To: Public Health and Welfare

MISSISSIPPI LEGISLATURE REGULAR SESSION 2003

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2444

AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO CLARIFY PROCEDURES FOR REQUIRED EMPLOYEE CRIMINAL BACKGROUND CHECKS AND AFFIDAVITS AT LICENSED HEALTH CARE FACILITIES, TO PROVIDE THAT CERTAIN CONTRACT EMPLOYEES ARE SUBJECT TO BACKGROUND CHECK REQUIREMENTS, TO PROVIDE FOR TEMPORARY EMPLOYMENT OF SUCH EMPLOYEES AND WAIVERS FOR MITIGATING CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

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

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

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

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

(4) (a) Notwithstanding any determination by the licensing agency that skilled nursing services would be appropriate for a resident of a personal care home, that resident, the resident’s guardian or the legally recognized responsible party for the resident may consent in writing for the resident to continue to reside in the personal care home, if approved in writing by a licensed physician. However, no personal care home shall allow more than two (2) residents, or ten percent (10%) of the total number of residents in the facility, whichever is greater, to remain in the personal care home under the provisions of this subsection (4). This consent shall be deemed to be appropriately
informed consent as described in the regulations promulgated by
the licensing agency. After that written consent has been
obtained, the resident shall have the right to continue to reside
in the personal care home for as long as the resident meets the
other conditions for residing in the personal care home. A copy
of the written consent and the physician's approval shall be
forwarded by the personal care home to the licensing agency.

(b) The State Board of Health shall promulgate rules
and regulations restricting the handling of a resident's personal
deposits by the director of a personal care home. Any funds given
or provided for the purpose of supplying extra comforts,
conveniences or services to any resident in any personal care
home, and any funds otherwise received and held from, for or on
behalf of any such resident, shall be deposited by the director or
other proper officer of the personal care home to the credit of
that resident in an account that shall be known as the Resident's
Personal Deposit Fund. No more than one (1) month's charge for
the care, support, maintenance and medical attention of the
resident shall be applied from the account at any one time. After
the death, discharge or transfer of any resident for whose benefit
any such fund has been provided, any unexpended balance remaining
in his personal deposit fund shall be applied for the payment of
care, cost of support, maintenance and medical attention that is
accrued. If any unexpended balance remains in that resident's
personal deposit fund after complete reimbursement has been made
for payment of care, support, maintenance and medical attention,
and the director or other proper officer of the personal care home
has been or shall be unable to locate the person or persons
entitled to the unexpended balance, the director or other proper
officer may, after the lapse of one (1) year from the date of that
death, discharge or transfer, deposit the unexpended balance to
the credit of the personal care home's operating fund.
(c) The State Board of Health shall promulgate rules and regulations requiring personal care homes to maintain records relating to health condition, medicine dispensed and administered, and any reaction to that medicine. The director of the personal care home shall be responsible for explaining the availability of those records to the family of the resident at any time upon reasonable request.

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

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

(b) Pursuant to regulations promulgated by the State Department of Health, the licensing agency shall require to be performed a criminal history record check on every new employee of a licensed entity who is employed after July 1, 2003. Except as otherwise provided in paragraph (c), no such employee hired after July 1, 2003, shall be permitted to provide direct patient care until the results of the criminal history record check have revealed no disqualifying record or such employee has been granted a waiver. In order to determine the
employee applicant's suitability for employment, the applicant shall be fingerprinted. * * * If such criminal history record check discloses a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(f), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault, or felonious abuse and/or battery of a vulnerable adult which has not been reversed on appeal or for which a pardon has not been granted, the * * * employee applicant shall not be eligible to be employed at such licensed entity.

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

(d) Under regulations promulgated by the State Board of Health, the licensing agency shall require every employee of a licensed entity providing direct patient care employed prior to July 1, 2003, to sign an affidavit stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, any sex offense listed in Section 45-33-23(f), child abuse, arson, grand larceny, burglary, gratification of lust, aggravated assault, or felonious abuse and/or battery of a vulnerable adult, or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. * * * All such existing employees of licensed entities must sign the affidavit required by this paragraph within six (6) months of the final adoption of the regulations promulgated by the State Board of Health. If a person signs the
affidavit required by paragraphs (b) and (c) of this subsection, and it is later determined that the person actually had been convicted of or pleaded guilty or nolo contendere to any of the offenses listed in this paragraph (d) of this subsection and the conviction or plea has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person is guilty of perjury. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a violent offense, the person, upon a conviction of perjury under this paragraph, shall be punished as provided in Section 97-9-61. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a nonviolent offense, the person, upon a conviction of perjury under this paragraph, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

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

S. B. No. 2444
03/SS26/R650.1
PAGE 6
(f) Any costs incurred by a licensed entity implementing this subsection shall be reimbursed as an allowable cost under Section 43-13-116.

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

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

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

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