

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 626

1 AN ACT TO AMEND SECTION 41-7-201, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT APPEALS OF ORDERS OF THE STATE DEPARTMENT OF
 3 HEALTH PERTAINING TO HEALTH CARE CERTIFICATES OF NEED SHALL BE
 4 MADE DIRECTLY TO THE MISSISSIPPI COURT OF APPEALS; TO AMEND
 5 SECTIONS 41-7-197 AND 9-4-3, MISSISSIPPI CODE OF 1972, TO CONFORM
 6 TO THE PRECEDING PROVISIONS; TO REPEAL SECTION 41-7-202,
 7 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR A STAY OF PROCEEDINGS
 8 OF ANY WRITTEN DECISION OF THE DEPARTMENT OF HEALTH PERTAINING TO
 9 A CERTIFICATE OF NEED FOR CERTAIN HEALTH CARE FACILITIES; AND FOR
 10 RELATED PURPOSES.

11 WHEREAS, in order to significantly reduce the time for a
 12 final decision in appeals of orders of the State Department of
 13 Health pertaining to health care certificates of need, the
 14 Legislature in 2011 enacted a law that amended Section 41-7-201 of
 15 the Mississippi Code to provide for a direct appeal of those
 16 orders to the Mississippi Supreme Court; and

17 WHEREAS, in case of *Dialysis Solutions, LLC v. Mississippi*
 18 *State Department of Health*, 96 So.3rd 713 (Miss. 2012), the
 19 Mississippi Supreme Court decided that the amended Section
 20 41-7-201 was unconstitutional because it violated Section 146 of
 21 the Mississippi Constitution of 1890 by impermissibly conferring
 22 original jurisdiction upon the Supreme Court; and



23 WHEREAS, Section 146 of the Constitution provides for the
24 jurisdiction of the Mississippi Supreme Court and it states that
25 "[t]he Supreme Court shall have such jurisdiction as properly
26 belongs to a court of appeals, and shall exercise no jurisdiction
27 on matters other than those specifically provided by this
28 Constitution or by general law. [...]"; and

29 WHEREAS, in 1993 the Legislature created another appellate
30 court in addition to the Mississippi Supreme Court, the Court of
31 Appeals of the State of Mississippi, which was given the power to
32 determine or otherwise dispose of any appeal or other proceeding
33 assigned to it by the Supreme Court; and

34 WHEREAS, unlike the Mississippi Supreme Court, which was
35 created in the Mississippi Constitution and whose jurisdiction is
36 specified in and limited by Section 146 of the Constitution, the
37 Court of Appeals was created by statute and its jurisdiction is
38 determined solely by the Legislature and is not subject to the
39 restrictions of Section 146 of the Constitution; and

40 WHEREAS, the jurisdiction of the Court of Appeals is
41 specified by Section 9-4-3 of the Mississippi Code and is
42 currently limited to appeals or other proceedings assigned to it
43 by the Supreme Court, but because the Court of Appeals is not a
44 constitutional court with constitutionally limited jurisdiction
45 but instead is a statutory court with statutory jurisdiction, the
46 Legislature may revise the jurisdiction of the Court of Appeals by
47 amendment to Section 9-4-3; and



48 WHEREAS, because direct appeals of orders of the State
49 Department of Health pertaining to health care certificates of
50 need cannot constitutionally be made to Mississippi Supreme Court,
51 and the Legislature still desires to significantly reduce the time
52 for a final decision in appeals of those orders, the Legislature
53 has determined that Sections 41-7-201 and 9-4-3 can be amended
54 consistent with the Constitution to provide for a direct appeal of
55 those orders to the Court of Appeals; NOW, THEREFORE,

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

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

59 41-7-201. * * * The provisions of this * * * section shall
60 apply to any party appealing any final order of the State
61 Department of Health pertaining to a certificate of need for any
62 health care facility as defined in Section 41-7-173(h) * * *:

63 (a) There shall be a "stay of proceedings" of any final
64 order issued by the State Department of Health pertaining to the
65 issuance of a certificate of need for the establishment,
66 construction, expansion or replacement of a health care facility
67 for a period of thirty (30) days from the date of the order, if an
68 existing provider located in the same service area where the
69 health care facility is or will be located has requested a hearing
70 during the course of review in opposition to the issuance of the
71 certificate of need. The stay of proceedings shall expire at the
72 termination of thirty (30) days; however, no construction,



73 renovation or other capital expenditure that is the subject of the
74 order shall be undertaken, no license to operate any facility that
75 is the subject of the order shall be issued by the licensing
76 agency, and no certification to participate in the Title XVII or
77 Title XIX programs of the Social Security Act shall be granted,
78 until all statutory appeals have been exhausted or the time
79 for * * * those appeals has expired. Notwithstanding the
80 foregoing, the filing of an appeal from a final order of the State
81 Department of Health or a final decision of the * * * Court of
82 Appeals for the issuance of a certificate of need shall not
83 prevent the purchase of medical equipment or development or
84 offering of institutional health services granted in a certificate
85 of need issued by the State Department of Health.

86 (b) In addition to other remedies now available at law
87 or in equity, any party aggrieved by such final order of the State
88 Department of Health shall have the right of direct appeal to
89 the * * * Mississippi Court of Appeals, which appeal must be filed
90 within twenty (20) days after the date of the final order. * * *
91 Any appeal shall state briefly the nature of the proceedings
92 before the State Department of Health and shall specify the order
93 complained of.

94 (c) Upon the filing of such an appeal, the clerk of
95 the * * * Court of Appeals shall serve notice thereof upon the
96 State Department of Health, whereupon the State Department of
97 Health shall, within thirty (30) days of the date of the filing of



98 the appeal, certify to the * * * court the record in the case,
99 which records shall include a transcript of all testimony,
100 together with all exhibits or copies thereof, all proceedings,
101 orders, findings and opinions entered in the case; * * *
102 however, * * * the parties and the State Department of Health may
103 stipulate that a specified portion only of the record shall be
104 certified to the court as the record on appeal. * * *

105 (* * *d) No new or additional evidence shall be
106 introduced in the * * * Court of Appeals but the case shall be
107 determined upon the record certified to the court.

108 (* * *e) The * * * Court of Appeals may sustain or
109 dismiss the appeal, or modify or vacate the order complained of in
110 whole or in part * * *. When the order is wholly or partly
111 vacated, the court may also, in its discretion, remand the matter
112 to the State Department of Health for * * * any further
113 proceedings, not inconsistent with the court's * * * decision, as,
114 in the opinion of the court, justice may require. * * * The order
115 shall not be vacated or set aside, either in whole or in part,
116 except for errors of law, unless the court finds that the order of
117 the State Department of Health is not supported by substantial
118 evidence, is contrary to the manifest weight of the evidence, is
119 in excess of the statutory authority or jurisdiction of the State
120 Department of Health, or violates any vested constitutional rights
121 of any party involved in the appeal. * * * However, * * * a
122 decision of the * * * Court of Appeals reversing the denial of a



123 certificate of need by the State Department of Health shall not
124 entitle the applicant to effectuate the certificate of need until
125 either:

126 (i) * * * The decision of the Court of Appeals has
127 become final and * * * the Supreme Court has not granted
128 certiorari review of the decision; or

129 (ii) The Supreme Court has entered a final * * *
130 decision affirming the * * * Court of Appeals.

131 (* * * f) * * * Any final decision of the Court of
132 Appeals may be reviewed by the Supreme Court * * * by writ of
133 certiorari as provided in Section 9-4-3(2).

134 (* * * g) Within thirty (30) days from the date of a
135 final * * * decision of the Supreme Court or a final * * *
136 decision of the * * * Court of Appeals for which the Supreme Court
137 has not granted certiorari review that modifies or wholly or
138 partly vacates the final order of the State Department of Health
139 granting a certificate of need, the State Department of Health
140 shall issue another order in conformity with the final * * *
141 decision of the Supreme Court, or the final * * * decision of
142 the * * * Court of Appeals for which the Supreme Court has not
143 granted certiorari review.

144 **SECTION 2.** Section 41-7-197, Mississippi Code of 1972, is
145 amended as follows:

146 41-7-197. (1) The State Department of Health shall adopt
147 and utilize procedures for conducting certificate of need reviews.



148 Such procedures shall include, inter alia, the following: (a)
149 written notification to the applicant; (b) written notification to
150 health care facilities in the same health service area as the
151 proposed service; (c) written notification to other persons who
152 prior to the receipt of the application have filed a formal notice
153 of intent to provide the proposed services in the same service
154 area; and (d) notification to members of the public who reside in
155 the service area where the service is proposed, which may be
156 provided through newspapers or public information channels.

157 (2) All notices provided shall include, inter alia, the
158 following: (a) the proposed schedule for the review; (b) written
159 notification of the period within which a public hearing during
160 the course of the review may be requested in writing by one or
161 more affected persons, such request to be made within ten (10)
162 days of the department's staff recommendation for approval or
163 disapproval of an application; and (c) the manner in which
164 notification will be provided of the time and place of any hearing
165 so requested. Any such hearing shall be commenced by an
166 independent hearing officer designated by the State Department of
167 Health within sixty (60) days of the filing of the hearing request
168 unless all parties to the hearing agree to extend the time for the
169 commencement of the hearing. At such hearing, the hearing officer
170 and any person affected by the proposal being reviewed may conduct
171 reasonable questioning of persons who make relevant factual
172 allegations concerning the proposal. The hearing officer shall



173 require that all persons be sworn before they may offer any
174 testimony at the hearing, and the hearing officer is authorized to
175 administer oaths. Any person so choosing may be represented by
176 counsel at the hearing. A record of the hearing shall be made,
177 which shall consist of a transcript of all testimony received, all
178 documents and other material introduced by any interested person,
179 the staff report and recommendation and such other material as the
180 hearing officer considers relevant, including his own
181 recommendation, which he shall make, after reviewing, studying and
182 analyzing the evidence presented during the hearing, within a
183 reasonable period of time after the hearing is closed, which in no
184 event shall exceed forty-five (45) days. The completed record
185 shall be certified to the State Health Officer, who shall consider
186 only the record in making his decision, and shall not consider any
187 evidence or material which is not included therein. All final
188 decisions regarding the issuance of a certificate of need shall be
189 made by the State Health Officer. The State Health Officer shall
190 make his or her written findings and issue his or her order after
191 reviewing said record. The findings and decision of the State
192 Health Officer shall not be deferred to any later date.

193 * * *

194 **SECTION 3.** Section 9-4-3, Mississippi Code of 1972, is
195 amended as follows:

196 9-4-3. (1) The Court of Appeals shall have the power to
197 determine or otherwise dispose of any appeal or other proceeding



198 assigned to it by the Supreme Court and any appeal made to it
199 under Section 41-7-201.

200 The jurisdiction of the Court of Appeals is limited to those
201 matters which have been assigned to it by the Supreme Court and
202 appeals made to it under Section 41-7-201.

203 The Supreme Court shall prescribe rules for the assignment of
204 matters to the Court of Appeals. These rules may provide for the
205 selective assignment of individual cases and may provide for the
206 assignment of cases according to subject matter or other general
207 criteria. However, the Supreme Court shall retain appeals in
208 cases imposing the death penalty, or cases involving utility
209 rates, annexations, bond issues, election contests, or a statute
210 held unconstitutional by the lower court.

211 (2) Decisions of the Court of Appeals are final and are not
212 subject to review by the Supreme Court, except by writ of
213 certiorari. The Supreme Court may grant certiorari review only by
214 the affirmative vote of four (4) of its members. At any time
215 before final decision by the Court of Appeals, the Supreme Court
216 may, by order, transfer to the Supreme Court any case pending
217 before the Court of Appeals.

218 (3) The Court of Appeals shall have jurisdiction to issue
219 writs of habeas corpus, mandamus, quo warranto, certiorari,
220 prohibition or any other process when this may be necessary in any
221 case assigned to it by the Supreme Court.



222 (4) The Court of Appeals shall issue a decision in every
223 case heard before the Court of Appeals within two hundred seventy
224 (270) days after the final briefs have been filed with the court.

225 (5) The Supreme Court shall issue a decision in every case
226 within its original jurisdiction, including all direct and
227 post-conviction collateral relief appeals or applications in cases
228 imposing the death penalty, within two hundred seventy (270) days
229 after the final briefs have been filed with the court. The
230 Supreme Court shall issue a decision in every case received on
231 certiorari from the Court of Appeals within one hundred eighty
232 (180) days after the final briefs have been filed with the court.

233 **SECTION 4.** Section 41-7-202, Mississippi Code of 1972, which
234 provides for a stay of proceedings of any written decision of the
235 Department of Health pertaining to a certificate of need for
236 certain health care facilities, is repealed.

237 **SECTION 5.** This act shall take effect and be in force from
238 and after July 1, 2019.

