

1 ENGROSSED SENATE
2 BILL NO. 492

By: Burrage of the Senate

and

Grau of the House

3
4
5
6 [emergency protective services for vulnerable adults
7 - modifying requirement - reimbursement - modifying
8 court actions - intent of language - certain
9 segregation - effective date]
10

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

12 SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-108, as
13 last amended by Section 4, Chapter 68, O.S.L. 2007 (43A O.S. Supp.
14 2010, Section 10-108), is amended to read as follows:

15 Section 10-108. A. 1. If the Department of Human Services
16 determines that a vulnerable adult is suffering from abuse, neglect,
17 self neglect, or financial neglect or exploitation presenting a
18 substantial risk of death or immediate and serious physical harm to
19 the person or financial exploitation of the estate of the person,
20 and the vulnerable adult lacks mental capacity to consent to receive
21 protective services and no consent can be obtained, the Department
22 may petition the district court in the county specified by paragraph
23 3 of this subsection for an order:
24

- 1 a. authorizing involuntary protective services and
2 appointing a temporary guardian of the person and/or
3 the estate,
- 4 b. freezing the assets of the vulnerable adult, if the
5 vulnerable adult is being exploited, establishing any
6 new accounts necessary to pay the daily living
7 expenses of the vulnerable adult, and directing a full
8 accounting and investigation of the person alleged to
9 be improperly managing the estate of the vulnerable
10 adult, ~~or~~
- 11 c. suspending or revoking the powers of an attorney-in-
12 fact granted by a durable power of attorney, or
13 revoking an irrevocable trust, or terminating a
14 guardianship or conservatorship established pursuant
15 to the Oklahoma Guardianship and Conservatorship Act,
16 or
- 17 d. directing any local law enforcement agency to
18 transport any incapacitated person or vulnerable adult
19 as necessary for appropriate care, treatment and
20 residential placement. If such transportation is
21 ordered, reimbursement for expenses incurred from the
22 transportation of a vulnerable adult under the
23 Department's temporary guardianship shall be paid as
24 provided for in Section 10-107 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 a. appoint a temporary guardian and order involuntary
21 protective services including, but not limited to,
22 authorization for medical and/or psychological
23 treatment and evaluations, and residential placement
24

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

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

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

14 d. order any local law enforcement agency to transport
15 any incapacitated person or vulnerable adult as
16 necessary for appropriate care, treatment and
17 residential placement. If such transportation is
18 ordered, reimbursement for expenses incurred from the
19 transportation of a vulnerable adult under the
20 Department's temporary guardianship shall be paid as
21 provided for in Section 10-107 of this title.

22 2. a. Except as otherwise provided by subparagraphs b and c
23 of this paragraph, the court appointing a temporary
24 guardian and ordering involuntary protective services

1 shall not have authority to order the sale of the real
2 property of the vulnerable adult.

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

14 c. The Department, as temporary guardian of a vulnerable
15 adult, may also sell the real property of the
16 vulnerable adult pursuant to the provisions of the
17 Oklahoma Guardianship and Conservatorship Act prior to
18 the one-year requirement specified in subparagraph b
19 of this paragraph, if not selling the real property
20 would jeopardize the vulnerable adult's eligibility
21 for Medicaid. The fact that the vulnerable adult
22 would be in jeopardy for receipt of Medicaid if the
23 property was not sold shall be stated upon the court
24

1 order directing the sale of the real property of the
2 vulnerable adult.

3 d. The court may issue an order authorizing the
4 Department to sell personal property of a vulnerable
5 adult when additional resources are required to pay
6 for necessary care for the vulnerable adult pursuant
7 to state law.

8 G. Whenever the court issues an order for involuntary
9 protective services, the court shall adhere to the following
10 limitations:

11 1. Only such protective services as are necessary to remove the
12 conditions creating the emergency shall be ordered, and the court
13 shall specifically designate the approved services in the order of
14 the court;

15 2. Protective services authorized by an involuntary protective
16 services order shall not include a change of residence unless the
17 court specifically finds such action is necessary to remove the
18 conditions creating the emergency and gives specific approval for
19 such action in the order of the court. Emergency placement may be
20 made to such facilities as nursing homes, hospital rehabilitation
21 centers, assisted living centers, foster care and in-home
22 placements, or to other appropriate facilities for emergency care or
23 evaluation to determine the extent of a vulnerable adult's physical,
24 mental and functional limitations; provided, however, emergency

1 placement shall not be made ~~to facilities for the acutely mentally~~
2 ~~ill~~ or construed as an alternative to emergency detention and
3 protective custody as authorized under Section 5-206 et seq. of this
4 title or made or construed as an alternative to involuntary
5 commitment under Section 5-410 et seq. of this title when a
6 vulnerable adult otherwise meets the criteria for involuntary
7 commitment. Services to such vulnerable adults shall be provided in
8 a manner that is appropriate for the adult's age and condition and
9 shall be provided in a setting that is segregated from any patients
10 or residents of a facility who have been determined to be a danger
11 to others; and

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

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

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

24

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

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

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

23 K. The vulnerable adult, the temporary guardian, or any
24 interested person may petition the court to have the order to

1 provide involuntary protective services set aside or modified at any
2 time.

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

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

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

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

23 4. The evaluation shall include at least the following
24 information:

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

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

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

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

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

1 Passed the Senate the 16th day of March, 2011.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2011.

7
8 _____
9 Presiding Officer of the House
10 of Representatives