

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2741

By: Duel

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5
6 AS INTRODUCED

7 An Act relating to mental health; enacting the
8 Oklahoma Elder Exploitation and Abuse Act; declaring
9 purpose and intent; defining terms; providing that
10 civil actions may be filed in certain situations;
11 providing venue provisions; providing relief that may
12 be granted; providing who may bring a claim;
13 authorizing the court to grant access to certain
14 records; providing that claim survives death of
15 vulnerable adult; providing that certain privileged
16 relationships are not grounds for excluding evidence;
17 providing for codification; and providing an
18 effective date.

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1 A. The purpose of the Oklahoma Elder Exploitation and Abuse Act
2 is to promote the general welfare of all citizens by establishing a
3 civil action for incapacitated persons and vulnerable adults which
4 provides for the protection of their rights and affords them a right
5 of civil action against those who neglect, exploit, or abuse them.

6 B. The purpose of the Oklahoma Elder Exploitation and Abuse Act
7 is to allow incapacitated persons and vulnerable adults, through
8 their legal representatives, to pursue claims against persons who
9 neglect, exploit, or abuse the incapacitated person or vulnerable
10 adult if he or she lacks the capacity to pursue such claims on his
11 or her own behalf.

12 C. The Oklahoma Elder Exploitation and Abuse Act does not
13 preclude an individual's mandatory responsibility to report to Adult
14 Protective Services or law enforcement if there is reasonable cause
15 to believe a vulnerable adult is being abused, neglected, or
16 exploited.

17 D. It is the intent of the Oklahoma State Legislature:

18 1. That the district court shall exercise the authority
19 conferred by the Oklahoma Elder Exploitation and Abuse Act to
20 encourage the development of maximum self-reliance and independence
21 of incapacitated persons and vulnerable adults and make appointive
22 and other orders only to the extent necessitated by the mental and
23 adaptive limitations of other conditions of the incapacitated or
24 partially incapacitated person warranting the action; and

1 2. That in performing their duties and exercising their powers,
2 legal representatives bringing claims under this act for
3 incapacitated persons and vulnerable adults shall:

4 a. Assure, to the extent reasonably possible, that the
5 rights of the persons for whom they are appointed are
6 protected, and

7 b. Encourage, to the extent reasonably possible,
8 incapacitated persons and vulnerable adults to
9 participate to the maximum extent of their abilities
10 in all decisions which affect them concerning the
11 claims afforded them under this act.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 14-103 of Title 43A, unless
14 there is created a duplication in numbering, reads as follows:

15 A. When used in the Oklahoma Elder Exploitation and Abuse Act:

16 1. "Incapacitated person" means:

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

18 (1) who is impaired by reason of mental or physical
19 illness or disability, dementia or related
20 disease, developmental or intellectual disability
21 or other cause, and

22 (2) whose ability to receive and evaluate information
23 effectively or to make and to communicate
24 responsible decisions is impaired to such an

1 extent that such person lacks the capacity to
2 manage his or her financial resources or to meet
3 essential requirements for his or her mental or
4 physical health or safety without assistance from
5 others, or

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

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

19 3. "Caretaker" means a person who has:

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

4 c. been appointed a guardian, limited guardian, or
5 conservator pursuant to the Oklahoma Guardianship and
6 Conservatorship Act;

7 4. "Abuse" means causing or permitting:

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

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

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

22 6. "Financial neglect" means repeated instances by a caretaker,
23 or other person, who has assumed the role of financial management,
24 of failure to use the resources available to restore or maintain the

1 health and physical well-being of a vulnerable adult, including, but
2 not limited to:

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

10 7. "Neglect" means:

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

21 8. "Personal degradation" means a willful act by a caretaker
22 intended to shame, degrade, humiliate or otherwise harm the personal
23 dignity of a vulnerable adult, or where the caretaker knew or
24 reasonably should have known the act would cause shame, degradation,

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

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

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

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

22 9. "Sexual abuse" means:

23 a. oral, anal, or vaginal penetration of a vulnerable
24 adult by or through the union with the sexual organ of

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

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

10 c. indecent exposure by a caretaker or other person
11 providing services to the vulnerable adult;

12 10. "Indecent exposure" means forcing or requiring a vulnerable
13 adult to:

14 a. look upon the body or private parts of another person
15 or upon sexual acts performed in the presence of the
16 vulnerable adult, or

17 b. touch or feel the body or private parts of another;

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

23 12. "Verbal abuse" means the use of words, sounds, or other
24 communication including, but not limited to, gestures, actions or

1 behaviors, by a caretaker or other person providing services to a
2 vulnerable adult that are likely to cause a reasonable person to
3 experience humiliation, intimidation, fear, shame or degradation.

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

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 14-104 of Title 43A, unless
17 there is created a duplication in numbering, reads as follows:

18 A. A claim for elder neglect, exploitation, or abuse, as
19 prescribed in this section, may be brought in any district court
20 within the county in the State of Oklahoma in which the vulnerable
21 adult lives or maintains his or her residence or was living at the
22 time of the act or omission giving rise to the claim.

23 B. A person who commits neglect or financial neglect against a
24 vulnerable adult, proven by a preponderance of the evidence, shall

1 be liable for actual damages in an amount that compensates the
2 vulnerable adult for the loss he or she has incurred as a result
3 thereof and shall be liable for punitive damages as Oklahoma law
4 otherwise allows.

5 C. A person who commits exploitation or abuse of a vulnerable
6 adult, proven by a preponderance of the evidence, shall be liable
7 for damages three (3) times the actual damages incurred by the
8 vulnerable adult as a result thereof and shall be liable for
9 punitive damages as Oklahoma law otherwise allows.

10 D. The prevailing party in the claims prescribed in subsections
11 B and C of this section shall be entitled to recover reasonable
12 attorney fees and costs.

13 E. The claims prescribed in this section shall follow and
14 otherwise be subject to the general laws governing civil claims
15 under Oklahoma law, including, without limitation, the provisions
16 found in Titles 12 and 23 of the Oklahoma Statutes.

17 F. The claims provided for by this section may be brought by
18 the vulnerable adult or on behalf of the vulnerable adult by his or
19 her guardian, limited guardian, conservator, agent under an
20 appropriate power of attorney, duly appointed representative of the
21 estate of the vulnerable adult, if deceased, or other legal
22 representative approved by the court.

23 G. In addition to any other documents or records to which the
24 vulnerable adult or his or her legal representative may be entitled

1 in pursuit of the claim or claims prescribed in this section, the
2 court may authorize or direct the vulnerable adult and his or her
3 legal representative access to and copies of financial, legal,
4 mental health, and physical health records of the vulnerable adult
5 in the possession of any physician, hospital, other health care
6 provider, firm, financial institution, lawyer, accountant,
7 counselor, broker, caregiver, corporation, other business entity, or
8 other facility or party. These records, upon order of the court,
9 shall be produced within ten (10) days, unless the court orders a
10 shorter time, and the records shall not be disclosed for any purpose
11 other than the purpose for which they have been obtained.

12 H. The claims provided for in this section survive the death of
13 the vulnerable adult.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 14-105 of Title 43A, unless
16 there is created a duplication in numbering, reads as follows:

17 The district court in which a claim authorized in this act is
18 filed may, upon proper application, issue a restraining order or
19 other injunctive relief to prohibit any further violation of this
20 act, regardless of the existence of any other remedy at law and in
21 addition thereto.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 14-106 of Title 43A, unless
24 there is created a duplication in numbering, reads as follows:

1 Subject to a specific court order, the physician-patient
2 privilege nor spousal privilege shall be grounds for excluding
3 evidence regarding the neglect, exploitation, or abuse of a
4 vulnerable adult or the cause thereof in any judicial proceeding
5 arising under this act.

6 SECTION 7. This act shall become effective November 1, 2023.

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