

*****Adopted*****

AMENDMENT No. 1 TO AMENDMENT No. 1 PROPOSED TO

House Bill NO. 449

By Senator(s) Burton

26 Amend by striking all after the enacting clause and inserting
27 in lieu thereof the following:

28

29 SECTION 1. Section 43-47-7, Mississippi Code of 1972, is
30 amended as follows:

31 43-47-7. (1) (a) Except as otherwise provided by Section
32 43-47-37 for vulnerable adults in care facilities, any person
33 including, but not limited to, the following, who knows or
34 suspects beyond a reasonable doubt that a vulnerable adult has
35 been or is being abused, neglected or exploited shall immediately
36 report such knowledge or suspicion to the Mississippi Department
37 of Human Services * * *:

38 (i) Attorney, physician, osteopathic physician,
39 medical examiner, chiropractor or nurse engaged in the admission,
40 examination, care or treatment of vulnerable adults;

41 (ii) Health professional or mental health
42 professional other than one listed in subparagraph (i);

43 (iii) Practitioner who relies solely on spiritual
44 means for healing;

45 (iv) Social worker or other professional adult
46 care, residential or institutional staff;

47 (v) State, county or municipal criminal justice
48 employee or law enforcement officer;

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

51 (vii) Bank, savings and loan or credit union
52 officer, trustee or employee.

53 (b) To the extent possible, a report made pursuant to
54 paragraph (a) must contain, but need not be limited to, the
55 following information:

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

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

61 (iii) Name, address and telephone number of each
62 alleged perpetrator.

63 (iv) Name address and telephone number of the
64 caregiver of the vulnerable adult, if different from the alleged
65 perpetrator.

66 (v) Description of the physical or psychological
67 injuries sustained.

68 (vi) Actions taken by the reporter; if any, such
69 as notification of the criminal justice agency.

70 (vii) Any other information available to the
71 reporting person which may establish the cause of abuse, neglect
72 or exploitation that occurred or is occurring.

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

78 (c) The department or its designees shall report to an
79 appropriate criminal investigative or prosecutive authority any
80 person required by this section to report or who fails to comply
81 with this section. A person who fails to make a report as
82 required under this subsection or who, because of the
83 circumstances, should have known or suspected beyond a reasonable

84 doubt that a vulnerable adult suffers from exploitation, abuse,
85 neglect or self-neglect but who knowingly fails to comply with
86 this section shall, upon conviction, be guilty of a misdemeanor
87 and shall be punished by a fine of not exceeding Five Thousand
88 Dollars (\$5,000.00), or by imprisonment in the county jail for not
89 more than six (6) months, or both such fine and imprisonment. If
90 a person convicted under this section is a member of a profession
91 or occupation that is licensed, certified or regulated by the
92 state, the court shall notify the appropriate licensing,
93 certifying or regulating entity of the conviction.

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

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

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

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

109 (6) The Executive Director of the Department of Human
110 Services shall establish a statewide central register of reports
111 made pursuant to this section. The central register shall be
112 capable of receiving reports of vulnerable adults in need of
113 protective services seven (7) days a week, twenty-four (24) hours
114 a day. To effectuate this purpose the executive director shall
115 establish a single toll-free statewide phone number that all
116 persons may use to report vulnerable adults in need of protective
117 services, and that all persons authorized by subsection (7) of
118 this section may use for determining the existence of prior

119 reports in order to evaluate the condition or circumstances of the
120 vulnerable adult before them. Such oral reports and evidence of
121 previous reports shall be transmitted to the appropriate county
122 welfare department. The central register shall include, but not
123 be limited to, the following information: the name and
124 identifying information of the individual reported, the county
125 welfare department responsible for the investigation of each such
126 report, the names, affiliations and purposes of any person
127 requesting or receiving information which the executive director
128 believes might be helpful in the furtherance of the purposes of
129 this chapter.

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

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

143 (7) Reports made pursuant to this section, reports written
144 or photographs taken concerning such reports in the possession of
145 the Department of Human Services or the county welfare department
146 shall be confidential and shall only be made available to:

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

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

152 * * *

153 (c) A grand jury or a court of competent jurisdiction,

154 upon finding that the information in the record is necessary for
155 the determination of charges before the grand jury;

156 (d) A district attorney or other law enforcement
157 official.

158 Notwithstanding subsection 7(b) hereof, the department may
159 not disclose a report of the abandonment, exploitation, abuse,
160 neglect or self-neglect of a vulnerable adult to the vulnerable
161 adult's guardian, attorney-in-fact, surrogate decision maker, or
162 care giver who is a perpetrator or alleged perpetrator of the
163 abandonment, exploitation, abuse or neglect of the vulnerable
164 adult.

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

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

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

179 SECTION 2. Section 43-47-9, Mississippi Code of 1972, is
180 amended as follows:

181 43-47-9. (1) Upon receipt of a report pursuant to Section
182 43-47-7 that a vulnerable adult is in need of protective services,
183 the department shall initiate an investigation and/or evaluation
184 within forty-eight (48) hours to determine whether the vulnerable
185 adult is in need of protective services and what services are
186 needed. The evaluation shall include any necessary visits and
187 interviews with the adult, and if appropriate, with the alleged
188 perpetrator of the vulnerable adult abuse and with any person

189 believed to have knowledge of the circumstances of the case. When
190 a caretaker of a vulnerable adult refuses to allow the department
191 reasonable access to conduct an investigation to determine if the
192 vulnerable adult is in need of protective services, the department
193 may petition the court for an order for injunctive relief
194 enjoining the caretaker from interfering with the investigation.

195 (2) The staff and physicians of local health departments,
196 mental health clinics and other public or private agencies,
197 including law enforcement agencies, shall cooperate fully with the
198 department in the performance of its duties. These duties include
199 immediate, in-residence evaluations and medical examinations and
200 treatment where the department deems it necessary. Provided,
201 however, that upon receipt of a report of abuse, neglect or
202 exploitation of a vulnerable adult confined in a licensed hospital
203 or licensed nursing home facility in the state, the department
204 shall immediately refer this report to the proper authority at the
205 State Department of Health for investigation under Section
206 43-47-37.

207 Upon a showing of probable cause that a vulnerable adult has
208 been abused, a court may authorize a qualified third party to make
209 an evaluation, to enter the residence of, and to examine the
210 vulnerable adult. Upon a showing of probable cause that a
211 vulnerable adult has been financially exploited, a court may
212 authorize a qualified third party, also authorized by the
213 department, to make an evaluation, and to gain access to the
214 financial records of the vulnerable adult.

215 (3) The department may contract with an agency or private
216 physician for the purpose of providing immediate, accessible
217 evaluations in the location that the department deems most
218 appropriate.

219 SECTION 3. Section 43-11-13, Mississippi Code of 1972, is
220 amended as follows:

221 43-11-13. (1) The licensing agency shall adopt, amend,
222 promulgate and enforce such rules, regulations and standards,
223 including classifications, with respect to all institutions for

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

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

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

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

262 (4) The licensing agency shall require that all licensees
263 conduct criminal records background checks and adult central
264 registry checks on each applicant for employment who provides
265 and/or would provide direct personal care or services to any
266 resident of an institution for the aged or infirm. The licensing
267 agency shall develop regulations for the conduct of criminal
268 records background checks by institutions for the aged or infirm.
269 The Department of Public Safety shall assist in the
270 implementation of a national criminal history record check. In
271 order to conduct the criminal records background check, each new
272 employee or prospective employee shall be fingerprinted. If no
273 disqualifying record is identified at the state level, the
274 fingerprints shall be forwarded by the Department of Public Safety
275 to the Federal Bureau of Investigation for a national criminal
276 history record check.

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

281 (6) The licensing agency is hereby authorized to charge a
282 fee which shall include the amount required by the Federal Bureau
283 of Investigation for the national criminal history record check
284 and any necessary costs incurred by the licensing agency for the
285 handling and administration of the criminal history background
286 checks. The Division of Medicaid shall reimburse fees for
287 mandatory fingerprinting and criminal history background checks as
288 allowable costs for Medicaid-certified facilities classified
289 according to the employment responsibilities of the applicant.
290 All fees incurred in compliance with this section which are not
291 Medicaid reimbursable shall be borne by the institution for the
292 aged or infirm.

293 SECTION 4. Section 43-47-19, Mississippi Code of 1972, is

294 amended as follows:

295 43-47-19. (1) It shall be unlawful for any person to abuse,
296 neglect or exploit any vulnerable adult.

297 (2) Any person who willfully commits an act or omits the
298 performance of any duty, which act or omission contributes to,
299 tends to contribute to or results in physical pain, injury, mental
300 anguish, unreasonable confinement, or deprivation of services
301 which are necessary to maintain the mental and physical health of
302 a vulnerable adult, or neglect * * * of any vulnerable adult shall
303 be guilty of a misdemeanor and, upon conviction thereof, shall be
304 punished by a fine not to exceed One Thousand Dollars (\$1,000.00)
305 or by imprisonment not to exceed one (1) year in the county jail,
306 or by both such fine and imprisonment. Any accepted medical
307 procedure performed in the usual scope of practice shall not be a
308 violation of this subsection.

309 Any person who willfully exploits a vulnerable adult and the
310 value of the resources is Two Hundred Fifty Dollars (\$250.00) or
311 less shall be guilty of a misdemeanor and, upon conviction
312 thereof, shall be punished by a fine not to exceed One Thousand
313 Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year
314 in the county jail or by both such fine and imprisonment. Any
315 person who willfully exploits a vulnerable adult and the value of
316 the resources exceeds Two Hundred Fifty Dollars (\$250.00) shall be
317 guilty of a felony and, upon conviction thereof, shall be punished
318 by imprisonment in the State Penitentiary for not more than ten
319 (10) years.

320 (3) Any person who willfully inflicts physical pain or
321 injury upon a vulnerable adult shall be guilty of felonious abuse
322 and/or battery of a vulnerable adult and, upon conviction thereof,
323 may be punished by imprisonment in the State Penitentiary for not
324 more than twenty (20) years.

325 (4) Nothing contained in this section shall prevent
326 proceedings against a person under any statute of this state or
327 municipal ordinance defining any act as a crime or misdemeanor.

328 SECTION 5. (1) Except as otherwise provided in subsection

329 (3), a person, knowing that the information is misleading or
330 inaccurate, shall not intentionally, willfully or recklessly place
331 or direct another to place in a patient's medical record or chart
332 misleading or inaccurate information regarding the diagnosis,
333 treatment or cause of a patient's condition. A violation of this
334 subsection is punishable as follows: a person who intentionally
335 or willfully or recklessly violates this subsection is guilty of a
336 misdemeanor, punishable by imprisonment for not more than one (1)
337 year, or a fine of not more then One Thousand Dollars (\$1,000.00),
338 or both.

339 (2) Except as otherwise provided in subsection (3), a person
340 shall not intentionally or willfully alter or destroy or direct
341 another to alter or destroy a patient's medical records or charts
342 for the purpose of concealing his or her responsibility for the
343 patient's injury, sickness or death. A person who violates this
344 subsection is guilty of a misdemeanor punishable by imprisonment
345 for not more than one (1) year, or a fine of not more than One
346 Thousand Dollars (\$1,000.00), or both.

347 (3) Subsections (1) and (2) do not apply to either of the
348 following:

349 (a) Destruction of a patient's original medical record
350 or chart if all of the information contained in or on the medical
351 record or chart is otherwise retained by means of mechanical or
352 electronic recording, chemical reproduction, or other equivalent
353 techniques that accurately reproduce all of the information
354 contained in or on the original.

355 (b) Supplementation of information or correction of an
356 error in a patient's medical record or chart in a manner that
357 reasonably discloses that the supplementation or correction was
358 performed and that does not conceal or alter prior entries.

359 SECTION 6. This act shall take effect and be in force from
360 and after July 1, 2000.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO
2 ADD CERTAIN 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 APPLICANTS FOR EMPLOYMENT AT ADULT CARE
8 FACILITIES UNDER THE VULNERABLE ADULTS ACT AND TO PROVIDE FOR THE
9 CONFIDENTIALITY OF SUCH REPORTS BY THE DEPARTMENT OF HUMAN
10 SERVICES; TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO
11 PROVIDE THAT A COURT MAY AUTHORIZE THE EVALUATION OF AN ABUSED
12 ADULT UPON SHOWING OF PROBABLE CAUSE, INCLUDING AN EVALUATION OF
13 THE FINANCIAL RECORDS OF THE VULNERABLE ADULT; TO AMEND SECTION
14 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE DEPARTMENT
15 OF HEALTH TO REQUIRE ALL LICENSED NURSING FACILITIES TO CONDUCT
16 CRIMINAL RECORD BACKGROUND CHECKS AND ADULT CENTRAL REGISTRY
17 CHECKS ON APPLICANTS FOR EMPLOYMENT AT NURSING FACILITIES, TO
18 PROVIDE IMMUNITY AND TO AUTHORIZE THE DEPARTMENT TO CHARGE THE
19 LICENSEE A FEE FOR SUCH CRIMINAL RECORD CHECKS; TO AMEND SECTION
20 43-47-19, MISSISSIPPI CODE OF 1972, TO CLARIFY AND INCREASE
21 CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR FINANCIAL
22 EXPLOITATION OF VULNERABLE ADULTS; TO ENACT STANDARDS FOR ENTRIES
23 IN PATIENT MEDICAL RECORDS OR CHARTS; TO ENACT PENALTIES FOR
24 VIOLATION OF THE STANDARDS; AND FOR RELATED PURPOSES.