

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1902

By: Rosino

AS INTRODUCED

An Act relating to services for people with disabilities; amending 56 O.S. 2021, Section 1025.3, which relates to the community services worker registry; providing for confidentiality and disclosure of certain records; requiring the Department of Human Services to conduct investigations upon certain reports; directing certain joint investigations; listing required elements of investigation; stipulating certain investigative procedures and requirements; establishing certain process for nonconsensual entry of residence; requiring certain sharing and filing of investigative reports; making the Department party to certain proceedings; requiring the State Department of Health to provide certain information to the Department of Human Services; authorizing the Department of Human Services to request certain hearing; providing certain construction; requiring certain notice to legal guardian; listing required components of notice; updating statutory language; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 2021, Section 1025.3, is amended to read as follows:

Section 1025.3. A. The Director of the Department of Human Services shall promulgate rules to establish and maintain a

1 community services worker registry. Such rules may include, but
2 need not be limited to:

3 1. A procedure for notation in such registry of a final
4 Department of Human Services investigative finding or a finding by
5 an ~~Administrative Law Judge~~ administrative law judge of maltreatment
6 of an individual by a community services worker or a Medicaid
7 personal care assistant;

8 2. A procedure for notice and due process for a community
9 services worker, or a Medicaid personal care assistant, or applicant
10 before the entering of such person's name in the registry as having
11 a final Department of Human Services investigative finding or
12 ~~Administrative Law Judge~~ administrative law judge finding of
13 maltreatment of an individual;

14 3. Disclosure requirements for information in the registry; and

15 4. Procedures for granting a waiver of the provisions of
16 paragraph 1 of subsection F of Section 1025.2 of this title by the
17 Director of Human Services.

18 B. The community services worker registry shall include, but
19 not be limited to, the following information on each community
20 services worker and each Medicaid personal care assistant:

21 1. The individual's full name;

22 2. Information necessary to identify each individual;

23 3. The date the individual's name was placed in the registry;

24 and

1 4. Information on any final Department of Human Services
2 investigative finding or ~~Administrative Law Judge~~ administrative law
3 judge finding of maltreatment concerning the worker.

4 C. A community services worker, a Medicaid personal care
5 assistant, or applicant who is adversely affected by an
6 ~~Administrative Law Judge~~ administrative law judge finding of
7 maltreatment of an individual may seek judicial review pursuant to
8 Article II of the Administrative Procedures Act. The finding of the
9 ~~Administrative Law Judge~~ administrative law judge may be appealed to
10 the district court of the county in which the community services
11 worker, Medicaid personal care assistant, or applicant resides
12 within thirty (30) days of the date of the decision. A copy of the
13 petition shall be served by mail upon the general counsel of the
14 Department of Human Services.

15 D. An investigation conducted under Section 1025.1 et seq. of
16 this title shall include a process for notifying a community
17 services provider of areas of concern and administrative
18 information. An area of concern or administrative information shall
19 not be considered final investigative findings, nor shall the area
20 of concern or administrative information be included in a final
21 investigative report of the Department of Human Services. The
22 Department shall develop a procedure by which a community services
23 provider may request an investigative status update within ten (10)
24

1 calendar days of the initiation of an investigation conducted under
2 Section 1025.1 et seq. of this title.

3 E. Except as otherwise provided for in this section, the
4 reports, records, and working papers used or developed in an
5 investigation pursuant to this section shall be kept confidential
6 and may be disclosed only as provided in Section 1-2-108 of Title
7 10A of the Oklahoma Statutes in the case of a child or Section 10-
8 110 or 10-110.1 of Title 43A of the Oklahoma Statutes in the case of
9 a vulnerable adult.

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1025.5 of Title 56, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Upon receiving a report of alleged maltreatment of persons
14 receiving services from a community services worker, Medicaid
15 personal care assistant, or paid caretaker working with the person
16 where such services are provided, the Department of Human Services
17 shall make a prompt and thorough investigation. When feasible, law
18 enforcement and the Department shall conduct joint investigations to
19 reduce potential trauma to the victim and to eliminate duplicative
20 efforts.

21 B. The investigation shall include:

22 1. Notification of the local law enforcement agency. Upon the
23 request of a law enforcement agency, the Department shall submit
24 copies of any results or records of an examination on the person

1 alleged to have been maltreated and any other clinical notes, x-
2 rays, photographs, or previous or current records relevant to the
3 case;

4 2. Sharing of any findings of maltreatment with any state
5 agency that has concurrent jurisdiction over persons or issues
6 identified in the investigation including, but not limited to, where
7 appropriate, the State Department of Health, the Oklahoma Board of
8 Nursing, or any other appropriate state licensure or certification
9 board, agency, or registry;

10 3. Every reasonable effort to locate and notify the legal
11 guardian of the person alleged to have suffered maltreatment
12 pursuant to Section 3 of this act;

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

16 5. Other relevant information or procedures as determined by
17 the Department.

18 C. 1. Investigations conducted pursuant to this section shall
19 include a visit to the home or other place of residence of the
20 person who is the subject of the report, a private interview with
21 such person and any other potential victims, and consultation with
22 persons who have knowledge of or may be witnesses to the
23 circumstances.

1 2. Investigators shall be suitably trained in interview
2 techniques and shall utilize such techniques in interviews with
3 elderly and incapacitated adults and individuals with intellectual
4 disabilities. Interviews shall be conducted at the appropriate
5 developmental age level of the victim. A reasonable effort shall be
6 made to conduct interviews of victims with an intellectual
7 disability or diminished capacity utilizing appropriate personnel
8 and following protocols and procedures established for interviews
9 with such persons, including the use of forensic interview
10 techniques when appropriate.

11 3. If, in the course of an investigation, the Department is
12 denied entrance to the home or other place of residence of a person
13 believed to be a victim of maltreatment, or is denied a private
14 interview with the person, the Department may petition the court for
15 an order allowing entry to the premises or private access to the
16 person. The court shall make a finding of probable cause of the
17 vulnerability of the person before issuing the order. If
18 documentation, or access to records, or other information relating
19 to such person as provided by this section is denied, the Department
20 may petition the court for an order allowing entry or access. The
21 petition shall state the name and address of the person who is the
22 subject of the report and shall allege specific facts sufficient to
23 show that the circumstances of the person are in need of
24 investigation. If it is necessary to forcibly enter the premises,

1 the representative of the Department shall make the entry
2 accompanied by a peace officer.

3 4. The Department shall make all reasonable attempts to
4 interview the community services worker, Medicaid personal care
5 assistant, or other person alleged to be involved in the
6 maltreatment.

7 D. 1. The Department shall forward its final findings,
8 including, but not limited to, any administrative appeal findings,
9 to the owner or administrator of the community services provider or
10 Medicaid personal care services provider to prevent further
11 incidents.

12 2. When a report is received pertaining to a person who has a
13 legal guardian, a copy of the final investigative report of the
14 Department shall be filed with the court with jurisdiction over the
15 guardianship.

16 3. In the case of a final investigative report pertaining to an
17 individual who is a resident of a facility licensed by the State
18 Department of Health and who is alleged to be a victim of
19 maltreatment by an employee of such facility, the Department of
20 Human Services shall forward a copy of the final investigative
21 report to the State Department of Health.

22 E. 1. The Department of Human Services shall be deemed a party
23 pursuant to the Administrative Procedures Act for the final
24 investigative reports filed by the Department with the State

1 Department of Health regarding persons who are residents of
2 facilities licensed by the State Department of Health.

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

10 3. Whenever the Department of Human Services believes that the
11 conditions leading to a report investigated by the Department
12 alleging a serious threat to the health, safety, or welfare of a
13 resident of a facility licensed by the State Department of Health
14 have not been adequately addressed, the Department of Human Services
15 may request the State Department of Health to hold a hearing on the
16 complaint as provided by Section 309 of Title 75 of the Oklahoma
17 Statutes.

18 4. Nothing in this subsection shall prevent the State
19 Department of Health from conducting any type of investigation or
20 taking any appropriate remedial or other action pursuant to the
21 provisions of the Nursing Home Care Act, the Residential Care Act,
22 or the Continuum of Care and Assisted Living Act.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1025.6 of Title 56, unless there
3 is created a duplication in numbering, reads as follows:

4 A. As soon as possible after initiating an investigation of a
5 report pursuant to Section 2 of this act, and within one business
6 day of identifying the legal guardian of the alleged victim, the
7 Department of Human Services shall provide notification to the legal
8 guardian of the alleged victim including an easily understood
9 written description of the investigation process.

10 B. The written notification specified by subsection A of this
11 section shall include:

12 1. A statement that the investigation is being undertaken by
13 the Department of Human Services in response to a report of
14 maltreatment. The statement shall include the name and office
15 telephone number of the Department representative with primary
16 responsibility for the investigation;

17 2. A statement that the identity of the person who reported the
18 incident of abuse, if known, shall remain confidential;

19 3. A statement that the investigation is required by law to be
20 conducted to enable the Department of Human Services to identify
21 incidents of maltreatment;

22 4. An explanation of the procedures of the Department of Human
23 Services for conducting an investigation of alleged maltreatment,
24 including a statement that:

- a. the alleged victim of maltreatment is the Department's primary client in such an investigation,
- b. findings of all investigations are provided to the office of the district attorney, and
- c. law enforcement may conduct a separate investigation to determine whether a criminal violation occurred;

5. A statement that, upon completion of the investigation, the legal guardian will receive a letter from the Department which will inform the legal guardian that:

- a. the Department has found insufficient evidence of maltreatment, or
- b. there appears to be probable cause to suspect the existence of maltreatment in the judgment of the Department;

6. The procedures to follow if there is a complaint regarding the actions of the Department;

7. References to the statutory and regulatory provisions governing abuse, neglect, or exploitation and how the legal guardian may obtain copies of those provisions; and

8. An explanation that the legal guardian may review specific information gathered during the investigation subject to the requirements and exceptions provided in Sections 10-110 and 10-110.1 of Title 43A of the Oklahoma Statutes.

1 SECTION 4. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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