STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1323 By: Tibbs of the House

and

Cain of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to mental health; amending 43A O.S. 2001, Sections 10-104 and 10-105, which relate to the Protective Services for Vulnerable Adults Act; updating language; removing certain reporting to district attorney; adding to list of persons and entities required to report; requiring the report to be reduced to writing; adding to contents of written report; requiring certain notification; requiring certain disclosure of certain protected health information; providing for exceptions; requiring submission of certain information; specifying certain conditions and specifications; providing exceptions; requiring submission to district attorney; adding to list of persons to receive certain reports; requiring certain information to be submitted to certain law enforcement and other state agencies; and declaring an emergency.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-104, is amended to read as follows:

Section 10-104. A. Any person having reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, or exploitation shall make a report as soon as the person is aware of the situation to ~~either the~~:

1. The Department of Human Services~~, the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred~~; or ~~the local~~

2. The municipal police department or sheriff's ~~department as soon as the person is aware of the situation. 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~~ office in the county in which the suspected abuse, neglect, or exploitation occurred.

B. Persons required to make reports pursuant to this section shall include, but not be limited to:

1. Physicians;

2. Operators of emergency response vehicles and other medical professionals;

3. Social workers and mental health professionals;

4. Law enforcement officials;

5. Staff of domestic violence programs; ~~and~~

6. Long-term care facility personnel;

7. Other health care professionals; and

8. Financial institutions including, but not limited to, banking institutions and investment companies, their employees, agents and officers.

~~B.~~ C. 1. If the report is not made in writing in the first instance, as soon as possible after it is initially made by telephone or otherwise, the report shall be reduced to writing by the Department of Human Services, in accordance with rules promulgated by the Commission for Human Services, or the local municipal police or sheriff's department whichever entity received the initial report. The report shall contain the following information:

a. the name and address of the vulnerable adult,

b. the name and address of the caretaker, guardian, or person having power of attorney over the vulnerable adult's resources if any, ~~and~~

c. a description of the current location ~~and~~ of the vulnerable adult,

d. a description of the current condition of the vulnerable adult, and

e. a description of the situation which may constitute abuse, neglect or exploitation of the vulnerable adult.

~~C.~~ 2. If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the report.

D. If the initial report is made to the local municipal police department or sheriff's office, such police department or sheriff's office shall notify, as soon as possible, the Department of Human Services of its investigation.

E. 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 punishable by imprisonment in the county jail for a term not exceeding one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

~~D.~~ F. 1. 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~~ the report.

2. The same immunity from any civil or criminal liability shall also be extended to previous employers of a person employed to be responsible for the care of a vulnerable adult, who in good faith report to new employers or prospective employers of such caretaker any misconduct of the caretaker including, but not limited to,

abuse, neglect or exploitation of a vulnerable adult, whether confirmed or not.

~~E.~~ G. Any person who willfully or recklessly makes a false report shall be civilly liable for any actual damages suffered by the person 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.~~ H. 1. Every physician or other health care professional making a report concerning the abuse, neglect or exploitation of a vulnerable adult, as required by this section, or examining a vulnerable adult to determine the likelihood of abuse, neglect or exploitation, and every hospital in which a vulnerable adult is examined or treated for abuse, neglect or exploitation shall disclose necessary health information related to the case and provide, upon request by either the Department of Human Services or the local municipal police or sheriff's department receiving the initial report, copies of the results or the records of the examination on which the report was based, and any other clinical notes, x-rays or photographs and other health information which is related to the case if:

a. the vulnerable adult agrees to the disclosure of the health information, or

b. the individual is unable to agree to the disclosure of health information because of incapacity; and

(1) the requesting party represents that the health information for which disclosure is sought is not intended to be used against the vulnerable adult in a criminal prosecution but to provide protective services pursuant to the Protective Services for Vulnerable Adults Act,

(2) the disclosure of the information is necessary to conduct an investigation into the alleged abuse,

neglect or exploitation of the vulnerable adult subject to the investigation, and

(3) immediate enforcement activity that depends upon the disclosure:

(a) is necessary to protect the health, safety and welfare of the vulnerable adult because of incapacity, or

(b) would be materially and adversely affected by waiting until the vulnerable adult is able to agree to the disclosure.

2. If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the disclosed health information.

I. After investigating the report, either the county office of the Department of Human Services or the municipal police department or sheriff's office, as appropriate, shall forward its findings to the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred.

J. Any state or county medical examiner or physician who has reasonable cause to suspect that the death of any vulnerable 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 or other law enforcement official 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 such suspicion, and any other health information that may be of assistance to the district attorney in conducting an investigation into the matter.

~~G.~~ K. No employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to

the Protective Services for Vulnerable Adults Act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

SECTION 2. AMENDATORY 43A O.S. 2001, Section 10-105, is amended to read as follows:

Section 10-105. A. Upon receiving a report of alleged abuse, neglect, or exploitation of a vulnerable adult pursuant to the provisions of the Protective Services for Vulnerable Adults Act, the Department of Human Services shall make a prompt and thorough investigation.

B. The investigation by the Department shall include:

1. Notification of local law enforcement agency. Upon the request of a law enforcement agency, the Department shall submit copies of any results or records of an examination on the vulnerable adult who is alleged to have been abused, neglected, or exploited and any other clinical notes, x-rays, photographs, or previous or current records relevant to the case;

2. Any findings of abuse, neglect, or exploitation of a vulnerable adult shall also be sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation including, but not limited to, where appropriate, the State Department of Health, the Oklahoma Board of Nursing, or any other appropriate state licensure or certification board, agency, or registry;

3. Every reasonable effort to locate and notify the caretaker, legal guardian and next of kin of the vulnerable adult who may be in need of protective services pursuant to Section 10-105.1 of this title;

~~3.~~ 4. Diagnostic evaluation to determine whether the person needs protective services;

~~4.~~ 5. Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person;

~~5.~~ 6. A statement of the least restrictive services needed;

~~6.~~ 7. Whether services are available from the Department or in the community and how the services can be provided;

~~7.~~ 8. Whether the person would be capable of obtaining services for self and could bear the cost or would be eligible for services from the Department;

~~8.~~ 9. Whether a caretaker or legal guardian would be willing to provide services or would agree to their provision;

~~9.~~ 10. Whether the person desires the services;

~~10.~~ 11. A statement of any follow-up investigation or monitoring of the services that may be needed; and

~~11.~~ 12. Other relevant information.

C. 1. The Department's investigation shall include a visit to the home or other place of residence of the person who is the subject of the report, a private interview with such 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 a vulnerable adult in need of protective services, or is denied a private interview, or documentation, or access to records, or other information relating to such person as provided by paragraph ~~10~~ 11 of subsection B of this section, the Department may petition the court for an order allowing entry or access.

2. The petition shall state the name and address of the person who is the subject of the report and shall allege specific facts sufficient to show that the circumstances of the person are in need of investigation.

3. If it is necessary to forcibly enter the premises, the representative of the Department shall make the entry accompanied by a peace officer.

4. The Department shall make all reasonable attempts to interview the caretaker or other persons alleged to be involved in the abuse, neglect or exploitation in order to enhance service provision and to prevent additional incidents of abuse, neglect or exploitation.

D. When a report is received pertaining to a vulnerable adult who has a legal guardian, a copy of the investigative report of the Department shall be filed with the court to which the guardian is accountable.

E. 1. In the case of a report pertaining to a vulnerable adult who is a resident of a nursing facility, residential care facility, assisted living facility or continuum of care facility, the Department shall immediately notify the State Department of Health of the investigative report in writing, and shall forward to the State Department of Health a copy of the Department's final investigative report.

2. The Department of Human Services shall be deemed a party pursuant to the Administrative Procedures Act for the investigative reports filed by the Department with the State Department of Health regarding vulnerable adults who are residents of nursing facilities, residential care facilities, assisted living facilities or continuum of care facilities.

a. Within thirty (30) days of receipt of the final investigative report submitted by the Department of Human Services pursuant to this section, the State Department of Health shall provide the Department of Human Services with a written summary of any action taken as a result of the complaint including, but not limited to, results of any inspections, enforcement

actions or actions which may be taken by the State Department of Health.

b. Whenever the Department of Human Services believes that the conditions giving rise to a complaint by the Department alleging a serious threat to the health, safety or welfare of a resident of a nursing facility, residential care facility, assisted living facility or continuum of care facility have not been adequately addressed, the Department of Human Services may request the State Department of Health to hold a hearing on the complaint as provided by Section 309 of Title 75 of the Oklahoma Statutes.

3. Nothing herein shall prevent the State Department of Health from conducting any type of investigation or taking any appropriate remedial or other action pursuant to the provisions of the Nursing Home Care Act, the Residential Care Act and the Continuum of Care and Assisted Living Act.

F. When a report is received pertaining to a vulnerable adult residing in a facility other than a home, where persons are employed to provide care and those employees have been named as persons responsible for the abuse, neglect or exploitation, the Department shall forward its findings to the owner or operator of the facility to prevent further incidents.

SECTION 3. 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.

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