



*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 Pitato 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

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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