

By: Senator(s) Blount

To: Public Health and
WelfareCOMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2797

1 AN ACT TO CREATE NEW SECTION 41-21-110, 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 MAKE REASONABLE EFFORTS TO IDENTIFY AND NOTIFY ALL
10 DESCENDANTS OF PATIENTS TREATED AT THE ASYLUM; TO REQUIRE THE
11 OVERSIGHT COMMITTEE TO ESTABLISH PROCEDURES BY WHICH A DESCENDANT
12 OF A PATIENT TREATED AT THE ASYLUM MAY OPT OUT OF THE DISCLOSURE
13 OF ANY RELATED RECORDS; TO REQUIRE ALL INFORMATION, DATA AND
14 RESEARCH REGARDING PATIENTS TO BE ANONYMIZED; TO AMEND SECTION
15 41-9-61, MISSISSIPPI CODE OF 1972, TO EXEMPT THE MISSISSIPPI STATE
16 ASYLUM RECORDS FROM BEING CONSIDERED HOSPITAL RECORDS FOR PURPOSES
17 OF THE CHAPTER; TO AMEND SECTION 41-21-97, MISSISSIPPI CODE OF
18 1972, TO PROVIDE THAT THE MISSISSIPPI STATE ASYLUM RECORDS SHALL
19 NOT BE CONSIDERED CONFIDENTIAL FOR PURPOSES OF THE SECTION,
20 PROVIDED THAT ANY MISSISSIPPI STATE ASYLUM RECORD RELATING TO ANY
21 PERSON WHO HAS NOT BEEN DECEASED FOR AT LEAST 50 YEARS SHALL STILL
22 BE CONSIDERED CONFIDENTIAL; TO AMEND SECTION 41-10-3, MISSISSIPPI
23 CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI STATE ASYLUM RECORDS
24 SHALL NOT BE CONSIDERED MEDICAL RECORDS FOR PURPOSES OF THE
25 SECTION; TO CONFORM TO THE PROVISIONS OF THE ACT; TO AMEND SECTION
26 41-30-33, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
27 MISSISSIPPI STATE ASYLUM RECORDS SHALL BE EXEMPT FROM CERTAIN
28 DISCLOSURE PROHIBITIONS, PROVIDED THAT SUCH RECORDS RELATING TO
29 ANY PERSON WHO HAS NOT BEEN DECEASED FOR AT LEAST 50 YEARS SHALL
30 NOT BE EXEMPT; TO AMEND SECTION 13-1-21, MISSISSIPPI CODE OF 1972,
31 TO PROVIDE THAT THE MISSISSIPPI STATE ASYLUM RECORDS SHALL BE
32 EXEMPT FROM CERTAIN MEDICAL PRIVILEGE REQUIREMENTS, PROVIDED THAT
33 SUCH RECORDS RELATING TO ANY PERSON WHO HAS NOT BEEN DECEASED FOR
34 AT LEAST 50 YEARS SHALL NOT BE EXEMPT; AND FOR RELATED PURPOSES.



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

SECTION 1. The following shall be codified as Section
41-21-110, Mississippi Code of 1972:

41-21-110. (1) For purposes of this section, "Mississippi
State Asylum Records" shall mean a collection of individual
patient records, in the possession of the Mississippi State
Hospital, including, but not limited to, paper charts and digital
copies of paper documents, that record patient care at the
Mississippi State Asylum from 1855 to 1935.

(2) For the purpose of this section, "Descendant" shall mean
the closest living relative of a patient at the Mississippi State
Asylum.

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

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

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



60 (b) Descendants' access to records. The Asylum Hill
61 Oversight Committee shall make reasonable efforts to identify and
62 notify descendants of patients treated at the Mississippi State
63 Asylum. Descendants of patients treated at the Mississippi State
64 Asylum have the right to access specific patient records.
65 Descendant request for records will be limited to the closest
66 living relative of the patient of which the requestor must attest,
67 by affidavit, that they are the closest living relative. The
68 University of Mississippi Medical Center and its officers and
69 employees shall be immune from any action or suit that arises from
70 their reliance upon the affidavit of a descendant that states the
71 affiant is the closest living relative of the decedent.

72 (c) 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). Patients born before 1873 shall be presumed to have been
77 deceased for fifty (50) years.

78 (5) The Asylum Hill Oversight Committee shall establish
79 procedures by which a descendant of a patient treated at the
80 Mississippi State Asylum may opt out of any disclosure of such
81 records. When a descendent of a patient opts out, such records
82 shall be considered confidential and shall not be disclosed for
83 any purpose. A descendant of a patient who was the subject of
84 specific Mississippi State Asylum Records may consent to the



University of Mississippi Medical Center using such records in a more specific manner, including disclosing specific identification designations, but no such disclosure shall be allowed without specific authorization.

(6) Mississippi State Asylum Records relating to any person who has not been deceased for at least fifty (50) years shall not be exempt from the provisions of Sections 41-30-33, 41-21-97 and 13-1-21. All information, data and research regarding patients shall be anonymized. Mississippi State Asylum Records relating to any person who has not been deceased for at least fifty (50) years shall constitute Protected Health Information and shall be subject to the Health Insurance Portability and Accountability Act (HIPAA).

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

SECTION 2. Section 41-9-61, Mississippi Code of 1972, is amended as follows:

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

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

(b) "Hospital records" shall mean, without restriction, those medical histories, records, reports, summaries, diagnoses and prognoses, records of treatment and medication ordered and



given, notes, entries, X-rays and other written or graphic data prepared, kept, made or maintained in hospitals that pertain to hospital confinements or hospital services rendered to patients admitted to hospitals or receiving emergency room or outpatient care. Such records shall also include abstracts of the foregoing data customarily made or made as provided in Section 41-9-75. Such records shall not, however, include ordinary business records pertaining to patients' accounts or the administration of the institution nor shall "hospital records" include any records consisting of nursing audits, physician audits, departmental evaluations or other evaluations or reviews which are used only for in-service education programs, or which are required only for accreditation or for participation in federal health programs. The Mississippi State Asylum Records as defined in Section 41-21-110 shall not be considered hospital records for purposes of this chapter.

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

(d) "Retirement," or variations thereof, shall mean the withdrawal from current files of hospital records, business records or parts thereof on or after the expiration of the applicable minimum period of retention established pursuant to Section 41-9-69. However, no hospital record, business record, or parts thereof, shall be subject to retirement where otherwise required by law to be kept as a permanent record.



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

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

SECTION 3. Section 41-21-97, Mississippi Code of 1972, is amended as follows:

41-21-97. (1) The hospital records of and information pertaining to patients at treatment facilities or patients being treated by physicians, psychologists (as defined in Section 73-31-3(e)), licensed master social workers or licensed professional counselors shall be confidential and shall be released only: (a) upon written authorization of the patient; (b) upon order of a court of competent jurisdiction; (c) when necessary for the continued treatment of a patient; (d) when, in the opinion of the director, release is necessary for the determination of eligibility for benefits, compliance with statutory reporting requirements, or other lawful purpose; or (e) when the patient has communicated to the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor an actual threat of physical violence against a clearly identified or reasonably



identifiable potential victim or victims, and then the treating physician, psychologist (as defined in Section 73-31-3(e)), master social worker or licensed professional counselor may communicate the threat only to the potential victim or victims, a law enforcement agency, or the parent or guardian of a minor who is identified as a potential victim.

(2) The Mississippi State Asylum Records shall not be considered confidential for purposes of this section, provided that any Mississippi State Asylum Record relating to any person who has not been deceased for at least fifty (50) years shall still be considered confidential in accordance with subsection (1) of this section.

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

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

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

(b) "Medical records" means any communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including



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

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

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

(4) The authority of the heir to act on behalf of the decedent shall terminate upon the appointment of an executor or administrator to act on behalf of the estate of the decedent.



210 However, the custodian of medical records shall be entitled to
211 rely upon the affidavit of the heir until the custodian of medical
212 records receives written notice of the appointment of an executor
213 or administrator.

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

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

221 (7) The Mississippi State Asylum Records shall not be
222 considered medical records for purposes of this section. In
223 accordance with Section 41-21-110, the Asylum Hill Oversight
224 Committee shall establish procedures by which descendants of a
225 decedent who was the subject of specific Mississippi State Asylum
226 Records may access such records.

227 **SECTION 5.** Section 41-30-33, Mississippi Code of 1972, is
228 amended as follows:

229 41-30-33. (1) The registration and other records of
230 services by approved treatment facilities, whether in-patient,
231 intermediate or out-patient, authorized by this chapter, shall
232 remain confidential, and information which has been entered in the
233 records shall be considered privileged information.



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

(3) The Mississippi State Asylum Records shall be exempt from the requirements of this section, provided that such records relating to any person who has not been deceased for at least fifty (50) years shall not be exempt.

SECTION 6. Section 13-1-21, Mississippi Code of 1972, is amended as follows:

13-1-21. (1) All communications made to a physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist or chiropractor by a patient under his charge or by one seeking professional advice are hereby declared to be privileged, and such party shall not be required to disclose the same in any legal proceeding except at the instance of the patient or, in case of the death of the patient, at the instance of his



259 personal representative or legal heirs in case there be no
260 personal representative, or except, if the validity of the will of
261 the decedent is in question, at the instance of the personal
262 representative or any of the legal heirs or any contestant or
263 proponent of the will.

264 (2) Waiver of the medical privilege of patients regarding
265 the release of medical information to health care personnel, the
266 State Board of Health or local health departments, made to comply
267 with Sections 41-3-15, 41-23-1 and 41-23-2 and related rules,
268 shall be implied. The medical privilege likewise shall be waived
269 to allow any physician, osteopath, dentist, hospital, nurse,
270 pharmacist, podiatrist, optometrist or chiropractor to report to
271 the State Department of Health necessary information regarding any
272 person afflicted with any communicable disease or infected with
273 the causative agent thereof who neglects or refuses to comply with
274 accepted protective measures to prevent the transmission of the
275 communicable disease.

276 (3) Willful violations of the provisions of this section
277 shall constitute a misdemeanor and shall be punishable as provided
278 for by law. Any physician, osteopath, dentist, hospital, nurse,
279 pharmacist, podiatrist, optometrist, or chiropractor shall be
280 civilly liable for damages for any willful or reckless and wanton
281 acts or omissions constituting such violations.

282 (4) In any action commenced or claim made after July 1,
283 1983, against a physician, hospital, hospital employee, osteopath,



dentist, nurse, pharmacist, podiatrist, optometrist or
chiropractor for professional services rendered or which should
have been rendered, the delivery of written notice of such claim
or the filing of such an action shall constitute a waiver of the
medical privilege and any medical information relevant to the
allegation upon which the cause of action or claim is based shall
be disclosed upon the request of the defendant, or his or her
counsel.

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

(6) The Mississippi State Asylum Records shall be exempt
from the requirements of this section, provided that such records
relating to any person who has not been deceased for at least
fifty (50) years shall not be exempt.

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

