

By: Senator(s) Jackson, Simmons (13th),
Hickman, Thomas, Frazier

To: Public Health and
Welfare

SENATE BILL NO. 2709

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO ADOPT RULES GOVERNING
3 MINIMUM STANDARDS OF CONSTRUCTION, ELECTRICITY AND EMERGENCY POWER
4 SOURCES APPLICABLE TO LICENSED NURSING HOMES AND ASSISTED LIVING
5 FACILITIES; TO PROVIDE THAT NURSING HOMES AND ASSISTED LIVING
6 FACILITIES SHALL BE REQUIRED TO MAINTAIN A FULLY OPERATIONAL
7 EMERGENCY POWER SOURCE AND A SUPPLY OF FUEL SUFFICIENT TO SUSTAIN
8 THE EMERGENCY POWER SOURCE FOR AT LEAST FIVE DAYS; TO CLARIFY THAT
9 SUCH EMERGENCY POWER SOURCE SHALL BE SUFFICIENT TO PROVIDE POWER
10 FOR PATIENTS RELIANT ON SUPPLEMENTAL OXYGEN OR FOR OTHER MEDICAL
11 DEVICES REQUIRING ELECTRICAL POWER AND TO MAINTAIN COMFORTABLE AIR
12 TEMPERATURES FOR RESIDENTS; TO REQUIRE THE DEPARTMENT TO CONDUCT
13 ROUTINE, UNANNOUNCED INSPECTIONS TO DETERMINE COMPLIANCE WITH SUCH
14 STANDARDS FOR ELECTRICITY AND EMERGENCY POWER SOURCES; TO PROVIDE
15 THAT NURSING HOMES AND ASSISTED LIVING FACILITIES LICENSED IN
16 MISSISSIPPI SHALL HAVE 60 DAYS TO COMPLY WITH THE MINIMUM
17 REQUIREMENTS FOLLOWING PROMULGATION OF SUCH REGULATIONS BY THE
18 STATE BOARD OF HEALTH; AND FOR RELATED PURPOSES.

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

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

22 43-11-13. (1) The licensing agency shall adopt, amend,
23 promulgate and enforce such rules, regulations and standards,
24 including classifications, with respect to all institutions for
25 the aged or infirm to be licensed under this chapter as may be
26 designed to further the accomplishment of the purpose of this



chapter in promoting adequate care of individuals in those institutions in the interest of public health, safety and welfare. Those rules, regulations and standards shall be adopted and promulgated by the licensing agency and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm" and the book shall be open and available to all institutions for the aged or infirm and the public generally at all reasonable times. Upon the adoption of those rules, regulations and standards, the licensing agency shall mail copies thereof to all those institutions in the state that have filed with the agency their names and addresses for this purpose, but the failure to mail the same or the failure of the institutions to receive the same shall in no way affect the validity thereof. The rules, regulations and standards may be amended by the licensing agency, from time to time, as necessary to promote the health, safety and welfare of persons living in those institutions.

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



52 rules, regulations and minimum standards as adopted by the
53 licensing agency, relative to fire prevention measures, shall be
54 prima facie evidence for revocation of license.

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

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



77 obtained, the resident shall have the right to continue to reside
78 in the personal care home for as long as the resident meets the
79 other conditions for residing in the personal care home. A copy
80 of the written consent and the physician's approval shall be
81 forwarded by the personal care home to the licensing agency.

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



has been or shall be unable to locate the person or persons entitled to the unexpended balance, the director or other proper officer may, after the lapse of one (1) year from the date of that death, discharge or transfer, deposit the unexpended balance to the credit of the personal care home's operating fund.

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

(5) The State Board of Health and the Mississippi Department of Corrections shall jointly issue rules and regulations for the operation of the special care facilities for paroled inmates.

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

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

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

(iii) "Employee" means any individual employed by a covered entity, and also includes any individual who by contract provides to the patients, residents or clients being served by the covered entity direct, hands-on, medical patient care in a



patient's, resident's or client's room or in treatment or recovery rooms. The term "employee" does not include health care professional/vocational technical students performing clinical training in a licensed entity under contracts between their 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 criminal history record check on (i) every new employee of a covered entity who provides direct patient care or services and who is employed on or after July 1, 2003, and (ii) every employee of a covered entity employed before July 1, 2003, who has a documented disciplinary action by his or her present employer. In addition, the licensing agency shall require the covered entity to perform a disciplinary check with the professional licensing agency of each employee, if any, to determine if any disciplinary action has been taken against the employee by that agency.

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



of Investigation for a national criminal history record check.
The licensing agency shall notify the covered entity of the
results of an employee applicant's criminal history record check.
If the criminal history record check discloses a felony
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 direct patient care until the employee has signed the affidavit required by this paragraph (d). All such existing employees of covered entities must sign the affidavit required by this paragraph (d) within six (6) months of the final adoption of the regulations promulgated by the State Board of Health. If a person signs the affidavit required by this paragraph (d), and it is later determined that the person actually had been convicted of or pleaded guilty or nolo contendere to any of the offenses listed in this paragraph (d) and the conviction or plea has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person is guilty of perjury. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a violent offense, the person, upon a conviction of perjury under this paragraph, shall be punished as provided in Section 97-9-61. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a nonviolent offense, the person, upon a conviction of perjury under this paragraph, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.



227 (e) The covered entity may, in its discretion, allow
228 any employee who is unable to sign the affidavit required by
229 paragraph (d) of this subsection (6) or any employee applicant
230 aggrieved by an employment decision under this subsection (6) to
231 appear before the covered entity's hiring officer, or his or her
232 designee, to show mitigating circumstances that may exist and
233 allow the employee or employee applicant to be employed by the
234 covered entity. The covered entity, upon report and
235 recommendation of the hiring officer, may grant waivers for those
236 mitigating circumstances, which shall include, but not be limited
237 to: (i) age at which the crime was committed; (ii) circumstances
238 surrounding the crime; (iii) length of time since the conviction
239 and criminal history since the conviction; (iv) work history; (v)
240 current employment and character references; and (vi) other
241 evidence demonstrating the ability of the individual to perform
242 the employment responsibilities competently and that the
243 individual does not pose a threat to the health or safety of the
244 patients of the covered entity.

245 (f) The licensing agency may charge the covered entity
246 submitting the fingerprints a fee not to exceed Fifty Dollars
247 (\$50.00), which covered entity may, in its discretion, charge the
248 same fee, or a portion thereof, to the employee applicant. Any
249 increase in the fee charged by the licensing agency under this
250 paragraph shall be in accordance with the provisions of Section
251 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 regulations adopted by the State Board of Health not later than July 1, 2025, the State Department of Health shall, every fifteen (15) months, conduct at least one (1) unannounced inspection to determine compliance by a licensed nursing home or assisted living facility with rules governing minimum standards of construction, electricity and emergency power sources, including those set forth in this subsection.



301 (b) The regulations shall include reasonable and fair
302 criteria for equipment essential to the health and welfare of the
303 residents, including equipment sufficient to provide adequate
304 day-to-day electricity and emergency power in the event of a power
305 outage.

306 (c) Nursing homes and assisted living facilities shall
307 be required to maintain a fully operational emergency power source
308 and a supply of fuel sufficient to sustain the emergency power
309 source for at least five (5) days during a power outage. Such
310 emergency power source shall be sufficient to:

311 (i) Provide power for patients reliant on
312 supplemental oxygen or other medical devices requiring electrical
313 power; and

314 (ii) Maintain comfortable air temperatures for the
315 residents.

316 (d) Nursing homes and assisted living facilities
317 licensed in Mississippi shall have sixty (60) days following the
318 promulgation of such regulations by the State Board of Health to
319 comply with the minimum requirements.

320 **SECTION 2.** This act shall take effect and be in force from
321 and after July 1, 2025.

