

By: Representatives Clarke, Thomas

To: Public Health and Welfare

HOUSE BILL NO. 1426

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE STAFFING REQUIREMENT FOR NURSING HOMES BY
3 REQUIRING NOT LESS THAN 3.0 HOURS OF DIRECT NURSING CARE PER
4 PATIENT DURING EACH TWENTY-FOUR HOUR PERIOD FOR NURSING HOME
5 PATIENTS; AND FOR RELATED PURPOSES.

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

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

9 43-11-13. (1) The licensing agency shall adopt, amend,
10 promulgate and enforce such rules, regulations and standards,
11 including classifications, with respect to all institutions for
12 the aged or infirm to be licensed under this chapter as may be
13 designed to further the accomplishment of the purpose of this
14 chapter in promoting adequate care of individuals in those
15 institutions in the interest of public health, safety and welfare.
16 Those rules, regulations and standards shall be adopted and
17 promulgated by the licensing agency and shall be recorded and
18 indexed in a book to be maintained by the licensing agency in its
19 main office in the State of Mississippi, entitled "Rules,
20 Regulations and Minimum Standards for Institutions for the Aged or
21 Infirm" and the book shall be open and available to all
22 institutions for the aged or infirm and the public generally at
23 all reasonable times. Upon the adoption of those rules,
24 regulations and standards, the licensing agency shall mail copies
25 thereof to all those institutions in the state that have filed
26 with the agency their names and addresses for this purpose, but
27 the failure to mail the same or the failure of the institutions to
28 receive the same shall in no way affect the validity thereof. The



29 rules, regulations and standards may be amended by the licensing
30 agency, from time to time, as necessary to promote the health,
31 safety and welfare of persons living in those institutions.

32 (2) The licensee shall keep posted in a conspicuous place on
33 the licensed premises all current rules, regulations and minimum
34 standards applicable to fire protection measures as adopted by the
35 licensing agency. The licensee shall furnish to the licensing
36 agency at least once each six (6) months a certificate of approval
37 and inspection by state or local fire authorities. Failure to
38 comply with state laws and/or municipal ordinances and current
39 rules, regulations and minimum standards as adopted by the
40 licensing agency, relative to fire prevention measures, shall be
41 prima facie evidence for revocation of license.

42 (3) The State Board of Health shall promulgate rules and
43 regulations restricting the storage, quantity and classes of drugs
44 allowed in personal care homes. Residents requiring
45 administration of Schedule II Narcotics as defined in the Uniform
46 Controlled Substances Law may be admitted to a personal care home.
47 Schedule drugs may only be allowed in a personal care home if they
48 are administered or stored utilizing proper procedures under the
49 direct supervision of a licensed physician or nurse.

50 (4) (a) Notwithstanding any determination by the licensing
51 agency that skilled nursing services would be appropriate for a
52 resident of a personal care home, that resident, the resident's
53 guardian or the legally recognized responsible party for the
54 resident may consent in writing for the resident to continue to
55 reside in the personal care home, if approved in writing by a
56 licensed physician. * * * However, * * * no personal care home
57 shall allow more than two (2) residents, or ten percent (10%) of
58 the total number of residents in the facility, whichever is
59 greater, to remain in the personal care home under the provisions
60 of this subsection (4). This consent shall be deemed to be
61 appropriately informed consent as described in the regulations



62 promulgated by the licensing agency. After that written consent
63 has been obtained, the resident shall have the right to continue
64 to reside in the personal care home for as long as the resident
65 meets the other conditions for residing in the personal care home.
66 A copy of the written consent and the physician's approval shall
67 be forwarded by the personal care home to the licensing agency.

68 (b) The State Board of Health shall promulgate rules
69 and regulations restricting the handling of a resident's personal
70 deposits by the director of a personal care home. Any funds given
71 or provided for the purpose of supplying extra comforts,
72 conveniences or services to any resident in any personal care
73 home, and any funds otherwise received and held from, for or on
74 behalf of any such resident, shall be deposited by the director or
75 other proper officer of the personal care home to the credit of
76 that resident in an account that shall be known as the Resident's
77 Personal Deposit Fund. No more than one (1) month's charge for
78 the care, support, maintenance and medical attention of the
79 resident shall be applied from the account at any one time. After
80 the death, discharge or transfer of any resident for whose benefit
81 any such fund has been provided, any unexpended balance remaining
82 in his personal deposit fund shall be applied for the payment of
83 care, cost of support, maintenance and medical attention that is
84 accrued. If any unexpended balance remains in that resident's
85 personal deposit fund after complete reimbursement has been made
86 for payment of care, support, maintenance and medical attention,
87 and the director or other proper officer of the personal care home
88 has been or shall be unable to locate the person or persons
89 entitled to the unexpended balance, the director or other proper
90 officer may, after the lapse of one (1) year from the date of that
91 death, discharge or transfer, deposit the unexpended balance to
92 the credit of the personal care home's operating fund.

93 (c) The State Board of Health shall promulgate rules
94 and regulations requiring personal care homes to maintain records



95 relating to health condition, medicine dispensed and administered,
96 and any reaction to that medicine. The director of the personal
97 care home shall be responsible for explaining the availability of
98 those records to the family of the resident at any time upon
99 reasonable request.

100 (d) The State Board of Health shall evaluate the
101 effects of this section as it promotes adequate care of
102 individuals in personal care homes in the interest of public
103 health, safety and welfare. It shall report its findings to the
104 Chairmen of the Public Health and Welfare Committees of the House
105 and Senate by January 1, 2003. This subsection (4) shall stand
106 repealed June 30, 2003.

107 (5) (a) Pursuant to regulations promulgated by the State
108 Department of Health, the licensing agency shall require to be
109 performed a criminal history record check on every new employee of
110 a licensed institution for the aged or infirm or care facility who
111 provides direct patient care or services and who is employed after
112 July 1, 2001. Except as otherwise provided, no such new employee
113 shall be permitted to provide direct patient care or services
114 until the results of the criminal history record check have
115 revealed no disqualifying record. Every such new employee shall
116 provide a valid current social security number and/or driver's
117 license number, which shall be furnished to the licensing agency
118 or to the private entity designated by the licensing agency to
119 conduct the criminal history record check. The institution for
120 the aged or infirm or care facility applying for the criminal
121 history record check will be promptly notified of any
122 disqualifying record found by the criminal history record check.
123 In order to determine the applicant's suitability for employment,
124 the applicant shall be fingerprinted. If no disqualifying record
125 is identified at the state level, the fingerprints shall be
126 forwarded by the Department of Public Safety to the Federal Bureau
127 of Investigation for a national criminal history record check.



128 (b) A licensed institution for the aged or infirm or
129 care facility may make an offer of temporary employment to a
130 prospective employee pending the results of a criminal history
131 record check on the person. In those instances, the licensed
132 institution for the aged or infirm or care facility shall provide
133 to the licensing agency, or to the designated private entity, the
134 name and relevant information relating to the person within
135 seventy-two (72) hours after the date the person accepts temporary
136 employment.

137 (c) All fees incurred in compliance with this section
138 shall be borne by the institution or facility requesting the
139 criminal history record check. The licensing agency, or the
140 designated private entity, is authorized to charge the institution
141 for the aged or infirm or care facility a fee, which shall include
142 the amount required by the Mississippi Department of Public
143 Safety, the Federal Bureau of Investigation or any other agency
144 designated by the licensing agency for the national criminal
145 history record check, in addition to any necessary costs incurred
146 by the licensing agency or the designated private entity for the
147 handling and administration of the criminal history record checks.
148 Costs incurred by a nursing home provider implementing this act
149 shall be reimbursed as an allowable cost under Section 43-13-116.

150 (d) The licensing agency, care facility, and their
151 agents, officers, employees, attorneys and representatives shall
152 be presumed to be acting in good faith for any employment decision
153 or action taken under paragraphs (a) and (b) of this subsection.
154 The presumption of good faith may be overcome by a preponderance
155 of the evidence in any civil action.

156 (e) The licensing agency shall promulgate regulations
157 to implement this subsection (5).

158 (6) The licensing agency shall require not less than 3.0
159 hours of direct nursing care per patient during each twenty-four
160 hour period for patients in nursing facilities.



161 **SECTION 2.** This act shall take effect and be in force from
162 and after July 1, 2002.

