

1 **SENATE FLOOR VERSION**

2 February 9, 2015

3 **AS AMENDED**

4 SENATE BILL NO. 218

5 By: Griffin

6 **[Protective Services for Vulnerable Adults Act -**
7 **Department of Human Services - voluntary protective**
8 **services - permitting Department to take control -**
9 **effective date]**

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

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

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

18 B. The investigation by the Department shall include:

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

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

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

12 4. Diagnostic evaluation to determine whether the person needs
13 protective services;

14 5. Any photographs necessary to document injuries or conditions
15 which have resulted or may result in an injury or serious harm to
16 the person;

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

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

20 8. Whether the person would be capable of obtaining services
21 for self and could bear the cost or would be eligible for services
22 from the Department;

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

1 10. Whether the person desires the services;

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

4 12. Other relevant information.

5 C. 1. a. The Department's investigation shall include a visit
6 to the home or other place of residence of the person
7 who is the subject of the report, a private interview
8 with such person, and consultation with persons who
9 have knowledge of the circumstances.

10 b. If, in the course of an investigation of this nature,
11 the Department is denied entrance to the home or other
12 place of residence of a person believed to be a
13 vulnerable adult in need of protective services, or is
14 denied a private interview with the vulnerable adult,
15 the Department may petition the court for an order
16 allowing entry to the premises or private access to
17 the vulnerable adult. The court shall make a finding
18 of probable cause of the vulnerability of the adult
19 before issuing the order. If documentation, or access
20 to records, or other information relating to such
21 person as provided by this section is denied, the
22 Department may petition the court for an order
23 allowing entry or access.

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

5 3. If it is necessary to forcibly enter the premises, the
6 representative of the Department shall make the entry accompanied by
7 a peace officer.

8 4. The Department shall make all reasonable attempts to
9 interview the caretaker or other persons alleged to be involved in
10 the abuse, neglect or exploitation in order to enhance service
11 provision and to prevent additional incidents of abuse, neglect or
12 exploitation.

13 D. When a report is received pertaining to a vulnerable adult
14 who has a legal guardian, a copy of the investigative report of the
15 Department shall be filed with the court to which the guardian is
16 accountable.

17 E. 1. In the case of a final investigative report pertaining
18 to a vulnerable adult who is a resident of a nursing facility,
19 residential care facility, assisted living facility or continuum of
20 care facility and who is alleged to be a victim of abuse, verbal
21 abuse, neglect, or exploitation by an employee of such facility, the
22 Department shall forward to the State Department of Health and to
23 the facility a copy of the Department's final investigative report.

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

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

16 b. Whenever the Department of Human Services believes
17 that the conditions giving rise to a complaint by the
18 Department alleging a serious threat to the health,
19 safety or welfare of a resident of a nursing facility,
20 residential care facility, assisted living facility or
21 continuum of care facility have not been adequately
22 addressed, the Department of Human Services may
23 request the State Department of Health to hold a
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1 hearing on the complaint as provided by Section 309 of
2 Title 75 of the Oklahoma Statutes.

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

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

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

18 Section 10-106. A. If the Department of Human Services
19 determines, as a result of its investigation, that a vulnerable
20 adult needs protective services, the Department shall immediately
21 provide or arrange for the provision of available protective
22 services in the least restrictive manner, provided the person
23 affirmatively consents to receive these services.

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

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

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

14 a. enjoining the caretaker from interfering with the
15 provision of protective services to the vulnerable
16 adult, ~~and~~

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

21 c. the Department shall take over control of assets,
22 resources, and income to provide for the care of the
23 vulnerable adult.

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

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

9 a. the assets of the vulnerable adult consenting to the
10 receipt of voluntary protective services, or

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
19 February 9, 2015 - DO PASS AS AMENDED
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