

By: Representative Taylor

To: Public Health and
Welfare

HOUSE BILL NO. 1478

1 AN ACT TO AMEND SECTION 43-11-1, 43-11-3, 43-11-5, 43-11-7,
2 43-11-9, 43-11-11, 43-11-13, 43-11-15, 43-11-17, 43-11-21,
3 43-11-23, 43-11-25 AND 43-11-27, MISSISSIPPI CODE OF 1972, TO MAKE
4 TECHNICAL REVISIONS TO CERTAIN LAWS REGULATING INSTITUTIONS FOR
5 THE AGED OR INFIRM; TO REVISE PENALTIES FOR SUBSEQUENT VIOLATIONS
6 OF THIS CHAPTER; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 43-11-1, Mississippi Code of 1972, is
9 amended as follows:

10 43-11-1. When used in this chapter, the following words
11 shall have the following meaning, unless the context clearly
12 indicates otherwise:

13 (a) "Institutions for the aged or infirm" means a place
14 either governmental or private which provides group living
15 arrangements for four (4) or more persons who are unrelated to the
16 operator and who are being provided food, shelter and personal
17 care whether any such place be organized or operated for profit or
18 not. The term "institution for aged or infirm" includes nursing
19 homes, pediatric skilled nursing facilities, psychiatric
20 residential treatment facilities, convalescent homes and homes for
21 the aged, provided that these institutions fall within the scope
22 of the definitions set forth above. The term "institution for the
23 aged or infirm" does not include hospitals, clinics or mental
24 institutions devoted primarily to providing medical service.

25 (b) "Person" means any individual, firm, partnership,
26 corporation, company, association or joint stock association, or
27 any licensee herein or the legal successor thereof.

28 (c) "Personal care" means assistance rendered by
29 personnel of the home to aged or infirm residents in performing
30 one or more of the activities of daily living, which includes, but
31 is not limited to the bathing, walking, excretory functions,
32 feeding, personal grooming and dressing of such residents.

33 (d) "Psychiatric residential treatment facility" means
34 any nonhospital establishment with permanent facilities which
35 provides a 24-hour program of care by qualified therapists
36 including, but not limited to, duly licensed mental health
37 professionals, psychiatrists, psychologists, psychotherapists and
38 licensed certified social workers, for emotionally disturbed
39 children and adolescents referred to such facility by a court,
40 local school district or by the Department of Human Services, who
41 are not in an acute phase of illness requiring the services of a
42 psychiatric hospital, and are in need of such restorative
43 treatment services. For purposes of this paragraph, the term
44 "emotionally disturbed" means a condition exhibiting one or more
45 of the following characteristics over a long period of time and to
46 a marked degree, which adversely affects educational performance:

47 1. An inability to learn which cannot be explained
48 by intellectual, sensory or health factors;

49 2. An inability to build or maintain satisfactory
50 relationships with peers and teachers;

51 3. Inappropriate types of behavior or feelings
52 under normal circumstances;

53 4. A general pervasive mood of unhappiness or
54 depression; or

55 5. A tendency to develop physical symptoms or
56 fears associated with personal or school problems. An
57 establishment furnishing primarily domiciliary care is not within
58 this definition.

59 (e) "Pediatric skilled nursing facility" means an
60 institution or a distinct part of an institution that is primarily

61 engaged in providing to inpatients skilled nursing care and
62 related services for persons under twenty-one (21) years of age
63 who require medical or nursing care or rehabilitation services for
64 the rehabilitation of injured, disabled or sick persons.

65 (f) "Licensing agency" means the State Department of
66 Health.

67 SECTION 2. Section 43-11-3, Mississippi Code of 1972, is
68 amended as follows:

69 43-11-3. The purpose of this chapter is to protect and
70 promote the public welfare by providing for the development,
71 establishment and enforcement of certain standards in the
72 maintenance and operation of institutions for the aged or infirm
73 which will insure continuous safe, sanitary and reasonably
74 adequate care of individuals in such institutions.

75 SECTION 3. Section 43-11-5, Mississippi Code of 1972, is
76 amended as follows:

77 43-11-5. No person, acting severally or jointly with any
78 other person, shall establish, conduct, or maintain an institution
79 for the aged or infirm in this state without a license as required
80 under this chapter.

81 SECTION 4. Section 43-11-7, Mississippi Code of 1972, is
82 amended as follows:

83 43-11-7. An application for a license shall be made to the
84 licensing agency upon forms provided by the licensing agency and
85 shall contain such information as the licensing agency reasonably
86 requires, which may include affirmative evidence of ability to
87 comply with such reasonable standards, rules and regulations as
88 are lawfully prescribed hereunder. Each application for a license
89 for an institution for the aged or infirm, except for personal
90 care homes, shall be accompanied by a license fee of Twenty
91 Dollars (\$20.00) for each bed in the institution, with a minimum
92 fee per institution of Two Hundred Dollars (\$200.00), which shall
93 be paid to the licensing agency. Each application for a license

for a personal care home shall be accompanied by a license fee of Fifteen Dollars (\$15.00) for each bed in the institution, with a minimum fee per institution of One Hundred Dollars (\$100.00), which shall be paid to the licensing agency.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SECTION 5. Section 43-11-9, Mississippi Code of 1972, is amended as follows:

43-11-9. (1) Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter and the requirements of Section 41-7-173 et seq., where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually upon payment by (a) the licensee of an institution for the aged or infirm, except for personal care homes, of a renewal fee of Twenty Dollars (\$20.00) for each bed in the institution, with a minimum fee per institution of Two Hundred Dollars (\$200.00), or (b) the licensee of a personal care home of a renewal fee of Fifteen Dollars (\$15.00) for each bed in the institution, with a minimum fee per institution of One Hundred Dollars (\$100.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation. Each license shall be issued only for the premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(2) A fee known as a "User Fee" shall be applicable and shall be paid to the licensing agency as set out in subsection (1) hereof. This user fee shall be assessed for the purpose of the

required reviewing and inspections of the proposal of any institution in which there are additions, renovations, modernizations, expansion, alterations, additions, conversions, modifications or replacement of the entire facility involved in such proposal. This fee includes the reviewing of architectural plans in all steps required. There shall be a minimum user fee of Fifty Dollars (\$50.00) and a maximum user fee of Five Thousand Dollars (\$5,000.00).

(3) No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

SECTION 6. Section 43-11-11, Mississippi Code of 1972, is amended as follows:

43-11-11. The licensing agency after notice and opportunity for a hearing to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter.

Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or such service, at which time the applicant or licensee, shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty (30) day period, appeals the decision to the chancery court; pursuant to Section 43-11-23.

159 The procedure governing hearings authorized by this section
160 shall be in accordance with rules promulgated by the licensing
161 agency. A full and complete record shall be kept of all
162 proceedings, and all testimony shall be recorded but need not be
163 transcribed unless the decision is appealed pursuant to Section
164 43-11-23. Witnesses may be subpoenaed by either party.

165 Compensation shall be allowed to witnesses as in cases in the
166 chancery court. Each party shall pay the expense of his own
167 witnesses. The cost of the record shall be paid by the licensing
168 agency provided any other party desiring a copy of the transcript
169 shall pay therefor the reasonable cost of preparing such record.

170 SECTION 7. Section 43-11-13, Mississippi Code of 1972, is
171 amended as follows:

172 43-11-13. (1) The licensing agency shall adopt, amend,
173 promulgate and enforce such rules, regulations and standards,
174 including classifications, with respect to all institutions for
175 the aged or infirm to be licensed as provided in this chapter as
176 may be designed to further the accomplishment of the purpose of
177 this chapter in promoting adequate care of individuals in such
178 institutions in the interest of public health, safety and welfare.
179 Such rules, regulations and standards shall be adopted and
180 promulgated by the licensing agency and shall be recorded and
181 indexed in a book to be maintained by the licensing agency in its
182 main office in the State of Mississippi, entitled "Rules,
183 Regulations and Minimum Standards for Institutions for the Aged or
184 Infirm" and said book shall be open and available to all
185 institutions for the aged or infirm and the public generally at
186 all reasonable times. Upon the adoption of such rules,
187 regulations and standards, the licensing agency shall mail copies
188 thereof to all such institutions in the state which have filed
189 with said agency their names and addresses for this purpose, but
190 the failure to mail the same or the failure of the institutions to
191 receive the same shall in nowise affect the validity thereof.

Said rules, regulations and standards may be amended by the licensing agency from time to time as necessary to promote the health, safety and welfare of persons living in said institutions.

(2) The licensee shall keep posted in a conspicuous place on the licensed premises all current rules, regulations and minimum standards applicable to fire protection measures as adopted by the licensing agency. The licensee shall furnish to the licensing agency at least once each six (6) months a certificate of approval and inspection by state or local fire authorities. Failure to comply with state laws and/or municipal ordinances and current rules, regulations and minimum standards as adopted by the licensing agency, relative to fire prevention measures, shall be prima facie evidence for revocation of license.

(3) The State Board of Health shall promulgate rules and regulations restricting the storage, quantity and classes of drugs allowed in personal care homes. Residents requiring administration of Schedule II Narcotics as defined in the Uniform Controlled Substances Law may be admitted to a personal care home. Schedule drugs may only be allowed in a personal care home if they are administered or stored utilizing proper procedures under the direct supervision of a licensed physician or nurse.

SECTION 8. Section 43-11-15, Mississippi Code of 1972, is amended as follows:

43-11-15. Any institution for the aged or infirm which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this chapter shall be given a reasonable time, under the particular circumstances not to exceed one (1) year from the date of such promulgation, within which to comply with such applicable rules and regulations and minimum standards.

SECTION 9. Section 43-11-17, Mississippi Code of 1972, is amended as follows:

43-11-17. The licensing agency shall make or cause to be made such inspections and investigations as it deems necessary to carry out the purposes of this chapter.

SECTION 10. Section 43-11-19, Mississippi Code of 1972, is amended as follows:

43-11-19. Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals, except in a proceeding involving the questions of licensure; however, the licensing agency may utilize statistical data concerning types of services and the utilization of those services for institutions for the aged or infirm in performing the statutory duties imposed upon it by Section 41-7-171, et seq. and the report requirement of Section 43-11-21.

SECTION 11. Section 43-11-21, Mississippi Code of 1972, is amended as follows:

43-11-21. The licensing agency shall prepare and publish an annual report of its activities and operations under this chapter. A reasonable number of copies of such publications shall be available in the office of the licensing agency to be furnished free to all persons requesting them.

SECTION 12. Section 43-11-23, Mississippi Code of 1972, is amended as follows:

43-11-23. Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing, may within thirty (30) days after the mailing or serving of notice of the decision as provided in Section 43-11-11, file a notice of appeal in the chancery court of the First Judicial District of Hinds County or the chancery court of the county in which the institution is located or to be located, and the chancery clerk of such court shall serve a copy of the notice of appeal upon the licensing agency. Thereupon the licensing agency shall, within sixty (60) days or such additional time as the court may allow

from the service of such notice, certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the licensing agency shall be conclusive unless substantially contrary to the weight of the evidence but upon good cause shown, the court may remand the case to the licensing agency to take further evidence, and the licensing agency may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the licensing agency and either the applicant or licensee or the licensing agency may appeal from this decision to the Supreme Court as in other cases in the chancery court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs as in other cases in chancery shall apply equally to cases hereunder.

SECTION 13. Section 43-11-25, Mississippi Code of 1972, is amended as follows:

43-11-25. Any person establishing, conducting, managing or operating an institution for the aged or infirm without a license under this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not more than One Thousand Dollars (\$1,000.00) for the first offense and not more than Two Thousand Dollars (\$2,000.00) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

SECTION 14. Section 43-11-27, Mississippi Code of 1972, is amended as follows:

43-11-27. Notwithstanding the existence or pursuit of any other remedy, the licensing agency may, in the manner provided by law, upon the advice of the Attorney General who shall represent the licensing agency in the proceedings, maintain an action in the name of the state for injunction or other process against any

290 person to restrain or prevent the establishment, conduct,
291 management or operation of an institution for the aged or infirm
292 without a license as required under this chapter.

293 SECTION 15. This act shall take effect and be in force from
294 and after July 1, 2001.