

By: Representative Mims

To: Public Health and Human Services

HOUSE BILL NO. 492  
(As Passed the House)

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.

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

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 \* \* \* created by the Mississippi  
30 Council on Aging \* \* \* within the Division of Aging and Adult  
31 Services the independent organizational unit called the Office of  
32 the State Long-Term Care Facilities Ombudsman as provided by the  
33 Older Americans Act of 1965, as amended, 42 USCS 3001, which is  
34 headed by a State Ombudsman.

35 (2) The council shall establish the qualifications of the  
36 state \* \* \* representatives of the Office of the State Long-Term  
37 Care Facilities Ombudsman.

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

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



47 43-7-55. For the purposes of Sections 43-7-51 through  
48 43-7-79, the following words shall have the definitions ascribed  
49 herein:

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

55 (b) " \* \* \* Representatives of the Office of the State  
56 Long-Term Care Facilities Ombudsman" means \* \* \* the district or  
57 local employees or volunteers selected by an area agency on aging  
58 who \* \* \* are then trained and \* \* \* designated as such by  
59 the \* \* \* State Ombudsman under Section 43-7-59;

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

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

65 (e) "Resident" means any resident, prospective  
66 resident, prior resident or deceased resident of any Long-Term  
67 care facility;

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

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



72 (h) "State Ombudsman Program" means the program that  
73 carries out the duties and functions of the Office of the State  
74 Long-Term Care Facilities Ombudsman, which consists of the State  
75 Ombudsman \* \* \*, the Office of the State Long-Term Care Facilities  
76 Ombudsman and the representatives of the Office of the State Long-  
77 Term Care Facilities Ombudsman;

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

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

83 43-7-57. The duties of the Office of the State Long-Term  
84 Care Facilities Ombudsman, as created under Section 43-7-53, shall  
85 be:

86 (a) The establishment of a procedure to have regular  
87 and timely access to the services provided by the State Ombudsman  
88 Program and to receive, investigate and resolve complaints filed  
89 by residents or sponsors or organizations or Long-Term care  
90 facilities on behalf of residents of Long-Term care facilities  
91 relating to the health, safety, welfare and rights of such  
92 residents and to represent the interests of residents before  
93 governmental agencies;

94 (b) The monitoring of the development and  
95 implementation of federal, state and local laws, regulations and  
96 policies with respect to Long-Term care facilities and to analyze,



97 comment on and recommend any changes in such laws, regulations and  
98 policies as the Office of the State Long-Term Care Facilities  
99 Ombudsman deems appropriate;

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

102 (d) To provide public forums, including the holding of  
103 public hearings, sponsorships of conferences and workshops, and  
104 the holding of other meetings to seek information concerning the  
105 needs and problems of residents in Long-Term care facilities;

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

111 (f) The submission of an annual report to the State  
112 Department of Health, the United States Assistant Secretary for  
113 Aging (ACL/AOA), Executive Director of the Council and the State  
114 Legislature, which shall include statistical information about the  
115 state and community Long-Term care facilities ombudsman programs,  
116 shall identify systemic problems in Long-Term care facilities that  
117 cannot be adequately addressed by state and local agencies, and  
118 shall include recommendations for legislative or executive action  
119 to alleviate any systemic problems;



120 (g) The testing and \* \* \* designation of \* \* \* the  
121 representatives of the Office of the State Long-Term Care  
122 Facilities Ombudsman;

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

128 (i) The development of policies and regulations related  
129 to the use of volunteers in the program \* \* \*; and

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

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

134 43-7-59. (1) The Office of the State Long-Term Care  
135 Facilities Ombudsman shall \* \* \* designate and refuse, suspend or  
136 remove designation of representatives of the Office of the State  
137 Long-Term Care Facilities Ombudsman in particular where a conflict  
138 of interest cannot be resolved, except that community Long-Term  
139 care facilities ombudsman programs existing on July 1, 1988, shall  
140 be \* \* \* designated unless the Office of the State Long-Term Care  
141 Facilities Ombudsman determines that the existing community  
142 program no longer meets the requirement of Sections 43-7-51  
143 through 43-7-79.



144 (2) The \* \* \* State Ombudsman shall specify standards for  
145 the \* \* \* designation and operation of community ombudsman  
146 programs and establish a grievance process.

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

149 43-7-61. (1) The Office of the State Long-Term Care  
150 Facilities Ombudsman shall establish a training and certification  
151 program. The \* \* \* State Ombudsman shall specify by rule the  
152 content of the training program. Each Long-Term care facilities  
153 ombudsman program shall bear the cost of training its own  
154 employees.

155 (2) The State Ombudsman shall \* \* \* establish minimum  
156 qualifications and recertification requirements for  
157 representatives of the Office of the State Long-Term Care  
158 Facilities Ombudsman. Such training shall include instruction in  
159 at least the following subjects as they relate to Long-Term care:

160 (a) The responsibilities and duties of community  
161 ombudsmen;

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

165 (c) The role of local, state and federal agencies that  
166 regulate Long-Term care facilities;

167 (d) The different kinds of Long-Term care facilities in  
168 Mississippi and the services provided in each kind;



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

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

174 (g) How to work with Long-Term care facility staff;

175 (h) The aging process and characteristics of the Long-  
176 Term care facility resident or institutionalized elderly;

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

181 (j) The training program shall include an appropriate  
182 internship to be performed in a Long-Term care facility.

183 (3) Persons selected by area agencies on aging who have  
184 satisfactorily completed the training arranged by the State  
185 Ombudsman shall be \* \* \* designated as representatives of the  
186 Office of the State Long-Term Care Facilities Ombudsman by the  
187 State Ombudsman.

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

192 (5) Ombudsmen who have successfully completed the training  
193 and certification program under this section shall be given





194 identification cards which shall be presented to employees of a  
195 Long-Term care facility upon request.

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

198 43-7-63. The duties of the community ombudsman shall be:

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

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

208 (c) The \* \* \* reviewing of the development and  
209 implementation of federal, state and local laws, regulations and  
210 policies relating to Long-Term care and, if appropriate, to  
211 comment on those laws, regulations and policies.

212 (d) The training of volunteers:

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



218 (ii) Volunteers who have met the training  
219 and \* \* \* designation requirements appropriate to their level of  
220 responsibility shall be given identification cards which shall be  
221 presented to employees of a Long-Term care facility upon request;

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

226 (e) The providing of public forums, scheduling of  
227 public hearings, sponsoring of conferences and workshops, and  
228 conducting other meetings to gather, disseminate and discuss  
229 information relative to the needs and problems of the residents in  
230 Long-Term care facilities as requested by resident and family  
231 councils.

232 (f) The encouragement and assistance in the development  
233 and operation of referral services which can provide current,  
234 valid and reliable information on Long-Term care facilities and  
235 alternatives to institutionalization for persons in need of these  
236 services.

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

239 (h) The development of an ongoing program of publicity  
240 concerning the purposes and mode of operation of the Long-Term  
241 care facilities ombudsman program through contact with the media  
242 and civic organizations.



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

245           43-7-65. (1) Investigative activities of the ombudsman  
246 shall include, but not be limited to: information gathering,  
247 mediation, negotiation, informing concerned parties of alternative  
248 remedies, reporting of suspected violations to appropriate  
249 licensing or certifying agencies and reporting of suspected  
250 criminal violations to the appropriate law enforcement  
251 authorities. The State Ombudsman Program is excluded from the  
252 abuse reporting requirements in Sections 43-47-7 and 43-47-37  
253 without appropriate resident informed consent or a court order.

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

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

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

261                   (c) The matter complained of is not within the  
262 investigatory authority of the community Long-Term care facilities  
263 ombudsman program; or

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



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

272 (4) The ombudsman shall have access to any Long-Term care  
273 facility or any and all residents of such a facility for the  
274 purposes of an investigation under this section or for the purpose  
275 of carrying out other duties specified by Sections 43-7-51 through  
276 43-7-79. The ombudsman may enter the facility at a time  
277 appropriate to the complaint. The visit may be announced in  
278 advance or such visit regarding the complaint under investigation  
279 may be unannounced. The clinical record of a resident may be  
280 examined by a representative of the State Ombudsman, with the  
281 permission of the resident or the resident's legal representative.  
282 Any copy of the clinical record examined under this provision  
283 shall not be removed from the nursing facility unless written  
284 authorization is obtained from the patient or the patient's legal  
285 representative.

286 (5) (a) The State Long-Term Care Facilities Ombudsman shall  
287 develop referral procedures that will adhere to the disclosure  
288 requirements of the State Ombudsman Program for all Long-Term care  
289 facilities programs to refer any complaint to any appropriate  
290 state or local government agency. The agency shall act as quickly



291 as possible on any complaint referred to it by a Long-Term care  
292 facilities ombudsman.

293 (b) If the complaint is referred to a government agency  
294 by a Long-Term care facilities ombudsman, that ombudsman shall be  
295 kept advised and shall be notified in writing in a timely manner  
296 by the government agency of the disposition of the referred  
297 complaint.

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

300 43-7-67. (1) Except during the course of an investigation  
301 carried out under Section 43-7-65, ombudsmen shall have access to  
302 Long-Term care facilities for the purposes of carrying out the  
303 duties enumerated by Sections 43-7-51 through 43-7-79 during  
304 reasonable hours or at other times with the prior approval of the  
305 administrator of the Long-Term care facility. Access shall mean:

- 306 (a) Access to the Long-Term care facility;
- 307 (b) Private communication with residents and their  
308 sponsors; and
- 309 (c) The right to tour the Long-Term care facility  
310 unescorted.

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



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

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

320       43-7-69. \* \* \* The State Ombudsman shall establish policies  
321 and procedures with regard to confidentiality of resident, Long-  
322 Term care facility and government agency records. These policies  
323 and procedures shall ensure that:

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

328           (b) The investigatory files of any Long-Term care  
329 facilities ombudsman program shall be maintained as confidential  
330 information and may only be disclosed at the discretion of the  
331 State Ombudsman or their designee for such purposes set by  
332 criteria of the State Ombudsman, except as necessary for the  
333 preparation of statistical data, as required to carry out the  
334 duties of Sections 43-7-51 through 43-7-79, or as required  
335 pursuant to a court order.

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

338       43-7-77. (1) The ombudsman may request information,  
339 cooperation and assistance from any government agency, and the  
340 agency is hereby authorized and directed to provide cooperation,



341 assistance or information that will enable the ombudsman to  
342 properly perform any of his functions, duties and powers under the  
343 provisions of Sections 43-7-51 through 43-7-79.

344 (2) All advocacy organizations and organizations similar in  
345 nature to the Long-Term care facilities ombudsman program which  
346 receive funding or official designation from the state shall  
347 cooperate with the Long-Term care facilities ombudsman.

348 (3) The Office of the State Long-Term Care Facilities  
349 Ombudsman shall maintain a close working relationship with the  
350 legal assistance developer of the Mississippi Council on Aging  
351 through adoption of memoranda of understanding.

352 (4) The Long-Term care facilities ombudsman shall seek to  
353 establish effective coordination between programs which provide  
354 legal services for the elderly, including, but not limited to,  
355 programs funded by the Federal Legal Services Corporation or the  
356 Older Americans Act of 1965, as amended, and other entities with  
357 responsibilities relevant to the health, safety, welfare and  
358 rights of residents in Long-Term care facilities through adoption  
359 of memoranda of understanding or other means.

360 (5) The Long-Term care facilities ombudsman may observe any  
361 survey in a Long-Term care facility conducted by a government  
362 agency.

363 **SECTION 12.** The following shall be codified as Section  
364 43-7-79, Mississippi Code of 1972:



365       43-7-79. The State Ombudsman shall recommend policies and  
366 procedures to carry out the provisions of Sections 43-7-51 through  
367 43-7-79 and propose rules and regulations to implement the  
368 provisions of Sections 43-7-51 through 43-7-79.

369       **SECTION 13.** Section 43-47-7, Mississippi Code of 1972, is  
370 amended as follows:

371       43-47-7. (1) (a) Except as otherwise provided by Section  
372 43-47-37 for vulnerable persons in care facilities and by Section  
373 43-7-65 for the State Ombudsman Program, any person including, but  
374 not limited to, the following, who knows or suspects that a  
375 vulnerable person has been or is being abused, neglected or  
376 exploited shall immediately report such knowledge or suspicion to  
377 the Department of Human Services or to the county department of  
378 human services where the vulnerable person is located:

379               (i) Attorney, physician, osteopathic physician,  
380 medical examiner, chiropractor or nurse engaged in the admission,  
381 examination, care or treatment of vulnerable persons;

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

384               (iii) Practitioner who relies solely on spiritual  
385 means for healing;

386               (iv) Social worker, family protection worker,  
387 family protection specialist or other professional care,  
388 residential or institutional staff;





389 (v) State, county or municipal criminal justice  
390 employee or law enforcement officer;

391 (vi) Human rights advocacy committee or Long-Term  
392 care ombudsman council member; or

393 (vii) Accountant, stockbroker, financial advisor  
394 or consultant, insurance agent or consultant, investment advisor  
395 or consultant, financial planner, or any officer or employee of a  
396 bank, savings and loan, credit union or any other financial  
397 service provider.

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

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

404 (ii) Names, addresses and telephone numbers of the  
405 vulnerable person's family members.

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

408 (iv) Name, address and telephone number of the  
409 caregiver of the vulnerable person, if different from the alleged  
410 perpetrator.

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



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

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

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

423 (c) The department, or its designees, shall report to  
424 an appropriate criminal investigative or prosecutive authority any  
425 person required by this section to report or who fails to comply  
426 with this section. A person who fails to make a report as  
427 required under this subsection or who, because of the  
428 circumstances, should have known or suspected beyond a reasonable  
429 doubt that a vulnerable person suffers from exploitation, abuse,  
430 neglect or self-neglect but who knowingly fails to comply with  
431 this section shall, upon conviction, be guilty of a misdemeanor  
432 and shall be punished by a fine not exceeding Five Thousand  
433 Dollars (\$5,000.00), or by imprisonment in the county jail for not  
434 more than six (6) months, or both such fine and imprisonment.  
435 However, for purposes of this subsection (1), any recognized legal  
436 financial transaction shall not be considered cause to report the  
437 knowledge or suspicion of the financial exploitation of a



438 vulnerable person. If a person convicted under this section is a  
439 member of a profession or occupation that is licensed, certified  
440 or regulated by the state, the court shall notify the appropriate  
441 licensing, certifying or regulating entity of the conviction.

442 (2) Reports received by law enforcement authorities or other  
443 agencies shall be forwarded immediately to the Department of Human  
444 Services or the county department of human services. The  
445 Department of Human Services shall investigate the reported abuse,  
446 neglect or exploitation immediately and shall file a preliminary  
447 report of its findings with the Office of the Attorney General  
448 within forty-eight (48) hours if immediate attention is needed, or  
449 seventy-two (72) hours if the vulnerable person is not in  
450 immediate danger and shall make additional reports as new  
451 information or evidence becomes available. The Department of  
452 Human Services, upon request, shall forward a statement to the  
453 person making the initial report required by this section as to  
454 what action is being taken, if any.

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



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

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

474 (6) The Executive Director of the Department of Human  
475 Services shall establish a statewide central register of reports  
476 made pursuant to this section. The central register shall be  
477 capable of receiving reports of vulnerable persons in need of  
478 protective services seven (7) days a week, twenty-four (24) hours  
479 a day. To effectuate this purpose, the executive director shall  
480 establish a single toll-free statewide phone number that all  
481 persons may use to report vulnerable persons in need of protective  
482 services, and that all persons authorized by subsection (7) of  
483 this section may use for determining the existence of prior  
484 reports in order to evaluate the condition or circumstances of the  
485 vulnerable person before them. Such oral reports and evidence of  
486 previous reports shall be transmitted to the appropriate county



487 department of human services. The central register shall include,  
488 but not be limited to, the following information: the name and  
489 identifying information of the individual reported, the county  
490 department of human services responsible for the investigation of  
491 each such report, the names, affiliations and purposes of any  
492 person requesting or receiving information which the executive  
493 director believes might be helpful in the furtherance of the  
494 purposes of this chapter, the name, address, birth date, social  
495 security number of the perpetrator of abuse, neglect and/or  
496 exploitation, and the type of abuse, neglect and/or exploitation  
497 of which there was substantial evidence upon investigation of the  
498 report. The central register shall inform the person making  
499 reports required under this section of his or her right to request  
500 statements from the department as to what action is being taken,  
501 if any.

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

510 The department shall not release data that would be harmful  
511 or detrimental to the vulnerable person or that would identify or



512 locate a person who, in good faith, made a report or cooperated in  
513 a subsequent investigation unless ordered to do so by a court of  
514 competent jurisdiction.

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

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

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

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

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

530 Notwithstanding the provisions of paragraph (b) of this  
531 subsection, the department may not disclose a report of the  
532 abandonment, exploitation, abuse, neglect or self-neglect of a  
533 vulnerable person to the vulnerable person's guardian,  
534 attorney-in-fact, surrogate decision maker, or caregiver who is a  
535 perpetrator or alleged perpetrator of the abandonment,  
536 exploitation, abuse or neglect of the vulnerable person.



537 Any person given access to the names or other information  
538 identifying the subject of the report, except the subject of the  
539 report, shall not divulge or make public such identifying  
540 information unless he is a district attorney or other law  
541 enforcement official and the purpose is to initiate court action.  
542 Any person who willfully permits the release of any data or  
543 information obtained pursuant to this section to persons or  
544 agencies not permitted to such access by this section shall be  
545 guilty of a misdemeanor.

546 (8) Upon reasonable cause to believe that a caretaker or  
547 other person has abused, neglected or exploited a vulnerable  
548 person, the department shall promptly notify the district attorney  
549 of the county in which the vulnerable person is located and the  
550 Office of the Attorney General, except as provided in Section  
551 43-47-37(2).

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

554 43-47-37. (1) Any person who, within the scope of his  
555 employment at a care facility as defined in Section 43-47-5(b), or  
556 in his professional or personal capacity, has knowledge of or  
557 reasonable cause to believe that any patient or resident of a care  
558 facility has been the victim of abuse, neglect or exploitation  
559 shall report immediately the abuse, neglect or exploitation.

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



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

567 (b) By a home health agency, in writing within  
568 seventy-two (72) hours of discovery to the department and the  
569 Medicaid Fraud Control Unit. Upon initial review, the Medicaid  
570 Fraud Control Unit shall make a determination whether or not the  
571 person suspected of committing the reported abuse, neglect or  
572 exploitation was an employee of the home health agency. If so,  
573 the Medicaid Fraud Control Unit shall determine whether there is  
574 substantial potential for criminal prosecution, and upon a  
575 positive determination, shall investigate and prosecute the  
576 complaint or refer it to an appropriate criminal investigative or  
577 prosecutive authority. If the alleged perpetrator is not an  
578 employee of the home health agency, the department shall  
579 investigate and process the complaint or refer it to an  
580 appropriate investigative or prosecutive authority.

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





586 (d) By all other care facilities, in writing, within  
587 seventy-two (72) hours of the discovery, to the State Department  
588 of Health and the Medicaid Fraud Control Unit. If, upon initial  
589 review by the State Department of Health and the Medicaid Fraud  
590 Control Unit, a determination is made that there is substantial  
591 potential for criminal prosecution, the unit will investigate and  
592 prosecute the complaint or refer it to an appropriate criminal  
593 investigative or prosecutive authority.

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

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

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

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

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

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

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

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



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

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

620 (5) (a) Any individual who, in good faith, makes a report  
621 as provided in this section or who testifies in an official  
622 proceeding regarding matters arising out of this section shall be  
623 immune from all criminal and civil liability. The immunity  
624 granted under this subsection shall not apply to any suspect or  
625 perpetrator of abuse, neglect or exploitation of any vulnerable  
626 person, or of any other criminal act under any statute of this  
627 state or municipal ordinance defining any act as a crime or  
628 misdemeanor.

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

634 (6) Any care facility that complies in good faith with the  
635 requirements of this section to report the abuse or exploitation



636 of a patient or resident in the care facility shall not be  
637 sanctioned by the State Department of Health for the occurrence of  
638 such abuse or exploitation if the care facility demonstrates that  
639 it adequately trained its employees and that the abuse or  
640 exploitation was caused by factors beyond the control of the care  
641 facility.

642 (7) Every person who knowingly fails to make the report as  
643 required by subsections (1), (2) and (3) of this section or  
644 attempts to induce another, by threat or otherwise, to fail to  
645 make a report as required by subsections (1), (2) and (3) of this  
646 section shall, upon conviction, be guilty of a misdemeanor and  
647 shall be punished by a fine of not exceeding Five Hundred Dollars  
648 (\$500.00), or by imprisonment in the county jail for not more than  
649 six (6) months, or both such fine and imprisonment.

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

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

658 (10) Upon a judicial determination of evidence that an  
659 employee of a care facility has abused, neglected or exploited a  
660 vulnerable person, the appropriate investigative agency shall



661 immediately provide the following information to the central  
662 registry: name, address, birth date, social security number of  
663 the perpetrator; type of abuse, neglect and/or exploitation; name,  
664 address, birth date, social security number of the victim; and  
665 date of the incident and report.

666           **SECTION 15.** This act shall take effect and be in force from  
667 and after July 1, 2017.

