

By: Representative Holland

To: Public Health and
Welfare; Judiciary A

HOUSE BILL NO. 904

1 AN ACT TO CODIFY NEW SECTION 11-11-8, MISSISSIPPI CODE OF
2 1972, TO SPECIFY THE VENUE FOR ACTIONS AGAINST NURSING HOMES FOR
3 INJURY OR DAMAGES OR WRONGFUL DEATH; TO AMEND SECTION 15-1-36,
4 MISSISSIPPI CODE OF 1972, TO INCLUDE NURSING HOMES AND OTHER
5 LONG-TERM CARE FACILITIES TO THE STATUTE OF LIMITATIONS APPLICABLE
6 TO TORT ACTIONS FOR INJURIES OR WRONGFUL DEATH ARISING FROM
7 MEDICAL OR OTHER PROFESSIONAL SERVICES; TO AMEND SECTION 43-11-7,
8 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON MAY APPLY FOR
9 A LICENSE FOR A NURSING HOME; TO AMEND SECTION 43-11-13,
10 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT RULES, REGULATIONS OR
11 STANDARDS PROMULGATED BY THE STATE DEPARTMENT OF HEALTH UNDER THE
12 LICENSING LAW SHALL NOT BE CONSTRUED AS ESTABLISHING A MEDICAL
13 STANDARD OF CARE; TO AMEND SECTION 43-11-19, MISSISSIPPI CODE OF
14 1972, TO PROVIDE THAT INFORMATION RECEIVED OR CAUSED TO BE
15 MAINTAINED OR COLLECTED BY THE STATE DEPARTMENT OF HEALTH THROUGH
16 FILED REPORTS OR INSPECTION UNDER THE NURSING HOME LICENSURE LAW
17 SHALL NOT BE DISCLOSED BY ANY PERSON OR PARTY, EXCEPT IN A
18 PROCEEDING INVOLVING THE QUESTIONS OF LICENSURE; TO AMEND SECTION
19 41-63-21, MISSISSIPPI CODE OF 1972, TO DELETE CERTAIN REPORTS,
20 RECORDS AND CORRESPONDENCE THAT ARE PREPARED BY THE STATE
21 DEPARTMENT OF HEALTH FROM THE DEFINITION OF "ACCREDITATION AND
22 QUALITY ASSURANCE MATERIALS"; TO AMEND SECTION 43-7-53,
23 MISSISSIPPI CODE OF 1972, TO REQUIRE THAT THE QUALIFICATIONS FOR
24 STATE AND COMMUNITY LONG-TERM CARE FACILITIES OMBUDSMEN SHALL
25 INCLUDE TRAINING AND EXPERIENCE WITH LONG-TERM CARE FACILITIES; TO
26 AMEND SECTION 43-7-61, MISSISSIPPI CODE OF 1972, TO REQUIRE
27 LONG-TERM CARE FACILITIES OMBUDSMEN TO PARTICIPATE IN ONGOING
28 TRAINING PROGRAMS RELATED TO THEIR DUTIES AND RESPONSIBILITIES;
29 AND FOR RELATED PURPOSES.

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

31 **SECTION 1.** The following shall be codified as Section
32 11-11-8, Mississippi Code of 1972:

33 11-11-8. Actions against nursing homes and other long-term
34 care providers for injury or damages or wrongful death, whether in
35 contract or tort, based on an alleged breach of the standard of
36 care must be brought in the county in which the act or omission
37 constituting the alleged breach of the standard of care by the
38 defendant actually occurred. If the act or omissions took place
39 in more than one (1) county within the State of Mississippi, the
40 action must be brought in the county in which the plaintiff



41 resided at the time of the act or omission, if the action is for
42 personal injuries, or in which the plaintiff's decedent resided at
43 the time of the act or omission, if the action is for wrongful
44 death. If at any time before the beginning of the trial of the
45 action it is shown that the plaintiff's injuries or plaintiff's
46 decedent's death did not result from acts or omissions that took
47 place in more than one (1) county, on motion of any defendant the
48 court shall transfer the action to the county in which the alleged
49 acts or omissions actually occurred.

50 If an action is brought in an improper county, the action may
51 be transferred to the proper county under Section 11-11-17.

52 **SECTION 2.** Section 15-1-36, Mississippi Code of 1972, is
53 amended as follows:

54 15-1-36. (1) For any claim accruing on or before June 30,
55 1998, and except as otherwise provided in this section, no claim
56 in tort may be brought against a licensed physician, osteopath,
57 dentist, hospital, nursing home or other long-term care facility,
58 nurse, pharmacist, podiatrist, optometrist or chiropractor for
59 injuries or wrongful death arising out of the course of medical,
60 surgical or other professional services unless it is filed within
61 two (2) years from the date the alleged act, omission or neglect
62 shall or with reasonable diligence might have been first known or
63 discovered.

64 (2) For any claim accruing on or after July 1, 1998, and
65 except as otherwise provided in this section, no claim in tort may
66 be brought against a licensed physician, osteopath, dentist,
67 hospital, nursing home or other long-term care facility, nurse,
68 pharmacist, podiatrist, optometrist or chiropractor for injuries
69 or wrongful death arising out of the course of medical, surgical
70 or other professional services unless it is filed within two (2)
71 years from the date the alleged act, omission or neglect shall or
72 with reasonable diligence might have been first known or
73 discovered, and, except as described in paragraphs (a) and (b) of



74 this subsection, in no event more than seven (7) years after the
75 alleged act, omission or neglect occurred:

76 (a) In the event a foreign object introduced during a
77 surgical or medical procedure has been left in a patient's body,
78 the cause of action shall be deemed to have first accrued at, and
79 not before, the time at which the foreign object is, or with
80 reasonable diligence should have been, first known or discovered
81 to be in the patient's body.

82 (b) In the event the cause of action shall have been
83 fraudulently concealed from the knowledge of the person entitled
84 thereto, the cause of action shall be deemed to have first accrued
85 at, and not before, the time at which such fraud shall be, or with
86 reasonable diligence should have been, first known or discovered.

87 (3) Except as otherwise provided in subsection (4) of this
88 section, if at the time at which the cause of action shall or with
89 reasonable diligence might have been first known or discovered,
90 the person to whom such claim has accrued shall be six (6) years
91 of age or younger, then such minor or the person claiming through
92 such minor may, notwithstanding that the period of time limited
93 pursuant to subsections (1) and (2) of this section shall have
94 expired, commence action on such claim at any time within two (2)
95 years next after the time at which the minor shall have reached
96 his sixth birthday, or shall have died, whichever shall have first
97 occurred.

98 (4) If at the time at which the cause of action shall or
99 with reasonable diligence might have been first known or
100 discovered, the person to whom such claim has accrued shall be a
101 minor without a parent or legal guardian, then such minor or the
102 person claiming through such minor may, notwithstanding that the
103 period of time limited pursuant to subsections (1) and (2) of this
104 section shall have expired, commence action on such claim at any
105 time within two (2) years next after the time at which the minor
106 shall have a parent or legal guardian or shall have died,



107 whichever shall have first occurred; * * * however, * * * in no
108 event shall the period of limitation begin to run prior to such
109 minor's sixth birthday unless such minor shall have died.

110 (5) If at the time at which the cause of action shall or
111 with reasonable diligence might have been first known or
112 discovered, the person to whom such claim has accrued shall be
113 under the disability of unsoundness of mind, then such person or
114 the person claiming through him may, notwithstanding that the
115 period of time hereinbefore limited shall have expired, commence
116 action on such claim at any time within two (2) years next after
117 the time at which the person to whom the right shall have first
118 accrued shall have ceased to be under the disability, or shall
119 have died, whichever shall have first occurred.

120 (6) When any person who shall be under the disabilities
121 mentioned in subsections (3), (4) and (5) of this section at the
122 time at which his right shall have first accrued, shall depart
123 this life without having ceased to be under such disability, no
124 time shall be allowed by reason of the disability of such person
125 to commence action on the claim of such person beyond the period
126 prescribed under Section 15-1-55, Mississippi Code of 1972.

127 (7) For the purposes of subsection (3) of this section, and
128 only for the purposes of such subsection, the disability of
129 infancy or minority shall be removed from and after a person has
130 reached his sixth birthday.

131 (8) For the purposes of subsection (4) of this section, and
132 only for the purposes of such subsection, the disability of
133 infancy or minority shall be removed from and after a person has
134 reached his sixth birthday or from and after such person shall
135 have a parent or legal guardian, whichever occurs later, unless
136 such disability is otherwise removed by law.

137 (9) The limitation established by this section as to a
138 licensed physician, osteopath, dentist, hospital or nurse shall



139 apply only to actions the cause of which accrued on or after July
140 1, 1976.

141 (10) The limitation established by this section as to
142 pharmacists shall apply only to actions the cause of which accrued
143 on or after July 1, 1978.

144 (11) The limitation established by this section as to
145 podiatrists shall apply only to actions the cause of which accrued
146 on or after July 1, 1979.

147 (12) The limitation established by this section as to
148 optometrists and chiropractors shall apply only to actions the
149 cause of which accrued on or after July 1, 1983.

150 (13) The limitation established by this section as to
151 actions commenced on behalf of minors shall apply only to actions
152 the cause of which accrued on or after July 1, 1989.

153 **SECTION 3.** Section 43-11-7, Mississippi Code of 1972, is
154 amended as follows:

155 43-11-7. Any person, as defined in Section 43-11-1, may
156 apply for a license as provided in this section. An application
157 for a license shall be made to the licensing agency upon forms
158 provided by it and shall contain such information as the licensing
159 agency reasonably requires, which may include affirmative evidence
160 of ability to comply with such reasonable standards, rules and
161 regulations as are lawfully prescribed hereunder. Each
162 application for a license for an institution for the aged or
163 infirm, except for personal care homes, shall be accompanied by a
164 license fee of Twenty Dollars (\$20.00) for each bed in the
165 institution, with a minimum fee per institution of Two Hundred
166 Dollars (\$200.00), which shall be paid to the licensing agency.
167 Each application for a license for a personal care home shall be
168 accompanied by a license fee of Fifteen Dollars (\$15.00) for each
169 bed in the institution, with a minimum fee per institution of One
170 Hundred Dollars (\$100.00), which shall be paid to the licensing
171 agency.



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

174 **SECTION 4.** Section 43-11-13, Mississippi Code of 1972, is
175 amended as follows:

176 43-11-13. (1) The licensing agency shall adopt, amend,
177 promulgate and enforce such rules, regulations and standards,
178 including classifications, with respect to all institutions for
179 the aged or infirm to be licensed under this chapter as may be
180 designed to further the accomplishment of the purpose of this
181 chapter in promoting adequate care of individuals in such
182 institutions in the interest of public health, safety and welfare.
183 Nothing contained in these or any other rules, regulations or
184 standards promulgated or enforced by the licensing agency shall be
185 construed as establishing a medical standard of care. Such rules,
186 regulations and standards shall be adopted and promulgated by the
187 licensing agency and shall be recorded and indexed in a book to be
188 maintained by the licensing agency in its main office in the State
189 of Mississippi, entitled "Rules, Regulations and Minimum Standards
190 for Institutions for the Aged or Infirm" and the book shall be
191 open and available to all institutions for the aged or infirm and
192 the public generally at all reasonable times. Upon the adoption
193 of such rules, regulations and standards, the licensing agency
194 shall mail copies thereof to all such institutions in the state
195 which have filed with the agency their names and addresses for
196 this purpose, but the failure to mail the same or the failure of
197 the institutions to receive the same shall in no way affect the
198 validity thereof. The rules, regulations and standards may be
199 amended by the licensing agency, from time to time, as necessary
200 to promote the health, safety and welfare of persons living in
201 those institutions.

202 (2) The licensee shall keep posted in a conspicuous place on
203 the licensed premises all current rules, regulations and minimum
204 standards applicable to fire protection measures as adopted by the



205 licensing agency. The licensee shall furnish to the licensing
206 agency at least once each six (6) months a certificate of approval
207 and inspection by state or local fire authorities. Failure to
208 comply with state laws and/or municipal ordinances and current
209 rules, regulations and minimum standards as adopted by the
210 licensing agency, relative to fire prevention measures, shall be
211 prima facie evidence for revocation of license.

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

220 (4) (a) Notwithstanding any determination by the licensing
221 agency that skilled nursing services would be appropriate for a
222 resident of a personal care home, that resident, the resident's
223 guardian or the legally recognized responsible party for the
224 resident may consent in writing for the resident to continue to
225 reside in the personal care home, if approved in writing by a
226 licensed physician. * * * However, * * * no personal care home
227 shall allow more than two (2) residents, or ten percent (10%) of
228 the total number of residents in the facility, whichever is
229 greater, to remain in the personal care home under the provisions
230 of this subsection (4). This consent shall be deemed to be
231 appropriately informed consent as described in the regulations
232 promulgated by the licensing agency. After that written consent
233 has been obtained, the resident shall have the right to continue
234 to reside in the personal care home for as long as the resident
235 meets the other conditions for residing in the personal care home.
236 A copy of the written consent and the physician's approval shall
237 be forwarded by the personal care home to the licensing agency.



238 (b) The State Board of Health shall promulgate rules
239 and regulations restricting the handling of a resident's personal
240 deposits by the director of a personal care home. Any funds given
241 or provided for the purpose of supplying extra comforts,
242 conveniences or services to any patient in any personal care home,
243 and any funds otherwise received and held from, for or on behalf
244 of any such resident, shall be deposited by the director or other
245 proper officer of the personal care home to the credit of that
246 patient in an account which shall be known as the Resident's
247 Personal Deposit Fund. No more than one (1) month charge for the
248 care, support, maintenance and medical attention of the patient
249 shall be applied from such account at any one time. After the
250 death, discharge or transfer of any resident for whose benefit any
251 such fund has been provided, any unexpended balance remaining in
252 his personal deposit fund shall be applied for the payment of
253 care, cost of support, maintenance and medical attention which is
254 accrued. In the event any unexpended balance remains in that
255 resident's personal deposit fund after complete reimbursement has
256 been made for payment of care, support, maintenance and medical
257 attention, and the director or other proper officer of the
258 personal care home has been or shall be unable to locate the
259 person or persons entitled to such unexpended balance, the
260 director or other proper officer may, after the lapse of one (1)
261 year from the date of such death, discharge or transfer, deposit
262 the unexpended balance to the credit of the personal care home's
263 operating fund.

264 (c) The State Board of Health shall promulgate rules
265 and regulations requiring personal care homes to maintain records
266 relating to health condition, medicine dispensed and administered,
267 and any reaction to such medicine. The director of the personal
268 care home shall be responsible for explaining the availability of
269 such records to the family of the resident at any time upon
270 reasonable request.



271 (d) The State Board of Health shall evaluate the
272 effects of this section as it promotes adequate care of
273 individuals in personal care homes in the interest of public
274 health, safety and welfare. It shall report its findings to the
275 Chairmen of the Public Health and Welfare Committees of the House
276 and Senate by January 1, 2003. This subsection (4) shall stand
277 repealed June 30, 2003.

278 (5) (a) Pursuant to regulations promulgated by the State
279 Department of Health, the licensing agency shall require to be
280 performed a criminal history record check on every new employee of
281 a licensed institution for the aged or infirm or care facility who
282 provides direct patient care or services and who is employed after
283 July 1, 2001. Except as otherwise provided, no such new employee
284 shall be permitted to provide direct patient care or services
285 until the results of the criminal history record check have
286 revealed no disqualifying record. Every such new employee shall
287 provide a valid current social security number and/or driver's
288 license number which shall be furnished to the licensing agency or
289 to the private entity designated by the licensing agency to
290 conduct the criminal history record check. The institution for
291 the aged or infirm or care facility applying for the criminal
292 history record check will be promptly notified of any
293 disqualifying record found by the criminal history record check.
294 In order to determine the applicant's suitability for employment,
295 the applicant shall be fingerprinted. If no disqualifying record
296 is identified at the state level, the fingerprints shall be
297 forwarded by the Department of Public Safety to the Federal Bureau
298 of Investigation for a national criminal history record check.

299 (b) A licensed institution for the aged or infirm or
300 care facility may make an offer of temporary employment to a
301 prospective employee pending the results of a criminal history
302 record check on the person. In such instances, the licensed
303 institution for the aged or infirm or care facility shall provide



304 to the licensing agency, or to the designated private entity, the
305 name and relevant information relating to the person within
306 seventy-two (72) hours after the date the person accepts temporary
307 employment.

308 (c) All fees incurred in compliance with this section
309 shall be borne by the institution or facility requesting the
310 criminal history record check. The licensing agency, or the
311 designated private entity, is authorized to charge the institution
312 for the aged or infirm or care facility a fee which shall include
313 the amount required by the Mississippi Department of Public
314 Safety, the Federal Bureau of Investigation or any other agency
315 designated by the licensing agency for the national criminal
316 history record check in addition to any necessary costs incurred
317 by the licensing agency or the designated private entity for the
318 handling and administration of the criminal history record checks.
319 Costs incurred by a nursing home provider implementing this act
320 shall be reimbursed as an allowable cost under Section 43-13-116.

321 (d) The licensing agency, care facility, and their
322 agents, officers, employees, attorneys and representatives shall
323 be presumed to be acting in good faith for any employment decision
324 or action taken under paragraphs (a) and (b) of this subsection.
325 The presumption of good faith may be overcome by a preponderance
326 of the evidence in any civil action.

327 (e) The licensing agency shall promulgate regulations
328 to implement this subsection (5).

329 **SECTION 5.** Section 43-11-19, Mississippi Code of 1972, is
330 amended as follows:

331 43-11-19. Information received or caused to be maintained or
332 collected by the licensing agency through filed reports,
333 inspection, or as otherwise authorized under this chapter, shall
334 not be disclosed by any person or party, except in a proceeding
335 involving the questions of licensure; however, the licensing
336 agency may utilize statistical data concerning types of services



337 and the utilization of those services for institutions for the
338 aged or infirm in performing the statutory duties imposed upon it
339 by Section 41-7-171, et seq. and by Section 43-11-21.

340 **SECTION 6.** Section 41-63-21, Mississippi Code of 1972, is
341 amended as follows:

342 41-63-21. The term "accreditation and quality assurance
343 materials" as used in Sections 41-63-21 through 41-63-29 means and
344 shall include written reports, records, correspondence and
345 materials concerning the accreditation or quality assurance of any
346 hospital, nursing home or other health care facility and any
347 medical care foundation, health maintenance organization,
348 preferred provider organization, individual practice association
349 or similar entity. * * * The confidentiality established by
350 Sections 41-63-21 through 41-63-29 shall apply to accreditation
351 and quality assurance materials prepared by an employee, advisor
352 or consultant of any hospital, nursing home or other health care
353 facility and any medical care foundation, health maintenance
354 organization, preferred provider organization, individual practice
355 association or similar entity and to materials provided by an
356 employee, advisor or consultant of an accreditation, quality
357 assurance or similar agency or similar body and to any individual
358 who is an employee, advisor or consultant of a hospital, nursing
359 home or other health care facility and any medical care
360 foundation, health maintenance organization, preferred provider
361 organization, individual practice association or similar entity or
362 accrediting, quality assurance or similar agency or body.

363 **SECTION 7.** Section 43-7-53, Mississippi Code of 1972, is
364 amended as follows:

365 43-7-53. (1) There is * * * established within the
366 Mississippi Council on Aging, the Office of the State Long-Term
367 Care Facilities Ombudsman as provided by the Older Americans Act
368 of 1965, as amended, 42 USCS 3001.



369 (2) The council shall establish the qualifications of state
370 and community ombudsmen. Those qualifications shall include
371 training and experience with long-term care facilities.

372 **SECTION 8.** Section 43-7-61, Mississippi Code of 1972, is
373 amended as follows:

374 43-7-61. (1) The Office of the State Long-Term Care
375 Facilities Ombudsman shall establish a training and certification
376 program. The council shall specify by rule the content of the
377 training program. Each long-term care facilities ombudsman
378 program shall bear the cost of training its own employees.

379 (2) The State Ombudsman shall arrange for the training of
380 all prospective community ombudsmen selected by area agencies on
381 aging. Such training shall include instruction in at least the
382 following subjects as they relate to long-term care:

383 (a) The responsibilities and duties of community
384 ombudsmen;

385 (b) The laws and regulations governing the receipt,
386 investigation and resolution of issues of the well-being of a
387 resident;

388 (c) The role of local, state and federal agencies that
389 regulate long-term care facilities;

390 (d) The different kinds of long-term care facilities in
391 Mississippi and the services provided in each kind;

392 (e) The special needs of the elderly and of the
393 physically and mentally handicapped;

394 (f) The role of the family, the sponsor, the legal
395 representative, the physician, the church, and other public and
396 private agencies, and the community;

397 (g) How to work with long-term care facility staff;

398 (h) The aging process and characteristics of the
399 long-term care facility resident or institutionalized elderly;

400 (i) Familiarity with and access to information
401 concerning the laws and regulations governing Medicare, Medicaid,



402 Social Security, Supplemental Security Income, the Veterans
403 Administration and Workers' Compensation; and

404 (j) The training program shall include an appropriate
405 internship to be performed in a long-term care facility.

406 (3) Persons selected by area agencies on aging who have
407 satisfactorily completed the training arranged by the State
408 Ombudsman shall be certified as community ombudsmen by the
409 council.

410 (4) Each area agency on aging may appoint an advisory
411 committee to advise it in the operation of its community ombudsman
412 program. The number and qualifications of members of the advisory
413 committee shall be determined by the area agency on aging.

414 (5) Ombudsmen who have successfully completed the training
415 and certification program under this section shall be given
416 identification cards which shall be presented to employees of a
417 long-term care facility upon request.

418 (6) Ombudsmen shall participate in ongoing training programs
419 related to their duties and responsibilities.

420 **SECTION 9.** This act shall take effect and be in force from
421 and after its passage.

