

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1589

By: Sellers and Collins

COMMITTEE SUBSTITUTE

An Act relating to persons with developmental disabilities; setting out legislative findings; amending 10 O.S. 1991, Sections 1408 and 1414, as amended by Section 2, Chapter 407, O.S.L. 1997 (10 O.S. Supp. 1998, Section 1414), which relate to facilities for the mentally retarded and persons with developmental disabilities; modifying and adding to definitions; updating language; amending Section 1, Chapter 136, O.S.L. 1998 (56 O.S. Supp. 1998, Section 3050), which relates to state administrative resource centers; requiring development of system of delivery of services to certain community clients placed at the resource centers; specifying contents of system; requiring distribution of certain information relating to contracts and invitation to bid; creating Office of Public Guardian with Office of the Attorney General; providing for responsibility; requiring plan; providing for contents of plan; amending 43A O.S. 1991, Section 10-108, as last amended by Section 5, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 1998, Section 10-108), which relates to the Protective Services for Vulnerable Adults Act; modifying basis for recommendations, review and evaluation; 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 1405.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

The Legislature makes the following findings with regard to the rights of persons with developmental disabilities:

1. Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation within budgetary constraints of the state;

2. In determining appropriate treatment, services and habilitation, persons with developmental disabilities should be treated with dignity, respect and consideration as productive members of our society;

3. The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and the decisions regarding treatment, services and habilitation made by persons with developmental disabilities and by their parents and guardians should be controlling.

4. a. The best interests of persons with developmental disabilities shall be the paramount consideration in all matters concerning the treatment, services and habilitation of such person.

b. In determining the best interests of the person with developmental disabilities regarding appropriate habilitation, treatment and the delivery of services:

(1) for habilitation purposes, equal consideration shall be given to community and resource center settings, and

(2) for provision of services and treatment for a person with developmental disabilities, equal consideration for providing services and programs shall be given to resource centers and community-based providers; and

5. All programs for persons with developmental disabilities should meet standards which are designed to ensure:

a. the most favorable possible outcome for those served,

b. in the case of resource center or community programs for persons with developmental disabilities, that care is appropriate to the needs of the persons being served by such programs,

- c. that the persons admitted to or served by resource centers or served by community providers are persons whose needs can be met through services provided by such facilities or such providers, and
- d. that the resource centers and community providers provide for the humane care of persons with developmental disabilities and protect their rights.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1408, is amended to read as follows:

Section 1408. A. ~~"Mentally retarded person" as used in~~ For the purposes of Sections 1406 through 1424 of this title:

1. "Mentally retarded person" means a person afflicted with mental defectiveness from birth or from an early age to such an extent that ~~he~~ the person is incapable of managing himself or herself or his or her affairs, who for ~~his~~ the person's own welfare or the welfare of others or of the community requires supervision, control, or care, and who is not mentally ill or of unsound mind to such an extent as to require ~~his~~ certification to an institution for the mentally ill-;

~~B. 2.~~ 2. "Resident" ~~as used in Sections 1406 through 1424 of this title shall mean~~ means a person admitted to and in residence in any of the institutions named in Section 1406 of this title, or on a vacation or extended vacation status from such institution-;

~~C. 3.~~ 3. "Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Individuals" means the national private nonprofit organization established for the purpose of promoting quality services for mentally retarded persons which is incorporated under that name-;

~~D. 4.~~ 4. "Developmental disability" ~~as used in Sections 1406 through 1424 of this title~~ means a severe, chronic disability of a person which:

- 1. ~~Is~~

a. is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, or autism~~†~~†

~~2. Is~~

b. is manifested before the person attains twenty-two (22) years of age~~†~~†

~~3. Is~~

c. is likely to continue indefinitely~~†~~†

~~4. Results~~

d. results in substantial functional limitations in three or more of the following areas of major life activity:

~~a.~~ (1) self-care,

~~b.~~ (2) receptive and expressive language,

~~c.~~ (3) learning,

~~d.~~ (4) mobility,

~~e.~~ (5) self-direction,

~~f.~~ (6) capacity for independent living, and

~~g.~~ (7) economic self-sufficiency~~†~~† and

~~5. Reflects~~

e. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. The term developmental disability shall not include mentally ill persons, as those persons are defined by Section 1-103 of Title 43A of the Oklahoma Statutes, whose sole disability is mental illness; and

5. "Resource centers" means the Northern Oklahoma Resource Center of Enid and the Southern Oklahoma Resource Center of Pauls Valley.

~~E. B. Nothing in subsection D of this section~~ The term  
"developmental disability" shall not be construed to render persons  
who are receiving services upon ~~the effective date of this act~~  
September 1, 1991, through programs and services for mentally  
retarded persons offered by the Department of Human Services as  
ineligible for such services. The Department of Human Services may  
provide, within the limitations of funds and other resources  
available for such purpose, programs and services for persons with  
developmental disabilities who are not presently served by the  
Department of Human Services.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1414, as  
amended by Section 2, Chapter 407, O.S.L. 1997 (10 O.S. Supp. 1998,  
Section 1414), is amended to read as follows:

Section 1414. A. 1. Mentally retarded persons who are legal  
residents of this state and who have a mental age not above that of  
the average nine-year-old child, as determined by psychological  
examination, may be admitted to an institution or resource center  
named in Section 1406 of this title or provided community services,  
if available, on a voluntary basis only upon written application to  
the Director on forms provided for such purpose. Other mentally  
retarded persons who are residents of this state and who are above  
such mental age may be admitted to an institution or resource center  
named in Section 1406 of this title or provided community services,  
on a voluntary basis only, upon recommendation of the superintendent  
of the institution or resource center and approval of the Director.

2. The application shall be signed by any parent having legal  
custody of such person, a guardian appointed by a court, or other  
legal custodian of such person.

3. The psychological examination provided for in this section  
shall be on forms provided by the Department and must be completed  
before an application can be approved and the applicant admitted to  
the institution.

B. Release of a resident of any of the institutions or resource centers named in Section 1406 of this title shall be subject to such reasonable rules and conditions as may be prescribed by the Commission for Human Services and shall be made only to the parent, guardian appointed by a court, or legal custodian of the resident; provided, however, a resident eighteen (18) years of age or older who has not been found by a court to be incompetent or incapacitated may request and obtain such person's own release.

SECTION 4. AMENDATORY Section 1, Chapter 136, O.S.L. 1998 (56 O.S. Supp. 1998, Section 3050), is amended to read as follows:

Section 3050. A. The Department of Human Services shall not close state-administered resource centers that provide full-time residential care and services to persons with developmental disabilities or prohibit full-time residential care or services at state-administered resource centers until otherwise provided by the Legislature.

B. The Department shall accept clients with developmental disabilities for whom it has been determined that full-time residential care and services are needed at state-administered resource centers.

C. The Developmental Disabilities Services Division of the Department of Human Services shall develop a system at the resource centers to deliver services to clients in community placements or on the Division's waiting list. The services that shall be provided within the system shall include, but not be limited to:

1. Respite care;

2. Daily living support skills and training;

3. Employment services;

4. Professional therapies, including, but not limited to,

physical therapy, occupational and speech therapy, and group therapy;

5. Nursing services;
6. Dental services;
7. Nutritional and dietary counseling;
8. Transportation services;
9. Training of direct care staff for private providers;
10. Family member training and support services; and
11. Pharmaceutical services.

D. If the Department of Human Services elects to contract or to elicit an invitation to bid with a provider for the furnishing of the residential and community services to persons with developmental disabilities specified by this section, the Department shall give, prior to contracting with or during the invitation to bid, an opportunity to the resource centers to contract with or submit a bid to the Department for the furnishing of such services.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-102 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Office of Public Guardian within the Office of the Attorney General. The Office of Public Guardian shall be responsible for:

1. The oversight and monitoring of adult guardianship and conservatorship;
2. Providing for guardians, limited guardians or conservators for adults who require a guardian, limited guardian or conservator and who have a qualified relative or friend to serve in that capacity; and
3. Such other matters related to the guardianship or conservatorship of adults as it deems necessary and appropriate.

B. On or before January 1, 2000, the Attorney General shall submit to the Governor, the Oklahoma State Senate and the Oklahoma House of Representatives a plan for the implementation of the Office of Public Guardian. The plan shall include but not be limited to:

1. The programs and services to be provided by the Office of Public Guardian;

2. The administrative structure and operations of the Office of Public Guardian;

3. The budgetary and personnel requirements of the Office of Public Guardian; and

4. Other matters necessary to carry out the duties and responsibilities of the Office of Public Guardian.

SECTION 6. AMENDATORY 43A O.S. 1991, Section 10-108, as last amended by Section 5, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 1998, 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 vulnerable adult 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. 1. The vulnerable adult shall receive an opportunity for a hearing upon the petition, and shall be personally served with a copy of the petition and a notice scheduling hearing at least forty-eight (48) hours prior to any such hearing.

2. The hearing shall be set by the court on an expedited basis, but no later than five (5) calendar days from the date the notice scheduling hearing is signed by the judge. The vulnerable adult shall have a right to a closed hearing unless such vulnerable adult requests otherwise. Under no circumstances shall the court authorize the Department to consent or deny consent to a Do-Not-Resuscitate order or the withdrawal of hydration or nutrition or other life-sustaining treatment although the court retains jurisdiction to hear such matters under applicable law.

a. Upon sworn testimony of a representative of the Department or law enforcement officer, or statement of a district attorney, that immediate and reasonably foreseeable death or serious physical harm to the vulnerable adult will result, the court may waive prior notice and enter a seventy-two-hour order whether or not during regular courthouse business hours. However, on the date of issuance of the seventy-two-hour order, the vulnerable adult and the attorney of the vulnerable adult, if known, shall be personally served with written notice scheduling a hearing within seventy-two (72) hours.

b. If a hearing on the seventy-two-hour order is declined, or upon conclusion of any such hearing, the court may terminate the temporary guardianship and involuntary services or enter a temporary thirty-day

order as provided for in paragraph 2 of subsection D of this section.

3. a. The vulnerable adult has a right to be present and represented by counsel at the hearing authorized by this subsection. If the vulnerable adult is indigent or, in the determination of the court, lacks capacity to waive the right to counsel, the court shall immediately appoint counsel who shall personally contact the vulnerable adult prior to any hearing.
  - b. If the vulnerable adult is not in attendance, the court shall make a special finding as to why the vulnerable adult is unable to attend, and, upon the request of the vulnerable adult or attorney, may continue the hearing to allow the vulnerable adult to attend.
  - c. (1) If the vulnerable adult is indigent, the cost of representation by counsel shall be borne by court funds.  
(2) If the vulnerable adult is not indigent, the court may order costs of representation paid from the estate in the same manner as currently paid under the Oklahoma Guardianship and Conservatorship Act.
- 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 thirty (30) calendar days, 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 involuntary protective services after the thirty-day order provided in paragraph 2 of subsection D of this section has expired, the temporary guardian shall immediately file a verified motion requesting 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. Service of the verified motion shall be made in conformity with subsection C of this section. Upon filing such motion, the court shall order that a physical, mental, and social evaluation of the vulnerable adult be conducted by the Department and that a

report and plan of care be submitted to the court within thirty (30) days thereafter reflecting the evaluation findings and recommended services. The prior temporary order shall remain in effect pending the scheduling of a review hearing at the end of the thirty-day evaluation period. 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 based on the best interests of the vulnerable adult for placement consistent with the least restrictive environment required:
  - (1) desires of the vulnerable adult,
  - (2) desires of the guardian or caretaker of the vulnerable adult,
  - (3) physical and mental health needs of the vulnerable adult,
  - (4) available programs and services to the vulnerable adult, and
  - (5) health, welfare and well-being of the vulnerable adult and the public.

3. At the conclusion of the hearing, the court shall either terminate the temporary guardianship and all involuntary services or continue the guardianship and specify any necessary services to be provided by the Department for a period not to exceed six (6) months.

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

SECTION 7. It being 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.

47-1-6335            KSM            6/11/15