

By: Senator(s) Huggins, Burton

To: Judiciary

SENATE BILL NO. 2654

1 AN ACT TO AMEND SECTIONS 43-11-19 AND 43-63-21, MISSISSIPPI  
 2 CODE OF 1972, TO CLARIFY THAT NURSING HOME SURVEYS AND REPORTS  
 3 SHALL BE CONFIDENTIAL EXCEPT IN ADMINISTRATIVE LICENSURE CASES; TO  
 4 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
 5 NOTHING IN THE NURSING HOME STATUTES OR REGULATIONS SHALL  
 6 ESTABLISH A MEDICAL STANDARD OF CARE; TO AMEND SECTION 15-1-36,  
 7 MISSISSIPPI CODE OF 1972, TO ESTABLISH A LONG-TERM CARE STATUTE OF  
 8 LIMITATIONS; TO AMEND SECTION 43-11-7, MISSISSIPPI CODE OF 1972,  
 9 TO CLARIFY APPLICANTS FOR A NURSING HOME LICENSE; TO AMEND  
 10 SECTIONS 43-7-53 AND 43-7-61, MISSISSIPPI CODE OF 1972, TO CLARIFY  
 11 QUALIFICATIONS FOR LONG-TERM CARE OMBUDSMEN; AND FOR RELATED  
 12 PURPOSES.

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

14 **SECTION 1.** Section 43-11-19, Mississippi Code of 1972, is  
 15 amended as follows:

16 43-11-19. Information received or caused to be maintained or  
 17 collected by the licensing agency through filed reports,  
 18 inspection, or as otherwise authorized under this chapter, shall  
 19 not be disclosed by any person or party except in a proceeding  
 20 involving the questions of licensure; however, the licensing  
 21 agency may utilize statistical data concerning types of services  
 22 and the utilization of those services for institutions for the  
 23 aged or infirm in performing the statutory duties imposed upon it  
 24 by Section 41-7-171, et seq. and by Section 43-11-21.

25 **SECTION 2.** Section 41-63-21, Mississippi Code of 1972, is  
 26 amended as follows:

27 41-63-21. The term "accreditation and quality assurance  
 28 materials" as used in Sections 41-63-21 through 41-63-29 means and  
 29 shall include written reports, records, correspondence and  
 30 materials concerning the accreditation or quality assurance of any  
 31 hospital, nursing home or other health care facility and any  
 32 medical care foundation, health maintenance organization,



33 preferred provider organization, individual practice association  
34 or similar entity. \* \* \* The confidentiality established by  
35 Sections 41-63-21 through 41-63-29 shall apply to accreditation  
36 and quality assurance materials prepared by an employee, advisor  
37 or consultant of any hospital, nursing home or other health care  
38 facility and any medical care foundation, health maintenance  
39 organization, preferred provider organization, individual practice  
40 association or similar entity and to materials provided by an  
41 employee, advisor or consultant of an accreditation, quality  
42 assurance or similar agency or similar body and to any individual  
43 who is an employee, advisor or consultant of a hospital, nursing  
44 home or other health care facility and any medical care  
45 foundation, health maintenance organization, preferred provider  
46 organization, individual practice association or similar entity or  
47 accrediting, quality assurance or similar agency or body. The  
48 confidentiality established by Sections 41-63-21 through 41-63-29  
49 shall apply to reports, records, correspondence and material  
50 concerning accreditation or quality assurance that are prepared by  
51 the State Department of Health except that if the State Department  
52 of Health determines that substantial noncompliance with licensure  
53 standards exists or that deficiencies that represent a threat to  
54 public safety or patient care exist, the department shall prepare  
55 a written summary of the substantial noncompliance or deficiencies  
56 and the health care provider's response to the department's  
57 determination, and the department's written summary and the health  
58 care provider's response thereto shall be considered public  
59 documents.

60 **SECTION 3.** Section 43-11-13, Mississippi Code of 1972, is  
61 amended as follows:

62 43-11-13. (1) The licensing agency shall adopt, amend,  
63 promulgate and enforce such rules, regulations and standards,  
64 including classifications, with respect to all institutions for  
65 the aged or infirm to be licensed under this chapter as may be



66 designed to further the accomplishment of the purpose of this  
67 chapter in promoting adequate care of individuals in such  
68 institutions in the interest of public health, safety and welfare.  
69 Nothing contained in these or any other rules, regulations and  
70 standards promulgated or enforced by the State Board of Health  
71 should be construed as establishing a medical standard of care.  
72 Such rules, regulations and standards shall be adopted and  
73 promulgated by the licensing agency and shall be recorded and  
74 indexed in a book to be maintained by the licensing agency in its  
75 main office in the State of Mississippi, entitled "Rules,  
76 Regulations and Minimum Standards for Institutions for the Aged or  
77 Infirm" and the book shall be open and available to all  
78 institutions for the aged or infirm and the public generally at  
79 all reasonable times. Upon the adoption of such rules,  
80 regulations and standards, the licensing agency shall mail copies  
81 thereof to all such institutions in the state which have filed  
82 with the agency their names and addresses for this purpose, but  
83 the failure to mail the same or the failure of the institutions to  
84 receive the same shall in no way affect the validity thereof. The  
85 rules, regulations and standards may be amended by the licensing  
86 agency, from time to time, as necessary to promote the health,  
87 safety and welfare of persons living in those institutions.

88 (2) The licensee shall keep posted in a conspicuous place on  
89 the licensed premises all current rules, regulations and minimum  
90 standards applicable to fire protection measures as adopted by the  
91 licensing agency. The licensee shall furnish to the licensing  
92 agency at least once each six (6) months a certificate of approval  
93 and inspection by state or local fire authorities. Failure to  
94 comply with state laws and/or municipal ordinances and current  
95 rules, regulations and minimum standards as adopted by the  
96 licensing agency, relative to fire prevention measures, shall be  
97 prima facie evidence for revocation of license.



98           (3) The State Board of Health shall promulgate rules and  
99 regulations restricting the storage, quantity and classes of drugs  
100 allowed in personal care homes. Residents requiring  
101 administration of Schedule II Narcotics as defined in the Uniform  
102 Controlled Substances Law may be admitted to a personal care home.  
103 Schedule drugs may only be allowed in a personal care home if they  
104 are administered or stored utilizing proper procedures under the  
105 direct supervision of a licensed physician or nurse.

106           (4) (a) Notwithstanding any determination by the licensing  
107 agency that skilled nursing services would be appropriate for a  
108 resident of a personal care home, that resident, the resident's  
109 guardian or the legally recognized responsible party for the  
110 resident may consent in writing for the resident to continue to  
111 reside in the personal care home, if approved in writing by a  
112 licensed physician. Provided, however, that no personal care home  
113 shall allow more than two (2) residents, or ten percent (10%) of  
114 the total number of residents in the facility, whichever is  
115 greater, to remain in the personal care home under the provisions  
116 of this subsection (4). This consent shall be deemed to be  
117 appropriately informed consent as described in the regulations  
118 promulgated by the licensing agency. After that written consent  
119 has been obtained, the resident shall have the right to continue  
120 to reside in the personal care home for as long as the resident  
121 meets the other conditions for residing in the personal care home.  
122 A copy of the written consent and the physician's approval shall  
123 be forwarded by the personal care home to the licensing agency.

124           (b) The State Board of Health shall promulgate rules  
125 and regulations restricting the handling of a resident's personal  
126 deposits by the director of a personal care home. Any funds given  
127 or provided for the purpose of supplying extra comforts,  
128 conveniences or services to any patient in any personal care home,  
129 and any funds otherwise received and held from, for or on behalf  
130 of any such resident, shall be deposited by the director or other



131 proper officer of the personal care home to the credit of that  
132 patient in an account which shall be known as the Resident's  
133 Personal Deposit Fund. No more than one (1) month charge for the  
134 care, support, maintenance and medical attention of the patient  
135 shall be applied from such account at any one (1) time. After the  
136 death, discharge or transfer of any resident for whose benefit any  
137 such fund has been provided, any unexpended balance remaining in  
138 his personal deposit fund shall be applied for the payment of  
139 care, cost of support, maintenance and medical attention which is  
140 accrued. In the event any unexpended balance remains in that  
141 resident's personal deposit fund after complete reimbursement has  
142 been made for payment of care, support, maintenance and medical  
143 attention, and the director or other proper officer of the  
144 personal care home has been or shall be unable to locate the  
145 person or persons entitled to such unexpended balance, the  
146 director or other proper officer may, after the lapse of one (1)  
147 year from the date of such death, discharge or transfer, deposit  
148 the unexpended balance to the credit of the personal care home's  
149 operating fund.

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

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



164 (5) (a) Pursuant to regulations promulgated by the State  
165 Department of Health, the licensing agency shall require to be  
166 performed a criminal history record check on every new employee of  
167 a licensed institution for the aged or infirm or care facility who  
168 provides direct patient care or services and who is employed after  
169 July 1, 2001. Except as otherwise provided, no such new employee  
170 shall be permitted to provide direct patient care or services  
171 until the results of the criminal history record check have  
172 revealed no disqualifying record. Every such new employee shall  
173 provide a valid current social security number and/or driver's  
174 license number which shall be furnished to the licensing agency or  
175 to the private entity designated by the licensing agency to  
176 conduct the criminal history record check. The institution for  
177 the aged or infirm or care facility applying for the criminal  
178 history record check will be promptly notified of any  
179 disqualifying record found by the criminal history record check.  
180 In order to determine the applicant's suitability for employment,  
181 the applicant shall be fingerprinted. If no disqualifying record  
182 is identified at the state level, the fingerprints shall be  
183 forwarded by the Department of Public Safety to the Federal Bureau  
184 of Investigation for a national criminal history record check.

185 (b) A licensed institution for the aged or infirm or  
186 care facility may make an offer of temporary employment to a  
187 prospective employee pending the results of a criminal history  
188 record check on the person. In such instances, the licensed  
189 institution for the aged or infirm or care facility shall provide  
190 to the licensing agency, or to the designated private entity, the  
191 name and relevant information relating to the person within  
192 seventy-two (72) hours after the date the person accepts temporary  
193 employment.

194 (c) All fees incurred in compliance with this section  
195 shall be borne by the institution or facility requesting the  
196 criminal history record check. The licensing agency, or the



197 designated private entity, is authorized to charge the institution  
198 for the aged or infirm or care facility a fee which shall include  
199 the amount required by the Mississippi Department of Public  
200 Safety, the Federal Bureau of Investigation or any other agency  
201 designated by the licensing agency for the national criminal  
202 history record check in addition to any necessary costs incurred  
203 by the licensing agency or the designated private entity for the  
204 handling and administration of the criminal history record checks.  
205 Costs incurred by a nursing home provider implementing this act  
206 shall be reimbursed as an allowable cost under Section 43-13-116.

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

213 (e) The licensing agency shall promulgate regulations  
214 to implement this subsection (5).

215 **SECTION 4.** Section 15-1-36, Mississippi Code of 1972, is  
216 amended as follows:

217 15-1-36. (1) For any claim accruing on or before June 30,  
218 1998, and except as otherwise provided in this section, no claim  
219 in tort may be brought against a licensed physician, osteopath,  
220 dentist, hospital or nursing home or other long-term care  
221 facility, nurse, pharmacist, podiatrist, optometrist or  
222 chiropractor for injuries or wrongful death arising out of the  
223 course of medical, surgical or other professional services unless  
224 it is filed within two (2) years from the date the alleged act,  
225 omission or neglect shall or with reasonable diligence might have  
226 been first known or discovered.

227 (2) For any claim accruing on or after July 1, 1998, and  
228 except as otherwise provided in this section, no claim in tort may  
229 be brought against a licensed physician, osteopath, dentist,



230 hospital or nursing home or other long-term care hospital, nurse,  
231 pharmacist, podiatrist, optometrist or chiropractor for injuries  
232 or wrongful death arising out of the course of medical, surgical  
233 or other professional services unless it is filed within two (2)  
234 years from the date the alleged act, omission or neglect shall or  
235 with reasonable diligence might have been first known or  
236 discovered, and, except as described in paragraphs (a) and (b) of  
237 this subsection, in no event more than seven (7) years after the  
238 alleged act, omission or neglect occurred:

239           (a) In the event a foreign object introduced during a  
240 surgical or medical procedure has been left in a patient's body,  
241 the cause of action shall be deemed to have first accrued at, and  
242 not before, the time at which the foreign object is, or with  
243 reasonable diligence should have been, first known or discovered  
244 to be in the patient's body.

245           (b) In the event the cause of action shall have been  
246 fraudulently concealed from the knowledge of the person entitled  
247 thereto, the cause of action shall be deemed to have first accrued  
248 at, and not before, the time at which such fraud shall be, or with  
249 reasonable diligence should have been, first known or discovered.

250           (3) Except as otherwise provided in subsection (4) of this  
251 section, if at the time at which the cause of action shall or with  
252 reasonable diligence might have been first known or discovered,  
253 the person to whom such claim has accrued shall be six (6) years  
254 of age or younger, then such minor or the person claiming through  
255 such minor may, notwithstanding that the period of time limited  
256 pursuant to subsections (1) and (2) of this section shall have  
257 expired, commence action on such claim at any time within two (2)  
258 years next after the time at which the minor shall have reached  
259 his sixth birthday, or shall have died, whichever shall have first  
260 occurred.

261           (4) If at the time at which the cause of action shall or  
262 with reasonable diligence might have been first known or





263 discovered, the person to whom such claim has accrued shall be a  
264 minor without a parent or legal guardian, then such minor or the  
265 person claiming through such minor may, notwithstanding that the  
266 period of time limited pursuant to subsections (1) and (2) of this  
267 section shall have expired, commence action on such claim at any  
268 time within two (2) years next after the time at which the minor  
269 shall have a parent or legal guardian or shall have died,  
270 whichever shall have first occurred; provided, however, that in no  
271 event shall the period of limitation begin to run prior to such  
272 minor's sixth birthday unless such minor shall have died.

273 (5) If at the time at which the cause of action shall or  
274 with reasonable diligence might have been first known or  
275 discovered, the person to whom such claim has accrued shall be  
276 under the disability of unsoundness of mind, then such person or  
277 the person claiming through him may, notwithstanding that the  
278 period of time hereinbefore limited shall have expired, commence  
279 action on such claim at any time within two (2) years next after  
280 the time at which the person to whom the right shall have first  
281 accrued shall have ceased to be under the disability, or shall  
282 have died, whichever shall have first occurred.

283 (6) When any person who shall be under the disabilities  
284 mentioned in subsections (3), (4) and (5) of this section at the  
285 time at which his right shall have first accrued, shall depart  
286 this life without having ceased to be under such disability, no  
287 time shall be allowed by reason of the disability of such person  
288 to commence action on the claim of such person beyond the period  
289 prescribed under Section 15-1-55, Mississippi Code of 1972.

290 (7) For the purposes of subsection (3) of this section, and  
291 only for the purposes of such subsection, the disability of  
292 infancy or minority shall be removed from and after a person has  
293 reached his sixth birthday.

294 (8) For the purposes of subsection (4) of this section, and  
295 only for the purposes of such subsection, the disability of



296 infancy or minority shall be removed from and after a person has  
297 reached his sixth birthday or from and after such person shall  
298 have a parent or legal guardian, whichever occurs later, unless  
299 such disability is otherwise removed by law.

300 (9) The limitation established by this section as to a  
301 licensed physician, osteopath, dentist, hospital or nurse shall  
302 apply only to actions the cause of which accrued on or after July  
303 1, 1976.

304 (10) The limitation established by this section as to  
305 pharmacists shall apply only to actions the cause of which accrued  
306 on or after July 1, 1978.

307 (11) The limitation established by this section as to  
308 podiatrists shall apply only to actions the cause of which accrued  
309 on or after July 1, 1979.

310 (12) The limitation established by this section as to  
311 optometrists and chiropractors shall apply only to actions the  
312 cause of which accrued on or after July 1, 1983.

313 (13) The limitation established by this section as to  
314 actions commenced on behalf of minors shall apply only to actions  
315 the cause of which accrued on or after July 1, 1989.

316 **SECTION 5.** Section 43-11-7, Mississippi Code of 1972, is  
317 amended as follows:

318 43-11-7. Any person, as defined in this chapter, may apply  
319 for a license as provided herein. An application for a license  
320 shall be made to the licensing agency upon forms provided by it  
321 and shall contain such information as the licensing agency  
322 reasonably requires, which may include affirmative evidence of  
323 ability to comply with such reasonable standards, rules and  
324 regulations as are lawfully prescribed hereunder. Each  
325 application for a license for an institution for the aged or  
326 infirm, except for personal care homes, shall be accompanied by a  
327 license fee of Twenty Dollars (\$20.00) for each bed in the  
328 institution, with a minimum fee per institution of Two Hundred



329 Dollars (\$200.00), which shall be paid to the licensing agency.  
330 Each application for a license for a personal care home shall be  
331 accompanied by a license fee of Fifteen Dollars (\$15.00) for each  
332 bed in the institution, with a minimum fee per institution of One  
333 Hundred Dollars (\$100.00), which shall be paid to the licensing  
334 agency.

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

337 **SECTION 6.** Section 43-7-53, Mississippi Code of 1972, is  
338 amended as follows:

339 43-7-53. (1) There is hereby established within the  
340 Mississippi Council on Aging, the Office of the State Long-Term  
341 Care Facilities Ombudsman as provided by the Older Americans Act  
342 of 1965, as amended, 42 USCS 3001.

343 (2) The council shall establish the qualifications of state  
344 and community ombudsmen. Such qualifications shall include  
345 training and experience with long-term care facilities.

346 **SECTION 7.** Section 43-7-61, Mississippi Code of 1972, is  
347 amended as follows:

348 43-7-61. (1) The Office of the State Long-Term Care  
349 Facilities Ombudsman shall establish a training and certification  
350 program. The council shall specify by rule the content of the  
351 training program. Each long-term care facilities ombudsman  
352 program shall bear the cost of training its own employees.

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

357 (a) The responsibilities and duties of community  
358 ombudsmen;

359 (b) The laws and regulations governing the receipt,  
360 investigation and resolution of issues of the well-being of a  
361 resident;



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

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

366 (e) The special needs of the elderly and of the  
367 physically and mentally handicapped;

368 (f) The role of the family, the sponsor, the legal  
369 representative, the physician, the church, and other public and  
370 private agencies, and the community;

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

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

374 (i) Familiarity with and access to information  
375 concerning the laws and regulations governing Medicare, Medicaid,  
376 Social Security, Supplemental Security Income, the Veterans  
377 Administration and Workers' Compensation; and

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

380 (3) Persons selected by area agencies on aging who have  
381 satisfactorily completed the training arranged by the State  
382 Ombudsman shall be certified as community ombudsmen by the  
383 council.

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

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

392 (6) Ombudsmen shall participate in ongoing training programs  
393 related to their duties or responsibilities.



394           **SECTION 8.** This act shall take effect and be in force from  
395 and after July 1, 2002.

