

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.