

By: Representative Holland

To: Public Health and Human Services

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; AND FOR RELATED
9 PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

111 43-11-13. (1) The licensing agency shall adopt, amend,
112 promulgate and enforce such rules, regulations and standards,
113 including classifications, with respect to all institutions for
114 the aged or infirm to be licensed under this chapter as may be
115 designed to further the accomplishment of the purpose of this
116 chapter in promoting adequate care of individuals in those
117 institutions in the interest of public health, safety and welfare.
118 Those rules, regulations and standards shall be adopted and
119 promulgated by the licensing agency and shall be recorded and
120 indexed in a book to be maintained by the licensing agency in its
121 main office in the State of Mississippi, entitled "Rules,
122 Regulations and Minimum Standards for Institutions for the Aged or
123 Infirm" and the book shall be open and available to all
124 institutions for the aged or infirm and the public generally at
125 all reasonable times. Upon the adoption of those rules,
126 regulations and standards, the licensing agency shall mail copies
127 thereof to all those institutions in the state that have filed
128 with the agency their names and addresses for this purpose, but

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

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

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

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

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

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

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

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

209 (5) (a) For the purposes of this subsection (5), the term
210 "licensed entity" means a hospital, nursing home, personal care
211 home, home health agency or hospice. For the purposes of this
212 subsection (5), the term "employee" means any individual employed
213 by a licensed entity. The term "employee" also includes any
214 individual who by contract provides to the patients, residents or
215 clients being served by the licensed entity direct, hands-on,
216 medical patient care in a patient's, resident's or client's room
217 or in treatment or recovery rooms.

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

225 Except as otherwise provided in paragraph (c) of this
226 subsection (5), no such employee hired on or after July 1, 2003,
227 shall be permitted to provide direct patient care until the

228 results of the criminal history record check have revealed no
229 disqualifying record or the employee has been granted a waiver.
230 In order to determine the employee applicant's suitability for
231 employment, the applicant shall be fingerprinted. Fingerprints
232 shall be submitted to the licensing agency from scanning, with the
233 results processed through the Department of Public Safety's
234 Criminal Information Center. If no disqualifying record is
235 identified at the state level, the fingerprints shall be forwarded
236 by the Department of Public Safety to the Federal Bureau of
237 Investigation for a national criminal history record check. The
238 licensing agency shall notify the licensed entity of the results
239 of an employee applicant's criminal history record check. If the
240 criminal history record check discloses a felony conviction,
241 guilty plea or plea of nolo contendere to a felony of possession
242 or sale of drugs, murder, manslaughter, armed robbery, rape,
243 sexual battery, sex offense listed in Section 45-33-23(f), child
244 abuse, arson, grand larceny, burglary, gratification of lust or
245 aggravated assault, or felonious abuse and/or battery of a
246 vulnerable adult that has not been reversed on appeal or for which
247 a pardon has not been granted, the employee applicant shall not be
248 eligible to be employed at the licensed entity.

249 (c) Any such new employee applicant may, however, be
250 employed on a temporary basis pending the results of the criminal
251 history record check, but any employment contract with the new
252 employee shall be voidable if the new employee receives a
253 disqualifying criminal history record check and no waiver is
254 granted as provided in this subsection (5).

255 (d) Under regulations promulgated by the State Board of
256 Health, the licensing agency shall require every employee of a
257 licensed entity employed before July 1, 2003, to sign an affidavit
258 stating that he or she has not been convicted of or pleaded guilty
259 or nolo contendere to a felony of possession or sale of drugs,
260 murder, manslaughter, armed robbery, rape, sexual battery, any sex

261 offense listed in Section 45-33-23(f), child abuse, arson, grand
262 larceny, burglary, gratification of lust, aggravated assault, or
263 felonious abuse and/or battery of a vulnerable adult, or that any
264 such conviction or plea was reversed on appeal or a pardon was
265 granted for the conviction or plea. No such employee of a
266 licensed entity hired before July 1, 2003, shall be permitted to
267 provide direct patient care until the employee has signed the
268 affidavit required by this paragraph (d). All such existing
269 employees of licensed entities must sign the affidavit required by
270 this paragraph (d) within six (6) months of the final adoption of
271 the regulations promulgated by the State Board of Health. If a
272 person signs the affidavit required by this paragraph (d), and it
273 is later determined that the person actually had been convicted of
274 or pleaded guilty or nolo contendere to any of the offenses listed
275 in this paragraph (d) and the conviction or plea has not been
276 reversed on appeal or a pardon has not been granted for the
277 conviction or plea, the person is guilty of perjury. If the
278 offense that the person was convicted of or pleaded guilty or nolo
279 contendere to was a violent offense, the person, upon a conviction
280 of perjury under this paragraph, shall be punished as provided in
281 Section 97-9-61. If the offense that the person was convicted of
282 or pleaded guilty or nolo contendere to was a nonviolent offense,
283 the person, upon a conviction of perjury under this paragraph,
284 shall be punished by a fine of not more than Five Hundred Dollars
285 (\$500.00), or by imprisonment in the county jail for not more than
286 six (6) months, or by both such fine and imprisonment.

287 (e) The licensed entity may, in its discretion, allow
288 any employee who is unable to sign the affidavit required by
289 paragraph (d) of this subsection (5) or any employee applicant
290 aggrieved by the employment decision under this subsection (5) to
291 appear before the licensed entity's hiring officer, or his or her
292 designee, to show mitigating circumstances that may exist and
293 allow the employee or employee applicant to be employed at the

294 licensed entity. The licensed entity, upon report and
295 recommendation of the hiring officer, may grant waivers for those
296 mitigating circumstances, which shall include, but not be limited
297 to: (i) age at which the crime was committed; (ii) circumstances
298 surrounding the crime; (iii) length of time since the conviction
299 and criminal history since the conviction; (iv) work history; (v)
300 current employment and character references; and (vi) other
301 evidence demonstrating the ability of the individual to perform
302 the employment responsibilities competently and that the
303 individual does not pose a threat to the health or safety of the
304 patients in the licensed entity.

305 (f) The licensing agency may charge the licensed entity
306 submitting the fingerprints a fee not to exceed Fifty Dollars
307 (\$50.00), which licensed entity may, in its discretion, charge the
308 same fee, or a portion thereof, to the employee applicant. Any
309 costs incurred by a licensed entity implementing this subsection
310 (5) shall be reimbursed as an allowable cost under Section
311 43-13-116.

312 (g) If the results of an employee applicant's criminal
313 history record check reveals no disqualifying event, then the
314 licensed entity shall, within two (2) weeks of the notification of
315 no disqualifying event, provide the employee applicant with a
316 notarized letter signed by the chief executive officer of the
317 licensed entity, or his or her authorized designee, confirming the
318 employee applicant's suitability for employment based on his or
319 her criminal history record check. An employee applicant may use
320 that letter for a period of two (2) years from the date of the
321 letter to seek employment at any licensed entity without the
322 necessity of an additional criminal history record check. Any
323 licensed entity presented with the letter may rely on the letter
324 with respect to an employee applicant's criminal background and is
325 not required for a period of two (2) years from the date of the

326 letter to conduct or have conducted a criminal history record
327 check as required in this subsection (5).

328 (h) The licensing agency, the licensed entity, and
329 their agents, officers, employees, attorneys and representatives,
330 shall be presumed to be acting in good faith for any employment
331 decision or action taken under this subsection (5). The
332 presumption of good faith may be overcome by a preponderance of
333 the evidence in any civil action. No licensing agency, licensed
334 entity, nor their agents, officers, employees, attorneys and
335 representatives shall be held liable in any employment decision or
336 action based in whole or in part on compliance with or attempts to
337 comply with the requirements of this subsection (5).

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

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

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