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Chapter No. 540
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HOUSE BILL NO. 826

Originated in House Don Richardson Clerk

HOUSE BILL NO. 826

AN ACT TO AMEND SECTION 41-7-201, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT APPEALS OF ORDERS OF THE STATE DEPARTMENT OF HEALTH PERTAINING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES SHALL BE MADE DIRECTLY TO THE MISSISSIPPI SUPREME COURT; TO AMEND SECTION 41-7-205, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A REQUEST FOR CERTAIN EXPENDITURES BY A HEALTH CARE FACILITY THAT EXCEED THE CAPITAL EXPENDITURE MINIMUM SHALL BE AUTHORIZED FOR EXPEDITED REVIEW; AND FOR RELATED PURPOSES.

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

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

41-7-201. * * * The provisions of this section shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health care facility as defined in Section 41-7-173(h) * * *:

(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health care facility for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVIII or

Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for those appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health * * * for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

(b) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of direct appeal to the Mississippi Supreme Court, which appeal must be filed within twenty (20) days after the date of the final order. * * * Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

(c) Upon the filing of such an appeal, the Clerk of the Supreme Court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the * * * court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; * * * however, * * * the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal. * * *

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

(e) No new or additional evidence shall be introduced in the Supreme Court, but the case shall be determined upon the record certified to the court.

(f) The Supreme Court * * * may sustain or dismiss the appeal, modify or vacate the order complained of, in whole or in part, and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for any further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) if the court affirms the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. * * *

* * *

(g) Within thirty (30) days from the date of a final order by the Supreme Court * * * that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court * * *.

SECTION 2. Section 41-7-205, Mississippi Code of 1972, is amended as follows:

41-7-205. The State Department of Health shall provide an expedited review for those projects which it determines to warrant

such action. All requests for such an expedited review by the applicant must be made in writing to the State Department of Health. The State Department of Health shall make a determination as to whether expedited review is appropriate within fifteen (15) days after receipt of a written request. The State Department of Health shall render its decision concerning the issuance of a certificate of need within ninety (90) days after the receipt of a completed application. A project is subject to expedited review only if it meets one (1) of the following criteria:

(a) A transfer or change of ownership of a health care facility wherein the facility continues to operate under the same category of license or permit as it possessed prior to the date of the proposed change of ownership and none of the other activities described in Section 41-7-191(1) take place in conjunction with such transfer;

(b) Replacement of equipment with used equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan;

(c) A request for project cost overruns that exceed the rate of inflation as determined by the State Department of Health;

(d) A request for relocation of services or facilities if the relocation of such services or facilities (i) involves a capital expenditure by or on behalf of a health care facility, or (ii) is more than one thousand three hundred twenty (1,320) feet from the main entrance of the health care facility or the facility where the service is located;

(e) A request for a certificate of need to comply with duly recognized fire, building, or life safety codes, or to comply with state licensure standards or accreditation standards required for reimbursements; and

(f) A request for a certificate of need for an expenditure that is not for a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure service or

series of those procedures, and that exceeds the capital expenditure minimum specified under Section 41-7-173.

SECTION 3. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 29, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 29, 2011

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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