SENATE BILL NO. 2128

AN ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF ADULT FOSTER CARE FAMILY HOMES AND ADULT FOSTER CARE LARGE GROUP HOMES; TO PROVIDE FOR THE ESTABLISHMENT OF STANDARDS OF CARE FOR SUCH ADULT FOSTER CARE HOMES; TO PROVIDE DEFINITIONS AND EXEMPTIONS; TO PROVIDE THAT THE DIVISION OF FAMILY AND CHILDREN'S SERVICES OF THE DEPARTMENT OF HUMAN SERVICES SHALL BE THE LICENSING AUTHORITY; TO PROVIDE FOR THE APPLICATION OF AND ISSUANCE OF LICENSES; TO PROVIDE FOR THE INSPECTION OF SUCH HOMES; TO PROVIDE FOR DISCIPLINARY PROCEEDINGS; TO PROVIDE FOR PENALTIES FOR VIOLATION OF THIS ACT; TO PROVIDE IMMUNITY; AND FOR RELATED PURPOSES.

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

SECTION 1. The purpose of this act is to protect the health, safety and well-being of all adults in the state who are cared for by family foster homes by providing for the establishment of licensing requirements for such homes and providing procedures to determine adherence to these requirements.

SECTION 2. For the purposes of this act, the following words and phrases shall have the meanings ascribed herein:

(a) "Adult" means a person eighteen (18) years of age or older who is placed in an adult foster care family home or an adult foster care large group home.

(b) "Adult foster care family home" means a private residence with the approved capacity to receive six (6) or fewer adults to be provided with foster care for five (5) or more days a week and for two (2) or more consecutive weeks. The adult foster care family home licensee shall be a member of the household and an occupant of the residence.

(c) "Adult foster care large group home" means an adult foster care facility with the approved capacity to receive at
least six (6) but not more than twenty (20) adults to be provided
with foster care.

(d) "Department" means the Mississippi Department of
Human Services.

(e) "Director" means the Director of the Division of
Family and Children's Services of the Mississippi Department of
Human Services.

(f) "Foster care" means the provision of supervision,
personal care and protection in addition to room and board for
twenty-four (24) hours a day, five (5) or more days a week, and
for two (2) or more consecutive weeks for compensation.

(g) "Licensee" means any person, agency or entity
licensed under this act.

(h) "Personal care" means personal assistance provided
by a licensee or an agent or employee of a license to a resident
who requires assistance with dressing, personal hygiene, grooming,
maintenance of a medication schedule as directed and supervised by
the resident's physician, or the development of those personal and
social skills required to live in the least restrictive
environment.

(i) "Protection" means the continual responsibility of
the licensee to take reasonable action to insure the health,
safety, and well-being of a resident, including protection from
physical harm, humiliation, intimidation, and social, moral,
financial, and personal exploitation while on the premises, while
under the supervision of the licensee or an agent or employee of
the licensee, or when the resident's assessment plan states that
the resident needs continuous supervision.

(j) "Supervision" means guidance or a resident in the
activities of daily living, including all of the following: (i)
reminding a resident to maintain his or her medication schedule,
as directed by the resident's physician; (ii) reminding a resident
or important activities to be carried out; (iii) assisting a
resident in keeping appointments; and (iv) being aware of a resident's general whereabouts even though the resident may travel independently about the community.

SECTION 3. (1) The Division of Family and Children's Services shall be the licensing authority for the department, and is vested with all the powers, duties and responsibilities described in this act. The division shall make and establish rules and regulations regarding:

(a) Approving, extending, denying, suspending and revoking licenses for adult foster care family homes and adult foster care group homes;

(b) Conditional licenses, variances from department rules and exclusions;

(c) Basic health and safety standards for licensees;

(d) Minimum administration and financial requirements for licensees; and

(e) Minimum requirements and standards for adult foster care to be provided by the licensee.

(2) The division shall:

(a) Define information that shall be submitted to the division with an application for a license;

(b) Establish guidelines for the administration and maintenance of client and service records, including staff qualifications, staff to client ratios;

(c) Issue licenses in accordance with this act;

(d) Conduct surveys and inspections of licensees and facilities;

(e) Establish and collect licensure fees;

(f) Investigate complaints regarding any licensee or facility;

(g) Have access to all records, correspondence and financial data required to be maintained by a licensee or facility;
(h) Have authority to interview any client, family member of a client, employee or officer of a licensee or facility; and

(i) Have authority to revoke, suspend or extend any license issued by the division.

(3) The division shall provide advice and technical assistance to facilities covered by this act to assist facilities in meeting the requirements of this act and the rules promulgated under this act. The division shall offer consultation, upon request, in developing methods for the improvement of service. The division shall provide education to the public regarding the requirements of this act through the ongoing use of mass media and other methods.

(4) Upon receipt of a request from an adult foster care facility for certification of a specialized program for developmentally disabled or mentally ill adults, the Mississippi Department of Mental Health shall inspect the facility to determine whether the proposed specialized program conforms with the requirements of applicable law and rules. The Department of Mental Health shall provide the division with an inspection report and a certification, denial or certification, or certification with limited terms for the proposed specialized program. The Department of Mental Health shall reinspect a certified specialized program not less than once biennially and notify the division in the same manner as for the initial certification, and may contract with a county mental health/mental retardation facility for services.

SECTION 4. (1) Except as provided in Section 6, no person, agency, firm, corporation, association or other entity, acting individually or jointly with any other person or entity, may establish, conduct or maintain an adult foster care family home or adult foster care group home without a valid and current license
issued by and under the authority of the division as provided by this act and the rules of the division.

(2) No license issued under this act is assignable or transferable.

(3) A current license shall at all times be posted in each licensee's facility, in a place that is visible and readily accessible to the public.

(4) (a) Each license issued under this act expires at midnight (Central Standard Time) twelve (12) months from the date of issuance unless it has been:
   (i) Previously revoked by the division; or
   (ii) Voluntarily returned to the division by the licensee.

   (b) A license may be renewed upon application and payment of the applicable fee, provided that the licensee meets the license requirements established by this act and the rules and regulations of the division.

(5) Any licensee or facility which is in operation at the time rules are made in accordance with this act shall be given a reasonable time for compliance as determined by the rules of the division.

SECTION 5. (1) An application for a license under this act shall be made to the division and shall contain information that the division determines is necessary in accordance with established rules.

(2) Information received by the division through reports, complaints, investigations and inspections shall be classified as public in accordance with Title 25, Chapter 61, Mississippi Code of 1972, Mississippi Public Records Act.

SECTION 6. The provisions of this act do not apply to:

(a) A facility or program owned or operated by an agency of the State of Mississippi or United States government;
(b) A facility or program operated by or under an exclusive contract with the Department of Corrections;

c) A nursing home or institution for the aged or infirm licensed under Section 43-11-1, et seq., Mississippi Code of 1972;

d) A hospital licensed under Section 43-9-1, et seq., Mississippi Code of 1972;

e) A community mental health/retardation facility receiving funds from the Mississippi Department of Mental Health; and

(f) A child care residential facility or child foster care home if the number of residents who become eighteen (18) years of age while residing in the institution or home does not exceed three (3).

SECTION 7. (1) If a license is revoked, the division may grant a new license after:

(a) Satisfactory evidence is submitted to the division, evidencing that the conditions upon which revocation was based have been corrected; and

(b) Inspection and compliance with all provisions of this act and applicable rules.

(2) The division may only suspend a license for a period of time which does not exceed the current expiration date of that license.

(3) When a license has been suspended, the division may completely or partially restore the suspended license upon a determination that the:

(a) Conditions upon which the suspension was based have been completely or partially corrected; and

(b) Interests of the public will not be jeopardized by restoration of the license.

SECTION 8. (1) The division may, for the purpose of ascertaining compliance with the provisions of this act and its
rules and regulations, enter and inspect on a routine basis the
facility of a licensee.

(2) Before conducting an inspection under subsection (1),
the division shall, after identifying the person in charge:

(a) Give proper identification;
(b) Request to see the applicable license;
(c) Describe the nature and purpose of the inspection;
and
(d) If necessary, explain the authority of the division
to conduct the inspection and the penalty for refusing to permit
the inspection.

(3) In conducting an inspection under subsection (1), the
division may, after meeting the requirements of subsection (2):

(a) Inspect the physical facilities;
(b) Inspect records and documents;
(c) Interview directors, employees, clients, family
members of clients and others; and
(d) Observe the licensee in operation.

(4) An inspection conducted under subsection (1) shall be
during regular business hours and may be announced or unannounced.

(5) The licensee shall make copies of inspection reports
available to the public upon request.

(6) The provisions of this section apply to on-site
inspections and do not restrict the division from contacting
family members, neighbors or other individuals, or from seeking
information from other sources to determine compliance with the
provisions of this act.

SECTION 9. The division is specifically authorized to
promulgate rules pursuant to the Administrative Procedures Act,
Title 25, Chapter 43, Mississippi Code of 1972, to regulate fees
charged by licensed adult foster care family homes and adult
foster large group homes, if it determines that the practices of
those licensed homes demonstrates that the fees charged are
excessive or that any of the homes' practices are deceptive or misleading; provided, that such rules regarding fees shall take into account the use of any sliding fee by a home which uses a sliding fee procedure to permit prospective families of varying income levels to utilize the services of such facilities.

SECTION 10. (1) If the division finds that a violation has occurred under this act or the rules and regulations of the division, it may:

(a) Deny, suspend or revoke a license or place the licensee on probation, if the division discovers that a licensee is not in compliance with the laws, standards or regulations governing its operation, and/or it finds evidence of aiding, abetting or permitting the commission of any illegal act; or

(b) Restrict or prohibit new admissions to the licensee's program or facility, if the division discovers that a licensee is not in compliance with the laws, standards or regulations governing its operation, and/or it finds evidence of aiding, abetting or permitting the commission of any illegal act.

(2) If placed on probation, the agency or licensee shall post a copy of the notice in a conspicuous place as directed by the division and with the agency's or individual's license, and the agency shall notify the custodians of each of the adults in its care in writing of the agency's status and the basis for the probation.

SECTION 11. In addition to, and notwithstanding, any other remedy provided by law the division may, in a manner provided by law and upon the advice of the Attorney General, who shall represent the division in the proceedings, maintain an action in the name of the state for injunction or other process against any person or entity to restrain or prevent the establishment, management or operation of a program or facility or performance of services in violation of this act or rules of the division.
SECTION 12. Any person, agency, association, corporation, institution, society or other organization violating the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment not more than five (5) years, or both such fine and imprisonment.

SECTION 13. The Department of Human Services and/or its officers, employees, attorneys and representatives shall not be held civilly liable for any findings, recommendations or actions taken pursuant to this act.

SECTION 14. The Mississippi Department of Human Services shall maintain an Adult Foster Care Resource Exchange Registry, which shall contain a total listing of all licensees under this act who wish to accept adults for foster care services. Said registry shall be distributed to all county human services directors within the state and shall be updated at least quarterly. The families of prospective adult foster care recipients shall be given the option of having their names placed in the registry, such request to be made in writing. The department shall establish regulations for listing descriptive characteristics and names of prospective adult foster care recipients while protecting the privacy of such prospective recipients and their families. Listed names shall be removed when placed in an adult foster care family or large group home, or when the family of the person withdraws the listing.

SECTION 15. This act shall take effect and be in force from and after July 1, 2002.