

By: Representative Moody

To: Public Health and
WelfareCOMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1160

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE CURRENT AND NEW EMPLOYEES AT LICENSED HEALTH CARE
3 FACILITIES TO SIGN AN AFFIDAVIT STATING THAT THEY HAVE NOT BEEN
4 CONVICTED OF OR PLEADED GUILTY TO CERTAIN SPECIFIED CRIMINAL
5 OFFENSES; TO PROVIDE THAT IF A PERSON HAS BEEN CONVICTED OF OR
6 PLEADED GUILTY TO ANY OF THE SPECIFIED OFFENSES, THE PERSON SHALL
7 NOT BE EMPLOYED AT A HEALTH CARE FACILITY; TO PROVIDE THAT IF A
8 PERSON SIGNS THE AFFIDAVIT AND IT IS LATER DETERMINED THAT THE
9 PERSON ACTUALLY HAD BEEN CONVICTED OF OR PLEADED GUILTY TO ANY OF
10 THE SPECIFIED OFFENSES, THE PERSON IS GUILTY OF PERJURY AND SHALL
11 BE PUNISHED AS PROVIDED BY LAW; TO PROVIDE CIVIL IMMUNITY TO
12 HEALTH CARE FACILITIES FOR MAKING EMPLOYMENT DECISIONS ALLOWED BY
13 THIS ACT; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 43-11-13, Mississippi Code of 1972, is
16 amended as follows:

17 43-11-13. (1) The licensing agency shall adopt, amend,
18 promulgate and enforce such rules, regulations and standards,
19 including classifications, with respect to all institutions for
20 the aged or infirm to be licensed under this chapter as may be
21 designed to further the accomplishment of the purpose of this
22 chapter in promoting adequate care of individuals in those
23 institutions in the interest of public health, safety and welfare.
24 Those rules, regulations and standards shall be adopted and
25 promulgated by the licensing agency and shall be recorded and
26 indexed in a book to be maintained by the licensing agency in its
27 main office in the State of Mississippi, entitled "Rules,
28 Regulations and Minimum Standards for Institutions for the Aged or
29 Infirm" and the book shall be open and available to all
30 institutions for the aged or infirm and the public generally at
31 all reasonable times. Upon the adoption of those rules,
32 regulations and standards, the licensing agency shall mail copies



thereof to all those institutions in the state that have filed with the agency their names and addresses for this purpose, but the failure to mail the same or the failure of the institutions to receive the same shall in no way affect the validity thereof. The 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 those 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.

(4) (a) Notwithstanding any determination by the licensing agency that skilled nursing services would be appropriate for a resident of a personal care home, that resident, the resident's guardian or the legally recognized responsible party for the resident may consent in writing for the resident to continue to reside in the personal care home, if approved in writing by a licensed physician. * * * However, * * * no personal care home shall allow more than two (2) residents, or ten percent (10%) of



66 the total number of residents in the facility, whichever is
67 greater, to remain in the personal care home under the provisions
68 of this subsection (4). This consent shall be deemed to be
69 appropriately informed consent as described in the regulations
70 promulgated by the licensing agency. After that written consent
71 has been obtained, the resident shall have the right to continue
72 to reside in the personal care home for as long as the resident
73 meets the other conditions for residing in the personal care home.
74 A copy of the written consent and the physician's approval shall
75 be forwarded by the personal care home to the licensing agency.

76 (b) The State Board of Health shall promulgate rules
77 and regulations restricting the handling of a resident's personal
78 deposits by the director of a personal care home. Any funds given
79 or provided for the purpose of supplying extra comforts,
80 conveniences or services to any resident in any personal care
81 home, and any funds otherwise received and held from, for or on
82 behalf of any such resident, shall be deposited by the director or
83 other proper officer of the personal care home to the credit of
84 that resident in an account that shall be known as the Resident's
85 Personal Deposit Fund. No more than one (1) month's charge for
86 the care, support, maintenance and medical attention of the
87 resident shall be applied from the account at any one time. After
88 the death, discharge or transfer of any resident for whose benefit
89 any such fund has been provided, any unexpended balance remaining
90 in his personal deposit fund shall be applied for the payment of
91 care, cost of support, maintenance and medical attention that is
92 accrued. If any unexpended balance remains in that resident's
93 personal deposit fund after complete reimbursement has been made
94 for payment of care, support, maintenance and medical attention,
95 and the director or other proper officer of the personal care home
96 has been or shall be unable to locate the person or persons
97 entitled to the unexpended balance, the director or other proper
98 officer may, after the lapse of one (1) year from the date of that



99 death, discharge or transfer, deposit the unexpended balance to
100 the credit of the personal care home's operating fund.

101 (c) The State Board of Health shall promulgate rules
102 and regulations requiring personal care homes to maintain records
103 relating to health condition, medicine dispensed and administered,
104 and any reaction to that medicine. The director of the personal
105 care home shall be responsible for explaining the availability of
106 those records to the family of the resident at any time upon
107 reasonable request.

108 (d) The State Board of Health shall evaluate the
109 effects of this section as it promotes adequate care of
110 individuals in personal care homes in the interest of public
111 health, safety and welfare. It shall report its findings to the
112 Chairmen of the Public Health and Welfare Committees of the House
113 and Senate by January 1, 2003. This subsection (4) shall stand
114 repealed June 30, 2003.

115 (5) (a) For the purposes of this subsection, the term
116 "licensed entity" means a hospital, nursing home, personal care
117 home, home health agency or hospice. For the purposes of this
118 subsection, the term "employee" means any person employed by a
119 licensed entity either directly, or if on a contractual basis,
120 those persons that provide direct patient care to the persons
121 being served by the licensed entity.

122 (b) Under regulations promulgated by the State Board of
123 Health, the licensing agency shall require * * * every * * *
124 employee of a licensed entity to sign an affidavit stating that he
125 or she has not been convicted of or pleaded guilty or nolo
126 contendere to a felony of possession or sale of drugs, murder,
127 manslaughter, armed robbery, rape, sexual battery, any sex offense
128 listed in Section 45-33-23(f), child abuse, arson, grand larceny,
129 burglary, gratification of lust, aggravated assault, or felonious
130 abuse and/or battery of a vulnerable adult, or that any such
131 conviction or plea was reversed on appeal or a pardon was granted



132 for the conviction or plea. No * * * new employee of a licensed
133 entity hired on or after July 1, 2002, shall be permitted to
134 provide direct patient care * * * until the employee has signed
135 the affidavit required by this paragraph. All existing employees
136 of licensed entities must sign the affidavit required by this
137 paragraph on or before December 31, 2002.

138 (c) If a person has been convicted of or pleaded guilty
139 or nolo contendere to any of the offenses listed in paragraph (b)
140 of this subsection and the conviction or plea has not been
141 reversed on appeal or a pardon has not been granted for the
142 conviction or plea, the person shall not be employed at a licensed
143 entity. If a person signs the affidavit required by paragraph (b)
144 of this subsection, and it is later determined that the person
145 actually had been convicted of or pleaded guilty or nolo
146 contendere to any of the offenses listed in paragraph (b) of this
147 subsection and the conviction or plea has not been reversed on
148 appeal or a pardon has not been granted for the conviction or
149 plea, the person is guilty of perjury and, upon conviction
150 therefor, shall be punished as provided in Section 97-9-61.

151 * * *

152 (d) The licensing agency, the licensed entity, and
153 their agents, officers, employees, attorneys and representatives,
154 shall be presumed to be acting in good faith for any employment
155 decision or action taken under * * * this subsection. The
156 presumption of good faith may be overcome by a preponderance of
157 the evidence in any civil action. No licensing agency, licensed
158 entity, nor their agents, officers, employees, attorneys and
159 representatives shall be held liable in any employment
160 discrimination suit in which an allegation of discrimination is
161 made regarding an employment decision authorized under this
162 section.

163 (e) The licensing agency shall promulgate regulations
164 to implement this subsection (5).



165 **SECTION 2.** This act shall take effect and be in force from
166 and after July 1, 2002.

