

By: Representative Mayo

To: Public Health and Welfare

HOUSE BILL NO. 293

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE DEFINITIONS UNDER THE VULNERABLE ADULTS ACT TO REMOVE THE
3 EXEMPTION OF LICENSED NURSING HOME FROM THE DEFINITION OF
4 "CARETAKER"; TO CLARIFY THAT "VULNERABLE ADULTS" INCLUDE RESIDENTS
5 OR PATIENTS IN NURSING FACILITIES; TO CLARIFY THAT THE DEPARTMENT
6 OF HUMAN SERVICES IS AUTHORIZED TO EVALUATE AND PROVIDE PROTECTIVE
7 SERVICES REGARDING ANY RESIDENT OR PATIENT IN A NURSING FACILITY;
8 AND FOR RELATED PURPOSES.

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

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

12 43-47-5. For the purposes of this chapter, the following
13 words shall have the meanings ascribed herein unless the context
14 otherwise requires:

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

25 (b) "Care facility" shall mean:

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

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



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

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

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

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

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

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

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

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

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

62 (ii) The vulnerable adult is unable to consent to
63 services;



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

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

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

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

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

90 (j) "Lacks the capacity to consent" shall mean that a
91 vulnerable adult, because of physical or mental incapacity, lacks
92 sufficient understanding or capacity to make or communicate
93 responsible decisions concerning his person, including, but not
94 limited to, provisions for health care, food, clothing or shelter.
95 This may be reasonably determined by the department in emergency
96 situations; in all other instances, the court shall make the



97 determination following the procedures in Sections 43-47-13 and
98 43-47-15 or as otherwise provided by the general laws of the
99 state.

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

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

116 (m) "Vulnerable adult" shall mean a person eighteen
117 (18) years of age or older or any minor whose ability to perform
118 the normal activities of daily living or to provide for his or her
119 own care or protection is impaired due to a mental, emotional,
120 physical or developmental disability or dysfunction, or brain
121 damage or the infirmities of aging. The term "vulnerable adult"
122 shall also include all residents or patients, regardless of age,
123 in a care facility, other than a licensed nursing facility, for
124 the purposes of Sections 43-47-19 and 43-47-37 only; however,
125 "vulnerable adult" shall include all residents or patients in a
126 nursing facility for all purposes under this chapter. The
127 department shall not be prohibited from investigating, and shall
128 have the authority and responsibility to fully investigate, in
129 accordance with the provisions of this chapter, any allegation of



130 abuse, neglect, and/or exploitation regarding a patient in a care
131 facility, if the alleged abuse, neglect and/or exploitation
132 occurred at a private residence. The Department of Human Services
133 is fully authorized to perform any investigation, evaluation or
134 examination or provide protective services, essential services or
135 emergency services regarding any resident or patient in a nursing
136 facility.

137 **SECTION 2.** This act shall take effect and be in force from
138 and after July 1, 2003.

