

By: Representative Yates

To: Public Health and Human Services

HOUSE BILL NO. 699

1 AN ACT TO CREATE NEW SECTION 41-21-111, MISSISSIPPI CODE OF
2 1972, TO PROVIDE THAT THE MISSISSIPPI STATE ASYLUM RECORDS IN THE
3 POSSESSION OF THE MISSISSIPPI STATE HOSPITAL SHALL BE PERMANENTLY
4 TRANSFERRED TO THE ROWLAND MEDICAL LIBRARY AT THE UNIVERSITY OF
5 MISSISSIPPI MEDICAL CENTER; TO PROVIDE THAT THE UNIVERSITY OF
6 MISSISSIPPI MEDICAL CENTER SHALL ESTABLISH THE ASYLUM HILL
7 OVERSIGHT COMMITTEE TO GOVERN THE ACCESS, USE AND DISCLOSURE OF
8 THE MISSISSIPPI STATE ASYLUM RECORDS; TO REQUIRE THE OVERSIGHT
9 COMMITTEE TO ESTABLISH STANDARDS FOR THE RECORDS INCLUDING
10 CURATION AND STORAGE, RESEARCHER ACCESS TO RECORDS AND HIPAA
11 CONSIDERATIONS; TO REQUIRE THE OVERSIGHT COMMITTEE TO ESTABLISH
12 PROCEDURES BY WHICH DESCENDANTS OF A DECEDENT WHO WAS THE SUBJECT
13 OF SPECIFIC MISSISSIPPI STATE ASYLUM RECORDS MAY ACCESS AND OPT
14 OUT OF THE USE OF SUCH RECORDS; TO AMEND SECTION 13-1-21,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI STATE
16 ASYLUM RECORDS SHALL BE EXEMPT FROM CERTAIN MEDICAL PRIVILEGE
17 REQUIREMENTS, PROVIDED THAT SUCH RECORDS RELATING TO ANY PERSON
18 WHO HAS NOT BEEN DECEASED FOR AT LEAST 50 YEARS SHALL NOT BE
19 EXEMPT; TO AMEND SECTION 41-9-61, MISSISSIPPI CODE OF 1972, TO
20 EXEMPT THE MISSISSIPPI STATE ASYLUM RECORDS FROM BEING CONSIDERED
21 HOSPITAL RECORDS FOR PURPOSES OF THE CHAPTER; TO AMEND SECTION
22 41-10-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI
23 STATE ASYLUM RECORDS SHALL NOT BE CONSIDERED MEDICAL RECORDS FOR
24 PURPOSES OF THE SECTION; TO AMEND SECTION 41-21-97, MISSISSIPPI
25 CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI STATE ASYLUM RECORDS
26 SHALL NOT BE CONSIDERED CONFIDENTIAL FOR PURPOSES OF THE SECTION,
27 PROVIDED THAT ANY MISSISSIPPI STATE ASYLUM RECORD RELATING TO ANY
28 PERSON WHO HAS NOT BEEN DECEASED FOR AT LEAST 50 YEARS SHALL STILL
29 BE CONSIDERED CONFIDENTIAL; TO AMEND SECTION 41-30-33, MISSISSIPPI
30 CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI STATE ASYLUM RECORDS
31 SHALL BE EXEMPT FROM CERTAIN DISCLOSURE PROHIBITIONS, PROVIDED
32 THAT SUCH RECORDS RELATING TO ANY PERSON WHO HAS NOT BEEN DECEASED
33 FOR AT LEAST 50 YEARS SHALL NOT BE EXEMPT; AND FOR RELATED
34 PURPOSES.



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

36 **SECTION 1.** The following shall be codified as Section
37 41-21-111, Mississippi Code of 1972:

38 41-21-111. (1) For purposes of this section, "Mississippi
39 State Asylum Records" means a collection of individual patient
40 records, including but not limited to, paper charts and digital
41 copies of paper documents, that record patient care at the
42 Mississippi State Asylum from years 1855 to 1935.

43 (2) The Mississippi State Asylum Records in the possession
44 of the Mississippi State Hospital shall be permanently transferred
45 to the Rowland Medical Library at the University of Mississippi
46 Medical Center.

47 (3) The University of Mississippi Medical Center shall
48 establish the Asylum Hill Oversight Committee to govern the
49 access, use and disclosure of the Mississippi State Asylum
50 Records. The following standards and practices shall be followed
51 by the Asylum Hill Oversight Committee:

52 (a) Curation and storage. The Mississippi State Asylum
53 Records shall be curated and stored using standard practices and
54 procedures based on the standards set forth by the Society of
55 American Archivists.

56 (b) Descendants' access to records. Descendants of
57 patients treated at the Asylum may request access to specific
58 patient records which shall be reviewed by the Asylum Hill
59 Oversight Committee. Descendant requests for records will be



60 limited to the closest living relative of the patient of which the
61 requestor must attest, by affidavit, that they are the closest
62 living relative. The University of Mississippi Medical Center and
63 its officers and employees shall be immune from any action or suit
64 arising from reliance upon the affidavit of a descendant that
65 states the affiant is the closest living relative of the decedent.

66 (c) Researcher access to records. Academic researchers
67 who are Asylum Hill Research Consortium members may access
68 Mississippi State Asylum Records, subject to approval by the
69 Asylum Hill Oversight Committee. All information, data and
70 research products shall be anonymized and shall only be reported
71 in the aggregate to the public.

72 (d) HIPAA. Records of patients with a documented death
73 date less than fifty (50) years from the date of the records
74 request constitute Protected Health Information and shall be
75 subject to the Health Insurance Portability and Accountability Act
76 (HIPAA).

77 (4) The Asylum Hill Oversight Committee shall establish
78 procedures by which a descendent of a decedent who was the subject
79 of specific Mississippi State Asylum Records may opt out of the
80 University of Mississippi Medical Center studying the decedent's
81 specific Mississippi State Asylum Records. When a descendent of a
82 decedent who was the subject of specific Mississippi State Asylum
83 Records opts out, such records shall be considered confidential
84 and shall not be disclosed. A descendent of a decedent who was



85 the subject of specific Mississippi State Asylum Records may
86 consent to the University of Mississippi Medical Center using such
87 records in a more specific manner, including disclosing specific
88 identification designations.

89 (5) Mississippi State Asylum Records relating to any person
90 who has not been deceased for at least fifty (50) years shall not
91 be exempt from the provisions of Sections 13-1-21, 41-21-97 and
92 41-30-33. Mississippi State Asylum Records relating to any person
93 who has not been deceased for at least fifty (50) years shall
94 constitute Protected Health Information and shall be subject to
95 the Health Insurance Portability and Accountability Act (HIPAA).

96 (6) The Mississippi State Asylum Records shall be exempt
97 from the Mississippi Public Records Act of 1983.

98 **SECTION 2.** Section 13-1-21, Mississippi Code of 1972, is
99 amended as follows:

100 13-1-21. (1) All communications made to a physician,
101 osteopath, dentist, hospital, nurse, pharmacist, podiatrist,
102 optometrist or chiropractor by a patient under his charge or by
103 one seeking professional advice are hereby declared to be
104 privileged, and such party shall not be required to disclose the
105 same in any legal proceeding except at the instance of the patient
106 or, in case of the death of the patient, at the instance of his
107 personal representative or legal heirs in case there be no
108 personal representative, or except, if the validity of the will of
109 the decedent is in question, at the instance of the personal



110 representative or any of the legal heirs or any contestant or
111 proponent of the will.

112 (2) Waiver of the medical privilege of patients regarding
113 the release of medical information to health care personnel, the
114 State Board of Health or local health departments, made to comply
115 with Sections 41-3-15, 41-23-1 and 41-23-2 and related rules,
116 shall be implied. The medical privilege likewise shall be waived
117 to allow any physician, osteopath, dentist, hospital, nurse,
118 pharmacist, podiatrist, optometrist or chiropractor to report to
119 the State Department of Health necessary information regarding any
120 person afflicted with any communicable disease or infected with
121 the causative agent thereof who neglects or refuses to comply with
122 accepted protective measures to prevent the transmission of the
123 communicable disease.

124 (3) Willful violations of the provisions of this section
125 shall constitute a misdemeanor and shall be punishable as provided
126 for by law. Any physician, osteopath, dentist, hospital, nurse,
127 pharmacist, podiatrist, optometrist, or chiropractor shall be
128 civilly liable for damages for any willful or reckless and wanton
129 acts or omissions constituting such violations.

130 (4) In any action commenced or claim made after July 1,
131 1983, against a physician, hospital, hospital employee, osteopath,
132 dentist, nurse, pharmacist, podiatrist, optometrist or
133 chiropractor for professional services rendered or which should
134 have been rendered, the delivery of written notice of such claim



135 or the filing of such an action shall constitute a waiver of the
136 medical privilege and any medical information relevant to the
137 allegation upon which the cause of action or claim is based shall
138 be disclosed upon the request of the defendant, or his or her
139 counsel.

140 (5) In any disciplinary action commencing on or after July
141 1, 1987, against a medical physician, an osteopathic physician or
142 a podiatrist pursuant to the provisions of Sections 73-25-1
143 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81 through
144 73-25-95 and 73-27-1 through 73-27-19, waiver of the medical
145 privilege of a patient to the extent of any information other than
146 that which would identify the patient shall be implied.

147 (6) The Mississippi State Asylum Records as defined in
148 Section 41-21-111 shall be exempt from the requirements of this
149 section, provided that such records relating to any person who has
150 not been deceased for at least fifty (50) years shall not be
151 exempt.

152 **SECTION 3.** Section 41-9-61, Mississippi Code of 1972, is
153 amended as follows:

154 41-9-61. As used in Sections 41-9-61 through 41-9-83:

155 (a) "Hospital" shall have the meaning ascribed thereto
156 by Section 41-9-3, regardless of the type of ownership or form of
157 management or organization of the institution, and it shall
158 include the proprietor and operator thereof.



159 (b) "Hospital records" shall mean, without restriction,
160 those medical histories, records, reports, summaries, diagnoses
161 and prognoses, records of treatment and medication ordered and
162 given, notes, entries, X-rays and other written or graphic data
163 prepared, kept, made or maintained in hospitals that pertain to
164 hospital confinements or hospital services rendered to patients
165 admitted to hospitals or receiving emergency room or outpatient
166 care. Such records shall also include abstracts of the foregoing
167 data customarily made or made as provided in Section 41-9-75. Such
168 records shall not, however, include ordinary business records
169 pertaining to patients' accounts or the administration of the
170 institution nor shall "hospital records" include any records
171 consisting of nursing audits, physician audits, departmental
172 evaluations or other evaluations or reviews which are used only
173 for in-service education programs, or which are required only for
174 accreditation or for participation in federal health programs.
175 The Mississippi State Asylum Records as defined in Section
176 41-21-111 shall not be considered hospital records for purposes of
177 this chapter.

178 (c) "Patient" shall mean outpatients, inpatients,
179 persons dead on arrival, and the newborn.

180 (d) "Retirement," or variations thereof, shall mean the
181 withdrawal from current files of hospital records, business
182 records or parts thereof on or after the expiration of the
183 applicable minimum period of retention established pursuant to



184 Section 41-9-69. However, no hospital record, business record, or
185 parts thereof, shall be subject to retirement where otherwise
186 required by law to be kept as a permanent record.

187 (e) "Licensing agency" shall mean the State Department
188 of Health.

189 (f) "Business records" shall mean all those books,
190 ledgers, records, papers and other documents prepared, kept, made
191 or received in hospitals that pertain to the organization,
192 administration or management of the business and affairs of
193 hospitals, but which do not constitute hospital records as
194 hereinabove defined.

195 **SECTION 4.** Section 41-10-3, Mississippi Code of 1972, is
196 amended as follows:

197 41-10-3. (1) The following words and phrases shall have the
198 meanings ascribed in this section unless the context clearly
199 indicates otherwise:

200 (a) "Heir" means any person who is entitled to a
201 distribution from the estate of an intestate decedent, or a person
202 who would be entitled to a distribution from the estate of a
203 testate decedent if that decedent had died intestate.

204 (b) "Medical records" means any communications related
205 to a patient's physical or mental health or condition that are
206 recorded in any form or medium and that are maintained for
207 purposes of patient diagnosis or treatment, including
208 communications that are prepared by a health care provider or by



209 other providers. The term does not include (i) materials that are
210 prepared in connection with utilization review, peer review or
211 quality assurance activities, or (ii) recorded telephone and radio
212 communications to and from a publicly operated emergency dispatch
213 office relating to requests for emergency services or reports of
214 suspected criminal activity; however, the term includes
215 communications that are recorded in any form or medium between
216 emergency medical personnel and medical personnel concerning the
217 diagnosis or treatment of a patient.

218 (2) Where no executor or administrator has been appointed by
219 a chancery court of competent jurisdiction regarding the probate
220 or administration of the estate of a decedent, any heir of the
221 decedent shall be authorized to act on behalf of the decedent
222 solely for the purpose of obtaining a copy of the decedent's
223 medical records. The authority shall not extend to any other
224 property rights relating to the decedent's estate.

225 (3) A custodian of medical records may provide a copy of the
226 decedent's medical records to an heir upon receipt of an affidavit
227 by the heir stating that he or she meets the requirements of this
228 section and that no executor or administrator has been appointed
229 by a chancery court with respect to the estate of the decedent.

230 (4) The authority of the heir to act on behalf of the
231 decedent shall terminate upon the appointment of an executor or
232 administrator to act on behalf of the estate of the decedent.
233 However, the custodian of medical records shall be entitled to



234 rely upon the affidavit of the heir until the custodian of medical
235 records receives written notice of the appointment of an executor
236 or administrator.

237 (5) A custodian of medical records shall not be required to
238 provide more than three (3) heirs with a copy of the decedent's
239 medical records before the appointment of an executor or
240 administrator.

241 (6) The provisions of this section shall not prohibit an
242 executor or administrator from requesting and receiving the
243 medical records of a decedent after his or her appointment.

244 (7) The Mississippi State Asylum Records as defined in
245 Section 41-21-111 shall not be considered medical records for
246 purposes of this section. In accordance with Section 41-21-111,
247 the Asylum Hill Oversight Committee shall establish procedures by
248 which descendants of a decedent who was the subject of specific
249 Mississippi State Asylum Records may access such records.

250 **SECTION 5.** Section 41-21-97, Mississippi Code of 1972, is
251 amended as follows:

252 41-21-97. (1) The hospital records of and information
253 pertaining to patients at treatment facilities or patients being
254 treated by physicians, psychologists (as defined in Section
255 73-31-3(e)), licensed master social workers or licensed
256 professional counselors shall be confidential and shall be
257 released only: (a) upon written authorization of the patient; (b)
258 upon order of a court of competent jurisdiction; (c) when



259 necessary for the continued treatment of a patient; (d) when, in
260 the opinion of the director, release is necessary for the
261 determination of eligibility for benefits, compliance with
262 statutory reporting requirements, or other lawful purpose; or (e)
263 when the patient has communicated to the treating physician,
264 psychologist (as defined in Section 73-31-3(e)), master social
265 worker or licensed professional counselor an actual threat of
266 physical violence against a clearly identified or reasonably
267 identifiable potential victim or victims, and then the treating
268 physician, psychologist (as defined in Section 73-31-3(e)), master
269 social worker or licensed professional counselor may communicate
270 the threat only to the potential victim or victims, a law
271 enforcement agency, or the parent or guardian of a minor who is
272 identified as a potential victim.

273 (2) The Mississippi State Asylum Records as defined in
274 Section 41-21-111 shall not be considered confidential for
275 purposes of this section, provided that any Mississippi State
276 Asylum Record relating to any person who has not been deceased for
277 at least fifty (50) years shall still be considered confidential
278 in accordance with subsection (1) of this section.

279 **SECTION 6.** Section 41-30-33, Mississippi Code of 1972, is
280 amended as follows:

281 41-30-33. (1) The registration and other records of
282 services by approved treatment facilities, whether in-patient,
283 intermediate or out-patient, authorized by this chapter, shall



284 remain confidential, and information which has been entered in the
285 records shall be considered privileged information.

286 (2) No part of the records shall be disclosed without the
287 consent of the person to whom it pertains, but appropriate
288 disclosure may be made without such consent to treatment personnel
289 for use in connection with his treatment and to counsel
290 representing the person in any proceeding held pursuant to Title
291 41, Chapter 31, Mississippi Code of 1972. Disclosure may also be
292 made without consent upon court order for purposes unrelated to
293 treatment after application showing good cause therefor. In
294 determining whether there is good cause for disclosure, the court
295 shall weigh the need for the information to be disclosed against
296 the possible harm of disclosure to the person to whom such
297 information pertains.

298 (3) The Mississippi State Asylum Records as defined in
299 Section 41-21-111 shall be exempt from the requirements of this
300 section, provided that such records relating to any person who has
301 not been deceased for at least fifty (50) years shall not be
302 exempt.

303 **SECTION 7.** This act shall take effect and be in force from
304 and after July 1, 2023.

