HOUSE BILL NO. 1020

AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO CLARIFY PROCEDURES FOR REQUIRED CRIMINAL BACKGROUND CHECKS AND AFFIDAVITS FOR CERTAIN EMPLOYEES AT LICENSED HEALTH CARE FACILITIES; 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 those institutions in the interest of public health, safety and welfare. Those 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 those rules, regulations and standards, the licensing agency shall mail copies thereof to all those institutions in the state that 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.
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. However, 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 resident 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 resident in an account that shall be known as the Resident's
Personal Deposit Fund. No more than one (1) month's charge for
the care, support, maintenance and medical attention of the
resident shall be applied from the account at any one 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 that is
accrued. If 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 the unexpended balance, the director or other proper
officer may, after the lapse of one (1) year from the date of that
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 that medicine. The director of the personal
care home shall be responsible for explaining the availability of
those 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

(5) (a) For the purposes of this subsection, the term
"licensed entity" means a hospital, nursing home, personal care
home, home health agency or hospice. For the purposes of this
subsection, the term "employee" means any person employed by a
licensed entity either directly, or if on a contractual basis,
those persons that provide direct patient care to the persons
being served by the licensed entity.

(b) Under regulations promulgated by the State
Department of Health, the licensing agency shall require to be
performed a criminal history record check on (i) every new
employee of a licensed entity who provides direct patient care or
services and who is employed on or after July 1, 2002, and (ii)
every employee of a licensed entity employed before July 1, 2002,
who has a documented disciplinary action by his or her present
employer. Except as otherwise provided, no such employee hired on
or after July 1, 2002, shall be permitted to provide direct
patient care until the results of the criminal history record
check have revealed no disqualifying record. However, if a new
employee hired on or after July 1, 2003, is transferring
employment from another licensed entity and has had a criminal
background history record check revealing no disqualifying
information within the three (3) years immediately preceding the
new employment, that employee shall only be required to comply
with the affidavit procedures in paragraph (c) of this subsection
(5). In order to determine the applicant's suitability for
employment, the applicant shall be fingerprinted. Fingerprints
shall be maintained in the employee's personnel file pending the
results of the criminal background history check. If no
disqualifying record is identified at the state level, the
fingerprints shall be forwarded by the Department of Public Safety
to the Federal Bureau of Investigation for a national criminal
history record check. If the criminal history record check
discloses a felony conviction, guilty plea or plea of nolo
contendere to a felony of possession or sale of drugs, murder,
manslaughter, armed robbery, rape, sexual battery, sex offense
listed in Section 45-33-23(f), child abuse, arson, grand larceny,
burglary, gratification of lust or aggravated assault, or
felonious abuse and/or battery of a vulnerable adult that has not
been reversed on appeal or for which a pardon has not been
granted, the new employee shall not be eligible to be employed at
the licensed entity. Any such new employee may be employed on a
temporary basis and be allowed to provide patient care and
services following appropriate orientation and training pending
the results of the criminal history record check, but any
employment contract with the employee shall be voidable if the new
employee receives a disqualifying criminal record check.

(c) Under regulations promulgated by the State Board of
Health, the licensing agency shall require every employee of a
licensed entity employed before July 1, 2002, to sign an affidavit
stating that he or she has not been convicted of or pleaded guilty
or nolo contendere to a felony of possession or sale of drugs,
murder, manslaughter, armed robbery, rape, sexual battery, any sex
offense listed in Section 45-33-23(f), child abuse, arson, grand
larceny, burglary, gratification of lust, aggravated assault, or
felonious abuse and/or battery of a vulnerable adult, or that any
such conviction or plea was reversed on appeal or a pardon was
granted for the conviction or plea. No such employee of a
licensed entity hired before July 1, 2002, shall be permitted to
provide direct patient care until the employee has signed the
affidavit required by this paragraph. All such existing employees
of licensed entities must sign the affidavit required by this
paragraph on or before December 31, 2002. If a person signs the
affidavit required by paragraph (b) of this subsection, and it is
later determined that the person actually had been convicted of or
pleaded guilty or nolo contendere to any of the offenses listed in
this paragraph (c) of this subsection and the conviction or plea
has not been reversed on appeal or a pardon has not been granted
for the conviction or plea, the person is guilty of perjury. If
the offense that the person was convicted of or pleaded guilty or
nolo contendere to was a violent offense, the person, upon a
conviction of perjury under this paragraph, shall be punished as
provided in Section 97-9-61. If the offense that the person was
convicted of or pleaded guilty or nolo contendere to was a
nonviolent offense, the person, upon a conviction of perjury under
this paragraph, shall be punished by a fine of not more than Five
Hundred Dollars ($500.00), or by imprisonment in the county jail
for not more than six (6) months, or by both that fine and
imprisonment. Every employee of a licensed facility who is
employed before July 1, 2002, may continue employment and be
allowed to provide patient care and services pending the signing
of an affidavit, but any employment contract with the employee
shall be voidable if an employee refuses to sign the affidavit.

(d) All fees incurred in compliance with this
subsection shall be borne by the licensed entity requesting the
criminal history record check. Costs incurred by a licensed
entity implementing this subsection shall be reimbursed as an
allowable cost under Section 43-13-116.
(e) The licensing agency, the licensed entity, 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 this subsection. The presumption of good faith may be overcome by a preponderance of the evidence in any civil action. No licensing agency, licensed entity, nor their agents, officers, employees, attorneys and representatives shall be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this section.

(f) 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, 2003.