

STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

HOUSE BILL 1627

By: Pittman

AS INTRODUCED

An Act relating to public health and safety; amending 43A O.S. 2001, Section 10-104, as last amended by Section 3, Chapter 68, O.S.L. 2007 (43A O.S. Supp. 2008, Section 10-104), which relates to Protective Services for Vulnerable Adults Act; requiring report to certain law enforcement; requiring preservation of evidence; amending 63 O.S. 2001, Section 1-1939, as amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008, Section 1-1939), which relates to the Nursing Home Care Act; expanding certain reporting requirements; and providing an effective date.

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

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

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

1. ~~The Department of Human Services; or~~

1 ~~2.~~ The municipal police department or sheriff's office in the
2 county in which the suspected abuse, neglect, or exploitation
3 occurred~~;~~ and

4 2. The Department of Human Services.

5 B. Any person making a report shall preserve, as reasonably
6 possible, any evidence of the abuse, neglect, or exploitation.

7 C. Persons required to make reports pursuant to this section
8 shall include, but not be limited to:

9 1. Physicians;

10 2. Operators of emergency response vehicles and other medical
11 professionals;

12 3. Social workers and mental health professionals;

13 4. Law enforcement officials;

14 5. Staff of domestic violence programs;

15 6. Long-term care facility personnel, including staff of
16 nursing facilities, intermediate care facilities for persons with
17 mental retardation, assisted living facilities, and residential care
18 facilities;

19 7. Other health care professionals;

20 8. Persons entering into transactions with a caretaker or other
21 person who has assumed the role of financial management for a
22 vulnerable adult;

1 9. Staff of residential care facilities, group homes, or
2 employment settings for individuals with developmental disabilities;
3 and

4 10. Job coaches, community service workers, and personal care
5 assistants.

6 ~~C.~~ D. 1. If the report is not made in writing in the first
7 instance, as soon as possible after it is initially made by
8 telephone or otherwise, the report shall be reduced to writing by
9 the Department of Human Services, in accordance with rules
10 promulgated by the Commission for Human Services, or the local
11 municipal police or sheriff's department whichever entity received
12 the initial report. The report shall contain the following
13 information:

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

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 report.

4 ~~D.~~ E. If the initial report is made to the local municipal
5 police department or sheriff's office, such police department or
6 sheriff's office shall notify, as soon as possible, the Department
7 of Human Services of its investigation.

8 ~~E.~~ F. Any person who knowingly and willfully fails to promptly
9 report any abuse, neglect, or exploitation as required by the
10 provisions of subsection A of this section, upon conviction, shall
11 be guilty of a misdemeanor punishable by imprisonment in the county
12 jail for a term not exceeding one (1) year or by a fine of not more
13 than One Thousand Dollars (\$1,000.00), or by both such fine and
14 imprisonment.

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

21 2. The same immunity from any civil or criminal liability shall
22 also be extended to previous employers of a person employed to be
23 responsible for the care of a vulnerable adult, who in good faith
24 report to new employers or prospective employers of such caretaker

1 any misconduct of the caretaker including, but not limited to,
2 abuse, neglect or exploitation of a vulnerable adult, whether
3 confirmed or not.

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

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

22 a. the vulnerable adult agrees to the disclosure of the
23 health information, or
24

b. the individual is unable to agree to the disclosure of health information because of incapacity; and

(1) the requesting party represents that the health information for which disclosure is sought is not intended to be used against the vulnerable adult in a criminal prosecution but to provide protective services pursuant to the Protective Services for Vulnerable Adults Act,

(2) the disclosure of the information is necessary to conduct an investigation into the alleged abuse, neglect or exploitation of the vulnerable adult subject to the investigation, and

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

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

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

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

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

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

16 ~~K.~~ L. No employer shall terminate the employment, prevent or
17 impair the practice or occupation of or impose any other sanction on
18 any employee solely for the reason that the employee made or caused
19 to be made a report or cooperated with an investigation pursuant to
20 the Protective Services for Vulnerable Adults Act. A court, in
21 addition to other damages and remedies, may assess reasonable
22 attorney fees against an employer who has been found to have
23 violated the provisions of this subsection.

1 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1939, as
2 amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008,
3 Section 1-1939), is amended to read as follows:

4 Section 1-1939. A. The owner and licensee are liable to a
5 resident for any intentional or negligent act or omission of their
6 agents or employees which injures the resident. In addition, any
7 state employee that aids, abets, assists, or conspires with an owner
8 or licensee to perform an act that causes injury to a resident shall
9 be individually liable.

10 B. A resident may maintain an action under the Nursing Home
11 Care Act for any other type of relief, including injunctive and
12 declaratory relief, permitted by law.

13 C. Any damages recoverable under this section, including
14 minimum damages as provided by this section, may be recovered in any
15 action which a court may authorize to be brought as a class action.
16 The remedies provided in this section, are in addition to and
17 cumulative with any other legal remedies available to a resident.
18 Exhaustion of any available administrative remedies shall not be
19 required prior to commencement of suit hereunder.

20 D. Any waiver by a resident or the legal representative of the
21 resident of the right to commence an action under this section,
22 whether oral or in writing, shall be null and void, and without
23 legal force or effect.
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1 E. Any party to an action brought under this section shall be
2 entitled to a trial by jury and any waiver of the right to a trial
3 by a jury, whether oral or in writing, prior to the commencement of
4 an action, shall be null and void, and without legal force or
5 effect.

6 F. A licensee or its agents or employees shall not transfer,
7 discharge, evict, harass, dismiss or retaliate against a resident, a
8 resident's guardian or an employee or agent who makes a report,
9 brings, or testifies in, an action under this section, or files a
10 complaint because of a report, testimony or complaint.

11 G. Any person, institution or agency, under the Nursing Home
12 Care Act, participating in good faith in the making of a report, or
13 in the investigation of such a report shall not be deemed to have
14 violated any privileged communication and shall have immunity from
15 any liability, civil or criminal, or any other proceedings, civil or
16 criminal, as a consequence of making such report. The good faith of
17 any persons required, or permitted to report cases of suspected
18 resident abuse or neglect under this act shall be presumed.

19 H. A facility employee or agent who becomes aware of abuse,
20 neglect or exploitation of a resident prohibited by the Nursing Home
21 Care Act shall immediately report the matter to the facility
22 administrator. A facility administrator who becomes aware of abuse,
23 neglect, or exploitation of a resident shall immediately act to
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1 rectify the problem and shall make a report of the incident and its
2 correction to the Department.

3 I. 1. The facility shall be responsible for reporting the
4 following serious incidents to local law enforcement and the
5 Department within twenty-four (24) hours:

- 6 a. communicable diseases,
- 7 b. deaths by unusual occurrence, including accidental
- 8 deaths or deaths other than by natural causes, and
- 9 deaths that may be attributed to a medical device,
- 10 c. missing residents. ~~In addition, the~~ The facility
- 11 shall make a report to local law enforcement agencies
- 12 within two (2) hours if the resident is still missing,
- 13 d. situations arising where criminal intent is suspected.
- 14 ~~Such situations shall also be reported to local law~~
- 15 ~~enforcement, and~~
- 16 e. resident abuse, neglect, and misappropriation of the
- 17 property of a resident.

18 2. All other incident reports shall be made in accordance with
19 federal law.

20 3. All initial written reports of incidents or situations shall
21 be mailed to the Department within five (5) working days after the
22 incident or situation. The final report shall be filed with the
23 Department when the full investigation is complete.

SECTION 3. This act shall become effective November 1, 2009.

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