

By: Senator(s) Little, Burton, Huggins,
Hyde-Smith, Johnson (19th)

To: Public Health and
Welfare

COMMITTEE SUBSTITUTE
FOR
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, AND TO PROVIDE FOR THE CONFIDENTIALITY OF
15 SUCH REPORTS BY THE ADULT PROTECTIVE SERVICES UNIT; TO AMEND
16 SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A COURT
17 MAY AUTHORIZE THE EVALUATION OF AN ABUSED ADULT UPON SHOWING OF
18 PROBABLE CAUSE, INCLUDING AN EVALUATION OF THE FINANCIAL RECORDS
19 OF THE VULNERABLE ADULT; TO AMEND SECTIONS 43-47-11, 43-47-15,
20 43-47-17, 43-47-21, 43-47-23, 43-47-25, 43-47-27, 43-47-29,
21 43-47-31, 43-47-33 AND 43-47-35, MISSISSIPPI CODE OF 1972, IN
22 CONFORMITY; TO AMEND SECTION 43-47-37, MISSISSIPPI CODE OF 1972,
23 TO CLARIFY REPORTING REQUIREMENTS FOR VICTIMS OF ABUSE, NEGLECT OR
24 EXPLOITATION AND TO CLARIFY IMMUNITY EXTENDED TO THE REPORTERS OF
25 SUCH ABUSE AND NEGLECT; TO AMEND SECTION 43-47-19, MISSISSIPPI
26 CODE OF 1972, TO CLARIFY AND INCREASE CRIMINAL PENALTIES FOR THE
27 ABUSE, NEGLECT OR FINANCIAL EXPLOITATION OF VULNERABLE ADULTS; TO
28 AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE
29 STATE DEPARTMENT OF HEALTH TO REQUIRE ALL LICENSED NURSING
30 FACILITIES TO CONDUCT CRIMINAL RECORD BACKGROUND CHECKS ON
31 APPLICANTS FOR EMPLOYMENT AT NURSING FACILITIES WHO WILL PROVIDE
32 DIRECT CARE, TO AUTHORIZE THE DEPARTMENT TO CHARGE AND COLLECT
33 FROM THE LICENSEE A FEE FOR SUCH CRIMINAL RECORD CHECKS; TO ENACT
34 STANDARDS FOR ENTRIES IN PATIENT MEDICAL RECORDS OR CHARTS; TO
35 ENACT PENALTIES FOR VIOLATION OF THE STANDARDS; AND FOR RELATED
36 PURPOSES.

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

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

40 43-47-4. (1) There is hereby created within the Office of
41 the Attorney General an "Adult Protective Services Unit." The

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

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

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

77 43-47-5. For the purposes of this chapter, the following
78 words shall have the meanings ascribed herein unless the context
79 otherwise requires:

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

90 (b) "Care facility" shall mean:

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

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

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

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

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

103 (vi) Any adult day services facility, which shall
104 mean a community-based group program for adults designed to meet
105 the needs of adults with impairments through individual plans of
106 care, which are structured, comprehensive, planned, nonresidential
107 programs providing a variety of health, social and related support

108 services in a protective setting, enabling participants to live in
109 the community. Exempted from this definition shall be any program
110 licensed and certified by the Mississippi Department of Mental
111 Health and any adult day services program provided to ten (10) or
112 less individuals by a licensed institution for the aged or infirm.

113 (c) "Caretaker" shall mean an individual, corporation,
114 partnership or other organization which has assumed the
115 responsibility for the care of a vulnerable adult, but shall not
116 include the Division of Medicaid, a licensed hospital, or a
117 licensed nursing home within the state.

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

120 (e) "Unit" shall mean the Adult Protective Services
121 Unit of the Office of the Attorney General, unless otherwise
122 designated as the Medicaid Fraud Unit of the Office of the
123 Attorney General.

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

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

128 (ii) The vulnerable adult is unable to consent to
129 services;

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

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

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

139 (h) "Essential services" shall mean those social work,
140 medical, psychiatric or legal services necessary to safeguard a

141 vulnerable adult's rights and resources and to maintain the
142 physical or mental well-being of the person. These services shall
143 include, but not be limited to, the provision of medical care for
144 physical and mental health needs, assistance in personal hygiene,
145 food, clothing, adequately heated and ventilated shelter,
146 protection from health and safety hazards, protection from
147 physical mistreatment and protection from exploitation. The words
148 "essential services" shall not include taking a vulnerable adult
149 into physical custody without his consent except as provided for
150 in Section 43-47-15 and as otherwise provided by the general laws
151 of the state.

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

156 (j) "Lacks the capacity to consent" shall mean that a
157 vulnerable adult, because of physical or mental incapacity, lacks
158 sufficient understanding or capacity to make or communicate
159 responsible decisions concerning his person, including, but not
160 limited to, provisions for health care, food, clothing or shelter.
161 This may be reasonably determined by the department in emergency
162 situations; in all other instances, the court shall make the
163 determination following the procedures in Sections 43-47-13 and
164 43-47-15 or as otherwise provided by the general laws of the
165 state.

166 (k) "Neglect" shall mean either the inability of a
167 vulnerable adult who is living alone to provide for himself the
168 food, clothing, shelter, health care or other services which are
169 necessary to maintain his mental and physical health, or failure
170 of a caretaker to supply the vulnerable adult with the food,
171 clothing, shelter, health care, supervision or other services
172 which a reasonably prudent person would do to maintain the

173 vulnerable adult's mental and physical health. "Neglect"
174 includes, but is not limited to, a single incident.

175 (1) "Protective services" shall mean services provided
176 by the state or other government or private organizations,
177 agencies or individuals which are necessary to protect a
178 vulnerable adult from abuse, neglect or exploitation. They shall
179 include, but not be limited to, investigation, evaluation of the
180 need for services and provision of essential services on behalf of
181 a vulnerable adult.

182 (m) "Vulnerable adult" shall mean a person eighteen
183 (18) years of age or older or any minor whose ability to perform
184 the normal activities of daily living or to provide for his or her
185 own care or protection is impaired due to a mental, emotional,
186 physical or developmental disability or dysfunction, or brain
187 damage or the infirmities of aging. The term "vulnerable adult"
188 shall also include all residents or patients, regardless of age,
189 in a care facility for the purposes of Sections 43-47-19 and
190 43-47-37 only. The Adult Protective Services Unit shall not be
191 prohibited from investigating, and shall have the authority and
192 responsibility to fully investigate, in accordance with the
193 provisions of this chapter, any allegation of abuse, neglect,
194 and/or exploitation regarding a patient in a care facility, if the
195 alleged abuse, neglect and/or exploitation occurred at a private
196 residence.

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

199 43-47-7. (1) (a) Except as otherwise provided by Section
200 43-47-37 for vulnerable adults in care facilities, any person
201 including, but not limited to, the following, who knows or
202 suspects that a vulnerable adult has been or is being abused,
203 neglected or exploited shall immediately report such knowledge or
204 suspicion to the Adult Protective Services Unit of the Office of
205 the Attorney General * * *:

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

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

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

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

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

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

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

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

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

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

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

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

234 (v) Description of the neglect, exploitation,
235 physical or psychological injuries sustained.

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

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

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

246 (c) The unit, or its designees, shall report to an
247 appropriate criminal investigative or prosecutive authority any
248 person required by this section to report or who fails to comply
249 with this section. A person who fails to make a report as
250 required under this subsection or who, because of the
251 circumstances, should have known or suspected that a vulnerable
252 adult suffers from exploitation, abuse, neglect or self-neglect
253 but who knowingly fails to comply with this section shall, upon
254 conviction, be guilty of a misdemeanor and shall be punished by a
255 fine not exceeding Five Thousand Dollars (\$5,000.00), or by
256 imprisonment in the county jail for not more than six (6) months,
257 or both such fine and imprisonment. Provided, however, that for
258 purposes of this subsection (1), any recognized legal banking
259 transaction shall not be considered cause to report the suspicion
260 or knowledge of the financial exploitation of a vulnerable adult.
261 If a person convicted under this section is a member of a
262 profession or occupation that is licensed, certified or regulated
263 by the state, the court shall notify the appropriate licensing,
264 certifying or regulating entity of the conviction.

265 (2) Reports received by law enforcement authorities or other
266 agencies shall be forwarded immediately to the Adult Protective
267 Services Unit.

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

270 (4) Anyone who makes a report pursuant to this section, who
271 testifies or participates in any judicial proceedings arising from
272 the report or who participates in a required investigation or
273 evaluation shall be presumed to be acting in good faith and in so
274 doing shall be immune from liability, civil or criminal, that
275 might otherwise be incurred or imposed. Provided, however, that
276 the immunity provided under this subsection shall not apply to any
277 suspect or perpetrator of any abuse, neglect or exploitation.

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

282 (6) The * * * Director of the Adult Protective Services Unit
283 shall establish a statewide central register of reports made
284 pursuant to this section. The central register shall be capable
285 of receiving reports of vulnerable adults in need of protective
286 services seven (7) days a week, twenty-four (24) hours a day. To
287 effectuate this purpose the executive director shall establish a
288 single toll-free statewide phone number that all persons may use
289 to report vulnerable adults in need of protective services, and
290 that all persons authorized by subsection (7) of this section may
291 use for determining the existence of prior reports in order to
292 evaluate the condition or circumstances of the vulnerable adult
293 before them. Such oral reports and evidence of previous reports
294 shall be transmitted to the appropriate office of the Attorney
295 General. The central register shall include, but not be limited
296 to, the following information: the name and identifying
297 information of the individual reported, the entity responsible for
298 the investigation of each such report, the names, affiliations and
299 purposes of any person requesting or receiving information which
300 the executive director believes might be helpful in the
301 furtherance of the purposes of this chapter, the name, address,
302 birth date, social security number of the perpetrator of abuse,

303 neglect and/or exploitation, and the type of abuse, neglect and/or
304 exploitation of which there was substantial evidence upon
305 investigation of the report.

306 Each person, business, organization or other entity, whether
307 public or private, operated for profit, operated for nonprofit or
308 a voluntary unit of government not responsible for law enforcement
309 providing care, supervision or treatment of vulnerable adults
310 shall conduct criminal records and adult central registry checks
311 on each new employee of the entity who provides, and/or would
312 provide direct patient care or services to adults or vulnerable
313 persons, as provided in Section 43-11-13.

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

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

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

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

328 * * *

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

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

334 Notwithstanding subsection 7(b) hereof, the unit may not
335 disclose a report of the abandonment, exploitation, abuse, neglect

336 or self-neglect of a vulnerable adult to the vulnerable adult's
337 guardian, attorney-in-fact, surrogate decision maker, or caregiver
338 who is a perpetrator or alleged perpetrator of the abandonment,
339 exploitation, abuse or neglect of the vulnerable adult.

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

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

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

356 43-47-9. (1) Upon receipt of a report pursuant to Section
357 43-47-7 that a vulnerable adult is in need of protective services,
358 the unit shall initiate an investigation and/or evaluation within
359 forty-eight (48) hours to determine whether the vulnerable adult
360 is in need of protective services and what services are needed.
361 The evaluation shall include any necessary visits and interviews
362 with the adult, and if appropriate, with the alleged perpetrator
363 of the vulnerable adult abuse and with any person believed to have
364 knowledge of the circumstances of the case. When a caretaker of a
365 vulnerable adult refuses to allow the unit reasonable access to
366 conduct an investigation to determine if the vulnerable adult is
367 in need of protective services, the unit may petition the court

368 for an order for injunctive relief enjoining the caretaker from
369 interfering with the investigation.

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

381 Upon a showing of probable cause that a vulnerable adult has
382 been abused, a court may authorize a qualified third party to make
383 an evaluation to enter the residence of, and to examine the
384 vulnerable adult. Upon a showing of probable cause that a
385 vulnerable adult has been financially exploited, a court may
386 authorize a qualified third party, also authorized by the unit, to
387 make an evaluation, and to gain access to the financial records of
388 the vulnerable adult.

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

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

395 43-47-11. (1) If, pursuant to an investigation instituted
396 pursuant to Section 43-47-7, the unit determines that a vulnerable
397 adult is in need of protective services, it shall prepare a plan
398 of services, reviewing that plan with the vulnerable adult and
399 obtaining his consent in writing.

400 (2) When a caretaker of a vulnerable adult who consents to
401 the receipt of protective services refuses to allow the provision
402 of such services to the vulnerable adult, the unit may petition
403 the court for an order for injunctive relief enjoining the
404 caretaker from interfering with the provision of protective
405 services to the vulnerable adult.

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

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

411 43-47-13. (1) Every reasonable effort shall be made to
412 secure the consent and participation of the vulnerable adult in an
413 evaluation and resolution of the need for protective services. If
414 those efforts fail and if the unit has reasonable cause to believe
415 that a vulnerable adult is being abused, neglected or exploited
416 and lacks the capacity to consent to protective services, then the
417 unit may petition the court for an order for injunctive relief
418 authorizing the provision of protective services. The petition
419 must allege specific facts sufficient to show that the vulnerable
420 adult is in need of protective services and lacks the capacity to
421 consent to them.

422 (2) The court shall set the case for hearing within fourteen
423 (14) days after the filing of the petition. The vulnerable adult
424 must receive at least five (5) days notice of the hearing. Where
425 good cause is shown, the court may direct that a shorter notice be
426 given. The vulnerable adult has the right to be present and
427 represented by counsel at the hearing. If the person, in the
428 determination of the court, lacks the capacity to waive the right
429 to counsel, then the court shall appoint a guardian ad litem. If
430 the person is indigent, the cost of representation shall be borne
431 by the department or by the court.

432 (3) If, at the hearing, the court finds by clear and
433 convincing evidence that the vulnerable adult is in need of
434 protective services and lacks the capacity to consent to those
435 services, the court may issue an order relative thereto. This
436 order may include the designation of an individual, organization
437 or agency to be responsible for the performing or obtaining of
438 essential services on behalf of the vulnerable adult or otherwise
439 consenting to protective services in his behalf. The order may
440 provide for protective services for a period not to exceed
441 eighteen (18) months, at which time the vulnerable adult's need
442 for protective services may be reviewed by the unit filing a
443 petition requesting such review with the court. Should the court
444 determine that the vulnerable adult is in further need of
445 protective services, it may order the provision of such protective
446 services as provided herein.

447 (4) The court may appoint a guardian or conservator for the
448 vulnerable adult, but the court shall not appoint the unit as a
449 guardian of the vulnerable adult. No vulnerable adult may be
450 committed to a mental health facility under this chapter. However,
451 nothing contained herein shall prohibit the filing of petitions
452 under other applicable provisions of the laws of this state.

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

455 43-47-15. (1) The unit shall have the authority to provide
456 immediate medical care, food, clothing, heat, shelter, supervision
457 or other essential services in the absence of consent if it is
458 determined that:

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

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

463 (c) No other statutory or otherwise appropriate remedy
464 is immediately available.

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

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

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

474 (b) An emergency exists; and

475 (c) No other person authorized by law or order to give
476 consent is available and willing to arrange for emergency
477 services.

478 If there is reasonable cause to believe that the conditions
479 listed above exist and no other custodian is available, then upon
480 a written petition for emergency services filed by the unit, the
481 court may issue an order for injunctive relief for the unit to
482 provide emergency services to a vulnerable adult.

483 (4) The petition for emergency services shall set forth the
484 name, address and authority of the petitioners; the name, age and
485 residence of the vulnerable adult; the nature of the emergency;
486 the proposed emergency services; the petitioner's reasonable
487 belief as to the existence of the conditions set forth in
488 subsection (1) of this section; and facts showing petitioner's
489 attempts to obtain the vulnerable adult's consent to the services.

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

495 (6) Where it is necessary to enter a premises without the
496 vulnerable adult's consent after obtaining a court order in

497 compliance with subsection (3) of this section, the representative
498 of the petitioner shall do so.

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

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

503 43-47-17. Notwithstanding any finding by the court of lack
504 of capacity of the vulnerable adult to consent, the vulnerable
505 adult or the individual, organization or agency designated to be
506 responsible for the vulnerable adult, if any, or the Adult
507 Protective Services Unit, shall have the right to bring a motion
508 in the cause for review of any order pursuant to this chapter.

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

511 43-47-19. (1) It shall be unlawful for any person to abuse,
512 neglect or exploit any vulnerable adult.

513 (2) Any person who willfully commits an act or omits the
514 performance of any duty, which act or omission contributes to,
515 tends to contribute to or results in physical pain, injury, mental
516 anguish, unreasonable confinement, or deprivation of services
517 which are necessary to maintain the mental and physical health of
518 a vulnerable adult, or neglect * * * of any vulnerable adult shall
519 be guilty of a misdemeanor and, upon conviction thereof, shall be
520 punished by a fine not to exceed One Thousand Dollars (\$1,000.00)
521 or by imprisonment not to exceed one (1) year in the county jail,
522 or by both such fine and imprisonment. Any accepted medical
523 procedure performed in the usual scope of practice shall not be a
524 violation of this subsection.

525 Any person who willfully exploits a vulnerable adult and the
526 value of the resources is Two Hundred Fifty Dollars (\$250.00) or
527 less shall be guilty of a misdemeanor and, upon conviction
528 thereof, shall be punished by a fine not to exceed One Thousand
529 Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year

530 in the county jail or by both such fine and imprisonment. Any
531 person who willfully exploits a vulnerable adult and the value of
532 the resources exceeds Two Hundred Fifty Dollars (\$250.00) shall be
533 guilty of a felony and, upon conviction thereof, shall be punished
534 by imprisonment in the State Penitentiary for not more than ten
535 (10) years.

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

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

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

546 43-47-21. At the time the unit makes an evaluation of the
547 case reported, in accordance with the provisions of Section
548 43-47-9, it shall be determined, according to the regulations set
549 by the unit, whether the vulnerable adult is financially capable
550 of paying for the essential services. If he is, he shall make
551 reimbursement for the costs of providing the needed essential
552 services. If it is determined that he is not financially capable
553 of paying for such services, they shall be provided at no cost to
554 the recipient of the services. The court may order the unit or
555 any public agency to provide for the custody, care and maintenance
556 of such vulnerable adult. Provided, however, that the care,
557 custody and maintenance of any vulnerable adult shall be within
558 statutory authorization and budgetary means of such institution,
559 facility, agency or department. Notwithstanding any provision to
560 the contrary, it is not the intent of the Legislature through the
561 adoption of this chapter to authorize any court exercising
562 jurisdiction over a vulnerable adult to enlarge or bring about the

563 addition of new groups or categories of recipients or to increase
564 the types of care and services for such adults under the
565 Mississippi Medicaid Law, and any court exercising jurisdiction
566 over a vulnerable adult shall not, in any way, enter an order
567 against the Division of Medicaid to provide for the custody, care,
568 or maintenance of a vulnerable adult who is not otherwise eligible
569 for medical assistance under Section 43-13-115 or services under
570 Section 43-13-117.

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

573 43-47-23. The unit and the court are authorized to seek the
574 cooperation of all public agencies, departments, societies,
575 organizations or agencies having for their object the protection
576 or aid of adults. These agencies, departments, societies and
577 organizations shall provide any such assistance as is necessary.

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

580 43-47-25. Any officer, agent or employee of the unit in the
581 good faith exercise of his duties under this chapter shall not be
582 liable for any civil damages as a result of his acts or omissions
583 in rendering assistance or aid to any vulnerable adult.

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

586 43-47-27. The unit shall adopt standards and other
587 procedures and guidelines with forms to insure the effective
588 implementation of the provisions of this chapter no later than
589 October 1, 2001.

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

592 43-47-29. In addition to the powers granted under the
593 provisions of this chapter, the unit is authorized to petition the
594 court under the provisions of Section 93-13-251 for appointment of
595 a conservator for any vulnerable adult.

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

598 43-47-31. (1) Nothing in this chapter shall be construed to
599 authorize, permit or require any emergency or protective services
600 in contravention of the stated or implied objection of such person
601 based upon his right of privacy, which is grounded in the federal
602 courts and the courts of this state, except in a situation where
603 the vulnerable adult is in imminent danger of serious harm.

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

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

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

615 43-47-33. The unit shall establish a comprehensive,
616 aggressive program to educate the general public of (a) the
617 existence and provisions of the Mississippi Vulnerable Adults Act
618 of 1986; (b) the duty to report the abuse, neglect or exploitation
619 of any and all vulnerable adults, and (c) criminal sanctions
620 associated with violations of the Mississippi Vulnerable Adults
621 Act.

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

624 43-47-35. It is the intent of the Legislature that the Adult
625 Protective Services Unit shall implement the provisions of this
626 chapter in the event federal funding is made available therefor
627 under a social services block grant, or in the event any other

628 federal or state funding is made available to provide for
629 protective services for vulnerable adults.

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

632 43-47-37. (1) Any person who, within the scope of his
633 employment at a care facility as defined in Section 43-47-5(b), or
634 in his professional or personal capacity, has knowledge of or
635 reasonable cause to believe that any patient or resident of a care
636 facility has been the victim of abuse, neglect or exploitation
637 shall report immediately the abuse, neglect or exploitation.

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

640 (a) By any employee of any home health agency, orally
641 or telephonically, within twenty-four (24) hours of discovery,
642 excluding Saturdays, Sundays and legal holidays, to the Adult
643 Protective Services Unit and the Medicaid Fraud Control Unit of
644 the Attorney General's office.

645 (b) By a home health agency, in writing within
646 seventy-two (72) hours of discovery to the Adult Protective
647 Services Unit and the Medicaid Fraud Control Unit. * * * Upon
648 initial review, the Adult Protective Services Unit and the
649 Medicaid Fraud Control Unit shall make a determination whether or
650 not the person suspected of committing the reported abuse, neglect
651 or exploitation was an employee of the home health agency. If so,
652 the Medicaid Fraud Control Unit shall determine whether there is
653 substantial potential for criminal prosecution, and upon a
654 positive determination, shall investigate and prosecute the
655 complaint or refer it to an appropriate criminal investigative or
656 prosecutive authority. If the alleged perpetrator is not an
657 employee of the home health agency, the Adult Protective Services
658 Unit shall investigate and process the complaint or refer it to an
659 appropriate investigative or prosecutive authority.

660 (c) By all other care facilities, orally or
661 telephonically, within twenty-four (24) hours of discovery,
662 excluding Saturdays, Sundays and legal holidays, to the State
663 Department of Health and the Medicaid Fraud Control Unit of the
664 Attorney General's office.

665 (d) By all other care facilities, in writing, within
666 seventy-two (72) hours of the discovery, to the State Department
667 of Health and the Medicaid Fraud Control Unit. If, upon initial
668 review by the State Department of Health and the Medicaid Fraud
669 Control Unit, a determination is made that there is substantial
670 potential for criminal prosecution, the unit will investigate and
671 prosecute the complaint or refer it to an appropriate criminal
672 investigative or prosecutive authority.

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

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

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

680 (c) The details, observations and beliefs concerning
681 the incident;

682 (d) Any statements relating to incident made by the
683 patient or resident;

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

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

687 (g) The name of the individual(s) believed to be
688 responsible for the incident and their connection to the patient
689 or resident; and

690 (h) Such other information that may be required by the
691 State Department of Health, and/or the Medicaid Fraud Control
692 Unit, as requested.

693 (4) Any other individual who has knowledge of or reasonable
694 cause to believe that any patient or resident of a care facility
695 has been the victim of abuse, exploitation or any other criminal
696 offense may make a report to the State Department of Health and
697 the Medicaid Fraud Control Unit.

698 (5) (a) Any individual who, in good faith, makes a report
699 as provided in this section or who testifies in an official
700 proceeding regarding matters arising out of this section shall be
701 immune from all criminal and civil liability * * *. The immunity
702 granted under this subsection shall not apply to any suspect or
703 perpetrator of abuse, neglect or exploitation of any vulnerable
704 adult, or of any other criminal act under any statute of this
705 state or municipal ordinance defining any act as a crime or
706 misdemeanor.

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

712 (6) Any care facility that complies in good faith with the
713 requirements of this section to report the abuse or exploitation
714 of a patient or resident in the care facility shall not be
715 sanctioned by the State Department of Health for the occurrence of
716 such abuse or exploitation if the care facility demonstrates that
717 it adequately trained its employees and that the abuse or
718 exploitation was caused by factors beyond the control of the care
719 facility.

720 (7) Every person who knowingly fails to make the report as
721 required by subsections (1), (2) and (3) of this section or
722 attempts to induce another, by threat or otherwise, to fail to
723 make a report as required by subsections (1), (2) and (3) of this
724 section shall, upon conviction, be guilty of a misdemeanor and
725 shall be punished by a fine of not exceeding Five Hundred Dollars

726 (\$500.00), or by imprisonment in the county jail for not more than
727 six (6) months, or both such fine and imprisonment.

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

730 (9) If, after initial inquiry or investigation, the Medicaid
731 Fraud Control Unit determines that there is reasonable cause to
732 believe that an employee of a home health agency has abused,
733 neglected or exploited a vulnerable adult, the unit shall notify
734 the Mississippi State Department of Health of the alleged abuse,
735 neglect or exploitation.

736 (10) Upon an administrative or judicial determination of
737 evidence that an employee of a care facility has abused, neglected
738 or exploited a vulnerable adult, the appropriate investigative
739 agency shall immediately provide the following information to the
740 central registry: name, address, birth date, social security
741 number of perpetrator; type of abuse, neglect and or exploitation;
742 name, address, birth date, social security number of victim; and
743 date of incident and report.

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

746 43-11-13. (1) The licensing agency shall adopt, amend,
747 promulgate and enforce such rules, regulations and standards,
748 including classifications, with respect to all institutions for
749 the aged or infirm to be licensed hereunder as may be designed to
750 further the accomplishment of the purpose of this chapter in
751 promoting adequate care of individuals in such institutions in the
752 interest of public health, safety and welfare. Such rules,
753 regulations and standards shall be adopted and promulgated by the
754 licensing agency and shall be recorded and indexed in a book to be
755 maintained by the licensing agency in its main office in the State
756 of Mississippi, entitled "Rules, Regulations and Minimum Standards
757 for Institutions for the Aged or Infirm" and said book shall be
758 open and available to all institutions for the aged or infirm and

759 the public generally at all reasonable times. Upon the adoption
760 of such rules, regulations and standards, the licensing agency
761 shall mail copies thereof to all such institutions in the state
762 which have filed with said agency their names and addresses for
763 this purpose, but the failure to mail the same or the failure of
764 the institutions to receive the same shall in nowise affect the
765 validity thereof. Said rules, regulations and standards may be
766 amended by the licensing agency, from time to time, as necessary
767 to promote the health, safety and welfare of persons living in
768 said institutions.

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

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

787 (4) (a) Pursuant to regulations promulgated by the State
788 Department of Health, all licensed institutions for the aged or
789 infirm and care facilities shall conduct a criminal history check
790 on every new employee who provides direct patient care or
791 services. Except as otherwise provided, no new employee shall be

792 permitted to provide direct patient care or services until the
793 results of the criminal history check have revealed no
794 disqualifying record. Every new employee shall provide a valid
795 current social security number and/or driver's license number
796 which shall be furnished to the licensing agency or the agency
797 designated by the licensing agency to conduct the criminal history
798 check. The institution for the aged or infirm applying for the
799 criminal history check will be promptly notified of any
800 disqualifying record found by the criminal history check.

801 (b) A licensed institution for the aged or infirm or
802 care facility may make an offer of temporary employment to a
803 prospective employee pending the results of a criminal history
804 check on the person. In such instances, the licensed institution
805 for the aged or infirm shall provide to the licensing agency the
806 name and relevant information relating to the person within
807 seventy-two (72) hours after the date the person accepts temporary
808 employment.

809 (c) All fees incurred in compliance with this section
810 shall be borne by the institution requesting the criminal history
811 check. The licensing agency is hereby authorized to charge a fee
812 which shall include the amount required by the Mississippi
813 Department of Public Safety, the Federal Bureau of Investigation
814 or any other agency designated by the licensing agency for the
815 national criminal history record check in addition to any
816 necessary costs incurred by the licensing agency for the handling
817 and administration of the criminal history checks. Costs incurred
818 by a nursing home provider implementing this act shall be
819 reimbursed as an allowable cost under Section 43-13-116.

820 (d) The licensing agency, care facility, and their
821 agents, officers, employees, attorneys and representatives shall
822 be presumed to be acting in good faith for any employment decision
823 or action taken pursuant to subsection (4)(a) and (b) of this

824 section. The presumption of good faith may be overcome by a
825 preponderance of the evidence in any civil action.

826 (e) The licensing agency shall promulgate regulations
827 to implement this subsection (4).

828 SECTION 20. (1) Except as otherwise provided in subsection
829 (3), a person, knowing that the information is misleading or
830 inaccurate, shall not intentionally, willfully or recklessly place
831 or direct another to place in a patient's medical record or chart
832 misleading or inaccurate information regarding the diagnosis,
833 care, treatment or cause of a patient's condition. A violation of
834 this subsection is punishable as follows: a person who
835 intentionally or willfully or recklessly violates this subsection
836 is guilty of a misdemeanor, punishable by imprisonment for not
837 more than one (1) year, or a fine of not more than One Thousand
838 Dollars (\$1,000.00), or both.

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

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

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

855 (b) Supplementation of information or correction of an
856 error in a patient's medical record or chart in a manner that

857 reasonably discloses that the supplementation or correction was
858 performed and that does not conceal or alter prior entries.

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