

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 649

By: Pruitt

AS INTRODUCED

An Act relating to public health and safety and mental health; amending 63 O.S. 1991, Sections 1-880.2, 1-880.3, 1-880.4, 1-880.5 and 1-880.6, as amended by Section 1, Chapter 82, O.S.L. 1994 (63 O.S. Supp. 2000, Section 1-880.6), which relate to the Psychiatric and Chemical Dependency Facility Certificate of Need Act; clarifying obsolete language; providing for exception to certain prohibition for a faith-based chemical dependency treatment program; defining term; clarifying language; expanding exceptions and exemptions for requirements for a certificate of need; requiring promulgation of rules for registration of the exemption of faith-based chemical dependency treatment programs; prohibiting certain acts by exempted programs; requiring inclusion of certain statement; requiring signed declaration; stating conditions for revocation of exemption; prohibiting denial of certain benefits and competition against certified programs for certain funding; construing effect of section of law; requiring the Department of Human Services to provide certain food stamp allotment to a chemical dependency treatment program under certain conditions; amending 43A O.S. 1991, Section 3-415, as amended by Section 1, Chapter 209, O.S.L. 1992, and Section 3, Chapter 213, O.S.L. 1994 (43A O.S. Supp. 2000, Sections 3-415 and 3-417), which relate to certified alcohol and drug abuse prevention, training, treatment and rehabilitation facilities; exempting faith-based chemical dependency treatment programs from rules and standards for certification and licensing requirements; clarifying language; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-880.2, is amended to read as follows:

Section 1-880.2 A. ~~The Legislature hereby declares that it is the public policy of the State of Oklahoma that the offering and development of psychiatric and drug dependency services should~~ shall

be made in a planned, orderly and economical manner consistent with and appropriate to services needed by people in various regions, districts or localities in the State of Oklahoma, ~~and that it is essential to the realization of this public policy that the offering and development of such services in this state be made in accordance with the needs for such services. It is the purpose of the.~~

B. The Legislature in enacting this act to further this public policy by providing hereby provides for the submittal of plans and applications, and by prohibiting hereby prohibits the offering, development or change of existing services prior to the issuance of a certificate of need by the State Department of Health; provided, however, a chemical dependency treatment program that:

1. Is conducted by a religious organization;

2. Is exclusively religious, spiritual or ecclesiastical in nature; and

3. Does not treat minors,

shall be exempt from the provisions of this act pursuant to the provisions of Section 6 of this act.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-880.3, is amended to read as follows:

Section 1-880.3 For purposes of this act:

1. "Act" means the Psychiatric and Chemical Dependency Facility Certificate of Need Act;

2. "Board" means the State Board of Health;

3. "Commissioner" means the State Commissioner of Health; ~~and~~

4. "Department" means the State Department of Health; and

5. "Religious organization" means a church, synagogue, mosque, or other religious institution:

a. the purpose of which is the propagation of religious belief, and

b. that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, 26 U.S.C.

Section 501(a), by being listed as an exempt organization under Section 501(c) of that code, 26 U.S.C. Section 501(c).

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-880.4, is amended to read as follows:

Section 1-880.4 A. The State Department of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke certificates of need;

2. Establish and enforce standards and requirements for certificates of need;

3. Require the submission of, and to review reports from any person requesting or obtaining a certificate of need;

4. Employ or designate personnel necessary to implement the provisions of this act;

5. Report to the district attorney having jurisdiction or the Attorney General any act committed by any person which may constitute a misdemeanor pursuant to the provisions of this act;

6. Advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies, and with affected groups and political subdivisions to further the purposes of the provisions of this act;

7. Develop and enforce rules and regulations subject to the approval of the State Board of Health to implement the provisions of this act;

8. Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for a certificate of need;

9. Establish administrative penalties for violations of the provisions of this act as authorized by the Board;

10. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department pursuant to this act;

11. Develop and administer plans for services, including manpower, facilities and other resources;

12. Develop and publish, once every four (4) years, a Quadrennial State Health Plan, following guidelines and procedures adopted by the Board, which specifies the method of adoption of the plan document, its format, provisions for developing and publishing plan amendments and the role of the State Department of Health and the Alcohol, Drug Abuse and Community Mental Health Planning and Coordination Boards of each mental health catchment area in its development;

13. Establish and administer criteria and standards for the delineation and approval of areas and regions for planning purposes;

14. Promote and maintain plans for providing services in the State of Oklahoma; and

15. Exercise all incidental powers as necessary and proper for the administration of this act.

B. The State Department of Health shall be the single state agency to participate in federal programs for planning and to apply for and administer federal funds for planning, provided, that this act, and any other law vesting planning functions in any other state agency, shall not apply to planning functions vested by law in the Department of Mental Health and Substance Abuse Services and the Department of Human Services.

C. The Department shall establish forms and provide for the collection of monthly data necessary for the computation of occupancy rates from licensed psychiatric and chemical dependency facilities which do not provide services to Medicaid recipients. Data shall include licensed bed capacity, average daily census, days

on which beds were reserved for residents temporarily absent, and the number, if any, of semi-private units rented as private rooms.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-880.5, is amended to read as follows:

Section 1-880.5 Except as otherwise provided by Section 1-880.6 of this title and Section 6 of this act, no psychiatric or chemical dependency facility or unit shall be developed or offered unless a certificate of need therefor has been issued. No governmental entity shall approve any grant of funds, issue any debentures or issue or renew any license for the operation of a facility, nor shall any third-party purchasers, licensed or operated by this state, issue reimbursement for services provided to its insurers or clients, unless the certificate of need as provided in this act has been obtained.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-880.6, as amended by Section 1, Chapter 82, O.S.L. 1994 (63 O.S. Supp. 2000, Section 1-880.6), is amended to read as follows:

Section 1-880.6 A. ~~Every~~ Except as otherwise provided by Section 6 of this act, every entity desiring to establish a new psychiatric or chemical dependency service or to acquire, lease or expand an existing service whether through construction or conversion of facilities, shall make application to the State Department of Health for a certificate of need in such form and accompanied by such information, including a complete list of stockholders, partners, and owners, and any other information, as the State Board of Health shall prescribe.

B. The provisions of the Psychiatric and Chemical Dependency Facility Certificate of Need Act shall not apply to ~~any~~:

1. Any hospital as defined by Section 1-710 of this title licensed by the State Department of Health on or before December 31, 1990, which has:

~~1.~~ ~~Construction~~ a. construction cost overruns or capital expenditures for completion of originally approved ~~beds or completion of previously constructed and~~ shelled space arising out of and based only upon the original certificate of need issued by the Commissioner for ~~said~~ such construction, when such construction costs or capital expenditures do not or will not increase the approved number of beds, allow conversion of bed use shall not be deemed new construction or increase pricing structure for treatment or services; or

~~2.~~ ~~Negotiated~~ b. negotiated a contract with an agency of this state, the federal government or a Native American nation duly recognized by the federal government that specifies the number of beds and their uses. A hospital provided for by paragraph 2 of this subsection shall be exempt from the certificate of need required by the Psychiatric and Chemical Dependency Facility Certificate of Need Act for the purposes specified in the contract. This exemption shall not apply to Medicare or Medicaid contracts or contracts for inpatient services for children or adolescents; or

2. A chemical dependency treatment program that:

- a. is conducted by a religious organization,
- b. is exclusively religious, spiritual, or ecclesiastical in nature, and
- c. does not treat minors.

C. The State Commissioner of Health is authorized to grant a certificate of need if the entity applying for the certificate has filed a notice on a form prescribed by the State Department of Health which shall include, but not be limited to:

1. The name and location of the entity;
2. The name and address of each person having an ownership interest in the entity;
3. The nature of the acquisition, expansion, addition or conversion, whether by sale, lease or other arrangement;
4. The parties to the sale, lease or other arrangement;
5. The size of the acquisition, expansion, addition or conversion;
6. The approximate cost of the acquisition, expansion, addition or conversion; and
7. The projected date of completion.

D. The State Commissioner of Health shall be notified, on a form prescribed by the State Department of Health, of the following:

1. Any decrease in the number of beds of a hospital, facility or hospital unit; and
2. Any change in the designation for a continuum of care in psychiatric or chemical dependency treatment.

E. Psychiatric and chemical dependency service for which a certificate of need is required shall include:

1. Any capital investment or lease of Five Hundred Thousand Dollars (\$500,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, architectural designs, plans, working drawings, specifications and site acquisition; provided, that this dollar limit shall not apply to a change in bed capacity;
2. Acquisition of a facility by purchase, lease, donation or through transfer of stock or corporate merger. If the Department finds that a proposed acquisition is consistent with the criteria and standards for review of such projects, then the Department shall issue a certificate of need. If the Department finds that the proposed acquisition is not consistent with the criteria, the project will be referred to the State Commissioner of Health for

final determination. The Department's determination to approve the proposed acquisition or to refer it to the Commissioner shall be made no later than fifteen (15) days following the day the application is determined to be complete and review ready, or the proposed acquisition shall be automatically approved. Proposed acquisitions shall be reviewed against standards adopted by the Department which relate only to the acquirer's capability to operate a facility; or

3. Inpatient psychiatric and chemical dependency services for persons under eighteen (18) years of age offered or provided by a hospital or other health care facility, including but not limited, to any conversion of existing beds, any increase in bed capacity and any new beds for the purpose of offering or providing said services, regardless of any capital or other costs of the project.

- a. The State Board of Health shall provide by rule for the temporary emergency use of beds ordinarily used for adult patients as psychiatric or chemical dependency beds for children or adolescents.
- b. Any application to establish or operate inpatient psychiatric or drug or alcohol treatment services for persons under eighteen (18) years of age shall include the establishment, operation and maintenance of a community-based service program or a day treatment program, as those terms are defined by Section ~~1101~~ 7001-1.3 of Title 10 of the Oklahoma Statutes, as an integral part of the total project.

F. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewers it may select to determine whether the application is complete. Once the Department has determined that the application is complete, it shall notify affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and

appropriateness of such expanded psychiatric or chemical dependency service. The investigation made pursuant to an application for a certificate of need shall include the following:

1. The adequacy of psychiatric and chemical dependency services in relation to an optimal target ratio of psychiatric or chemical dependency beds to the population;

2. The availability of services which may serve as alternatives or substitutes;

3. The adequacy of financial resources for the new or expanded services and for the continued operation thereof;

4. The availability of sufficient manpower to properly staff and operate the proposed new or expanded service; and

5. Any other matter which the Department deems appropriate.

G. Each application for a certificate of need applied for pursuant to the provisions of this section except for those applications filed by state agencies shall be accompanied by an application fee in an amount established by the Department.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-880.6A of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. The State Board of Health shall promulgate rules establishing a simple procedure for a faith-based chemical dependency treatment program to register the program's exemption under Section 1-880.6 of this title.

2. A program that is exempt under this section:

a. may not provide medical care, medical detoxification, or medical withdrawal services,

b. shall conspicuously include in any advertisement or literature that promotes or describes the program or the program's chemical dependency treatment services the following statement:

"The treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the State Department of Health. This program offers only nonmedical treatment and recovery methods such as prayer, moral guidance, spiritual counseling, and scriptural study",

- c. may not admit a person unless the person signs the following statement on admission:

"Declaration

I understand that:

- a. the treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the State Department of Health, and
- b. (name of program) offers only nonmedical treatment and recovery methods, such as prayer, moral guidance, spiritual counseling, and scriptural study, and
- c. if at anytime I have an objection to the religious character of this organization or institution from which I am receiving services, within a reasonable period of time after the date of my objection I shall have the option of choosing an alternative provider which is accessible to me, and the value of whose services is not less than the value of the assistance which I receive from this organization.

Signed _____ Date _____", and

- d. shall:
 - (1) keep the original signed statement on file, and
 - (2) provide a copy of the signed statement to the person admitted.

B. The State Commissioner of Health may revoke an exemption provided by this section after notice and hearing if:

1. The organization conducting the program fails to timely inform the Commissioner of any material change in the program's registration information;

2. Any program advertisement or literature fails to include the statements required by subsection A of this section; or

3. The organization violates the provisions of this act or any rules promulgated hereunder.

C. 1. A state agency may not deny to an individual a state or federal social service benefit on the basis that the individual is participating in a faith-based chemical dependency treatment program.

2. An exempt program under this section shall not be eligible to compete against a certified program for direct federal or state treatment funding.

D. The provisions of this section shall not affect the authority of a county or state health department official, the State Fire Marshal, or a local fire prevention official to inspect a facility used by a program exempted under this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-880.6B of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department of Human Services shall provide an individual's food stamp allotment to the chemical dependency treatment program in which the person resides to the extent allowed under Section 8(f) of the Food Stamp Act of 1997, 7 U.S.C. Section 2017(e), if the individual designates the program as the individual's authorized representative.

SECTION 8. AMENDATORY 43A O.S. 1991, Section 3-415, as amended by Section 1, Chapter 209, O.S.L. 1992 (43A O.S. Supp. 2000, Section 3-415), is amended to read as follows:

Section 3-415. A. 1. The Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority shall promulgate ~~regulations~~ rules and standards for certification for private facilities and organizations which provide treatment, counseling, rehabilitation, and other related services directed toward alcohol- and drug-dependent persons; provided, however, the provisions of this section shall not apply to a faith-based chemical dependency treatment program as provided in Section 6 of this act. These facilities and organizations shall be known as "Certified Services for the Alcohol and Drug Dependent". Only certified facilities may receive and assist alcohol- and drug-dependent persons by providing treatment, rehabilitation, and other related services to alcohol- and drug-dependent persons.

2. Any person violating the requirement that only certified facilities may receive and assist alcohol- and drug-dependent persons by providing treatment, rehabilitation, and other related services to alcohol- and drug-dependent persons, upon conviction, shall be guilty of a misdemeanor.

B. 1. Applications for certification as a certified service for the alcohol- and drug-dependent person pursuant to the provisions of this section shall be made to the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority on prescribed forms.

2. In reviewing and determining the merits of an application for certification, the Authority may:

- a. utilize and consider all available materials and information discovered or submitted to the Authority; provided, the Authority shall notify the applicant of the existence of such materials and information at least seventy-two (72) hours in advance of the hearing, and

b. review, hear and consider all available evidence regarding issues of safety and effectiveness of the treatment modality utilized by the applicant.

C. The Authority may certify the facility for a period of thirty-six (36) months subject to renewal as provided.

D. For good cause shown, including but not limited to failure to comply with ~~regulations~~ rules and standards promulgated by the Authority, pending state or federal investigations, or verified complaints concerning matters affecting the proper operation or ownership of the facility, the Authority may postpone, deny or withdraw the certification of the facility.

E. Licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, and certified alcohol or drug abuse counselors are exempt from the ~~regulations~~ rules and standards for certification, provided that such exemptions shall apply only to individual professional persons in their private practice and not to any treatment facility operated by such person. Properly licensed hospitals, programs operated by the State Department of Health or Department of Human Services, programs conducted and facilities operated by Alcoholics Anonymous, the Department of Corrections, the Department of Mental Health and Substance Abuse Services, or the Salvation Army are also exempt from the provisions of the Oklahoma Alcohol and Drug Abuse Services Act, Section 3-401 et seq. of this title.

F. Certified services for the alcohol- or drug-dependent person shall comply with standards adopted by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority. Such standards shall require that treatment and therapeutic methods shall be in compliance with:

1. The Joint Commission on Accreditation of Healthcare Organizations;

2. The Commission on Accreditation of Rehabilitation Facilities; or

3. Approved medical and professional standards as determined by the Board of Mental Health and Substance Abuse Services.

G. The Board may require a precertification review of any new applications that appear to use nontraditional methods of treatment. The Board may select an independent, recognized authority in Oklahoma to review such programs to make recommendations to the Board as to the validity of the proposed program.

H. Any facility or organization certified to provide certified services shall cooperate with inspection personnel of the state and shall promptly file all reports required by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority.

I. Failure to comply with ~~regulations~~ rules and standards promulgated by the Authority shall be grounds for revocation of certification and licensing, after proper notice and hearing.

J. All claims by and accomplishments publicized by any applicant for certification or any certified alcohol- or drug-dependent organization, including but not limited to patient count and success rates, shall be documented and verifiable by the Board.

K. The Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority is hereby authorized to collect from each applicant the sum of One Hundred Dollars (\$100.00) annually to help defray the costs incurred in the certification procedure.

L. Any materials or information received by the Authority from an applicant regarding the applicant's financial status or including a client's identity shall not be construed to be open records pursuant to the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes.

SECTION 9. AMENDATORY Section 3, Chapter 213, O.S.L. 1994 (43A O.S. Supp. 2000, Section 3-417), is amended to read as follows:

Section 3-417. A. 1. After being certified by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority, any person or private agency, other than a transitional living facility or halfway house as defined by Section 3-403 of this title and persons or private agencies providing only outpatient services, shall apply to the State Commissioner of Health for a license to operate the treatment facility; provided, however, the provisions of this section shall not apply to a faith-based chemical dependency treatment program as provided in Section 6 of this act.

2. Applications for such licenses shall be made in accordance with provisions for licensing hospitals and related institutions contained in Sections 1-703 and 1-704 of Title 63 of the Oklahoma Statutes.

B. In addition to the standards for treatment services and rules of operation required by Section 3-416 of this title, the Department of Mental Health and Substance Abuse Services shall establish physical facility standards, fire safety standards and such other health and safety standards for halfway houses and transitional living facilities as necessary.

C. The Department of Mental Health and Substance Abuse Services and the State Department of Health shall ensure that the standards required by Section 3-415 of Title 43A and Section 1-705 of Title 63 of the Oklahoma Statutes include specific physical facility standards providing for facilities that provide substance abuse treatment services to pregnant women and women with children when the children also reside at the facility.

SECTION 10. This act shall become effective November 1, 2001.