

By: Representative Crawford

To: Public Health and Human Services

HOUSE BILL NO. 1680

1 AN ACT TO EXEMPT ANY OFFICIAL, AGENT OR EMPLOYEE OF THE STATE
2 OR A POLITICAL SUBDIVISION THEREOF FROM ENFORCING OR BEING ORDERED
3 TO ENFORCE ANY FEDERAL DIRECTIVE THAT ALLOWS ANY MEDICAL, HEALTH
4 CARE, BEHAVIORAL, OR MENTAL HEALTH TREATMENT, SERVICE, THERAPY OR
5 COUNSELING TO PROVIDE ACCESS TO A STUDENT WITH A DISABILITY'S
6 PERSONALLY IDENTIFIABLE INFORMATION, PUBLIC BENEFITS INFORMATION
7 OR MAKE ANY MODIFICATION TO THAT STUDENTS IEP OR SERVICE PLANS
8 WITHOUT THE CONSENT OF THE CHILD'S PARENT OR LEGAL GUARDIAN; TO
9 PROVIDE A CAUSE OF ACTION BY A PARENT OR LEGAL GUARDIAN AGAINST
10 ANY PERSON, CORPORATION OR OTHER ENTITY, WHO VIOLATES THE MEDICAL
11 AND MENTAL HEALTH RELATED PARENTAL NOTIFICATION AND CONSENT
12 REQUIREMENTS; TO BRING FORWARD SECTION 41-41-3, MISSISSIPPI CODE
13 OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENTS; TO AMEND SECTION
14 37-23-137, MISSISSIPPI CODE OF 1972, TO REQUIRE WRITTEN PRIOR
15 NOTICE AND REQUEST FOR CONSENT SHALL BE PROVIDED TO THE PARENTS OF
16 A CHILD WITH A DISABILITY EACH TIME CERTAIN REVISIONS ARE MADE TO
17 THE CHILD'S IEP, WHEN THE CHILD'S PUBLIC BENEFITS ARE SOUGHT TO BE
18 ACCESSED AND WHEN THE CHILD'S PERSONAL IDENTIFIABLE INFORMATION IS
19 SOUGHT TO BE DISCLOSED FOR BILLING PURPOSES; TO PROVIDE FOR THE
20 SEVERABILITY OF THE PROVISIONS OF THIS SECTION; AND FOR RELATED
21 PURPOSES.

22 WHEREAS, the United States Supreme Court has held that under
23 the Tenth Amendment, "Congress cannot compel the States to enact
24 or enforce a federal regulatory program ... Congress cannot
25 circumvent that prohibition by conscripting the State's officers
26 directly. The Federal Government may neither issue directives
27 requiring the States to address particular problems, nor command



28 the States' officers, or those of their political subdivisions, to
29 administer or enforce a federal regulatory program." (*Printz v.*
30 *U.S.*, 521 U.S. 898, 935 (1997)); and,

31 WHEREAS, Chief Justice John Roberts in *NFIB v. Sebelius*, 567
32 U.S. 519 (2012) cites with approval the warning that "it is of
33 fundamental importance to consider whether essential attributes of
34 state sovereignty are compromised by the assertion of federal
35 power"; and

36 WHEREAS, Section 41-41-3 provides that health care cannot be
37 provided to a minor without the consent of a parent, guardian or
38 other authorized person as provided therein; and,

39 WHEREAS, the United States Secretary of Health and Human
40 Services has issued a notice of proposed rulemaking to rescind 34
41 CFR Section 300.154(d)(2)(iv), which would remove the requirement
42 for parental consent prior to accessing a child's or parent's
43 public benefits or insurance for the first time; and

44 WHEREAS, the referenced notice of proposed rulemaking further
45 proposes to rescind the requirement in 34 CFR Section
46 300.154(d)(2)(v) that notices to parents of children with an IDEA
47 no longer include the following two statements: (i) a statement
48 that the parents have the right to withdraw consent to disclose
49 their child's personal identifying information (PII) to the agency
50 responsible for the administration of the State's public benefits
51 or insurance program at any time; and (ii) a statement that
52 refusal to provide consent or withdrawal of consent to disclose



53 PII to the agency responsible for the administration of the
54 State's public benefits or insurance program does not relieve the
55 public agency of its responsibility to ensure that all required
56 services are provided at no cost to the parents: NOW, THEREFORE,

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

58 **SECTION 1.** It is the purpose and intention of the
59 Legislature to protect the rights of the state government and of
60 the people of this state reserved to them in our federal system of
61 government under the Ninth and Tenth Amendments to the United
62 States Constitution, insofar as the rights of parents to govern
63 and direct medical and health care decisions of their children and
64 to protect their children's privacy are concerned.

65 **SECTION 2.** No federal executive order, agency order, rule,
66 guidance document, memorandum, directive, regulation or
67 administrative interpretation of a law or statute enrolled by the
68 United States Congress and signed by the President of the United
69 States, including, without limitation, any of the above referenced
70 proposed rule changes, which allow any medical, health care,
71 behavioral, or mental health treatment, service, therapy or
72 counseling without parental notification or consent in
73 contravention of the provisions of Sections 37-23-137 or 41-4-3,
74 or any other applicable laws of the state governing such parental
75 notification or consent, shall be enforced or ordered to be
76 enforced by any official, agent or employee of this state or a



77 political subdivision thereof, or any person acting under color of
78 state law.

79 SECTION 3. (1) Notwithstanding any federal executive order,
80 agency order, rule, guidance document, memorandum, directive,
81 regulation or administrative interpretation of a law or statute
82 enrolled by the United States Congress and signed by the President
83 of the United States, including, without limitation, any proposed
84 rule as referenced in Section 1 of this act, any state agency,
85 school district, health care institution or health care provider,
86 as defined in Section 41-41-203, who violates the provisions of
87 Sections 37-23-137, 41-41-3, or other applicable laws of the state
88 governing such parental notification or consent, may be subject to
89 a civil suit for damages brought by any parent whose rights
90 secured by those sections were violated. Relief available in such
91 a civil suit may include, without limitation, actual damages,
92 court costs, reasonable attorney fees as ordered by the court, and
93 punitive damages if the violation satisfies the standards for
94 imposition of punitive damages elsewhere provided by law.

95 (2) An individual may assert a violation of this act as a
96 claim in any judicial or administrative proceeding or as defense
97 in any judicial or administrative proceeding without regard to
98 whether the proceeding is brought by or in the name of the
99 government, any private person or any other party.

100 (3) An action under this act may be commenced, and relief
101 may be granted, in a court of competent jurisdiction in the state



102 without regard to whether the individual commencing the action has
103 sought or exhausted available administrative remedies.

104 (4) Sovereign immunity shall not be an affirmative defense
105 in any action pursuant to this act.

106 **SECTION 4.** Section 37-23-137, Mississippi Code of 1972, is
107 amended as follows:

108 37-23-137. (1) Consent shall be obtained:

109 (a) Prior to initial evaluation;

110 (b) Prior to implementation of the initial
111 individualized educational program for a child with a disability;

112 (c) Prior to reevaluation, except that such consent is
113 not required, if the local educational agency can demonstrate that
114 it had taken reasonable measures to obtain such consent and the
115 parent failed to respond; and

116 (d) Prior to the release of educational records as
117 required under the Family Educational Rights and Privacy Act and
118 IDEA.

119 (2) If the parent of a child with a disability refuses
120 consent for the evaluation, the local educational agency may
121 continue to pursue an evaluation by utilizing the due process
122 hearing procedures under IDEA, except to the extent these are not
123 in conflict with Mississippi law relating to parental consent.

124 (3) (a) Written prior notice shall be provided to the
125 parents of the child whenever a local educational agency proposes
126 to initiate or change or refuses to initiate or change the



127 identification, evaluation, or educational placement of the child,
128 or the provision of a free appropriate public education to that
129 child.

130 (b) Notwithstanding any federal executive order, agency
131 order, rule, guidance document, memorandum, directive, regulation
132 or administrative interpretation of a law or statute enrolled by
133 the United States Congress and signed by the President of the
134 United States to the contrary, including, without limitation, Part
135 B of the Individuals with Disabilities in Education Act, or any
136 provisions of the Family Educational Rights and Privacy Act
137 (FERPA) or the Bipartisan Safer Communities Act, written prior
138 notice and request for consent shall be provided to the parents of
139 the child each time:

140 (i) A public agency seeks to access a child's
141 public benefits or insurance;

142 (ii) A child with a disability is required to be
143 reevaluated; and

144 (iii) A public entity seeks disclosure of a
145 child's personal identifiable information for Medicaid billing
146 under FERPA or IDEA.

147 (4) Written prior notice shall be provided in the native
148 language of the parents, unless it clearly is not feasible to do
149 so.

150 (5) Written prior notice shall include:



151 (a) A description of the action proposed or refused by
152 the local educational agency;

153 (b) An explanation of why the local educational agency
154 proposes or refuses to take the action;

155 (c) A description of any other options that the local
156 educational agency considered and the reasons why those options
157 were rejected;

158 (d) A description of any other factors that are
159 relevant to the local educational agency's proposal or refusal;

160 (e) A description of each evaluation procedure, test,
161 record, or report the local educational agency used as a basis for
162 the proposed or refused action;

163 (f) A description of any factors that are relevant to
164 the local educational agency's proposal or refusal;

165 (g) A statement that the parents of a child with a
166 disability have protection under the procedural safeguards under
167 IDEA and, if the notice is not an initial referral for evaluation,
168 notification of an individualized educational program meeting or
169 notice for reevaluation, the means by which a copy of a
170 description of procedural safeguards can be obtained; and

171 (h) Sources for parents to contact to obtain assistance
172 in understanding the provisions under IDEA.

173 (6) A copy of the procedural safeguards established by the
174 State Department of Education shall be given to the parents upon:



175 (a) Initial referral for evaluation, reevaluation or
176 parent request for evaluation;
177 (b) The child's initial IEP meeting;
178 (c) Registration of a complaint under IDEA to the State
179 Department of Education;
180 (d) Upon a request by a parent; and
181 (e) If there is no circumstance giving rise to the
182 purpose of parents receiving a copy of the procedural safeguards
183 under paragraphs (a), (b) and (c) of this subsection, then the
184 parents shall be provided with a copy of the procedural safeguards
185 at least once on an annual basis.

186 The procedural safeguards shall include provisions which
187 allow parents to be informed of the parental right to record IEP
188 meetings by means of an audio or visual recording device or
189 written transcript at the parent's own expense if they so desire a
190 record of the meeting.

191 (7) The State Department of Education and each local
192 educational agency shall establish procedures to ensure parents of
193 children with disabilities have the opportunity to participate in
194 meetings with respect to the identification, evaluation, and
195 education placement of the child, and the provision of a free
196 appropriate public education of such child. Local educational
197 agencies shall provide parents of children with disabilities an
198 opportunity to provide input in the development of the agencies'
199 application for funding, as required under IDEA.



200 (8) The parent or guardian or local educational agency shall
201 have the right to audio record the proceedings of individualized
202 education program team meetings. The parent or guardian or local
203 educational agency shall notify the members of the individualized
204 education program team of his, her, or its intent to audio record
205 a meeting at least twenty-four (24) hours prior to the meeting.

206 (9) In conducting the evaluation, the local educational
207 agency shall:

208 (a) Use a variety of assessment tools and strategies to
209 gather relevant functional and developmental information,
210 including information provided by the parent, that may assist in
211 determining whether the child is a child with a disability and the
212 content of the child's individualized education program including
213 information related to enabling the child to be involved in and
214 progress in the general curriculum or, for preschool children, to
215 participate in appropriate activities;

216 (b) Not use any single procedure as the sole criterion
217 for determining whether a child is a child with a disability or
218 determining an appropriate educational program for the child; and

219 (c) Use technically sound instruments that may assess
220 the relative contribution of cognitive and behavioral factors, in
221 addition to physical or developmental factors.

222 (10) Each local educational agency shall ensure that:

223 (a) Tests and other evaluation materials used to assess
224 a child are:



225 (i) Selected and administered so as not to be
226 discriminatory on a racial or cultural basis; and
227 (ii) Provided and administered in the child's
228 native language or other mode of communication, unless it is
229 clearly not feasible to do so;

230 (b) Any standardized tests that are given to the child:
231 (i) Have been validated for the specific purpose
232 for which they are used;
233 (ii) Are administered by trained and knowledgeable
234 personnel; and
235 (iii) Are administered in accordance with any
236 instructions provided by the producer of such tests;

237 (c) The child is assessed in all areas of suspected
238 disability; and
239 (d) Assessment tools and strategies that provide
240 relevant information that directly assist persons in determining
241 the educational needs of the child are provided.

242 (11) Upon completion of administration of tests and other
243 evaluation materials:
244 (a) The determination of whether the child is a child
245 with a disability as defined under IDEA and state regulations
246 established by the State Board of Education shall be made by a
247 team of qualified professionals and the parent of the child and
248 certified by a Screening Team as defined by the State Board of
249 Education;



250 (b) In making such a determination of eligibility, a
251 child shall not be determined to be a child with a disability if
252 the determinant factor for such determination is lack of
253 instruction in reading or math or limited English proficiency; and

254 (c) A copy of the evaluation report and the
255 documentation of determination of eligibility will be given to the
256 parent.

257 (12) Parents shall have an opportunity to obtain an
258 independent educational evaluation of their child in accordance
259 with the requirements under IDEA.

260 (13) An outside individual or entity contracting with a
261 local educational agency for the purpose of performing an
262 observation in order to make recommendations of possible changes
263 in a child's IEP, or any outside individual or entity making an
264 observation of a child which results in such recommendations,
265 shall submit a report of the observation to the local educational
266 agency. The local educational agency shall notify the parent upon
267 receipt of this report.

268 (14) Parents and guardians shall have the right of review or
269 to receive copies of all educational records, as such records are
270 defined by the Family Educational Rights and Privacy Act and the
271 Individuals with Disabilities Education Act, pertaining to their
272 child. The local educational agency shall be responsible for
273 making the educational records available to the parent or
274 guardian. The cost of providing a copy of any information



275 contained in a student's educational record to the parents or
276 guardians shall be established by the local school board in
277 accordance with the requirements of the Family Educational Rights
278 and Privacy Act and the Individuals with Disabilities Education
279 Act.

280 (15) If any subsection of this section or its application to
281 any person or circumstance is held invalid, the invalidity does
282 not affect other subsections or applications of this section which
283 can be given effect without the invalid subsection or application,
284 and to this end the provisions of this section are severable.

285 **SECTION 5.** Section 41-41-3, Mississippi Code of 1972, is
286 brought forward as follows:

287 41-41-3. (1) It is hereby recognized and established that,
288 in addition to such other persons as may be so authorized and
289 empowered, any one (1) of the following persons who is reasonably
290 available, in descending order of priority, is authorized and
291 empowered to consent on behalf of an unemancipated minor, either
292 orally or otherwise, to any surgical or medical treatment or
293 procedures not prohibited by law which may be suggested,
294 recommended, prescribed or directed by a duly licensed physician:

- 295 (a) The minor's guardian or custodian.
296 (b) The minor's parent.
297 (c) An adult brother or sister of the minor.
298 (d) The minor's grandparent.



299 (2) If none of the individuals eligible to act under
300 subsection (1) is reasonably available, an adult who has exhibited
301 special care and concern for the minor and who is reasonably
302 available may act; the adult shall communicate the assumption of
303 authority as promptly as practicable to the individuals specified
304 in subsection (1) who can be readily contacted.

305 (3) Any female, regardless of age or marital status, is
306 empowered to give consent for herself in connection with pregnancy
307 or childbirth.

308 **SECTION 6.** If any one or more provisions, sections,
309 subsections, sentences, clauses, phrases or words of this act or
310 the application thereof to any person or circumstance is found to
311 be unconstitutional, the same is hereby declared to be severable
312 and the balance of this act shall remain effective notwithstanding
313 such unconstitutionality. The Legislature hereby declares that it
314 would have passed this act, and each provision, section,
315 subsection, sentence, clause, phrase or word thereof, irrespective
316 of the fact that any one or more provisions, sections,
317 subsections, sentences, clauses, phrases or words be declared
318 unconstitutional.

319 **SECTION 7.** This act shall take effect and be in force from
320 and after July 1, 2024.

