

# Senate Bill 2501

*AN ACT RELATING TO THE MISSISSIPPI VULNERABLE ADULTS ACT; TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO DEFINE "VULNERABLE ADULT," CLARIFY CERTAIN DEFINITIONS AND DEFINE CERTAIN PROHIBITIONS ON THE INVESTIGATION AND PROVISION OF PROTECTIVE SERVICES REGARDING RESIDENTS OR PATIENTS IN A CARE FACILITY; TO AMEND SECTION 43-47-7, MISSISSIPPI CODE OF 1972, TO ADD CERTAIN LICENSED MEDICAL PERSONNEL AND OTHER ENTITIES TO THE ENUMERATION OF MANDATED REPORTERS OF ABUSE, NEGLECT AND EXPLOITATION UNDER THE VULNERABLE ADULTS ACT, TO PRESCRIBE CERTAIN PROCEDURES FOR THESE REPORTS TO BE TAKEN BY THE DEPARTMENT OF HUMAN SERVICES, TO PRESCRIBE CRIMINAL PENALTIES FOR FAILING TO MAKE SUCH REQUIRED REPORTS, AND TO PROVIDE FOR THE CONFIDENTIALITY OF SUCH REPORTS; TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A COURT MAY AUTHORIZE THE EVALUATION OF AN ABUSED ADULT UPON SHOWING OF PROBABLE CAUSE, INCLUDING AN EVALUATION OF THE FINANCIAL RECORDS OF THE VULNERABLE ADULT; TO AMEND SECTIONS 43-47-23, 43-47-27, 43-47-31, 43-47-33 AND 43-47-35, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING PROVISIONS; TO AMEND SECTION 43-47-37, MISSISSIPPI CODE OF 1972, TO CLARIFY REPORTING REQUIREMENTS FOR VICTIMS OF ABUSE, NEGLECT OR EXPLOITATION AND TO CLARIFY IMMUNITY EXTENDED TO THE REPORTERS OF SUCH ABUSE AND NEGLECT; TO AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO CLARIFY AND INCREASE CRIMINAL PENALTIES FOR THE ABUSE, NEGLECT OR FINANCIAL EXPLOITATION OF VULNERABLE ADULTS; TO AMEND SECTION 43-11-13, MISSISSIPPI CODE OF 1972, TO DIRECT THE STATE DEPARTMENT OF HEALTH TO REQUIRE ALL LICENSED NURSING FACILITIES TO CONDUCT CRIMINAL HISTORY RECORD CHECKS ON NEW APPLICANTS FOR EMPLOYMENT AT NURSING FACILITIES WHO WILL PROVIDE DIRECT CARE; TO AUTHORIZE THE DEPARTMENT TO CHARGE AND COLLECT FROM THE LICENSEE A FEE FOR SUCH CRIMINAL RECORD CHECKS; TO AUTHORIZE THE DEPARTMENT TO*

*DESIGNATE A PRIVATE ENTITY TO CONDUCT SUCH CRIMINAL RECORD CHECKS; TO ENACT STANDARDS FOR ENTRIES IN PATIENT MEDICAL RECORDS OR CHARTS; TO ENACT PENALTIES FOR VIOLATION OF THE STANDARDS; TO AMEND SECTION 81-5-55, MISSISSIPPI CODE OF 1972, TO AUTHORIZE FINANCIAL INSTITUTIONS TO DISCLOSE INFORMATION UPON WRITTEN REQUEST OF THE ATTORNEY GENERAL IN CASES OF FINANCIAL EXPLOITATION OF A VULNERABLE ADULT; AND FOR RELATED PURPOSES.*

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

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

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

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

(b) "Care facility" shall mean:

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

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

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

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

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

(vi) Any adult day services facility, which shall mean a community-based group program for adults designed to meet the needs of adults with impairments through individual plans of care, which are structured, comprehensive, planned, nonresidential programs providing a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Exempted from this definition shall be any program licensed and certified by the Mississippi Department of Mental Health and any adult day services program provided to ten (10) or fewer individuals by a licensed institution for the aged or infirm.

(c) "Caretaker" shall mean an individual, corporation, partnership or other organization which has assumed the responsibility for the care of a vulnerable adult, but shall not

include the Division of Medicaid, a licensed hospital, or a licensed nursing home within the state.

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

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

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

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

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

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

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

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

(h) "Essential services" shall mean those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable adult's rights and resources and to maintain the physical or mental well-being of the person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment and protection from exploitation. The words "essential services" shall not include taking a vulnerable adult into physical custody without his consent except as provided for in Section 43-47-15 and as otherwise provided by the general laws of the state.

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

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

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

(l) "Protective services" shall mean services provided by the state or other government or private organizations, agencies or individuals which are necessary to protect a vulnerable adult from abuse, neglect or exploitation. They shall include, but not be

limited to, investigation, evaluation of the need for services and provision of essential services on behalf of a vulnerable adult.

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

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

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

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

(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) Accountant, stockbroker, financial advisor or consultant, insurance agent or consultant, investment advisor or consultant, financial planner, or any officer or employee of a bank, savings and loan, credit union or any other financial service provider.

(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 neglect, exploitation, 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 the above, any person or entity holding or required to hold a license as specified in Title 73, Professions and Vocations, 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 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. However, for purposes of this subsection (1), any recognized legal financial transaction shall not be considered cause to report the knowledge or suspicion of the financial exploitation of a vulnerable adult. 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 \* \* \* department of human services. The Department of Human Services shall investigate the reported abuse, neglect or exploitation immediately and shall file a preliminary report of its findings with the Office of the Attorney General within forty-eight (48) hours, and shall make additional reports as new information or evidence becomes available. The Department of Human Services, upon request, shall forward a statement to the person making the initial report required by this section as to what action is being taken, if any.

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

(4) Anyone who makes a report required by this section or 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. However, the immunity provided under this subsection shall not apply to any suspect or perpetrator of any abuse, neglect or exploitation.

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

(6) The Executive Director of \* \* \* Human Services shall establish a statewide central register of reports made pursuant to this section. The central register shall be capable of receiving reports of vulnerable adults in need of protective services seven (7) days a week, twenty-four (24) hours a day. To effectuate this purpose the executive director shall establish a single toll-free statewide phone number that all persons may use to

report vulnerable adults in need of protective services, and that all persons authorized by subsection (7) of this section may use for determining the existence of prior reports in order to evaluate the condition or circumstances of the vulnerable adult before them. Such oral reports and evidence of previous reports shall be transmitted to the appropriate county \* \* \* department of human services. The central register shall include, but not be limited to, the following information: the name and identifying information of the individual reported, the county \* \* \* department of human services responsible for the investigation of each such report, the names, affiliations and purposes of any person requesting or receiving information which the executive director believes might be helpful in the furtherance of the purposes of this chapter, the name, address, birth date, social security number of the perpetrator of abuse, neglect and/or exploitation, and the type of abuse, neglect and/or exploitation of which there was substantial evidence upon investigation of the report. The central register shall inform the person making reports required under this section of his or her right to request statements from the department as to what action is being taken, if any.

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

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

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

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

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

\* \* \*

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

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

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

Any person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action. Any person who willfully permits the release of any

data or information obtained pursuant to this section to persons or agencies not permitted to such access by this section shall be guilty of a misdemeanor.

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

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

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. \* \* \* However, \* \* \* 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 4. Section 43-47-19, Mississippi Code of 1972, is amended as follows:

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

(2) Any person who willfully commits an act or omits the performance of any duty, which act or omission contributes to, tends to contribute to or results in physical pain, injury, mental anguish, unreasonable confinement, or deprivation of services which are necessary to maintain the mental and physical health of a vulnerable adult, or neglect \* \* \* of any vulnerable adult shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both

such fine and imprisonment. Any accepted medical procedure performed in the usual scope of practice shall not be a violation of this subsection.

Any person who willfully exploits a vulnerable adult shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not to exceed one (1) year in the county jail or by both such fine and imprisonment.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

43-47-37. (1) Any person who, within the scope of his employment at a care facility as defined in Section 43-47-5(b), or in his professional or personal capacity, has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, neglect or exploitation shall report immediately the abuse, neglect or exploitation.

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

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

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

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

(d) By all other care facilities, in writing, within seventy-two (72) hours of the discovery, to the \* \* \* State Department of Health and the Medicaid Fraud Control Unit. If, upon initial review by the \* \* \* State Department of Health and the Medicaid Fraud Control Unit, a determination is made that there is substantial potential for criminal prosecution, the unit will investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

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

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

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

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

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

- (e) The date, time and place of the incident;
- (f) The name of any individual(s) believed to have knowledge of the incident;
- (g) The name of the individual(s) believed to be responsible for the incident and their connection to the patient or resident; and
- (h) Such other information that may be required by the \* \* \* State Department of Health and/or the Medicaid Fraud Control Unit, as requested.
- (4) Any other individual who has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, exploitation or any other criminal offense may make a report to the State Department of Health and the Medicaid Fraud Control Unit.
- (5) (a) Any individual who, in good faith, makes a report as provided in this section or who testifies in an official proceeding regarding matters arising out of this section shall be immune from all criminal and civil liability \* \* \*. The immunity granted under this subsection shall not apply to any suspect or perpetrator of abuse, neglect or exploitation of any vulnerable adult, or of any other criminal act under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.
- (b) No person shall terminate from employment, demote, reject for promotion or otherwise sanction, punish or retaliate against any individual who, in good faith, makes a report as provided in this section or who testifies in any official proceeding regarding matters arising out of this section.
- (6) Any care facility that complies in good faith with the requirements of this section to report the abuse or exploitation of a patient or resident in the care facility shall not be sanctioned by the State Department of Health for the occurrence of such abuse or exploitation if the care facility demonstrates that it adequately trained its employees and that the abuse or exploitation was caused by factors beyond the control of the care facility.
- (7) Every person who knowingly fails to make the report as required by subsections (1), (2) and (3) of this section or attempts to induce another, by threat or otherwise, to fail to make a report as required by subsections (1), (2) and (3) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment.
- (8) Copies of Sections 43-47-7 and 43-47-37 shall be posted prominently in every health care facility.
- (9) If, after initial inquiry or investigation, the Medicaid Fraud Control Unit determines that there is reasonable cause to believe that an employee of a home health agency has abused, neglected or exploited a vulnerable adult, the unit shall notify the Mississippi State Department of Health of the alleged abuse, neglect or exploitation.
- (10) Upon a judicial determination of evidence that an employee of a care facility has abused, neglected or exploited a vulnerable adult, the appropriate investigative agency shall immediately provide the following information to the central registry: name, address, birth date, social security number of perpetrator; type of abuse, neglect and or exploitation; name, address, birth date, social security number of victim; and date of incident and report.

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

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 under this chapter 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 the 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 the 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 no way affect the validity thereof. The 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 those 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 agency at least once each six (6) months a certificate of approval and inspection by state or local fire authorities. Failure to comply with state laws and/or municipal ordinances and current rules, regulations and minimum standards as adopted by the licensing agency, relative to fire prevention measures, shall be prima facie evidence for revocation of license.

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

(4) (a) Pursuant to regulations promulgated by the State Department of Health, the licensing agency shall require to be performed a criminal history record check on every new employee of a licensed institution for the aged or infirm or care facility who provides direct patient care or services and who is employed after July 1, 2001. Except as otherwise provided, no such new employee shall be permitted to provide direct patient care or services until the results of the criminal history record check have revealed no disqualifying record. Every such new employee shall provide a valid current social security number and/or driver's license number which shall be furnished to the licensing agency or to the private entity designated by the licensing agency to conduct the criminal history record check. The institution for the aged or infirm or care facility applying for the criminal history record check will be promptly notified of any disqualifying record found by the criminal history record check. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check.

(b) A licensed institution for the aged or infirm or care facility may make an offer of temporary employment to a prospective employee pending the results of a criminal history record check on the person. In such instances, the licensed institution for the aged or infirm or care facility shall provide to the licensing agency, or to the designated

private entity, the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment.

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

(d) The licensing agency, care facility, and their agents, officers, employees, attorneys and representatives shall be presumed to be acting in good faith for any employment decision or action taken under paragraphs (a) and (b) of this subsection. The presumption of good faith may be overcome by a preponderance of the evidence in any civil action.

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

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

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

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

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

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

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

81-5-55. In no instance shall the name of any depositor, or the amount of his deposit, be disclosed to anyone, except to report to approved parties, such as credit bureaus, account verification services and others, the forcible closure of a deposit account due to misuse, such as fraud, kiting or chronic bad check writing or when required to be done

in legal proceedings, for verification of public assistance in cases wherein the depositor has applied for public assistance and the Department of Human Services submits a written authorization executed by the depositor authorizing the receipt of such information, for verification of the financial exploitation of a vulnerable adult in cases wherein the Attorney General submits a written authorization, or in case of insolvency of banks. The parties referred to herein must be approved by the Commissioner of Banking and Consumer Finance and must satisfactorily demonstrate their reliability and credibility of their activities. Disclosure of depositor information to any affiliate or agent providing services on behalf of the bank shall not be considered disclosure of depositor information within the meaning of this section. The term "affiliate" means a corporation or business entity that controls, is controlled by or is under common control with the bank. The term "agent" means anyone who has an agreement, arrangement or understanding to transact business for the bank by the authority and on account of the bank, provided such agreement binds the agent to the same degree of confidentiality of disclosure of bank records as the bank. Any violation of this provision shall be considered a misdemeanor and, upon conviction thereof, in any court of competent jurisdiction, such person shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisoned in the county jail not more than six (6) months or both, and in addition thereto, shall be liable upon his bond to any person damaged thereby.

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

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

Passed State Senate  
March 27, 2001

Passed House of Representatives  
March 27, 2001

APPROVED BY THE GOVERNOR

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GOVERNOR