

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

House Bill NO. 1077

By Senator(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

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

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

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, 2004.

(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" also shall 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 the employee has been granted a waiver by a licensed entity. In order to determine the employee applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigations for a national criminal history record check. 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 for a period up to four (4) weeks 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 provided in this subsection.

(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 * * *.

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 that 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 those 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.

(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 that letter for a period of three (3) years from the date of the background check to seek employment at any licensed entity with the necessity of an additional criminal record check. Any licensed entity presented without the letter may rely on the letter with respect to an employee applicant's criminal background and is not required for a period of three (3) years from the date of the background check 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) not later than August 1, 2003. In the event the licensing agency has not promulgated regulations to implement this subsection (5) by August 1, 2003, the Attorney General shall promulgate regulations to implement this subsection (5) on or before September 1, 2003.

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

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

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 THOSE 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.