

By: Senator(s) Nunnelee

To: Public Health and
Welfare; Judiciary, Division
A

SENATE BILL NO. 2881

1 AN ACT TO CODIFY SECTIONS 43-12-1 THROUGH 43-12-27,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE LICENSURE AND
3 REGULATION OF CONTINUING CARE RETIREMENT COMMUNITIES BY THE STATE
4 DEPARTMENT OF HEALTH; TO PROVIDE DEFINITIONS; TO PROVIDE FOR THE
5 ISSUANCE OF LICENSES; TO PROVIDE A DISCIPLINARY PROCESS FOR
6 LICENSEES AND JUDICIAL REVIEW; TO PROVIDE FOR THE RETENTION OF
7 MEDICAL RECORDS; TO PROVIDE FOR INSPECTIONS; TO PROVIDE FOR
8 CONFIDENTIALITY; TO PROVIDE CRIMINAL AND CIVIL PENALTIES FOR
9 VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** The following provision shall be codified as
12 Section 43-12-1, Mississippi Code of 1972:

13 43-12-1. **Definitions.**

14 When used in this chapter, the following words shall have the
15 following meanings:

16 (a) "Continuing Care Retirement Community" means, as
17 described in the latest edition of the Mississippi State Health
18 Plan, a comprehensive, cohesive living arrangement for the elderly
19 which is offered under a contract that lasts for more than one (1)
20 year or for the life of the resident and describes the service
21 obligation of the Continuing Care Retirement Community and the
22 financial obligations of the resident. A Continuing Care
23 Retirement Community must include: (i) independent living
24 accommodations, (ii) personal care beds, and (iii) intermediate or
25 skilled nursing care beds, or both. The three (3) components must
26 be located on a single site and be operated as one (1) inseparable
27 facility. The nursing facility component must contain a minimum
28 of thirty (30) beds. Any nursing facility beds authorized by this
29 section will not be counted against the bed need set forth in the
30 State Health Plan, as identified in Section 41-7-171 et seq.

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

34 (c) "Personal care" means assistance rendered by
35 personnel of a Continuing Care Retirement Community to its
36 residents in performing one or more of the activities of daily
37 living, which includes, but is not limited to, the bathing,
38 walking, excretory functions, feeding, personal grooming and
39 dressing of such residents.

40 (d) "Licensing agency" means the State Department of
41 Health.

42 (e) "Medical records" mean, without restriction, those
43 medical histories, records, reports, summaries, diagnoses and
44 prognoses, records of treatment and medication ordered and given,
45 notes, entries, x-rays and other written or graphic data prepared,
46 kept, made or maintained in the Continuing Care Retirement
47 Community that pertain to residency in or services rendered to
48 residents of such Continuing Care Retirement Community.

49 **SECTION 2.** The following provision shall be codified as
50 Section 43-12-3, Mississippi Code of 1972:

51 **43-12-3. Statement of purpose.**

52 The purpose of this chapter is to protect and promote the
53 public welfare by providing for the development, establishment and
54 enforcement of certain standards in the maintenance and operation
55 of Continuing Care Retirement Communities which will insure safe,
56 sanitary and reasonably adequate care of individuals in such
57 facilities.

58 **SECTION 3.** The following provision shall be codified as
59 Section 43-12-5, Mississippi Code of 1972:

60 **43-12-5. Continuing Care Retirement Community requires**
61 **license.**

62 No person, acting severally or jointly with any other person,
63 shall establish, conduct or maintain a Continuing Care Retirement
64 Community in this state without a license under this chapter.

65 **SECTION 4.** The following provision shall be codified as
66 Section 43-12-7, Mississippi Code of 1972:

67 43-12-7. **Application, form and fee.**

68 Any person, as defined in Section 43-12-1, may apply for a
69 license as provided in this section. An application for a license
70 shall be made to the licensing agency upon forms provided by it
71 and shall contain such information as the licensing agency
72 reasonably requires, which may include affirmative evidence of
73 ability to comply with such reasonable standards, rules and
74 regulations as are lawfully prescribed under this chapter. Each
75 application for a license for a Continuing Care Retirement
76 Community shall be accompanied by a license fee of Twenty Dollars
77 (\$20.00) for each resident of the facility, excluding residents of
78 the independent living section of the facility, with a minimum fee
79 per facility of Two Hundred Dollars (\$200.00), which shall be paid
80 to the licensing agency.

81 No governmental entity or agency shall be required to pay the
82 fee or fees set forth in this section.

83 **SECTION 5.** The following provision shall be codified as
84 Section 43-12-9, Mississippi Code of 1972:

85 43-12-9. **License issuance, renewal, terms, display.**

86 (1) Upon receipt of an application for license and the
87 license fee, the licensing agency shall issue a license if the
88 applicant and its facilities meet the requirements established
89 under this chapter and the requirements of Section 41-7-173 et
90 seq., where determined by the licensing agency to be applicable.
91 A license, unless suspended or revoked, shall be renewable
92 annually upon payment by the licensee of a Continuing Care
93 Retirement Community of a renewal fee of Twenty Dollars (\$20.00)
94 for each resident of the facility, excluding residents of the

95 independent living section of the facility, which shall be paid to
96 the licensing agency, and upon filing by the licensee and approval
97 by the licensing agency of an annual report upon such uniform
98 dates and containing such information in such form as the
99 licensing agency prescribes by regulation. Each license shall be
100 issued only for the premises and person or persons or other legal
101 entity or entities named in the application and shall not be
102 transferable or assignable except with the written approval of the
103 licensing agency. Licenses shall be posted in a conspicuous place
104 on the licensed premises.

105 (2) A fee known as a "User Fee" shall be applicable and
106 shall be paid to the licensing agency as set out in subsection (1)
107 hereof. This user fee shall be assessed for the purpose of the
108 required reviewing and inspections of the proposal of any facility
109 in which there are additions, renovations, modernizations,
110 expansion, alterations, conversions, modifications or replacement
111 of the entire facility involved in such proposal. This fee
112 includes the reviewing of architectural plans in all steps
113 required. There shall be a minimum user fee of Fifty Dollars
114 (\$50.00) and a maximum user fee of Five Thousand Dollars
115 (\$5,000.00).

116 (3) No governmental entity or agency shall be required to
117 pay the fee or fees set forth in this section.

118 **SECTION 6.** The following provision shall be codified as
119 Section 43-12-11, Mississippi Code of 1972:

120 43-12-11. **Denial, suspension or revocation process.**

121 The licensing agency, after notice and opportunity for a
122 hearing to the applicant or licensee, is authorized to deny,
123 suspend, or revoke a license in any case in which it finds that
124 there has been a substantial failure to comply with the
125 requirements established under this chapter.

126 Such notice shall be effected by registered mail or by
127 personal service setting forth the particular reasons for the

128 proposed action and fixing a date not less than thirty (30) days
129 from the date of such mailing or such service, at which time the
130 applicant or licensee shall be given an opportunity for a prompt
131 and fair hearing. On the basis of any such hearing, or upon
132 default of the applicant or licensee, the licensing agency shall
133 make a determination specifying its findings of fact and
134 conclusions of law. A copy of such determination shall be sent by
135 registered mail or served personally upon the applicant or
136 licensee. The decision revoking, suspending or denying the
137 license or application shall become final thirty (30) days after
138 it is so mailed or served, unless the applicant or licensee,
139 within such thirty-day period, appeals to the decision to the
140 chancery court pursuant to Section 43-12-23.

141 The procedure governing hearings authorized by this section
142 shall be in accordance with rules promulgated by the licensing
143 agency. A full and complete record shall be kept of all
144 proceedings, and all testimony shall be recorded but need not be
145 transcribed unless the decision is appealed pursuant to Section
146 43-12-23. Witnesses may be subpoenaed by either party.
147 Compensation shall be allowed to witnesses as in cases in the
148 chancery court. Each party shall pay the expense of his own
149 witnesses. The cost of the record shall be paid by the licensing
150 agency provided any other party desiring a copy of the transcript
151 shall pay therefor the reasonable cost of preparing the same.

152 **SECTION 7.** The following provision shall be codified as
153 Section 43-12-13, Mississippi Code of 1972:

154 43-12-13. **Rules, regulations and standards; affidavits as to**
155 **criminal convictions.**

156 (1) The licensing agency shall adopt, amend, promulgate and
157 enforce such rules, regulations and standards, including
158 classifications, with respect to all Continuing Care Retirement
159 Communities to be licensed under this chapter as may be designed
160 to further the accomplishment of the purpose of this chapter in

161 promoting adequate care of individuals in those facilities in the
162 interest of public health, safety and welfare. Those rules,
163 regulations and standards shall be adopted and promulgated by the
164 licensing agency and shall be recorded and indexed in a book to be
165 maintained by the licensing agency in its main office in the State
166 of Mississippi, entitled "Rules, Regulations and Minimum Standards
167 for Continuing Care Retirement Communities" and the book shall be
168 open and available to all Continuing Care Retirement Communities
169 and the public generally at all reasonable times. Upon the
170 adoption of those rules, regulations and standards, the licensing
171 agency shall mail copies thereof to all persons in the state who
172 have filed with the agency their names and addresses for this
173 purpose, but the failure to mail the same or the failure of the
174 persons to receive the same shall in no way affect the validity
175 thereof. The rules, regulations and standards may be amended by
176 the licensing agency, from time to time, as necessary to promote
177 the health, safety and welfare of persons living in those
178 institutions.

179 (2) The licensing agency shall have the authority to adopt
180 similar rules, regulations and standards for Continuing Care
181 Retirement Communities as the licensing agency has for
182 institutions for the aged or infirm set forth in Section 43-11-13.
183 Further, Continuing Care Retirement Communities shall also be
184 governed by all requirements established in Section 43-11-13
185 relating to institutions for the aged or infirm.

186 **SECTION 8.** The following provision shall be codified as
187 Section 43-12-15, Mississippi Code of 1972:

188 43-12-15. **Existing facilities, time to comply.**

189 Any Continuing Care Retirement Community which is in
190 operation at the time of promulgation of any applicable rules or
191 regulations or minimum standards under this chapter shall be given
192 a reasonable time, under the particular circumstances not to
193 exceed one (1) year from the date of such promulgation, within

194 which to comply with such rules and regulations and minimum
195 standards.

196 **SECTION 9.** The following provision shall be codified as
197 Section 43-12-16, Mississippi Code of 1972:

198 43-12-16. **Medical records; possession; access.**

199 Medical records are and shall remain the property of the
200 various Continuing Care Retirement Communities, subject, however,
201 to reasonable access to the information contained therein upon
202 written request by the resident, his legally appointed
203 representatives, his attending medical personnel and his duly
204 authorized nominees, and upon payment of any reasonable charges
205 for such service. Nothing in this section shall be construed to
206 deny access to medical records by the Attorney General, the
207 licensing agency, or his or its agents and investigators in the
208 discharge of their official duties under this chapter. Except as
209 otherwise provided by law, medical records shall not constitute
210 public records and nothing in this section shall be deemed to
211 impair any privilege of confidence conferred by law or the
212 Mississippi Rules of Evidence on residents, their personal
213 representatives, or heirs by Section 13-1-21.

214 **SECTION 10.** The following provision shall be codified as
215 Section 43-12-17, Mississippi Code of 1972:

216 43-12-17. **Inspections and investigations.**

217 The licensing agency shall make or cause to be made such
218 inspections and investigations as it deems necessary.

219 **SECTION 11.** The following provision shall be codified as
220 Section 43-12-19, Mississippi Code of 1972:

221 43-12-19. **Confidentiality.**

222 Information received by the licensing agency through filed
223 reports, inspection, or as otherwise authorized under this
224 chapter, shall not be disclosed publicly in such manner as to
225 identify individuals, except in a proceeding involving the
226 questions of licensure; however, the licensing agency may utilize

227 statistical data concerning types of services and the utilization
228 of those services for Continuing Care Retirement Communities in
229 performing the statutory duties imposed upon it by Section
230 41-7-171 et seq. and by Section 43-12-21.

231 **SECTION 12.** The following provision shall be codified as
232 Section 43-12-21, Mississippi Code of 1972:

233 43-12-21. **Annual reports.**

234 The licensing agency shall prepare and publish an annual
235 report of its activities and operations under this chapter. A
236 reasonable number of copies of such publications shall be
237 available in the office of the licensing agency to be furnished
238 free to persons requesting them.

239 **SECTION 13.** The following provision shall be codified as
240 Section 43-12-23, Mississippi Code of 1972:

241 43-12-23. **Appeal and review.**

242 Any applicant or licensee aggrieved by the decision of the
243 licensing agency after a hearing may, within thirty (30) days
244 after the mailing or serving of notice of the decision as provided
245 in Section 43-12-11, file a notice of appeal in the Chancery Court
246 of the First Judicial District of Hinds County or the chancery
247 court of the county in which the Continuing Care Retirement
248 Community is located or to be located, and the chancery clerk
249 thereof shall serve a copy of the notice of appeal upon the
250 licensing agency. Thereupon the licensing agency shall, within
251 sixty (60) days or such additional time as the court may allow
252 from the service of such notice, certify and file with the court a
253 copy of the record and decision, including the transcript of the
254 hearings on which the decision is based. Findings of fact by the
255 licensing agency shall be conclusive unless substantially contrary
256 to the weight of the evidence but upon good cause shown, the court
257 may remand the case to the licensing agency to take further
258 evidence, and the licensing agency may thereupon affirm, reverse
259 or modify its decision. The court may affirm, modify or reverse

260 the decision of the licensing agency and either the applicant or
261 licensee or the licensing agency may appeal from this decision to
262 the Supreme Court as in other cases in the chancery court.
263 Pending final disposition of the matter the status quo of the
264 applicant or licensee shall be preserved, except as the court
265 otherwise orders in the public interest. Rules with respect to
266 court costs as in other cases in chancery shall apply equally to
267 cases hereunder.

268 **SECTION 14.** The following provision shall be codified as
269 Section 43-12-25, Mississippi Code of 1972:

270 43-12-25. **Sanctions.**

271 Any person establishing, conducting, managing or operating a
272 Continuing Care Retirement Community without a license under this
273 chapter shall be guilty of a misdemeanor, and upon conviction
274 shall be fined not more than One Thousand Dollars (\$1,000.00) for
275 the first offense and not more than One Thousand Dollars
276 (\$1,000.00) for each subsequent offense, and each day of a
277 continuing violation after conviction shall be considered a
278 separate offense.

279 **SECTION 15.** The following provision shall be codified as
280 Section 43-12-27, Mississippi Code of 1972:

281 43-12-27. **Equitable relief.**

282 Notwithstanding the existence or pursuit of any other remedy,
283 the licensing agency may, in the manner provided by law, upon the
284 advice of the Attorney General who shall represent the licensing
285 agency in the proceedings, maintain an action in the name of the
286 state for injunction or other process against any person to
287 restrain or prevent the establishment, conduct, management or
288 operation of a Continuing Care Retirement Community without a
289 license under this chapter.

290 **SECTION 16.** This act shall take effect and be in force from
291 and after July 1, 2004.