

By: Senator(s) Hyde-Smith

To: Public Health and Welfare

SENATE BILL NO. 2098

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

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

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

59 (f) To certify, coordinate and establish minimum  
60 standards and establish minimum required services for regional  
61 mental health and mental retardation commissions and other  
62 community service providers for community or regional programs and

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

92 (g) To establish and promulgate reasonable minimum  
93 standards for the construction and operation of state and all  
94 Department of Mental Health certified facilities, including  
95 reasonable minimum standards for the admission, diagnosis, care,

96 treatment, transfer of patients and their records, and also  
97 including reasonable minimum standards for providing day care,  
98 outpatient care, emergency care, inpatient care and follow-up  
99 care, when such care is provided for persons with mental or  
100 emotional illness, mental retardation, alcoholism, drug misuse and  
101 developmental disabilities;

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

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

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

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

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

120 (m) To establish mental health holding centers for the  
121 purpose of providing short-term emergency mental health treatment,  
122 places for holding persons awaiting commitment proceedings or  
123 awaiting placement in a state mental health facility following  
124 commitment, and for diverting placement in a state mental health  
125 facility. These mental health holding facilities shall be readily  
126 accessible, available statewide, and be in compliance with  
127 emergency services' minimum standards. They shall be  
128 comprehensive and available to triage and make appropriate

129 clinical disposition, including the capability to access inpatient  
130 services or less restrictive alternatives, as needed, as  
131 determined by medical staff. Such facility shall have medical,  
132 nursing and behavioral services available on a  
133 twenty-four-hour-a-day basis. The board may provide for all or  
134 part of the costs of establishing and operating the holding  
135 centers in each district from such funds as may be appropriated to  
136 the board for such use, and may participate in any plan or  
137 agreement with any public or private entity under which the entity  
138 will provide all or part of the costs of establishing and  
139 operating a holding center in any district;

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

156           (o) To develop formal mental health worker  
157 qualifications for regional mental health and mental retardation  
158 commissions and other community service providers. The State  
159 Personnel Board shall develop and promulgate a recommended salary  
160 scale and career ladder for all regional mental health/retardation  
161 center therapists and case managers who work directly with

162 clients. The State Personnel Board shall also develop and  
163 promulgate a career ladder for all direct care workers employed by  
164 the State Department of Mental Health;

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

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

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

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

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

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

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

194           (w) To require performance contracts with community  
195 mental health/mental retardation service providers to contain  
196 performance indicators to measure successful outcomes, including  
197 diversion of persons from inpatient psychiatric hospitals,  
198 rapid/timely response to emergency cases, client satisfaction with  
199 services and other relevant performance measures;

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

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

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

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

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

246           If the State Board of Mental Health authorizes the sale of  
247 lands owned by Ellisville State School, as provided for under this  
248 paragraph (bb), the monies derived from the sale shall be placed  
249 into a special fund that is created in the State Treasury to be  
250 known as the "Ellisville State School Client's Trust Fund." The  
251 principal of the trust fund shall remain inviolate and shall never  
252 be expended. Any interest earned on the principal may be expended  
253 solely for the benefits of clients served at Ellisville State  
254 School. The State Treasurer shall invest the monies of the trust  
255 fund in any of the investments authorized for the Mississippi  
256 Prepaid Affordable College Tuition Program under Section 37-155-9,  
257 and those investments shall be subject to the limitations  
258 prescribed by Section 37-155-9. Unexpended amounts remaining in



259 the trust fund at the end of a fiscal year shall not lapse into  
260 the State General Fund, and any interest earned on amounts in the  
261 trust fund shall be deposited to the credit of the trust fund.  
262 The administration of Ellisville State School may use any interest  
263 earned on the principal of the trust fund, upon appropriation by  
264 the Legislature, as needed for services or facilities by the  
265 clients of Ellisville State School. Ellisville State School shall  
266 make known to the Legislature, through the Legislative Budget  
267 Committee and the respective Appropriations Committees of the  
268 House and Senate, its proposed use of interest earned on the  
269 principal of the trust fund for any fiscal year in which it  
270 proposes to make expenditures thereof. The State Treasurer shall  
271 provide Ellisville State School with an annual report on the  
272 Ellisville State School Client's Trust Fund to indicate the total  
273 monies in the trust fund, interest earned during the year,  
274 expenses paid from the trust fund and such other related  
275 information.

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

284       All new programs authorized under this section shall be  
285 subject to the availability of funds appropriated therefor by the  
286 Legislature;

287       (cc) Working with the advice and consent of the  
288 administration of Boswell Regional Center, to enter into  
289 negotiations with the Economic Development Authority of Simpson  
290 County for the purpose of negotiating the possible exchange, lease  
291 or sale of lands owned by Boswell Regional Center to the Economic

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

312 If the State Board of Mental Health authorizes the sale of  
313 lands owned by Boswell Regional Center, as provided for under this  
314 paragraph (cc), the monies derived from the sale shall be placed  
315 into a special fund that is created in the State Treasury to be  
316 known as the "Boswell Regional Center Client's Trust Fund." The  
317 principal of the trust fund shall remain inviolate and shall never  
318 be expended. Any earnings on the principal may be expended solely  
319 for the benefits of clients served at Boswell Regional Center.  
320 The State Treasurer shall invest the monies of the trust fund in  
321 any of the investments authorized for the Mississippi Prepaid  
322 Affordable College Tuition Program under Section 37-155-9, and  
323 those investments shall be subject to the limitations prescribed  
324 by Section 37-155-9. Unexpended amounts remaining in the trust

325 fund at the end of a fiscal year shall not lapse into the State  
326 General Fund, and any earnings on amounts in the trust fund shall  
327 be deposited to the credit of the trust fund. The administration  
328 of Boswell Regional Center may use any earnings on the principal  
329 of the trust fund, upon appropriation by the Legislature, as  
330 needed for services or facilities by the clients of Boswell  
331 Regional Center. Boswell Regional Center shall make known to the  
332 Legislature, through the Legislative Budget Committee and the  
333 respective Appropriations Committees of the House and Senate, its  
334 proposed use of the earnings on the principal of the trust fund  
335 for any fiscal year in which it proposes to make expenditures  
336 thereof. The State Treasurer shall provide Boswell Regional  
337 Center with an annual report on the Boswell Regional Center  
338 Client's Trust Fund to indicate the total monies in the trust  
339 fund, interest and other income earned during the year, expenses  
340 paid from the trust fund and such other related information.

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

349 All new programs authorized under this section shall be  
350 subject to the availability of funds appropriated therefor by the  
351 Legislature;

352 (dd) Notwithstanding any other section of the code, the  
353 Board of Mental Health shall be authorized to fingerprint and  
354 perform a criminal history record check on every employee or  
355 volunteer. Every employee and volunteer shall provide a valid  
356 current social security number and/or driver's license number  
357 which shall be furnished to conduct the criminal history record

358 check. If no disqualifying record is identified at the state  
359 level, fingerprints shall be forwarded to the Federal Bureau of  
360 Investigation for a national criminal history record check;

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

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

391 private entities shall be approved by the Department of Finance  
392 and Administration and all leases shall be filed with the  
393 Secretary of State;

394 (gg) Not later than July 1, 2006, the board shall  
395 formulate policies by which physicians, psychologists, nurses,  
396 direct care workers, houseparents and security personnel of the  
397 hospitals and facilities under the authority of the board, and no  
398 other employees, may be assigned housing on the grounds of each  
399 hospital or facility. No employee shall be deemed qualified to  
400 receive housing unless the employee's job duties require him or  
401 her to be directly responsible for providing medical,  
402 psychological, nursing, direct care, houseparenting or security  
403 services.

404 **SECTION 2.** This act shall take effect and be in force from  
405 and after July 1, 2006.