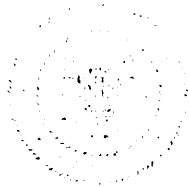


DEPARTMENT OF MENTAL HEALTH

State of Mississippi

239 North Lamar Street
1101 Robert E. Lee Building
Jackson, Mississippi 39201



601-359-1288
FAX 601-359-6295
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Wendy D. Bailey - Executive Director

October 2, 2023

Dear President of the Board of Supervisors:

On behalf of the Mississippi Department of Mental Health (DMH), we write regarding a recent official opinion issued by the Office of the Attorney General that concerns the certification of county holding facilities by DMH.

In 2009, Senate Bill 2016 was passed giving DMH the authority to certify any county facility that is used for "providing housing, maintenance, and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility". Recently, DMH requested an Official Opinion from the Office of the Attorney General regarding this law.

According to the Opinion (enclosed), each county must determine what facilities will be utilized as a holding facility and have the facility certified by DMH. Further, the Opinion provides that each holding facility the county determines must meet the certification standards and requirements established by DMH. In compliance with the law, DMH developed the Mental Health Holding Facility designation and standards (enclosed) for holding facilities to be certified. By law, designated holding facilities must be comprehensive and available to triage and make appropriate clinical dispositions, including the capability to access inpatient services or less restrictive alternatives, as needed, as determined by medical staff. Such facility shall have medical, nursing, and behavioral services available on a twenty-four-hour-a-day basis. If you have a facility in your county, including but not limited to a jail, that you would like DMH to assess whether it meets the appropriate standards and requirements to receive designation as a certified holding facility, please contact Monica Wilmoth, DMH Director of the Division of Certification at monica.wilmoth@dmh.ms.gov.

Standards for holding people pending admission to a treatment facility are important because these individuals, citizens of your community, are often very ill, experiencing great distress, and in need of immediate care and treatment. According to data collected in FY23 (enclosed), counties are placing people in jail pending admission to a state hospital, instead of in a designated holding facility. If you are currently utilizing a location as a holding facility that is not either DMH certified or a hospital certified by the Mississippi Department of Health or Joint Commission Accredited, we strongly encourage you to work closely with your local mental health authority, Region 8 Mental Health Services, to determine the best option for your county, or contact DMH's Division of Certification to begin the certification process.

Mississippi operates and funds four state psychiatric hospitals with a total of 320 acute psychiatric beds. These beds should only be utilized for people who have been deemed to be a danger to themselves or others and cannot be diverted through community-based services. A civil commitment should be a last resort after the county and their community mental health center have exhausted all other options for treatment. There

are robust service options other than a commitment to a state hospital for people with serious mental illness. DMH has collaborated with your local community mental health authority, Region 8 Mental Health Services, to create and help fund an array of intensive community support services, mobile crisis response, and Crisis Stabilization Beds to help prevent the need for civil commitment. In FY23, DMH provided more than \$8.7 million in funding to Region 8 Mental Health Services to assist in the treatment needs of people in your communities (this amount doesn't include Medicaid reimbursement).

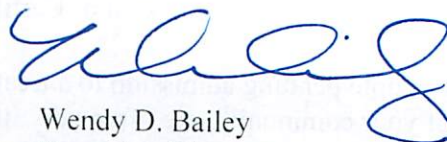
Mississippi's crisis service system includes: 1) 988, the three-digit, 24/7 suicide prevention and behavioral health crisis line, 2) Mobile Crisis Response Teams dispatched to wherever the need is in the community, and 3) Crisis Stabilization Units (CSUs). A person in crisis can now call 988, a local Mobile Crisis Response Team at their toll-free hotline, or the DMH Helpline (1-877-210-8513). Last year, the National Suicide Prevention Lifeline changed to a three-digit number for mental health crisis and suicide response, 988. 988 is a national, universal number that will connect callers to local, trained counselors. A Mobile Crisis Response Team is operated by your CMHC and available for your county. These teams provide community-based crisis services to the location where an individual is experiencing a crisis.

Region 8 Mental Health Services also operates a CSU in its catchment region that is available for your county. Mississippi's 13 CSUs function as short-term units to divert individuals from state hospitals or from being held in jails if they required admission to a state hospital. The CSUs are certified by DMH. There is at least one CSU in each CMHC region in the state with a total of 180 beds. Additional beds will be added in the current fiscal year. Many people with serious mental illness can be treated at the unit and returned to the community without an inpatient admission to the state psychiatric hospital. In addition, DMH is funding 33 court liaisons who work with the local community mental health center and chancery clerk's office to connect people with options other than a civil commitment.

Moreover, state law encourages counties to work with local hospitals to assist when needed to provide treatment for people who are waiting on admission to a state hospital. If a county does not currently have a DMH designated holding facility, the law requires counties to contract with another county to utilize their holding facility. This is why multiple counties within a region utilize the same CSU, and some counties also contract with local hospitals.

Again, I appreciate your dedication and service to our state. Please do not hesitate to reach out if we can provide assistance.

Sincerely,



Wendy D. Bailey
Executive Director

CC: Dave Van, Region 8 Mental Health Services Executive Director
County Sheriff
County Chancery Clerk
Commissioners for Region 8 Mental Health Services



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 24, 2023

Wendy D. Bailey, Executive Director
Mississippi Department of Mental Health
239 North Lamar Street
1101 Robert E. Lee Building
Jackson, Mississippi 39201

Re: County Holding Facility Certification by Mississippi Department of Mental Health

Dear Director Bailey:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. Does Mississippi Code Annotated Section 41-21-77 require the Mississippi Department of Mental Health to proactively certify county jails if they are being used for providing housing, maintenance, and medical treatment for an involuntarily committed person, or does the statute indicate that the Department of Mental Health has the authority to certify county facilities pursuant to Section 41-4-7(kk)?
2. Does Section 41-4-7(kk) require the State Board of Mental Health to certify county holding facilities, such as county jails?
3. If the answer to Question 2 is yes, would this also include county hospitals that may hold someone who has been involuntarily committed?

Brief Response

1. Section 41-21-77(1) not only gives the Mississippi Department of Mental Health ("Department") the authority to certify county facilities pursuant to Section 41-4-7(kk), but it is a mandatory requirement that the Department certify "[a]ny county facility used for providing housing, maintenance, and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility . . ." This said, as it is the county's determination as to what facilities will be used, there is no requirement to proactively certify county facilities that may be but are not being used in this manner.

2. Section 41-4-7(kk) provides that the State Board of Mental Health has the power and duty “[t]o certify and establish minimum standards and minimum required services” for county holding facilities. However, read in conjunction with Section 41-21-77(1), the two statutes indicate that it is the responsibility of the Department to ensure each county holding facility meets the certification standards and requirements set forth by the State Board of Mental Health.
3. Section 41-21-77(1)’s certification requirement applies to “[a]ny county facility providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility” (emphasis added). There is no exception to this requirement for county hospitals.

Applicable Law and Discussion

Section 41-21-77(1) provides, in part:

Any county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility shall be certified by the State Department of Mental Health under the provisions of Section 41-4-7(kk). No person shall be delivered or admitted to any non-Department of Mental Health treatment facility unless the treatment facility is licensed and/or certified to provide the appropriate level of psychiatric care for persons with mental illness. It is the intent of this Legislature that county-owned hospitals work with regional community mental health/intellectual disability centers in providing care to local patients.

(emphasis added).

It is the opinion of this office that the term “shall” in Section 41-21-77(1) indicates that it is a mandatory requirement that the Department certify any county facility used for providing housing, maintenance, and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility. *See Pitalo v. GPCH-GP, Inc.*, 933 So. 2d 927, 929 (Miss. 2006) (“Simply stated, ‘shall’ is mandatory, while ‘may’ is discretionary.”) (citation omitted). This said, as it is the county that determines what facility shall be used for this purpose, there is no requirement to proactively certify county facilities that may be but are not being used in this manner.

Regarding your second question, we first note “that a mentally ill person awaiting a competency hearing or awaiting admission to a mental institution should not be held in a jail unless the court determines that there is no reasonable alternative.” MS AG Op., *Glennis* at *1 (July 7, 1995) (referencing Miss. Code Ann. § 41-21-67(4)). Nonetheless, Section 41-4-7(kk) provides the *State Board of Mental Health* (as opposed to the Department) with the “power[] and duty[] . . . [t]o certify and establish minimum standards and minimum required services for county facilities used for housing, feeding and providing medical treatment for any person who has been involuntarily ordered admitted to a treatment center by a court of competent jurisdiction.” However, consistent

Wendy D. Bailey, Executive Director
August 24, 2023
Page 3

with Section 41-21-77(1), Section 41-4-7(kk) goes on to provide that it is the *Department's* responsibility to certify the requisite facilities with the established standards:

If the *department* finds deficiencies in any such county facility or its provider based on the minimum standards and minimum required services established for certification, the *department* shall give the county or its provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the *department* determines that the county or its provider still does not meet the minimum standards and minimum required services, the *department* may remove the certification of the county or provider and require the county to contract with another county having a certified facility to hold those persons for that period of time pending transportation and admission to a state treatment facility.

(emphasis added).

As provided *supra*, Section 41-21-77(1) likewise requires that such county facilities “shall be certified by the State Department of Mental Health” Accordingly, it is the opinion of this office that it is the responsibility of the Department to ensure that each county holding facility, including but not limited to county jails, meets the appropriate certification standards and requirements. In the instance the Department finds that a county facility fails to meet the requisite standards, the Department shall give the county a six-month probationary period to rectify any issues. Miss. Code Ann. § 41-4-7(kk). If the Department determines that the facility still does not meet the requisite standards following the probationary period, “the department may remove the certification of the county or provider and require the county to contract with another county having a certified facility to hold those persons for that period of time pending transportation and admission to a state treatment facility.” *Id.*

Regarding your third question, Section 41-21-77(1)'s certification requirement applies to “[a]ny county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility. . . .” (emphasis added). There is no exception to this requirement for county hospitals. It is therefore the opinion of this office that Section 41-21-77(1)'s certification requirement would also include county hospitals that may hold someone who has been involuntarily committed.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Maggie Kate Bobo

Maggie Kate Bobo
Special Assistant Attorney General

Part 2: Chapter 35: Designated Mental Health Holding Facilities

Rule 35.1 Designation

Designated Mental Health Holding Facilities (hereafter referred to as “holding facility”) hold people who have been involuntarily civilly committed and are awaiting transportation to a treatment facility. The holding facility can be a county facility or a facility with which the county contracts. DMH will conduct annual on-site visits to each holding facility to ensure with the standards in this Chapter.

Source: Section 41-4-7 of the *Mississippi Code, 1972, as amended*

Rule 35.2 Policies and Procedures

- A. Each holding facility must have a manual that includes the written policies and procedures for operating and maintaining the facility holding people involved in the civil commitment process or those awaiting transportation to a certified/licensed mental health facility. Written policies and procedures must give sufficient details for implementation and documentation of duties and functions so that a new employee or someone unfamiliar with the operation of the holding facility and services would be able to carry out necessary operations of the holding facility.
- B. The policies and procedures must:
 1. Be reviewed annually by the governing authority of the county, with advice and input from the regional Community Mental Health Center, as documented in the governing authority meeting minutes;
 2. Be updated as needed, with changes approved by the governing authority before they are instituted, as documented in the governing authority meeting minutes. Changed sections, pages, etc., must show the date of approval of the revision on each page;
 3. Be readily accessible to all employees on all shifts providing services to people in the holding facility, with a copy at each service delivery location;
 4. Describe how the policies and procedures are made available to the public; and,
 5. Have a copy of the Memoranda of Understanding or contract between the holding facility and the Community Mental Health Center to describe how mental health services will be provided while people are being held in the holding facility.
- C. A personnel record for each employee and contractual employee, as noted below, must be maintained and must include, but not be limited to:
 1. The application for employment, including employment history and experience.
 2. A copy of the current Mississippi license or certification for all licensed or certified personnel.
 3. A copy of college transcripts, high school diploma, and/or appropriate documents to verify that educational requirements of the job description are met.

4. Documentation of an annual performance evaluation.
 5. A written job description that shall include, at a minimum:
 - (a) Job title;
 - (b) Responsibilities of the job; and,
 - (c) Skills, knowledge, training/education and experience required for the job.
 6. For contractual employees, a copy of the contract or written agreement which includes effective dates of the contract and which is signed and dated by the contractual employee and the director of the holding facility or county supervisor.
 7. For all employees (including contractual employees) and volunteers, documentation must be maintained that a criminal records background check (including prior convictions under the Vulnerable Adults Act) and child registry check (for employees and volunteers who work with or may have to work with children/youth) has been obtained and no information received would exclude the employee/volunteer. (See Sections 43-15-6, 43-20-5, and 43-20-8 of the *Mississippi Code of 1972, Annotated*) For the purposes of these checks, each employee/volunteer hired after July 1, 2002, must be fingerprinted.
- D. Each holding facility shall have written procedures for admission of people who have been involuntarily civilly committed and are awaiting transportation. These procedures shall include, but not be limited to, the following:
1. Make a complete search of the person and his/her possessions;
 2. Properly inventory and store person's personal property;
 3. Require any necessary personal hygiene activities (e.g., shower or hair care, if needed);
 4. Issue clean, laundered clothing or appropriate garments (e.g., suicide risk reduction garments);
 5. Issue allowable personal hygiene articles;
 6. Perform health/medical screening;
 7. Record basic personal data and information to be used for mail and visiting lists; and,
 8. Provide a verbal orientation of the person to the holding facility and daily routines.

Source: Section 41-4-7 of the *Mississippi Code, 1972, as amended*

Rule 35.3 Employee Training

- A. Supervisory and direct service employees who work with people being held in the holding facility as part of the civil commitment process must participate in training opportunities and other meetings, as specified and required by DMH.
- B. Documentation of training of individual employees must be included in individual training/personnel records and must include:
 1. Date of training;
 2. Topic(s) addressed;
 3. Name(s) of presenter(s) and qualifications; and,

4. Contact hours (actual time spent in training).
- C. Training on the following must be conducted and/or documented prior to service delivery for all newly hired employees (including contractual employees) and annually thereafter for all agency provider employees. People who are trained in the medical field (i.e., physicians, nurse practitioners or licensed nurses) may be excluded from this prior training. People who have documentation that they have received this training at another program approved by DMH within the time frame required may also be excluded:
1. First aid and life safety, including handling of emergencies such as choking, seizures, etc.;
 2. Preventing, recognizing and reporting abuse/neglect, including provisions of the Vulnerable Adults Act, and the MS Child Abuse Law;
 3. Handling of accidents and roadside emergencies (for services transporting only);
 4. De-escalation techniques & crisis intervention;
 5. Confidentiality of information pertaining to people being housed in the holding facility, including appropriate state and federal regulations governing confidentiality, particularly in addressing requests for such information;
 6. Fire safety and disaster preparedness to include:
 - (a) Use of alarm system;
 - (b) Notification of authorities who would be needed/required in an emergency;
 - (c) Actions to be taken in case of fire/disaster; and,
 - (d) Use of fire extinguishers;
 7. Cardiopulmonary Resuscitation Certification (CPR) must be a live, face-to-face training which is conducted by a certified CPR instructor. Must be certified by the American Red Cross, American Heart Association or by other approved agency providers by DMH. Employees must be initially certified and maintain certification as required by the certifying entity;
 8. Recognizing and reporting serious incidents, including completion and submission of reports;
 9. Universal precautions for containing the spread of contaminants;
 10. Adverse medication reaction and medical response; and,
 11. Suicide precautions.

Source: Section 41-4-7 of the *Mississippi Code, 1972, as amended*

Rule 35.4 Environment and Safety

- A. If the holding facility is being used for civil commitment purposes and is part of a correctional facility or jail, the people awaiting transfer related to civil commitment proceedings (or just people detained as part of the civil commitment process) must be held separately from pre-trial criminal offense detainees or inmates serving sentences.
- B. Rooms used for holding people must be free from structures and/or fixtures that could be used to harm themselves.

- C. Holding facilities must be inspected and approved by appropriate local and/or state fire, health/sanitation, and safety agencies at least annually (within the anniversary month of the prior inspection), with written records of fire and health inspections on file.
- D. The following must be conducted immediately upon arrival:
 - 1. Suicide assessment (using a DMH approved screening instrument); and,
 - 2. Violence risk assessment (using a DMH approved screening instrument).
- E. If the risk level for any of these assessments is deemed “high,” a twenty-four (24) hour follow-up assessment by a nurse or physician is required.
- F. If the risk level for suicide is deemed “high,” immediate suicide prevention actions must be instituted.

Source: Section 41-4-7 of the *Mississippi Code, 1972, as amended*

Rule 35.5 Clinical Management

- A. Each holding facility must have written procedures and documentation for clinical management of people who are involved in or have been involuntarily civilly committed and awaiting transportation. These procedures shall include, but not be limited to, the following:
 - 1. Immediately upon arrival of the person to the holding facility, all mental health screening information (pursuant to civil commitment procedures) must be made available to the holding facility personnel;
 - 2. Immediately upon arrival or within twenty-four (24) hours, a medical screening should be conducted and documented by a registered nurse or nurse practitioner that includes, at a minimum, the following components:
 - (a) Vital signs (at a minimum: body temperature, pulse/heart rate, respiratory rate, and blood pressure);
 - (b) Accu-Chek monitoring for people with diabetes;
 - (c) Medical/drug history;
 - (d) Allergy history; and,
 - (e) Psychiatric history (refer to pre-evaluation form).
- B. Clinical Management of the person being held must include:
 - 1. Within seventy-two (72) hours of admission, people should be assessed by a physician, preferably a psychiatrist or a nurse practitioner;
 - 2. Twenty-four (24) hour crisis/on-call coverage by a physician or psychiatric nurse practitioner;
 - 3. Availability of ordered pharmacologic agents within twenty-four (24) hours

4. Timely administration of prescribed medication in accordance with the MS Nursing Practice Act;
5. Access to medical services for pre-existing conditions that require ongoing medical attention (e.g., high blood pressure, diabetes, etc.);
6. Immediate availability of a limited supply of injectable psychotropic medications, medications for urgent management of non-life threatening medical conditions (e.g., insulin, albuterol inhalers and medications used for withdrawal management);
7. Ongoing assessment and monitoring for people with mental illness or substance use considered by medical or psychiatric personnel to be at high risk;
8. Training/certification of employees in prevention/management of aggressive behavior program; and,
9. Procedures for maintenance of people's records, including:
 - (a) Documentation of information by professional personnel across disciplines;
 - (b) Documentation of physician's orders; and,
 - (c) Basic personal data and information that ensures rapid emergency contact, if needed.

Source: Section 41-4-7 of the *Mississippi Code, 1972, as amended*

Rule 35.6 Dignity of People

- A. In order to ensure the dignity and rights of people being held in a holding facility for reasons of psychiatric crisis or civil commitment, reasonable access to the following must be allowed:
 1. Protection and advocacy services/information;
 - (a) Disability Rights MS 800-772-4057;
 - (b) Dept. of Mental Health 877-210-8513;
 2. Chaplain services;
 3. Telephone contact; and,
 4. Visits with family members.

Source: Section 41-4-7 of the *Mississippi Code, 1972, as amended*