

By: Senator(s) Dawkins, Williamson

To: Public Health and Welfare

SENATE BILL NO. 2919

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REQUIRE ELECTRONIC
3 MONITORING DEVICES IN THE ROOMS OF RESIDENTS OF NURSING HOMES AT
4 THE REQUEST OF THE RESIDENT OR THE RESIDENT'S GUARDIAN; TO
5 AUTHORIZE THE DEPARTMENT OF HEALTH TO ISSUE REGULATIONS; TO
6 PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR
7 RELATED PURPOSES.

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

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

11 43-11-13. (1) The licensing agency shall adopt, amend,
12 promulgate and enforce such rules, regulations and standards,
13 including classifications, with respect to all institutions for
14 the aged or infirm to be licensed under this chapter as may be
15 designed to further the accomplishment of the purpose of this
16 chapter in promoting adequate care of individuals in those
17 institutions in the interest of public health, safety and welfare.
18 Those rules, regulations and standards shall be adopted and
19 promulgated by the licensing agency and shall be recorded and
20 indexed in a book to be maintained by the licensing agency in its
21 main office in the State of Mississippi, entitled "Rules,
22 Regulations and Minimum Standards for Institutions for the Aged or
23 Infirm" and the book shall be open and available to all
24 institutions for the aged or infirm and the public generally at
25 all reasonable times. Upon the adoption of those rules,
26 regulations and standards, the licensing agency shall mail copies
27 thereof to all those institutions in the state that have filed
28 with the agency their names and addresses for this purpose, but
29 the failure to mail the same or the failure of the institutions to

30 receive the same shall in no way affect the validity thereof. The
31 rules, regulations and standards may be amended by the licensing
32 agency, from time to time, as necessary to promote the health,
33 safety and welfare of persons living in those institutions.

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

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

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

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

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

95 (c) The State Board of Health shall promulgate rules
96 and regulations requiring personal care homes to maintain records
97 relating to health condition, medicine dispensed and administered,
98 and any reaction to that medicine. The director of the personal
99 care home shall be responsible for explaining the availability of
100 those records to the family of the resident at any time upon
101 reasonable request.

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

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

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

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

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

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

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

161 offense listed in Section 45-33-23(f), child abuse, arson, grand
162 larceny, burglary, gratification of lust, aggravated assault, or
163 felonious abuse and/or battery of a vulnerable adult, or that any
164 such conviction or plea was reversed on appeal or a pardon was
165 granted for the conviction or plea. No such employee of a
166 licensed entity hired before July 1, 2003, shall be permitted to
167 provide direct patient care until the employee has signed the
168 affidavit required by this paragraph (d). All such existing
169 employees of licensed entities must sign the affidavit required by
170 this paragraph (d) within six (6) months of the final adoption of
171 the regulations promulgated by the State Board of Health. If a
172 person signs the affidavit required by this paragraph (d), and it
173 is later determined that the person actually had been convicted of
174 or pleaded guilty or nolo contendere to any of the offenses listed
175 in this paragraph (d) and the conviction or plea has not been
176 reversed on appeal or a pardon has not been granted for the
177 conviction or plea, the person is guilty of perjury. If the
178 offense that the person was convicted of or pleaded guilty or nolo
179 contendere to was a violent offense, the person, upon a conviction
180 of perjury under this paragraph, shall be punished as provided in
181 Section 97-9-61. If the offense that the person was convicted of
182 or pleaded guilty or nolo contendere to was a nonviolent offense,
183 the person, upon a conviction of perjury under this paragraph,
184 shall be punished by a fine of not more than Five Hundred Dollars
185 (\$500.00), or by imprisonment in the county jail for not more than
186 six (6) months, or by both such fine and imprisonment.

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

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

205 (f) The licensing agency may charge the licensed entity
206 submitting the fingerprints a fee not to exceed Fifty Dollars
207 (\$50.00), which licensed entity may, in its discretion, charge the
208 same fee, or a portion thereof, to the employee applicant. Any
209 costs incurred by a licensed entity implementing this subsection
210 (5) shall be reimbursed as an allowable cost under Section
211 43-13-116.

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

226 to conduct or have conducted a criminal history record check as
227 required in this subsection (5).

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

238 (i) The licensing agency shall promulgate regulations
239 to implement this subsection (5).

240 (6) (a) An institution for the aged or infirm shall permit
241 a resident, the resident's next of kin at the request of the
242 resident, or the resident's guardian to monitor the room of the
243 resident through the use of electronic monitoring devices.

244 (b) (i) The institution shall require a resident who
245 conducts electronic monitoring or the resident's guardian to post
246 a notice on the door of the resident's room.

247 (ii) The notice must state that the room is being
248 monitored by an electronic monitoring device.

249 (c) Electronic monitoring conducted under this section:

250 (i) Is not compulsory and may be conducted only at
251 the request of the resident or the resident's guardian;

252 (ii) Must be paid for by the resident or the
253 resident's guardian; and

254 (iii) Must protect the privacy rights of other
255 residents and visitors to the institution to the extent reasonably
256 possible.

257 (d) An institution may not refuse to admit an
258 individual to residency in the institution and may not remove a

259 resident from the institution because of a request to conduct
260 electronic monitoring.

261 (e) An institution shall make reasonable physical
262 accommodation for electronic monitoring, including:

263 (i) Providing a reasonably secure place to mount
264 the video surveillance camera or other monitoring device; and

265 (ii) Providing access to power sources for the
266 video surveillance camera or other electronic monitoring device.

267 (f) An institution shall inform a resident or the
268 resident's guardian of the resident's right to conduct electronic
269 monitoring.

270 (g) If electronic monitoring is conducted, the
271 institution may require the resident, the resident's next of kin,
272 or the resident's guardian to conduct the electronic monitoring in
273 plain view.

274 (h) An institution may require that a request to
275 conduct electronic monitoring be made in writing.

276 (i) Subject to applicable rules of evidence and
277 procedure, a tape or recording created through the use of
278 electronic monitoring conducted under this section may be admitted
279 into evidence in a civil or criminal court action or
280 administrative proceeding.

281 (j) An administrator of an institution who knowingly
282 refuses to permit a resident, the resident's next of kin at the
283 request of the resident, or the resident's guardian to monitor the
284 room of the resident in accordance with this section through the
285 use of electronic monitoring devices is guilty of a misdemeanor,
286 and upon conviction, shall be fined an amount not to exceed Five
287 Thousand Dollars (\$5,000.00).

288 (k) An administrator of an institution who knowingly
289 refuses to admit an individual to residency in the institution, or
290 who knowingly allows the removal of a resident from the
291 institution, because of a request to conduct electronic monitoring

292 under this section is guilty of a misdemeanor and upon conviction,
293 shall be fined an amount not to exceed Five Thousand Dollars
294 (\$5,000.00).

295 (1) (i) A person who intentionally hampers, obstructs,
296 tampers with, or destroys an electronic monitoring device
297 installed in a resident's room in accordance with this section or
298 a tape or recording made by the device is guilty of a misdemeanor
299 and upon conviction, shall be fined an amount not to exceed Five
300 Thousand Dollars (\$5,000.00).

301 (ii) It is an affirmative defense to prosecution
302 under this subsection that the person took the action with the
303 consent of the resident on whose behalf the electronic monitoring
304 device was installed, the resident's guardian, or the resident's
305 next of kin if the next of kin was conducting the monitoring at
306 the request of the resident.

307 (m) The licensing agency shall promulgate regulations
308 to enforce the provisions of this subsection (6).

309 (n) For purposes of this subsection (6), "electronic
310 monitoring device" includes:

311 (i) Video surveillance cameras installed in the
312 room of a resident; and

313 (ii) Audio devices installed in the room of a
314 resident designed to acquire communications or other sounds
315 occurring in the room.

316 **SECTION 2.** This act shall take effect and be in force from
317 and after July 1, 2004.