

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)

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 175.1, as amended by Section 1, Chapter 249, O.S.L. 1992 (10 O.S. Supp. 1994, Section 175.1), is amended to read as follows:

Section 175.1 It is the intent and purpose of this act to provide for a more efficient administration of the Children with Special Health Care Needs Program in ~~Oklahoma~~ this state and to provide for a continuity of dependable funds to establish and conduct a program of medical care for children who are crippled or who are suffering from conditions leading to crippling, or otherwise handicapped, or who are suffering from conditions or maladies amenable to treatment; to cooperate with counties and all public and private agencies and institutions interested in the care of children in making county funds and resources of these public and private agencies and institutions available for the care of such children; to cooperate with the appropriate agency of the federal government in making effective the provisions of the Federal Social Security Act, 42 U.S.C., Section 301 et seq., relating to crippled children

and such other laws, provisions, or programs that the Congress has adopted or may adopt for the remedial care of such children, including provisions for prevention, for locating such children and for providing medical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare for such children.

SECTION 2. 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. For the purposes of this section and Sections 3 through 8 of this act, "day treatment program" means nonresidential partial hospitalization programs, day treatment programs and day hospital programs in which children are placed for psychiatric or psychological treatment and which precludes their attendance at a regular public or private school. Day treatment programs serve children 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 place them at risk of inpatient hospital, residential or other institutional care. Day treatment programs provide mental health ambulatory, active treatment programs that include therapeutic, coordinated, structured clinical services in a stable, therapeutic milieu with the goal of preventing the need for inpatient or institutional care or reducing the length of inpatient or institutional care, and reintegration of the child into school and the community.

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 or the Office of the Advocate General, as appropriate for the complaint or grievance;

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; and

4. Standards which shall substantially comply with the standards adopted by the Oklahoma Health Care Authority pursuant to the provisions of Section 603.4 of Title 10 of the Oklahoma Statutes.

C. On or prior to the admission of a patient into a day treatment program, the program shall provide the patient and the family with copies of:

- a. the patient and family bill of rights,
- b. policies governing the use of force, and
- c. the telephone number and address of the Office of Client Advocacy within the Department of Human Services.

The program shall maintain records in the patient's records showing that the information has been provided to the child and the family.

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

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1403.3, is amended to read as follows:

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

B. The Oklahoma ~~Public Welfare~~ Commission for Human Services 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 for Human Services, in the favor of the complainant, and
- h. perform such other duties as required by the Director.

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 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 by Section 2 of this act. The Advocate General shall file a report of the results of the investigation with the appropriate district attorney and with the State Department of Health.

SECTION 4. 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 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. At least once each year, the ~~Department of Human Services~~ Medical Services Division of the Oklahoma Health Care Authority shall monitor compliance of outpatient hospital day treatment services with the standards in the Medical Providers-Hospital Specific Manual, OAC 340:125-6. Any program found to be out of compliance with such standards shall be subject to cancellation of its contract with the Department of Human Services according to rules governing such contract cancellations.

SECTION 5. 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 by Section 2 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 6. 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 paragraph, 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 sanatoria, 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,~~ or a day treatment program as defined by Section 2 of this act.

~~(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.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-705, is amended to read as follows:

Section 1-705. A. The State Board of Health, upon recommendation of the State Commissioner of Health and with the advice of the Health Facilities Advisory Council hereinafter provided for, shall adopt rules, regulations and standards for the construction and operation of hospitals and related institutions, for which licenses are required by the terms of this article, to provide for the proper care of patients. The adoption of rules and regulations shall be subject to and be governed by the provisions of House Bill No. 865 Of the Twenty-ninth Legislature.

B. Every hospital and related institution shall be periodically inspected by an authorized representative of the Commissioner, and reports of such inspections shall be on forms prescribed by the Commissioner, who shall, after receipt of such reports, take such action as he deems necessary to have corrected any deficiencies or violations of the rules, regulations and standards of the Board, shown in such reports.

C. Hospitals and related institutions licensed under the provisions of this article shall not be exempt from being inspected

or licensed under laws relating to hotels, restaurants, lodging houses, boarding houses and places of refreshment.

D. Every hospital and related institution as defined by Section 1-710 of this title and chemical dependency treatment facilities, other than group homes, halfway houses and transitional living facilities, licensed by the Department that offers or provides inpatient psychiatric or chemical dependency treatment services to persons eighteen (18) years of age or younger shall offer, provide or otherwise make available community-based programs and services and may make said programs and services available directly, through contract, or other appropriate means as determined by the Department. For the purposes of this subsection the term "community-based services" shall have the same meaning as said term is defined by Section 1101 of Title 10 of the Oklahoma Statutes.

E. The rules promulgated by the Board establishing standards for day treatment programs as defined by Section 2 of this act shall be in compliance with the standards adopted by the Oklahoma Health Care Authority, pursuant to Section 603.4 of Title 10 of the Oklahoma Statutes.

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

Passed the House of Representatives the 8th day of March, 1995.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate