

By: Huggins, Burton

To: Public Health and  
Welfare

SENATE BILL NO. 2641  
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE DEPARTMENT OF HUMAN SERVICES SHALL BE AUTHORIZED  
3 AND DIRECTED TO INVESTIGATE ANY ALLEGATION OF ABUSE, NEGLECT OR  
4 EXPLOITATION OF A PATIENT IN A CARE FACILITY IF THE ALLEGED ACTION  
5 OCCURRED AT A PRIVATE RESIDENCE; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 43-47-5, Mississippi Code of 1972, is  
8 amended as follows:[RDD1]

9 43-47-5. For the purposes of this chapter, the following  
10 words shall have the meanings ascribed herein unless the context  
11 otherwise requires:

12 (a) "Abuse" shall mean the willful infliction of  
13 physical pain, injury or mental anguish on a vulnerable adult, the  
14 unreasonable confinement of a vulnerable adult, or the willful  
15 deprivation by a caretaker of services which are necessary to  
16 maintain the mental and physical health of a vulnerable adult.  
17 "Abuse" shall not mean conduct which is a part of the treatment  
18 and care of, and in furtherance of the health and safety of a  
19 patient or resident of a care facility.

20 (b) "Care facility" shall mean:

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

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

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

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

31 (v) Any hospice as defined in, and required to be  
32 licensed under, the provisions of Chapter 85 of Title 41.

33 (c) "Caretaker" shall mean an individual, corporation,  
34 partnership or other organization which has assumed the  
35 responsibility for the care of a vulnerable adult, but shall not  
36 include the Division of Medicaid, a licensed hospital, or a  
37 licensed nursing home within the state.

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

40 (e) "Department" shall mean the Department of Human  
41 Services.

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

43 (i) A vulnerable adult is in substantial danger of  
44 death or irreparable harm if protective services are not provided  
45 immediately;

46 (ii) The vulnerable adult is unable to consent to  
47 services;

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

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

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

57 (h) "Essential services" shall mean those social work,  
58 medical, psychiatric or legal services necessary to safeguard a  
59 vulnerable adult's rights and resources and to maintain the  
60 physical or mental well-being of the person. These services shall

61 include, but not be limited to, the provision of medical care for  
62 physical and mental health needs, assistance in personal hygiene,  
63 food, clothing, adequately heated and ventilated shelter,  
64 protection from health and safety hazards, protection from  
65 physical mistreatment and protection from exploitation. The words  
66 "essential services" shall not include taking a vulnerable adult  
67 into physical custody without his consent except as provided for  
68 in Section 43-47-15 and as otherwise provided by the general laws  
69 of the state.

70 (i) "Exploitation" shall mean the illegal or improper  
71 use of a vulnerable adult or his resources for another's profit or  
72 advantage.

73 (j) "Lacks the capacity to consent" shall mean that a  
74 vulnerable adult, because of physical or mental incapacity, lacks  
75 sufficient understanding or capacity to make or communicate  
76 responsible decisions concerning his person, including, but not  
77 limited to, provisions for health care, food, clothing or shelter.  
78 This may be reasonably determined by the department in emergency  
79 situations; in all other instances, the court shall make the  
80 determination following the procedures in Sections 43-47-13 and  
81 43-47-15 or as otherwise provided by the general laws of the  
82 state.

83 (k) "Neglect" shall mean either the inability of a  
84 vulnerable adult who is living alone to provide for himself the  
85 food, clothing, shelter, health care or other services which are  
86 necessary to maintain his mental and physical health, or failure  
87 of a caretaker to supply the vulnerable adult with the food,  
88 clothing, shelter, health care, supervision or other services  
89 which are necessary to maintain his mental and physical health.

90 (l) "Protective services" shall mean services provided  
91 by the state or other government or private organizations,  
92 agencies or individuals which are necessary to protect a  
93 vulnerable adult from abuse, neglect or exploitation. They shall

94 include, but not be limited to, investigation, evaluation of the  
95 need for services and provision of essential services on behalf of  
96 a vulnerable adult.

97 (m) "Vulnerable adult" shall mean a person eighteen  
98 (18) years of age or older or any minor not covered by the Youth  
99 Court Act who is present in the state and who, regardless of  
100 residence, is unable to protect his or her own rights, interests,  
101 and/or vital concerns and who cannot seek help without assistance  
102 because of physical, mental or emotional impairment. The term  
103 "vulnerable adult" shall also include all residents or patients,  
104 regardless of age, in a care facility for the purposes of Sections  
105 43-47-19 and 43-47-37 only. Nothing in this chapter shall be  
106 construed as authorizing the Department of Human Services to  
107 perform any investigation, evaluation or examination or provide  
108 protective services, essential services or emergency services  
109 regarding any resident or patient in a care facility.\_

110 Notwithstanding the provisions of this subsection, the department  
111 shall not be prohibited from investigating, and shall have the  
112 authority and responsibility to fully investigate, in accordance  
113 with the provisions of this chapter, any allegation of abuse,  
114 neglect, and/or exploitation regarding a patient in a care  
115 facility, if the alleged abuse, neglect, and/or exploitation  
116 occurred at a private residence.

117 SECTION 2. This act shall take effect and be in force from  
118 and after July 1, 2000.