

By: Senator(s) Dawkins

To: Public Health and Welfare

SENATE BILL NO. 2648

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO ADOPT RULES REQUIRING  
3 THE STATE DEPARTMENT OF HEALTH TO DETERMINE COMPLIANCE WITH  
4 STANDARDS FOR ELECTRICITY AND EMERGENCY POWER SOURCES DURING  
5 ROUTINE INSPECTIONS OF LICENSED NURSING AND ASSISTED LIVING  
6 FACILITIES; AND FOR RELATED PURPOSES.

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

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

10 43-11-13. (1) The licensing agency shall adopt, amend,  
11 promulgate and enforce such rules, regulations and standards,  
12 including classifications, with respect to all institutions for  
13 the aged or infirm to be licensed under this chapter as may be  
14 designed to further the accomplishment of the purpose of this  
15 chapter in promoting adequate care of individuals in those  
16 institutions in the interest of public health, safety and welfare.  
17 Those rules, regulations and standards shall be adopted and  
18 promulgated by the licensing agency and shall be recorded and  
19 indexed in a book to be maintained by the licensing agency in its  
20 main office in the State of Mississippi, entitled "Rules,



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

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

43 (3) The State Board of Health shall promulgate rules and  
44 regulations restricting the storage, quantity and classes of drugs  
45 allowed in personal care homes and adult foster care facilities.



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

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



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



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

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

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

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

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



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

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

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

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



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

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



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

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

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





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

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



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

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

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



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

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

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

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



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

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

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

279 (7) Under regulations adopted by the State Board of Health  
280 not later than July 1, 2019, the licensing agency shall every  
281 fifteen (15) months conduct at least one (1) unannounced  
282 inspection to determine compliance by the licensed nursing home or  
283 assisted living facility with rules governing minimum standards of  
284 construction, electricity and emergency power sources. The  
285 regulations shall include reasonable and fair criteria for the  
286 equipment essential to the health and welfare of the residents,  
287 including equipment sufficient to provide adequate day-to-day  
288 electricity, a fully operational emergency power source, and a  
289 supply of fuel sufficient to sustain the emergency power source  
290 for at least five (5) days during a power outage. Nursing and  
291 assisted living facilities are required to maintain a fully  
292 operational emergency power source and a supply of fuel sufficient  
293 to sustain the emergency power source for at least five (5) days



294 during a power outage and to have generators capable of  
295 maintaining comfortable temperatures for the residents for at  
296 least ninety-six (96) hours.

297 Nursing homes and assisted living facilities licensed in  
298 Mississippi shall have sixty (60) days following the promulgation  
299 of the said regulation by the State Board of Health to comply with  
300 the minimum requirements.

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

