

235B.18 Provision of services to dependent adult who lacks capacity to consent — hearing — findings.

1. If the department reasonably determines that a dependent adult is a victim of dependent adult abuse and lacks capacity to consent to the receipt of protective services, the department may petition the district court in the county in which the dependent adult resides for an order authorizing the provision of protective services. The petition shall allege specific facts sufficient to demonstrate that the dependent adult is in need of protective services and lacks capacity to consent to the receipt of services.

2. The petition specified in subsection 1 shall be verified and shall include all of the following:

a. The name, date of birth, and address of the dependent adult alleged to be in need of protective services.

b. The nature of the dependent adult abuse.

c. The protective services required.

3. The court shall set the case for hearing within fourteen days of the filing of the petition. The dependent adult shall receive at least five days' notice of the hearing. The dependent adult has the right to be present and represented by counsel at the hearing. If the dependent adult, in the determination of the judge, lacks the capacity to waive the right of counsel, the court may appoint a guardian ad litem for the dependent adult.

4. If, at the hearing, the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and lacks the capacity to consent to the receipt of protective services, the judge may issue an order authorizing the provision of protective services. The order may include the designation of a person to be responsible for performing or obtaining protective services on behalf of the dependent adult or otherwise consenting to the receipt of protective services on behalf of the dependent adult. Within sixty days of the appointment of such a person the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552 for good cause shown. The court may extend the sixty-day period for an additional sixty days, at the end of which the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552. A dependent adult shall not be committed to a mental health facility under this section.

5. A determination by the court that a dependent adult lacks the capacity to consent to the receipt of protective services under this chapter shall not affect incompetency proceedings under sections 633.552 through 633.556 or any other proceedings, and incompetency proceedings under sections 633.552 through 633.556 shall not have a conclusive effect on the question of capacity to consent to the receipt of protective services under this chapter. A person previously adjudicated as incompetent under the relevant provisions of chapter 633 is entitled to the care, protection, and services under this chapter.

6. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.

96 Acts, ch 1130, §8; 2005 Acts, ch 50, §1; 2009 Acts, ch 107, §3

Referred to in §235B.16A, 235E.4, 633.701