

By: Senator(s) Dawkins

To: Public Health and Welfare

SENATE BILL NO. 2794

1 AN ACT AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO  
2 AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REQUIRE ELECTRONIC  
3 MONITORING DEVICES IN THE ROOMS OF RESIDENTS OF NURSING HOMES AT  
4 THE REQUEST OF THE RESIDENT OR THE RESIDENT'S GUARDIAN; TO  
5 AUTHORIZE THE DEPARTMENT OF HEALTH TO ISSUE REGULATIONS; TO  
6 PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR  
7 RELATED PURPOSES.

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

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

11 43-11-13. (1) The licensing agency shall adopt, amend,  
12 promulgate and enforce such rules, regulations and standards,  
13 including classifications, with respect to all institutions for  
14 the aged or infirm to be licensed under this chapter as may be  
15 designed to further the accomplishment of the purpose of this  
16 chapter in promoting adequate care of individuals in such  
17 institutions in the interest of public health, safety and welfare.  
18 Such rules, regulations and standards shall be adopted and  
19 promulgated by the licensing agency and shall be recorded and  
20 indexed in a book to be maintained by the licensing agency in its  
21 main office in the State of Mississippi, entitled "Rules,  
22 Regulations and Minimum Standards for Institutions for the Aged or  
23 Infirm" and the book shall be open and available to all  
24 institutions for the aged or infirm and the public generally at  
25 all reasonable times. Upon the adoption of such rules,  
26 regulations and standards, the licensing agency shall mail copies  
27 thereof to all such institutions in the state which have filed  
28 with the agency their names and addresses for this purpose, but  
29 the failure to mail the same or the failure of the institutions to



30 receive the same shall in no way affect the validity thereof. The  
31 rules, regulations and standards may be amended by the licensing  
32 agency, from time to time, as necessary to promote the health,  
33 safety and welfare of persons living in those institutions.

34 (2) The licensee shall keep posted in a conspicuous place on  
35 the licensed premises all current rules, regulations and minimum  
36 standards applicable to fire protection measures as adopted by the  
37 licensing agency. The licensee shall furnish to the licensing  
38 agency at least once each six (6) months a certificate of approval  
39 and inspection by state or local fire authorities. Failure to  
40 comply with state laws and/or municipal ordinances and current  
41 rules, regulations and minimum standards as adopted by the  
42 licensing agency, relative to fire prevention measures, shall be  
43 prima facie evidence for revocation of license.

44 (3) The State Board of Health shall promulgate rules and  
45 regulations restricting the storage, quantity and classes of drugs  
46 allowed in personal care homes. Residents requiring  
47 administration of Schedule II Narcotics as defined in the Uniform  
48 Controlled Substances Law may be admitted to a personal care home.  
49 Schedule drugs may only be allowed in a personal care home if they  
50 are administered or stored utilizing proper procedures under the  
51 direct supervision of a licensed physician or nurse.

52 (4) (a) Notwithstanding any determination by the licensing  
53 agency that skilled nursing services would be appropriate for a  
54 resident of a personal care home, that resident, the resident's  
55 guardian or the legally recognized responsible party for the  
56 resident may consent in writing for the resident to continue to  
57 reside in the personal care home, if approved in writing by a  
58 licensed physician. Provided, however, that no personal care home  
59 shall allow more than two (2) residents, or ten percent (10%) of  
60 the total number of residents in the facility, whichever is  
61 greater, to remain in the personal care home under the provisions  
62 of this subsection (4). This consent shall be deemed to be



63 appropriately informed consent as described in the regulations  
64 promulgated by the licensing agency. After that written consent  
65 has been obtained, the resident shall have the right to continue  
66 to reside in the personal care home for as long as the resident  
67 meets the other conditions for residing in the personal care home.  
68 A copy of the written consent and the physician's approval shall  
69 be forwarded by the personal care home to the licensing agency.

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



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

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

110           (5) (a) Pursuant to regulations promulgated by the State  
111 Department of Health, the licensing agency shall require to be  
112 performed a criminal history record check on every new employee of  
113 a licensed institution for the aged or infirm or care facility who  
114 provides direct patient care or services and who is employed after  
115 July 1, 2001. Except as otherwise provided, no such new employee  
116 shall be permitted to provide direct patient care or services  
117 until the results of the criminal history record check have  
118 revealed no disqualifying record. Every such new employee shall  
119 provide a valid current social security number and/or driver's  
120 license number which shall be furnished to the licensing agency or  
121 to the private entity designated by the licensing agency to  
122 conduct the criminal history record check. The institution for  
123 the aged or infirm or care facility applying for the criminal  
124 history record check will be promptly notified of any  
125 disqualifying record found by the criminal history record check.  
126 In order to determine the applicant's suitability for employment,  
127 the applicant shall be fingerprinted. If no disqualifying record  
128 is identified at the state level, the fingerprints shall be



129 forwarded by the Department of Public Safety to the Federal Bureau  
130 of Investigation for a national criminal history record check.

131 (b) A licensed institution for the aged or infirm or  
132 care facility may make an offer of temporary employment to a  
133 prospective employee pending the results of a criminal history  
134 record check on the person. In such instances, the licensed  
135 institution for the aged or infirm or care facility shall provide  
136 to the licensing agency, or to the designated private entity, the  
137 name and relevant information relating to the person within  
138 seventy-two (72) hours after the date the person accepts temporary  
139 employment.

140 (c) All fees incurred in compliance with this section  
141 shall be borne by the institution or facility requesting the  
142 criminal history record check. The licensing agency, or the  
143 designated private entity, is authorized to charge the institution  
144 for the aged or infirm or care facility a fee which shall include  
145 the amount required by the Mississippi Department of Public  
146 Safety, the Federal Bureau of Investigation or any other agency  
147 designated by the licensing agency for the national criminal  
148 history record check in addition to any necessary costs incurred  
149 by the licensing agency or the designated private entity for the  
150 handling and administration of the criminal history record checks.  
151 Costs incurred by a nursing home provider implementing this act  
152 shall be reimbursed as an allowable cost under Section 43-13-116.

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

159 (e) The licensing agency shall promulgate regulations  
160 to implement this subsection (5).



161       (6) (a) An institution for the aged or infirm shall permit  
162 a resident, the resident's next of kin at the request of the  
163 resident, or the resident's guardian to monitor the room of the  
164 resident through the use of electronic monitoring devices.

165           (b) (i) The institution shall require a resident who  
166 conducts electronic monitoring or the resident's guardian to post  
167 a notice on the door of the resident's room.

168           (ii) The notice must state that the room is being  
169 monitored by an electronic monitoring device.

170           (c) Electronic monitoring conducted under this section:

171           (i) Is not compulsory and may be conducted only at  
172 the request of the resident or the resident's guardian;

173           (ii) Must be paid for by the resident or the  
174 resident's guardian; and

175           (iii) Must protect the privacy rights of other  
176 residents and visitors to the institution to the extent reasonably  
177 possible.

178           (d) An institution may not refuse to admit an  
179 individual to residency in the institution and may not remove a  
180 resident from the institution because of a request to conduct  
181 electronic monitoring.

182           (e) An institution shall make reasonable physical  
183 accommodation for electronic monitoring, including:

184           (i) Providing a reasonably secure place to mount  
185 the video surveillance camera or other monitoring device; and

186           (ii) Providing access to power sources for the  
187 video surveillance camera or other electronic monitoring device.

188           (f) An institution shall inform a resident or the  
189 resident's guardian of the resident's right to conduct electronic  
190 monitoring.

191           (g) If electronic monitoring is conducted, the  
192 institution may require the resident, the resident's next of kin,



193 or the resident's guardian to conduct the electronic monitoring in  
194 plain view.

195 (h) An institution may require that a request to  
196 conduct electronic monitoring be made in writing.

197 (i) Subject to applicable rules of evidence and  
198 procedure, a tape or recording created through the use of  
199 electronic monitoring conducted under this section may be admitted  
200 into evidence in a civil or criminal court action or  
201 administrative proceeding.

202 (j) An administrator of an institution who knowingly  
203 refuses to permit a resident, the resident's next of kin at the  
204 request of the resident, or the resident's guardian to monitor the  
205 room of the resident in accordance with this section through the  
206 use of electronic monitoring devices is guilty of a misdemeanor,  
207 and upon conviction, shall be fined an amount not to exceed Five  
208 Thousand Dollars (\$5,000.00).

209 (k) An administrator of an institution who knowingly  
210 refuses to admit an individual to residency in the institution, or  
211 who knowingly allows the removal of a resident from the  
212 institution, because of a request to conduct electronic monitoring  
213 under this section is guilty of a misdemeanor and upon conviction,  
214 shall be fined an amount not to exceed Five Thousand Dollars  
215 (\$5,000.00).

216 (l) (i) A person who intentionally hampers, obstructs,  
217 tampers with, or destroys an electronic monitoring device  
218 installed in a resident's room in accordance with this section or  
219 a tape or recording made by the device is guilty of a misdemeanor  
220 and upon conviction, shall be fined an amount not to exceed Five  
221 Thousand Dollars (\$5,000.00).

222 (ii) It is an affirmative defense to prosecution  
223 under this subsection that the person took the action with the  
224 consent of the resident on whose behalf the electronic monitoring  
225 device was installed, the resident's guardian, or the resident's



226 next of kin if the next of kin was conducting the monitoring at  
227 the request of the resident.

228 (m) The licensing agency shall promulgate regulations  
229 to enforce the provisions of this subsection (6).

230 (n) For purposes of this subsection (6), "electronic  
231 monitoring device" includes:

232 (i) Video surveillance cameras installed in the  
233 room of a resident; and

234 (ii) Audio devices installed in the room of a  
235 resident designed to acquire communications or other sounds  
236 occurring in the room.

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

