

By: Senator(s) Nunnelee

To: Public Health and Welfare

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2367

1 AN ACT TO AMEND SECTIONS 43-20-5, 43-20-8, 43-20-11,  
2 43-20-12, 43-20-14, 43-20-53, 43-20-57 AND 43-20-59, MISSISSIPPI  
3 CODE OF 1972, TO TRANSFER THE POWERS AND DUTIES OF THE STATE  
4 DEPARTMENT OF HEALTH RELATING TO THE LICENSURE OF CHILD CARE  
5 FACILITIES TO THE STATE DEPARTMENT OF HUMAN SERVICES AND TO  
6 PROVIDE THAT THE DEPARTMENT OF HUMAN SERVICES SHALL PERFORM ALL OF  
7 THE DUTIES RELATING TO THE ESTABLISHMENT AND ENFORCEMENT OF  
8 REGULATIONS GOVERNING THE OPERATION OF LICENSED CHILD CARE  
9 FACILITIES THAT WERE FORMERLY PERFORMED BY THE STATE DEPARTMENT OF  
10 HEALTH; TO REPEAL SECTIONS 43-20-7 AND 43-20-55, MISSISSIPPI CODE  
11 OF 1972, WHICH CREATE AN ADVISORY COUNCIL TO ASSIST THE LICENSING  
12 AGENCY IN THE DEVELOPMENT OF CHILD CARE FACILITY STANDARDS AND  
13 REGULATIONS; TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972,  
14 TO DEFINE THE TERM "ADULT DAY SERVICES FACILITY" FOR PURPOSES OF  
15 INSTITUTIONAL LICENSURE BY THE STATE DEPARTMENT OF HEALTH; TO  
16 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE  
17 STATE BOARD OF HEALTH TO PROMULGATE RULES, REGULATIONS AND  
18 STANDARDS REGARDING THE OPERATION OF ADULT DAY SERVICES FACILITIES  
19 WHICH INCORPORATE THE MOST CURRENT RANGES AND LEVELS OF CARE  
20 DEVELOPED BY THE NATIONAL ADULT DAY SERVICES ASSOCIATION (NADSA);  
21 TO CODIFY SECTION 43-11-8, MISSISSIPPI CODE OF 1972, TO PRESCRIBE  
22 FEES FOR ADULT DAY CARE FACILITY LICENSURE; AND FOR RELATED  
23 PURPOSES.

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

25 **SECTION 1.** Section 43-20-5, Mississippi Code of 1972, is  
26 amended as follows:

27 43-20-5. (1) From and after July 1, 2005, the powers and  
28 duties of the State Department of Health relating to the licensure  
29 of child care facilities under this chapter shall be transferred  
30 to the State Department of Human Services. All records, property,  
31 funds, other assets and personnel of the Child Care Licensure Unit  
32 and the Child Care Licensure Program shall be transferred to the  
33 Department of Human Services. The Executive Director of the  
34 Department of Human Services may assign to the appropriate offices  
35 such powers and duties deemed appropriate to carry out the lawful  
36 functions of the department under this chapter.

37           (2) When used in this chapter, the following words shall  
38 have the following meanings:

39           (a) "Child care facility" means a place that provides  
40 shelter and personal care for six (6) or more children who are not  
41 related within the third degree computed according to the civil  
42 law to the operator and who are under thirteen (13) years of age,  
43 for any part of the twenty-four-hour day, whether that place is  
44 organized or operated for profit or not. The term "child care  
45 facility" includes day nurseries, day care centers and any other  
46 facility that falls within the scope of the definitions set forth  
47 in this paragraph, regardless of auspices. Exemptions from the  
48 provisions of this chapter include:

49           (i) Child care facilities that operate for no more  
50 than two (2) days a week, whose primary purpose is to provide  
51 respite for the caregiver or temporary care during other scheduled  
52 or related activities and organized programs that operate for  
53 three (3) or fewer weeks per year such as, but not limited to,  
54 vacation bible schools and scout day camps.

55           (ii) Any child residential home as defined in, and  
56 in compliance with the provisions of, Section 43-16-3(b) et seq.

57           (iii) 1. Any elementary, including kindergarten,  
58 and/or secondary school system, accredited by the Mississippi  
59 State Department of Education, the Southern Association of  
60 Colleges and Schools, the Mississippi Private School Education  
61 Association, the American Association of Christian Schools, the  
62 Association of Christian Schools International, and any Head Start  
63 program operating in conjunction with an elementary school system,  
64 whether it is public, private or parochial, whose primary purpose  
65 is a structured school or school readiness program.

66           2. Accreditation, for the purpose of  
67 exemption from the provisions of this chapter, means: a. receipt  
68 by any school or school system of full accreditation from an  
69 accrediting entity listed in item 1 of this subparagraph (iii), or

70 b. proof of application by the school or school system for  
71 accreditation status from the accrediting entity. Proof of  
72 application for accreditation status shall include, but not be  
73 limited to, a copy of the applicant's completed application for  
74 accreditation filed with the licensing agency and a letter or  
75 other authenticating documentation from a signatory authority with  
76 the accrediting entity that the application for accreditation has  
77 been received and that the applicant is currently under  
78 consideration or review for full accreditation status by the  
79 accrediting entity. An exemption for a nonaccredited applicant  
80 under this item 2 shall be for a maximum of one (1) year from the  
81 receipt date by the licensing agency of the completed  
82 documentation for proof of application for accreditation status.  
83 Failure to receive full accreditation by the end of the one-year  
84 exemption period for a nonaccredited applicant shall result in the  
85 nonaccredited applicant no longer remaining exempt from the  
86 provisions of this chapter at the end of the one-year period.  
87 However, if full accreditation is not received by the end of the  
88 one-year exemption period, the State Department of Human Services,  
89 in its discretion, may extend the exemption period for any  
90 nonaccredited applicant for periods of six (6) months, with the  
91 total extension not to exceed one (1) year. During any such  
92 extension periods, the department shall have the authority to  
93 enforce child care facility licensure provisions relating to the  
94 health and safety of the children in the school or school system.  
95 If a nonaccredited applicant fails to receive full accreditation  
96 by the end of all extended exemption periods, the applicant shall  
97 no longer remain exempt from the provisions of this chapter at the  
98 end of the extended exemption periods. This item 2 shall stand  
99 repealed on July 1, 2006.

100 (iv) Any membership organization affiliated with a  
101 national organization that charges only a nominal annual  
102 membership fee, does not receive monthly, weekly or daily payments

103 for services, and is certified by its national association as  
104 being in compliance with the association's minimum standards and  
105 procedures including, but not limited to, the Boys and Girls Club  
106 of America, and the YMCA.

107 (v) Any family child care home as defined in  
108 Section 43-20-53(a) et seq.

109 All other preschool child care programs and/or extended day  
110 school programs must meet requirements set forth in this chapter.

111 (b) "Health" means that condition of being sound in  
112 mind and body and encompasses an individual's physical, mental and  
113 emotional welfare.

114 (c) "Safety" means that condition of being protected  
115 from hurt, injury or loss.

116 (d) "Person" means any person, firm, partnership,  
117 corporation or association.

118 (e) "Operator" means any person, acting individually or  
119 jointly with another person or persons, who establishes, owns,  
120 operates, conducts or maintains a child care facility. The child  
121 care facility license shall be issued in the name of the operator,  
122 or, if there is more than one (1) operator, in the name of one (1)  
123 of the operators. If there is more than one (1) operator, all  
124 statutory and regulatory provisions concerning the background  
125 checks of operators shall be equally applied to all operators of a  
126 facility including, but not limited to, a spouse who jointly owns,  
127 operates or maintains the child care facility regardless of which  
128 particular person is named on the license.

129 (f) "Personal care" means assistance rendered by  
130 personnel of the child care facility in performing one or more of  
131 the activities of daily living which includes, but is not limited  
132 to, the feeding, personal grooming, supervising and dressing of  
133 children placed in the child care facility.

134 (g) "Licensing agency" means the Mississippi Department  
135 of Human Services.

136           (h) "Caregiver" means any person who provides direct  
137 care, supervision or guidance to children in a child care  
138 facility, regardless of title or occupation.

139           **SECTION 2.** Section 43-20-8, Mississippi Code of 1972, is  
140 amended as follows:

141           43-20-8. (1) The licensing agency shall have powers and  
142 duties as set forth below, in addition to other duties prescribed  
143 under this chapter:

144           (a) Promulgate rules and regulations concerning the  
145 licensing and regulation of child care facilities as defined in  
146 Section 43-20-5;

147           (b) Have the authority to issue, deny, suspend, revoke,  
148 restrict or otherwise take disciplinary action against licensees  
149 as provided for in this chapter;

150           (c) Set and collect fees and penalties as provided for  
151 in this chapter; and

152           (d) Have such other powers as may be required to carry  
153 out the provisions of this chapter.

154           (2) Child care facilities shall assure that parents have  
155 welcome access to the child care facility at all times.

156           (3) Each child care facility shall develop and maintain a  
157 current list of contact persons for each child provided care by  
158 that facility. An agreement may be made between the child care  
159 facility and the child's parent, guardian or contact person at the  
160 time of registration to inform the parent, guardian or contact  
161 person if the child does not arrive at the facility within a  
162 reasonable time.

163           (4) Child care facilities shall require that, for any  
164 current or prospective caregiver, current criminal records,  
165 background checks and current child abuse registry checks are  
166 obtained. In order to determine the applicant's suitability for  
167 employment, the applicant shall be fingerprinted. If no  
168 disqualifying record is identified at the state level, the

169 fingerprints shall be forwarded by the Department of Public Safety  
170 to the FBI for a national criminal history record check.

171 (5) The licensing agency shall require to be performed a  
172 criminal records background check and a child abuse registry check  
173 for all operators of a child care facility and any person living  
174 in a residence used for child care. The Department of Human  
175 Services shall have the authority to disclose \* \* \* any potential  
176 applicant whose name is listed on the Child Abuse Central Registry  
177 or has a pending administrative review. That information shall  
178 remain confidential by all parties. In order to determine the  
179 applicant's suitability for employment, the applicant shall be  
180 fingerprinted. If no disqualifying record is identified at the  
181 state level, the fingerprints shall be forwarded by the Department  
182 of Public Safety to the FBI for a national criminal history record  
183 check.

184 (6) The licensing agency shall have the authority to exclude  
185 a particular crime or crimes or a substantiated finding of child  
186 abuse and/or neglect as disqualifying individuals or entities for  
187 prospective or current employment or licensure.

188 (7) The licensing agency and its agents, officers,  
189 employees, attorneys and representatives shall not be held civilly  
190 liable for any findings, recommendations or actions taken under  
191 this section.

192 (8) All fees incurred in compliance with this section shall  
193 be borne by the child care facility. The licensing agency is  
194 authorized to charge a fee that includes the amount required by  
195 the Federal Bureau of Investigation for the national criminal  
196 history record check in compliance with the Child Protection Act  
197 of 1993, as amended, and any necessary costs incurred by the  
198 licensing agency for the handling and administration of the  
199 criminal history background checks.

200 **SECTION 3.** Section 43-20-11, Mississippi Code of 1972, is  
201 amended as follows:

202           43-20-11. An application for a license under this chapter  
203 shall be made to the licensing agency upon forms provided by it,  
204 and shall contain such information as the licensing agency may  
205 reasonably require. Each application for a license shall be  
206 accompanied by a license fee not to exceed Two Hundred Dollars  
207 (\$200.00), which shall be paid to the licensing agency. Licenses  
208 shall be granted to applicants upon the filing of properly  
209 completed application forms, accompanied by payment of the said  
210 license fee, and a certificate of inspection and approval by the  
211 fire department of the municipality or other political subdivision  
212 in which the facility is located, and by a certificate of  
213 inspection and approval by the health department of the county in  
214 which the facility is located, and approval by the licensing  
215 agency; except that if no fire department exists where the  
216 facility is located, the State Fire Marshal shall certify as to  
217 the inspection for safety from fire hazards. Said fire, county  
218 health department and licensing agency inspections and approvals  
219 shall be based upon regulations promulgated by the licensing  
220 agency \* \* \*.

221           Each license shall be issued only for the premises and person  
222 or persons named in the application and shall not be transferable  
223 or assignable except with the written approval of the licensing  
224 agency. Licenses shall be posted in a conspicuous place on the  
225 licensed premises.

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

228           **SECTION 4.** Section 43-20-12, Mississippi Code of 1972, is  
229 amended as follows:

230           43-20-12. All fees collected by the Mississippi Department  
231 of Human Services under this chapter and any penalties collected  
232 by the board for violations of this chapter shall be deposited in  
233 the State General Fund \* \* \*.

234           **SECTION 5.** Section 43-20-14, Mississippi Code of 1972, is  
235 amended as follows:

236           43-20-14. (1) The licensing agency may deny a license or  
237 refuse to renew a license for any of the reasons set forth in  
238 subsection (3) of this section.

239           (2) Before the licensing agency may deny or refuse to renew,  
240 the applicant or person named on the license shall be entitled to  
241 a hearing in order to show cause why the license should not be  
242 denied or should be renewed.

243           (3) The licensing agency may suspend, revoke or restrict the  
244 license of any child care facility upon one or more of the  
245 following grounds:

246           (a) Fraud, misrepresentation or concealment of material  
247 facts;

248           (b) Conviction of an operator for any crime if the  
249 licensing agency finds that the act or acts for which the operator  
250 was convicted could have a detrimental effect on children cared  
251 for by any child care facility;

252           (c) Violation of any of the provisions of this act or  
253 of the regulations governing the licensing and regulation of child  
254 care facilities promulgated by the licensing agency;

255           (d) Any conduct, or failure to act, that is found or  
256 determined by the licensing agency to threaten the health or  
257 safety of children at the facility;

258           (e) Failure by the child care facility to comply with  
259 the provisions of Section 43-20-8(3) regarding background checks  
260 of caregivers; and

261           (f) Information received by the licensing agency as a  
262 result of the criminal records background check and the child  
263 abuse registry check on all operators under Section 43-20-8.

264           (4) Before the licensing agency may suspend, revoke or  
265 restrict the license of any facility, any licensee affected by  
266 that decision of the licensing agency shall be entitled to a



267 hearing in which the licensee may show cause why the license  
268 should not be suspended, revoked or restricted.

269 (5) Any licensee who disagrees with or is aggrieved by a  
270 decision of the Mississippi State Department of Human Services in  
271 regard to the denial, refusal to renew, suspension, revocation or  
272 restriction of the license of the licensee, may appeal to the  
273 chancery court of the county in which the facility is located.  
274 The appeal shall be filed no later than thirty (30) days after the  
275 licensee receives written notice of the final administrative  
276 action by the Mississippi State Department of Human Services as to  
277 the suspension, revocation or restriction of the license of the  
278 licensee.

279 **SECTION 6.** Section 43-20-53, Mississippi Code of 1972, is  
280 amended as follows:

281 43-20-53. As used in Sections 43-20-51 through 43-20-65:

282 (a) "Family child care home" means any residential  
283 facility occupied by the operator where five (5) or fewer children  
284 who are not related within the third degree computed according to  
285 the civil law to the provider and who are under the age of  
286 thirteen (13) years of age are provided care for any part of the  
287 twenty-four-hour day.

288 (b) "Registering agency" means the Mississippi State  
289 Department of Human Services.

290 (c) "Provider" means the person responsible for the  
291 care of children.

292 **SECTION 7.** Section 43-20-57, Mississippi Code of 1972, is  
293 amended as follows:

294 43-20-57. (1) No person shall knowingly maintain a family  
295 child care home if, in such family child care home, there resides,  
296 works or regularly volunteers any person who:

297 (a) (i) Has a felony conviction for a crime against  
298 persons;

299 (ii) Has a felony conviction under the Uniform  
300 Controlled Substances Act;

301 (iii) Has a conviction for a crime of child abuse  
302 or neglect;

303 (iv) Has a conviction for any sex offense as  
304 defined in Section 45-33-23, Mississippi Code of 1972; or

305 (v) Any other offense committed in another  
306 jurisdiction or any federal offense which, if committed in this  
307 state, would be deemed to be such a crime without regard to its  
308 designation elsewhere;

309 (b) Has been adjudicated a juvenile offender because of  
310 having committed an act which if done by an adult would constitute  
311 the commission of a felony and which is a crime against persons;

312 (c) Has had a child declared in a court order in this  
313 or any other state to be deprived or a child in need of care based  
314 on an allegation of physical, mental or emotional abuse or neglect  
315 or sexual abuse;

316 (d) Has had parental rights terminated pursuant to  
317 Section 93-15-101 et seq., Mississippi Code of 1972; or

318 (e) Has an infectious or contagious disease, as defined  
319 by the State Department of Health pursuant to Section 41-23-1,  
320 Mississippi Code of 1972.

321 (2) No person shall maintain a family child care home if  
322 such person has been found to be a disabled person in need of a  
323 guardian or conservator, or both.

324 (3) Any person who resides in the home and who has been  
325 found to be a disabled person in need of a guardian or  
326 conservator, or both, shall be included in the total number of  
327 children allowed in care.

328 (4) In accordance with the provision of this subsection (4),  
329 the State Department of Human Services shall have access to any  
330 court orders or adjudications of any court of record, any records  
331 of such orders or adjudications, criminal history record

332 information in the possession of the Mississippi Highway Safety  
333 Patrol or court of this state concerning persons working,  
334 regularly volunteering or residing in a family child care home.  
335 The department shall have access to these records for the purpose  
336 of determining whether or not the home meets the requirements of  
337 Sections 43-20-51 through 43-20-65.

338 (5) No family child care home or its employees shall be  
339 liable for civil damages to any person refused employment or  
340 discharged from employment by reason of such home's compliance  
341 with the provisions of this section if such home acts in good  
342 faith to comply with this section.

343 **SECTION 8.** Section 43-20-59, Mississippi Code of 1972, is  
344 amended as follows:

345 43-20-59. (1) Any person maintaining a family child care  
346 home may register such home with the State Department of Human  
347 Services on forms provided by the department.

348 (2) A certificate of registration shall be issued to the  
349 applicant for registration who (a) attests to the safety of the  
350 home for the care of children, (b) submits a fee of Five Dollars  
351 (\$5.00) payable to the department, and (c) certifies that no  
352 person described in paragraph (a), (b), (c), (d) or (e) of Section  
353 43-20-57(1) resides, works or volunteers in the family child care  
354 home.

355 (3) The department shall furnish each applicant for  
356 registration a family child care home safety evaluation form to be  
357 completed by the applicant and submitted with the registration  
358 application.

359 (4) The certificate of registration shall be renewed  
360 annually in the same manner provided for in this section.

361 (5) A certificate of registration shall be in force for one  
362 (1) year after the date of issuance unless revoked pursuant to  
363 Sections 43-20-51 through 43-20-65. The certificate shall specify  
364 that the registrant may operate a family child care home for five

365 (5) or fewer children. This section shall not be construed to  
366 limit the right of the department to enter a registered family  
367 child care home for the purpose of assessing compliance with  
368 Sections 43-20-51 through 43-20-65 after receiving a complaint  
369 against the registrant of such home or in conducting a periodic  
370 routine inspection.

371 (6) The department shall adopt rules and regulations to  
372 implement the registration provisions.

373 **SECTION 9.** Sections 43-20-7 and 43-20-55, Mississippi Code  
374 of 1972, which create an Advisory Council to assist the licensing  
375 agency in the development of child care facility standards and  
376 regulations, are hereby repealed.

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

379 43-11-1. When used in this chapter, the following words  
380 shall have the following meaning:

381 (a) "Institutions for the aged or infirm" means a place  
382 either governmental or private which provides group living  
383 arrangements for four (4) or more persons who are unrelated to the  
384 operator and who are being provided food, shelter and personal  
385 care whether any such place be organized or operated for profit or  
386 not. The term "institution for aged or infirm" includes nursing  
387 homes, pediatric skilled nursing facilities, psychiatric  
388 residential treatment facilities, convalescent homes, homes for  
389 the aged and adult day services facilities, provided that these  
390 institutions fall within the scope of the definitions set forth  
391 above. The term "institution for the aged or infirm" does not  
392 include hospitals, clinics or mental institutions devoted  
393 primarily to providing medical service.

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

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

402 (d) "Psychiatric residential treatment facility" means  
403 any nonhospital establishment with permanent facilities which  
404 provides a twenty-four-hour program of care by qualified  
405 therapists, including, but not limited to, duly licensed mental  
406 health professionals, psychiatrists, psychologists,  
407 psychotherapists and licensed certified social workers, for  
408 emotionally disturbed children and adolescents referred to such  
409 facility by a court, local school district or by the Department of  
410 Human Services, who are not in an acute phase of illness requiring  
411 the services of a psychiatric hospital, and are in need of such  
412 restorative treatment services. For purposes of this paragraph,  
413 the term "emotionally disturbed" means a condition exhibiting one  
414 or more of the following characteristics over a long period of  
415 time and to a marked degree, which adversely affects educational  
416 performance:

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

419 2. An inability to build or maintain satisfactory  
420 relationships with peers and teachers;

421 3. Inappropriate types of behavior or feelings  
422 under normal circumstances;

423 4. A general pervasive mood of unhappiness or  
424 depression; or

425 5. A tendency to develop physical symptoms or  
426 fears associated with personal or school problems. An  
427 establishment furnishing primarily domiciliary care is not within  
428 this definition.

429 (e) "Pediatric skilled nursing facility" means an  
430 institution or a distinct part of an institution that is primarily  
431 engaged in providing to inpatients skilled nursing care and  
432 related services for persons under twenty-one (21) years of age  
433 who require medical or nursing care or rehabilitation services for  
434 the rehabilitation of injured, disabled or sick persons.

435 (f) "Licensing agency" means the State Department of  
436 Health.

437 (g) "Medical records" mean, without restriction, those  
438 medical histories, records, reports, summaries, diagnoses and  
439 prognoses, records of treatment and medication ordered and given,  
440 notes, entries, x-rays and other written or graphic data prepared,  
441 kept, made or maintained in institutions for the aged or infirm  
442 that pertain to residency in, or services rendered to residents  
443 of, an institution for the aged or infirm.

444 (h) "Adult day services facility" means a  
445 community-based group program for adults designed to meet the  
446 needs of adults with impairments through individual plans of care,  
447 which are structured, comprehensive, planned, nonresidential  
448 programs providing a variety of health, social and related support  
449 services in a protective setting, enabling participants to live in  
450 the community.

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

453 43-11-13. (1) The licensing agency shall adopt, amend,  
454 promulgate and enforce such rules, regulations and standards,  
455 including classifications, with respect to all institutions for  
456 the aged or infirm to be licensed under this chapter as may be  
457 designed to further the accomplishment of the purpose of this  
458 chapter in promoting adequate care of individuals in those  
459 institutions in the interest of public health, safety and welfare.  
460 Those rules, regulations and standards shall be adopted and  
461 promulgated by the licensing agency and shall be recorded and

462 indexed in a book to be maintained by the licensing agency in its  
463 main office in the State of Mississippi, entitled "Rules,  
464 Regulations and Minimum Standards for Institutions for the Aged or  
465 Infirm" and the book shall be open and available to all  
466 institutions for the aged or infirm and the public generally at  
467 all reasonable times. Upon the adoption of those rules,  
468 regulations and standards, the licensing agency shall mail copies  
469 thereof to all those institutions in the state that have filed  
470 with the agency their names and addresses for this purpose, but  
471 the failure to mail the same or the failure of the institutions to  
472 receive the same shall in no way affect the validity thereof. The  
473 rules, regulations and standards may be amended by the licensing  
474 agency, from time to time, as necessary to promote the health,  
475 safety and welfare of persons living in those institutions.

476 (2) The licensee shall keep posted in a conspicuous place on  
477 the licensed premises all current rules, regulations and minimum  
478 standards applicable to fire protection measures as adopted by the  
479 licensing agency. The licensee shall furnish to the licensing  
480 agency at least once each six (6) months a certificate of approval  
481 and inspection by state or local fire authorities. Failure to  
482 comply with state laws and/or municipal ordinances and current  
483 rules, regulations and minimum standards as adopted by the  
484 licensing agency, relative to fire prevention measures, shall be  
485 prima facie evidence for revocation of license.

486 (3) The State Board of Health shall promulgate rules and  
487 regulations restricting the storage, quantity and classes of drugs  
488 allowed in personal care homes and adult day services facilities.  
489 Residents requiring administration of Schedule II Narcotics as  
490 defined in the Uniform Controlled Substances Law may be admitted  
491 to a personal care home. Schedule drugs may only be allowed in a  
492 personal care home if they are administered or stored utilizing  
493 proper procedures under the direct supervision of a licensed  
494 physician or nurse.

495           (4) (a) Notwithstanding any determination by the licensing  
496 agency that skilled nursing services would be appropriate for a  
497 resident of a personal care home, that resident, the resident's  
498 guardian or the legally recognized responsible party for the  
499 resident may consent in writing for the resident to continue to  
500 reside in the personal care home, if approved in writing by a  
501 licensed physician. However, no personal care home shall allow  
502 more than two (2) residents, or ten percent (10%) of the total  
503 number of residents in the facility, whichever is greater, to  
504 remain in the personal care home under the provisions of this  
505 subsection (4). This consent shall be deemed to be appropriately  
506 informed consent as described in the regulations promulgated by  
507 the licensing agency. After that written consent has been  
508 obtained, the resident shall have the right to continue to reside  
509 in the personal care home for as long as the resident meets the  
510 other conditions for residing in the personal care home. A copy  
511 of the written consent and the physician's approval shall be  
512 forwarded by the personal care home to the licensing agency.

513           (b) The State Board of Health shall promulgate rules  
514 and regulations restricting the handling of a resident's personal  
515 deposits by the director of a personal care home. Any funds given  
516 or provided for the purpose of supplying extra comforts,  
517 conveniences or services to any resident in any personal care  
518 home, and any funds otherwise received and held from, for or on  
519 behalf of any such resident, shall be deposited by the director or  
520 other proper officer of the personal care home to the credit of  
521 that resident in an account that shall be known as the Resident's  
522 Personal Deposit Fund. No more than one (1) month's charge for  
523 the care, support, maintenance and medical attention of the  
524 resident shall be applied from the account at any one time. After  
525 the death, discharge or transfer of any resident for whose benefit  
526 any such fund has been provided, any unexpended balance remaining  
527 in his personal deposit fund shall be applied for the payment of



528 care, cost of support, maintenance and medical attention that is  
529 accrued. If any unexpended balance remains in that resident's  
530 personal deposit fund after complete reimbursement has been made  
531 for payment of care, support, maintenance and medical attention,  
532 and the director or other proper officer of the personal care home  
533 has been or shall be unable to locate the person or persons  
534 entitled to the unexpended balance, the director or other proper  
535 officer may, after the lapse of one (1) year from the date of that  
536 death, discharge or transfer, deposit the unexpended balance to  
537 the credit of the personal care home's operating fund.

538 (c) The State Board of Health shall promulgate rules  
539 and regulations requiring personal care homes to maintain records  
540 relating to health condition, medicine dispensed and administered,  
541 and any reaction to that medicine. The director of the personal  
542 care home shall be responsible for explaining the availability of  
543 those records to the family of the resident at any time upon  
544 reasonable request.

545 (d) The State Board of Health shall evaluate the  
546 effects of this section as it promotes adequate care of  
547 individuals in personal care homes in the interest of public  
548 health, safety and welfare. It shall report its findings to the  
549 Chairmen of the Public Health and Welfare Committees of the House  
550 and Senate by January 1, 2003. This subsection (4) shall stand  
551 repealed June 30, 2006.

552 (5) (a) For the purposes of this subsection (5):

553 (i) "Licensed entity" means a hospital, nursing  
554 home, personal care home, home health agency or hospice;

555 (ii) "Covered entity" means a licensed entity or a  
556 health care professional staffing agency;

557 (iii) "Employee" means any individual employed by  
558 a covered entity, and also includes any individual who by contract  
559 provides to the patients, residents or clients being served by the  
560 covered entity direct, hands-on, medical patient care in a

561 patient's, resident's or client's room or in treatment or recovery  
562 rooms. The term "employee" does not include health care  
563 professional/vocational technical students, as defined in Section  
564 37-29-232, performing clinical training in a licensed entity under  
565 contracts between their schools and the licensed entity, and does  
566 not include students at high schools located in Mississippi who  
567 observe the treatment and care of patients in a licensed entity as  
568 part of the requirements of an allied-health course taught in the  
569 high school, if:

570                   1. The student is under the supervision of a  
571 licensed health care provider; and

572                   2. The student has signed an affidavit that  
573 is on file at the student's school stating that he or she has not  
574 been convicted of or pleaded guilty or nolo contendere to a felony  
575 listed in paragraph (d) of this subsection (5), or that any such  
576 conviction or plea was reversed on appeal or a pardon was granted  
577 for the conviction or plea. Before any student may sign such an  
578 affidavit, the student's school shall provide information to the  
579 student explaining what a felony is and the nature of the felonies  
580 listed in paragraph (d) of this subsection (5).

581           However, the health care professional/vocational technical  
582 academic program in which the student is enrolled may require the  
583 student to obtain criminal history record checks under the  
584 provisions of Section 37-29-232.

585           (b) Under regulations promulgated by the State Board of  
586 Health, the licensing agency shall require to be performed a  
587 criminal history record check on (i) every new employee of a  
588 covered entity who provides direct patient care or services and  
589 who is employed on or after July 1, 2003, and (ii) every employee  
590 of a covered entity employed before July 1, 2003, who has a  
591 documented disciplinary action by his or her present employer. In  
592 addition, the licensing agency shall require the covered entity to  
593 perform a disciplinary check with the professional licensing

594 agency of each employee, if any, to determine if any disciplinary  
595 action has been taken against the employee by that agency.

596       Except as otherwise provided in paragraph (c) of this  
597 subsection (5), no such employee hired on or after July 1, 2003,  
598 shall be permitted to provide direct patient care until the  
599 results of the criminal history record check have revealed no  
600 disqualifying record or the employee has been granted a waiver.  
601 In order to determine the employee applicant's suitability for  
602 employment, the applicant shall be fingerprinted. Fingerprints  
603 shall be submitted to the licensing agency from scanning, with the  
604 results processed through the Department of Public Safety's  
605 Criminal Information Center. If no disqualifying record is  
606 identified at the state level, the fingerprints shall be forwarded  
607 by the Department of Public Safety to the Federal Bureau of  
608 Investigation for a national criminal history record check. The  
609 licensing agency shall notify the covered entity of the results of  
610 an employee applicant's criminal history record check. If the  
611 criminal history record check discloses a felony conviction,  
612 guilty plea or plea of nolo contendere to a felony of possession  
613 or sale of drugs, murder, manslaughter, armed robbery, rape,  
614 sexual battery, sex offense listed in Section 45-33-23(g), child  
615 abuse, arson, grand larceny, burglary, gratification of lust or  
616 aggravated assault, or felonious abuse and/or battery of a  
617 vulnerable adult that has not been reversed on appeal or for which  
618 a pardon has not been granted, the employee applicant shall not be  
619 eligible to be employed by the covered entity.

620       (c) Any such new employee applicant may, however, be  
621 employed on a temporary basis pending the results of the criminal  
622 history record check, but any employment contract with the new  
623 employee shall be voidable if the new employee receives a  
624 disqualifying criminal history record check and no waiver is  
625 granted as provided in this subsection (5).

626           (d) Under regulations promulgated by the State Board of  
627 Health, the licensing agency shall require every employee of a  
628 covered entity employed before July 1, 2003, to sign an affidavit  
629 stating that he or she has not been convicted of or pleaded guilty  
630 or nolo contendere to a felony of possession or sale of drugs,  
631 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
632 offense listed in Section 45-33-23(g), child abuse, arson, grand  
633 larceny, burglary, gratification of lust, aggravated assault, or  
634 felonious abuse and/or battery of a vulnerable adult, or that any  
635 such conviction or plea was reversed on appeal or a pardon was  
636 granted for the conviction or plea. No such employee of a covered  
637 entity hired before July 1, 2003, shall be permitted to provide  
638 direct patient care until the employee has signed the affidavit  
639 required by this paragraph (d). All such existing employees of  
640 covered entities must sign the affidavit required by this  
641 paragraph (d) within six (6) months of the final adoption of the  
642 regulations promulgated by the State Board of Health. If a person  
643 signs the affidavit required by this paragraph (d), and it is  
644 later determined that the person actually had been convicted of or  
645 pleaded guilty or nolo contendere to any of the offenses listed in  
646 this paragraph (d) and the conviction or plea has not been  
647 reversed on appeal or a pardon has not been granted for the  
648 conviction or plea, the person is guilty of perjury. If the  
649 offense that the person was convicted of or pleaded guilty or nolo  
650 contendere to was a violent offense, the person, upon a conviction  
651 of perjury under this paragraph, shall be punished as provided in  
652 Section 97-9-61. If the offense that the person was convicted of  
653 or pleaded guilty or nolo contendere to was a nonviolent offense,  
654 the person, upon a conviction of perjury under this paragraph,  
655 shall be punished by a fine of not more than Five Hundred Dollars  
656 (\$500.00), or by imprisonment in the county jail for not more than  
657 six (6) months, or by both such fine and imprisonment.

658           (e) The covered entity may, in its discretion, allow  
659 any employee who is unable to sign the affidavit required by  
660 paragraph (d) of this subsection (5) or any employee applicant  
661 aggrieved by an employment decision under this subsection (5) to  
662 appear before the covered entity's hiring officer, or his or her  
663 designee, to show mitigating circumstances that may exist and  
664 allow the employee or employee applicant to be employed by the  
665 covered entity. The covered entity, upon report and  
666 recommendation of the hiring officer, may grant waivers for those  
667 mitigating circumstances, which shall include, but not be limited  
668 to: (i) age at which the crime was committed; (ii) circumstances  
669 surrounding the crime; (iii) length of time since the conviction  
670 and criminal history since the conviction; (iv) work history; (v)  
671 current employment and character references; and (vi) other  
672 evidence demonstrating the ability of the individual to perform  
673 the employment responsibilities competently and that the  
674 individual does not pose a threat to the health or safety of the  
675 patients of the covered entity.

676           (f) The licensing agency may charge the covered entity  
677 submitting the fingerprints a fee not to exceed Fifty Dollars  
678 (\$50.00), which covered entity may, in its discretion, charge the  
679 same fee, or a portion thereof, to the employee applicant. Any  
680 costs incurred by a covered entity implementing this subsection  
681 (5) shall be reimbursed as an allowable cost under Section  
682 43-13-116.

683           (g) If the results of an employee applicant's criminal  
684 history record check reveals no disqualifying event, then the  
685 covered entity shall, within two (2) weeks of the notification of  
686 no disqualifying event, provide the employee applicant with a  
687 notarized letter signed by the chief executive officer of the  
688 covered entity, or his or her authorized designee, confirming the  
689 employee applicant's suitability for employment based on his or  
690 her criminal history record check. An employee applicant may use

691 that letter for a period of two (2) years from the date of the  
692 letter to seek employment with any covered entity without the  
693 necessity of an additional criminal history record check. Any  
694 covered entity presented with the letter may rely on the letter  
695 with respect to an employee applicant's criminal background and is  
696 not required for a period of two (2) years from the date of the  
697 letter to conduct or have conducted a criminal history record  
698 check as required in this subsection (5).

699 (h) The licensing agency, the covered entity, and their  
700 agents, officers, employees, attorneys and representatives, shall  
701 be presumed to be acting in good faith for any employment decision  
702 or action taken under this subsection (5). The presumption of  
703 good faith may be overcome by a preponderance of the evidence in  
704 any civil action. No licensing agency, covered entity, nor their  
705 agents, officers, employees, attorneys and representatives shall  
706 be held liable in any employment decision or action based in whole  
707 or in part on compliance with or attempts to comply with the  
708 requirements of this subsection (5).

709 (i) The licensing agency shall promulgate regulations  
710 to implement this subsection (5).

711 (j) The provisions of this subsection (5) shall not  
712 apply to:

713 (i) Applicants and employees of the University of  
714 Mississippi Medical Center for whom criminal history record checks  
715 and fingerprinting are obtained in accordance with Section  
716 37-115-41; or

717 (ii) Health care professional/vocational technical  
718 students for whom criminal history record checks and  
719 fingerprinting are obtained in accordance with Section 37-29-232.

720 (6) Unless the adult day service facility has been in  
721 operation for a minimum of two (2) years and meets the criteria  
722 and standards set by the National Adult Day Services Association,  
723 the State Board of Health shall promulgate rules, regulations and

724 standards regarding the operation of adult day services facilities  
725 which incorporate, but are not limited to, the most current ranges  
726 and levels of care developed by the National Adult Day Services  
727 Association (NADSA).

728 **SECTION 12.** The following provision shall be codified as  
729 Section 43-11-8, Mississippi Code of 1972:

730 43-11-8. (1) An application for a license for an adult day  
731 care facility shall be made to the licensing agency upon forms  
732 provided by it and shall contain such information as the licensing  
733 agency reasonably requires, which may include affirmative evidence  
734 of ability to comply with such reasonable standards, rules and  
735 regulations as are lawfully prescribed hereunder. Each  
736 application for a license for an adult day care facility shall be  
737 accompanied by a license fee of Ten Dollars (\$10.00) for each  
738 person of licensed capacity, with a minimum fee per institution of  
739 Fifty Dollars (\$50.00), which shall be paid to the licensing  
740 agency. Each application for a license for an adult day care  
741 facility shall be accompanied by a license fee of Ten Dollars  
742 (\$10.00) for each bed in the institution, with a minimum fee per  
743 institution of Fifty Dollars (\$50.00), which shall be paid to the  
744 licensing agency.

745 (2) A license, unless suspended or revoked, shall be  
746 renewable annually upon payment by (a) the licensee of an adult  
747 day care facility, except for personal care homes, of a renewal  
748 fee of Ten Dollars (\$10.00) for each person of licensed capacity  
749 in the institution, with a minimum fee per institution of Fifty  
750 Dollars (\$50.00), or (b) the licensee of an adult day care  
751 facility of a renewal fee of Ten Dollars (\$10.00) for each  
752 licensed facility, with a minimum fee per institution of Fifty  
753 Dollars (\$50.00), which shall be paid to the licensing agency, and  
754 upon filing by the licensee and approval by the licensing agency  
755 of an annual report upon such uniform dates and containing such  
756 information in such form as the licensing agency prescribes by

757 regulation. Each license shall be issued only for the premises  
758 and person or persons or other legal entity or entities named in  
759 the application and shall not be transferable or assignable except  
760 with the written approval of the licensing agency. Licenses shall  
761 be posted in a conspicuous place on the licensed premises.

762 (3) A fee known as a "user fee" shall be applicable and  
763 shall be paid to the licensing agency as set out in subsection (1)  
764 hereof. This user fee shall be assessed for the purpose of the  
765 required reviewing and inspections of the proposal of any  
766 institution in which there are additions, renovations,  
767 modernizations, expansion, alterations, conversions, modifications  
768 or replacement of the entire facility involved in such proposal.  
769 This fee includes the reviewing of architectural plans in all  
770 steps required. There shall be a minimum user fee of Fifty  
771 Dollars (\$50.00) and a maximum user fee of Two Thousand Dollars  
772 (\$2,000.00).

773 **SECTION 13.** This act shall take effect and be in force from  
774 and after July 1, 2005.