

By: Representative Smith (39th)

To: Public Health and
Welfare

HOUSE BILL NO. 1250

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 LICENSING AGENCY
 15 TO CONDUCT CRIMINAL RECORD BACKGROUND CHECKS AND ADULT CENTRAL
 16 REGISTRY CHECKS ON LICENSABLE APPLICANTS FOR EMPLOYMENT AT NURSING
 17 FACILITIES; TO DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO CONDUCT
 18 CRIMINAL BACKGROUND AND ADULT CENTRAL REGISTRY CHECKS ON
 19 UNLICENSED APPLICANTS AT NURSING FACILITIES; TO AUTHORIZE THE
 20 DEPARTMENT TO CHARGE THE FACILITY A FEE FOR SUCH CRIMINAL RECORD
 21 CHECKS; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO
 22 CLARIFY AND INCREASE CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR
 23 FINANCIAL EXPLOITATION OF VULNERABLE ADULTS; TO ENACT STANDARDS
 24 FOR ENTRIES IN PATIENT MEDICAL RECORDS OR CHARTS; TO ENACT
 25 PENALTIES FOR VIOLATION OF THE STANDARDS; AND FOR RELATED
 26 PURPOSES.

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

28 SECTION 1. Section 43-47-7, Mississippi Code of 1972, is
 29 amended as follows:

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

37 (i) Physician, osteopathic physician, medical
38 examiner, chiropractor or nurse engaged in the admission,
39 examination, care or treatment of vulnerable adults;

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

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

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

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

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

50 (vii) Bank, savings and loan, credit union or
51 other financial institution officer, trustee or employee.

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

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

58 (ii) Names, addresses and telephone numbers of the
59 vulnerable adult's family members.

60 (iii) Name, address and telephone number of each
61 alleged perpetrator.

62 (iv) Name, address and telephone number of the
63 caregiver of the vulnerable adult, if different from the alleged
64 perpetrator.

65 (v) Description of the physical or psychological
66 injuries sustained.

67 (vi) Actions taken by the reporter; if any, such
68 as notification of the criminal justice agency.

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

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

77 (c) The department or its designees shall report to an
78 appropriate criminal investigative or prosecutive authority any
79 person required by this section to report or who fails to comply
80 with this section. A person who fails to make a report as
81 required under this subsection or who, because of their training
82 or experience, should have known or suspected beyond a reasonable
83 doubt that a vulnerable adult suffers from exploitation, abuse,
84 neglect or self-neglect but who knowingly fails to comply with
85 this section shall, upon conviction, be guilty of a misdemeanor
86 and shall be punished by a fine of not exceeding Five Thousand
87 Dollars (\$5,000.00), or by imprisonment in the county jail for not
88 more than six (6) months, or both such fine and imprisonment. If
89 a person convicted under this section is a member of a profession
90 or occupation that is licensed, certified or regulated by the
91 state, the court shall notify the appropriate licensing,
92 certifying or regulating entity of the conviction.

93 (2) Reports received by law enforcement authorities or other
94 agencies shall be forwarded immediately to the Department of Human
95 Services or the county welfare department.

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

98 (4) Anyone who makes a report required by this section, who
99 testifies or participates in any judicial proceedings arising from
100 the report or who participates in a required investigation or
101 evaluation, if found to be acting in good faith, shall be immune

102 from liability, civil or criminal, that might otherwise be
103 incurred or imposed.

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

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

128 Each person, business, organization or other entity, whether
129 public or private, operated for profit, operated for nonprofit or
130 a voluntary unit of government not responsible for law enforcement
131 providing care, supervision or treatment of vulnerable adults
132 shall require certified copies of Department of Public Safety
133 criminal records and adult central registry checks from each new

134 employee of the entity who provides, and/or would provide direct
135 patient care or services to adults or vulnerable persons.

136 The department shall not release data that would be harmful
137 or detrimental to the vulnerable adult or that would identify or
138 locate a person who, in good faith, made a report or cooperated in
139 a subsequent investigation unless ordered to do so by a court of
140 competent jurisdiction.

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

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

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

150 * * *

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

154 (d) A district attorney or other law enforcement
155 official.

156 Notwithstanding paragraph (b) of this subsection, the
157 department may not disclose a report of the abandonment,
158 exploitation, abuse, neglect or self-neglect of a vulnerable adult
159 to the vulnerable adult's guardian, attorney-in-fact, surrogate
160 decision maker, or care giver who is a perpetrator or alleged
161 perpetrator of the abandonment, exploitation, abuse or neglect of
162 the vulnerable adult.

163 Any person given access to the names or other information
164 identifying the subject of the report, except the subject of the
165 report, shall not divulge or make public such identifying
166 information unless he is a district attorney or other law

167 enforcement official and the purpose is to initiate court action.
168 Any person who willfully permits the release of any data or
169 information obtained pursuant to this section to persons or
170 agencies not permitted to such access by this section shall be
171 guilty of a misdemeanor.

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

177 SECTION 2. Section 43-47-9, Mississippi Code of 1972, is
178 amended as follows:

179 43-47-9. (1) Upon receipt of a report pursuant to Section
180 43-47-7 that a vulnerable adult is in need of protective services,
181 the department shall initiate an investigation and/or evaluation
182 within forty-eight (48) hours to determine whether the vulnerable
183 adult is in need of protective services and what services are
184 needed. The evaluation shall include any necessary visits and
185 interviews with the adult, and if appropriate, with the alleged
186 perpetrator of the vulnerable adult abuse and with any person
187 believed to have knowledge of the circumstances of the case. When
188 a caretaker of a vulnerable adult refuses to allow the department
189 reasonable access to conduct an investigation to determine if the
190 vulnerable adult is in need of protective services, the department
191 may petition the court for an order for injunctive relief
192 enjoining the caretaker from interfering with the investigation.

193 (2) The staff and physicians of local health departments,
194 mental health clinics and other public or private agencies,
195 including law enforcement agencies, shall cooperate fully with the
196 department in the performance of its duties. These duties include
197 immediate, in-residence evaluations and medical examinations and
198 treatment where the department deems it necessary. Provided,
199 however, that upon receipt of a report of abuse, neglect or

200 exploitation of a vulnerable adult confined in a licensed hospital
201 or licensed nursing home facility in the state, the department
202 shall immediately refer this report to the proper authority at the
203 State Department of Health for investigation under Section
204 43-47-37.

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

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

217 SECTION 3. Section 43-11-13, Mississippi Code of 1972, is
218 amended as follows:

219 43-11-13. (1) The licensing agency shall adopt, amend,
220 promulgate and enforce such rules, regulations and standards,
221 including classifications, with respect to all institutions for
222 the aged or infirm to be licensed under this chapter as may be
223 designed to further the accomplishment of the purpose of this
224 chapter in promoting adequate care of individuals in such
225 institutions in the interest of public health, safety and welfare.
226 Such rules, regulations and standards shall be adopted and
227 promulgated by the licensing agency and shall be recorded and
228 indexed in a book to be maintained by the licensing agency in its
229 main office in the State of Mississippi, entitled "Rules,
230 Regulations and Minimum Standards for Institutions for the Aged or
231 Infirm" and the book shall be open and available to all
232 institutions for the aged or infirm and the public generally at

233 all reasonable times. Upon the adoption of such rules,
234 regulations and standards, the licensing agency shall mail copies
235 thereof to all such institutions in the state which have filed
236 with the agency their names and addresses for this purpose, but
237 the failure to mail the same or the failure of the institutions to
238 receive the same shall in no way affect the validity thereof. The
239 rules, regulations and standards may be amended by the licensing
240 agency from time to time as necessary to promote the health,
241 safety and welfare of persons living in those institutions.

242 (2) The licensee shall keep posted in a conspicuous place on
243 the licensed premises all current rules, regulations and minimum
244 standards applicable to fire protection measures as adopted by the
245 licensing agency. The licensee shall furnish to the licensing
246 agency at least once each six (6) months a certificate of approval
247 and inspection by state or local fire authorities. Failure to
248 comply with state laws and/or municipal ordinances and current
249 rules, regulations and minimum standards as adopted by the
250 licensing agency, relative to fire prevention measures, shall be
251 prima facie evidence for revocation of license.

252 (3) The State Board of Health shall promulgate rules and
253 regulations restricting the storage, quantity and classes of drugs
254 allowed in personal care homes. Residents requiring
255 administration of Schedule II Narcotics as defined in the Uniform
256 Controlled Substances Law may be admitted to a personal care home.
257 Schedule drugs may only be allowed in a personal care home if they
258 are administered or stored utilizing proper procedures under the
259 direct supervision of a licensed physician or nurse.

260 (4) The licensing agency shall conduct criminal records
261 background checks and adult central registry checks on each
262 licensable applicant for employment who provides and/or would
263 provide direct personal care or services to any resident of an
264 institution for the aged or infirm. The Department of Public
265 Safety shall develop regulations for the conduct of criminal

266 records background checks by licensing agencies for institutions
267 for the aged or infirm. The Department of Public Safety shall
268 conduct criminal background and adult central registry checks on
269 unlicensed applicants at nursing facilities and conduct a national
270 criminal history record check. In order to conduct the criminal
271 records background check, each new employee or prospective
272 employee shall be fingerprinted. If no disqualifying record is
273 identified at the state level, the fingerprints shall be forwarded
274 by the Department of Public Safety to the Federal Bureau of
275 Investigation for a national criminal history record check.

276 (5) The Department of Public Safety is authorized to charge
277 the institution for the aged or infirm a fee which shall include
278 the amount required by the Federal Bureau of Investigation for the
279 national criminal history record check and any necessary costs
280 incurred by the Department of Public Safety for the handling and
281 administration of the criminal history background checks.

282 SECTION 4. Section 43-47-19, Mississippi Code of 1972, is
283 amended as follows:

284 43-47-19. (1) It shall be unlawful for any person to abuse,
285 neglect or exploit any vulnerable adult.

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

298 Any person who willfully exploits a vulnerable adult and the
299 value of the resources is Two Hundred Fifty Dollars (\$250.00) or
300 less shall be guilty of a misdemeanor and, upon conviction
301 thereof, shall be punished by a fine not to exceed One Thousand
302 Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year
303 in the county jail, or by both such fine and imprisonment. Any
304 person who willfully exploits a vulnerable adult and the value of
305 the resources exceeds Two Hundred Fifty Dollars (\$250.00) shall be
306 guilty of a felony and, upon conviction thereof, shall be punished
307 by imprisonment in the State Penitentiary for not more than ten
308 (10) years.

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

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

317 SECTION 5. (1) Except as otherwise provided in subsection
318 (3), a person, knowing that the information is misleading or
319 inaccurate, shall not intentionally, willfully or recklessly place
320 or direct another to place in a patient's medical record or chart
321 misleading or inaccurate information regarding the diagnosis,
322 treatment or cause of a patient's condition. A violation of this
323 subsection is punishable as follows: a person who intentionally
324 or willfully or recklessly violates this subsection is guilty of a
325 misdemeanor, punishable by imprisonment for not more than one (1)
326 year, or a fine of not more than One Thousand Dollars (\$1,000.00),
327 or both.

328 (2) Except as otherwise provided in subsection (3), a person
329 shall not intentionally or willfully alter or destroy or direct
330 another to alter or destroy a patient's medical records or charts

331 for the purpose of concealing his or her responsibility for the
332 patient's injury, sickness or death. A person who violates this
333 subsection is guilty of a misdemeanor punishable by imprisonment
334 for not more than one (1) year, or a fine of not more than One
335 Thousand Dollars (\$1,000.00), or both.

336 (3) Subsections (1) and (2) do not apply to either of the
337 following:

338 (a) Destruction of a patient's original medical record
339 or chart if all of the information contained in or on the medical
340 record or chart is otherwise retained by means of mechanical or
341 electronic recording, chemical reproduction, or other equivalent
342 techniques that accurately reproduce all of the information
343 contained in or on the original.

344 (b) Supplementation of information or correction of an
345 error in a patient's medical record or chart in a manner that
346 reasonably discloses that the supplementation or correction was
347 performed and that does not conceal or alter prior entries.

348 SECTION 6. This act shall take effect and be in force from
349 and after July 1, 2001.