

By: Representatives Smith (59th), Moody

To: Public Health and Welfare

HOUSE BILL NO. 1077

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY PROCEDURES FOR REQUIRED EMPLOYEE CRIMINAL BACKGROUND
3 CHECKS AND AFFIDAVITS AT LICENSED HEALTH CARE FACILITIES; TO
4 PROVIDE THAT CERTAIN CONTRACT EMPLOYEES ARE SUBJECT TO BACKGROUND
5 CHECK REQUIREMENTS, TO PROVIDE FOR TEMPORARY EMPLOYMENT OF THOSE
6 EMPLOYEES AND WAIVERS FOR MITIGATING CIRCUMSTANCES; 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 those
17 institutions in the interest of public health, safety and welfare.
18 Those 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 those rules,
26 regulations and standards, the licensing agency shall mail copies
27 thereof to all those institutions in the state that 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. However, no personal care home shall allow
59 more than two (2) residents, or ten percent (10%) of the total
60 number of residents in the facility, whichever is greater, to
61 remain in the personal care home under the provisions of this
62 subsection (4). This consent shall be deemed to be appropriately



63 informed consent as described in the regulations promulgated by
64 the licensing agency. After that written consent has been
65 obtained, the resident shall have the right to continue to reside
66 in the personal care home for as long as the resident meets the
67 other conditions for residing in the personal care home. A copy
68 of the written consent and the physician's approval shall be
69 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 resident in any personal care
75 home, and any funds otherwise received and held from, for or on
76 behalf of any such resident, shall be deposited by the director or
77 other proper officer of the personal care home to the credit of
78 that resident in an account that shall be known as the Resident's
79 Personal Deposit Fund. No more than one (1) month's charge for
80 the care, support, maintenance and medical attention of the
81 resident shall be applied from the account at any one time. After
82 the death, discharge or transfer of any resident for whose benefit
83 any such fund has been provided, any unexpended balance remaining
84 in his personal deposit fund shall be applied for the payment of
85 care, cost of support, maintenance and medical attention that is
86 accrued. If any unexpended balance remains in that resident's
87 personal deposit fund after complete reimbursement has been made
88 for payment of care, support, maintenance and medical attention,
89 and the director or other proper officer of the personal care home
90 has been or shall be unable to locate the person or persons
91 entitled to the unexpended balance, the director or other proper
92 officer may, after the lapse of one (1) year from the date of that
93 death, discharge or transfer, deposit the unexpended balance to
94 the credit of the personal care home's operating fund.



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

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

109 (5) (a) For the purposes of this subsection, the term
110 "licensed entity" means a hospital, nursing home, personal care
111 home, home health agency or hospice. For the purposes of this
112 subsection, the term "employee" means any individual employed by a
113 licensed entity. The term "employee" also shall include any
114 individual, other than a licensed physician, who by contract
115 provides to the patients, residents or clients being served by the
116 licensed entity direct, hands-on, medical patient care in a
117 patient's, resident's or client's room or in treatment or recovery
118 rooms.

119 (b) Pursuant to regulations promulgated by the State
120 Department of Health, the licensing agency shall require to be
121 performed a criminal history record check on * * * every new
122 employee of a licensed entity * * * who is employed after July 1,
123 2003. Except as otherwise provided in paragraph (c), no such
124 employee hired after July 1, 2003, shall be permitted to provide
125 direct patient care until the results of the criminal history
126 record check have revealed no disqualifying record or the employee
127 has been granted a waiver. In order to determine the employee



128 applicant's suitability for employment, the applicant shall be
129 fingerprinted. * * * If such criminal history record check
130 discloses a felony conviction, guilty plea or plea of nolo
131 contendere to a felony of possession or sale of drugs, murder,
132 manslaughter, armed robbery, rape, sexual battery, sex offense
133 listed in Section 45-33-23(f), child abuse, arson, grand larceny,
134 burglary, gratification of lust or aggravated assault, or
135 felonious abuse and/or battery of a vulnerable adult which has not
136 been reversed on appeal or for which a pardon has not been
137 granted, the * * * employee applicant shall not be eligible to be
138 employed at such licensed entity.

139 (c) Any such new employee applicant may, however, be
140 employed on a temporary basis and provide patient care services
141 following an appropriate orientation and training period pending
142 the results of the criminal history record check but any
143 employment contract with such employee shall be voidable if the
144 new employee receives a disqualifying criminal record check and no
145 waiver is granted as provided in this subsection.

146 (d) Under regulations promulgated by the State Board of
147 Health, the licensing agency shall require every employee of a
148 licensed entity providing direct patient care employed prior to
149 July 1, 2003, to sign an affidavit stating that he or she has not
150 been convicted of or pleaded guilty or nolo contendere to a felony
151 of possession or sale of drugs, murder, manslaughter, armed
152 robbery, rape, sexual battery, any sex offense listed in Section
153 45-33-23(f), child abuse, arson, grand larceny, burglary,
154 gratification of lust, aggravated assault, or felonious abuse
155 and/or battery of a vulnerable adult, or that any such conviction
156 or plea was reversed on appeal or a pardon was granted for the
157 conviction or plea. * * * All such existing employees of licensed
158 entities must sign the affidavit required by this paragraph within
159 six (6) months of the final adoption of the regulations
160 promulgated by the State Board of Health. If a person signs the



161 affidavit required by paragraphs (b) and (c) of this subsection,
162 and it is later determined that the person actually had been
163 convicted of or pleaded guilty or nolo contendere to any of the
164 offenses listed in this paragraph (d) of this subsection and the
165 conviction or plea has not been reversed on appeal or a pardon has
166 not been granted for the conviction or plea, the person is guilty
167 of perjury. If the offense that the person was convicted of or
168 pleaded guilty or nolo contendere to was a violent offense, the
169 person, upon a conviction of perjury under this paragraph, shall
170 be punished as provided in Section 97-9-61. If the offense that
171 the person was convicted of or pleaded guilty or nolo contendere to
172 was a nonviolent offense, the person, upon a conviction of perjury
173 under this paragraph, shall be punished by a fine of not more than
174 Five Hundred Dollars (\$500.00), or by imprisonment in the county
175 jail for not more than six (6) months, or by both such fine and
176 imprisonment.

177 (e) The licensed entity may, in its discretion, allow
178 any employee unable to sign the affidavit or any employee
179 applicant aggrieved by the employment decision under this
180 subsection to appear before the licensed entity's hiring officer,
181 or his or her designee, to show mitigating circumstances that may
182 exist and allow the employee or employee applicant to be employed
183 at the licensed entity. The licensed entity, upon report and
184 recommendation of the hiring officer, may grant waivers for those
185 mitigating circumstances, which shall include, but not be limited
186 to: (i) age at which the crime was committed; (ii) circumstances
187 surrounding the crime; (iii) length of time since the conviction
188 and criminal history since the conviction; (iv) work history; (v)
189 current employment and character references; and (vi) other
190 evidence demonstrating the ability of the individual to perform
191 the employment responsibilities competently and that the
192 individual does not pose a threat to the health or safety of the
193 patients in the licensed entity.



194 (f) Any costs incurred by a licensed entity
195 implementing this subsection shall be reimbursed as an allowable
196 cost under Section 43-13-116.

197 (g) If the results of an employee applicant's criminal
198 history record check reveals no disqualifying event, then in that
199 event the licensed entity shall, upon request by the employee
200 applicant, provide the employee applicant with a notarized letter
201 signed by the chief executive officer of the licensed entity, or
202 his or her authorized designee, confirming the employee
203 applicant's suitability for employment based on his or her
204 criminal history record check. An employee applicant may use that
205 letter for a period of two (2) years from the date of the letter
206 to seek employment at any licensed entity with the necessity of an
207 additional criminal record check. Any licensed entity presented
208 with the letter may rely on the letter with respect to an employee
209 applicant's criminal background and is not required for a period
210 of two (2) years from the date of the letter to conduct or have
211 conducted a criminal history record check as required in this
212 subsection (5).

213 (h) The licensing agency, the licensed entity, and
214 their agents, officers, employees, attorneys and representatives,
215 shall be presumed to be acting in good faith for any employment
216 decision or action taken under this subsection. The presumption
217 of good faith may be overcome by a preponderance of the evidence
218 in any civil action. No licensing agency, licensed entity, nor
219 their agents, officers, employees, attorneys and representatives
220 shall be held liable in any employment * * * decision or action
221 based in whole or in part on compliance with or attempts to comply
222 with the requirements of this section.

223 (i) The licensing agency shall promulgate regulations
224 to implement this subsection (5).

225 **SECTION 2.** This act shall take effect and be in force from
226 and after its passage.

