

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 218

By: Griffin

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6 AS INTRODUCED

7 An Act relating to the Protective Services for
8 Vulnerable Adults Act; amending 43A O.S. 2011,
9 Section 10-105, which relates to investigations of
10 reports; requiring Department of Human Services to
11 forward certain report to certain facilities;
12 amending 43A O.S. 2011, Section 10-106, which relates
13 to voluntary protective services; requiring
14 Department to petition court for enjoinder under
15 certain circumstances; requiring certain decree under
16 certain circumstances; permitting Department to take
17 control of certain assets under certain
18 circumstances; and providing an effective date.

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

20 SECTION 1. AMENDATORY 43A O.S. 2011, Section 10-105, is
21 amended to read as follows:

22 Section 10-105. A. Upon receiving a report of alleged abuse,
23 neglect, or exploitation of a vulnerable adult pursuant to the
24 provisions of the Protective Services for Vulnerable Adults Act, the
Department of Human Services shall make a prompt and thorough
investigation.

B. The investigation by the Department shall include:

1 1. Notification of local law enforcement agency. Upon the
2 request of a law enforcement agency, the Department shall submit
3 copies of any results or records of an examination on the vulnerable
4 adult who is alleged to have been abused, neglected, or exploited
5 and any other clinical notes, x-rays, photographs, or previous or
6 current records relevant to the case;

7 2. Any findings of abuse, neglect, or exploitation of a
8 vulnerable adult shall also be sent to any state agency with
9 concurrent jurisdiction over persons or issues identified in the
10 investigation including, but not limited to, where appropriate, the
11 State Department of Health, the Oklahoma Board of Nursing, or any
12 other appropriate state licensure or certification board, agency, or
13 registry;

14 3. Every reasonable effort to locate and notify the caretaker,
15 legal guardian and next of kin of the vulnerable adult who may be in
16 need of protective services pursuant to Section 10-105.1 of this
17 title;

18 4. Diagnostic evaluation to determine whether the person needs
19 protective services;

20 5. Any photographs necessary to document injuries or conditions
21 which have resulted or may result in an injury or serious harm to
22 the person;

23 6. A statement of the least restrictive services needed;

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1 7. Whether services are available from the Department or in the
2 community and how the services can be provided;

3 8. Whether the person would be capable of obtaining services
4 for self and could bear the cost or would be eligible for services
5 from the Department;

6 9. Whether a caretaker or legal guardian would be willing to
7 provide services or would agree to their provision;

8 10. Whether the person desires the services;

9 11. A statement of any follow-up investigation or monitoring of
10 the services that may be needed; and

11 12. Other relevant information.

12 C. 1. a. The Department's investigation shall include a visit

13 to the home or other place of residence of the person
14 who is the subject of the report, a private interview
15 with such person, and consultation with persons who
16 have knowledge of the circumstances.

17 b. If, in the course of an investigation of this nature,
18 the Department is denied entrance to the home or other
19 place of residence of a person believed to be a
20 vulnerable adult in need of protective services, or is
21 denied a private interview with the vulnerable adult,
22 the Department may petition the court for an order
23 allowing entry to the premises or private access to
24 the vulnerable adult. The court shall make a finding

1 of probable cause of the vulnerability of the adult
2 before issuing the order. If documentation, or access
3 to records, or other information relating to such
4 person as provided by this section is denied, the
5 Department may petition the court for an order
6 allowing entry or access.

7 2. The petition shall state the name and address of the person
8 who is the subject of the report and shall allege specific facts
9 sufficient to show that the circumstances of the person are in need
10 of investigation.

11 3. If it is necessary to forcibly enter the premises, the
12 representative of the Department shall make the entry accompanied by
13 a peace officer.

14 4. The Department shall make all reasonable attempts to
15 interview the caretaker or other persons alleged to be involved in
16 the abuse, neglect or exploitation in order to enhance service
17 provision and to prevent additional incidents of abuse, neglect or
18 exploitation.

19 D. When a report is received pertaining to a vulnerable adult
20 who has a legal guardian, a copy of the investigative report of the
21 Department shall be filed with the court to which the guardian is
22 accountable.

23 E. 1. In the case of a final investigative report pertaining
24 to a vulnerable adult who is a resident of a nursing facility,

1 residential care facility, assisted living facility or continuum of
2 care facility and who is alleged to be a victim of abuse, verbal
3 abuse, neglect, or exploitation by an employee of such facility, the
4 Department shall forward to the State Department of Health and to
5 the facility a copy of the Department's final investigative report.

6 2. The Department of Human Services shall be deemed a party
7 pursuant to the Administrative Procedures Act for the investigative
8 reports filed by the Department with the State Department of Health
9 regarding vulnerable adults who are residents of nursing facilities,
10 residential care facilities, assisted living facilities or continuum
11 of care facilities.

12 a. Within thirty (30) days of receipt of the final
13 investigative report submitted by the Department of
14 Human Services pursuant to this section, the State
15 Department of Health shall provide the Department of
16 Human Services with a written summary of any action
17 taken as a result of the complaint including, but not
18 limited to, results of any inspections, enforcement
19 actions or actions which may be taken by the State
20 Department of Health.

21 b. Whenever the Department of Human Services believes
22 that the conditions giving rise to a complaint by the
23 Department alleging a serious threat to the health,
24 safety or welfare of a resident of a nursing facility,

1 residential care facility, assisted living facility or
2 continuum of care facility have not been adequately
3 addressed, the Department of Human Services may
4 request the State Department of Health to hold a
5 hearing on the complaint as provided by Section 309 of
6 Title 75 of the Oklahoma Statutes.

7 3. Nothing herein shall prevent the State Department of Health
8 from conducting any type of investigation or taking any appropriate
9 remedial or other action pursuant to the provisions of the Nursing
10 Home Care Act, the Residential Care Act and the Continuum of Care
11 and Assisted Living Act.

12 F. When a report is received pertaining to a vulnerable adult
13 residing in a facility other than the home of the vulnerable adult,
14 where persons are employed to provide care and those employees have
15 been named as persons responsible for the abuse, neglect or
16 exploitation, the Department shall forward its final findings,
17 including, but not limited to, any administrative appeal findings to
18 the owner or administrator of the facility to prevent further
19 incidents.

20 SECTION 2. AMENDATORY 43A O.S. 2011, Section 10-106, is
21 amended to read as follows:

22 Section 10-106. A. If the Department of Human Services
23 determines, as a result of its investigation, that a vulnerable
24 adult needs protective services, the Department shall immediately

1 provide or arrange for the provision of available protective
2 services in the least restrictive manner, provided the person
3 affirmatively consents to receive these services.

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

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

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

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

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

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1 c. the Department shall take over control of assets,
2 resources, and income to provide for the care of the
3 vulnerable adult.

4 C. If a vulnerable adult does not consent to the receipt of
5 protective services or withdraws consent to the receipt of such
6 services, the services shall be terminated, unless the Department
7 determines that the person lacks capacity to consent, in which case
8 the Department may seek court authorization to provide services
9 pursuant to Section 10-108 of this title.

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

- 12 a. the assets of the vulnerable adult consenting to the
13 receipt of voluntary protective services, or
- 14 b. any available private or public assistance programs
15 for which the vulnerable adult is eligible.

16 2. If no assets or other private or public funds are available
17 to the person, payment shall be made from a fund established by the
18 Department for the purpose of providing emergency adult protective
19 services, subject to availability of funds.

20 SECTION 3. This act shall become effective November 1, 2015.

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