

By: Senator(s) Blackwell

To: Public Health and
Welfare

SENATE BILL NO. 2683

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE CAPITAL EXPENDITURE THRESHOLD FOR MAJOR MEDICAL
3 EQUIPMENT, FOR CLINICAL SERVICES AND FOR NONCLINICAL SERVICES AND
4 TO ADD A PROVISION FOR ANNUAL ADJUSTMENT OF SUCH THRESHOLDS BASED
5 ON THE CONSUMER PRICE INDEX (CPI); TO REMOVE PSYCHIATRIC
6 HOSPITALS, CHEMICAL DEPENDENCY HOSPITALS, END-STAGE RENAL DISEASE
7 (ESRD) FACILITIES, INTERMEDIATE CARE FACILITIES, INTERMEDIATE CARE
8 FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND
9 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FROM THE REQUIREMENTS
10 OF THE HEALTH CARE CERTIFICATE OF NEED LAW; TO CLARIFY THE
11 DEFINITION OF AMBULATORY SURGICAL FACILITY; TO AMEND SECTION
12 41-7-191, MISSISSIPPI CODE OF 1972, TO REDUCE THE PERIOD IN WHICH
13 A HEALTH CARE FACILITY MAY CEASE TO OPERATE WITHOUT REQUIRING A
14 CERTIFICATE OF NEED TO REOPEN; TO DELETE THE MORATORIUM ON THE
15 ISSUANCE OF CERTIFICATES OF NEED FOR SKILLED NURSING FACILITIES
16 AND INTERMEDIATE CARE FACILITIES OR FOR THE CONVERSION OF VACANT
17 HOSPITAL BEDS TO PROVIDE SKILLED OR INTERMEDIATE NURSING HOME
18 CARE; TO REMOVE THE MORATORIUM ON THE ISSUANCE OF CERTIFICATES OF
19 NEED FOR HOME HEALTH AGENCIES ESTABLISHED WITHIN OR BY A HOSPITAL;
20 TO PROVIDE THAT A CERTAIN LONG-TERM CARE HOSPITAL IN HARRISON
21 COUNTY MAY NOT PARTICIPATE IN THE MEDICAID PROGRAM EXCEPT AS A
22 CROSSOVER ENROLLED PROVIDER; TO PROVIDE THAT THE REPAIR OR
23 REBUILDING OF CERTAIN HEALTH CARE FACILITIES THAT SUSTAIN
24 SIGNIFICANT DAMAGE FROM A NATURAL DISASTER MUST BE WITHIN FIVE (5)
25 MILES OF THE PRE-DISASTER LOCATION OF THE CAMPUS OF THE DAMAGED
26 HEALTH CARE FACILITY; AND TO CONFORM TO THE PROVISIONS OF THIS
27 ACT; TO CREATE NEW SECTIONS 41-7-191.1, 41-7-191.2, 41-7-191.3,
28 41-7-191.4 AND 41-7-191.5, MISSISSIPPI CODE OF 1972, TO ORGANIZE
29 VARIOUS PROVISIONS OF THE HEALTH CARE CERTIFICATE OF NEED LAW INTO
30 SEPARATE CODE SECTIONS; TO AMEND SECTION 41-7-197, MISSISSIPPI
31 CODE OF 1972, TO PROVIDE THAT ANY PARTY REQUESTING A HEARING ON AN
32 APPLICATION FOR A HEALTH CARE CERTIFICATE OF NEED WHO DOES NOT
33 PREVAIL AT THE HEARING SHALL PAY ALL ATTORNEY, CONSULTANT AND
34 OTHER FEES; TO PROVIDE THAT SUCH HEARINGS SHALL BE BASED ON THE

35 DISCRETION OF THE STATE DEPARTMENT OF HEALTH WITH NO JUDICIAL
36 REVIEW FOLLOWING HEARING DETERMINATIONS; AND FOR RELATED PURPOSES.

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

38 **SECTION 1.** Section 41-7-173, Mississippi Code of 1972, is
39 amended as follows:

40 41-7-173. For the purposes of Section 41-7-171 et seq., the
41 following words shall have the meanings ascribed herein, unless
42 the context otherwise requires:

43 (a) "Affected person" means (i) the applicant; (ii) a
44 person residing within the geographic area to be served by the
45 applicant's proposal; (iii) a person who regularly uses health
46 care facilities or HMOs located in the geographic area of the
47 proposal which provide similar service to that which is proposed;
48 (iv) health care facilities and HMOs which have, prior to receipt
49 of the application under review, formally indicated an intention
50 to provide service similar to that of the proposal being
51 considered at a future date; (v) third-party payers who reimburse
52 health care facilities located in the geographical area of the
53 proposal; or (vi) any agency that establishes rates for health
54 care services or HMOs located in the geographic area of the
55 proposal.

56 (b) "Certificate of need" means a written order of the
57 State Department of Health setting forth the affirmative finding
58 that a proposal in prescribed application form, sufficiently
59 satisfies the plans, standards and criteria prescribed for such
60 service or other project by Section 41-7-171 et seq., and by rules



61 and regulations promulgated thereunder by the State Department of
62 Health.

63 (c) (i) "Capital expenditure," when pertaining to
64 defined major medical equipment, shall mean an expenditure which,
65 under generally accepted accounting principles consistently
66 applied, is not properly chargeable as an expense of operation and
67 maintenance and which exceeds * * * Three Million Dollars
68 (\$3,000,000.00). Each fiscal year, this amount shall increase by
69 the annual rate of inflation for the State of Mississippi as
70 determined by the State Economist.

71 (ii) "Capital expenditure," when pertaining to
72 other than major medical equipment, shall mean any expenditure
73 which, under generally accepted accounting principles consistently
74 applied, is not properly chargeable as an expense of operation and
75 maintenance and which exceeds, for clinical health services, as
76 defined in paragraph (k) below, * * * Ten Million Dollars
77 (\$10,000,000.00), adjusted for inflation as published by the State
78 Department of Health or which exceeds, for nonclinical health
79 services, as defined in paragraph (k) below, * * * Twenty Million
80 Dollars (\$20,000,000.00), adjusted for inflation as published by
81 the State Department of Health. Each year, these amounts shall
82 increase by the annual rate of inflation for the State of
83 Mississippi as determined by the State Economist.

84 (iii) A "capital expenditure" shall include the
85 acquisition, whether by lease, sufferance, gift, devise, legacy,



86 settlement of a trust or other means, of any facility or part
87 thereof, or equipment for a facility, the expenditure for which
88 would have been considered a capital expenditure if acquired by
89 purchase. Transactions which are separated in time but are
90 planned to be undertaken within twelve (12) months of each other
91 and are components of an overall plan for meeting patient care
92 objectives shall, for purposes of this definition, be viewed in
93 their entirety without regard to their timing.

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

108 (d) "Change of ownership" includes, but is not limited
109 to, inter vivos gifts, purchases, transfers, lease arrangements,
110 cash and/or stock transactions or other comparable arrangements



111 whenever any person or entity acquires or controls a majority
112 interest of an existing health care facility, and/or the change of
113 ownership of major medical equipment, a health service, or an
114 institutional health service. Changes of ownership from
115 partnerships, single proprietorships or corporations to another
116 form of ownership are specifically included. However, "change of
117 ownership" shall not include any inherited interest acquired as a
118 result of a testamentary instrument or under the laws of descent
119 and distribution of the State of Mississippi.

120 (e) "Commencement of construction" means that all of
121 the following have been completed with respect to a proposal or
122 project proposing construction, renovating, remodeling or
123 alteration:

124 (i) A legally binding written contract has been
125 consummated by the proponent and a lawfully licensed contractor to
126 construct and/or complete the intent of the proposal within a
127 specified period of time in accordance with final architectural
128 plans which have been approved by the licensing authority of the
129 State Department of Health;

130 (ii) Any and all permits and/or approvals deemed
131 lawfully necessary by all authorities with responsibility for such
132 have been secured; and

133 (iii) Actual bona fide undertaking of the subject
134 proposal has commenced, and a progress payment of at least one
135 percent (1%) of the total cost price of the contract has been paid



136 to the contractor by the proponent, and the requirements of this
137 paragraph (e) have been certified to in writing by the State
138 Department of Health.

139 Force account expenditures, such as deposits, securities,
140 bonds, et cetera, may, in the discretion of the State Department
141 of Health, be excluded from any or all of the provisions of
142 defined commencement of construction.

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

146 (g) "Develop," when used in connection with health
147 services, means to undertake those activities which, on their
148 completion, will result in the offering of a new institutional
149 health service or the incurring of a financial obligation as
150 defined under applicable state law in relation to the offering of
151 such services.

152 (h) "Health care facility" includes hospitals, * * *
153 skilled nursing facilities, * * * ambulatory surgical
154 facilities, * * * home health agencies, * * * pediatric skilled
155 nursing facilities, long-term care hospitals, comprehensive
156 medical rehabilitation facilities, including facilities owned or
157 operated by the state or a political subdivision or
158 instrumentality of the state, but does not include Christian
159 Science sanatoriums operated or listed and certified by the First
160 Church of Christ, Scientist, Boston, Massachusetts. This



161 definition shall not apply to facilities for the private practice,
162 either independently or by incorporated medical groups, of
163 physicians, dentists or health care professionals except where
164 such facilities are an integral part of an institutional health
165 service. The various health care facilities listed in this
166 paragraph shall be defined as follows:

167 (i) "Hospital" means an institution which is
168 primarily engaged in providing to inpatients, by or under the
169 supervision of physicians, diagnostic services and therapeutic
170 services for medical diagnosis, treatment and care of injured,
171 disabled or sick persons, or rehabilitation services for the
172 rehabilitation of injured, disabled or sick persons. Such term
173 does not include psychiatric hospitals.

174 (ii) * * * [Deleted]

175 (iii) * * * [Deleted]

176 (iv) "Skilled nursing facility" means an
177 institution or a distinct part of an institution which is
178 primarily engaged in providing to inpatients skilled nursing care
179 and related services for patients who require medical or nursing
180 care or rehabilitation services for the rehabilitation of injured,
181 disabled or sick persons.

182 (v) * * * [Deleted]

183 (vi) * * * [Deleted]

184 (vii) "Ambulatory surgical facility" means a
185 facility primarily organized or established for the purpose of



186 performing surgery for outpatients and is a separate identifiable
187 legal entity from any other health care facility. Such term does
188 not include the offices of private physicians or dentists, whether
189 for individual or group practice, and does not include any
190 abortion facility as defined in Section 41-75-1 * * *. An
191 ambulatory surgical facility does not include single specialty
192 entities that operate from a shared facility for defined days of
193 the week in an arrangement where other single specialty entities
194 operate from the same facility on other days of the week with no
195 same-day overlap between the various entities.

196 (viii) * * * [Deleted]

197 (ix) "Home health agency" means a public or
198 privately owned agency or organization, or a subdivision of such
199 an agency or organization, properly authorized to conduct business
200 in Mississippi, which is primarily engaged in providing to
201 individuals at the written direction of a licensed physician, in
202 the individual's place of residence, skilled nursing services
203 provided by or under the supervision of a registered nurse
204 licensed to practice in Mississippi, and one or more of the
205 following services or items:

206 1. Physical, occupational or speech therapy;
207 2. Medical social services;
208 3. Part-time or intermittent services of a
209 home health aide;



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

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

226 (x) * * * [Deleted]

227 (xi) "Pediatric skilled nursing facility" means an
228 institution or a distinct part of an institution that is primarily
229 engaged in providing to inpatients skilled nursing care and
230 related services for persons under twenty-one (21) years of age
231 who require medical or nursing care or rehabilitation services for
232 the rehabilitation of injured, disabled or sick persons.

233 (xii) "Long-term care hospital" means a
234 freestanding, Medicare-certified hospital that has an average



235 length of inpatient stay greater than twenty-five (25) days, which
236 is primarily engaged in providing chronic or long-term medical
237 care to patients who do not require more than three (3) hours of
238 rehabilitation or comprehensive rehabilitation per day, and has a
239 transfer agreement with an acute care medical center and a
240 comprehensive medical rehabilitation facility. Long-term care
241 hospitals shall not use rehabilitation, comprehensive medical
242 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
243 nursing home, skilled nursing facility or sub-acute care facility
244 in association with its name.

245 (xiii) "Comprehensive medical rehabilitation
246 facility" means a hospital or hospital unit that is licensed
247 and/or certified as a comprehensive medical rehabilitation
248 facility which provides specialized programs that are accredited
249 by the Commission on Accreditation of Rehabilitation Facilities
250 and supervised by a physician board certified or board eligible in
251 physiatry or other doctor of medicine or osteopathy with at least
252 two (2) years of training in the medical direction of a
253 comprehensive rehabilitation program that:

- 254 1. Includes evaluation and treatment of
255 individuals with physical disabilities;
- 256 2. Emphasizes education and training of
257 individuals with disabilities;
- 258 3. Incorporates at least the following core
259 disciplines:



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

283 (i) Provides or otherwise makes available to
284 enrolled participants health care services, including



285 substantially the following basic health care services: usual
286 physician services, hospitalization, laboratory, x-ray, emergency
287 and preventive services, and out-of-area coverage;

288 (ii) Is compensated (except for copayments) for
289 the provision of the basic health care services listed in
290 subparagraph (i) of this paragraph to enrolled participants on a
291 predetermined basis; and

292 (iii) Provides physician services primarily:

293 1. Directly through physicians who are either
294 employees or partners of such organization; or
295 2. Through arrangements with individual
296 physicians or one or more groups of physicians (organized on a
297 group practice or individual practice basis).

298 (j) "Health service area" means a geographic area of
299 the state designated in the State Health Plan as the area to be
300 used in planning for specified health facilities and services and
301 to be used when considering certificate of need applications to
302 provide health facilities and services.

303 (k) "Health services" means clinically related (i.e.,
304 diagnostic, treatment or rehabilitative) services and
305 includes * * * mental health and home health care services.

306 "Clinical health services" shall only include those activities
307 which contemplate any change in the existing bed complement of any
308 health care facility through the addition or conversion of any
309 beds, under Section 41-7-191(1)(c) or propose to offer any health



310 services if those services have not been provided on a regular
311 basis by the proposed provider of such services within the period
312 of twelve (12) months prior to the time such services would be
313 offered, under Section 41-7-191(1)(d). "Nonclinical health
314 services" shall be all other services which do not involve any
315 change in the existing bed complement or offering health services
316 as described above. "Health services" does not include medical
317 and related services for the diagnosis and treatment of chemical
318 dependency such as alcohol and drug abuse.

319 (1) "Institutional health services" shall mean health
320 services provided in or through health care facilities and shall
321 include the entities in or through which such services are
322 provided.

323 (m) "Major medical equipment" means medical equipment
324 designed for providing medical or any health-related service which
325 costs in excess of * * * Three Million Dollars (\$3,000,000.00).
326 However, this definition shall not be applicable to clinical
327 laboratories if they are determined by the State Department of
328 Health to be independent of any physician's office, hospital or
329 other health care facility or otherwise not so defined by federal
330 or state law, or rules and regulations promulgated thereunder.

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



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

339 (p) "Person" means an individual, a trust or estate,
340 partnership, corporation (including associations, joint-stock
341 companies and insurance companies), the state or a political
342 subdivision or instrumentality of the state.

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

347 (r) "Radiation therapy services" means the treatment of
348 cancer and other diseases using ionizing radiation of either high
349 energy photons (x-rays or gamma rays) or charged particles
350 (electrons, protons or heavy nuclei). However, for purposes of a
351 certificate of need, radiation therapy services shall not include
352 low energy, superficial, external beam x-ray treatment of
353 superficial skin lesions.

354 (s) "Secretary" means the Secretary of Health and Human
355 Services, and any officer or employee of the Department of Health
356 and Human Services to whom the authority involved has been
357 delegated.

358 (t) "State Health Plan" means the sole and official
359 statewide health plan for Mississippi which identifies priority



360 state health needs and establishes standards and criteria for
361 health-related activities which require certificate of need review
362 in compliance with Section 41-7-191.

363 (u) "State Health Planning and Development Agency"
364 means the agency of state government designated to perform health
365 planning and resource development programs for the State of
366 Mississippi.

367 **SECTION 2.** Section 41-7-191, Mississippi Code of 1972, is
368 amended as follows:

369 41-7-191. (1) Except as otherwise provided in Sections
370 41-7-191.1 through 41-7-191.5, no person shall engage in any of
371 the following activities without obtaining the required
372 certificate of need:

373 (a) The construction, development or other
374 establishment of a new health care facility, which establishment
375 shall include the reopening of a health care facility that has
376 ceased to operate for a period of * * * thirty-six (36) months or
377 more;

378 (b) The relocation of a health care facility or portion
379 thereof, or major medical equipment, unless such relocation of a
380 health care facility or portion thereof, or major medical
381 equipment, which does not involve a capital expenditure by or on
382 behalf of a health care facility, is within five thousand two
383 hundred eighty (5,280) feet from the main entrance of the health
384 care facility;



385 (c) Any change in the existing bed complement of any
386 health care facility through the addition or conversion of any
387 beds or the alteration, modernizing or refurbishing of any unit or
388 department in which the beds may be located; however, if a health
389 care facility has voluntarily delicensed some of its existing bed
390 complement, it may later relicense some or all of its delicensed
391 beds without the necessity of having to acquire a certificate of
392 need. The State Department of Health shall maintain a record of
393 the delicensing health care facility and its voluntarily
394 delicensed beds and continue counting those beds as part of the
395 state's total bed count for health care planning purposes. If a
396 health care facility that has voluntarily delicensed some of its
397 beds later desires to relicense some or all of its voluntarily
398 delicensed beds, it shall notify the State Department of Health of
399 its intent to increase the number of its licensed beds. The State
400 Department of Health shall survey the health care facility within
401 thirty (30) days of that notice and, if appropriate, issue the
402 health care facility a new license reflecting the new contingent
403 of beds. However, in no event may a health care facility that has
404 voluntarily delicensed some of its beds be reissued a license to
405 operate beds in excess of its bed count before the voluntary
406 delicensure of some of its beds without seeking certificate of
407 need approval;

408 (d) Offering of the following health services if those
409 services have not been provided on a regular basis by the proposed



410 provider of such services within the period of twelve (12) months
411 prior to the time such services would be offered:

412 (i) Open-heart surgery services;

413 (ii) Cardiac catheterization services;

414 (iii) Comprehensive inpatient rehabilitation
415 services;

416 (iv) * * * [Deleted]

417 (v) * * * [Deleted]

418 (vi) Radiation therapy services;

419 (vii) Diagnostic imaging services of an invasive
420 nature, i.e. invasive digital angiography;

421 (viii) Nursing home care as defined in * * *

422 subparagraph (iv) * * * of Section 41-7-173(h);

423 (ix) Home health services;

424 (x) Swing-bed services;

425 (xi) Ambulatory surgical services;

426 (xii) Magnetic resonance imaging services;

427 (xiii) [Deleted]

428 (xiv) Long-term care hospital services;

429 (xv) Positron emission tomography (PET) services;

430 (e) The relocation of one or more health services from
431 one physical facility or site to another physical facility or
432 site, unless such relocation, which does not involve a capital
433 expenditure by or on behalf of a health care facility, (i) is to a
434 physical facility or site within five thousand two hundred eighty



435 (5,280) feet from the main entrance of the health care facility
436 where the health care service is located, or (ii) is the result of
437 an order of a court of appropriate jurisdiction or a result of
438 pending litigation in such court, or by order of the State
439 Department of Health, or by order of any other agency or legal
440 entity of the state, the federal government, or any political
441 subdivision of either, whose order is also approved by the State
442 Department of Health;

443 (f) The acquisition or otherwise control of any major
444 medical equipment for the provision of medical services; however,
445 (i) the acquisition of any major medical equipment used only for
446 research purposes, and (ii) the acquisition of major medical
447 equipment to replace medical equipment for which a facility is
448 already providing medical services and for which the State
449 Department of Health has been notified before the date of such
450 acquisition shall be exempt from this paragraph; an acquisition
451 for less than fair market value must be reviewed, if the
452 acquisition at fair market value would be subject to review;

453 (g) Changes of ownership of existing health care
454 facilities in which a notice of intent is not filed with the State
455 Department of Health at least thirty (30) days prior to the date
456 such change of ownership occurs, or a change in services or bed
457 capacity as prescribed in paragraph (c) or (d) of this subsection
458 as a result of the change of ownership; an acquisition for less



459 than fair market value must be reviewed, if the acquisition at
460 fair market value would be subject to review;

461 (h) The change of ownership of any health care facility
462 defined in * * * subparagraph (iv) * * * of Section 41-7-173(h),
463 in which a notice of intent as described in paragraph (g) has not
464 been filed and if the Executive Director, Division of Medicaid,
465 Office of the Governor, has not certified in writing that there
466 will be no increase in allowable costs to Medicaid from
467 revaluation of the assets or from increased interest and
468 depreciation as a result of the proposed change of ownership;

469 (i) Any activity described in paragraphs (a) through
470 (h) if undertaken by any person if that same activity would
471 require certificate of need approval if undertaken by a health
472 care facility;

473 (j) Any capital expenditure or deferred capital
474 expenditure by or on behalf of a health care facility not covered
475 by paragraphs (a) through (h);

476 (k) The contracting of a health care facility as
477 defined in subparagraphs (i) through (viii) of Section 41-7-173(h)
478 to establish a home office, subunit, or branch office in the space
479 operated as a health care facility through a formal arrangement
480 with an existing health care facility as defined in subparagraph
481 (ix) of Section 41-7-173(h);

482 (1) The replacement or relocation of a health care
483 facility designated as a critical access hospital shall be exempt



484 from subsection (1) of this section so long as the critical access
485 hospital complies with all applicable federal law and regulations
486 regarding such replacement or relocation;

487 (m) Reopening a health care facility that has ceased to
488 operate for a period of * * * thirty-six (36) months or more,
489 which reopening requires a certificate of need for the
490 establishment of a new health care facility.

491 (2) * * * [Deleted]

492 (3) * * * [Deleted]

493 (4) * * * [Deleted]

494 (5) * * * [Deleted]

495 * * *

496 (* * *6) * * * [Deleted]

497 * * *

498 (* * *7) Nothing in this section or in any other provision
499 of Section 41-7-171 et seq. shall prevent any nursing facility
500 from designating an appropriate number of existing beds in the
501 facility as beds for providing care exclusively to patients with
502 Alzheimer's disease.

503 (* * *8) Nothing in this section or any other provision of
504 Section 41-7-171 et seq. shall prevent any health care facility
505 from the new construction, renovation, conversion or expansion of
506 new beds in the facility designated as intensive care units,
507 negative pressure rooms, or isolation rooms pursuant to the
508 provisions of Sections 41-14-1 through 41-14-11, or Section



509 41-14-31. For purposes of this subsection, the provisions of
510 Section 41-7-193(1) requiring substantial compliance with the
511 projection of need as reported in the current State Health Plan
512 and the provisions of Section 41-7-197 requiring a formal
513 certificate of need hearing process are waived.

514 **SECTION 3.** The following shall be codified as Section
515 41-7-191.1, Mississippi Code of 1972:

516 41-7-191.1. (1) The State Department of Health shall issue
517 a certificate of need to a Mississippi corporation qualified to
518 manage a long-term care hospital as defined in Section
519 41-7-173(h) (xii) in Harrison County, not to exceed eighty (80)
520 beds, including any necessary renovation or construction required
521 for licensure and certification, provided that the recipient of
522 the certificate of need agrees in writing that the long-term care
523 hospital will not at any time participate in the Medicaid program
524 (Section 43-13-101 et seq.) except as a crossover enrolled
525 provider. This written agreement by the recipient of the
526 certificate of need shall be fully binding on any subsequent owner
527 of the long-term care hospital, if the ownership of the facility
528 is transferred at any time after the issuance of the certificate
529 of need. Agreement that the long-term care hospital will not
530 participate in the Medicaid program except as a crossover enrolled
531 provider shall be a condition of the issuance of a certificate of
532 need to any person under this subsection (1), and if such
533 long-term care hospital at any time after the issuance of the



534 certificate of need, regardless of the ownership of the facility,
535 participates in the Medicaid program except as a crossover
536 enrolled provider, the State Department of Health shall revoke the
537 certificate of need, if it is still outstanding, and shall deny or
538 revoke the license of the long-term care hospital, at the time
539 that the department determines, after a hearing complying with due
540 process, that the facility has failed to comply with any of the
541 conditions upon which the certificate of need was issued, as
542 provided in this subsection and in the written agreement by the
543 recipient of the certificate of need. For purposes of this
544 subsection, the provisions of Section 41-7-193(1) requiring
545 substantial compliance with the projection of need as reported in
546 the current State Health Plan are waived. This subsection (1)
547 shall be retroactive to July 1, 2023.

548 (2) The State Department of Health may issue a certificate
549 of need to any hospital in the state to utilize a portion of its
550 beds for the "swing-bed" concept. Any such hospital must be in
551 conformance with the federal regulations regarding such swing-bed
552 concept at the time it submits its application for a certificate
553 of need to the State Department of Health, except that such
554 hospital may have more licensed beds or a higher average daily
555 census (ADC) than the maximum number specified in federal
556 regulations for participation in the swing-bed program. Any
557 hospital meeting all federal requirements for participation in the
558 swing-bed program which receives such certificate of need shall



559 render services provided under the swing-bed concept to any
560 patient eligible for Medicare (Title XVIII of the Social Security
561 Act) who is certified by a physician to be in need of such
562 services, and no such hospital shall permit any patient who is
563 eligible for both Medicaid and Medicare or eligible only for
564 Medicaid to stay in the swing beds of the hospital for more than
565 thirty (30) days per admission unless the hospital receives prior
566 approval for such patient from the Division of Medicaid, Office of
567 the Governor. Any hospital having more licensed beds or a higher
568 average daily census (ADC) than the maximum number specified in
569 federal regulations for participation in the swing-bed program
570 which receives such certificate of need shall develop a procedure
571 to ensure that before a patient is allowed to stay in the swing
572 beds of the hospital, there are no vacant nursing home beds
573 available for that patient located within a fifty-mile radius of
574 the hospital. When any such hospital has a patient staying in the
575 swing beds of the hospital and the hospital receives notice from a
576 nursing home located within such radius that there is a vacant bed
577 available for that patient, the hospital shall transfer the
578 patient to the nursing home within a reasonable time after receipt
579 of the notice. Any hospital which is subject to the requirements
580 of the two (2) preceding sentences of this subsection may be
581 suspended from participation in the swing-bed program for a
582 reasonable period of time by the State Department of Health if the
583 department, after a hearing complying with due process, determines



584 that the hospital has failed to comply with any of those
585 requirements.

586 (3) The State Department of Health shall issue a certificate
587 of need to any hospital which is currently licensed for two
588 hundred fifty (250) or more acute care beds and is located in any
589 general hospital service area not having a comprehensive cancer
590 center, for the establishment and equipping of such a center which
591 provides facilities and services for outpatient radiation oncology
592 therapy, outpatient medical oncology therapy, and appropriate
593 support services, including the provision of radiation therapy
594 services. The provisions of Section 41-7-193(1) regarding
595 substantial compliance with the projection of need as reported in
596 the current State Health Plan are waived for the purpose of this
597 subsection.

598 (4) The State Department of Health may authorize the
599 transfer of hospital beds, not to exceed sixty (60) beds, from the
600 North Panola Community Hospital to the South Panola Community
601 Hospital. The authorization for the transfer of those beds shall
602 be exempt from the certificate of need review process.

603 (5) The State Department of Health shall issue a certificate
604 of need for the construction of an acute care hospital in Kemper
605 County, not to exceed twenty-five (25) beds, which shall be named
606 the "John C. Stennis Memorial Hospital." In issuing the
607 certificate of need under this subsection, the department shall
608 give priority to a hospital located in Lauderdale County that has



609 two hundred fifteen (215) beds. For purposes of this subsection,
610 the provisions of Section 41-7-193(1) requiring substantial
611 compliance with the projection of need as reported in the current
612 State Health Plan and the provisions of Section 41-7-197 requiring
613 a formal certificate of need hearing process are waived. There
614 shall be no prohibition or restrictions on participation in the
615 Medicaid program (Section 43-13-101 et seq.) for the person or
616 entity receiving the certificate of need authorized under this
617 subsection or for the beds constructed under the authority of that
618 certificate of need.

619 **SECTION 4.** The following shall be codified as Section
620 41-7-191.2, Mississippi Code of 1972:

621 41-7-191.2. The Department of Health shall not grant
622 approval for or issue a certificate of need to any person
623 proposing the establishment of, or expansion of the currently
624 approved territory of, or the contracting to establish a home
625 office, subunit or branch office within the space operated as a
626 health care facility as defined in Section 41-7-173(h)(i) through
627 (viii) by a health care facility as defined in subparagraph (ix)
628 of Section 41-7-173(h). The Department of Health may grant
629 approval or issue a certificate of need to a health care facility
630 as defined in Section 41-7-173(h)(i) proposing the establishment
631 of, expansion of the currently approved territory of, or the
632 contracting to establish a home office, subunit or branch office



633 within the space operated as such a facility of a health care
634 facility as defined in subparagraph (ix) of Section 41-7-173(h).

635 **SECTION 5.** The following shall be codified as Section
636 41-7-191.3, Mississippi Code of 1972:

637 41-7-191.3. (1) The State Department of Health shall issue
638 any certificates of need necessary for Mississippi State
639 University and a public or private health care provider to jointly
640 acquire and operate a linear accelerator and a magnetic resonance
641 imaging unit. Those certificates of need shall cover all capital
642 expenditures related to the project between Mississippi State
643 University and the health care provider, including, but not
644 limited to, the acquisition of the linear accelerator, the
645 magnetic resonance imaging unit and other radiological modalities;
646 the offering of linear accelerator and magnetic resonance imaging
647 services; and the cost of construction of facilities in which to
648 locate these services. The linear accelerator and the magnetic
649 resonance imaging unit shall be (a) located in the City of
650 Starkville, Oktibbeha County, Mississippi; (b) operated jointly by
651 Mississippi State University and the public or private health care
652 provider selected by Mississippi State University through a
653 request for proposals (RFP) process in which Mississippi State
654 University selects, and the Board of Trustees of State
655 Institutions of Higher Learning approves, the health care provider
656 that makes the best overall proposal; (c) available to Mississippi
657 State University for research purposes two-thirds (2/3) of the



658 time that the linear accelerator and magnetic resonance imaging
659 unit are operational; and (d) available to the public or private
660 health care provider selected by Mississippi State University and
661 approved by the Board of Trustees of State Institutions of Higher
662 Learning one-third (1/3) of the time for clinical, diagnostic and
663 treatment purposes. For purposes of this section, the provisions
664 of Section 41-7-193(1) requiring substantial compliance with the
665 projection of need as reported in the current State Health Plan
666 are waived.

667 (2) The planning, design, construction, renovation,
668 addition, furnishing and equipping of a clinical research unit at
669 any health care facility defined in Section 41-7-173(h) that is
670 under the direction and control of the University of Mississippi
671 Medical Center and located in Jackson, Mississippi, and the
672 addition of new beds or the conversion of beds from one (1)
673 category to another in any such clinical research unit, shall not
674 require the issuance of a certificate of need under Section
675 41-7-171 et seq., notwithstanding any provision in Section
676 41-7-171 et seq. to the contrary.

677 **SECTION 6.** The following shall be codified as Section
678 41-7-191.4, Mississippi Code of 1972:

679 41-7-191.4. (1) Health care facilities owned and/or
680 operated by the state or its agencies are exempt from the
681 restraints in this section against issuance of a certificate of
682 need if such addition or expansion consists of repairing or



683 renovation necessary to comply with the state licensure law. This
684 exception shall not apply to the new construction of any building
685 by such state facility. This exception shall not apply to any
686 health care facilities owned and/or operated by counties,
687 municipalities, districts, unincorporated areas, other defined
688 persons, or any combination thereof.

689 (2) The new construction, renovation or expansion of or
690 addition to any health care facility defined in subparagraph (iv)
691 (skilled nursing facility) of Section 41-7-173(h) which is owned
692 by the State of Mississippi and under the direction and control of
693 the State Department of Mental Health, and the addition of new
694 beds or the conversion of beds from one category to another in any
695 such defined health care facility which is owned by the State of
696 Mississippi and under the direction and control of the State
697 Department of Mental Health, shall not require the issuance of a
698 certificate of need under Section 41-7-171 et seq.,
699 notwithstanding any provision in Section 41-7-171 et seq. to the
700 contrary.

701 (3) The new construction, renovation or expansion of or
702 addition to any veterans homes or domiciliaries for eligible
703 veterans of the State of Mississippi as authorized under Section
704 35-1-19 shall not require the issuance of a certificate of need,
705 notwithstanding any provision in Section 41-7-171 et seq. to the
706 contrary.



707 **SECTION 7.** The following shall be codified as Section

708 41-7-191.5, Mississippi Code of 1972:

709 41-7-191.5. The repair or the rebuilding of an existing,

710 operating health care facility that sustained significant damage

711 from a natural disaster that occurred after April 15, 2014, in an

712 area that is proclaimed a disaster area or subject to a state of

713 emergency by the Governor or by the President of the United States

714 shall be exempt from all of the requirements of the Mississippi

715 Certificate of Need Law (Section 41-7-171 et seq.) and any and all

716 rules and regulations promulgated under that law, subject to the

717 following conditions:

718 (a) The repair or the rebuilding of any such damaged

719 health care facility must be within five (5) miles of the

720 pre-disaster location of the campus of the damaged health care

721 facility;

722 (b) The repair or the rebuilding of the damaged health

723 care facility (i) does not increase or change the complement of

724 its bed capacity that it had before the Governor's or the

725 President's proclamation, (ii) does not increase or change its

726 levels and types of health care services that it provided before

727 the Governor's or the President's proclamation, and (iii) does not

728 rebuild in a different county; however, this paragraph does not

729 restrict or prevent a health care facility from decreasing its bed

730 capacity that it had before the Governor's or the President's

731 proclamation, or from decreasing the levels of or decreasing or



732 eliminating the types of health care services that it provided
733 before the Governor's or the President's proclamation, when the
734 damaged health care facility is repaired or rebuilt;

735 (c) The exemption from Certificate of Need Law provided
736 under this section is valid for only five (5) years from the date
737 of the Governor's or the President's proclamation. If actual
738 construction has not begun within that five-year period, the
739 exemption provided under this subsection is inapplicable; and

740 (d) The Division of Health Facilities Licensure and
741 Certification of the State Department of Health shall provide the
742 same oversight for the repair or the rebuilding of the damaged
743 health care facility that it provides to all health care facility
744 construction projects in the state.

745 For the purposes of this section, "significant damage" to a
746 health care facility means damage to the health care facility
747 requiring an expenditure of at least One Million Dollars
748 (\$1,000,000.00).

749 **SECTION 8.** Section 41-7-197, Mississippi Code of 1972, is
750 amended as follows:

751 41-7-197. (1) The State Department of Health shall adopt
752 and utilize procedures for conducting certificate of need reviews.
753 Such procedures shall include, *inter alia*, the following: (a)
754 written notification to the applicant; (b) written notification to
755 health care facilities in the same health service area as the
756 proposed service; (c) written notification to other persons who



757 prior to the receipt of the application have filed a formal notice
758 of intent to provide the proposed services in the same service
759 area; and (d) notification to members of the public who reside in
760 the service area where the service is proposed, which may be
761 provided through newspapers or public information channels.

762 (2) All notices provided shall include, *inter alia*, the
763 following: (a) the proposed schedule for the review; (b) written
764 notification of the period within which a public hearing during
765 the course of the review may be requested in writing by one or
766 more affected persons, such request to be made within ten (10)
767 days of the department's staff recommendation for approval or
768 disapproval of an application; and (c) the manner in which
769 notification will be provided of the time and place of any hearing
770 so requested. Any such hearing shall be commenced by an
771 independent hearing officer designated by the State Department of
772 Health within sixty (60) days of the filing of the hearing request
773 unless all parties to the hearing agree to extend the time for the
774 commencement of the hearing. At such hearing, the hearing officer
775 and any person affected by the proposal being reviewed may conduct
776 reasonable questioning of persons who make relevant factual
777 allegations concerning the proposal. The hearing officer shall
778 require that all persons be sworn before they may offer any
779 testimony at the hearing, and the hearing officer is authorized to
780 administer oaths. Any person so choosing may be represented by
781 counsel at the hearing. A record of the hearing shall be made,



782 which shall consist of a transcript of all testimony received, all
783 documents and other material introduced by any interested person,
784 the staff report and recommendation and such other material as the
785 hearing officer considers relevant, including his own
786 recommendation, which he shall make, after reviewing, studying and
787 analyzing the evidence presented during the hearing, within a
788 reasonable period of time after the hearing is closed, which in no
789 event shall exceed forty-five (45) days. The completed record
790 shall be certified to the State Health Officer, who shall consider
791 only the record in making his decision, and shall not consider any
792 evidence or material which is not included therein. All final
793 decisions regarding the issuance of a certificate of need shall be
794 made by the State Health Officer. The State Health Officer shall
795 make his or her written findings and issue his or her order after
796 reviewing said record. The findings and decision of the State
797 Health Officer shall not be deferred to any later date.

798 (3) Unless a hearing is held, if review by the State
799 Department of Health concerning the issuance of a certificate of
800 need is not complete with a final decision issued by the State
801 Health Officer within the time specified by rule or regulation,
802 which shall not exceed ninety (90) days from the filing of the
803 application for a certificate of need, the proponent of the
804 proposal may, within thirty (30) days after the expiration of the
805 specified time for review, commence such legal action as is
806 necessary, in the Chancery Court of the First Judicial District of



807 Hinds County or in the chancery court of the county in which the
808 service or facility is proposed to be provided, to compel the
809 State Health Officer to issue written findings and written order
810 approving or disapproving the proposal in question.

811 (4) (a) When an applicant for a certificate of need files
812 its request in accordance with the State Department of Health
813 procedures and that project receives staff recommendation for
814 approval, and if an interested party requests a hearing on said
815 project and the hearing officer at said hearing determines that
816 the applicant's request merits approval, then the party initiating
817 the request for a hearing shall reimburse the applicant for all
818 attorney, consultant and other fees related to said hearing.
819 Reimbursement is to be made in full within ninety (90) days of the
820 hearing officer's decision.

821 (b) Security for costs related to the hearing described
822 in this section shall be required of the party initiating the
823 hearing at the time the request for a hearing is made, and the
824 amount of such security shall be determined by the State
825 Department of Health. Security for costs may be given by written
826 undertaking endorsed on or filed with the papers in the cause or
827 by a deposit with the State Department of Health. Additional
828 security may be required by the State Department of Health, if it
829 appears that the security already taken is insufficient. The
830 judgment, when entered against the party initiating the hearing,
831 shall be rendered against the surety as well as against the party



832 initiating the hearing. If the party that initiated the hearing
833 prevails, the whole of the deposit shall be returned to said
834 party.

835 (5) Hearings described in this section shall be based on the
836 discretion of the State Department of Health with no judicial
837 review following hearing determinations.

838 **SECTION 9.** This act shall take effect and be in force from
839 and after its passage.