HOUSE BILL NO. 293

AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER THE VULNERABLE ADULTS ACT TO REMOVE THE EXEMPTION OF LICENSED NURSING HOME FROM THE DEFINITION OF "CARETAKER"; TO CLARIFY THAT "VULNERABLE ADULTS" INCLUDE RESIDENTS OR PATIENTS IN NURSING FACILITIES; TO CLARIFY THAT THE DEPARTMENT OF HUMAN SERVICES IS AUTHORIZED TO EVALUATE AND PROVIDE PROTECTIVE SERVICES REGARDING ANY RESIDENT OR PATIENT IN A NURSING FACILITY; 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 or a licensed hospital 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
determination 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 whose ability to perform
the normal activities of daily living or to provide for his or her
own care or protection is impaired due to a mental, emotional,
physical or developmental disability or dysfunction, or brain
damage or the infirmities of aging. The term "vulnerable adult"
shall also include all residents or patients, regardless of age,
in a care facility, other than a licensed nursing facility, for
the purposes of Sections 43-47-19 and 43-47-37 only; however,
"vulnerable adult" shall include all residents or patients in a
nursing facility for all purposes under this chapter. 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. The Department of Human Services is fully authorized to perform any investigation, evaluation or examination or provide protective services, essential services or emergency services regarding any resident or patient in a nursing facility.

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