

By: Senator(s) Nunnelee

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2407

1 AN ACT TO AMEND SECTION 41-4-7, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE MISSISSIPPI DEPARTMENT OF MENTAL HEALTH TO PURCHASE
3 LIABILITY INSURANCE FOR PHYSICIANS AND DENTISTS EMPLOYED BY THE
4 DEPARTMENT; 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;



94 (h) To assist community or regional programs consistent
95 with the purposes of this chapter by making grants and contracts
96 from available funds;

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

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

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

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

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



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

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

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

157 (p) The employees of the department shall be governed
158 by personnel merit system rules and regulations, the same as other
159 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;



192 (x) To enter into interagency agreements with other
193 state agencies, school districts and other local entities as
194 determined necessary by the department to ensure that local mental
195 health service entities are fulfilling their responsibilities to
196 the overall state plan for behavioral services;

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

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

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

218 (bb) Working with the advice and consent of the
219 administration of Ellisville State School, to enter into
220 negotiations with the Economic Development Authority of Jones
221 County for the purpose of negotiating the possible exchange, lease
222 or sale of lands owned by Ellisville State School to the Economic
223 Development Authority of Jones County. It is the intent of the
224 Mississippi Legislature that such negotiations shall ensure that



225 the financial interest of the persons with mental retardation
226 served by Ellisville State School will be held paramount in the
227 course of these negotiations. The Legislature also recognizes the
228 importance of economic development to the citizens of the State of
229 Mississippi and Jones County, and encourages fairness to the
230 Economic Development Authority of Jones County. Any negotiations
231 proposed which would result in the recommendation for exchange,
232 lease or sale of lands owned by Ellisville State School must have
233 the approval of the State Board of Mental Health. The State Board
234 of Mental Health may and has the final authority as to whether or
235 not these negotiations result in the exchange, lease or sale of
236 the properties it currently holds in trust for citizens with
237 mental retardation served at Ellisville State School.

238 If the State Board of Mental Health authorizes the sale of
239 lands owned by Ellisville State School, as provided for under this
240 paragraph (bb), the monies derived from the sale shall be placed
241 into a special fund that is created in the State Treasury to be
242 known as the "Ellisville State School Client's Trust Fund." The
243 principal of the trust fund shall remain inviolate and shall never
244 be expended. Any interest earned on the principal may be expended
245 solely for the benefits of clients served at Ellisville State
246 School. The State Treasurer shall invest the monies of the trust
247 fund in any of the investments authorized for the Mississippi
248 Prepaid Affordable College Tuition Program under Section 37-155-9,
249 and those investments shall be subject to the limitations
250 prescribed by Section 37-155-9. Unexpended amounts remaining in
251 the trust fund at the end of a fiscal year shall not lapse into
252 the State General Fund, and any interest earned on amounts in the
253 trust fund shall be deposited to the credit of the trust fund.
254 The administration of Ellisville State School may use any interest
255 earned on the principal of the trust fund, upon appropriation by
256 the Legislature, as needed for services or facilities by the
257 clients of Ellisville State School. Ellisville State School shall



258 make known to the Legislature, through the Legislative Budget
259 Committee and the respective Appropriations Committees of the
260 House and Senate, its proposed use of interest earned on the
261 principal of the trust fund for any fiscal year in which it
262 proposes to make expenditures thereof. The State Treasurer shall
263 provide Ellisville State School with an annual report on the
264 Ellisville State School Client's Trust Fund to indicate the total
265 monies in the trust fund, interest earned during the year,
266 expenses paid from the trust fund and such other related
267 information.

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

276 All new programs authorized under this section shall be
277 subject to the availability of funds appropriated therefor by the
278 Legislature;

279 (cc) Working with the advice and consent of the
280 administration of Boswell Regional Center, to enter into
281 negotiations with the Economic Development Authority of Simpson
282 County for the purpose of negotiating the possible exchange, lease
283 or sale of lands owned by Boswell Regional Center to the Economic
284 Development Authority of Simpson County. It is the intent of the
285 Mississippi Legislature that such negotiations shall ensure that
286 the financial interest of the persons with mental retardation
287 served by Boswell Regional Center will be held paramount in the
288 course of these negotiations. The Legislature also recognizes the
289 importance of economic development to the citizens of the State of
290 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



324 Legislature, through the Legislative Budget Committee and the
325 respective Appropriations Committees of the House and Senate, its
326 proposed use of the earnings on the principal of the trust fund
327 for any fiscal year in which it proposes to make expenditures
328 thereof. The State Treasurer shall provide Boswell Regional
329 Center with an annual report on the Boswell Regional Center
330 Client's Trust Fund to indicate the total monies in the trust
331 fund, interest and other income earned during the year, expenses
332 paid from the trust fund and such other related information.

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

341 All new programs authorized under this section shall be
342 subject to the availability of funds appropriated therefor by the
343 Legislature;

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

353 (ee) The Department of Mental Health shall have the
354 authority for the development of a consumer friendly single point
355 of intake and referral system within its service areas for persons
356 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 (ff) To have the sole power and discretion to enter
377 into, sign, execute and deliver long-term or multiyear leases of
378 real and personal property to and from other state and federal
379 agencies;

380 (gg) To purchase professional liability insurance for
381 physicians and dentists employed by the Department of Mental
382 Health.

383 **SECTION 2.** This act shall take effect and be in force from
384 and after July 1, 2004.

