

By: Senator(s) Dearing

To: Public Health and Welfare

SENATE BILL NO. 2122

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, 2005.