ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1602 By: Voskuhl of the House

and

Williams (Penny) of the Senate

(children - amending Sections in Titles 10, 21 and 63 - day treatment programs - standard adoptions - neglect and abuse - codification - effective date)

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause and entire bill and insert

[children - treatment programs - amending Sections in Titles 10, 21, 63 and 43A - codification - effective date]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.20 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. As used in Sections 1 through 4 of this act, "day treatment program" means nonresidential, partial hospitalization programs, day treatment programs, and day hospital programs in which children and adolescents are placed for psychiatric or psychological treatment. Day treatment programs shall serve children and adolescents who are experiencing severe psychiatric symptoms, disturbances of conduct, decompensating conditions affecting mental health, or severe developmental delays that seriously impair their capacity to

function age-appropriately in their daily lives and that place them at risk of inpatient hospital, residential or other institutional care. Day treatment programs shall provide mental health ambulatory, active treatment programs that shall include therapeutic, coordinated and structured clinical services in a stable, therapeutic milieu, with the goal of preventing the need for or reducing the length of inpatient or institutional care, and reintegrating of the child into the school and the community. A day treatment program shall not mean an alternative school or alternative education program as such terms are defined in rules promulgated by the State Board of Education.

B. All day treatment programs shall adopt:

1. A patient and family bill of rights;

2. Grievance procedures for reporting complaints or grievances to the State Department of Health, the Department of Mental Health and Substance Abuse Services or the Office of the Advocate General, and that are appropriate for the complaint or grievance; and

3. Policies governing the use of force, which shall be in compliance with the provisions of Section 1403.2 of Title 10 of the Oklahoma Statutes.

C. The Commission for Human Services shall promulgate rules governing participation of a foster care family in the treatment of a child and in family therapy with a child when the child is in foster care.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1403.3, is amended to read as follows:

Section 1403.3 A. The ~~Oklahoma Public Welfare~~ Commission <u>for Human Services</u> shall establish and maintain a fair, simple and expeditious system for resolution of grievances of all persons committed to the Department <u>of Human Services</u> regarding the substance or application of any written or unwritten policy~~,~~ <u>or</u> rule ~~or regulation~~ of the Department or of an agent or contractor of the

Department or any decision, behavior or action by an employee~~,~~ or agent ~~or~~ of, contractor with, or ~~by~~ other person committed to the Department.

B. The ~~Oklahoma Public Welfare~~ Commission is authorized and directed to establish the Office of Advocate Defender within the Department and to employ such personnel as may be necessary to carry out the purposes of subsection A of this section. Such personnel may be dismissed only for cause.

1. The chief administrative officer of the Office of Advocate Defender shall be the Advocate General, who shall be an attorney selected from a list of three names submitted by the Oklahoma Commission on Children and Youth. The Advocate General shall be a member of the Oklahoma Bar Association and shall have a minimum of three (3) years' experience as an attorney. The compensation of the Advocate General shall be no less than that of the classification of Attorney III as established in the Merit System of Personnel Administration classification and compensation plan, but shall be an unclassified position.

2. The duties and responsibilities of the Advocate General are as follows:

a. supervise personnel assigned to children's institutions and facilities as student defender/representatives,

b. monitor and review grievance procedures and hearings,

c. investigate grievances of juveniles and staff grievances related to juveniles which are not resolved at the facility level,

d. investigate allegations of abuse or neglect of juveniles in Department-operated facilities or juveniles who are in the custody of the Department and placed in a private facility,

e. coordinate any hearings or meetings of administrative review committees conducted as a result of unresolved grievances or as a result of investigations,

f. make recommendations to the Director, and provide regular or special reports regarding grievance procedures, hearings and investigations to the Director, the Office of Juvenile System Oversight and other appropriate persons as necessary,

g. forward to the Office of Juvenile Systems Oversight, for the information of the Director of that office, a copy of the final report of a complaint which is not resolved, through the system for resolution of grievances established by the ~~Oklahoma Human Services~~ Commission, in the favor of the complainant, and

h. perform such other duties as required by the Director of Human Services.

C. The Department shall promptly and immediately report to the appropriate district attorney having jurisdiction any act or omission by persons employed by the Department, perpetrated, committed or suffered or allowed to be perpetrated or committed by such person or persons upon any child in the custody of the Department, wherever housed, when such act or omission, upon conviction, would constitute ~~an~~ a criminal offense ~~against the criminal laws of this state~~. Copies of all such reports shall be forwarded to the Attorney General.

D. The Office of the Advocate General shall investigate allegations of abuse or neglect of a patient in a day treatment program as defined in Section 1 of this act, if funds are available. The Advocate General shall file a report of the results of the investigation with the appropriate district attorney having jurisdiction and the State Department of Health.

SECTION 3. AMENDATORY Section 3, Chapter 378, O.S.L. 1994 (10 O.S. Supp. 1994, Section 603.4), is amended to read as follows:

Section 603.4 A. There is hereby created to continue until June 30, 1996, in accordance with the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of Title 74 of the Oklahoma Statutes, the Committee for Day Treatment Standards. The Committee shall consist of eleven (11) members who shall be appointed by the Oklahoma Commission on Children and Youth from representatives of service providers, agency representatives, consumers, educational institutions, juvenile justice, and child advocates. Staff support shall be provided by the Oklahoma Commission on Children and Youth.

B. The Committee's duties shall include developing and monitoring standards for child and adolescent day treatment programs. The Committee shall use current Medicaid standards as a guide to produce proposed rules for day treatment program quality. The Committee shall develop proposed rules by October 1, 1994.

C. The Department of Human Services, State Department of Health, Oklahoma Health Care Authority and Department of Mental Health and Substance Abuse Services shall review the proposed rules developed by the Committee and, no later than January 1, 1995, shall deliver a proposal for oversight and enforcement of such rules, including recommendations of which agency will be responsible for the oversight and enforcement, and recommendations for necessary legislation to the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, and the chair of the Joint Legislative Committee for Review of Special Services to Children and Youth. Staff support for the development of the proposal shall be provided by the Oklahoma Commission on Children and Youth.

D. In accordance with the standards recommended by the Committee on Day Treatment Standards in its report dated November 2, 1994, the State Board of Health, the Board of Mental Health and

Substance Abuse Services and the Oklahoma Health Care Authority Board shall promulgate rules establishing standards for day treatment programs, as defined in Section 1 of this act, and shall monitor, not less than annually, compliance with the standards, if funds are available. The responsibilities of the boards regarding enforcement of and monitoring of compliance with the rules shall be as follows:

1. The State Board of Health shall promulgate rules establishing standards for day treatment programs other than those operated by community mental health centers;

2. The Board of Mental Health and Substance Abuse Services shall promulgate rules for day treatment programs operated by community mental health centers; and

3. ~~At least once each year, the Department of Human Services Medical Services Division~~ The Oklahoma Health Care Authority Board shall monitor compliance of outpatient hospital day treatment services with the standards in the Medical Providers-Hospital Specific Manual, ~~OAC 340:125-6~~ OAC 317:30-5-42(a) (6). Any program found to be out of compliance with such standards shall be subject to cancellation of its authorization for day treatment services within its contract with the ~~Department of Human Services~~ Oklahoma Health Care Authority according to rules governing such contract cancellations.

E. The boards shall coordinate development and monitoring of rules to the maximum extent reasonable and practical in order to avoid unnecessary contradiction or conflict and to minimize the incidence of duplicative monitoring of day treatment programs.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 845, as amended by Section 1, Chapter 265, O.S.L. 1992 (21 O.S. Supp. 1994, Section 845), is amended to read as follows:

Section 845. A. It is the policy of this state to provide for the protection of children who have had physical injury inflicted

upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of persons responsible for the care and protection of such children.

B. As used in Sections 846 through 848 of this title:

1. "Abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare;

2. "Harm or threatened harm to a child's health or welfare" includes but is not limited to nonaccidental physical or mental injury; sexual abuse, sexual exploitation, or negligent treatment or maltreatment including the failure to provide adequate food, clothing, shelter, or medical care except as provided for in Section 846 of this title;

3. "Child" means a person under the age of eighteen (18) years;

4. "Person responsible for a child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution ~~or~~, facility or day treatment program as defined in Section 1 of this act; or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

5. "Sexual abuse" includes but is not limited to rape, incest and lewd or indecent acts or proposals, as defined by law, by a person responsible for the child's welfare; and

6. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or

depicting of a child in those acts as defined by the state law, by a person responsible for the child's welfare.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-701, is amended to read as follows:

Section 1-701. For the purposes of this article:

~~(a) The term "hospital~~ 1. "Hospital" means any institution, place, building or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted for overnight stay or longer in order to obtain medical care, surgical care, obstetrical care, or nursing care for illness, disease, injury, infirmity, or deformity. Except as otherwise provided by ~~subsection~~ paragraph ~~(b)~~ 5 of this ~~section~~ subsection, places where pregnant females are admitted and receive care incident to pregnancy, abortion or delivery shall be considered to be a "hospital" within the meaning of this article, regardless of the number of patients received or the duration of their stay. The term "hospital" includes general and specialized hospitals, tuberculosis sanitoria, maternity homes, lying-in homes, and homes for unwed mothers in which care is given during delivery.

~~(1) The term "general~~ 2. "General hospital" means a hospital maintained for the purpose of providing hospital care in a broad category of illness and injury.

~~(2) The term "specialized~~ 3. "Specialized hospital" means a hospital maintained for the purpose of providing hospital care in a certain category, or categories, of illness and injury.

~~(b) The term "related~~ 4. "Related institution" means an institution, or an industrial or other type of infirmary, providing limited medical or surgical care to ill or injured persons on a temporary basis, or a birthing center.

~~(c)~~ 5. "Birthing center" means any facility, place or institution, which is maintained or established primarily for the

purpose of providing services of a certified midwife or licensed medical doctor to assist or attend a woman in delivery and birth, and where a woman is scheduled in advance to give birth following a normal, uncomplicated, low-risk pregnancy. Provided, however, licensure for a birthing center shall not be compulsory.

6. "Day treatment program" means nonresidential, partial hospitalization programs, day treatment programs, and day hospital programs in which children and adolescents are placed for psychiatric or psychological treatment. Day treatment programs shall serve children and adolescents who are experiencing severe psychiatric symptoms, disturbances of conduct, decompensating conditions affecting mental health, or severe developmental delays that seriously impair their capacity to function age-appropriately in their daily lives and that place them at risk of inpatient hospital, residential or other institutional care. Day treatment programs shall provide mental health ambulatory, active treatment programs that include therapeutic, coordinated and structured clinical services in a stable, therapeutic milieu, with the goal of preventing the need for or reducing the length of inpatient or institutional care, and reintegrating the child into the school and the community. A day treatment program shall not mean an alternative school or alternative education program as such terms are defined in rules promulgated by the State Board of Education.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-702a, is amended to read as follows:

Section 1-702a. A. By January 1, 1992, the State Board of Health shall promulgate and adopt rules for the voluntary licensing of birthing centers.

B. The State Board of Health shall promulgate rules establishing standards for day treatment programs other than those operated by community mental health centers.

SECTION 7. AMENDATORY 43A O.S. 1991, Section 3-302, is amended to read as follows:

Section 3-302. As used in the Unified Community Mental Health Services Act~~, Section 3-301 et seq. of this title~~:

1. "Catchment area or service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services;

2. "Community mental health services", in conformance with federal requirements, means services for the treatment of alcoholism, drug addiction or abuse, and mental illness, and the prevention, diagnosis, or rehabilitation of such persons;

3. "Board" means the Alcohol, Drug Abuse and Community Mental Health Planning and Coordination Board;

4. "Mental health facility" means:

a. a comprehensive community mental health center offering services including, but not limited to, the following basic services: Inpatient, outpatient, partial hospitalization, emergency care, and consultation and education; and offering the following services at the option of the center: Prescreening services, rehabilitation services, precare and aftercare services, training programs, and research and evaluation programs,

b. an outpatient facility offering diagnostic and treatment services,

c. a day care facility offering a treatment program for children or adults suffering from mental or emotional problems, or

d. community residential mental health programs and facilities which provide supervised residential care, counseling, case management or other similar services

to children or adults suffering from mental or emotional problems;

5. "Domestic violence program" or "sexual assault program" means a facility, agency or organization which offers or provides or a person who engages in the offering of shelter, residential services or support services to:

a. victims or survivors of domestic abuse as defined in Section 60.1 of Title 22 of the Oklahoma Statutes, any dependent children of said victims or survivors and any other member of the family or household of such victim or survivor,

b. victims or survivors of sexual assault, and

c. persons who are homeless as a result of domestic or sexual violence or both domestic and sexual violence,

and which may provide other services, including, but not limited to, counseling, case management, referrals or other similar services to victims or survivors of domestic abuse or sexual assault~~.~~;

6. "Day treatment program" means nonresidential, partial hospitalization programs, day treatment programs, and day hospital programs in which children and adolescents are placed for psychiatric or psychological treatment. Day treatment programs shall serve children and adolescents who are experiencing severe psychiatric symptoms, disturbances of conduct, decompensating conditions affecting mental health or severe developmental delays that seriously impair their capacity to function age-appropriately in their daily lives and that place them at risk of inpatient hospital, residential or other institutional care. Day treatment programs shall provide mental health ambulatory, active treatment programs that shall include therapeutic, coordinated and structured clinical services in a stable, therapeutic milieu, with the goal of preventing the need for or reducing the length of inpatient or institutional care, and reintegrating the child into the school and

the community. A day treatment program shall not mean an alternative school or alternative education program as such terms are defined in rules promulgated by the State Board of Education.

SECTION 8. This act shall become effective November 1, 1995."

Passed the Senate the 11th day of April, 1995.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1995.

Speaker of the House of Representatives