

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1425

By: Thomas

AS INTRODUCED

An Act relating to poor persons; creating the Oklahoma Adult Companion Home Certification Act; providing purpose; defining terms; requiring certain certifications; providing procedures; providing certain certification requirements; requiring promulgation of certain rules; providing for investigations and inspections; providing for revocation of or refusal to renew certain permits; providing for certain hearings, orders and appeals; specifying procedures; specifying penalties; amending 63 O.S 1991, Section 1-818.2, which relates to Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act; amending 63 O.S. 1991, Section 1-820, which relates to the Residential Care Act; amending 63 O.S. 1991, Sections 1-1902 and 1-1903, which relate to the Nursing Home Care Act; modifying definitions; conforming and clarifying language; amending 43A O.S. 1991, Sections 10-104, 10-105, 10-106, 10-107 and 10-108, which relate to certain elderly or incapacitated adults; requiring certain reports; modifying certain investigations and contents; adding to certain information; expanding reviews and inspections; providing for payment of certain

costs; requiring certain assistance; clarifying language; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 8 of this act shall be known and may be cited as the "Oklahoma Adult Companion Home Certification Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.2 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. It is the declared purpose and policy of the Oklahoma Adult Companion Home Certification Act, to ensure maintenance of minimum standards for the care and protection of mentally retarded or developmentally disabled adults, and to encourage and assist adult companion homes toward maximum standards.

B. In order to provide care for mentally retarded or developmentally disabled adults in adult companion homes, a certification shall be obtained from the Department of Human Services. Such certificates shall be issued on the basis of meeting minimum standards which are essential for the health and welfare of any mentally retarded or developmentally disabled adult placed for care in such homes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.3 of Title 56, unless there is created a duplication in numbering, reads as follows:

For purposes of the provisions of the Oklahoma Adult Companion Home Certification Act:

1. "Department" means the Department of Human Services; and

2. "Adult companion home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three (3) or fewer mentally retarded or developmentally disabled adults.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.4 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1993, no home shall be operated or maintained unless certified by the Department. No new home may be established without the prior approval of the Department which shall be granted only after the Department is satisfied that such home will meet known needs for the services proposed to be provided and that the home will meet minimum standards for a certificate to operate.

B. An application for a certification shall be made in the manner and on the terms prescribed by the Department. Before issuing such certification, the Department shall investigate the activities and standards of care of the applicant and if satisfied that the applicant meets the requirements as provided in the Oklahoma Adult Companion Home Certification Act, a certification shall be issued. A provisional certification may be issued to any applicant whose services are needed but which is temporarily unable to conform to all the rules of said Department. All certifications shall be in force for one (1) year from date of issuance unless revoked as authorized by the Oklahoma Adult Companion Home Certification Act, and shall be reissued annually on application. A provisional certification may be in force for not more than one (1) year, unless such emergency exists as, in the discretion of the Department, necessitates an extension thereof.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.5 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Department shall promulgate minimum requirements and desirable standards for homes. These standards shall include requirements for:

1. A constructive program and services to meet the needs of each mentally retarded or developmentally disabled adult;
2. Staff of good moral character and ability;
3. Adequate and safe housing, sanitation, and equipment;
4. Good health care;
5. Good community relationships;
6. Essential records and administrative methods; and
7. Sufficient funds for sound operation.

B. Such rules shall not be made, prescribed, or published until after consultation with the Department of Health and the State Bureau of Investigation or other agency performing the duties of State Fire Marshal.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.6 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department shall have authority at any reasonable time to investigate and examine into the conditions of any home which receives and cares for mentally retarded or developmentally disabled adults. The Department shall have authority at any time to require the home to provide information pertaining to mentally retarded or developmentally disabled adults in its care. The Department of Health may visit any home at the request of the Department to advise on matters affecting the health of mentally retarded or developmentally disabled adults and to inspect the sanitation of the buildings used for their care. The State Bureau of Investigation, or other agency performing the duties of State Fire Marshal, may

visit any home at the request of the Department to advise on matters affecting the safety of mentally retarded or developmentally disabled adults and to inspect the condition of the buildings for their care. Information obtained by the Department from any home regarding mentally retarded or developmentally disabled adults shall be deemed confidential and privileged communications and shall be properly safeguarded and shall not be accessible to anyone except as herein provided unless upon order of a court of competent jurisdiction.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.7 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department may revoke any certificate issued pursuant to the provisions of the Oklahoma Adult Companion Home Certification Act if the home has violated any provision of the Oklahoma Adult Companion Home Certification Act or the rules of said Department. No certification shall be revoked or renewal refused unless the holder of such certification shall have been given at least thirty (30) days' notice in writing of the grounds of such proposed revocation or refusal. If such revocation or refusal is protested within thirty (30) days of receipt of said notice by writing addressed to the Commission, the Commission, or its authorized agency, shall conduct a hearing at which an opportunity is given to the owner or operator of such home to present testimony and confront witnesses. Notice of such hearing shall be given to said owner or operator of such home by personal service or by delivery to the proper address by registered mail, at least two (2) weeks prior to the date thereof. If notice of the proposed revocation or refusal is not so protested, the certification may thereupon be revoked or renewal thereof refused.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.8 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Any certificate holder aggrieved by the decision of the Department pursuant to the provisions of the Oklahoma Adult Companion Home Certification Act, within ten (10) days after the revocation or refusal to issue or renew the certification, may take an appeal de novo to the district court of the county in which the home is maintained and operated by filing with the clerk of the court a verified petition. Notice of such appeal shall be served on the Director of the Department within five (5) days of the date of its filing.

B. The Department, within ten (10) days of the service of such notice, shall file with the clerk of said court a transcript of the proceedings had before it. The district court shall thereupon be vested with jurisdiction to hear and determine the questions of law and fact involved, as in an appeal de novo. If the Department prevails, the judgment of the district court shall be that the decision of the Department be affirmed. If the owner or operator of a home prevails, the judgment of the court shall be that the revocation be set aside or the certification issued or renewed, as the case may be. Pending the hearing of the appeal, the action of the Department revoking or refusing renewal of the certification or the granting thereof shall be stayed.

C. Any person or owner or operator of a home may be enjoined from maintaining and operating such home for violations of any provisions of the Oklahoma Adult Companion Home Certification Act by suit brought in the name of the state by the Attorney General of Oklahoma or by a district attorney.

D. Any person or agent, representative, or officer of any home who violates any of the provisions of the Oklahoma Adult Companion Home Certification Act, upon conviction, shall be deemed guilty of a

misdemeanor. Whenever any agent, representative, or officer of any home is convicted under authority of the Oklahoma Adult Companion Home Certification Act, such conviction shall be sufficient ground for the revocation of the certificate to operate a home.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-818.2, is amended to read as follows:

Section 1-818.2 As used in the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act:

1. "Abuse" means any intentional abuse, neglect, and exploitation, as those terms are defined by the Protective Services for the Elderly and for Incapacitated Persons Act, and any sexual assault inflicted on a resident of a group home;

2. "Access" means the right of a person to enter a group home to communicate privately and without unreasonable restriction;

3. "Administrator" means the person designated by the owner who has authority and responsibility for the programs and operation of a group home for developmentally disabled and physically handicapped adults;

4. "Advisory Board" means the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Advisory Board established by Section 1-818.4 of this title;

5. "Board" means the State Board of Health;

6. "Commissioner" means the State Commissioner of Health;

7. "Department" means the State Department of Health;

8. "Developmental disability" means a severely chronic disability of a person which:

- a. is attributable to a physical or mental impairment or a combination of physical and mental impairments, ~~and,~~
- b. is manifested before the person attains the age of twenty-two (22), ~~and,~~
- c. is likely to continue indefinitely, ~~and,~~

- d. results in substantial functional limitations in three or more of the following areas of major life activity:
- (1) self-care,
  - (2) receptive and expressive language,
  - (3) learning,
  - (4) mobility,
  - (5) self-direction,
  - (6) capacity for independent living,
  - (7) economic self-sufficiency~~7~~, and
- e. reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong or of extended duration and are individually planned and coordinated;

9. "Group home for developmentally disabled and physically handicapped adults" means any establishment or institution other than a hotel, motel, fraternity or sorority house, or college or university dormitory for not more than twelve (12) residents eighteen (18) years of age or older who are developmentally disabled or physically handicapped and which offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to increased independence of the residents and supportive assistance to any of its residents requiring supportive assistance. Said residents shall not require intermediate care facility services;

10. "Habilitation" means procedures and interventions designed to assist a developmentally disabled individual achieve greater physical, mental and social development by enhancing the well-being of the person and teaching skills which increase the possibility that a resident of a group home will make progressively independent and responsible decisions about social behavior, quality of life, job satisfaction and personal relationships;



11. "Home" and "group home" means a group home for developmentally disabled and physically handicapped adults;

12. "Adult companion home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three (3) or fewer mentally retarded or developmentally disabled adults;

13. "Licensee" means a person, corporation, partnership, or association who is the owner of a home which is licensed pursuant to the provisions of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act;

~~13.~~ 14. "Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury to a resident;

~~14.~~ 15. "House manager" means the person who is not the administrator but who manages the group home;

~~15.~~ 16. "Owner" means a person, corporation, partnership, association, or other entity which owns a home or leases a home. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the home;

~~16.~~ 17. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs, or general supervision of the physical and mental well-being of a person, who is currently unable to maintain a private, independent residence, or who has limited abilities in the managing of his person, whether or not a guardian has been appointed for such person;

~~17.~~ 18. "Physically handicapped" means a condition which causes the restricted use of his or her extremities by an individual or affects other bodily functions of an individual and which require the specialized training, habilitation or rehabilitation services provided by a group home;

~~18.~~ 19. "Program certification" means certification by the Department that a group home meets and is in compliance with the rules and regulations adopted by the Board as standards for the training, habilitation or rehabilitation of residents of a group home;

~~19.~~ 20. "Resident" means a person residing in a group home for developmentally disabled or physically handicapped persons due to a developmental disability or physical handicap;

~~20.~~ 21. "Representative of a resident" means a court-appointed guardian or conservator, or if there is no court-appointed guardian or conservator, an adult designated in writing by the resident to be his or her representative;

~~21.~~ 22. "Sexual assault" means rape, incest, lewd and indecent acts or proposals, as defined by law, by a person responsible for the resident's welfare and includes the allowing, permitting, or encouraging a resident to engage in prostitution or the lewd, obscene, or pornographic photographing, filming or depiction of a resident;

~~22.~~ 23. "Supervision" means the provision of on-site staffing in the group home or on the premises of the group home when residents are present who require on-site staffing, as determined by an assessment by a qualified professional;

~~23.~~ 24. "Supportive assistance" means the service rendered to any person which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to training, supervision, assistance in housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person; and

~~24.~~ 25. "Transfer" means a change in location of living arrangements of a resident from one group home to another group home.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-820, is amended to read as follows:

Section 1-820. As used in the Residential Care Act:

1. "Abuse" means intentional physical or mental injury or sexual assault inflicted on a resident of a home by any person;

2. "Access" means the right of a person to enter a home to communicate privately and without unreasonable restriction;

3. "Administrator" means the person who is in charge of a home and who devotes at least one-third (1/3) of his full working time to on-the-job supervision of such home;

4. "Adult companion home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three (3) or fewer mentally retarded or developmentally disabled adults;

5. "Advisory Board" means the Long-Term Care Facility Advisory Board;

~~5.~~ 6. "Board" means the State Board of Health;

~~6.~~ 7. "Commissioner" means the State Commissioner of Health;

~~7.~~ 8. "Department" means the State Department of Health;

~~8.~~ 9. "Habilitation" means procedures and interventions designed to assist a mentally ill, drug-dependent or alcohol-dependent person eighteen (18) years of age or older to achieve greater physical, mental and social development by enhancing the well-being of the person and teaching skills which increase the possibility that the resident will make progressively independent and responsible decisions about social behavior, quality of life, job satisfaction and personal relationships;

~~9.~~ 10. "Home" means a residential care home;

~~10.~~ 11. "Residential care home" means:

- a. any establishment or institution other than an adult companion home, a hotel, motel, fraternity or sorority house, or college or university dormitory which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any resident requiring supportive assistance who are not related to the owner or administrator of the home by blood or marriage. Said residents shall be ambulatory and essentially capable of managing their own affairs, but do not routinely require skilled nursing care or intermediate care,
- b. a residential care home may consist of a series of units or buildings which are not connected or part of the same structure if:
  - (1) such buildings or units are owned by the same owner or operator,
  - (2) all residents of the units or buildings are fully capable of ambulation to and from the buildings or units,
  - (3) the location and construction of the buildings or units ensure the health, safety, and protection from fire hazards and other hazards and provide for the convenience and accessibility of the residents to each residential building or unit,
  - (4) any out-of-doors premise or thoroughfare is adequately maintained to ensure the health and safety of the residents,
  - (5) the buildings or units are within one hundred seventy-five (175) feet of the building housing the main kitchen and dining room. The units or

buildings must be located in the most convenient and accessible location for residents, and

- c. residential care home shall not mean a hotel, motel, fraternity or sorority house, or college or university dormitory providing such facility operates in a manner customary to its description and does not house three or more persons who require supportive assistance from said facility in order to meet an adequate level of daily living.

The Board shall develop minimum standards for such residential homes pursuant to Section 1-836 of this title;

~~11.~~ 12. "Licensee" means a person, corporation, partnership, or association who is the owner of a home which is licensed pursuant to the provisions of the Residential Care Act;

~~12.~~ 13. "Maintenance" means meals, shelter, and laundry services;

~~13.~~ 14. "Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury to a resident;

~~14.~~ 15. "Operator" means the person who is not the administrator but who manages the home;

~~15.~~ 16. "Owner" means a person, corporation, partnership, association, or other entity which owns a home or leases a home. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the home;

~~16.~~ 17. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, or who is incapable of managing his person, whether or not a guardian has been appointed for such person;

~~17.~~ 18. "Resident" means a person residing in a home due to illness, physical or mental infirmity, or advanced age;

~~18.~~ 19. "Representative of a resident" means a court-appointed guardian, or if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident. An owner, agent, or employee of a home shall not be a representative of a resident unless such person is appointed by the court;

~~19.~~ 20. "Supportive assistance" means the service rendered to any person which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. The term "supportive assistance" shall not be interpreted or applied so as to prohibit the participation of residents in housekeeping or meal preparation tasks as a part of the written treatment plan for the training, habilitation or rehabilitation of the resident prepared with the participation of the resident, the mental health or drug or alcohol services case-manager assigned to the resident and the administrator of the facility or his designee. Supportive assistance shall not include medical service; and

~~20.~~ 21. "Transfer" means a change in location of living arrangements of a resident from one home to another home.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-1902, is amended to read as follows:

Section 1-1902. As used in the Nursing Home Care Act:

1. "Abuse" means any intentional physical or mental injury or sexual assault inflicted on a resident of a facility by any person;

2. "Access" means the right of a person to enter a facility to communicate privately and without unreasonable restriction when

invited to do so by a resident. The state or local "ombudsman", as that term is defined by the Special Unit on Aging of the Department of Human Services pursuant to the Older Americans' Act, as amended, and a case manager employed by the Department of Mental Health and Substance Abuse Services or one of its contract agencies shall have right of access to enter a facility, communicate privately and without unreasonable restriction with any resident who consents to the communication, to seek consent to communicate privately and without restriction with any resident and to observe all areas of the facility that directly pertain to the patient care of the resident without infringing upon the privacy of the other residents without first obtaining their consent;

3. "Administrator" means the person licensed by the State of Oklahoma who is in charge of a facility and who devotes at least one-third (1/3) of his full working time to on-the-job supervision of such facility, provided that this requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or less beds (ICF-MR/16), provided said ICF-MR/16 facility or facilities are physically located on one campus owned and operated by an organization or institution that has a qualified administrator and each ICF-MR/16 facility shall be supervised by a qualified mental retardation professional;

4. "Advisory Board" means the Long-Term Care Advisory Board;

5. "Board" means State Board of Health;

6. "Commissioner" means Commissioner of Health;

7. "Department" means the State Department of Health;

8. "Facility" means a nursing facility and a specialized home.

The term shall not include a residential care home or an adult companion home;

9. "Nursing facility" means a home, an establishment or an institution a distinct part thereof which is primarily engaged in providing:

- a. skilled nursing care and related services for residents who require medical or nursing care,
- b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or
- c. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services beyond the level of care provided by a residential care home which can be made available to them only through a nursing facility;

10. "Specialized facility" means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for mentally retarded or developmentally disabled persons;

11. "Residential care home" means any home, establishment, or institution licensed pursuant to the provisions of the Residential Care Act other than a hotel, motel, fraternity or sorority house, or college or university dormitory which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any resident requiring supportive assistance. Said residents shall be ambulatory and essentially capable of managing their own affairs, but do not routinely require nursing care; provided, residential care home shall not mean a hotel, motel, fraternity or sorority house, or college or university dormitory providing such facility operates in a manner customary to its description and does not house three or more persons who require supportive assistance from said facility in order to meet an adequate level of daily living;

12. "Licensee" means the person, a corporation, partnership, or association who is the owner of the facility which is licensed by



the Department pursuant to the provisions of the Nursing Home Care Act;

13. "Maintenance" means meals, shelter, and laundry services;

14. "Neglect" means a failure to provide adequate medical or personal care or maintenance, which results in physical or mental injury to a resident;

15. "Owner" means a person, corporation, partnership, association, or other entity which owns a facility or leases a facility. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the facility;

16. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, or who is incapable of managing his person, whether or not a guardian has been appointed for such person;

17. "Resident" means a person residing in a facility due to illness, physical or mental infirmity, or advanced age;

18. "Representative of a resident" means a court-appointed guardian, or if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident. Provided that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act, Section 1-1902 et seq. of this title, the Residential Home Care Act, Section 1-819 et seq. of this title, or the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act, Section 1-818.1 et seq. of this title, shall not be appointed guardian or limited guardian of a resident of such facility unless said owner, operator, administrator or employee is the spouse of said resident, or a relative of said resident within the second

degree of consanguinity and is otherwise eligible for appointment;  
and

19. "Supportive assistance" means the service rendered to any person which is less than the service provided by a nursing facility but which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution, and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. Supportive assistance shall not include medical service; and

20. "Adult companion home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three (3) or fewer mentally retarded or developmentally disabled adults.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-1903, is amended to read as follows:

Section 1-1903. A. No person shall establish, operate, or maintain in this state any facility without first obtaining a license as required by the Nursing Home Care Act.

B. The Nursing Home Care Act shall not apply to adult companion homes, residential care homes ~~or to~~, hotels, motels, boarding houses or rooming houses, or other places that furnish board or room to their residents. The Nursing Home Care Act shall not apply to Oklahoma State Veterans Centers and such other facilities which are under control of the Oklahoma War Veterans Commission.

C. The Nursing Home Care Act shall not authorize any person to engage in any manner in the practice of the healing arts or the practice of medicine, as defined by law.

D. The Nursing Home Care Act shall not apply to a facility which is not charging or receiving periodic compensation for

services rendered, and not receiving any county, state, or federal assistance.

SECTION 13. AMENDATORY 43A O.S. 1991, Section 10-104, is amended to read as follows:

Section 10-104. A. Any person having reasonable cause to believe that an elderly person or incapacitated adult is suffering from abuse, neglect, or financial exploitation shall make a report to either the Department of Human Services or the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred. If a report is made to the Department of Human Services, the county office after investigating the report shall forward its findings to the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred. Persons required to make reports pursuant to this section shall include but not be limited to: physicians, operators of emergency response vehicles and other medical professionals, social workers and other mental health professionals, law enforcement officials, staff of domestic violence programs, nursing home personnel, clergy and representatives of financial institutions and others whose professions or occupations bring them in regular contact with elderly persons or incapacitated adults.

B. The report shall contain the name and address of the elderly person or incapacitated adult, the name and address of the caretaker, if any, and a description of the situation of the elderly person or incapacitated adult.

C. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

D. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have immunity from any civil or criminal liability

that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

E. Any person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons being reported and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury.

F. Any state or county medical examiner or physician who has reasonable cause to suspect that the death of any elderly or incapacitated adult may be the result of abuse or neglect as defined by Section 10-103 of this title shall make a report to the district attorney of the county in which the death occurred. The report shall include the name of the person making the report, the name of the deceased person, the facts or other evidence supporting said suspicion, and any other information that may be of assistance to the district attorney in conducting an investigation into the matter.

SECTION 14. AMENDATORY 43A O.S. 1991, 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, the Department of Human Services shall make a prompt and thorough investigation.

B. The investigation by the Department shall include:

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

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

~~3.~~ 3. What least restrictive services are needed; and

~~3-4.~~ 4. Whether services are available from the Department or in the community and how the services can be provided; and

~~4-5.~~ 5. 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; and

~~5-6.~~ 6. Whether a caretaker would be willing to provide services or would agree to their provision; and

~~6-7.~~ 7. Whether the person desires the services; and

~~7-8.~~ 8. What ~~followup~~ follow-up investigation and monitoring of the services will be needed; and

~~8-9.~~ 9. Other relevant data. "Other relevant data" includes but is not limited to records of financial institutions, medical records, guardianship proceedings, or other documentation to assist the Department in reaching a determination as to whether abuse, neglect or exploitation exists. Officers of financial institutions, medical professionals and court clerks shall cooperate with the Department's investigation by providing relevant records as requested by the Department.

C. The Department's investigation shall include a visit to the home or other place of residence of 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 documentation, or access to records, or other information relating to said person as provided by paragraph 9 of subsection B of this section, the Department may petition the court for an order allowing entry. 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 1-1902 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 15. AMENDATORY 43A O.S. Supp. 1991, Section 10-106, is amended to read as follows:

Section 10-106. A. If the Department determines, as a result of its investigation, that an elderly person or incapacitated adult needs protective services, the Department shall immediately provide or arrange for the provision of protective services in the least restrictive manner, provided the person affirmatively consents to receive these services.

B. When a caretaker of an elderly person or incapacitated adult who consents to the receipt of protective services refuses to allow the provision of such services to the person, the Department may petition to the court for a decree enjoining the caretaker from interfering with the provision of protective services to the person. The complaint must allege specific facts sufficient to show that said person is in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the provision of such services. If the court finds that the person is in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the

provision of such services, the court may enter a decree enjoining the caretaker from interfering with the provision of protective services to the person.

C. If an elderly person or incapacitated adult does not consent to the receipt of protective services, or if said person withdraws his consent, the services shall be terminated, unless the Department determines that the person lacks capacity to consent, in which case the Department may seek court authorization to provide services pursuant to Section 10-108 of this title.

D. ~~The costs of providing protective services shall be borne by the Department unless the person agrees to pay for them or a court authorizes the Department to receive reasonable reimbursement from the assets of said person after a finding that the person is financially able to make such payment:~~

1. By the assets of the person consenting to the receipt of voluntary protective services; or

2. From any private assistance programs for which the person is eligible; or

3. If no assets or other public or private funds are available to the person, then the Department may make payment from a fund established by the Department for the purpose of providing emergency adult protective services.

SECTION 16. AMENDATORY 43A O.S. Supp. 1991, 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. 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.

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. ~~An~~ Payment for services provided to an elderly person or incapacitated adult determined by the court to be in need of involuntary protective services shall ~~not be required to pay for involuntary protective services~~ be made as provided by subsection D of Section 10-106 of this title.

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 17. AMENDATORY 43A O.S. Supp. 1991, 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 ~~emergency~~ 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 ~~emergency~~ 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 ~~emergency~~ 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. ~~Emergency~~ 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 ~~emergency~~ 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 ~~emergency~~ 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 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 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 18. This act shall become effective July 1, 1993.

SECTION 19. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-5448

KSM