

SHORT TITLE: Mental health; records of certain volunteer counselors
to be confidential; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 884

By: Hendrick

AS INTRODUCED

An Act relating to mental health; amending 43A O.S.

1991, Sections 1-109, as amended by Section 41, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1993, Section 1-109), 3-403, 3-422 and 3-423, which relate to medical and other records of and services for certain persons receiving mental health and substance abuse services; making records of certain volunteer counselors subject to confidentiality requirements; providing exceptions; defining term; providing exception to confidentiality of certain records when made available for purposes of research; limiting civil liability for certain acts of volunteer counselors under certain circumstances; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 1-109, as amended by Section 41, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1993, Section 1-109), is amended to read as follows:

Section 1-109. A. All medical records and all communications between physician ~~or~~, psychotherapist or volunteer counselor and a patient are both privileged and confidential. Such information is available only to persons or agencies actively engaged in treatment

of the patient or in treatment of a minor child of the patient, or in related administrative work.

1. Except as provided in this section and Section 19 of Title 76 of the Oklahoma Statutes, privileged or confidential information shall not be released to anyone not involved in the treatment programs without a written release by the patient or, if a guardian has been appointed for the patient, the guardian of the patient, or an order from a court of competent jurisdiction. If the patient is a minor child, the written consent of the parent, as defined by the Inpatient Mental Health Treatment of Children Act, Section 5-501 et seq. of this title, or public or private child care agency having legal custody of the child is required. Provided, however, confidential information may be released as provided by Sections 1125 through 1125.2 of Title 10 of the Oklahoma Statutes.

2. Individuals and agencies holding a contract with the Department of Mental Health and Substance Abuse Services to provide mental health or drug or alcohol treatment services and who have signed a qualified service agreement as provided by said contract may transmit records and information as necessary and appropriate for the care and treatment of patients pursuant to rules and regulations adopted by the Board of Mental Health and Substance Abuse Services.

3. The Board of Mental Health and Substance Abuse Services shall adopt rules and regulations providing for the transmittal of records and information if necessary and appropriate to other public and private agencies which are actively providing services to minor patients, former patients who are minors, or the minor children of adult patients.

B. A person who is or has been a patient of a physician, psychotherapist, mental health institution or facility, a drug or alcohol abuse treatment facility or service, a community mental health service or agency ~~or~~, a community social service agency or a

volunteer counselor for the purpose of mental health or drug or alcohol abuse care and treatment shall not be entitled to personal access to the information contained in his psychiatric or psychological records or to copies of said records unless access to said records is consented to by the treating physician ~~or~~, practitioner or volunteer counselor, or is ordered by a court. Said person shall, upon request, be provided with information contained in said records as appropriate as determined by the person in charge of the care and treatment of the patient. Said information shall be provided to the patient in a manner consistent with the best interest of the patient as determined by the person in charge of the care and treatment of the patient.

C. Upon request, a responsible family member of a patient or former patient, the attorney, guardian or conservator of a patient or former patient, is entitled to the following information from the Department, individuals or agencies holding contracts with the Department to provide mental health or drug or alcohol treatment services, and facilities certified by the Department as mental health or drug or alcohol treatment facilities regarding the person who is the subject of the request:

1. Information as to whether or not the person is or was a patient;
2. If the person is receiving inpatient care and treatment, a statement as to the probable duration of said inpatient care;
3. A summary of the diagnosis and prognosis of the person;
4. A listing of the medications the person has received or is receiving, a copy of the treatment plan of the person, and, when the person making the request is a responsible family member, guardian or conservator, any other information necessary in order for the responsible family member to assist in the implementation of the discharge planning required pursuant to Section 7-102 of this title; and

5. As requested, such other information as may be necessary to determine whether or not guardianship or conservatorship proceedings should be initiated.

D. For the purposes of this subsection, "responsible family member" means the parent, spouse, adult child, adult sibling, or other adult relative who is actively involved in providing care to or monitoring the care of a person who is a current or former patient as verified by the physician, psychologist or other person responsible for the care and treatment of said person. Except in an emergency, as determined by the person verifying the involvement of the responsible family member, the request shall be made in writing.

E. The person verifying the involvement of the responsible family member shall notify the patient or former patient of the request and, except with regard to a parent as to his or her minor child or in case of an emergency, obtain the consent of the patient prior to the release of the information.

SECTION 2. AMENDATORY 43A O.S. 1991, Section 3-403, is amended to read as follows:

Section 3-403. As used in the Oklahoma Alcohol and Drug Abuse Services Act, Section 3-401 et seq. of this title:

1. "Approved treatment facility" means any facility which offers either inpatient, intermediate or outpatient treatment to any person suffering from alcohol or drug abuse, or alcohol- or drug-related problems and which is certified by the Alcohol Prevention, Training, Treatment and Rehabilitation Authority and which has been licensed by the State Department of Health pursuant to the provisions of the Oklahoma Alcohol and Drug Abuse Services Act;

2. An "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs his health, his family life, his occupation and compromises the health and safety of the community;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

4. "Authority" means the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority;

5. "Council" means the Alcoholism and Drug Abuse Advisory Council;

6. "Incompetent person" means a person who has been adjudged legally mentally incompetent by a district court and who has not been judicially restored to competency;

7. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as the direct result of the consumption of alcohol or drugs;

8. "Medical detoxification" means diagnostic and treatment services performed by licensed facilities for acute alcohol intoxication, delirium tremens and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician and attendant medical personnel including nurses, interns and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol;

9. "Nonmedical detoxification" means detoxification services for intoxicated clients with no apparent physical or neurological symptoms requiring medical treatment as a result of their intoxication. Nonmedical detoxification includes providing a bed, oral administration of fluids, three meals a day and the taking of the client's temperature, blood pressure and pulse at least once every six (6) hours for the duration of the client's stay in the nonmedical detoxification service;

10. "Inpatient treatment" means the process of providing residential diagnostic and treatment services on a scheduled basis;

11. "Intermediate care" means an organized therapeutic environment in which a client may receive diagnostic services, counseling, vocational rehabilitation and/or work therapy while benefiting from the support which a full or partial residential setting can provide. Intermediate care should provide a transition between the inpatient detoxification facility and reintegration into community life. Intermediate care must include provision for a bed, three meals a day and medical support if needed;

12. "Transitional living facility" and "halfway house" means an approved treatment facility which offers or provides temporary residential accommodations, meals, supervision at all times residents are in the facility or on facility premises, and services, including counseling, short-term supportive care, case management, mental health services or treatment services to residents pursuant to a contract with the Department of Mental Health and Substance Abuse Services. A transitional living facility shall provide services to not more than twelve (12) residents;

13. "Short-term supportive care" means a service rendered to any person residing in a halfway house or transitional living facility which is sufficient to assist the person to meet or achieve an adequate level of daily living and to learn or develop adequate daily living skills. Daily living skills shall include but not be

limited to resident participation in meal preparation and routine housekeeping and laundry tasks. Short-term supportive assistance includes, but is not limited to assistance in the preparation of meals, housekeeping, laundry tasks and personal hygiene. Short-term supportive assistance shall not include medical services or personal care as defined in Section 1-820 of Title 63 of the Oklahoma Statutes; ~~and~~

14. "Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcohol-dependent, intoxicated and drug-dependent persons; and

15. "Volunteer counselor" means an individual who is not a physician or psychotherapist and who assists an individual whom the volunteer counselor believes in good faith to be in need of assistance and who does so without compensation as part of a supervised program of a nonprofit organization, governmental entity, or such programs supervised by the Oklahoma Bar Association, the Oklahoma Medical Association, the Oklahoma Dental Association or the Oklahoma Pharmaceutical Association. "Volunteer counselor" includes, but is not limited to, individuals participating in programs involving peer counseling and individuals who answer telephones or who serve as listeners in crisis intervention, hotline or helpline programs.

SECTION 3. AMENDATORY 43A O.S. 1991, Section 3-422, is amended to read as follows:

Section 3-422. A. All medical records and all communications between a doctor and a patient or between a volunteer counselor and a patient are both privileged and confidential. Such information is available only to those engaged in treatment of the patient or in related administrative work. Privileged or confidential information

will not be released to anyone not involved in the treatment programs without a written release by the patient or an order from a court of competent jurisdiction.

B. All communications by certified facilities, organizations, or volunteer counselors who are not certified, or individuals and organizations excepted from certification concerning the treatment and rehabilitation of drug-dependent persons are classified as confidential. All written communications relating to the treatment and rehabilitation of drug-dependent persons shall be contained in folders and clearly marked "Confidential". These confidential communications may be seen and used only by persons who are actively involved in treatment and rehabilitation programs. Any person involved in a treatment and rehabilitation program or voluntary counseling program is prohibited from testifying to any information relating to drug possession or dependency gained in the program in any court action against a drug-dependent person. The medical records compiled during the treatment and rehabilitation of a drug-dependent person may not be accepted as evidence or used in any manner in any court action against the drug-dependent person.

SECTION 4. AMENDATORY 43A O.S. 1991, Section 3-423, is amended to read as follows:

Section 3-423. All records, including registration records, of ~~the~~ an approved treatment facility or voluntary counseling program are confidential and privileged to the patient ~~admitted under this act;~~ provided, that the administrator in charge of the approved treatment facility or volunteer counselor may make available information from records of patients ~~admitted under this act~~ for purposes of research into the causes and treatment of alcoholism or drug abuse. Information made available under this section shall not be published in a way that discloses patients' names or other identifying information.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-430 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A person is not civilly liable for an act done in good faith, reasonably, and without malice in connection with participation as a volunteer counselor.

SECTION 6. This act shall become effective September 1, 1994.

44-2-1497 CJ