

By: Representative Holland

To: Public Health and Human
Services

HOUSE BILL NO. 915

1 AN ACT TO REQUIRE THE UNIVERSITY OF MISSISSIPPI MEDICAL
2 CENTER (UMMC) TO FINGERPRINT AND PERFORM CRIMINAL HISTORY RECORD
3 CHECKS ON ALL NEW EMPLOYEES THAT WORK IN OR PROVIDE DIRECT PATIENT
4 CARE; TO PROVIDE THAT NO NEW EMPLOYEE OF UMMC SHALL BE PERMITTED
5 TO PROVIDE DIRECT PATIENT CARE UNTIL THE RESULTS OF THE CRIMINAL
6 HISTORY RECORD CHECK HAVE REVEALED NO DISQUALIFYING RECORD; TO
7 PROVIDE THAT IF THE CRIMINAL HISTORY RECORD CHECK DISCLOSES
8 CERTAIN CONVICTIONS OR PLEAS, THE APPLICANT SHALL NOT BE ELIGIBLE
9 TO BE EMPLOYED AT UMMC; TO PROVIDE THAT UPON THE RECEIPT OF A
10 CRIMINAL HISTORY RECORD CHECK THAT REVEALS NO DISQUALIFYING EVENT,
11 UMMC SHALL PROVIDE THE APPLICANT WITH A NOTARIZED LETTER THAT THE
12 APPLICANT MAY USE FOR A PERIOD OF TWO YEARS TO SEEK EMPLOYMENT AT
13 ANY LICENSED HEALTH CARE ENTITY WITHOUT THE NECESSITY OF AN
14 ADDITIONAL CRIMINAL HISTORY RECORD CHECK; TO PROVIDE THAT UMMC OR
15 ITS AGENTS SHALL NOT BE HELD LIABLE IN ANY EMPLOYMENT DECISION OR
16 ACTION BASED ON COMPLIANCE WITH OR ATTEMPTS TO COMPLY WITH THIS
17 ACT; TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO
18 PROVIDE THAT THE REQUIREMENT FOR FINGERPRINTING AND PERFORMING
19 CRIMINAL HISTORY RECORD CHECKS UNDER THAT SECTION DO NOT APPLY TO
20 UMMC; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** (1) For the purposes of this section:

23 (a) "Applicant" means any person who is applying to
24 become an employee of UMMC.

25 (b) "Employee" means an employee, contractor, temporary
26 worker or consultant.

27 (c) "UMMC" means the University of Mississippi Medical
28 Center.

29 (2) The University of Mississippi Medical Center shall
30 fingerprint and perform a criminal history record check on all new
31 employees that work in or provide direct patient care. Except as
32 otherwise provided in this section, no employee of UMMC hired on
33 or after the effective date of House Bill No. 915, 2004 Regular
34 Session, shall be permitted to provide direct patient care until
35 the results of the criminal history record check have revealed no
36 disqualifying record. In order to determine the applicant's

suitability for employment, the applicant shall be fingerprinted. Fingerprints shall be submitted to the Department of Public Safety by UMMC via scanning or other electronic method, with the results processed through the Department of Public Safety's Criminal Information Center. 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 Investigation for a national criminal history record check. If the 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 that has not been reversed on appeal or for which a pardon has not been granted, the applicant shall not be eligible to be employed at UMMC.

(3) Notwithstanding the provisions of subsection (2) of this section, any such applicant may be employed on a temporary basis pending the results of the criminal history record check. Any employment contract with an applicant during the application process shall be voidable upon receipt of a disqualifying criminal history record check.

(4) Upon the receipt of an applicant's criminal history record check that reveals no disqualifying event, UMMC shall, within two (2) weeks of the notification of no disqualifying event, provide the applicant with a notarized letter signed by the Vice Chancellor, or his or her authorized designee, confirming the applicant's suitability for employment based on his or her criminal history record check. An applicant or employee may use that letter for a period of two (2) years from the date of the letter to seek employment at any licensed entity, as defined in Section 43-11-13(5), without the necessity of an additional

70 criminal history record check under Section 43-11-13(5). Any
71 licensed entity presented with the letter may rely on the letter
72 for a period of two (2) years from the date of the letter without
73 having to conduct or have conducted a criminal history record
74 check on the applicant or employee.

75 (5) UMMC and its agents, officers, employees, attorneys and
76 representatives shall be presumed to be acting in good faith for
77 any employment decision or action taken under this section. The
78 presumption of good faith may be overcome by a preponderance of
79 the evidence in any civil action. UMMC or its agents, officers,
80 employees, attorneys and representatives shall not be held liable
81 in any employment decision or action based in whole or in part on
82 compliance with or attempts to comply with the requirements of
83 this section.

84 **SECTION 2.** Section 43-11-13, Mississippi Code of 1972, is
85 amended as follows:

86 43-11-13. (1) The licensing agency shall adopt, amend,
87 promulgate and enforce such rules, regulations and standards,
88 including classifications, with respect to all institutions for
89 the aged or infirm to be licensed under this chapter as may be
90 designed to further the accomplishment of the purpose of this
91 chapter in promoting adequate care of individuals in those
92 institutions in the interest of public health, safety and welfare.
93 Those rules, regulations and standards shall be adopted and
94 promulgated by the licensing agency and shall be recorded and
95 indexed in a book to be maintained by the licensing agency in its
96 main office in the State of Mississippi, entitled "Rules,
97 Regulations and Minimum Standards for Institutions for the Aged or
98 Infirm" and the book shall be open and available to all
99 institutions for the aged or infirm and the public generally at
100 all reasonable times. Upon the adoption of those rules,
101 regulations and standards, the licensing agency shall mail copies
102 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

136 remain in the personal care home under the provisions of this
137 subsection (4). This consent shall be deemed to be appropriately
138 informed consent as described in the regulations promulgated by
139 the licensing agency. After that written consent has been
140 obtained, the resident shall have the right to continue to reside
141 in the personal care home for as long as the resident meets the
142 other conditions for residing in the personal care home. A copy
143 of the written consent and the physician's approval shall be
144 forwarded by the personal care home to the licensing agency.

145 (b) The State Board of Health shall promulgate rules
146 and regulations restricting the handling of a resident's personal
147 deposits by the director of a personal care home. Any funds given
148 or provided for the purpose of supplying extra comforts,
149 conveniences or services to any resident in any personal care
150 home, and any funds otherwise received and held from, for or on
151 behalf of any such resident, shall be deposited by the director or
152 other proper officer of the personal care home to the credit of
153 that resident in an account that shall be known as the Resident's
154 Personal Deposit Fund. No more than one (1) month's charge for
155 the care, support, maintenance and medical attention of the
156 resident shall be applied from the account at any one time. After
157 the death, discharge or transfer of any resident for whose benefit
158 any such fund has been provided, any unexpended balance remaining
159 in his personal deposit fund shall be applied for the payment of
160 care, cost of support, maintenance and medical attention that is
161 accrued. If any unexpended balance remains in that resident's
162 personal deposit fund after complete reimbursement has been made
163 for payment of care, support, maintenance and medical attention,
164 and the director or other proper officer of the personal care home
165 has been or shall be unable to locate the person or persons
166 entitled to the unexpended balance, the director or other proper
167 officer may, after the lapse of one (1) year from the date of that

168 death, discharge or transfer, deposit the unexpended balance to
169 the credit of the personal care home's operating fund.

170 (c) The State Board of Health shall promulgate rules
171 and regulations requiring personal care homes to maintain records
172 relating to health condition, medicine dispensed and administered,
173 and any reaction to that medicine. The director of the personal
174 care home shall be responsible for explaining the availability of
175 those records to the family of the resident at any time upon
176 reasonable request.

177 (d) The State Board of Health shall evaluate the
178 effects of this section as it promotes adequate care of
179 individuals in personal care homes in the interest of public
180 health, safety and welfare. It shall report its findings to the
181 Chairmen of the Public Health and Welfare Committees of the House
182 and Senate by January 1, 2003. This subsection (4) shall stand
183 repealed June 30, 2004.

184 (5) (a) For the purposes of this subsection (5), the term
185 "licensed entity" means a hospital, nursing home, personal care
186 home, home health agency or hospice. For the purposes of this
187 subsection (5), the term "employee" means any individual employed
188 by a licensed entity. The term "employee" also includes any
189 individual who by contract provides to the patients, residents or
190 clients being served by the licensed entity direct, hands-on,
191 medical patient care in a patient's, resident's or client's room
192 or in treatment or recovery rooms.

193 (b) Under regulations promulgated by the State Board of
194 Health, the licensing agency shall require to be performed a
195 criminal history record check on (i) every new employee of a
196 licensed entity who provides direct patient care or services and
197 who is employed on or after July 1, 2003, and (ii) every employee
198 of a licensed entity employed before July 1, 2003, who has a
199 documented disciplinary action by his or her present employer.

200 Except as otherwise provided in paragraph (c) of this
201 subsection (5), no such employee hired on or after July 1, 2003,
202 shall be permitted to provide direct patient care until the
203 results of the criminal history record check have revealed no
204 disqualifying record or the employee has been granted a waiver.
205 In order to determine the employee applicant's suitability for
206 employment, the applicant shall be fingerprinted. Fingerprints
207 shall be submitted to the licensing agency from scanning, with the
208 results processed through the Department of Public Safety's
209 Criminal Information Center. If no disqualifying record is
210 identified at the state level, the fingerprints shall be forwarded
211 by the Department of Public Safety to the Federal Bureau of
212 Investigation for a national criminal history record check. The
213 licensing agency shall notify the licensed entity of the results
214 of an employee applicant's criminal history record check. If the
215 criminal history record check discloses a felony conviction,
216 guilty plea or plea of nolo contendere to a felony of possession
217 or sale of drugs, murder, manslaughter, armed robbery, rape,
218 sexual battery, sex offense listed in Section 45-33-23(f), child
219 abuse, arson, grand larceny, burglary, gratification of lust or
220 aggravated assault, or felonious abuse and/or battery of a
221 vulnerable adult that has not been reversed on appeal or for which
222 a pardon has not been granted, the employee applicant shall not be
223 eligible to be employed at the licensed entity.

224 (c) Any such new employee applicant may, however, be
225 employed on a temporary basis pending the results of the criminal
226 history record check, but any employment contract with the new
227 employee shall be voidable if the new employee receives a
228 disqualifying criminal history record check and no waiver is
229 granted as provided in this subsection (5).

230 (d) Under regulations promulgated by the State Board of
231 Health, the licensing agency shall require every employee of a
232 licensed entity employed before July 1, 2003, to sign an affidavit

233 stating that he or she has not been convicted of or pleaded guilty
234 or nolo contendere to a felony of possession or sale of drugs,
235 murder, manslaughter, armed robbery, rape, sexual battery, any sex
236 offense listed in Section 45-33-23(f), child abuse, arson, grand
237 larceny, burglary, gratification of lust, aggravated assault, or
238 felonious abuse and/or battery of a vulnerable adult, or that any
239 such conviction or plea was reversed on appeal or a pardon was
240 granted for the conviction or plea. No such employee of a
241 licensed entity hired before July 1, 2003, shall be permitted to
242 provide direct patient care until the employee has signed the
243 affidavit required by this paragraph (d). All such existing
244 employees of licensed entities must sign the affidavit required by
245 this paragraph (d) within six (6) months of the final adoption of
246 the regulations promulgated by the State Board of Health. If a
247 person signs the affidavit required by this paragraph (d), and it
248 is later determined that the person actually had been convicted of
249 or pleaded guilty or nolo contendere to any of the offenses listed
250 in this paragraph (d) and the conviction or plea has not been
251 reversed on appeal or a pardon has not been granted for the
252 conviction or plea, the person is guilty of perjury. If the
253 offense that the person was convicted of or pleaded guilty or nolo
254 contendere to was a violent offense, the person, upon a conviction
255 of perjury under this paragraph, shall be punished as provided in
256 Section 97-9-61. If the offense that the person was convicted of
257 or pleaded guilty or nolo contendere to was a nonviolent offense,
258 the person, upon a conviction of perjury under this paragraph,
259 shall be punished by a fine of not more than Five Hundred Dollars
260 (\$500.00), or by imprisonment in the county jail for not more than
261 six (6) months, or by both such fine and imprisonment.

262 (e) The licensed entity may, in its discretion, allow
263 any employee who is unable to sign the affidavit required by
264 paragraph (d) of this subsection (5) or any employee applicant
265 aggrieved by the employment decision under this subsection (5) to

266 appear before the licensed entity's hiring officer, or his or her
267 designee, to show mitigating circumstances that may exist and
268 allow the employee or employee applicant to be employed at the
269 licensed entity. The licensed entity, upon report and
270 recommendation of the hiring officer, may grant waivers for those
271 mitigating circumstances, which shall include, but not be limited
272 to: (i) age at which the crime was committed; (ii) circumstances
273 surrounding the crime; (iii) length of time since the conviction
274 and criminal history since the conviction; (iv) work history; (v)
275 current employment and character references; and (vi) other
276 evidence demonstrating the ability of the individual to perform
277 the employment responsibilities competently and that the
278 individual does not pose a threat to the health or safety of the
279 patients in the licensed entity.

280 (f) The licensing agency may charge the licensed entity
281 submitting the fingerprints a fee not to exceed Fifty Dollars
282 (\$50.00), which licensed entity may, in its discretion, charge the
283 same fee, or a portion thereof, to the employee applicant. Any
284 costs incurred by a licensed entity implementing this subsection
285 (5) shall be reimbursed as an allowable cost under Section
286 43-13-116.

287 (g) If the results of an employee applicant's criminal
288 history record check reveals no disqualifying event, then the
289 licensed entity shall, within two (2) weeks of the notification of
290 no disqualifying event, provide the employee applicant with a
291 notarized letter signed by the chief executive officer of the
292 licensed entity, or his or her authorized designee, confirming the
293 employee applicant's suitability for employment based on his or
294 her criminal history record check. An employee applicant may use
295 that letter for a period of two (2) years from the date of the
296 letter to seek employment at any licensed entity without the
297 necessity of an additional criminal history record check. Any
298 licensed entity presented with the letter may rely on the letter

299 with respect to an employee applicant's criminal background and is
300 not required for a period of two (2) years from the date of the
301 letter to conduct or have conducted a criminal history record
302 check as required in this subsection (5).

303 (h) The licensing agency, the licensed entity, and
304 their agents, officers, employees, attorneys and representatives,
305 shall be presumed to be acting in good faith for any employment
306 decision or action taken under this subsection (5). The
307 presumption of good faith may be overcome by a preponderance of
308 the evidence in any civil action. No licensing agency, licensed
309 entity, nor their agents, officers, employees, attorneys and
310 representatives shall be held liable in any employment decision or
311 action based in whole or in part on compliance with or attempts to
312 comply with the requirements of this subsection (5).

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

315 (j) The provisions of this subsection (5) shall not
316 apply to the University of Mississippi Medical Center.

317 **SECTION 3.** This act shall take effect and be in force from
318 and after its passage.