

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 351

By: Rice

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5  
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.  
8 2001, Section 10-104, as last amended by Section 3,  
9 Chapter 68, O.S.L. 2007 (43A O.S. Supp. 2008, Section  
10 10-104), which relates to reporting abuse of a  
11 vulnerable adult; requiring reporting of abuse to the  
12 Department of Human Services and the municipal police  
13 department or sheriff's office; and providing an  
14 effective date.

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

16 SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-104, as  
17 last amended by Section 3, Chapter 68, O.S.L. 2007 (43A O.S. Supp.  
18 2008, Section 10-104), is amended to read as follows:

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

- 23 1. The Department of Human Services; ~~or~~ and
- 24 2. The municipal police department or sheriff's office in the  
county in which the suspected abuse, neglect, or exploitation  
occurred.

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

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

22 C. 1. If the report is not made in writing in the first  
23 instance, as soon as possible after it is initially made by telephone  
24 or otherwise, the report shall be reduced to writing by the

1 Department of Human Services, in accordance with rules promulgated by  
2 the Commission for Human Services, or the local municipal police or  
3 sheriff's department whichever entity received the initial report.

4 The report shall contain the following information:

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

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 report.

18 D. If the initial report is made to the local municipal police  
19 department or sheriff's office, such police department or sheriff's  
20 office shall notify, as soon as possible, the Department of Human  
21 Services of its investigation.

22 E. Any person who knowingly and willfully fails to promptly  
23 report any abuse, neglect, or exploitation as required by the  
24 provisions of subsection A of this section, upon conviction, shall be

1 guilty of a misdemeanor punishable by imprisonment in the county jail  
2 for a term not exceeding one (1) year or by a fine of not more than  
3 One Thousand Dollars (\$1,000.00), or by both such fine and  
4 imprisonment.

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

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

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

22 H. 1. Every physician or other health care professional making  
23 a report concerning the abuse, neglect or exploitation of a  
24 vulnerable adult, as required by this section, or examining a

1 vulnerable adult to determine the likelihood of abuse, neglect or  
2 exploitation, and every hospital in which a vulnerable adult is  
3 examined or treated for abuse, neglect or exploitation shall disclose  
4 necessary health information related to the case and provide, upon  
5 request by either the Department of Human Services or the local  
6 municipal police or sheriff's department receiving the initial report,  
7 copies of the results or the records of the examination on which the  
8 report was based, and any other clinical notes, x-rays or photographs  
9 and other health information which is related to the case if:

- 10 a. the vulnerable adult agrees to the disclosure of the  
11 health information, or
- 12 b. the individual is unable to agree to the disclosure of  
13 health information because of incapacity; and
  - 14 (1) the requesting party represents that the health  
15 information for which disclosure is sought is not  
16 intended to be used against the vulnerable adult  
17 in a criminal prosecution but to provide  
18 protective services pursuant to the Protective  
19 Services for Vulnerable Adults Act,
  - 20 (2) the disclosure of the information is necessary to  
21 conduct an investigation into the alleged abuse,  
22 neglect or exploitation of the vulnerable adult  
23 subject to the investigation, and

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1 (3) immediate enforcement activity that depends upon  
2 the disclosure:

3 (a) is necessary to protect the health, safety  
4 and welfare of the vulnerable adult because  
5 of incapacity, or

6 (b) would be materially and adversely affected by  
7 waiting until the vulnerable adult is able to  
8 agree to the disclosure.

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

12 I. After investigating the report, either the county office of  
13 the Department of Human Services or the municipal police department  
14 or sheriff's office, as appropriate, shall forward its findings to  
15 the office of the district attorney in the county in which the  
16 suspected abuse, neglect, or exploitation occurred.

17 J. Any state or county medical examiner or physician who has  
18 reasonable cause to suspect that the death of any vulnerable adult  
19 may be the result of abuse or neglect as defined by Section 10-103 of  
20 this title shall make a report to the district attorney or other law  
21 enforcement official of the county in which the death occurred. The  
22 report shall include the name of the person making the report, the  
23 name of the deceased person, the facts or other evidence supporting  
24 such suspicion, and any other health information that may be of

1 assistance to the district attorney in conducting an investigation  
2 into the matter.

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

11 SECTION 2. This act shall become effective November 1, 2009.

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13 52-1-913 JM 3/6/2009 4:00:20 AM

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