

By: Representative Moody

To: Public Health and Welfare

HOUSE BILL NO. 1160

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
 2 TO DEFINE THOSE LICENSED HEALTH CARE FACILITIES AND EMPLOYEES
 3 SUBJECT TO THE CRIMINAL RECORD BACKGROUND CHECK REQUIREMENTS, TO
 4 PROVIDE A TIMETABLE FOR COMPLETING THE CRIMINAL RECORD BACKGROUND
 5 CHECKS, TO PRESCRIBE THOSE FELONIES THAT DISQUALIFY INDIVIDUALS
 6 FOR EMPLOYMENT AT THOSE LICENSED FACILITIES, TO DELETE THE
 7 AUTHORITY FOR CHARGING A FEE FOR CONDUCTING THE CRIMINAL RECORD
 8 BACKGROUND CHECK, TO PROVIDE THAT PROVIDER COSTS SHALL BE FULLY
 9 REIMBURSABLE UNDER THE MEDICAID PROGRAM AND TO PROVIDE CIVIL
 10 IMMUNITY FOR CONDUCTING THE BACKGROUND CHECKS; AND FOR RELATED
 11 PURPOSES.

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

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

15 43-11-13. (1) The licensing agency shall adopt, amend,
 16 promulgate and enforce such rules, regulations and standards,
 17 including classifications, with respect to all institutions for
 18 the aged or infirm to be licensed under this chapter as may be
 19 designed to further the accomplishment of the purpose of this
 20 chapter in promoting adequate care of individuals in such
 21 institutions in the interest of public health, safety and welfare.
 22 Such rules, regulations and standards shall be adopted and
 23 promulgated by the licensing agency and shall be recorded and
 24 indexed in a book to be maintained by the licensing agency in its
 25 main office in the State of Mississippi, entitled "Rules,
 26 Regulations and Minimum Standards for Institutions for the Aged or
 27 Infirm" and the book shall be open and available to all
 28 institutions for the aged or infirm and the public generally at
 29 all reasonable times. Upon the adoption of such rules,
 30 regulations and standards, the licensing agency shall mail copies
 31 thereof to all such institutions in the state which have filed



32 with the agency their names and addresses for this purpose, but
33 the failure to mail the same or the failure of the institutions to
34 receive the same shall in no way affect the validity thereof. The
35 rules, regulations and standards may be amended by the licensing
36 agency, from time to time, as necessary to promote the health,
37 safety and welfare of persons living in those institutions.

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

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

56 (4) (a) Notwithstanding any determination by the licensing
57 agency that skilled nursing services would be appropriate for a
58 resident of a personal care home, that resident, the resident's
59 guardian or the legally recognized responsible party for the
60 resident may consent in writing for the resident to continue to
61 reside in the personal care home, if approved in writing by a
62 licensed physician. Provided, however, that no personal care home
63 shall allow more than two (2) residents, or ten percent (10%) of
64 the total number of residents in the facility, whichever is



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

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



98 the unexpended balance to the credit of the personal care home's
99 operating fund.

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

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

114 (5) (a) For the purposes of this section, the term
115 "licensed entity" includes hospitals, nursing homes, personal care
116 homes, home health agencies and hospices. For the purposes of
117 this section, the term "employee" means any person employed by the
118 licensed entity either directly, or if on a contractual basis,
119 those individuals that provide direct patient care to the
120 individuals being served by the licensed entity.

121 (b) Under regulations promulgated by the State Board of
122 Health, the licensing agency shall require to be performed a
123 criminal history record check on every * * * employee of a
124 licensed entity. Except as otherwise provided, no such new
125 employee hired after July 1, 2002, shall be permitted to provide
126 direct patient care * * * until the results of the criminal
127 history record check have revealed no disqualifying record. All
128 existing employees of licensed entities shall have a criminal
129 history record check completed on or before December 31, 2002. If
130 the criminal history record check discloses a felony conviction,



131 guilty plea or plea of nolo contendere to a felony of possession
132 or sale of drugs, murder, manslaughter, armed robbery, rape,
133 sexual battery, sex offense listed in Section 45-31-3(i), child
134 abuse, arson, grand larceny, burglary, gratification of lust or
135 aggravated assault, or felonious abuse and/or battery of a
136 vulnerable adult that has not been reversed on appeal or for which
137 a pardon has not been granted, the employee shall not be eligible
138 to be employed at the licensed entity.

139 * * *

140 (c) All fees incurred in compliance with this section
141 shall be borne by the licensed entity requesting the criminal
142 history record check. * * * Costs incurred by a licensed entity
143 implementing this section shall be fully reimbursed as a
144 pass-through cost under the state Medicaid program for
145 participating providers.

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

157 (e) The licensing agency shall promulgate regulations
158 to implement this subsection (5).

159 **SECTION 2.** This act shall take effect and be in force from
160 and after its passage.

