

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 345

By: Cain of the Senate

and

Lindley of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to mental health and poor persons; amending 43A O.S. 1991, Section 10-103, as last amended by Section 3, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 2000, Section 10-103), which relates to the Protective Services for Vulnerable Adults Act; modifying and expanding definitions; amending Section 13, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 2000, Section 1025.3), which relates to the community services worker registry; expanding registry to include workers found to have committed verbal abuse; allowing judicial review of finding of verbal abuse; amending 63 O.S. 1991, Section 1-1918, as last amended by Section 4, Chapter 231, O.S.L. 1996 (63 O.S. Supp. 2000, Section 1-1918), which relates to rights and responsibilities; modifying statement of rights and responsibilities of nursing facility residents; clarifying language; stating that residents shall be free from neglect; clarifying definition of terms; amending 63 O.S. 1991, Section 1-1940, as last amended by Section 17, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1940), which relates to the Nursing Home Care Act; modifying powers and duties of the Attorney General; prohibiting solicitation or acceptance of anything of value by a caregiver from specified persons; defining term; providing penalty for specified crime; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 10-103, as last amended by Section 3, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 2000, Section 10-103), is amended to read as follows:

Section 10-103. A. When used in the Protective Services for Vulnerable Adults Act:

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

2. "Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" include, but shall not be limited to, the identification of vulnerable adults in need of the services, the provision of medical care for physical and mental health needs, provision of social services assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, guardianship referral, outreach and transportation necessary to secure any of such needs. The term shall not include taking the person into physical custody without the consent of the 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 other care without which physical injury or illness is likely to occur;

4. "Incapacitated person" means:

- a. any person eighteen (18) years of age or older who is impaired by reason of mental or physical illness or disability, dementia or related disease, 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 from others, or

- b. a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act;

5. "Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of self, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect self from abuse, neglect, or exploitation without assistance from others;

6. "Caretaker" means a person who has:

- a. the responsibility for the care of ~~the person~~ a vulnerable adult or the financial management of the resources of ~~the~~ a vulnerable adult as a result of a family relationship,
- b. assumed the responsibility for the care of ~~the~~ a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act;

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

8. "Abuse" means causing or permitting:

- a. the ~~intentional~~ infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or
- b. the deprivation of ~~food~~ nutrition, clothing, shelter, ~~or medical~~ health care, or other care or services

without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person ~~responsible for~~ providing ~~these~~ services to a vulnerable adult;

9. "Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

10. "Neglect" means:

- a. the failure to provide protection for a vulnerable adult who is unable to protect ~~the person's~~ his or her own interest; ~~or,~~
- b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; ~~or~~
- c. ~~the harming or threatening with~~ causing or permitting harm or the risk of harm to a vulnerable adult through the action or, inaction ~~by either another individual or through the person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury,~~ or lack of supervision by a caretaker providing direct services; and

11. "Sexual abuse" means:

- a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of ~~another~~ a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of ~~another~~ by a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object, ~~or,~~

- b. for the purpose of sexual gratification, the touching or, feeling or observation of the body or private parts of another a vulnerable adult by a caretaker or other person providing services to the vulnerable adult, or
- c. indecent exposure by a caretaker or other person providing services to the vulnerable adult;

12. "Indecent exposure" means forcing or requiring a vulnerable adult to:

- a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult, or
- b. touch or feel the body or private parts of another;

13. "Self-neglect" means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

14. "Sexual exploitation" includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by state law; and

15. "Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

B. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of

disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

SECTION 2. AMENDATORY Section 13, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 2000, Section 1025.3), is amended to read as follows:

Section 1025.3 A. ~~Within one hundred eighty (180) days following the effective date of this act, the~~ The Commission for Human Services ~~shall~~ may promulgate rules to establish and maintain a community services worker registry. Such rules ~~will~~ may include, but need not be limited to:

1. A procedure for notation in such registry of a final Department of Human Services investigative finding or a finding by an Administrative Law Judge of abuse, neglect, verbal abuse, or exploitation as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, of an individual by a community services worker;

2. A procedure for notice and due process for a community services worker or applicant before the entering of such person's name in the registry as having a final Department of Human Services investigative finding or Administrative Law Judge finding of abuse, neglect, verbal abuse, or exploitation of an individual;

3. Disclosure requirements for information in the registry; and

4. Procedures for granting a waiver of the provisions of paragraph 1 of subsection F of Section ~~12~~ 1025.2 of this ~~act~~ title by the Director of Human Services.

B. The community services worker registry shall include, but not be limited to, the following information on each community services worker:

1. The individual's full name;
2. Information necessary to identify each individual;
3. The date the individual's name was placed in the registry;

and

4. Information on any final Department of Human Services investigative finding or Administrative Law Judge finding of abuse, ~~exploitation, or neglect,~~ verbal abuse or exploitation as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes concerning the worker.

C. A community services worker or applicant who is adversely affected by an Administrative Law Judge finding of abuse, neglect, verbal abuse or exploitation of an individual may seek judicial review ~~under Section 318 et seq. of Title 75 of the Oklahoma Statutes~~ pursuant to Article II of the Administrative Procedures Act. The finding of the Administrative Law Judge may be appealed to the district court in which the community services worker or applicant resides within thirty (30) days of the date of the decision. A copy of the petition shall be served by mail upon the general counsel of the Department of Human Services.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-1918, as last amended by Section 4, Chapter 231, O.S.L. 1996 (63 O.S. Supp. 2000, Section 1-1918), is amended to read as follows:

Section 1-1918. A. All principles enumerated in this section shall be posted in a conspicuous, easily accessible place in each facility. Each resident and personally appointed representative of the resident, if any, shall be verbally advised and provided a written copy of such principles prior to or upon admission to the facility. The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section. The facility shall make available to each resident, upon reasonable ~~requests~~ request, a current written statement of such rights and responsibilities.

B. A statement of rights and responsibilities shall include, but not be limited to, the following:

1. Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed upon and the facility shall encourage and assist in the exercise of these rights;

2. Every resident shall have the right to have private communications, including telephonic communications and visits and consultations with ~~the~~ a physician, or an attorney, and meetings of family and resident groups or any other person or persons of the resident's choice, and may send and promptly receive, unopened, the resident's personal mail;

3. Every resident shall have the right, without fear of reprisal or discrimination, to present grievances with respect to treatment or care that is or fails to be furnished on behalf of the resident or others to the facility's staff or administrator, to governmental officials, or to any other person, and to organize or to join with other residents or individuals within or outside of the facility to work for improvements in resident care. The family of a resident shall have the right to meet in the facility with other residents' families. Every resident shall have the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

4. Every resident shall have the right to manage such resident's own financial affairs, unless the resident delegates the responsibility, in writing, to the facility. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in the resident's behalf by the facility during any period of time the resident has delegated such responsibilities to the facility;

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized

medical practice standards within the community. Every resident unless adjudged to be mentally incapacitated shall be fully informed by the resident's attending physician of the resident's medical condition and advised in advance of proposed treatment or changes in treatment in terms and language that the resident can understand, unless medically contraindicated, and to participate in the planning of care and treatment or changes in care and treatment. Every resident shall have the right to refuse medication and treatment after being fully informed of and understanding the consequences of such actions unless adjudged to be mentally incapacitated;

6. Every resident shall receive respect and privacy in the medical care program of the resident. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential, and shall include such documentation or information so as to alert a health care provider or an emergency medical care facility of the existence of a directive to physicians or a living will;

7. Every resident shall have the right to reside and to receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered;

8. Every resident shall be informed by the facility, at the time of admission, of the facility's policy regarding the provision of hospice services. The facility's policy shall:

- a. specify whether the facility provides hospice services, either directly or through contractual arrangements with other hospice providers,
- b. specify whether the facility permits hospice services to be provided in the facility by any other hospice services or only by hospice services contracted by the facility,

- c. provide that each resident shall receive a list of hospice services with which the facility contracts, and
- d. provide for complete disclosure to the resident of the facility's relationship with any hospice service that is the result of ownership or an ownership interest of five percent (5%) or more;

9. Every resident shall have the right to receive notice before the room or roommate of the resident in the facility is changed and if the resident has a telephone in his or her room, the resident must be informed of any charges to be incurred when moving;

10. Every resident shall have the right to retain and use personal clothing and possessions, unless medically contraindicated, and shall have the right to security in the storage and use of such clothing and possessions;

11. Every resident shall have the right to receive courteous and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and a statement of related charges, including any costs for services not covered under ~~medicare~~ Medicare or ~~medicaid~~ Medicaid, or not covered by the facility's basic per diem rate;

12. Every resident shall be free from mental and physical abuse and neglect, as such terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, corporal punishment, involuntary seclusion, and from any physical and chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms, except those restraints authorized in writing by a physician for a specified period of time or as are necessitated by an emergency where the restraint may only be applied by a physician, qualified licensed nurse or other personnel under the supervision of the physician who shall set forth in writing the

circumstances requiring the use of restraint. Use of a chemical or physical restraint shall require the consultation of a physician within twenty-four (24) hours of such emergency;

13. Every resident shall receive a statement of the facility's regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents;

14. Every resident shall receive a statement that, should they be adjudicated incompetent and have no ability to be restored to legal capacity, the above rights and responsibilities shall be exercised by a court-appointed representative;

15. No resident shall be required to perform services for a facility;

16. Every resident shall have privacy for spousal visits. Every resident may share a room with the resident's spouse, if the spouse is residing in the same facility;

17. When a physician indicates it is appropriate, a facility shall immediately notify the resident's next of kin, or representative of the resident's death or when the resident's death appears to be imminent;

18. Every resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

19. Every resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the State Department of Health with respect to the facility and any plan of correction in effect with respect to the facility.

C. A facility shall, at the point that a resident requires hospice services, inform the resident or the personally appointed representative of the resident, if any, verbally and in writing of

the resident's right to hospice services pursuant to the facility's policy at the time of the resident's admission.

D. No licensed facility shall deny appropriate care on the basis of the resident's source of payment as defined in the regulations. Appropriate care shall not include duplication of services by a nursing home, hospice, or any combination of care providers.

E. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights as stated in this section.

F. Any person convicted of violating any provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00), nor more than Three Hundred Dollars (\$300.00), or imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

G. In addition to the penalties provided in this section, an action may be brought against an individual by any resident who is injured by any violation of this section, or who shall suffer injury from any person whose threats would cause a violation of this section if carried through, may maintain an action to prevent, restrain or enjoin a violation or threatened violation. If a violation or threatened violation of this section shall be established in any action, the court shall enjoin and restrain or otherwise prohibit the violation or threatened violation and assess in favor of the plaintiff and against the defendant the cost of the suit, and the reasonable attorney fees incurred by the plaintiff. If damages are alleged and proved in the action, the plaintiff shall be entitled to recover from the defendant the actual damages sustained by the plaintiff. If it is proved in an action that the defendant's conduct was willful or in reckless disregard of the rights provided by this section, punitive damages may be assessed.

H. Any employee of a state agency that inspects any nursing facility or special facility shall report any flagrant violations of this act or any other statute to the administrative head of the state agency, who shall immediately take whatever steps are necessary to correct the situation including, when appropriate, reporting the violation to the district attorney of the county in which the violation occurred.

I. Upon the death of a resident who has no sources of payment for funeral services, the facility shall immediately notify appropriate county officials who shall be responsible for funeral and burial procedures of the deceased in the same manner as with any indigent resident of the county.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-1940, as last amended by Section 17, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1940), is amended to read as follows:

Section 1-1940. A. The operation or maintenance of a facility in violation of the Nursing Home Care Act or rules promulgated by the State Board of Health, pursuant thereto, is hereby declared a public nuisance, inimical to the public welfare.

B. The State Commissioner of Health or the Department of Human Services, in the name of the people of the state, through the Attorney General, or the district attorney of the county in which the facility is located, ~~or the Attorney General~~ may, in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such facility.

C. 1. Any person with personal knowledge or substantial specific information who believes that the Nursing Home Care Act, a rule promulgated thereto, or a federal certification rule applying to a facility may have been violated may file a complaint.

2. The complaint may be submitted to the State Department of Health, in writing, by telephone, or personally. An oral complaint shall be reduced to writing by the Department.

3. Any person who willfully or recklessly makes a false complaint or a report without a reasonable basis in fact for such a complaint, under the provisions of the Nursing Home Care Act, shall be liable in a civil suit for any actual damages suffered by a facility for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury when deemed proper by the court or jury.

4. The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint.

5. Upon receipt of a complaint pursuant to this subsection, the Department shall determine whether the Nursing Home Care Act, a rule promulgated pursuant thereto, or a federal certification rule for facilities has been or is being violated and whether the Department has jurisdiction over the complaint area. If the Department does not have jurisdiction over the complaint area, the complaint shall not be investigated by the Department and notice of the decision not to investigate shall be given to the complainant. The complaint shall be immediately referred to the appropriate agency having jurisdiction over the complaint area. A report summarizing the complaint investigation shall be made in writing. The Department shall give priority to investigations of complaints which allege continuing violations or which threaten the health and safety of residents.

6. In all cases, the Department shall inform the complainant of its findings within ten (10) working days of its determination unless otherwise indicated by the complainant. The complainant may direct the Department to send a copy of such findings to one other

person. The notice of such findings shall include a copy of the written determination, the remedial action taken, if any, and the state licensure or federal certification, or both, on which the violation is listed.

D. 1. Upon receipt of a complaint submitted to the State Department of Health by the Department of Human Services or the Attorney General which alleges a violation of the Nursing Home Care Act, any rule promulgated thereto, or federal certification rules, and which also alleges that such violation is a serious threat to the health, safety and welfare of a resident of a nursing facility, the State Department of Health shall take immediate action to remedy the violation based upon the complaint of the Department of Human Services.

2. The Department of Human Services or the Attorney General as applicable shall be deemed a party pursuant to the Administrative Procedures Act for purposes of any complaint made by the Department of Human Services or the Attorney General as applicable to the State Department of Health for violations of the Nursing Home Care Act, rules promulgated thereto or federal certification rules.

- a. Within thirty (30) days of receipt of a final investigative report submitted by the Department of Human Services or the Attorney General as applicable pursuant to this section, the State Department of Health shall provide the Department of Human Services with a written summary of any action taken pertaining to the complaint including, but not limited to, any inspection or actions which may be taken by the State Department of Health.
- b. Whenever the Department of Human Services or the Attorney General as applicable believes that the conditions giving rise to a complaint alleging a serious threat to the health, safety and welfare of a

resident of a nursing facility have not been adequately addressed, the Department of Human Services may request a hearing on the complaint as provided by Section 309 of Title 75 of the Oklahoma Statutes.

E. A written determination, notice of violation and remedial action taken concerning a complaint shall be available for public inspection at the facility.

F. The Department shall seek any remedial action provided under ~~this act~~ the Nursing Home Care Act for violations documented during complaint investigations.

G. The State Board of Health shall promulgate rules governing the receipt, investigation and resolution of complaints and reports of violations. The rules promulgated by the Board shall provide for the expeditious investigation and resolution of a complaint or report including, but not limited to:

1. An easily understood and readily accessible method of submitting complaints and reports regarding complaints;

2. Actions to be taken upon the receipt of a complaint or report of a complaint;

3. Establishing a priority for investigations of complaints. Specifically, the Department shall give higher priority to investigations of complaints which allege continuing violations or which threaten the health, safety or welfare of residents;

4. The timely investigation of the complaint or report of a complaint;

5. Written reports to the complainants or persons filing the complaint report;

6. Any necessary or appropriate remedial action as determined by the findings of the investigation;

7. The protection of the identity of the complainant, provided that the person is a current or past resident or resident's

representative or designated guardian or a current or past employee of a facility;

8. Specific information to be included in investigative protocols which must include at a minimum an interview with:

- a. the complainant,
- b. the resident, if possible, and
- c. any potential witness, collateral resource or affected resident; and

9. Any additional rules necessary for the timely and thorough investigation and resolution of complaints.

H. The Department is authorized to employ hearing officers, and hire attorneys to represent the Department and Commissioner to ensure that this and other laws pertaining to the Department are properly executed.

SECTION 5. 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:

A. 1. It shall be unlawful for a caregiver to solicit or accept anything of value greater than One Dollar (\$1.00) from any person in the caregiver's care.

2. As used in this section, "caregiver" means a person who is the paid agent or employee of:

- a. an assisted living center,
- b. a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of Title 63 of the Oklahoma Statutes,
- c. an adult day care center as such term is defined in Section 1-872 of Title 63 of the Oklahoma Statutes,
- d. a home health or home care agency, or
- e. the Department of Human Services, in its capacity as an operator of any hospital or health care

institution, or as a contractor with providers under the Personal Care Services Program, but does not include a guardian, limited guardian, or conservator as such terms are defined in the Oklahoma Guardianship and Conservatorship Act.

B. Any person who violates the provisions of paragraph 1 of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

SECTION 6. Section 5 of this act shall become effective November 1, 2001.

SECTION 7. 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.

48-1-1687

CJ

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