

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 492

By: Burrage of the Senate  
and  
Grau of the House

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8 [ emergency protective services for vulnerable adults  
- modifying requirement - reimbursement - modifying  
9 court actions - intent of language - certain  
segregation - effective date ]

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

13

14 "( emergency protective services for vulnerable

15 adults - modifying requirement - reimbursement -

16 modifying court actions - intent of language -

17 certain segregation -

18 effective date )

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

22 SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-108, as  
23 last amended by Section 4, Chapter 68, O.S.L. 2007 (43A O.S. Supp.  
24 2010, Section 10-108), is amended to read as follows:

1 Section 10-108. A. 1. If the Department of Human Services  
2 determines that a vulnerable adult is suffering from abuse, neglect,  
3 self-neglect, or financial neglect or exploitation presenting a  
4 substantial risk of death or immediate and serious physical harm to  
5 the person or financial exploitation of the estate of the person,  
6 and the vulnerable adult lacks mental capacity to consent to receive  
7 protective services and no consent can be obtained, the Department  
8 may petition the district court in the county specified by paragraph  
9 3 of this subsection for an order:

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

1 to the Oklahoma Guardianship and Conservatorship Act,  
2 or

3 d. directing any law enforcement agency to transport any  
4 incapacitated person or vulnerable adult as necessary  
5 for appropriate care, treatment and residential  
6 placement. If such transportation is ordered,  
7 reimbursement for expenses incurred from the  
8 transportation of a vulnerable adult under the  
9 Department's temporary guardianship shall be paid as  
10 provided for in Section 10-107 of this title.

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

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

- 18 a. the district court in the county in which the  
19 vulnerable adult resides,  
20 b. the district court in the county in which the  
21 vulnerable adult is receiving inpatient services, or  
22 c. the district court in the county where the vulnerable  
23 adult is located when any delay caused by taking the  
24 petition to the district court in the county of the

1 residence of the vulnerable adult would result in  
2 greater substantial risk of death or greater serious  
3 physical harm to the vulnerable adult. The petition  
4 shall include an explanation of why the petition was  
5 filed in the district court in the county specified by  
6 this subparagraph rather than in the district court as  
7 specified in subparagraph a or b of this paragraph.

8 B. The petition shall be sworn to and include the name, age,  
9 and address of the vulnerable adult who the Department has  
10 determined is in need of emergency protective services, the nature  
11 of the abuse, neglect, or exploitation, the services needed, and  
12 information relating to the capacity of the person to consent to  
13 services and a description of the attempts of the Department to  
14 obtain consent and the name of the person or organization proposed  
15 to be appointed as temporary guardian.

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

21 2. a. The hearing shall be set by the court on an expedited  
22 basis, but no later than five (5) calendar days, not  
23 including weekends or holidays when the court is  
24 closed, from the date the notice scheduling hearing is

1 signed by the judge. The vulnerable adult shall have  
2 a right to a closed hearing unless such vulnerable  
3 adult requests otherwise.

4 b. Unless the vulnerable adult objects or the person  
5 requiring notification pursuant to this subparagraph  
6 is alleged to have abused, neglected or exploited the  
7 vulnerable adult, the following persons shall be  
8 notified of any hearing held pursuant to this  
9 subsection:

10 (1) the legal guardian, guardian ad litem and  
11 caretaker of the vulnerable adult,

12 (2) any person so requested by the vulnerable adult  
13 to be present at the hearing, and

14 (3) persons required to be notified pursuant to  
15 Section 3-110 of Title 30 of the Oklahoma  
16 Statutes.

17 D. 1. Upon sworn testimony of a representative of the  
18 Department, or statement of a district attorney representing the  
19 Department, that immediate and reasonably foreseeable death or  
20 serious physical harm to or financial exploitation of the vulnerable  
21 adult will result, the court may waive prior notice and issue a  
22 seventy-two-hour temporary guardianship and provide involuntary  
23 protective services whether or not during regular courthouse  
24 business hours. However, within twenty-four (24) hours of issuance

1 of the seventy-two-hour order, the vulnerable adult and the attorney  
2 of the vulnerable adult, if known, shall be personally served with  
3 written notice scheduling a hearing within seventy-two (72) hours.

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

9 E. 1. The vulnerable adult has a right to be present and  
10 represented by counsel at any hearing authorized by this section.  
11 If the vulnerable adult is indigent or, in the determination of the  
12 court, lacks capacity to waive the right to counsel, the court shall  
13 immediately appoint counsel who shall personally meet with the  
14 vulnerable adult and attempt to discuss the petition or any pending  
15 motion prior to any hearing.

16 2. If the vulnerable adult is not in attendance at a scheduled  
17 hearing, the court shall make a special finding as to why the  
18 vulnerable adult is unable to attend, and, upon the request of the  
19 vulnerable adult or the attorney of the vulnerable adult, may  
20 continue the hearing to allow the vulnerable adult to attend.

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

23 4. If the vulnerable adult is not indigent, the court may order  
24 costs of representation paid from the estate in the same manner as

1 currently paid under the Oklahoma Guardianship and Conservatorship  
2 Act.

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

- 4 a. appoint a temporary guardian and order involuntary  
5 protective services including, but not limited to,  
6 authorization for medical and/or psychological  
7 treatment and evaluations, and residential placement  
8 subject to the provisions of subsection G of this  
9 section,
- 10 b. issue an order freezing all assets of the vulnerable  
11 adult, establish any new accounts necessary to pay the  
12 daily living expenses of the vulnerable adult, and  
13 order a full accounting and investigation of the  
14 person alleged to be improperly managing the  
15 vulnerable adult's estate, ~~or~~
- 16 c. suspend or revoke powers of attorney or terminate a  
17 guardianship or conservatorship upon a finding that  
18 the attorney-in-fact, guardian or conservator failed  
19 to act appropriately on behalf of the vulnerable  
20 adult, or
- 21 d. order any law enforcement agency to transport any  
22 incapacitated person or vulnerable adult as necessary  
23 for appropriate care, treatment and residential  
24 placement. If such transportation is ordered,

1           reimbursement for expenses incurred from the  
2           transportation of a vulnerable adult under the  
3           Department's temporary guardianship shall be paid as  
4           provided for in Section 10-107 of this title.

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

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

21           c.     The Department, as temporary guardian of a vulnerable  
22                     adult, may also sell the real property of the  
23                     vulnerable adult pursuant to the provisions of the  
24                     Oklahoma Guardianship and Conservatorship Act prior to

1 the one-year requirement specified in subparagraph b  
2 of this paragraph, if not selling the real property  
3 would jeopardize the vulnerable adult's eligibility  
4 for Medicaid. The fact that the vulnerable adult  
5 would be in jeopardy for receipt of Medicaid if the  
6 property was not sold shall be stated upon the court  
7 order directing the sale of the real property of the  
8 vulnerable adult.

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

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

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

21 2. Protective services authorized by an involuntary protective  
22 services order shall not include a change of residence unless the  
23 court specifically finds such action is necessary to remove the  
24 conditions creating the emergency and gives specific approval for

1 such action in the order of the court. Emergency placement may be  
2 made to such facilities as nursing homes, hospital rehabilitation  
3 centers, assisted living centers, foster care and in-home  
4 placements, or to other appropriate facilities for emergency care or  
5 evaluation to determine the extent of a vulnerable adult's physical,  
6 mental and functional limitations; provided, however, emergency  
7 placement shall not be made ~~to facilities for the acutely mentally~~  
8 ~~ill~~ or construed as an alternative to emergency detention and  
9 protective custody as authorized under Section 5-206 et seq. of this  
10 title or made or construed as an alternative to involuntary  
11 commitment under Section 5-410 et seq. of this title when a  
12 vulnerable adult otherwise meets the criteria for involuntary  
13 commitment. Services to such vulnerable adults shall be provided in  
14 a manner that is appropriate for the adult's age and condition and,  
15 except for facilities operated by the Department of Mental Health  
16 and Substance Abuse Services (DMHSAS), or community-based structured  
17 crisis centers under contract with the DMHSAS pursuant to Section 3-  
18 317 of this title, services provided to vulnerable adults pursuant  
19 to this section of law shall be provided in a setting that is  
20 segregated from any patients or residents of a facility who have  
21 been determined to be a danger to others; and

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

1 H. The court shall appoint the Department or an interested  
2 person or organization as temporary guardian of the person with  
3 responsibility for the welfare of such person and authority to give  
4 consent on behalf of the person for the approved involuntary  
5 protective services until the expiration of the order.

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

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

- 12 a. forcible entry of the premises of the vulnerable adult  
13 to be protected for the purpose of rendering  
14 protective services but only after a reasonable  
15 showing to the court that good faith attempts to gain  
16 voluntary access to the premises have failed and  
17 forcible entry is necessary,
- 18 b. the transporting of the vulnerable adult to another  
19 location for the provision of involuntary services,  
20 and
- 21 c. the eviction of persons who are in a position to  
22 exploit the vulnerable adult from any property owned,  
23 leased, or rented by the vulnerable adult and  
24

1                   restriction of those persons' further access to any  
2                   property of the vulnerable adult.

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

9           K. The vulnerable adult, the temporary guardian, or any  
10 interested person may petition the court to have the order to  
11 provide involuntary protective services set aside or modified at any  
12 time.

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

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

23           2. Upon filing such motion, the court shall order that a  
24 physical, mental, and social evaluation of the vulnerable adult be

1 conducted by the Department and that a proposed plan of care be  
2 submitted to the court within thirty (30) calendar days thereafter  
3 reflecting the evaluation findings and recommended services.

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

9 4. The evaluation shall include at least the following  
10 information:

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

1 recommendations for placement based upon the best  
2 interests of the vulnerable adult taking into  
3 consideration the following:

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

16 During the hearing to consider the motion to continue the  
17 temporary guardianship of the vulnerable adult for up to one hundred  
18 eighty (180) calendar days, the court shall consider the  
19 Department's findings and proposed plan of care and any other  
20 evidence presented by the caretaker, guardian or other interested  
21 persons. The court shall either terminate the temporary  
22 guardianship and all involuntary services or continue the temporary  
23 guardianship and specify any necessary services to be provided by  
24 the Department for a period not to exceed one hundred eighty (180)

1 calendar days. Provided, the court may continue the guardianship of  
2 the Department, if there is no one willing and able to act as  
3 guardian for the vulnerable adult.

4 N. Neither the Department nor any of its employees or any other  
5 petitioner shall be liable for filing a petition pursuant to the  
6 Protective Services for Vulnerable Adults Act if the petition was  
7 filed in good faith.

8 SECTION 2. This act shall become effective November 1, 2011.”

9 Passed the House of Representatives the 26th day of April, 2011.

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12 \_\_\_\_\_  
Presiding Officer of the House of  
Representatives

13  
14 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2011.

15  
16  
17 \_\_\_\_\_  
Presiding Officer of the Senate