

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.

