



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 12, 2024

David N. Wilkerson
Commissioner, Region 11 Mental Health Commission
Post Office Box 1284
Woodville, Mississippi 39669

Re: Disposition of Medical Records

Dear Commissioner Wilkerson:

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

Background

You provide the following in your request: the Region 11 Mental Health Commission (“Region 11”) is a political subdivision that was established pursuant to Mississippi Code Annotated Section 41-19-33. Region 11 has recently been decertified by the Mississippi State Department of Mental Health, and the counties forming Region 11 have since joined new regions to cover their mental health services. Region 11 currently provides no services and has no facilities, employees, income, or funding. Region 11 is unsure how to proceed with its medical records. Neither of the regions that now service the geographic area of the former Region 11 are willing to take possession of the medical records of the former Region 11 patients.

Questions Presented

1. Since Region 11 was a place devoted to the treatment and care of those suffering from mental infirmity, do its medical histories, records, reports, summaries, diagnoses and prognoses, records of treatment and medication ordered and given, notes, entries, and other written graphic data fall under the definition of “hospital records” in Mississippi Code Annotated Section 41-9-61(b)?
2. If so, is it your opinion that the medical records would fall under the purview of Section 41-9-79 as to their final disposition?
3. If so, is it your opinion that the State Department of Health is the “licensing agency” responsible to store, retain, retire, and provide access to the medical records, as defined in Section 41-9-61(e)?

4. If the answer is no to any of these questions, my commission desires an opinion as to what the commission is lawfully able to do with its medical records when Region 11 dissolves.

Brief Response

1. According to your request, Region 11 is a regional mental health commission and as such, its medical records are not hospital records as defined in Section 41-9-61(b) but instead are governed by the applicable provisions of Sections 41-19-31, *et seq.*, for regional mental health commissions.
2. This question is rendered moot by Response 1.
3. This question is rendered moot by Response 1.
4. As a regional mental health commission, Region 11 falls under the purview of the State Board of Mental Health and should follow its guidance with respect to the disposition of medical records.

Applicable Law and Discussion

As an initial matter, opinions of this office are limited to prospective questions of state law and not federal law. Miss. Code Ann. § 7-5-25. Your questions may implicate federal laws or regulations. However, this opinion does not consider those implications as they are outside the scope of an official Attorney General's Opinion.

Regional mental health commissions are established pursuant to Section 41-19-33 and have the duty "to administer mental health/intellectual disability programs certified and required by the State Board of Mental Health and as specified in Section 41-4-1(2)." Miss. Code Ann. § 41-19-33(1) (amended by 2024 Miss. Laws H.B. 1640). Section 41-4-1(2) authorizes the State Board of Mental Health "to promulgate regulations to ensure that core adult mental health services, child mental health services, intellectual/developmental disability services, and substance abuse prevention and treatment/rehabilitation services are provided throughout the state through the regional mental health/intellectual disability commissions and centers or through other providers." Pursuant to Section 41-4-7, the State Board of Mental Health has the power and duty: "(i) To certify, coordinate and establish minimum standards and establish minimum required services, as specified in Section 41-4-1(2), for regional mental health and intellectual disability commissions . . ." and:

(j) To establish and promulgate reasonable minimum standards for the construction and operation of state and all Department of Mental Health certified facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, *transfer of patients and their records*, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care, when such care is provided for persons with mental or emotional illness, an intellectual disability, alcoholism, drug misuse and developmental disabilities

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(emphasis added.)

In your request, you reference Sections 41-9-61, *et seq.*, which govern medical records for hospitals. Pursuant to Section 41-9-63, these hospitals have the duty to prepare and maintain hospital records in accordance with regulations adopted by the Department of Health. As you point out in your request, the “hospitals” referenced in Section 41-9-61 are broadly defined in Section 41-9-3(a). However, it is the opinion of this office that the records of regional mental health commissions fall under the purview of the State Board of Mental Health pursuant to Section 41-4-7(j) and are not “hospital records” as defined in Section 41-9-3(a). Thus, Region 11 should follow the guidance of the State Board of Mental Health with respect to the disposition of its patient’s medical records and any other law(s) pertaining to an individual’s right to their medical records and information. *See* Miss. Code Ann. § 41-21-102(7) (“Unless disclosure is determined to be detrimental to the physical or mental health of the patient, and unless notation to that effect is made in the patient's record, a patient has the right of access to his medical records.”). Sections 41-9-69 and 41-9-79, which provide for the preservation of hospital records and the disposition of records upon a hospital’s closing, do not apply to regional mental health commissions.

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/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General