

By: Representative Porter

To: Public Health and Human Services

HOUSE BILL NO. 48

1 AN ACT TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO  
 2 DEFINE THE TERM "ADULT DAY CARE FACILITY" FOR PURPOSES OF  
 3 INSTITUTIONAL LICENSURE BY THE STATE DEPARTMENT OF HEALTH; TO  
 4 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE  
 5 STATE BOARD OF HEALTH TO PROMULGATE RULES, REGULATIONS AND  
 6 STANDARDS REGARDING THE OPERATION OF ADULT DAY CARE FACILITIES  
 7 WHICH INCORPORATE THE MOST CURRENT RANGES AND LEVELS OF CARE  
 8 DEVELOPED BY THE NATIONAL ADULT DAY SERVICES ASSOCIATION (NADSA);  
 9 TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO IMPLEMENT THE  
 10 RAP-BACK CRIMINAL HISTORY RECORDS SYSTEM FOR MONITORING EMPLOYEES  
 11 AT LICENSED ADULT CARE FACILITIES; TO CODIFY SECTION 43-11-9.1,  
 12 MISSISSIPPI CODE OF 1972, TO PRESCRIBE FEES FOR ADULT DAY CARE  
 13 FACILITY LICENSURE; TO AMEND SECTION 43-13-117.1, MISSISSIPPI CODE  
 14 OF 1972, TO PROVIDE REQUIREMENTS AND LEVELS OF SERVICE FOR  
 15 MEDICAID REIMBURSEMENT FOR ADULT DAY CARE SERVICES BY A MEDICAID  
 16 WAIVER PROVIDER; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** Section 43-11-1, Mississippi Code of 1972, is  
 19 amended as follows:

20 43-11-1. When used in this chapter, the following words  
 21 shall have the following meaning:

22 (a) "Institutions for the aged or infirm" means a place  
 23 either governmental or private that provides group living  
 24 arrangements for four (4) or more persons who are unrelated to the  
 25 operator and who are being provided food, shelter and personal



26 care, whether any such place is organized or operated for profit  
27 or not. The term "institution for the aged or infirm" includes  
28 nursing homes, pediatric skilled nursing facilities, psychiatric  
29 residential treatment facilities, convalescent homes, homes for  
30 the aged \* \* \*, adult foster care and adult day care facilities,  
31 provided that these institutions fall within the scope of the  
32 definitions set forth above. The term "institution for the aged  
33 or infirm" does not include hospitals, clinics or mental  
34 institutions devoted primarily to providing medical service, and  
35 does not include any private residence in which the owner of the  
36 residence is providing personal care services to disabled or  
37 homeless veterans under an agreement with, and in compliance with  
38 the standards prescribed by, the United States Department of  
39 Veterans Affairs, if the owner of the residence also provided  
40 personal care services to disabled or homeless veterans at any  
41 time during calendar year 2008.

42 (b) "Person" means any individual, firm, partnership,  
43 corporation, company, association or joint-stock association, or  
44 any licensee herein or the legal successor thereof.

45 (c) "Personal care" means assistance rendered by  
46 personnel of the home to aged or infirm residents in performing  
47 one or more of the activities of daily living, which includes, but  
48 is not limited to, the bathing, walking, excretory functions,  
49 feeding, personal grooming and dressing of such residents.



50 (d) "Psychiatric residential treatment facility" means  
51 any nonhospital establishment with permanent facilities which  
52 provides a twenty-four-hour program of care by qualified  
53 therapists, including, but not limited to, duly licensed mental  
54 health professionals, psychiatrists, psychologists,  
55 psychotherapists and licensed certified social workers, for  
56 emotionally disturbed children and adolescents referred to such  
57 facility by a court, local school district or by the Department of  
58 Human Services, who are not in an acute phase of illness requiring  
59 the services of a psychiatric hospital, and are in need of such  
60 restorative treatment services. For purposes of this paragraph,  
61 the term "emotionally disturbed" means a condition exhibiting one  
62 or more of the following characteristics over a long period of  
63 time and to a marked degree, which adversely affects educational  
64 performance:

65 \* \* \* (i) An inability to learn which cannot be  
66 explained by intellectual, sensory or health factors;

67 \* \* \* (ii) An inability to build or maintain  
68 satisfactory relationships with peers and teachers;

69 \* \* \* (iii) Inappropriate types of behavior or  
70 feelings under normal circumstances;

71 \* \* \* (iv) A general pervasive mood of unhappiness  
72 or depression; or

73 \* \* \* (v) A tendency to develop physical symptoms  
74 or fears associated with personal or school problems. An



75 establishment furnishing primarily domiciliary care is not within  
76 this definition.

77 (e) "Pediatric skilled nursing facility" means an  
78 institution or a distinct part of an institution that is primarily  
79 engaged in providing to inpatients skilled nursing care and  
80 related services for persons under twenty-one (21) years of age  
81 who require medical or nursing care or rehabilitation services for  
82 the rehabilitation of injured, disabled or sick persons.

83 (f) "Licensing agency" means the State Department of  
84 Health.

85 (g) "Medical records" mean, without restriction, those  
86 medical histories, records, reports, summaries, diagnoses and  
87 prognoses, records of treatment and medication ordered and given,  
88 notes, entries, x-rays and other written or graphic data prepared,  
89 kept, made or maintained in institutions for the aged or infirm  
90 that pertain to residency in, or services rendered to residents  
91 of, an institution for the aged or infirm.

92 (h) "Adult foster care facility" means a home setting  
93 for vulnerable adults in the community who are unable to live  
94 independently due to physical, emotional, developmental or mental  
95 impairments, or in need of emergency and continuing protective  
96 social services for purposes of preventing further abuse or  
97 neglect and for safeguarding and enhancing the welfare of the  
98 abused or neglected vulnerable adult. Adult foster care programs  
99 shall be designed to meet the needs of vulnerable adults with



100 impairments through individual plans of care, which provide a  
101 variety of health, social and related support services in a  
102 protective setting, enabling participants to live in the  
103 community. Adult foster care programs may be (i) traditional,  
104 where the foster care provider lives in the residence and is the  
105 primary caregiver to clients in the home; (ii) corporate, where  
106 the foster care home is operated by a corporation with shift staff  
107 delivering services to clients; or (iii) shelter, where the foster  
108 care home accepts clients on an emergency short-term basis for up  
109 to thirty (30) days.

110 (i) "Adult day care facility" means a public agency or  
111 private organization, or a subdivision of such an agency or  
112 organization, that:

113 (i) Provides the following items and services:

114 1. Nursing services;

115 2. Transportation of the individual to and

116 from the adult day care facility in connection with any item or

117 service listed in this subparagraph (i), in the discretion of the

118 facility;

119 3. Meals;

120 4. A program of supervised activities (that

121 meets the criteria the licensing agency determines appropriate)

122 designed to promote physical and mental health that are furnished

123 to the individual by the facility in a group setting for a period



124 of not fewer than four (4) and not greater than twelve (12) hours  
125 per day;

126 5. The administration of medication by a  
127 registered nurse, and a medication management program to minimize  
128 unnecessary or inappropriate use of prescription drugs and adverse  
129 events due to unintended prescription drug-to-drug interactions;  
130 and

131 (ii) Meets those standards established by the  
132 licensing agency to assure quality of care and other requirements  
133 that the licensing agency finds necessary in the interest of the  
134 health and safety of individuals who are furnished services in the  
135 facility.

136 **SECTION 2.** Section 43-11-13, Mississippi Code of 1972, is  
137 amended as follows:

138 43-11-13. (1) The licensing agency shall adopt, amend,  
139 promulgate and enforce such rules, regulations and standards,  
140 including classifications, with respect to all institutions for  
141 the aged or infirm to be licensed under this chapter as may be  
142 designed to further the accomplishment of the purpose of this  
143 chapter in promoting adequate care of individuals in those  
144 institutions in the interest of public health, safety and welfare.  
145 Those rules, regulations and standards shall be adopted and  
146 promulgated by the licensing agency and shall be recorded and  
147 indexed in a book to be maintained by the licensing agency in its  
148 main office in the State of Mississippi, entitled "Rules,



149 Regulations and Minimum Standards for Institutions for the Aged or  
150 Infirm" and the book shall be open and available to all  
151 institutions for the aged or infirm and the public generally at  
152 all reasonable times. Upon the adoption of those rules,  
153 regulations and standards, the licensing agency shall mail copies  
154 thereof to all those institutions in the state that have filed  
155 with the agency their names and addresses for this purpose, but  
156 the failure to mail the same or the failure of the institutions to  
157 receive the same shall in no way affect the validity thereof. The  
158 rules, regulations and standards may be amended by the licensing  
159 agency, from time to time, as necessary to promote the health,  
160 safety and welfare of persons living in those institutions.

161 (2) The licensee shall keep posted in a conspicuous place on  
162 the licensed premises all current rules, regulations and minimum  
163 standards applicable to fire protection measures as adopted by the  
164 licensing agency. The licensee shall furnish to the licensing  
165 agency at least once each six (6) months a certificate of approval  
166 and inspection by state or local fire authorities. Failure to  
167 comply with state laws and/or municipal ordinances and current  
168 rules, regulations and minimum standards as adopted by the  
169 licensing agency, relative to fire prevention measures, shall be  
170 prima facie evidence for revocation of license.

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



174 Residents requiring administration of Schedule II Narcotics as  
175 defined in the Uniform Controlled Substances Law may be admitted  
176 to a personal care home. Schedule drugs may only be allowed in a  
177 personal care home if they are administered or stored utilizing  
178 proper procedures under the direct supervision of a licensed  
179 physician or nurse.

180 (4) (a) Notwithstanding any determination by the licensing  
181 agency that skilled nursing services would be appropriate for a  
182 resident of a personal care home, that resident, the resident's  
183 guardian or the legally recognized responsible party for the  
184 resident may consent in writing for the resident to continue to  
185 reside in the personal care home, if approved in writing by a  
186 licensed physician. However, no personal care home shall allow  
187 more than two (2) residents, or ten percent (10%) of the total  
188 number of residents in the facility, whichever is greater, to  
189 remain in the personal care home under the provisions of this  
190 subsection (4). This consent shall be deemed to be appropriately  
191 informed consent as described in the regulations promulgated by  
192 the licensing agency. After that written consent has been  
193 obtained, the resident shall have the right to continue to reside  
194 in the personal care home for as long as the resident meets the  
195 other conditions for residing in the personal care home. A copy  
196 of the written consent and the physician's approval shall be  
197 forwarded by the personal care home to the licensing agency.





198 (b) The State Board of Health shall promulgate rules  
199 and regulations restricting the handling of a resident's personal  
200 deposits by the director of a personal care home. Any funds given  
201 or provided for the purpose of supplying extra comforts,  
202 conveniences or services to any resident in any personal care  
203 home, and any funds otherwise received and held from, for or on  
204 behalf of any such resident, shall be deposited by the director or  
205 other proper officer of the personal care home to the credit of  
206 that resident in an account that shall be known as the Resident's  
207 Personal Deposit Fund. No more than one (1) month's charge for  
208 the care, support, maintenance and medical attention of the  
209 resident shall be applied from the account at any one time. After  
210 the death, discharge or transfer of any resident for whose benefit  
211 any such fund has been provided, any unexpended balance remaining  
212 in his personal deposit fund shall be applied for the payment of  
213 care, cost of support, maintenance and medical attention that is  
214 accrued. If any unexpended balance remains in that resident's  
215 personal deposit fund after complete reimbursement has been made  
216 for payment of care, support, maintenance and medical attention,  
217 and the director or other proper officer of the personal care home  
218 has been or shall be unable to locate the person or persons  
219 entitled to the unexpended balance, the director or other proper  
220 officer may, after the lapse of one (1) year from the date of that  
221 death, discharge or transfer, deposit the unexpended balance to  
222 the credit of the personal care home's operating fund.



223 (c) The State Board of Health shall promulgate rules  
224 and regulations requiring personal care homes to maintain records  
225 relating to health condition, medicine dispensed and administered,  
226 and any reaction to that medicine. The director of the personal  
227 care home shall be responsible for explaining the availability of  
228 those records to the family of the resident at any time upon  
229 reasonable request.

230 (5) To operate an adult day care center in Mississippi, the  
231 facility provider must be registered with the licensing division  
232 of the State Department of Health or possess a current valid  
233 license issued under this chapter. Mississippi Medicaid waiver  
234 providers are required to have a state license and must have a  
235 Medicaid contract with the Division of Medicaid. The licensure  
236 and Medicaid payments consist of the following three (3) levels of  
237 service:

238 (a) Health promotion – Level I. Facilities serving no  
239 more than five (5) clients per day do not require a license;  
240 however, they must register with the licensing agency. The  
241 facility may not provide transportation services or nursing  
242 services but must provide activities for socialization,  
243 nutritional services and supervision of the clients attending.  
244 Facilities shall submit, annually, at the time of registration  
245 renewal, a notarized affidavit attesting to the fact that they are  
246 only providing care to five (5) or fewer clients and attesting to



247 their compliance with the provisions with this subsection. The  
248 affidavit must remain on file within the licensing agency.

249 (b) **Basic level – Level II.** Facilities are licensed to  
250 serve clients based on the size and capacity of the facility. The  
251 facilities are required to provide nursing services, nutritional  
252 services, socialization and therapeutic activities consistent with  
253 National Standards. Level II Facilities shall maintain, at a  
254 minimum, a staff-to-client ratio of one (1) staff member for every  
255 seven (7) clients. Standards governing the quality of care and  
256 services rendered must be developed with input from all  
257 stakeholders and must be consistent with National Standards. In  
258 addition to providing adult day care services, the licensed  
259 provider must offer transportation services within a reasonable  
260 distance from the facility.

261 (c) **Enhanced level – Level III.** Enhanced level  
262 facilities are licensed to serve clients based on the size and  
263 capacity of the facility. This type of facility serves clients  
264 with significant impairments and medical needs such as: tube  
265 feeding; wheelchair bound; trach tubes' Alzheimer's or other  
266 severe cognitive deficits; and other impairments or conditions  
267 associated with aged and infirmed persons. The facility must  
268 provide skilled nursing services in addition to nutritional  
269 services, socialization and therapeutic activities consistent with  
270 National Standards. Standards governing the quality of care and  
271 services rendered must be developed with input from all



272 stakeholders and must be consistent with National Standards.  
273 Enhanced level facilities shall maintain a staff-to-client ratio  
274 of not less than one (1) staff member for every five (5) clients.  
275 In addition to providing adult day care services, the licensed  
276 provider must offer transportation services within a reasonable  
277 distance from the facility.

278 ( \* \* \*6) (a) For the purposes of this subsection

279 ( \* \* \*6):

280 (i) "Licensed entity" means a hospital, nursing  
281 home, personal care home, home health agency, hospice, adult day  
282 care facility or adult foster care facility;

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

285 (iii) "Employee" means any individual employed by  
286 a covered entity, and also includes any individual who by contract  
287 provides to the patients, residents or clients being served by the  
288 covered entity direct, hands-on, medical patient care in a  
289 patient's, resident's or client's room or in treatment or recovery  
290 rooms. The term "employee" does not include health care  
291 professional/vocational technical students performing clinical  
292 training in a licensed entity under contracts between their  
293 schools and the licensed entity, and does not include students at  
294 high schools located in Mississippi who observe the treatment and  
295 care of patients in a licensed entity as part of the requirements  
296 of an allied-health course taught in the high school, if:



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

299 2. The student has signed an affidavit that  
300 is on file at the student's school stating that he or she has not  
301 been convicted of or pleaded guilty or nolo contendere to a felony  
302 listed in paragraph (d) of this subsection ( \* \* \*6), or that any  
303 such conviction or plea was reversed on appeal or a pardon was  
304 granted for the conviction or plea. Before any student may sign  
305 such an affidavit, the student's school shall provide information  
306 to the student explaining what a felony is and the nature of the  
307 felonies listed in paragraph (d) of this subsection ( \* \* \*6).

308 However, the health care professional/vocational technical  
309 academic program in which the student is enrolled may require the  
310 student to obtain criminal history record checks. In such  
311 incidences, paragraph (a)(iii)1 and 2 of this subsection ( \* \* \*6)  
312 does not preclude the licensing entity from processing submitted  
313 fingerprints of students from healthcare-related  
314 professional/vocational technical programs who, as part of their  
315 program of study, conduct observations and provide clinical care  
316 and services in a covered entity \* \* \*;

317 (iv) "Rap-Back" means the notification to the  
318 department when an individual who has undergone a  
319 fingerprint-based, state or federal criminal history information  
320 check has a subsequent state or federal criminal history event.



321 (b) Under regulations promulgated by the State Board of  
322 Health, the licensing agency shall require to be performed a  
323 criminal history record check on (i) every new employee of a  
324 covered entity who provides direct patient care or services and  
325 who is employed on or after July 1, 2003, and (ii) every employee  
326 of a covered entity employed before July 1, 2003, who has a  
327 documented disciplinary action by his or her present employer.  
328 The licensing agency may put into place methods that reduce  
329 duplicate fingerprinting, including the development of Rap-Back  
330 capabilities, as required by the Centers for Medicare and Medicaid  
331 Services. In addition, the licensing agency shall require the  
332 covered entity to perform a disciplinary check with the  
333 professional licensing agency of each employee, if any, to  
334 determine if any disciplinary action has been taken against the  
335 employee by that agency.

336 Except as otherwise provided in paragraph (c) of this  
337 subsection ( \* \* \*6), no such employee hired on or after July 1,  
338 2003, shall be permitted to provide direct patient care until the  
339 results of the criminal history record check have revealed no  
340 disqualifying record or the employee has been granted a waiver.  
341 In order to determine the employee applicant's suitability for  
342 employment, the applicant shall be fingerprinted. Fingerprints  
343 shall be submitted to the licensing agency from scanning, with the  
344 results processed through the Department of Public Safety's  
345 Criminal Information Center. The fingerprints shall then be



346 forwarded by the Department of Public Safety to the Federal Bureau  
347 of Investigation for a national criminal history record check.  
348 The licensing agency shall notify the covered entity of the  
349 results of an employee applicant's criminal history record check.  
350 If the criminal history record check discloses a felony  
351 conviction, guilty plea or plea of nolo contendere to a felony of  
352 possession or sale of drugs, murder, manslaughter, armed robbery,  
353 rape, sexual battery, sex offense listed in Section 45-33-23(h),  
354 child abuse, arson, grand larceny, burglary, gratification of lust  
355 or aggravated assault, or felonious abuse and/or battery of a  
356 vulnerable adult that has not been reversed on appeal or for which  
357 a pardon has not been granted, the employee applicant shall not be  
358 eligible to be employed by the covered entity.

359 (c) Any such new employee applicant may, however, be  
360 employed on a temporary basis pending the results of the criminal  
361 history record check, but any employment contract with the new  
362 employee shall be voidable if the new employee receives a  
363 disqualifying criminal history record check and no waiver is  
364 granted as provided in this subsection ( \* \* \*6).

365 (d) Under regulations promulgated by the State Board of  
366 Health, the licensing agency shall require every employee of a  
367 covered entity employed before July 1, 2003, to sign an affidavit  
368 stating that he or she has not been convicted of or pleaded guilty  
369 or nolo contendere to a felony of possession or sale of drugs,  
370 murder, manslaughter, armed robbery, rape, sexual battery, any sex



371 offense listed in Section 45-33-23(h), child abuse, arson, grand  
372 larceny, burglary, gratification of lust, aggravated assault, or  
373 felonious abuse and/or battery of a vulnerable adult, or that any  
374 such conviction or plea was reversed on appeal or a pardon was  
375 granted for the conviction or plea. No such employee of a covered  
376 entity hired before July 1, 2003, shall be permitted to provide  
377 direct patient care until the employee has signed the affidavit  
378 required by this paragraph (d). All such existing employees of  
379 covered entities must sign the affidavit required by this  
380 paragraph (d) within six (6) months of the final adoption of the  
381 regulations promulgated by the State Board of Health. If a person  
382 signs the affidavit required by this paragraph (d), and it is  
383 later determined that the person actually had been convicted of or  
384 pleaded guilty or nolo contendere to any of the offenses listed in  
385 this paragraph (d) and the conviction or plea has not been  
386 reversed on appeal or a pardon has not been granted for the  
387 conviction or plea, the person is guilty of perjury. If the  
388 offense that the person was convicted of or pleaded guilty or nolo  
389 contendere to was a violent offense, the person, upon a conviction  
390 of perjury under this paragraph, shall be punished as provided in  
391 Section 97-9-61. If the offense that the person was convicted of  
392 or pleaded guilty or nolo contendere to was a nonviolent offense,  
393 the person, upon a conviction of perjury under this paragraph,  
394 shall be punished by a fine of not more than Five Hundred Dollars





395 (\$500.00), or by imprisonment in the county jail for not more than  
396 six (6) months, or by both such fine and imprisonment.

397 (e) The covered entity may, in its discretion, allow  
398 any employee who is unable to sign the affidavit required by  
399 paragraph (d) of this subsection ( \* \* \*6) or any employee  
400 applicant aggrieved by an employment decision under this  
401 subsection ( \* \* \*6) to appear before the covered entity's hiring  
402 officer, or his or her designee, to show mitigating circumstances  
403 that may exist and allow the employee or employee applicant to be  
404 employed by the covered entity. The covered entity, upon report  
405 and recommendation of the hiring officer, may grant waivers for  
406 those mitigating circumstances, which shall include, but not be  
407 limited to: (i) age at which the crime was committed; (ii)  
408 circumstances surrounding the crime; (iii) length of time since  
409 the conviction and criminal history since the conviction; (iv)  
410 work history; (v) current employment and character references; and  
411 (vi) other evidence demonstrating the ability of the individual to  
412 perform the employment responsibilities competently and that the  
413 individual does not pose a threat to the health or safety of the  
414 patients of the covered entity.

415 (f) The licensing agency may charge the covered entity  
416 submitting the fingerprints a fee not to exceed Fifty Dollars  
417 (\$50.00), which covered entity may, in its discretion, charge the  
418 same fee, or a portion thereof, to the employee applicant. Any  
419 increase in the fee charged by the licensing agency under this



420 paragraph shall be in accordance with the provisions of Section  
421 41-3-65. Any costs incurred by a covered entity implementing this  
422 subsection ( \* \* \*6) shall be reimbursed as an allowable cost  
423 under Section 43-13-116.

424 (g) If the results of an employee applicant's criminal  
425 history record check reveals no disqualifying event, then the  
426 covered entity shall, within two (2) weeks of the notification of  
427 no disqualifying event, provide the employee applicant with a  
428 notarized letter signed by the chief executive officer of the  
429 covered entity, or his or her authorized designee, confirming the  
430 employee applicant's suitability for employment based on his or  
431 her criminal history record check. An employee applicant may use  
432 that letter for a period of two (2) years from the date of the  
433 letter to seek employment with any covered entity without the  
434 necessity of an additional criminal history record check. Any  
435 covered entity presented with the letter may rely on the letter  
436 with respect to an employee applicant's criminal background and is  
437 not required for a period of two (2) years from the date of the  
438 letter to conduct or have conducted a criminal history record  
439 check as required in this subsection ( \* \* \*6).

440 (h) The licensing agency, the covered entity, and their  
441 agents, officers, employees, attorneys and representatives, shall  
442 be presumed to be acting in good faith for any employment decision  
443 or action taken under this subsection ( \* \* \*6). The presumption  
444 of good faith may be overcome by a preponderance of the evidence



445 in any civil action. No licensing agency, covered entity, nor  
446 their agents, officers, employees, attorneys and representatives  
447 shall be held liable in any employment decision or action based in  
448 whole or in part on compliance with or attempts to comply with the  
449 requirements of this subsection ( \* \* \*6).

450 (i) The licensing agency shall promulgate regulations  
451 to implement this subsection ( \* \* \*6).

452 (j) The provisions of this subsection ( \* \* \*6) shall  
453 not apply to:

454 (i) Applicants and employees of the University of  
455 Mississippi Medical Center for whom criminal history record checks  
456 and fingerprinting are obtained in accordance with Section  
457 37-115-41; or

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

461 (k) The Mississippi Justice Information Center may  
462 implement the Rap-Back criminal history records system and the  
463 State Department of Health may implement and use the state/federal  
464 Rap-Back criminal history system as a method of ongoing monitoring  
465 of individuals providing care to Mississippi's vulnerable  
466 population in "covered" entities (nursing homes, hospitals,  
467 hospices, home health agencies, adult day care centers, and  
468 personal care homes). The department may apply for and provide  
469 matching funds in order for Mississippi to receive federal grants



470 to make necessary upgrades to the department's data system to  
471 accommodate Rap-Back capabilities.

472 ( \* \* \*7) The State Board of Health shall promulgate rules,  
473 regulations and standards regarding the operation of adult foster  
474 care facilities and adult day care facilities which incorporate,  
475 but are not limited to, the most current ranges and levels of care  
476 developed by the National Adult Day Services Association (NADSA).

477 **SECTION 3.** The following shall be codified as Section  
478 43-11-9.1, Mississippi Code of 1972:

479 43-11-9.1. (1) An application for a license for an adult  
480 day care facility must be made to the licensing agency upon forms  
481 provided by it and must contain the information that the licensing  
482 agency reasonably requires, which may include affirmative evidence  
483 of ability to comply with those reasonable standards, rules and  
484 regulations lawfully prescribed under this chapter. Each  
485 application for a license for an adult day care facility must be  
486 accompanied by a license fee of Four Hundred Dollars (\$400.00)  
487 plus Twenty Dollars (\$20.00) for each person of licensed capacity,  
488 with a maximum fee per institution of Five Hundred Dollars  
489 (\$500.00), which fee must be paid to the licensing agency.

490 (2) A license, unless suspended or revoked, is renewable  
491 annually upon payment by the licensee of an adult day care  
492 facility, except for personal care homes, of a renewal fee of Four  
493 Hundred Dollars (\$400.00) plus Twenty Dollars (\$20.00) for each  
494 person of licensed capacity in the institution, with a maximum fee



495 per institution of Five Hundred Dollars (\$500.00), which fee must  
496 paid to the licensing agency, and upon filing by the licensee and  
497 approval by the licensing agency of an annual report upon the  
498 uniform dates and containing the information in the form the  
499 licensing agency has prescribed by regulation. Each license may  
500 be issued only for the premises and person or persons or other  
501 legal entity or entities named in the application and is not  
502 transferable or assignable except with the written approval of the  
503 licensing agency. Licenses must be posted in a conspicuous place  
504 on the licensed premises.

505 (3) A fee known as a "user fee" is applicable and must be  
506 paid to the licensing agency. This user fee is assessed for the  
507 purpose of the required reviewing and inspections of the proposal  
508 of any institution in which there are additions, renovations,  
509 modernizations, expansion, alterations, conversions, modifications  
510 or replacement of the entire facility involved in the proposal.  
511 This fee includes the reviewing of architectural plans in all  
512 steps required. The amount of the minimum user fee is Two Hundred  
513 Dollars (\$200.00).

514 **SECTION 4.** Section 43-13-117.1, Mississippi Code of 1972, is  
515 amended as follows:

516 43-13-117.1. (1) It is the intent of the Legislature to  
517 expand access to Medicaid-funded home- and community-based  
518 services for eligible nursing facility residents who choose those  
519 services. The Executive Director of the Division of Medicaid is



520 authorized to transfer funds allocated for nursing facility  
521 services for eligible residents to cover the cost of services  
522 available through the Independent Living Waiver, the Traumatic  
523 Brain Injury/Spinal Cord Injury Waiver, the Elderly and Disabled  
524 Waiver, and the Assisted Living Waiver programs when eligible  
525 residents choose those community services. The amount of funding  
526 transferred by the division shall be sufficient to cover the cost  
527 of home- and community-based waiver services for each eligible  
528 nursing facility \* \* \* resident who \* \* \* chooses those services.  
529 The number of nursing facility residents who return to the  
530 community and home- and community-based waiver services shall not  
531 count against the total number of waiver slots for which the  
532 Legislature appropriates funding each year. Any funds remaining  
533 in the program when a former nursing facility resident ceases to  
534 participate in a home- and community-based waiver program under  
535 this provision shall be returned to nursing facility funding.

536 (2) To operate an adult day care facility in Mississippi,  
537 the facility provider must possess a current valid license issued  
538 under Section 43-11-13. Mississippi Medicaid waiver providers  
539 must have the applicable state licenses and a Medicaid contract  
540 with the Division of Medicaid. The licensure and Medicaid  
541 payments consist of the following three (3) levels of service and  
542 reimbursement:

543 (a) **Health promotion – Level I.** Facilities serving no  
544 more than five (5) clients per day do not require a license. The



545 facilities may not provide transportation services or nursing  
546 services but must provide nutritional and supervision of the  
547 clients attending. The rate payable by Medicaid is Fifty Dollars  
548 (\$50.00) per day for each client in attendance for each given day.

549 (b) **Basic level – Level II.** Facilities are licensed to  
550 serve clients based on the size and capacity of the facility. The  
551 facilities are required to provide nursing services in addition to  
552 nutritional services, socialization and therapeutic activities  
553 consistent with National Standards, including a staff-to-client  
554 ratio of one (1) staff member for every seven (7) clients.  
555 Standards must be developed with input from all stakeholders. The  
556 rate payable by Medicaid is Seventy-five Dollars (\$75.00) per day  
557 for each client in attendance for each day.

558 (c) **Enhanced level – Level III.** Facilities are  
559 licensed to serve clients based on the size and capacity of the  
560 facility. This type of facility serves clients with significant  
561 impairments and medical needs such as: tube feeding; wheelchair  
562 bound; trach tubes; Alzheimer's or other severe cognitive  
563 deficits; and other impairments or conditions associated with aged  
564 and infirmed persons. The facility must provide skilled nursing  
565 services in addition to nutritional services, socialization and  
566 therapeutic activities consistent with National Standards.  
567 Standards must be developed with input from all stakeholders,  
568 including a staff-to-client ratio of one (1) staff member for  
569 every five (5) clients. The rate payable by Medicaid is One



570 Hundred Twenty-five Dollars (\$125.00) per day for each client in  
571 attendance for each day.

572 In addition to providing adult day care services, the  
573 licensed provider of Level II and Level III services must offer  
574 transportation services within a reasonable distance from the  
575 facility. The provider must be reimbursed for those clients who  
576 use transportation at the rate of Twelve Dollars and Fifty Cents  
577 (\$12.50) for a one-way trip and Twenty-five Dollars (\$25.00) for a  
578 round trip. The transportation services must be provided in a  
579 vehicle designed and equipped to handle the clients attending the  
580 facility. The reimbursement for transportation is in addition to  
581 the adult day care service reimbursement and a separate  
582 reimbursement.

583 **SECTION 5.** This act shall take effect and be in force from  
584 and after July 1, 2022.

