

1 **AGING AND ADULT SERVICES AMENDMENTS**

2 2001 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Dan R. Eastman**

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

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

9 AMENDS:

10 **62A-3-301**, as last amended by Chapter 254, Laws of Utah 1998

11 **62A-3-304**, as last amended by Chapter 13, Laws of Utah 1998

12 REPEALS:

13 **62A-3-310**, as last amended by Chapter 130, Laws of Utah 1996

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

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

16 **62A-3-301. Definitions.**

17 As used in this part:

18 (1) "Abuse" means:

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

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

22 (c) unlawful detention or unreasonable confinement;

23 (d) gross lewdness; or

24 (e) deprivation of life sustaining treatment, except:

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

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

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

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

29 (4) "Caretaker" means any person, corporation, or public institution that has assumed by
30 relationship, contract, or court order the responsibility to provide food, shelter, clothing, medical,
31 and other necessities to a disabled or elder adult.

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

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

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

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

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

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

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

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

52 (13) "Neglect" means:

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

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

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

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

62 (15) "Protective services" means services provided by the offices of Adult Protective
63 Services within the division, including investigation of allegations of abuse, emotional or
64 psychological abuse, neglect, or exploitation, and other services provided either by voluntary
65 agreement or as authorized by court order to assist disabled or elder adults in need of protection,
66 for the purpose of discontinuing and preventing further abuse, neglect, or exploitation. [~~Those~~
67 ~~services may include the services of guardian and conservator provided in accordance with Title~~
68 ~~75, Utah Uniform Probate Code, when no other agency or individual can appropriately provide the~~
69 ~~service.] The services provided by the offices of Adult Protective Services shall be consistent, if
70 at all possible, with the accustomed lifestyle of the disabled or elder adult.~~

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

72 **62A-3-304. Adult protective services provided by division -- Costs -- Procedures.**

73 (1) The division shall furnish, to the extent funded by the Legislature, adult protective
74 services in response to referrals of abuse, neglect, or exploitation involving disabled or elder adults
75 in need of protection. Those services may be provided by voluntary agreement or upon court
76 order, in accordance with this section and Sections 62A-3-305, 62A-3-306, and 62A-3-309[~~and~~
77 ~~62A-3-310~~].

78 (2) Disabled or elder adults who receive protective services from the division shall receive
79 those services knowingly and voluntarily, and without coercion in accordance with Subsection (4),
80 unless the services are court ordered in accordance with Subsections (5), (6), and (7) and Sections
81 62A-3-305, 62A-3-306, 62A-3-307, 62A-3-308, and 62A-3-309.

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

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

86 (b) the disabled or elder adult to be protected is financially able to pay for those services
87 according to rates established by the division and that payment is provided for as part of the written
88 agreement for services described in Subsection (4)(b); or

89 (c) the court appoints a guardian and orders that the costs be paid from the disabled or

90 elder adult's estate.

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

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

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

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

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

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

110 (c) the right to be present at the hearing described in Subsection (6)(b), unless the disabled
111 or elder adult has knowingly and voluntarily waived the right to be present, or a licensed physician
112 who is not the petitioner or an agent of the petitioner, has certified that the disabled or elder adult
113 is physically unable to attend, in which case the court shall appoint a court investigator to
114 personally interview that disabled or elder adult and determine his desires concerning the hearing.
115 Waiver shall not be presumed by nonappearance of the disabled or elder adult, but shall be
116 determined at the hearing on the basis of factual information supplied to the court;

117 (d) the right to counsel at the hearing, in preparation for the hearing, and at every
118 significant stage of the protective service. If a disabled or elder adult is unable to afford counsel,
119 the court shall appoint counsel, who shall be paid by the division in accordance with Subsection
120 (3);

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

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

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

129 Section 3. **Repealer.**

130 This act repeals:

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

Legislative Review Note
as of 1-12-01 10:37 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel