

By: Senator(s) Harkins

To: Public Health and Welfare

SENATE BILL NO. 2661
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 41-7-173, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF "CAPITAL EXPENDITURE" AND "CHANGE OF
3 OWNERSHIP" AND "CLINICAL HEALTH SERVICES" FOR THE PURPOSE OF
4 HEALTH CARE CERTIFICATE OF NEED REVIEW; TO AMEND SECTION 41-7-193,
5 MISSISSIPPI CODE OF 1972, TO CLARIFY PROCEDURES FOR APPLYING FOR A
6 HEALTH CARE CERTIFICATE OF NEED; TO AMEND SECTION 41-7-197,
7 MISSISSIPPI CODE OF 1972, TO CLARIFY PROCEDURES FOR HEALTH CARE
8 CERTIFICATE OF NEED HEARINGS; TO AMEND SECTION 41-7-201,
9 MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURES FOR JUDICIAL
10 APPEALS OF ANY FINAL ORDER OF THE STATE DEPARTMENT OF HEALTH
11 PERTAINING TO A CERTIFICATE OF NEED FOR A HOME HEALTH AGENCY OR
12 OTHER HEALTH CARE FACILITY; TO AMEND SECTION 41-7-205, MISSISSIPPI
13 CODE OF 1972, TO PRESCRIBE A PROCEDURE FOR AN APPLICATION FOR A
14 DETERMINATION OF REVIEWABILITY BY THE STATE DEPARTMENT OF HEALTH
15 FOR CERTAIN DEFINED CAPITAL EXPENDITURES AND TO PRESCRIBE FEES
16 THEREFOR; AND FOR RELATED PURPOSES.

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

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

20 41-7-173. For the purposes of Section 41-7-171 et seq., the
21 following words shall have the meanings ascribed herein, unless
22 the context otherwise requires:

23 (a) "Affected person" means (i) the applicant; (ii) a
24 person residing within the geographic area to be served by the
25 applicant's proposal; (iii) a person who regularly uses health



26 care facilities or HMOs located in the geographic area of the
27 proposal which provide similar service to that which is proposed;
28 (iv) health care facilities and HMOs which have, prior to receipt
29 of the application under review, formally indicated an intention
30 to provide service similar to that of the proposal being
31 considered at a future date; (v) third-party payers who reimburse
32 health care facilities located in the geographical area of the
33 proposal; or (vi) any agency that establishes rates for health
34 care services or HMOs located in the geographic area of the
35 proposal.

36 (b) "Certificate of need" means a written order of the
37 State Department of Health setting forth the affirmative finding
38 that a proposal in prescribed application form, sufficiently
39 satisfies the plans, standards and criteria prescribed for such
40 service or other project by Section 41-7-171 et seq., and by rules
41 and regulations promulgated thereunder by the State Department of
42 Health.

43 (c) (i) "Capital expenditure," when pertaining to
44 defined major medical equipment, shall mean an expenditure which,
45 under generally accepted accounting principles consistently
46 applied, is not properly chargeable as an expense of operation and
47 maintenance and which exceeds One Million Five Hundred Thousand
48 Dollars (\$1,500,000.00).

49 (ii) "Capital expenditure," when pertaining to
50 other than major medical equipment, shall mean any expenditure



51 which under generally accepted accounting principles consistently
52 applied is not properly chargeable as an expense of operation and
53 maintenance and which exceeds * * *, for clinical health services,
54 as defined in subsection (k) below, Five Million Dollars
55 (\$5,000,000.00), adjusted for inflation as published by the State
56 Department of Health or which exceeds * * *, for nonclinical
57 health services, as defined in subsection (k) below, Ten Million
58 Dollars (\$10,000,000.00), adjusted for inflation as published by
59 the State Department of Health.

60 (iii) A "capital expenditure" shall include the
61 acquisition, whether by lease, sufferance, gift, devise, legacy,
62 settlement of a trust or other means, of any facility or part
63 thereof, or equipment for a facility, the expenditure for which
64 would have been considered a capital expenditure if acquired by
65 purchase. Transactions which are separated in time but are
66 planned to be undertaken within twelve (12) months of each other
67 and are components of an overall plan for meeting patient care
68 objectives shall, for purposes of this definition, be viewed in
69 their entirety without regard to their timing.

70 (iv) In those instances where a health care
71 facility or other provider of health services proposes to provide
72 a service in which the capital expenditure for major medical
73 equipment or other than major medical equipment or a combination
74 of the two (2) may have been split between separate parties, the
75 total capital expenditure required to provide the proposed service



76 shall be considered in determining the necessity of certificate of
77 need review and in determining the appropriate certificate of need
78 review fee to be paid. The capital expenditure associated with
79 facilities and equipment to provide services in Mississippi shall
80 be considered regardless of where the capital expenditure was
81 made, in state or out of state, and regardless of the domicile of
82 the party making the capital expenditure, in state or out of
83 state.

84 (d) "Change of ownership" includes, but is not limited
85 to, inter vivos gifts, purchases, transfers, lease arrangements,
86 cash and/or stock transactions or other comparable arrangements
87 whenever any person or entity acquires or controls a majority
88 interest of * * * an existing health care facility, and/or the
89 change of ownership of major medical equipment, a health service,
90 or an institutional health service. Changes of ownership from
91 partnerships, single proprietorships or corporations to another
92 form of ownership are specifically included. However, "change of
93 ownership" shall not include any inherited interest acquired as a
94 result of a testamentary instrument or under the laws of descent
95 and distribution of the State of Mississippi.

96 (e) "Commencement of construction" means that all of
97 the following have been completed with respect to a proposal or
98 project proposing construction, renovating, remodeling or
99 alteration:



100 (i) A legally binding written contract has been
101 consummated by the proponent and a lawfully licensed contractor to
102 construct and/or complete the intent of the proposal within a
103 specified period of time in accordance with final architectural
104 plans which have been approved by the licensing authority of the
105 State Department of Health;

106 (ii) Any and all permits and/or approvals deemed
107 lawfully necessary by all authorities with responsibility for such
108 have been secured; and

109 (iii) Actual bona fide undertaking of the subject
110 proposal has commenced, and a progress payment of at least one
111 percent (1%) of the total cost price of the contract has been paid
112 to the contractor by the proponent, and the requirements of this
113 paragraph (e) have been certified to in writing by the State
114 Department of Health.

115 Force account expenditures, such as deposits, securities,
116 bonds, et cetera, may, in the discretion of the State Department
117 of Health, be excluded from any or all of the provisions of
118 defined commencement of construction.

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

122 (g) "Develop," when used in connection with health
123 services, means to undertake those activities which, on their
124 completion, will result in the offering of a new institutional



125 health service or the incurring of a financial obligation as
126 defined under applicable state law in relation to the offering of
127 such services.

128 (h) "Health care facility" includes hospitals,
129 psychiatric hospitals, chemical dependency hospitals, skilled
130 nursing facilities, end-stage renal disease (ESRD) facilities,
131 including freestanding hemodialysis units, intermediate care
132 facilities, ambulatory surgical facilities, intermediate care
133 facilities for the mentally retarded, home health agencies,
134 psychiatric residential treatment facilities, pediatric skilled
135 nursing facilities, long-term care hospitals, comprehensive
136 medical rehabilitation facilities, including facilities owned or
137 operated by the state or a political subdivision or
138 instrumentality of the state, but does not include Christian
139 Science sanatoriums operated or listed and certified by the First
140 Church of Christ, Scientist, Boston, Massachusetts. This
141 definition shall not apply to facilities for the private practice,
142 either independently or by incorporated medical groups, of
143 physicians, dentists or health care professionals except where
144 such facilities are an integral part of an institutional health
145 service. The various health care facilities listed in this
146 paragraph shall be defined as follows:

147 (i) "Hospital" means an institution which is
148 primarily engaged in providing to inpatients, by or under the
149 supervision of physicians, diagnostic services and therapeutic



150 services for medical diagnosis, treatment and care of injured,
151 disabled or sick persons, or rehabilitation services for the
152 rehabilitation of injured, disabled or sick persons. Such term
153 does not include psychiatric hospitals.

154 (ii) "Psychiatric hospital" means an institution
155 which is primarily engaged in providing to inpatients, by or under
156 the supervision of a physician, psychiatric services for the
157 diagnosis and treatment of persons with mental illness.

158 (iii) "Chemical dependency hospital" means an
159 institution which is primarily engaged in providing to inpatients,
160 by or under the supervision of a physician, medical and related
161 services for the diagnosis and treatment of chemical dependency
162 such as alcohol and drug abuse.

163 (iv) "Skilled nursing facility" means an
164 institution or a distinct part of an institution which is
165 primarily engaged in providing to inpatients skilled nursing care
166 and related services for patients who require medical or nursing
167 care or rehabilitation services for the rehabilitation of injured,
168 disabled or sick persons.

169 (v) "End-stage renal disease (ESRD) facilities"
170 means kidney disease treatment centers, which includes
171 freestanding hemodialysis units and limited care facilities. The
172 term "limited care facility" generally refers to an
173 off-hospital-premises facility, regardless of whether it is
174 provider or nonprovider operated, which is engaged primarily in



175 furnishing maintenance hemodialysis services to stabilized
176 patients.

177 (vi) "Intermediate care facility" means an
178 institution which provides, on a regular basis, health-related
179 care and services to individuals who do not require the degree of
180 care and treatment which a hospital or skilled nursing facility is
181 designed to provide, but who, because of their mental or physical
182 condition, require health-related care and services (above the
183 level of room and board).

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(f).

191 (viii) "Intermediate care facility for the
192 mentally retarded" means an intermediate care facility that
193 provides health or rehabilitative services in a planned program of
194 activities to persons with an intellectual disability, also
195 including, but not limited to, cerebral palsy and other conditions
196 covered by the Federal Developmentally Disabled Assistance and
197 Bill of Rights Act, Public Law 94-103.

198 (ix) "Home health agency" means a public or
199 privately owned agency or organization, or a subdivision of such



200 an agency or organization, properly authorized to conduct business
201 in Mississippi, which is primarily engaged in providing to
202 individuals at the written direction of a licensed physician, in
203 the individual's place of residence, skilled nursing services
204 provided by or under the supervision of a registered nurse
205 licensed to practice in Mississippi, and one or more of the
206 following services or items:

- 207 1. Physical, occupational or speech therapy;
- 208 2. Medical social services;
- 209 3. Part-time or intermittent services of a
210 home health aide;
- 211 4. Other services as approved by the
212 licensing agency for home health agencies;
- 213 5. Medical supplies, other than drugs and
214 biologicals, and the use of medical appliances; or
- 215 6. Medical services provided by an intern or
216 resident-in-training at a hospital under a teaching program of
217 such hospital.

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



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

227 (x) "Psychiatric residential treatment facility"
228 means any nonhospital establishment with permanent licensed
229 facilities which provides a twenty-four-hour program of care by
230 qualified therapists, including, but not limited to, duly licensed
231 mental health professionals, psychiatrists, psychologists,
232 psychotherapists and licensed certified social workers, for
233 emotionally disturbed children and adolescents referred to such
234 facility by a court, local school district or by the Department of
235 Human Services, who are not in an acute phase of illness requiring
236 the services of a psychiatric hospital, and are in need of such
237 restorative treatment services. For purposes of this
238 subparagraph, the term "emotionally disturbed" means a condition
239 exhibiting one or more of the following characteristics over a
240 long period of time and to a marked degree, which adversely
241 affects educational performance:

242 1. An inability to learn which cannot be
243 explained by intellectual, sensory or health factors;

244 2. An inability to build or maintain
245 satisfactory relationships with peers and teachers;

246 3. Inappropriate types of behavior or
247 feelings under normal circumstances;



248 4. A general pervasive mood of unhappiness or
249 depression; or

250 5. A tendency to develop physical symptoms or
251 fears associated with personal or school problems. An
252 establishment furnishing primarily domiciliary care is not within
253 this definition.

254 (xi) "Pediatric skilled nursing facility" means an
255 institution or a distinct part of an institution that is primarily
256 engaged in providing to inpatients skilled nursing care and
257 related services for persons under twenty-one (21) years of age
258 who require medical or nursing care or rehabilitation services for
259 the rehabilitation of injured, disabled or sick persons.

260 (xii) "Long-term care hospital" means a
261 freestanding, Medicare-certified hospital that has an average
262 length of inpatient stay greater than twenty-five (25) days, which
263 is primarily engaged in providing chronic or long-term medical
264 care to patients who do not require more than three (3) hours of
265 rehabilitation or comprehensive rehabilitation per day, and has a
266 transfer agreement with an acute care medical center and a
267 comprehensive medical rehabilitation facility. Long-term care
268 hospitals shall not use rehabilitation, comprehensive medical
269 rehabilitation, medical rehabilitation, sub-acute rehabilitation,
270 nursing home, skilled nursing facility or sub-acute care facility
271 in association with its name.



272 (xiii) "Comprehensive medical rehabilitation
273 facility" means a hospital or hospital unit that is licensed
274 and/or certified as a comprehensive medical rehabilitation
275 facility which provides specialized programs that are accredited
276 by the Commission on Accreditation of Rehabilitation Facilities
277 and supervised by a physician board certified or board eligible in
278 physiatry or other doctor of medicine or osteopathy with at least
279 two (2) years of training in the medical direction of a
280 comprehensive rehabilitation program that:

281 1. Includes evaluation and treatment of
282 individuals with physical disabilities;

283 2. Emphasizes education and training of
284 individuals with disabilities;

285 3. Incorporates at least the following core
286 disciplines:

- 287 (i) Physical Therapy;
- 288 (ii) Occupational Therapy;
- 289 (iii) Speech and Language Therapy;
- 290 (iv) Rehabilitation Nursing; and

291 4. Incorporates at least three (3) of the
292 following disciplines:

- 293 (i) Psychology;
- 294 (ii) Audiology;
- 295 (iii) Respiratory Therapy;
- 296 (iv) Therapeutic Recreation;



- 297 (v) Orthotics;
- 298 (vi) Prosthetics;
- 299 (vii) Special Education;
- 300 (viii) Vocational Rehabilitation;
- 301 (ix) Psychotherapy;
- 302 (x) Social Work;
- 303 (xi) Rehabilitation Engineering.

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

307 (i) "Health maintenance organization" or "HMO" means a
308 public or private organization organized under the laws of this
309 state or the federal government which:

310 (i) Provides or otherwise makes available to
311 enrolled participants health care services, including
312 substantially the following basic health care services: usual
313 physician services, hospitalization, laboratory, x-ray, emergency
314 and preventive services, and out-of-area coverage;

315 (ii) Is compensated (except for copayments) for
316 the provision of the basic health care services listed in
317 subparagraph (i) of this paragraph to enrolled participants on a
318 predetermined basis; and

319 (iii) Provides physician services primarily:

320 1. Directly through physicians who are either
321 employees or partners of such organization; or



322 2. Through arrangements with individual
323 physicians or one or more groups of physicians (organized on a
324 group practice or individual practice basis).

325 (j) "Health service area" means a geographic area of
326 the state designated in the State Health Plan as the area to be
327 used in planning for specified health facilities and services and
328 to be used when considering certificate of need applications to
329 provide health facilities and services.

330 (k) "Health services" means clinically related (i.e.,
331 diagnostic, treatment or rehabilitative) services and includes
332 alcohol, drug abuse, mental health and home health care services.
333 "Clinical health services" shall only include those activities
334 which contemplate any change in the existing bed complement of any
335 health care facility through the addition or conversion of any
336 beds, under Section 41-7-191(1)(c) or propose to offer any health
337 services if those services have not been provided on a regular
338 basis by the proposed provider of such services within the period
339 of twelve (12) months prior to the time such services would be
340 offered, under Section 41-7-191(1)(d). "Nonclinical health
341 services" shall be all other services which do not involve any
342 change in the existing bed complement or offering health services
343 as described above.

344 (l) "Institutional health services" shall mean health
345 services provided in or through health care facilities and shall



346 include the entities in or through which such services are
347 provided.

348 (m) "Major medical equipment" means medical equipment
349 designed for providing medical or any health-related service which
350 costs in excess of One Million Five Hundred Thousand Dollars
351 (\$1,500,000.00). However, this definition shall not be applicable
352 to clinical laboratories if they are determined by the State
353 Department of Health to be independent of any physician's office,
354 hospital or other health care facility or otherwise not so defined
355 by federal or state law, or rules and regulations promulgated
356 thereunder.

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

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

365 (p) "Person" means an individual, a trust or estate,
366 partnership, corporation (including associations, joint-stock
367 companies and insurance companies), the state or a political
368 subdivision or instrumentality of the state.

369 (q) "Provider" shall mean any person who is a provider
370 or representative of a provider of health care services requiring



371 a certificate of need under Section 41-7-171 et seq., or who has
372 any financial or indirect interest in any provider of services.

373 (r) "Radiation therapy services" means the treatment of
374 cancer and other diseases using ionizing radiation of either high
375 energy photons (x-rays or gamma rays) or charged particles
376 (electrons, protons or heavy nuclei). However, for purposes of a
377 certificate of need, radiation therapy services shall not include
378 low energy, superficial, external beam x-ray treatment of
379 superficial skin lesions.

380 (s) "Secretary" means the Secretary of Health and Human
381 Services, and any officer or employee of the Department of Health
382 and Human Services to whom the authority involved has been
383 delegated.

384 (t) "State Health Plan" means the sole and official
385 statewide health plan for Mississippi which identifies priority
386 state health needs and establishes standards and criteria for
387 health-related activities which require certificate of need review
388 in compliance with Section 41-7-191.

389 (u) "State Health Planning and Development Agency"
390 means the agency of state government designated to perform health
391 planning and resource development programs for the State of
392 Mississippi.

393 **SECTION 2.** Section 41-7-193, Mississippi Code of 1972, is
394 amended as follows:



395 41-7-193. (1) No person may enter into any financing
396 arrangement or commitment for financing a new institutional health
397 service or any other project requiring a certificate of need
398 unless such certificate has been granted for such purpose. A
399 certificate of need shall not be granted or issued to any person
400 for any proposal, cause or reason, unless the proposal has been
401 reviewed for consistency with the specifications and the criteria
402 established by the State Department of Health and substantially
403 complies with the projection of need as reported in the state
404 health plan in effect at the time the application for the proposal
405 was submitted.

406 (2) An application for a certificate of need for an
407 institutional health service, medical equipment or any proposal
408 requiring a certificate of need shall specify the time, within
409 that granted, such shall be functional or operational according to
410 a time schedule submitted with the application. Each certificate
411 of need shall specify the maximum amount of capital expenditure
412 that may be obligated. The State Department of Health shall
413 periodically review the progress and time schedule of any person
414 issued or granted a certificate of need for any purpose.

415 (3) An application for a certificate of need may be filed at
416 any time with the department after the applicant has given the
417 department fifteen (15) days' written notice of its intent to
418 apply for a certificate of need. The department shall not delay
419 review of an application. The department shall make its



420 recommendation approving or disapproving a complete application
421 within forty-five (45) days of the date the application was filed
422 or within fifteen (15) days of receipt of any requested
423 information, whichever is later, said request to be made by the
424 department within fifteen (15) days of the filing of the
425 application.

426 **SECTION 3.** Section 41-7-197, Mississippi Code of 1972, is
427 amended as follows:

428 41-7-197. (1) The State Department of Health shall adopt
429 and utilize procedures for conducting certificate of need reviews.
430 Such procedures shall include, inter alia, the following: (a)
431 written notification to the applicant; (b) written notification to
432 health care facilities in the same health service area as the
433 proposed service; (c) written notification to other persons who
434 prior to the receipt of the application have filed a formal notice
435 of intent to provide the proposed services in the same service
436 area; and (d) notification to members of the public who reside in
437 the service area where the service is proposed, which may be
438 provided through newspapers or public information channels.

439 (2) All notices provided shall include, inter alia, the
440 following: (a) the proposed schedule for the review; (b) written
441 notification of the period within which a public hearing during
442 the course of the review may be requested in writing by one or
443 more affected persons, such request to be made within * * * ten
444 (10) days of * * * the department's staff recommendation for



445 approval or disapproval of an application; and (c) the manner in
446 which notification will be provided of the time and place of any
447 hearing so requested. Any such hearing shall be * * * commenced
448 by * * * an independent hearing officer designated by the State
449 Department of Health within sixty (60) days of the filing of the
450 hearing request unless all parties to the hearing agree to extend
451 the time for the commencement of the hearing. At such hearing,
452 the hearing officer and any person affected by the proposal being
453 reviewed may conduct reasonable questioning of persons who make
454 relevant factual allegations concerning the proposal. The hearing
455 officer shall require that all persons be sworn before they may
456 offer any testimony at the hearing, and the hearing officer is
457 authorized to administer oaths. Any person so choosing may be
458 represented by counsel at the hearing. A record of the hearing
459 shall be made, which shall consist of a transcript of all
460 testimony received, all documents and other material introduced by
461 any interested person, the staff report and recommendation and
462 such other material as the hearing officer considers relevant,
463 including his own recommendation, which he shall make, after
464 reviewing, studying and analyzing the evidence presented during
465 the hearing, within a reasonable period of time after the hearing
466 is closed * * *, which in no event shall exceed forty-five (45)
467 days. The completed record shall be certified to the State Health
468 Officer, who shall consider only the record in making his
469 decision, and shall not consider any evidence or material which is



470 not included therein. All final decisions regarding the issuance
471 of a certificate of need shall be made by the State Health
472 Officer. The State Health Officer shall make his or her written
473 findings and issue his or her order after reviewing said record.
474 The findings and decision of the State Health Officer shall not be
475 deferred to any later date * * *.

476 (3) Unless a hearing is held, if review by the State
477 Department of Health concerning the issuance of a certificate of
478 need is not complete with a final decision issued by the State
479 Health Officer within the time specified by rule or regulation,
480 which shall not * * * exceed ninety (90) days * * * from the
481 filing of the application for a certificate of need, *the* proponent
482 of the proposal may, within thirty (30) days * * * after the
483 expiration of the specified time for review, commence such legal
484 action as is necessary, in the Chancery Court of the First
485 Judicial District of Hinds County or in the chancery court of the
486 county in which the * * * service or facility is proposed to be
487 provided, to compel the State Health Officer to issue written
488 findings and written order approving or disapproving the proposal
489 in question.

490 **SECTION 4.** Section 41-7-201, Mississippi Code of 1972, is
491 amended as follows:

492 41-7-201. (1) The provisions of this subsection (1) shall
493 apply to any party appealing any final order of the State



494 Department of Health pertaining to a certificate of need for * * *
495 a home health * * * agency, as defined in Section 41-7-173(h) (ix):
496 * * *

497 (* * * a) In addition to other remedies now available
498 at law or in equity, any party aggrieved by any such final order
499 of the State Department of Health shall have the right of * * *
500 appeal to the * * * Chancery Court of the First Judicial District
501 of Hinds County, Mississippi, which appeal must be filed
502 within * * * thirty (30) days after the date of the final order.
503 Provided, however, that any appeal of an order disapproving an
504 application for such a certificate of need may be made to the
505 chancery court of the county where the proposed construction,
506 expansion or alteration was to be located or the new service or
507 purpose of the capital expenditure was to be located. Such appeal
508 must be filed in accordance with the thirty (30) days for filing
509 as heretofore provided. Any appeal shall state briefly the nature
510 of the proceedings before the State Department of Health and shall
511 specify the order complained of. Any appeal shall state briefly
512 the nature of the proceedings before the State Department of
513 Health and shall specify the order complained of. Any person
514 whose rights may be materially affected by the action of the State
515 Department of Health may appear and become a party or the court
516 may, upon motion, order that any such person, organization or
517 entity be joined as a necessary party.



518 (* * *b) Upon the filing of such an appeal, the clerk
519 of the * * * chancery court shall serve notice thereof upon the
520 State Department of Health, whereupon the State Department of
521 Health shall, within thirty (30) days * * * or within such
522 additional time as the court may by order for cause allow from the
523 service of such notice, certify to the chancery court the record
524 in the case, which records shall include a transcript of all
525 testimony, together with all exhibits or copies thereof, all
526 pleadings, proceedings, orders, findings and opinions entered in
527 the case; provided, however, that the parties and the State
528 Department of Health may stipulate that a specified portion only
529 of the record shall be certified to the court as the record on
530 appeal.

531 * * *

532 (* * *c) The * * * court may dispose of the appeal in
533 termtime or vacation and may sustain or dismiss the appeal, modify
534 or vacate the order complained of, in whole or in part, * * * as
535 the case may be; but in case the order is wholly or partly
536 vacated, the court may also, in its discretion, remand the matter
537 to the State Department of Health for * * * such further
538 proceedings, not inconsistent with the court's order, as, in the
539 opinion of the court, justice may require. * * * The order shall
540 not be vacated or set aside, either in whole or in part, except
541 for errors of law, unless the court finds that the order of the
542 State Department of Health is not supported by substantial



543 evidence, is contrary to the manifest weight of the evidence, is
544 in excess of the statutory authority or jurisdiction of the State
545 Department of Health, or violates any vested constitutional rights
546 of any party involved in the appeal. Provided, however, an order
547 of the chancery court reversing the denial of a certificate of
548 need by the State Department of Health shall not entitle the
549 applicant to effectuate the certificate of need until either:

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

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

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

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

562 (a) There shall be a "stay of proceedings" of any final
563 order issued by the State Department of Health pertaining to the
564 issuance of a certificate of need for the establishment,
565 construction, expansion or replacement of a health care facility
566 for a period of thirty (30) days from the date of the order, if an
567 existing provider located in the same service area where the



568 health care facility is or will be located has requested a hearing
569 during the course of review in opposition to the issuance of the
570 certificate of need. The stay of proceedings shall expire at the
571 termination of thirty (30) days; however, no construction,
572 renovation or other capital expenditure that is the subject of the
573 order shall be undertaken, no license to operate any facility that
574 is the subject of the order shall be issued by the licensing
575 agency, and no certification to participate in the Title XVII or
576 Title XIX programs of the Social Security Act shall be granted,
577 until all statutory appeals have been exhausted or the time for
578 such appeals has expired. Notwithstanding the foregoing, the
579 filing of an appeal from a final order of the State Department of
580 Health or the chancery court for the issuance of a certificate of
581 need shall not prevent the purchase of medical equipment or
582 development or offering of institutional health services granted
583 in a certificate of need issued by the State Department of Health.

584 (b) In addition to other remedies now available at law
585 or in equity, any party aggrieved by such final order of the State
586 Department of Health shall have the right of appeal to the
587 Chancery Court of the First Judicial District of Hinds County,
588 Mississippi, which appeal must be filed within twenty (20) days
589 after the date of the final order. Provided, however, that any
590 appeal of an order disapproving an application for such a
591 certificate of need may be made to the chancery court of the
592 county where the proposed construction, expansion or alteration



593 was to be located or the new service or purpose of the capital
594 expenditure was to be located. Such appeal must be filed in
595 accordance with the twenty (20) days for filing as heretofore
596 provided. Any appeal shall state briefly the nature of the
597 proceedings before the State Department of Health and shall
598 specify the order complained of.

599 (c) Upon the filing of such an appeal, the clerk of the
600 chancery court shall serve notice thereof upon the State
601 Department of Health, whereupon the State Department of Health
602 shall, within thirty (30) days of the date of the filing of the
603 appeal, certify to the chancery court the record in the case,
604 which records shall include a transcript of all testimony,
605 together with all exhibits or copies thereof, all proceedings,
606 orders, findings and opinions entered in the case; provided,
607 however, that the parties and the State Department of Health may
608 stipulate that a specified portion only of the record shall be
609 certified to the court as the record on appeal. The chancery
610 court shall give preference to any such appeal from a final order
611 by the State Department of Health in a certificate of need
612 proceeding, and shall render a final order regarding such appeal
613 no later than one hundred twenty (120) days from the date of the
614 final order by the State Department of Health. If the chancery
615 court has not rendered a final order within this
616 one-hundred-twenty-day period, then the final order of the State
617 Department of Health shall be deemed to have been affirmed by the



618 chancery court, and any party to the appeal shall have the right
619 to appeal from the chancery court to the Supreme Court on the
620 record certified by the State Department of Health as otherwise
621 provided in paragraph (g) of this subsection. In the event the
622 chancery court has not rendered a final order within the
623 one-hundred-twenty-day period and an appeal is made to the Supreme
624 Court as provided herein, the Supreme Court shall remand the case
625 to the chancery court to make an award of costs, fees, reasonable
626 expenses and attorney's fees incurred in favor of appellee payable
627 by the appellant(s) should the Supreme Court affirm the order of
628 the State Department of Health.

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

635 (e) No new or additional evidence shall be introduced
636 in the chancery court but the case shall be determined upon the
637 record certified to the court.

638 (f) The court may dispose of the appeal in termtime or
639 vacation and may sustain or dismiss the appeal, modify or vacate
640 the order complained of in whole or in part and may make an award
641 of costs, fees, expenses and attorney's fees, as the case may be;
642 but in case the order is wholly or partly vacated, the court may



643 also, in its discretion, remand the matter to the State Department
644 of Health for such further proceedings, not inconsistent with the
645 court's order, as, in the opinion of the court, justice may
646 require. The court, as part of the final order, shall make an
647 award of costs, fees, reasonable expenses and attorney's fees
648 incurred in favor of appellee payable by the appellant(s) should
649 the court affirm the order of the State Department of Health. The
650 order shall not be vacated or set aside, either in whole or in
651 part, except for errors of law, unless the court finds that the
652 order of the State Department of Health is not supported by
653 substantial evidence, is contrary to the manifest weight of the
654 evidence, is in excess of the statutory authority or jurisdiction
655 of the State Department of Health, or violates any vested
656 constitutional rights of any party involved in the appeal.
657 Provided, however, an order of the chancery court reversing the
658 denial of a certificate of need by the State Department of Health
659 shall not entitle the applicant to effectuate the certificate of
660 need until either:
661 (i) Such order of the chancery court has become
662 final and has not been appealed to the Supreme Court; or
663 (ii) The Supreme Court has entered a final order
664 affirming the chancery court.
665 (g) Appeals in accordance with law may be had to the
666 Supreme Court of the State of Mississippi from any final judgment
667 of the chancery court.



668 (* * *h) Within thirty (30) days from the date of a
669 final order by the Supreme Court or a final order of the chancery
670 court not appealed to the Supreme Court that modifies or wholly or
671 partly vacates the final order of the State Department of Health
672 granting a certificate of need, the State Department of Health
673 shall issue another order in conformity with the final order of
674 the Supreme Court, or the final order of the chancery court not
675 appealed to the Supreme Court.

676 **SECTION 5.** Section 41-7-205, Mississippi Code of 1972, is
677 amended as follows:

678 41-7-205. * * * An applicant proposing a project which may
679 be governed by the provisions of Section 41-7-171 et seq. may
680 submit a determination of reviewability request to obtain a
681 written declaratory opinion regarding the reviewability of the
682 proposed project. If such opinion is sought, the requestor and
683 department shall abide by the provisions of Section 25-43-2.103 as
684 they are effective on July 1, 2016, except that the department's
685 response shall be provided within forty-five (45) days of the
686 request.

687 **SECTION 6.** This act shall take effect and be in force from
688 and after July 1, 2016.

