

By: Representative Moody

To: Public Health and Welfare

HOUSE BILL NO. 1020

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY PROCEDURES FOR REQUIRED CRIMINAL BACKGROUND CHECKS AND  
3 AFFIDAVITS FOR CERTAIN EMPLOYEES AT LICENSED HEALTH CARE  
4 FACILITIES; AND FOR RELATED PURPOSES.

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

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

8 43-11-13. (1) The licensing agency shall adopt, amend,  
9 promulgate and enforce such rules, regulations and standards,  
10 including classifications, with respect to all institutions for  
11 the aged or infirm to be licensed under this chapter as may be  
12 designed to further the accomplishment of the purpose of this  
13 chapter in promoting adequate care of individuals in those  
14 institutions in the interest of public health, safety and welfare.  
15 Those rules, regulations and standards shall be adopted and  
16 promulgated by the licensing agency and shall be recorded and  
17 indexed in a book to be maintained by the licensing agency in its  
18 main office in the State of Mississippi, entitled "Rules,  
19 Regulations and Minimum Standards for Institutions for the Aged or  
20 Infirm," and the book shall be open and available to all  
21 institutions for the aged or infirm and the public generally at  
22 all reasonable times. Upon the adoption of those rules,  
23 regulations and standards, the licensing agency shall mail copies  
24 thereof to all those institutions in the state that have filed  
25 with the agency their names and addresses for this purpose, but  
26 the failure to mail the same or the failure of the institutions to  
27 receive the same shall in no way affect the validity thereof. The  
28 rules, regulations and standards may be amended by the licensing



29 agency, from time to time, as necessary to promote the health,  
30 safety and welfare of persons living in those institutions.

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

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

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



62 obtained, the resident shall have the right to continue to reside  
63 in the personal care home for as long as the resident meets the  
64 other conditions for residing in the personal care home. A copy  
65 of the written consent and the physician's approval shall be  
66 forwarded by the personal care home to the licensing agency.

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

92 (c) The State Board of Health shall promulgate rules  
93 and regulations requiring personal care homes to maintain records  
94 relating to health condition, medicine dispensed and administered,



95 and any reaction to that medicine. The director of the personal  
96 care home shall be responsible for explaining the availability of  
97 those records to the family of the resident at any time upon  
98 reasonable request.

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

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

113 (b) Under regulations promulgated by the State  
114 Department of Health, the licensing agency shall require to be  
115 performed a criminal history record check on (i) every new  
116 employee of a licensed entity who provides direct patient care or  
117 services and who is employed on or after July 1, 2002, and (ii)  
118 every employee of a licensed entity employed before July 1, 2002,  
119 who has a documented disciplinary action by his or her present  
120 employer. Except as otherwise provided, no such employee hired on  
121 or after July 1, 2002, shall be permitted to provide direct  
122 patient care until the results of the criminal history record  
123 check have revealed no disqualifying record. However, if a new  
124 employee hired on or after July 1, 2003, is transferring  
125 employment from another licensed entity and has had a criminal  
126 background history record check revealing no disqualifying  
127 information within the three (3) years immediately preceding the



128 new employment, that employee shall only be required to comply  
129 with the affidavit procedures in paragraph (c) of this subsection  
130 (5). In order to determine the applicant's suitability for  
131 employment, the applicant shall be fingerprinted. Fingerprints  
132 shall be maintained in the employee's personnel file pending the  
133 results of the criminal background history check. If no  
134 disqualifying record is identified at the state level, the  
135 fingerprints shall be forwarded by the Department of Public Safety  
136 to the Federal Bureau of Investigation for a national criminal  
137 history record check. If the criminal history record check  
138 discloses a felony conviction, guilty plea or plea of nolo  
139 contendere to a felony of possession or sale of drugs, murder,  
140 manslaughter, armed robbery, rape, sexual battery, sex offense  
141 listed in Section 45-33-23(f), child abuse, arson, grand larceny,  
142 burglary, gratification of lust or aggravated assault, or  
143 felonious abuse and/or battery of a vulnerable adult that has not  
144 been reversed on appeal or for which a pardon has not been  
145 granted, the new employee shall not be eligible to be employed at  
146 the licensed entity. Any such new employee may be employed on a  
147 temporary basis and be allowed to provide patient care and  
148 services following appropriate orientation and training pending  
149 the results of the criminal history record check, but any  
150 employment contract with the employee shall be voidable if the new  
151 employee receives a disqualifying criminal record check.

152 (c) Under regulations promulgated by the State Board of  
153 Health, the licensing agency shall require every employee of a  
154 licensed entity employed before July 1, 2002, to sign an affidavit  
155 stating that he or she has not been convicted of or pleaded guilty  
156 or nolo contendere to a felony of possession or sale of drugs,  
157 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
158 offense listed in Section 45-33-23(f), child abuse, arson, grand  
159 larceny, burglary, gratification of lust, aggravated assault, or  
160 felonious abuse and/or battery of a vulnerable adult, or that any



161 such conviction or plea was reversed on appeal or a pardon was  
162 granted for the conviction or plea. No such employee of a  
163 licensed entity hired before July 1, 2002, shall be permitted to  
164 provide direct patient care until the employee has signed the  
165 affidavit required by this paragraph. All such existing employees  
166 of licensed entities must sign the affidavit required by this  
167 paragraph on or before December 31, 2002. If a person signs the  
168 affidavit required by paragraph (b) of this subsection, and it is  
169 later determined that the person actually had been convicted of or  
170 pleaded guilty or nolo contendere to any of the offenses listed in  
171 this paragraph (c) of this subsection and the conviction or plea  
172 has not been reversed on appeal or a pardon has not been granted  
173 for the conviction or plea, the person is guilty of perjury. If  
174 the offense that the person was convicted of or pleaded guilty or  
175 nolo contendere to was a violent offense, the person, upon a  
176 conviction of perjury under this paragraph, shall be punished as  
177 provided in Section 97-9-61. If the offense that the person was  
178 convicted of or pleaded guilty or nolo contendere to was a  
179 nonviolent offense, the person, upon a conviction of perjury under  
180 this paragraph, shall be punished by a fine of not more than Five  
181 Hundred Dollars (\$500.00), or by imprisonment in the county jail  
182 for not more than six (6) months, or by both that fine and  
183 imprisonment. Every employee of a licensed facility who is  
184 employed before July 1, 2002, may continue employment and be  
185 allowed to provide patient care and services pending the signing  
186 of an affidavit, but any employment contract with the employee  
187 shall be voidable if an employee refuses to sign the affidavit.

188 (d) All fees incurred in compliance with this  
189 subsection shall be borne by the licensed entity requesting the  
190 criminal history record check. Costs incurred by a licensed  
191 entity implementing this subsection shall be reimbursed as an  
192 allowable cost under Section 43-13-116.



193           (e) The licensing agency, the licensed entity, and  
194 their agents, officers, employees, attorneys and representatives,  
195 shall be presumed to be acting in good faith for any employment  
196 decision or action taken under this subsection. The presumption  
197 of good faith may be overcome by a preponderance of the evidence  
198 in any civil action. No licensing agency, licensed entity, nor  
199 their agents, officers, employees, attorneys and representatives  
200 shall be held liable in any employment discrimination suit in  
201 which an allegation of discrimination is made regarding an  
202 employment decision authorized under this section.

203           (f) The licensing agency shall promulgate regulations  
204 to implement this subsection (5).

205           **SECTION 2.** This act shall take effect and be in force from  
206 and after July 1, 2003.

