

By: Representative Ford (73rd)

To: Public Health and Human  
Services

HOUSE BILL NO. 1540

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



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

(4) (a) Notwithstanding any determination by the licensing agency that skilled nursing services would be appropriate for a resident of a personal care home, that resident, the resident's guardian or the legally recognized responsible party for the resident may consent in writing for the resident to continue to reside in the personal care home, if approved in writing by a licensed physician. However, no personal care home shall allow more than two (2) residents, or ten percent (10%) of the total number of residents in the facility, whichever is greater, to remain in the personal care home under the provisions of this subsection (4). This consent shall be deemed to be appropriately informed consent as described in the regulations promulgated by the licensing agency. After that written consent has been obtained, the resident shall have the right to continue to reside in the personal care home for as long as the resident meets the other conditions for residing in the personal care home. A copy of the written consent and the physician's approval shall be 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) The State Board of Health and the Mississippi Department  
103 of Corrections shall jointly issue rules and regulations for the  
104 operation of the special care facilities for paroled inmates.

105           (6) (a) For the purposes of this subsection (6):

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

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

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



high schools located in Mississippi who observe the treatment and care of patients in a licensed entity as part of the requirements of an allied-health course taught in the high school, if:

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

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

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

(b) Under regulations promulgated by the State Board of Health, the licensing agency shall require to be performed a



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

154 Except as otherwise provided in paragraph (c) of this  
155 subsection (6), no such employee hired on or after July 1, 2003,  
156 shall be permitted to provide direct patient care until the  
157 results of the criminal history record check have revealed no  
158 disqualifying record or the employee has been granted a waiver.  
159 In order to determine the employee applicant's suitability for  
160 employment, the applicant shall be fingerprinted. Fingerprints  
161 shall be submitted to the licensing agency from scanning, with the  
162 results processed through the Department of Public Safety's  
163 Criminal Information Center. The fingerprints shall then be  
164 forwarded by the Department of Public Safety to the Federal Bureau  
165 of Investigation for a national criminal history record check.  
166 The licensing agency shall notify the covered entity of the  
167 results of an employee applicant's criminal history record check.  
168 If the criminal history record check discloses a felony  
169 conviction, guilty plea or plea of nolo contendere to a felony of



possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault, or felonious abuse and/or battery of a vulnerable adult that has not been reversed on appeal or for which a pardon has not been granted, the employee applicant shall not be eligible to be employed by the covered entity.

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

(d) Under regulations promulgated by the State Board of Health, the licensing agency shall require every employee of a covered entity employed before July 1, 2003, to sign an affidavit stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, any sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust, aggravated assault, or felonious abuse and/or battery of a vulnerable adult, or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. No such employee of a covered entity hired before July 1, 2003, shall be permitted to provide





195 direct patient care until the employee has signed the affidavit  
196 required by this paragraph (d). All such existing employees of  
197 covered entities must sign the affidavit required by this  
198 paragraph (d) within six (6) months of the final adoption of the  
199 regulations promulgated by the State Board of Health. If a person  
200 signs the affidavit required by this paragraph (d), and it is  
201 later determined that the person actually had been convicted of or  
202 pleaded guilty or nolo contendere to any of the offenses listed in  
203 this paragraph (d) and the conviction or plea has not been  
204 reversed on appeal or a pardon has not been granted for the  
205 conviction or plea, the person is guilty of perjury. If the  
206 offense that the person was convicted of or pleaded guilty or nolo  
207 contendere to was a violent offense, the person, upon a conviction  
208 of perjury under this paragraph, shall be punished as provided in  
209 Section 97-9-61. If the offense that the person was convicted of  
210 or pleaded guilty or nolo contendere to was a nonviolent offense,  
211 the person, upon a conviction of perjury under this paragraph,  
212 shall be punished by a fine of not more than Five Hundred Dollars  
213 (\$500.00), or by imprisonment in the county jail for not more than  
214 six (6) months, or by both such fine and imprisonment.

215 (e) The covered entity may, in its discretion, allow  
216 any employee who is unable to sign the affidavit required by  
217 paragraph (d) of this subsection (6) or any employee applicant  
218 aggrieved by an employment decision under this subsection (6) to  
219 appear before the covered entity's hiring officer, or his or her



designee, to show mitigating circumstances that may exist and allow the employee or employee applicant to be employed by the covered entity. The covered entity, upon report and recommendation of the hiring officer, may grant waivers for those mitigating circumstances, which shall include, but not be limited to: (i) age at which the crime was committed; (ii) circumstances surrounding the crime; (iii) length of time since the conviction and criminal history since the conviction; (iv) work history; (v) current employment and character references; and (vi) other evidence demonstrating the ability of the individual to perform the employment responsibilities competently and that the individual does not pose a threat to the health or safety of the patients of the covered entity.

(f) The licensing agency may charge the covered entity submitting the fingerprints a fee not to exceed Fifty Dollars (\$50.00), which covered entity may, in its discretion, charge the same fee, or a portion thereof, to the employee applicant. Any increase in the fee charged by the licensing agency under this paragraph shall be in accordance with the provisions of Section 41-3-65. Any costs incurred by a covered entity implementing this subsection (6) shall be reimbursed as an allowable cost under Section 43-13-116.

(g) If the results of an employee applicant's criminal history record check reveals no disqualifying event, then the covered entity shall, within two (2) weeks of the notification of



no disqualifying event, provide the employee applicant with a notarized letter signed by the chief executive officer of the covered entity, or his or her authorized designee, confirming the employee applicant's suitability for employment based on his or her criminal history record check. An employee applicant may use that letter for a period of two (2) years from the date of the letter to seek employment with any covered entity without the necessity of an additional criminal history record check. Any covered entity presented with the letter may rely on the letter with respect to an employee applicant's criminal background and is not required for a period of two (2) years from the date of the letter to conduct or have conducted a criminal history record check as required in this subsection (6).

(h) The licensing agency, the covered entity, and their agents, officers, employees, attorneys and representatives, shall be presumed to be acting in good faith for any employment decision or action taken under this subsection (6). The presumption of good faith may be overcome by a preponderance of the evidence in any civil action. No licensing agency, covered entity, nor their agents, officers, employees, attorneys and representatives shall be held liable in any employment decision or action based in whole or in part on compliance with or attempts to comply with the requirements of this subsection (6).

(i) The licensing agency shall promulgate regulations to implement this subsection (6).



(j) The provisions of this subsection (6) shall not apply to:

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

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

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

(8) (a) Under rules adopted by the State Board of Health not later than July 1, 2025, the licensing agency shall, every fifteen (15) months, conduct at least one (1) unannounced inspection in each licensed nursing facility and assisted living facility to determine compliance by the nursing facility or assisted living facility with rules governing minimum standards of construction, electricity and emergency power sources.

(b) The regulations shall include reasonable and fair criteria for the equipment essential to the health and welfare of the residents, including equipment sufficient to provide adequate day-to-day electricity, a fully operational emergency power source, and a supply of fuel sufficient to sustain the emergency power source for at least five (5) days during a power outage.



295           (c) Nursing facilities and assisted living facilities  
296 shall maintain a fully operational emergency power source and a  
297 supply of fuel sufficient to sustain the emergency power source  
298 for at least five (5) days during a power outage and to have  
299 generators capable of maintaining comfortable temperatures for the  
300 residents for at least ninety-six (96) hours.

301           (d) Nursing facilities and assisted living facilities  
302 licensed in Mississippi shall have sixty (60) days following the  
303 adoption of such rules by the State Board of Health to comply with  
304 the minimum requirements.

305           **SECTION 2.** This act shall take effect and be in force from  
306 and after its passage.

