

ENGROSSED HOUSE
BILL NO. 2472

By: Seikel of the House
and
Cain of the Senate

An Act relating to mental health; amending 43A O.S. 1991, Section 10-108, as last amended by Section 11, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-108), which relates to vulnerable adults; modifying certain time periods relating to emergency protective services; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 10-108, as last amended by Section 11, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-108), is amended to read as follows:

Section 10-108. A. If the Department of Human Services determines that a vulnerable adult is suffering from abuse, neglect, or exploitation presenting a substantial risk of death, or immediate and serious physical harm to the person or the estate of the person to the extent that an emergency exists, and the person 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 such person resides, or in the district court in the county where any of the protective services are to be provided, for an order:

1. Authorizing involuntary protective services and appointing a temporary guardian;

2. Freezing the assets of the vulnerable adult and directing a full accounting and investigation of the person alleged to be improperly managing the estate of the vulnerable adult; or

3. Revoking the powers of an attorney-in-fact.

B. The petition shall be sworn to and include the name, age, and address of the vulnerable adult who the Department has determined 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 and the name of the person or organization proposed to be appointed as temporary guardian.

C. The vulnerable 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 the person 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. 1. After a hearing on the petition, the court may:

a. issue an order for involuntary protective services and appoint a temporary guardian,

b. issue an order freezing all assets of the vulnerable adult and order a full accounting and investigation of the person alleged to be improperly managing the vulnerable adult's estate, or

- c. revoke powers of attorney upon a finding that the attorney-in-fact failed to act appropriately on behalf of the vulnerable adult.

2. Whenever the court issues an order for involuntary protective services, the court shall adhere to the following limitations:

- a. 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,
- b. 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; provided, however, emergency placement shall not be made to facilities for the acutely mentally ill,
- c. involuntary protective services may be provided for a period not to exceed ~~ten (10)~~ thirty (30) 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, and~~
- d. 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 such person and authority to give consent on behalf of the person for the approved protective services until the expiration of the order for involuntary protective services.

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

4. To implement an order for involuntary protective services, the court may authorize forcible entry of the premises of the vulnerable 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 vulnerable 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 vulnerable adult continues to need protective services after the renewal order provided in paragraph 2 of 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 as provided by Title 30 of the Oklahoma Statutes, or
- b. application for commitment of the vulnerable adult to a nursing home, personal medical institution, foster care service or other home placement, or to some other appropriate facility other than a facility for the acutely mentally ill, for a period not to exceed six (6) months.

2. Prior to a hearing on a petition for continued involuntary protective services for up to six (6) months, the court shall direct that a comprehensive physical, mental and social evaluation of the vulnerable adult alleged to be in need of continued services be conducted. 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 summary 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 and social evaluation, 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. After a hearing, the court may authorize continued protective services on an involuntary basis for a vulnerable 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 a vulnerable 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 2. This act shall become effective November 1, 1998.

Passed the House of Representatives the 25th day of February, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate