

By: Senator(s) Mettetal

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 3041

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT PATIENTS IN LONG-TERM CARE FACILITIES SHALL HAVE A
3 "RIGHT-TO-CHOOSE" PHARMACY PROVIDERS; AND FOR RELATED PURPOSES.

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

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

7 43-11-13. (1) The licensing agency shall adopt, amend,
8 promulgate and enforce such rules, regulations and standards,
9 including classifications, with respect to all institutions for
10 the aged or infirm to be licensed under this chapter as may be
11 designed to further the accomplishment of the purpose of this
12 chapter in promoting adequate care of individuals in those
13 institutions in the interest of public health, safety and welfare.
14 Those rules, regulations and standards shall be adopted and
15 promulgated by the licensing agency and shall be recorded and
16 indexed in a book to be maintained by the licensing agency in its
17 main office in the State of Mississippi, entitled "Rules,
18 Regulations and Minimum Standards for Institutions for the Aged or
19 Infirm" and the book shall be open and available to all
20 institutions for the aged or infirm and the public generally at
21 all reasonable times. Upon the adoption of those rules,
22 regulations and standards, the licensing agency shall mail copies
23 thereof to all those institutions in the state that have filed
24 with the agency their names and addresses for this purpose, but
25 the failure to mail the same or the failure of the institutions to
26 receive the same shall in no way affect the validity thereof. The
27 rules, regulations and standards may be amended by the licensing

28 agency, from time to time, as necessary to promote the health,
29 safety and welfare of persons living in those institutions.

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

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

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

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

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

91 (c) The State Board of Health shall promulgate rules
92 and regulations requiring personal care homes to maintain records
93 relating to health condition, medicine dispensed and administered,

94 and any reaction to that medicine. The director of the personal
95 care home shall be responsible for explaining the availability of
96 those records to the family of the resident at any time upon
97 reasonable request.

98 (d) The State Board of Health shall evaluate the
99 effects of this section as it promotes adequate care of
100 individuals in personal care homes in the interest of public
101 health, safety and welfare. It shall report its findings to the
102 Chairmen of the Public Health and Welfare Committees of the House
103 and Senate by January 1, 2003. This subsection (4) shall stand
104 repealed on June 30, 2008.

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

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

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

110 (iii) "Employee" means any individual employed by
111 a covered entity, and also includes any individual who by contract
112 provides to the patients, residents or clients being served by the
113 covered entity direct, hands-on, medical patient care in a
114 patient's, resident's or client's room or in treatment or recovery
115 rooms. The term "employee" does not include health care
116 professional/vocational technical students, as defined in Section
117 37-29-232, performing clinical training in a licensed entity under
118 contracts between their schools and the licensed entity, and does
119 not include students at high schools located in Mississippi who
120 observe the treatment and care of patients in a licensed entity as
121 part of the requirements of an allied-health course taught in the
122 high school, if:

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

125 2. The student has signed an affidavit that
126 is on file at the student's school stating that he or she has not

127 been convicted of or pleaded guilty or nolo contendere to a felony
128 listed in paragraph (d) of this subsection (5), or that any such
129 conviction or plea was reversed on appeal or a pardon was granted
130 for the conviction or plea. Before any student may sign such an
131 affidavit, the student's school shall provide information to the
132 student explaining what a felony is and the nature of the felonies
133 listed in paragraph (d) of this subsection (5).

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

138 (b) Under regulations promulgated by the State Board of
139 Health, the licensing agency shall require to be performed a
140 criminal history record check on (i) every new employee of a
141 covered entity who provides direct patient care or services and
142 who is employed on or after July 1, 2003, and (ii) every employee
143 of a covered entity employed before July 1, 2003, who has a
144 documented disciplinary action by his or her present employer. In
145 addition, the licensing agency shall require the covered entity to
146 perform a disciplinary check with the professional licensing
147 agency of each employee, if any, to determine if any disciplinary
148 action has been taken against the employee by that agency.

149 Except as otherwise provided in paragraph (c) of this
150 subsection (5), no such employee hired on or after July 1, 2003,
151 shall be permitted to provide direct patient care until the
152 results of the criminal history record check have revealed no
153 disqualifying record or the employee has been granted a waiver.
154 In order to determine the employee applicant's suitability for
155 employment, the applicant shall be fingerprinted. Fingerprints
156 shall be submitted to the licensing agency from scanning, with the
157 results processed through the Department of Public Safety's
158 Criminal Information Center. If no disqualifying record is
159 identified at the state level, the fingerprints shall be forwarded

160 by the Department of Public Safety to the Federal Bureau of
161 Investigation for a national criminal history record check. The
162 licensing agency shall notify the covered entity of the results of
163 an employee applicant's criminal history record check. If the
164 criminal history record check discloses a felony conviction,
165 guilty plea or plea of nolo contendere to a felony of possession
166 or sale of drugs, murder, manslaughter, armed robbery, rape,
167 sexual battery, sex offense listed in Section 45-33-23(g), child
168 abuse, arson, grand larceny, burglary, gratification of lust or
169 aggravated assault, or felonious abuse and/or battery of a
170 vulnerable adult that has not been reversed on appeal or for which
171 a pardon has not been granted, the employee applicant shall not be
172 eligible to be employed by the covered entity.

173 (c) Any such new employee applicant may, however, be
174 employed on a temporary basis pending the results of the criminal
175 history record check, but any employment contract with the new
176 employee shall be voidable if the new employee receives a
177 disqualifying criminal history record check and no waiver is
178 granted as provided in this subsection (5).

179 (d) Under regulations promulgated by the State Board of
180 Health, the licensing agency shall require every employee of a
181 covered entity employed before July 1, 2003, to sign an affidavit
182 stating that he or she has not been convicted of or pleaded guilty
183 or nolo contendere to a felony of possession or sale of drugs,
184 murder, manslaughter, armed robbery, rape, sexual battery, any sex
185 offense listed in Section 45-33-23(g), child abuse, arson, grand
186 larceny, burglary, gratification of lust, aggravated assault, or
187 felonious abuse and/or battery of a vulnerable adult, or that any
188 such conviction or plea was reversed on appeal or a pardon was
189 granted for the conviction or plea. No such employee of a covered
190 entity hired before July 1, 2003, shall be permitted to provide
191 direct patient care until the employee has signed the affidavit
192 required by this paragraph (d). All such existing employees of

193 covered entities must sign the affidavit required by this
194 paragraph (d) within six (6) months of the final adoption of the
195 regulations promulgated by the State Board of Health. If a person
196 signs the affidavit required by this paragraph (d), and it is
197 later determined that the person actually had been convicted of or
198 pleaded guilty or nolo contendere to any of the offenses listed in
199 this paragraph (d) and the conviction or plea has not been
200 reversed on appeal or a pardon has not been granted for the
201 conviction or plea, the person is guilty of perjury. If the
202 offense that the person was convicted of or pleaded guilty or nolo
203 contendere to was a violent offense, the person, upon a conviction
204 of perjury under this paragraph, shall be punished as provided in
205 Section 97-9-61. If the offense that the person was convicted of
206 or pleaded guilty or nolo contendere to was a nonviolent offense,
207 the person, upon a conviction of perjury under this paragraph,
208 shall be punished by a fine of not more than Five Hundred Dollars
209 (\$500.00), or by imprisonment in the county jail for not more than
210 six (6) months, or by both such fine and imprisonment.

211 (e) The covered entity may, in its discretion, allow
212 any employee who is unable to sign the affidavit required by
213 paragraph (d) of this subsection (5) or any employee applicant
214 aggrieved by an employment decision under this subsection (5) to
215 appear before the covered entity's hiring officer, or his or her
216 designee, to show mitigating circumstances that may exist and
217 allow the employee or employee applicant to be employed by the
218 covered entity. The covered entity, upon report and
219 recommendation of the hiring officer, may grant waivers for those
220 mitigating circumstances, which shall include, but not be limited
221 to: (i) age at which the crime was committed; (ii) circumstances
222 surrounding the crime; (iii) length of time since the conviction
223 and criminal history since the conviction; (iv) work history; (v)
224 current employment and character references; and (vi) other
225 evidence demonstrating the ability of the individual to perform

226 the employment responsibilities competently and that the
227 individual does not pose a threat to the health or safety of the
228 patients of the covered entity.

229 (f) The licensing agency may charge the covered entity
230 submitting the fingerprints a fee not to exceed Fifty Dollars
231 (\$50.00), which covered entity may, in its discretion, charge the
232 same fee, or a portion thereof, to the employee applicant. Any
233 costs incurred by a covered entity implementing this subsection
234 (5) shall be reimbursed as an allowable cost under Section
235 43-13-116.

236 (g) If the results of an employee applicant's criminal
237 history record check reveals no disqualifying event, then the
238 covered entity shall, within two (2) weeks of the notification of
239 no disqualifying event, provide the employee applicant with a
240 notarized letter signed by the chief executive officer of the
241 covered entity, or his or her authorized designee, confirming the
242 employee applicant's suitability for employment based on his or
243 her criminal history record check. An employee applicant may use
244 that letter for a period of two (2) years from the date of the
245 letter to seek employment with any covered entity without the
246 necessity of an additional criminal history record check. Any
247 covered entity presented with the letter may rely on the letter
248 with respect to an employee applicant's criminal background and is
249 not required for a period of two (2) years from the date of the
250 letter to conduct or have conducted a criminal history record
251 check as required in this subsection (5).

252 (h) The licensing agency, the covered entity, and their
253 agents, officers, employees, attorneys and representatives, shall
254 be presumed to be acting in good faith for any employment decision
255 or action taken under this subsection (5). The presumption of
256 good faith may be overcome by a preponderance of the evidence in
257 any civil action. No licensing agency, covered entity, nor their
258 agents, officers, employees, attorneys and representatives shall

259 be held liable in any employment decision or action based in whole
260 or in part on compliance with or attempts to comply with the
261 requirements of this subsection (5).

262 (i) The licensing agency shall promulgate regulations
263 to implement this subsection (5).

264 (j) The provisions of this subsection (5) shall not
265 apply to:

266 (i) Applicants and employees of the University of
267 Mississippi Medical Center for whom criminal history record checks
268 and fingerprinting are obtained in accordance with Section
269 37-115-41; or

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

273 (6) (a) This subsection shall apply to patients in
274 long-term facilities, as defined herein. It is the intent of the
275 Legislature that the State of Mississippi shall become a
276 "right-to-choose" state for the purposes of Medicaid and Medicare
277 benefits, and that patients of long-term care facilities shall
278 have the same rights and privileges concerning pharmacy providers
279 as participants or beneficiaries of health benefit plans.

280 (b) "Long-term care facility" means any skilled nursing
281 facility, extended care home, intermediate care facility, personal
282 care home or boarding home which is subject to regulation or
283 licensure by the State Department of Health.

284 (c) A patient in a long-term care facility shall not be
285 limited in his choice of a pharmacy or pharmacist provider if said
286 provider meets the same standards of dispensing guidelines
287 required of long-term care facilities.

288 (d) A long-term care facility may require that a
289 patient or the person who normally makes health care decisions on
290 behalf of the patient sign a document that identifies his pharmacy
291 or pharmacist provider of choice and that releases the facility of

292 any liability for the dispensing of the prescription until the
293 facility accepts control of the dispensed drug.

294 **SECTION 2.** This act shall take effect and be in force from
295 and after July 1, 2007.