

By: Moody

To: Public Health and Welfare

HOUSE BILL NO. 733

1 AN ACT TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO
 2 ADD LICENSED MEDICAL PERSONNEL AND OTHER ENTITIES TO THE
 3 ENUMERATION OF MANDATED REPORTERS OF ABUSE, NEGLECT AND
 4 EXPLOITATION UNDER THE VULNERABLE ADULTS ACT AND TO PRESCRIBE
 5 CRIMINAL PENALTIES FOR FAILING TO MAKE SUCH REQUIRED REPORTS; TO
 6 PROVIDE THAT ADULT CENTRAL REGISTRY CRIMINAL BACKGROUND CHECKS
 7 SHALL BE MANDATORY ON EMPLOYEES, PROSPECTIVE EMPLOYEES, VOLUNTEERS
 8 AND PROSPECTIVE VOLUNTEERS OF ADULT CARE FACILITIES UNDER THE
 9 VULNERABLE ADULTS ACT; TO PROVIDE FOR THE CONFIDENTIALITY OF SUCH
 10 REPORTS BY THE DEPARTMENT OF HUMAN SERVICES; TO AMEND SECTION
 11 43-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A COURT MAY
 12 AUTHORIZE THE EVALUATION OF AN ABUSED ADULT UPON SHOWING OF
 13 PROBABLE CAUSE, INCLUDING AN EVALUATION OF THE FINANCIAL RECORDS
 14 OF THE VULNERABLE ADULT; TO AMEND SECTION 43-11-13, MISSISSIPPI
 15 CODE OF 1972, TO DIRECT THE STATE DEPARTMENT OF HEALTH TO REQUIRE
 16 ALL LICENSED NURSING FACILITIES TO CONDUCT CRIMINAL RECORD
 17 BACKGROUND CHECKS AND ADULT CENTRAL REGISTRY CHECKS ON EMPLOYEES,
 18 PROSPECTIVE EMPLOYEES AND VOLUNTEERS; TO PROVIDE IMMUNITY; TO
 19 AUTHORIZE THE DEPARTMENT TO CHARGE THE LICENSEE A FEE FOR SUCH
 20 CRIMINAL RECORD CHECKS; AND FOR RELATED PURPOSES.

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

22 SECTION 1. Section 43-47-7, Mississippi Code of 1972, is
 23 amended as follows:[CRG1]

24 43-47-7. (1) (a) Except as otherwise provided by Section
 25 43-47-37 for vulnerable adults in care facilities, any person
 26 including, but not limited to, the following, who knows or
 27 suspects that a vulnerable adult has been or is being abused,
 28 neglected or exploited shall immediately report such knowledge or
 29 suspicion to the Mississippi Department of Human Services * * *:

30 (i) Physician, osteopathic physician, medical

31 examiner, chiropractic physician, nurse or hospital personnel
32 engaged in the admission, examination, care or treatment of
33 disabled adults or elderly persons;

34 (ii) Health professional or mental health
35 professional other than one listed in subparagraph (i) of this
36 paragraph (a);

37 (iii) Practitioner who relies solely on spiritual
38 means for healing;

39 (iv) Nursing home staff, assisted living facility
40 staff, adult day care center staff, adult family-care home staff,
41 social worker or other professional adult care, residential or
42 institutional staff;

43 (v) State, county or municipal criminal justice
44 employee or law enforcement officer;

45 (vi) Human rights advocacy committee or long-term
46 care ombudsman council member; or

47 (vii) Bank, savings and loan or credit union
48 officer, trustee or employee.

49 (b) To the extent possible, a report made under
50 paragraph (a) must contain, but need not be limited to, the
51 following information:

52 (i) Name, age, race, sex, physical description and
53 location of each vulnerable adult alleged to have been abused,
54 neglected or exploited.

55 (ii) Names, addresses and telephone numbers of the
56 vulnerable adult's family members.

57 (iii) Name, address and telephone number of each
58 alleged perpetrator.

59 (iv) Name, address and telephone number of the
60 caregiver of the vulnerable adult, if different from the alleged
61 perpetrator.

62 (v) Description of the physical or psychological
63 injuries sustained.

64 (vi) Actions taken by the reporter, if any, such
65 as notification of the criminal justice agency.

66 (vii) Any other information available to the
67 reporting person that may establish the cause of abuse, neglect or
68 exploitation that occurred or is occurring.

69 In addition to above, any person or entity holding or
70 required to hold a license as specified in Title 73, Professions
71 and Vocations, of the Mississippi Code of 1972, shall be required
72 to give his, her or its name, address and telephone number in the
73 report of the alleged abuse, neglect or exploitation.

74 (c) The department or its designees shall report to an
75 appropriate criminal investigative or prosecutive authority any
76 person required by this section to report or who fails to comply
77 with this section. A person who fails to make a report as
78 required under this subsection or who, because of the
79 circumstances, should have known or suspected that a vulnerable
80 adult suffers from abandonment, exploitation, abuse, neglect or
81 self-neglect but who knowingly fails to comply with this section
82 shall, upon conviction, be guilty of a misdemeanor and shall be
83 punished by a fine of not exceeding Five Thousand Dollars
84 (\$5,000.00), or by imprisonment in the county jail for not more
85 than six (6) months, or both such fine and imprisonment. If a
86 person convicted under this section is a member of a profession or
87 occupation that is licensed, certified or regulated by the state,
88 the court shall notify the appropriate licensing, certifying or
89 regulating entity of the conviction.

90 (2) Reports received by law enforcement authorities or other
91 agencies shall be forwarded immediately to the Department of Human
92 Services or the county welfare department.

93 (3) The report may be made orally or in writing, but where
94 made orally, it shall be followed up by a written report.

95 (4) Anyone who makes a report pursuant to this section, who
96 testifies or participates in any judicial proceedings arising from
97 the report or who participates in a required investigation or
98 evaluation shall be presumed to be acting in good faith and in so
99 doing shall be immune from liability, civil or criminal, that
100 might otherwise be incurred or imposed.

101 (5) A person who intentionally makes a false report under
102 the provisions of this section may be found liable in a civil suit
103 for any actual damages suffered by the person or persons so
104 reported and for any punitive damages set by the court or jury.

105 (6) The Executive Director of the Department of Human
106 Services shall establish a statewide central register of reports
107 made pursuant to this section. The central register shall be
108 capable of receiving reports of vulnerable adults in need of
109 protective services seven (7) days a week, twenty-four (24) hours
110 a day. To effectuate this purpose the executive director shall
111 establish a single toll-free statewide phone number that all
112 persons may use to report vulnerable adults in need of protective
113 services, and that all persons authorized by subsection (7) of
114 this section may use for determining the existence of prior
115 reports in order to evaluate the condition or circumstances of the
116 vulnerable adult before them. Such oral reports and evidence of
117 previous reports shall be transmitted to the appropriate county

118 welfare department. The central register shall include, but not
119 be limited to, the following information: the name and
120 identifying information of the individual reported, the county
121 welfare department responsible for the investigation of each such
122 report, the names, affiliations and purposes of any person
123 requesting or receiving information which the executive director
124 believes might be helpful in the furtherance of the purposes of
125 this chapter.

126 Upon request, a vulnerable adult who is the subject of a
127 report or, if the vulnerable adult is legally incapacitated, the
128 guardian or guardian ad litem of the vulnerable adult shall be
129 entitled to receive a copy of all information contained in the
130 registry pertaining to his or her case.

131 Each person, business, organization or other entity, whether
132 public or private, operated for profit, operated for nonprofit or
133 a voluntary unit of government not responsible for law enforcement
134 providing care, supervision or treatment of adults or vulnerable
135 persons shall conduct criminal records and adult central registry
136 checks on each employee, prospective employee, volunteer or
137 prospective volunteer of the entity who provides, and/or would
138 provide services to adults or vulnerable persons.

139 The department shall not release data that would be harmful
140 or detrimental to the vulnerable adult or that would identify or
141 locate a person who, in good faith, made a report or cooperated in
142 a subsequent investigation unless ordered to do so by a court of
143 competent jurisdiction.

144 (7) Reports made pursuant to this section, reports written
145 or photographs taken concerning such reports in the possession of

146 the Department of Human Services or the county welfare department
147 shall be confidential and shall only be made available to:

148 (a) A physician who has before him a vulnerable adult
149 whom he reasonably suspects may be abused, neglected or exploited,
150 as defined in Section 43-47-5;

151 (b) A duly authorized agency having the responsibility
152 for the care or supervision of a subject of the report;

153 (c) Any person who is the subject of the report;

154 (d) A grand jury or a court of competent jurisdiction,
155 upon finding that the information in the record is necessary for
156 the determination of charges before the grand jury;

157 (e) A district attorney or other law enforcement
158 official.

159 Notwithstanding paragraph (b) of this subsection, the
160 department may not disclose a report of the abandonment,
161 exploitation, abuse, neglect or self-neglect of a vulnerable adult
162 to the vulnerable adult's guardian, attorney-in-fact, surrogate
163 decision maker, or care giver who is a perpetrator or alleged
164 perpetrator of the abandonment, exploitation, abuse or neglect of
165 the vulnerable adult.

166 Any person given access to the names or other information
167 identifying the subject of the report, except the subject of the
168 report, shall not divulge or make public such identifying
169 information unless he is a district attorney or other law
170 enforcement official and the purpose is to initiate court action.

171 Any person who willfully permits the release of any data or
172 information obtained pursuant to this section to persons or
173 agencies not permitted to such access by this section shall be

174 guilty of a misdemeanor.

175 (8) Upon reasonable cause to believe that a caretaker or
176 other person has abused, neglected or exploited a vulnerable
177 adult, the department shall promptly notify the district attorney
178 of the county in which the vulnerable adult is located, except as
179 provided in Section 43-47-37(2).

180 SECTION 2. Section 43-47-9, Mississippi Code of 1972, is
181 amended as follows:[CRG2]

182 43-47-9. (1) Upon receipt of a report pursuant to Section
183 43-47-7 that a vulnerable adult is in need of protective services,
184 the department shall initiate an investigation and/or evaluation
185 within forty-eight (48) hours to determine whether the vulnerable
186 adult is in need of protective services and what services are
187 needed. The evaluation shall include any necessary visits and
188 interviews with the adult, and if appropriate, with the alleged
189 perpetrator of the dependent adult abuse and with any person
190 believed to have knowledge of the circumstances of the case. When
191 a caretaker of a vulnerable adult refuses to allow the department
192 reasonable access to conduct an investigation to determine if the
193 vulnerable adult is in need of protective services, the department
194 may petition the court for an order for injunctive relief
195 enjoining the caretaker from interfering with the investigation.
196 The department may provide necessary protective services and may
197 establish a sliding fee schedule for those persons able to pay a
198 portion of the protective services.

199 (2) The staff and physicians of local health departments,
200 mental health clinics and other public or private agencies,
201 including law enforcement agencies, shall cooperate fully with the

202 department in the performance of its duties. These duties include
203 immediate, in-residence evaluations and medical examinations and
204 treatment where the department deems it necessary. * * *
205 However, * * * upon receipt of a report of abuse, neglect or
206 exploitation of a vulnerable adult confined in a licensed hospital
207 or licensed nursing home facility in the state, the department
208 shall immediately refer this report to the proper authority at the
209 State Department of Health for investigation under Section
210 43-47-37.

211 Upon a showing of probable cause that an adult has been
212 abused, a court may authorize a person, also authorized by the
213 department, to make an evaluation, to enter the residence of, and
214 to examine the dependent adult. Upon a showing of probable cause
215 that a dependent adult has been financially exploited, a court may
216 authorize a person, also authorized by the department, to make an
217 evaluation, and to gain access to the financial records of the
218 dependent adult.

219 (3) The department may contract with an agency or private
220 physician for the purpose of providing immediate, accessible
221 evaluations in the location that the department deems most
222 appropriate.

223 SECTION 3. Section 43-11-13, Mississippi Code of 1972, is
224 amended as follows:[CRG3]

225 43-11-13. (1) The licensing agency shall adopt, amend,
226 promulgate and enforce such rules, regulations and standards,
227 including classifications, with respect to all institutions for
228 the aged or infirm to be licensed hereunder as may be designed to
229 further the accomplishment of the purpose of this chapter in

230 promoting adequate care of individuals in such institutions in the
231 interest of public health, safety and welfare. Such rules,
232 regulations and standards shall be adopted and promulgated by the
233 licensing agency and shall be recorded and indexed in a book to be
234 maintained by the licensing agency in its main office in the State
235 of Mississippi, entitled "Rules, Regulations and Minimum Standards
236 for Institutions for the Aged or Infirm" and the book shall be
237 open and available to all institutions for the aged or infirm and
238 the public generally at all reasonable times. Upon the adoption
239 of such rules, regulations and standards, the licensing agency
240 shall mail copies thereof to all such institutions in the state
241 which have filed with the agency their names and addresses for
242 this purpose, but the failure to mail the same or the failure of
243 the institutions to receive the same shall in nowise affect the
244 validity thereof. The rules, regulations and standards may be
245 amended by the licensing agency from time to time as necessary to
246 promote the health, safety and welfare of persons living in those
247 institutions.

248 (2) The licensee shall keep posted in a conspicuous place on
249 the licensed premises all current rules, regulations and minimum
250 standards applicable to fire protection measures as adopted by the
251 licensing agency. The licensee shall furnish to the licensing
252 agency at least once each six (6) months a certificate of approval
253 and inspection by state or local fire authorities. Failure to
254 comply with state laws and/or municipal ordinances and current
255 rules, regulations and minimum standards as adopted by the
256 licensing agency, relative to fire prevention measures, shall be
257 prima facie evidence for revocation of license.

258 (3) The State Board of Health shall promulgate rules and
259 regulations restricting the storage, quantity and classes of drugs
260 allowed in personal care homes. Residents requiring
261 administration of Schedule II Narcotics as defined in the Uniform
262 Controlled Substances Law may be admitted to a personal care home.

263 Schedule drugs may only be allowed in a personal care home if
264 they are administered or stored utilizing proper procedures under
265 the direct supervision of a licensed physician or nurse.

266 (4) The licensing agency shall require that all licensees
267 conduct criminal records background checks and adult central
268 registry checks on each employee, prospective employee, volunteer
269 or prospective volunteer who provides or would provide personal
270 care or have personal contact with any resident of an institution
271 for the aged or infirm. In order to conduct the criminal records
272 background check, each employee, prospective employee, volunteer
273 or prospective volunteer shall be fingerprinted. If no
274 disqualifying record is identified at the state level, the
275 fingerprints shall be forwarded by the Department of Public Safety
276 to the Federal Bureau of Investigation for a national criminal
277 history record check.

278 (5) The licensing agency and its agents, officers,
279 employees, attorneys and representatives shall not be held civilly
280 liable for any findings, recommendation or actions taken pursuant
281 to this section.

282 (6) All fees incurred in compliance with this section shall
283 be borne by the institution for the aged or infirm. The licensing
284 agency may charge a fee that shall include the amount required by
285 the Federal Bureau of Investigation for the national criminal

286 history record check and any necessary costs incurred by the
287 licensing agency for the handling and administration of the
288 criminal history background checks

289 SECTION 4. This act shall take effect and be in force from
290 and after July 1, 2000.