

By: Representative Barnett

To: Public Health and Human Services

HOUSE BILL NO. 1203

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
 2 TO INCREASE THE NUMERICAL RESTRICTION ON THE NUMBER OF RESIDENTS
 3 IN A PERSONAL CARE HOME WHO MAY CONTINUE TO RESIDE IN THE PERSONAL
 4 CARE HOME IF APPROVED IN WRITING BY A LICENSED PHYSICIAN,
 5 NOTWITHSTANDING A DETERMINATION BY THE LICENSING AGENCY THAT
 6 SKILLED NURSING SERVICES WOULD BE APPROPRIATE FOR THE RESIDENT;
 7 AND FOR RELATED PURPOSES.

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

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

11 43-11-13. (1) The licensing agency shall adopt, amend,
 12 promulgate and enforce such rules, regulations and standards,
 13 including classifications, with respect to all institutions for
 14 the aged or infirm to be licensed under this chapter as may be
 15 designed to further the accomplishment of the purpose of this
 16 chapter in promoting adequate care of individuals in those
 17 institutions in the interest of public health, safety and welfare.
 18 Those rules, regulations and standards shall be adopted and
 19 promulgated by the licensing agency and shall be recorded and
 20 indexed in a book to be maintained by the licensing agency in its



21 main office in the State of Mississippi, entitled "Rules,
22 Regulations and Minimum Standards for Institutions for the Aged or
23 Infirm" and the book shall be open and available to all
24 institutions for the aged or infirm and the public generally at
25 all reasonable times. Upon the adoption of those rules,
26 regulations and standards, the licensing agency shall mail copies
27 thereof to all those institutions in the state that have filed
28 with the agency their names and addresses for this purpose, but
29 the failure to mail the same or the failure of the institutions to
30 receive the same shall in no way affect the validity thereof. The
31 rules, regulations and standards may be amended by the licensing
32 agency, from time to time, as necessary to promote the health,
33 safety and welfare of persons living in those institutions.

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

44 (3) The State Board of Health shall promulgate rules and
45 regulations restricting the storage, quantity and classes of drugs



46 allowed in personal care homes and adult foster care facilities.
47 Residents requiring administration of Schedule II Narcotics as
48 defined in the Uniform Controlled Substances Law may be admitted
49 to a personal care home. Schedule drugs may only be allowed in a
50 personal care home if they are administered or stored utilizing
51 proper procedures under the direct supervision of a licensed
52 physician or nurse.

53 (4) (a) Notwithstanding any determination by the licensing
54 agency that skilled nursing services would be appropriate for a
55 resident of a personal care home, that resident, the resident's
56 guardian or the legally recognized responsible party for the
57 resident may consent in writing for the resident to continue to
58 reside in the personal care home, if approved in writing by a
59 licensed physician. However, no personal care home shall allow
60 more than * * * ten (10) residents, or ten percent (10%) of the
61 total number of residents in the facility, whichever is greater,
62 to remain in the personal care home under the provisions of this
63 subsection (4). This consent shall be deemed to be appropriately
64 informed consent as described in the regulations promulgated by
65 the licensing agency. After that written consent has been
66 obtained, the resident shall have the right to continue to reside
67 in the personal care home for as long as the resident meets the
68 other conditions for residing in the personal care home. A copy
69 of the written consent and the physician's approval shall be
70 forwarded by the personal care home to the licensing agency.



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



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

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

104 (i) "Licensed entity" means a hospital, nursing
105 home, personal care home, home health agency, hospice or adult
106 foster care facility;

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

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



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

123 2. The student has signed an affidavit that
124 is on file at the student's school stating that he or she has not
125 been convicted of or pleaded guilty or nolo contendere to a felony
126 listed in paragraph (d) of this subsection (5), or that any such
127 conviction or plea was reversed on appeal or a pardon was granted
128 for the conviction or plea. Before any student may sign such an
129 affidavit, the student's school shall provide information to the
130 student explaining what a felony is and the nature of the felonies
131 listed in paragraph (d) of this subsection (5).

132 However, the health care professional/vocational technical
133 academic program in which the student is enrolled may require the
134 student to obtain criminal history record checks. In such
135 incidences, paragraph (a)(iii)1 and 2 of this subsection (5) does
136 not preclude the licensing entity from processing submitted
137 fingerprints of students from healthcare-related
138 professional/vocational technical programs who, as part of their
139 program of study, conduct observations and provide clinical care
140 and services in a covered entity.

141 (b) Under regulations promulgated by the State Board of
142 Health, the licensing agency shall require to be performed a
143 criminal history record check on (i) every new employee of a
144 covered entity who provides direct patient care or services and
145 who is employed on or after July 1, 2003, and (ii) every employee



146 of a covered entity employed before July 1, 2003, who has a
147 documented disciplinary action by his or her present employer. In
148 addition, the licensing agency shall require the covered entity to
149 perform a disciplinary check with the professional licensing
150 agency of each employee, if any, to determine if any disciplinary
151 action has been taken against the employee by that agency.

152 Except as otherwise provided in paragraph (c) of this
153 subsection (5), no such employee hired on or after July 1, 2003,
154 shall be permitted to provide direct patient care until the
155 results of the criminal history record check have revealed no
156 disqualifying record or the employee has been granted a waiver.
157 In order to determine the employee applicant's suitability for
158 employment, the applicant shall be fingerprinted. Fingerprints
159 shall be submitted to the licensing agency from scanning, with the
160 results processed through the Department of Public Safety's
161 Criminal Information Center. The fingerprints shall then be
162 forwarded by the Department of Public Safety to the Federal Bureau
163 of Investigation for a national criminal history record check.
164 The licensing agency shall notify the covered entity of the
165 results of an employee applicant's criminal history record check.
166 If the criminal history record check discloses a felony
167 conviction, guilty plea or plea of nolo contendere to a felony of
168 possession or sale of drugs, murder, manslaughter, armed robbery,
169 rape, sexual battery, sex offense listed in Section 45-33-23(h),
170 child abuse, arson, grand larceny, burglary, gratification of lust



171 or aggravated assault, or felonious abuse and/or battery of a
172 vulnerable adult that has not been reversed on appeal or for which
173 a pardon has not been granted, the employee applicant shall not be
174 eligible to be employed by the covered entity.

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

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



196 paragraph (d) within six (6) months of the final adoption of the
197 regulations promulgated by the State Board of Health. If a person
198 signs the affidavit required by this paragraph (d), and it is
199 later determined that the person actually had been convicted of or
200 pleaded guilty or nolo contendere to any of the offenses listed in
201 this paragraph (d) and the conviction or plea has not been
202 reversed on appeal or a pardon has not been granted for the
203 conviction or plea, the person is guilty of perjury. If the
204 offense that the person was convicted of or pleaded guilty or nolo
205 contendere to was a violent offense, the person, upon a conviction
206 of perjury under this paragraph, shall be punished as provided in
207 Section 97-9-61. If the offense that the person was convicted of
208 or pleaded guilty or nolo contendere to was a nonviolent offense,
209 the person, upon a conviction of perjury under this paragraph,
210 shall be punished by a fine of not more than Five Hundred Dollars
211 (\$500.00), or by imprisonment in the county jail for not more than
212 six (6) months, or by both such fine and imprisonment.

213 (e) The covered entity may, in its discretion, allow
214 any employee who is unable to sign the affidavit required by
215 paragraph (d) of this subsection (5) or any employee applicant
216 aggrieved by an employment decision under this subsection (5) to
217 appear before the covered entity's hiring officer, or his or her
218 designee, to show mitigating circumstances that may exist and
219 allow the employee or employee applicant to be employed by the
220 covered entity. The covered entity, upon report and



221 recommendation of the hiring officer, may grant waivers for those
222 mitigating circumstances, which shall include, but not be limited
223 to: (i) age at which the crime was committed; (ii) circumstances
224 surrounding the crime; (iii) length of time since the conviction
225 and criminal history since the conviction; (iv) work history; (v)
226 current employment and character references; and (vi) other
227 evidence demonstrating the ability of the individual to perform
228 the employment responsibilities competently and that the
229 individual does not pose a threat to the health or safety of the
230 patients of the covered entity.

231 (f) The licensing agency may charge the covered entity
232 submitting the fingerprints a fee not to exceed Fifty Dollars
233 (\$50.00), which covered entity may, in its discretion, charge the
234 same fee, or a portion thereof, to the employee applicant. Any
235 increase in the fee charged by the licensing agency under this
236 paragraph shall be in accordance with the provisions of Section
237 41-3-65. Any costs incurred by a covered entity implementing this
238 subsection (5) shall be reimbursed as an allowable cost under
239 Section 43-13-116.

240 (g) If the results of an employee applicant's criminal
241 history record check reveals no disqualifying event, then the
242 covered entity shall, within two (2) weeks of the notification of
243 no disqualifying event, provide the employee applicant with a
244 notarized letter signed by the chief executive officer of the
245 covered entity, or his or her authorized designee, confirming the



246 employee applicant's suitability for employment based on his or
247 her criminal history record check. An employee applicant may use
248 that letter for a period of two (2) years from the date of the
249 letter to seek employment with any covered entity without the
250 necessity of an additional criminal history record check. Any
251 covered entity presented with the letter may rely on the letter
252 with respect to an employee applicant's criminal background and is
253 not required for a period of two (2) years from the date of the
254 letter to conduct or have conducted a criminal history record
255 check as required in this subsection (5).

256 (h) The licensing agency, the covered entity, and their
257 agents, officers, employees, attorneys and representatives, shall
258 be presumed to be acting in good faith for any employment decision
259 or action taken under this subsection (5). The presumption of
260 good faith may be overcome by a preponderance of the evidence in
261 any civil action. No licensing agency, covered entity, nor their
262 agents, officers, employees, attorneys and representatives shall
263 be held liable in any employment decision or action based in whole
264 or in part on compliance with or attempts to comply with the
265 requirements of this subsection (5).

266 (i) The licensing agency shall promulgate regulations
267 to implement this subsection (5).

268 (j) The provisions of this subsection (5) shall not
269 apply to:



270 (i) Applicants and employees of the University of
271 Mississippi Medical Center for whom criminal history record checks
272 and fingerprinting are obtained in accordance with Section
273 37-115-41; or

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

277 (6) The State Board of Health shall promulgate rules,
278 regulations and standards regarding the operation of adult foster
279 care facilities.

280 **SECTION 2.** This act shall take effect and be in force from
281 and after July 1, 2018.

