To: Public Health and Welfare

MISSISSIPPI LEGISLATURE REGULAR SESSION 2002

By: Senator(s) Dawkins

SENATE BILL NO. 2794

AN ACT AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REQUIRE ELECTRONIC MONITORING DEVICES IN THE ROOMS OF RESIDENTS OF NURSING HOMES AT THE REQUEST OF THE RESIDENT OR THE RESIDENT'S GUARDIAN; TO AUTHORIZE THE DEPARTMENT OF HEALTH TO ISSUE REGULATIONS; TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; 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. 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. The institution for the aged or infirm or care facility applying for the criminal history record check will be promptly notified of any disqualifying record found by the criminal history record check. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be

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

(b) A licensed institution for the aged or infirm or care facility may make an offer of temporary employment to a prospective employee pending the results of a criminal history record check on the person. In such instances, the licensed institution for the aged or infirm or care facility 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.

(c) All fees incurred in compliance with this section 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 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.

(d) 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.

(e) The licensing agency shall promulgate regulations to implement this subsection (5).
(6) (a) An institution for the aged or infirm shall permit a resident, the resident's next of kin at the request of the resident, or the resident's guardian to monitor the room of the resident through the use of electronic monitoring devices.

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

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

(c) Electronic monitoring conducted under this section:

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

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

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

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

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

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

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

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

(g) If electronic monitoring is conducted, the institution may require the resident, the resident's next of kin,
or the resident's guardian to conduct the electronic monitoring in
plain view.

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

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

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

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

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

(ii) It is an affirmative defense to prosecution
under this subsection that the person took the action with the
consent of the resident on whose behalf the electronic monitoring
device was installed, the resident's guardian, or the resident's
next of kin if the next of kin was conducting the monitoring at
the request of the resident.

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

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

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

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

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