

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3797

By: Hefner

AS INTRODUCED

An Act relating to abuse of elderly and disabled adults; amending 43a O.S. 2021, Section 10-103, which relates to definitions in the Protective Services for the Elderly and for Incapacitated Adults Act; adding a definition; amending 43a O.S. 2021, Section 10-104, which relates to persons required to report abuse, neglect, or exploitation, penalty, immunity, civil liability for false reports, disclosure of health information, reporting of suspicious deaths, impairment of employment prohibited; directing notification of investigation and reporting to Oklahoma's Protection and Advocacy System; amending 63 O.S. 2021, Section 1-1902, which relates to definitions in the Nursing Home Care Act; adding a definition; amending 63 O.S. 2021, Section 1-1939, which relates to liability to residents, injunctive 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:

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

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

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

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

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

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

10 4. "Incapacitated person" means:

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

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

16 (2) whose ability to receive and evaluate information
17 effectively or to make and to communicate
18 responsible decisions is impaired to such an
19 extent that such person lacks the capacity to
20 manage his or her financial resources or to meet
21 essential requirements for his or her mental or
22 physical health or safety without assistance from
23 others, or

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

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

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

15 a. the responsibility for the care of a vulnerable adult
16 or the financial management of the resources of a
17 vulnerable adult as a result of a family relationship,

18 b. assumed the responsibility for the care of a
19 vulnerable adult voluntarily, by contract, or as a
20 result of the ties of friendship, or

21 c. been appointed a guardian, limited guardian, or
22 conservator pursuant to the Oklahoma Guardianship and
23 Conservatorship Act;

24 7. "Department" means the Department of Human Services;
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1 8. "Abuse" means causing or permitting:

2 a. the infliction of physical pain, injury, sexual abuse,
3 sexual exploitation, unreasonable restraint or
4 confinement, mental anguish or personal degradation,
5 or

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

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

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

21 a. squandering or negligently mismanaging the money,
22 property, or accounts of a vulnerable adult,

23 b. refusing to pay for necessities or utilities in a
24 timely manner, or
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1 c. providing substandard care to a vulnerable adult
2 despite the availability of adequate financial
3 resources;

4 11. "Neglect" means:

5 a. the failure to provide protection for a vulnerable
6 adult who is unable to protect his or her own
7 interest,

8 b. the failure to provide a vulnerable adult with
9 adequate shelter, nutrition, health care, or clothing,
10 or

11 c. negligent acts or omissions that result in harm or the
12 unreasonable risk of harm to a vulnerable adult
13 through the action, inaction, or lack of supervision
14 by a caretaker providing direct services;

15 12. "Personal degradation" means a willful act by a caretaker
16 intended to shame, degrade, humiliate or otherwise harm the personal
17 dignity of a vulnerable adult, or where the caretaker knew or
18 reasonably should have known the act would cause shame, degradation,
19 humiliation or harm to the personal dignity of a reasonable person.
20 Personal degradation includes the taking, transmitting, or display
21 of an electronic image of a vulnerable adult by a caretaker, where
22 the caretaker's actions constitute a willful act intended to shame,
23 degrade, humiliate or otherwise harm the personal dignity of the
24 dependent adult, or where the caretaker knew or reasonably should
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1 have known the act would cause shame, degradation, humiliation or
2 harm to the personal dignity of a reasonable person. Personal
3 degradation does not include:

- 4 a. the taking, transmission or display of an electronic
5 image of a vulnerable adult for the purpose of
6 reporting vulnerable adult abuse to law enforcement,
7 the Department of Human Services or other regulatory
8 agency that oversees caretakers or enforces abuse or
9 neglect laws or rules,
- 10 b. the taking, transmission or display of an electronic
11 image of a vulnerable adult for the purpose of
12 treatment or diagnosis, or
- 13 c. the taking, transmission or display of an electronic
14 image of a vulnerable adult as part of an ongoing
15 investigation;

16 13. "Sexual abuse" means:

- 17 a. oral, anal, or vaginal penetration of a vulnerable
18 adult by or through the union with the sexual organ of
19 a caretaker or other person providing services to the
20 vulnerable adult, or the anal or vaginal penetration
21 of a vulnerable adult by a caretaker or other person
22 providing services to the vulnerable adult with any
23 other object, or

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

7 14. "Indecent exposure" means forcing or requiring a vulnerable
8 adult to:

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

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

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

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

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

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

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

21 Section 10-104. A. Any person having reasonable cause to
22 believe that a vulnerable adult is suffering from abuse, neglect, or
23 exploitation shall make a report as soon as the person is aware of
24 the situation to:
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1 1. The Department of Human Services; or

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

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

7 1. Physicians;

8 2. Operators of emergency response vehicles and other medical
9 professionals;

10 3. Social workers and mental health professionals;

11 4. Law enforcement officials;

12 5. Staff of domestic violence programs;

13 6. Long-term care facility personnel, including staff of
14 nursing facilities, intermediate care facilities for individuals
15 with intellectual disabilities (ICFs/IID), assisted living
16 facilities, and residential care facilities;

17 7. Other health care professionals;

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

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

23 10. Job coaches, community service workers, and personal care
24 assistants; and
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1 11. Municipal employees.

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

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

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 report.

1 D. If the initial report is made to the local municipal police
2 department or sheriff's office, such police department or sheriff's
3 office shall notify, as soon as possible, the Department of Human
4 Services of its investigation and Oklahoma's Protection and Advocacy
5 System.

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

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

19 2. The same immunity from any civil or criminal liability shall
20 also be extended to previous employers of a person employed to be
21 responsible for the care of a vulnerable adult, who in good faith
22 report to new employers or prospective employers of such caretaker
23 any misconduct of the caretaker including, but not limited to,
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1 abuse, neglect or exploitation of a vulnerable adult, whether
2 confirmed or not.

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

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

- 20 a. the vulnerable adult agrees to the disclosure of the
21 health information, or
- 22 b. the individual is unable to agree to the disclosure of
23 health information because of incapacity; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 4. "Advisory Board" means the Long-Term Care Facility Advisory
18 Board;

19 5. "Adult companion home" means any home or establishment,
20 funded and certified by the Department of Human Services, which
21 provides homelike residential accommodations and supportive
22 assistance to three or fewer adults with intellectual or
23 developmental disabilities;

24 6. "Board" means State Board of Health;
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1 7. "Commissioner" means State Commissioner of Health;

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

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

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

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

19 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
20 this title, a facility constructed or operated by an entity
21 described in paragraph 7 of subsection B of Section 6201 of Title 74
22 of the Oklahoma Statutes or the nursing care component of a
23 continuum of care facility, as such term is defined under the
24 Continuum of Care and Assisted Living Act, to the extent that the
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1 facility constructed or operated by an entity described in paragraph
2 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
3 Statutes contains such a nursing care component;

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

18 12. "Residential care home" means any home, establishment, or
19 institution licensed pursuant to the provisions of the Residential
20 Care Act other than a hotel, motel, fraternity or sorority house, or
21 college or university dormitory, which offers or provides
22 residential accommodations, food service, and supportive assistance
23 to any of its residents or houses any resident requiring supportive
24 assistance. The residents shall be persons who are ambulatory and
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1 essentially capable of managing their own affairs, but who do not
2 routinely require nursing care; provided, the term "residential care
3 home" shall not mean a hotel, motel, fraternity or sorority house,
4 or college or university dormitory, if the facility operates in a
5 manner customary to its description and does not house any person
6 who requires supportive assistance from the facility in order to
7 meet an adequate level of daily living;

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

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

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

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

19 ~~16~~ 17. "Owner" means a person, corporation, partnership,
20 association, or other entity which owns a facility or leases a
21 facility. The person or entity that stands to profit or lose as a
22 result of the financial success or failure of the operation shall be
23 presumed to be the owner of the facility. Notwithstanding the
24 foregoing, any nonstate governmental entity that has acquired and
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1 owns or leases a facility and that has entered into an agreement
2 with the Oklahoma Health Care Authority to participate in the
3 nursing facility supplemental payment program ("UPL Owner") shall be
4 deemed the owner of such facility and shall be authorized to obtain
5 management services from a management services provider ("UPL
6 Manager"), and to delegate, allocate and assign as between the UPL
7 Owner and UPL Manager, compensation, profits, losses, liabilities,
8 decision-making authority and responsibilities, including
9 responsibility for the employment, direction, supervision and
10 control of the facility's administrator and staff;

11 ~~17~~ 18. "Personal care" means assistance with meals, dressing,
12 movement, bathing or other personal needs or maintenance, or general
13 supervision of the physical and mental well-being of a person, who
14 is incapable of maintaining a private, independent residence, or who
15 is incapable of managing his person, whether or not a guardian has
16 been appointed for such person;

17 ~~18~~ 19. "Resident" means a person residing in a facility due to
18 illness, physical or mental infirmity, or advanced age;

19 ~~19~~ 20. "Representative of a resident" means a court-appointed
20 guardian or, if there is no court-appointed guardian, the parent of
21 a minor, a relative, or other person, designated in writing by the
22 resident; provided, that any owner, operator, administrator or
23 employee of a facility subject to the provisions of the Nursing Home
24 Care Act, the Residential Care Act, or the Group Homes for the
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1 Developmentally Disabled or Physically Handicapped Persons Act shall
2 not be appointed guardian or limited guardian of a resident of the
3 facility unless the owner, operator, administrator or employee is
4 the spouse of the resident, or a relative of the resident within the
5 second degree of consanguinity and is otherwise eligible for
6 appointment; and

7 ~~20.~~ 21. "Supportive assistance" means the service rendered to
8 any person which is less than the service provided by a nursing
9 facility but which is sufficient to enable the person to meet an
10 adequate level of daily living. Supportive assistance includes but
11 is not limited to housekeeping, assistance in the preparation of
12 meals, assistance in the safe storage, distribution, and
13 administration of medications, and assistance in personal care as is
14 necessary for the health and comfort of such person. Supportive
15 assistance shall not include medical service.

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

18 Section 1-1939. A. The owner and licensee are liable to a
19 resident for any intentional or negligent act or omission of their
20 agents or employees which injures the resident. In addition, any
21 state employee that aids, abets, assists, or conspires with an owner
22 or licensee to perform an act that causes injury to a resident shall
23 be individually liable.
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1 B. A resident may maintain an action under the Nursing Home
2 Care Act for any other type of relief, including injunctive and
3 declaratory relief, permitted by law.

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

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

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

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

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

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

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

- 19 a. communicable diseases,
- 20 b. deaths by unusual occurrence, including accidental
21 deaths or deaths other than by natural causes, and
22 deaths that may be attributed to a medical device,
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- 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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22 59-2-9013 TJ 01/16/24
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