

By: Senator(s) Burton

To: Public Health and Welfare

SENATE BILL NO. 2178

1 AN ACT TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO
 2 DEFINE THE TERM "ADULT DAY SERVICES FACILITY" FOR PURPOSES OF
 3 INSTITUTIONAL LICENSURE BY THE STATE DEPARTMENT OF HEALTH; TO
 4 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE
 5 STATE BOARD OF HEALTH TO PROMULGATE RULES, REGULATIONS AND
 6 STANDARDS REGARDING THE OPERATION OF ADULT DAY SERVICES FACILITIES
 7 WHICH INCORPORATE THE MOST CURRENT RANGES AND LEVELS OF CARE
 8 DEVELOPED BY THE NATIONAL ADULT DAY SERVICES ASSOCIATION (NADSA);
 9 TO CODIFY SECTION 43-11-8, MISSISSIPPI CODE OF 1972, TO PRESCRIBE
 10 FEES FOR ADULT DAY CARE FACILITY LICENSURE; AND FOR RELATED
 11 PURPOSES.

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

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

15 43-11-1. When used in this chapter, the following words
 16 shall have the following meaning:

17 (a) "Institutions for the aged or infirm" means a place
 18 either governmental or private which provides group living
 19 arrangements for four (4) or more persons who are unrelated to the
 20 operator and who are being provided food, shelter and personal
 21 care whether any such place be organized or operated for profit or
 22 not. The term "institution for aged or infirm" includes nursing
 23 homes, pediatric skilled nursing facilities, psychiatric
 24 residential treatment facilities, convalescent homes, homes for
 25 the aged, and adult day services facilities, provided that these
 26 institutions fall within the scope of the definitions set forth
 27 above. The term "institution for the aged or infirm" does not
 28 include hospitals, clinics or mental institutions devoted
 29 primarily to providing medical service.



30 (b) "Person" means any individual, firm, partnership,
31 corporation, company, association or joint stock association, or
32 any licensee herein or the legal successor thereof.

33 (c) "Personal care" means assistance rendered by
34 personnel of the home to aged or infirm residents in performing
35 one or more of the activities of daily living, which includes, but
36 is not limited to, the bathing, walking, excretory functions,
37 feeding, personal grooming and dressing of such residents.

38 (d) "Psychiatric residential treatment facility" means
39 any nonhospital establishment with permanent facilities which
40 provides a 24-hour program of care by qualified therapists
41 including, but not limited to, duly licensed mental health
42 professionals, psychiatrists, psychologists, psychotherapists and
43 licensed certified social workers, for emotionally disturbed
44 children and adolescents referred to such facility by a court,
45 local school district or by the Department of Human Services, who
46 are not in an acute phase of illness requiring the services of a
47 psychiatric hospital, and are in need of such restorative
48 treatment services. For purposes of this paragraph, the term
49 "emotionally disturbed" means a condition exhibiting one or more
50 of the following characteristics over a long period of time and to
51 a marked degree, which adversely affects educational performance:

52 1. An inability to learn which cannot be explained
53 by intellectual, sensory or health factors;

54 2. An inability to build or maintain satisfactory
55 relationships with peers and teachers;

56 3. Inappropriate types of behavior or feelings
57 under normal circumstances;

58 4. A general pervasive mood of unhappiness or
59 depression; or

60 5. A tendency to develop physical symptoms or
61 fears associated with personal or school problems. An



62 establishment furnishing primarily domiciliary care is not within
63 this definition.

64 (e) "Pediatric skilled nursing facility" means an
65 institution or a distinct part of an institution that is primarily
66 engaged in providing to inpatients skilled nursing care and
67 related services for persons under twenty-one (21) years of age
68 who require medical or nursing care or rehabilitation services for
69 the rehabilitation of injured, disabled or sick persons.

70 (f) "Licensing agency" means the State Department of
71 Health.

72 (g) "Adult day services facility" means a
73 community-based group program for adults designed to meet the
74 needs of adults with impairments through individual plans of care,
75 which are structured, comprehensive, planned, nonresidential
76 programs providing a variety of health, social and related support
77 services in a protective setting, enabling participants to live in
78 the community. Exempted from this definition shall be any program
79 licensed and certified by the Mississippi Department of Mental
80 Health and any adult day services program provided to ten (10) or
81 less individuals by a licensed institution for the aged or infirm.

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

84 43-11-13. (1) The licensing agency shall adopt, amend,
85 promulgate and enforce such rules, regulations and standards,
86 including classifications, with respect to all institutions for
87 the aged or infirm to be licensed under this chapter as may be
88 designed to further the accomplishment of the purpose of this
89 chapter in promoting adequate care of individuals in such
90 institutions in the interest of public health, safety and welfare.
91 Such rules, regulations and standards shall be adopted and
92 promulgated by the licensing agency and shall be recorded and
93 indexed in a book to be maintained by the licensing agency in its
94 main office in the State of Mississippi, entitled "Rules,



95 Regulations and Minimum Standards for Institutions for the Aged or
96 Infirm" and the book shall be open and available to all
97 institutions for the aged or infirm and the public generally at
98 all reasonable times. Upon the adoption of such rules,
99 regulations and standards, the licensing agency shall mail copies
100 thereof to all such institutions in the state which have filed
101 with the agency their names and addresses for this purpose, but
102 the failure to mail the same or the failure of the institutions to
103 receive the same shall in no way affect the validity thereof. The
104 rules, regulations and standards may be amended by the licensing
105 agency, from time to time, as necessary to promote the health,
106 safety and welfare of persons living in those institutions.

107 (2) The licensee shall keep posted in a conspicuous place on
108 the licensed premises all current rules, regulations and minimum
109 standards applicable to fire protection measures as adopted by the
110 licensing agency. The licensee shall furnish to the licensing
111 agency at least once each six (6) months a certificate of approval
112 and inspection by state or local fire authorities. Failure to
113 comply with state laws and/or municipal ordinances and current
114 rules, regulations and minimum standards as adopted by the
115 licensing agency, relative to fire prevention measures, shall be
116 prima facie evidence for revocation of license.

117 (3) The State Board of Health shall promulgate rules and
118 regulations restricting the storage, quantity and classes of drugs
119 allowed in personal care homes. Residents requiring
120 administration of Schedule II Narcotics as defined in the Uniform
121 Controlled Substances Law may be admitted to a personal care home.
122 Schedule drugs may only be allowed in a personal care home if they
123 are administered or stored utilizing proper procedures under the
124 direct supervision of a licensed physician or nurse.

125 (4) (a) Notwithstanding any determination by the licensing
126 agency that skilled nursing services would be appropriate for a
127 resident of a personal care home, that resident, the resident's



128 guardian or the legally recognized responsible party for the
129 resident may consent in writing for the resident to continue to
130 reside in the personal care home, if approved in writing by a
131 licensed physician. Provided, however, that no personal care home
132 shall allow more than two (2) residents, or ten percent (10%) of
133 the total number of residents in the facility, whichever is
134 greater, to remain in the personal care home under the provisions
135 of this subsection (4). This consent shall be deemed to be
136 appropriately informed consent as described in the regulations
137 promulgated by the licensing agency. After that written consent
138 has been obtained, the resident shall have the right to continue
139 to reside in the personal care home for as long as the resident
140 meets the other conditions for residing in the personal care home.
141 A copy of the written consent and the physician's approval shall
142 be forwarded by the personal care home to the licensing agency.

143 (b) The State Board of Health shall promulgate rules
144 and regulations restricting the handling of a resident's personal
145 deposits by the director of a personal care home. Any funds given
146 or provided for the purpose of supplying extra comforts,
147 conveniences or services to any patient in any personal care home,
148 and any funds otherwise received and held from, for or on behalf
149 of any such resident, shall be deposited by the director or other
150 proper officer of the personal care home to the credit of that
151 patient in an account which shall be known as the Resident's
152 Personal Deposit Fund. No more than one (1) month charge for the
153 care, support, maintenance and medical attention of the patient
154 shall be applied from such account at any one (1) time. After the
155 death, discharge or transfer of any resident for whose benefit any
156 such fund has been provided, any unexpended balance remaining in
157 his personal deposit fund shall be applied for the payment of
158 care, cost of support, maintenance and medical attention which is
159 accrued. In the event any unexpended balance remains in that
160 resident's personal deposit fund after complete reimbursement has



161 been made for payment of care, support, maintenance and medical
162 attention, and the director or other proper officer of the
163 personal care home has been or shall be unable to locate the
164 person or persons entitled to such unexpended balance, the
165 director or other proper officer may, after the lapse of one (1)
166 year from the date of such death, discharge or transfer, deposit
167 the unexpended balance to the credit of the personal care home's
168 operating fund.

169 (c) The State Board of Health shall promulgate rules
170 and regulations requiring personal care homes to maintain records
171 relating to health condition, medicine dispensed and administered,
172 and any reaction to such medicine. The director of the personal
173 care home shall be responsible for explaining the availability of
174 such records to the family of the resident at any time upon
175 reasonable request.

176 (d) The State Board of Health shall evaluate the
177 effects of this section as it promotes adequate care of
178 individuals in personal care homes in the interest of public
179 health, safety and welfare. It shall report its findings to the
180 Chairmen of the Public Health and Welfare Committees of the House
181 and Senate by January 1, 2003. This subsection (4) shall stand
182 repealed June 30, 2003.

183 (5) (a) Pursuant to regulations promulgated by the State
184 Department of Health, the licensing agency shall require to be
185 performed a criminal history record check on every new employee of
186 a licensed institution for the aged or infirm or care facility who
187 provides direct patient care or services and who is employed after
188 July 1, 2001. Except as otherwise provided, no such new employee
189 shall be permitted to provide direct patient care or services
190 until the results of the criminal history record check have
191 revealed no disqualifying record. Every such new employee shall
192 provide a valid current social security number and/or driver's
193 license number which shall be furnished to the licensing agency or



194 to the private entity designated by the licensing agency to
195 conduct the criminal history record check. The institution for
196 the aged or infirm or care facility applying for the criminal
197 history record check will be promptly notified of any
198 disqualifying record found by the criminal history record check.
199 In order to determine the applicant's suitability for employment,
200 the applicant shall be fingerprinted. If no disqualifying record
201 is identified at the state level, the fingerprints shall be
202 forwarded by the Department of Public Safety to the Federal Bureau
203 of Investigation for a national criminal history record check.

204 (b) A licensed institution for the aged or infirm or
205 care facility may make an offer of temporary employment to a
206 prospective employee pending the results of a criminal history
207 record check on the person. In such instances, the licensed
208 institution for the aged or infirm or care facility shall provide
209 to the licensing agency, or to the designated private entity, the
210 name and relevant information relating to the person within
211 seventy-two (72) hours after the date the person accepts temporary
212 employment.

213 (c) All fees incurred in compliance with this section
214 shall be borne by the institution or facility requesting the
215 criminal history record check. The licensing agency, or the
216 designated private entity, is authorized to charge the institution
217 for the aged or infirm or care facility a fee which shall include
218 the amount required by the Mississippi Department of Public
219 Safety, the Federal Bureau of Investigation or any other agency
220 designated by the licensing agency for the national criminal
221 history record check in addition to any necessary costs incurred
222 by the licensing agency or the designated private entity for the
223 handling and administration of the criminal history record checks.
224 Costs incurred by a nursing home provider implementing this
225 section shall be reimbursed as an allowable cost under Section
226 43-13-116.



227 (d) The licensing agency, care facility and their
228 agents, officers, employees, attorneys and representatives shall
229 be presumed to be acting in good faith for any employment decision
230 or action taken under paragraphs (a) and (b) of this subsection.
231 The presumption of good faith may be overcome by a preponderance
232 of the evidence in any civil action.

233 (e) The licensing agency shall promulgate regulations
234 to implement this subsection (5).

235 (6) The State Board of Health shall promulgate rules,
236 regulations and standards regarding the operation of adult day
237 services facilities which incorporate, but are not limited to, the
238 most current ranges and levels of care developed by the National
239 Adult Day Services Association (NADSA).

240 **SECTION 3.** The following provision shall be codified as
241 Section 43-11-8, Mississippi Code of 1972:

242 43-11-8. (1) An application for a license for an adult day
243 care facility shall be made to the licensing agency upon forms
244 provided by it and shall contain such information as the licensing
245 agency reasonably requires, which may include affirmative evidence
246 of ability to comply with such reasonable standards, rules and
247 regulations as are lawfully prescribed hereunder. Each
248 application for a license for an adult day care facility shall be
249 accompanied by a license fee of Ten Dollars (\$10.00) for each
250 person of licensed capacity, with a minimum fee per institution of
251 Fifty Dollars (\$50.00), which shall be paid to the licensing
252 agency. Each application for a license for an adult day care
253 facility shall be accompanied by a license fee of Ten Dollars
254 (\$10.00) for each bed in the institution, with a minimum fee per
255 institution of Fifty Dollars (\$50.00), which shall be paid to the
256 licensing agency.

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



259 (2) A license, unless suspended or revoked, shall be
260 renewable annually upon payment by (a) the licensee of an adult
261 day care facility, except for personal care homes, of a renewal
262 fee of Ten Dollars (\$10.00) for licensed capacity in the
263 institution, with a minimum fee per institution of Fifty Dollars
264 (\$50.00), or (b) the licensee of an adult day care facility of a
265 renewal fee of Ten Dollars (\$10.00) for each licensed facility,
266 with a minimum fee per institution of Fifty Dollars (\$50.00),
267 which shall be paid to the licensing agency, and upon filing by
268 the licensee and approval by the licensing agency of an annual
269 report upon such uniform dates and containing such information in
270 such form as the licensing agency prescribes by regulation. Each
271 license shall be issued only for the premises and person or
272 persons or other legal entity or entities named in the application
273 and shall not be transferable or assignable except with the
274 written approval of the licensing agency. Licenses shall be
275 posted in a conspicuous place on the licensed premises.

276 (3) A fee known as a "user fee" shall be applicable and
277 shall be paid to the licensing agency as set out in subsection (1)
278 hereof. This user fee shall be assessed for the purpose of the
279 required reviewing and inspections of the proposal of any
280 institution in which there are additions, renovations,
281 modernizations, expansion, alterations, conversions, modifications
282 or replacement of the entire facility involved in such proposal.
283 This fee includes the reviewing of architectural plans in all
284 steps required. There shall be a minimum user fee of Fifty
285 Dollars (\$50.00) and a maximum user fee of Two Thousand Dollars
286 (\$2,000.00).

287 **SECTION 4.** This act shall take effect and be in force from
288 and after July 1, 2002.

