

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2312

By: Kirby

AS INTRODUCED

An Act relating to public and mental health; creating the Oklahoma Nursing Aides Training and Certification Act; providing for later enacted statutes; providing for construction of act; providing for promulgation of rules by Oklahoma State Board of Health; amending 43 O.S. 1991, Sections 10-101, 10-102 and 10-103, as amended by Section 1, Chapter 244, O.S.L. 1994 (43A O.S. Supp 1995, Section 10-103), which relate to Protective Services for the Elderly and for Incapacitated Adults Act; changing short title to Protective Services for Vulnerable Adults Act; modifying and clarifying purpose; modifying and adding to definitions; providing for codification; 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 1-1950.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 and 2 of this act shall be known and may be cited as the "Oklahoma Nursing Aides Training and Certification Act".

B. All statutes hereinafter enacted and codified within the Oklahoma Nursing Aides Training and Certification Act shall be considered and deemed part of the Oklahoma Nursing Aides Training and Certification Act.

C. The provisions of the Oklahoma Nursing Aides Training and Certification Act shall not require any health professional licensed pursuant to the laws of this state when practicing or performing nursing aide services to obtain any certification or registration required by the Oklahoma Nursing Aides Training and Certification Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Board of Health in pursuance of its general power of supervision over the health, safety and welfare of the citizens of this state is hereby authorized and directed, through the Commissioner of Health, to promulgate and enforce rules pursuant to the provisions of the Oklahoma Nursing Aides Training and Certification Act governing persons practicing or desiring to practice as a certified nursing aide or as a registered nursing aide trainee in long-term care facilities, residential care facilities, adult daycare centers, adult companion homes, group homes for the developmentally disabled or physically handicapped or in any health care institutions operated by the Department of Human Services as contractors with providers within the nontechnical medical care program or as contractors with or as employees of home care agencies.

SECTION 3. AMENDATORY 43A O.S. 1991, Section 10-101, is amended to read as follows:

Section 10-101. Sections 10-101 through 10-110 of ~~the Mental Health Law~~ this title shall be known and may be cited as the

"Protective Services for ~~the Elderly and for Incapacitated~~  
Vulnerable Adults Act".

SECTION 4. AMENDATORY 43A O.S. 1991, Section 10-102, is amended to read as follows:

Section 10-102. A. The Legislature recognizes that many ~~citizens~~ elderly persons and incapacitated and partially incapacitated adults of this state, ~~because of the infirmities of aging, incapacity, or other disability~~ are unable to manage their ~~own affairs or~~ to protect themselves from abuse, exploitation, ~~abuse,~~ or neglect and are therefore in need of protective services.  
~~Said~~

B. Protective services provided pursuant to the provisions of the Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act shall guarantee, to the maximum degree of feasibility, ~~the individual~~ such vulnerable adults the same rights as are guaranteed to other citizens, and at the same time protect ~~the individual~~ such vulnerable adult from abuse, exploitation, ~~abuse,~~ or neglect.

C. The Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act is designed to establish protective:

1. Protective services and to assure availability of ~~said~~ the services to ~~persons~~ vulnerable adults in need of those services;

2. Reporting and notification requirements for alleged abuse, exploitation and neglect of a vulnerable adult;

3. Preventive abuse, exploitation and neglect standard requirements; and

4. Penalties for abuse, exploitation and neglect of vulnerable adults.

SECTION 5. AMENDATORY 43A O.S. 1991, Section 10-103, as amended by Section 1, Chapter 244, O.S.L. 1994 (43A O.S. Supp. 1995, Section 10-103), is amended to read as follows:

Section 10-103. When used in the Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable 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 or neglect of such person a vulnerable adult and includes but is not limited to:

- a. conducting investigations and assessments of complaints of alleged abuse, exploitation or neglect to determine if the situation and condition of the vulnerable adult warrant further action,
- b. a program of identifiable and specialized social services that offers services appropriate to resolving problems of abuse, exploitation or neglect of a vulnerable adult,
- c. case management to assure stabilization of the situation, and
- d. referral for legal assistance to initiate any necessary judicial remedial action;

2. "Services which are necessary to aid ~~an individual a~~ vulnerable adult to meet essential requirements for mental or physical health and ~~safety~~ welfare" includes but shall not be limited to the identification of ~~adults~~ a vulnerable adult 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 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 any other care without which physical injury or illness is likely to occur;~~

~~4. 3. "Elderly person" means any person aged sixty-five (65) or over residing in this state;~~

~~5. 4. "Incapacitated ~~person~~ adult" means ~~any~~ a person eighteen (18) years of age or older:~~

~~a. who is impaired by reason of:~~

- ~~(1) 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 as defined by Section 1-103 of Title 43A of the Oklahoma Statutes,~~
- ~~(2) mental retardation or developmental disability as defined by Section 1-818.2 of Title 63 of the Oklahoma Statutes,~~
- ~~(3) physical illness or disability,~~
- ~~(4) drug or alcohol dependency as defined by Section 3-403 of Title 43A of the Oklahoma Statutes, or~~
- ~~(5) such other similar cause, and~~

b. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:

(1) lacks the capacity to meet essential requirements for such person's mental or physical health, welfare or safety, or

(2) is unable to manage his financial resources;

~~6. "Adult~~ 5. "Partially incapacitated adult" means a person eighteen (18) years of age or older whose impairment is only to the extent that, without the assistance of another, said person is unable to:

a. meet the essential requirements for such mental or physical health, welfare and safety, or

b. manage all of his financial resources or to engage in all of the activities necessary for the effective management of his financial resources;

6. "Vulnerable adult" means an elderly person or an incapacitated or partially incapacitated person who may be unable to protect himself from abuse, exploitation and neglect;

~~7. "Vulnerable 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~~ an elderly person or incapacitated or partially incapacitated person who cannot adequately protect himself from abuse, exploitation or neglect without assistance from others;

~~7. 8. "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~~ person who is, either temporarily or permanently, responsible for the care of a vulnerable adult. The term "caretaker" includes but is not limited to adult children, parents, relatives, neighbors, adult daycare administration and personnel of public and private agencies, institutions and facilities, adult congregate living facilities, subdivisions of this state or state agencies and:

- a. nursing facilities licensed by the Nursing Home Care Act,
- b. homes licensed by the Residential Care Act, group homes licensed by the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act, adult companion homes certified by the Oklahoma Adult Companion Home Certification Act,
- c. home care agencies licensed by the Home Care Act,
- d. adult daycare centers licensed by the Adult Day Care Act, and
- e. the officers and employees of such facilities, homes, agencies and centers;

~~8.~~ 9. "Department" means the Department of Human Services;

~~9.~~ 9. ~~"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;~~

~~10.~~ 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~~

~~11.~~ 10. "Abuse" means and includes but is not limited to:

- a. intentional infliction of physical harm,
- b. injury caused by criminally negligent acts or omissions,

- c. unreasonable confinement,
- d. unlawful imprisonment,
- e. sexual abuse or sexual assault, or
- f. threatened harm to the health, welfare and safety of a vulnerable adult;

11. "Threatened harm to the health, welfare or safety of a vulnerable adult" includes but is not limited to threats by words or actions or otherwise of physical injury, sexual abuse, negligent treatment or maltreatment, including but not limited to the failure or omission to provide adequate food, clothing, shelter or medical care so as to cause or produce a demonstrated mental illness or duress in the vulnerable adult;

12. "Physical injury" means the impairment of a physical condition and includes but shall not be limited to any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling or injury to any internal organ;

13. "Serious physical injury" means physical injury which creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb;

14. "Capacity to consent" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including but not limited to the ability of a person to provide for his own health or mental health care, food, shelter, clothing, safety or financial affairs. This determination may be based on assessment or investigative findings, observation, or medical or mental health evaluation;

15. "Adult protective services worker" means a person who has been selected by and trained under the requirements prescribed by the Department to provide adult protective services;

16. "Ruled out" means a report which is determined by an adult protective services worker:

- a. to be false,
- b. to be unfounded,
- c. to be inherently improbable,
- d. to involve an accidental injury where neglect was not a factor, or
- e. as not constituting abuse, exploitation or neglect;

17. "Confirmed report" means a report which is determined by an adult protective services worker, based upon some credible evidence, to constitute abuse, exploitation or neglect;

18. "Uncertain report" means a report which is not ruled out by an adult protective services worker, but which has inconclusive findings and for which there is insufficient evidence to determine whether abuse, exploitation or neglect has occurred;

19. "Sexual abuse of a vulnerable adult" means rape, lewd or indecent acts or proposals as defined by law and the engaging in any sexual act with a vulnerable adult, by a person who is not the spouse of such vulnerable adult, if:

- a. such person compels the vulnerable adult, who is physically incapable of preventing the act because of advanced age or physical or mental incapacity, to submit by placing the vulnerable adult in fear of receiving physical injury or serious physical injury, or
- b. the vulnerable adult does not have the capacity to consent by reason of:
  - (1) an intoxicating, narcotic or anesthetic agent administered to the vulnerable adult by or with the privity of the person, or
  - (2) any other cause, whether temporary or permanent, and the person knew or should have known of the

vulnerable adult's incapacity to consent or understand the nature of the act;

20. "Sexual acts" means:

- a. the touching of the anus or genitals of the vulnerable adult by a person using any instrumentality or any part of the body of the person, or
- b. the touching of the anus or genitals of a person by the vulnerable adult using any instrumentality or any part of the body of the vulnerable adult.

The term "sexual acts" shall not include normal medical treatment and normal sanitary care;

21. "Exploitation of a vulnerable person" means:

- a. the intentional expenditure, diminution or use by any person, including but not limited to a caretaker, of the property or assets of a vulnerable adult without the express voluntary consent of the vulnerable adult who has the capacity to consent or the consent of a legally authorized representative of a vulnerable adult, or by means of fraudulent conduct, practices or representations, or
- b. the use of a vulnerable adult's power of attorney or guardianship for one's own profit or advantage by means of fraudulent conduct, practices or representations;

22. "Cruelty to a vulnerable adult" means the intentional or criminally negligent mistreatment or neglect by any person, including a caretaker, whereby unjustifiable pain, malnourishment or suffering is caused to the vulnerable adult including but not limited to a person who is a resident of a facility, home or a client of an agency or center, and any mental health facility, hospital or other facility having the custody of the vulnerable

adult or is providing health or mental services to the vulnerable adult;

23. "Extortion of a vulnerable adult" means the acquisition of a thing of value from a vulnerable adult by physical force, intimidation, trickery or abuse of legal or official authority;

24. "Neglect" means the failure of a caretaker of a vulnerable adult to provide reasonable 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 to the vulnerable adult or to provide the essential requirements for the mental or physical health and welfare of a vulnerable adult; and

25. "Self-neglect by a vulnerable adult" means a vulnerable adult who is unable to meet the essential requirements for mental or physical health and welfare through the vulnerable adult's own actions.

SECTION 6. 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.

45-2-8960

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