

By: Senator(s) Burton, Little

To: Public Health and Welfare; Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2432

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER TO
3 ESTABLISH AND CONDUCT CRIMINAL BACKGROUND CHECKS IN ACCORDANCE
4 WITH PROCEDURES PROMULGATED BY THE STATE DEPARTMENT OF HEALTH; AND
5 FOR RELATED PURPOSES.

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

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

9 43-11-13. (1) The licensing agency shall adopt, amend,
10 promulgate and enforce such rules, regulations and standards,
11 including classifications, with respect to all institutions for
12 the aged or infirm to be licensed under this chapter as may be
13 designed to further the accomplishment of the purpose of this
14 chapter in promoting adequate care of individuals in those
15 institutions in the interest of public health, safety and welfare.
16 Those rules, regulations and standards shall be adopted and
17 promulgated by the licensing agency and shall be recorded and
18 indexed in a book to be maintained by the licensing agency in its
19 main office in the State of Mississippi, entitled "Rules,
20 Regulations and Minimum Standards for Institutions for the Aged or
21 Infirm" and the book shall be open and available to all
22 institutions for the aged or infirm and the public generally at
23 all reasonable times. Upon the adoption of those rules,
24 regulations and standards, the licensing agency shall mail copies
25 thereof to all those institutions in the state that have filed
26 with the agency their names and addresses for this purpose, but
27 the failure to mail the same or the failure of the institutions to
28 receive the same shall in no way affect the validity thereof. The

29 rules, regulations and standards may be amended by the licensing
30 agency, from time to time, as necessary to promote the health,
31 safety and welfare of persons living in those institutions.

32 (2) The licensee shall keep posted in a conspicuous place on
33 the licensed premises all current rules, regulations and minimum
34 standards applicable to fire protection measures as adopted by the
35 licensing agency. The licensee shall furnish to the licensing
36 agency at least once each six (6) months a certificate of approval
37 and inspection by state or local fire authorities. Failure to
38 comply with state laws and/or municipal ordinances and current
39 rules, regulations and minimum standards as adopted by the
40 licensing agency, relative to fire prevention measures, shall be
41 prima facie evidence for revocation of license.

42 (3) The State Board of Health shall promulgate rules and
43 regulations restricting the storage, quantity and classes of drugs
44 allowed in personal care homes. Residents requiring
45 administration of Schedule II Narcotics as defined in the Uniform
46 Controlled Substances Law may be admitted to a personal care home.
47 Schedule drugs may only be allowed in a personal care home if they
48 are administered or stored utilizing proper procedures under the
49 direct supervision of a licensed physician or nurse.

50 (4) (a) Notwithstanding any determination by the licensing
51 agency that skilled nursing services would be appropriate for a
52 resident of a personal care home, that resident, the resident's
53 guardian or the legally recognized responsible party for the
54 resident may consent in writing for the resident to continue to
55 reside in the personal care home, if approved in writing by a
56 licensed physician. However, no personal care home shall allow
57 more than two (2) residents, or ten percent (10%) of the total
58 number of residents in the facility, whichever is greater, to
59 remain in the personal care home under the provisions of this
60 subsection (4). This consent shall be deemed to be appropriately
61 informed consent as described in the regulations promulgated by

62 the licensing agency. After that written consent has been
63 obtained, the resident shall have the right to continue to reside
64 in the personal care home for as long as the resident meets the
65 other conditions for residing in the personal care home. A copy
66 of the written consent and the physician's approval shall be
67 forwarded by the personal care home to the licensing agency.

68 (b) The State Board of Health shall promulgate rules
69 and regulations restricting the handling of a resident's personal
70 deposits by the director of a personal care home. Any funds given
71 or provided for the purpose of supplying extra comforts,
72 conveniences or services to any resident in any personal care
73 home, and any funds otherwise received and held from, for or on
74 behalf of any such resident, shall be deposited by the director or
75 other proper officer of the personal care home to the credit of
76 that resident in an account that shall be known as the Resident's
77 Personal Deposit Fund. No more than one (1) month's charge for
78 the care, support, maintenance and medical attention of the
79 resident shall be applied from the account at any one time. After
80 the death, discharge or transfer of any resident for whose benefit
81 any such fund has been provided, any unexpended balance remaining
82 in his personal deposit fund shall be applied for the payment of
83 care, cost of support, maintenance and medical attention that is
84 accrued. If any unexpended balance remains in that resident's
85 personal deposit fund after complete reimbursement has been made
86 for payment of care, support, maintenance and medical attention,
87 and the director or other proper officer of the personal care home
88 has been or shall be unable to locate the person or persons
89 entitled to the unexpended balance, the director or other proper
90 officer may, after the lapse of one (1) year from the date of that
91 death, discharge or transfer, deposit the unexpended balance to
92 the credit of the personal care home's operating fund.

93 (c) The State Board of Health shall promulgate rules
94 and regulations requiring personal care homes to maintain records

95 relating to health condition, medicine dispensed and administered,
96 and any reaction to that medicine. The director of the personal
97 care home shall be responsible for explaining the availability of
98 those records to the family of the resident at any time upon
99 reasonable request.

100 (d) The State Board of Health shall evaluate the
101 effects of this section as it promotes adequate care of
102 individuals in personal care homes in the interest of public
103 health, safety and welfare. It shall report its findings to the
104 Chairmen of the Public Health and Welfare Committees of the House
105 and Senate by January 1, 2003. This subsection (4) shall stand
106 repealed June 30, 2004.

107 (5) (a) For the purposes of this subsection (5), the term
108 "licensed entity" means a hospital, nursing home, personal care
109 home, home health agency or hospice. For the purposes of this
110 subsection (5), the term "employee" means any individual employed
111 by a licensed entity. The term "employee" also includes any
112 individual who by contract provides to the patients, residents or
113 clients being served by the licensed entity direct, hands-on,
114 medical patient care in a patient's, resident's or client's room
115 or in treatment or recovery rooms.

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

123 Except as otherwise provided in paragraph (c) of this
124 subsection (5), no such employee hired on or after July 1, 2003,
125 shall be permitted to provide direct patient care until the
126 results of the criminal history record check have revealed no
127 disqualifying record or the employee has been granted a waiver.

128 In order to determine the employee applicant's suitability for
129 employment, the applicant shall be fingerprinted. Fingerprints
130 shall be submitted to the licensing agency from scanning, with the
131 results processed through the Department of Public Safety's
132 Criminal Information Center. If no disqualifying record is
133 identified at the state level, the fingerprints shall be forwarded
134 by the Department of Public Safety to the Federal Bureau of
135 Investigation for a national criminal history record check. The
136 licensing agency shall notify the licensed entity of the results
137 of an employee applicant's criminal history record check. If the
138 criminal history record check discloses a felony conviction,
139 guilty plea or plea of nolo contendere to a felony of possession
140 or sale of drugs, murder, manslaughter, armed robbery, rape,
141 sexual battery, sex offense listed in Section 45-33-23(f), child
142 abuse, arson, grand larceny, burglary, gratification of lust or
143 aggravated assault, or felonious abuse and/or battery of a
144 vulnerable adult that has not been reversed on appeal or for which
145 a pardon has not been granted, the employee applicant shall not be
146 eligible to be employed at the licensed entity.

147 (c) Any such new employee applicant may, however, be
148 employed on a temporary basis pending the results of the criminal
149 history record check, but any employment contract with the new
150 employee shall be voidable if the new employee receives a
151 disqualifying criminal record check and no waiver is granted as
152 provided in this subsection (5).

153 (d) Under regulations promulgated by the State Board of
154 Health, the licensing agency shall require every employee of a
155 licensed entity employed before July 1, 2003, to sign an affidavit
156 stating that he or she has not been convicted of or pleaded guilty
157 or nolo contendere to a felony of possession or sale of drugs,
158 murder, manslaughter, armed robbery, rape, sexual battery, any sex
159 offense listed in Section 45-33-23(f), child abuse, arson, grand
160 larceny, burglary, gratification of lust, aggravated assault, or

161 felonious abuse and/or battery of a vulnerable adult, or that any
162 such conviction or plea was reversed on appeal or a pardon was
163 granted for the conviction or plea. No such employee of a
164 licensed entity hired before July 1, 2003, shall be permitted to
165 provide direct patient care until the employee has signed the
166 affidavit required by this paragraph (d). All such existing
167 employees of licensed entities must sign the affidavit required by
168 this paragraph (d) within six (6) months of the final adoption of
169 the regulations promulgated by the State Board of Health. If a
170 person signs the affidavit required by this paragraph (d), and it
171 is later determined that the person actually had been convicted of
172 or pleaded guilty or nolo contendere to any of the offenses listed
173 in this paragraph (d) and the conviction or plea has not been
174 reversed on appeal or a pardon has not been granted for the
175 conviction or plea, the person is guilty of perjury. If the
176 offense that the person was convicted of or pleaded guilty or nolo
177 contendere to was a violent offense, the person, upon a conviction
178 of perjury under this paragraph, shall be punished as provided in
179 Section 97-9-61. If the offense that the person was convicted of
180 or pleaded guilty or nolo contendere to was a nonviolent offense,
181 the person, upon a conviction of perjury under this paragraph,
182 shall be punished by a fine of not more than Five Hundred Dollars
183 (\$500.00), or by imprisonment in the county jail for not more than
184 six (6) months, or by both such fine and imprisonment.

185 (e) The licensed entity may, in its discretion, allow
186 any employee who is unable to sign the affidavit required by
187 paragraph (d) of this subsection (5) or any employee applicant
188 aggrieved by the employment decision under this subsection (5) to
189 appear before the licensed entity's hiring officer, or his or her
190 designee, to show mitigating circumstances that may exist and
191 allow the employee or employee applicant to be employed at the
192 licensed entity. The licensed entity, upon report and
193 recommendation of the hiring officer, may grant waivers for those

194 mitigating circumstances, which shall include, but not be limited
195 to: (i) age at which the crime was committed; (ii) circumstances
196 surrounding the crime; (iii) length of time since the conviction
197 and criminal history since the conviction; (iv) work history; (v)
198 current employment and character references; and (vi) other
199 evidence demonstrating the ability of the individual to perform
200 the employment responsibilities competently and that the
201 individual does not pose a threat to the health or safety of the
202 patients in the licensed entity.

203 (f) The licensing agency may charge the licensed entity
204 submitting the fingerprints a fee not to exceed Fifty Dollars
205 (\$50.00), which licensed entity may, in its discretion, charge the
206 same fee, or a portion thereof, to the employee applicant. Any
207 costs incurred by a licensed entity implementing this subsection
208 (5) shall be reimbursed as an allowable cost under Section
209 43-13-116.

210 (g) If the results of an employee applicant's criminal
211 history record check reveals no disqualifying event, then the
212 licensed entity shall, within two (2) weeks of the notification of
213 no disqualifying event, provide the employee applicant with a
214 notarized letter signed by the chief executive officer of the
215 licensed entity, or his or her authorized designee, confirming the
216 employee applicant's suitability for employment based on his or
217 her criminal history record check. An employee applicant may use
218 that letter for a period of two (2) years from the date of the
219 letter to seek employment at any licensed entity without the
220 necessity of an additional criminal record check. Any licensed
221 entity presented with the letter may rely on the letter with
222 respect to an employee applicant's criminal background and is not
223 required for a period of two (2) years from the date of the letter
224 to conduct or have conducted a criminal history record check as
225 required in this subsection (5).

226 (h) The licensing agency, the licensed entity, and
227 their agents, officers, employees, attorneys and representatives,
228 shall be presumed to be acting in good faith for any employment
229 decision or action taken under this subsection (5). The
230 presumption of good faith may be overcome by a preponderance of
231 the evidence in any civil action. No licensing agency, licensed
232 entity, nor their agents, officers, employees, attorneys and
233 representatives shall be held liable in any employment decision or
234 action based in whole or in part on compliance with or attempts to
235 comply with the requirements of this subsection (5).

236 (i) The licensing agency shall promulgate regulations
237 to implement this subsection (5).

238 (6) (a) Notwithstanding any other provision of this
239 section, the University of Mississippi Medical Center (UMMC) shall
240 be authorized to fingerprint and perform a criminal history record
241 check on (i) new employees, and (ii) contractors, temporary
242 workers or consultants that work in or provide direct patient
243 care.

244 (b) Except as otherwise provided, no employee hired
245 after passage of Senate Bill No. 2432, 2004 Regular Session, shall
246 be permitted to provide direct patient care until the results of
247 the criminal history check have revealed no disqualifying record.
248 In order to determine the applicant's suitability for employment,
249 the applicant shall be fingerprinted. Fingerprints shall be
250 submitted to the Department of Public Safety by UMMC via scanning
251 or other electronic method. If no disqualifying record is
252 identified at the state level, the applicant's fingerprints shall
253 be forwarded by the Department of Public Safety to the Federal
254 Bureau of Investigation for a national criminal history record
255 check. If the criminal history record check discloses a felony
256 conviction, guilty pleas or pleas of nolo contendere to a felony
257 of possession or sale of drugs, murder, manslaughter, armed
258 robbery, rape, sexual battery, sex offense listed in Section

259 45-33-23(f), child abuse, arson, grand larceny, burglary,
260 gratification of lust or aggravated assault, or felonious abuse
261 and/or battery of a vulnerable adult that has not been reversed on
262 appeal or for which a pardon has not been granted, the applicant
263 shall not be eligible to be employed at UMMC.

264 (c) Such new applicant may, however, be employed on a
265 temporary basis pending the results of the criminal history record
266 check. Any employment contract with an applicant during the
267 applicant process shall be voidable upon receipt of a
268 disqualifying criminal record check.

269 (d) Upon receipt of an applicant's criminal history
270 record check revealing no disqualifying event, UMMC shall, within
271 two (2) weeks of the notification of no disqualifying event,
272 provide the applicant with a notarized letter signed by the Vice
273 Chancellor, or his or her authorized designee, confirming the
274 applicant's suitability for employment based on his or her
275 criminal history record check. An employee/applicant may use that
276 letter for a period of two (2) years from the date of the letter
277 to seek employment at any licensed entity without the necessity of
278 an additional criminal record check. Any licensed entity
279 presented with the letter may rely on the letter for a period of
280 two (2) years from the date of the letter to conduct or have
281 conducted a criminal history record check as required in this
282 subsection (6).

283 (e) UMMC may, in its discretion, allow any applicant
284 aggrieved by the employment decision under this statute to appear
285 before the UMMC hiring officer, or his/her designee, to show
286 mitigating circumstances that may exist and allow the applicant to
287 be employed. UMMC, upon report for those mitigating
288 circumstances, which shall include, but not be limited to: (i)
289 age at which the crime was committed; (ii) circumstances
290 surrounding the crime; (iii) length of time since the conviction
291 and criminal history since the conviction; (iv) work history; (v)

292 current employment and character references; and (vi) other
293 evidence demonstrating the ability of the individual to perform
294 the employment responsibilities competently and that the
295 individual does not pose a threat to the health or safety of the
296 patients admitted to UMMC.

297 (f) UMMC may charge a fee as prescribed in subsection
298 (5)(f) of this section for fingerprinting applicants, students,
299 employees, contractors, consultants, outside agency personnel,
300 visiting faculty, researchers or any other individual(s) that may
301 provide direct services to UMMC.

302 (g) UMMC and its agents, officers, employees, attorneys
303 and representatives shall be presumed to be acting in good faith
304 for any employment decision or action taken under this subsection
305 (6). The presumption of good faith may be overcome by a
306 preponderance of the evidence in a civil action. UMMC or its
307 agents, officers, employees, attorneys and representatives shall
308 not be held liable in any employment decision or action based in
309 whole or in part on compliance with or attempts to comply in good
310 faith with the requirements of this subsection (6).

311 **SECTION 2.** This act shall take effect and be in force from
312 and after its passage.