

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 398

By: Adelson of the Senate
and
Sullivan of the House

(caretakers - financial neglect - definition -
report -

effective date)

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AUTHORS: Add the following House Coauthors: Braddock, Harrison,
Inman, Kiesel and Sherrer

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

"An Act relating to mental health; amending 21 O.S.
2001, Section 843.1, as amended by Section 8,
Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2006, Section
843.1), which relates to abuse, neglect, or
financial exploitation by caretaker; expanding
punishable offense; amending 43A O.S. 2001, Sections
10-103, as last amended by Section 2, Chapter 332,
O.S.L. 2003, 10-104, as amended by Section 1,
Chapter 399, O.S.L. 2003 and 10-108, as amended by
Section 8, Chapter 332, O.S.L. 2003 (43A O.S. Supp.
2006, Sections 10-103, 10-104 and 10-108), which
relate to the Protective Services for Vulnerable
Adults Act; adding definition; adding persons
required to make certain report; authorizing certain
court order; authorizing certain eviction; and
providing an effective date.

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

2 SECTION 1. AMENDATORY 21 O.S. 2001, Section 843.1, as
3 amended by Section 8, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2006,
4 Section 843.1), is amended to read as follows:
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6 Section 843.1 A. 1. No caretaker or other person shall
7 abuse, commit financial neglect, neglect, commit sexual abuse, or
8 exploit any person entrusted to the care of such caretaker or other
9 person in a nursing facility or other setting, or knowingly cause,
10 secure, or permit any of these acts to be done.

11 2. For purposes of this section, the terms, "abuse",
12 "financial neglect", "neglect", "sexual abuse", and "exploit" shall
13 have the same meaning as such terms are defined and clarified in
14 Section 10-103 of Title 43A of the Oklahoma Statutes.

15 B. 1. Any person convicted of a violation of this section,
16 except as provided in paragraph 2 of this subsection, shall be
17 guilty of a felony. The violator, upon conviction, shall be
18 punished by imprisonment in the State Penitentiary for a term not to
19 exceed ten (10) years, and by a fine not exceeding Ten Thousand
20 Dollars (\$10,000.00), or by both such fine and imprisonment. Such
21 person's term shall further be subject to the provisions of Section
22 13.1 of this title.

23 2. Any person convicted of violating the provisions of this
24 section by committing sexual abuse shall be guilty of a felony. The

1 person convicted of sexual abuse shall be punished by imprisonment
2 in the State Penitentiary for a term not to exceed fifteen (15)
3 years, and by a fine not exceeding Ten Thousand Dollars
4 (\$10,000.00), or by both such fine and imprisonment.

5 C. Consent shall not be a defense for any violation of this
6 section.

7 SECTION 2. AMENDATORY 43A O.S. 2001, Section 10-103, as
8 amended by Section 2, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006,
9 Section 10-103), is amended to read as follows:

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

12 1. "Protective services" means services which are necessary to
13 aid a vulnerable adult in meeting the essential requirements for
14 mental or physical health and safety that the vulnerable adult is
15 unable to provide or obtain without assistance. The term
16 "protective services" includes but is not limited to services
17 provided to or obtained for such person in order to prevent or
18 remedy the abuse, neglect, or exploitation of such person;

19 2. "Services which are necessary to aid an individual to meet
20 essential requirements for mental or physical health and safety"
21 include, but shall not be limited to:

22 a. the identification of vulnerable adults in need of the
23 services,
24

- 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 services.

The term shall not include taking the person into physical custody without the consent of the person except as provided for in 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

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

3 (2) whose ability to receive and evaluate information
4 effectively or to make and to communicate
5 responsible decisions is impaired to such an
6 extent that such person lacks the capacity to
7 manage his or her financial resources or to meet
8 essential requirements for his or her mental or
9 physical health or safety without assistance from
10 others, or

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

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

23 6. "Caretaker" means a person who has:
24

- 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;

1 10. "Financial neglect" means repeated instances by a
2 caretaker, or other person, who has assumed the role of financial
3 management, of failure to use the resources available to restore or
4 maintain the health and physical well-being of a vulnerable adult,
5 including, but not limited to:

- 6 a. squandering or negligently mismanaging the money,
7 property, or accounts of a vulnerable adult,
8 b. refusing to pay for necessities or utilities in a
9 timely manner, or
10 c. providing substandard care to a vulnerable adult
11 despite the availability of adequate financial
12 resources;

13 11. "Neglect" means:

- 14 a. the failure to provide protection for a vulnerable
15 adult who is unable to protect his or her own
16 interest,
17 b. the failure to provide a vulnerable adult with
18 adequate shelter, nutrition, health care, or clothing,
19 or
20 c. negligent acts or omissions that result in harm or the
21 unreasonable risk of harm to a vulnerable adult
22 through the action, inaction, or lack of supervision
23 by a caretaker providing direct services;

24 ~~11.~~ 12. "Sexual abuse" means:

- 1 a. oral, anal, or vaginal penetration of a vulnerable
2 adult by or through the union with the sexual organ of
3 a caretaker or other person providing services to the
4 vulnerable adult, or the anal or vaginal penetration
5 of a vulnerable adult by a caretaker or other person
6 providing services to the vulnerable adult with any
7 other object, or
8 b. for the purpose of sexual gratification, the touching,
9 feeling or observation of the body or private parts of
10 a vulnerable adult by a caretaker or other person
11 providing services to the vulnerable adult, or
12 c. indecent exposure by a caretaker or other person
13 providing services to the vulnerable adult;

14 ~~12.~~ 13. "Indecent exposure" means forcing or requiring a
15 vulnerable adult to:

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

20 ~~13.~~ 14. "Self-neglect" means the action or inaction of a
21 vulnerable adult which causes that person to fail to meet the
22 essential requirements for physical or mental health and safety due
23 to the vulnerable adult's lack of awareness, incompetence or
24 incapacity;

1 ~~14.~~ 15. "Sexual exploitation" includes, but is not limited to,
2 a caretaker's causing, allowing, permitting or encouraging a
3 vulnerable adult to engage in prostitution or in the lewd, obscene,
4 or pornographic photographing, filming or depiction of the
5 vulnerable adult as those acts are defined by state law; and

6 ~~15.~~ 16. "Verbal abuse" means the use of words, sounds, or other
7 communication including, but not limited to, gestures, actions or
8 behaviors, by a caretaker or other person providing services to a
9 vulnerable adult that are likely to cause a reasonable person to
10 experience humiliation, intimidation, fear, shame or degradation.

11 B. Nothing in this section shall be construed to mean a
12 vulnerable adult is abused or neglected for the sole reason the
13 vulnerable adult, in good faith, selects and depends upon spiritual
14 means alone through prayer, in accordance with the practices of a
15 recognized religious method of healing, for the treatment or cure of
16 disease or remedial care, or a caretaker or other person
17 responsible, in good faith, is furnishing such vulnerable adult
18 spiritual means alone through prayer, in accordance with the tenets
19 and practices of a recognized church or religious denomination, for
20 the treatment or cure of disease or remedial care in accordance with
21 the practices of or express consent of the vulnerable adult.

22 SECTION 3. AMENDATORY 43A O.S. 2001, Section 10-104, as
23 amended by Section 1, Chapter 399, O.S.L. 2003 (43A O.S. Supp. 2006,
24 Section 10-104), is amended to read as follows:

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

- 5 1. The Department of Human Services; or
- 6 2. The municipal police department or sheriff's office in the
7 county in which the suspected abuse, neglect, or exploitation
8 occurred.

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

- 11 1. Physicians;
- 12 2. Operators of emergency response vehicles and other medical
13 professionals;
- 14 3. Social workers and mental health professionals;
- 15 4. Law enforcement officials;
- 16 5. Staff of domestic violence programs;
- 17 6. Long-term care facility personnel, ~~and~~, including staff of
18 nursing facilities, intermediate care facilities for persons with
19 mental retardation, assisted living facilities, and residential care
20 facilities;
- 21 7. Other health care professionals;
- 22 8. Persons entering into transactions with a caretaker or other
23 person who has assumed the role of financial management for a
24 vulnerable adult;

1 9. Staff of residential care facilities, group homes, or
2 employment settings for individuals with developmental disabilities;
3 and

4 10. Job coaches, community service workers, and personal care
5 assistants.

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

- 14 a. the name and address of the vulnerable adult,
- 15 b. the name and address of the caretaker, guardian, or
16 person having power of attorney over the vulnerable
17 adult's resources if any,
- 18 c. a description of the current location of the
19 vulnerable adult,
- 20 d. a description of the current condition of the
21 vulnerable adult, and
- 22 e. a description of the situation which may constitute
23 abuse, neglect or exploitation of the vulnerable
24 adult.

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

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

8 E. Any person who knowingly and willfully fails to promptly
9 report any abuse, neglect, or exploitation as required by the
10 provisions of subsection A of this section, upon conviction, shall
11 be guilty of a misdemeanor punishable by imprisonment in the county
12 jail for a term not exceeding one (1) year or by a fine of not more
13 than One Thousand Dollars (\$1,000.00), or by both such fine and
14 imprisonment.

15 F. 1. Any person participating in good faith and exercising
16 due care in the making of a report pursuant to the provisions of
17 this section shall have immunity from any civil or criminal
18 liability that might otherwise be incurred or imposed. Any such
19 participant shall have the same immunity with respect to
20 participation in any judicial proceeding resulting from the report.

21 2. The same immunity from any civil or criminal liability shall
22 also be extended to previous employers of a person employed to be
23 responsible for the care of a vulnerable adult, who in good faith
24 report to new employers or prospective employers of such caretaker

1 any misconduct of the caretaker including, but not limited to,
2 abuse, neglect or exploitation of a vulnerable adult, whether
3 confirmed or not.

4 G. Any person who willfully or recklessly makes a false report
5 shall be civilly liable for any actual damages suffered by the
6 person being reported and for any punitive damages set by the court
7 or jury which may be allowed in the discretion of the court or jury.

8 H. 1. Every physician or other health care professional making
9 a report concerning the abuse, neglect or exploitation of a
10 vulnerable adult, as required by this section, or examining a
11 vulnerable adult to determine the likelihood of abuse, neglect or
12 exploitation, and every hospital in which a vulnerable adult is
13 examined or treated for abuse, neglect or exploitation shall
14 disclose necessary health information related to the case and
15 provide, upon request by either the Department of Human Services or
16 the local municipal police or sheriff's department receiving the
17 initial report, copies of the results or the records of the
18 examination on which the report was based, and any other clinical
19 notes, x-rays or photographs and other health information which is
20 related to the case if:

- 21 a. the vulnerable adult agrees to the disclosure of the
- 22 health information, or
- 23 b. the individual is unable to agree to the disclosure of
- 24 health information because of incapacity; and

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

7 (2) the disclosure of the information is necessary to
8 conduct an investigation into the alleged abuse,
9 neglect or exploitation of the vulnerable adult
10 subject to the investigation, and

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

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

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

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

22 I. After investigating the report, either the county office of
23 the Department of Human Services or the municipal police department
24 or sheriff's office, as appropriate, shall forward its findings to

1 the office of the district attorney in the county in which the
2 suspected abuse, neglect, or exploitation occurred.

3 J. Any state or county medical examiner or physician who has
4 reasonable cause to suspect that the death of any vulnerable adult
5 may be the result of abuse or neglect as defined by Section 10-103
6 of this title shall make a report to the district attorney or other
7 law enforcement official of the county in which the death occurred.
8 The report shall include the name of the person making the report,
9 the name of the deceased person, the facts or other evidence
10 supporting such suspicion, and any other health information that may
11 be of assistance to the district attorney in conducting an
12 investigation into the matter.

13 K. No employer shall terminate the employment, prevent or
14 impair the practice or occupation of or impose any other sanction on
15 any employee solely for the reason that the employee made or caused
16 to be made a report or cooperated with an investigation pursuant to
17 the Protective Services for Vulnerable Adults Act. A court, in
18 addition to other damages and remedies, may assess reasonable
19 attorney fees against an employer who has been found to have
20 violated the provisions of this subsection.

21 SECTION 4. AMENDATORY 43A O.S. 2001, Section 10-108, as
22 amended by Section 8, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006,
23 Section 10-108), is amended to read as follows:

24

1 Section 10-108. A. 1. If the Department of Human Services
2 determines that a vulnerable adult is suffering from abuse, neglect,
3 or exploitation presenting a substantial risk of death or immediate
4 and serious physical harm to the person or financial exploitation of
5 the estate of the person, and the vulnerable adult lacks mental
6 capacity to consent to receive protective services and no consent
7 can be obtained, the Department may petition the district court in
8 the county specified by paragraph 3 of this subsection for an order:

- 9 a. authorizing involuntary protective services and
10 appointing a temporary guardian of the person and/or
11 the estate,
12 b. freezing the assets of the vulnerable adult, if the
13 vulnerable adult is being exploited, establishing any
14 new accounts necessary to pay the daily living
15 expenses of the vulnerable adult, and directing a full
16 accounting and investigation of the person alleged to
17 be improperly managing the estate of the vulnerable
18 adult, or
19 c. suspending or revoking the powers of an attorney-in-
20 fact granted by a durable power of attorney, or
21 revoking an irrevocable trust, or terminating a
22 guardianship or conservatorship established pursuant
23 to the Oklahoma Guardianship and Conservatorship Act.
24

1 2. Under no circumstances shall the court authorize the
2 Department, pursuant to this subsection, to consent or deny consent
3 to a Do-Not-Resuscitate order or the withdrawal of hydration or
4 nutrition or other life-sustaining treatment although the court
5 retains jurisdiction to hear such matters under applicable law.

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

- 8 a. the district court in the county in which the
9 vulnerable adult resides,
- 10 b. the district court in the county in which the
11 vulnerable adult is receiving inpatient services, or
- 12 c. the district court in the county where the vulnerable
13 adult is located when any delay caused by taking the
14 petition to the district court in the county of the
15 residence of the vulnerable adult would result in
16 greater substantial risk of death or greater serious
17 physical harm to the vulnerable adult. The petition
18 shall include an explanation of why the petition was
19 filed in the district court in the county specified by
20 this subparagraph rather than in the district court as
21 specified in subparagraph a or b of this paragraph.

22 B. The petition shall be sworn to and include the name, age,
23 and address of the vulnerable adult who the Department has
24 determined is in need of emergency protective services, the nature

1 of the abuse, neglect, or exploitation, the services needed, and
2 information relating to the capacity of the person to consent to
3 services and a description of the attempts of the Department to
4 obtain consent and the name of the person or organization proposed
5 to be appointed as temporary guardian.

6 C. 1. The vulnerable adult shall receive an opportunity for a
7 hearing upon the petition, and shall be personally served with a
8 copy of the petition and a notice scheduling hearing at least forty-
9 eight (48) hours prior to any such hearing if the petition seeks
10 temporary guardianship of thirty (30) days or more.

11 2. a. The hearing shall be set by the court on an expedited
12 basis, but no later than five (5) calendar days, not
13 including weekends or holidays when the court is
14 closed, from the date the notice scheduling hearing is
15 signed by the judge. The vulnerable adult shall have
16 a right to a closed hearing unless such vulnerable
17 adult requests otherwise.

18 b. Unless the vulnerable adult objects or the person
19 requiring notification pursuant to this subparagraph
20 is alleged to have abused, neglected or exploited the
21 vulnerable adult, the following persons shall be
22 notified of any hearing held pursuant to this
23 subsection:
24

- 1 (1) the legal guardian, guardian ad litem and
2 caretaker of the vulnerable adult,
- 3 (2) any person so requested by the vulnerable adult
4 to be present at the hearing, and
- 5 (3) persons required to be notified pursuant to
6 Section 3-110 of Title 30 of the Oklahoma
7 Statutes.

8 D. 1. Upon sworn testimony of a representative of the
9 Department, or statement of a district attorney representing the
10 Department, that immediate and reasonably foreseeable death or
11 serious physical harm to or financial exploitation of the vulnerable
12 adult will result, the court may waive prior notice and issue a
13 seventy-two-hour temporary guardianship and provide involuntary
14 protective services whether or not during regular courthouse
15 business hours. However, within twenty-four (24) hours of issuance
16 of the seventy-two-hour order, the vulnerable adult and the attorney
17 of the vulnerable adult, if known, shall be personally served with
18 written notice scheduling a hearing within seventy-two (72) hours.

19 2. If a hearing on the seventy-two-hour order is declined, or
20 upon conclusion of any such hearing, the court may terminate the
21 temporary guardianship and involuntary services or enter a temporary
22 guardianship for up to thirty (30) additional calendar days as
23 provided for in subsection G of this section.

1 E. 1. The vulnerable adult has a right to be present and
2 represented by counsel at any hearing authorized by this section.
3 If the vulnerable adult is indigent or, in the determination of the
4 court, lacks capacity to waive the right to counsel, the court shall
5 immediately appoint counsel who shall personally meet with the
6 vulnerable adult and attempt to discuss the petition or any pending
7 motion prior to any hearing.

8 2. If the vulnerable adult is not in attendance at a scheduled
9 hearing, the court shall make a special finding as to why the
10 vulnerable adult is unable to attend, and, upon the request of the
11 vulnerable adult or the attorney of the vulnerable adult, may
12 continue the hearing to allow the vulnerable adult to attend.

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

15 4. If the vulnerable adult is not indigent, the court may order
16 costs of representation paid from the estate in the same manner as
17 currently paid under the Oklahoma Guardianship and Conservatorship
18 Act.

19 F. 1. After a hearing on the petition, the court may:
20 a. appoint a temporary guardian and order involuntary
21 protective services including, but not limited to,
22 authorization for medical and/or psychological
23 treatment and evaluations, and residential placement
24

1 subject to the provisions of subsection G of this
2 section,

3 b. issue an order freezing all assets of the vulnerable
4 adult, establish any new accounts necessary to pay the
5 daily living expenses of the vulnerable adult, and
6 order a full accounting and investigation of the
7 person alleged to be improperly managing the
8 vulnerable adult's estate, or

9 c. suspend or revoke powers of attorney or terminate a
10 guardianship or conservatorship upon a finding that
11 the attorney-in-fact, guardian or conservator failed
12 to act appropriately on behalf of the vulnerable
13 adult.

14 2. a. Except as otherwise provided by subparagraphs b and c
15 of this paragraph, the court appointing a temporary
16 guardian and ordering involuntary protective services
17 shall not have authority to order the sale of the real
18 property of the vulnerable adult.

19 b. If the Department of Human Services has been appointed
20 temporary guardian and the court issues an order for
21 the Department to continue as the temporary guardian
22 of the vulnerable adult beyond the one hundred eighty
23 (180) calendar days authorized by this section because
24 there is no one willing and able to act as guardian

1 for the vulnerable adult, the Department, as temporary
2 guardian may, after one (1) year from its initial
3 appointment, sell the real property of a vulnerable
4 adult pursuant to the provisions of the Oklahoma
5 Guardianship and Conservatorship Act.

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

18 d. The court may issue an order authorizing the
19 Department to sell personal property of a vulnerable
20 adult when additional resources are required to pay
21 for necessary care for the vulnerable adult pursuant
22 to state law.

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

4 1. Only such protective services as are necessary to remove the
5 conditions creating the emergency shall be ordered, and the court
6 shall specifically designate the approved services in the order of
7 the court;

8 2. Protective services authorized by an involuntary protective
9 services order shall not include a change of residence unless the
10 court specifically finds such action is necessary to remove the
11 conditions creating the emergency and gives specific approval for
12 such action in the order of the court. Emergency placement may be
13 made to such facilities as nursing homes, hospital rehabilitation
14 centers, assisted living centers, foster care and in-home
15 placements, or to other appropriate facilities; provided, however,
16 emergency placement shall not be made to facilities for the acutely
17 mentally ill; and

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

21 H. The court shall appoint the Department or an interested
22 person or organization as temporary guardian of the person with
23 responsibility for the welfare of such person and authority to give
24

1 consent on behalf of the person for the approved involuntary
2 protective services until the expiration of the order.

3 I. The issuance of an order for involuntary protective services
4 and the appointment of a temporary guardian shall not deprive the
5 vulnerable adult of any rights except to the extent validly provided
6 for in the order or appointment.

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

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

15 b. the transporting of the vulnerable adult to another
16 location for the provision of involuntary services,
17 and

18 c. the eviction of persons who are in a position to
19 exploit the vulnerable adult from any property owned,
20 leased, or rented by the vulnerable adult and
21 restriction of those persons' further access to any
22 property of the vulnerable adult.

23 2. If forcible entry is authorized by the court, the order
24 shall include a directive that the Department's representative be

1 accompanied by a police officer or deputy sheriff in the county
2 where the vulnerable adult or property of the vulnerable adult is
3 located, and the police officer or deputy sheriff shall make the
4 forcible entry.

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

9 L. If the vulnerable adult continues to need involuntary
10 protective services after expiration of the thirty-day temporary
11 guardianship provided in subsection G of this section, the temporary
12 guardian shall immediately file a verified motion requesting the
13 court to, except as otherwise provided by subsection F of this
14 section, continue the temporary guardianship and involuntary
15 protective services under this section for a period not to exceed
16 one hundred eighty (180) calendar days.

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

19 2. Upon filing such motion, the court shall order that a
20 physical, mental, and social evaluation of the vulnerable adult be
21 conducted by the Department and that a proposed plan of care be
22 submitted to the court within thirty (30) calendar days thereafter
23 reflecting the evaluation findings and recommended services.

24

1 3. Upon filing such motion, the prior temporary guardianship
2 shall remain in full force and effect pending a review hearing after
3 the thirty-day evaluation period. The caretaker, guardian or next-
4 of-kin of the vulnerable adult may request that the evaluation
5 period be shortened for good cause.

6 4. The evaluation shall include at least the following
7 information:

- 8 a. the address of the place where the person is residing
9 and the person or agency which is providing care,
10 treatment, or services at present,
- 11 b. a summary of the professional treatment and services
12 provided to the person by the Department or agency, if
13 any, in connection with the problem creating the need
14 for emergency protective services, and
- 15 c. a medical and social evaluation, including, but not
16 limited to, the Department's assessment of the
17 person's capacity to consent to services, a
18 psychological or psychiatric evaluation and review if
19 the mental state of the person is in question, and any
20 recommendations for or against maintenance of partial
21 legal rights. The evaluation and review shall include
22 recommendations for placement based upon the best
23 interests of the vulnerable adult taking into
24 consideration the following:

- 1 (1) the least restrictive environment,
- 2 (2) the desires of the vulnerable adult and legal
3 guardian,
- 4 (3) the desires of the caretaker of the vulnerable
5 adult and of any of the persons specified in
6 Section 3-110 of Title 30 of the Oklahoma
7 Statutes,
- 8 (4) the physical and mental health needs of the
9 vulnerable adult,
- 10 (5) the available programs and services, and
11 (6) the health, well-being and welfare of the
12 vulnerable adult and the public.

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

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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 5. This act shall become effective November 1, 2007."

Passed the House of Representatives the 10th day of April, 2007.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2007.

Presiding Officer of the Senate