

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1643

By: Inman

4  
5  
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.  
8 2001, Sections 10-101, 10-102, as amended by Section  
9 1, Chapter 332, O.S.L. 2003, 10-103, as amended by  
10 Section 2, Chapter 332, O.S.L. 2003, 10-104, as  
11 amended by Section 1, Chapter 399, O.S.L. 2003, 10-  
12 105, as last amended by Section 27, Chapter 5, O.S.L.  
13 2004, 10-105.1, as amended by Section 5, Chapter 332,  
14 O.S.L. 2003, 10-106, as amended by Section 6, Chapter  
15 332, O.S.L. 2003, 10-107, as amended by Section 7,  
16 Chapter 332, O.S.L. 2003, 10-108, as amended by  
17 Section 8, Chapter 332, O.S.L. 2003, 10-110 and 10-  
18 111 (43A O.S. Supp. 2006, Sections 10-102, 10-103,  
19 10-104, 10-105, 10-105.1, 10-106, 10-107 and 10-108),  
20 which relate to the Protective Services for  
21 Vulnerable Adults Act; modifying legislative intent;  
22 modifying scope of certain definitions; expanding  
23 scope of reporting requirement; making certain  
24 actions unlawful; providing penalties; modifying  
references to certain persons; and providing an  
effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-101, is  
amended to read as follows:

Section 10-101. Sections 10-101 through ~~10-110~~ 10-111 of this  
title may be cited as the "Protective Services for Vulnerable ~~Adults~~  
Persons Act".

1 SECTION 2. AMENDATORY 43A O.S. 2001, Section 10-102, as  
2 amended by Section 1, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006,  
3 Section 10-102), is amended to read as follows:

4 Section 10-102. A. The Legislature recognizes that many  
5 citizens of this state, because of the infirmities of aging,  
6 incapacity, or other disability are unable to manage their own  
7 affairs or to protect themselves from exploitation, abuse, or  
8 neglect and are in need of protective services. The Legislature  
9 further recognizes that all persons shall be, from conception  
10 through eternity, treated with dignity and respect.

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

16 C. The Protective Services for Vulnerable ~~Adults~~ Persons Act is  
17 designed to establish a program of protective services for  
18 vulnerable ~~adults~~ persons in need of those services.

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

22 Section 10-103. A. When used in the Protective Services for  
23 Vulnerable ~~Adults~~ Persons Act:

24

1           1. "Protective services" means services which are necessary to  
2 aid a vulnerable ~~adult~~ person in meeting the essential requirements  
3 for mental or physical health and safety that the vulnerable ~~adult~~  
4 person is unable to provide or obtain without assistance. The term  
5 "protective services" includes but is not limited to services  
6 provided to or obtained for such person in order to prevent or  
7 remedy the abuse, neglect, or exploitation of such person;

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

- 11           a. the identification of vulnerable ~~adults~~ persons in  
12                 need of the services,
- 13           b. the provision of medical care for physical and mental  
14                 health needs,
- 15           c. the provision of social services assistance in  
16                 personal hygiene, food, clothing, and adequately  
17                 heated and ventilated shelter,
- 18           d. protection from health and safety hazards,
- 19           e. protection from physical mistreatment,
- 20           f. guardianship referral,
- 21           g. outreach programs, and
- 22           h. the transportation necessary to secure any of such  
23                 services.

24

1 The term shall not include taking the person into physical custody  
2 without the consent of the person except as provided for in Sections  
3 10-107 and 10-108 of this title, and the evaluation, monitoring, and  
4 provision of protective placements;

5 3. "Meet essential requirements for ~~mental or physical health~~  
6 ~~and safety~~" means activities of daily living" shall include, but not  
7 be limited to, those actions necessary to provide the mental or  
8 physical health and safety, health care, food, shelter, clothing,  
9 personal hygiene and other care without which physical injury or  
10 illness to the vulnerable ~~adult~~ person is likely to occur;

11 4. "Incapacitated person" means:

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

13 (1) who is impaired by reason of mental or physical  
14 illness or disability, dementia or related  
15 disease, mental retardation, developmental  
16 disability or other cause, and

17 (2) whose ability to receive and evaluate information  
18 effectively or to make and to communicate  
19 responsible decisions is impaired to such an  
20 extent that such person lacks the capacity to  
21 manage his or her financial resources or to meet  
22 essential requirements for his or her mental or  
23 physical health or safety without assistance from  
24 others, or

1           b. a person for whom a guardian, limited guardian, or  
2           conservator has been appointed pursuant to the  
3           Oklahoma Guardianship and Conservatorship Act;

4 5. "Vulnerable ~~adult~~ person" means an individual who is an  
5 incapacitated person or who, ~~because of physical or mental~~  
6 ~~disability, incapacity, or other disability, is substantially~~  
7 ~~impaired in the ability~~ is unable to provide adequately for the care  
8 or custody of himself or herself, or is unable to manage his or her  
9 property and financial affairs effectively, or to meet essential  
10 requirements for mental or physical health or safety, or to protect  
11 himself or herself from abuse, verbal abuse, neglect, or  
12 exploitation without assistance from others. A vulnerable person is  
13 further defined as one who is:

- 14           a. capable of or susceptible to being wounded or hurt  
15           physically or emotionally,  
16           b. susceptible to temptation or corrupt influence, and  
17           c. open to or defenseless against criticism or moral  
18           attack;

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

- 20           a. the responsibility for the care of a vulnerable ~~adult~~  
21           person or the financial management of the resources of  
22           a vulnerable ~~adult~~ person as a result of a family  
23           relationship,

1           b.    assumed the responsibility for the care of a  
2                   vulnerable ~~adult~~ person voluntarily, by contract, or  
3                   as a result of the ties of friendship, or

4           c.    been appointed a guardian, limited guardian, or  
5                   conservator pursuant to the Oklahoma Guardianship and  
6                   Conservatorship Act;

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

8       8.    "Abuse" means causing or permitting:

9           a.    the infliction of physical pain, injury, sexual abuse,  
10                   sexual exploitation, unreasonable restraint or  
11                   confinement, social isolation, or mental anguish, or

12           b.    the deprivation of nutrition, hydration, clothing,  
13                   shelter, utilities, health care, or other care or  
14                   services without which serious physical or mental  
15                   injury is likely to occur to a vulnerable ~~adult~~ person  
16                   by a caretaker or other person providing services to a  
17                   vulnerable ~~adult~~ person;

18       9.    "Exploitation" or "exploit" means an unjust or improper use  
19 of the resources of a vulnerable ~~adult~~ person for the profit or  
20 advantage, pecuniary or otherwise, of a person other than the  
21 vulnerable ~~adult~~ person through the use of undue influence,  
22 coercion, harassment, duress, deception, false representation, false  
23 pretense, intimidation, social isolation, humiliation, or  
24 discrimination;

1 10. "Neglect" means:

2 a. the failure to provide protection for a vulnerable  
3 ~~adult~~ person who is unable to or at a disadvantage to  
4 protect his or her own interest either temporarily or  
5 permanently,

6 b. the failure to provide a vulnerable ~~adult~~ person with  
7 adequate shelter, nutrition, hydration, health care,  
8 utilities, or clothing either temporarily or  
9 permanently, or

10 c. negligent acts or omissions that result in harm or the  
11 unreasonable risk of harm to a vulnerable ~~adult~~ person  
12 through the action, inaction, or lack of supervision  
13 by a caretaker or other responsible person providing  
14 direct services;

15 11. "Sexual abuse" means:

16 a. oral, anal, or vaginal penetration of a vulnerable  
17 ~~adult~~ person by or through the union with the sexual  
18 organ of a caretaker or other person providing  
19 services to the vulnerable ~~adult~~ person, or the anal  
20 or vaginal penetration of a vulnerable ~~adult~~ person by  
21 a caretaker or other person providing services to the  
22 vulnerable ~~adult~~ person with any other object, ~~or~~

23 b. for the purpose of sexual gratification, the touching,  
24 feeling or observation of the body or private parts of

1 a vulnerable ~~adult~~ person by a caretaker or other  
2 person providing services to the vulnerable ~~adult~~  
3 person, ~~or~~

4 c. for the purpose of achieving power and control over  
5 the vulnerable person, the caretaker or other  
6 responsible person providing services is of the  
7 opposite sex and the vulnerable person has requested a  
8 caretaker or other responsible person providing  
9 services to be of the same sex for personal care, or

10 d. indecent exposure by a caretaker or other person  
11 providing services to the vulnerable ~~adult~~ person;

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

14 a. look upon the body or private parts of another person  
15 or upon sexual acts performed in the presence of the  
16 vulnerable ~~adult~~ person, or

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

18 13. "Self-neglect" means the action or inaction of a vulnerable  
19 ~~adult~~ person which causes that person to fail to meet the essential  
20 requirements for physical or mental health and safety due to the  
21 vulnerable ~~adult's~~ person's lack of awareness, intimidation,  
22 harassment, discrimination, incompetence ~~or~~, incapacity, or low  
23 self-esteem and lack of knowledge of what services are available,  
24 and where or how to obtain the services;

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

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

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

1 SECTION 4. AMENDATORY 43A O.S. 2001, Section 10-104, as  
2 amended by Section 1, Chapter 399, O.S.L. 2003 (43A O.S. Supp. 2006,  
3 Section 104), is amended to read as follows:

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

- 8 1. The Department of Human Services; or
- 9 2. The office of the district attorney in the county in which  
10 the suspected abuse, neglect, or exploitation occurred; or

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

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

- 16 1. Physicians;
  - 17 2. Operators of emergency response vehicles and other medical  
18 professionals;
  - 19 3. Social workers and mental health professionals;
  - 20 4. Law enforcement officials;
  - 21 5. Staff of domestic violence programs;
  - 22 6. Long-term care facility personnel; and
  - 23 7. Other health care professionals.
- 24

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

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. 1. 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 2. Any person investigating any report of abuse, neglect, or  
11 exploitation as required by law, who knowingly or willingly abuses,  
12 neglects, harasses, or exploits any person involved in the  
13 investigation including, but not limited to, the person being  
14 interviewed, shall, upon conviction, be guilty of a misdemeanor  
15 punishable by imprisonment in the county jail for a term not  
16 exceeding one (1) year or by a fine of not more than One Thousand  
17 Dollars (\$1,000.00), or by both such fine and imprisonment.

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

24

1           2. The same immunity from any civil or criminal liability shall  
2 also be extended to previous employers of a person employed to be  
3 responsible for the care of a vulnerable ~~adult~~ person, who in good  
4 faith report to new employers or prospective employers of such  
5 caretaker any misconduct of the caretaker including, but not limited  
6 to, abuse, neglect or exploitation of a vulnerable ~~adult~~ person,  
7 whether confirmed or not.

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

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

- 1 a. the vulnerable ~~adult~~ person agrees to the disclosure  
2 of the health information, or
- 3 b. the individual is unable to agree to the disclosure of  
4 health information because of incapacity; and
- 5 (1) the requesting party represents that the health  
6 information for which disclosure is sought is not  
7 intended to be used against the vulnerable ~~adult~~  
8 person in a criminal prosecution but to provide  
9 protective services pursuant to the Protective  
10 Services for Vulnerable ~~Adults~~ Persons Act,
- 11 (2) the disclosure of the information is necessary to  
12 conduct an investigation into the alleged abuse,  
13 neglect or exploitation of the vulnerable ~~adult~~  
14 person subject to the investigation, and
- 15 (3) immediate enforcement activity that depends upon  
16 the disclosure:
- 17 (a) is necessary to protect the health, safety  
18 and welfare of the vulnerable ~~adult~~ person  
19 because of incapacity, or
- 20 (b) would be materially and adversely affected  
21 by waiting until the vulnerable ~~adult~~ person  
22 is able to agree to the disclosure.  
23  
24

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 disclosed health information.

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

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

19           K. No employer shall terminate the employment, prevent or  
20 impair the practice or occupation of or impose any other sanction on  
21 any employee solely for the reason that the employee made or caused  
22 to be made a report or cooperated with an investigation pursuant to  
23 the Protective Services for Vulnerable ~~Adults~~ Persons Act. A court,  
24 in addition to other damages and remedies, may assess reasonable

1 attorney fees against an employer who has been found to have  
2 violated the provisions of this subsection.

3 SECTION 5. AMENDATORY 43A O.S. 2001, Section 10-105, as  
4 last amended by Section 27, Chapter 5, O.S.L. 2004 (43A O.S. Supp.  
5 2006, Section 10-105), is amended to read as follows:

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

11 B. The investigation by the Department shall include:

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

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

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

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

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

10          6. A statement of the least restrictive services needed;

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

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

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

18          10. Whether the person desires the services;

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

21          12. Other relevant information.

22          C. 1. a. The Department's investigation shall include a visit  
23               to the home or other place of residence of the person  
24               who is the subject of the report, a private interview

1 with such person, and consultation with persons who  
2 have knowledge of the circumstances.

3 b. If, in the course of an investigation of this nature,  
4 the Department is denied entrance to the home or other  
5 place of residence of a person believed to be a  
6 vulnerable ~~adult~~ person in need of protective  
7 services, or is denied a private interview with the  
8 vulnerable ~~adult~~ person, the Department may petition  
9 the court for an order allowing entry to the premises  
10 or private access to the vulnerable ~~adult~~ person. The  
11 court shall make a finding of probable cause of the  
12 vulnerability of the ~~adult~~ person before issuing the  
13 order. If documentation, or access to records, or  
14 other information relating to such person as provided  
15 by this section is denied, the Department may petition  
16 the court for an order allowing entry or access.

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

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

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

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

10          E. 1. In the case of a final investigative report pertaining  
11 to a vulnerable ~~adult~~ person who is a resident of a nursing  
12 facility, residential care facility, assisted living facility or  
13 continuum of care facility and who is alleged to be a victim of  
14 abuse, verbal abuse, neglect, or exploitation by an employee of such  
15 facility, the Department shall forward to the State Department of  
16 Health a copy of the Department's final investigative report.

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

23           a. Within thirty (30) days of receipt of the final  
24                 investigative report submitted by the Department of

1 Human Services pursuant to this section, the State  
2 Department of Health shall provide the Department of  
3 Human Services with a written summary of any action  
4 taken as a result of the complaint including, but not  
5 limited to, results of any inspections, enforcement  
6 actions or actions which may be taken by the State  
7 Department of Health.

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

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

23 F. When a report is received pertaining to a vulnerable ~~adult~~  
24 person residing in a facility other than the home of the vulnerable

1 ~~adult~~ person, where persons are employed to provide care and those  
2 employees have been named as persons responsible for the abuse,  
3 neglect or exploitation, the Department shall forward its final  
4 findings, including, but not limited to, any administrative appeal  
5 findings to the owner or administrator of the facility to prevent  
6 further incidents.

7 SECTION 6. AMENDATORY 43A O.S. 2001, Section 10-105.1,  
8 as amended by Section 5, Chapter 332, O.S.L. 2003 (43A O.S. Supp.  
9 2006, Section 10-105.1), is amended to read as follows:

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

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

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

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

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

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

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

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

21           b. a statement that findings of all investigations are  
22           provided to the office of the district attorney, and  
23  
24

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

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

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

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

14 c. a statement that involuntary services may be provided  
15 through the judicial system when immediate services  
16 are needed to preserve the life of the vulnerable  
17 ~~adult~~ person and physical health or preserve the  
18 resources of the vulnerable ~~adult~~ person which may  
19 later be needed to provide care for the vulnerable  
20 ~~adult~~ person;

21 6. A statement that, upon completion of the investigation, the  
22 identified caretaker, legal guardian and next of kin will receive a  
23 letter from the Department which will inform such caretaker, legal  
24 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~~ person;

7. The procedures concerning the process the caretaker, legal guardian and next of kin may use to acquire access to the vulnerable ~~adult~~ person in the event the vulnerable ~~adult~~ person is removed from the residence of the vulnerable ~~adult~~ person 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~~ person 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

1           11. An explanation that the caretaker, legal guardian and next  
2 of kin may review specific information gathered during the  
3 investigation and pertaining to the service needs of the vulnerable  
4 ~~adult~~ person subject to the requirements and exceptions provided in  
5 Section 10-110 of this title.

6           SECTION 7.           AMENDATORY           43A O.S. 2001, Section 10-106, as  
7 amended by Section 6, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006,  
8 Section 10-106), is amended to read as follows:

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

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

20           2. The complaint must allege specific facts sufficient to show  
21 that the person is a vulnerable ~~adult~~ person in need of protective  
22 services, consents to the receipt of protective services, and that  
23 the caretaker refuses to allow the provision of such services.  
24

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

5           a. enjoining the caretaker from interfering with the  
6           provision of protective services to the vulnerable  
7           ~~adult~~ person, and

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

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

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

20           a. the assets of the vulnerable ~~adult~~ person consenting  
21           to the receipt of voluntary protective services, or

22           b. any available private or public assistance programs  
23           for which the vulnerable ~~adult~~ person is eligible.  
24

1           2. If no assets or other private or public funds are available  
2 to the person, payment shall be made from a fund established by the  
3 Department for the purpose of providing emergency ~~adult~~ protective  
4 services, subject to availability of funds.

5           SECTION 8.           AMENDATORY           43A O.S. 2001, Section 10-107, as  
6 amended by Section 7, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006,  
7 Section 10-107), is amended to read as follows:

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

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

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

22           C. 1. Payment for involuntary protective services provided to  
23 a vulnerable ~~adult~~ person determined by the court to be in need of  
24

1 involuntary protective services pursuant to this section or Section  
2 10-108 of this title shall be made:

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

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

19 c. as provided by paragraph 2 of subsection D of Section  
20 10-106 of this title if the person has inadequate  
21 assets to make such payments as ordered by the court,  
22 and no private or public funds are available to the  
23 person, from a fund established by the Department for  
24

1 the purpose of providing emergency ~~adult~~ protective  
2 services, subject to availability of funds.

3 2. The person has a right to be present and represented by  
4 counsel at any hearing. If the vulnerable ~~adult~~ person is indigent  
5 or, in the determination of the court, lacks capacity to waive the  
6 right to counsel, the court shall appoint counsel. If the person is  
7 indigent, the cost of representation by counsel shall be borne by  
8 this state.

9 D. Upon the request of an authorized representative of the  
10 Department, the district attorney of the county in which the person  
11 alleged or found by a court to be in need of involuntary protective  
12 services resides shall provide legal representation for the  
13 Department in any local proceedings related to the provision of  
14 involuntary protective services pursuant to this section or Section  
15 10-108 of this title.

16 SECTION 9. AMENDATORY 43A O.S. 2001, Section 10-108, as  
17 amended by Section 8, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006,  
18 Section 10-108), is amended to read as follows:

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

1 services and no consent can be obtained, the Department may petition  
2 the district court in the county specified by paragraph 3 of this  
3 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~~ person, if  
8 the vulnerable ~~adult~~ person is being exploited,  
9 establishing any new accounts necessary to pay the  
10 daily living expenses of the vulnerable ~~adult~~ person,  
11 and directing a full accounting and investigation of  
12 the person alleged to be improperly managing the  
13 estate of the vulnerable ~~adult~~ person, 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~~ person resides,
- 5           b. the district court in the county in which the  
6           vulnerable ~~adult~~ person is receiving inpatient  
7           services, or
- 8           c. the district court in the county where the vulnerable  
9           ~~adult~~ person is located when any delay caused by  
10           taking the petition to the district court in the  
11           county of the residence of the vulnerable ~~adult~~ person  
12           would result in greater substantial risk of death or  
13           greater serious physical harm to the vulnerable ~~adult~~  
14           person. The petition shall include an explanation of  
15           why the petition was filed in the district court in  
16           the county specified by this subparagraph rather than  
17           in the district court as specified in subparagraph a  
18           or b of this paragraph.

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

1 obtain consent and the name of the person or organization proposed  
2 to be appointed as temporary guardian.

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

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

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

21 (1) the legal guardian, guardian ad litem and  
22 caretaker of the vulnerable ~~adult~~ person,

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

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~~ person will result, the court may waive prior notice and issue  
9 a 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~~ person and the  
13 attorney of the vulnerable ~~adult~~ person, if known, shall be  
14 personally served with written notice scheduling a hearing within  
15 seventy-two (72) hours.

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

21 E. 1. The vulnerable ~~adult~~ person has a right to be present  
22 and represented by counsel at any hearing authorized by this  
23 section. If the vulnerable ~~adult~~ person is indigent or, in the  
24 determination of the court, lacks capacity to waive the right to

1 counsel, the court shall immediately appoint counsel who shall  
2 personally meet with the vulnerable ~~adult~~ person and attempt to  
3 discuss the petition or any pending motion prior to any hearing.

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

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

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

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

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

23 b. issue an order freezing all assets of the vulnerable  
24 ~~adult~~ person, establish any new accounts necessary to

1 pay the daily living expenses of the vulnerable ~~adult~~  
2 person, and order a full accounting and investigation  
3 of the person alleged to be improperly managing the  
4 vulnerable ~~adult's~~ person's estate, or

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

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

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

1 provisions of the Oklahoma Guardianship and  
2 Conservatorship Act.

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

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

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

22 2. Protective services authorized by an involuntary protective  
23 services order shall not include a change of residence unless the  
24 court specifically finds such action is necessary to remove the

1 conditions creating the emergency and gives specific approval for  
2 such action in the order of the court. Emergency placement may be  
3 made to such facilities as nursing homes, hospital rehabilitation  
4 centers, assisted living centers, foster care and in-home  
5 placements, or to other appropriate facilities; provided, however,  
6 emergency placement shall not be made to facilities for the acutely  
7 mentally ill; and

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

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

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

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

22 a. forcible entry of the premises of the vulnerable ~~adult~~  
23 person to be protected for the purpose of rendering  
24 protective services but only after a reasonable

1 showing to the court that good faith attempts to gain  
2 voluntary access to the premises have failed and  
3 forcible entry is necessary, and

4 b. the transporting of the vulnerable ~~adult~~ person to  
5 another location for the provision of involuntary  
6 services.

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

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

17 L. If the vulnerable ~~adult~~ person continues to need involuntary  
18 protective services after expiration of the thirty-day temporary  
19 guardianship provided in subsection G of this section, the temporary  
20 guardian shall immediately file a verified motion requesting the  
21 court to, except as otherwise provided by subsection F of this  
22 section, continue the temporary guardianship and involuntary  
23 protective services under this section for a period not to exceed  
24 one hundred eighty (180) calendar days.

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

3 2. Upon filing such motion, the court shall order that a  
4 physical, mental, and social evaluation of the vulnerable ~~adult~~  
5 person be conducted by the Department and that a proposed plan of  
6 care be submitted to the court within thirty (30) calendar days  
7 thereafter reflecting the evaluation findings and recommended  
8 services.

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

14 4. The evaluation shall include at least the following  
15 information:

16 a. the address of the place where the person is residing  
17 and the person or agency which is providing care,  
18 treatment, or services at present,

19 b. a summary of the professional treatment and services  
20 provided to the person by the Department or agency, if  
21 any, in connection with the problem creating the need  
22 for emergency protective services, and

23 c. a medical and social evaluation, including, but not  
24 limited to, the Department's assessment of the

1 person's capacity to consent to services, a  
2 psychological or psychiatric evaluation and review if  
3 the mental state of the person is in question, and any  
4 recommendations for or against maintenance of partial  
5 legal rights. The evaluation and review shall include  
6 recommendations for placement based upon the best  
7 interests of the vulnerable ~~adult~~ person taking into  
8 consideration the following:

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

21 During the hearing to consider the motion to continue the  
22 temporary guardianship of the vulnerable ~~adult~~ person for up to one  
23 hundred eighty (180) calendar days, the court shall consider the  
24 Department's findings and proposed plan of care and any other

1 evidence presented by the caretaker, guardian or other interested  
2 persons. The court shall either terminate the temporary  
3 guardianship and all involuntary services or continue the temporary  
4 guardianship and specify any necessary services to be provided by  
5 the Department for a period not to exceed one hundred eighty (180)  
6 calendar days. Provided, the court may continue the guardianship of  
7 the Department, if there is no one willing and able to act as  
8 guardian for the vulnerable ~~adult~~ persons.

9 N. Neither the Department nor any of its employees or any other  
10 petitioner shall be liable for filing a petition pursuant to the  
11 Protective Services for Vulnerable ~~Adults~~ Persons Act if the  
12 petition was filed in good faith.

13 SECTION 10. AMENDATORY 43A O.S. 2001, Section 10-110, is  
14 amended to read as follows:

15 Section 10-110. A. The reports, records, and working papers  
16 used or developed in an investigation of the circumstances of a  
17 vulnerable ~~adult~~ person pursuant to the provisions of the Protective  
18 Services for Vulnerable ~~Adults~~ Persons Act are confidential and may  
19 be disclosed only pursuant to rules promulgated by the Commission  
20 for Human Services, by order of the court or as otherwise provided  
21 by this section.

22 B. Department of Human Services agency records pertaining to a  
23 vulnerable ~~adult~~ person may be inspected and their contents  
24

1 disclosed without a court order to the following persons upon  
2 showing of proper credentials and pursuant to their lawful duties:

3 1. A district attorney and the employees of an office of a  
4 district attorney in the course of their official duties pursuant to  
5 this title or the prosecution of crimes against vulnerable ~~adults~~  
6 persons;

7 2. The attorney representing a vulnerable ~~adult~~ person who is  
8 the subject of a proceeding pursuant to the provisions of the  
9 Protective Services for Vulnerable ~~Adults~~ Persons Act;

10 3. Employees of a law enforcement agency of this or another  
11 state and employees of protective services for vulnerable ~~adults~~  
12 persons of another state;

13 4. A physician who has before him or her a vulnerable ~~adult~~  
14 person whom the physician reasonably suspects may have been abused  
15 or neglected or any health care or mental health professional  
16 involved in the evaluation or treatment of the vulnerable ~~adult~~  
17 person;

18 5. A caretaker, legal guardian, custodian or other family  
19 ~~members~~ member of the vulnerable ~~adult~~ person; provided the  
20 Department may limit such disclosures to summaries or to information  
21 directly necessary for the purpose of such disclosure;

22 6. Any public or private agency or person authorized by the  
23 Department to diagnose, provide care and treatment to a vulnerable  
24

1 ~~adult~~ person who is the subject of a report or record of vulnerable  
2 ~~adult~~ person abuse or neglect;

3 7. Any public or private agency or person authorized by the  
4 Department to supervise or provide other services to a vulnerable  
5 ~~adult~~ person who is the subject of a report or record of vulnerable  
6 ~~adult~~ person abuse or neglect; provided the Department may limit  
7 such disclosure to summaries or to information directly necessary  
8 for the purpose of such disclosure; and

9 8. Any person or agency for research purposes, if all of the  
10 following conditions are met:

11 a. the person or agency conducting such research is  
12 employed by the State of Oklahoma or is under contract  
13 with this state and is authorized by the Department of  
14 Human Services to conduct such research, and

15 b. the person or agency conducting the research ensures  
16 that all documents containing identifying information  
17 are maintained in secure locations and access to such  
18 documents by unauthorized persons is prohibited; that  
19 no identifying information is included in documents  
20 generated from the research conducted; and that all  
21 identifying information is deleted from documents used  
22 in the research when the research is completed.

23 C. Nothing in this section shall be construed as prohibiting  
24 the Department from disclosing such confidential information as may

1 be necessary to secure appropriate care, treatment or protection of  
2 a vulnerable ~~adult~~ person alleged to be abused or neglected.

3 D. Records and their contents disclosed pursuant to this  
4 section shall remain confidential. The use of such information  
5 shall be limited to the purposes for which disclosure is authorized.  
6 It shall be unlawful and a misdemeanor for any person to furnish any  
7 record or disclose any information contained therein for any  
8 unauthorized purpose.

9 SECTION 11. AMENDATORY 43A O.S. 2001, Section 10-111, is  
10 amended to read as follows:

11 Section 10-111. A. 1. The district courts are vested with  
12 jurisdiction to issue orders and enforce orders restricting  
13 visitation, by the custodian or by any other person specified by the  
14 court, of a vulnerable ~~adult~~ person who is receiving or has been  
15 determined to need protective services pursuant to the Protective  
16 Services for Vulnerable ~~Adults~~ Persons Act.

17 2. Whenever it is consistent with the welfare and safety of a  
18 vulnerable ~~adult~~ person, the court shall restrict the visitation of  
19 a custodian or other person specified by the court who is alleged or  
20 has been determined to have abused, neglected or exploited the  
21 vulnerable ~~adult~~ person.

22 3. Notice as ordered by the court shall be given to the  
23 custodian or other person alleged or determined to have abused,  
24 neglected or exploited a vulnerable ~~adult~~ person.

1 B. If the Department of Human Services determines, as a result  
2 of its investigation, that a vulnerable ~~adult~~ person needs voluntary  
3 or involuntary protective services as a result of abuse, neglect or  
4 exploitation by the caretaker or by any other person, the Department  
5 may petition the district court to restrict the visitation of such  
6 custodian or other person with the vulnerable ~~adult~~ person.

7 C. 1. Consistent with the welfare and safety of the vulnerable  
8 ~~adult~~ person, the court may require supervised visitation, prohibit  
9 visitation or otherwise limit the visitation by the custodian or  
10 such other person with the vulnerable ~~adult~~ person.

11 2. The basis for restricting visitation shall be stated in the  
12 record by the court.

13 D. The owner, operator or any facility personnel of a nursing  
14 home, residential home, assisted living facility or other long-term  
15 care facility having reason to believe that visitation of a  
16 vulnerable ~~adult~~ person should be restricted may notify the long-  
17 term care ombudsman program or ~~adult~~ protective services. Any other  
18 person having reason to believe that visitation of a vulnerable  
19 ~~adult~~ person should be restricted may notify the Department of Human  
20 Services pursuant to the Protective Services for Vulnerable ~~Adults~~  
21 Persons Act.

22 SECTION 12. This act shall become effective November 1, 2007.

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24 51-1-6115 BW 01/15/07