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COMMITTEE AMENDMENT NO 1 PROPOSED TO**

House Bill No. 492

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

13 **SECTION 1.** Section 43-7-7, Mississippi Code of 1972, is
14 amended as follows:

15 43-7-7. The Department of Human Services shall be
16 responsible for the collection of data and statistics and for
17 making a continuing study of conditions affecting the general
18 welfare of the aging population; for providing for an inter-agency
19 and inter-departmental exchange of ideas; for encouraging and
20 assisting in the development of programs for the aging in
21 municipalities and counties of the state, including elder rights
22 leadership; for cooperation with public and private agencies and



23 departments in coordinating programs for the aging; for
24 encouraging and promoting biological, physiological and
25 sociological research; for making recommendations for residential
26 housing and needed nursing and custodial care facilities.

27 **SECTION 2.** Section 43-7-53, Mississippi Code of 1972, is
28 amended as follows:

29 43-7-53. (1) There is * * *~~hereby established within~~
30 created by the Mississippi Council on Aging * * *~~within the~~
31 Division of Aging and Adult Services the independent
32 organizational unit called the Office of the State Long-Term Care
33 Facilities Ombudsman as provided by the Older Americans Act of
34 1965, as amended, 42 USCS 3001, which is headed by a State
35 Ombudsman.

36 (2) The council shall establish the qualifications of the
37 state * * *~~and community ombudsmen~~ representatives of the Office
38 of the State Long-Term Care Facilities Ombudsman.

39 (3) There shall be a position of legal assistance developer
40 within the council who is a member in good standing with The
41 Mississippi Bar who will assist the State Ombudsman in carrying
42 out the duties to protect the health, safety, rights and welfare
43 of residents and provide adequate administrative and legal
44 representation on behalf of residents of long-term care facilities
45 in a manner free of conflict of interest.

46 **SECTION 3.** Section 43-7-55, Mississippi Code of 1972, is
47 amended as follows:



48 43-7-55. For the purposes of Sections 43-7-51 through
49 43-7-79, the following words shall have the definitions ascribed
50 herein:

51 (a) "Administrator" means any person charged with the
52 general administration or supervision of a long-term care facility
53 without regard to whether such person has an ownership interest in
54 such facility or to whether such person's functions and duties are
55 shared with one or more other persons;

56 (b) " * * * ~~Community ombudsman~~ Representatives of the
57 Office of the State Long-Term Care Facilities Ombudsman"
58 means * * * ~~a person~~ the district or local employees or volunteers
59 selected by an area agency on aging who * * * ~~is~~ are then trained
60 and * * * ~~certified~~ designated as such by the * * * ~~council~~ pursuant
61 to State Ombudsman under Section 43-7-59;

62 (c) "Council" means the Mississippi Council on Aging;

63 (d) "Long-term care facility" means any skilled nursing
64 facility, extended care home, intermediate care facility, personal
65 care home or boarding home which is subject to regulation or
66 licensure by the State Department of Health;

67 (e) "Resident" means any resident, prospective
68 resident, prior resident or deceased resident of any long-term
69 care facility;

70 (f) "Sponsor" means an adult relative, friend or
71 guardian who has a responsibility in the resident's welfare;



(g) "State Ombudsman" means the State Long-Term Care Facilities Ombudsman;

(h) "State Ombudsman Program" means the program that carries out the duties and functions of the Office of the State Long-term Care Facilities Ombudsman, which consists of the State Ombudsman * * *or any community ombudsman, the Office of the State Long-term Care Facilities Ombudsman and the representatives of the Office of the State Long-term Care Facilities Ombudsman;

(i) "Area agency on aging" means those grantees of the council which are charged with the local administration of the Older Americans Act.

SECTION 4. Section 43-7-57, Mississippi Code of 1972, is amended as follows:

43-7-57. The duties of the Office of the State Long-Term Care Facilities Ombudsman, as created under Section 43-7-53, shall be:

(a) The establishment of a procedure to have regular and timely access to the services provided by the State Ombudsman Program and to receive, investigate and resolve complaints filed by residents or sponsors or organizations or long-term care facilities on behalf of residents of long-term care facilities relating to the health, safety, welfare and rights of such residents and to represent the interests of residents before governmental agencies;



(b) The monitoring of the development and implementation of federal, state and local laws, regulations and policies with respect to long-term care facilities and to analyze, comment on and recommend any changes in such laws, regulations and policies as the Office of the State Long-term Care Facilities Ombudsman deems appropriate;

(c) The establishment of a training program for both the state and community ombudsmen;

(d) To provide public forums, including the holding of public hearings, sponsorships of conferences and workshops, and the holding of other meetings to seek information concerning the needs and problems of residents in long-term care facilities;

(e) The establishment and maintenance of a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems faced by residents as a group;

(f) The submission of an annual report to the State Department of Health, the United States Assistant Secretary for Aging (ACL/AOA), Executive Director of the Council and the State Legislature, which shall include statistical information about the state and community long-term care facilities ombudsman programs, shall identify systemic problems in long-term care facilities that cannot be adequately addressed by state and local agencies, and



shall include recommendations for legislative or executive action to alleviate any systemic problems;

(g) The testing and ~~***certification~~ designation of ~~***ombudsmen~~ the representatives of the Office of the State Long-term Care Facilities Ombudsman;

(h) The development of an ongoing program of publicizing programs designated by the Office of the State Long-Term Care Facilities Ombudsman and by the community long-term care facilities ombudsman through contact with the media and civic organizations;

(i) The development of policies and regulations related to the use of volunteers in the program ~~***, and to assure that the responsibility and authority of volunteers shall be restricted to activities which do not involve access to patient or facility records;~~ and

(j) Other duties as mandated by the Older Americans Act of 1965, as amended.

SECTION 5. Section 43-7-59, Mississippi Code of 1972, is amended as follows:

43-7-59. (1) The Office of the State Long-Term Care Facilities Ombudsman shall ~~***certify community long-term care facilities ombudsman programs~~ designate and refuse, suspend or remove designation of representatives of the Office of the State Long-term Care Facilities Ombudsman in particular where a conflict of interest cannot be resolved, except that community long-term



care facilities ombudsman programs existing on July 1, 1988, shall be ~~***certified~~ designated unless the Office of the State Long-Term Care Facilities Ombudsman determines that the existing community program no longer meets the requirement of Sections 43-7-51 through 43-7-79.

(2) The ~~***council~~ State Ombudsman shall specify standards for the ~~***certification~~ designation and operation of community ombudsman programs and establish a grievance process.

SECTION 6. Section 43-7-61, Mississippi Code of 1972, is amended as follows:

43-7-61. (1) The Office of the State Long-Term Care Facilities Ombudsman shall establish a training and certification program. The ~~***council~~ State Ombudsman shall specify by rule the content of the training program. Each long-term care facilities ombudsman program shall bear the cost of training its own employees.

(2) The State Ombudsman shall ~~***arrange for the training of all prospective community ombudsmen selected by area agencies on aging~~ establish minimum qualifications and recertification requirements for representatives of the Office of the State Long-Term Care Facilities Ombudsman. Such training shall include instruction in at least the following subjects as they relate to long-term care:

(a) The responsibilities and duties of community ombudsmen;



(b) The laws and regulations governing the receipt, investigation and resolution of issues of the well-being of a resident;

(c) The role of local, state and federal agencies that regulate long-term care facilities;

(d) The different kinds of long-term care facilities in Mississippi and the services provided in each kind;

(e) The special needs of the elderly and of the physically and mentally handicapped;

(f) The role of the family, the sponsor, the legal representative, the physician, the church, and other public and private agencies, and the community;

(g) How to work with long-term care facility staff;

(h) The aging process and characteristics of the long-term care facility resident or institutionalized elderly;

(i) Familiarity with and access to information concerning the laws and regulations governing Medicare, Medicaid, Social Security, Supplemental Security Income, the Veterans Administration and Workers' Compensation; and

(j) The training program shall include an appropriate internship to be performed in a long-term care facility.

(3) Persons selected by area agencies on aging who have satisfactorily completed the training arranged by the State Ombudsman shall be * * *~~certified as community ombudsmen by the~~



~~council~~ designated as representatives of the Office of the State Long-Term Care Facilities Ombudsman by the State Ombudsman.

(4) Each area agency on aging may appoint an advisory committee to advise it in the operation of its community ombudsman program. The number and qualifications of members of the advisory committee shall be determined by the area agency on aging.

(5) Ombudsmen who have successfully completed the training and certification program under this section shall be given identification cards which shall be presented to employees of a long-term care facility upon request.

SECTION 7. Section 43-7-63, Mississippi Code of 1972, is amended as follows:

43-7-63. The duties of the community ombudsman shall be:

(a) The investigation of complaints filed by residents, sponsors, organizations or long-term care facilities on behalf of residents of long-term care facilities relating to the health, safety, welfare and rights of a resident and to ensure that residents have regular and timely access to the services of the State Ombudsman Program without inappropriate disclosure of resident-identifying information.

(b) The pursuit of efforts to resolve complaints informally and represent residents before governmental agencies.

(c) The * * *~~monitoring~~ reviewing of the development and implementation of federal, state and local laws, regulations



and policies relating to long-term care and, if appropriate, to
comment on those laws, regulations and policies.

(d) The training of volunteers:

(i) Training of volunteers shall be approved by
the State Long-Term Care Facilities Ombudsman as appropriate to
the level of responsibility of the volunteer, and shall be carried
out in accordance with the training manual developed by the Office
of the State Long-Term Care Facilities Ombudsman;

(ii) Volunteers who have met the training
and * * *~~certification~~ designation requirements appropriate to
their level of responsibility shall be given identification cards
which shall be presented to employees of a long-term care facility
upon request;

(iii) No volunteer shall perform any of the duties
enumerated by Sections 43-7-51 through 43-7-79 prior to completion
of the training and designation program, except as a supervised
portion of that training program.

(e) The providing of public forums, scheduling of
public hearings, sponsoring of conferences and workshops, and
conducting other meetings to gather, disseminate and discuss
information relative to the needs and problems of the residents in
long-term care facilities as requested by resident and family
councils.

(f) The encouragement and assistance in the development
and operation of referral services which can provide current,



valid and reliable information on long-term care facilities and alternatives to institutionalization for persons in need of these services.

(g) The submission of reports as required by the Office of the State Long-Term Care Facilities Ombudsman.

(h) The development of an ongoing program of publicity concerning the purposes and mode of operation of the long-term care facilities ombudsman program through contact with the media and civic organizations.

SECTION 8. Section 43-7-65, Mississippi Code of 1972, is amended as follows:

43-7-65. (1) Investigative activities of the ombudsman shall include, but not be limited to: information gathering, mediation, negotiation, informing concerned parties of alternative remedies, reporting of suspected violations to appropriate licensing or certifying agencies and reporting of suspected criminal violations to the appropriate law enforcement authorities. The State Ombudsman Program is excluded from the abuse reporting requirements in Sections 43-47-7 and 43-47-37 without appropriate resident informed consent or a court order.

(2) The ombudsman need not investigate any complaint upon determining that:

(a) The complaint is trivial, frivolous, vexatious, delayed or made in bad faith;



(b) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(c) The matter complained of is not within the investigatory authority of the community long-term care facilities ombudsman program; or

(d) A real or apparent conflict of interest exists and no other ombudsman is available to investigate the complaint in an impartial manner.

(3) If a determination is made by a community long-term care facilities ombudsman not to investigate any complaint, then the complaint shall be referred to the Office of the State Long-Term Care Facilities Ombudsman which shall make a final decision as to whether the matter warrants further investigation.

(4) The ombudsman shall have access to any long-term care facility or any and all residents of such a facility for the purposes of an investigation under this section or for the purpose of carrying out other duties specified by Sections 43-7-51 through 43-7-79. The ombudsman may enter the facility at a time appropriate to the complaint. The visit may be announced in advance or such visit regarding the complaint under investigation may be unannounced. The clinical record of a resident may be examined by a representative of the State Ombudsman, with the permission of the resident or the resident's legal representative. Any copy of the clinical record examined under this provision



shall not be removed from the nursing facility unless written authorization is obtained from the patient or the patient's legal representative.

(5) (a) The State Long-Term Care Facilities Ombudsman shall develop referral procedures that will adhere to the disclosure requirements of the State Ombudsman Program for all long-term care facilities programs to refer any complaint to any appropriate state or local government agency. The agency shall act as quickly as possible on any complaint referred to it by a long-term care facilities ombudsman.

(b) If the complaint is referred to a government agency by a long-term care facilities ombudsman, that ombudsman shall be kept advised and shall be notified in writing in a timely manner by the government agency of the disposition of the referred complaint.

SECTION 9. Section 43-7-67, Mississippi Code of 1972, is amended as follows:

43-7-67. (1) Except during the course of an investigation carried out under Section 43-7-65, ombudsmen shall have access to long-term care facilities for the purposes of carrying out the duties enumerated by Sections 43-7-51 through 43-7-79 during reasonable hours or at other times with the prior approval of the administrator of the long-term care facility. Access shall mean:

(a) Access to the long-term care facility;



(b) Private communication with residents and their sponsors; and

(c) The right to tour the long-term care facility unescorted.

(2) No person shall discriminate, retaliate or engage in willful interference against any resident, immediate family, resident representative or an employee of a long-term care facility due to making a complaint or giving information in good faith to the State Ombudsman Program.

(3) Any person convicted of violating any provision of this section shall be guilty of a misdemeanor.

SECTION 10. Section 43-7-69, Mississippi Code of 1972, is amended as follows:

43-7-69. * * *~~Each long-term care facilities ombudsman program~~ The State Ombudsman shall establish policies and procedures with regard to confidentiality of resident, long-term care facility and government agency records. These policies and procedures shall ensure that:

(a) Any ombudsman shall not disclose the identity of any resident or complainant unless the resident or complainant or the legal representative of either specifically consents in writing to the disclosure.

(b) The investigatory files of any long-term care facilities ombudsman program shall be maintained as confidential information and may only be disclosed at the discretion of the



341 State Ombudsman or their designee for such purposes set by
342 criteria of the State Ombudsman, except as necessary for the
343 preparation of statistical data, as required to carry out the
344 duties of Sections 43-7-51 through 43-7-79, or as required
345 pursuant to a court order.

346 **SECTION 11.** Section 43-7-77, Mississippi Code of 1972, is
347 amended as follows:

348 43-7-77. (1) The ombudsman may request information,
349 cooperation and assistance from any government agency, and the
350 agency is hereby authorized and directed to provide cooperation,
351 assistance or information that will enable the ombudsman to
352 properly perform any of his functions, duties and powers under the
353 provisions of Sections 43-7-51 through 43-7-79.

354 (2) All advocacy organizations and organizations similar in
355 nature to the long-term care facilities ombudsman program which
356 receive funding or official designation from the state shall
357 cooperate with the long-term care facilities ombudsman.

358 (3) The Office of the State Long-term Care Facilities
359 Ombudsman shall maintain a close working relationship with the
360 legal assistance developer of the Mississippi Council on Aging
361 through adoption of memoranda of understanding.

362 (4) The long-term care facilities ombudsman shall seek to
363 establish effective coordination between programs which provide
364 legal services for the elderly, including, but not limited to,
365 programs funded by the Federal Legal Services Corporation or the



Older Americans Act of 1965, as amended, and other entities with responsibilities relevant to the health, safety, welfare, and rights of residents in long-term care facilities through adoption of memoranda of understanding or other means.

(5) The long-term care facilities ombudsman may observe any survey in a long-term care facility conducted by a government agency.

SECTION 12. The following shall be codified as Section 43-7-79, Mississippi Code of 1972:

43-7-79. The State Ombudsman shall recommend policies and procedures to carry out the provisions of Sections 43-7-51 through 43-7-79 and propose rules and regulations to implement the provisions of Sections 43-7-51 through 43-7-79.

SECTION 13. 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 persons in care facilities and by Section 43-7-65 for the State Ombudsman Program, any person including, but not limited to, the following, who knows or suspects that a vulnerable person 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 person is located:



389 (i) Attorney, physician, osteopathic physician,
390 medical examiner, chiropractor or nurse engaged in the admission,
391 examination, care or treatment of vulnerable persons;

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

394 (iii) Practitioner who relies solely on spiritual
395 means for healing;

396 (iv) Social worker, family protection worker,
397 family protection specialist or other professional care,
398 residential or institutional staff;

399 (v) State, county or municipal criminal justice
400 employee or law enforcement officer;

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

403 (vii) Accountant, stockbroker, financial advisor
404 or consultant, insurance agent or consultant, investment advisor
405 or consultant, financial planner, or any officer or employee of a
406 bank, savings and loan, credit union or any other financial
407 service provider.

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

411 (i) Name, age, race, sex, physical description and
412 location of each vulnerable person alleged to have been abused,
413 neglected or exploited.



(ii) Names, addresses and telephone numbers of the vulnerable person'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 person, 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 person 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 person. 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 if immediate attention is needed, or seventy-two (72) hours if the vulnerable person is not in immediate danger and shall make additional reports as new information or evidence becomes available. The Department of Human Services, 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 the Department 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 persons in need of



488 protective services seven (7) days a week, twenty-four (24) hours
489 a day. To effectuate this purpose, the executive director shall
490 establish a single toll-free statewide phone number that all
491 persons may use to report vulnerable persons in need of protective
492 services, and that all persons authorized by subsection (7) of
493 this section may use for determining the existence of prior
494 reports in order to evaluate the condition or circumstances of the
495 vulnerable person before them. Such oral reports and evidence of
496 previous reports shall be transmitted to the appropriate county
497 department of human services. The central register shall include,
498 but not be limited to, the following information: the name and
499 identifying information of the individual reported, the county
500 department of human services responsible for the investigation of
501 each such report, the names, affiliations and purposes of any
502 person requesting or receiving information which the executive
503 director believes might be helpful in the furtherance of the
504 purposes of this chapter, the name, address, birth date, social
505 security number of the perpetrator of abuse, neglect and/or
506 exploitation, and the type of abuse, neglect and/or exploitation
507 of which there was substantial evidence upon investigation of the
508 report. The central register shall inform the person making
509 reports required under this section of his or her right to request
510 statements from the department as to what action is being taken,
511 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 persons 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 person 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 person 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;



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

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

540 Notwithstanding the provisions of paragraph (b) of this
541 subsection, the department may not disclose a report of the
542 abandonment, exploitation, abuse, neglect or self-neglect of a
543 vulnerable person to the vulnerable person's guardian,
544 attorney-in-fact, surrogate decision maker, or caregiver who is a
545 perpetrator or alleged perpetrator of the abandonment,
546 exploitation, abuse or neglect of the vulnerable person.

547 Any person given access to the names or other information
548 identifying the subject of the report, except the subject of the
549 report, shall not divulge or make public such identifying
550 information unless he is a district attorney or other law
551 enforcement official and the purpose is to initiate court action.
552 Any person who willfully permits the release of any data or
553 information obtained pursuant to this section to persons or
554 agencies not permitted to such access by this section shall be
555 guilty of a misdemeanor.

556 (8) Upon reasonable cause to believe that a caretaker or
557 other person has abused, neglected or exploited a vulnerable
558 person, the department shall promptly notify the district attorney
559 of the county in which the vulnerable person is located and the



Office of the Attorney General, except as provided in Section 43-47-37(2).

SECTION 14. Section 43-47-37, Mississippi Code of 1972, is amended as follows:

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

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

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

(b) By a home health agency, in writing within seventy-two (72) hours of discovery to the department and the Medicaid Fraud Control Unit. Upon initial review, the Medicaid Fraud Control Unit shall make a determination whether or not the person suspected of committing the reported abuse, neglect or exploitation was an employee of the home health agency. If so, the Medicaid Fraud Control Unit shall determine whether there is substantial potential for criminal prosecution, and upon a



585 positive determination, shall investigate and prosecute the
586 complaint or refer it to an appropriate criminal investigative or
587 prosecutive authority. If the alleged perpetrator is not an
588 employee of the home health agency, the department shall
589 investigate and process the complaint or refer it to an
590 appropriate investigative or prosecutive authority.

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

596 (d) By all other care facilities, in writing, within
597 seventy-two (72) hours of the discovery, to the State Department
598 of Health and the Medicaid Fraud Control Unit. If, upon initial
599 review by the State Department of Health and the Medicaid Fraud
600 Control Unit, a determination is made that there is substantial
601 potential for criminal prosecution, the unit will investigate and
602 prosecute the complaint or refer it to an appropriate criminal
603 investigative or prosecutive authority.

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

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



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

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

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

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

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

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

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

(4) Except as otherwise provided by Section 43-7-65 for the State Ombudsman Program, any other individual who has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, exploitation or any other criminal offense may make a report to the State Department of Health and the Medicaid Fraud Control Unit.

(5) (a) Any individual who, in good faith, makes a report as provided in this section or who testifies in an official proceeding regarding matters arising out of this section shall be immune from all criminal and civil liability. The immunity



634 granted under this subsection shall not apply to any suspect or
635 perpetrator of abuse, neglect or exploitation of any vulnerable
636 person, or of any other criminal act under any statute of this
637 state or municipal ordinance defining any act as a crime or
638 misdemeanor.

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

644 (6) Any care facility that complies in good faith with the
645 requirements of this section to report the abuse or exploitation
646 of a patient or resident in the care facility shall not be
647 sanctioned by the State Department of Health for the occurrence of
648 such abuse or exploitation if the care facility demonstrates that
649 it adequately trained its employees and that the abuse or
650 exploitation was caused by factors beyond the control of the care
651 facility.

652 (7) Every person who knowingly fails to make the report as
653 required by subsections (1), (2) and (3) of this section or
654 attempts to induce another, by threat or otherwise, to fail to
655 make a report as required by subsections (1), (2) and (3) of this
656 section shall, upon conviction, be guilty of a misdemeanor and
657 shall be punished by a fine of not exceeding Five Hundred Dollars



658 (\$500.00), or by imprisonment in the county jail for not more than
659 six (6) months, or both such fine and imprisonment.

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

662 (9) If, after initial inquiry or investigation, the Medicaid
663 Fraud Control Unit determines that there is reasonable cause to
664 believe that an employee of a home health agency has abused,
665 neglected or exploited a vulnerable person, the unit shall notify
666 the Mississippi State Department of Health of the alleged abuse,
667 neglect or exploitation.

668 (10) Upon a judicial determination of evidence that an
669 employee of a care facility has abused, neglected or exploited a
670 vulnerable person, the appropriate investigative agency shall
671 immediately provide the following information to the central
672 registry: name, address, birth date, social security number of
673 the perpetrator; type of abuse, neglect and/or exploitation; name,
674 address, birth date, social security number of the victim; and
675 date of the incident and report.

676 **SECTION 15.** This act shall take effect and be in force from
677 and after July 1, 2017, and shall stand repealed from and after
678 June 30, 2017.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTIONS 43-7-7, 43-7-53, 43-7-55, 43-7-57,
2 43-7-59, 43-7-61, 43-7-63, 43-7-65, 43-7-67, 43-7-69 AND 43-7-77,



3 MISSISSIPPI CODE OF 1972, TO REVISE VARIOUS PROVISIONS OF THE
4 LONG-TERM CARE FACILITIES OMBUDSMAN ACT TO CONFORM TO NEW FEDERAL
5 REGULATIONS FOR THE LONG-TERM CARE OMBUDSMAN PROGRAM; TO CREATE
6 NEW SECTION 43-7-79, MISSISSIPPI CODE OF 1972, TO REQUIRE THE
7 STATE OMBUDSMAN TO RECOMMEND POLICIES AND PROCEDURES TO CARRY OUT
8 THE PROVISIONS OF THE ACT AND PROPOSE RULES AND REGULATIONS TO
9 IMPLEMENT THE PROVISIONS OF THE ACT; TO AMEND SECTIONS 43-47-7 AND
10 43-47-37, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
11 PROVISIONS; AND FOR RELATED PURPOSES.

