

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3217

By: Lawson

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 2011, Sections 10-106 and 10-107, which relates to protective services; providing for certain facility rights when Department of Human Services lacks sufficient funds to pay for involuntary protective services; amending 43A O.S. 2011, Section 10-108, which relates to a petition for involuntary protective services; providing for appointment of the Department as temporary guardian; requiring temporary guardian to assist vulnerable adult in obtaining certain services; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 10-106, is amended to read as follows:

Section 10-106. A. If the Department of Human Services determines, as a result of its investigation, that a vulnerable adult needs protective services, the Department shall immediately provide or arrange for the provision of available protective

1 services in the least restrictive manner, provided the person
2 affirmatively consents to receive these services.

3 B. 1. When a caretaker of a vulnerable adult who consents to
4 the receipt of protective services refuses to allow the provision of
5 such services to the person, the Department may petition to the
6 court for a decree enjoining the caretaker from interfering with the
7 provision of protective services to the person.

8 2. The complaint must allege specific facts sufficient to show
9 that the person is a vulnerable adult in need of protective
10 services, consents to the receipt of protective services, and that
11 the caretaker refuses to allow the provision of such services.

12 3. If the court finds that the person is a vulnerable adult in
13 need of protective services, consents to the receipt of protective
14 services, and that the caretaker refuses to allow the provision of
15 such services, the court may enter a decree:

16 a. enjoining the caretaker from interfering with the
17 provision of protective services to the vulnerable
18 adult, and

19 b. freezing the assets of the vulnerable adult if it has
20 been determined by preponderance of the evidence that
21 the vulnerable adult is being exploited and it is
22 necessary to protect such assets.

23 C. If a vulnerable adult does not consent to the receipt of
24 protective services or withdraws consent to the receipt of such

1 services, the services shall be terminated, unless the Department
2 determines that the person lacks capacity to consent, in which case
3 the Department may seek court authorization to provide services
4 pursuant to Section 10-108 of this title.

5 D. 1. Payment for the costs of providing protective services
6 shall be made from either:

7 a. the assets of the vulnerable adult consenting to the
8 receipt of voluntary protective services, or

9 b. any available private or public assistance programs
10 for which the vulnerable adult is eligible.

11 2. If no assets or other private or public funds are available
12 to the person, payment shall be made from a fund established by the
13 Department for the purpose of providing emergency adult protective
14 services, subject to availability of funds. If the Department lacks
15 sufficient funds to pay for involuntary protective services as
16 provided in this section, the facility in which the vulnerable adult
17 has been placed shall have the right to:

18 a. immediately discharge the vulnerable adult and the
19 Department shall accept the vulnerable adult back into
20 the custody of the Department, or

21 b. continue to provide service to the adult offsetting
22 the cost of such services as a credit toward any
23 amounts the facility may otherwise be obligated to pay
24 to the state or any agency thereof, including but not

1 limited to fines imposed based upon survey results and
2 quality of care fees imposed on the facility.

3 Any amounts owed to the facility for services provided pursuant
4 to this section which are not reimbursed by way of direct payment or
5 offset by way of credit during the year of service shall carry over
6 for reimbursement or credit in subsequent years.

7 SECTION 2. AMENDATORY 43A O.S. 2011, Section 10-107, is
8 amended to read as follows:

9 Section 10-107. A. If a vulnerable adult lacks the capacity to
10 consent to receive protective services recommended by the Department
11 of Human Services, these services may be ordered by a court on an
12 involuntary basis through an emergency order.

13 B. 1. In ordering emergency involuntary protective services
14 for a vulnerable adult, the court shall authorize only that
15 intervention which it finds to be least restrictive of the liberty
16 and rights of such person, while consistent with the welfare and
17 safety of the person. The basis for such finding shall be stated in
18 the record by the court.

19 2. Whenever it is consistent with the welfare and safety of the
20 person, the court shall authorize that involuntary protective
21 services be administered to the vulnerable adult in the present
22 living accommodations of that person.

23 C. 1. Payment for involuntary protective services provided to
24 a vulnerable adult determined by the court to be in need of

1 involuntary protective services pursuant to this section or Section
2 10-108 of this title shall be made:

- 3 a. from assets of the vulnerable adult receiving
4 emergency involuntary protective services, if the
5 court so orders after a showing by the Department that
6 the person has adequate assets to make such payment,
7 and that payment for the involuntary protective
8 services will not cause the person to go without other
9 necessities of life. Prior to any hearing on the
10 assets or issuance of an order pursuant to this
11 subparagraph, the legal guardian, caretaker and
12 guardian ad litem of the vulnerable adult, any person
13 so requested by the vulnerable adult and persons
14 required to be notified pursuant to Section 3-110 of
15 Title 30 of the Oklahoma Statutes shall be notified of
16 such hearing and order,
- 17 b. from any private or public assistance programs for
18 which the person is eligible, or
- 19 c. as provided by paragraph 2 of subsection D of Section
20 10-106 of this title if the person has inadequate
21 assets to make such payments as ordered by the court,
22 and no private or public funds are available to the
23 person, from a fund established by the Department for
24 the purpose of providing emergency adult protective

1 services, subject to availability of funds. If the
2 Department lacks sufficient funds to pay for
3 involuntary protective services as provided in this
4 section, the facility in which the vulnerable adult
5 has been placed shall have the right to:

- 6 (1) immediately discharge the vulnerable adult and
7 the Department shall accept the vulnerable adult
8 back into the custody of the Department, or
9 (2) continue to provide service to the adult
10 offsetting the cost of such services as a credit
11 toward any amounts the facility may otherwise be
12 obligated to pay to the state or any agency
13 thereof, including but not limited to fines
14 imposed based upon survey results and quality of
15 care fees imposed on the facility.

16 Any amounts owed to the facility for services provided
17 pursuant to this section which are not reimbursed by way of
18 direct payment or offset by way of credit during the year
19 of service shall carry over for reimbursement or credit in
20 subsequent years.

21 2. The person has a right to be present and represented by
22 counsel at any hearing. If the vulnerable adult is indigent or, in
23 the determination of the court, lacks capacity to waive the right to
24 counsel, the court shall appoint counsel. If the person is

1 indigent, the cost of representation by counsel shall be borne by
2 this state.

3 D. Upon the request of an authorized representative of the
4 Department, the district attorney of the county in which the person
5 alleged or found by a court to be in need of involuntary protective
6 services resides shall provide legal representation for the
7 Department in any local proceedings related to the provision of
8 involuntary protective services pursuant to this section or Section
9 10-108 of this title.

10 SECTION 3. AMENDATORY 43A O.S. 2011, Section 10-108, is
11 amended to read as follows:

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

- 21 a. authorizing involuntary protective services and
22 appointing a temporary guardian of the person and/or
23 the estate,
24

- 1 b. freezing the assets of the vulnerable adult, if the
2 vulnerable adult is being exploited, establishing any
3 new accounts necessary to pay the daily living
4 expenses of the vulnerable adult, and directing a full
5 accounting and investigation of the person alleged to
6 be improperly managing the estate of the vulnerable
7 adult,
- 8 c. suspending or revoking the powers of an attorney-in-
9 fact granted by a durable power of attorney, or
10 revoking an irrevocable trust, or terminating a
11 guardianship or conservatorship established pursuant
12 to the Oklahoma Guardianship and Conservatorship Act,
13 or
- 14 d. directing any law enforcement agency to transport any
15 incapacitated person or vulnerable adult as necessary
16 for appropriate care, treatment and residential
17 placement. If such transportation is ordered,
18 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. Under no circumstances shall the court authorize the
23 Department, pursuant to this subsection, to consent or deny consent
24 to a Do-Not-Resuscitate order or the withdrawal of hydration or

1 nutrition or other life-sustaining treatment although the court
2 retains jurisdiction to hear such matters under applicable law.

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

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

19 B. The petition shall be sworn to and include the name, age,
20 and address of the vulnerable adult who the Department has
21 determined is in need of emergency protective services, the nature
22 of the abuse, neglect, or exploitation, the services needed, and
23 information relating to the capacity of the person to consent to
24 services and a description of the attempts of the Department to

1 obtain consent and the name of the person or organization proposed
2 to be appointed as temporary guardian.

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

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

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

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

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

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

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

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

20 E. 1. The vulnerable adult has a right to be present and
21 represented by counsel at any hearing authorized by this section.
22 If the vulnerable adult is indigent or, in the determination of the
23 court, lacks capacity to waive the right to counsel, the court shall
24 immediately appoint counsel who shall personally meet with the

1 vulnerable adult and attempt to discuss the petition or any pending
2 motion prior to any hearing.

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

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

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

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

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

21 b. issue an order freezing all assets of the vulnerable
22 adult, establish any new accounts necessary to pay the
23 daily living expenses of the vulnerable adult, and
24 order a full accounting and investigation of the

1 person alleged to be improperly managing the
2 vulnerable adult's estate,

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

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

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

21 b. If the Department of Human Services has been appointed
22 temporary guardian and the court issues an order for
23 the Department to continue as the temporary guardian
24 of the vulnerable adult beyond the one hundred eighty

1 (180) calendar days authorized by this section because
2 there is no one willing and able to act as guardian
3 for the vulnerable adult, the Department, as temporary
4 guardian may, after one (1) year from its initial
5 appointment, sell the real property of a vulnerable
6 adult pursuant to the provisions of the Oklahoma
7 Guardianship and Conservatorship Act.

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

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

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

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

8 2. Protective services authorized by an involuntary protective
9 services order shall not include a change of residence unless the
10 court specifically finds such action is necessary to remove the
11 conditions creating the emergency and gives specific approval for
12 such action in the order of the court. Emergency placement may be
13 made to such facilities as nursing homes, hospital rehabilitation
14 centers, assisted living centers, foster care and in-home
15 placements, or to other appropriate facilities for emergency care or
16 evaluation to determine the extent of a vulnerable adult's physical,
17 mental and functional limitations; provided, however, emergency
18 placement shall not be made or construed as an alternative to
19 emergency detention and protective custody as authorized under
20 Section 5-206 et seq. of this title or made or construed as an
21 alternative to involuntary commitment under Section 5-410 et seq. of
22 this title when a vulnerable adult otherwise meets the criteria for
23 involuntary commitment. Services to such vulnerable adults shall be
24 provided in a manner that is appropriate for the adult's age and

1 condition and, except for facilities operated by the Department of
2 Mental Health and Substance Abuse Services or community-based
3 structured crisis centers under contract with the Department
4 pursuant to Section 3-317 of this title, services provided to
5 vulnerable adults pursuant to this section shall be provided in a
6 setting that is segregated from any patients or residents of a
7 facility who have been determined to be a danger to others. Prior
8 to placement of a vulnerable adult in a nursing home or assisted
9 living center facility, the court shall appoint the Department as
10 temporary guardian of the vulnerable adult and the guardianship
11 shall remain in place until such time as the vulnerable adult has
12 been approved for Medicaid benefits or otherwise establishes funds
13 to pay for such services. The temporary guardian shall be required
14 to assist the vulnerable adult in obtaining Medicaid or other
15 applicable benefits to pay for services determined to be necessary
16 for the vulnerable adult; and

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

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

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

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

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

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

1 located, and the police officer or deputy sheriff shall make the
2 forcible entry.

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

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

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

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

22 3. Upon filing such motion, the prior temporary guardianship
23 shall remain in full force and effect pending a review hearing after
24 the thirty-day evaluation period. The caretaker, guardian or next-

1 of-kin of the vulnerable adult may request that the evaluation
2 period be shortened for good cause.

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

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

- 1 (3) the desires of the caretaker of the vulnerable
2 adult and of any of the persons specified in
3 Section 3-110 of Title 30 of the Oklahoma
4 Statutes,
5 (4) the physical and mental health needs of the
6 vulnerable adult,
7 (5) the available programs and services, and
8 (6) the health, well-being and welfare of the
9 vulnerable adult and the public.

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

22 N. Neither the Department nor any of its employees or any other
23 petitioner shall be liable for filing a petition pursuant to the
24

1 Protective Services for Vulnerable Adults Act if the petition was
2 filed in good faith.

3 SECTION 4. This act shall become effective November 1, 2020.
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