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To: Public Health and  
WelfareCOMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2736

1 AN ACT TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO  
2 ADD CERTAIN LICENSED MEDICAL PERSONNEL AND OTHER ENTITIES TO THE  
3 ENUMERATION OF MANDATED REPORTERS OF ABUSE, NEGLECT AND  
4 EXPLOITATION UNDER THE VULNERABLE ADULTS ACT AND TO PRESCRIBE  
5 CRIMINAL PENALTIES FOR FAILING TO MAKE SUCH REQUIRED REPORTS, TO  
6 PROVIDE THAT ADULT CENTRAL REGISTRY CRIMINAL BACKGROUND CHECKS  
7 SHALL BE MANDATORY ON APPLICANTS FOR EMPLOYMENT AT ADULT CARE  
8 FACILITIES UNDER THE VULNERABLE ADULTS ACT AND TO PROVIDE FOR THE  
9 CONFIDENTIALITY OF SUCH REPORTS BY THE DEPARTMENT OF HUMAN  
10 SERVICES; TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO  
11 PROVIDE THAT A COURT MAY AUTHORIZE THE EVALUATION OF AN ABUSED  
12 ADULT UPON SHOWING OF PROBABLE CAUSE, INCLUDING AN EVALUATION OF  
13 THE FINANCIAL RECORDS OF THE VULNERABLE ADULT; TO AMEND SECTION  
14 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE DEPARTMENT  
15 OF HEALTH TO REQUIRE ALL LICENSED NURSING FACILITIES TO CONDUCT  
16 CRIMINAL RECORD BACKGROUND CHECKS AND ADULT CENTRAL REGISTRY  
17 CHECKS ON APPLICANTS FOR EMPLOYMENT AT NURSING FACILITIES, TO  
18 PROVIDE IMMUNITY AND TO AUTHORIZE THE DEPARTMENT TO CHARGE THE  
19 LICENSEE A FEE FOR SUCH CRIMINAL RECORD CHECKS; TO AMEND SECTION  
20 43-47-19, MISSISSIPPI CODE OF 1972, TO CLARIFY AND INCREASE  
21 CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR FINANCIAL  
22 EXPLOITATION OF VULNERABLE ADULTS; AND FOR RELATED PURPOSES.

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

24 SECTION 1. Section 43-47-7, Mississippi Code of 1972, is  
25 amended as follows:[CRG1]

26 43-47-7. (1) (a) Except as otherwise provided by Section  
27 43-47-37 for vulnerable adults in care facilities, any person  
28 including, but not limited to, the following, who knows or  
29 suspects beyond a reasonable doubt that a vulnerable adult has  
30 been or is being abused, neglected or exploited shall immediately  
31 report such knowledge or suspicion to the Mississippi Department  
32 of Human Services \* \* \*:

33 (i) Attorney, physician, osteopathic physician,  
34 medical examiner, chiropractor or nurse engaged in the admission,  
35 examination, care or treatment of vulnerable adults;

36 (ii) Health professional or mental health

professional other than one listed in subparagraph (i);

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

(iv) Social worker or other professional adult care, residential or institutional staff;

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

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

(vii) Bank, savings and loan or credit union officer, trustee or employee.

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

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

(ii) Names, addresses and telephone numbers of the vulnerable adult'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 adult, if different from the alleged perpetrator.

(v) Description of the 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 above, any person or entity holding or required to hold a license as specified in Title 73, Professions

and Vocations, of the 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 adult 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 of 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. 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 welfare department.

(3) The report may be made orally or in writing, but where made orally, it shall be followed up by a written report.

(4) Anyone who makes a report pursuant to this section, 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.

(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

103 reported and for any punitive damages set by the court or jury.

104 (6) The Executive Director of the Department of Human  
105 Services shall establish a statewide central register of reports  
106 made pursuant to this section. The central register shall be  
107 capable of receiving reports of vulnerable adults in need of  
108 protective services seven (7) days a week, twenty-four (24) hours  
109 a day. To effectuate this purpose the executive director shall  
110 establish a single toll-free statewide phone number that all  
111 persons may use to report vulnerable adults in need of protective  
112 services, and that all persons authorized by subsection (7) of  
113 this section may use for determining the existence of prior  
114 reports in order to evaluate the condition or circumstances of the  
115 vulnerable adult before them. Such oral reports and evidence of  
116 previous reports shall be transmitted to the appropriate county  
117 welfare department. The central register shall include, but not  
118 be limited to, the following information: the name and identifying  
119 information of the individual reported, the county welfare  
120 department responsible for the investigation of each such report,  
121 the names, affiliations and purposes of any person requesting or  
122 receiving information which the executive director believes might  
123 be helpful in the furtherance of the purposes of this chapter.

124 Each person, business, organization or other entity, whether  
125 public or private, operated for profit, operated for nonprofit or  
126 a voluntary unit of government not responsible for law enforcement  
127 providing care, supervision or treatment of vulnerable adults  
128 shall conduct criminal records and adult central registry checks  
129 on each new employee of the entity who provides, and/or would  
130 provide direct patient care or services to adults or vulnerable  
131 persons.

132 The department shall not release data that would be harmful  
133 or detrimental to the vulnerable adult or that would identify or  
134 locate a person who, in good faith, made a report or cooperated in  
135 a subsequent investigation unless ordered to do so by a court of

136 competent jurisdiction.

137       (7) Reports made pursuant to this section, reports written  
138 or photographs taken concerning such reports in the possession of  
139 the Department of Human Services or the county welfare department  
140 shall be confidential and shall only be made available to:

141           (a) A physician who has before him a vulnerable adult  
142 whom he reasonably suspects may be abused, neglected or exploited,  
143 as defined in Section 43-47-5;

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

146       \* \* \*

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

150           (d) A district attorney or other law enforcement  
151 official.

152       Any person given access to the names or other information  
153 identifying the subject of the report, except the subject of the  
154 report, shall not divulge or make public such identifying  
155 information unless he is a district attorney or other law  
156 enforcement official and the purpose is to initiate court action.

157       Any person who willfully permits the release of any data or  
158 information obtained pursuant to this section to persons or  
159 agencies not permitted to such access by this section shall be  
160 guilty of a misdemeanor.

161       (8) Upon reasonable cause to believe that a caretaker or  
162 other person has abused, neglected or exploited a vulnerable  
163 adult, the department shall promptly notify the district attorney  
164 of the county in which the vulnerable adult is located, except as  
165 provided in Section 43-47-37(2).

166       SECTION 2. Section 43-47-9, Mississippi Code of 1972, is  
167 amended as follows:[CRG2]

168       43-47-9. (1) Upon receipt of a report pursuant to Section

43-47-7 that a vulnerable adult is in need of protective services, the department shall initiate an investigation and/or evaluation within forty-eight (48) hours to determine whether the vulnerable adult is in need of protective services and what services are needed. The evaluation shall include any necessary visits and interviews with the adult, and if appropriate, with the alleged perpetrator of the vulnerable adult abuse and with any person believed to have knowledge of the circumstances of the case. When a caretaker of a vulnerable adult refuses to allow the department reasonable access to conduct an investigation to determine if the vulnerable adult is in need of protective services, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the investigation.

(2) The staff and physicians of local health departments, mental health clinics and other public or private agencies, including law enforcement agencies, shall cooperate fully with the department in the performance of its duties. These duties include immediate, in-residence evaluations and medical examinations and treatment where the department deems it necessary. Provided, however, that upon receipt of a report of abuse, neglect or exploitation of a vulnerable adult confined in a licensed hospital or licensed nursing home facility in the state, the department shall immediately refer this report to the proper authority at the State Department of Health for investigation under Section 43-47-37.

Upon a showing of probable cause that a vulnerable adult has been abused, a court may authorize a qualified third party to make an evaluation, to enter the residence of, and to examine the vulnerable adult. Upon a showing of probable cause that a vulnerable adult has been financially exploited, a court may authorize a qualified third party, also authorized by the department, to make an evaluation, and to gain access to the financial records of the vulnerable adult.

(3) The department may contract with an agency or private physician for the purpose of providing immediate, accessible evaluations in the location that the department deems most appropriate.

SECTION 3. Section 43-11-13, Mississippi Code of 1972, is amended as follows:[CRG3]

43-11-13. (1) The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards, including classifications, with respect to all institutions for the aged or infirm to be licensed hereunder as may be designed to further the accomplishment of the purpose of this chapter in promoting adequate care of individuals in such institutions in the interest of public health, safety and welfare. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm" and said book shall be open and available to all institutions for the aged or infirm and the public generally at all reasonable times. Upon the adoption of such rules, regulations and standards, the licensing agency shall mail copies thereof to all such institutions in the state which have filed with said agency their names and addresses for this purpose, but the failure to mail the same or the failure of the institutions to receive the same shall in nowise affect the validity thereof. Said rules, regulations and standards may be amended by the licensing agency from time to time as necessary to promote the health, safety and welfare of persons living in said institutions.

(2) The licensee shall keep posted in a conspicuous place on the licensed premises all current rules, regulations and minimum standards applicable to fire protection measures as adopted by the licensing agency. The licensee shall furnish to the licensing

235 agency at least once each six (6) months a certificate of approval  
236 and inspection by state or local fire authorities. Failure to  
237 comply with state laws and/or municipal ordinances and current  
238 rules, regulations and minimum standards as adopted by the  
239 licensing agency, relative to fire prevention measures, shall be  
240 prima facie evidence for revocation of license.

241 (3) The State Board of Health shall promulgate rules and  
242 regulations restricting the storage, quantity and classes of drugs  
243 allowed in personal care homes. Residents requiring  
244 administration of Schedule II Narcotics as defined in the Uniform  
245 Controlled Substances Law may be admitted to a personal care home.  
246 Schedule drugs may only be allowed in a personal care home if  
247 they are administered or stored utilizing proper procedures under  
248 the direct supervision of a licensed physician or nurse.

249 (4) The licensing agency shall require that all licensees  
250 conduct criminal records background checks and adult central  
251 registry checks on each applicant for employment who provides  
252 and/or would provide direct personal care or services to any  
253 resident of an institution for the aged or infirm. The licensing  
254 agency shall develop regulations for the conduct of criminal  
255 records background checks by institutions for the aged or infirm.  
256 The Department of Public Safety shall assist in the  
257 implementation of a national criminal history record check. In  
258 order to conduct the criminal records background check, each new  
259 employee or prospective employee shall be fingerprinted. If no  
260 disqualifying record is identified at the state level, the  
261 fingerprints shall be forwarded by the Department of Public Safety  
262 to the Federal Bureau of Investigation for a national criminal  
263 history record check.

264 (5) The licensing agency, the institution for the aged or  
265 infirm, and their agents, officers, employees, attorneys and  
266 representatives shall not be held civilly liable for any findings,  
267 recommendation or actions taken pursuant to this section.



268       (6) The licensing agency is hereby authorized to charge a  
269 fee which shall include the amount required by the Federal Bureau  
270 of Investigation for the national criminal history record check  
271 and any necessary costs incurred by the licensing agency for the  
272 handling and administration of the criminal history background  
273 checks. The Division of Medicaid shall reimburse fees for  
274 mandatory fingerprinting and criminal history background checks as  
275 allowable costs for Medicaid-certified facilities classified  
276 according to the employment responsibilities of the applicant.  
277 All fees incurred in compliance with this section which are not  
278 Medicaid reimbursable shall be borne by the institution for the  
279 aged or infirm.

280       SECTION 4. Section 43-47-19, Mississippi Code of 1972, is  
281 amended as follows:[CRG4]

282       43-47-19. (1) It shall be unlawful for any person to abuse,  
283 neglect or exploit any vulnerable adult.

284       (2) Any person who willfully commits an act or omits the  
285 performance of any duty, which act or omission contributes to,  
286 tends to contribute to or results in physical pain, injury, mental  
287 anguish, unreasonable confinement, or deprivation of services  
288 which are necessary to maintain the mental and physical health of  
289 a vulnerable adult, or neglect \* \* \* of any vulnerable adult shall  
290 be guilty of a misdemeanor and, upon conviction thereof, shall be  
291 punished by a fine not to exceed One Thousand Dollars (\$1,000.00)  
292 or by imprisonment not to exceed one (1) year in the county jail,  
293 or by both such fine and imprisonment. Any accepted medical  
294 procedure performed in the usual scope of practice shall not be a  
295 violation of this subsection.

296       Any person who willfully exploits a vulnerable adult and the  
297 value of the resources is Two Hundred Fifty Dollars (\$250.00) or  
298 less shall be guilty of a misdemeanor and, upon conviction  
299 thereof, shall be punished by a fine not to exceed One Thousand  
300 Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year

301 in the county jail or by both such fine and imprisonment. Any  
302 person who willfully exploits a vulnerable adult and the value of  
303 the resources exceeds Two Hundred Fifty Dollars (\$250.00) shall be  
304 guilty of a felony and, upon conviction thereof, shall be punished  
305 by imprisonment in the State Penitentiary for not more than ten  
306 (10) years.

307       (3) Any person who willfully inflicts physical pain or  
308 injury upon a vulnerable adult shall be guilty of felonious abuse  
309 and/or battery of a vulnerable adult and, upon conviction thereof,  
310 may be punished by imprisonment in the State Penitentiary for not  
311 more than twenty (20) years.

312       (4) Nothing contained in this section shall prevent  
313 proceedings against a person under any statute of this state or  
314 municipal ordinance defining any act as a crime or misdemeanor.

315       SECTION 5. This act shall take effect and be in force from  
316 and after July 1, 2000.