HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 492 By: Burrage of the Senate

and

Grau of the House

COMMITTEE SUBSTITUTE

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

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

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

Section 10-108. A. 1. If the Department of Human Services determines that a vulnerable adult is suffering from abuse, neglect,

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self-neglect, or financial neglect or exploitation presenting a substantial risk of death or immediate and serious physical harm to the person or financial exploitation of the estate of the person, and the vulnerable adult lacks mental capacity to consent to receive protective services and no consent can be obtained, the Department may petition the district court in the county specified by paragraph 3 of this subsection for an order:

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

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

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

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

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

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

a. the district court in the county in which the vulnerable adult resides,

b. the district court in the county in which the vulnerable adult is receiving inpatient services, or

c. the district court in the county where the vulnerable adult is located when any delay caused by taking the petition to the district court in the county of the residence of the vulnerable adult would result in

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greater substantial risk of death or greater serious physical harm to the vulnerable adult. The petition shall include an explanation of why the petition was filed in the district court in the county specified by this subparagraph rather than in the district court as specified in subparagraph a or b of this paragraph.

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

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

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

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

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

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

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

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

D. 1. Upon sworn testimony of a representative of the Department, or statement of a district attorney representing the Department, that immediate and reasonably foreseeable death or serious physical harm to or financial exploitation of the vulnerable adult will result, the court may waive prior notice and issue a seventy-two-hour temporary guardianship and provide involuntary protective services whether or not during regular courthouse

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business hours. However, within twenty-four (24) hours of issuance of the seventy-two-hour order, the vulnerable adult and the attorney of the vulnerable adult, if known, shall be personally served with written notice scheduling a hearing within seventy-two (72) hours.

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

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

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

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

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

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

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

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

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

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

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

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

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adult pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act.

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

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

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

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

2. Protective services authorized by an involuntary protective services order shall not include a change of residence unless the court specifically finds such action is necessary to remove the conditions creating the emergency and gives specific approval for such action in the order of the court. Emergency placement may be made to such facilities as nursing homes, hospital rehabilitation centers, assisted living centers, foster care and in-home placements, or to other appropriate facilities for emergency care or evaluation to determine the extent of a vulnerable adult's physical, mental and functional limitations; provided, however, emergency placement shall not be made ~~to facilities for the acutely mentally ill~~ or construed as an alternative to emergency detention and protective custody as authorized under Section 5-206 et seq. of this title or made or construed as an alternative to involuntary commitment under Section 5-410 et seq. of this title when a vulnerable adult otherwise meets the criteria for involuntary commitment. Services to such vulnerable adults shall be provided in a manner that is appropriate for the adult's age and condition and, except for facilities operated by the Department of Mental Health

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and Substance Abuse Services (DMHSAS), or community-based structured crisis centers under contract with the DMHSAS pursuant to Section 3-317 of this title, services provided to vulnerable adults pursuant to this section of law shall be provided in a setting that is segregated from any patients or residents of a facility who have been determined to be a danger to others; and

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

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

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

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

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

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

b. the transporting of the vulnerable adult to another location for the provision of involuntary services, and

c. the eviction of persons who are in a position to exploit the vulnerable adult from any property owned, leased, or rented by the vulnerable adult and restriction of those persons' further access to any property of the vulnerable adult.

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

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

L. If the vulnerable adult continues to need involuntary protective services after expiration of the thirty-day temporary

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guardianship provided in subsection G of this section, the temporary guardian shall immediately file a verified motion requesting the court to, except as otherwise provided by subsection F of this section, continue the temporary guardianship and involuntary protective services under this section for a period not to exceed one hundred eighty (180) calendar days.

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

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

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

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

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

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

c. a medical and social evaluation, including, but not limited to, the Department's assessment of the person's capacity to consent to services, a psychological or psychiatric evaluation and review if the mental state of the person is in question, and any recommendations for or against maintenance of partial legal rights. The evaluation and review shall include recommendations for placement based upon the best interests of the vulnerable adult taking into consideration the following:

(1) the least restrictive environment,

(2) the desires of the vulnerable adult and legal guardian,

(3) the desires of the caretaker of the vulnerable adult and of any of the persons specified in Section 3-110 of Title 30 of the Oklahoma Statutes,

(4) the physical and mental health needs of the vulnerable adult,

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(5) the available programs and services, and

(6) the health, well-being and welfare of the vulnerable adult and the public.

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 04-12-2011 - DO PASS, As Amended.

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