HOUSE BILL NO. 1363

AN ACT TO AMEND SECTION 41-4-7, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE DEPARTMENT OF MENTAL HEALTH TO CONDUCT CRIMINAL BACKGROUND CHECKS ON PROSPECTIVE EMPLOYEES AND VOLUNTEERS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-4-7, Mississippi Code of 1972, is amended as follows:

41-4-7. The State Board of Mental Health shall have the following powers and duties:

(a) To appoint a full-time executive director of the Department of Mental Health, who shall be employed by the board and shall serve as executive secretary to the board. The first director shall be a duly licensed physician with special interest and competence in psychiatry, and shall possess a minimum of three (3) years' experience in clinical and administrative psychiatry. Subsequent directors shall possess at least a master's degree or its equivalent, and shall possess at least ten (10) years' administrative experience in the field of mental health. The salary of the executive director shall be determined by the board;

(b) To set up state plans for the purpose of controlling and treating any and all forms of mental and emotional illness, alcoholism, drug misuse and developmental disabilities;

(c) To supervise, coordinate and establish standards for all operations and activities of the state related to mental health and providing mental health services, including but not limited to: the requirement that no person be approved for treatment which is paid for by funds made available through the department who has not had a treatment plan established as a
result of having been seen by a licensed physician or licensed clinical psychologist and that physician or clinical psychologist signing these plans stating that he/she has personally evaluated the client and that the treatment plan is medically necessary. A physician or clinical psychologist shall recertify each client's record at least semiannually (except for persons with a diagnosis of mental retardation/developmental disability which shall be completed annually), and more often if medically indicated by physically visiting the client and certifying same in the record. The board shall have the authority to develop and implement all standards and plans and shall have the authority to establish appropriate actions, including financially punitive actions, to insure enforcement of these established standards, in accordance with the Administrative Procedures Law (Section 25-43-1 et seq.);

(d) To enter into contracts with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest;

(e) To collect reasonable fees for its services; provided, however, if it is determined that a person receiving services is unable to pay the total fee, the department shall collect any amount such person is able to pay;

(f) To certify, coordinate and establish minimum standards and establish minimum required services for regional mental health and mental retardation commissions and other community service providers for community or regional programs and services in mental health, mental retardation, alcoholism, drug misuse, developmental disabilities, compulsive gambling, addictive disorders and related programs throughout the state. Such regional mental health and mental retardation commissions and other community service providers shall submit an annual operational plan to the State Department of Mental Health for approval or disapproval based on the minimum standards and minimum
required services established by the department for certification. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider. However, the department shall not mandate a standard or service, or decertify a regional commission or community service provider for not meeting a standard or service, if the standard or service does not have funding appropriated by the Legislature or have a funding source from the State Department of Mental Health or a local funding source. The State Board of Mental Health shall promulgate rules and regulations necessary to implement the provisions of this paragraph (f), in accordance with the Administrative Procedures Law (Section 25-43-1 et seq.).

(g) To establish and promulgate reasonable minimum standards for the construction and operation of state and all Department of Mental Health certified facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, transfer of patients and their records, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care, when such care is provided for persons with mental or emotional illness, mental retardation, alcoholism, drug misuse and developmental disabilities;
(h) To assist community or regional programs consistent with the purposes of this chapter by making grants and contracts from available funds;

(i) To establish and collect reasonable fees for necessary inspection services incidental to certification or compliance;

(j) To accept gifts, trusts, bequests, grants, endowments or transfers of property of any kind;

(k) To receive monies coming to it by way of fees for services or by appropriations;

(l) To serve as the single state agency in receiving and administering any and all funds available from any source for the purpose of service delivery, training, research and education in regard to all forms of mental illness, mental retardation, alcoholism, drug misuse and developmental disabilities, unless such funds are specifically designated to a particular agency or institution by the federal government, the Mississippi Legislature or any other grantor;

(m) To establish mental health holding centers for the purpose of providing short-term emergency mental health treatment, places for holding persons awaiting commitment proceedings or awaiting placement in a state mental health facility following commitment, and for diverting placement in a state mental health facility. These mental health holding facilities shall be readily accessible, available statewide, and be in compliance with emergency services' minimum standards. They shall be comprehensive and available to triage and make appropriate clinical disposition including the capability to access inpatient services or less restrictive alternatives, as needed, as determined by medical staff. Such facility shall have medical, nursing and behavioral services available on a 24-hour-a-day basis. The board may provide for all or part of the costs of establishing and operating the holding centers in each district.

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from such funds as may be appropriated to the board for such use, and may participate in any plan or agreement with any public or private entity under which the entity will provide all or part of the costs of establishing and operating a holding center in any district;

(n) To certify/license case managers, mental health therapists, mental retardation therapists, mental health/retardation program administrators, addiction counselors and others as deemed appropriate by the board. Persons already professionally licensed by another state board or agency are not required to be certified/licensed under this section by the Department of Mental Health. The department shall not use professional titles in its certification/licensure process for which there is an independent licensing procedure. Such certification/licensure shall be valid only in the state mental health system, in programs funded and/or certified by the Department of Mental Health, and/or in programs certified/licensed by the State Department of Health that are operated by the state mental health system serving the mentally ill, mentally retarded, developmental disabled or persons with addictions, and shall not be transferable;

(o) To develop formal mental health worker qualifications for regional mental health and mental retardation commissions and other community service providers. The State Personnel Board shall develop and promulgate a recommended salary scale and career ladder for all regional mental health/retardation center therapists and case managers who work directly with clients. The State Personnel Board shall also develop and promulgate a career ladder for all direct care workers employed by the State Department of Mental Health;

(p) The employees of the department shall be governed by personnel merit system rules and regulations, the same as other employees in state services;
(q) To establish such rules and regulations as may be necessary in carrying out the provisions of this chapter, including the establishment of a formal grievance procedure to investigate and attempt to resolve consumer complaints;

(r) To grant easements for roads, utilities and any other purpose it finds to be in the public interest;

(s) To survey statutory designations, building markers and the names given to mental health/retardation facilities and proceedings in order to recommend deletion of obsolete and offensive terminology relative to the mental health/retardation system;

(t) To ensure an effective case management system directed at persons who have been discharged from state and private psychiatric hospitals to ensure their continued well-being in the community;

(u) To develop formal service delivery standards designed to measure the quality of services delivered to community clients, as well as the timeliness of services to community clients provided by regional mental health/retardation commissions and other community services providers;

(v) To establish regional state offices to provide mental health crisis intervention centers and services available throughout the state to be utilized on a case-by-case emergency basis. The regional services director, other staff and delivery systems shall meet the minimum standards of the Department of Mental Health;

(w) To require performance contracts with community mental health/mental retardation service providers to contain performance indicators to measure successful outcomes, including diversion of persons from inpatient psychiatric hospitals, rapid/timely response to emergency cases, client satisfaction with services and other relevant performance measures;
(x) To enter into interagency agreements with other state agencies, school districts and other local entities as determined necessary by the department to ensure that local mental health service entities are fulfilling their responsibilities to the overall state plan for behavioral services;

(y) To establish and maintain a toll-free grievance reporting telephone system for the receipt and referral for investigation of all complaints by clients of state and community mental health/retardation facilities;

(z) To establish a peer review/quality assurance evaluation system that assures that appropriate assessment, diagnosis and treatment is provided according to established professional criteria and guidelines;

(aa) To develop and implement state plans for the purpose of assisting with the care and treatment of persons with Alzheimer's disease and other dementia. This plan shall include education and training of service providers, care-givers in the home setting and others who deal with persons with Alzheimer's disease and other dementia, and development of adult day care, family respite care and counseling programs to assist families who maintain persons with Alzheimer's disease and other dementia in the home setting. No agency shall be required to provide any services under this section until such time as sufficient funds have been appropriated or otherwise made available by the Legislature specifically for the purposes of the treatment of persons with Alzheimer's and other dementia; and

(bb) Working with the advice and consent of the administration of Ellisville State School, to enter into negotiations with the Economic Development Authority of Jones County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Ellisville State School to the Economic Development Authority of Jones County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that
the financial interest of the persons with mental retardation served by Ellisville State School will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Jones County, and encourages fairness to the Economic Development Authority of Jones County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Ellisville State School must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for citizens with mental retardation served at Ellisville State School.

If the State Board of Mental Health authorizes the sale of lands owned by Ellisville State School, as provided for under this paragraph (bb), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Ellisville State School Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any interest earned on the principal may be expended solely for the benefits of clients served at Ellisville State School. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Ellisville State School may use any interest earned on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Ellisville State School. Ellisville State School shall
make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of interest earned on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Ellisville State School with an annual report on the Ellisville State School Client's Trust Fund to indicate the total monies in the trust fund, interest earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/retardation services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature.

(cc) Working with the advice and consent of the administration of Boswell Regional Center, to enter into negotiations with the Economic Development Authority of Simpson County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Boswell Regional Center to the Economic Development Authority of Simpson County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with mental retardation served by Boswell Regional Center will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Simpson County, and encourages fairness to the
Economic Development Authority of Simpson County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Boswell Regional Center must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for citizens with mental retardation served at Boswell Regional Center. In any such exchange, lease or sale of such lands owned by Boswell Regional Center, title to all minerals, oil and gas on such lands shall be reserved, together with the right of ingress and egress to remove same, whether such provisions be included in the terms of any such exchange, lease or sale or not.

If the State Board of Mental Health authorizes the sale of lands owned by Boswell Regional Center, as provided for under this paragraph (cc), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Boswell Regional Center Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any earnings on the principal may be expended solely for the benefits of clients served at Boswell Regional Center. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any earnings on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Boswell Regional Center may use any earnings on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Boswell Regional Center. Boswell Regional Center shall make known to the
Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of the earnings on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Boswell Regional Center with an annual report on the Boswell Regional Center Client's Trust Fund to indicate the total monies in the trust fund, interest and other income earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/retardation services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature.

(dd) Notwithstanding any other provision of law, the Board of Mental Health is authorized to fingerprint and perform a criminal history record check on every new employee or volunteer. Every new employee and volunteer shall provide a valid current social security number and/or driver's license number, which shall be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

SECTION 2. This act shall take effect and be in force from and after July 1, 2002.