

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3797 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Ellyn Hefner

Adopted: _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3797

By: Hefner

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to abuse of elderly and disabled
9 adults; amending 43a O.S. 2021, Section 10-103, which
10 relates to definitions in the Protective Services for
11 the Elderly and for Incapacitated Adults Act; adding
12 a definition; amending 43a O.S. 2021, Section 10-104,
13 which relates to persons required to report abuse,
14 neglect, or exploitation, penalty, immunity, civil
15 liability for false reports, disclosure of health
16 information, reporting of suspicious deaths,
17 impairment of employment prohibited; directing
18 notification of investigation and reporting to
19 Oklahoma's Protection and Advocacy System; amending
20 63 O.S. 2021, Section 1-1902, which relates to
21 definitions in the Nursing Home Care Act; adding a
22 definition; amending 63 O.S. 2021, Section 1-1939,
23 which relates to liability to residents, injunctive
24 and declaratory relief, damages, waiver of rights,
jury trial, retaliation against residents, immunity,
report of abuse or neglect and other serious
incidents; directing reports be furnished with
Oklahoma's Protection and Advocacy System; and
providing an effective date.

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

SECTION 1. AMENDATORY 43a O.S. 2021, Section 10-103, is
amended to read as follows:

1 Section 10-103. A. When used in the Protective Services for
2 Vulnerable Adults Act:

3 1. "Protective services" means services which are necessary to
4 aid a vulnerable adult in meeting the essential requirements for
5 mental or physical health and safety that the vulnerable adult is
6 unable to provide or obtain without assistance. The term
7 "protective services" includes but is not limited to services
8 provided to or obtained for such person in order to prevent or
9 remedy the abuse, neglect, or exploitation of such person;

10 2. "Services which are necessary to aid an individual to meet
11 essential requirements for mental or physical health and safety"
12 include, but shall not be limited to:

- 13 a. the identification of vulnerable adults in need of the
14 services,
- 15 b. the provision of medical care for physical and mental
16 health needs,
- 17 c. the provision of social services assistance in
18 personal hygiene, food, clothing, and adequately
19 heated and ventilated shelter,
- 20 d. protection from health and safety hazards,
- 21 e. protection from physical mistreatment,
- 22 f. guardianship referral,
- 23 g. outreach programs, and

1 h. the transportation necessary to secure any of such
2 services.

3 The term shall not include taking the person into physical custody
4 without the consent of the person except as provided for in Sections
5 10-107 and 10-108 of this title, and the evaluation, monitoring, and
6 provision of protective placements;

7 3. "Meet essential requirements for mental or physical health
8 and safety" means those actions necessary to provide the health
9 care, food, shelter, clothing, personal hygiene and other care
10 without which physical injury or illness to the vulnerable adult is
11 likely to occur;

12 4. "Incapacitated person" means:

13 a. any person eighteen (18) years of age or older:

14 (1) who is impaired by reason of mental or physical
15 illness or disability, dementia or related
16 disease, developmental or intellectual disability
17 or other cause, and

18 (2) whose ability to receive and evaluate information
19 effectively or to make and to communicate
20 responsible decisions is impaired to such an
21 extent that such person lacks the capacity to
22 manage his or her financial resources or to meet
23 essential requirements for his or her mental or
24

1 physical health or safety without assistance from
2 others, or

- 3 b. a person for whom a guardian, limited guardian, or
4 conservator has been appointed pursuant to the
5 Oklahoma Guardianship and Conservatorship Act;

6 5. "Vulnerable adult" means an individual who is an
7 incapacitated person or who, because of physical or mental
8 disability, including persons with Alzheimer's disease or other
9 dementias, incapacity, or other disability, is substantially
10 impaired in the ability to provide adequately for the care or
11 custody of himself or herself, or is unable to manage his or her
12 property and financial affairs effectively, or to meet essential
13 requirements for mental or physical health or safety, or to protect
14 himself or herself from abuse, verbal abuse, neglect, or
15 exploitation without assistance from others;

16 6. "Caretaker" means a person who has:

- 17 a. the responsibility for the care of a vulnerable adult
18 or the financial management of the resources of a
19 vulnerable adult as a result of a family relationship,
- 20 b. assumed the responsibility for the care of a
21 vulnerable adult voluntarily, by contract, or as a
22 result of the ties of friendship, or

1 c. been appointed a guardian, limited guardian, or
2 conservator pursuant to the Oklahoma Guardianship and
3 Conservatorship Act;

4 7. "Department" means the Department of Human Services;

5 8. "Abuse" means causing or permitting:

6 a. the infliction of physical pain, injury, sexual abuse,
7 sexual exploitation, unreasonable restraint or
8 confinement, mental anguish or personal degradation,
9 or

10 b. the deprivation of nutrition, clothing, shelter,
11 health care, or other care or services without which
12 serious physical or mental injury is likely to occur
13 to a vulnerable adult by a caretaker or other person
14 providing services to a vulnerable adult;

15 9. "Exploitation" or "exploit" means an unjust or improper use
16 of the resources of a vulnerable adult for the profit or advantage,
17 pecuniary or otherwise, of a person other than the vulnerable adult
18 through the use of undue influence, coercion, harassment, duress,
19 deception, false representation or false pretense;

20 10. "Financial neglect" means repeated instances by a
21 caretaker, or other person, who has assumed the role of financial
22 management, of failure to use the resources available to restore or
23 maintain the health and physical well-being of a vulnerable adult,
24 including, but not limited to:

- a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,
- b. refusing to pay for necessities or utilities in a timely manner, or
- c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources;

11. "Neglect" means:

- a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,
- b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or
- c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

12. "Personal degradation" means a willful act by a caretaker intended to shame, degrade, humiliate or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation or harm to the personal dignity of a reasonable person. Personal degradation includes the taking, transmitting, or display

1 of an electronic image of a vulnerable adult by a caretaker, where
2 the caretaker's actions constitute a willful act intended to shame,
3 degrade, humiliate or otherwise harm the personal dignity of the
4 dependent adult, or where the caretaker knew or reasonably should
5 have known the act would cause shame, degradation, humiliation or
6 harm to the personal dignity of a reasonable person. Personal
7 degradation does not include:

8 a. the taking, transmission or display of an electronic
9 image of a vulnerable adult for the purpose of
10 reporting vulnerable adult abuse to law enforcement,
11 the Department of Human Services or other regulatory
12 agency that oversees caretakers or enforces abuse or
13 neglect laws or rules,

14 b. the taking, transmission or display of an electronic
15 image of a vulnerable adult for the purpose of
16 treatment or diagnosis, or

17 c. the taking, transmission or display of an electronic
18 image of a vulnerable adult as part of an ongoing
19 investigation;

20 13. "Sexual abuse" means:

21 a. oral, anal, or vaginal penetration of a vulnerable
22 adult by or through the union with the sexual organ of
23 a caretaker or other person providing services to the
24 vulnerable adult, or the anal or vaginal penetration

1 of a vulnerable adult by a caretaker or other person
2 providing services to the vulnerable adult with any
3 other object, or

- 4 b. for the purpose of sexual gratification, the touching,
5 feeling or observation of the body or private parts of
6 a vulnerable adult by a caretaker or other person
7 providing services to the vulnerable adult, or
8 c. indecent exposure by a caretaker or other person
9 providing services to the vulnerable adult;

10 14. "Indecent exposure" means forcing or requiring a vulnerable
11 adult to:

- 12 a. look upon the body or private parts of another person
13 or upon sexual acts performed in the presence of the
14 vulnerable adult, or
15 b. touch or feel the body or private parts of another;

16 15. "Self-neglect" means the action or inaction of a vulnerable
17 adult which causes that person to fail to meet the essential
18 requirements for physical or mental health and safety due to the
19 vulnerable adult's lack of awareness, incompetence or incapacity;

20 16. "Sexual exploitation" includes, but is not limited to, a
21 caretaker's causing, allowing, permitting or encouraging a
22 vulnerable adult to engage in prostitution or in the lewd, obscene,
23 or pornographic photographing, filming or depiction of the
24 vulnerable adult as those acts are defined by state law; ~~and~~

1 17. "Verbal abuse" means the use of words, sounds, or other
2 communication including, but not limited to, gestures, actions or
3 behaviors, by a caretaker or other person providing services to a
4 vulnerable adult that are likely to cause a reasonable person to
5 experience humiliation, intimidation, fear, shame or degradation;
6 and

7 18. "Oklahoma's Protection and Advocacy System" means a
8 protection and advocacy system established in accordance with
9 Section 143 of the Developmental Disabilities Assistance and Bill of
10 Rights Act of 2000.

11 B. Nothing in this section shall be construed to mean a
12 vulnerable adult is abused or neglected for the sole reason the
13 vulnerable adult, in good faith, selects and depends upon spiritual
14 means alone through prayer, in accordance with the practices of a
15 recognized religious method of healing, for the treatment or cure of
16 disease or remedial care, or a caretaker or other person
17 responsible, in good faith, is furnishing such vulnerable adult
18 spiritual means alone through prayer, in accordance with the tenets
19 and practices of a recognized church or religious denomination, for
20 the treatment or cure of disease or remedial care in accordance with
21 the practices of or express consent of the vulnerable adult.

22 SECTION 2. AMENDATORY 43a O.S. 2021, Section 10-104, is
23 amended to read as follows:

24

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

- 5 1. The Department of Human Services; or
- 6 2. The municipal police department or sheriff's office in the
7 county in which the suspected abuse, neglect, or exploitation
8 occurred.

9 B. Persons required to make reports pursuant to this section
10 shall include, but not be limited to:

- 11 1. Physicians;
- 12 2. Operators of emergency response vehicles and other medical
13 professionals;
- 14 3. Social workers and mental health professionals;
- 15 4. Law enforcement officials;
- 16 5. Staff of domestic violence programs;
- 17 6. Long-term care facility personnel, including staff of
18 nursing facilities, intermediate care facilities for individuals
19 with intellectual disabilities (ICFs/IID), assisted living
20 facilities, and residential care facilities;
- 21 7. Other health care professionals;
- 22 8. Persons entering into transactions with a caretaker or other
23 person who has assumed the role of financial management for a
24 vulnerable adult;

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

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

5 11. Municipal employees.

6 C. 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 Director of 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. If the initial report is made to the local municipal police
5 department or sheriff's office, such police department or sheriff's
6 office shall notify, as soon as possible, the Department of Human
7 Services and Oklahoma's Protection and Advocacy System of its
8 investigation.

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

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

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

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

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

9 H. 1. Every physician or other health care professional making
10 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

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

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

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

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

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

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

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

1 I. After investigating the report, either the county office of
2 the Department of Human Services or the municipal police department
3 or sheriff's office, as appropriate, shall forward its findings to
4 the office of the district attorney and to Oklahoma's Protection and
5 Advocacy System in the county in which the suspected abuse, neglect,
6 or exploitation occurred. Unsubstantiated findings shall be labeled
7 as such before transmission to the office of the district attorney.
8 Findings of self-neglect shall not be forwarded to the office of the
9 district attorney unless similar findings were reported within six
10 (6) months prior.

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

22 K. No employer shall terminate the employment, prevent or
23 impair the practice or occupation of or impose any other sanction on
24 any employee solely for the reason that the employee made or caused

1 to be made a report or cooperated with an investigation pursuant to
2 the Protective Services for Vulnerable Adults Act. A court, in
3 addition to other damages and remedies, may assess reasonable
4 attorney fees against an employer who has been found to have
5 violated the provisions of this subsection.

6 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-1902, is
7 amended to read as follows:

8 Section 1-1902. As used in the Nursing Home Care Act:

9 1. "Abuse" means the willful infliction of injury, unreasonable
10 confinement, intimidation or punishment, with resulting physical
11 harm, impairment or mental anguish;

12 2. "Access" means the right of a person to enter a facility to
13 communicate privately and without unreasonable restriction when
14 invited to do so by a resident. The state or local "ombudsman", as
15 that term is defined by the Aging Services Division of the
16 Department of Human Services pursuant to the Older Americans' Act,
17 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager
18 employed by the Department of Mental Health and Substance Abuse
19 Services or one of its contract agencies shall have right of access
20 to enter a facility, communicate privately and without unreasonable
21 restriction with any resident who consents to the communication, to
22 seek consent to communicate privately and without restriction with
23 any resident, and to observe all areas of the facility that directly
24 pertain to the patient care of the resident without infringing upon

1 the privacy of the other residents without first obtaining their
2 consent;

3 3. "Administrator" means the person licensed by the State of
4 Oklahoma who is in charge of a facility. An administrator must
5 devote at least one-third (1/3) of such person's working time to on-
6 the-job supervision of the facility; provided that this requirement
7 shall not apply to an administrator of an intermediate care facility
8 for individuals with intellectual disabilities with sixteen or fewer
9 beds (ICF/IID-16), in which case the person licensed by the state
10 may be in charge of more than one such ICF/IID-16 facility, if such
11 facilities are located within a circle that has a radius of not more
12 than fifteen (15) miles, the total number of facilities and beds
13 does not exceed six facilities and sixty-four beds, and each such
14 ICF/IID-16 facility is supervised by a qualified professional. The
15 facilities may be free-standing in a community or may be on campus
16 with a parent institution. The ICF/IID-16 facility may be
17 independently owned and operated or may be part of a larger
18 institutional operation;

19 4. "Advisory Board" means the Long-Term Care Facility Advisory
20 Board;

21 5. "Adult companion home" means any home or establishment,
22 funded and certified by the Department of Human Services, which
23 provides homelike residential accommodations and supportive
24

1 assistance to three or fewer adults with intellectual or
2 developmental disabilities;

3 6. "Board" means State Board of Health;

4 7. "Commissioner" means State Commissioner of Health;

5 8. "Department" means the State Department of Health;

6 9. "Facility" means a nursing facility and a specialized home;
7 provided this term shall not include a residential care home or an
8 adult companion home;

9 10. "Nursing facility" means a home, an establishment or an
10 institution, a distinct part of which is primarily engaged in
11 providing:

- 12 a. skilled nursing care and related services for
- 13 residents who require medical or nursing care,
- 14 b. rehabilitation services for the rehabilitation of
- 15 injured, disabled, or sick persons, or
- 16 c. on a regular basis, health-related care and services
- 17 to individuals who, because of their mental or
- 18 physical condition, require care and services beyond
- 19 the level of care provided by a residential care home
- 20 and which can be made available to them only through a
- 21 nursing facility.

22 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
23 this title, a facility constructed or operated by an entity
24 described in paragraph 7 of subsection B of Section 6201 of Title 74

1 of the Oklahoma Statutes or the nursing care component of a
2 continuum of care facility, as such term is defined under the
3 Continuum of Care and Assisted Living Act, to the extent that the
4 facility constructed or operated by an entity described in paragraph
5 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
6 Statutes contains such a nursing care component;

7 11. "Specialized facility" means any home, establishment, or
8 institution which offers or provides inpatient long-term care
9 services on a twenty-four-hour basis to a limited category of
10 persons requiring such services, including but not limited to a
11 facility providing health or habilitation services for individuals
12 with intellectual or developmental disabilities, but does not mean,
13 for purposes of Section 1-851.1 of this title, a facility
14 constructed or operated by an entity described in paragraph 7 of
15 subsection B of Section 6201 of Title 74 of the Oklahoma Statutes or
16 the nursing care component of a continuum of care facility, as such
17 term is defined under the Continuum of Care and Assisted Living Act,
18 to the extent that the facility constructed or operated by an entity
19 described in paragraph 7 of subsection B of Section 6201 of Title 74
20 of the Oklahoma Statutes contains such a nursing care component;

21 12. "Residential care home" means any home, establishment, or
22 institution licensed pursuant to the provisions of the Residential
23 Care Act other than a hotel, motel, fraternity or sorority house, or
24 college or university dormitory, which offers or provides

1 residential accommodations, food service, and supportive assistance
2 to any of its residents or houses any resident requiring supportive
3 assistance. The residents shall be persons who are ambulatory and
4 essentially capable of managing their own affairs, but who do not
5 routinely require nursing care; provided, the term "residential care
6 home" shall not mean a hotel, motel, fraternity or sorority house,
7 or college or university dormitory, if the facility operates in a
8 manner customary to its description and does not house any person
9 who requires supportive assistance from the facility in order to
10 meet an adequate level of daily living;

11 13. "Licensee" means the person, a corporation, partnership, or
12 association who is the owner of the facility which is licensed by
13 the Department pursuant to the provisions of the Nursing Home Care
14 Act;

15 14. "Maintenance" means meals, shelter, and laundry services;

16 15. "Neglect" means failure to provide goods and/or services
17 necessary to avoid physical harm, mental anguish, or mental illness;

18 16. "Oklahoma's Protection and Advocacy System" means a
19 protection and advocacy system established in accordance with
20 Section 143 of the Developmental Disabilities Assistance and Bill of
21 Rights Act of 2000;

22 ~~16~~ 17. "Owner" means a person, corporation, partnership,
23 association, or other entity which owns a facility or leases a
24 facility. The person or entity that stands to profit or lose as a

1 result of the financial success or failure of the operation shall be
2 presumed to be the owner of the facility. Notwithstanding the
3 foregoing, any nonstate governmental entity that has acquired and
4 owns or leases a facility and that has entered into an agreement
5 with the Oklahoma Health Care Authority to participate in the
6 nursing facility supplemental payment program ("UPL Owner") shall be
7 deemed the owner of such facility and shall be authorized to obtain
8 management services from a management services provider ("UPL
9 Manager"), and to delegate, allocate and assign as between the UPL
10 Owner and UPL Manager, compensation, profits, losses, liabilities,
11 decision-making authority and responsibilities, including
12 responsibility for the employment, direction, supervision and
13 control of the facility's administrator and staff;

14 ~~17~~ 18. "Personal care" means assistance with meals, dressing,
15 movement, bathing or other personal needs or maintenance, or general
16 supervision of the physical and mental well-being of a person, who
17 is incapable of maintaining a private, independent residence, or who
18 is incapable of managing his person, whether or not a guardian has
19 been appointed for such person;

20 ~~18~~. 19. "Resident" means a person residing in a facility due to
21 illness, physical or mental infirmity, or advanced age;

22 ~~19~~. 20. "Representative of a resident" means a court-appointed
23 guardian or, if there is no court-appointed guardian, the parent of
24 a minor, a relative, or other person, designated in writing by the

1 resident; provided, that any owner, operator, administrator or
2 employee of a facility subject to the provisions of the Nursing Home
3 Care Act, the Residential Care Act, or the Group Homes for the
4 Developmentally Disabled or Physically Handicapped Persons Act shall
5 not be appointed guardian or limited guardian of a resident of the
6 facility unless the owner, operator, administrator or employee is
7 the spouse of the resident, or a relative of the resident within the
8 second degree of consanguinity and is otherwise eligible for
9 appointment; and

10 ~~20.~~ 21. "Supportive assistance" means the service rendered to
11 any person which is less than the service provided by a nursing
12 facility but which is sufficient to enable the person to meet an
13 adequate level of daily living. Supportive assistance includes but
14 is not limited to housekeeping, assistance in the preparation of
15 meals, assistance in the safe storage, distribution, and
16 administration of medications, and assistance in personal care as is
17 necessary for the health and comfort of such person. Supportive
18 assistance shall not include medical service.

19 SECTION 4. AMENDATORY 63 O.S. 2021, Section 1-1939, is
20 amended to read as follows:

21 Section 1-1939. A. The owner and licensee are liable to a
22 resident for any intentional or negligent act or omission of their
23 agents or employees which injures the resident. In addition, any
24 state employee that aids, abets, assists, or conspires with an owner

1 or licensee to perform an act that causes injury to a resident shall
2 be individually liable.

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

6 C. Any damages recoverable under this section, including
7 minimum damages as provided by this section, may be recovered in any
8 action which a court may authorize to be brought as a class action.
9 The remedies provided in this section, are in addition to and
10 cumulative with any other legal remedies available to a resident.
11 Exhaustion of any available administrative remedies shall not be
12 required prior to commencement of suit hereunder.

13 D. Any waiver by a resident or the legal representative of the
14 resident of the right to commence an action under this section,
15 whether oral or in writing, shall be null and void, and without
16 legal force or effect.

17 E. Any party to an action brought under this section shall be
18 entitled to a trial by jury and any waiver of the right to a trial
19 by a jury, whether oral or in writing, prior to the commencement of
20 an action, shall be null and void, and without legal force or
21 effect.

22 F. A licensee or its agents or employees shall not transfer,
23 discharge, evict, harass, dismiss or retaliate against a resident, a
24 resident's guardian or an employee or agent who makes a report,

1 brings, or testifies in, an action under this section, or files a
2 complaint because of a report, testimony or complaint.

3 G. Any person, institution or agency, under the Nursing Home
4 Care Act, participating in good faith in the making of a report, or
5 in the investigation of such a report shall not be deemed to have
6 violated any privileged communication and shall have immunity from
7 any liability, civil or criminal, or any other proceedings, civil or
8 criminal, as a consequence of making such report. The good faith of
9 any persons required, or permitted to report cases of suspected
10 resident abuse or neglect under this act shall be presumed.

11 H. A facility employee or agent who becomes aware of abuse,
12 neglect or exploitation of a resident prohibited by the Nursing Home
13 Care Act shall immediately report the matter to the facility
14 administrator. A facility administrator who becomes aware of abuse,
15 neglect, or exploitation of a resident shall immediately act to
16 rectify the problem and shall make a report of the incident and its
17 correction to the Department of Human Services.

18 I. 1. The facility shall be responsible for reporting the
19 following serious incidents to the Department within twenty-four
20 (24) hours:

- 21 a. communicable diseases,
- 22 b. deaths by unusual occurrence, including accidental
- 23 deaths or deaths other than by natural causes, and
- 24 deaths that may be attributed to a medical device,

- 1 c. missing residents. In addition, the facility shall
2 make a report to local law enforcement agencies within
3 two (2) hours if the resident is still missing,
4 d. situations arising where a rape or a criminal act is
5 suspected. Such situations shall also be reported to
6 local law enforcement immediately. The facility shall
7 make every effort to preserve the scene of the
8 suspected rape or crime until local law enforcement
9 has arrived, and
10 e. resident abuse, neglect and misappropriation of the
11 property of a resident.

12 2. All other incident reports shall be made in accordance with
13 federal law.

14 3. All initial written reports of incidents or situations shall
15 be mailed to the Department and Oklahoma's Protection and Advocacy
16 System within five (5) working days after the incident or situation.
17 The final report shall be filed with the Department and Oklahoma's
18 Protection and Advocacy System when the full investigation is
19 complete.

20 SECTION 5. This act shall become effective November 1, 2024.

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