To: Public Health and Welfare

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Senator(s) Johnson (19th)

SENATE BILL NO. 2187

AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO PRESCRIBE AND CLARIFY PROCEDURES FOR CONDUCTING CRIMINAL HISTORY BACKGROUND CHECKS FOR PROSPECTIVE NURSING FACILITY EMPLOYEES PROVIDING DIRECT PATIENT CARE; AND FOR RELATED PURPOSES.

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

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

43-11-13. (1) The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards, including classifications, with respect to all institutions for the aged or infirm to be licensed under this chapter as may be designed to further the accomplishment of the purpose of this chapter in promoting adequate care of individuals in such institutions in the interest of public health, safety and welfare. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm" and the book shall be open and available to all institutions for the aged or infirm and the public generally at all reasonable times. Upon the adoption of such rules, regulations and standards, the licensing agency shall mail copies thereof to all such institutions in the state which 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. Provided, however, that no personal care home
shall allow more than two (2) residents, or ten percent (10%) of
the total number of residents in the facility, whichever is
greater, to remain in the personal care home under the provisions
of this subsection (4). This consent shall be deemed to be
appropriately informed consent as described in the regulations
promulgated by the licensing agency. After that written consent
has been obtained, the resident shall have the right to continue
to reside in the personal care home for as long as the resident
meets the other conditions for residing in the personal care home.
A copy of the written consent and the physician's approval shall
be forwarded by the personal care home to the licensing agency.

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

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

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

(5) (a) Pursuant to regulations promulgated by the State Department of Health, the licensing agency shall require to be performed a criminal history record check on every new employee of a licensed institution for the aged or infirm or care facility who provides direct patient care or services and who is employed after July 1, 2001. Except as otherwise provided, no such new employee shall be permitted to provide direct patient care or services until the results of the criminal history record check have revealed no disqualifying record. The procedure for the criminal history record check on prospective new employees shall be as follows:

(i) Every such new employee shall provide a valid current social security number and/or driver's license number which shall be furnished to the licensing agency or to the private entity designated by the licensing agency to conduct the criminal history record check.

(ii) The employer institution shall make a preliminary criminal history record check with the local municipal and/or county law enforcement agency(ies) in which the institution is located to determine the existence of a disqualifying criminal misdemeanor or felony record.
(iii) If no disqualifying criminal misdemeanor or felony information is found at the local or county level, the law enforcement agency shall proceed to check the National Criminal Information Center database to determine the existence of a disqualifying criminal felony record.

(iv) If no disqualifying criminal record history information is found under subparagraph (ii) or (iii), the employing institution may make an offer of temporary employment to a prospective employee pending the results of the state and Federal Bureau of Investigation criminal history record check on the person required under subparagraph (v). In such instances, the licensed institution shall provide to the licensing agency or to the designated private entity, the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment.

(v) All fees incurred in compliance with this subsection (5) shall be borne by the institution or facility requesting the criminal history record check. The licensing agency, or the designated private entity, is authorized to charge the institution for the aged or infirm or care facility a fee for complying with the requirements of subparagraph (v), which shall include the amount required by the Mississippi Department of Public Safety, the Federal Bureau of Investigation or any other agency designated by the licensing agency for the national criminal history record check in addition to any necessary costs incurred by the licensing agency or the designated private entity.
for the handling and administration of the criminal history record checks. Costs incurred by a nursing home provider implementing this act shall be reimbursed as an allowable cost under Section 43-13-116.

(viii) In order to be current for purposes of this subsection (5), criminal history record checks shall be conducted at least every five (5) years from the date of the initial or any previously conducted criminal history record check.

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

(c) The licensing agency shall promulgate regulations to implement this subsection (5).

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