

By: Representative Whittington

To: Public Health and Human Services

HOUSE BILL NO. 756

1 AN ACT TO AMEND SECTION 41-4-7, MISSISSIPPI CODE OF 1972, TO
2 DIRECT THE STATE BOARD OF MENTAL HEALTH TO FORMULATE POLICIES BY
3 WHICH PHYSICIANS, PSYCHOLOGISTS, NURSES, DIRECT CARE WORKERS,
4 HOUSEPARENTS AND SECURITY PERSONNEL OF THE HOSPITALS AND
5 FACILITIES UNDER THE BOARD'S AUTHORITY, AND NO OTHER EMPLOYEES,
6 MAY BE ASSIGNED HOUSING ON THE GROUNDS OF EACH HOSPITAL OR
7 FACILITY; AND FOR RELATED PURPOSES.

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

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

11 41-4-7. The State Board of Mental Health shall have the
12 following powers and duties:

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

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

26 (c) To supervise, coordinate and establish standards
27 for all operations and activities of the state related to mental
28 health and providing mental health services, including, but not
29 limited to: the requirement that no person be approved for

30 treatment which is paid for by funds made available through the
31 department who has not had a treatment plan established as a
32 result of having been seen by a licensed physician or licensed
33 clinical psychologist and that physician or clinical psychologist
34 signing these plans stating that he/she has personally evaluated
35 the client and that the treatment plan is medically necessary. A
36 physician or clinical psychologist shall recertify each client's
37 record at least semiannually (except for persons with a diagnosis
38 of mental retardation/developmental disability which shall be
39 completed annually), and more often if medically indicated by
40 physically visiting the client and certifying same in the record.
41 The board shall have the authority to develop and implement all
42 standards and plans and shall have the authority to establish
43 appropriate actions, including financially punitive actions, to
44 insure enforcement of these established standards, in accordance
45 with the Administrative Procedures Law (Section 25-43-1 et seq.);

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

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

54 (f) To certify, coordinate and establish minimum
55 standards and establish minimum required services for regional
56 mental health and mental retardation commissions and other
57 community service providers for community or regional programs and
58 services in mental health, mental retardation, alcoholism, drug
59 misuse, developmental disabilities, compulsive gambling, addictive
60 disorders and related programs throughout the state. Such
61 regional mental health and mental retardation commissions and
62 other community service providers shall submit an annual

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

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

95 emotional illness, mental retardation, alcoholism, drug misuse and
96 developmental disabilities;

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

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

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

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

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

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

128 twenty-four-hour-a-day basis. The board may provide for all or
129 part of the costs of establishing and operating the holding
130 centers in each district from such funds as may be appropriated to
131 the board for such use, and may participate in any plan or
132 agreement with any public or private entity under which the entity
133 will provide all or part of the costs of establishing and
134 operating a holding center in any district;

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

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

160 (p) The employees of the department shall be governed
161 by personnel merit system rules and regulations, the same as other
162 employees in state services;

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

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

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

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

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

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

189 (w) To require performance contracts with community
190 mental health/mental retardation service providers to contain
191 performance indicators to measure successful outcomes, including
192 diversion of persons from inpatient psychiatric hospitals,

193 rapid/timely response to emergency cases, client satisfaction with
194 services and other relevant performance measures;

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

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

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

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

221 (bb) Working with the advice and consent of the
222 administration of Ellisville State School, to enter into
223 negotiations with the Economic Development Authority of Jones
224 County for the purpose of negotiating the possible exchange, lease
225 or sale of lands owned by Ellisville State School to the Economic

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

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

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

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

279 All new programs authorized under this section shall be
280 subject to the availability of funds appropriated therefor by the
281 Legislature;

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

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

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

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

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

344 All new programs authorized under this section shall be
345 subject to the availability of funds appropriated therefor by the
346 Legislature;

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

356 (ee) The Department of Mental Health shall have the
357 authority for the development of a consumer friendly single point

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

379 (ff) To have the sole power and discretion to enter
380 into, sign, execute and deliver long-term or multiyear leases of
381 real and personal property owned by the Department of Mental
382 Health to and from other state and federal agencies and private
383 entities deemed to be in the public's best interest. Any monies
384 derived from such leases shall be deposited into the funds of the
385 Department of Mental Health for its exclusive use. Leases to
386 private entities shall be approved by the Department of Finance
387 and Administration and all leases shall be filed with the
388 Secretary of State;

389 (gg) Not later than July 1, 2006, the board shall
390 formulate policies by which physicians, psychologists, nurses,

391 direct care workers, houseparents and security personnel of the
392 hospitals and facilities under the authority of the board, and no
393 other employees, may be assigned housing on the grounds of each
394 hospital or facility. No employee shall be deemed qualified to
395 receive housing unless the employee's job duties require him or
396 her to be directly responsible for providing medical,
397 psychological, nursing, direct care, houseparenting or security
398 services.

399 **SECTION 2.** This act shall take effect and be in force from
400 and after July 1, 2005.