

House Bill No. 329

An act relating to adult protective services; amending s. 415.102, F.S.; redefining the term “abuse” to include actions by a relative or a household member which are likely to harm a vulnerable adult; redefining the term “neglect” to include actions of a vulnerable adult against himself or herself; amending s. 415.1051, F.S.; providing for the Department of Children and Family Services to petition the court for an order authorizing the provision of protective services for a vulnerable adult in need of services; amending s. 415.107, F.S.; authorizing the Agency for Persons with Disabilities to have access to certain otherwise confidential records and reports; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (15) of section 415.102, Florida Statutes, are amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(1) “Abuse” means any willful act or threatened act by a relative, caregiver, or household member ~~which~~ ~~that~~ causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions.

(15) “Neglect” means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which ~~that~~ a prudent person would consider essential for the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

Section 2. Subsection (1) of section 415.1051, Florida Statutes, is amended to read:

415.1051 Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.—

(1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.—If the department has reasonable cause to believe that a vulnerable adult or a vulnerable adult in need of services is being abused, neglected, or exploited and is in need of protective services but lacks the capacity to consent to protective services, the department shall petition the court for an order authorizing the provision of protective services.

(a) Nonemergency protective services petition.—The petition must state the name, age, and address of the vulnerable adult, allege specific facts sufficient to show that the vulnerable adult is in need of protective services and lacks the capacity to consent to them, and indicate the services needed.

(b) Notice.—Notice of the filing of the petition and a copy of the petition must be given to the vulnerable adult, to that person's spouse, guardian, and legal counsel, and, when known, to the adult children or next of kin of the vulnerable adult. Such notice must be given at least 5 days before the hearing.

(c) Hearing.—

1. The court shall set the case for hearing within 14 days after the filing of the petition. The vulnerable adult and any person given notice of the filing of the petition have the right to be present at the hearing. The department must make reasonable efforts to ensure the presence of the vulnerable adult at the hearing.

2. The vulnerable adult has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable adult who is without legal representation.

3. The court shall determine whether:

a. Protective services, including in-home services, are necessary.

b. The vulnerable adult lacks the capacity to consent to the provision of such services.

(d) Hearing findings.—If at the hearing the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and lacks the capacity to consent, the court may issue an order authorizing the provision of protective services. If an order for protective services is issued, it must include a statement of the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable adult or otherwise consenting to protective services on behalf of the vulnerable adult.

(e) Continued protective services.—

1. No more than 60 days after the date of the order authorizing the provision of protective services, the department shall petition the court to determine whether:

a. Protective services will be continued with the consent of the vulnerable adult pursuant to subsection (1);

b. Protective services will be continued for the vulnerable adult who lacks capacity;

c. Protective services will be discontinued; or

d. A petition for guardianship should be filed pursuant to chapter 744.

2. If the court determines that a petition for guardianship should be filed pursuant to chapter 744, the court, for good cause shown, may order continued protective services until it makes a determination regarding capacity.

(f) Costs.—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so; or by third-party reimbursement, if available. If the vulnerable adult is unable to pay for guardianship, application may be made to the public guardian for public guardianship services, if available.

Section 3. Paragraphs (a) and (h) of subsection (3) of section 415.107, Florida Statutes, are amended to read:

415.107 Confidentiality of reports and records.—

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, ~~of the Agency for Health Care Administration, the Agency for Persons with Disabilities, or of the Department of Elderly Affairs~~ who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, or other facilities used for the placement of vulnerable adults.

(h) Any appropriate official of the department, ~~of the Agency for Health Care Administration, the Agency for Persons with Disabilities, or of the Department of Elderly Affairs~~ who is responsible for:

1. Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or

2. Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.