

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.

