

By: Representative Holland

To: Public Health and Human Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1013

1 AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS AND
2 FINGERPRINTING FOR HEALTH CARE PROFESSIONAL/VOCATIONAL TECHNICAL
3 STUDENTS; TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO
4 PROVIDE THAT THE REQUIREMENT FOR PERFORMING CRIMINAL HISTORY
5 RECORD CHECKS AND FINGERPRINTING UNDER THAT SECTION DO NOT APPLY
6 TO HEALTH CARE PROFESSIONAL/VOCATIONAL TECHNICAL STUDENTS FOR WHOM
7 CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING ARE OBTAINED IN
8 ACCORDANCE WITH THE PROVISIONS OF THIS ACT; TO PROVIDE THAT
9 NURSING AND OTHER ALLIED HEALTH STUDENTS PERFORMING CLINICAL
10 TRAINING ARE NOT SUBJECT TO CRIMINAL HISTORY RECORD CHECKS AND
11 FINGERPRINTING UNDER CERTAIN CONDITIONS; AND FOR RELATED PURPOSES.

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

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

14 (a) "Health care professional/vocational technical,
15 academic program" means an academic program in medicine, nursing,
16 dentistry, occupational therapy, physical therapy, social
17 services, nutrition services, speech therapy, or other allied
18 health professional whose purpose is to prepare professionals to
19 render patient care services.

20 (b) "Health care professional/vocational technical
21 student" means a student enrolled in a health
22 professional/vocational technical academic program.

23 (2) The dean or director of the health care
24 professional/vocational technical academic program shall ensure
25 that criminal history record checks and fingerprinting are
26 obtained on their students before the students begin any clinical
27 rotation in a licensed health care entity and that the criminal
28 history record check information and registry checks are on file
29 at the academic institution. In order to determine the student's
30 suitability for the clinical rotation, the student shall be
31 fingerprinted. If no disqualifying record is identified at the

32 state level, the fingerprints shall be forwarded by the Department
33 of Public Safety, the Department of Health, or any other legally
34 authorized entity to the FBI for a national criminal history
35 record check. The fee for the fingerprinting and criminal history
36 record check shall be paid by the applicant, not to exceed One
37 Hundred Dollars (\$100.00); however, the academic institution in
38 which the student is enrolled, in its discretion, may elect to pay
39 the fee for the fingerprinting and criminal history record check
40 on behalf of any applicant. Under no circumstances shall the
41 academic institution representative or any individual other than
42 the subject of the criminal history record checks disseminate
43 information received through any such checks except insofar as
44 required to fulfill the purposes of this section.

45 (3) If the fingerprinting or criminal history record checks
46 disclose a felony conviction, guilty plea or plea of nolo
47 contendere to a felony of possession or sale of drugs, murder,
48 manslaughter, armed robbery, rape, sexual battery, sex offense
49 listed in Section 45-33-23(f), child abuse, arson, grand larceny,
50 burglary, gratification of lust or aggravated assault, or
51 felonious abuse and/or battery of a vulnerable adult that has not
52 been reversed on appeal or for which a pardon has not been
53 granted, the student shall not be eligible to be admitted to the
54 health care professional/vocational technical academic program of
55 study. Any preadmission agreement executed by the health care
56 professional/vocational technical academic program shall be
57 voidable if the student receives a disqualifying criminal history
58 record check. However, the administration of the health care
59 professional/vocational technical academic program may, in its
60 discretion, allow any applicant aggrieved by the admissions
61 decision under this section to appear before an appeals committee
62 or before a hearing officer designated for that purpose, to show
63 mitigating circumstances that may exist and allow the student to
64 be admitted to or continue in the program of study. The health

65 care professional/vocational technical academic program may grant
66 waivers for those mitigating circumstances, which shall include,
67 but not be limited to: (a) age at which the crime was committed;
68 (b) circumstances surrounding the crime; (c) length of time since
69 the conviction and criminal history since the conviction; (d) work
70 history; (e) current employment and character references;
71 (f) other evidence demonstrating the ability of the student to
72 perform the clinical responsibilities competently and that the
73 student does not pose a threat to the health or safety of patients
74 in the licensed health care entities in which they will be
75 conducting clinical experiences. The health care
76 professional/vocational technical academic program shall provide
77 assurance to the licensed health care entity in which the clinical
78 rotation is planned that the results of a health
79 professional/vocational student's criminal history record check
80 would not prohibit the student from being able to conduct his or
81 her clinical activities in the facility, institution, or
82 organization. The criminal history record check shall be valid
83 for the course of academic study, provided that annual disclosure
84 statements are provided to the health care professional/vocational
85 technical academic program regarding any criminal activity that
86 may have occurred during the student's tenure with the health care
87 professional/vocational technical academic program. The criminal
88 history record check may be repeated at the discretion of the
89 health care professional/vocational technical academic program
90 based on information obtained during the annual disclosure
91 statements. In extenuating circumstances, if a criminal history
92 record check is initiated and the results are not available at the
93 time the clinical rotation begins, the academic institution in
94 which the student is enrolled, at its discretion, may require a
95 signed affidavit from the student assuring compliance with this
96 section. The affidavit will be considered void within sixty (60)
97 days of its signature.

98 (4) Criminal history record checks that are done as part of
99 the requirements for participation in the health care
100 professional/vocational technical academic program may not be used
101 for any other purpose than those activities associated with their
102 program of study. Students who may be employed as health care
103 professionals outside of their program of study may be required to
104 obtain additional criminal history record checks as part of their
105 employment agreement.

106 (5) No health professional/vocational technical academic
107 program or academic program employee shall be held liable in any
108 admissions discrimination suit in which an allegation of
109 discrimination is made regarding an admissions decision authorized
110 under this section.

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

113 43-11-13. (1) The licensing agency shall adopt, amend,
114 promulgate and enforce such rules, regulations and standards,
115 including classifications, with respect to all institutions for
116 the aged or infirm to be licensed under this chapter as may be
117 designed to further the accomplishment of the purpose of this
118 chapter in promoting adequate care of individuals in those
119 institutions in the interest of public health, safety and welfare.
120 Those rules, regulations and standards shall be adopted and
121 promulgated by the licensing agency and shall be recorded and
122 indexed in a book to be maintained by the licensing agency in its
123 main office in the State of Mississippi, entitled "Rules,
124 Regulations and Minimum Standards for Institutions for the Aged or
125 Infirm" and the book shall be open and available to all
126 institutions for the aged or infirm and the public generally at
127 all reasonable times. Upon the adoption of those rules,
128 regulations and standards, the licensing agency shall mail copies
129 thereof to all those institutions in the state that have filed
130 with the agency their names and addresses for this purpose, but

131 the failure to mail the same or the failure of the institutions to
132 receive the same shall in no way affect the validity thereof. The
133 rules, regulations and standards may be amended by the licensing
134 agency, from time to time, as necessary to promote the health,
135 safety and welfare of persons living in those institutions.

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

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

154 (4) (a) Notwithstanding any determination by the licensing
155 agency that skilled nursing services would be appropriate for a
156 resident of a personal care home, that resident, the resident's
157 guardian or the legally recognized responsible party for the
158 resident may consent in writing for the resident to continue to
159 reside in the personal care home, if approved in writing by a
160 licensed physician. However, no personal care home shall allow
161 more than two (2) residents, or ten percent (10%) of the total
162 number of residents in the facility, whichever is greater, to
163 remain in the personal care home under the provisions of this

164 subsection (4). This consent shall be deemed to be appropriately
165 informed consent as described in the regulations promulgated by
166 the licensing agency. After that written consent has been
167 obtained, the resident shall have the right to continue to reside
168 in the personal care home for as long as the resident meets the
169 other conditions for residing in the personal care home. A copy
170 of the written consent and the physician's approval shall be
171 forwarded by the personal care home to the licensing agency.

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

197 (c) The State Board of Health shall promulgate rules
198 and regulations requiring personal care homes to maintain records
199 relating to health condition, medicine dispensed and administered,
200 and any reaction to that medicine. The director of the personal
201 care home shall be responsible for explaining the availability of
202 those records to the family of the resident at any time upon
203 reasonable request.

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

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

212 (i) "Licensed entity" means a hospital, nursing
213 home, personal care home, home health agency or hospice;

214 (ii) "Employee" means any individual employed by a
215 licensed entity, and also includes any individual who by contract
216 provides to the patients, residents or clients being served by the
217 licensed entity direct, hands-on, medical patient care in a
218 patient's, resident's or client's room or in treatment or recovery
219 rooms. The term "employee" does not include nursing and other
220 allied health students performing clinical training in a licensed
221 entity under contracts between their schools and the licensed
222 entity if:

223 1. The student is under the direct and
224 immediate supervision of a licensed health care provider; and

225 2. The student has signed an affidavit that
226 is on file at the student's school stating that he or she has not
227 been convicted of or pleaded guilty or nolo contendere to a felony
228 listed in paragraph (d) of this subsection (5), or that any such
229 conviction or plea was reversed on appeal or a pardon was granted

230 for the conviction or plea. Before any student may sign such an
231 affidavit, the student's school shall provide information to the
232 student explaining what a felony is and the nature of the felonies
233 listed in paragraph (d) of this subsection (5).

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

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

263 a pardon has not been granted, the employee applicant shall not be
264 eligible to be employed at the licensed entity.

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

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

296 of perjury under this paragraph, shall be punished as provided in
297 Section 97-9-61. If the offense that the person was convicted of
298 or pleaded guilty or nolo contendere to was a nonviolent offense,
299 the person, upon a conviction of perjury under this paragraph,
300 shall be punished by a fine of not more than Five Hundred Dollars
301 (\$500.00), or by imprisonment in the county jail for not more than
302 six (6) months, or by both such fine and imprisonment.

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

321 (f) The licensing agency may charge the licensed entity
322 submitting the fingerprints a fee not to exceed Fifty Dollars
323 (\$50.00), which licensed entity may, in its discretion, charge the
324 same fee, or a portion thereof, to the employee applicant. Any
325 costs incurred by a licensed entity implementing this subsection
326 (5) shall be reimbursed as an allowable cost under Section
327 43-13-116.

328 (g) If the results of an employee applicant's criminal
329 history record check reveals no disqualifying event, then the
330 licensed entity shall, within two (2) weeks of the notification of
331 no disqualifying event, provide the employee applicant with a
332 notarized letter signed by the chief executive officer of the
333 licensed entity, or his or her authorized designee, confirming the
334 employee applicant's suitability for employment based on his or
335 her criminal history record check. An employee applicant may use
336 that letter for a period of two (2) years from the date of the
337 letter to seek employment at any licensed entity without the
338 necessity of an additional criminal history record check. Any
339 licensed entity presented with the letter may rely on the letter
340 with respect to an employee applicant's criminal background and is
341 not required for a period of two (2) years from the date of the
342 letter to conduct or have conducted a criminal history record
343 check as required in this subsection (5).

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

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

356 (j) The provisions of this subsection (5) shall not
357 apply to health care professional/vocational technical students
358 for whom criminal history record checks and fingerprinting are
359 obtained in accordance with Section 1 of this act.

360 **SECTION 3.** This act shall take effect and be in force from
361 and after July 1, 2004.