

By: Senator(s) Hill

To: Public Health and
Welfare

SENATE BILL NO. 2057

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
 2 RELATIVE TO RIGHTS OF NURSING HOME RESIDENTS; TO AUTHORIZE A
 3 NURSING HOME RESIDENT OR A LEGAL REPRESENTATIVE TO HAVE A
 4 MONITORING DEVICE INSTALLED IN THE ROOM OF THE RESIDENT; TO
 5 ESTABLISH CONDITIONS FOR THE INSTALLATION AND USE OF MONITORING
 6 DEVICES IN NURSING HOMES; TO PROVIDE FOR CONSENT RELATIVE TO THE
 7 INSTALLATION AND USE OF SUCH DEVICES; TO PROVIDE LIMITATIONS ON
 8 THE USE OF SUCH DEVICES; TO REQUIRE NURSING HOMES TO MAKE CERTAIN
 9 ACCOMMODATIONS RELATIVE TO SUCH DEVICES; TO LIMIT LIABILITY IN
 10 CASES IN WHICH A MONITORING DEVICE IS INSTALLED WITHOUT PROPER
 11 AUTHORIZATION OR USED IMPROPERLY; TO PROHIBIT CERTAIN CONDUCT BY
 12 NURSING HOMES; TO ESTABLISH ADMINISTRATIVE PENALTIES; TO PROVIDE
 13 FOR ADMINISTRATIVE RULEMAKING; AND FOR RELATED PURPOSES.

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

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

17 43-11-13. (1) The licensing agency shall adopt, amend,
 18 promulgate and enforce such rules, regulations and standards,
 19 including classifications, with respect to all institutions for
 20 the aged or infirm to be licensed under this chapter as may be
 21 designed to further the accomplishment of the purpose of this
 22 chapter in promoting adequate care of individuals in those
 23 institutions in the interest of public health, safety and welfare.



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

40 (2) The licensee shall keep posted in a conspicuous place on
41 the licensed premises all current rules, regulations and minimum
42 standards applicable to fire protection measures as adopted by the
43 licensing agency. The licensee shall furnish to the licensing
44 agency at least once each six (6) months a certificate of approval
45 and inspection by state or local fire authorities. Failure to
46 comply with state laws and/or municipal ordinances and current
47 rules, regulations and minimum standards as adopted by the



48 licensing agency, relative to fire prevention measures, shall be
49 prima facie evidence for revocation of license.

50 (3) The State Board of Health shall promulgate rules and
51 regulations restricting the storage, quantity and classes of drugs
52 allowed in personal care homes and adult foster care facilities.
53 Residents requiring administration of Schedule II Narcotics as
54 defined in the Uniform Controlled Substances Law may be admitted
55 to a personal care home. Schedule drugs may only be allowed in a
56 personal care home if they are administered or stored utilizing
57 proper procedures under the direct supervision of a licensed
58 physician or nurse.

59 (4) (a) Notwithstanding any determination by the licensing
60 agency that skilled nursing services would be appropriate for a
61 resident of a personal care home, that resident, the resident's
62 guardian or the legally recognized responsible party for the
63 resident may consent in writing for the resident to continue to
64 reside in the personal care home, if approved in writing by a
65 licensed physician. However, no personal care home shall allow
66 more than two (2) residents, or ten percent (10%) of the total
67 number of residents in the facility, whichever is greater, to
68 remain in the personal care home under the provisions of this
69 subsection (4). This consent shall be deemed to be appropriately
70 informed consent as described in the regulations promulgated by
71 the licensing agency. After that written consent has been
72 obtained, the resident shall have the right to continue to reside



73 in the personal care home for as long as the resident meets the
74 other conditions for residing in the personal care home. A copy
75 of the written consent and the physician's approval shall be
76 forwarded by the personal care home to the licensing agency.

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



98 entitled to the unexpended balance, the director or other proper
99 officer may, after the lapse of one (1) year from the date of that
100 death, discharge or transfer, deposit the unexpended balance to
101 the credit of the personal care home's operating fund.

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

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

110 (i) "Licensed entity" means a hospital, nursing
111 home, personal care home, home health agency, hospice or adult
112 foster care facility;

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

115 (iii) "Employee" means any individual employed by
116 a covered entity, and also includes any individual who by contract
117 provides to the patients, residents or clients being served by the
118 covered entity direct, hands-on, medical patient care in a
119 patient's, resident's or client's room or in treatment or recovery
120 rooms. The term "employee" does not include health care
121 professional/vocational technical students performing clinical
122 training in a licensed entity under contracts between their



123 schools and the licensed entity, and does not include students at
124 high schools located in Mississippi who observe the treatment and
125 care of patients in a licensed entity as part of the requirements
126 of an allied-health course taught in the high school, if:

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

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

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



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

158 Except as otherwise provided in paragraph (c) of this
159 subsection (5), no such employee hired on or after July 1, 2003,
160 shall be permitted to provide direct patient care until the
161 results of the criminal history record check have revealed no
162 disqualifying record or the employee has been granted a waiver.
163 In order to determine the employee applicant's suitability for
164 employment, the applicant shall be fingerprinted. Fingerprints
165 shall be submitted to the licensing agency from scanning, with the
166 results processed through the Department of Public Safety's
167 Criminal Information Center. The fingerprints shall then be
168 forwarded by the Department of Public Safety to the Federal Bureau
169 of Investigation for a national criminal history record check.
170 The licensing agency shall notify the covered entity of the
171 results of an employee applicant's criminal history record check.



172 If the criminal history record check discloses a felony
173 conviction, guilty plea or plea of nolo contendere to a felony of
174 possession or sale of drugs, murder, manslaughter, armed robbery,
175 rape, sexual battery, sex offense listed in Section 45-33-23(h),
176 child abuse, arson, grand larceny, burglary, gratification of lust
177 or aggravated assault, or felonious abuse and/or battery of a
178 vulnerable adult that has not been reversed on appeal or for which
179 a pardon has not been granted, the employee applicant shall not be
180 eligible to be employed by the covered entity.

181 (c) Any such new employee applicant may, however, be
182 employed on a temporary basis pending the results of the criminal
183 history record check, but any employment contract with the new
184 employee shall be voidable if the new employee receives a
185 disqualifying criminal history record check and no waiver is
186 granted as provided in this subsection (5).

187 (d) Under regulations promulgated by the State Board of
188 Health, the licensing agency shall require every employee of a
189 covered entity employed before July 1, 2003, to sign an affidavit
190 stating that he or she has not been convicted of or pleaded guilty
191 or nolo contendere to a felony of possession or sale of drugs,
192 murder, manslaughter, armed robbery, rape, sexual battery, any sex
193 offense listed in Section 45-33-23(h), child abuse, arson, grand
194 larceny, burglary, gratification of lust, aggravated assault, or
195 felonious abuse and/or battery of a vulnerable adult, or that any
196 such conviction or plea was reversed on appeal or a pardon was



197 granted for the conviction or plea. No such employee of a covered
198 entity hired before July 1, 2003, shall be permitted to provide
199 direct patient care until the employee has signed the affidavit
200 required by this paragraph (d). All such existing employees of
201 covered entities must sign the affidavit required by this
202 paragraph (d) within six (6) months of the final adoption of the
203 regulations promulgated by the State Board of Health. If a person
204 signs the affidavit required by this paragraph (d), and it is
205 later determined that the person actually had been convicted of or
206 pleaded guilty or nolo contendere to any of the offenses listed in
207 this paragraph (d) and the conviction or plea has not been
208 reversed on appeal or a pardon has not been granted for the
209 conviction or plea, the person is guilty of perjury. If the
210 offense that the person was convicted of or pleaded guilty or nolo
211 contendere to was a violent offense, the person, upon a conviction
212 of perjury under this paragraph, shall be punished as provided in
213 Section 97-9-61. If the offense that the person was convicted of
214 or pleaded guilty or nolo contendere to was a nonviolent offense,
215 the person, upon a conviction of perjury under this paragraph,
216 shall be punished by a fine of not more than Five Hundred Dollars
217 (\$500.00), or by imprisonment in the county jail for not more than
218 six (6) months, or by both such fine and imprisonment.

219 (e) The covered entity may, in its discretion, allow
220 any employee who is unable to sign the affidavit required by
221 paragraph (d) of this subsection (5) or any employee applicant



222 aggrieved by an employment decision under this subsection (5) to
223 appear before the covered entity's hiring officer, or his or her
224 designee, to show mitigating circumstances that may exist and
225 allow the employee or employee applicant to be employed by the
226 covered entity. The covered entity, upon report and
227 recommendation of the hiring officer, may grant waivers for those
228 mitigating circumstances, which shall include, but not be limited
229 to: (i) age at which the crime was committed; (ii) circumstances
230 surrounding the crime; (iii) length of time since the conviction
231 and criminal history since the conviction; (iv) work history; (v)
232 current employment and character references; and (vi) other
233 evidence demonstrating the ability of the individual to perform
234 the employment responsibilities competently and that the
235 individual does not pose a threat to the health or safety of the
236 patients of the covered entity.

237 (f) The licensing agency may charge the covered entity
238 submitting the fingerprints a fee not to exceed Fifty Dollars
239 (\$50.00), which covered entity may, in its discretion, charge the
240 same fee, or a portion thereof, to the employee applicant. Any
241 increase in the fee charged by the licensing agency under this
242 paragraph shall be in accordance with the provisions of Section
243 41-3-65. Any costs incurred by a covered entity implementing this
244 subsection (5) shall be reimbursed as an allowable cost under
245 Section 43-13-116.



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

262 (h) The licensing agency, the covered entity, and their
263 agents, officers, employees, attorneys and representatives, shall
264 be presumed to be acting in good faith for any employment decision
265 or action taken under this subsection (5). The presumption of
266 good faith may be overcome by a preponderance of the evidence in
267 any civil action. No licensing agency, covered entity, nor their
268 agents, officers, employees, attorneys and representatives shall
269 be held liable in any employment decision or action based in whole



270 or in part on compliance with or attempts to comply with the
271 requirements of this subsection (5).

272 (i) The licensing agency shall promulgate regulations
273 to implement this subsection (5).

274 (j) The provisions of this subsection (5) shall not
275 apply to:

276 (i) Applicants and employees of the University of
277 Mississippi Medical Center for whom criminal history record checks
278 and fingerprinting are obtained in accordance with Section
279 37-115-41; or

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

283 (6) The State Board of Health shall promulgate rules,
284 regulations and standards regarding the operation of adult foster
285 care facilities.

286 (7) (a) Short title. This subsection shall be known and
287 may be cited as the "Nursing Home Virtual Visitation Act."

288 (b) Definitions. As used in this subsection, the
289 following terms have the meaning ascribed in this section:

290 (i) "Licensing agency" means the Mississippi State
291 Department of Health.

292 (ii) 1. "Monitoring device" means a surveillance
293 instrument that transmits and records activity and is not
294 connected to the facility's computer network.



295 2. The term "monitoring device" shall not
296 include a camera that records still images exclusively.

297 (iii) "Nursing home" means an institution for the
298 aged or infirm as defined in Section 43-11-1.

299 (iv) "Ombudsman" means the Administrator of the
300 Office of the State Long-Term Care Ombudsman established within
301 the Mississippi Department of Human Services pursuant to Section
302 43-47-1 et seq.

303 (v) "Resident" means a person who is a resident of
304 a nursing home.

305 (vi) "Legal representative" means a legal guardian
306 or a legally appointed substitute decision-maker who is authorized
307 to act on behalf of a nursing home resident.

308 (c) **Monitoring device; authorization and use.** (i) A
309 resident who has the capacity to consent as determined by
310 emergency rules promulgated by the licensing agency pursuant to
311 this subsection or his legal representative may authorize the
312 installation and use of a monitoring device in a nursing home if
313 all of the following conditions are met:

314 1. The resident or his legal representative
315 gives notice of the installation to the nursing home.

316 2. If the monitoring device records activity
317 visually, the recordings made by the device include a record of
318 the date and time.



319 3. The resident pays for the monitoring
320 device and all installation, operation, maintenance, and removal
321 costs associated with the device.

322 4. Each resident occupying the same room who
323 has the capacity to consent as determined by emergency rules
324 promulgated by the licensing agency pursuant to this subsection,
325 or that resident's legal representative, gives written consent for
326 the installation of the monitoring device.

327 (ii) If the structure of the resident's room must
328 be altered in order to accommodate a monitoring device, then the
329 renovation to the room may be done only by a licensed contractor,
330 subject to approval by the facility.

331 (iii) Any monitoring device installed in
332 accordance with the provisions of this subsection shall be in
333 compliance with the National Fire Protection Association Life
334 Safety regulations.

335 (d) **Monitoring device option; installation; consent of**
336 **residents in shared rooms; accommodation by nursing home.** (i) 1.
337 At the time of a person's admission to a nursing home, the nursing
338 home shall notify the person of his right to have a monitoring
339 device installed in his room, and shall offer the person the
340 option to have a monitoring device. The resident or his roommate
341 may exercise the right to install or remove a monitoring device at
342 any time during which he resides in the nursing home. The nursing



343 home shall keep a record of the person's authorization or choice
344 not to have a monitoring device.

345 2. The nursing home shall make the record
346 provided for in subparagraph (i)1 of this paragraph accessible to
347 the ombudsman.

348 (ii) 1. If a resident who is residing in a shared
349 room wishes to have a monitoring device installed in the room and
350 another resident living in or moving into the same shared room
351 refuses to consent to the use of the monitoring device, then the
352 nursing home shall make a reasonable attempt to accommodate the
353 resident who wishes to have the monitoring device installed. A
354 nursing home shall be deemed to have met this accommodation
355 requirement when, upon notification that a roommate has not
356 consented to the use of an electronic monitoring device in his
357 room, the facility offers to move either resident to another
358 shared room that is available at the time of the request.

359 2. If a resident chooses to reside in a
360 private room in order to accommodate the use of an electronic
361 monitoring device, the resident shall pay the private room rate.
362 If a nursing home is unable to accommodate a resident due to lack
363 of space, the nursing home shall reevaluate the request at least
364 once every two (2) weeks until the request is fulfilled.

365 (iii) After authorization, consent, and notice in
366 accordance with this subsection, a resident or his legal



367 representative may install, operate, and maintain, at the expense
368 of the resident, a monitoring device in the room of the resident.

369 (iv) The nursing home shall cooperate to
370 accommodate the installation of the monitoring device unless doing
371 so would place undue burden on the nursing home.

372 (v) The monitoring device shall be in a fixed,
373 stationary position and shall monitor only the resident who
374 consents either personally or through his legal representative to
375 be monitored.

376 (e) **Consent; waiver.** (i) Consent to the authorization
377 for installation and use of a monitoring device may be given only
378 by the resident or his legal representative.

379 (ii) Consent to the authorization for installation
380 and use of a monitoring device shall include a release of
381 liability for the nursing home for a violation of the resident's
382 right to privacy insofar as the use of the monitoring device is
383 concerned.

384 (iii) A resident or his legal representative may
385 reverse a choice to have or not have a monitoring device installed
386 and used at any time after notice of such reversal has been made
387 to the nursing home, and to the ombudsman, upon a form prescribed
388 by the licensing agency.

389 (f) **Authorization form; content.** The form for the
390 authorization of installation and use of a monitoring device shall
391 provide for all of the following:



392 (i) Consent of the resident or his legal
393 representative authorizing the installation and use of the
394 monitoring device.

395 (ii) Notice to the nursing home of the resident's
396 installation of a monitoring device and specifics as to the type,
397 function, and use of the device.

398 (iii) Consent of any other resident sharing the
399 same room, or that resident's legal representative, to the
400 installation and use of a monitoring device.

401 (iv) Notice of release from liability for
402 violation of privacy through the use of the monitoring device.

403 (v) Waiver of the resident's right to privacy in
404 connection with the use of the monitoring device.

405 (g) **Immunity; unauthorized use.** (i) In any civil
406 action against a nursing home, material obtained through the use
407 of a monitoring device shall not be used if the device was
408 installed or used without the knowledge of the nursing home, or
409 installed or used without the prescribed form.

410 (ii) Compliance with the provisions of this
411 subsection shall be a complete defense to any civil or criminal
412 action brought against the resident, legal representative, or
413 nursing home for the use or presence of a monitoring device.

414 (h) **Prohibited acts; administrative penalties.** (i) 1.
415 No nursing home shall deny a person or resident admission to or
416 discharge from a nursing home, or otherwise discriminate or



417 retaliate against a person or resident because the person or
418 resident chooses to authorize installation and use of a monitoring
419 device.

420 2. Any person who knowingly or willfully
421 violates the provisions of subparagraph (i)1. of this paragraph
422 shall be subject to appropriate action by the licensing agency as
423 set forth in rules promulgated pursuant to this subsection.

424 (ii) 1. Except as provided in subparagraph (i)2.
425 of this paragraph, no person shall intentionally hamper, obstruct,
426 tamper with, or destroy a monitoring device or a recording made by
427 a monitoring device installed in a nursing home pursuant to this
428 subsection.

429 2. The prohibition and penalties provided in
430 this subsection shall not apply to the resident who owns the
431 monitoring device or recording, or to his legal representative.

432 (i) **Public notice; signage of electronic monitoring**
433 **device.** (i) If a resident of a nursing facility conducts
434 electronic monitoring, a sign shall be clearly and conspicuously
435 posted at the main entrance of the nursing facility building to
436 alert and inform visitors. The sign shall be in a large, clearly
437 legible type and font and bear the words "electronic monitoring"
438 and shall further state in equally legible type and font "The
439 rooms of some residents may be equipped with electronic monitoring
440 devices installed by or on behalf of the resident."



441 (ii) A sign shall be clearly and conspicuously
442 posted at the entrance of a resident's room where authorized
443 electronic monitoring is being conducted. The sign shall be in
444 large, clearly legible type and font and bear the words "This room
445 is electronically monitored."

446 (iii) The nursing facility shall be responsible
447 for reasonable costs of installation and maintenance of the sign
448 required by subparagraph (i) of this paragraph. The resident or
449 his legal representative shall be responsible for installing and
450 maintaining the sign required pursuant to subparagraph (ii) of
451 this paragraph, which shall also be in accordance with the written
452 policy of the nursing facility.

453 (j) **Reporting abuse and neglect.** Any person who views
454 an incident which a reasonable man would consider abuse or neglect
455 after viewing a recording made in a nursing facility shall report
456 the incident to the facility as soon as is practicable after the
457 viewing. The facility shall be provided with a copy of the
458 recording in which the suspected incident of abuse or neglect
459 occurred. If the recording must be transferred to a different
460 format to be viewed, the transfer shall be done at the expense of
461 the facility by a qualified professional who can certify that the
462 contents of the recording were not altered.

463 (k) **Administrative rulemaking.** The licensing agency
464 shall adopt all rules in accordance with the Administrative



465 Procedure Act as are necessary for implementation of the
466 provisions of this subsection.

467 **SECTION 2.** This act shall take effect and be in force from
468 and after July 1, 2019.

