

By: Senator(s) Blackwell

To: Public Health and  
Welfare; Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2004

1 AN ACT TO AMEND SECTION 41-7-197, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT ANY PARTY REQUESTING A HEARING ON AN APPLICATION  
3 FOR A HEALTH CARE CERTIFICATE OF NEED WHO DOES NOT PREVAIL AT THE  
4 HEARING SHALL PAY COSTS AND ATTORNEY FEES, AND TO APPLY THE SAME  
5 REQUIREMENT TO ANY PARTY WHO APPEALS AN ORDER OF THE HEARING  
6 OFFICER TO THE PROPER COURT AND LOSES ON APPEAL; AND FOR RELATED  
7 PURPOSES.

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

9 **SECTION 1.** Section 41-7-197, Mississippi Code of 1972, is  
10 amended as follows:

11 41-7-197. (1) The State Department of Health shall adopt  
12 and utilize procedures for conducting certificate of need reviews.  
13 Such procedures shall include, inter alia, the following: (a)  
14 written notification to the applicant; (b) written notification to  
15 health care facilities in the same health service area as the  
16 proposed service; (c) written notification to other persons who  
17 prior to the receipt of the application have filed a formal notice  
18 of intent to provide the proposed services in the same service  
19 area; and (d) notification to members of the public who reside in



20 the service area where the service is proposed, which may be  
21 provided through newspapers or public information channels.

22 (2) All notices provided shall include, inter alia, the  
23 following: (a) the proposed schedule for the review; (b) written  
24 notification of the period within which a public hearing during  
25 the course of the review may be requested in writing by one or  
26 more affected persons, such request to be made within ten (10)  
27 days of the department's staff recommendation for approval or  
28 disapproval of an application; and (c) the manner in which  
29 notification will be provided of the time and place of any hearing  
30 so requested. Any such hearing shall be commenced by an  
31 independent hearing officer designated by the State Department of  
32 Health within sixty (60) days of the filing of the hearing request  
33 unless all parties to the hearing agree to extend the time for the  
34 commencement of the hearing. At such hearing, the hearing officer  
35 and any person affected by the proposal being reviewed may conduct  
36 reasonable questioning of persons who make relevant factual  
37 allegations concerning the proposal. The hearing officer shall  
38 require that all persons be sworn before they may offer any  
39 testimony at the hearing, and the hearing officer is authorized to  
40 administer oaths. Any person so choosing may be represented by  
41 counsel at the hearing. A record of the hearing shall be made,  
42 which shall consist of a transcript of all testimony received, all  
43 documents and other material introduced by any interested person,  
44 the staff report and recommendation and such other material as the



45 hearing officer considers relevant, including his own  
46 recommendation, which he shall make, after reviewing, studying and  
47 analyzing the evidence presented during the hearing, within a  
48 reasonable period of time after the hearing is closed, which in no  
49 event shall exceed forty-five (45) days. The completed record  
50 shall be certified to the State Health Officer, who shall consider  
51 only the record in making his decision, and shall not consider any  
52 evidence or material which is not included therein. All final  
53 decisions regarding the issuance of a certificate of need shall be  
54 made by the State Health Officer. The State Health Officer shall  
55 make his or her written findings and issue his or her order after  
56 reviewing said record. The findings and decision of the State  
57 Health Officer shall not be deferred to any later date.

58 (3) Unless a hearing is held, if review by the State  
59 Department of Health concerning the issuance of a certificate of  
60 need is not complete with a final decision issued by the State  
61 Health Officer within the time specified by rule or regulation,  
62 which shall not exceed ninety (90) days from the filing of the  
63 application for a certificate of need, the proponent of the  
64 proposal may, within thirty (30) days after the expiration of the  
65 specified time for review, commence such legal action as is  
66 necessary, in the Chancery Court of the First Judicial District of  
67 Hinds County or in the chancery court of the county in which the  
68 service or facility is proposed to be provided, to compel the



69 State Health Officer to issue written findings and written order  
70 approving or disapproving the proposal in question.

71 (4) When an applicant for a certificate of need files its  
72 request in accordance with State Department of Health procedures  
73 and that project receives staff recommendation for approval, and  
74 if an interested party requests a hearing on said project and the  
75 hearing officer at said hearing determines that the applicant's  
76 request merits approval, then the party initiating the request for  
77 a hearing shall reimburse the applicant for all attorney,  
78 consultant and other fees related to said hearing. Reimbursement  
79 is to be made in full within ninety (90) days of the hearing  
80 officer's decision. If the interested party decides to appeal the  
81 final order and loses on appeal, the same requirement on  
82 reimbursing the applicant shall be applied by the court.

83 **SECTION 2.** This act shall take effect and be in force from  
84 and after July 1, 2020.

