

By: Senator(s) Little, Burton, Huggins

To: Public Health and Welfare

SENATE BILL NO. 2501

1 AN ACT RELATING TO THE MISSISSIPPI VULNERABLE ADULTS ACT; TO
2 CODIFY SECTION 43-47-4, MISSISSIPPI CODE OF 1972, AND AMEND
3 SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO TRANSFER THE ADULT
4 PROTECTIVE SERVICES' RESPONSIBILITIES OF THE DEPARTMENT OF HUMAN
5 SERVICES TO THE ADULT PROTECTIVE SERVICES UNIT OF THE OFFICE OF
6 ATTORNEY GENERAL, TO DEFINE "VULNERABLE ADULT," TO CLARIFY CERTAIN
7 DEFINITIONS AND TO DEFINE CERTAIN PROHIBITIONS ON THE
8 INVESTIGATION AND PROVISION OF PROTECTIVE SERVICES REGARDING
9 RESIDENTS OR PATIENTS IN A CARE FACILITY; TO AMEND SECTION
10 43-47-7, MISSISSIPPI CODE OF 1972, TO ADD CERTAIN LICENSED MEDICAL
11 PERSONNEL AND OTHER ENTITIES TO THE ENUMERATION OF MANDATED
12 REPORTERS OF ABUSE, NEGLECT AND EXPLOITATION UNDER THE VULNERABLE
13 ADULTS ACT AND TO PRESCRIBE CRIMINAL PENALTIES FOR FAILING TO MAKE
14 SUCH REQUIRED REPORTS, TO PROVIDE THAT ADULT CENTRAL REGISTRY
15 CRIMINAL BACKGROUND CHECKS SHALL BE MANDATORY ON APPLICANTS FOR
16 EMPLOYMENT AT ADULT CARE FACILITIES UNDER THE VULNERABLE ADULTS
17 ACT AND TO PROVIDE FOR THE CONFIDENTIALITY OF SUCH REPORTS BY THE
18 ADULT PROTECTIVE SERVICES UNIT; TO AMEND SECTION 43-47-9,
19 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A COURT MAY AUTHORIZE
20 THE EVALUATION OF AN ABUSED ADULT UPON SHOWING OF PROBABLE CAUSE,
21 INCLUDING AN EVALUATION OF THE FINANCIAL RECORDS OF THE VULNERABLE
22 ADULT; TO AMEND SECTIONS 43-47-11, 43-47-15, 43-47-17, 43-47-21,
23 43-47-23, 43-47-25, 43-47-27, 43-47-29, 43-47-31, 43-47-33 AND
24 43-47-35, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND
25 SECTION 43-47-37, MISSISSIPPI CODE OF 1972, TO CLARIFY REPORTING
26 REQUIREMENTS FOR VICTIMS OF ABUSE, NEGLECT OR EXPLOITATION AND TO
27 CLARIFY IMMUNITY EXTENDED TO THE REPORTERS OF SUCH ABUSE AND
28 NEGLECT; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO
29 CLARIFY AND INCREASE CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR
30 FINANCIAL EXPLOITATION OF VULNERABLE ADULTS; TO AMEND SECTION
31 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE DEPARTMENT
32 OF HEALTH TO REQUIRE ALL LICENSED NURSING FACILITIES TO CONDUCT
33 CRIMINAL RECORD BACKGROUND CHECKS ON APPLICANTS FOR EMPLOYMENT AT
34 NURSING FACILITIES WHO WILL PROVIDE DIRECT CARE, TO PROVIDE
35 IMMUNITY AND TO AUTHORIZE THE DEPARTMENT TO CHARGE AND COLLECT
36 FROM THE LICENSEE A FEE FOR SUCH CRIMINAL RECORD CHECKS; TO ENACT
37 STANDARDS FOR ENTRIES IN PATIENT MEDICAL RECORDS OR CHARTS; TO
38 ENACT PENALTIES FOR VIOLATION OF THE STANDARDS; AND FOR RELATED
39 PURPOSES.

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

41 SECTION 1. The following provision shall be codified as
42 Section 43-47-4, Mississippi Code of 1972:

43 43-47-4. (1) There is hereby created within the Office of
44 the Attorney General an "Adult Protective Services Unit." The
45 unit shall consist of a director appointed by the Attorney General
46 and such attorneys, investigators and other such personnel as are
47 necessary to conduct the activities of the unit. The Attorney
48 General, acting through the Director of the Adult Protective
49 Services Unit, may, in any case involving alleged violations of
50 this chapter, conduct an investigation or prosecution. In
51 conducting such actions, the Attorney General, acting through the
52 director, shall have all the powers of a district attorney,
53 including the powers to issue or cause to be issued subpoenas or
54 other process. Persons employed by the Attorney General as
55 investigators in the Adult Protective Services Unit shall serve as
56 law enforcement officers as defined in Section 45-6-3, and they
57 shall be empowered to make arrests and to serve and execute search
58 warrants and other valid legal process anywhere within the State
59 of Mississippi.

60 (2) Effective July 1, 2001, any employees of the Mississippi
61 Department of Human Services whose functions and responsibilities
62 involve adult protective services shall be transferred to the
63 Adult Protective Services Unit of the Office of Attorney General,
64 in accordance with the rules and regulations of the State
65 Personnel Board. Other responsibilities of the Division of Aging
66 and Adult Services, including meal delivery, ombudsman services,
67 homemaker assistance, health insurance counseling and adult day
68 care, shall remain the responsibility of the Department of Human
69 Services. No employees shall be dismissed as the result of the
70 agency reorganization required by this act, and any reduction in
71 the number of persons employed by the state shall result from
72 attrition of employees and not dismissal. All records, real and
73 personal property and unexpended balances of appropriations,
74 allocations or other funds of the Department of Human Services
75 involved with adult protective services shall be transferred to

76 the Adult Protective Services Unit of the Office of Attorney
77 General.

78 SECTION 2. Section 43-47-5, Mississippi Code of 1972, is
79 amended as follows:

80 43-47-5. For the purposes of this chapter, the following
81 words shall have the meanings ascribed herein unless the context
82 otherwise requires:

83 (a) "Abuse" shall mean the willful or nonaccidental
84 infliction of physical pain, injury or mental anguish on a
85 vulnerable adult, the unreasonable confinement of a vulnerable
86 adult, or the willful deprivation by a caretaker of services which
87 are necessary to maintain the mental and physical health of a
88 vulnerable adult. "Abuse" shall include sexual abuse. "Abuse"
89 shall not mean conduct which is a part of the treatment and care
90 of, and in furtherance of the health and safety of a patient or
91 resident of a care facility. "Abuse" includes, but is not limited
92 to, a single incident.

93 (b) "Care facility" shall mean:

94 (i) Any institution or place for the aged or
95 infirm as defined in, and required to be licensed under, the
96 provisions of Section 43-11-1 et seq.; and

97 (ii) Any long-term care facility as defined in
98 Section 43-7-55; and

99 (iii) Any hospital as defined in, and required to
100 be licensed under, the provisions of Section 41-9-1 et seq.; and

101 (iv) Any home health agency as defined in, and
102 required to be licensed under, the provisions of Section 41-71-1
103 et seq.; and

104 (v) Any hospice as defined in, and required to be
105 licensed under, the provisions of Chapter 85 of Title 41.

106 (c) "Caretaker" shall mean an individual, corporation,
107 partnership or other organization which has assumed the
108 responsibility for the care of a vulnerable adult, but shall not

109 include the Division of Medicaid, a licensed hospital, or a
110 licensed nursing home within the state.

111 (d) "Court" shall mean the chancery court of the county
112 in which the vulnerable adult resides or is located.

113 (e) "Unit" shall mean the Adult Protective Services
114 Unit of the Office of the Attorney General.

115 (f) "Emergency" shall mean a situation in which:

116 (i) A vulnerable adult is in substantial danger of
117 serious harm, death or irreparable harm if protective services are
118 not provided immediately;

119 (ii) The vulnerable adult is unable to consent to
120 services;

121 (iii) No responsible, able or willing caretaker,
122 if any, is available to consent to emergency services; and

123 (iv) There is insufficient time to utilize the
124 procedure provided in Section 43-47-13.

125 (g) "Emergency services" shall mean those services
126 necessary to maintain a vulnerable adult's vital functions and
127 without which there is reasonable belief that the vulnerable adult
128 would suffer irreparable harm or death, and may include taking
129 physical custody of the adult.

130 (h) "Essential services" shall mean those social work,
131 medical, psychiatric or legal services necessary to safeguard a
132 vulnerable adult's rights and resources and to maintain the
133 physical or mental well-being of the person. These services shall
134 include, but not be limited to, the provision of medical care for
135 physical and mental health needs, assistance in personal hygiene,
136 food, clothing, adequately heated and ventilated shelter,
137 protection from health and safety hazards, protection from
138 physical mistreatment and protection from exploitation. The words
139 "essential services" shall not include taking a vulnerable adult
140 into physical custody without his consent except as provided for

141 in Section 43-47-15 and as otherwise provided by the general laws
142 of the state.

143 (i) "Exploitation" shall mean the illegal or improper
144 use of a vulnerable adult or his resources for another's profit or
145 advantage with or without the consent of the vulnerable adult.
146 "Exploitation" includes, but is not limited to, a single incident.

147 (j) "Lacks the capacity to consent" shall mean that a
148 vulnerable adult, because of physical or mental incapacity, lacks
149 sufficient understanding or capacity to make or communicate
150 responsible decisions concerning his person, including, but not
151 limited to, provisions for health care, food, clothing or shelter.
152 This may be reasonably determined by the department in emergency
153 situations; in all other instances, the court shall make the
154 determination following the procedures in Sections 43-47-13 and
155 43-47-15 or as otherwise provided by the general laws of the
156 state.

157 (k) "Neglect" shall mean either the inability of a
158 vulnerable adult who is living alone to provide for himself the
159 food, clothing, shelter, health care or other services which are
160 necessary to maintain his mental and physical health, or failure
161 of a caretaker to supply the vulnerable adult with the food,
162 clothing, shelter, health care, supervision or other services
163 which a reasonably prudent person would do to maintain the
164 vulnerable adult's mental and physical health. "Neglect"
165 includes, but is not limited to, a single incident.

166 (l) "Protective services" shall mean services provided
167 by the state or other government or private organizations,
168 agencies or individuals which are necessary to protect a
169 vulnerable adult from abuse, neglect or exploitation. They shall
170 include, but not be limited to, investigation, evaluation of the
171 need for services and provision of essential services on behalf of
172 a vulnerable adult.

173 (m) "Vulnerable adult" shall mean a person eighteen
174 (18) years of age or older or any minor whose ability to perform
175 the normal activities of daily living or to provide for his or her
176 own care or protection is impaired due to a mental, emotional,
177 physical or developmental disability or dysfunction, or brain
178 damage or the infirmities of aging. The term "vulnerable adult"
179 shall also include all residents or patients, regardless of age,
180 in a care facility for the purposes of Sections 43-47-19 and
181 43-47-37 only. The Adult Protective Services Unit shall not be
182 prohibited from investigating, and shall have the authority and
183 responsibility to fully investigate, in accordance with the
184 provisions of this chapter, any allegation of abuse, neglect,
185 and/or exploitation regarding a patient in a care facility, if the
186 alleged abuse, neglect and/or exploitation occurred at a private
187 residence.

188 SECTION 3. Section 43-47-7, Mississippi Code of 1972, is
189 amended as follows:

190 43-47-7. (1) (a) Except as otherwise provided by Section
191 43-47-37 for vulnerable adults in care facilities, any person
192 including, but not limited to, the following, who knows or
193 suspects that a vulnerable adult has been or is being abused,
194 neglected or exploited shall immediately report such knowledge or
195 suspicion to the Adult Protective Services Unit of the Office of
196 the Attorney General * * *:

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

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

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

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

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

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

210 (vii) Bank, savings and loan or credit union
211 officer, trustee or employee.

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

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

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

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

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

225 (v) Description of the neglect, exploitation,
226 physical or psychological injuries sustained.

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

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

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

237 (c) The unit, or its designees, shall report to an
238 appropriate criminal investigative or prosecutive authority any

239 person required by this section to report or who fails to comply
240 with this section. A person who fails to make a report as
241 required under this subsection or who, because of the
242 circumstances, should have known or suspected beyond a reasonable
243 doubt that a vulnerable adult suffers from exploitation, abuse,
244 neglect or self-neglect but who knowingly fails to comply with
245 this section shall, upon conviction, be guilty of a misdemeanor
246 and shall be punished by a fine not exceeding Five Thousand
247 Dollars (\$5,000.00), or by imprisonment in the county jail for not
248 more than six (6) months, or both such fine and imprisonment. If
249 a person convicted under this section is a member of a profession
250 or occupation that is licensed, certified or regulated by the
251 state, the court shall notify the appropriate licensing,
252 certifying or regulating entity of the conviction.

253 (2) Reports received by law enforcement authorities or other
254 agencies shall be forwarded immediately to the Adult Protective
255 Services Unit.

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

258 (4) Anyone who makes a report pursuant to this section, who
259 testifies or participates in any judicial proceedings arising from
260 the report or who participates in a required investigation or
261 evaluation shall be presumed to be acting in good faith and in so
262 doing shall be immune from liability, civil or criminal, that
263 might otherwise be incurred or imposed. Provided, however, that
264 the immunity provided under this subsection shall not apply to the
265 suspect or perpetrator of the abuse, neglect or exploitation.

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

270 (6) The Executive Director of the Adult Protective Services
271 Unit shall establish a statewide central register of reports made

272 pursuant to this section. The central register shall be capable
273 of receiving reports of vulnerable adults in need of protective
274 services seven (7) days a week, twenty-four (24) hours a day. To
275 effectuate this purpose the executive director shall establish a
276 single toll-free statewide phone number that all persons may use
277 to report vulnerable adults in need of protective services, and
278 that all persons authorized by subsection (7) of this section may
279 use for determining the existence of prior reports in order to
280 evaluate the condition or circumstances of the vulnerable adult
281 before them. Such oral reports and evidence of previous reports
282 shall be transmitted to the appropriate office of the Attorney
283 General. The central register shall include, but not be limited
284 to, the following information: the name and identifying
285 information of the individual reported, the unit responsible for
286 the investigation of each such report, the names, affiliations and
287 purposes of any person requesting or receiving information which
288 the executive director believes might be helpful in the
289 furtherance of the purposes of this chapter, the name, address,
290 birth date, social security number of the perpetrator of abuse,
291 neglect and/or exploitation, and the type of abuse, neglect and/or
292 exploitation of which there was substantial evidence upon
293 investigation of the report.

294 Each person, business, organization or other entity, whether
295 public or private, operated for profit, operated for nonprofit or
296 a voluntary unit of government not responsible for law enforcement
297 providing care, supervision or treatment of vulnerable adults
298 shall conduct criminal records and adult central registry checks
299 on each new employee of the entity who provides, and/or would
300 provide direct patient care or services to adults or vulnerable
301 persons.

302 The unit shall not release data that would be harmful or
303 detrimental to the vulnerable adult or that would identify or
304 locate a person who, in good faith, made a report or cooperated in

305 a subsequent investigation unless ordered to do so by a court of
306 competent jurisdiction.

307 (7) Reports made pursuant to this section, reports written
308 or photographs taken concerning such reports in the possession of
309 the Adult Protective Services Unit shall be confidential and shall
310 only be made available to:

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

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

316 * * *

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

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

322 Notwithstanding subsection 7(b) hereof, the unit may not
323 disclose a report of the abandonment, exploitation, abuse, neglect
324 or self-neglect of a vulnerable adult to the vulnerable adult's
325 guardian, attorney-in-fact, surrogate decision maker, or caregiver
326 who is a perpetrator or alleged perpetrator of the abandonment,
327 exploitation, abuse or neglect of the vulnerable adult.

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

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

342 SECTION 4. Section 43-47-9, Mississippi Code of 1972, is
343 amended as follows:

344 43-47-9. (1) Upon receipt of a report pursuant to Section
345 43-47-7 that a vulnerable adult is in need of protective services,
346 the unit shall initiate an investigation and/or evaluation within
347 forty-eight (48) hours to determine whether the vulnerable adult
348 is in need of protective services and what services are needed.
349 The evaluation shall include any necessary visits and interviews
350 with the adult, and if appropriate, with the alleged perpetrator
351 of the vulnerable adult abuse and with any person believed to have
352 knowledge of the circumstances of the case. When a caretaker of a
353 vulnerable adult refuses to allow the unit reasonable access to
354 conduct an investigation to determine if the vulnerable adult is
355 in need of protective services, the unit may petition the court
356 for an order for injunctive relief enjoining the caretaker from
357 interfering with the investigation.

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

369 Upon a showing of probable cause that a vulnerable adult has
370 been abused, a court may authorize a qualified third party to make
371 an evaluation to enter the residence of, and to examine the
372 vulnerable adult. Upon a showing of probable cause that a
373 vulnerable adult has been financially exploited, a court may
374 authorize a qualified third party, also authorized by the unit, to
375 make an evaluation, and to gain access to the financial records of
376 the vulnerable adult.

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

381 SECTION 5. Section 43-47-11, Mississippi Code of 1972, is
382 amended as follows:

383 43-47-11. (1) If, pursuant to an investigation instituted
384 pursuant to Section 43-47-7, the unit determines that a vulnerable
385 adult is in need of protective services, it shall prepare a plan
386 of services, reviewing that plan with the vulnerable adult and
387 obtaining his consent in writing.

388 (2) When a caretaker of a vulnerable adult who consents to
389 the receipt of protective services refuses to allow the provision
390 of such services to the vulnerable adult, the unit may petition
391 the court for an order for injunctive relief enjoining the
392 caretaker from interfering with the provision of protective
393 services to the vulnerable adult.

394 (3) If a vulnerable adult does not consent to the receipt of
395 protective services, or if he withdraws his consent, the services
396 shall not be provided, except as indicated in Section 43-47-13.

397 SECTION 6. Section 43-47-13, Mississippi Code of 1972, is
398 amended as follows:

399 43-47-13. (1) Every reasonable effort shall be made to
400 secure the consent and participation of the vulnerable adult in an
401 evaluation and resolution of the need for protective services. If

402 those efforts fail and if the unit has reasonable cause to believe
403 that a vulnerable adult is being abused, neglected or exploited
404 and lacks the capacity to consent to protective services, then the
405 unit may petition the court for an order for injunctive relief
406 authorizing the provision of protective services. The petition
407 must allege specific facts sufficient to show that the vulnerable
408 adult is in need of protective services and lacks the capacity to
409 consent to them.

410 (2) The court shall set the case for hearing within fourteen
411 (14) days after the filing of the petition. The vulnerable adult
412 must receive at least five (5) days notice of the hearing. Where
413 good cause is shown, the court may direct that a shorter notice be
414 given. The vulnerable adult has the right to be present and
415 represented by counsel at the hearing. If the person, in the
416 determination of the court, lacks the capacity to waive the right
417 to counsel, then the court shall appoint a guardian ad litem. If
418 the person is indigent, the cost of representation shall be borne
419 by the department or by the court.

420 (3) If, at the hearing, the court finds by clear and
421 convincing evidence that the vulnerable adult is in need of
422 protective services and lacks the capacity to consent to those
423 services, the court may issue an order relative thereto. This
424 order may include the designation of an individual, organization
425 or agency to be responsible for the performing or obtaining of
426 essential services on behalf of the vulnerable adult or otherwise
427 consenting to protective services in his behalf. The order may
428 provide for protective services for a period not to exceed
429 eighteen (18) months, at which time the vulnerable adult's need
430 for protective services may be reviewed by the unit filing a
431 petition requesting such review with the court. Should the court
432 determine that the vulnerable adult is in further need of
433 protective services, it may order the provision of such protective
434 services as provided herein.

435 (4) The court may appoint a guardian or conservator for the
436 vulnerable adult, but the court shall not appoint the unit as a
437 guardian of the vulnerable adult. No vulnerable adult may be
438 committed to a mental health facility under this chapter. However,
439 nothing contained herein shall prohibit the filing of petitions
440 under other applicable provisions of the laws of this state.

441 SECTION 7. Section 43-47-15, Mississippi Code of 1972, is
442 amended as follows:

443 43-47-15. (1) The unit shall have the authority to provide
444 immediate medical care, food, clothing, heat, shelter, supervision
445 or other essential services in the absence of consent if it is
446 determined that:

447 (a) The vulnerable adult is in imminent danger of death
448 or irreparable harm;

449 (b) Provision of emergency and/or protective services
450 will alleviate the endangerment; and

451 (c) No other statutory or otherwise appropriate remedy
452 is immediately available.

453 (2) Within forty-eight (48) hours, excluding Saturdays,
454 Sundays and legal holidays, the unit shall petition the court for
455 an order for injunctive relief authorizing the provision of
456 emergency services.

457 (3) Upon petition of the Attorney General, the court may
458 order the provision of emergency services to a vulnerable adult
459 after finding that there is reasonable cause to believe that:

460 (a) The vulnerable adult lacks the capacity to consent
461 and that he is in need of protective services;

462 (b) An emergency exists; and

463 (c) No other person authorized by law or order to give
464 consent is available and willing to arrange for emergency
465 services.

466 If there is reasonable cause to believe that the conditions
467 listed above exist and no other custodian is available, then upon

468 a written petition for emergency services filed by the unit, the
469 court may issue an order for injunctive relief for the unit to
470 provide emergency services to a vulnerable adult.

471 (4) The petition for emergency services shall set forth the
472 name, address and authority of the petitioners; the name, age and
473 residence of the vulnerable adult; the nature of the emergency;
474 the proposed emergency services; the petitioner's reasonable
475 belief as to the existence of the conditions set forth in
476 subsection (1) of this section; and facts showing petitioner's
477 attempts to obtain the vulnerable adult's consent to the services.

478 (5) If the provision of emergency and/or protective services
479 alleviates the imminent danger of death or irreparable harm and
480 the unit has reasonable cause to believe that the vulnerable adult
481 remains in need of protective services, the unit shall proceed
482 according to Sections 43-47-11 and 43-47-13.

483 (6) Where it is necessary to enter a premises without the
484 vulnerable adult's consent after obtaining a court order in
485 compliance with subsection (3) of this section, the representative
486 of the petitioner shall do so.

487 (7) No petitioner shall be held liable in any action brought
488 by the vulnerable adult if the petitioner acted in good faith.

489 SECTION 8. Section 43-47-17, Mississippi Code of 1972, is
490 amended as follows:

491 43-47-17. Notwithstanding any finding by the court of lack
492 of capacity of the vulnerable adult to consent, the vulnerable
493 adult or the individual, organization or agency designated to be
494 responsible for the vulnerable adult, if any, or the Adult
495 Protective Services Unit, shall have the right to bring a motion
496 in the cause for review of any order pursuant to this chapter.

497 SECTION 9. Section 43-47-19, Mississippi Code of 1972, is
498 amended as follows:

499 43-47-19. (1) It shall be unlawful for any person to abuse,
500 neglect or exploit any vulnerable adult.

501 (2) Any person who willfully commits an act or omits the
502 performance of any duty, which act or omission contributes to,
503 tends to contribute to or results in physical pain, injury, mental
504 anguish, unreasonable confinement, or deprivation of services
505 which are necessary to maintain the mental and physical health of
506 a vulnerable adult, or neglect * * * of any vulnerable adult shall
507 be guilty of a misdemeanor and, upon conviction thereof, shall be
508 punished by a fine not to exceed One Thousand Dollars (\$1,000.00)
509 or by imprisonment not to exceed one (1) year in the county jail,
510 or by both such fine and imprisonment. Any accepted medical
511 procedure performed in the usual scope of practice shall not be a
512 violation of this subsection.

513 Any person who willfully exploits a vulnerable adult and the
514 value of the resources is Two Hundred Fifty Dollars (\$250.00) or
515 less shall be guilty of a misdemeanor and, upon conviction
516 thereof, shall be punished by a fine not to exceed One Thousand
517 Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year
518 in the county jail or by both such fine and imprisonment. Any
519 person who willfully exploits a vulnerable adult and the value of
520 the resources exceeds Two Hundred Fifty Dollars (\$250.00) shall be
521 guilty of a felony and, upon conviction thereof, shall be punished
522 by imprisonment in the State Penitentiary for not more than ten
523 (10) years.

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

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

532 SECTION 10. Section 43-47-21, Mississippi Code of 1972, is
533 amended as follows:

534 43-47-21. At the time the unit makes an evaluation of the
535 case reported, in accordance with the provisions of Section
536 43-47-9, it shall be determined, according to the regulations set
537 by the unit, whether the vulnerable adult is financially capable
538 of paying for the essential services. If he is, he shall make
539 reimbursement for the costs of providing the needed essential
540 services. If it is determined that he is not financially capable
541 of paying for such services, they shall be provided at no cost to
542 the recipient of the services. The court may order the unit or
543 any public agency to provide for the custody, care and maintenance
544 of such vulnerable adult. Provided, however, that the care,
545 custody and maintenance of any vulnerable adult shall be within
546 statutory authorization and budgetary means of such institution,
547 facility, agency or department. Notwithstanding any provision to
548 the contrary, it is not the intent of the Legislature through the
549 adoption of this chapter to authorize any court exercising
550 jurisdiction over a vulnerable adult to enlarge or bring about the
551 addition of new groups or categories of recipients or to increase
552 the types of care and services for such adults under the
553 Mississippi Medicaid Law, and any court exercising jurisdiction
554 over a vulnerable adult shall not, in any way, enter an order
555 against the Division of Medicaid to provide for the custody, care,
556 or maintenance of a vulnerable adult who is not otherwise eligible
557 for medical assistance under Section 43-13-115 or services under
558 Section 43-13-117.

559 SECTION 11. Section 43-47-23, Mississippi Code of 1972, is
560 amended as follows:

561 43-47-23. The unit and the court are authorized to seek the
562 cooperation of all public agencies, departments, societies,
563 organizations or agencies having for their object the protection
564 or aid of adults. These agencies, departments, societies and
565 organizations shall provide any such assistance as is necessary.

566 SECTION 12. Section 43-47-25, Mississippi Code of 1972, is
567 amended as follows:

568 43-47-25. Any officer, agent or employee of the unit in the
569 good faith exercise of his duties under this chapter shall not be
570 liable for any civil damages as a result of his acts or omissions
571 in rendering assistance or aid to any vulnerable adult.

572 SECTION 13. Section 43-47-27, Mississippi Code of 1972, is
573 amended as follows:

574 43-47-27. The unit shall adopt standards and other
575 procedures and guidelines with forms to insure the effective
576 implementation of the provisions of this chapter no later than
577 October 1, 1986.

578 SECTION 14. Section 43-47-29, Mississippi Code of 1972, is
579 amended as follows:

580 43-47-29. In addition to the powers granted under the
581 provisions of this chapter, the unit is authorized to petition the
582 court under the provisions of Section 93-13-251 for appointment of
583 a conservator for any vulnerable adult.

584 SECTION 15. Section 43-47-31, Mississippi Code of 1972, is
585 amended as follows:

586 43-47-31. (1) Nothing in this chapter shall be construed to
587 authorize, permit or require any emergency or protective services
588 in contravention of the stated or implied objection of such person
589 based upon his right of privacy, which is grounded in the federal
590 courts and the courts of this state, except in a situation where
591 the vulnerable adult is in imminent danger of serious harm.

592 (2) Nothing in this chapter shall be construed to mean a
593 person is neglected or in need of emergency or protective services
594 for the sole reason he is being furnished or relies upon treatment
595 by spiritual means through prayer alone in accordance with the
596 tenets and practices of a recognized church or religious
597 denominations.

598 (3) Nothing in this chapter shall be construed to authorize,
599 permit or require any medical care or treatment in contravention
600 of the stated or implied objection of such person.

601 SECTION 16. Section 43-47-33, Mississippi Code of 1972, is
602 amended as follows:

603 43-47-33. The unit shall establish a comprehensive,
604 aggressive program to educate the general public of (a) the
605 existence and provisions of the Mississippi Vulnerable Adults Act
606 of 1986; (b) the duty to report the abuse, neglect or exploitation
607 of any and all vulnerable adults, and (c) criminal sanctions
608 associated with violations of the Mississippi Vulnerable Adults
609 Act.

610 SECTION 17. Section 43-47-35, Mississippi Code of 1972, is
611 amended as follows:

612 43-47-35. It is the intent of the Legislature that the Adult
613 Protective Services Unit shall implement the provisions of this
614 chapter in the event federal funding is made available therefor
615 under a social services block grant, or in the event any other
616 federal or state funding is made available to provide for
617 protective services for vulnerable adults.

618 SECTION 18. Section 43-47-37, Mississippi Code of 1972, is
619 amended as follows:

620 43-47-37. (1) Any person who, within the scope of his
621 employment at a care facility as defined in Section 43-47-5(b), or
622 in his professional or personal capacity, has knowledge of or
623 reasonable cause to believe that any patient or resident of a care
624 facility has been the victim of abuse, neglect or exploitation
625 shall report immediately the abuse, neglect or exploitation.

626 (2) The reporting of conduct as required by subsection (1)
627 of this section shall be made:

628 (a) By any employee of any home health agency, orally
629 or telephonically, within twenty-four (24) hours of discovery,
630 excluding Saturdays, Sundays and legal holidays, to the Adult

631 Protective Services Unit and the Medicaid Fraud Control Unit of
632 the Attorney General's office.

633 (b) By a home health agency, in writing within
634 seventy-two (72) hours of discovery to the Adult Protective
635 Services Unit and the Medicaid Fraud Control Unit. If, upon
636 initial review, the Adult Protective Services Unit or the Medicaid
637 Fraud Control Unit determines that there is substantial potential
638 for criminal prosecution, the unit shall investigate and process
639 the complaint or refer it to an appropriate criminal investigative
640 or prosecutive authority.

641 (c) By all other care facilities, orally or
642 telephonically, within twenty-four (24) hours of discovery,
643 excluding Saturdays, Sundays and legal holidays, to the Adult
644 Protective Services Unit and the Medicaid Fraud Control Unit of
645 the Attorney General's office.

646 (d) By all other care facilities, in writing, within
647 seventy-two (72) hours of the discovery, to the Adult Protective
648 Services Unit and the Medicaid Fraud Control Unit. If, upon
649 initial review by the Adult Protective Services Unit and the
650 Medicaid Fraud Control Unit, a determination is made that there is
651 substantial potential for criminal prosecution, the unit will
652 investigate and prosecute the complaint or refer it to an
653 appropriate criminal investigative or prosecutive authority.

654 (3) The contents of the reports required by subsections (1)
655 and (2) of this section shall contain the following information
656 unless the information is unobtainable by the person reporting:

657 (a) The name, address, telephone number, occupation and
658 employer's address and telephone number of the person reporting;

659 (b) The name and address of the patient or resident who
660 is believed to be the victim of abuse or exploitation;

661 (c) The details, observations and beliefs concerning
662 the incident;

663 (d) Any statements relating to incident made by the
664 patient or resident;

665 (e) The date, time and place of the incident;

666 (f) The name of any individual(s) believed to have
667 knowledge of the incident;

668 (g) The name of the individual(s) believed to be
669 responsible for the incident and their connection to the patient
670 or resident; and

671 (h) Such other information that may be required by the
672 Adult Protective Services Unit, and/or the Medicaid Fraud Control
673 Unit, as requested.

674 (4) Any other individual who has knowledge of or reasonable
675 cause to believe that any patient or resident of a care facility
676 has been the victim of abuse, exploitation or any other criminal
677 offense may make a report to the Adult Protective Services Unit
678 and the Medicaid Fraud Control Unit.

679 (5) (a) Any individual who, in good faith, makes a report
680 as provided in this section or who testifies in an official
681 proceeding regarding matters arising out of this section shall be
682 immune from all criminal and civil liability * * *. The immunity
683 granted under this subsection shall not apply to any suspect or
684 perpetrator of abuse, neglect or exploitation of any vulnerable
685 adult, or of any other criminal act under any statute of this
686 state or municipal ordinance defining any act as a crime or
687 misdemeanor.

688 (b) No person shall terminate from employment, demote,
689 reject for promotion or otherwise sanction, punish or retaliate
690 against any individual who, in good faith, makes a report as
691 provided in this section or who testifies in any official
692 proceeding regarding matters arising out of this section.

693 (6) Any care facility that complies in good faith with the
694 requirements of this section to report the abuse or exploitation
695 of a patient or resident in the care facility shall not be

696 sanctioned by the State Department of Health for the occurrence of
697 such abuse or exploitation if the care facility demonstrates that
698 it adequately trained its employees and that the abuse or
699 exploitation was caused by factors beyond the control of the care
700 facility.

701 (7) Every person who knowingly fails to make the report as
702 required by subsections (1), (2) and (3) of this section or
703 attempts to induce another, by threat or otherwise, to fail to
704 make a report as required by subsections (1), (2) and (3) of this
705 section shall, upon conviction, be guilty of a misdemeanor and
706 shall be punished by a fine of not exceeding Five Hundred Dollars
707 (\$500.00), or by imprisonment in the county jail for not more than
708 six (6) months, or both such fine and imprisonment.

709 (8) Copies of Sections 43-47-7 and 43-47-37 shall be posted
710 prominently in every health care facility.

711 (9) If, after initial inquiry or investigation, the Adult
712 Protective Services Unit or the Medicaid Fraud Control Unit
713 determines that there is reasonable cause to believe that an
714 employee of a home health agency has abused, neglected or
715 exploited a vulnerable adult, the unit shall notify the district
716 attorney and the Mississippi State Department of Health of the
717 alleged abuse, neglect or exploitation.

718 (10) Upon the determination of evidence that an employee of
719 a care facility has abused, neglected or exploited a vulnerable
720 adult the Adult Protective Services Unit shall immediately provide
721 the following information to the central registry: name, address,
722 birth date, social security number of perpetrator; type of abuse,
723 neglect and or exploitation; name, address, birth date, social
724 security number of victim; and date of incident and report.

725 SECTION 19. Section 43-11-13, Mississippi Code of 1972, is
726 amended as follows:

727 43-11-13. (1) The licensing agency shall adopt, amend,
728 promulgate and enforce such rules, regulations and standards,

729 including classifications, with respect to all institutions for
730 the aged or infirm to be licensed hereunder as may be designed to
731 further the accomplishment of the purpose of this chapter in
732 promoting adequate care of individuals in such institutions in the
733 interest of public health, safety and welfare. Such rules,
734 regulations and standards shall be adopted and promulgated by the
735 licensing agency and shall be recorded and indexed in a book to be
736 maintained by the licensing agency in its main office in the State
737 of Mississippi, entitled "Rules, Regulations and Minimum Standards
738 for Institutions for the Aged or Infirm" and said book shall be
739 open and available to all institutions for the aged or infirm and
740 the public generally at all reasonable times. Upon the adoption
741 of such rules, regulations and standards, the licensing agency
742 shall mail copies thereof to all such institutions in the state
743 which have filed with said agency their names and addresses for
744 this purpose, but the failure to mail the same or the failure of
745 the institutions to receive the same shall in nowise affect the
746 validity thereof. Said rules, regulations and standards may be
747 amended by the licensing agency, from time to time, as necessary
748 to promote the health, safety and welfare of persons living in
749 said institutions.

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

760 (3) The State Board of Health shall promulgate rules and
761 regulations restricting the storage, quantity and classes of drugs

762 allowed in personal care homes. Residents requiring
763 administration of Schedule II Narcotics as defined in the Uniform
764 Controlled Substances Law may be admitted to a personal care home.
765 Schedule drugs may only be allowed in a personal care home if they
766 are administered or stored utilizing proper procedures under the
767 direct supervision of a licensed physician or nurse.

768 (4) (a) Pursuant to regulations promulgated by the State
769 Department of Health, all licensed institutions for the aged or
770 infirm shall conduct a criminal history check on every new
771 employee who provides direct patient care or services. Except as
772 otherwise provided, no new employee shall be permitted to provide
773 direct patient care or services until the results of the criminal
774 history check have revealed no disqualifying record. Every new
775 employee shall provide a valid current social security number
776 and/or driver's license number which shall be furnished to the
777 licensing agency or the agency designated by the licensing agency
778 to conduct the criminal history check. The institution for the
779 aged or infirm applying for the criminal history check will be
780 promptly notified of any disqualifying record found by the
781 criminal history check.

782 (b) A licensed institution for the aged or infirm may
783 make an offer of temporary employment to a prospective employee
784 pending the results of a criminal history check on the person. In
785 such instances, the licensed institution for the aged or infirm
786 shall provide to the licensing agency the name and relevant
787 information relating to the person within seventy-two (72) hours
788 after the date the person accepts temporary employment.

789 (c) All fees incurred in compliance with this section
790 shall be borne by the institution requesting the criminal history
791 check. The licensing agency is hereby authorized to charge a fee
792 which shall include the amount required by the Mississippi
793 Department of Public Safety, the Federal Bureau of Investigation
794 or any other agency designated by the licensing agency for the

795 national criminal history record check in addition to any
796 necessary costs incurred by the licensing agency for the handling
797 and administration of the criminal history checks. Costs incurred
798 by a nursing home provider implementing this act shall be
799 reimbursed as an allowable cost under Section 43-13-116.

800 (d) The licensing agency, the institution for the aged
801 or infirm, and their agents, officers, employees, attorneys and
802 representatives shall not be held civilly liable for any findings,
803 recommendations or actions taken pursuant to this section.

804 (e) The licensing agency shall promulgate regulations
805 to implement this subsection (4).

806 SECTION 20. (1) Except as otherwise provided in subsection
807 (3), a person, knowing that the information is misleading or
808 inaccurate, shall not intentionally, willfully or recklessly place
809 or direct another to place in a patient's medical record or chart
810 misleading or inaccurate information regarding the diagnosis,
811 treatment or cause of a patient's condition. A violation of this
812 subsection is punishable as follows: a person who intentionally
813 or willfully or recklessly violates this subsection is guilty of a
814 misdemeanor, punishable by imprisonment for not more than one (1)
815 year, or a fine of not more then One Thousand Dollars (\$1,000.00),
816 or both.

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

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

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

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

837 SECTION 21. This act shall take effect and be in force from
838 and after July 1, 2001.