

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 398

6 By: Adelson of the Senate

7 and

8 Sullivan of the House

9 COMMITTEE SUBSTITUTE

10 An Act relating to mental health; amending 21 O.S.
11 2001, Section 843.1, as amended by Section 8, Chapter
12 22, O.S.L. 2002 (21 O.S. Supp. 2006, Section 843.1),
13 which relates to abuse, neglect, or financial
14 exploitation by caretaker; expanding punishable
15 offense; amending 43A O.S. 2001, Sections 10-103, as
16 last amended by Section 2, Chapter 332, O.S.L. 2003,
17 10-104, as amended by Section 1, Chapter 399, O.S.L.
18 2003 and 10-108, as amended by Section 8, Chapter
19 332, O.S.L. 2003 (43A O.S. Supp. 2006, Sections 10-
20 103, 10-104 and 10-108), which relate to the
21 Protective Services for Vulnerable Adults Act; adding
22 definition; adding persons required to make certain
23 report; authorizing certain court order; authorizing
24 certain eviction; and providing an effective date.

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

1 Section 843.1 A. 1. No caretaker or other person shall
2 abuse, commit financial neglect, neglect, commit sexual abuse, or
3 exploit any person entrusted to the care of such caretaker or other
4 person in a nursing facility or other setting, or knowingly cause,
5 secure, or permit any of these acts to be done.

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

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

18 2. Any person convicted of violating the provisions of this
19 section by committing sexual abuse shall be guilty of a felony. The
20 person convicted of sexual abuse shall be punished by imprisonment
21 in the State Penitentiary for a term not to exceed fifteen (15)
22 years, and by a fine not exceeding Ten Thousand Dollars
23 (\$10,000.00), or by both such fine and imprisonment.

1 C. Consent shall not be a defense for any violation of this
2 section.

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

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

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

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

- 18 a. the identification of vulnerable adults in need of the
19 services,
- 20 b. the provision of medical care for physical and mental
21 health needs,
- 22 c. the provision of social services assistance in
23 personal hygiene, food, clothing, and adequately
24 heated and ventilated shelter,

- 1 d. protection from health and safety hazards,
- 2 e. protection from physical mistreatment,
- 3 f. guardianship referral,
- 4 g. outreach programs, and
- 5 h. the transportation necessary to secure any of such
- 6 services.

7 The term shall not include taking the person into physical custody
8 without the consent of the person except as provided for in Sections
9 10-107 and 10-108 of this title, and the evaluation, monitoring, and
10 provision of protective placements;

11 3. "Meet essential requirements for mental or physical health
12 and safety" means those actions necessary to provide the health
13 care, food, shelter, clothing, personal hygiene and other care
14 without which physical injury or illness to the vulnerable adult is
15 likely to occur;

16 4. "Incapacitated person" means:

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

18 (1) who is impaired by reason of mental or physical
19 illness or disability, dementia or related
20 disease, mental retardation, developmental
21 disability or other cause, and

22 (2) whose ability to receive and evaluate information
23 effectively or to make and to communicate
24 responsible decisions is impaired to such an

1 extent that such person lacks the capacity to
2 manage his or her financial resources or to meet
3 essential requirements for his or her mental or
4 physical health or safety without assistance from
5 others, or

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

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

18 6. "Caretaker" means a person who has:

- 19 a. the responsibility for the care of a vulnerable adult
20 or the financial management of the resources of a
21 vulnerable adult as a result of a family relationship,
- 22 b. assumed the responsibility for the care of a
23 vulnerable adult voluntarily, by contract, or as a
24 result of the ties of friendship, or

1 c. been appointed a guardian, limited guardian, or
2 conservator pursuant to the Oklahoma Guardianship and
3 Conservatorship Act;

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

5 8. "Abuse" means causing or permitting:

6 a. the infliction of physical pain, injury, sexual abuse,
7 sexual exploitation, unreasonable restraint or
8 confinement, or mental anguish, or

9 b. the deprivation of nutrition, clothing, shelter,
10 health care, or other care or services without which
11 serious physical or mental injury is likely to occur
12 to a vulnerable adult by a caretaker or other person
13 providing services to a vulnerable adult;

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

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

- 1 a. squandering or negligently mismanaging the money,
2 property, or accounts of a vulnerable adult,
3 b. refusing to pay for necessities or utilities in a
4 timely manner, or
5 c. providing substandard care to a vulnerable adult
6 despite the availability of adequate financial
7 resources;

8 11. "Neglect" means:

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

19 ~~11.~~ 12. "Sexual abuse" means:

- 20 a. oral, anal, or vaginal penetration of a vulnerable
21 adult by or through the union with the sexual organ of
22 a caretaker or other person providing services to the
23 vulnerable adult, or the anal or vaginal penetration
24 of a vulnerable adult by a caretaker or other person

1 providing services to the vulnerable adult with any
2 other object, or

3 b. for the purpose of sexual gratification, the touching,
4 feeling or observation of the body or private parts of
5 a vulnerable adult by a caretaker or other person

6 providing services to the vulnerable adult, or

7 c. indecent exposure by a caretaker or other person
8 providing services to the vulnerable adult;

9 ~~12.~~ 13. "Indecent exposure" means forcing or requiring a
10 vulnerable adult to:

11 a. look upon the body or private parts of another person
12 or upon sexual acts performed in the presence of the
13 vulnerable adult, or

14 b. touch or feel the body or private parts of another;

15 ~~13.~~ 14. "Self-neglect" means the action or inaction of a
16 vulnerable adult which causes that person to fail to meet the
17 essential requirements for physical or mental health and safety due
18 to the vulnerable adult's lack of awareness, incompetence or
19 incapacity;

20 ~~14.~~ 15. "Sexual exploitation" includes, but is not limited to,
21 a caretaker's causing, allowing, permitting or encouraging a
22 vulnerable adult to engage in prostitution or in the lewd, obscene,
23 or pornographic photographing, filming or depiction of the
24 vulnerable adult as those acts are defined by state law; and

1 ~~15.~~ 16. "Verbal abuse" means the use of words, sounds, or other
2 communication including, but not limited to, gestures, actions or
3 behaviors, by a caretaker or other person providing services to a
4 vulnerable adult that are likely to cause a reasonable person to
5 experience humiliation, intimidation, fear, shame or degradation.

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

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

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

24 1. The Department of Human Services; or

1 2. The municipal police department or sheriff's office in the
2 county in which the suspected abuse, neglect, or exploitation
3 occurred.

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

6 1. Physicians;

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

9 3. Social workers and mental health professionals;

10 4. Law enforcement officials;

11 5. Staff of domestic violence programs;

12 6. Long-term care facility personnel; ~~and~~ including staff of
13 nursing facilities, intermediate care facilities for persons with
14 mental retardation, assisted living facilities, and residential care
15 facilities;

16 7. Other health care professionals;

17 8. Persons entering into transactions with a caretaker or other
18 person who has assumed the role of financial management for a
19 vulnerable adult;

20 9. Staff of residential care facilities, group homes, or
21 employment settings for individuals with developmental disabilities;
22 and

23 10. Job coaches, community service workers, and personal care
24 assistants.

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

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

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

23 D. If the initial report is made to the local municipal police
24 department or sheriff's office, such police department or sheriff's

1 office shall notify, as soon as possible, the Department of Human
2 Services of its investigation.

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

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

16 2. The same immunity from any civil or criminal liability shall
17 also be extended to previous employers of a person employed to be
18 responsible for the care of a vulnerable adult, who in good faith
19 report to new employers or prospective employers of such caretaker
20 any misconduct of the caretaker including, but not limited to,
21 abuse, neglect or exploitation of a vulnerable adult, whether
22 confirmed or not.

23 G. Any person who willfully or recklessly makes a false report
24 shall be civilly liable for any actual damages suffered by the

1 person being reported and for any punitive damages set by the court
2 or jury which may be allowed in the discretion of the court or jury.

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

- 16 a. the vulnerable adult agrees to the disclosure of the
17 health information, or
18 b. the individual is unable to agree to the disclosure of
19 health information because of incapacity; and
20 (1) the requesting party represents that the health
21 information for which disclosure is sought is not
22 intended to be used against the vulnerable adult
23 in a criminal prosecution but to provide
24

1 protective services pursuant to the Protective
2 Services for Vulnerable Adults Act,

3 (2) the disclosure of the information is necessary to
4 conduct an investigation into the alleged abuse,
5 neglect or exploitation of the vulnerable adult
6 subject to the investigation, and

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

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

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

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

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

23 J. Any state or county medical examiner or physician who has
24 reasonable cause to suspect that the death of any vulnerable adult

1 may be the result of abuse or neglect as defined by Section 10-103
2 of this title shall make a report to the district attorney or other
3 law enforcement official of the county in which the death occurred.
4 The report shall include the name of the person making the report,
5 the name of the deceased person, the facts or other evidence
6 supporting such suspicion, and any other health information that may
7 be of assistance to the district attorney in conducting an
8 investigation into the matter.

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

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

20 Section 10-108. A. 1. If the Department of Human Services
21 determines that a vulnerable adult is suffering from abuse, neglect,
22 or exploitation presenting a substantial risk of death or immediate
23 and serious physical harm to the person or financial exploitation of
24 the estate of the person, and the vulnerable adult lacks mental

1 capacity to consent to receive protective services and no consent
2 can be obtained, the Department may petition the district court in
3 the county specified by paragraph 3 of this subsection for an order:

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

7 b. freezing the assets of the vulnerable adult, if the
8 vulnerable adult is being exploited, establishing any
9 new accounts necessary to pay the daily living
10 expenses of the vulnerable adult, and directing a full
11 accounting and investigation of the person alleged to
12 be improperly managing the estate of the vulnerable
13 adult, or

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

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

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

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

17 B. The petition shall be sworn to and include the name, age,
18 and address of the vulnerable adult who the Department has
19 determined is in need of emergency protective services, the nature
20 of the abuse, neglect, or exploitation, the services needed, and
21 information relating to the capacity of the person to consent to
22 services and a description of the attempts of the Department to
23 obtain consent and the name of the person or organization proposed
24 to be appointed as temporary guardian.

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

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

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

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

21 (2) any person so requested by the vulnerable adult
22 to be present at the hearing, and
23
24

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

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

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

20 E. 1. The vulnerable adult has a right to be present and
21 represented by counsel at any hearing authorized by this section.
22 If the vulnerable adult is indigent or, in the determination of the
23 court, lacks capacity to waive the right to counsel, the court shall
24 immediately appoint counsel who shall personally meet with the

1 vulnerable adult and attempt to discuss the petition or any pending
2 motion prior to any hearing.

3 2. If the vulnerable adult is not in attendance at a scheduled
4 hearing, the court shall make a special finding as to why the
5 vulnerable adult is unable to attend, and, upon the request of the
6 vulnerable adult or the attorney of the vulnerable adult, may
7 continue the hearing to allow the vulnerable adult to attend.

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

10 4. If the vulnerable adult is not indigent, the court may order
11 costs of representation paid from the estate in the same manner as
12 currently paid under the Oklahoma Guardianship and Conservatorship
13 Act.

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

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

21 b. issue an order freezing all assets of the vulnerable
22 adult, establish any new accounts necessary to pay the
23 daily living expenses of the vulnerable adult, and
24 order a full accounting and investigation of the

1 person alleged to be improperly managing the
2 vulnerable adult's estate, or

3 c. suspend or revoke powers of attorney or terminate a
4 guardianship or conservatorship upon a finding that
5 the attorney-in-fact, guardian or conservator failed
6 to act appropriately on behalf of the vulnerable
7 adult.

8 2. a. Except as otherwise provided by subparagraphs b and c
9 of this paragraph, the court appointing a temporary
10 guardian and ordering involuntary protective services
11 shall not have authority to order the sale of the real
12 property of the vulnerable adult.

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

24

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

13 d. The court may issue an order authorizing the
14 Department to sell personal property of a vulnerable
15 adult when additional resources are required to pay
16 for necessary care for the vulnerable adult pursuant
17 to state law.

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

21 1. Only such protective services as are necessary to remove the
22 conditions creating the emergency shall be ordered, and the court
23 shall specifically designate the approved services in the order of
24 the court;

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

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

14 H. The court shall appoint the Department or an interested
15 person or organization as temporary guardian of the person with
16 responsibility for the welfare of such person and authority to give
17 consent on behalf of the person for the approved involuntary
18 protective services until the expiration of the order.

19 I. The issuance of an order for involuntary protective services
20 and the appointment of a temporary guardian shall not deprive the
21 vulnerable adult of any rights except to the extent validly provided
22 for in the order or appointment.

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

- 1 a. forcible entry of the premises of the vulnerable adult
2 to be protected for the purpose of rendering
3 protective services but only after a reasonable
4 showing to the court that good faith attempts to gain
5 voluntary access to the premises have failed and
6 forcible entry is necessary, ~~and~~
- 7 b. the transporting of the vulnerable adult to another
8 location for the provision of involuntary services,
9 and
- 10 c. the eviction of persons who are in a position to
11 exploit the vulnerable adult from any property owned,
12 leased, or rented by the vulnerable adult and
13 restriction of those persons' further access to any
14 property of the vulnerable adult.

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

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

1 L. If the vulnerable adult continues to need involuntary
2 protective services after expiration of the thirty-day temporary
3 guardianship provided in subsection G of this section, the temporary
4 guardian shall immediately file a verified motion requesting the
5 court to, except as otherwise provided by subsection F of this
6 section, continue the temporary guardianship and involuntary
7 protective services under this section for a period not to exceed
8 one hundred eighty (180) calendar days.

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

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

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

21 4. The evaluation shall include at least the following
22 information:
23
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- 1 a. the address of the place where the person is residing
2 and the person or agency which is providing care,
3 treatment, or services at present,
- 4 b. a summary of the professional treatment and services
5 provided to the person by the Department or agency, if
6 any, in connection with the problem creating the need
7 for emergency protective services, and
- 8 c. a medical and social evaluation, including, but not
9 limited to, the Department's assessment of the
10 person's capacity to consent to services, a
11 psychological or psychiatric evaluation and review if
12 the mental state of the person is in question, and any
13 recommendations for or against maintenance of partial
14 legal rights. The evaluation and review shall include
15 recommendations for placement based upon the best
16 interests of the vulnerable adult taking into
17 consideration the following:
- 18 (1) the least restrictive environment,
19 (2) the desires of the vulnerable adult and legal
20 guardian,
21 (3) the desires of the caretaker of the vulnerable
22 adult and of any of the persons specified in
23 Section 3-110 of Title 30 of the Oklahoma
24 Statutes,

- 1 (4) the physical and mental health needs of the
2 vulnerable adult,
3 (5) the available programs and services, and
4 (6) the health, well-being and welfare of the
5 vulnerable adult and the public.

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

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

21 SECTION 5. This act shall become effective November 1, 2007.

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