

By: Representative Holland

To: Public Health and Welfare; Judiciary A

HOUSE BILL NO. 1202

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

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

24 **SECTION 1.** Section 43-11-7, Mississippi Code of 1972, is
 25 amended as follows:

26 43-11-7. Any person, as defined in Section 43-11-1, may
 27 apply for a license as provided in this section. An application
 28 for a license shall be made to the licensing agency upon forms
 29 provided by it and shall contain such information as the licensing
 30 agency reasonably requires, which may include affirmative evidence
 31 of ability to comply with such reasonable standards, rules and
 32 regulations as are lawfully prescribed hereunder. Each
 33 application for a license for an institution for the aged or
 34 infirm, except for personal care homes, shall be accompanied by a
 35 license fee of Twenty Dollars (\$20.00) for each bed in the
 36 institution, with a minimum fee per institution of Two Hundred
 37 Dollars (\$200.00), which shall be paid to the licensing agency.



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

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

45 **SECTION 2.** Section 43-11-13, Mississippi Code of 1972, is
46 amended as follows:

47 43-11-13. (1) The licensing agency shall adopt, amend,
48 promulgate and enforce such rules, regulations and standards,
49 including classifications, with respect to all institutions for
50 the aged or infirm to be licensed under this chapter as may be
51 designed to further the accomplishment of the purpose of this
52 chapter in promoting adequate care of individuals in such
53 institutions in the interest of public health, safety and welfare.
54 Nothing contained in these or any other rules, regulations or
55 standards promulgated or enforced by the licensing agency shall be
56 construed as establishing a medical standard of care. Such rules,
57 regulations and standards shall be adopted and promulgated by the
58 licensing agency and shall be recorded and indexed in a book to be
59 maintained by the licensing agency in its main office in the State
60 of Mississippi, entitled "Rules, Regulations and Minimum Standards
61 for Institutions for the Aged or Infirm" and the book shall be
62 open and available to all institutions for the aged or infirm and
63 the public generally at all reasonable times. Upon the adoption
64 of such rules, regulations and standards, the licensing agency
65 shall mail copies thereof to all such institutions in the state
66 which have filed with the agency their names and addresses for
67 this purpose, but the failure to mail the same or the failure of
68 the institutions to receive the same shall in no way affect the
69 validity thereof. The rules, regulations and standards may be
70 amended by the licensing agency, from time to time, as necessary



71 to promote the health, safety and welfare of persons living in
72 those institutions.

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

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

91 (4) (a) Notwithstanding any determination by the licensing
92 agency that skilled nursing services would be appropriate for a
93 resident of a personal care home, that resident, the resident's
94 guardian or the legally recognized responsible party for the
95 resident may consent in writing for the resident to continue to
96 reside in the personal care home, if approved in writing by a
97 licensed physician. * * * However, * * * no personal care home
98 shall allow more than two (2) residents, or ten percent (10%) of
99 the total number of residents in the facility, whichever is
100 greater, to remain in the personal care home under the provisions
101 of this subsection (4). This consent shall be deemed to be
102 appropriately informed consent as described in the regulations
103 promulgated by the licensing agency. After that written consent



104 has been obtained, the resident shall have the right to continue
105 to reside in the personal care home for as long as the resident
106 meets the other conditions for residing in the personal care home.
107 A copy of the written consent and the physician's approval shall
108 be forwarded by the personal care home to the licensing agency.

109 (b) The State Board of Health shall promulgate rules
110 and regulations restricting the handling of a resident's personal
111 deposits by the director of a personal care home. Any funds given
112 or provided for the purpose of supplying extra comforts,
113 conveniences or services to any patient in any personal care home,
114 and any funds otherwise received and held from, for or on behalf
115 of any such resident, shall be deposited by the director or other
116 proper officer of the personal care home to the credit of that
117 patient in an account which shall be known as the Resident's
118 Personal Deposit Fund. No more than one (1) month charge for the
119 care, support, maintenance and medical attention of the patient
120 shall be applied from such account at any one time. After the
121 death, discharge or transfer of any resident for whose benefit any
122 such fund has been provided, any unexpended balance remaining in
123 his personal deposit fund shall be applied for the payment of
124 care, cost of support, maintenance and medical attention which is
125 accrued. In the event any unexpended balance remains in that
126 resident's personal deposit fund after complete reimbursement has
127 been made for payment of care, support, maintenance and medical
128 attention, and the director or other proper officer of the
129 personal care home has been or shall be unable to locate the
130 person or persons entitled to such unexpended balance, the
131 director or other proper officer may, after the lapse of one (1)
132 year from the date of such death, discharge or transfer, deposit
133 the unexpended balance to the credit of the personal care home's
134 operating fund.

135 (c) The State Board of Health shall promulgate rules
136 and regulations requiring personal care homes to maintain records



137 relating to health condition, medicine dispensed and administered,
138 and any reaction to such medicine. The director of the personal
139 care home shall be responsible for explaining the availability of
140 such records to the family of the resident at any time upon
141 reasonable request.

142 (d) The State Board of Health shall evaluate the
143 effects of this section as it promotes adequate care of
144 individuals in personal care homes in the interest of public
145 health, safety and welfare. It shall report its findings to the
146 Chairmen of the Public Health and Welfare Committees of the House
147 and Senate by January 1, 2003. This subsection (4) shall stand
148 repealed June 30, 2003.

149 (5) (a) Pursuant to regulations promulgated by the State
150 Department of Health, the licensing agency shall require to be
151 performed a criminal history record check on every new employee of
152 a licensed institution for the aged or infirm or care facility who
153 provides direct patient care or services and who is employed after
154 July 1, 2001. Except as otherwise provided, no such new employee
155 shall be permitted to provide direct patient care or services
156 until the results of the criminal history record check have
157 revealed no disqualifying record. Every such new employee shall
158 provide a valid current social security number and/or driver's
159 license number which shall be furnished to the licensing agency or
160 to the private entity designated by the licensing agency to
161 conduct the criminal history record check. The institution for
162 the aged or infirm or care facility applying for the criminal
163 history record check will be promptly notified of any
164 disqualifying record found by the criminal history record check.
165 In order to determine the applicant's suitability for employment,
166 the applicant shall be fingerprinted. If no disqualifying record
167 is identified at the state level, the fingerprints shall be
168 forwarded by the Department of Public Safety to the Federal Bureau
169 of Investigation for a national criminal history record check.



170 (b) A licensed institution for the aged or infirm or
171 care facility may make an offer of temporary employment to a
172 prospective employee pending the results of a criminal history
173 record check on the person. In such instances, the licensed
174 institution for the aged or infirm or care facility shall provide
175 to the licensing agency, or to the designated private entity, the
176 name and relevant information relating to the person within
177 seventy-two (72) hours after the date the person accepts temporary
178 employment.

179 (c) All fees incurred in compliance with this section
180 shall be borne by the institution or facility requesting the
181 criminal history record check. The licensing agency, or the
182 designated private entity, is authorized to charge the institution
183 for the aged or infirm or care facility a fee which shall include
184 the amount required by the Mississippi Department of Public
185 Safety, the Federal Bureau of Investigation or any other agency
186 designated by the licensing agency for the national criminal
187 history record check in addition to any necessary costs incurred
188 by the licensing agency or the designated private entity for the
189 handling and administration of the criminal history record checks.
190 Costs incurred by a nursing home provider implementing this act
191 shall be reimbursed as an allowable cost under Section 43-13-116.

192 (d) The licensing agency, care facility, and their
193 agents, officers, employees, attorneys and representatives shall
194 be presumed to be acting in good faith for any employment decision
195 or action taken under paragraphs (a) and (b) of this subsection.
196 The presumption of good faith may be overcome by a preponderance
197 of the evidence in any civil action.

198 (e) The licensing agency shall promulgate regulations
199 to implement this subsection (5).

200 **SECTION 3.** Section 43-11-19, Mississippi Code of 1972, is
201 amended as follows:



202 43-11-19. Information received or caused to be maintained or
203 collected by the licensing agency through filed reports,
204 inspection, or as otherwise authorized under this chapter, shall
205 not be disclosed by any person or party, except in a proceeding
206 involving the questions of licensure; however, the licensing
207 agency may utilize statistical data concerning types of services
208 and the utilization of those services for institutions for the
209 aged or infirm in performing the statutory duties imposed upon it
210 by Section 41-7-171, et seq. and by Section 43-11-21.

211 **SECTION 4.** Section 41-63-21, Mississippi Code of 1972, is
212 amended as follows:

213 41-63-21. The term "accreditation and quality assurance
214 materials" as used in Sections 41-63-21 through 41-63-29 means and
215 shall include written reports, records, correspondence and
216 materials concerning the accreditation or quality assurance of any
217 hospital, nursing home or other health care facility and any
218 medical care foundation, health maintenance organization,
219 preferred provider organization, individual practice association
220 or similar entity. * * * The confidentiality established by
221 Sections 41-63-21 through 41-63-29 shall apply to accreditation
222 and quality assurance materials prepared by an employee, advisor
223 or consultant of any hospital, nursing home or other health care
224 facility and any medical care foundation, health maintenance
225 organization, preferred provider organization, individual practice
226 association or similar entity and to materials provided by an
227 employee, advisor or consultant of an accreditation, quality
228 assurance or similar agency or similar body and to any individual
229 who is an employee, advisor or consultant of a hospital, nursing
230 home or other health care facility and any medical care
231 foundation, health maintenance organization, preferred provider
232 organization, individual practice association or similar entity or
233 accrediting, quality assurance or similar agency or body.



234 **SECTION 5.** Section 43-7-53, Mississippi Code of 1972, is
235 amended as follows:

236 43-7-53. (1) There is * * * established within the
237 Mississippi Council on Aging, the Office of the State Long-Term
238 Care Facilities Ombudsman as provided by the Older Americans Act
239 of 1965, as amended, 42 USCS 3001.

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

243 **SECTION 6.** Section 43-7-61, Mississippi Code of 1972, is
244 amended as follows:

245 43-7-61. (1) The Office of the State Long-Term Care
246 Facilities Ombudsman shall establish a training and certification
247 program. The council shall specify by rule the content of the
248 training program. Each long-term care facilities ombudsman
249 program shall bear the cost of training its own employees.

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

254 (a) The responsibilities and duties of community
255 ombudsmen;

256 (b) The laws and regulations governing the receipt,
257 investigation and resolution of issues of the well-being of a
258 resident;

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

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

263 (e) The special needs of the elderly and of the
264 physically and mentally handicapped;



265 (f) The role of the family, the sponsor, the legal
266 representative, the physician, the church, and other public and
267 private agencies, and the community;

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

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

271 (i) Familiarity with and access to information
272 concerning the laws and regulations governing Medicare, Medicaid,
273 Social Security, Supplemental Security Income, the Veterans
274 Administration and Workers' Compensation; and

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

277 (3) Persons selected by area agencies on aging who have
278 satisfactorily completed the training arranged by the State
279 Ombudsman shall be certified as community ombudsmen by the
280 council.

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

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

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

291 **SECTION 7.** This act shall take effect and be in force from
292 and after its passage.

