

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.



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.





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



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

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

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

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

143 (b) Under regulations promulgated by the State Board of
144 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



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

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

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



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

233 (f) The licensing agency may charge the covered entity
234 submitting the fingerprints a fee not to exceed Fifty Dollars
235 (\$50.00), which covered entity may, in its discretion, charge the
236 same fee, or a portion thereof, to the employee applicant. Any
237 increase in the fee charged by the licensing agency under this
238 paragraph shall be in accordance with the provisions of Section
239 41-3-65. Any costs incurred by a covered entity implementing this
240 subsection (6) shall be reimbursed as an allowable cost under
241 Section 43-13-116.

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



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

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

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

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

272 (i) Applicants and employees of the University of
273 Mississippi Medical Center for whom criminal history record checks
274 and fingerprinting are obtained in accordance with Section
275 37-115-41; or

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

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

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

289 (b) The regulations shall include reasonable and fair
290 criteria for the equipment essential to the health and welfare of
291 the residents, including equipment sufficient to provide adequate
292 day-to-day electricity, a fully operational emergency power
293 source, and a supply of fuel sufficient to sustain the emergency
294 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.

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

