

By: Representatives Smith (59th), Moody

To: Public Health and Welfare

HOUSE BILL NO. 1077
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY PROCEDURES FOR REQUIRED EMPLOYEE CRIMINAL BACKGROUND
3 CHECKS AND AFFIDAVITS AT LICENSED HEALTH CARE FACILITIES; TO
4 PROVIDE THAT CERTAIN CONTRACT EMPLOYEES ARE SUBJECT TO BACKGROUND
5 CHECK REQUIREMENTS; TO PROVIDE FOR TEMPORARY EMPLOYMENT OF THOSE
6 EMPLOYEES AND WAIVERS FOR MITIGATING CIRCUMSTANCES; TO EXTEND THE
7 AUTOMATIC REPEALER ON CERTAIN LICENSURE STANDARDS FOR PERSONAL
8 CARE HOMES; 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 those
18 institutions in the interest of public health, safety and welfare.
19 Those 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 those rules,
27 regulations and standards, the licensing agency shall mail copies
28 thereof to all those institutions in the state that 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. However, no personal care home shall allow
60 more than two (2) residents, or ten percent (10%) of the total
61 number of residents in the facility, whichever is greater, to
62 remain in the personal care home under the provisions of this
63 subsection (4). This consent shall be deemed to be appropriately



64 informed consent as described in the regulations promulgated by
65 the licensing agency. After that written consent has been
66 obtained, the resident shall have the right to continue to reside
67 in the personal care home for as long as the resident meets the
68 other conditions for residing in the personal care home. A copy
69 of the written consent and the physician's approval shall be
70 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 resident in any personal care
76 home, and any funds otherwise received and held from, for or on
77 behalf of any such resident, shall be deposited by the director or
78 other proper officer of the personal care home to the credit of
79 that resident in an account that shall be known as the Resident's
80 Personal Deposit Fund. No more than one (1) month's charge for
81 the care, support, maintenance and medical attention of the
82 resident shall be applied from the account at any one time. After
83 the death, discharge or transfer of any resident for whose benefit
84 any such fund has been provided, any unexpended balance remaining
85 in his personal deposit fund shall be applied for the payment of
86 care, cost of support, maintenance and medical attention that is
87 accrued. If any unexpended balance remains in that resident's
88 personal deposit fund after complete reimbursement has been made
89 for payment of care, support, maintenance and medical attention,
90 and the director or other proper officer of the personal care home
91 has been or shall be unable to locate the person or persons
92 entitled to the unexpended balance, the director or other proper
93 officer may, after the lapse of one (1) year from the date of that
94 death, discharge or transfer, deposit the unexpended balance to
95 the credit of the personal care home's operating fund.



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

103 (d) The State Board of Health shall evaluate the
104 effects of this section as it promotes adequate care of
105 individuals in personal care homes in the interest of public
106 health, safety and welfare. It shall report its findings to the
107 Chairmen of the Public Health and Welfare Committees of the House
108 and Senate by January 1, 2003. This subsection (4) shall stand
109 repealed June 30, 2004.

110 (5) (a) For the purposes of this subsection, the term
111 "licensed entity" means a hospital, nursing home, personal care
112 home, home health agency or hospice. For the purposes of this
113 subsection, the term "employee" means any individual employed by a
114 licensed entity. The term "employee" also includes any individual
115 who by contract provides to the patients, residents or clients
116 being served by the licensed entity direct, hands-on, medical
117 patient care in a patient's, resident's or client's room or in
118 treatment or recovery rooms.

119 (b) Under regulations promulgated by the State Board of
120 Health, the licensing agency shall require to be performed a
121 criminal history record check on (i) every new employee of a
122 licensed entity who provides direct patient care or services and
123 who is employed on or after July 1, 2003, and (ii) every employee
124 of a licensed entity employed before July 1, 2003, who has a
125 documented disciplinary action by his or her present employer.

126 Except as otherwise provided in paragraph (c) of this
127 subsection, no such employee hired after or on July 1, 2003, shall
128 be permitted to provide direct patient care until the results of



129 the criminal history record check have revealed no disqualifying
130 record or the employee has been granted a waiver. In order to
131 determine the employee applicant's suitability for employment, the
132 applicant shall be fingerprinted. Fingerprints shall be submitted
133 to the licensing agency from scanning, with the results processed
134 through the Department of Public Safety's Criminal Information
135 Center. If no disqualifying record is identified at the state
136 level, the fingerprints shall be forwarded by the Department of
137 Public Safety to the Federal Bureau of Investigation for a
138 national criminal history record check. The licensing agency
139 shall notify the licensed entity of the results of an employee
140 applicant's criminal history record check. If the criminal
141 history record check discloses a felony conviction, guilty plea or
142 plea of nolo contendere to a felony of possession or sale of
143 drugs, murder, manslaughter, armed robbery, rape, sexual battery,
144 sex offense listed in Section 45-33-23(f), child abuse, arson,
145 grand larceny, burglary, gratification of lust or aggravated
146 assault, or felonious abuse and/or battery of a vulnerable adult
147 that has not been reversed on appeal or for which a pardon has not
148 been granted, the * * * employee applicant shall not be eligible
149 to be employed at the licensed entity.

150 (c) Any such new employee applicant may, however, be
151 employed on a temporary basis pending the results of the criminal
152 history record check, but any employment contract with the new
153 employee shall be voidable if the new employee receives a
154 disqualifying criminal record check and no waiver is granted as
155 provided in this subsection.

156 (d) Under regulations promulgated by the State Board of
157 Health, the licensing agency shall require every employee of a
158 licensed entity employed before July 1, 2003, to sign an affidavit
159 stating that he or she has not been convicted of or pleaded guilty
160 or nolo contendere to a felony of possession or sale of drugs,
161 murder, manslaughter, armed robbery, rape, sexual battery, any sex



162 offense listed in Section 45-33-23(f), child abuse, arson, grand
163 larceny, burglary, gratification of lust, aggravated assault, or
164 felonious abuse and/or battery of a vulnerable adult, or that any
165 such conviction or plea was reversed on appeal or a pardon was
166 granted for the conviction or plea. No such employee of a
167 licensed entity hired before July 1, 2003, shall be permitted to
168 provide direct patient care until the employee has signed the
169 affidavit required by this paragraph (d). All such existing
170 employees of licensed entities must sign the affidavit required by
171 this paragraph (d) within six (6) months of the final adoption of
172 the regulations promulgated by the State Board of Health. If a
173 person signs the affidavit required by this paragraph (d), and it
174 is later determined that the person actually had been convicted of
175 or pleaded guilty or nolo contendere to any of the offenses listed
176 in this paragraph (d) and the conviction or plea has not been
177 reversed on appeal or a pardon has not been granted for the
178 conviction or plea, the person is guilty of perjury. If the
179 offense that the person was convicted of or pleaded guilty or nolo
180 contendere to was a violent offense, the person, upon a conviction
181 of perjury under this paragraph, shall be punished as provided in
182 Section 97-9-61. If the offense that the person was convicted of
183 or pleaded guilty or nolo contendere to was a nonviolent offense,
184 the person, upon a conviction of perjury under this paragraph,
185 shall be punished by a fine of not more than Five Hundred Dollars
186 (\$500.00), or by imprisonment in the county jail for not more than
187 six (6) months, or by both such fine and imprisonment.

188 (e) The licensed entity may, in its discretion, allow
189 any employee who is unable to sign the affidavit required by
190 paragraph (d) of this subsection or any employee applicant
191 aggrieved by the employment decision under this subsection (5) to
192 appear before the licensed entity's hiring officer, or his or her
193 designee, to show mitigating circumstances that may exist and
194 allow the employee or employee applicant to be employed at the



195 licensed entity. The licensed entity, upon report and
196 recommendation of the hiring officer, may grant waivers for those
197 mitigating circumstances, which shall include, but not be limited
198 to: (i) age at which the crime was committed; (ii) circumstances
199 surrounding the crime; (iii) length of time since the conviction
200 and criminal history since the conviction; (iv) work history; (v)
201 current employment and character references; and (vi) other
202 evidence demonstrating the ability of the individual to perform
203 the employment responsibilities competently and that the
204 individual does not pose a threat to the health or safety of the
205 patients in the licensed entity.

206 (f) The licensing agency may charge the licensed entity
207 submitting the fingerprints a fee not to exceed Fifty Dollars
208 (\$50.00), which licensed entity may, in its discretion, charge the
209 same fee, or a portion thereof, to the employee applicant. Any
210 costs incurred by a licensed entity implementing this subsection
211 (5) shall be reimbursed as an allowable cost under Section
212 43-13-116.

213 (g) If the results of an employee applicant's criminal
214 history record check reveals no disqualifying event, then the
215 licensed entity shall, within two (2) weeks of the notification of
216 no disqualifying event, provide the employee applicant with a
217 notarized letter signed by the chief executive officer of the
218 licensed entity, or his or her authorized designee, confirming the
219 employee applicant's suitability for employment based on his or
220 her criminal history record check. An employee applicant may use
221 that letter for a period of two (2) years from the date of the
222 letter to seek employment at any licensed entity with the
223 necessity of an additional criminal record check. Any licensed
224 entity presented with the letter may rely on the letter with
225 respect to an employee applicant's criminal background and is not
226 required for a period of two (2) years from the date of the letter



227 to conduct or have conducted a criminal history record check as
228 required in this subsection (5).

229 (h) The licensing agency, the licensed entity, and
230 their agents, officers, employees, attorneys and representatives,
231 shall be presumed to be acting in good faith for any employment
232 decision or action taken under this subsection (5). The
233 presumption of good faith may be overcome by a preponderance of
234 the evidence in any civil action. No licensing agency, licensed
235 entity, nor their agents, officers, employees, attorneys and
236 representatives shall be held liable in any employment * * *
237 decision or action based in whole or in part on compliance with or
238 attempts to comply with the requirements of this subsection (5).

239 (i) The licensing agency shall promulgate regulations
240 to implement this subsection (5).

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

