

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3108

By: Bastin

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 1991, Section 1-109, as last amended by Section 1, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 1-109), which relates to records of the Department of Mental Health and Substance Abuse Services; clarifying language; 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 last amended by Section 1, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 1-109), is amended to read as follows:

Section 1-109. A. All medical records and all communications between physician or psychotherapist and 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, or public or private child care agency having legal custody of the child is required. ~~Provided, however~~ However, confidential information may be released as provided by Sections 7005-1.1 through 7005-1.3 of Title 10 of the Oklahoma Statutes. Upon admission and after a person has been an inpatient for seventy-two (72) hours, the facility shall inquire, at least once, whether the person wishes to authorize the release of information regarding the inpatient status of the person.

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 such contract may transmit records and information as necessary and appropriate for the care and treatment of patients pursuant to rules adopted by the Board of Mental Health and Substance Abuse Services.

3. The Board of Mental Health and Substance Abuse Services shall adopt rules 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 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 such person's psychiatric or psychological

records or to copies of such records unless access to such records is consented to by the treating physician or practitioner or is ordered by a court. Such person shall, upon request, be provided with information contained in such records as appropriate as determined by the person in charge of the care and treatment of the patient. Such 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 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 such 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 guardianship or conservatorship proceedings should be initiated.

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 such 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.

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. This act shall become effective November 1, 1998.

46-2-8583

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