SENATE BILL NO. 2488

AN ACT TO AMEND SECTIONS 43-47-5, 43-47-7, 43-47-9 AND 43-47-31, MISSISSIPPI CODE OF 1972, RELATING TO THE MISSISSIPPI VULNERABLE ADULTS ACT, TO DEFINE THE TERM "VULNERABLE ADULT," TO DEFINE THE TERM "ABANDONMENT," TO CLARIFY THAT INVESTIGATIONS SHALL BE INITIATED IMMEDIATELY AND TO CLARIFY THE AUTHORITY OF THE DEPARTMENT TO OVERRIDE A COMPETENT ADULT'S CHOICE AND RIGHT TO SELF DETERMINATION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 43-47-5, Mississippi Code of 1972, is amended as follows:

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

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

(b) "Care facility" shall mean:

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

(ii) Any long-term care facility as defined in Section 43-7-55; and
(iii) Any hospital as defined in, and required to be licensed under, the provisions of Section 41-9-1 et seq.; and

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

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

(vi) Any adult day services facility, which shall mean a community-based group program for adults designed to meet the needs of adults with impairments through individual plans of care, which are structured, comprehensive, planned, nonresidential programs providing a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Exempted from this definition shall be any program licensed and certified by the Mississippi Department of Mental Health and any adult day services program provided to ten (10) or fewer individuals by a licensed institution for the aged or infirm.

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

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

(e) "Department" shall mean the Department of Human Services.

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

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

(ii) The vulnerable adult is unable to consent to services;
(iii) No responsible, able or willing caretaker, if any, is available to consent to emergency services; and

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

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

(h) "Essential services" shall mean those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable adult's rights and resources and to maintain the physical or mental well-being of the person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment and protection from exploitation. The words "essential services" shall not include taking a vulnerable adult into physical custody without his consent except as provided for in Section 43-47-15 and as otherwise provided by the general laws of the state.

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

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

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

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

(m) "Vulnerable adult" shall mean a person eighteen
(18) years of age or older or any minor not covered by the Youth
Court Act. The term "vulnerable adult" shall also include all
residents or patients, regardless of age, in a care facility for
the purposes of Sections 43-47-19 and 43-47-37 only. The
department shall not be prohibited from investigating, and shall
have the authority and responsibility to fully investigate, in
accordance with the provisions of this chapter, any allegation of
abuse, neglect, and/or exploitation regarding a patient in a care
facility, if the alleged abuse, neglect and/or exploitation
occurred at a private residence.

SECTION 2. Section 43-47-7, Mississippi Code of 1972, is
amended as follows:
43-47-7. (1) (a) Except as otherwise provided by Section 43-47-37 for vulnerable adults in care facilities, any person including, but not limited to, the following, who knows or suspects that a vulnerable adult has been or is being abused, neglected or exploited shall immediately report such knowledge or suspicion to the Department of Human Services or to the county department of human services where the vulnerable adult is located:

(i) Attorney, physician, osteopathic physician, medical examiner, chiropractor or nurse engaged in the admission, examination, care or treatment of vulnerable adults;
(ii) Health professional or mental health professional other than one listed in subparagraph (i);
(iii) Practitioner who relies solely on spiritual means for healing;
(iv) Social worker or other professional adult care, residential or institutional staff;
(v) State, county or municipal criminal justice employee or law enforcement officer;
(vi) Human rights advocacy committee or long-term care ombudsman council member; or
(vii) Accountant, stockbroker, financial advisor or consultant, insurance agent or consultant, investment advisor or consultant, financial planner, or any officer or employee of a bank, savings and loan, credit union or any other financial service provider.

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

(i) Name, age, race, sex, physical description and location of each vulnerable adult alleged to have been abused, neglected or exploited.
(ii) Names, addresses and telephone numbers of the vulnerable adult's family members.

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

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

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

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

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

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

(c) The department, or its designees, shall report to an appropriate criminal investigative or prosecutive authority any person required by this section to report or who fails to comply with this section. A person who fails to make a report as required under this subsection or who, because of the circumstances, should have known or suspected beyond a reasonable doubt that a vulnerable adult suffers from exploitation, abuse, neglect or self-neglect but who knowingly fails to comply with this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. However, for purposes of this subsection (1), any recognized legal financial transaction shall not be considered cause to report the
knowledge or suspicion of the financial exploitation of a vulnerable adult. If a person convicted under this section is a member of a profession or occupation that is licensed, certified or regulated by the state, the court shall notify the appropriate licensing, certifying or regulating entity of the conviction.

(2) Reports received by law enforcement authorities or other agencies shall be forwarded immediately to the Department of Human Services or the county department of human services. The Department of Human Services shall investigate the reported abuse, neglect or exploitation immediately and shall file a preliminary report of its findings with the Office of the Attorney General within forty-eight (48) hours, and shall make additional reports as new information or evidence becomes available. The Department, upon request, shall forward a statement to the person making the initial report required by this section as to what action is being taken, if any.

(3) The report may be made orally or in writing, but where made orally, it shall be followed up by a written report. A person who fails to report or to otherwise comply with this section, as provided herein, shall have no civil or criminal liability, other than that expressly provided for in this section, to any person or entity in connection with any failure to report or to otherwise comply with the requirements of this section.

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

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

(6) The Executive Director of Human Services shall establish
a statewide central register of reports made pursuant to this
section. The central register shall be capable of receiving
reports of vulnerable adults in need of protective services seven
(7) days a week, twenty-four (24) hours a day. To effectuate this
purpose the executive director shall establish a single toll-free
statewide phone number that all persons may use to report
vulnerable adults in need of protective services, and that all
persons authorized by subsection (7) of this section may use for
determining the existence of prior reports in order to evaluate
the condition or circumstances of the vulnerable adult before
them. Such oral reports and evidence of previous reports shall be
transmitted to the appropriate county department of human
services. The central register shall include, but not be limited
to, the following information: the name and identifying
information of the individual reported, the county department of
human services responsible for the investigation of each such
report, the names, affiliations and purposes of any person
requesting or receiving information which the executive director
believes might be helpful in the furtherance of the purposes of
this chapter, the name, address, birth date, social security
number of the perpetrator of abuse, neglect and/or exploitation,
and the type of abuse, neglect and/or exploitation of which there
was substantial evidence upon investigation of the report. The
central register shall inform the person making reports required
under this section of his or her right to request statements from
the department as to what action is being taken, if any.

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

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

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

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

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

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

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

Notwithstanding the provisions of paragraph (b) of this subsection, the department may not disclose a report of the abandonment, exploitation, abuse, neglect or self-neglect of a vulnerable adult to the vulnerable adult's guardian, attorney-in-fact, surrogate decision maker, or caregiver who is a perpetrator or alleged perpetrator of the abandonment, exploitation, abuse or neglect of the vulnerable adult. "Abandonment" shall mean an action or inaction by a legal guardian, caretaker or custodian of a vulnerable adult which
leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter or health care.

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

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

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

SECTION 3. Section 43-47-9, Mississippi Code of 1972, is amended as follows:

43-47-9. (1) Upon receipt of a report pursuant to Section 43-47-7 that a vulnerable adult is in need of protective services, the department shall initiate an investigation and/or evaluation immediately to determine whether the vulnerable adult is in need of protective services and what services are needed. The evaluation shall include any necessary visits and interviews with the adult, and if appropriate, with the alleged perpetrator of the vulnerable adult abuse and with any person believed to have knowledge of the circumstances of the case. When a caretaker of a vulnerable adult refuses to allow the department reasonable access to conduct an investigation to determine if the vulnerable adult is in need of protective services, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the investigation.
(2) The staff and physicians of local health departments, mental health clinics and other public or private agencies, including law enforcement agencies, shall cooperate fully with the department in the performance of its duties. These duties include immediate, in-residence evaluations and medical examinations and treatment where the department deems it necessary. However, upon receipt of a report of abuse, neglect or exploitation of a vulnerable adult confined in a licensed hospital or licensed nursing home facility in the state, the department shall immediately refer this report to the proper authority at the State Department of Health for investigation under Section 43-47-37.

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

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

SECTION 4. Section 43-47-31, Mississippi Code of 1972, is amended as follows:

43-47-31. (1) Nothing in this chapter shall be construed to authorize, permit or require any emergency or protective services in contravention of the stated or implied objection of such person based upon his right of privacy, which is grounded in the federal courts and the courts of this state **.

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

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

SECTION 5. This act shall take effect and be in force from
and after July 1, 2002.