HOUSE BILL NO. 1250

AN ACT TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO ADD CERTAIN LICENSED MEDICAL PERSONNEL AND OTHER ENTITIES TO THE ENUMERATION OF MANDATED REPORTERS OF ABUSE, NEGLECT AND EXPLOITATION UNDER THE VULNERABLE ADULTS ACT AND TO PRESCRIBE CRIMINAL PENALTIES FOR FAILING TO MAKE SUCH REQUIRED REPORTS; TO PROVIDE THAT ADULT CENTRAL REGISTRY CRIMINAL BACKGROUND CHECKS SHALL BE MANDATORY ON APPLICANTS FOR EMPLOYMENT AT ADULT CARE FACILITIES UNDER THE VULNERABLE ADULTS ACT AND TO PROVIDE FOR THE CONFIDENTIALITY OF SUCH REPORTS BY THE DEPARTMENT OF HUMAN SERVICES; TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A COURT MAY AUTHORIZE THE EVALUATION OF AN ABUSED ADULT UPON SHOWING OF PROBABLE CAUSE, INCLUDING AN EVALUATION OF THE FINANCIAL RECORDS OF THE VULNERABLE ADULT; TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE LICENSING AGENCY TO CONDUCT CRIMINAL RECORD BACKGROUND CHECKS AND ADULT CENTRAL REGISTRY CHECKS ON LICENSABLE APPLICANTS FOR EMPLOYMENT AT NURSING FACILITIES; TO DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO CONDUCT CRIMINAL BACKGROUND AND ADULT CENTRAL REGISTRY CHECKS ON UNLICENSED APPLICANTS AT NURSING FACILITIES; TO AUTHORIZE THE DEPARTMENT TO CHARGE THE FACILITY A FEE FOR SUCH CRIMINAL RECORD CHECKS; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO CLARIFY AND INCREASE CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR FINANCIAL EXPLOITATION OF VULNERABLE ADULTS; TO ENACT STANDARDS FOR ENTRIES IN PATIENT MEDICAL RECORDS OR CHARTS; TO ENACT PENALTIES FOR VIOLATION OF THE STANDARDS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

(vii) Bank, savings and loan, credit union or other financial institution officer, trustee or employee.

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

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

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

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

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

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

(vi) Actions taken by the reporter; if any, such as notification of the criminal justice agency.
(vii) Any other information available to the reporting person which may establish the cause of abuse, neglect or exploitation that occurred or is occurring.

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

(c) The department or its designees shall report to an appropriate criminal investigative or prosecutive authority any person required by this section to report or who fails to comply with this section. A person who fails to make a report as required under this subsection or who, because of their training or experience, should have known or suspected beyond a reasonable doubt that a vulnerable adult suffers from exploitation, abuse, neglect or self-neglect but who knowingly fails to comply with this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not exceeding Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. If a person convicted under this section is a member of a profession or occupation that is licensed, certified or regulated by the state, the court shall notify the appropriate licensing, certifying or regulating entity of the conviction.

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

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

(4) Anyone who makes a report required by this section, who testifies or participates in any judicial proceedings arising from the report or who participates in a required investigation or evaluation, if found to be acting in good faith, shall be immune...
from liability, civil or criminal, that might otherwise be
incurred or imposed.

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

(6) The Executive Director of the Department of Human
Services shall establish a statewide central register of reports
made pursuant to this section. The central register shall be
capable of receiving reports of vulnerable adults in need of
protective services seven (7) days a week, twenty-four (24) hours
a day. To effectuate this purpose the executive director shall
establish a single toll-free statewide phone number that all
persons may use to report vulnerable adults in need of protective
services, and that all persons authorized by subsection (7) of
this section may use for determining the existence of prior
reports in order to evaluate the condition or circumstances of the
vulnerable adult before them. Such oral reports and evidence of
previous reports shall be transmitted to the appropriate county
welfare department. The central register shall include, but not
be limited to, the following information: the name and identifying
information of the individual reported, the county welfare
department responsible for the investigation of each such report,
the names, affiliations and purposes of any person requesting or
receiving information which the executive director believes might
be helpful in the furtherance of the purposes of this chapter.

Each person, business, organization or other entity, whether
public or private, operated for profit, operated for nonprofit or
a voluntary unit of government not responsible for law enforcement
providing care, supervision or treatment of vulnerable adults
shall require certified copies of Department of Public Safety
criminal records and adult central registry checks from each new
employee of the entity who provides, and/or would provide direct patient care or services to adults or vulnerable persons.

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

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

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

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

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

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

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

Any person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law
enforcement official and the purpose is to initiate court action. Any person who willfully permits the release of any data or information obtained pursuant to this section to persons or agencies not permitted to such access by this section shall be guilty of a misdemeanor.

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

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

43-47-9. (1) Upon receipt of a report pursuant to Section 43-47-7 that a vulnerable adult is in need of protective services, the department shall initiate an investigation and/or evaluation within forty-eight (48) hours to determine whether the vulnerable adult is in need of protective services and what services are needed. The evaluation shall include any necessary visits and interviews with the adult, and if appropriate, with the alleged perpetrator of the vulnerable adult abuse and with any person believed to have knowledge of the circumstances of the case. When a caretaker of a vulnerable adult refuses to allow the department reasonable access to conduct an investigation to determine if the vulnerable adult is in need of protective services, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the investigation.

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

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

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

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

43-11-13. (1) The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards, including classifications, with respect to all institutions for the aged or infirm to be licensed under this chapter as may be designed to further the accomplishment of the purpose of this chapter in promoting adequate care of individuals in such institutions in the interest of public health, safety and welfare. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm" and the book shall be open and available to all institutions for the aged or infirm and the public generally at

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all reasonable times. Upon the adoption of such rules, regulations and standards, the licensing agency shall mail copies thereof to all such institutions in the state which have filed with the agency their names and addresses for this purpose, but the failure to mail the same or the failure of the institutions to receive the same shall in no way affect the validity thereof. The rules, regulations and standards may be amended by the licensing agency from time to time as necessary to promote the health, safety and welfare of persons living in those institutions.

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

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

(4) The licensing agency shall conduct criminal records background checks and adult central registry checks on each licensable applicant for employment who provides and/or would provide direct personal care or services to any resident of an institution for the aged or infirm. The Department of Public Safety shall develop regulations for the conduct of criminal background investigations as required.
records background checks by licensing agencies for institutions
for the aged or infirm. The Department of Public Safety shall
conduct criminal background and adult central registry checks on
unlicensed applicants at nursing facilities and conduct a national
criminal history record check. In order to conduct the criminal
records background check, each new employee or prospective
employee shall be fingerprinted. If no disqualifying record is
identified at the state level, the fingerprints shall be forwarded
by the Department of Public Safety to the Federal Bureau of
Investigation for a national criminal history record check.

(5) The Department of Public Safety is authorized to charge
the institution for the aged or infirm a fee which shall include
the amount required by the Federal Bureau of Investigation for the
national criminal history record check and any necessary costs
incurred by the Department of Public Safety for the handling and
administration of the criminal history background checks.

SECTION 4. Section 43-47-19, Mississippi Code of 1972, is
amended as follows:

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

(2) Any person who willfully commits an act or omits the
performance of any duty, which act or omission contributes to,
tends to contribute to or results in physical pain, injury, mental
anguish, unreasonable confinement, or deprivation of services
which are necessary to maintain the mental and physical health of
a vulnerable adult, or neglect * * * of any vulnerable adult shall
be guilty of a misdemeanor and, upon conviction thereof, shall be
punished by a fine not to exceed One Thousand Dollars ($1,000.00)
or by imprisonment not to exceed one (1) year in the county jail,
or by both such fine and imprisonment. Any accepted medical
procedure performed in the usual scope of practice shall not be a
violation of this subsection.
Any person who willfully exploits a vulnerable adult and the value of the resources is Two Hundred Fifty Dollars ($250.00) or less shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment. Any person who willfully exploits a vulnerable adult and the value of the resources exceeds Two Hundred Fifty Dollars ($250.00) shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the State Penitentiary for not more than ten (10) years.

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

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

SECTION 5. (1) Except as otherwise provided in subsection (3), a person, knowing that the information is misleading or inaccurate, shall not intentionally, willfully or recklessly place or direct another to place in a patient's medical record or chart misleading or inaccurate information regarding the diagnosis, treatment or cause of a patient's condition. A violation of this subsection is punishable as follows: a person who intentionally or willfully or recklessly violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year, or a fine of not more then One Thousand Dollars ($1,000.00), or both.

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

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

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

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

SECTION 6. This act shall take effect and be in force from and after July 1, 2001.