

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1110

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5
6 AS INTRODUCED

7 An Act relating to vulnerable adults; creating the
8 Vulnerable Adult Injury and Death Review Board within
9 the Office of the Attorney General; providing powers
10 and duties of the Board; authorizing Board to
11 promulgate rules; requiring annual report;
12 establishing membership of Board; authorizing travel
13 reimbursement; providing for administrative support
14 for Board; amending 25 O.S. 2011, Section 307, which
15 relates to the Oklahoma Open Meeting Act; modifying
16 exemptions from the prohibition against executive
17 sessions; allowing for executive sessions of the
18 Board for certain purposes; providing for
19 codification; and providing an effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1701 of Title 22, unless there
23 is created a duplication in numbering, reads as follows:

24 A. There is hereby created until July 1, 2021, in accordance
with the Oklahoma Sunset Law, the Vulnerable Adult Injury and Death
Review Board within the Office of the Attorney General. The Board
shall have the power and duty to:

1. Conduct case reviews of deaths and injuries of elderly and
mentally or physically debilitated adults when circumstances of the

1 death or injury cannot be documented or that may be the result of
2 error, negligence or abuse;

3 2. Develop accurate statistical information and identification
4 of elderly and mentally or physically debilitated adults whose
5 injury or death occurred under circumstances that cannot be
6 documented or that may be the result of error, negligence or abuse;

7 3. Review and make recommendations to improve applicable
8 policies and procedures within state agencies that may help reduce
9 injuries and deaths among the elderly and mentally or physically
10 debilitated adults; and

11 4. Enter into agreements with other state, local or private
12 entities as necessary to carry out the duties of the Vulnerable
13 Adult Injury and Death Review Board.

14 B. In carrying out its duties and responsibilities the Board
15 shall:

16 1. Promulgate rules establishing criteria for identifying cases
17 involving the death or injury of an elderly or mentally or
18 physically debilitated adult that would be subject to specific, in-
19 depth review by the Board;

20 2. Conduct a specific case review of those cases in which the
21 cause of death or injury cannot be documented or may be the result
22 of error, negligence or abuse;

23 3. Establish and maintain statistical information related to
24 the deaths and injuries of elderly and mentally or physically

1 debilitated adults resulting from errors, negligence or abuse
2 including, but not limited to, demographic and medical diagnostic
3 information;

4 4. Establish procedures for obtaining initial information
5 regarding deaths and injuries of elderly and mentally or physically
6 debilitated adults from the Long-Term Care Division and the Home
7 Care Services Division of the State Department of Health, the State
8 Long-Term Care Ombudsman, and the Adult Protective Services Division
9 of the Department of Human Services;

10 5. Request and obtain a copy of all records and reports
11 pertaining to an elderly or mentally or physically debilitated adult
12 whose case is under review including, but not limited to:

- 13 a. hospital records,
- 14 b. medical examiner report,
- 15 c. medical and dental records,
- 16 d. emergency medical service records,
- 17 e. files of the Department of Human Services,
- 18 f. files of the State Long-Term Care Ombudsman made
19 available pursuant to federal law, and
- 20 g. files of the State Department of Health.

21 Confidential information provided to the Board shall be
22 maintained by the Board in a confidential manner as otherwise
23 required by state and federal law. Any person damaged by disclosure
24 of such confidential information by the Board or its members not

1 authorized by law may maintain a claim for damages pursuant to The
2 Governmental Tort Claims Act;

3 6. Interview interested parties including, but not limited to,
4 relatives and friends of the elderly or mentally or physically
5 debilitated adult;

6 7. Maintain all confidential information, documents and records
7 in possession of the Board as confidential and not subject to
8 subpoena or discovery in any civil or criminal proceedings;
9 provided, however, information, documents and records otherwise
10 available from other sources shall not be exempt from subpoena or
11 discovery through those sources solely because such information,
12 documents and records were presented to or reviewed by the Board;

13 8. Conduct reviews of specific cases of deaths and injuries of
14 elderly or mentally or physically debilitated adults and request the
15 preparation of additional information and reports as determined to
16 be necessary by the Board including, but not limited to, clinical
17 summaries from treating physicians and chronologies of contact with
18 the person;

19 9. If recommended by a majority vote of the Board, report
20 findings of gross neglect of duty by any state officer or state
21 employee to the director of the state agency that employs the
22 officer or employee and to the district attorney of the jurisdiction
23 in which the death or injury occurred; and
24

1 10. Exercise all incidental powers necessary and proper for the
2 implementation and administration of the Vulnerable Adult Injury and
3 Death Review Board.

4 C. The review and discussion of individual cases of death or
5 injury of elderly and mentally or physically debilitated adults
6 shall be conducted in executive session as provided in Section 307
7 of Title 25 of the Oklahoma Statutes. All other business shall be
8 conducted in accordance with the provisions of the Oklahoma Open
9 Meeting Act. All discussions of individual cases and any writings
10 produced by or created for the Board in the course of determining a
11 remedial measure to be recommended by the Board, as the result of a
12 review of the death or injury of elderly and mentally or physically
13 debilitated adults, shall be privileged and shall not be admissible
14 in evidence in any proceeding. The Board shall periodically conduct
15 meetings to discuss organization and business matters and any
16 actions or recommendations aimed at improving the care received by
17 elderly and mentally or physically debilitated adults which shall be
18 subject to the Oklahoma Open Meeting Act.

19 D. The Board shall submit an annual statistical report to the
20 Attorney General, the Governor, the Speaker of the House of
21 Representatives, the President Pro Tempore of the Senate, the
22 Commissioner of Health and the Director of the Department of Human
23 Services on the incidence of deaths and injuries of elderly and
24 mentally or physically debilitated adults in which the circumstances

1 of the death or injury could not be documented or may have been the
2 result of error, negligence or abuse during the previous state
3 fiscal year. The Board shall also include its recommendations, if
4 any, to the State Department of Health, the State Long-Term Care
5 Ombudsman and the Department of Human Services. The report shall be
6 completed no later than February 1 of each year.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1702 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The Vulnerable Adult Injury and Death Review Board shall be
11 composed of eleven (11) members as follows:

12 1. The State Long-Term Care Ombudsman, or designee;

13 2. The Director of the Long-Term Care Division of the State
14 Department of Health, or designee;

15 3. The Director of the Home Services Division of the State
16 Department of Health, or designee;

17 4. The Director of the Adult Protective Services Program within
18 the Department of Human Services, or designee;

19 5. The Chief Medical Examiner, or designee;

20 6. Two members appointed by the Speaker of the Oklahoma House
21 of Representatives as follows:

22 a. one shall be a licensed physician practicing
23 geriatrics, and
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1 b. one shall be a mental health professional specializing
2 in the treatment of the elderly;

3 7. Two members appointed by the President Pro Tempore of the
4 Oklahoma State Senate as follows:

5 a. one shall be a nonsalaried member of an organization
6 that represents the interests of retired persons, and

7 b. one shall be a gerontologist; and

8 8. Two members appointed by the Governor as follows:

9 a. one shall be a nonsalaried member of an organization
10 that represents and advocates for older Oklahomans,
11 and

12 b. one shall be an alumnus of an organization that
13 represents and advocates for older Oklahomans.

14 B. Appointed members shall serve for terms of two (2) years and
15 shall be eligible for reappointment.

16 C. Every two (2) years the Board shall elect from among its
17 membership a chair and vice chair. The Board shall meet at least
18 quarterly and may meet more frequently as necessary as determined by
19 the chair. Members shall serve without compensation but may be
20 reimbursed for necessary travel expenses out of funds available to
21 the Office of the Attorney General pursuant to the State Travel
22 Reimbursement Act; provided, that the reimbursement shall be paid in
23 the case of state employee members by the agency employing the
24 members.

1 D. With funds appropriated or otherwise available for that
2 purpose, the Office of the Attorney General shall provide
3 administrative assistance and services to the Vulnerable Adult
4 Injury and Death Review Board.

5 SECTION 3. AMENDATORY 25 O.S. 2011, Section 307, is
6 amended to read as follows:

7 Section 307. A. No public body shall hold executive sessions
8 unless otherwise specifically provided in this section.

9 B. Executive sessions of public bodies will be permitted only
10 for the purpose of:

11 1. Discussing the employment, hiring, appointment, promotion,
12 demotion, disciplining or resignation of any individual salaried
13 public officer or employee;

14 2. Discussing negotiations concerning employees and
15 representatives of employee groups;

16 3. Discussing the purchase or appraisal of real property;

17 4. Confidential communications between a public body and its
18 attorney concerning a pending investigation, claim, or action if the
19 public body, with the advice of its attorney, determines that
20 disclosure will seriously impair the ability of the public body to
21 process the claim or conduct a pending investigation, litigation, or
22 proceeding in the public interest;

23 5. Permitting district boards of education to hear evidence and
24 discuss the expulsion or suspension of a student when requested by

1 the student involved or the student's parent, attorney or legal
2 guardian;

3 6. Discussing matters involving a specific handicapped child;

4 7. Discussing any matter where disclosure of information would
5 violate confidentiality requirements of state or federal law;

6 8. Engaging in deliberations or rendering a final or
7 intermediate decision in an individual proceeding pursuant to
8 Article II of the Administrative Procedures Act; or

9 9. Discussing the following:

10 a. the investigation of a plan or scheme to commit an act
11 of terrorism,

12 b. assessments of the vulnerability of government
13 facilities or public improvements to an act of
14 terrorism,

15 c. plans for deterrence or prevention of or protection
16 from an act of terrorism,

17 d. plans for response or remediation after an act of
18 terrorism,

19 e. information technology of the public body but only if
20 the discussion specifically identifies:

21 (1) design or functional schematics that demonstrate
22 the relationship or connections between devices
23 or systems,

24 (2) system configuration information,

- 1 (3) security monitoring and response equipment
- 2 placement and configuration,
- 3 (4) specific location or placement of systems,
- 4 components or devices,
- 5 (5) system identification numbers, names, or
- 6 connecting circuits,
- 7 (6) business continuity and disaster planning, or
- 8 response plans, or
- 9 (7) investigation information directly related to
- 10 security penetrations or denial of services, or
- 11 f. the investigation of an act of terrorism that has
- 12 already been committed.

13 For the purposes of this subsection, the term "terrorism" means
14 any act encompassed by the definitions set forth in Section 1268.1
15 of Title 21 of the Oklahoma Statutes.

16 C. Notwithstanding the provisions of subsection B of this
17 section, the following public bodies may hold executive sessions:

18 1. The State Banking Board, as provided for under Section 306.1
19 of Title 6 of the Oklahoma Statutes;

20 2. The Oklahoma Industrial Finance Authority, as provided for
21 in Section 854 of Title 74 of the Oklahoma Statutes;

22 3. The Oklahoma Development Finance Authority, as provided for
23 in Section 5062.6 of Title 74 of the Oklahoma Statutes;

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1 4. The Oklahoma Center for the Advancement of Science and
2 Technology, as provided for in Section 5060.7 of Title 74 of the
3 Oklahoma Statutes;

4 5. The Oklahoma Savings and Loan Board, as provided for under
5 subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;

6 6. The Oklahoma Health Research Committee for purposes of
7 conferring on matters pertaining to research and development of
8 products, if public disclosure of the matter discussed would
9 interfere with the development of patents, copyrights, products, or
10 services;

11 7. A review committee, as provided for in Section 855 of Title
12 62 of the Oklahoma Statutes;

13 8. The Child Death Review Board for purposes of receiving and
14 conferring on matters pertaining to materials declared confidential
15 by law;

16 9. The Domestic Violence Fatality Review Board as provided in
17 Section 1601 of Title 22 of the Oklahoma Statutes;

18 10. All nonprofit foundations, boards, bureaus, commissions,
19 agencies, trusteeships, authorities, councils, committees, public
20 trusts, task forces or study groups supported in whole or part by
21 public funds or entrusted with the expenditure of public funds for
22 purposes of conferring on matters pertaining to economic
23 development, including the transfer of property, financing, or the
24 creation of a proposal to entice a business to remain or to locate

1 within their jurisdiction if public disclosure of the matter
2 discussed would interfere with the development of products or
3 services or if public disclosure would violate the confidentiality
4 of the business;

5 11. The Oklahoma Indigent Defense System Board for purposes of
6 discussing negotiating strategies in connection with making possible
7 counteroffers to offers to contract to provide legal representation
8 to indigent criminal defendants and indigent juveniles in cases for
9 which the System must provide representation pursuant to the
10 provisions of the Indigent Defense System Act; ~~and~~

11 12. The Quality Investment Committee for purposes of discussing
12 applications and confidential materials pursuant to the terms of the
13 Oklahoma Quality Investment Act; and

14 13. The Vulnerable Adult Injury and Death Review Board for the
15 purposes of reviewing and discussing individual cases of death or
16 injury of elderly and mentally or physically debilitated adults.

17 D. An executive session for the purpose of discussing the
18 purchase or appraisal of real property shall be limited to members
19 of the public body, the attorney for the public body, and the
20 immediate staff of the public body. No landowner, real estate
21 salesperson, broker, developer, or any other person who may profit
22 directly or indirectly by a proposed transaction concerning real
23 property which is under consideration may be present or participate
24 in the executive session.

1 E. No public body may go into an executive session unless the
2 following procedures are strictly complied with:

3 1. The proposed executive session is noted on the agenda as
4 provided in Section 311 of this title;

5 2. The executive session is authorized by a majority vote of a
6 quorum of the members present and the vote is a recorded vote; and

7 3. Except for matters considered in executive sessions of the
8 State Banking Board and the Oklahoma Savings and Loan Board, and
9 which are required by state or federal law to be confidential, any
10 vote or action on any item of business considered in an executive
11 session shall be taken in public meeting with the vote of each
12 member publicly cast and recorded.

13 F. A willful violation of the provisions of this section shall:

14 1. Subject each member of the public body to criminal sanctions
15 as provided in Section 314 of this title; and

16 2. Cause the minutes and all other records of the executive
17 session, including tape recordings, to be immediately made public.

18 SECTION 4. This act shall become effective November 1, 2015.

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