

By: Senator(s) Little, Burton, Huggins,
Hyde-Smith, Johnson (19th)

To: Public Health and
Welfare

SENATE BILL NO. 2501
(As Sent to Governor)

1 AN ACT RELATING TO THE MISSISSIPPI VULNERABLE ADULTS ACT; TO
2 AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO DEFINE
3 "VULNERABLE ADULT," CLARIFY CERTAIN DEFINITIONS AND DEFINE CERTAIN
4 PROHIBITIONS ON THE INVESTIGATION AND PROVISION OF PROTECTIVE
5 SERVICES REGARDING RESIDENTS OR PATIENTS IN A CARE FACILITY; TO
6 AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO ADD CERTAIN
7 LICENSED MEDICAL PERSONNEL AND OTHER ENTITIES TO THE ENUMERATION
8 OF MANDATED REPORTERS OF ABUSE, NEGLECT AND EXPLOITATION UNDER THE
9 VULNERABLE ADULTS ACT, TO PRESCRIBE CERTAIN PROCEDURES FOR THESE
10 REPORTS TO BE TAKEN BY THE DEPARTMENT OF HUMAN SERVICES, TO
11 PRESCRIBE CRIMINAL PENALTIES FOR FAILING TO MAKE SUCH REQUIRED
12 REPORTS, AND TO PROVIDE FOR THE CONFIDENTIALITY OF SUCH REPORTS;
13 TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE
14 THAT A COURT MAY AUTHORIZE THE EVALUATION OF AN ABUSED ADULT UPON
15 SHOWING OF PROBABLE CAUSE, INCLUDING AN EVALUATION OF THE
16 FINANCIAL RECORDS OF THE VULNERABLE ADULT; TO AMEND SECTIONS
17 43-47-23, 43-47-27, 43-47-31, 43-47-33 AND 43-47-35, MISSISSIPPI
18 CODE OF 1972, IN CONFORMITY TO THE PRECEDING PROVISIONS; TO AMEND
19 SECTION 43-47-37, MISSISSIPPI CODE OF 1972, TO CLARIFY REPORTING
20 REQUIREMENTS FOR VICTIMS OF ABUSE, NEGLECT OR EXPLOITATION AND TO
21 CLARIFY IMMUNITY EXTENDED TO THE REPORTERS OF SUCH ABUSE AND
22 NEGLECT; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO
23 CLARIFY AND INCREASE CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR
24 FINANCIAL EXPLOITATION OF VULNERABLE ADULTS; TO AMEND SECTION
25 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE DEPARTMENT
26 OF HEALTH TO REQUIRE ALL LICENSED NURSING FACILITIES TO CONDUCT
27 CRIMINAL HISTORY RECORD CHECKS ON NEW APPLICANTS FOR EMPLOYMENT AT
28 NURSING FACILITIES WHO WILL PROVIDE DIRECT CARE; TO AUTHORIZE THE
29 DEPARTMENT TO CHARGE AND COLLECT FROM THE LICENSEE A FEE FOR SUCH
30 CRIMINAL RECORD CHECKS; TO AUTHORIZE THE DEPARTMENT TO DESIGNATE A
31 PRIVATE ENTITY TO CONDUCT SUCH CRIMINAL RECORD CHECKS; TO ENACT
32 STANDARDS FOR ENTRIES IN PATIENT MEDICAL RECORDS OR CHARTS; TO
33 ENACT PENALTIES FOR VIOLATION OF THE STANDARDS; TO AMEND SECTION
34 81-5-55, MISSISSIPPI CODE OF 1972, TO AUTHORIZE FINANCIAL
35 INSTITUTIONS TO DISCLOSE INFORMATION UPON WRITTEN REQUEST OF THE
36 ATTORNEY GENERAL IN CASES OF FINANCIAL EXPLOITATION OF A
37 VULNERABLE ADULT; AND FOR RELATED PURPOSES.

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

39 SECTION 1. Section 43-47-5, Mississippi Code of 1972, is
40 amended as follows:

41 43-47-5. For the purposes of this chapter, the following
42 words shall have the meanings ascribed herein unless the context
43 otherwise requires:

44 (a) "Abuse" shall mean the willful or nonaccidental
45 infliction of physical pain, injury or mental anguish on a
46 vulnerable adult, the unreasonable confinement of a vulnerable
47 adult, or the willful deprivation by a caretaker of services which
48 are necessary to maintain the mental and physical health of a
49 vulnerable adult. "Abuse" shall include sexual abuse. "Abuse"
50 shall not mean conduct which is a part of the treatment and care
51 of, and in furtherance of the health and safety of a patient or
52 resident of a care facility. "Abuse" includes, but is not limited
53 to, a single incident.

54 (b) "Care facility" shall mean:

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

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

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

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

65 (v) Any hospice as defined in, and required to be
66 licensed under, the provisions of Chapter 85 of Title 41; and

67 (vi) Any adult day services facility, which shall
68 mean a community-based group program for adults designed to meet
69 the needs of adults with impairments through individual plans of
70 care, which are structured, comprehensive, planned, nonresidential
71 programs providing a variety of health, social and related support
72 services in a protective setting, enabling participants to live in
73 the community. Exempted from this definition shall be any program

74 licensed and certified by the Mississippi Department of Mental
75 Health and any adult day services program provided to ten (10) or
76 fewer individuals by a licensed institution for the aged or
77 infirm.

78 (c) "Caretaker" shall mean an individual, corporation,
79 partnership or other organization which has assumed the
80 responsibility for the care of a vulnerable adult, but shall not
81 include the Division of Medicaid, a licensed hospital, or a
82 licensed nursing home within the state.

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

85 (e) "Department" shall mean the Department of Human
86 Services.

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

88 (i) A vulnerable adult is in substantial danger of
89 serious harm, death or irreparable harm if protective services are
90 not provided immediately;

91 (ii) The vulnerable adult is unable to consent to
92 services;

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

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

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

102 (h) "Essential services" shall mean those social work,
103 medical, psychiatric or legal services necessary to safeguard a
104 vulnerable adult's rights and resources and to maintain the
105 physical or mental well-being of the person. These services shall
106 include, but not be limited to, the provision of medical care for

107 physical and mental health needs, assistance in personal hygiene,
108 food, clothing, adequately heated and ventilated shelter,
109 protection from health and safety hazards, protection from
110 physical mistreatment and protection from exploitation. The words
111 "essential services" shall not include taking a vulnerable adult
112 into physical custody without his consent except as provided for
113 in Section 43-47-15 and as otherwise provided by the general laws
114 of the state.

115 (i) "Exploitation" shall mean the illegal or improper
116 use of a vulnerable adult or his resources for another's profit or
117 advantage with or without the consent of the vulnerable adult.
118 "Exploitation" includes, but is not limited to, a single incident.

119 (j) "Lacks the capacity to consent" shall mean that a
120 vulnerable adult, because of physical or mental incapacity, lacks
121 sufficient understanding or capacity to make or communicate
122 responsible decisions concerning his person, including, but not
123 limited to, provisions for health care, food, clothing or shelter.
124 This may be reasonably determined by the department in emergency
125 situations; in all other instances, the court shall make the
126 determination following the procedures in Sections 43-47-13 and
127 43-47-15 or as otherwise provided by the general laws of the
128 state.

129 (k) "Neglect" shall mean either the inability of a
130 vulnerable adult who is living alone to provide for himself the
131 food, clothing, shelter, health care or other services which are
132 necessary to maintain his mental and physical health, or failure
133 of a caretaker to supply the vulnerable adult with the food,
134 clothing, shelter, health care, supervision or other services
135 which a reasonably prudent person would do to maintain the
136 vulnerable adult's mental and physical health. "Neglect"
137 includes, but is not limited to, a single incident.

138 (l) "Protective services" shall mean services provided
139 by the state or other government or private organizations,

140 agencies or individuals which are necessary to protect a
141 vulnerable adult from abuse, neglect or exploitation. They shall
142 include, but not be limited to, investigation, evaluation of the
143 need for services and provision of essential services on behalf of
144 a vulnerable adult.

145 (m) "Vulnerable adult" shall mean a person eighteen
146 (18) years of age or older or any minor whose ability to perform
147 the normal activities of daily living or to provide for his or her
148 own care or protection is impaired due to a mental, emotional,
149 physical or developmental disability or dysfunction, or brain
150 damage or the infirmities of aging. The term "vulnerable adult"
151 shall also include all residents or patients, regardless of age,
152 in a care facility for the purposes of Sections 43-47-19 and
153 43-47-37 only. The department shall not be prohibited from
154 investigating, and shall have the authority and responsibility to
155 fully investigate, in accordance with the provisions of this
156 chapter, any allegation of abuse, neglect, and/or exploitation
157 regarding a patient in a care facility, if the alleged abuse,
158 neglect and/or exploitation occurred at a private residence.

159 SECTION 2. Section 43-47-7, Mississippi Code of 1972, is
160 amended as follows:

161 43-47-7. (1) (a) Except as otherwise provided by Section
162 43-47-37 for vulnerable adults in care facilities, any person
163 including, but not limited to, the following, who knows or
164 suspects that a vulnerable adult has been or is being abused,
165 neglected or exploited shall immediately report such knowledge or
166 suspicion to the Department of Human Services or to the
167 county * * * department of human services where the vulnerable
168 adult is located:

169 (i) Attorney, physician, osteopathic physician,
170 medical examiner, chiropractor or nurse engaged in the admission,
171 examination, care or treatment of vulnerable adults;

172 (ii) Health professional or mental health
173 professional other than one listed in subparagraph (i);
174 (iii) Practitioner who relies solely on spiritual
175 means for healing;
176 (iv) Social worker or other professional adult
177 care, residential or institutional staff;
178 (v) State, county or municipal criminal justice
179 employee or law enforcement officer;
180 (vi) Human rights advocacy committee or long-term
181 care ombudsman council member; or
182 (vii) Accountant, stockbroker, financial advisor
183 or consultant, insurance agent or consultant, investment advisor
184 or consultant, financial planner, or any officer or employee of a
185 bank, savings and loan, credit union or any other financial
186 service provider.
187 (b) To the extent possible, a report made pursuant to
188 paragraph (a) must contain, but need not be limited to, the
189 following information:
190 (i) Name, age, race, sex, physical description and
191 location of each vulnerable adult alleged to have been abused,
192 neglected or exploited.
193 (ii) Names, addresses and telephone numbers of the
194 vulnerable adult's family members.
195 (iii) Name, address and telephone number of each
196 alleged perpetrator.
197 (iv) Name address and telephone number of the
198 caregiver of the vulnerable adult, if different from the alleged
199 perpetrator.
200 (v) Description of the neglect, exploitation,
201 physical or psychological injuries sustained.
202 (vi) Actions taken by the reporter, if any, such
203 as notification of the criminal justice agency.

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

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

212 (c) The department, or its designees, shall report to
213 an appropriate criminal investigative or prosecutive authority any
214 person required by this section to report or who fails to comply
215 with this section. A person who fails to make a report as
216 required under this subsection or who, because of the
217 circumstances, should have known or suspected beyond a reasonable
218 doubt that a vulnerable adult suffers from exploitation, abuse,
219 neglect or self-neglect but who knowingly fails to comply with
220 this section shall, upon conviction, be guilty of a misdemeanor
221 and shall be punished by a fine not exceeding Five Thousand
222 Dollars (\$5,000.00), or by imprisonment in the county jail for not
223 more than six (6) months, or both such fine and imprisonment.

224 However, for purposes of this subsection (1), any recognized legal
225 financial transaction shall not be considered cause to report the
226 knowledge or suspicion of the financial exploitation of a
227 vulnerable adult. If a person convicted under this section is a
228 member of a profession or occupation that is licensed, certified
229 or regulated by the state, the court shall notify the appropriate
230 licensing, certifying or regulating entity of the conviction.

231 (2) Reports received by law enforcement authorities or other
232 agencies shall be forwarded immediately to the Department of Human
233 Services or the county * * * department of human services. The
234 Department of Human Services shall investigate the reported abuse,
235 neglect or exploitation immediately and shall file a preliminary
236 report of its findings with the Office of the Attorney General

237 within forty-eight (48) hours, and shall make additional reports
238 as new information or evidence becomes available. The Department
239 of Human Services, upon request, shall forward a statement to the
240 person making the initial report required by this section as to
241 what action is being taken, if any.

242 (3) The report may be made orally or in writing, but where
243 made orally, it shall be followed up by a written report. A
244 person who fails to report or to otherwise comply with this
245 section, as provided herein, shall have no civil or criminal
246 liability, other than that expressly provided for in this section,
247 to any person or entity in connection with any failure to report
248 or to otherwise comply with the requirements of this section.

249 (4) Anyone who makes a report required by this section or
250 who testifies or participates in any judicial proceedings arising
251 from the report or who participates in a required investigation or
252 evaluation shall be presumed to be acting in good faith and in so
253 doing shall be immune from liability, civil or criminal, that
254 might otherwise be incurred or imposed. However, the immunity
255 provided under this subsection shall not apply to any suspect or
256 perpetrator of any abuse, neglect or exploitation.

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

261 (6) The Executive Director of * * * Human Services shall
262 establish a statewide central register of reports made pursuant to
263 this section. The central register shall be capable of receiving
264 reports of vulnerable adults in need of protective services seven
265 (7) days a week, twenty-four (24) hours a day. To effectuate this
266 purpose the executive director shall establish a single toll-free
267 statewide phone number that all persons may use to report
268 vulnerable adults in need of protective services, and that all
269 persons authorized by subsection (7) of this section may use for

270 determining the existence of prior reports in order to evaluate
271 the condition or circumstances of the vulnerable adult before
272 them. Such oral reports and evidence of previous reports shall be
273 transmitted to the appropriate county * * * department of human
274 services. The central register shall include, but not be limited
275 to, the following information: the name and identifying
276 information of the individual reported, the county * * *
277 department of human services responsible for the investigation of
278 each such report, the names, affiliations and purposes of any
279 person requesting or receiving information which the executive
280 director believes might be helpful in the furtherance of the
281 purposes of this chapter, the name, address, birth date, social
282 security number of the perpetrator of abuse, neglect and/or
283 exploitation, and the type of abuse, neglect and/or exploitation
284 of which there was substantial evidence upon investigation of the
285 report. The central register shall inform the person making
286 reports required under this section of his or her right to request
287 statements from the department as to what action is being taken,
288 if any.

289 Each person, business, organization or other entity, whether
290 public or private, operated for profit, operated for nonprofit or
291 a voluntary unit of government not responsible for law enforcement
292 providing care, supervision or treatment of vulnerable adults
293 shall conduct criminal history records checks on each new employee
294 of the entity who provides, and/or would provide direct patient
295 care or services to adults or vulnerable persons, as provided in
296 Section 43-11-13.

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

302 (7) Reports made pursuant to this section, reports written
303 or photographs taken concerning such reports in the possession of
304 the Department of Human Services or the county * * * department of
305 human services shall be confidential and shall only be made
306 available to:

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

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

312 * * *

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

316 (d) A district attorney or other law enforcement
317 official.

318 Notwithstanding the provisions of paragraph (b) of this
319 subsection, the department may not disclose a report of the
320 abandonment, exploitation, abuse, neglect or self-neglect of a
321 vulnerable adult to the vulnerable adult's guardian,
322 attorney-in-fact, surrogate decision maker, or caregiver who is a
323 perpetrator or alleged perpetrator of the abandonment,
324 exploitation, abuse or neglect of the vulnerable adult.

325 Any person given access to the names or other information
326 identifying the subject of the report, except the subject of the
327 report, shall not divulge or make public such identifying
328 information unless he is a district attorney or other law
329 enforcement official and the purpose is to initiate court action.
330 Any person who willfully permits the release of any data or
331 information obtained pursuant to this section to persons or
332 agencies not permitted to such access by this section shall be
333 guilty of a misdemeanor.

334 (8) Upon reasonable cause to believe that a caretaker or
335 other person has abused, neglected or exploited a vulnerable
336 adult, the department shall promptly notify the district attorney
337 of the county in which the vulnerable adult is located and the
338 Office of the Attorney General, except as provided in Section
339 43-47-37(2).

340 SECTION 3. Section 43-47-9, Mississippi Code of 1972, is
341 amended as follows:

342 43-47-9. (1) Upon receipt of a report pursuant to Section
343 43-47-7 that a vulnerable adult is in need of protective services,
344 the department shall initiate an investigation and/or evaluation
345 within forty-eight (48) hours to determine whether the vulnerable
346 adult is in need of protective services and what services are
347 needed. The evaluation shall include any necessary visits and
348 interviews with the adult, and if appropriate, with the alleged
349 perpetrator of the vulnerable adult abuse and with any person
350 believed to have knowledge of the circumstances of the case. When
351 a caretaker of a vulnerable adult refuses to allow the department
352 reasonable access to conduct an investigation to determine if the
353 vulnerable adult is in need of protective services, the department
354 may petition the court for an order for injunctive relief
355 enjoining the caretaker from interfering with the investigation.

356 (2) The staff and physicians of local health departments,
357 mental health clinics and other public or private agencies,
358 including law enforcement agencies, shall cooperate fully with the
359 department in the performance of its duties. These duties include
360 immediate, in-residence evaluations and medical examinations and
361 treatment where the department deems it necessary. * * *
362 However, * * * upon receipt of a report of abuse, neglect or
363 exploitation of a vulnerable adult confined in a licensed hospital
364 or licensed nursing home facility in the state, the department
365 shall immediately refer this report to the proper authority at the

366 State Department of Health for investigation under Section
367 43-47-37.

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

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

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

382 43-47-19. (1) It shall be unlawful for any person to abuse,
383 neglect or exploit any vulnerable adult.

384 (2) Any person who willfully commits an act or omits the
385 performance of any duty, which act or omission contributes to,
386 tends to contribute to or results in physical pain, injury, mental
387 anguish, unreasonable confinement, or deprivation of services
388 which are necessary to maintain the mental and physical health of
389 a vulnerable adult, or neglect * * * of any vulnerable adult shall
390 be guilty of a misdemeanor and, upon conviction thereof, shall be
391 punished by a fine not to exceed One Thousand Dollars (\$1,000.00)
392 or by imprisonment not to exceed one (1) year in the county jail,
393 or by both such fine and imprisonment. Any accepted medical
394 procedure performed in the usual scope of practice shall not be a
395 violation of this subsection.

396 Any person who willfully exploits a vulnerable adult shall be
397 guilty of a misdemeanor and, upon conviction thereof, shall be
398 punished by a fine not to exceed Five Thousand Dollars (\$5,000.00)

399 or by imprisonment not to exceed one (1) year in the county jail
400 or by both such fine and imprisonment.

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

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

409 SECTION 5. Section 43-47-23, Mississippi Code of 1972, is
410 amended as follows:

411 43-47-23. The department and the court are authorized to
412 seek the cooperation of all public agencies, departments,
413 societies, organizations or agencies having for their object the
414 protection or aid of adults. These agencies, departments,
415 societies and organizations shall provide any such assistance as
416 is necessary.

417 SECTION 6. Section 43-47-27, Mississippi Code of 1972, is
418 amended as follows:

419 43-47-27. The department shall adopt standards and other
420 procedures and guidelines with forms to insure the effective
421 implementation of the provisions of this chapter no later than
422 October 1, 2001.

423 SECTION 7. Section 43-47-31, Mississippi Code of 1972, is
424 amended as follows:

425 43-47-31. (1) Nothing in this chapter shall be construed to
426 authorize, permit or require any emergency or protective services
427 in contravention of the stated or implied objection of such person
428 based upon his right of privacy, which is grounded in the federal
429 courts and the courts of this state, except in a situation where
430 the vulnerable adult is in imminent danger of serious harm.

431 (2) Nothing in this chapter shall be construed to mean a
432 person is neglected or in need of emergency or protective services
433 for the sole reason he is being furnished or relies upon treatment
434 by spiritual means through prayer alone in accordance with the
435 tenets and practices of a recognized church or religious
436 denominations.

437 (3) Nothing in this chapter shall be construed to authorize,
438 permit or require any medical care or treatment in contravention
439 of the stated or implied objection of such person.

440 SECTION 8. Section 43-47-33, Mississippi Code of 1972, is
441 amended as follows:

442 43-47-33. The department shall establish a comprehensive,
443 aggressive program to educate the general public of (a) the
444 existence and provisions of the Mississippi Vulnerable Adults Act
445 of 1986; (b) the duty to report the abuse, neglect or exploitation
446 of any and all vulnerable adults, and (c) criminal sanctions
447 associated with violations of the Mississippi Vulnerable Adults
448 Act.

449 SECTION 9. Section 43-47-35, Mississippi Code of 1972, is
450 amended as follows:

451 43-47-35. It is the intent of the Legislature that the * * *
452 department * * * shall implement the provisions of this chapter in
453 the event federal funding is made available therefor under a
454 social services block grant, or in the event any other federal or
455 state funding is made available to provide for protective services
456 for vulnerable adults.

457 SECTION 10. Section 43-47-37, Mississippi Code of 1972, is
458 amended as follows:

459 43-47-37. (1) Any person who, within the scope of his
460 employment at a care facility as defined in Section 43-47-5(b), or
461 in his professional or personal capacity, has knowledge of or
462 reasonable cause to believe that any patient or resident of a care

463 facility has been the victim of abuse, neglect or exploitation
464 shall report immediately the abuse, neglect or exploitation.

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

467 (a) By any employee of any home health agency, orally
468 or telephonically, within twenty-four (24) hours of discovery,
469 excluding Saturdays, Sundays and legal holidays, to the * * *
470 department * * * and the Medicaid Fraud Control Unit of the
471 Attorney General's office.

472 (b) By a home health agency, in writing within
473 seventy-two (72) hours of discovery to the * * * department * * *
474 and the Medicaid Fraud Control Unit. * * * Upon initial review,
475 the Medicaid Fraud Control Unit shall make a determination whether
476 or not the person suspected of committing the reported abuse,
477 neglect or exploitation was an employee of the home health agency.
478 If so, the Medicaid Fraud Control Unit shall determine whether
479 there is substantial potential for criminal prosecution, and upon
480 a positive determination, shall investigate and prosecute the
481 complaint or refer it to an appropriate criminal investigative or
482 prosecutive authority. If the alleged perpetrator is not an
483 employee of the home health agency, the department shall
484 investigate and process the complaint or refer it to an
485 appropriate investigative or prosecutive authority.

486 (c) By all other care facilities, orally or
487 telephonically, within twenty-four (24) hours of discovery,
488 excluding Saturdays, Sundays and legal holidays, to the * * *
489 State Department of Health and the Medicaid Fraud Control Unit of
490 the Attorney General's office.

491 (d) By all other care facilities, in writing, within
492 seventy-two (72) hours of the discovery, to the * * * State
493 Department of Health and the Medicaid Fraud Control Unit. If,
494 upon initial review by the * * * State Department of Health and
495 the Medicaid Fraud Control Unit, a determination is made that

496 there is substantial potential for criminal prosecution, the unit
497 will investigate and prosecute the complaint or refer it to an
498 appropriate criminal investigative or prosecutive authority.

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

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

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

506 (c) The details, observations and beliefs concerning
507 the incident;

508 (d) Any statements relating to incident made by the
509 patient or resident;

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

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

513 (g) The name of the individual(s) believed to be
514 responsible for the incident and their connection to the patient
515 or resident; and

516 (h) Such other information that may be required by
517 the * * * State Department of Health and/or the Medicaid Fraud
518 Control Unit, as requested.

519 (4) Any other individual who has knowledge of or reasonable
520 cause to believe that any patient or resident of a care facility
521 has been the victim of abuse, exploitation or any other criminal
522 offense may make a report to the State Department of Health and
523 the Medicaid Fraud Control Unit.

524 (5) (a) Any individual who, in good faith, makes a report
525 as provided in this section or who testifies in an official
526 proceeding regarding matters arising out of this section shall be
527 immune from all criminal and civil liability * * *. The immunity
528 granted under this subsection shall not apply to any suspect or

529 perpetrator of abuse, neglect or exploitation of any vulnerable
530 adult, or of any other criminal act under any statute of this
531 state or municipal ordinance defining any act as a crime or
532 misdemeanor.

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

538 (6) Any care facility that complies in good faith with the
539 requirements of this section to report the abuse or exploitation
540 of a patient or resident in the care facility shall not be
541 sanctioned by the State Department of Health for the occurrence of
542 such abuse or exploitation if the care facility demonstrates that
543 it adequately trained its employees and that the abuse or
544 exploitation was caused by factors beyond the control of the care
545 facility.

546 (7) Every person who knowingly fails to make the report as
547 required by subsections (1), (2) and (3) of this section or
548 attempts to induce another, by threat or otherwise, to fail to
549 make a report as required by subsections (1), (2) and (3) of this
550 section shall, upon conviction, be guilty of a misdemeanor and
551 shall be punished by a fine of not exceeding Five Hundred Dollars
552 (\$500.00), or by imprisonment in the county jail for not more than
553 six (6) months, or both such fine and imprisonment.

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

556 (9) If, after initial inquiry or investigation, the Medicaid
557 Fraud Control Unit determines that there is reasonable cause to
558 believe that an employee of a home health agency has abused,
559 neglected or exploited a vulnerable adult, the unit shall notify
560 the Mississippi State Department of Health of the alleged abuse,
561 neglect or exploitation.

562 (10) Upon a judicial determination of evidence that an
563 employee of a care facility has abused, neglected or exploited a
564 vulnerable adult, the appropriate investigative agency shall
565 immediately provide the following information to the central
566 registry: name, address, birth date, social security number of
567 perpetrator; type of abuse, neglect and or exploitation; name,
568 address, birth date, social security number of victim; and date of
569 incident and report.

570 SECTION 11. Section 43-11-13, Mississippi Code of 1972, is
571 amended as follows:

572 43-11-13. (1) The licensing agency shall adopt, amend,
573 promulgate and enforce such rules, regulations and standards,
574 including classifications, with respect to all institutions for
575 the aged or infirm to be licensed under this chapter as may be
576 designed to further the accomplishment of the purpose of this
577 chapter in promoting adequate care of individuals in such
578 institutions in the interest of public health, safety and welfare.
579 Such rules, regulations and standards shall be adopted and
580 promulgated by the licensing agency and shall be recorded and
581 indexed in a book to be maintained by the licensing agency in its
582 main office in the State of Mississippi, entitled "Rules,
583 Regulations and Minimum Standards for Institutions for the Aged or
584 Infirm" and the book shall be open and available to all
585 institutions for the aged or infirm and the public generally at
586 all reasonable times. Upon the adoption of such rules,
587 regulations and standards, the licensing agency shall mail copies
588 thereof to all such institutions in the state which have filed
589 with the agency their names and addresses for this purpose, but
590 the failure to mail the same or the failure of the institutions to
591 receive the same shall in no way affect the validity thereof. The
592 rules, regulations and standards may be amended by the licensing
593 agency, from time to time, as necessary to promote the health,
594 safety and welfare of persons living in those institutions.

595 (2) The licensee shall keep posted in a conspicuous place on
596 the licensed premises all current rules, regulations and minimum
597 standards applicable to fire protection measures as adopted by the
598 licensing agency. The licensee shall furnish to the licensing
599 agency at least once each six (6) months a certificate of approval
600 and inspection by state or local fire authorities. Failure to
601 comply with state laws and/or municipal ordinances and current
602 rules, regulations and minimum standards as adopted by the
603 licensing agency, relative to fire prevention measures, shall be
604 prima facie evidence for revocation of license.

605 (3) The State Board of Health shall promulgate rules and
606 regulations restricting the storage, quantity and classes of drugs
607 allowed in personal care homes. Residents requiring
608 administration of Schedule II Narcotics as defined in the Uniform
609 Controlled Substances Law may be admitted to a personal care home.
610 Schedule drugs may only be allowed in a personal care home if they
611 are administered or stored utilizing proper procedures under the
612 direct supervision of a licensed physician or nurse.

613 (4) (a) Pursuant to regulations promulgated by the State
614 Department of Health, the licensing agency shall require to be
615 performed a criminal history record check on every new employee of
616 a licensed institution for the aged or infirm or care facility who
617 provides direct patient care or services and who is employed after
618 July 1, 2001. Except as otherwise provided, no such new employee
619 shall be permitted to provide direct patient care or services
620 until the results of the criminal history record check have
621 revealed no disqualifying record. Every such new employee shall
622 provide a valid current social security number and/or driver's
623 license number which shall be furnished to the licensing agency or
624 to the private entity designated by the licensing agency to
625 conduct the criminal history record check. The institution for
626 the aged or infirm or care facility applying for the criminal
627 history record check will be promptly notified of any

628 disqualifying record found by the criminal history record check.
629 In order to determine the applicant's suitability for employment,
630 the applicant shall be fingerprinted. If no disqualifying record
631 is identified at the state level, the fingerprints shall be
632 forwarded by the Department of Public Safety to the Federal Bureau
633 of Investigation for a national criminal history record check.

634 (b) A licensed institution for the aged or infirm or
635 care facility may make an offer of temporary employment to a
636 prospective employee pending the results of a criminal history
637 record check on the person. In such instances, the licensed
638 institution for the aged or infirm or care facility shall provide
639 to the licensing agency, or to the designated private entity, the
640 name and relevant information relating to the person within
641 seventy-two (72) hours after the date the person accepts temporary
642 employment.

643 (c) All fees incurred in compliance with this section
644 shall be borne by the institution or facility requesting the
645 criminal history record check. The licensing agency, or the
646 designated private entity, is authorized to charge the institution
647 for the aged or infirm or care facility a fee which shall include
648 the amount required by the Mississippi Department of Public
649 Safety, the Federal Bureau of Investigation or any other agency
650 designated by the licensing agency for the national criminal
651 history record check in addition to any necessary costs incurred
652 by the licensing agency or the designated private entity for the
653 handling and administration of the criminal history record checks.
654 Costs incurred by a nursing home provider implementing this act
655 shall be reimbursed as an allowable cost under Section 43-13-116.

656 (d) The licensing agency, care facility, and their
657 agents, officers, employees, attorneys and representatives shall
658 be presumed to be acting in good faith for any employment decision
659 or action taken under paragraphs (a) and (b) of this subsection.

660 The presumption of good faith may be overcome by a preponderance
661 of the evidence in any civil action.

662 (e) The licensing agency shall promulgate regulations
663 to implement this subsection (4).

664 SECTION 12. (1) Except as otherwise provided in subsection
665 (3), a person, knowing that the information is misleading or
666 inaccurate, shall not intentionally, willfully or recklessly place
667 or direct another to place in a patient's medical record or chart
668 misleading or inaccurate information regarding the diagnosis,
669 care, treatment or cause of a patient's condition. A violation of
670 this subsection is punishable as follows: a person who
671 intentionally or willfully or recklessly violates this subsection
672 is guilty of a misdemeanor, punishable by imprisonment for not
673 more than one (1) year, or a fine of not more than One Thousand
674 Dollars (\$1,000.00), or both.

675 (2) Except as otherwise provided in subsection (3), a person
676 shall not intentionally or willfully alter or destroy or direct
677 another to alter or destroy a patient's medical records or charts
678 for the purpose of concealing his or her responsibility for the
679 patient's injury, sickness or death. A person who violates this
680 subsection is guilty of a misdemeanor punishable by imprisonment
681 for not more than one (1) year, or a fine of not more than One
682 Thousand Dollars (\$1,000.00), or both.

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

685 (a) Destruction of a patient's original medical record
686 or chart if all of the information contained in or on the medical
687 record or chart is otherwise retained by means of mechanical or
688 electronic recording, chemical reproduction, or other equivalent
689 techniques that accurately reproduce all of the information
690 contained in or on the original.

691 (b) Supplementation of information or correction of an
692 error in a patient's medical record or chart in a manner that

693 reasonably discloses that the supplementation or correction was
694 performed and that does not conceal or alter prior entries.

695 SECTION 13. Section 81-5-55, Mississippi Code of 1972, is
696 amended as follows:

697 81-5-55. In no instance shall the name of any depositor, or
698 the amount of his deposit, be disclosed to anyone, except to
699 report to approved parties, such as credit bureaus, account
700 verification services and others, the forcible closure of a
701 deposit account due to misuse, such as fraud, kiting or chronic
702 bad check writing or when required to be done in legal
703 proceedings, for verification of public assistance in cases
704 wherein the depositor has applied for public assistance and the
705 Department of Human Services submits a written authorization
706 executed by the depositor authorizing the receipt of such
707 information, for verification of the financial exploitation of a
708 vulnerable adult in cases wherein the Attorney General submits a
709 written authorization, or in case of insolvency of banks. The
710 parties referred to herein must be approved by the Commissioner of
711 Banking and Consumer Finance and must satisfactorily demonstrate
712 their reliability and credibility of their activities. Disclosure
713 of depositor information to any affiliate or agent providing
714 services on behalf of the bank shall not be considered disclosure
715 of depositor information within the meaning of this section. The
716 term "affiliate" means a corporation or business entity that
717 controls, is controlled by or is under common control with the
718 bank. The term "agent" means anyone who has an agreement,
719 arrangement or understanding to transact business for the bank by
720 the authority and on account of the bank, provided such agreement
721 binds the agent to the same degree of confidentiality of
722 disclosure of bank records as the bank. Any violation of this
723 provision shall be considered a misdemeanor and, upon conviction
724 thereof, in any court of competent jurisdiction, such person shall
725 be punished by a fine of not more than One Thousand Dollars

726 (\$1,000.00) or imprisoned in the county jail not more than six (6)
727 months or both, and in addition thereto, shall be liable upon his
728 bond to any person damaged thereby.

729 This section shall not be construed to prohibit the
730 disclosure, to the State Treasurer, State Auditor, Legislative
731 Budget Office, Joint Legislative Committee on Performance
732 Evaluation and Expenditure Review or the Department of Finance and
733 Administration, of any information about any type of account or
734 investment, including certificates of deposit, owned by any public
735 entity of the State of Mississippi. In addition, this section
736 shall not be construed to prohibit, or to impose liability for,
737 the disclosure of information to the Department of Human Services,
738 the Child Support Unit of the Department of Human Services, or
739 their contractors or agents, pursuant to Chapter 19 of Title 43,
740 Mississippi Code of 1972.

741 SECTION 14. This act shall take effect and be in force from
742 and after July 1, 2001.