

By: Senator(s) Rhodes

To: Public Health and  
Welfare

## SENATE BILL NO. 2711

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

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

45 (2) The licensee shall keep posted in a conspicuous place on  
46 the licensed premises all current rules, regulations and minimum  
47 standards applicable to fire protection measures as adopted by the  
48 licensing agency. The licensee shall furnish to the licensing  
49 agency at least once each six (6) months a certificate of approval  
50 and inspection by state or local fire authorities. Failure to  
51 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



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

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

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

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

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

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

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



127 patient's, resident's or client's room or in treatment or recovery  
128 rooms. The term "employee" does not include health care  
129 professional/vocational technical students performing clinical  
130 training in a licensed entity under contracts between their  
131 schools and the licensed entity, and does not include students at  
132 high schools located in Mississippi who observe the treatment and  
133 care of patients in a licensed entity as part of the requirements  
134 of an allied-health course taught in the high school, if:

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

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

146                           However, the health care professional/vocational technical  
147 academic program in which the student is enrolled may require the  
148 student to obtain criminal history record checks. In such  
149 incidences, paragraph (a)(iii)1 and 2 of this subsection (6) does  
150 not preclude the licensing entity from processing submitted  
151 fingerprints of students from healthcare-related



152 professional/vocational technical programs who, as part of their  
153 program of study, conduct observations and provide clinical care  
154 and services in a covered entity.

155 (b) Under regulations promulgated by the State Board of  
156 Health, the licensing agency shall require to be performed a  
157 criminal history record check on (i) every new employee of a  
158 covered entity who provides direct patient care or services and  
159 who is employed on or after July 1, 2003, and (ii) every employee  
160 of a covered entity employed before July 1, 2003, who has a  
161 documented disciplinary action by his or her present employer. In  
162 addition, the licensing agency shall require the covered entity to  
163 perform a disciplinary check with the professional licensing  
164 agency of each employee, if any, to determine if any disciplinary  
165 action has been taken against the employee by that agency.

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



177 of Investigation for a national criminal history record check.  
178 The licensing agency shall notify the covered entity of the  
179 results of an employee applicant's criminal history record check.  
180 If the criminal history record check discloses a felony  
181 conviction, guilty plea or plea of nolo contendere to a felony of  
182 possession or sale of drugs, murder, manslaughter, armed robbery,  
183 rape, sexual battery, sex offense listed in Section 45-33-23(h),  
184 child abuse, arson, grand larceny, burglary, gratification of lust  
185 or aggravated assault, or felonious abuse and/or battery of a  
186 vulnerable adult that has not been reversed on appeal or for which  
187 a pardon has not been granted, the employee applicant shall not be  
188 eligible to be employed by the covered entity.

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

195 (d) Under regulations promulgated by the State Board of  
196 Health, the licensing agency shall require every employee of a  
197 covered entity employed before July 1, 2003, to sign an affidavit  
198 stating that he or she has not been convicted of or pleaded guilty  
199 or nolo contendere to a felony of possession or sale of drugs,  
200 murder, manslaughter, armed robbery, rape, sexual battery, any sex  
201 offense listed in Section 45-33-23(h), child abuse, arson, grand



202 larceny, burglary, gratification of lust, aggravated assault, or  
203 felonious abuse and/or battery of a vulnerable adult, or that any  
204 such conviction or plea was reversed on appeal or a pardon was  
205 granted for the conviction or plea. No such employee of a covered  
206 entity hired before July 1, 2003, shall be permitted to provide  
207 direct patient care until the employee has signed the affidavit  
208 required by this paragraph (d). All such existing employees of  
209 covered entities must sign the affidavit required by this  
210 paragraph (d) within six (6) months of the final adoption of the  
211 regulations promulgated by the State Board of Health. If a person  
212 signs the affidavit required by this paragraph (d), and it is  
213 later determined that the person actually had been convicted of or  
214 pleaded guilty or nolo contendere to any of the offenses listed in  
215 this paragraph (d) and the conviction or plea has not been  
216 reversed on appeal or a pardon has not been granted for the  
217 conviction or plea, the person is guilty of perjury. If the  
218 offense that the person was convicted of or pleaded guilty or nolo  
219 contendere to was a violent offense, the person, upon a conviction  
220 of perjury under this paragraph, shall be punished as provided in  
221 Section 97-9-61. If the offense that the person was convicted of  
222 or pleaded guilty or nolo contendere to was a nonviolent offense,  
223 the person, upon a conviction of perjury under this paragraph,  
224 shall be punished by a fine of not more than Five Hundred Dollars  
225 (\$500.00), or by imprisonment in the county jail for not more than  
226 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



252 subsection (6) shall be reimbursed as an allowable cost under  
253 Section 43-13-116.

254 (g) If the results of an employee applicant's criminal  
255 history record check reveals no disqualifying event, then the  
256 covered entity shall, within two (2) weeks of the notification of  
257 no disqualifying event, provide the employee applicant with a  
258 notarized letter signed by the chief executive officer of the  
259 covered entity, or his or her authorized designee, confirming the  
260 employee applicant's suitability for employment based on his or  
261 her criminal history record check. An employee applicant may use  
262 that letter for a period of two (2) years from the date of the  
263 letter to seek employment with any covered entity without the  
264 necessity of an additional criminal history record check. Any  
265 covered entity presented with the letter may rely on the letter  
266 with respect to an employee applicant's criminal background and is  
267 not required for a period of two (2) years from the date of the  
268 letter to conduct or have conducted a criminal history record  
269 check as required in this subsection (6).

270 (h) The licensing agency, the covered entity, and their  
271 agents, officers, employees, attorneys and representatives, shall  
272 be presumed to be acting in good faith for any employment decision  
273 or action taken under this subsection (6). The presumption of  
274 good faith may be overcome by a preponderance of the evidence in  
275 any civil action. No licensing agency, covered entity, nor their  
276 agents, officers, employees, attorneys and representatives shall



277 be held liable in any employment decision or action based in whole  
278 or in part on compliance with or attempts to comply with the  
279 requirements of this subsection (6).

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

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

284 (i) Applicants and employees of the University of  
285 Mississippi Medical Center for whom criminal history record checks  
286 and fingerprinting are obtained in accordance with Section  
287 37-115-41; or

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

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

294 (8) (a) Under regulations adopted by the State Board of  
295 Health not later than July 1, 2025, the State Department of Health  
296 shall, every fifteen (15) months, conduct at least one (1)  
297 unannounced inspection to determine compliance by a licensed  
298 nursing home or assisted living facility with rules governing  
299 minimum standards of construction, electricity and emergency power  
300 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.

