2643 hospital payments, or allowable days or volumes, as long as the
2644 hospital assessment provided in Section 43-13-145 is in effect.



2645 This subsection (J) shall not apply to decreases in payments that
2646 are a result of: reduced hospital admissions, audits or payments
2647 under the APR-DRG or APC models, or a managed care program or
2648 similar model described in subsection (H) of this section.

2649 (K) This section shall stand repealed on * * * July 1, 2019.

2650 **SECTION 7.** (1) The Division of Medicaid shall develop and
2651 implement the Infectious Disease Elimination Pilot Program to
2652 prevent the spread of blood-borne pathogens and infectious
2653 diseases in an effort to decrease the costs associated with
2654 managing those diseases and reduce the financial and clinical
2655 burden of blood-borne illnesses upon the Medicaid program and the
2656 citizens of Mississippi. The pilot program shall be operated in
2657 accordance with guidelines promulgated by the United State
2658 Department of Health and Human Services, including access to safe
2659 syringe and needle exchange services.

2660 (2) The division shall provide a report to the Office of the
2661 Governor and the Chairmen of the House and Senate Medicaid
2662 Committees of its findings and recommendations regarding the pilot
2663 program in order to evaluate the effectiveness of the pilot
2664 program in reducing costs of the Medicaid program and in providing
2665 improved health and well-being of the affected patients.

2666 **SECTION 8.** Section 41-29-105, Mississippi Code of 1972, is
2667 amended as follows:



2668 41-29-105. The following words and phrases, as used in this
2669 article, shall have the following meanings, unless the context
2670 otherwise requires:

2671 (a) "Administer" means the direct application of a
2672 controlled substance, whether by injection, inhalation, ingestion
2673 or any other means, to the body of a patient or research subject
2674 by:

2675 (* * *i) A practitioner (or, in his presence, by
2676 his authorized agent); or

2677 (* * *ii) The patient or research subject at the
2678 direction and in the presence of the practitioner.

2679 (b) "Agent" means an authorized person who acts on
2680 behalf of or at the direction of a manufacturer, distributor or
2681 dispenser. Such word does not include a common or contract
2682 carrier, public warehouseman or employee of the carrier or
2683 warehouseman. This definition shall not be applied to the term
2684 "agent" when such term clearly designates a member or officer of
2685 the Bureau of Narcotics or other law enforcement organization.

2686 (c) "Board" means the Mississippi State Board of
2687 Medical Licensure.

2688 (d) "Bureau" means the Mississippi Bureau of Narcotics.
2689 However, where the title "Bureau of Drug Enforcement" occurs, that
2690 term shall also refer to the Mississippi Bureau of Narcotics.

2691 (e) "Commissioner" means the Commissioner of the
2692 Department of Public Safety.



2693 (f) "Controlled substance" means a drug, substance or
2694 immediate precursor in Schedules I through V of Sections 41-29-113
2695 through 41-29-121.

2696 (g) "Counterfeit substance" means a controlled
2697 substance which, or the container or labeling of which, without
2698 authorization, bears the trademark, trade name, or other
2699 identifying mark, imprint, number or device, or any likeness
2700 thereof, of a manufacturer, distributor or dispenser other than
2701 the person who in fact manufactured, distributed or dispensed the
2702 substance.

2703 (h) "Deliver" or "delivery" means the actual,
2704 constructive, or attempted transfer from one person to another of
2705 a controlled substance, whether or not there is an agency
2706 relationship.

2707 (i) "Director" means the Director of the Bureau of
2708 Narcotics.

2709 (j) "Dispense" means to deliver a controlled substance
2710 to an ultimate user or research subject by or pursuant to the
2711 lawful order of a practitioner, including the prescribing,
2712 administering, packaging, labeling or compounding necessary to
2713 prepare the substance for that delivery.

2714 (k) "Dispenser" means a practitioner who dispenses.

2715 (l) "Distribute" means to deliver other than by
2716 administering or dispensing a controlled substance.

2717 (m) "Distributor" means a person who distributes.



2718 (n) "Drug" means (* * *i) a substance recognized as a
2719 drug in the official United States Pharmacopoeia, official
2720 Homeopathic Pharmacopoeia of the United States, or official
2721 National Formulary, or any supplement to any of them; (* * *ii) a
2722 substance intended for use in the diagnosis, cure, mitigation,
2723 treatment, or prevention of disease in man or animals; (* * *iii)
2724 a substance (other than food) intended to affect the structure or
2725 any function of the body of man or animals; and (* * *iv) a
2726 substance intended for use as a component of any article specified
2727 in this paragraph. Such word does not include devices or their
2728 components, parts, or accessories.

2729 (o) "Hashish" means the resin extracted from any part
2730 of the plants of the genus Cannabis and all species thereof or any
2731 preparation, mixture or derivative made from or with that resin.

2732 (p) "Immediate precursor" means a substance which the
2733 board has found to be and by rule designates as being the
2734 principal compound commonly used or produced primarily for use,
2735 and which is an immediate chemical intermediary used or likely to
2736 be used in the manufacture of a controlled substance, the control
2737 of which is necessary to prevent, curtail, or limit manufacture.

2738 (q) "Manufacture" means the production, preparation,
2739 propagation, compounding, conversion or processing of a controlled
2740 substance, either directly or indirectly, by extraction from
2741 substances of natural origin, or independently by means of
2742 chemical synthesis, or by a combination of extraction and chemical



2743 synthesis, and includes any packaging or repackaging of the
2744 substance or labeling or relabeling of its container. The term
2745 "manufacture" does not include the preparation, compounding,
2746 packaging or labeling of a controlled substance in conformity with
2747 applicable state and local law:

2748 (* * *i) By a practitioner as an incident to his
2749 administering or dispensing of a controlled substance in the
2750 course of his professional practice; or

2751 (* * *ii) By a practitioner, or by his authorized
2752 agent under his supervision, for the purpose of, or as an incident
2753 to, research, teaching or chemical analysis and not for sale.

2754 (r) " * * * Marijuana" means all parts of the plant of
2755 the genus Cannabis and all species thereof, whether growing or
2756 not, the seeds thereof, and every compound, manufacture, salt,
2757 derivative, mixture or preparation of the plant or its seeds,
2758 excluding hashish.

2759 (s) "Narcotic drug" means any of the following, whether
2760 produced directly or indirectly by extraction from substances of
2761 vegetable origin, or independently by means of chemical synthesis,
2762 or by a combination of extraction and chemical synthesis:

2763 (* * *i) Opium and opiate, and any salt,
2764 compound, derivative or preparation of opium or opiate;

2765 (* * *ii) Any salt, compound, isomer, derivative
2766 or preparation thereof which is chemically equivalent or identical



2767 with any of the substances referred to in clause 1, but not
2768 including the isoquinoline alkaloids of opium;

2769 (* * *iii) Opium poppy and poppy straw; and

2770 (* * *iv) Cocaine, coca leaves and any salt,
2771 compound, derivative or preparation of cocaine, coca leaves, and
2772 any salt, compound, isomer, derivative or preparation thereof
2773 which is chemically equivalent or identical with any of these
2774 substances, but not including decocainized coca leaves or
2775 extractions of coca leaves which do not contain cocaine or
2776 ecgonine.

2777 (t) "Opiate" means any substance having an
2778 addiction-forming or addiction-sustaining liability similar to
2779 morphine or being capable of conversion into a drug having
2780 addiction-forming or addiction-sustaining liability. It does not
2781 include, unless specifically designated as controlled under
2782 Section 41-29-111, the dextrorotatory isomer of
2783 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
2784 Such word does include its racemic and levorotatory forms.

2785 (u) "Opium poppy" means the plant of the species
2786 *Papaver somniferum* L., except its seeds.

2787 (v) (i) "Paraphernalia" means all equipment, products
2788 and materials of any kind which are used, intended for use, or
2789 designed for use, in planting, propagating, cultivating, growing,
2790 harvesting, manufacturing, compounding, converting, producing,
2791 processing, preparing, testing, analyzing, packaging, repackaging,



2792 storing, containing, concealing, injecting, ingesting, inhaling or
2793 otherwise introducing into the human body a controlled substance
2794 in violation of the Uniform Controlled Substances Law. It
2795 includes, but is not limited to:

2796 * * *1. Kits used, intended for use, or
2797 designed for use in planting, propagating, cultivating, growing or
2798 harvesting of any species of plant which is a controlled substance
2799 or from which a controlled substance can be derived;

2800 * * *2. Kits used, intended for use, or
2801 designed for use in manufacturing, compounding, converting,
2802 producing, processing or preparing controlled substances;

2803 * * *3. Isomerization devices used, intended
2804 for use or designed for use in increasing the potency of any
2805 species of plant which is a controlled substance;

2806 * * *4. Testing equipment used, intended for
2807 use, or designed for use in identifying or in analyzing the
2808 strength, effectiveness or purity of controlled substances;

2809 * * *5. Scales and balances used, intended
2810 for use or designed for use in weighing or measuring controlled
2811 substances;

2812 * * *6. Diluents and adulterants, such as
2813 quinine hydrochloride, mannitol, mannite, dextrose and lactose,
2814 used, intended for use or designed for use in cutting controlled
2815 substances;



2816 * * *7. Separation gins and sifters used,
2817 intended for use or designed for use in removing twigs and seeds
2818 from, or in otherwise cleaning or refining, * * * marijuana;

2819 * * *8. Blenders, bowls, containers, spoons
2820 and mixing devices used, intended for use or designed for use in
2821 compounding controlled substances;

2822 * * *9. Capsules, balloons, envelopes and
2823 other containers used, intended for use or designed for use in
2824 packaging small quantities of controlled substances;

2825 * * *10. Containers and other objects used,
2826 intended for use or designed for use in storing or concealing
2827 controlled substances;

2828 * * *11. Hypodermic syringes, needles and
2829 other objects used, intended for use or designed for use in
2830 parenterally injecting controlled substances into the human body,
2831 except for those that are exempt under Section 41-29-139(d)(5);

2832 * * *12. Objects used, intended for use or
2833 designed for use in ingesting, inhaling or otherwise
2834 introducing * * * marijuana, cocaine, hashish or hashish oil into
2835 the human body, such as:

2836 * * *a. Metal, wooden, acrylic, glass,
2837 stone, plastic or ceramic pipes with or without screens, permanent
2838 screens, hashish heads or punctured metal bowls;

2839 * * *b. Water pipes;

2840 * * *c. Carburetion tubes and devices;



2841 * * *d. Smoking and carburetion masks;
2842 * * *e. Roach clips, meaning objects
2843 used to hold burning material, such as a * * * marijuana
2844 cigarette, that has become too small or too short to be held in
2845 the hand;
2846 * * *f. Miniature cocaine spoons and
2847 cocaine vials;
2848 * * *g. Chamber pipes;
2849 * * *h. Carburetor pipes;
2850 * * *i. Electric pipes;
2851 * * *j. Air-driven pipes;
2852 * * *k. Chillums;
2853 * * *l. Bongs; and
2854 * * *m. Ice pipes or chillers.

2855 (ii) In determining whether an object is
2856 paraphernalia, a court or other authority should consider, in
2857 addition to all other logically relevant factors, the following:

2858 * * *1. Statements by an owner or by anyone
2859 in control of the object concerning its use;

2860 * * *2. Prior convictions, if any, of an
2861 owner, or of anyone in control of the object, under any state or
2862 federal law relating to any controlled substance;

2863 * * *3. The proximity of the object, in time
2864 and space, to a direct violation of the Uniform Controlled
2865 Substances Law;



2866 * * *4. The proximity of the object to
2867 controlled substances;

2868 * * *5. The existence of any residue of
2869 controlled substances on the object;

2870 * * *6. Direct or circumstantial evidence of
2871 the intent of an owner, or of anyone in control of the object, to
2872 deliver it to persons whom he knows, or should reasonably know,
2873 intend to use the object to facilitate a violation of the Uniform
2874 Controlled Substances Law; the innocence of an owner, or of anyone
2875 in control of the object, as to a direct violation of the Uniform
2876 Controlled Substances Law shall not prevent a finding that the
2877 object is intended for use, or designed for use as paraphernalia;

2878 * * *7. Instructions, oral or written,
2879 provided with the object concerning its use;

2880 * * *8. Descriptive materials accompanying
2881 the object which explain or depict its use;

2882 * * *9. National and local advertising
2883 concerning its use;

2884 * * *10. The manner in which the object is
2885 displayed for sale;

2886 * * *11. Whether the owner or anyone in
2887 control of the object is a legitimate supplier of like or related
2888 items to the community, such as a licensed distributor or dealer
2889 of tobacco products;



2890 * * *12. Direct or circumstantial evidence
2891 of the ratio of sales of the object(s) to the total sales of the
2892 business enterprise;

2893 * * *13. The existence and scope of
2894 legitimate uses for the object in the community;

2895 * * *14. Expert testimony concerning its
2896 use.

2897 (w) "Person" means individual, corporation, government
2898 or governmental subdivision or agency, business trust, estate,
2899 trust, partnership or association, or any other legal entity.

2900 (x) "Poppy straw" means all parts, except the seeds, of
2901 the opium poppy, after mowing.

2902 (y) "Practitioner" means:

2903 (* * *i) A physician, dentist, veterinarian,
2904 scientific investigator, optometrist certified to prescribe and
2905 use therapeutic pharmaceutical agents under Sections 73-19-153
2906 through 73-19-165, or other person licensed, registered or
2907 otherwise permitted to distribute, dispense, conduct research with
2908 respect to or to administer a controlled substance in the course
2909 of professional practice or research in this state; and

2910 (* * *ii) A pharmacy, hospital or other
2911 institution licensed, registered, or otherwise permitted to
2912 distribute, dispense, conduct research with respect to or to
2913 administer a controlled substance in the course of professional
2914 practice or research in this state.



2915 (z) "Production" includes the manufacture, planting,
2916 cultivation, growing or harvesting of a controlled substance.

2917 (aa) "Sale," "sell" or "selling" means the actual,
2918 constructive or attempted transfer or delivery of a controlled
2919 substance for remuneration, whether in money or other
2920 consideration.

2921 (bb) "State," when applied to a part of the United
2922 States, includes any state, district, commonwealth, territory,
2923 insular possession thereof, and any area subject to the legal
2924 authority of the United States of America.

2925 (cc) "Ultimate user" means a person who lawfully
2926 possesses a controlled substance for his own use or for the use of
2927 a member of his household or for administering to an animal owned
2928 by him or by a member of his household.

2929 **SECTION 9.** Section 41-29-139, Mississippi Code of 1972, is
2930 amended as follows:

2931 41-29-139. (a) **Transfer and possession with intent to**
2932 **transfer.** Except as authorized by this article, it is unlawful
2933 for any person knowingly or intentionally:

2934 (1) To sell, barter, transfer, manufacture, distribute,
2935 dispense or possess with intent to sell, barter, transfer,
2936 manufacture, distribute or dispense, a controlled substance; or

2937 (2) To create, sell, barter, transfer, distribute,
2938 dispense or possess with intent to create, sell, barter, transfer,
2939 distribute or dispense, a counterfeit substance.



2940 (b) **Punishment for transfer and possession with intent to**
2941 **transfer.** Except as otherwise provided in Section 41-29-142, any
2942 person who violates subsection (a) of this section shall be, if
2943 convicted, sentenced as follows:

2944 (1) For controlled substances classified in Schedule I
2945 or II, as set out in Sections 41-29-113 and 41-29-115, other than
2946 marijuana or synthetic cannabinoids:

2947 (A) If less than two (2) grams or ten (10) dosage
2948 units, by imprisonment for not more than eight (8) years or a fine
2949 of not more than Fifty Thousand Dollars (\$50,000.00), or both.

2950 (B) If two (2) or more grams or ten (10) or more
2951 dosage units, but less than ten (10) grams or twenty (20) dosage
2952 units, by imprisonment for not less than three (3) years nor more
2953 than twenty (20) years or a fine of not more than Two Hundred
2954 Fifty Thousand Dollars (\$250,000.00), or both.

2955 (C) If ten (10) or more grams or twenty (20) or
2956 more dosage units, but less than thirty (30) grams or forty (40)
2957 dosage units, by imprisonment for not less than five (5) years nor
2958 more than thirty (30) years or a fine of not more than Five
2959 Hundred Thousand Dollars (\$500,000.00), or both.

2960 (2) (A) For marijuana:
2961 1. If thirty (30) grams or less, by
2962 imprisonment for not more than three (3) years or a fine of not
2963 more than Three Thousand Dollars (\$3,000.00), or both;



2964 2. If more than thirty (30) grams but less
2965 than two hundred fifty (250) grams, by imprisonment for not more
2966 than five (5) years or a fine of not more than Five Thousand
2967 Dollars (\$5,000.00), or both;

2968 3. If two hundred fifty (250) or more grams
2969 but less than five hundred (500) grams, by imprisonment for not
2970 less than three (3) years nor more than ten (10) years or a fine
2971 of not more than Fifteen Thousand Dollars (\$15,000.00), or both;

2972 4. If five hundred (500) or more grams but
2973 less than one (1) kilogram, by imprisonment for not less than five
2974 (5) years nor more than twenty (20) years or a fine of not more
2975 than Twenty Thousand Dollars (\$20,000.00), or both.

2976 (B) For synthetic cannabinoids:

2977 1. If ten (10) grams or less, by imprisonment
2978 for not more than three (3) years or a fine of not more than Three
2979 Thousand Dollars (\$3,000.00), or both;

2980 2. If more than ten (10) grams but less than
2981 twenty (20) grams, by imprisonment for not more than five (5)
2982 years or a fine of not more than Five Thousand Dollars
2983 (\$5,000.00), or both;

2984 3. If twenty (20) or more grams but less than
2985 forty (40) grams, by imprisonment for not less than three (3)
2986 years nor more than ten (10) years or a fine of not more than
2987 Fifteen Thousand Dollars (\$15,000.00), or both;



2988 4. If forty (40) or more grams but less than
2989 two hundred (200) grams, by imprisonment for not less than five
2990 (5) years nor more than twenty (20) years or a fine of not more
2991 than Twenty Thousand Dollars (\$20,000.00), or both.

2992 (3) For controlled substances classified in Schedules
2993 III and IV, as set out in Sections 41-29-117 and 41-29-119:

2994 (A) If less than two (2) grams or ten (10) dosage
2995 units, by imprisonment for not more than five (5) years or a fine
2996 of not more than Five Thousand Dollars (\$5,000.00), or both;

2997 (B) If two (2) or more grams or ten (10) or more
2998 dosage units, but less than ten (10) grams or twenty (20) dosage
2999 units, by imprisonment for not more than eight (8) years or a fine
3000 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

3001 (C) If ten (10) or more grams or twenty (20) or
3002 more dosage units, but less than thirty (30) grams or forty (40)
3003 dosage units, by imprisonment for not more than fifteen (15) years
3004 or a fine of not more than One Hundred Thousand Dollars
3005 (\$100,000.00), or both;

3006 (D) If thirty (30) or more grams or forty (40) or
3007 more dosage units, but less than five hundred (500) grams or two
3008 thousand five hundred (2,500) dosage units, by imprisonment for
3009 not more than twenty (20) years or a fine of not more than Two
3010 Hundred Fifty Thousand Dollars (\$250,000.00), or both.

3011 (4) For controlled substances classified in Schedule V,
3012 as set out in Section 41-29-121:



3013 (A) If less than two (2) grams or ten (10) dosage
3014 units, by imprisonment for not more than one (1) year or a fine of
3015 not more than Five Thousand Dollars (\$5,000.00), or both;

3016 (B) If two (2) or more grams or ten (10) or more
3017 dosage units, but less than ten (10) grams or twenty (20) dosage
3018 units, by imprisonment for not more than five (5) years or a fine
3019 of not more than Ten Thousand Dollars (\$10,000.00), or both;

3020 (C) If ten (10) or more grams or twenty (20) or
3021 more dosage units, but less than thirty (30) grams or forty (40)
3022 dosage units, by imprisonment for not more than ten (10) years or
3023 a fine of not more than Twenty Thousand Dollars (\$20,000.00), or
3024 both;

3025 (D) For thirty (30) or more grams or forty (40) or
3026 more dosage units, but less than five hundred (500) grams or two
3027 thousand five hundred (2,500) dosage units, by imprisonment for
3028 not more than fifteen (15) years or a fine of not more than Fifty
3029 Thousand Dollars (\$50,000.00), or both.

3030 (c) **Simple possession.** It is unlawful for any person
3031 knowingly or intentionally to possess any controlled substance
3032 unless the substance was obtained directly from, or pursuant to, a
3033 valid prescription or order of a practitioner while acting in the
3034 course of his professional practice, or except as otherwise
3035 authorized by this article. The penalties for any violation of
3036 this subsection (c) with respect to a controlled substance
3037 classified in Schedules I, II, III, IV or V, as set out in Section



3038 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including
3039 marijuana or synthetic cannabinoids, shall be based on dosage unit
3040 as defined herein or the weight of the controlled substance as set
3041 forth herein as appropriate:

3042 "Dosage unit (d.u.)" means a tablet or capsule, or in the
3043 case of a liquid solution, one (1) milliliter. In the case of
3044 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
3045 stamp, square, dot, microdot, tablet or capsule of a controlled
3046 substance.

3047 For any controlled substance that does not fall within the
3048 definition of the term "dosage unit," the penalties shall be based
3049 upon the weight of the controlled substance.

3050 The weight set forth refers to the entire weight of any
3051 mixture or substance containing a detectable amount of the
3052 controlled substance.

3053 If a mixture or substance contains more than one (1)
3054 controlled substance, the weight of the mixture or substance is
3055 assigned to the controlled substance that results in the greater
3056 punishment.

3057 A person shall be charged and sentenced as follows for a
3058 violation of this subsection with respect to:

3059 (1) A controlled substance classified in Schedule I or
3060 II, except marijuana and synthetic cannabinoids:

3061 (A) If less than one-tenth (0.1) gram or two (2)
3062 dosage units, the violation is a misdemeanor and punishable by



3063 imprisonment for not more than one (1) year or a fine of not more
3064 than One Thousand Dollars (\$1,000.00), or both.

3065 (B) If one-tenth (0.1) gram or more or two (2) or
3066 more dosage units, but less than two (2) grams or ten (10) dosage
3067 units, by imprisonment for not more than three (3) years or a fine
3068 of not more than Fifty Thousand Dollars (\$50,000.00), or both.

3069 (C) If two (2) or more grams or ten (10) or more
3070 dosage units, but less than ten (10) grams or twenty (20) dosage
3071 units, by imprisonment for not more than eight (8) years or a fine
3072 of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),
3073 or both.

3074 (D) If ten (10) or more grams or twenty (20) or
3075 more dosage units, but less than thirty (30) grams or forty (40)
3076 dosage units, by imprisonment for not less than three (3) years
3077 nor more than twenty (20) years or a fine of not more than Five
3078 Hundred Thousand Dollars (\$500,000.00), or both.

3079 (2) (A) Marijuana and synthetic cannabinoids:

3080 1. If thirty (30) grams or less of marijuana
3081 or ten (10) grams or less of synthetic cannabinoids, by a fine of
3082 not less than One Hundred Dollars (\$100.00) nor more than Two
3083 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph
3084 (2) (A) may be enforceable by summons if the offender provides
3085 proof of identity satisfactory to the arresting officer and gives
3086 written promise to appear in court satisfactory to the arresting
3087 officer, as directed by the summons. A second conviction under



3088 this section within two (2) years is a misdemeanor punishable by a
3089 fine of Two Hundred Fifty Dollars (\$250.00), not more than sixty
3090 (60) days in the county jail, and mandatory participation in a
3091 drug education program approved by the Division of Alcohol and
3092 Drug Abuse of the State Department of Mental Health, unless the
3093 court enters a written finding that a drug education program is
3094 inappropriate. A third or subsequent conviction under this
3095 paragraph (2)(A) within two (2) years is a misdemeanor punishable
3096 by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor
3097 more than One Thousand Dollars (\$1,000.00) and confinement for not
3098 more than six (6) months in the county jail.

3099 Upon a first or second conviction under this paragraph
3100 (2)(A), the courts shall forward a report of the conviction to the
3101 Mississippi Bureau of Narcotics which shall make and maintain a
3102 private, nonpublic record for a period not to exceed two (2) years
3103 from the date of conviction. The private, nonpublic record shall
3104 be solely for the use of the courts in determining the penalties
3105 which attach upon conviction under this paragraph (2)(A) and shall
3106 not constitute a criminal record for the purpose of private or
3107 administrative inquiry and the record of each conviction shall be
3108 expunged at the end of the period of two (2) years following the
3109 date of such conviction;

3110 2. Additionally, a person who is the operator
3111 of a motor vehicle, who possesses on his person or knowingly keeps
3112 or allows to be kept in a motor vehicle within the area of the



3113 vehicle normally occupied by the driver or passengers, more than
3114 one (1) gram, but not more than thirty (30) grams of marijuana or
3115 not more than ten (10) grams of synthetic cannabinoids is guilty
3116 of a misdemeanor and, upon conviction, may be fined not more than
3117 One Thousand Dollars (\$1,000.00) or confined for not more than
3118 ninety (90) days in the county jail, or both. For the purposes of
3119 this subsection, such area of the vehicle shall not include the
3120 trunk of the motor vehicle or the areas not normally occupied by
3121 the driver or passengers if the vehicle is not equipped with a
3122 trunk. A utility or glove compartment shall be deemed to be
3123 within the area occupied by the driver and passengers;

3124 (B) Marijuana:

3125 1. If more than thirty (30) grams but less
3126 than two hundred fifty (250) grams, by a fine of not more than One
3127 Thousand Dollars (\$1,000.00), or confinement in the county jail
3128 for not more than one (1) year, or both; or by a fine of not more
3129 than Three Thousand Dollars (\$3,000.00), or imprisonment in the
3130 custody of the Department of Corrections for not more than three
3131 (3) years, or both;

3132 2. If two hundred fifty (250) or more grams
3133 but less than five hundred (500) grams, by imprisonment for not
3134 less than two (2) years nor more than eight (8) years or by a fine
3135 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

3136 3. If five hundred (500) or more grams but
3137 less than one (1) kilogram, by imprisonment for not less than four



3138 (4) years nor more than sixteen (16) years or a fine of not more
3139 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

3140 4. If one (1) kilogram or more but less than
3141 five (5) kilograms, by imprisonment for not less than six (6)
3142 years nor more than twenty-four (24) years or a fine of not more
3143 than Five Hundred Thousand Dollars (\$500,000.00), or both;

3144 5. If five (5) kilograms or more, by
3145 imprisonment for not less than ten (10) years nor more than thirty
3146 (30) years or a fine of not more than One Million Dollars
3147 (\$1,000,000.00), or both.

3148 (C) Synthetic cannabinoids:

3149 1. If more than ten (10) grams but less than
3150 twenty (20) grams, by a fine of not more than One Thousand Dollars
3151 (\$1,000.00), or confinement in the county jail for not more than
3152 one (1) year, or both; or by a fine of not more than Three
3153 Thousand Dollars (\$3,000.00), or imprisonment in the custody of
3154 the Department of Corrections for not more than three (3) years,
3155 or both;

3156 2. If twenty (20) or more grams but less than
3157 forty (40) grams, by imprisonment for not less than two (2) years
3158 nor more than eight (8) years or by a fine of not more than Fifty
3159 Thousand Dollars (\$50,000.00), or both;

3160 3. If forty (40) or more grams but less than
3161 two hundred (200) grams, by imprisonment for not less than four



3162 (4) years nor more than sixteen (16) years or a fine of not more
3163 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

3164 4. If two hundred (200) or more grams, by
3165 imprisonment for not less than six (6) years nor more than
3166 twenty-four (24) years or a fine of not more than Five Hundred
3167 Thousand Dollars (\$500,000.00), or both.

3168 (3) A controlled substance classified in Schedule III,
3169 IV or V as set out in Sections 41-29-117 through 41-29-121, upon
3170 conviction, may be punished as follows:

3171 (A) If less than fifty (50) grams or less than one
3172 hundred (100) dosage units, the offense is a misdemeanor and
3173 punishable by not more than one (1) year or a fine of not more
3174 than One Thousand Dollars (\$1,000.00), or both.

3175 (B) If fifty (50) or more grams or one hundred
3176 (100) or more dosage units, but less than one hundred fifty (150)
3177 grams or five hundred (500) dosage units, by imprisonment for not
3178 less than one (1) year nor more than four (4) years or a fine of
3179 not more than Ten Thousand Dollars (\$10,000.00), or both.

3180 (C) If one hundred fifty (150) or more grams or
3181 five hundred (500) or more dosage units, but less than three
3182 hundred (300) grams or one thousand (1,000) dosage units, by
3183 imprisonment for not less than two (2) years nor more than eight
3184 (8) years or a fine of not more than Fifty Thousand Dollars
3185 (\$50,000.00), or both.



3186 (D) If three hundred (300) or more grams or one
3187 thousand (1,000) or more dosage units, but less than five hundred
3188 (500) grams or two thousand five hundred (2,500) dosage units, by
3189 imprisonment for not less than four (4) years nor more than
3190 sixteen (16) years or a fine of not more than Two Hundred Fifty
3191 Thousand Dollars (\$250,000.00), or both.

3192 (d) **Paraphernalia.** (1) It is unlawful for a person who is
3193 not authorized by the State Board of Medical Licensure, State
3194 Board of Pharmacy, or other lawful authority to use, or to possess
3195 with intent to use, paraphernalia to plant, propagate, cultivate,
3196 grow, harvest, manufacture, compound, convert, produce, process,
3197 prepare, test, analyze, pack, repack, store, contain, conceal,
3198 inject, ingest, inhale or otherwise introduce into the human body
3199 a controlled substance in violation of the Uniform Controlled
3200 Substances Law. Any person who violates this subsection (d)(1) is
3201 guilty of a misdemeanor and, upon conviction, may be confined in
3202 the county jail for not more than six (6) months, or fined not
3203 more than Five Hundred Dollars (\$500.00), or both; however, no
3204 person shall be charged with a violation of this subsection when
3205 such person is also charged with the possession of thirty (30)
3206 grams or less of marijuana under subsection (c)(2)(A) of this
3207 section.

3208 (2) It is unlawful for any person to deliver, sell,
3209 possess with intent to deliver or sell, or manufacture with intent
3210 to deliver or sell, paraphernalia, knowing, or under circumstances



3211 where one reasonably should know, that it will be used to plant,
3212 propagate, cultivate, grow, harvest, manufacture, compound,
3213 convert, produce, process, prepare, test, analyze, pack, repack,
3214 store, contain, conceal, inject, ingest, inhale, or otherwise
3215 introduce into the human body a controlled substance in violation
3216 of the Uniform Controlled Substances Law. Except as provided in
3217 subsection (d) (3), a person who violates this subsection (d) (2) is
3218 guilty of a misdemeanor and, upon conviction, may be confined in
3219 the county jail for not more than six (6) months, or fined not
3220 more than Five Hundred Dollars (\$500.00), or both.

3221 (3) Any person eighteen (18) years of age or over who
3222 violates subsection (d) (2) of this section by delivering or
3223 selling paraphernalia to a person under eighteen (18) years of age
3224 who is at least three (3) years his junior is guilty of a
3225 misdemeanor and, upon conviction, may be confined in the county
3226 jail for not more than one (1) year, or fined not more than One
3227 Thousand Dollars (\$1,000.00), or both.

3228 (4) It is unlawful for any person to place in any
3229 newspaper, magazine, handbill, or other publication any
3230 advertisement, knowing, or under circumstances where one
3231 reasonably should know, that the purpose of the advertisement, in
3232 whole or in part, is to promote the sale of objects designed or
3233 intended for use as paraphernalia. Any person who violates this
3234 subsection is guilty of a misdemeanor and, upon conviction, may be



3235 confined in the county jail for not more than six (6) months, or
3236 fined not more than Five Hundred Dollars (\$500.00), or both.

3237 (5) This subsection (d) does not prohibit the Division
3238 of Medicaid from possessing and distributing hypodermic syringes
3239 and needles to participants in the Infectious Disease Elimination
3240 Pilot Program implemented under Section 1 of this section, and
3241 does not prohibit participants in the program from exchanging
3242 hypodermic syringes and needles at the program. Items possessed,
3243 distributed and exchanged at the program shall not be deemed to be
3244 drug paraphernalia under this subsection (d) while located at the
3245 program.

3246 (e) It shall be unlawful for any physician practicing
3247 medicine in this state to prescribe, dispense or administer any
3248 amphetamine or amphetamine-like anorectics and/or central nervous
3249 system stimulants classified in Schedule II, pursuant to Section
3250 41-29-115, for the exclusive treatment of obesity, weight control
3251 or weight loss. Any person who violates this subsection, upon
3252 conviction, is guilty of a misdemeanor and may be confined for a
3253 period not to exceed six (6) months, or fined not more than One
3254 Thousand Dollars (\$1,000.00), or both.

3255 (f) **Trafficking.** (1) Any person trafficking in controlled
3256 substances shall be guilty of a felony and, upon conviction, shall
3257 be imprisoned for a term of not less than ten (10) years nor more
3258 than forty (40) years and shall be fined not less than Five
3259 Thousand Dollars (\$5,000.00) nor more than One Million Dollars



3260 (\$1,000,000.00). The ten-year mandatory sentence shall not be
3261 reduced or suspended. The person shall not be eligible for
3262 probation or parole, the provisions of Sections 41-29-149,
3263 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

3264 (2) "Trafficking in controlled substances" as used
3265 herein means:

3266 (A) A violation of subsection (a) of this section
3267 involving thirty (30) or more grams or forty (40) or more dosage
3268 units of a Schedule I or II controlled substance except marijuana
3269 and synthetic cannabinoids;

3270 (B) A violation of subsection (a) of this section
3271 involving five hundred (500) or more grams or two thousand five
3272 hundred (2,500) or more dosage units of a Schedule III, IV or V
3273 controlled substance;

3274 (C) A violation of subsection (c) of this section
3275 involving thirty (30) or more grams or forty (40) or more dosage
3276 units of a Schedule I or II controlled substance except marijuana
3277 and synthetic cannabinoids;

3278 (D) A violation of subsection (c) of this section
3279 involving five hundred (500) or more grams or two thousand five
3280 hundred (2,500) or more dosage units of a Schedule III, IV or V
3281 controlled substance; or

3282 (E) A violation of subsection (a) of this section
3283 involving one (1) kilogram or more of marijuana or two hundred
3284 (200) grams or more of synthetic cannabinoids.



3285 (g) **Aggravated trafficking.** Any person trafficking in
3286 Schedule I or II controlled substances, except marijuana and
3287 synthetic cannabinoids, of two hundred (200) grams or more shall
3288 be guilty of aggravated trafficking and, upon conviction, shall be
3289 sentenced to a term of not less than twenty-five (25) years nor
3290 more than life in prison and shall be fined not less than Five
3291 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
3292 (\$1,000,000.00). The twenty-five-year sentence shall be a
3293 mandatory sentence and shall not be reduced or suspended. The
3294 person shall not be eligible for probation or parole, the
3295 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to
3296 the contrary notwithstanding.

3297 (h) **Sentence mitigation.** (1) Notwithstanding any provision
3298 of this section, a person who has been convicted of an offense
3299 under this section that requires the judge to impose a prison
3300 sentence which cannot be suspended or reduced and is ineligible
3301 for probation or parole may, at the discretion of the court,
3302 receive a sentence of imprisonment that is no less than
3303 twenty-five percent (25%) of the sentence prescribed by the
3304 applicable statute. In considering whether to apply the departure
3305 from the sentence prescribed, the court shall conclude that:

3306 (A) The offender was not a leader of the criminal
3307 enterprise;

3308 (B) The offender did not use violence or a weapon
3309 during the crime;



3310 (C) The offense did not result in a death or
3311 serious bodily injury of a person not a party to the criminal
3312 enterprise; and

3313 (D) The interests of justice are not served by the
3314 imposition of the prescribed mandatory sentence.

3315 The court may also consider whether information and
3316 assistance were furnished to a law enforcement agency, or its
3317 designee, which, in the opinion of the trial judge, objectively
3318 should or would have aided in the arrest or prosecution of others
3319 who violate this subsection. The accused shall have adequate
3320 opportunity to develop and make a record of all information and
3321 assistance so furnished.

3322 (2) If the court reduces the prescribed sentence
3323 pursuant to this subsection, it must specify on the record the
3324 circumstances warranting the departure.

3325 **SECTION 10.** Section 41-29-153, Mississippi Code of 1972, is
3326 amended as follows:

3327 41-29-153. (a) The following are subject to forfeiture:

3328 (1) All controlled substances which have been
3329 manufactured, distributed, dispensed or acquired in violation of
3330 this article or in violation of Article 5 of this chapter;

3331 (2) All raw materials, products and equipment of any
3332 kind which are used, or intended for use, in manufacturing,
3333 compounding, processing, delivering, importing, or exporting any



3334 controlled substance in violation of this article or in violation
3335 of Article 5 of this chapter;

3336 (3) All property which is used, or intended for use, as
3337 a container for property described in paragraph (1) or (2) of this
3338 subsection;

3339 (4) All conveyances, including aircraft, vehicles or
3340 vessels, which are used, or intended for use, to transport, or in
3341 any manner to facilitate the transportation, sale, receipt,
3342 possession or concealment of property described in paragraph (1)
3343 or (2) of this subsection, however:

3344 A. No conveyance used by any person as a common
3345 carrier in the transaction of business as a common carrier is
3346 subject to forfeiture under this section unless it appears that
3347 the owner or other person in charge of the conveyance is a
3348 consenting party or privy to a violation of this article;

3349 B. No conveyance is subject to forfeiture under
3350 this section by reason of any act or omission proved by the owner
3351 thereof to have been committed or omitted without his knowledge or
3352 consent; if the confiscating authority has reason to believe that
3353 the conveyance is a leased or rented conveyance, then the
3354 confiscating authority shall notify the owner of the conveyance
3355 within five (5) days of the confiscation;

3356 C. A forfeiture of a conveyance encumbered by a
3357 bona fide security interest is subject to the interest of the



3358 secured party if he neither had knowledge of nor consented to the
3359 act or omission;

3360 D. A conveyance is not subject to forfeiture for a
3361 violation of Section 41-29-139(c) (2) (A) 1, 2 or (B)1 or (C)1, 2,
3362 3;

3363 (5) All money, deadly weapons, books, records, and
3364 research products and materials, including formulas, microfilm,
3365 tapes and data which are used, or intended for use, in violation
3366 of this article or in violation of Article 5 of this chapter;

3367 (6) All drug paraphernalia as defined in Section
3368 41-29-105(v) that is not exempt under Section 41-29-139(d) (5); and

3369 (7) Everything of value, including real estate,
3370 furnished, or intended to be furnished, in exchange for a
3371 controlled substance in violation of this article, all proceeds
3372 traceable to such an exchange, and all monies, negotiable
3373 instruments, businesses or business investments, securities, and
3374 other things of value used, or intended to be used, to facilitate
3375 any violation of this article. All monies, coin and currency
3376 found in close proximity to forfeitable controlled substances, to
3377 forfeitable drug manufacturing or distributing paraphernalia, or
3378 to forfeitable records of the importation, manufacture or
3379 distribution of controlled substances are presumed to be
3380 forfeitable under this paragraph; the burden of proof is upon
3381 claimants of the property to rebut this presumption.



3382 A. No property shall be forfeited under the
3383 provisions of subsection (a)(7) of this section, to the extent of
3384 the interest of an owner, by reason of any act or omission
3385 established by him to have been committed or omitted without his
3386 knowledge or consent.

3387 B. Neither personal property encumbered by a bona
3388 fide security interest nor real estate encumbered by a bona fide
3389 mortgage, deed of trust, lien or encumbrance shall be forfeited
3390 under the provisions of subsection (a)(7) of this section, to the
3391 extent of the interest of the secured party or the interest of the
3392 mortgagee, holder of a deed of trust, lien or encumbrance by
3393 reason of any act or omission established by him to have been
3394 committed or omitted without his knowledge or consent.

3395 (b) Property subject to forfeiture may be seized by the
3396 bureau, local law enforcement officers, enforcement officers of
3397 the Mississippi Department of Transportation, highway patrolmen,
3398 the board, or the State Board of Pharmacy upon process issued by
3399 any appropriate court having jurisdiction over the property.

3400 Seizure without process may be made if:

3401 (1) The seizure is incident to an arrest or a search
3402 under a search warrant or an inspection under an administrative
3403 inspection warrant;

3404 (2) The property subject to seizure has been the
3405 subject of a prior judgment in favor of the state in a criminal
3406 injunction or forfeiture proceeding based upon this article;



3407 (3) The bureau, the board, local law enforcement
3408 officers, enforcement officers of the Mississippi Department of
3409 Transportation, or highway patrolmen, or the State Board of
3410 Pharmacy have probable cause to believe that the property is
3411 directly or indirectly dangerous to health or safety;

3412 (4) The bureau, local law enforcement officers,
3413 enforcement officers of the Mississippi Department of
3414 Transportation, highway patrolmen, the board, or the State Board
3415 of Pharmacy have probable cause to believe that the property was
3416 used or is intended to be used in violation of this article; or

3417 (5) The seizing law enforcement agency obtained a
3418 seizure warrant as described in * * * subsection (f) of this
3419 section.

3420 (c) Controlled substances listed in Schedule I of Section
3421 41-29-113 that are possessed, transferred, sold, or offered for
3422 sale in violation of this article are contraband and shall be
3423 seized and summarily forfeited to the state. Controlled
3424 substances listed in the said Schedule I, which are seized or come
3425 into the possession of the state, the owners of which are unknown,
3426 are contraband and shall be summarily forfeited to the state.

3427 (d) Species of plants from which controlled substances in
3428 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
3429 derived which have been planted or cultivated in violation of this
3430 article, or of which the owners or cultivators are unknown, or



3431 which are wild growths, may be seized and summarily forfeited to
3432 the state.

3433 (e) The failure, upon demand by the bureau and/or local law
3434 enforcement officers, or their authorized agents, or highway
3435 patrolmen designated by the bureau, the board, or the State Board
3436 of Pharmacy, of the person in occupancy or in control of land or
3437 premises upon which the species of plants are growing or being
3438 stored, to produce an appropriate registration, or proof that he
3439 is the holder thereof, constitutes authority for the seizure and
3440 forfeiture of the plants.

3441 (f) (1) When any property is seized under the Uniform
3442 Controlled Substances Law, except as otherwise provided in
3443 paragraph (3) of this subsection, by a law enforcement agency with
3444 the intent to be forfeited, the law enforcement agency that seized
3445 the property shall obtain a seizure warrant from the county or
3446 circuit court having jurisdiction of such property within
3447 seventy-two (72) hours of any seizure, excluding weekends and
3448 holidays. Any law enforcement agency that fails to obtain a
3449 seizure warrant within seventy-two (72) hours as required by this
3450 section shall notify the person from whom the property was seized
3451 that it will not be forfeited and shall provide written
3452 instructions advising the person how to retrieve the seized
3453 property.

3454 (2) A circuit or county judge having jurisdiction of
3455 any property other than a controlled substance, raw material or



3456 paraphernalia, may issue a seizure warrant upon proper oath or
3457 affirmation from a law enforcement agency. The law enforcement
3458 agency that is seeking a seizure warrant shall provide the
3459 following information to the judge:

3460 A. Probable cause to believe that the property was
3461 used or intended to be used in violation of this article;

3462 B. The name of the person from whom the property
3463 was seized; and

3464 C. A detailed description of the property which is
3465 seized, including the value of the property.

3466 (3) This subsection does not apply to seizures
3467 performed pursuant to Section 41-29-157 when property is
3468 specifically set forth in a search and seizure warrant.

3469 **SECTION 11.** The State Board of Medical Licensure shall adopt
3470 reasonable regulations that allow primary care physicians to
3471 provide maintenance therapy for persons with identified substance
3472 use disorders and allow those physicians to provide that treatment
3473 until the person can receive treatment from a licensed treatment
3474 provider.

3475 **SECTION 12.** A municipality, county or other political
3476 subdivision of this state shall not place rules, regulations,
3477 requirements or zoning restrictions on drug and alcohol treatment
3478 centers. Any current rule, regulation, requirement or zoning
3479 restriction that violates the provisions of this section shall be
3480 explicitly preempted and voided by this section.



3481 SECTION 13. (1) A municipality, county or public or private
3482 educational institutions may adopt a pre-arrest diversion program
3483 in which:

3484 (a) Law enforcement officers of the entity that adopted
3485 the program, at their sole discretion, may divert adults who
3486 commit a nonviolent misdemeanor offense. Adults who are diverted
3487 shall report for intake as required by the pre-arrest diversion
3488 program and shall be provided appropriate assessment,
3489 intervention, education and behavioral health care services. If
3490 the adult does not participate in the pre-arrest diversion
3491 program, the law enforcement agency may criminally charge the
3492 adult for the original offense and refer the case to the
3493 appropriate prosecuting agency to determine if prosecution is
3494 appropriate. If the adult successfully completes the program, an
3495 arrest record shall not be associated with the offense.

3496 (b) A municipality, county or public or private
3497 educational institution that adopts a pre-arrest diversion program
3498 shall create a steering committee for the program to develop
3499 policies and procedures for the program, including, but not
3500 limited to, eligibility criteria, program implementation and
3501 operation, and the fee to be paid by adults participating in the
3502 program. At a minimum, the steering committee must be composed of
3503 representatives of the law enforcement agencies participating in
3504 the program, a representative of the program services provider, a
3505 public defender or his or her designee, a prosecuting attorney or



3506 his or her designee, a clerk of the circuit court or his or her
3507 designee, and other interested stakeholders.

3508 (2) This section does not preempt a county or municipality
3509 from enacting noncriminal sanctions for a violation of an
3510 ordinance or other violation, and does not preempt a county,
3511 municipality or public or private educational institution from
3512 creating its own model for a pre-arrest diversion program for
3513 adults.

3514 **SECTION 14.** This act shall take effect and be in force from
3515 and after June 30, 2018.

