

By: Senator(s) Burton

To: Public Health and Welfare

SENATE BILL NO. 2042

1 AN ACT TO DEFINE THE TERM "ADULT DAY CARE FACILITY" FOR
 2 PURPOSES OF LICENSURE BY THE STATE DEPARTMENT OF HEALTH; TO
 3 REQUIRE A LICENSE TO ESTABLISH AND OPERATE AN ADULT DAY CARE
 4 FACILITY AND TO PROVIDE PROCEDURES FOR APPLICATION AND FEES; TO
 5 AUTHORIZE JUDICIAL REVIEW OF LICENSURE DENIAL; TO PRESCRIBE
 6 CRIMINAL PENALTIES AND INJUNCTIVE RELIEF FOR UNLICENSED OPERATION
 7 OF A FACILITY; TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF
 8 1972, TO DIRECT THE STATE BOARD OF HEALTH TO PROMULGATE RULES,
 9 REGULATIONS AND STANDARDS REGARDING THE OPERATION OF ADULT DAY
 10 CARE FACILITIES; TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO
 11 IMPLEMENT THE RAP-BACK CRIMINAL HISTORY RECORDS SYSTEM FOR
 12 MONITORING EMPLOYEES AT LICENSED ADULT DAY CARE FACILITIES AND TO
 13 DELETE CERTAIN REPEALERS RELATING TO FACILITY STANDARDS; AND FOR
 14 RELATED PURPOSES.

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

16 **SECTION 1. Definitions.** (1) "Adult day care facility"

17 means a public agency or private organization providing Medicaid
 18 home- and community-based services for the purposes of
 19 reimbursement under the Elderly and Disabled Waiver as authorized
 20 by Section 43-13-117(A)(15), or a subdivision of such an agency or
 21 organization that:

22 (a) Provides the following items and services:

23 (i) Nursing services;



24 (ii) Transportation of the individual to and from
25 such adult day care facility in connection with any such item or
26 service;

27 (iii) Meals;

28 (iv) A program of supervised activities (that
29 meets such criteria as the licensing agency determines
30 appropriate) designed to promote physical and mental health that
31 are furnished to the individual by such a facility in a group
32 setting for a period of not greater than eight (8) hours per day;

33 (v) The administration of medication by a
34 registered nurse, and a medication management program to minimize
35 unnecessary or inappropriate use of prescription drugs and adverse
36 events due to unintended prescription drug-to-drug interaction;

37 (vi) All other applicable standards as defined in
38 the applicable Medicaid home- and community-based services waiver
39 as approved by the Centers for Medicare and Medicaid Services; and

40 (b) Meets such standards established by the licensing
41 agency to assure quality of care and such other requirements as
42 the licensing agency finds necessary in the interest of the health
43 and safety of individuals who are furnished services in the
44 facility.

45 (2) "Person" means any individual, firm, partnership,
46 corporation, company, association or joint-stock association, or
47 any licensee herein or the legal successor thereof.

48 (3) "Licensing agency" means the State Department of Health.



49 (4) "Medical records" mean, without restriction, those
50 medical histories, records, reports, summaries, diagnoses and
51 prognoses, records of treatment and medication ordered and given,
52 notes, entries, x-rays and other written or graphic data prepared,
53 kept, made or maintained in adult day care facilities that pertain
54 to services rendered to individuals in an adult day care facility.

55 **SECTION 2. Purpose.** The purpose of this act is to protect
56 and promote the public welfare by providing for the development,
57 establishment and enforcement of certain standards in the
58 maintenance and operation of adult day care facilities, which will
59 ensure safe, sanitary and reasonably adequate care of individuals
60 in such facilities.

61 **SECTION 3. License.** No person, acting severally or jointly
62 with any other person, shall establish, conduct, or maintain an
63 adult day care facility in this state without a license hereunder.

64 **SECTION 4. Application for license; license and renewal**
65 **fees; issuance and renewal of license; user fee.** (1) Any person,
66 as defined in Section 1 of this act, may apply for a license as
67 provided in this section. An application for a license for an
68 adult day care facility shall be made to the licensing agency upon
69 forms provided by it and shall contain such information as the
70 licensing agency reasonably requires, which may include
71 affirmative evidence of ability to comply with such reasonable
72 standards, rules and regulations as are lawfully prescribed
73 hereunder. Each application for a license for an adult day care



74 facility shall be accompanied by a license fee, which shall be set
75 by and paid to the State Department of Health to reasonably offset
76 the costs of the provisions herein. The licensing agency, at its
77 discretion, may waive part or all of the licensure fee for adult
78 day care facilities serving fewer than seven (7) clients.

79 (2) A license, unless suspended or revoked, shall be
80 renewable every year upon payment by the licensee of an adult day
81 care facility of a renewal fee, which shall be set by and paid to
82 the State Department of Health to reasonably offset the costs of
83 the provisions herein, and upon filing by the licensee and
84 approval by the licensing agency of an annual report upon such
85 uniform dates and containing such information in such form as the
86 licensing agency prescribes by regulation. The licensing agency,
87 at its discretion, may waive part or all of the licensure fee for
88 adult day care facilities serving fewer than seven (7) clients.

89 (3) Each license shall be issued only for the premises and
90 person or persons or other legal entity or entities named in the
91 application and shall not be transferable or assignable except
92 with the written approval of the licensing agency. Licenses shall
93 be posted in a conspicuous place on the licensed premises.

94 (4) A fee known as a "user fee" shall be applicable and
95 shall be paid to the licensing agency as set out in subsection (1)
96 of this section. The user fee shall be assessed for the purpose
97 of the required reviewing and inspections of the proposal of any
98 adult day care facility in which there are additions, renovations,



99 modernizations, expansion, alterations, conversions, modifications
100 or replacement of the entire facility involved in such proposal.
101 This fee includes the reviewing of architectural plans in all
102 steps required. The State Department of Health shall set and
103 receive a minimum user fee to reasonably offset the costs of the
104 provisions herein.

105 (5) Any increase in the fees charged by the licensing agency
106 under this section shall be in accordance with the provisions of
107 Section 41-3-65.

108 (6) No governmental entity or agency shall be required to
109 pay the fee or fees set forth in this section.

110 **SECTION 5. Denial or revocation of license; hearings and**
111 **review.** The licensing agency after notice and opportunity for a
112 hearing to the applicant or licensee is authorized to deny,
113 suspend or revoke a license in any case in which it finds that
114 there has been a substantial failure to comply with the
115 requirements established under this article.

116 Such notice shall be effected by registered mail, or by
117 personal service setting forth the particular reasons for the
118 proposed action and fixing a date not less than thirty (30) days
119 from the date of such mailing or such service, at which time the
120 applicant or licensee, shall be given an opportunity for a prompt
121 and fair hearing. On the basis of any such hearing, or upon
122 default of the applicant or licensee, the licensing agency shall
123 make a determination specifying its findings of fact and



124 conclusions of law. A copy of such determination shall be sent by
125 registered mail or served personally upon the applicant or
126 licensee. The decision revoking, suspending or denying the
127 license or application shall become final thirty (30) days after
128 it is so mailed or served, unless the applicant or licensee,
129 within such thirty-day period, appeals the decision to the
130 chancery court pursuant to Section 12 of this act.

131 The procedure governing hearings authorized by this section
132 shall be in accordance with rules promulgated by the licensing
133 agency. A full and complete record shall be kept of all
134 proceedings, and all testimony shall be recorded but need not be
135 transcribed unless the decision is appealed pursuant to Section 12
136 of this act. Witnesses may be subpoenaed by either party.
137 Compensation shall be allowed to witnesses as in cases in the
138 chancery court. Each party shall pay the expense of his own
139 witnesses. The cost of the record shall be paid by the licensing
140 agency provided any other party desiring a copy of the transcript
141 shall pay therefor the reasonable cost of preparing the same.

142 **SECTION 6. Rules, regulations and standards.** To the fullest
143 reasonable extent, adult day care facilities, as defined in this
144 article, shall be subject to the applicable rules, regulations,
145 and standards prescribed in Section 43-11-13. To operate an adult
146 day care facility, as defined in this article, the center must
147 possess a current valid license issued pursuant to this article



148 and must have a current provider agreement with the Division of
149 Medicaid.

150 **SECTION 7. Effective date of regulations.** Any adult day
151 care facility which is in operation at the time of promulgation of
152 any applicable rules or regulations or minimum standards under
153 this article shall be given a reasonable time, under the
154 particular circumstances not to exceed one (1) year from the date
155 of such promulgation, within which to comply with such rules and
156 regulations and minimum standards.

157 **SECTION 8. Medical records not public documents but property**
158 **of adult day care facilities.** Medical records are and shall
159 remain the property of the various adult day care facilities,
160 subject, however, to reasonable access to the information
161 contained therein upon written request by the individual, his or
162 her legally appointed representatives, his or her attending
163 medical personnel, or his or her duly authorized representative,
164 and upon payment of any reasonable charges for such service.
165 Nothing in this section shall be construed to deny access to
166 medical records by the Attorney General, the Mississippi Division
167 of Medicaid, the licensing agency, or his or its agents and
168 investigators in the discharge of their official duties. Except
169 as otherwise provided by law, medical records shall not constitute
170 public records and nothing in this section shall be deemed to
171 impair any privilege of confidence conferred by law or the



172 Mississippi Rules of Evidence on individuals, their personal
173 representatives or heirs by Section 13-1-21.

174 **SECTION 9. Inspections.** The licensing agency shall make or
175 cause to be made such inspections and investigations as it deems
176 necessary.

177 **SECTION 10. Information confidential.** Information received
178 by the licensing agency through filed reports, inspection, or as
179 otherwise authorized under this article, shall not be disclosed
180 publicly in such manner as to identify individuals, except in a
181 proceeding involving the questions of licensure; however, the
182 licensing agency may utilize statistical data concerning types of
183 services and the utilization of those services for adult day care
184 facilities in performing the statutory duties imposed upon it by
185 Section 41-7-171 et seq. and by Section 11 of this act.

186 **SECTION 11. Annual report of licensing agency.** The
187 licensing agency shall prepare and publish an annual report of its
188 activities and operations under this article. A reasonable number
189 of copies of such publications shall be available in the office of
190 the licensing agency to be furnished free to persons requesting
191 them. At its discretion, the licensing agency may choose to
192 report this information in the annual report required by Section
193 43-11-21 in lieu of creating a separate annual report.

194 **SECTION 12. Judicial review.** Any applicant or licensee
195 aggrieved by the decision of the licensing agency after a hearing,
196 may within thirty (30) days after the mailing or serving of notice



197 of the decision as provided in Section 5 of this act, file a
198 notice of appeal in the Chancery Court of the First Judicial
199 District of Hinds County, Mississippi or the chancery court of the
200 county in which the adult day care facility is located or to be
201 located, and the chancery clerk thereof shall serve a copy of the
202 notice of appeal upon the licensing agency. Thereupon the
203 licensing agency shall, within sixty (60) days or such additional
204 time as the court may allow from the service of such notice,
205 certify and file with the court a copy of the record and decision,
206 including the transcript of the hearings on which the decision is
207 based. Findings of fact by the licensing agency shall be
208 conclusive unless substantially contrary to the weight of the
209 evidence but upon good cause shown, the court may remand the case
210 to the licensing agency to take further evidence, and the
211 licensing agency may thereupon affirm, reverse or modify its
212 decision. The court may affirm, modify or reverse the decision of
213 the licensing agency and either the applicant or licensee or the
214 licensing agency may appeal from this decision to the Supreme
215 Court as in other cases in the chancery court. Pending final
216 disposition of the matter the status quo of the applicant or
217 licensee shall be preserved, except as the court otherwise orders
218 in the public interest. Rules with respect to court costs as in
219 other cases in chancery court shall apply equally to cases
220 hereunder.



221 **SECTION 13. Penalties.** Any person establishing, conducting,
222 managing or operating an adult day care facility without a license
223 under this article shall be guilty of a misdemeanor, and upon
224 conviction shall be fined not more than One Thousand Dollars
225 (\$1,000.00) for the first offense and not more than One Thousand
226 Dollars (\$1,000.00) for each subsequent offense, and each day of a
227 continuing violation after conviction shall be considered a
228 separate offense.

229 **SECTION 14. Injunction.** Notwithstanding the existence or
230 pursuit of any other remedy, the licensing agency may, in the
231 manner provided by law, upon the advice of the Attorney General
232 who, except as otherwise authorized in Section 7-5-39, shall
233 represent the licensing agency in the proceedings, maintain an
234 action in the name of the state for injunction or other process
235 against any person to restrain or prevent the establishment,
236 conduct, management or operation of an adult day care facility
237 without a license under this article.

238 **SECTION 15.** It is the intention of the Legislature that
239 Sections 1 through 14 of this act shall be codified as new Article
240 15 in Chapter 13 of Title 43.

241 **SECTION 16.** Section 43-11-13, Mississippi Code of 1972, is
242 amended as follows:

243 43-11-13. (1) The licensing agency shall adopt, amend,
244 promulgate and enforce such rules, regulations and standards,
245 including classifications, with respect to all institutions for



246 the aged or infirm to be licensed under this chapter and adult day
247 care facilities as defined in Section 1 of this act as may be
248 designed to further the accomplishment of the purpose of this
249 chapter and Section 2 of this act in promoting adequate care of
250 individuals in those institutions or facilities in the interest of
251 public health, safety and welfare. Those rules, regulations and
252 standards for institutions for the aged or infirm shall be adopted
253 and promulgated by the licensing agency and shall be recorded and
254 indexed in a book to be maintained by the licensing agency in its
255 main office in the State of Mississippi, entitled "Rules,
256 Regulations and Minimum Standards for Institutions for the Aged or
257 Infirm" and the book shall be open and available to all
258 institutions for the aged or infirm and the public generally at
259 all reasonable times. Those rules, regulations and standards for
260 adult day care facilities shall be adopted and promulgated by the
261 licensing agency and shall be recorded and indexed in a book to be
262 maintained by the licensing agency in its main office in the State
263 of Mississippi, entitled "Rules, Regulations and Minimum Standards
264 for Adult Day Care Facilities," and the book shall be open and
265 available to all adult day care facilities and the public
266 generally at all reasonable times. Upon the adoption of those
267 rules, regulations and standards, the licensing agency shall mail
268 copies thereof to all those institutions and facilities in the
269 state that have filed with the agency their names and addresses
270 for this purpose, but the failure to mail the same or the failure



271 of the institutions or facilities to receive the same shall in no
272 way affect the validity thereof. The rules, regulations and
273 standards may be amended by the licensing agency, from time to
274 time, as necessary to promote the health, safety and welfare of
275 persons living in those institutions or being served by those
276 facilities.

277 (2) The licensee shall keep posted in a conspicuous place on
278 the licensed premises all current rules, regulations and minimum
279 standards applicable to fire protection measures as adopted by the
280 licensing agency. The licensee shall furnish to the licensing
281 agency at least once each six (6) months a certificate of approval
282 and inspection by state or local fire authorities. Failure to
283 comply with state laws and/or municipal ordinances and current
284 rules, regulations and minimum standards as adopted by the
285 licensing agency, relative to fire prevention measures, shall be
286 prima facie evidence for revocation of license.

287 (3) The State Board of Health shall promulgate rules and
288 regulations restricting the storage, quantity and classes of drugs
289 allowed in personal care homes * * *, adult foster care
290 facilities, and adult day care facilities. Residents and other
291 individuals served in facilities requiring administration of
292 Schedule II Narcotics as defined in the Uniform Controlled
293 Substances Law may be admitted to a personal care home. Schedule
294 drugs may only be allowed in a personal care home if they are



295 administered or stored utilizing proper procedures under the
296 direct supervision of a licensed physician or nurse.

297 (4) (a) Notwithstanding any determination by the licensing
298 agency that skilled nursing services would be appropriate for a
299 resident of a personal care home, that resident, the resident's
300 guardian or the legally recognized responsible party for the
301 resident may consent in writing for the resident to continue to
302 reside in the personal care home, if approved in writing by a
303 licensed physician. However, no personal care home shall allow
304 more than two (2) residents, or ten percent (10%) of the total
305 number of residents in the facility, whichever is greater, to
306 remain in the personal care home under the provisions of this
307 subsection (4). This consent shall be deemed to be appropriately
308 informed consent as described in the regulations promulgated by
309 the licensing agency. After that written consent has been
310 obtained, the resident shall have the right to continue to reside
311 in the personal care home for as long as the resident meets the
312 other conditions for residing in the personal care home. A copy
313 of the written consent and the physician's approval shall be
314 forwarded by the personal care home to the licensing agency.

315 (b) The State Board of Health shall promulgate rules
316 and regulations restricting the handling of a resident's personal
317 deposits by the director of a personal care home. Any funds given
318 or provided for the purpose of supplying extra comforts,
319 conveniences or services to any resident in any personal care



320 home, and any funds otherwise received and held from, for or on
321 behalf of any such resident, shall be deposited by the director or
322 other proper officer of the personal care home to the credit of
323 that resident in an account that shall be known as the Resident's
324 Personal Deposit Fund. No more than one (1) month's charge for
325 the care, support, maintenance and medical attention of the
326 resident shall be applied from the account at any one time. After
327 the death, discharge or transfer of any resident for whose benefit
328 any such fund has been provided, any unexpended balance remaining
329 in his personal deposit fund shall be applied for the payment of
330 care, cost of support, maintenance and medical attention that is
331 accrued. If any unexpended balance remains in that resident's
332 personal deposit fund after complete reimbursement has been made
333 for payment of care, support, maintenance and medical attention,
334 and the director or other proper officer of the personal care home
335 has been or shall be unable to locate the person or persons
336 entitled to the unexpended balance, the director or other proper
337 officer may, after the lapse of one (1) year from the date of that
338 death, discharge or transfer, deposit the unexpended balance to
339 the credit of the personal care home's operating fund.

340 (c) The State Board of Health shall promulgate rules
341 and regulations requiring personal care homes and adult day care
342 facilities to maintain records relating to health condition,
343 medicine dispensed and administered, and any reaction to that
344 medicine. The director of the personal care home or the adult day



345 care facility shall be responsible for explaining the availability
346 of those records to the family of the resident at any time upon
347 reasonable request.

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

349 (i) "Licensed entity" means a hospital, nursing
350 home, personal care home, home health agency, hospice * * *, adult
351 foster care facility, or adult day care facility;

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

354 (iii) "Employee" means any individual employed by
355 a covered entity, and also includes any individual who by contract
356 provides to the patients, residents, individuals, or clients being
357 served by the covered entity direct, hands-on, medical patient
358 care in a patient's, resident's, individual's, or client's room,
359 adult day care facility, or in treatment or recovery rooms. The
360 term "employee" does not include health care
361 professional/vocational technical students performing clinical
362 training in a licensed entity under contracts between their
363 schools and the licensed entity, and does not include students at
364 high schools located in Mississippi who observe the treatment and
365 care of patients in a licensed entity as part of the requirements
366 of an allied-health course taught in the high school, if:

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



369 2. The student has signed an affidavit that
370 is on file at the student's school stating that he or she has not
371 been convicted of or pleaded guilty or nolo contendere to a felony
372 listed in paragraph (d) of this subsection (5), or that any such
373 conviction or plea was reversed on appeal or a pardon was granted
374 for the conviction or plea. Before any student may sign such an
375 affidavit, the student's school shall provide information to the
376 student explaining what a felony is and the nature of the felonies
377 listed in paragraph (d) of this subsection (5).

378 However, the health care professional/vocational technical
379 academic program in which the student is enrolled may require the
380 student to obtain criminal history record checks * * *; and

381 (iv) "Rap-Back" means the notifications to the
382 department when an individual who has undergone a
383 fingerprint-based, state or federal criminal history information
384 check has a subsequent state or federal criminal history event.

385 (b) Under regulations promulgated by the State Board of
386 Health, the licensing agency shall require to be performed a
387 criminal history record check on (i) every new employee of a
388 covered entity who provides direct patient care or services and
389 who is employed on or after July 1, 2003, and (ii) every employee
390 of a covered entity employed before July 1, 2003, who has a
391 documented disciplinary action by his or her present employer.
392 The department is authorized to put into place methods that reduce
393 duplicate fingerprinting, including the development of Rap-Back



394 capabilities, as required by the Centers for Medicare and Medicaid
395 Services. In addition, the licensing agency shall require the
396 covered entity to perform a disciplinary check with the
397 professional licensing agency of each employee, if any, to
398 determine if any disciplinary action has been taken against the
399 employee by that agency.

400 Except as otherwise provided in paragraph (c) of this
401 subsection (5), no such employee hired on or after July 1, 2003,
402 shall be permitted to provide direct patient care or services in
403 an adult day care facility until the results of the criminal
404 history record check have revealed no disqualifying record or the
405 employee has been granted a waiver. In order to determine the
406 employee applicant's suitability for employment, the applicant
407 shall be fingerprinted. Fingerprints shall be submitted to the
408 licensing agency from scanning, with the results processed through
409 the Department of Public Safety's Criminal Information Center.
410 The fingerprints shall then be forwarded by the Department of
411 Public Safety to the Federal Bureau of Investigation for a
412 national criminal history record check. The licensing agency
413 shall notify the covered entity of the results of an employee
414 applicant's criminal history record check. If the criminal
415 history record check discloses a felony conviction, guilty plea or
416 plea of nolo contendere to a felony of possession or sale of
417 drugs, murder, manslaughter, armed robbery, rape, sexual battery,
418 sex offense listed in Section 45-33-23(h), child abuse, arson,



419 grand larceny, burglary, gratification of lust or aggravated
420 assault, or felonious abuse and/or battery of a vulnerable adult
421 that has not been reversed on appeal or for which a pardon has not
422 been granted, the employee applicant shall not be eligible to be
423 employed by the covered entity.

424 (c) Any such new employee applicant may, however, be
425 employed on a temporary basis pending the results of the criminal
426 history record check, but any employment contract with the new
427 employee shall be voidable if the new employee receives a
428 disqualifying criminal history record check and no waiver is
429 granted as provided in this subsection (5).

430 (d) Under regulations promulgated by the State Board of
431 Health, the licensing agency shall require every employee of a
432 covered entity employed before July 1, 2003, to sign an affidavit
433 stating that he or she has not been convicted of or pleaded guilty
434 or nolo contendere to a felony of possession or sale of drugs,
435 murder, manslaughter, armed robbery, rape, sexual battery, any sex
436 offense listed in Section 45-33-23(h), child abuse, arson, grand
437 larceny, burglary, gratification of lust, aggravated assault, or
438 felonious abuse and/or battery of a vulnerable adult, or that any
439 such conviction or plea was reversed on appeal or a pardon was
440 granted for the conviction or plea. No such employee of a covered
441 entity hired before July 1, 2003, shall be permitted to provide
442 direct patient care until the employee has signed the affidavit
443 required by this paragraph (d). All such existing employees of



444 covered entities must sign the affidavit required by this
445 paragraph (d) within six (6) months of the final adoption of the
446 regulations promulgated by the State Board of Health. If a person
447 signs the affidavit required by this paragraph (d), and it is
448 later determined that the person actually had been convicted of or
449 pleaded guilty or nolo contendere to any of the offenses listed in
450 this paragraph (d) and the conviction or plea has not been
451 reversed on appeal or a pardon has not been granted for the
452 conviction or plea, the person is guilty of perjury. If the
453 offense that the person was convicted of or pleaded guilty or nolo
454 contendere to was a violent offense, the person, upon a conviction
455 of perjury under this paragraph, shall be punished as provided in
456 Section 97-9-61. If the offense that the person was convicted of
457 or pleaded guilty or nolo contendere to was a nonviolent offense,
458 the person, upon a conviction of perjury under this paragraph,
459 shall be punished by a fine of not more than Five Hundred Dollars
460 (\$500.00), or by imprisonment in the county jail for not more than
461 six (6) months, or by both such fine and imprisonment.

462 (e) The covered entity may, in its discretion, allow
463 any employee who is unable to sign the affidavit required by
464 paragraph (d) of this subsection (5) or any employee applicant
465 aggrieved by an employment decision under this subsection (5) to
466 appear before the covered entity's hiring officer, or his or her
467 designee, to show mitigating circumstances that may exist and
468 allow the employee or employee applicant to be employed by the



469 covered entity. The covered entity, upon report and
470 recommendation of the hiring officer, may grant waivers for those
471 mitigating circumstances, which shall include, but not be limited
472 to: (i) age at which the crime was committed; (ii) circumstances
473 surrounding the crime; (iii) length of time since the conviction
474 and criminal history since the conviction; (iv) work history; (v)
475 current employment and character references; and (vi) other
476 evidence demonstrating the ability of the individual to perform
477 the employment responsibilities competently and that the
478 individual does not pose a threat to the health or safety of the
479 patients of the covered entity.

480 (f) The licensing agency may charge the covered entity
481 submitting the fingerprints a fee * * * as established by the
482 State Board of Health, which covered entity may, in its
483 discretion, charge the same fee, or a portion thereof, to the
484 employee applicant. Any increase in the fee charged by the
485 licensing agency under this paragraph shall be in accordance with
486 the provisions of Section 41-3-65. Any costs incurred by a
487 covered entity implementing this subsection (5) shall be
488 reimbursed as an allowable cost under Section 43-13-116.

489 (g) If the results of an employee applicant's criminal
490 history record check reveals no disqualifying event, then the
491 covered entity shall, within two (2) weeks of the notification of
492 no disqualifying event, provide the employee applicant with a
493 notarized letter signed by the chief executive officer of the



494 covered entity, or his or her authorized designee, confirming the
495 employee applicant's suitability for employment based on his or
496 her criminal history record check. An employee applicant may use
497 that letter for a period of two (2) years from the date of the
498 letter to seek employment with any covered entity without the
499 necessity of an additional criminal history record check. Any
500 covered entity presented with the letter may rely on the letter
501 with respect to an employee applicant's criminal background and is
502 not required for a period of two (2) years from the date of the
503 letter to conduct or have conducted a criminal history record
504 check as required in this subsection (5).

505 (h) The licensing agency, the covered entity, and their
506 agents, officers, employees, attorneys and representatives, shall
507 be presumed to be acting in good faith for any employment decision
508 or action taken under this subsection (5). The presumption of
509 good faith may be overcome by a preponderance of the evidence in
510 any civil action. No licensing agency, covered entity, nor their
511 agents, officers, employees, attorneys and representatives shall
512 be held liable in any employment decision or action based in whole
513 or in part on compliance with or attempts to comply with the
514 requirements of this subsection (5).

515 (i) The licensing agency shall promulgate regulations
516 to implement this subsection (5).

517 (j) The provisions of this subsection (5) shall not
518 apply to:



519 (i) Applicants and employees of the University of
520 Mississippi Medical Center for whom criminal history record checks
521 and fingerprinting are obtained in accordance with Section
522 37-115-41; or

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

526 (k) The Mississippi Criminal Information Center is
527 authorized to implement the Rap-Back criminal history records
528 system and the State Department of Health is authorized to
529 implement and to utilize the state/federal Rap-Back criminal
530 history system as a method of ongoing monitoring of individuals
531 providing such care to Mississippi's vulnerable population in
532 "covered" entities (nursing homes, hospitals, hospices, home
533 health agencies, adult day care facilities and personal care
534 homes), and to apply for and provide matching funds in order for
535 Mississippi to receive federal grants to make necessary upgrades
536 to the department's data system to accommodate Rap-Back
537 capabilities.

538 (6) The State Board of Health shall promulgate rules,
539 regulations and standards regarding the operation of adult foster
540 care facilities and adult day care facilities.

541 **SECTION 17.** This act shall take effect and be in force from
542 and after July 1, 2019.

