

By: Senator(s) Burton

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2028

1 AN ACT TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO
 2 DEFINE THE TERM "ADULT DAY SERVICES FACILITY" FOR PURPOSES OF
 3 INSTITUTIONAL LICENSURE BY THE STATE DEPARTMENT OF HEALTH; TO
 4 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE
 5 STATE BOARD OF HEALTH TO PROMULGATE RULES, REGULATIONS AND
 6 STANDARDS REGARDING THE OPERATION OF ADULT DAY SERVICES FACILITIES
 7 WHICH INCORPORATE THE MOST CURRENT RANGES AND LEVELS OF CARE
 8 DEVELOPED BY THE NATIONAL ADULT DAY SERVICES ASSOCIATION (NADSA);
 9 TO CODIFY SECTION 43-11-8, MISSISSIPPI CODE OF 1972, TO PRESCRIBE
 10 FEES FOR ADULT DAY CARE FACILITY LICENSURE; AND FOR RELATED
 11 PURPOSES.

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

13 **SECTION 1.** Section 43-11-1, Mississippi Code of 1972, is
 14 amended as follows:

15 43-11-1. When used in this chapter, the following words
 16 shall have the following meaning:

17 (a) "Institutions for the aged or infirm" means a place
 18 either governmental or private which provides group living
 19 arrangements for four (4) or more persons who are unrelated to the
 20 operator and who are being provided food, shelter and personal
 21 care whether any such place be organized or operated for profit or
 22 not. The term "institution for aged or infirm" includes nursing
 23 homes, pediatric skilled nursing facilities, psychiatric
 24 residential treatment facilities, convalescent homes, homes for
 25 the aged and adult day services facilities, provided that these
 26 institutions fall within the scope of the definitions set forth
 27 above. The term "institution for the aged or infirm" does not
 28 include hospitals, clinics or mental institutions devoted
 29 primarily to providing medical service.

30 (b) "Person" means any individual, firm, partnership,
31 corporation, company, association or joint stock association, or
32 any licensee herein or the legal successor thereof.

33 (c) "Personal care" means assistance rendered by
34 personnel of the home to aged or infirm residents in performing
35 one or more of the activities of daily living, which includes, but
36 is not limited to, the bathing, walking, excretory functions,
37 feeding, personal grooming and dressing of such residents.

38 (d) "Psychiatric residential treatment facility" means
39 any nonhospital establishment with permanent facilities which
40 provides a twenty-four-hour program of care by qualified
41 therapists, including, but not limited to, duly licensed mental
42 health professionals, psychiatrists, psychologists,
43 psychotherapists and licensed certified social workers, for
44 emotionally disturbed children and adolescents referred to such
45 facility by a court, local school district or by the Department of
46 Human Services, who are not in an acute phase of illness requiring
47 the services of a psychiatric hospital, and are in need of such
48 restorative treatment services. For purposes of this paragraph,
49 the term "emotionally disturbed" means a condition exhibiting one
50 or more of the following characteristics over a long period of
51 time and to a marked degree, which adversely affects educational
52 performance:

53 1. An inability to learn which cannot be explained
54 by intellectual, sensory or health factors;

55 2. An inability to build or maintain satisfactory
56 relationships with peers and teachers;

57 3. Inappropriate types of behavior or feelings
58 under normal circumstances;

59 4. A general pervasive mood of unhappiness or
60 depression; or

61 5. A tendency to develop physical symptoms or
62 fears associated with personal or school problems. An

63 establishment furnishing primarily domiciliary care is not within
64 this definition.

65 (e) "Pediatric skilled nursing facility" means an
66 institution or a distinct part of an institution that is primarily
67 engaged in providing to inpatients skilled nursing care and
68 related services for persons under twenty-one (21) years of age
69 who require medical or nursing care or rehabilitation services for
70 the rehabilitation of injured, disabled or sick persons.

71 (f) "Licensing agency" means the State Department of
72 Health.

73 (g) "Medical records" mean, without restriction, those
74 medical histories, records, reports, summaries, diagnoses and
75 prognoses, records of treatment and medication ordered and given,
76 notes, entries, x-rays and other written or graphic data prepared,
77 kept, made or maintained in institutions for the aged or infirm
78 that pertain to residency in, or services rendered to residents
79 of, an institution for the aged or infirm.

80 (h) "Adult day services facility" means a
81 community-based group program for adults designed to meet the
82 needs of adults with impairments through individual plans of care,
83 which are structured, comprehensive, planned, nonresidential
84 programs providing a variety of health, social and related support
85 services in a protective setting, enabling participants to live in
86 the community.

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

89 43-11-13. (1) The licensing agency shall adopt, amend,
90 promulgate and enforce such rules, regulations and standards,
91 including classifications, with respect to all institutions for
92 the aged or infirm to be licensed under this chapter as may be
93 designed to further the accomplishment of the purpose of this
94 chapter in promoting adequate care of individuals in those
95 institutions in the interest of public health, safety and welfare.

96 Those rules, regulations and standards shall be adopted and
97 promulgated by the licensing agency and shall be recorded and
98 indexed in a book to be maintained by the licensing agency in its
99 main office in the State of Mississippi, entitled "Rules,
100 Regulations and Minimum Standards for Institutions for the Aged or
101 Infirm" and the book shall be open and available to all
102 institutions for the aged or infirm and the public generally at
103 all reasonable times. Upon the adoption of those rules,
104 regulations and standards, the licensing agency shall mail copies
105 thereof to all those institutions in the state that have filed
106 with the agency their names and addresses for this purpose, but
107 the failure to mail the same or the failure of the institutions to
108 receive the same shall in no way affect the validity thereof. The
109 rules, regulations and standards may be amended by the licensing
110 agency, from time to time, as necessary to promote the health,
111 safety and welfare of persons living in those institutions.

112 (2) The licensee shall keep posted in a conspicuous place on
113 the licensed premises all current rules, regulations and minimum
114 standards applicable to fire protection measures as adopted by the
115 licensing agency. The licensee shall furnish to the licensing
116 agency at least once each six (6) months a certificate of approval
117 and inspection by state or local fire authorities. Failure to
118 comply with state laws and/or municipal ordinances and current
119 rules, regulations and minimum standards as adopted by the
120 licensing agency, relative to fire prevention measures, shall be
121 prima facie evidence for revocation of license.

122 (3) The State Board of Health shall promulgate rules and
123 regulations restricting the storage, quantity and classes of drugs
124 allowed in personal care homes and adult day services facilities.
125 Residents requiring administration of Schedule II Narcotics as
126 defined in the Uniform Controlled Substances Law may be admitted
127 to a personal care home. Schedule drugs may only be allowed in a
128 personal care home if they are administered or stored utilizing

129 proper procedures under the direct supervision of a licensed
130 physician or nurse.

131 (4) (a) Notwithstanding any determination by the licensing
132 agency that skilled nursing services would be appropriate for a
133 resident of a personal care home, that resident, the resident's
134 guardian or the legally recognized responsible party for the
135 resident may consent in writing for the resident to continue to
136 reside in the personal care home, if approved in writing by a
137 licensed physician. However, no personal care home shall allow
138 more than two (2) residents, or ten percent (10%) of the total
139 number of residents in the facility, whichever is greater, to
140 remain in the personal care home under the provisions of this
141 subsection (4). This consent shall be deemed to be appropriately
142 informed consent as described in the regulations promulgated by
143 the licensing agency. After that written consent has been
144 obtained, the resident shall have the right to continue to reside
145 in the personal care home for as long as the resident meets the
146 other conditions for residing in the personal care home. A copy
147 of the written consent and the physician's approval shall be
148 forwarded by the personal care home to the licensing agency.

149 (b) The State Board of Health shall promulgate rules
150 and regulations restricting the handling of a resident's personal
151 deposits by the director of a personal care home. Any funds given
152 or provided for the purpose of supplying extra comforts,
153 conveniences or services to any resident in any personal care
154 home, and any funds otherwise received and held from, for or on
155 behalf of any such resident, shall be deposited by the director or
156 other proper officer of the personal care home to the credit of
157 that resident in an account that shall be known as the Resident's
158 Personal Deposit Fund. No more than one (1) month's charge for
159 the care, support, maintenance and medical attention of the
160 resident shall be applied from the account at any one time. After
161 the death, discharge or transfer of any resident for whose benefit

162 any such fund has been provided, any unexpended balance remaining
163 in his personal deposit fund shall be applied for the payment of
164 care, cost of support, maintenance and medical attention that is
165 accrued. If any unexpended balance remains in that resident's
166 personal deposit fund after complete reimbursement has been made
167 for payment of care, support, maintenance and medical attention,
168 and the director or other proper officer of the personal care home
169 has been or shall be unable to locate the person or persons
170 entitled to the unexpended balance, the director or other proper
171 officer may, after the lapse of one (1) year from the date of that
172 death, discharge or transfer, deposit the unexpended balance to
173 the credit of the personal care home's operating fund.

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

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

188 (5) (a) For the purposes of this subsection (5), the term
189 "licensed entity" means a hospital, nursing home, personal care
190 home, home health agency or hospice. For the purposes of this
191 subsection (5), the term "employee" means any individual employed
192 by a licensed entity. The term "employee" also includes any
193 individual who by contract provides to the patients, residents or
194 clients being served by the licensed entity direct, hands-on,

195 medical patient care in a patient's, resident's or client's room
196 or in treatment or recovery rooms.

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

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

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

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

261 or pleaded guilty or nolo contendere to was a nonviolent offense,
262 the person, upon a conviction of perjury under this paragraph,
263 shall be punished by a fine of not more than Five Hundred Dollars
264 (\$500.00), or by imprisonment in the county jail for not more than
265 six (6) months, or by both such fine and imprisonment.

266 (e) The licensed entity may, in its discretion, allow
267 any employee who is unable to sign the affidavit required by
268 paragraph (d) of this subsection (5) or any employee applicant
269 aggrieved by the employment decision under this subsection (5) to
270 appear before the licensed entity's hiring officer, or his or her
271 designee, to show mitigating circumstances that may exist and
272 allow the employee or employee applicant to be employed at the
273 licensed entity. The licensed entity, upon report and
274 recommendation of the hiring officer, may grant waivers for those
275 mitigating circumstances, which shall include, but not be limited
276 to: (i) age at which the crime was committed; (ii) circumstances
277 surrounding the crime; (iii) length of time since the conviction
278 and criminal history since the conviction; (iv) work history; (v)
279 current employment and character references; and (vi) other
280 evidence demonstrating the ability of the individual to perform
281 the employment responsibilities competently and that the
282 individual does not pose a threat to the health or safety of the
283 patients in the licensed entity.

284 (f) The licensing agency may charge the licensed entity
285 submitting the fingerprints a fee not to exceed Fifty Dollars
286 (\$50.00), which licensed entity may, in its discretion, charge the
287 same fee, or a portion thereof, to the employee applicant. Any
288 costs incurred by a licensed entity implementing this subsection
289 (5) shall be reimbursed as an allowable cost under Section
290 43-13-116.

291 (g) If the results of an employee applicant's criminal
292 history record check reveals no disqualifying event, then the
293 licensed entity shall, within two (2) weeks of the notification of

294 no disqualifying event, provide the employee applicant with a
295 notarized letter signed by the chief executive officer of the
296 licensed entity, or his or her authorized designee, confirming the
297 employee applicant's suitability for employment based on his or
298 her criminal history record check. An employee applicant may use
299 that letter for a period of two (2) years from the date of the
300 letter to seek employment at any licensed entity without the
301 necessity of an additional criminal record check. Any licensed
302 entity presented with the letter may rely on the letter with
303 respect to an employee applicant's criminal background and is not
304 required for a period of two (2) years from the date of the letter
305 to conduct or have conducted a criminal history record check as
306 required in this subsection (5).

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

317 (i) The licensing agency shall promulgate regulations
318 to implement this subsection (5).

319 (6) The State Board of Health shall promulgate rules,
320 regulations and standards regarding the operation of adult day
321 services facilities which incorporate, but are not limited to, the
322 most current ranges and levels of care developed by the National
323 Adult Day Services Association (NADSA).

324 **SECTION 3.** The following provision shall be codified as
325 Section 43-11-8, Mississippi Code of 1972:

326 43-11-8. (1) An application for a license for an adult day
327 care facility shall be made to the licensing agency upon forms
328 provided by it and shall contain such information as the licensing
329 agency reasonably requires, which may include affirmative evidence
330 of ability to comply with such reasonable standards, rules and
331 regulations as are lawfully prescribed hereunder. Each
332 application for a license for an adult day care facility shall be
333 accompanied by a license fee of Ten Dollars (\$10.00) for each
334 person of licensed capacity, with a minimum fee per institution of
335 Fifty Dollars (\$50.00), which shall be paid to the licensing
336 agency. Each application for a license for an adult day care
337 facility shall be accompanied by a license fee of Ten Dollars
338 (\$10.00) for each bed in the institution, with a minimum fee per
339 institution of Fifty Dollars (\$50.00), which shall be paid to the
340 licensing agency.

341 (2) A license, unless suspended or revoked, shall be
342 renewable annually upon payment by (a) the licensee of an adult
343 day care facility, except for personal care homes, of a renewal
344 fee of Ten Dollars (\$10.00) for each person of licensed capacity
345 in the institution, with a minimum fee per institution of Fifty
346 Dollars (\$50.00), or (b) the licensee of an adult day care
347 facility of a renewal fee of Ten Dollars (\$10.00) for each
348 licensed facility, with a minimum fee per institution of Fifty
349 Dollars (\$50.00), which shall be paid to the licensing agency, and
350 upon filing by the licensee and approval by the licensing agency
351 of an annual report upon such uniform dates and containing such
352 information in such form as the licensing agency prescribes by
353 regulation. Each license shall be issued only for the premises
354 and person or persons or other legal entity or entities named in
355 the application and shall not be transferable or assignable except
356 with the written approval of the licensing agency. Licenses shall
357 be posted in a conspicuous place on the licensed premises.

358 (3) A fee known as a "user fee" shall be applicable and
359 shall be paid to the licensing agency as set out in subsection (1)
360 hereof. This user fee shall be assessed for the purpose of the
361 required reviewing and inspections of the proposal of any
362 institution in which there are additions, renovations,
363 modernizations, expansion, alterations, conversions, modifications
364 or replacement of the entire facility involved in such proposal.
365 This fee includes the reviewing of architectural plans in all
366 steps required. There shall be a minimum user fee of Fifty
367 Dollars (\$50.00) and a maximum user fee of Two Thousand Dollars
368 (\$2,000.00).

369 **SECTION 4.** This act shall take effect and be in force from
370 and after July 1, 2004.