ENROLLED HOUSE
BILL NO. 1681

By: Blackburn of the House

and

Cain of the Senate

An Act relating to vulnerable adults; amending 43A O.S. 2001, Sections 10-102, 10-103, 10-104, 10-105, 10-105.1, 10-106, 10-107 and 10-108, which relate to the Protective Services for Vulnerable Adults Act; modifying purpose; modifying definitions; updating and clarifying language; requiring findings to be sent to other state agencies; modifying investigation procedures; authorizing certain petitions; removing certain persons from accompanying certain representatives; requiring certain written notice; requiring exhaustion of certain stages; requiring forward of certain findings; authorizing certain vulnerable adults to prevent notification of certain persons; changing certain standards of proof; authorizing freezing of certain assets; making certain services subject to availability of funds; requiring the district court fund to provide for certain representation; authorizing establishment of certain accounts; updating language; modifying procedures for temporary guardianships; modifying petition procedures for involuntary protective services; modifying contents; requiring certain peace officers to make forcible entries; clarifying language; and declaring an emergency.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-102, is amended to read as follows:

Section 10-102. A. The Legislature recognizes that many citizens 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 exploitation, abuse, or neglect and are in need of protective services. ~~Said services~~

B. Services provided pursuant to the provisions of the Protective Services for Vulnerable Adults Act shall guarantee, to the maximum degree of feasibility, the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse, or neglect.

C. The Protective Services for Vulnerable Adults Act is designed to establish a program of protective services ~~and to assure~~

~~availability of said services to persons~~ for vulnerable adults in need of those services.

SECTION 2. AMENDATORY 43A O.S. 2001, 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~~ that the vulnerable adult is unable to provide or obtain without assistance ~~and~~. The term "protective services" includes but is not limited to 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~~,~~:

a. the identification of vulnerable adults in need of the services,

b. the provision of medical care for physical and mental health needs,

c. the provision of social services assistance in personal hygiene, food, clothing, and adequately heated and ventilated shelter,

d. protection from health and safety hazards,

e. protection from physical mistreatment,

f. guardianship referral,

g. outreach programs, and

h. the transportation necessary to secure any of such ~~needs~~ services.

The term shall not include taking the person into physical custody without the consent of the person except as provided for in ~~Section~~ Sections 10-107 and 10-108 of this title, and the 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 to the vulnerable adult is likely to occur;

4. "Incapacitated person" means:

a. any person eighteen (18) years of age or older:

(1) who is impaired by reason of mental or physical illness or disability, dementia or related

disease, mental retardation, developmental disability or other cause, and

(2) 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~~ such person lacks the capacity to manage ~~their~~ his or her financial resources or to meet essential requirements for ~~their~~ his or her 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~~ himself or herself, 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~~ himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others;

6. "Caretaker" means a person who has:

a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,

b. assumed the responsibility for the care of 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 infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or

b. the deprivation of nutrition, clothing, shelter, 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 providing 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 his or her own interest,

b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or

c. ~~the causing or permitting~~ negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, 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 a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of 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, feeling or observation of the body or private parts of 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 3. AMENDATORY 43A O.S. 2001, Section 10-104, is amended to read as follows:

Section 10-104. A. 1. Any person having reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, or exploitation shall make a report to either 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 municipal police department or sheriff's department as soon as the person is aware of the situation.

2. a. 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 in the county in which the suspected abuse, neglect, or exploitation occurred.

b. The findings shall also be sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, where appropriate, the State Department of Health, the Oklahoma Board of Nursing, or any other appropriate state licensure or certification board, agency, or registry.

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.

~~B.~~ C. The report shall contain the name and address of the vulnerable adult, the name and address of the caretaker, if any, and a description of the current location and current condition of the vulnerable adult and of the situation which may constitute abuse, neglect or exploitation of the vulnerable adult.

~~C.~~ D. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of ~~subsection~~ subsections A and B 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.~~ E. 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 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.~~ F. 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.~~ G. 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 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 information that may be of assistance to the district attorney in conducting an investigation into the matter.

~~G.~~ H. 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 4. 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;

2. 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. Diagnostic evaluation to determine whether the person needs protective services;

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

5. A statement of the least restrictive services needed;

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

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

9. Whether the person desires the services;

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

11. Other relevant information.

C. 1. a. 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.

b. 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~~ with the vulnerable adult, the Department may petition the court for an order allowing entry to the premises or private access to the vulnerable adult. The court shall make a finding of probable cause of the vulnerability of the adult before issuing the order. If documentation, or access to records, or other information relating to such person as provided by ~~paragraph 10 of subsection B of~~ this section is denied, 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 final investigative 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 and who is alleged to be a victim of abuse, verbal abuse, neglect, or exploitation by an employee of such 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~~ the home of the vulnerable adult, 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 final findings, including, but not limited to, any administrative appeal findings to the owner or ~~operator~~ administrator of the facility to prevent further incidents.

SECTION 5. AMENDATORY 43A O.S. 2001, Section 10-105.1, is amended to read as follows:

Section 10-105.1 A. As soon as possible after initiating an investigation of a ~~vulnerable adult~~ referral regarding a vulnerable adult, the Department shall provide to the caretaker of the alleged victim, ~~and to~~ the legal guardian, and next of kin of the vulnerable adult notification including a brief oral summary and easily understood written description of the investigation process, whether or not the caretaker, guardian or next of kin is alleged to be the perpetrator of the abuse, neglect or exploitation of the vulnerable adult.

B. If the vulnerable adult retains capacity to consent to voluntary services, and does not wish for a caretaker or next of kin to receive notification of the investigation, the Department shall abide by wishes of the vulnerable adult. ~~Such notice~~

C. The notification specified by subsection A of this section shall include:

1. A statement that the investigation is being undertaken by the Department of Human Services pursuant to the requirements of the Protective Services for Vulnerable Adults Act in response to a report of abuse, neglect or exploitation and shall include the name and office telephone number of the Department representative with primary responsibility for the investigation;

2. A statement that the identity of the person who reported the incident of abuse is confidential and may not even be known to the Department since the report could have been made anonymously;

3. A statement that the investigation is required by law to be conducted in order to enable the Department of Human Services to identify incidents of abuse, neglect or exploitation in order to provide protective or preventive social services to vulnerable adults who are in need of such services;

4. An explanation of the procedures of the Department of Human Services for conducting an investigation of alleged abuse, neglect or exploitation, including:

a. a statement that the alleged victim of abuse, neglect or exploitation is the Department's primary client in such an investigation,

b. a statement that findings of all investigations are provided to the office of the district attorney, and

c. a statement that law enforcement may conduct a separate investigation to determine whether a criminal violation occurred;

5. An explanation of services which may be provided as a result of the Department's investigation, including:

a. a statement that the caretaker, legal guardian and next of kin will be involved in the process of developing a plan of services for the vulnerable adult insofar as that involvement is consistent with the best interests of the vulnerable adult,

b. a statement that voluntary services may be provided or arranged for based on the adult client's needs, desires and acceptance, and

c. a statement that involuntary services may be provided through the judicial system when immediate services are needed to preserve the life of the vulnerable adult and physical health or preserve the resources of the vulnerable adult which may later be needed to provide care for the vulnerable adult;

6. A statement that, upon completion of the investigation, the identified caretaker, legal guardian and next of kin will receive a letter from the Department which will inform such caretaker, legal guardian and next of kin:

a. that the Department has found insufficient evidence of abuse, neglect or exploitation,

b. that there appears to be probable cause to suspect the existence of abuse, neglect or exploitation in the judgment of the Department, and

c. the recommendations of the Department concerning the vulnerable adult;

7. The procedures concerning the process the caretaker, legal guardian and next of kin may use to acquire access to the vulnerable adult in the event the vulnerable adult is removed from the residence of the vulnerable adult and the circumstances under which access may be obtained;

8. The procedures to follow if there is a complaint regarding the actions of the Department and the procedures to request a review of the findings made by the Department during or at the conclusion of the investigation;

9. Information specifying that if the caretaker, legal guardian and next of kin of the vulnerable adult have any questions as to their legal rights, that such persons have a right to seek legal counsel;

10. References to the statutory and regulatory provisions governing abuse, neglect or exploitation and how the caretaker, legal guardian and next of kin may obtain copies of those provisions; and

11. An explanation that the caretaker, legal guardian and next of kin may review specific information gathered during the investigation and pertaining to the service needs of the vulnerable adult ~~pursuant~~ subject to the requirements and exceptions provided in Section 10-110 of ~~Title 43A of the Oklahoma Statutes~~ this title.

SECTION 6. AMENDATORY 43A O.S. 2001, Section 10-106, is amended to read as follows:

Section 10-106. A. If the Department of Human Services determines, as a result of its investigation, that a vulnerable adult needs protective services, the Department shall immediately provide or arrange for the provision of available protective services in the least restrictive manner, provided the person affirmatively consents to receive these services.

B. 1. When a caretaker of a vulnerable adult who consents to the receipt of protective services refuses to allow the provision of such services to the person, the Department may petition to the court for a decree enjoining the caretaker from interfering with the provision of protective services to the person.

2. The complaint must allege specific facts sufficient to show that the person is a vulnerable adult in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the provision of such services.

3. If the court finds that the person is a vulnerable adult in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the provision of such services, the court may enter a decree:

a. enjoining the caretaker from interfering with the provision of protective services to the vulnerable adult, and

b. freezing the assets of the vulnerable adult if it has been determined by preponderance of the evidence that the vulnerable adult is being exploited and it is necessary to protect such assets.

C. If a vulnerable adult does not consent to the receipt of protective services or withdraws consent to the receipt of such services, the services shall be terminated, unless the Department determines that the person lacks capacity to consent, in which case the Department may seek court authorization to provide services pursuant to Section 10-108 of this title.

D. 1. Payment for the costs of providing protective services shall be made from either:

a. the assets of the vulnerable adult consenting to the receipt of voluntary protective services, or

b. any available private or public assistance programs for which the vulnerable adult is eligible.

2. If no assets or other private or public funds are available to the person, payment shall be made from a fund established by the

Department for the purpose of providing emergency adult protective services, subject to availability of funds.

SECTION 7. AMENDATORY 43A O.S. 2001, Section 10-107, is amended to read as follows:

Section 10-107. A. If a vulnerable adult lacks the capacity to consent to receive protective services recommended by the Department of Human Services, these services may be ordered by a court on an involuntary basis through an emergency order.

B. 1. In ordering emergency involuntary protective services for a vulnerable adult, the court shall authorize only that intervention which it finds to be least restrictive of the liberty and rights of such person, while consistent with the welfare and safety of the person. The basis for such finding shall be stated in the record by the court.

2. Whenever it is consistent with the welfare and safety of the person, the court shall authorize that involuntary protective services be administered to the vulnerable adult in the present living accommodations of that person.

C. 1. Payment for involuntary protective services provided to a vulnerable adult determined by the court to be in need of involuntary protective services pursuant to this section or Section 10-108 of this title shall be made:

a. from assets of the vulnerable adult receiving emergency involuntary protective services, if the court so orders after a showing by the Department that the person has adequate assets to make such payment, and that payment for the involuntary protective services will not cause the person to go without other necessities of life. Prior to any hearing on the assets or issuance of an order pursuant to this subparagraph, the legal guardian, caretaker and guardian ad litem of the vulnerable adult, any person so requested by the vulnerable adult and persons required to be notified pursuant to Section 3-110 of Title 30 of the Oklahoma Statutes shall be notified of such hearing and order~~;~~,

b. from any private or public assistance programs for which the person is eligible~~;~~, or

c. as provided by paragraph 2 of subsection D of Section 10-106 of this title if the person has inadequate assets to make such payments as ordered by the court, and no private or public funds are available to the person, from a fund established by the Department for the purpose of providing emergency adult protective services, subject to availability of funds.

2. The person has a right to be present and represented by counsel at ~~the~~ any hearing. If ~~he~~ the vulnerable adult 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. Upon the request of an authorized representative of the Department, the district attorney of the county in which the person alleged or found by a court to be in need of involuntary protective services resides shall provide ~~any assistance required by~~ legal representation for the Department in any local proceedings related to the provision of involuntary protective services pursuant to this section or Section 10-108 of this title.

SECTION 8. AMENDATORY 43A O.S. 2001, Section 10-108, is amended to read as follows:

Section 10-108. A. 1. 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 financial exploitation of 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 specified by paragraph 3 of this subsection for an order:

a. authorizing involuntary protective services and appointing a temporary guardian of the person and/or the estate,

b. freezing the assets of the vulnerable adult, if the vulnerable adult is being exploited, establishing any new accounts necessary to pay the daily living expenses 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

c. suspending or revoking the powers of an attorney-in-fact granted by a durable power of attorney, or revoking an irrevocable trust, or terminating a guardianship or conservatorship established pursuant to the Oklahoma Guardianship and Conservatorship Act.

2. Under no circumstances shall the court authorize the Department, pursuant to this subsection, 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.

3. The district court which may be petitioned by the Department for an order pursuant to paragraph 1 of this subsection is:

a. the district court in the county in which the vulnerable adult resides,

b. the district court in the county in which the vulnerable adult is receiving inpatient services, or

c. the district court in the county where the vulnerable adult is located when any delay caused by taking the petition to the district court in the county of the residence of the vulnerable adult would result in greater substantial risk of death or greater serious

physical harm to the vulnerable adult. The petition shall include an explanation of why the petition was filed in the district court in the county specified by this subparagraph rather than in the district court as specified in subparagraph a or b of this paragraph.

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 a description of 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 if the petition seeks temporary guardianship of thirty (30) days or more.

2. a. The hearing shall be set by the court on an expedited basis, but no later than five (5) calendar days, not including weekends or holidays when the court is closed, 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.

b. Unless the vulnerable adult objects or the person requiring notification pursuant to this subparagraph is alleged to have abused, neglected or exploited the vulnerable adult, the following persons shall be notified of any hearing held pursuant to this subsection:

(1) the legal guardian, guardian ad litem and caretaker of the vulnerable adult,

(2) any person so requested by the vulnerable adult to be present at the hearing, and

(3) persons required to be notified pursuant to Section 3-110 of Title 30 of the Oklahoma Statutes.

D. 1. Upon sworn testimony of a representative of the Department ~~or law enforcement officer~~, or statement of a district attorney representing the Department, that immediate and reasonably foreseeable death or serious physical harm to or financial exploitation of the vulnerable adult will result, the court may waive prior notice and issue a seventy-two-hour ~~order~~ temporary guardianship and provide involuntary protective services whether or not during regular courthouse business hours. However, within twenty-four (24) hours 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.

2. 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 guardianship for up to thirty (30) additional calendar days as provided for in subsection G of this section.

E. 1. The vulnerable adult has a right to be present and represented by counsel at any hearing authorized by this section. 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 meet with the vulnerable adult and attempt to discuss the petition or any pending motion ~~with the vulnerable adult~~ prior to any hearing.

2. If the vulnerable adult is not in attendance at a scheduled hearing, 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 the attorney of the vulnerable adult, may continue the hearing to allow the vulnerable adult to attend.

3. If the vulnerable adult is indigent, the cost of representation by counsel shall be borne by court funds.

4. 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.

F. 1. After a hearing on the petition, the court may:

a. appoint a temporary guardian and order involuntary protective services including, but not limited to, authorization for medical and/or psychological treatment and evaluations, and residential placement subject to the provisions of subsection G of this section,

b. issue an order freezing all assets of the vulnerable adult, establish any new accounts necessary to pay the daily living expenses 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. suspend or revoke powers of attorney or terminate a guardianship or conservatorship upon a finding that the attorney-in-fact, guardian or conservator failed to act appropriately on behalf of the vulnerable adult.

2. a. Except as otherwise provided by subparagraphs b and c of this paragraph, the court appointing a temporary guardian and ordering involuntary protective services shall not have authority to order the sale of the real property of the vulnerable adult. ~~A guardian appointed pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act may sell the real property of the vulnerable adult as provided by the Oklahoma Guardianship and Conservatorship Act.~~

b. If the Department of Human Services has been appointed temporary guardian and the court issues an order for the Department to continue as the temporary guardian of the vulnerable adult beyond the one hundred eighty (180) calendar days authorized by this section because there is no one willing and able to act as guardian for the vulnerable adult, the Department, as temporary guardian may, after one (1) year from its initial appointment, sell the real property of a vulnerable adult pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act.

c. The Department, as temporary guardian of a vulnerable adult, may also sell the real property of the vulnerable adult pursuant to ~~court order~~ the provisions of the Oklahoma Guardianship and Conservatorship Act prior to the one-year requirement specified in subparagraph b of this paragraph, if not selling the real property would jeopardize the vulnerable adult's eligibility for Medicaid. The fact that the vulnerable adult would be in jeopardy for receipt of Medicaid if the property was not sold shall be stated upon the court order directing the sale of the real property of the vulnerable adult.

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

1. 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;

2. 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, hospital rehabilitation centers, assisted living centers, foster care and in-home placements, or to other appropriate facilities; provided, however, emergency placement shall not be made to facilities for the acutely mentally ill; and

3. Involuntary protective services may be provided for a period not to exceed thirty (30) calendar days except as provided by subsections L and M of this section.

H. 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 involuntary protective services until the expiration of the order.

I. 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.

J. 1. To ~~implement~~ enforce an order for involuntary protective services, the court may authorize:

a. forcible entry of the premises of the vulnerable adult to be protected for the purpose of rendering protective services but only after a reasonable showing to the court that good faith attempts to gain voluntary access to the premises have failed and forcible entry is necessary, and

b. the transporting of the vulnerable adult to another location for the provision of ~~such~~ involuntary services~~,~~

~~but only after a reasonable showing to the court that good faith attempts to gain voluntary access to the premises have failed and forcible entry is necessary~~.

2. If forcible entry is authorized by the court, the order shall include a directive that the Department's representative be accompanied by a police officer or deputy sheriff in the county where the vulnerable adult or property of the vulnerable adult is located, and the police officer or deputy sheriff shall make the forcible entry.

K. The vulnerable adult, the temporary guardian, or any interested person may petition the court to have the ~~emergency~~ order to provide involuntary protective services set aside or modified at any time.

L. If the vulnerable adult continues to need involuntary protective services after expiration of the thirty-day ~~order~~ temporary guardianship provided in subsection G 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:~~

~~1. Appointment of a permanent guardian as provided by Title 30 of the Oklahoma Statutes; or~~

~~2. Except~~, except as otherwise provided by subsection F of this section, ~~continuation of~~ continue the temporary guardianship and involuntary protective services under this section for a period not to exceed one hundred eighty (180) calendar days.

M. 1. Service of the verified motion shall be made in conformity with subsection C of this section.

2. 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~~ proposed plan of care be submitted to the court within thirty (30) calendar days thereafter reflecting the evaluation findings and recommended services.

3. ~~The~~ Upon filing such motion, the prior temporary ~~order~~ guardianship shall remain in full force and effect pending ~~the scheduling of~~ a review hearing ~~at the end of~~ after the thirty-day evaluation period. The caretaker, guardian or next-of-kin of the

vulnerable adult may request that the evaluation period be shortened for good cause.

4. 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, but not limited to, 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. The evaluation and review shall include recommendations for placement based upon the best interests of the vulnerable adult taking into consideration the following:

(1) the least restrictive environment,

(2) the desires of the vulnerable adult and legal guardian,

(3) the desires of the caretaker of the vulnerable adult and of any of the persons specified in Section 3-110 of Title 30 of the Oklahoma Statutes,

(4) the physical and mental health needs of the vulnerable adult,

(5) the available programs and services, and

(6) the health, well-being and welfare of the vulnerable adult and the public.

During the hearing to consider the motion to continue the temporary guardianship of the vulnerable adult for up to one hundred eighty (180) calendar days, the court shall consider the Department’s findings and proposed plan of care and any other evidence presented by the caretaker, guardian or other interested persons. The court shall either terminate the temporary guardianship and all involuntary services or continue the temporary guardianship and specify any necessary services to be provided by the Department for a period not to exceed one hundred eighty (180) calendar days. Provided, the court may continue the guardianship of the Department, if there is no one willing and able to act as guardian for the vulnerable adult.

N. Neither the Department nor any of its employees or any other petitioner shall be liable for filing a petition pursuant to the Vulnerable Adults Act if the petition was filed in good faith.

SECTION 9. 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.

Passed the House of Representatives the 20th day of May, 2003.

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Presiding Officer of the House of Representatives

Passed the Senate the 22nd day of May , 2003.

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Presiding Officer of the Senate