

ENROLLED HOUSE  
BILL NO. 2601

By: Seikel of the House

and

Cain of the Senate

An Act relating to mental health; amending 43A O.S. 1991, Sections 10-103, and 10-105, 10-107 and 10-108, as amended by Sections 2, 4 and 5, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Sections 10-105, 10-107 and 10-108), which relate to the Protective Services for the Elderly and for Incapacitated Adults Act; modifying definitions; clarifying citation; modifying payment requirements; requiring certain payments; authorizing exceptions; providing and modifying certain evaluation services requirements; requiring appointment of counsel in certain cases; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 43A O.S. 1991, Section 10-103, is amended to read as follows:

Section 10-103. When used in the Protective Services for the Elderly and for Incapacitated Adults Act:

1. "Protective services" means services which are necessary to aid an elderly or incapacitated person in meeting the essential requirements for his mental or physical health and safety which such person is unable to provide or obtain without assistance and includes services provided to or obtained for such person in order to prevent or remedy the abuse, neglect, or exploitation of such person;

2. "Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" include but shall not be limited to the identification of adults in need of the services, the provision of medical care for physical and mental health needs, provision of social services assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, guardianship referral, outreach and transportation necessary to secure any of such needs. The term shall not include taking the person into physical custody without the consent of said person except as provided for in Section ~~807~~ 10-107 of this title, and evaluation, monitoring, and provision of protective placements;

3. "Meet essential requirements for mental or physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which physical injury or illness is likely to occur;

4. "Elderly person" means any person aged sixty-five (65) or over residing in this state;

5. "Incapacitated person" means any person eighteen (18) years of age or older who is impaired by reason of mental or physical illness or disability, advanced age, mental retardation, developmental disability or other cause and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that they lack the capacity to manage their financial resources or to meet essential requirements for their mental or physical health or safety without assistance;

6. "Adult in need of protective services" means an individual who, because of physical or mental disability, incapacity or other disability, is substantially impaired in his ability to provide adequately for his own care or custody, or is unable to manage his property and affairs effectively, or to carry out the activities of daily living, or to protect himself from abuse, neglect, or exploitation without assistance from others;

7. "Caretaker" means a person who has the responsibility for the care of the adult in need of protective services as a result of family relationship or who has assumed the responsibility for the care of the elderly person or incapacitated adult voluntarily, by contract, or as a result of the ties of friendship;

8. "Department" means the Department of Human Services;

~~9. "Evaluation Service" means a team of medical, psychological, psychiatric, and social work professionals established by the Department for the purpose of conducting a comprehensive physical, mental, and social evaluation of an elderly person or an incapacitated adult for whom a petition has been filed in a court for continued protective services on an involuntary basis;~~

~~10.~~ "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care by a caretaker or other person responsible for providing these services;

~~11.~~ 10. "Exploitation" means an unjust or improper use of the resources of an elderly person or incapacitated adult for the profit or advantage, pecuniary or otherwise, of another person; and

~~12.~~ 11. "Neglect" means the failure to provide protection for an elderly person or incapacitated adult who is unable to protect his own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of his lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury.

SECTION 2. AMENDATORY 43A O.S. 1991, Section 10-105, as amended by Section 2, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Section 10-105), is amended to read as follows:

Section 10-105. A. Upon receiving a report of alleged abuse, neglect, or exploitation of an elderly person or incapacitated adult pursuant to the provisions of the Protective Services for the Elderly and for Incapacitated Adults Act, Section 10-101 et seq. of this title, the Department of Human Services shall make a prompt and thorough investigation.

B. The investigation by the Department shall include:

1. Every reasonable effort to notify the next of kin of the person who may be in need of protective services;

2. Diagnostic evaluation to determine whether the person needs protective services;

3. Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person;

4. What least restrictive services are needed;
5. Whether services are available from the Department or in the community and how the services can be provided;
6. Whether the person would be capable of obtaining services for himself and could bear the cost or would be eligible for services from the Department;
7. Whether a caretaker would be willing to provide services or would agree to their provision;
8. Whether the person desires the services;
9. What follow-up investigation and monitoring of the services will be needed; and
10. Other relevant data.

C. The Department's investigation shall include a visit to the home or other place of residence of said person, a private interview with said person, and consultation with persons who have knowledge of the circumstances. If, in the course of an investigation of this nature, the Department is denied entrance to the home or other place of residence of a person believed to be an adult in need of protective services, or is denied a private interview, or documentation, or access to records, or other information relating to said person as provided by paragraph ~~9~~ 10 of subsection B of this section, the Department may petition the court for an order allowing entry or access. The petition shall state the name and address of the person and shall allege specific facts sufficient to show that the circumstances of the person are in need of investigation. If it is necessary to forcibly enter the premises, the representative of the Department shall make the entry accompanied by a peace officer.

D. In the case of a report pertaining to an elderly person or incapacitated adult who is a resident of a nursing facility or residential care facility, the Department shall immediately notify the State Department of Health of such report in writing, and shall forward to the State Department of Health a copy of the Department's final investigative report. Nothing herein shall prevent the State Department of Health from conducting any type of investigation or taking any appropriate action pursuant to the provisions of the Nursing Home Care Act, Section 1-1901 et seq. of Title 63 of the Oklahoma Statutes, and the Residential Care Act, ~~Section 1-819 et seq. of Title 63 of the Oklahoma Statutes.~~

SECTION 3. AMENDATORY 43A O.S. 1991, Section 10-107, as amended by Section 4, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Section 10-107), is amended to read as follows:

Section 10-107. A. If an elderly person or incapacitated adult lacks the capacity to consent to receive protective services recommended by the Department of Human Services, these services may be ordered by a court on an involuntary basis through an emergency order.

B. 1. In ordering involuntary protective services, the court shall authorize only that intervention which it finds to be least restrictive of the liberty and rights of said person, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

2. Whenever it is consistent with the welfare and safety of the person, the court shall authorize that involuntary protective services be administered to the elderly person or incapacitated adult in his present living accommodations.

C. 1. Payment for services provided to an elderly person or incapacitated adult determined by the court to be in need of involuntary protective services shall be made ~~as provided by subsection D of Section 10-106 of this title:~~

- a. from assets of the person receiving involuntary protective services, if the court so orders after a showing by the Department that the person has adequate assets to make such payment, and that payment for the involuntary protective services will not cause the person to go without other necessities of life,
- b. from any private or public assistance programs for which the person is eligible, or
- c. as provided by paragraph 2 of subsection D of Section 10-106 of this title if the person has inadequate assets to make such payments as ordered by the court, and no private or public funds are available to the person.

2. The person has a right to be present and represented by counsel at the hearing. If he is indigent or, in the determination of the court, lacks capacity to waive the right to counsel, the court shall appoint counsel. If the person is indigent, the cost of representation by counsel shall be borne by this state.

D. Upon the request of an authorized representative of the Department, the district attorney of the county in which the person alleged or found by a court to be in need of involuntary protective services resides shall provide any assistance required by the Department in any local proceedings related to the provision of involuntary protective services.

SECTION 4. AMENDATORY 43A O.S. 1991, Section 10-108, as amended by Section 5, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Section 10-108), is amended to read as follows:

Section 10-108. A. If the Department of Human Services determines that an elderly person or incapacitated adult is suffering from abuse, neglect, or exploitation presenting a substantial risk of death, or immediate and serious physical harm to himself to the extent that an emergency exists, lacks mental capacity to consent to receive protective services and no consent can be obtained, the Department may petition the district court in the county in which said person resides, or in the district court in the county where any of the protective services are to be provided, for an order authorizing involuntary protective services.

B. The petition shall be sworn to and include the name, age, and address of the elderly person or incapacitated adult who the Department determines is in need of emergency protective services, the nature of the abuse, neglect, or exploitation, the services needed, and information relating to the capacity of the person to consent to services and the attempts of the Department to obtain consent.

C. The elderly person or incapacitated adult shall receive a forty-eight-hour notice of the hearing. The court may waive the forty-eight-hour notice requirement upon showing that immediate and reasonably foreseeable death or serious physical harm to the person will result from the forty-eight-hour delay. The person has a right to be present and represented by counsel at the hearing. If he is indigent or, in the determination of the court, lacks capacity to waive the right to counsel, the court shall appoint counsel. If the person is indigent, the cost of representation by counsel shall be borne by this state.

D. In issuing an order for involuntary protective services, the court shall adhere to the following limitations:

1. Only such protective services as are necessary to remove the conditions creating the emergency shall be ordered, and the court shall specifically designate the approved services in the order of the court;

2. Protective services authorized by an involuntary protective services order shall not include a change of residence unless the court specifically finds such action is necessary to remove the conditions creating the emergency and gives specific approval for such action in the order of the court. Emergency placement may be made to such facilities as nursing homes, personal medical institutions, foster care services and other home placements, or to other appropriate facilities. Emergency placement shall not be made to facilities for the acutely mentally ill;

3. Involuntary protective services may be provided for a period not to exceed ten (10) calendar days. The original order may be renewed once for a ten-day period upon a showing to the court that continuation of the original order for involuntary protective services is necessary to remove the emergency;

4. In the court order, the court shall appoint the Department or an interested person or organization as temporary guardian of the person with responsibility for the welfare of said person and authority to give consent for the person for the approved protective services until the expiration of the order for involuntary protective services;

5. The issuance of an order for involuntary protective services and the appointment of a temporary guardian shall not deprive the elderly person or incapacitated adult of any rights except to the extent validly provided for in the order or appointment; and

6. To implement an order for involuntary protective services, the court may authorize forcible entry of the premises of the adult to be protected for the purpose of rendering protective services or transporting the person to another location for the provision of such services only after a showing to the court that attempts to gain voluntary access to the premises have failed and forcible entry is necessary. Persons making authorized forcible entry shall be accompanied by a peace officer.

E. The elderly person or incapacitated adult, the temporary guardian, or any interested person may petition the court to have the emergency order set aside or modified at any time.

F. 1. If the elderly person or incapacitated adult continues to need protective services after the renewal order provided in subsection D of this section has expired, the temporary guardian shall immediately petition the court to order either or both of the following:

- a. appointment of a guardian, or
- b. application for commitment of the elderly person or incapacitated adult to a nursing home, personal medical institution, foster care service and other home placement, or to some other appropriate facility other than a facility for the acutely mentally ill.

2. In order to make the finding that a need exists for continued services, the court shall direct that a comprehensive physical, mental and social evaluation of the elderly person or incapacitated adult alleged to be in need of continued services be conducted ~~by the Evaluation Service~~. The evaluation shall include at least the following information:

- a. the address of the place where the person is residing and the person or agency which is providing care, treatment, or services at present,
- b. a resume of the professional treatment and services provided to the person by the Department or agency, if any, in connection with the problem creating the need for emergency protective services, and

c. a medical, ~~psychological, psychiatric,~~ and social evaluation ~~and review,~~ including the Department's assessment of the person's capacity to consent to services, a psychological or psychiatric evaluation and review if the mental state of the person is in question, and any recommendations for or against maintenance of partial legal rights. Such evaluation and review shall include recommendations for placement consistent with the least restrictive environment required.

3. The court may authorize continued protective services on an involuntary basis for an elderly person or incapacitated adult for a period not to exceed six (6) months.

4. At the time of the expiration of an order for continued protective services on an involuntary basis for an elderly person or incapacitated adult, the guardian, the original petitioner, or any interested person may petition the court to extend its order for protective services for an additional period not to exceed six (6) months. The contents of the petition shall state the factual basis for the need for continued protective services of the person. Notice of the petition for the extension of protective services shall be made in conformity with subsection C of this section.

G. The petitioner shall not be liable for filing the petition if the petition was filed in good faith.

SECTION 5. This act shall become effective September 1, 1994.

Passed the House of Representatives the 18th day of May, 1994.

Speaker of the House of  
Representatives

Passed the Senate the 19th day of May, 1994.

President of the Senate