

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 55th Legislature (2015)

4 COMMITTEE SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 218

By: Griffin and Pittman of the  
Senate

and

Cox of the House

7  
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9  
10                                   COMMITTEE SUBSTITUTE

11                   [ Protective Services for Vulnerable Adults Act -  
12                   Department of Human Services - voluntary protective  
13                   services - Department to take control - effective  
14                   date ]

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

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

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

1 B. The investigation by the Department shall include:

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

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

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

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

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

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

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 If the complainant is a facility resident, the resident's  
7 representative or a current employee of the facility, the Department  
8 shall keep the complainant's identity or other information which may  
9 identify the complainant confidential.

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

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

1           b. Whenever the Department of Human Services believes  
2           that the conditions giving rise to a complaint by the  
3           Department alleging a serious threat to the health,  
4           safety or welfare of a resident of a nursing facility,  
5           residential care facility, assisted living facility or  
6           continuum of care facility have not been adequately  
7           addressed, the Department of Human Services may  
8           request the State Department of Health to hold a  
9           hearing on the complaint as provided by Section 309 of  
10          Title 75 of the Oklahoma Statutes.

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

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

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

3 Section 10-106. A. If the Department of Human Services  
4 determines, as a result of its investigation, that a vulnerable  
5 adult needs protective services, the Department shall immediately  
6 provide or arrange for the provision of available protective  
7 services in the least restrictive manner, provided the person  
8 affirmatively consents to receive these services.

9 B. 1. When a caretaker of a vulnerable adult who consents to  
10 the receipt of protective services refuses to allow the provision of  
11 such services to the person, the Department may petition to the  
12 court for a decree enjoining the caretaker from interfering with the  
13 provision of protective services to the person.

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

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

22 a. enjoining the caretaker from interfering with the  
23 provision of protective services to the vulnerable  
24 adult, and

1           b.    freezing the assets of the vulnerable adult if it has  
2                    been determined by preponderance of the evidence that  
3                    the vulnerable adult is being exploited and it is  
4                    necessary to protect such assets.

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

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

13               a.    the assets of the vulnerable adult consenting to the  
14                    receipt of voluntary protective services, or

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

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

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

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23 COMMITTEE REPORT BY: COMMITTEE ON LONG-TERM CARE AND SENIOR  
24 SERVICES, dated 03/24/2015 - DO PASS, As Amended.