

By: Representatives Gunn, Boyd

To: Judiciary A

HOUSE BILL NO. 626
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-7-201, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE MISSISSIPPI SUPREME COURT SHALL CONDUCT AN
3 EXPEDITED JUDICIAL REVIEW OF ANY APPEAL OF AN ORDER OF THE
4 CHANCERY COURT RELATING TO THE ISSUANCE OF A HEALTH CARE
5 CERTIFICATE OF NEED; AND FOR RELATED PURPOSES.

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

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

9 41-7-201. (1) The provisions of this subsection (1) shall
10 apply to any party appealing any final order of the State
11 Department of Health pertaining to a certificate of need for a
12 home health agency, as defined in Section 41-7-173(h) (ix):

13 (a) In addition to other remedies now available at law
14 or in equity, any party aggrieved by any such final order of the
15 State Department of Health shall have the right of appeal to the
16 Chancery Court of the First Judicial District of Hinds County,
17 Mississippi, which appeal must be filed within thirty (30) days
18 after the date of the final order. Provided, however, that any
19 appeal of an order disapproving an application for such a



20 certificate of need may be made to the chancery court of the
21 county where the proposed construction, expansion or alteration
22 was to be located or the new service or purpose of the capital
23 expenditure was to be located. Such appeal must be filed in
24 accordance with the thirty (30) days for filing as heretofore
25 provided. Any appeal shall state briefly the nature of the
26 proceedings before the State Department of Health and shall
27 specify the order complained of. Any appeal shall state briefly
28 the nature of the proceedings before the State Department of
29 Health and shall specify the order complained of. Any person
30 whose rights may be materially affected by the action of the State
31 Department of Health may appear and become a party or the court
32 may, upon motion, order that any such person, organization or
33 entity be joined as a necessary party.

34 (b) Upon the filing of such an appeal, the clerk of the
35 chancery court shall serve notice thereof upon the State
36 Department of Health, whereupon the State Department of Health
37 shall, within thirty (30) days or within such additional time as
38 the court may by order for cause allow from the service of such
39 notice, certify to the chancery court the record in the case,
40 which records shall include a transcript of all testimony,
41 together with all exhibits or copies thereof, all pleadings,
42 proceedings, orders, findings and opinions entered in the case;
43 provided, however, that the parties and the State Department of



44 Health may stipulate that a specified portion only of the record
45 shall be certified to the court as the record on appeal.

46 (c) The court may dispose of the appeal in termtime or
47 vacation and may sustain or dismiss the appeal, modify or vacate
48 the order complained of, in whole or in part, as the case may be;
49 but in case the order is wholly or partly vacated, the court may
50 also, in its discretion, remand the matter to the State Department
51 of Health for such further proceedings, not inconsistent with the
52 court's order, as, in the opinion of the court, justice may
53 require. The order shall not be vacated or set aside, either in
54 whole or in part, except for errors of law, unless the court finds
55 that the order of the State Department of Health is not supported
56 by substantial evidence, is contrary to the manifest weight of the
57 evidence, is in excess of the statutory authority or jurisdiction
58 of the State Department of Health, or violates any vested
59 constitutional rights of any party involved in the appeal.
60 Provided, however, an order of the chancery court reversing the
61 denial of a certificate of need by the State Department of Health
62 shall not entitle the applicant to effectuate the certificate of
63 need until either:

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

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



68 (d) Appeals in accordance with law may be had to the
69 Supreme Court of the State of Mississippi from any final judgment
70 of the chancery court.

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

76 (a) There shall be a "stay of proceedings" of any final
77 order issued by the State Department of Health pertaining to the
78 issuance of a certificate of need for the establishment,
79 construction, expansion or replacement of a health care facility
80 for a period of thirty (30) days from the date of the order, if an
81 existing provider located in the same service area where the
82 health care facility is or will be located has requested a hearing
83 during the course of review in opposition to the issuance of the
84 certificate of need. The stay of proceedings shall expire at the
85 termination of thirty (30) days; however, no construction,
86 renovation or other capital expenditure that is the subject of the
87 order shall be undertaken, no license to operate any facility that
88 is the subject of the order shall be issued by the licensing
89 agency, and no certification to participate in the Title XVII or
90 Title XIX programs of the Social Security Act shall be granted,
91 until all statutory appeals have been exhausted or the time for
92 such appeals has expired. Notwithstanding the foregoing, the



93 filing of an appeal from a final order of the State Department of
94 Health or the chancery court for the issuance of a certificate of
95 need shall not prevent the purchase of medical equipment or
96 development or offering of institutional health services granted
97 in a certificate of need issued by the State Department of Health.

98 (b) In addition to other remedies now available at law
99 or in equity, any party aggrieved by such final order of the State
100 Department of Health shall have the right of appeal to the
101 Chancery Court of the First Judicial District of Hinds County,
102 Mississippi, which appeal must be filed within twenty (20) days
103 after the date of the final order. Provided, however, that any
104 appeal of an order disapproving an application for such a
105 certificate of need may be made to the chancery court of the
106 county where the proposed construction, expansion or alteration
107 was to be located or the new service or purpose of the capital
108 expenditure was to be located. Such appeal must be filed in
109 accordance with the twenty (20) days for filing as heretofore
110 provided. Any appeal shall state briefly the nature of the
111 proceedings before the State Department of Health and shall
112 specify the order complained of.

113 (c) Upon the filing of such an appeal, the clerk of the
114 chancery court shall serve notice thereof upon the State
115 Department of Health, whereupon the State Department of Health
116 shall, within thirty (30) days of the date of the filing of the
117 appeal, certify to the chancery court the record in the case,



118 which records shall include a transcript of all testimony,
119 together with all exhibits or copies thereof, all proceedings,
120 orders, findings and opinions entered in the case; provided,
121 however, that the parties and the State Department of Health may
122 stipulate that a specified portion only of the record shall be
123 certified to the court as the record on appeal. The chancery
124 court shall give preference to any such appeal from a final order
125 by the State Department of Health in a certificate of need
126 proceeding, and shall render a final order regarding such appeal
127 no later than one hundred twenty (120) days from the date of the
128 final order by the State Department of Health. If the chancery
129 court has not rendered a final order within this
130 one-hundred-twenty-day period, then the final order of the State
131 Department of Health shall be deemed to have been affirmed by the
132 chancery court, and any party to the appeal shall have the right
133 to appeal from the chancery court to the Supreme Court on the
134 record certified by the State Department of Health as otherwise
135 provided in paragraph (g) of this subsection. In the event the
136 chancery court has not rendered a final order within the
137 one-hundred-twenty-day period and an appeal is made to the Supreme
138 Court as provided herein, the Supreme Court shall remand the case
139 to the chancery court to make an award of costs, fees, reasonable
140 expenses and attorney's fees incurred in favor of appellee payable
141 by the appellant(s) should the Supreme Court affirm the order of
142 the State Department of Health.



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

149 (e) No new or additional evidence shall be introduced
150 in the chancery court but the case shall be determined upon the
151 record certified to the court.

152 (f) The court may dispose of the appeal in termtime or
153 vacation and may sustain or dismiss the appeal, modify or vacate
154 the order complained of in whole or in part and may make an award
155 of costs, fees, expenses and attorney's fees, as the case may be;
156 but in case the order is wholly or partly vacated, the court may
157 also, in its discretion, remand the matter to the State Department
158 of Health for such further proceedings, not inconsistent with the
159 court's order, as, in the opinion of the court, justice may
160 require. The court, as part of the final order, shall make an
161 award of costs, fees, reasonable expenses and attorney's fees
162 incurred in favor of appellee payable by the appellant(s) should
163 the court affirm the order of the State Department of Health. The
164 order shall not be vacated or set aside, either in whole or in
165 part, except for errors of law, unless the court finds that the
166 order of the State Department of Health is not supported by
167 substantial evidence, is contrary to the manifest weight of the



168 evidence, is in excess of the statutory authority or jurisdiction
169 of the State Department of Health, or violates any vested
170 constitutional rights of any party involved in the appeal.

171 Provided, however, an order of the chancery court reversing the
172 denial of a certificate of need by the State Department of Health
173 shall not entitle the applicant to effectuate the certificate of
174 need until either:

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

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

179 (g) Appeals in accordance with law may be had to the
180 Supreme Court of the State of Mississippi from any final judgment
181 of the chancery court. The Supreme Court must give preference and
182 conduct an expedited judicial review of an appeal of a final order
183 of the chancery court relating to a certificate of need proceeding
184 and must render a final order regarding the appeal no later than
185 one hundred twenty (120) days from the date the final order by the
186 chancery court is certified to the Supreme Court. The Supreme
187 Court shall consider such appeals in an expeditious manner without
188 regard to position on the court docket.

189 (h) Within thirty (30) days from the date of a final
190 order by the Supreme Court or a final order of the chancery court
191 not appealed to the Supreme Court that modifies or wholly or
192 partly vacates the final order of the State Department of Health



193 granting a certificate of need, the State Department of Health
194 shall issue another order in conformity with the final order of
195 the Supreme Court, or the final order of the chancery court not
196 appealed to the Supreme Court.

197 **SECTION 2.** This act shall take effect and be in force from
198 and after July 1, 2019.

