

## **Senate Amendments to House Bill No. 626**

**TO THE CLERK OF THE HOUSE:**

**THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:**

### **AMENDMENT NO. 1**

**Amend by striking all after the enacting clause and inserting in lieu thereof the following:**

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.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.



SS02\HB626A.J

Liz Welch  
Secretary of the Senate