

1 ENGROSSED HOUSE
2 BILL NO. 3797

By: Hefner and Schreiber of the
House

3 and

4 Floyd of the Senate
5
6

7 An Act relating to abuse of elderly and disabled
8 adults; amending 43A O.S. 2021, Section 10-103, which
9 relates to definitions in the Protective Services for
10 the Elderly and for Incapacitated Adults Act; adding
11 a definition; amending 43A O.S. 2021, Section 10-104,
12 which relates to persons required to report abuse,
13 neglect, or exploitation, penalty, immunity, civil
14 liability for false reports, disclosure of health
15 information, reporting of suspicious deaths,
16 impairment of employment prohibited; directing
17 notification of investigation and reporting to
18 Oklahoma's Protection and Advocacy System; amending
19 63 O.S. 2021, Section 1-1902, which relates to
20 definitions in the Nursing Home Care Act; adding a
21 definition; amending 63 O.S. 2021, Section 1-1939,
22 which relates to liability to residents, injunctive
23 and declaratory relief, damages, waiver of rights,
24 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:

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

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

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

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

1 h. the transportation necessary to secure any of such
2 services.

3 The term shall not include taking the person into physical custody
4 without the consent of the person except as provided for in Sections
5 10-107 and 10-108 of this title, and the evaluation, monitoring, and
6 provision of protective placements;

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

12 4. "Incapacitated person" means:

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

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

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

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

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

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

- 17 a. the responsibility for the care of a vulnerable adult
18 or the financial management of the resources of a
19 vulnerable adult as a result of a family relationship,
20 b. assumed the responsibility for the care of a
21 vulnerable adult voluntarily, by contract, or as a
22 result of the ties of friendship, or
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24

1 c. been appointed a guardian, limited guardian, or
2 conservator pursuant to the Oklahoma Guardianship and
3 Conservatorship Act;

4 7. "Department" means the Department of Human Services;

5 8. "Abuse" means causing or permitting:

6 a. the infliction of physical pain, injury, sexual abuse,
7 sexual exploitation, unreasonable restraint or
8 confinement, mental anguish or personal degradation,
9 or

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

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

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

- a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,
- b. refusing to pay for necessities or utilities in a timely manner, or
- c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources;

11. "Neglect" means:

- a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,
- b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or
- c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

12. "Personal degradation" means a willful act by a caretaker intended to shame, degrade, humiliate or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation or harm to the personal dignity of a reasonable person. Personal degradation includes the taking, transmitting, or display

1 of an electronic image of a vulnerable adult by a caretaker, where
2 the caretaker's actions constitute a willful act intended to shame,
3 degrade, humiliate or otherwise harm the personal dignity of the
4 dependent adult, or where the caretaker knew or reasonably should
5 have known the act would cause shame, degradation, humiliation or
6 harm to the personal dignity of a reasonable person. Personal
7 degradation does not include:

8 a. the taking, transmission or display of an electronic
9 image of a vulnerable adult for the purpose of
10 reporting vulnerable adult abuse to law enforcement,
11 the Department of Human Services or other regulatory
12 agency that oversees caretakers or enforces abuse or
13 neglect laws or rules,

14 b. the taking, transmission or display of an electronic
15 image of a vulnerable adult for the purpose of
16 treatment or diagnosis, or

17 c. the taking, transmission or display of an electronic
18 image of a vulnerable adult as part of an ongoing
19 investigation;

20 13. "Sexual abuse" means:

21 a. oral, anal, or vaginal penetration of a vulnerable
22 adult by or through the union with the sexual organ of
23 a caretaker or other person providing services to the
24 vulnerable adult, or the anal or vaginal penetration

1 of a vulnerable adult by a caretaker or other person
2 providing services to the vulnerable adult with any
3 other object, or

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

10 14. "Indecent exposure" means forcing or requiring a vulnerable
11 adult to:

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

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

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

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

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

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

22 SECTION 2. AMENDATORY 43A O.S. 2021, Section 10-104, is
23 amended to read as follows:

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1 Section 10-104. A. Any person having reasonable cause to
2 believe that a vulnerable adult is suffering from abuse, neglect, or
3 exploitation shall make a report as soon as the person is aware of
4 the situation to:

- 5 1. The Department of Human Services; or
- 6 2. The municipal police department or sheriff's office in the
7 county in which the suspected abuse, neglect, or exploitation
8 occurred.

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

- 11 1. Physicians;
- 12 2. Operators of emergency response vehicles and other medical
13 professionals;
- 14 3. Social workers and mental health professionals;
- 15 4. Law enforcement officials;
- 16 5. Staff of domestic violence programs;
- 17 6. Long-term care facility personnel, including staff of
18 nursing facilities, intermediate care facilities for individuals
19 with intellectual disabilities (ICFs/IID), assisted living
20 facilities, and residential care facilities;
- 21 7. Other health care professionals;
- 22 8. Persons entering into transactions with a caretaker or other
23 person who has assumed the role of financial management for a
24 vulnerable adult;

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

3 10. Job coaches, community service workers, and personal care
4 assistants; and

5 11. Municipal employees.

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

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

1 2. If federal law specifically prohibits the disclosure of any
2 of the information required by this subsection, that information may
3 be excluded from the report.

4 D. If the initial report is made to the local municipal police
5 department or sheriff's office, such police department or sheriff's
6 office shall notify, as soon as possible, the Department of Human
7 Services of its investigation.

8 E. The Department of Human Services shall forward a copy of all
9 initial reports to Oklahoma's Protection and Advocacy System.

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

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

23 2. The same immunity from any civil or criminal liability shall
24 also be extended to previous employers of a person employed to be

1 responsible for the care of a vulnerable adult, who in good faith
2 report to new employers or prospective employers of such caretaker
3 any misconduct of the caretaker including, but not limited to,
4 abuse, neglect or exploitation of a vulnerable adult, whether
5 confirmed or not.

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

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

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- 1 a. the vulnerable adult agrees to the disclosure of the
2 health information, or
- 3 b. the individual is unable to agree to the disclosure of
4 health information because of incapacity; and
- 5 (1) the requesting party represents that the health
6 information for which disclosure is sought is not
7 intended to be used against the vulnerable adult
8 in a criminal prosecution, but to provide
9 protective services pursuant to the Protective
10 Services for Vulnerable Adults Act,
- 11 (2) the disclosure of the information is necessary to
12 conduct an investigation into the alleged abuse,
13 neglect or exploitation of the vulnerable adult
14 subject to the investigation, and
- 15 (3) immediate enforcement activity that depends upon
16 the disclosure:
- 17 (a) is necessary to protect the health, safety
18 and welfare of the vulnerable adult because
19 of incapacity, or
- 20 (b) would be materially and adversely affected
21 by waiting until the vulnerable adult is
22 able to agree to the disclosure.
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1 2. If federal law specifically prohibits the disclosure of any
2 of the information required by this subsection, that information may
3 be excluded from the disclosed health information.

4 ~~F.~~ J. After investigating the report, either the county office
5 of the Department of Human Services or the municipal police
6 department or sheriff's office, as appropriate, shall forward its
7 findings to the office of the district attorney in the county in
8 which the suspected abuse, neglect, or exploitation occurred.
9 Unsubstantiated findings shall be labeled as such before
10 transmission to the office of the district attorney. Findings of
11 self-neglect shall not be forwarded to the office of the district
12 attorney unless similar findings were reported within six (6) months
13 prior. The Department of Human Services shall forward all findings
14 to Oklahoma's Protection and Advocacy System.

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

3 ~~K.~~ L. No employer shall terminate the employment, prevent or
4 impair the practice or occupation of or impose any other sanction on
5 any employee solely for the reason that the employee made or caused
6 to be made a report or cooperated with an investigation pursuant to
7 the Protective Services for Vulnerable Adults Act. A court, in
8 addition to other damages and remedies, may assess reasonable
9 attorney fees against an employer who has been found to have
10 violated the provisions of this subsection.

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

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

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

17 2. "Access" means the right of a person to enter a facility to
18 communicate privately and without unreasonable restriction when
19 invited to do so by a resident. The state or local "ombudsman", as
20 that term is defined by the Aging Services Division of the
21 Department of Human Services pursuant to the Older Americans' Act,
22 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager
23 employed by the Department of Mental Health and Substance Abuse
24 Services or one of its contract agencies shall have right of access

1 to enter a facility, communicate privately and without unreasonable
2 restriction with any resident who consents to the communication, to
3 seek consent to communicate privately and without restriction with
4 any resident, and to observe all areas of the facility that directly
5 pertain to the patient care of the resident without infringing upon
6 the privacy of the other residents without first obtaining their
7 consent;

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

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- 1 4. "Advisory Board" means the Long-Term Care Facility Advisory
2 Board;
- 3 5. "Adult companion home" means any home or establishment,
4 funded and certified by the Department of Human Services, which
5 provides homelike residential accommodations and supportive
6 assistance to three or fewer adults with intellectual or
7 developmental disabilities;
- 8 6. "Board" means State Board of Health;
- 9 7. "Commissioner" means State Commissioner of Health;
- 10 8. "Department" means the State Department of Health;
- 11 9. "Facility" means a nursing facility and a specialized home;
12 provided this term shall not include a residential care home or an
13 adult companion home;
- 14 10. "Nursing facility" means a home, an establishment or an
15 institution, a distinct part of which is primarily engaged in
16 providing:
- 17 a. skilled nursing care and related services for
18 residents who require medical or nursing care,
19 b. rehabilitation services for the rehabilitation of
20 injured, disabled, or sick persons, or
21 c. on a regular basis, health-related care and services
22 to individuals who, because of their mental or
23 physical condition, require care and services beyond
24 the level of care provided by a residential care home

1 and which can be made available to them only through a
2 nursing facility.

3 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
4 this title, a facility constructed or operated by an entity
5 described in paragraph 7 of subsection B of Section 6201 of Title 74
6 of the Oklahoma Statutes or the nursing care component of a
7 continuum of care facility, as such term is defined under the
8 Continuum of Care and Assisted Living Act, to the extent that the
9 facility constructed or operated by an entity described in paragraph
10 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
11 Statutes contains such a nursing care component;

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

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

17 13. "Licensee" means the person, a corporation, partnership, or
18 association who is the owner of the facility which is licensed by
19 the Department pursuant to the provisions of the Nursing Home Care
20 Act;

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

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

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

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

21 ~~17~~ 18. "Personal care" means assistance with meals, dressing,
22 movement, bathing or other personal needs or maintenance, or general
23 supervision of the physical and mental well-being of a person, who
24 is incapable of maintaining a private, independent residence, or who

1 is incapable of managing his person, whether or not a guardian has
2 been appointed for such person;

3 ~~18.~~ 19. "Resident" means a person residing in a facility due to
4 illness, physical or mental infirmity, or advanced age;

5 ~~19.~~ 20. "Representative of a resident" means a court-appointed
6 guardian or, if there is no court-appointed guardian, the parent of
7 a minor, a relative, or other person, designated in writing by the
8 resident; provided, that any owner, operator, administrator or
9 employee of a facility subject to the provisions of the Nursing Home
10 Care Act, the Residential Care Act, or the Group Homes for the
11 Developmentally Disabled or Physically Handicapped Persons Act shall
12 not be appointed guardian or limited guardian of a resident of the
13 facility unless the owner, operator, administrator or employee is
14 the spouse of the resident, or a relative of the resident within the
15 second degree of consanguinity and is otherwise eligible for
16 appointment; and

17 ~~20.~~ 21. "Supportive assistance" means the service rendered to
18 any person which is less than the service provided by a nursing
19 facility but which is sufficient to enable the person to meet an
20 adequate level of daily living. Supportive assistance includes but
21 is not limited to housekeeping, assistance in the preparation of
22 meals, assistance in the safe storage, distribution, and
23 administration of medications, and assistance in personal care as is
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1 necessary for the health and comfort of such person. Supportive
2 assistance shall not include medical service.

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

5 Section 1-1939. A. The owner and licensee are liable to a
6 resident for any intentional or negligent act or omission of their
7 agents or employees which injures the resident. In addition, any
8 state employee that aids, abets, assists, or conspires with an owner
9 or licensee to perform an act that causes injury to a resident shall
10 be individually liable.

11 B. A resident may maintain an action under the Nursing Home
12 Care Act for any other type of relief, including injunctive and
13 declaratory relief, permitted by law.

14 C. Any damages recoverable under this section, including
15 minimum damages as provided by this section, may be recovered in any
16 action which a court may authorize to be brought as a class action.
17 The remedies provided in this section, are in addition to and
18 cumulative with any other legal remedies available to a resident.
19 Exhaustion of any available administrative remedies shall not be
20 required prior to commencement of suit hereunder.

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

1 E. Any party to an action brought under this section shall be
2 entitled to a trial by jury and any waiver of the right to a trial
3 by a jury, whether oral or in writing, prior to the commencement of
4 an action, shall be null and void, and without legal force or
5 effect.

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

11 G. Any person, institution or agency, under the Nursing Home
12 Care Act, participating in good faith in the making of a report, or
13 in the investigation of such a report shall not be deemed to have
14 violated any privileged communication and shall have immunity from
15 any liability, civil or criminal, or any other proceedings, civil or
16 criminal, as a consequence of making such report. The good faith of
17 any persons required, or permitted to report cases of suspected
18 resident abuse or neglect under this act shall be presumed.

19 H. A facility employee or agent who becomes aware of abuse,
20 neglect or exploitation of a resident prohibited by the Nursing Home
21 Care Act shall immediately report the matter to the facility
22 administrator. A facility administrator who becomes aware of abuse,
23 neglect, or exploitation of a resident shall immediately act to
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1 rectify the problem and shall make a report of the incident and its
2 correction to the Department of Human Services.

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

- 6 a. communicable diseases,
- 7 b. deaths by unusual occurrence, including accidental
8 deaths or deaths other than by natural causes, and
9 deaths that may be attributed to a medical device,
- 10 c. missing residents. In addition, the facility shall
11 make a report to local law enforcement agencies within
12 two (2) hours if the resident is still missing,
- 13 d. situations arising where a rape or a criminal act is
14 suspected. Such situations shall also be reported to
15 local law enforcement immediately. The facility shall
16 make every effort to preserve the scene of the
17 suspected rape or crime until local law enforcement
18 has arrived, and
- 19 e. resident abuse, neglect and misappropriation of the
20 property of a resident.

21 2. All other incident reports shall be made in accordance with
22 federal law.

23 3. All initial written reports of incidents or situations shall
24 be mailed to the Department and Oklahoma's Protection and Advocacy

1 System within five (5) working days after the incident or situation.
2 The final report shall be filed with the Department and Oklahoma's
3 Protection and Advocacy System when the full investigation is
4 complete.

5 SECTION 5. This act shall become effective November 1, 2024.

6 Passed the House of Representatives the 13th day of March, 2024.

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Presiding Officer of the House
of Representatives

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11 Passed the Senate the ___ day of _____, 2024.

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Presiding Officer of the Senate

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