

By: Representative Moody

To: Public Health and  
Welfare

## HOUSE BILL NO. 739

1 AN ACT TO AMEND SECTION 41-4-7, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY THE AUTHORITY OF THE BOARD OF MENTAL HEALTH TO USE  
3 FINGERPRINTING TO PERFORM BACKGROUND CHECKS ON ALL EMPLOYEES AND  
4 VOLUNTEERS; AND FOR RELATED PURPOSES.

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

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

8 41-4-7. The State Board of Mental Health shall have the  
9 following powers and duties:

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

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

23 (c) To supervise, coordinate and establish standards  
24 for all operations and activities of the state related to mental  
25 health and providing mental health services, including, but not  
26 limited to: the requirement that no person be approved for  
27 treatment which is paid for by funds made available through the  
28 department who has not had a treatment plan established as a



29 result of having been seen by a licensed physician or licensed  
30 clinical psychologist and that physician or clinical psychologist  
31 signing these plans stating that he/she has personally evaluated  
32 the client and that the treatment plan is medically necessary. A  
33 physician or clinical psychologist shall recertify each client's  
34 record at least semiannually (except for persons with a diagnosis  
35 of mental retardation/developmental disability which shall be  
36 completed annually), and more often if medically indicated by  
37 physically visiting the client and certifying same in the record.  
38 The board shall have the authority to develop and implement all  
39 standards and plans and shall have the authority to establish  
40 appropriate actions, including financially punitive actions, to  
41 insure enforcement of these established standards, in accordance  
42 with the Administrative Procedures Law (Section 25-43-1 et seq.);

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

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

51 (f) To certify, coordinate and establish minimum  
52 standards and establish minimum required services for regional  
53 mental health and mental retardation commissions and other  
54 community service providers for community or regional programs and  
55 services in mental health, mental retardation, alcoholism, drug  
56 misuse, developmental disabilities, compulsive gambling, addictive  
57 disorders and related programs throughout the state. Such  
58 regional mental health and mental retardation commissions and  
59 other community service providers shall submit an annual  
60 operational plan to the State Department of Mental Health for  
61 approval or disapproval based on the minimum standards and minimum



62 required services established by the department for certification.  
63 If the department finds deficiencies in the plan of any regional  
64 commission or community service provider based on the minimum  
65 standards and minimum required services established for  
66 certification, the department shall give the regional commission  
67 or community service provider a six-month probationary period to  
68 bring its standards and services up to the established minimum  
69 standards and minimum required services. After the six-month  
70 probationary period, if the department determines that the  
71 regional commission or community service provider still does not  
72 meet the minimum standards and minimum required services  
73 established for certification, the department may remove the  
74 certification of the commission or provider. However, the  
75 department shall not mandate a standard or service, or decertify a  
76 regional commission or community service provider for not meeting  
77 a standard or service, if the standard or service does not have  
78 funding appropriated by the Legislature or have a funding source  
79 from the State Department of Mental Health or a local funding  
80 source. The State Board of Mental Health shall promulgate rules  
81 and regulations necessary to implement the provisions of this  
82 paragraph (f), in accordance with the Administrative Procedures  
83 Law (Section 25-43-1 et seq.);

84 (g) To establish and promulgate reasonable minimum  
85 standards for the construction and operation of state and all  
86 Department of Mental Health certified facilities, including  
87 reasonable minimum standards for the admission, diagnosis, care,  
88 treatment, transfer of patients and their records, and also  
89 including reasonable minimum standards for providing day care,  
90 outpatient care, emergency care, inpatient care and follow-up  
91 care, when such care is provided for persons with mental or  
92 emotional illness, mental retardation, alcoholism, drug misuse and  
93 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 twenty-four-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 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;



160           (q) To establish such rules and regulations as may be  
161 necessary in carrying out the provisions of this chapter,  
162 including the establishment of a formal grievance procedure to  
163 investigate and attempt to resolve consumer complaints;

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

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

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

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

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

186           (w) To require performance contracts with community  
187 mental health/mental retardation service providers to contain  
188 performance indicators to measure successful outcomes, including  
189 diversion of persons from inpatient psychiatric hospitals,  
190 rapid/timely response to emergency cases, client satisfaction with  
191 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; \* \* \*

(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



291 Economic Development Authority of Simpson County. Any  
292 negotiations proposed which would result in the recommendation for  
293 exchange, lease or sale of lands owned by Boswell Regional Center  
294 must have the approval of the State Board of Mental Health. The  
295 State Board of Mental Health may and has the final authority as to  
296 whether or not these negotiations result in the exchange, lease or  
297 sale of the properties it currently holds in trust for citizens  
298 with mental retardation served at Boswell Regional Center. In any  
299 such exchange, lease or sale of such lands owned by Boswell  
300 Regional Center, title to all minerals, oil and gas on such lands  
301 shall be reserved, together with the right of ingress and egress  
302 to remove same, whether such provisions be included in the terms  
303 of any such exchange, lease or sale or not.

304       If the State Board of Mental Health authorizes the sale of  
305 lands owned by Boswell Regional Center, as provided for under this  
306 paragraph (cc), the monies derived from the sale shall be placed  
307 into a special fund that is created in the State Treasury to be  
308 known as the "Boswell Regional Center Client's Trust Fund." The  
309 principal of the trust fund shall remain inviolate and shall never  
310 be expended. Any earnings on the principal may be expended solely  
311 for the benefits of clients served at Boswell Regional Center.  
312 The State Treasurer shall invest the monies of the trust fund in  
313 any of the investments authorized for the Mississippi Prepaid  
314 Affordable College Tuition Program under Section 37-155-9, and  
315 those investments shall be subject to the limitations prescribed  
316 by Section 37-155-9. Unexpended amounts remaining in the trust  
317 fund at the end of a fiscal year shall not lapse into the State  
318 General Fund, and any earnings on amounts in the trust fund shall  
319 be deposited to the credit of the trust fund. The administration  
320 of Boswell Regional Center may use any earnings on the principal  
321 of the trust fund, upon appropriation by the Legislature, as  
322 needed for services or facilities by the clients of Boswell  
323 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 section of the code, the Board of Mental Health shall be authorized to fingerprint and perform a criminal history record check on every \* \* \* employee or volunteer. Every \* \* \* 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;

(ee) The Department of Mental Health shall have the authority for the development of a consumer friendly single point of intake and referral system within its service areas for persons with mental illness, mental retardation, developmental



357 disabilities or alcohol or substance abuse who need assistance  
358 identifying or accessing appropriate services. The department  
359 will develop and implement a comprehensive evaluation procedure  
360 ensuring that, where appropriate, the affected person or their  
361 parent or legal guardian will be involved in the assessment and  
362 planning process. The department, as the point of intake and as  
363 service provider, shall have the authority to determine the  
364 appropriate institutional, hospital or community care setting for  
365 persons who have been diagnosed with mental illness, mental  
366 retardation, developmental disabilities and/or alcohol or  
367 substance abuse, and may provide for the least restrictive  
368 placement if the treating professional believes such a setting is  
369 appropriate, if the person affected or their parent or legal  
370 guardian wants such services, and if the department can do so with  
371 a reasonable modification of the program without creating a  
372 fundamental alteration of the program. The least restrictive  
373 setting could be an institution, hospital or community setting,  
374 based upon the needs of the affected person or their parent or  
375 legal guardian.

376       **SECTION 2.** This act shall take effect and be in force from  
377 and after its passage.

