

By: Senator(s) Dawkins

To: Public Health and Welfare

SENATE BILL NO. 2363

1 AN ACT TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO REQUIRE ELECTRONIC
3 MONITORING DEVICES IN THE ROOMS OF RESIDENTS OF NURSING HOMES AT
4 THE REQUEST OF THE RESIDENT OR THE RESIDENT'S GUARDIAN; TO
5 AUTHORIZE THE DEPARTMENT OF HEALTH TO ISSUE REGULATIONS; TO
6 PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR
7 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, 2006.

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;

112 (ii) "Covered entity" means a licensed entity or a
113 health care professional staffing agency;

114 (iii) "Employee" means any individual employed by
115 a covered entity, and also includes any individual who by contract
116 provides to the patients, residents or clients being served by the
117 covered entity direct, hands-on, medical patient care in a
118 patient's, resident's or client's room or in treatment or recovery
119 rooms. The term "employee" does not include health care
120 professional/vocational technical students, as defined in Section
121 37-29-232, performing clinical training in a licensed entity under
122 contracts between their schools and the licensed entity, and does
123 not include students at high schools located in Mississippi who
124 observe the treatment and care of patients in a licensed entity as
125 part of the requirements of an allied-health course taught in the
126 high school, if:

127 1. The student is under the supervision of a
128 licensed health care provider; and

129 2. The student has signed an affidavit that
130 is on file at the student's school stating that he or she has not
131 been convicted of or pleaded guilty or nolo contendere to a felony
132 listed in paragraph (d) of this subsection (5), or that any such
133 conviction or plea was reversed on appeal or a pardon was granted
134 for the conviction or plea. Before any student may sign such an
135 affidavit, the student's school shall provide information to the
136 student explaining what a felony is and the nature of the felonies
137 listed in paragraph (d) of this subsection (5).

138 However, the health care professional/vocational technical
139 academic program in which the student is enrolled may require the
140 student to obtain criminal history record checks under the
141 provisions of Section 37-29-232.

142 (b) Under regulations promulgated by the State Board of
143 Health, the licensing agency shall require to be performed a
144 criminal history record check on (i) every new employee of a
145 covered entity who provides direct patient care or services and
146 who is employed on or after July 1, 2003, and (ii) every employee
147 of a covered entity employed before July 1, 2003, who has a
148 documented disciplinary action by his or her present employer. In
149 addition, the licensing agency shall require the covered entity to
150 perform a disciplinary check with the professional licensing
151 agency of each employee, if any, to determine if any disciplinary
152 action has been taken against the employee by that agency.

153 Except as otherwise provided in paragraph (c) of this
154 subsection (5), no such employee hired on or after July 1, 2003,
155 shall be permitted to provide direct patient care until the
156 results of the criminal history record check have revealed no
157 disqualifying record or the employee has been granted a waiver.
158 In order to determine the employee applicant's suitability for
159 employment, the applicant shall be fingerprinted. Fingerprints

160 shall be submitted to the licensing agency from scanning, with the
161 results processed through the Department of Public Safety's
162 Criminal Information Center. If no disqualifying record is
163 identified at the state level, the fingerprints shall be forwarded
164 by the Department of Public Safety to the Federal Bureau of
165 Investigation for a national criminal history record check. The
166 licensing agency shall notify the covered entity of the results of
167 an employee applicant's criminal history record check. If the
168 criminal history record check discloses a felony conviction,
169 guilty plea or plea of nolo contendere to a felony of possession
170 or sale of drugs, murder, manslaughter, armed robbery, rape,
171 sexual battery, sex offense listed in Section 45-33-23(g), child
172 abuse, arson, grand larceny, burglary, gratification of lust or
173 aggravated assault, or felonious abuse and/or battery of a
174 vulnerable adult that has not been reversed on appeal or for which
175 a pardon has not been granted, the employee applicant shall not be
176 eligible to be employed by the covered entity.

177 (c) Any such new employee applicant may, however, be
178 employed on a temporary basis pending the results of the criminal
179 history record check, but any employment contract with the new
180 employee shall be voidable if the new employee receives a
181 disqualifying criminal history record check and no waiver is
182 granted as provided in this subsection (5).

183 (d) Under regulations promulgated by the State Board of
184 Health, the licensing agency shall require every employee of a
185 covered entity employed before July 1, 2003, to sign an affidavit
186 stating that he or she has not been convicted of or pleaded guilty
187 or nolo contendere to a felony of possession or sale of drugs,
188 murder, manslaughter, armed robbery, rape, sexual battery, any sex
189 offense listed in Section 45-33-23(g), child abuse, arson, grand
190 larceny, burglary, gratification of lust, aggravated assault, or
191 felonious abuse and/or battery of a vulnerable adult, or that any
192 such conviction or plea was reversed on appeal or a pardon was

193 granted for the conviction or plea. No such employee of a covered
194 entity hired before July 1, 2003, shall be permitted to provide
195 direct patient care until the employee has signed the affidavit
196 required by this paragraph (d). All such existing employees of
197 covered entities must sign the affidavit required by this
198 paragraph (d) within six (6) months of the final adoption of the
199 regulations promulgated by the State Board of Health. If a person
200 signs the affidavit required by this paragraph (d), and it is
201 later determined that the person actually had been convicted of or
202 pleaded guilty or nolo contendere to any of the offenses listed in
203 this paragraph (d) and the conviction or plea has not been
204 reversed on appeal or a pardon has not been granted for the
205 conviction or plea, the person is guilty of perjury. If the
206 offense that the person was convicted of or pleaded guilty or nolo
207 contendere to was a violent offense, the person, upon a conviction
208 of perjury under this paragraph, shall be punished as provided in
209 Section 97-9-61. If the offense that the person was convicted of
210 or pleaded guilty or nolo contendere to was a nonviolent offense,
211 the person, upon a conviction of perjury under this paragraph,
212 shall be punished by a fine of not more than Five Hundred Dollars
213 (\$500.00), or by imprisonment in the county jail for not more than
214 six (6) months, or by both such fine and imprisonment.

215 (e) The covered entity may, in its discretion, allow
216 any employee who is unable to sign the affidavit required by
217 paragraph (d) of this subsection (5) or any employee applicant
218 aggrieved by an employment decision under this subsection (5) to
219 appear before the covered entity's hiring officer, or his or her
220 designee, to show mitigating circumstances that may exist and
221 allow the employee or employee applicant to be employed by the
222 covered entity. The covered entity, upon report and
223 recommendation of the hiring officer, may grant waivers for those
224 mitigating circumstances, which shall include, but not be limited
225 to: (i) age at which the crime was committed; (ii) circumstances

226 surrounding the crime; (iii) length of time since the conviction
227 and criminal history since the conviction; (iv) work history; (v)
228 current employment and character references; and (vi) other
229 evidence demonstrating the ability of the individual to perform
230 the employment responsibilities competently and that the
231 individual does not pose a threat to the health or safety of the
232 patients of the covered entity.

233 (f) The licensing agency may charge the covered entity
234 submitting the fingerprints a fee not to exceed Fifty Dollars
235 (\$50.00), which covered entity may, in its discretion, charge the
236 same fee, or a portion thereof, to the employee applicant. Any
237 costs incurred by a covered entity implementing this subsection
238 (5) shall be reimbursed as an allowable cost under Section
239 43-13-116.

240 (g) If the results of an employee applicant's criminal
241 history record check reveals no disqualifying event, then the
242 covered entity shall, within two (2) weeks of the notification of
243 no disqualifying event, provide the employee applicant with a
244 notarized letter signed by the chief executive officer of the
245 covered entity, or his or her authorized designee, confirming the
246 employee applicant's suitability for employment based on his or
247 her criminal history record check. An employee applicant may use
248 that letter for a period of two (2) years from the date of the
249 letter to seek employment with any covered entity without the
250 necessity of an additional criminal history record check. Any
251 covered entity presented with the letter may rely on the letter
252 with respect to an employee applicant's criminal background and is
253 not required for a period of two (2) years from the date of the
254 letter to conduct or have conducted a criminal history record
255 check as required in this subsection (5).

256 (h) The licensing agency, the covered entity, and their
257 agents, officers, employees, attorneys and representatives, shall
258 be presumed to be acting in good faith for any employment decision

259 or action taken under this subsection (5). The presumption of
260 good faith may be overcome by a preponderance of the evidence in
261 any civil action. No licensing agency, covered entity, nor their
262 agents, officers, employees, attorneys and representatives shall
263 be held liable in any employment decision or action based in whole
264 or in part on compliance with or attempts to comply with the
265 requirements of this subsection (5).

266 (i) The licensing agency shall promulgate regulations
267 to implement this subsection (5).

268 (j) The provisions of this subsection (5) shall not
269 apply to:

270 (i) Applicants and employees of the University of
271 Mississippi Medical Center for whom criminal history record checks
272 and fingerprinting are obtained in accordance with Section
273 37-115-41; or

274 (ii) Health care professional/vocational technical
275 students for whom criminal history record checks and
276 fingerprinting are obtained in accordance with Section 37-29-232.

277 (6) (a) An institution for the aged or infirm shall permit
278 a resident, the resident's next of kin at the request of the
279 resident, or the resident's guardian to monitor the room of the
280 resident through the use of electronic monitoring devices.

281 (b) (i) The institution shall require a resident who
282 conducts electronic monitoring or the resident's guardian to post
283 a notice on the door of the resident's room.

284 (ii) The notice must state that the room is being
285 monitored by an electronic monitoring device.

286 (c) Electronic monitoring conducted under this section:

287 (i) Is not compulsory and may be conducted only at
288 the request of the resident or the resident's guardian;

289 (ii) Must be paid for by the resident or the
290 resident's guardian; and

291 (iii) Must protect the privacy rights of other
292 residents and visitors to the institution to the extent reasonably
293 possible.

294 (d) An institution may not refuse to admit an
295 individual to residency in the institution and may not remove a
296 resident from the institution because of a request to conduct
297 electronic monitoring.

298 (e) An institution shall make reasonable physical
299 accommodation for electronic monitoring, including:

300 (i) Providing a reasonably secure place to mount
301 the video surveillance camera or other monitoring device; and

302 (ii) Providing access to power sources for the
303 video surveillance camera or other electronic monitoring device.

304 (f) An institution shall inform a resident or the
305 resident's guardian of the resident's right to conduct electronic
306 monitoring.

307 (g) If electronic monitoring is conducted, the
308 institution may require the resident, the resident's next of kin,
309 or the resident's guardian to conduct the electronic monitoring in
310 plain view.

311 (h) An institution may require that a request to
312 conduct electronic monitoring be made in writing.

313 (i) Subject to applicable rules of evidence and
314 procedure, a tape or recording created through the use of
315 electronic monitoring conducted under this section may be admitted
316 into evidence in a civil or criminal court action or
317 administrative proceeding.

318 (j) An administrator of an institution who knowingly
319 refuses to permit a resident, the resident's next of kin at the
320 request of the resident, or the resident's guardian to monitor the
321 room of the resident in accordance with this section through the
322 use of electronic monitoring devices is guilty of a misdemeanor,

323 and upon conviction, shall be fined an amount not to exceed Five
324 Thousand Dollars (\$5,000.00).

325 (k) An administrator of an institution who knowingly
326 refuses to admit an individual to residency in the institution, or
327 who knowingly allows the removal of a resident from the
328 institution, because of a request to conduct electronic monitoring
329 under this section is guilty of a misdemeanor and upon conviction,
330 shall be fined an amount not to exceed Five Thousand Dollars
331 (\$5,000.00).

332 (l) (i) A person who intentionally hampers, obstructs,
333 tampers with, or destroys an electronic monitoring device
334 installed in a resident's room in accordance with this section or
335 a tape or recording made by the device is guilty of a misdemeanor
336 and upon conviction, shall be fined an amount not to exceed Five
337 Thousand Dollars (\$5,000.00).

338 (ii) It is an affirmative defense to prosecution
339 under this subsection that the person took the action with the
340 consent of the resident on whose behalf the electronic monitoring
341 device was installed, the resident's guardian, or the resident's
342 next of kin if the next of kin was conducting the monitoring at
343 the request of the resident.

344 (m) The licensing agency shall promulgate regulations
345 to enforce the provisions of this subsection (6).

346 (n) For purposes of this subsection (6), "electronic
347 monitoring device" includes:

348 (i) Video surveillance cameras installed in the
349 room of a resident; and

350 (ii) Audio devices installed in the room of a
351 resident designed to acquire communications or other sounds
352 occurring in the room.

353 **SECTION 2.** This act shall take effect and be in force from
354 and after July 1, 2005.