

By: Representative Whittington

To: Public Health and Human
Services

HOUSE BILL NO. 446

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, 2007, 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.