

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2301:

Tibbs

AS INTRODUCED

An Act relating to public health and safety; amending 43A O.S. 2001, Section 10-105, as amended by Section 2, Chapter 399, O.S.L. 2003 (43A O.S. Supp. 2003, Section 10-105), which relates to investigations of reports on vulnerable adults; modifying certain investigation procedures; providing for suspension with payment of certain employees; defining term; and declaring an emergency.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-105, as amended by Section 2, Chapter 399, O.S.L. 2003 (43A O.S. Supp. 2003, 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;

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

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

6. A statement of the least restrictive services needed;

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

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;

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

10. Whether the person desires the services;

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

12. 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 11 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. During the investigation, any employee of a licensed nursing facility licensed as a registered nurse as defined in Section 567.5 of Title 59 of the Oklahoma Statutes, licensed practical nurse as defined in Section 567.6 of Title 59 of the Oklahoma Statutes, certified medication aide, or nurses aide as defined in Section 1-1950.1 of Title 63 of the Oklahoma Statutes who is accused of violating the Protective Services for Vulnerable Adults Act shall be

suspended with pay during the investigation until the report is received by the employer.

E. 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. F.~~ 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 the 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.~~ G. 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.

H. For purposes of this section, "certified medication aide" means a certified nurse aide who has passed a State Department of Health-approved program for administering medications.

SECTION 2. 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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