

By: Representative Holland

To: Public Health and Human
Services

COMMITTEE SUBSTITUTE
FOR
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 REQUIRE UMMC TO PERFORM DISCIPLINARY CHECKS WITH THE
5 PROFESSIONAL LICENSING AGENCIES OF THOSE EMPLOYEES; TO PROVIDE
6 THAT NO NEW EMPLOYEE OF UMMC SHALL BE PERMITTED TO PROVIDE DIRECT
7 PATIENT CARE UNTIL THE RESULTS OF THE CRIMINAL HISTORY RECORD
8 CHECK HAVE REVEALED NO DISQUALIFYING RECORD OR THE EMPLOYEE HAS
9 BEEN GRANTED A WAIVER; TO PROVIDE THAT IF THE CRIMINAL HISTORY
10 RECORD CHECK DISCLOSES CERTAIN CONVICTIONS OR PLEAS, THE APPLICANT
11 SHALL NOT BE ELIGIBLE TO BE EMPLOYED AT UMMC; TO PROVIDE THAT
12 APPLICANTS AGGRIEVED BY AN EMPLOYMENT DECISION OF UMMC MAY SHOW
13 MITIGATING CIRCUMSTANCES THAT ALLOW THE APPLICANT TO BE EMPLOYED,
14 AND UMMC MAY GRANT WAIVERS FOR THOSE MITIGATING CIRCUMSTANCES; TO
15 PROVIDE THAT UPON THE RECEIPT OF A CRIMINAL HISTORY RECORD CHECK
16 THAT REVEALS NO DISQUALIFYING EVENT, UMMC SHALL PROVIDE THE
17 APPLICANT WITH A NOTARIZED LETTER THAT THE APPLICANT MAY USE FOR A
18 PERIOD OF TWO YEARS TO SEEK EMPLOYMENT AT ANY LICENSED HEALTH CARE
19 ENTITY WITHOUT THE NECESSITY OF AN ADDITIONAL CRIMINAL HISTORY
20 RECORD CHECK; TO PROVIDE THAT UMMC OR ITS AGENTS SHALL NOT BE HELD
21 LIABLE IN ANY EMPLOYMENT DECISION OR ACTION BASED ON COMPLIANCE
22 WITH OR ATTEMPTS TO COMPLY WITH THIS ACT; TO AMEND SECTION
23 43-11-13, MISSISSIPPI CODE OF 1972, TO INCLUDE HEALTH CARE
24 PROFESSIONAL STAFFING AGENCIES IN THOSE ENTITIES THAT MUST HAVE
25 CRIMINAL HISTORY RECORD CHECKS OF THEIR EMPLOYEES BEFORE THE
26 EMPLOYEES MAY PROVIDE DIRECT PATIENT CARE OR SERVICES; TO REQUIRE
27 DISCIPLINARY CHECKS TO BE PERFORMED WITH THE PROFESSIONAL
28 LICENSING AGENCIES OF EMPLOYEES OF COVERED ENTITIES; TO PROVIDE
29 THAT THE REQUIREMENT FOR FINGERPRINTING AND PERFORMING CRIMINAL
30 HISTORY RECORD CHECKS UNDER THAT SECTION DO NOT APPLY TO UMMC; AND
31 FOR RELATED PURPOSES.

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

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

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

36 (b) "Employee" means an employee, contractor, temporary
37 worker or consultant.

38 (c) "UMMC" means the University of Mississippi Medical
39 Center.

40 (2) The University of Mississippi Medical Center shall
41 fingerprint and perform a criminal history record check on all new

42 employees that work in or provide direct patient care. In
43 addition, UMMC shall perform a disciplinary check with the
44 professional licensing agency of the employee, if any, to
45 determine if any disciplinary action has been taken against the
46 employee by that agency. Except as otherwise provided in this
47 section, no employee of UMMC hired on or after the effective date
48 of House Bill No. 915, 2004 Regular Session, shall be permitted to
49 provide direct patient care until the results of the criminal
50 history record check have revealed no disqualifying record or the
51 employee has been granted a waiver. In order to determine the
52 applicant's suitability for employment, the applicant shall be
53 fingerprinted. Fingerprints shall be submitted to the Department
54 of Public Safety by UMMC via scanning or other electronic method,
55 with the results processed through the Department of Public
56 Safety's Criminal Information Center. If no disqualifying record
57 is identified at the state level, the fingerprints shall be
58 forwarded by the Department of Public Safety to the Federal Bureau
59 of Investigation for a national criminal history record check. If
60 the criminal history record check discloses a felony conviction,
61 guilty plea or plea of nolo contendere to a felony of possession
62 or sale of drugs, murder, manslaughter, armed robbery, rape,
63 sexual battery, sex offense listed in Section 45-33-23(f), child
64 abuse, arson, grand larceny, burglary, gratification of lust or
65 aggravated assault, or felonious abuse and/or battery of a
66 vulnerable adult that has not been reversed on appeal or for which
67 a pardon has not been granted, the applicant shall not be eligible
68 to be employed at UMMC.

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

74 history record check if no waiver is granted under subsection (4)
75 of this section.

76 (4) UMMC may, in its discretion, allow any applicant
77 aggrieved by an employment decision under this section to appear
78 before the UMMC hiring officer, or his or her designee, to show
79 mitigating circumstances that may exist and allow the applicant to
80 be employed at UMMC. UMMC, upon report and recommendation of the
81 hiring officer, may grant waivers for those mitigating
82 circumstances, which shall include, but not be limited to: (a)
83 age at which the crime was committed; (b) circumstances
84 surrounding the crime; (c) length of time since the conviction and
85 criminal history since the conviction; (d) work history; (e)
86 current employment and character references; and (f) other
87 evidence demonstrating the ability of the individual to perform
88 the employment responsibilities competently and that the
89 individual does not pose a threat to the health or safety of the
90 patients admitted to UMMC.

91 (5) Upon the receipt of an applicant's criminal history
92 record check that reveals no disqualifying event, UMMC shall,
93 within two (2) weeks of the notification of no disqualifying
94 event, provide the applicant with a notarized letter signed by the
95 vice chancellor, or his or her authorized designee, confirming the
96 applicant's suitability for employment based on his or her
97 criminal history record check. An applicant or employee may use
98 that letter for a period of two (2) years from the date of the
99 letter to seek employment at any covered entity, as defined in
100 Section 43-11-13(5), without the necessity of an additional
101 criminal history record check under Section 43-11-13(5). Any
102 licensed entity presented with the letter may rely on the letter
103 for a period of two (2) years from the date of the letter without
104 having to conduct or have conducted a criminal history record
105 check on the applicant or employee.

106 (6) UMMC and its agents, officers, employees, attorneys and
107 representatives shall be presumed to be acting in good faith for
108 any employment decision or action taken under this section. The
109 presumption of good faith may be overcome by a preponderance of
110 the evidence in any civil action. UMMC or its agents, officers,
111 employees, attorneys and representatives shall not be held liable
112 in any employment decision or action based in whole or in part on
113 compliance with or attempts to comply with the requirements of
114 this section.

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

117 43-11-13. (1) The licensing agency shall adopt, amend,
118 promulgate and enforce such rules, regulations and standards,
119 including classifications, with respect to all institutions for
120 the aged or infirm to be licensed under this chapter as may be
121 designed to further the accomplishment of the purpose of this
122 chapter in promoting adequate care of individuals in those
123 institutions in the interest of public health, safety and welfare.
124 Those rules, regulations and standards shall be adopted and
125 promulgated by the licensing agency and shall be recorded and
126 indexed in a book to be maintained by the licensing agency in its
127 main office in the State of Mississippi, entitled "Rules,
128 Regulations and Minimum Standards for Institutions for the Aged or
129 Infirm" and the book shall be open and available to all
130 institutions for the aged or infirm and the public generally at
131 all reasonable times. Upon the adoption of those rules,
132 regulations and standards, the licensing agency shall mail copies
133 thereof to all those institutions in the state that have filed
134 with the agency their names and addresses for this purpose, but
135 the failure to mail the same or the failure of the institutions to
136 receive the same shall in no way affect the validity thereof. The
137 rules, regulations and standards may be amended by the licensing

138 agency, from time to time, as necessary to promote the health,
139 safety and welfare of persons living in those institutions.

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

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

158 (4) (a) Notwithstanding any determination by the licensing
159 agency that skilled nursing services would be appropriate for a
160 resident of a personal care home, that resident, the resident's
161 guardian or the legally recognized responsible party for the
162 resident may consent in writing for the resident to continue to
163 reside in the personal care home, if approved in writing by a
164 licensed physician. However, no personal care home shall allow
165 more than two (2) residents, or ten percent (10%) of the total
166 number of residents in the facility, whichever is greater, to
167 remain in the personal care home under the provisions of this
168 subsection (4). This consent shall be deemed to be appropriately
169 informed consent as described in the regulations promulgated by
170 the licensing agency. After that written consent has been

171 obtained, the resident shall have the right to continue to reside
172 in the personal care home for as long as the resident meets the
173 other conditions for residing in the personal care home. A copy
174 of the written consent and the physician's approval shall be
175 forwarded by the personal care home to the licensing agency.

176 (b) The State Board of Health shall promulgate rules
177 and regulations restricting the handling of a resident's personal
178 deposits by the director of a personal care home. Any funds given
179 or provided for the purpose of supplying extra comforts,
180 conveniences or services to any resident in any personal care
181 home, and any funds otherwise received and held from, for or on
182 behalf of any such resident, shall be deposited by the director or
183 other proper officer of the personal care home to the credit of
184 that resident in an account that shall be known as the Resident's
185 Personal Deposit Fund. No more than one (1) month's charge for
186 the care, support, maintenance and medical attention of the
187 resident shall be applied from the account at any one time. After
188 the death, discharge or transfer of any resident for whose benefit
189 any such fund has been provided, any unexpended balance remaining
190 in his personal deposit fund shall be applied for the payment of
191 care, cost of support, maintenance and medical attention that is
192 accrued. If any unexpended balance remains in that resident's
193 personal deposit fund after complete reimbursement has been made
194 for payment of care, support, maintenance and medical attention,
195 and the director or other proper officer of the personal care home
196 has been or shall be unable to locate the person or persons
197 entitled to the unexpended balance, the director or other proper
198 officer may, after the lapse of one (1) year from the date of that
199 death, discharge or transfer, deposit the unexpended balance to
200 the credit of the personal care home's operating fund.

201 (c) The State Board of Health shall promulgate rules
202 and regulations requiring personal care homes to maintain records
203 relating to health condition, medicine dispensed and administered,

204 and any reaction to that medicine. The director of the personal
205 care home shall be responsible for explaining the availability of
206 those records to the family of the resident at any time upon
207 reasonable request.

208 (d) The State Board of Health shall evaluate the
209 effects of this section as it promotes adequate care of
210 individuals in personal care homes in the interest of public
211 health, safety and welfare. It shall report its findings to the
212 Chairmen of the Public Health and Welfare Committees of the House
213 and Senate by January 1, 2003. This subsection (4) shall stand
214 repealed June 30, 2004.

215 (5) (a) For the purposes of this subsection (5):

216 (i) "Covered entity" means a hospital, nursing
217 home, personal care home, home health agency, hospice, or health
218 care professional staffing agency.

219 (ii) "Employee" means any individual employed by a
220 covered entity, and also includes any individual who by contract
221 provides to the patients, residents or clients being served by the
222 covered entity direct, hands-on, medical patient care in a
223 patient's, resident's or client's room or in treatment or recovery
224 rooms.

225 (b) Under regulations promulgated by the State Board of
226 Health, the licensing agency shall require to be performed a
227 criminal history record check on (i) every new employee of a
228 covered entity who provides direct patient care or services and
229 who is employed on or after July 1, 2003, and (ii) every employee
230 of a covered entity employed before July 1, 2003, who has a
231 documented disciplinary action by his or her present employer. In
232 addition, the licensing agency shall require to be performed a
233 disciplinary check with the professional licensing agency of each
234 employee, if any, to determine if any disciplinary action has been
235 taken against the employee by that agency.

236 Except as otherwise provided in paragraph (c) of this
237 subsection (5), no such employee hired on or after July 1, 2003,
238 shall be permitted to provide direct patient care until the
239 results of the criminal history record check have revealed no
240 disqualifying record or the employee has been granted a waiver.
241 In order to determine the employee applicant's suitability for
242 employment, the applicant shall be fingerprinted. Fingerprints
243 shall be submitted to the licensing agency from scanning, with the
244 results processed through the Department of Public Safety's
245 Criminal Information Center. If no disqualifying record is
246 identified at the state level, the fingerprints shall be forwarded
247 by the Department of Public Safety to the Federal Bureau of
248 Investigation for a national criminal history record check. The
249 licensing agency shall notify the covered entity of the results of
250 an employee applicant's criminal history record check and the
251 results of the disciplinary check. If the criminal history record
252 check discloses a felony conviction, guilty plea or plea of nolo
253 contendere to a felony of possession or sale of drugs, murder,
254 manslaughter, armed robbery, rape, sexual battery, sex offense
255 listed in Section 45-33-23(f), child abuse, arson, grand larceny,
256 burglary, gratification of lust or aggravated assault, or
257 felonious abuse and/or battery of a vulnerable adult that has not
258 been reversed on appeal or for which a pardon has not been
259 granted, the employee applicant shall not be eligible to be
260 employed at the covered entity.

261 (c) Any such new employee applicant may, however, be
262 employed on a temporary basis pending the results of the criminal
263 history record check, but any employment contract with the new
264 employee shall be voidable if the new employee receives a
265 disqualifying criminal history record check and no waiver is
266 granted as provided in this subsection (5).

267 (d) Under regulations promulgated by the State Board of
268 Health, the licensing agency shall require every employee of a

269 covered entity employed before July 1, 2003, to sign an affidavit
270 stating that he or she has not been convicted of or pleaded guilty
271 or nolo contendere to a felony of possession or sale of drugs,
272 murder, manslaughter, armed robbery, rape, sexual battery, any sex
273 offense listed in Section 45-33-23(f), child abuse, arson, grand
274 larceny, burglary, gratification of lust, aggravated assault, or
275 felonious abuse and/or battery of a vulnerable adult, or that any
276 such conviction or plea was reversed on appeal or a pardon was
277 granted for the conviction or plea. No such employee of a covered
278 entity hired before July 1, 2003, shall be permitted to provide
279 direct patient care until the employee has signed the affidavit
280 required by this paragraph (d). All such existing employees of
281 covered entities must sign the affidavit required by this
282 paragraph (d) within six (6) months of the final adoption of the
283 regulations promulgated by the State Board of Health. If a person
284 signs the affidavit required by this paragraph (d), and it is
285 later determined that the person actually had been convicted of or
286 pleaded guilty or nolo contendere to any of the offenses listed in
287 this paragraph (d) and the conviction or plea has not been
288 reversed on appeal or a pardon has not been granted for the
289 conviction or plea, the person is guilty of perjury. If the
290 offense that the person was convicted of or pleaded guilty or nolo
291 contendere to was a violent offense, the person, upon a conviction
292 of perjury under this paragraph, shall be punished as provided in
293 Section 97-9-61. If the offense that the person was convicted of
294 or pleaded guilty or nolo contendere to was a nonviolent offense,
295 the person, upon a conviction of perjury under this paragraph,
296 shall be punished by a fine of not more than Five Hundred Dollars
297 (\$500.00), or by imprisonment in the county jail for not more than
298 six (6) months, or by both such fine and imprisonment.

299 (e) The covered entity may, in its discretion, allow
300 any employee who is unable to sign the affidavit required by
301 paragraph (d) of this subsection (5) or any employee applicant

302 aggrieved by an employment decision under this subsection (5) to
303 appear before the covered entity's hiring officer, or his or her
304 designee, to show mitigating circumstances that may exist and
305 allow the employee or employee applicant to be employed at the
306 covered entity. The covered entity, upon report and
307 recommendation of the hiring officer, may grant waivers for those
308 mitigating circumstances, which shall include, but not be limited
309 to: (i) age at which the crime was committed; (ii) circumstances
310 surrounding the crime; (iii) length of time since the conviction
311 and criminal history since the conviction; (iv) work history; (v)
312 current employment and character references; and (vi) other
313 evidence demonstrating the ability of the individual to perform
314 the employment responsibilities competently and that the
315 individual does not pose a threat to the health or safety of the
316 patients in the covered entity.

317 (f) The licensing agency may charge the covered entity
318 submitting the fingerprints a fee not to exceed Fifty Dollars
319 (\$50.00), which covered entity may, in its discretion, charge the
320 same fee, or a portion thereof, to the employee applicant. Any
321 costs incurred by a covered entity implementing this subsection
322 (5) shall be reimbursed as an allowable cost under Section
323 43-13-116.

324 (g) If the results of an employee applicant's criminal
325 history record check reveals no disqualifying event, then the
326 covered entity shall, within two (2) weeks of the notification of
327 no disqualifying event, provide the employee applicant with a
328 notarized letter signed by the chief executive officer of the
329 covered entity, or his or her authorized designee, confirming the
330 employee applicant's suitability for employment based on his or
331 her criminal history record check. An employee applicant may use
332 that letter for a period of two (2) years from the date of the
333 letter to seek employment at any covered entity without the
334 necessity of an additional criminal history record check. Any

335 covered entity presented with the letter may rely on the letter
336 with respect to an employee applicant's criminal background and is
337 not required for a period of two (2) years from the date of the
338 letter to conduct or have conducted a criminal history record
339 check as required in this subsection (5).

340 (h) The licensing agency, the covered entity, and their
341 agents, officers, employees, attorneys and representatives, shall
342 be presumed to be acting in good faith for any employment decision
343 or action taken under this subsection (5). The presumption of
344 good faith may be overcome by a preponderance of the evidence in
345 any civil action. No licensing agency, covered entity, nor their
346 agents, officers, employees, attorneys and representatives shall
347 be held liable in any employment decision or action based in whole
348 or in part on compliance with or attempts to comply with the
349 requirements of this subsection (5).

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

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

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