

AMENDMENT PROPOSED TO

Mu #1

HOUSE BILL NO. 1367

By Moak

After line 49, add the following
and re-number the sections accordingly:

attachment

(note to clerk
from HB's
45, 329 and/or 432)

AMEND TITLE (to conform) (as follows):

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1 SECTION 0. The State of Mississippi hereby recognizes the
2 necessity of allowing individuals to make informed and educated
3 choices regarding health care services and the essential need to
4 provide information to facilitate these important decisions. It
5 further recognizes that public disclosure of certain health care
6 information would lower the cost of health care through the use of
7 the most appropriate provider and improve the quality of health
8 care services by mandating the reporting of information regarding
9 health care providers. It is the intention of the Legislature to
10 establish a procedure by which the general public may obtain
11 essential and basic information concerning potential health care
12 providers, while ensuring the accuracy and disclosure of all
13 relevant information that would enable individuals to
14 informatively select their health care provider.

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SECTION 0. (1) The State Board of Medical Licensure shall
collect for each physician licensed or otherwise practicing
medicine in the State of Mississippi the following information, in

H.B.S.
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432

31 a format developed by the board that shall be available for
32 dissemination to the public:

13 (a) A description of any criminal convictions for
4 felonies and violent misdemeanors as determined by the board. A
5 description of any criminal charges. For purposes of this
6 paragraph, a person shall be deemed to be convicted of a crime if
7 that person pleaded guilty or if that person was found or adjudged
8 guilty by a court of competent jurisdiction.

9 (b) A description of any charges to which a physician
0 pleads nolo contendere or where sufficient facts of guilt were
1 found and the matter was continued without a finding by a court of
2 competent jurisdiction.

3 (c) A description of any final disciplinary actions
taken by the State Board of Medical Licensure.

4 (d) A description of any final disciplinary actions by
licensing boards in other states or reported in the National
Practitioner Data Bank.

5 (e) A description of revocation or involuntary
restriction of hospital privileges that have been taken by a
hospital's governing body and any other official of a hospital
after procedural due process has been afforded, or the resignation
from or nonrenewal of medical staff membership or the restriction
of privileges at a hospital taken in lieu of or in settlement of a
pending disciplinary case.

6 (f) Notwithstanding any law to the contrary, all
medical malpractice court judgments and all medical malpractice
arbitration awards in which a payment is awarded to a complaining
party and all settlements of medical malpractice claims in which a
payment is made to a complaining party. Information concerning
all settlements shall be accompanied by the following statements:

"Settlement of a claim may occur for a variety of reasons
which do not necessarily reflect negatively on the professional
competence or conduct of the physician. A payment in settlement

4 of a medical malpractice action or claim should not be construed
5 as creating a presumption that medical malpractice has occurred."

6 All civil court awards or settlements arising from
7 allegations of sexual misconduct filed by patients, employees or
8 hospital staff shall be provided.

9 (g) A paragraph describing the malpractice experience
10 of each medical specialty and an explanation that some high risk
11 specialties experience more malpractice claims than less risky
12 specialties. This information shall be updated on an annual basis
13 reflecting the most recent malpractice claims experience of each
14 specialty.

(h) Names of medical schools and dates of graduation.

(i) Graduate medical education.

(j) Specialty board certification(s).

(k) Number of years in practice.

(l) Name of hospitals where the physician has
privileges.

(m) Appointments to medical school faculties and
indication as to whether the physician has a responsibility for
graduate medical education.

(n) Information regarding publications in peer-reviewed
medical literature.

(o) Information regarding professional or community
service activities and awards.

(p) The location of the physician's primary practice
location.

(q) The indication of any translating services that may
be available at the physician's primary practice location.

(r) An indication of whether the physician participates
in the Medicaid program.

(2) The State Board of Medical Licensure shall provide each
physician with a copy of that physician's profile prior to the
release to the public.

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(3) A physician shall be provided a reasonable time, not to exceed sixty (60) days, to correct factual inaccuracies or omissions that may appear in the profile.

(4) (a) A physician may petition the State Board of Medical Licensure for permission to temporarily omit certain information as described in paragraph (b) of this subsection for a period not to exceed one (1) year.

(b) If the physician demonstrates to the board that disclosure of the information would represent an undue risk of injury to the physician or the property of the physician, the board may grant the request and the information shall be withheld until such time as the situation is resolved, based on the presentation of evidence to the board, for a period not to exceed one (1) year.

(5) The State Board of Medical Licensure shall not disclose any pending malpractice claims to the public, and nothing in this section shall be construed to prohibit the State Board of Medical Licensure from investigating and disciplining a physician on the basis of pending medical malpractice claim information obtained under this act.

SECTION (1) The clerk of any court in which a physician is convicted of any crime or in which any unregistered practitioner is convicted of holding himself out as a practitioner of medicine or of practicing medicine shall, within one (1) week thereafter, report the same to the State Board of Medical Licensure together with a copy of the court proceedings in the case.

(2) For the purposes of this section, a person shall be deemed to be convicted of a crime if he pleaded guilty or was found or adjudged guilty by a court of competent jurisdiction.

(3) Upon review, the State Board of Medical Licensure shall provide the information for purposes consistent with this act.

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(4) In the instance where a physician pleads nolo contendere to charges or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction, the clerk shall, within one (1) week thereafter, report the same to the State Board of Medical Licensure together with a copy of the court proceedings in the case. Upon review, the State Board of Medical Licensure shall provide the information for purposes consistent with this act.

SECTION 4.

(1) Each hospital or health care facility licensed under the act of July 19, 1979, (Public Law 130, No. 48), known as the Health Care Facilities Act, shall report to the State Board of Medical Licensure if the hospital or facility denies, restricts, revokes or fails to renew staff privileges or accepts the resignation of a physician for any reason related to the physician's competence to practice medicine or for any other reason related to a complaint or allegation regarding any violation of law, regulation, rule or bylaw of the hospital or facility regardless of whether the complaint or allegation specifically states a violation of a specific law, regulation, rule or bylaw. The report shall be filed within thirty (30) days of the occurrence of the reportable action and include details regarding the nature and circumstances of the action, its date and reasons for it.

(2) Each hospital or health care facility licensed under the Health Care Facilities Act shall file an annual disciplinary report with the board no later than January 31 and shall send the report by certified or registered mail. The report shall summarize the action reports submitted for the previous calendar year and shall be signed under oath. If the hospital or facility submitted no action reports for the previous calendar year, then the report required by this subsection shall state that no action reports were required.

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1 (3) No hospital, health care facility or person that reports
2 information to the department under this section shall be liable
3 to the physician referenced in the report for making the report,
4 provided that the report is made in good faith and without malice.

5 SECTION 6 (1) A professional medical association, society,
6 body, professional standards review organization or similarly
7 constituted professional organization, whether or not such
8 association, society, body or organization is local, regional,
9 state, national or international in scope, shall report to the
10 State Board of Medical Licensure the disciplinary action taken
against any physician. Such report of disciplinary action shall
be filed with the board within thirty (30) days of such
disciplinary action, shall be in writing and shall be mailed to
the board by certified or registered mail.

(2) As used in this section, the term "disciplinary action"
includes, but is not limited to, revocation, suspension, censure,
reprimand, restriction, nonrenewal, denial or restriction of
privileges or a resignation shall be reported only when the
resignation or the denial or restriction of privileges is related
in any way to:

- (a) The physician's competence to practice medicine; or
- (b) A complaint or allegation regarding any violation
of law or regulation, including, but not limited to, the
regulations of the State Health Department or the Medical
Licensure Board or hospital, health care facility or professional
medical association bylaws, whether or not the complaint or
allegation specifically cites violation of a specified law,
regulation or bylaw.

SECTION 7. Every insurer or risk management organization
which provides professional liability insurance to a physician
shall report to the State Board of Medical Licensure any claim or
action for damages for personal injuries alleged to have been

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3 caused by error, omission or negligence in the performance of the
4 physician's professional services where the claim resulted in:

- 5 (a) Final judgment in any amount;
- 6 (b) Settlement in any amount; or
- 7 (c) Final disposition not resulting in payment on
8 behalf of the insured.

9 (2) Reports shall be filed with the State Board of Medical
0 Licensure no longer than thirty (30) days following the occurrence
1 of any event listed under this section.

2 (3) The reports shall be in writing on a form prescribed by
3 the State Board of Medical Licensure and shall contain the
4 following information.

- 5 (a) The name, address, specialty coverage and policy
6 number of the physician against whom the claim is made;
- 7 (b) The name, address and age of the claimant or
8 plaintiff;
- 9 (c) The nature and substance of the claim;
- 0 (d) The date when and place where the claim arose;
- 1 (e) The amounts paid, if any, and the date, manner of
2 disposition, judgment and settlement;
- 3 (f) The date and reason for final disposition, if no
4 judgment or settlement; and
- 5 (g) Such additional information as the State Board of
6 Medical Licensure shall require. No insurer or its agents or
7 employees shall be liable in any cause of action arising from
8 reporting to the State Board of Medical Licensure as required in
9 this section.

10 **SECTION 4.** (1) A physician who does not possess
11 professional liability insurance shall report to the State Board
12 of Medical Licensure every settlement or arbitration award of a
13 claim or action for damages for death or personal injury caused by
14 negligence, error or omission in practice, or the unauthorized
15 rendering of professional services by the physician. The report

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shall be made within thirty (30) days after the settlement agreement has been reduced to writing or thirty (30) days after service of the arbitration award on the parties as long as it is signed by all of the parties.

(2) (a) Exempt as otherwise provided in paragraph (b), a physician who fails to comply with the provisions of this section shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00).

(b) A physician who makes a knowing or intentional failure to comply with the provisions of this act, or conspires or colludes not to comply with the provisions of this act, or hinders or impedes any other person in such compliance, shall be subject to a civil penalty of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00).

SECTION 2. (1) Effective January 1, 2005, a fee of not more than Twenty Dollars (\$20.00) shall be assessed to all physicians, and the fee shall be collected by the State Board of Medical Licensure every two (2) years to offset the costs associated with this act.

(2) The State Board of Medical Licensure shall make available to the public, upon request by any person or entity and upon payment of a reasonable copy charge not to exceed One Dollar (\$1.00) per page, the information compiled by the State Board of Medical Licensure as provided in Section 3 of this act.

(3) Each physician shall make available to the public, free of charge, information compiled by the State Board of Medical Licensure in Section 3 of this act. All physicians shall conspicuously post at their primary place of practice a notice stating, "free background information available upon request."

(4) The board shall disseminate information of Section 3 of this act by posting the information on the state's website on the Internet. The fees collected under subsection (1) may be used to pay for the expenses of complying with this subsection.

9 SECTION 9. The State Board of Medical Licensure shall in
 0 the manner provided by law promulgate the rules and regulations
 1 necessary to carry out the provisions of this act, including, but
 2 not limited to, the exchange of information between the State
 3 Board of Medical Licensure and other relevant state agencies,
 4 insurance carriers, hospitals and judicial administrative offices.

5 SECTION 11. This act shall take effect ~~and be in force from~~
 6 ~~and~~ after January 1, 2005.

CR/gm

SECTION 2

(1) An institution for the aged or infirm, as defined in Section 43-11-1, shall permit a resident, the resident's next of kin at the request of the resident, or the resident's guardian to monitor the room of the resident through the use of electronic monitoring devices.

(2) The institution shall require a resident who conducts electronic monitoring or the resident's guardian to post a notice on the door of the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(3) Electronic monitoring conducted under this section:

- (a) Is not compulsory and may be conducted only at the request of the resident or the resident's guardian;
- (b) Must be paid for by the resident or the resident's guardian; and
- (c) Must protect the privacy rights of other residents and visitors to the institution to the extent reasonably possible.

(4) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct electronic monitoring.

(5) An institution shall make reasonable physical accommodation for electronic monitoring, including:

(a) Providing a reasonably secure place to mount the video surveillance camera or other monitoring device; and

(b) Providing access to power sources for the video surveillance camera or other electronic monitoring device.

(6) An institution shall inform a resident or the resident's guardian of the resident's right to conduct electronic monitoring.

(7) If electronic monitoring is conducted, the institution may require the resident, the resident's next of kin, or the resident's guardian to conduct the electronic monitoring in plain view.

(8) An institution may require that a request to conduct electronic monitoring be made in writing.

(9) Subject to applicable rules of evidence and procedure, a tape or recording created through the use of electronic monitoring conducted under this section may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(10) An administrator of an institution who knowingly refuses to permit a resident, the resident's next of kin at the request of the resident, or the resident's guardian to monitor the room of the resident in accordance with this section through the use of electronic monitoring devices is guilty of a misdemeanor.

(11) An administrator of an institution who knowingly refuses to admit an individual to residency in the institution, or who knowingly allows the removal of a resident from the institution, because of a request to conduct electronic monitoring under this section is guilty of a misdemeanor.

(12) (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this section or a tape or recording made by the device is guilty of a misdemeanor.

(b) It is an affirmative defense to prosecution under this subsection that the person took the action with the consent of the resident on whose behalf the electronic monitoring device was installed, the resident's guardian, or the resident's next of kin if the next of kin was conducting the monitoring at the request of the resident.

(13) The State Board of Health shall promulgate rules and regulations to enforce the provisions of this section.

(14) For purposes of this section, "electronic monitoring device" includes:

(a) Video surveillance cameras installed in the room of a resident; and

(b) Audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room.