

By: Senator(s) Dearing

To: Public Health and Welfare

SENATE BILL NO. 2120

1 AN ACT TO PROVIDE A "BILL OF RIGHTS" FOR PATIENTS AND  
 2 RESIDENTS OF HEALTH CARE FACILITIES; TO PROVIDE DEFINITIONS; TO  
 3 REQUIRE DISCLOSURE OF INFORMATION ABOUT RIGHTS AND TREATMENT; TO  
 4 REQUIRE COURTEOUS TREATMENT; TO REQUIRE APPROPRIATE HEALTH CARE  
 5 AND FREEDOM FROM MALTREATMENT; TO REQUIRE THE DISCLOSURE OF THE  
 6 PHYSICIAN'S IDENTITY; TO PROVIDE FOR PARTICIPATION IN PLANNING  
 7 TREATMENT AND NOTIFICATION OF FAMILY MEMBERS; TO PROVIDE THE RIGHT  
 8 TO REFUSE CARE; TO PROVIDE FOR COMMUNICATION PRIVACY AND  
 9 CONFIDENTIALITY OF RECORDS OF TREATMENT; TO PROVIDE A GRIEVANCE  
 10 PROCEDURE; TO PROVIDE A RIGHT TO ASSOCIATE; TO PROVIDE FOR  
 11 ADVISORY COUNCILS; TO PROVIDE FOR PROTECTION AND ADVOCACY  
 12 SERVICES; TO SET STANDARDS FOR ISOLATION AND RESTRAINTS; AND FOR  
 13 RELATED PURPOSES.

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

15 **SECTION 1. Legislative intent.** It is the intent of the  
 16 Legislature and the purpose of this act to promote the interests  
 17 and well-being of the patients and residents of health care  
 18 facilities. No health care facility may require a patient or  
 19 resident to waive these rights as a condition of admission to the  
 20 facility. Any guardian or conservator of a patient or resident  
 21 or, in the absence of a guardian or conservator, an interested  
 22 person, may seek enforcement of these rights on behalf of a  
 23 patient or resident. An interested person may also seek  
 24 enforcement of these rights on behalf of a patient or resident who  
 25 has a guardian or conservator through administrative agencies or  
 26 in district court having jurisdiction over guardianships and  
 27 conservatorships. Pending the outcome of an enforcement  
 28 proceeding the health care facility may, in good faith, comply  
 29 with the instructions of a guardian or conservator. It is the  
 30 intent of this act that every patient's civil and religious  
 31 liberties, including the right to independent personal decisions  
 32 and knowledge of available choices, shall not be infringed and

33 that the facility shall encourage and assist in the fullest  
34 possible exercise of these rights.

35 **SECTION 2. Definitions.** For the purposes of this act,  
36 "patient" means a person who is admitted to an acute care  
37 inpatient facility for a continuous period longer than twenty-four  
38 (24) hours for the purpose of diagnosis or treatment bearing on  
39 the physical or mental health of that person. "Patient" also  
40 means a minor who is admitted to a residential program as defined  
41 in Section 43-16-3. For purposes of this act, "patient" also  
42 means any person who is receiving mental health treatment on an  
43 outpatient basis or in a community support program or other  
44 community-based program. "Resident" means a person who is  
45 admitted to a nonacute care facility, including extended care  
46 facilities, nursing homes and boarding care homes for care  
47 required because of prolonged mental or physical illness or  
48 disability, recovery from injury or disease or advancing age.

49 **SECTION 3. Public policy declaration.** It is declared to be  
50 the public policy of this state that the interests of each patient  
51 and resident be protected by a declaration of a patient's bill of  
52 rights which shall include, but not be limited to, the rights  
53 specified in this act.

54 **SECTION 4. Information about rights.** Patients and residents  
55 shall, at admission, be told that there are legal rights for their  
56 protection during their stay at the facility or throughout their  
57 course of treatment and maintenance in the community and that  
58 these are described in an accompanying written statement of the  
59 applicable rights and responsibilities set forth in this act. In  
60 the case of patients admitted to residential programs as defined  
61 in Section 43-16-3, the written statement shall also describe the  
62 right of a person sixteen (16) years old or older to request  
63 release, and shall list the names and telephone numbers of  
64 individuals and organizations that provide advocacy and legal  
65 services for patients in residential programs. Reasonable

66 accommodations shall be made for those with communication  
67 impairments and those who speak a language other than English.  
68 Current facility policies, inspection findings of state and local  
69 health authorities, and further explanation of the written  
70 statement of rights shall be available to patients, residents,  
71 their guardians or their chosen representatives upon reasonable  
72 request to the administrator or other designated staff person,  
73 consistent with Section 43-47-1 et seq. relating to vulnerable  
74 adults.

75        **SECTION 5. Courteous treatment.** Patients and residents have  
76 the right to be treated with courtesy and respect for their  
77 individuality by employees of or persons providing service in a  
78 health care facility.

79        **SECTION 6. Appropriate health care.** Patients and residents  
80 shall have the right to appropriate medical and personal care  
81 based on individual needs. Appropriate care for residents means  
82 care designed to enable residents to achieve their highest level  
83 of physical and mental functioning. This right is limited where  
84 the service is not reimbursable by public or private resources.

85        **SECTION 7. Physician's identity.** Patients and residents  
86 shall have or be given, in writing, the name, business address,  
87 telephone number and specialty, if any, of the physician  
88 responsible for coordination of their care. In cases where it is  
89 medically inadvisable, as documented by the attending physician in  
90 a patient's or resident's care record, the information shall be  
91 given to the patient's or resident's guardian or other person  
92 designated by the patient or resident as a representative.

93        **SECTION 8. Relationship with other health services.**  
94 Patients and residents who receive services from an outside  
95 provider are entitled, upon request, to be told the identity of  
96 the provider. Residents shall be informed, in writing, of any  
97 health care services which are provided to those residents by  
98 individuals, corporations or organizations other than their

99 facility. Information shall include the name of the outside  
100 provider, the address and a description of the service which may  
101 be rendered. In cases where it is medically inadvisable, as  
102 documented by the attending physician in a patient's or resident's  
103 care record, the information shall be given to the patient's or  
104 resident's guardian or other person designated by the patient or  
105 resident as a representative.

106 **SECTION 9. Information about treatment.** Patients and  
107 residents shall be given by their physicians complete and current  
108 information concerning their diagnosis, treatment, alternatives,  
109 risks and prognosis as required by the physician's legal duty to  
110 disclose. This information shall be in terms and language the  
111 patients or residents can reasonably be expected to understand.  
112 Patients and residents may be accompanied by a family member or  
113 other chosen representative. This information shall include the  
114 likely medical or major psychological results of the treatment and  
115 its alternatives. In cases where it is medically inadvisable, as  
116 documented by the attending physician in a patient's or resident's  
117 medical record, the information shall be given to the patient's or  
118 resident's guardian or other person designated by the patient or  
119 resident as a representative. Individuals have the right to  
120 refuse this information.

121 Every patient or resident suffering from any form of breast  
122 cancer shall be fully informed, prior to or at the time of  
123 admission and during her stay, of all alternative effective  
124 methods of treatment of which the treating physician is  
125 knowledgeable, including surgical, radiological or  
126 chemotherapeutic treatments or combinations of treatments and the  
127 risks associated with each of those methods.

128 **SECTION 10. Participation in planning treatment;**  
129 **notification of family members.** (1) Patients and residents shall  
130 have the right to participate in the planning of their health  
131 care. This right includes the opportunity to discuss treatment

132 and alternatives with individual caregivers, the opportunity to  
133 request and participate in formal care conferences and the right  
134 to include a family member or other chosen representative. In the  
135 event that the patient or resident cannot be present, a family  
136 member or other representative chosen by the patient or resident  
137 may be included in such conferences.

138 (2) If a patient or resident who enters a facility is  
139 unconscious or comatose or is unable to communicate, the facility  
140 shall make reasonable efforts as required under subsection (3) to  
141 notify either a family member or a person designated in writing by  
142 the patient as the person to contact in an emergency that the  
143 patient or resident has been admitted to the facility. The  
144 facility shall allow the family member to participate in treatment  
145 planning, unless the facility knows or has reason to believe the  
146 patient or resident has an effective advance directive to the  
147 contrary or knows the patient or resident has specified in writing  
148 that they do not want a family member included in treatment  
149 planning. After notifying a family member but prior to allowing a  
150 family member to participate in treatment planning, the facility  
151 must make reasonable efforts, consistent with reasonable medical  
152 practices, to determine if the patient or resident has executed an  
153 advance directive relative to the patient or resident's health  
154 care decisions. For purposes of this subsection, "reasonable  
155 efforts" include:

156 (a) Examining the personal effects of the patient or  
157 resident;

158 (b) Examining the medical records of the patient or  
159 resident in the possession of the facility;

160 (c) Inquiring of any emergency contact or family member  
161 contacted under this act whether the patient or resident has  
162 executed an advance directive and whether the patient or resident  
163 has a physician to whom the patient or resident normally goes for  
164 care; and

165           (d) Inquiring of the physician to whom the patient or  
166 resident normally goes for care, if known, whether the patient or  
167 resident has executed an advance directive. If a facility  
168 notifies a family member or designated emergency contact or allows  
169 a family member to participate in treatment planning in accordance  
170 with this subsection, the facility is not liable to the patient or  
171 resident for damages on the grounds that the notification of the  
172 family member or emergency contact or the participation of the  
173 family member was improper or violated the patient's privacy  
174 rights.

175           (3) In making reasonable efforts to notify a family member  
176 or designated emergency contact, the facility shall attempt to  
177 identify family members or a designated emergency contact by  
178 examining the personal effects of the patient or resident and the  
179 medical records of the patient or resident in the possession of  
180 the facility. If the facility is unable to notify a family member  
181 or designated emergency contact within twenty-four (24) hours  
182 after the admission, the facility shall notify the county social  
183 service agency or local law enforcement agency that the patient or  
184 resident has been admitted and the facility has been unable to  
185 notify a family member or designated emergency contact. The  
186 county social service agency and local law enforcement agency  
187 shall assist the facility in identifying and notifying a family  
188 member or designated emergency contact. A county social service  
189 agency or local law enforcement agency that assists a facility in  
190 implementing this section is not liable to the patient or resident  
191 for damages on the grounds that the notification of the family  
192 member or emergency contact or the participation of the family  
193 member was improper or violated the patient's privacy rights.

194           **SECTION 11. Continuity of care.** Patients and residents  
195 shall have the right to be cared for with reasonable regularity  
196 and continuity of staff assignment as far as facility policy  
197 allows.

198           **SECTION 12. Right to refuse care.** Competent patients and  
199 residents shall have the right to refuse treatment based on the  
200 information required in Section 9. Residents who refuse  
201 treatment, medication or dietary restrictions shall be informed of  
202 the likely medical or major psychological results of the refusal,  
203 with documentation in the individual medical record. In cases  
204 where a patient or resident is incapable of understanding the  
205 circumstances but has not been adjudicated incompetent, or when  
206 legal requirements limit the right to refuse treatment, the  
207 conditions and circumstances shall be fully documented by the  
208 attending physician in the patient's or resident's medical record.

209           **SECTION 13. Experimental research.** Written, informed  
210 consent must be obtained prior to a patient's or resident's  
211 participation in experimental research. Patients and residents  
212 have the right to refuse participation. Both consent and refusal  
213 shall be documented in the individual care record.

214           **SECTION 14. Freedom from maltreatment.** Patients and  
215 residents shall be free from maltreatment as defined in the  
216 Vulnerable Adults Protection Act, Section 43-47-1 et seq.  
217 "Maltreatment" means the intentional and nontherapeutic infliction  
218 of physical pain or injury, or any persistent course of conduct  
219 intended to produce mental or emotional distress. Every patient  
220 and resident shall also be free from nontherapeutic chemical and  
221 physical restraints, except in fully documented emergencies, or as  
222 authorized in writing after examination by a patient's or  
223 resident's physician for a specified and limited period of time,  
224 and only when necessary to protect the resident from self-injury  
225 or injury to others.

226           **SECTION 15. Treatment privacy.** Patients and residents shall  
227 have the right to respectfulness and privacy as it relates to  
228 their medical and personal care program. Case discussion,  
229 consultation, examination and treatment are confidential and shall  
230 be conducted discreetly. Privacy shall be respected during

231 toileting, bathing and other activities of personal hygiene,  
232 except as needed for patient or resident safety or assistance.

233       **SECTION 16. Confidentiality of records.** Patients and  
234 residents shall be assured confidential treatment of their  
235 personal and medical records, and may approve or refuse their  
236 release to any individual outside the facility. Residents shall  
237 be notified when personal records are requested by any individual  
238 outside the facility and may select someone to accompany them when  
239 the records or information are the subject of a personal  
240 interview. Copies of records and written information from the  
241 records shall be made available in accordance with this section  
242 and Section 41-9-61. This right does not apply to complaint  
243 investigations and inspections by the Department of Health, where  
244 required by third-party payment contracts, or where otherwise  
245 provided by law.

246       **SECTION 17. Disclosure of services available.** Patients and  
247 residents shall be informed, prior to or at the time of admission  
248 and during their stay, of services which are included in the  
249 facility's basic per diem or daily room rate and that other  
250 services are available at additional charges. Facilities shall  
251 make every effort to assist patients and residents in obtaining  
252 information regarding whether the Medicare or medical assistance  
253 program will pay for any or all of the aforementioned services.

254       **SECTION 18. Responsive service.** Patients and residents  
255 shall have the right to a prompt and reasonable response to their  
256 questions and requests.

257       **SECTION 19. Personal privacy.** Patients and residents shall  
258 have the right to every consideration of their privacy,  
259 individuality and cultural identity as related to their social,  
260 religious and psychological well-being. Facility staff shall  
261 respect the privacy of a resident's room by knocking on the door  
262 and seeking consent before entering, except in an emergency or  
263 where clearly inadvisable.

264           **SECTION 20. Grievances.** Patients and residents shall be  
265 encouraged and assisted, throughout their stay in a facility or  
266 their course of treatment, to understand and exercise their rights  
267 as patients, residents and citizens. Patients and residents may  
268 voice grievances and recommend changes in policies and services to  
269 facility staff and others of their choice, free from restraint,  
270 interference, coercion, discrimination or reprisal, including  
271 threat of discharge. Notice of the grievance procedure of the  
272 facility or program, as well as addresses and telephone numbers  
273 for the State Board of Health and the area nursing home ombudsman,  
274 shall be posted in a conspicuous place.

275           Every acute care inpatient facility, every residential  
276 program, every nonacute care facility and every facility employing  
277 more than two (2) people that provides outpatient mental health  
278 services shall have a written internal grievance procedure that,  
279 at a minimum, sets forth the process to be followed; specifies  
280 time limits, including time limits for facility response; provides  
281 for the patient or resident to have the assistance of an advocate;  
282 requires a written response to written grievances; and provides  
283 for a timely decision by an impartial decision maker if the  
284 grievance is not otherwise resolved.

285           **SECTION 21. Communication privacy.** Patients and residents  
286 may associate and communicate privately with persons of their  
287 choice and enter and, except as provided by the commitment  
288 statutes, leave the facility as they choose. Patients and  
289 residents shall have access, at their expense, to writing  
290 instruments, stationery and postage. Personal mail shall be sent  
291 without interference and received unopened unless medically or  
292 programmatically contraindicated and documented by the physician  
293 in the medical record. There shall be access to a telephone where  
294 patients and residents can make and receive calls as well as speak  
295 privately. Facilities which are unable to provide a private area  
296 shall make reasonable arrangements to accommodate the privacy of

297 patients' or residents' calls. Upon admission to a facility where  
298 federal law prohibits unauthorized disclosure of patient or  
299 resident identifying information to callers and visitors, the  
300 patient or resident, or the legal guardian or conservator of the  
301 patient or resident, shall be given the opportunity to authorize  
302 disclosure of the patient's or resident's presence in the facility  
303 to callers and visitors who may seek to communicate with the  
304 patient or resident. To the extent possible, the legal guardian  
305 or conservator of a patient or resident shall consider the  
306 opinions of the patient or resident regarding the disclosure of  
307 the patient's or resident's presence in the facility. This right  
308 is limited where medically inadvisable, as documented by the  
309 attending physician in a patient's or resident's care record.

310 **SECTION 22. Personal property.** Patients and residents may  
311 retain and use their personal clothing and possessions as space  
312 permits, unless to do so would infringe upon rights of other  
313 patients or residents, and unless medically or programmatically  
314 contraindicated for documented medical, safety or programmatic  
315 reasons. The facility must either maintain a central locked  
316 depository or provide individual locked storage areas in which  
317 residents may store their valuables for safekeeping. The facility  
318 may, but is not required to, provide compensation for or  
319 replacement of lost or stolen items.

320 **SECTION 23. Services for the facility.** Patients and  
321 residents shall not perform labor or services for the facility  
322 unless those activities are included for therapeutic purposes and  
323 appropriately goal-related in their individual medical record.

324 **SECTION 24. Choice of supplier.** Residents may purchase or  
325 rent goods or services not included in the per diem rate from a  
326 supplier of their choice unless otherwise provided by law. The  
327 supplier shall ensure that these purchases are sufficient to meet  
328 the medical or treatment needs of the residents.

329           **SECTION 25. Financial affairs.** Competent residents may  
330 manage their personal financial affairs, or shall be given at  
331 least a quarterly accounting of financial transactions on their  
332 behalf if they delegate this responsibility in accordance with the  
333 laws of Mississippi to the facility for any period of time.

334           **SECTION 26. Right to associate.** Residents may meet with  
335 visitors and participate in activities of commercial, religious,  
336 political and community groups without interference, at their  
337 discretion, if the activities do not infringe on the right to  
338 privacy of other residents or are not programmatically  
339 contraindicated. This includes the right to join with other  
340 individuals within and outside the facility to work for  
341 improvements in long-term care. Upon admission to a facility  
342 where federal law prohibits unauthorized disclosure of patient or  
343 resident identifying information to callers and visitors, the  
344 patient or resident, or the legal guardian or conservator of the  
345 patient or resident, shall be given the opportunity to authorize  
346 disclosure of the patient's or resident's presence in the facility  
347 to callers and visitors who may seek to communicate with the  
348 patient or resident. To the extent possible, the legal guardian  
349 or conservator of a patient or resident shall consider the  
350 opinions of the patient or resident regarding the disclosure of  
351 the patient's or resident's presence in the facility.

352           **SECTION 27. Advisory councils.** Residents and their families  
353 shall have the right to organize, maintain and participate in  
354 resident advisory and family councils. Each facility shall  
355 provide assistance and space for meetings. Council meetings shall  
356 be afforded privacy, with staff or visitors attending only upon  
357 the council's invitation. A staff person shall be designated the  
358 responsibility of providing this assistance and responding to  
359 written requests which result from council meetings. Resident and  
360 family councils shall be encouraged to make recommendations  
361 regarding facility policies.

362           **SECTION 28. Married residents.** Residents, if married, shall  
363 be assured privacy for visits by their spouses and, if both  
364 spouses are residents of the facility, they shall be permitted to  
365 share a room, unless medically contraindicated and documented by  
366 their physicians in the medical records.

367           **SECTION 29. Transfers and discharges.** Residents shall not  
368 be arbitrarily transferred or discharged. Residents must be  
369 notified, in writing, of the proposed discharge or transfer and  
370 its justification no later than thirty (30) days before discharge  
371 from the facility and seven (7) days before transfer to another  
372 room within the facility. This notice shall include the  
373 resident's right to contest the proposed action, with the address  
374 and telephone number of the area nursing home ombudsman. The  
375 resident, informed of this right, may choose to relocate before  
376 the notice period ends. The notice period may be shortened in  
377 situations outside the facility's control, such as a determination  
378 by utilization review, the accommodation of newly-admitted  
379 residents, a change in the resident's medical or treatment  
380 program, the resident's own or another resident's welfare, or  
381 nonpayment for stay unless prohibited by the public program or  
382 programs paying for the resident's care, as documented in the  
383 medical record. Facilities shall make a reasonable effort to  
384 accommodate new residents without disrupting room assignments.

385           **SECTION 30. Protection and advocacy services.** Patients and  
386 residents shall have the right of reasonable access at reasonable  
387 times to any available rights protection services and advocacy  
388 services so that the patient may receive assistance in  
389 understanding, exercising and protecting the rights described in  
390 this act and in other law. This right shall include the  
391 opportunity for private communication between the patient and a  
392 representative of the rights protection service or advocacy  
393 service.

394           **SECTION 31. Isolation and restraints.** A minor patient who  
395 has been admitted to a residential program has the right to be  
396 free from physical restraint and isolation except in emergency  
397 situations involving a likelihood that the patient will physically  
398 harm the patient's self or others. These procedures may not be  
399 used for disciplinary purposes, to enforce program rules or for  
400 the convenience of staff. Isolation or restraint may be used only  
401 upon the prior authorization of a physician, psychiatrist or  
402 licensed psychologist, only when less restrictive measures are  
403 ineffective or not feasible and only for the shortest time  
404 necessary.

405           **SECTION 32. Treatment plan.** A minor patient who has been  
406 admitted to a residential program has the right to a written  
407 treatment plan that describes in behavioral terms the case  
408 problems, the precise goals of the plan and the procedures that  
409 will be utilized to minimize the length of time that the minor  
410 requires inpatient treatment. The plan shall also state goals for  
411 release to a less restrictive facility and follow-up treatment  
412 measures and services, if appropriate. To the degree possible,  
413 the minor patient and the minor patient's parents or guardian  
414 shall be involved in the development of the treatment and  
415 discharge plan.

416           **SECTION 33. Restraints.** (1) Competent nursing home  
417 residents, family members of residents who are not competent and  
418 legally appointed conservators and guardians have the right to  
419 request and consent to the use of a physical restraint in order to  
420 treat the medical symptoms of the resident.

421           (2) Upon receiving a request for a physical restraint, a  
422 nursing home shall inform the resident, family member or legal  
423 representative of alternatives to and the risks involved with  
424 physical restraint use. The nursing home shall provide a physical  
425 restraint to a resident only upon receipt of a signed consent form  
426 authorizing restraint use and a written order from the attending

427 physician that contains statements and determinations regarding  
428 medical symptoms and specifies the circumstances under which  
429 restraints are to be used.

430 (3) A nursing home providing a restraint under subsection  
431 (2) must:

432 (a) Document that the procedures outlined in that  
433 subsection have been followed;

434 (b) Monitor the use of the restraint by the resident;  
435 and

436 (c) Periodically, in consultation with the resident,  
437 the family and the attending physician, reevaluate the resident's  
438 need for the restraint.

439 (4) A nursing home shall not be subject to fines, civil  
440 money penalties or other state or federal survey enforcement  
441 remedies solely as the result of allowing the use of a physical  
442 restraint as authorized in this section. Nothing in this section  
443 shall preclude the State Board of Health from taking action to  
444 protect the health and safety of a resident if:

445 (a) The use of the restraint has jeopardized the health  
446 and safety of the resident; and

447 (b) The nursing home failed to take reasonable measures  
448 to protect the health and safety of the resident.

449 (5) For purposes of this section, "medical symptoms"  
450 include:

451 (a) A concern for the physical safety of the resident;  
452 and

453 (b) Physical or psychological needs expressed by a  
454 resident. A resident's fear of falling may be the basis of a  
455 medical symptom.

456 A written order from the attending physician that contains  
457 statements and determinations regarding medical symptoms is  
458 sufficient evidence of the medical necessity of the physical  
459 restraint.

460           (6) When determining nursing facility compliance with state  
461 and federal standards for the use of physical restraints, the  
462 State Board of Health is bound by the statements and  
463 determinations contained in the attending physician's order  
464 regarding medical symptoms. For purposes of this order, "medical  
465 symptoms" include the request by a competent resident, family  
466 member of a resident who is not competent, or legally appointed  
467 conservator or guardian that the facility provide a physical  
468 restraint in order to enhance the physical safety of the resident.

469           **SECTION 34.** This act shall take effect and be in force from  
470 and after July 1, 2006.