

By: Senator(s) Burton

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2106

1 AN ACT TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERM "ADULT DAY SERVICES FACILITY" FOR PURPOSES OF
3 INSTITUTIONAL LICENSURE BY THE STATE DEPARTMENT OF HEALTH; TO
4 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE
5 STATE BOARD OF HEALTH TO PROMULGATE RULES, REGULATIONS AND
6 STANDARDS REGARDING THE OPERATION OF ADULT DAY SERVICES FACILITIES
7 WHICH INCORPORATE THE MOST CURRENT RANGES AND LEVELS OF CARE
8 DEVELOPED BY THE NATIONAL ADULT DAY SERVICES ASSOCIATION (NADSA);
9 TO CODIFY SECTION 43-11-8, MISSISSIPPI CODE OF 1972, TO PRESCRIBE
10 FEES FOR ADULT DAY SERVICES FACILITY LICENSURE; AND FOR RELATED
11 PURPOSES.

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

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

15 43-11-1. When used in this chapter, the following words
16 shall have the following meaning:

17 (a) "Institutions for the aged or infirm" means a place
18 either governmental or private which provides group living
19 arrangements for four (4) or more persons who are unrelated to the
20 operator and who are being provided food, shelter and personal
21 care whether any such place be organized or operated for profit or
22 not. The term "institution for aged or infirm" includes nursing
23 homes, pediatric skilled nursing facilities, psychiatric
24 residential treatment facilities, convalescent homes, homes for
25 the aged and adult day services facilities, provided that these
26 institutions fall within the scope of the definitions set forth
27 above. The term "institution for the aged or infirm" does not
28 include hospitals, clinics or mental institutions devoted
29 primarily to providing medical service.

30 (b) "Person" means any individual, firm, partnership,
31 corporation, company, association or joint stock association, or
32 any licensee herein or the legal successor thereof.

33 (c) "Personal care" means assistance rendered by
34 personnel of the home to aged or infirm residents in performing
35 one or more of the activities of daily living, which includes, but
36 is not limited to, the bathing, walking, excretory functions,
37 feeding, personal grooming and dressing of such residents.

38 (d) "Psychiatric residential treatment facility" means
39 any nonhospital establishment with permanent facilities which
40 provides a twenty-four-hour program of care by qualified
41 therapists, including, but not limited to, duly licensed mental
42 health professionals, psychiatrists, psychologists,
43 psychotherapists and licensed certified social workers, for
44 emotionally disturbed children and adolescents referred to such
45 facility by a court, local school district or by the Department of
46 Human Services, who are not in an acute phase of illness requiring
47 the services of a psychiatric hospital, and are in need of such
48 restorative treatment services. For purposes of this paragraph,
49 the term "emotionally disturbed" means a condition exhibiting one
50 or more of the following characteristics over a long period of
51 time and to a marked degree, which adversely affects educational
52 performance:

53 1. An inability to learn which cannot be explained
54 by intellectual, sensory or health factors;

55 2. An inability to build or maintain satisfactory
56 relationships with peers and teachers;

57 3. Inappropriate types of behavior or feelings
58 under normal circumstances;

59 4. A general pervasive mood of unhappiness or
60 depression; or

61 5. A tendency to develop physical symptoms or
62 fears associated with personal or school problems. An

63 establishment furnishing primarily domiciliary care is not within
64 this definition.

65 (e) "Pediatric skilled nursing facility" means an
66 institution or a distinct part of an institution that is primarily
67 engaged in providing to inpatients skilled nursing care and
68 related services for persons under twenty-one (21) years of age
69 who require medical or nursing care or rehabilitation services for
70 the rehabilitation of injured, disabled or sick persons.

71 (f) "Licensing agency" means the State Department of
72 Health.

73 (g) "Medical records" mean, without restriction, those
74 medical histories, records, reports, summaries, diagnoses and
75 prognoses, records of treatment and medication ordered and given,
76 notes, entries, x-rays and other written or graphic data prepared,
77 kept, made or maintained in institutions for the aged or infirm
78 that pertain to residency in, or services rendered to residents
79 of, an institution for the aged or infirm.

80 (h) "Adult day services facility" means a
81 community-based group program for adults designed to meet the
82 needs of adults with impairments through individual plans of care,
83 which are structured, comprehensive, planned, nonresidential
84 programs providing a variety of health, social and related support
85 services in a protective setting, enabling participants to live in
86 the community.

87 **SECTION 2.** Section 43-11-13, Mississippi Code of 1972, is
88 amended as follows:

89 43-11-13. (1) The licensing agency shall adopt, amend,
90 promulgate and enforce such rules, regulations and standards,
91 including classifications, with respect to all institutions for
92 the aged or infirm to be licensed under this chapter as may be
93 designed to further the accomplishment of the purpose of this
94 chapter in promoting adequate care of individuals in those
95 institutions in the interest of public health, safety and welfare.

96 Those rules, regulations and standards shall be adopted and
97 promulgated by the licensing agency and shall be recorded and
98 indexed in a book to be maintained by the licensing agency in its
99 main office in the State of Mississippi, entitled "Rules,
100 Regulations and Minimum Standards for Institutions for the Aged or
101 Infirm" and the book shall be open and available to all
102 institutions for the aged or infirm and the public generally at
103 all reasonable times. Upon the adoption of those rules,
104 regulations and standards, the licensing agency shall mail copies
105 thereof to all those institutions in the state that have filed
106 with the agency their names and addresses for this purpose, but
107 the failure to mail the same or the failure of the institutions to
108 receive the same shall in no way affect the validity thereof. The
109 rules, regulations and standards may be amended by the licensing
110 agency, from time to time, as necessary to promote the health,
111 safety and welfare of persons living in those institutions.

112 (2) The licensee shall keep posted in a conspicuous place on
113 the licensed premises all current rules, regulations and minimum
114 standards applicable to fire protection measures as adopted by the
115 licensing agency. The licensee shall furnish to the licensing
116 agency at least once each six (6) months a certificate of approval
117 and inspection by state or local fire authorities. Failure to
118 comply with state laws and/or municipal ordinances and current
119 rules, regulations and minimum standards as adopted by the
120 licensing agency, relative to fire prevention measures, shall be
121 prima facie evidence for revocation of license.

122 (3) The State Board of Health shall promulgate rules and
123 regulations restricting the storage, quantity and classes of drugs
124 allowed in personal care homes and adult day services facilities.
125 Residents requiring administration of Schedule II Narcotics as
126 defined in the Uniform Controlled Substances Law may be admitted
127 to a personal care home. Schedule drugs may only be allowed in a
128 personal care home if they are administered or stored utilizing

129 proper procedures under the direct supervision of a licensed
130 physician or nurse.

131 (4) (a) Notwithstanding any determination by the licensing
132 agency that skilled nursing services would be appropriate for a
133 resident of a personal care home, that resident, the resident's
134 guardian or the legally recognized responsible party for the
135 resident may consent in writing for the resident to continue to
136 reside in the personal care home, if approved in writing by a
137 licensed physician. However, no personal care home shall allow
138 more than two (2) residents, or ten percent (10%) of the total
139 number of residents in the facility, whichever is greater, to
140 remain in the personal care home under the provisions of this
141 subsection (4). This consent shall be deemed to be appropriately
142 informed consent as described in the regulations promulgated by
143 the licensing agency. After that written consent has been
144 obtained, the resident shall have the right to continue to reside
145 in the personal care home for as long as the resident meets the
146 other conditions for residing in the personal care home. A copy
147 of the written consent and the physician's approval shall be
148 forwarded by the personal care home to the licensing agency.

149 (b) The State Board of Health shall promulgate rules
150 and regulations restricting the handling of a resident's personal
151 deposits by the director of a personal care home. Any funds given
152 or provided for the purpose of supplying extra comforts,
153 conveniences or services to any resident in any personal care
154 home, and any funds otherwise received and held from, for or on
155 behalf of any such resident, shall be deposited by the director or
156 other proper officer of the personal care home to the credit of
157 that resident in an account that shall be known as the Resident's
158 Personal Deposit Fund. No more than one (1) month's charge for
159 the care, support, maintenance and medical attention of the
160 resident shall be applied from the account at any one time. After
161 the death, discharge or transfer of any resident for whose benefit

162 any such fund has been provided, any unexpended balance remaining
163 in his personal deposit fund shall be applied for the payment of
164 care, cost of support, maintenance and medical attention that is
165 accrued. If any unexpended balance remains in that resident's
166 personal deposit fund after complete reimbursement has been made
167 for payment of care, support, maintenance and medical attention,
168 and the director or other proper officer of the personal care home
169 has been or shall be unable to locate the person or persons
170 entitled to the unexpended balance, the director or other proper
171 officer may, after the lapse of one (1) year from the date of that
172 death, discharge or transfer, deposit the unexpended balance to
173 the credit of the personal care home's operating fund.

174 (c) The State Board of Health shall promulgate rules
175 and regulations requiring personal care homes to maintain records
176 relating to health condition, medicine dispensed and administered,
177 and any reaction to that medicine. The director of the personal
178 care home shall be responsible for explaining the availability of
179 those records to the family of the resident at any time upon
180 reasonable request.

181 (d) The State Board of Health shall evaluate the
182 effects of this section as it promotes adequate care of
183 individuals in personal care homes in the interest of public
184 health, safety and welfare. It shall report its findings to the
185 Chairmen of the Public Health and Welfare Committees of the House
186 and Senate by January 1, 2003. This subsection (4) shall stand
187 repealed June 30, 2006.

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

189 (i) "Licensed entity" means a hospital, nursing
190 home, personal care home, home health agency or hospice;

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

193 (iii) "Employee" means any individual employed by
194 a covered entity, and also includes any individual who by contract

195 provides to the patients, residents or clients being served by the
196 covered entity direct, hands-on, medical patient care in a
197 patient's, resident's or client's room or in treatment or recovery
198 rooms. The term "employee" does not include health care
199 professional/vocational technical students, as defined in Section
200 37-29-232, performing clinical training in a licensed entity under
201 contracts between their schools and the licensed entity, and does
202 not include students at high schools located in Mississippi who
203 observe the treatment and care of patients in a licensed entity as
204 part of the requirements of an allied-health course taught in the
205 high school, if:

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

208 2. The student has signed an affidavit that
209 is on file at the student's school stating that he or she has not
210 been convicted of or pleaded guilty or nolo contendere to a felony
211 listed in paragraph (d) of this subsection (5), or that any such
212 conviction or plea was reversed on appeal or a pardon was granted
213 for the conviction or plea. Before any student may sign such an
214 affidavit, the student's school shall provide information to the
215 student explaining what a felony is and the nature of the felonies
216 listed in paragraph (d) of this subsection (5).

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

221 (b) Under regulations promulgated by the State Board of
222 Health, the licensing agency shall require to be performed a
223 criminal history record check on (i) every new employee of a
224 covered entity who provides direct patient care or services and
225 who is employed on or after July 1, 2003, and (ii) every employee
226 of a covered entity employed before July 1, 2003, who has a
227 documented disciplinary action by his or her present employer. In

228 addition, the licensing agency shall require the covered entity to
229 perform a disciplinary check with the professional licensing
230 agency of each employee, if any, to determine if any disciplinary
231 action has been taken against the employee by that agency.

232 Except as otherwise provided in paragraph (c) of this
233 subsection (5), no such employee hired on or after July 1, 2003,
234 shall be permitted to provide direct patient care until the
235 results of the criminal history record check have revealed no
236 disqualifying record or the employee has been granted a waiver.
237 In order to determine the employee applicant's suitability for
238 employment, the applicant shall be fingerprinted. Fingerprints
239 shall be submitted to the licensing agency from scanning, with the
240 results processed through the Department of Public Safety's
241 Criminal Information Center. If no disqualifying record is
242 identified at the state level, the fingerprints shall be forwarded
243 by the Department of Public Safety to the Federal Bureau of
244 Investigation for a national criminal history record check. The
245 licensing agency shall notify the covered entity of the results of
246 an employee applicant's criminal history record check. If the
247 criminal history record check discloses a felony conviction,
248 guilty plea or plea of nolo contendere to a felony of possession
249 or sale of drugs, murder, manslaughter, armed robbery, rape,
250 sexual battery, sex offense listed in Section 45-33-23(g), child
251 abuse, arson, grand larceny, burglary, gratification of lust or
252 aggravated assault, or felonious abuse and/or battery of a
253 vulnerable adult that has not been reversed on appeal or for which
254 a pardon has not been granted, the employee applicant shall not be
255 eligible to be employed by the covered entity.

256 (c) Any such new employee applicant may, however, be
257 employed on a temporary basis pending the results of the criminal
258 history record check, but any employment contract with the new
259 employee shall be voidable if the new employee receives a

260 disqualifying criminal history record check and no waiver is
261 granted as provided in this subsection (5).

262 (d) Under regulations promulgated by the State Board of
263 Health, the licensing agency shall require every employee of a
264 covered entity employed before July 1, 2003, to sign an affidavit
265 stating that he or she has not been convicted of or pleaded guilty
266 or nolo contendere to a felony of possession or sale of drugs,
267 murder, manslaughter, armed robbery, rape, sexual battery, any sex
268 offense listed in Section 45-33-23(g), child abuse, arson, grand
269 larceny, burglary, gratification of lust, aggravated assault, or
270 felonious abuse and/or battery of a vulnerable adult, or that any
271 such conviction or plea was reversed on appeal or a pardon was
272 granted for the conviction or plea. No such employee of a covered
273 entity hired before July 1, 2003, shall be permitted to provide
274 direct patient care until the employee has signed the affidavit
275 required by this paragraph (d). All such existing employees of
276 covered entities must sign the affidavit required by this
277 paragraph (d) within six (6) months of the final adoption of the
278 regulations promulgated by the State Board of Health. If a person
279 signs the affidavit required by this paragraph (d), and it is
280 later determined that the person actually had been convicted of or
281 pleaded guilty or nolo contendere to any of the offenses listed in
282 this paragraph (d) and the conviction or plea has not been
283 reversed on appeal or a pardon has not been granted for the
284 conviction or plea, the person is guilty of perjury. If the
285 offense that the person was convicted of or pleaded guilty or nolo
286 contendere to was a violent offense, the person, upon a conviction
287 of perjury under this paragraph, shall be punished as provided in
288 Section 97-9-61. If the offense that the person was convicted of
289 or pleaded guilty or nolo contendere to was a nonviolent offense,
290 the person, upon a conviction of perjury under this paragraph,
291 shall be punished by a fine of not more than Five Hundred Dollars

292 (\$500.00), or by imprisonment in the county jail for not more than
293 six (6) months, or by both such fine and imprisonment.

294 (e) The covered entity may, in its discretion, allow
295 any employee who is unable to sign the affidavit required by
296 paragraph (d) of this subsection (5) or any employee applicant
297 aggrieved by an employment decision under this subsection (5) to
298 appear before the covered entity's hiring officer, or his or her
299 designee, to show mitigating circumstances that may exist and
300 allow the employee or employee applicant to be employed by the
301 covered entity. The covered entity, upon report and
302 recommendation of the hiring officer, may grant waivers for those
303 mitigating circumstances, which shall include, but not be limited
304 to: (i) age at which the crime was committed; (ii) circumstances
305 surrounding the crime; (iii) length of time since the conviction
306 and criminal history since the conviction; (iv) work history; (v)
307 current employment and character references; and (vi) other
308 evidence demonstrating the ability of the individual to perform
309 the employment responsibilities competently and that the
310 individual does not pose a threat to the health or safety of the
311 patients of the covered entity.

312 (f) The licensing agency may charge the covered entity
313 submitting the fingerprints a fee not to exceed Fifty Dollars
314 (\$50.00), which covered entity may, in its discretion, charge the
315 same fee, or a portion thereof, to the employee applicant. Any
316 costs incurred by a covered entity implementing this subsection
317 (5) shall be reimbursed as an allowable cost under Section
318 43-13-116.

319 (g) If the results of an employee applicant's criminal
320 history record check reveals no disqualifying event, then the
321 covered entity shall, within two (2) weeks of the notification of
322 no disqualifying event, provide the employee applicant with a
323 notarized letter signed by the chief executive officer of the
324 covered entity, or his or her authorized designee, confirming the

325 employee applicant's suitability for employment based on his or
326 her criminal history record check. An employee applicant may use
327 that letter for a period of two (2) years from the date of the
328 letter to seek employment with any covered entity without the
329 necessity of an additional criminal history record check. Any
330 covered entity presented with the letter may rely on the letter
331 with respect to an employee applicant's criminal background and is
332 not required for a period of two (2) years from the date of the
333 letter to conduct or have conducted a criminal history record
334 check as required in this subsection (5).

335 (h) The licensing agency, the covered entity, and their
336 agents, officers, employees, attorneys and representatives, shall
337 be presumed to be acting in good faith for any employment decision
338 or action taken under this subsection (5). The presumption of
339 good faith may be overcome by a preponderance of the evidence in
340 any civil action. No licensing agency, covered entity, nor their
341 agents, officers, employees, attorneys and representatives shall
342 be held liable in any employment decision or action based in whole
343 or in part on compliance with or attempts to comply with the
344 requirements of this subsection (5).

345 (i) The licensing agency shall promulgate regulations
346 to implement this subsection (5).

347 (j) The provisions of this subsection (5) shall not
348 apply to:

349 (i) Applicants and employees of the University of
350 Mississippi Medical Center for whom criminal history record checks
351 and fingerprinting are obtained in accordance with Section
352 37-115-41; or

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

356 (6) The State Board of Health shall promulgate rules,
357 regulations and standards regarding the operation of adult day

358 services facilities which incorporate, but are not limited to, the
359 most current ranges and levels of care developed by the National
360 Adult Day Services Association (NADSA).

361 **SECTION 3.** The following provision shall be codified as
362 Section 43-11-8, Mississippi Code of 1972:

363 43-11-8. (1) An application for a license for an adult day
364 services facility shall be made to the licensing agency upon forms
365 provided by it and shall contain such information as the licensing
366 agency reasonably requires, which may include affirmative evidence
367 of ability to comply with such reasonable standards, rules and
368 regulations as are lawfully prescribed hereunder. Each
369 application for a license for an adult day services facility shall
370 be accompanied by a license fee of Ten Dollars (\$10.00) for each
371 person of licensed capacity, with a minimum fee per institution of
372 Fifty Dollars (\$50.00), which shall be paid to the licensing
373 agency. Each application for a license for an adult day services
374 facility shall be accompanied by a license fee of Ten Dollars
375 (\$10.00) for each bed in the institution, with a minimum fee per
376 institution of Fifty Dollars (\$50.00), which shall be paid to the
377 licensing agency.

378 (2) A license, unless suspended or revoked, shall be
379 renewable annually upon payment by (a) the licensee of an adult
380 day services facility, except for personal care homes, of a
381 renewal fee of Ten Dollars (\$10.00) for each person of licensed
382 capacity in the institution, with a minimum fee per institution of
383 Fifty Dollars (\$50.00), or (b) the licensee of an adult day care
384 facility of a renewal fee of Ten Dollars (\$10.00) for each
385 licensed facility, with a minimum fee per institution of Fifty
386 Dollars (\$50.00), which shall be paid to the licensing agency, and
387 upon filing by the licensee and approval by the licensing agency
388 of an annual report upon such uniform dates and containing such
389 information in such form as the licensing agency prescribes by
390 regulation. Each license shall be issued only for the premises

391 and person or persons or other legal entity or entities named in
392 the application and shall not be transferable or assignable except
393 with the written approval of the licensing agency. Licenses shall
394 be posted in a conspicuous place on the licensed premises.

395 (3) A fee known as a "user fee" shall be applicable and
396 shall be paid to the licensing agency as set out in subsection (1)
397 hereof. This user fee shall be assessed for the purpose of the
398 required reviewing and inspections of the proposal of any
399 institution in which there are additions, renovations,
400 modernizations, expansion, alterations, conversions, modifications
401 or replacement of the entire facility involved in such proposal.
402 This fee includes the reviewing of architectural plans in all
403 steps required. There shall be a minimum user fee of Fifty
404 Dollars (\$50.00) and a maximum user fee of Two Thousand Dollars
405 (\$2,000.00).

406 **SECTION 4.** This act shall take effect and be in force from
407 and after January 1, 2007.