

By: Representative Smith (59th)

To: Public Health and Human
Services

HOUSE BILL NO. 1400

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE LICENSED ENTITIES WHOSE EMPLOYEES ARE SUBJECT
3 TO THE REQUIREMENT FOR CRIMINAL HISTORY RECORD CHECKS AND
4 FINGERPRINTING SHALL INCLUDE ANY ENTITY THAT CONTRACTS WITH A
5 LICENSED ENTITY, EMERGENCY MEDICAL SERVICES PROVIDERS, AND ANY
6 HEALTH CARE ENTITY AS DESIGNATED BY THE STATE BOARD OF HEALTH; AND
7 FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

110 (i) "Licensed entity" means a hospital, nursing
111 home, personal care home, home health agency or hospice. This
112 term also includes any entity that contracts with a licensed
113 entity, including, but not limited to, educational institutions
114 for students in health care and allied health care professions,
115 and health care and allied health care professional employment
116 staffing agencies; emergency medical services providers; and any
117 health care entity as designated by the State Board of Health.

118 (ii) * * * "Employee" means any individual
119 employed by a licensed entity, and also includes any individual
120 who by contract provides to the patients, residents or clients
121 being served by the licensed entity direct, hands-on, medical
122 patient care in a patient's, resident's or client's room or in
123 treatment or recovery rooms.

124 (b) Under regulations promulgated by the State Board of
125 Health, the licensing agency shall require to be performed a
126 criminal history record check on (i) every new employee of a
127 licensed entity who provides direct patient care or services and

128 who is employed on or after July 1, 2003, and (ii) every employee
129 of a licensed entity employed before July 1, 2003, who has a
130 documented disciplinary action by his or her present employer.

131 Except as otherwise provided in paragraph (c) of this
132 subsection (5), no such employee hired on or after July 1, 2003,
133 shall be permitted to provide direct patient care until the
134 results of the criminal history record check have revealed no
135 disqualifying record or the employee has been granted a waiver.
136 In order to determine the employee applicant's suitability for
137 employment, the applicant shall be fingerprinted. Fingerprints
138 shall be submitted to the licensing agency from scanning, with the
139 results processed through the Department of Public Safety's
140 Criminal Information Center. If no disqualifying record is
141 identified at the state level, the fingerprints shall be forwarded
142 by the Department of Public Safety to the Federal Bureau of
143 Investigation for a national criminal history record check. The
144 licensing agency shall notify the licensed entity of the results
145 of an employee applicant's criminal history record check. If the
146 criminal history record check discloses a felony conviction,
147 guilty plea or plea of nolo contendere to a felony of possession
148 or sale of drugs, murder, manslaughter, armed robbery, rape,
149 sexual battery, sex offense listed in Section 45-33-23(f), child
150 abuse, arson, grand larceny, burglary, gratification of lust or
151 aggravated assault, or felonious abuse and/or battery of a
152 vulnerable adult that has not been reversed on appeal or for which
153 a pardon has not been granted, the employee applicant shall not be
154 eligible to be employed at the licensed entity.

155 (c) Any such new employee applicant may, however, be
156 employed on a temporary basis pending the results of the criminal
157 history record check, but any employment contract with the new
158 employee shall be voidable if the new employee receives a
159 disqualifying criminal history record check and no waiver is
160 granted as provided in this subsection (5).

161 (d) Under regulations promulgated by the State Board of
162 Health, the licensing agency shall require every employee of a
163 licensed entity employed before July 1, 2003, to sign an affidavit
164 stating that he or she has not been convicted of or pleaded guilty
165 or nolo contendere to a felony of possession or sale of drugs,
166 murder, manslaughter, armed robbery, rape, sexual battery, any sex
167 offense listed in Section 45-33-23(f), child abuse, arson, grand
168 larceny, burglary, gratification of lust, aggravated assault, or
169 felonious abuse and/or battery of a vulnerable adult, or that any
170 such conviction or plea was reversed on appeal or a pardon was
171 granted for the conviction or plea. No such employee of a
172 licensed entity hired before July 1, 2003, shall be permitted to
173 provide direct patient care until the employee has signed the
174 affidavit required by this paragraph (d). All such existing
175 employees of licensed entities must sign the affidavit required by
176 this paragraph (d) within six (6) months of the final adoption of
177 the regulations promulgated by the State Board of Health. If a
178 person signs the affidavit required by this paragraph (d), and it
179 is later determined that the person actually had been convicted of
180 or pleaded guilty or nolo contendere to any of the offenses listed
181 in this paragraph (d) and the conviction or plea has not been
182 reversed on appeal or a pardon has not been granted for the
183 conviction or plea, the person is guilty of perjury. If the
184 offense that the person was convicted of or pleaded guilty or nolo
185 contendere to was a violent offense, the person, upon a conviction
186 of perjury under this paragraph, shall be punished as provided in
187 Section 97-9-61. If the offense that the person was convicted of
188 or pleaded guilty or nolo contendere to was a nonviolent offense,
189 the person, upon a conviction of perjury under this paragraph,
190 shall be punished by a fine of not more than Five Hundred Dollars
191 (\$500.00), or by imprisonment in the county jail for not more than
192 six (6) months, or by both such fine and imprisonment.

193 (e) The licensed entity may, in its discretion, allow
194 any employee who is unable to sign the affidavit required by
195 paragraph (d) of this subsection (5) or any employee applicant
196 aggrieved by the employment decision under this subsection (5) to
197 appear before the licensed entity's hiring officer, or his or her
198 designee, to show mitigating circumstances that may exist and
199 allow the employee or employee applicant to be employed at the
200 licensed entity. The licensed entity, upon report and
201 recommendation of the hiring officer, may grant waivers for those
202 mitigating circumstances, which shall include, but not be limited
203 to: (i) age at which the crime was committed; (ii) circumstances
204 surrounding the crime; (iii) length of time since the conviction
205 and criminal history since the conviction; (iv) work history; (v)
206 current employment and character references; and (vi) other
207 evidence demonstrating the ability of the individual to perform
208 the employment responsibilities competently and that the
209 individual does not pose a threat to the health or safety of the
210 patients in the licensed entity.

211 (f) The licensing agency may charge the licensed entity
212 submitting the fingerprints a fee not to exceed Fifty Dollars
213 (\$50.00), which licensed entity may, in its discretion, charge the
214 same fee, or a portion thereof, to the employee applicant. Any
215 costs incurred by a licensed entity implementing this subsection
216 (5) shall be reimbursed as an allowable cost under Section
217 43-13-116.

218 (g) If the results of an employee applicant's criminal
219 history record check reveals no disqualifying event, then the
220 licensed entity shall, within two (2) weeks of the notification of
221 no disqualifying event, provide the employee applicant with a
222 notarized letter signed by the chief executive officer of the
223 licensed entity, or his or her authorized designee, confirming the
224 employee applicant's suitability for employment based on his or
225 her criminal history record check. An employee applicant may use

226 that letter for a period of two (2) years from the date of the
227 letter to seek employment at any licensed entity without the
228 necessity of an additional criminal history record check. Any
229 licensed entity presented with the letter may rely on the letter
230 with respect to an employee applicant's criminal background and is
231 not required for a period of two (2) years from the date of the
232 letter to conduct or have conducted a criminal history record
233 check as required in this subsection (5).

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

244 (i) The licensing agency shall promulgate regulations
245 to implement this subsection (5).

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