

By: Senator(s) Burton

To: Public Health and
Welfare

SENATE BILL NO. 2178

1 AN ACT TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERM "ADULT DAY SERVICES FACILITY" FOR PURPOSES OF
3 INSTITUTIONAL LICENSURE BY THE STATE DEPARTMENT OF HEALTH; TO
4 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE
5 STATE BOARD OF HEALTH TO PROMULGATE RULES, REGULATIONS AND
6 STANDARDS REGARDING THE OPERATION OF ADULT DAY SERVICES FACILITIES
7 WHICH INCORPORATE THE MOST CURRENT RANGES AND LEVELS OF CARE
8 DEVELOPED BY THE NATIONAL ADULT DAY SERVICES ASSOCIATION (NADSA);
9 TO CODIFY SECTION 43-11-8, MISSISSIPPI CODE OF 1972, TO PRESCRIBE
10 FEES FOR ADULT DAY CARE FACILITY LICENSURE; AND FOR RELATED
11 PURPOSES.

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

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

15 43-11-1. When used in this chapter, the following words
16 shall have the following meaning:

17 (a) "Institutions for the aged or infirm" means a place
18 either governmental or private which provides group living
19 arrangements for four (4) or more persons who are unrelated to the
20 operator and who are being provided food, shelter and personal
21 care whether any such place be organized or operated for profit or
22 not. The term "institution for aged or infirm" includes nursing
23 homes, pediatric skilled nursing facilities, psychiatric
24 residential treatment facilities, convalescent homes, homes for
25 the aged, and adult day services facilities, provided that these
26 institutions fall within the scope of the definitions set forth
27 above. The term "institution for the aged or infirm" does not
28 include hospitals, clinics or mental institutions devoted
29 primarily to providing medical service.



30 (b) "Person" means any individual, firm, partnership,
31 corporation, company, association or joint stock association, or
32 any licensee herein or the legal successor thereof.

33 (c) "Personal care" means assistance rendered by
34 personnel of the home to aged or infirm residents in performing
35 one or more of the activities of daily living, which includes, but
36 is not limited to, the bathing, walking, excretory functions,
37 feeding, personal grooming and dressing of such residents.

38 (d) "Psychiatric residential treatment facility" means
39 any nonhospital establishment with permanent facilities which
40 provides a 24-hour program of care by qualified therapists
41 including, but not limited to, duly licensed mental health
42 professionals, psychiatrists, psychologists, psychotherapists and
43 licensed certified social workers, for emotionally disturbed
44 children and adolescents referred to such facility by a court,
45 local school district or by the Department of Human Services, who
46 are not in an acute phase of illness requiring the services of a
47 psychiatric hospital, and are in need of such restorative
48 treatment services. For purposes of this paragraph, the term
49 "emotionally disturbed" means a condition exhibiting one or more
50 of the following characteristics over a long period of time and to
51 a marked degree, which adversely affects educational performance:

52 1. An inability to learn which cannot be explained
53 by intellectual, sensory or health factors;

54 2. An inability to build or maintain satisfactory
55 relationships with peers and teachers;

56 3. Inappropriate types of behavior or feelings
57 under normal circumstances;

58 4. A general pervasive mood of unhappiness or
59 depression; or

60 5. A tendency to develop physical symptoms or
61 fears associated with personal or school problems. An



establishment furnishing primarily domiciliary care is not within this definition.

(e) "Pediatric skilled nursing facility" means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(f) "Licensing agency" means the State Department of Health.

(g) "Adult day services facility" means a community-based group program for adults designed to meet the needs of adults with impairments through individual plans of care, which are structured, comprehensive, planned, nonresidential programs providing a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Exempted from this definition shall be any program licensed and certified by the Mississippi Department of Mental Health and any adult day services program provided to ten (10) or less individuals by a licensed institution for the aged or infirm.

SECTION 2. Section 43-11-13, Mississippi Code of 1972, is amended as follows:

43-11-13. (1) The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards, including classifications, with respect to all institutions for the aged or infirm to be licensed under this chapter as may be designed to further the accomplishment of the purpose of this chapter in promoting adequate care of individuals in such institutions in the interest of public health, safety and welfare. Such 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 such rules, regulations and standards, the licensing agency shall mail copies thereof to all such institutions in the state which 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 rules, regulations and minimum standards as adopted by the licensing agency, relative to fire prevention measures, shall be prima facie evidence for revocation of license.

(3) The State Board of Health shall promulgate rules and regulations restricting the storage, quantity and classes of drugs allowed in personal care homes. 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. Provided, however, that 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.

(b) The State Board of Health shall promulgate rules and regulations restricting the handling of a resident's personal deposits by the director of a personal care home. Any funds given or provided for the purpose of supplying extra comforts, conveniences or services to any patient in any personal care home, and any funds otherwise received and held from, for or on behalf of any such resident, shall be deposited by the director or other proper officer of the personal care home to the credit of that patient in an account which shall be known as the Resident's Personal Deposit Fund. No more than one (1) month charge for the care, support, maintenance and medical attention of the patient shall be applied from such account at any one (1) time. After the death, discharge or transfer of any resident for whose benefit any such fund has been provided, any unexpended balance remaining in his personal deposit fund shall be applied for the payment of care, cost of support, maintenance and medical attention which is accrued. In the event any unexpended balance remains in that resident's personal deposit fund after complete reimbursement has



161 been made for payment of care, support, maintenance and medical
162 attention, and the director or other proper officer of the
163 personal care home has been or shall be unable to locate the
164 person or persons entitled to such unexpended balance, the
165 director or other proper officer may, after the lapse of one (1)
166 year from the date of such death, discharge or transfer, deposit
167 the unexpended balance to the credit of the personal care home's
168 operating fund.

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

176 (d) The State Board of Health shall evaluate the
177 effects of this section as it promotes adequate care of
178 individuals in personal care homes in the interest of public
179 health, safety and welfare. It shall report its findings to the
180 Chairmen of the Public Health and Welfare Committees of the House
181 and Senate by January 1, 2003. This subsection (4) shall stand
182 repealed June 30, 2003.

183 (5) (a) Pursuant to regulations promulgated by the State
184 Department of Health, the licensing agency shall require to be
185 performed a criminal history record check on every new employee of
186 a licensed institution for the aged or infirm or care facility who
187 provides direct patient care or services and who is employed after
188 July 1, 2001. Except as otherwise provided, no such new employee
189 shall be permitted to provide direct patient care or services
190 until the results of the criminal history record check have
191 revealed no disqualifying record. Every such new employee shall
192 provide a valid current social security number and/or driver's
193 license number which shall be furnished to the licensing agency or



to the private entity designated by the licensing agency to conduct the criminal history record check. The institution for the aged or infirm or care facility applying for the criminal history record check will be promptly notified of any disqualifying record found by the criminal history record check. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check.

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

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



(d) The licensing agency, care facility 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 paragraphs (a) and (b) of this subsection. The presumption of good faith may be overcome by a preponderance of the evidence in any civil action.

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

(6) The State Board of Health shall promulgate rules, regulations and standards regarding the operation of adult day services facilities which incorporate, but are not limited to, the most current ranges and levels of care developed by the National Adult Day Services Association (NADSA).

SECTION 3. The following provision shall be codified as Section 43-11-8, Mississippi Code of 1972:

43-11-8. (1) An application for a license for an adult day care facility shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for a license for an adult day care facility shall be accompanied by a license fee of Ten Dollars (\$10.00) for each person of licensed capacity, with a minimum fee per institution of Fifty Dollars (\$50.00), which shall be paid to the licensing agency. Each application for a license for an adult day care facility shall be accompanied by a license fee of Ten Dollars (\$10.00) for each bed in the institution, with a minimum fee per institution of Fifty Dollars (\$50.00), which shall be paid to the licensing agency.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.



(2) A license, unless suspended or revoked, shall be renewable annually upon payment by (a) the licensee of an adult day care facility, except for personal care homes, of a renewal fee of Ten Dollars (\$10.00) for licensed capacity in the institution, with a minimum fee per institution of Fifty Dollars (\$50.00), or (b) the licensee of an adult day care facility of a renewal fee of Ten Dollars (\$10.00) for each licensed facility, with a minimum fee per institution of Fifty Dollars (\$50.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation. Each license shall be issued only for the premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(3) A fee known as a "user fee" shall be applicable and shall be paid to the licensing agency as set out in subsection (1) hereof. This user fee shall be assessed for the purpose of the required reviewing and inspections of the proposal of any institution in which there are additions, renovations, modernizations, expansion, alterations, conversions, modifications or replacement of the entire facility involved in such proposal. This fee includes the reviewing of architectural plans in all steps required. There shall be a minimum user fee of Fifty Dollars (\$50.00) and a maximum user fee of Two Thousand Dollars (\$2,000.00).

SECTION 4. This act shall take effect and be in force from and after July 1, 2002.

