

By: Representatives Smith (39th), Reeves

To: Public Health and Human Services

HOUSE BILL NO. 1033

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE HEALTH CARE PROFESSIONAL STAFFING AGENCIES IN THOSE
3 ENTITIES THAT MUST HAVE FINGERPRINT CHECKS OF THEIR EMPLOYEES
4 BEFORE THE EMPLOYEES MAY PROVIDE DIRECT PATIENT CARE OR SERVICES;
5 TO DELETE THE REQUIREMENT FOR A CRIMINAL HISTORY RECORD CHECK FOR
6 THE EMPLOYEES OF THOSE ENTITIES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

108 (5) (a) For the purposes of this subsection (5):

109 (i) "Covered entity" means a hospital, nursing
110 home, personal care home, home health agency, hospice, or health
111 care professional staffing agency.

112 (ii) * * * "Employee" means any individual
113 employed by a covered entity, and also includes any individual who
114 by contract provides to the patients, residents or clients being
115 served by the covered entity direct, hands-on, medical patient
116 care in a patient's, resident's or client's room or in treatment
117 or recovery rooms.

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

125 Except as otherwise provided in paragraph (c) of this
126 subsection (5), no such employee hired on or after July 1, 2003,
127 shall be permitted to provide direct patient care until the
128 results of the fingerprint check have revealed no disqualifying

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

149 (c) Any such new employee applicant may, however, be
150 employed on a temporary basis pending the results of the
151 fingerprint check, but any employment contract with the new
152 employee shall be voidable if the new employee receives a
153 disqualifying fingerprint check and no waiver is granted as
154 provided in this subsection (5).

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

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

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

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

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

212 (g) If the results of an employee applicant's
213 fingerprint check reveals no disqualifying event, then the covered
214 entity shall, within two (2) weeks of the notification of no
215 disqualifying event, provide the employee applicant with a
216 notarized letter signed by the chief executive officer of the
217 covered entity, or his or her authorized designee, confirming the
218 employee applicant's suitability for employment based on his or
219 her fingerprint check. An employee applicant may use that letter
220 for a period of two (2) years from the date of the letter to seek
221 employment at any covered entity without the necessity of an
222 additional fingerprint check. Any covered entity presented with
223 the letter may rely on the letter with respect to an employee
224 applicant's criminal background and is not required for a period
225 of two (2) years from the date of the letter to conduct or have
226 conducted a fingerprint check as required in this subsection (5).

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

237 (i) The licensing agency shall promulgate regulations
238 to implement this subsection (5).

239 **SECTION 2.** This act shall take effect and be in force from
240 and after July 1, 2004.