

By: Senator(s) Dawkins

To: Public Health and Welfare

SENATE BILL NO. 2415

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REQUIRE ELECTRONIC
3 MONITORING DEVICES IN THE ROOMS OF RESIDENTS OF NURSING HOMES AT
4 THE REQUEST OF THE RESIDENT OR THE RESIDENT'S GUARDIAN; TO
5 AUTHORIZE THE DEPARTMENT OF HEALTH TO ISSUE REGULATIONS; TO
6 PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; 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 person employed by a
113 licensed entity either directly, or if on a contractual basis,
114 those persons that provide direct patient care to the persons
115 being served by the licensed entity.

116 (b) Pursuant to regulations promulgated by the State
117 Department of Health, the licensing agency shall require to be
118 performed a criminal history record check on (i) every new
119 employee of a licensed entity who provides direct patient care or
120 services and who is employed after July 1, 2002, and (ii) every
121 employee of a licensed entity employed prior to July 1, 2002, who
122 has a documented disciplinary action by his or her present
123 employer. Except as otherwise provided, no such employee hired
124 after July 1, 2002, shall be permitted to provide direct patient
125 care until the results of the criminal history record check have
126 revealed no disqualifying record. In order to determine the
127 applicant's suitability for employment, the applicant shall be



128 fingerprinted. If no disqualifying record is identified at the
129 state level, the fingerprints shall be forwarded by the Department
130 of Public Safety to the Federal Bureau of Investigation for a
131 national criminal history record check. If such criminal history
132 record check discloses a felony conviction, guilty plea or plea of
133 nolo contendere to a felony of possession or sale of drugs,
134 murder, manslaughter, armed robbery, rape, sexual battery, sex
135 offense listed in Section 45-33-23(f), child abuse, arson, grand
136 larceny, burglary, gratification of lust or aggravated assault, or
137 felonious abuse and/or battery of a vulnerable adult which has not
138 been reversed on appeal or for which a pardon has not been
139 granted, the new employee shall not be eligible to be employed at
140 such licensed entity. Any such new employee may be employed on a
141 temporary basis pending the results of the criminal history record
142 check but any employment contract with such employee shall be
143 voidable if the new employee receives a disqualifying criminal
144 record check.

145 (c) Under regulations promulgated by the State Board of
146 Health, the licensing agency shall require every employee of a
147 licensed entity employed prior to July 1, 2002, to sign an
148 affidavit stating that he or she has not been convicted of or
149 pleaded guilty or nolo contendere to a felony of possession or
150 sale of drugs, murder, manslaughter, armed robbery, rape, sexual
151 battery, any sex offense listed in Section 45-33-23(f), child
152 abuse, arson, grand larceny, burglary, gratification of lust,
153 aggravated assault, or felonious abuse and/or battery of a
154 vulnerable adult, or that any such conviction or plea was reversed
155 on appeal or a pardon was granted for the conviction or plea. No
156 such employee of a licensed entity hired before July 1, 2002,
157 shall be permitted to provide direct patient care until the
158 employee has signed the affidavit required by this paragraph. All
159 such existing employees of licensed entities must sign the
160 affidavit required by this paragraph on or before December 31,



161 2002. If a person signs the affidavit required by paragraph (b)
162 of this subsection, and it is later determined that the person
163 actually had been convicted of or pleaded guilty or nolo
164 contendere to any of the offenses listed in this paragraph (c) of
165 this subsection and the conviction or plea has not been reversed
166 on appeal or a pardon has not been granted for the conviction or
167 plea, the person is guilty of perjury. If the offense that the
168 person was convicted of or pleaded guilty or nolo contendere to was
169 a violent offense, the person, upon a conviction of perjury under
170 this paragraph, shall be punished as provided in Section 97-9-61.
171 If the offense that the person was convicted of or pleaded guilty
172 or nolo contendere to was a nonviolent offense, the person, upon a
173 conviction of perjury under this paragraph, shall be punished by a
174 fine of not more than Five Hundred Dollars (\$500.00), or by
175 imprisonment in the county jail for not more than six (6) months,
176 or by both such fine and imprisonment.

177 (d) All fees incurred in compliance with this
178 subsection shall be borne by the licensed entity requesting the
179 criminal history record check. Costs incurred by a licensed
180 entity implementing this subsection shall be reimbursed as an
181 allowable cost under Section 43-13-116.

182 (e) The licensing agency, the licensed entity, and
183 their agents, officers, employees, attorneys and representatives,
184 shall be presumed to be acting in good faith for any employment
185 decision or action taken under this subsection. The presumption
186 of good faith may be overcome by a preponderance of the evidence
187 in any civil action. No licensing agency, licensed entity, nor
188 their agents, officers, employees, attorneys and representatives
189 shall be held liable in any employment discrimination suit in
190 which an allegation of discrimination is made regarding an
191 employment decision authorized under this section.

192 (f) The licensing agency shall promulgate regulations
193 to implement this subsection (5).



194 (6) (a) An institution for the aged or infirm shall permit
195 a resident, the resident's next of kin at the request of the
196 resident, or the resident's guardian to monitor the room of the
197 resident through the use of electronic monitoring devices.

198 (b) (i) The institution shall require a resident who
199 conducts electronic monitoring or the resident's guardian to post
200 a notice on the door of the resident's room.

201 (ii) The notice must state that the room is being
202 monitored by an electronic monitoring device.

203 (c) Electronic monitoring conducted under this section:

204 (i) Is not compulsory and may be conducted only at
205 the request of the resident or the resident's guardian;

206 (ii) Must be paid for by the resident or the
207 resident's guardian; and

208 (iii) Must protect the privacy rights of other
209 residents and visitors to the institution to the extent reasonably
210 possible.

211 (d) An institution may not refuse to admit an
212 individual to residency in the institution and may not remove a
213 resident from the institution because of a request to conduct
214 electronic monitoring.

215 (e) An institution shall make reasonable physical
216 accommodation for electronic monitoring, including:

217 (i) Providing a reasonably secure place to mount
218 the video surveillance camera or other monitoring device; and

219 (ii) Providing access to power sources for the
220 video surveillance camera or other electronic monitoring device.

221 (f) An institution shall inform a resident or the
222 resident's guardian of the resident's right to conduct electronic
223 monitoring.

224 (g) If electronic monitoring is conducted, the
225 institution may require the resident, the resident's next of kin,



226 or the resident's guardian to conduct the electronic monitoring in
227 plain view.

228 (h) An institution may require that a request to
229 conduct electronic monitoring be made in writing.

230 (i) Subject to applicable rules of evidence and
231 procedure, a tape or recording created through the use of
232 electronic monitoring conducted under this section may be admitted
233 into evidence in a civil or criminal court action or
234 administrative proceeding.

235 (j) An administrator of an institution who knowingly
236 refuses to permit a resident, the resident's next of kin at the
237 request of the resident, or the resident's guardian to monitor the
238 room of the resident in accordance with this section through the
239 use of electronic monitoring devices is guilty of a misdemeanor,
240 and upon conviction, shall be fined an amount not to exceed Five
241 Thousand Dollars (\$5,000.00).

242 (k) An administrator of an institution who knowingly
243 refuses to admit an individual to residency in the institution, or
244 who knowingly allows the removal of a resident from the
245 institution, because of a request to conduct electronic monitoring
246 under this section is guilty of a misdemeanor and upon conviction,
247 shall be fined an amount not to exceed Five Thousand Dollars
248 (\$5,000.00).

249 (l) (i) A person who intentionally hampers, obstructs,
250 tampers with, or destroys an electronic monitoring device
251 installed in a resident's room in accordance with this section or
252 a tape or recording made by the device is guilty of a misdemeanor
253 and upon conviction, shall be fined an amount not to exceed Five
254 Thousand Dollars (\$5,000.00).

255 (ii) It is an affirmative defense to prosecution
256 under this subsection that the person took the action with the
257 consent of the resident on whose behalf the electronic monitoring
258 device was installed, the resident's guardian, or the resident's



259 next of kin if the next of kin was conducting the monitoring at
260 the request of the resident.

261 (m) The licensing agency shall promulgate regulations
262 to enforce the provisions of this subsection (6).

263 (n) For purposes of this subsection (6), "electronic
264 monitoring device" includes:

265 (i) Video surveillance cameras installed in the
266 room of a resident; and

267 (ii) Audio devices installed in the room of a
268 resident designed to acquire communications or other sounds
269 occurring in the room.

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

