

By: Representatives Smith (59th), Moody

To: Public Health and Welfare

HOUSE BILL NO. 1077
(As Passed the House)

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; TO EXTEND THE
7 AUTOMATIC REPEALER ON CERTAIN LICENSURE STANDARDS FOR PERSONAL
8 CARE HOMES; AND FOR RELATED PURPOSES.

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

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

12 43-11-13. (1) The licensing agency shall adopt, amend,
13 promulgate and enforce such rules, regulations and standards,
14 including classifications, with respect to all institutions for
15 the aged or infirm to be licensed under this chapter as may be
16 designed to further the accomplishment of the purpose of this
17 chapter in promoting adequate care of individuals in those
18 institutions in the interest of public health, safety and welfare.
19 Those rules, regulations and standards shall be adopted and
20 promulgated by the licensing agency and shall be recorded and
21 indexed in a book to be maintained by the licensing agency in its
22 main office in the State of Mississippi, entitled "Rules,
23 Regulations and Minimum Standards for Institutions for the Aged or
24 Infirm" and the book shall be open and available to all
25 institutions for the aged or infirm and the public generally at
26 all reasonable times. Upon the adoption of those rules,
27 regulations and standards, the licensing agency shall mail copies
28 thereof to all those institutions in the state that have filed
29 with the agency their names and addresses for this purpose, but
30 the failure to mail the same or the failure of the institutions to



31 receive the same shall in no way affect the validity thereof. The
32 rules, regulations and standards may be amended by the licensing
33 agency, from time to time, as necessary to promote the health,
34 safety and welfare of persons living in those institutions.

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

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

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



64 informed consent as described in the regulations promulgated by
65 the licensing agency. After that written consent has been
66 obtained, the resident shall have the right to continue to reside
67 in the personal care home for as long as the resident meets the
68 other conditions for residing in the personal care home. A copy
69 of the written consent and the physician's approval shall be
70 forwarded by the personal care home to the licensing agency.

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



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

103 (d) The State Board of Health shall evaluate the
104 effects of this section as it promotes adequate care of
105 individuals in personal care homes in the interest of public
106 health, safety and welfare. It shall report its findings to the
107 Chairmen of the Public Health and Welfare Committees of the House
108 and Senate by January 1, 2003. This subsection (4) shall stand
109 repealed June 30, 2004.

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

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



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

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

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



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

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



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

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

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

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

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

