

AGING AND ADULT SERVICES AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Dan R. Eastman

This act modifies the Human Services Code. This act repeals the authority of the director of the Division of Aging and Adult Services to act as a court-appointed trustee, receiver, custodian, or guardian over a disabled or elder adult and makes conforming amendments.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-3-301, as last amended by Chapter 254, Laws of Utah 1998

62A-3-304, as last amended by Chapter 13, Laws of Utah 1998

REPEALS:

62A-3-310, as last amended by Chapter 130, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-3-301** is amended to read:

62A-3-301. Definitions.

As used in this part:

(1) "Abuse" means:

(a) attempting to cause, or intentionally or knowingly causing physical harm or intentionally placing another in fear of imminent physical harm;

(b) physical injury caused by criminally negligent acts or omissions;

(c) unlawful detention or unreasonable confinement;

(d) gross lewdness; or

(e) deprivation of life sustaining treatment, except:

(i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(2) "Adult" means a person who is 18 years of age or older.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Caretaker" means any person, corporation, or public institution that has assumed by

relationship, contract, or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a disabled or elder adult.

(5) "Counsel" means an attorney licensed to practice in this state.

(6) "Disabled adult" means a person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that he lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing, or medical care, without which physical injury or illness may occur. A person who is, in good faith, under treatment solely of a spiritual means, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, and by an accredited practitioner thereof shall not be considered a disabled or elder adult for that reason alone.

(7) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

(8) "Elder adult" means a person 65 years of age or older.

(9) "Emergency" means that a disabled or elder adult is at risk of death or immediate and serious harm to himself or others.

(10) "Emotional or psychological abuse" means deliberate conduct that is directed at a disabled or elder adult through verbal or nonverbal means, and that causes the disabled or elder adult to suffer emotional distress or to fear bodily injury, harm, or restraint.

(11) "Exploitation" means exploitation of a disabled or elder adult as that offense is described in Subsection 76-5-111(4).

(12) "Informed consent" means the same as that term is defined in Section 76-5-111.

(13) "Neglect" means:

(a) the failure of a caretaker to provide habilitation, care, nutrition, clothing, shelter, supervision, or medical care;

(b) a pattern of conduct by a caretaker, without the disabled or elder adult's informed consent, resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health; or

(c) the failure or inability of a disabled adult to provide those services for himself.

(14) "Protected person" means a disabled or elder adult for whom the court has ordered protective services including disabled or elder adults for whom emergency protective services are established under the provisions of this part.

(15) "Protective services" means services provided by the offices of Adult Protective Services within the division, including investigation of allegations of abuse, emotional or psychological abuse, neglect, or exploitation, and other services provided either by voluntary agreement or as authorized by court order to assist disabled or elder adults in need of protection, for the purpose of discontinuing and preventing further abuse, neglect, or exploitation. [~~Those services may include the services of guardian and conservator provided in accordance with Title 75, Utah Uniform Probate Code, when no other agency or individual can appropriately provide the service.~~] The services provided by the offices of Adult Protective Services shall be consistent, if at all possible, with the accustomed lifestyle of the disabled or elder adult.

Section 2. Section **62A-3-304** is amended to read:

62A-3-304. Adult protective services provided by division -- Costs -- Procedures.

(1) The division shall furnish, to the extent funded by the Legislature, adult protective services in response to referrals of abuse, neglect, or exploitation involving disabled or elder adults in need of protection. Those services may be provided by voluntary agreement or upon court order, in accordance with this section and Sections 62A-3-305, 62A-3-306, and 62A-3-309[~~and 62A-3-310~~].

(2) Disabled or elder adults who receive protective services from the division shall receive those services knowingly and voluntarily, and without coercion in accordance with Subsection (4), unless the services are court ordered in accordance with Subsections (5), (6), and (7) and Sections 62A-3-305, 62A-3-306, 62A-3-307, 62A-3-308, and 62A-3-309.

(3) Costs incurred in providing protective services are the responsibility of the disabled or elder adult if:

(a) the disabled or elder adult to be protected is eligible for those services from another governmental agency;

(b) the disabled or elder adult to be protected is financially able to pay for those services

according to rates established by the division and that payment is provided for as part of the written agreement for services described in Subsection (4)(b); or

(c) the court appoints a guardian and orders that the costs be paid from the disabled or elder adult's estate.

(4) (a) Protective services may be provided without a court order, after review by the division, for a disabled or elder adult who has the capacity to consent and who requests or knowingly and voluntarily consents to receive those services.

(b) Whenever the division provides adult protective services, a written agreement shall be executed by the division and the recipient, setting forth the purposes and limitations of the services to be provided. If consent to protective services is subsequently withdrawn by the disabled or elder adult, services provided under this section shall cease.

(5) Involuntary protective services may be provided to a disabled adult who does not consent or who lacks the capacity to consent to those services only upon court order in accordance with Section 62A-3-305.

(6) When protective services are furnished pursuant to court order in accordance with Sections 62A-3-305, 62A-3-306, 62A-3-307, 62A-3-308, and 62A-3-309, the disabled or elder adult receiving those services has the following rights prior to the provision of services:

(a) personal service of a copy of the petition for protective services which complies with Section 62A-3-305;

(b) the right to a hearing before a district court, with at least ten days' notice of the contents of the petition, the rights set forth in this section, and of the possible consequences of the hearing. This notice shall also be provided to all reasonably ascertainable persons and agencies having some responsibility for the disabled or elder adult's welfare, and to his guardian;

(c) the right to be present at the hearing described in Subsection (6)(b), unless the disabled or elder adult has knowingly and voluntarily waived the right to be present, or a licensed physician who is not the petitioner or an agent of the petitioner, has certified that the disabled or elder adult is physically unable to attend, in which case the court shall appoint a court investigator to personally interview that disabled or elder adult and determine his desires concerning the hearing. Waiver shall

not be presumed by nonappearance of the disabled or elder adult, but shall be determined at the hearing on the basis of factual information supplied to the court;

(d) the right to counsel at the hearing, in preparation for the hearing, and at every significant stage of the protective service. If a disabled or elder adult is unable to afford counsel, the court shall appoint counsel, who shall be paid by the division in accordance with Subsection (3);

(e) the right to offer evidence on his behalf, to compel the attendance of witnesses, and to confront and cross-examine witnesses. The disabled or elder adult shall also be provided a written statement setting forth the reasons for and conditions of any protective order; and

(f) the right to the least possible restriction of his rights, consistent with his welfare and safety.

(7) Nothing in this section limits specific procedures under Title 75, Utah Uniform Probate Code, or under the protective placement process described in Section 62A-3-309, designed to safeguard the best interests of the person to be protected.

Section 3. Repealer.

This act repeals:

Section 62A-3-310, Director as trustee, receiver, custodian, or guardian.