

By: Senator(s) Huggins

To: Public Health and Welfare

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2191

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO DEFINE THOSE LICENSED HEALTH CARE FACILITIES AND EMPLOYEES
3 SUBJECT TO THE CRIMINAL RECORD BACKGROUND CHECK REQUIREMENTS, TO
4 PROVIDE A TIMETABLE FOR COMPLETING SUCH CRIMINAL RECORD BACKGROUND
5 CHECKS, TO PRESCRIBE THOSE FELONIES WHICH DISQUALIFY INDIVIDUALS
6 FOR EMPLOYMENT AT SUCH LICENSED FACILITIES AND TO DELETE THE
7 AUTHORITY FOR CHARGING A FEE FOR CONDUCTING THE CRIMINAL RECORD
8 BACKGROUND CHECK; AND FOR RELATED PURPOSES.

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

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

12 43-11-13. (1) The licensing agency shall adopt, amend,
13 promulgate and enforce such rules, regulations and standards,
14 including classifications, with respect to all institutions for
15 the aged or infirm to be licensed under this chapter as may be
16 designed to further the accomplishment of the purpose of this
17 chapter in promoting adequate care of individuals in such
18 institutions in the interest of public health, safety and welfare.
19 Such rules, regulations and standards shall be adopted and
20 promulgated by the licensing agency and shall be recorded and
21 indexed in a book to be maintained by the licensing agency in its
22 main office in the State of Mississippi, entitled "Rules,
23 Regulations and Minimum Standards for Institutions for the Aged or
24 Infirm" and the book shall be open and available to all
25 institutions for the aged or infirm and the public generally at
26 all reasonable times. Upon the adoption of such rules,
27 regulations and standards, the licensing agency shall mail copies
28 thereof to all such institutions in the state which have filed
29 with the agency their names and addresses for this purpose, but
30 the failure to mail the same or the failure of the institutions to



31 receive the same shall in no way affect the validity thereof. The
32 rules, regulations and standards may be amended by the licensing
33 agency, from time to time, as necessary to promote the health,
34 safety and welfare of persons living in those institutions.

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

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

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



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

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



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

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

111 (5) (a) For the purposes of this section, the term
112 "licensed entity" shall include hospitals, nursing homes, personal
113 care homes, home health agencies and hospices. For the purposes
114 of this section, the term "employee" shall mean any person
115 employed by the licensed entity either directly, or if on a
116 contractual basis, those individuals which provide direct patient
117 care to such individuals being served by the licensed entity.

118 (b) Pursuant to regulations promulgated by the State
119 Department of Health, the licensing agency shall require to be
120 performed a criminal history record check on every * * * employee
121 of a licensed entity * * *. Except as otherwise provided, no such
122 new employee hired after July 1, 2002, shall be permitted to
123 provide direct patient care * * * until the results of the
124 criminal history record check have revealed no disqualifying
125 record. In order to determine the applicant's suitability for
126 employment, the applicant shall be fingerprinted. If no
127 disqualifying record is identified at the state level, the
128 fingerprints shall be forwarded by the Department of Public Safety
129 to the Federal Bureau of Investigation for a national criminal



130 history record check. All existing employees of licensed entities
131 shall have a criminal history record check completed on or before
132 December 31, 2002. If such criminal history record check
133 discloses a felony conviction, guilty plea or plea of nolo
134 contendere to a felony of possession or sale of drugs, murder,
135 manslaughter, armed robbery, rape, sexual battery, sex offense
136 listed in Section 45-31-3(i), child abuse, arson, grand larceny,
137 burglary, gratification of lust or aggravated assault, or
138 felonious abuse and/or battery of a vulnerable adult which has not
139 been reversed on appeal or for which a pardon has not been
140 granted, the employee shall not be eligible to be employed at such
141 licensed entity.

142 * * *

143 (c) All fees incurred in compliance with this section
144 shall be borne by the licensed entity requesting the criminal
145 history record check. * * * Costs incurred by a licensed entity
146 implementing this section shall be reimbursed as an allowable cost
147 under Section 43-13-116.

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

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

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

