STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 561 By: Cain

COMMITTEE SUBSTITUTE

An Act relating to mental health; amending 43A O.S. 2001, Sections 1-103, as last amended by Section 2, Chapter 394, O.S.L. 2003, 1-107, as last amended by Section 1, Chapter 113, O.S.L. 2004, 1-109, as last amended by Section 3, Chapter 113, O.S.L. 2004, 1-110, as last amended by Section 5, Chapter 46, O.S.L. 2003, 2-103, as amended by Section 5, Chapter 488, O.S.L. 2002, and 2-107, as amended by Section 4, Chapter 217, O.S.L. 2003, 2-109, as amended by Section 6, Chapter 113, O.S.L. 2004, 2-203, 2-205, 2-303, Section 2, Chapter 354, O.S.L. 2003, and 3-101, as last amended by Section 2, Chapter 196, O.S.L. 2003, 3-108, 3-314.1, as last amended by Section 2, Chapter 389, O.S.L. 2004, 3-314.2, as amended by Section 8, Chapter 113, O.S.L. 2004, 3-415, as amended by Section 24, Chapter 488, O.S.L. 2002, 3-452, as last amended by Section 5, Chapter 196, O.S.L. 2003, 3-453, as last amended by Section 6, Chapter 196, O.S.L. 2003, 3-460, as amended by Section 23, Chapter 46, O.S.L. 2003, 5-101, as last amended by Section 3, Chapter 394, O.S.L. 2003, 5-104, 5-207, as last amended by Section 17, Chapter 113, O.S.L. 2004, 7-101, as amended by Section 39, Chapter 46, O.S.L. 2003 and 9-101, as amended by Section 47, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2004, Sections 1-103, 1-107, 1-109, 1-110, 2-103, 2-107, 2-109, 3-101, 3-314.1, 3-314.2, 3-415, 3-452, 3-453, 3-460, 5-101, 5-207, 7-101 and 9-101), which relate to mental health definitions, the Department of Mental Health and Substance Abuse Services Board members, officers, employees, offices, equipment and institutions, alcohol and drug abuse services and courses, and care of the mentally ill; expanding definitions; allowing choice of county venue under certain circumstances; prohibiting court's refusal to hear a case for specified reasons; expanding use and disclosures for which an authorization is not required and stipulating specified conditions; clarifying responsibility between municipalities and sheriff's offices for transport of certain persons; providing for agreements between law enforcement agencies; expanding income sources for certain fund; expanding fund usages; expanding list of entities that may receive certain summary and specifying conditions; expanding qualifications of the Board of Mental Health and Substance Abuse Services; expanding types of positions that may be exempt from Merit System Classification; eliminating requirement for initial internal audit reports; deleting income

source and prohibition on use of certain revolving fund; expanding and clarifying list of Department of Mental Health and Substance Abuse facilities; expanding fund sources and usages for certain revolving fund; specifying types of adolescent treatment services to be established by the Commissioner of Mental Health and Substance Abuse Services; creating certified Eating Disorder Treatment Program; expanding list of facilities that must comply with Board standards; clarifying entities that may bring specified injunctive action; providing for establishment of rules and standards for eating disorder treatment programs; defining term; providing for certification application procedures, certification period and program compliance inspections; providing certification exemptions and providing for nonapplication; providing for violations of provisions and that certain action shall be prima facie evidence; creating Certified Gambling Addiction Treatment Program; providing for establishment of rules and standards for gambling addiction treatment programs; providing for certification application procedures, certification period and program compliance inspections; providing certification exemptions and providing for nonapplication; exempting other state agency programs and services; requiring cooperation and reporting by certified programs and providing for certification revocation for noncompliance; specifying annual payment for specified purpose; specifying entities that may bring specified injunctive action; providing for violations of provisions and that certain action shall be prima facie evidence; exempting additional facilities from the Oklahoma Alcohol and Drug Abuse Services Act; removing requirement for an assessment by a certified assessment agency for certain purpose; changing revolving fund to which certain fees shall be remitted; modifying certain title and establishing facilitator qualifications; providing for transfer of certain monies to specified fund; changing revolving fund to which certain fees shall be remitted; requiring promulgation of rules for specified purpose; providing for transfer of certain monies to certain fund; adding condition under which a person may be admitted to and confined in certain facility; providing penalty for false certification of certain conditions by any person; specifying conditions under which a person shall be transported to specified facilities for certain purpose; providing for alcohol- or drug-dependent determination; conditioning certain release upon specified conditions; construing act; providing for parental consent for specified treatment of a minor in certain facility; providing for request for discharge from a residential facility; repealing 43A O.S. 2001, Section 1-109, as last amended by Section 6, Chapter 168, O.S.L. 2004 (43A O.S. Supp. 2004, Section 1-109), which is a duplicate section relating to disclosure of confidential and privileged information; 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. 2001, Section 1-103, as last amended by Section 2, Chapter 394, O.S.L. 2003 (43A O.S. Supp. 2004, Section 1-103), is amended to read as follows:

Section 1-103. When used in this title, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Department" means the Department of Mental Health and Substance Abuse Services;

2. "Chair" means the chair of the Board of Mental Health and Substance Abuse Services;

3. "Mental illness" means a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;

4. "Board" means the "Board of Mental Health and Substance Abuse Services" as established by this law;

5. "Commissioner" means the individual selected and appointed by the Board to serve as Commissioner of Mental Health and Substance Abuse Services;

6. "Indigent person" means a person who has not sufficient assets or resources to support the person and to support members of the family of the person lawfully dependent on the person for support;

7. "Facility" means any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of the mentally ill or drug-dependent or alcohol-dependent persons including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites or institutions; provided that facility shall not mean a child guidance center operated by the State Department of Health;

8. "Patient" means a person under care or treatment in a facility pursuant to the Mental Health Law, or in an outpatient status;

9. "Care and treatment" means medical care and behavioral health services, as well as food, clothing and maintenance, furnished to a person;

10. Whenever in this law or in any other law, or in any rule or order made or promulgated pursuant to this law or to any other law, or in the printed forms prepared for the admission of patients or for statistical reports, the words "insane", "insanity", "lunacy", "mentally sick", "mental disease" or "mental disorder" are used, such terms shall have equal significance to the words "mental illness";

11. "Licensed mental health professional" means:

a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,

b. a physician licensed pursuant to ~~Chapter 11~~ Section 480 et seq. or ~~Chapter 14~~ Section 620 et seq. of Title 59 of the Oklahoma Statutes who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions,

c. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,

d. a professional counselor licensed pursuant to ~~Chapter 44~~ Section 1901 et seq. of Title 59 of the Oklahoma Statutes,

e. a person licensed as a clinical social worker pursuant to the provisions of the ~~Licensed~~ Social ~~Workers~~ Worker's Licensing Act,

f. a licensed marital and family therapist as defined in ~~Chapter 44A~~ Section 1925.1 et seq. of Title 59 of the Oklahoma Statutes,

g. a licensed behavioral practitioner as defined in Chapter 44B of Title 59 of the Oklahoma Statutes, or

h. an advanced practice nurse as defined in ~~Chapter 12~~ Section 567.1 et seq. of Title 59 of the Oklahoma Statutes specializing in mental health;

12. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

13. a. "Person requiring treatment" means:

(1) a person who because of a mental illness of the person represents a risk of harm to self or others,

(2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others, or

(3) a person who appears to require inpatient treatment:

(a) (i) for a previously diagnosed history of schizophrenia, bipolar disorder, or major depression with suicidal intent, or

(ii) due to the appearance of symptoms of schizophrenia, bipolar disorder, or major depression with suicidal intent, and

(b) for whom such treatment is reasonably believed will prevent progressively more debilitating mental impairment.

Nothing in divisions (1) and (2) of this subparagraph shall be limited by the provisions of division (3) of this subparagraph.

b. ~~Person~~ Unless a person also meets the criteria established in subparagraph a of this paragraph, person requiring treatment shall not mean:

(1) a person whose mental processes have been weakened or impaired by reason of advanced years,

(2) a mentally retarded or developmentally disabled person as defined in Title 10 of the Oklahoma Statutes,

(3) a person with seizure disorder, or

(4) a person with a traumatic brain injury~~,~~ ~~unless the person also meets the criteria set forth in subparagraph a of this paragraph~~;

14. "Petitioner" means a person who files a petition alleging that an individual is a person requiring treatment;

15. "Executive director" means the person in charge of a facility as defined in this section;

16. "Private hospital or institution" means any general hospital maintaining a neuro-psychiatric unit or ward, or any private hospital or facility for care and treatment of a person having a mental illness, which is not supported by state or federal government, except that the term shall include the Oklahoma Memorial Hospital Neuro-psychiatric Unit. The term “private hospital” or “institution” shall not include nursing homes or other facilities maintained primarily for the care of elderly and disabled persons;

17. "Individualized treatment plan" means a proposal developed during the stay of an individual in a facility, under the provisions of this title, which is specifically tailored to the treatment needs of the individual. Each plan shall clearly include the following:

a. a statement of treatment goals or objectives, based upon and related to a clinical evaluation, which can be reasonably achieved within a designated time interval,

b. treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to each of these goals and which include specific prognosis for achieving each of these goals,

c. identification of the types of professional personnel who will carry out the treatment procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law,

d. documentation of involvement by the individual receiving treatment and, if applicable, the accordance of the individual with the treatment plan, and

e. a statement attesting that the executive director of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the home community of the individual; and

18. "Risk of harm to self or others" means:

a. a substantial risk of immediate physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other self-inflicted or bodily harm,

b. a substantial risk of immediate physical harm to another person or persons as manifested by evidence of

violent behavior directed toward another person or persons,

c. having placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious threats,

d. a reasonable certainty that without immediate treatment severe impairment or injury will result to the person alleged to be a person requiring treatment as manifested by the inability of the person to avoid or protect self from such impairment or injury, or

e. a substantial risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community.

SECTION 2. AMENDATORY 43A O.S. 2001, Section 1-107, as last amended by Section 1, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2004, Section 1-107), is amended to read as follows:

Section 1-107. A. Civil actions for involuntary commitment of a person may be brought in any of the following counties:

1. The person's county of residence;

2. The county where the person was first taken into protective custody; or

3. The county in which the person is being held on emergency detention.

B. <u>If a civil action for involuntary commitment can be brought in more than one county pursuant to the provisions of subsection A of this section, the action may be filed in any of such counties. No court shall refuse any case solely because the action may have been brought in another county.</u>

C. 1. Hearings in actions for involuntary commitment may be held within the mental health facility in which the person is being detained or is to be committed whenever the judge deems it to be in the best interests of the patient.

2. Such hearings shall be conducted by any judge designated by the presiding judge of the judicial district. Hearings may be held in an area of the facility designated by the executive director and agreed upon by the presiding judge of that judicial district.

~~C.~~ D. The court may conduct any nonjury hearing required or authorized pursuant to the provisions of this title for detained or confined persons, at the discretion of the judge, by video teleconferencing after advising the person subject to possible detention or commitment of his or her constitutional rights. If the video teleconferencing hearing is conducted, the image of the detainee or person subject to commitment may be broadcast by secure video to the judge. A secure video system shall provide for two-way communications including image and sound between the detainee and the judge.

~~D.~~ E. The provisions for criminal venue as provided otherwise by law shall not be applicable to proceedings encompassed by commitment statutes referred to in this title which are deemed civil in nature.

~~E.~~ F. Unless otherwise provided by law, the rules of civil procedure shall apply to all judicial proceedings provided for in this title, including, but not limited to, the rules concerning vacation of orders and appellate review.

SECTION 3. AMENDATORY 43A O.S. 2001, Section 1-109, as last amended by Section 3, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2004, Section 1-109), is amended to read as follows:

Section 1-109. A. 1. All mental health and drug or alcohol abuse treatment information, whether or not recorded, and all communications between a physician or psychotherapist and a patient

are both privileged and confidential. In addition, the identity of all persons who have received or are receiving mental health or drug or alcohol abuse treatment services shall be considered confidential and privileged.

2. Such information shall only be available to persons actively engaged in the treatment of the patient or in related administrative work. The information available to persons actively engaged in the treatment of the consumer or in related administrative work shall be limited to the minimum amount of information necessary for the person or agency to carry out its function.

3. Except as otherwise provided in this section, such information shall not be disclosed to anyone not involved in the treatment of the patient or related administrative work.

B. A person who is or has been a patient of a physician, psychotherapist, mental health facility, a drug or alcohol abuse treatment facility or service, other agency for the purpose of mental health or drug or alcohol abuse care and treatment shall be entitled to personal access to his or her mental health or drug or alcohol abuse treatment information, except the following:

1. Information contained in notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session, and that is separated from the rest of the patient’s medical record;

2. Information compiled in reasonable anticipation of or for use in a civil, criminal or administrative action or proceeding;

3. Information that is otherwise privileged or prohibited from disclosure by law;

4. Information the person in charge of the care and treatment of the patient determines to be reasonably likely to endanger the life or physical safety of the patient or another person;

5. Information created or obtained as part of research that includes treatment; provided, the patient consented to the temporary suspension of access while the research is ongoing. The patient's right of access shall resume upon completion of the research;

6. Information requested by an inmate that a correctional institution has determined may jeopardize the health, safety, security, custody or rehabilitation of the inmate or other person; and

7. Information obtained under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

C. 1. A valid written release for disclosure of mental health or drug or alcohol abuse treatment information shall have, at a minimum, the following elements:

a. the specific name or general designation of the program or person permitted to make the disclosure,

b. the name or title of the individual or the name of the organization to which disclosure is to be made,

c. the name of the patient whose records are to be released,

d. the purpose of the disclosure,

e. a description of the information to be disclosed,

f. the dated signature of the patient or authorized representative or both when required,

g. a statement of the right of the patient to revoke the release in writing and a description of how the patient may do so,

h. an expiration date, event or condition which, if not revoked before, shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given, and

i. if the release is signed by a person authorized to act for a patient, a description of the authority of such person to act.

2. A release is not valid if the document submitted has any of the following defects:

a. the expiration date has passed or the expiration event or condition is known to have occurred or to exist,

b. the release has not been filled out completely with respect to an element described in paragraph 1 of this section,

c. the release is known to have been revoked, or

d. any material information in the release is known to be false.

3. A revocation of a release as provided in this section shall be in writing and may be made at any time, except when:

a. information has already been released in reliance thereon,

b. the authorization was obtained as a condition of obtaining insurance coverage and other law provides the insurer with the right to contest a claim under the policy or the policy itself, or

c. the release was executed as part of a criminal justice referral.

4. Disclosure regarding a deceased patient shall require either a court order or a written release of an executor, administrator or personal representative appointed by the court, or if there is no such appointment, by the spouse of the patient or, if none, by any responsible member of the family of the patient. As used in this paragraph, "responsible family member" means the parent, adult child, adult sibling or other adult relative who was actively involved in providing care to or monitoring the care of the patient

as verified by the physician, psychologist or other person responsible for the care and treatment of such person.

D. Except as otherwise permitted, mental health and alcohol or substance abuse treatment information may not be disclosed without valid patient authorization or a valid court order issued by a court of competent jurisdiction. For purposes of this section, a subpoena by itself is not sufficient to authorize disclosure of mental health and alcohol or substance abuse treatment information.

E. An authorization shall not be required for the following uses and disclosures:

1. Disclosure by a health care provider of mental health information necessary to carry out such provider's own treatment, payment, or health care operations;

2. Communications to law enforcement officers regarding information directly related to the commission of a crime on the premises of a facility or against facility personnel, or a threat to commit such a crime. Such communications involving persons with substance abuse disorders shall be limited to the circumstances surrounding the incident, patient status, name and address of the patient and patient's last-known whereabouts;

3. A review preparatory to research, research on decedents information or research conducted when a waiver of authorization has been approved by either an institutional review board or privacy board;

4. Communications pursuant to a business associate agreement, qualified service organization agreement or a qualified service organization/business associate agreement. As used in this paragraph:

a. "business associate agreement" means a written signed agreement between a health care provider and an outside entity which performs or assists in the performance of a function or activity involving the

use or disclosure of individually identifiable health information on behalf of the health care provider,

b. "qualified service organization agreement" means a written, signed agreement between a health care provider and an outside entity which provides services to the health care provider's consumers that are different from the services provided by the health care provider, that allows the health care provider to communicate consumer information necessary for the outside entity to provide services to the health care provider's consumers without the need for an authorization signed by a consumer and in which the outside entity acknowledges that in receiving, storing, processing or otherwise dealing with any consumer information from the health care provider it is fully bound by the provisions of 42 C.F.R., Part 2 and, if necessary, will resist any efforts in judicial proceedings to obtain access to consumer information, except as permitted by 42 C.F.R., Part 2, and

c. "qualified service organization/business agreement" means a written, signed agreement between a health care provider and an outside entity which provides services to the health care provider's consumers that are different from the services provided by the health care provider, that allows the health care provider to communicate consumer information necessary for the outside entity to provide services to the health care provider's consumers without the need for an authorization signed by a consumer, and in which the outside entity acknowledges that in receiving, storing, processing or otherwise dealing with any consumer information from the health care provider it

is fully bound by the provisions 42 C.F.R., Part 2 and, if necessary, will resist any efforts in judicial proceedings to obtain access to consumer information, except as permitted by 42 C.F.R., Part 2. The agreement must also contain elements required by federal privacy regulations in 45 C.F.R., Parts 160 & 164;

5. Reporting under state law incidents of suspected child abuse or neglect to the appropriate authorities; provided, however, for disclosures involving an individual with a substance abuse disorder, this exception does not allow for follow-up communications;

6. Disclosure of patient-identifying information to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention;

7. Communications necessary for audit and evaluation activities;

8. When a program or facility director determines that an adult person with a substance abuse disorder has a medical condition which prevents the person from "knowing or effective action on his or her own behalf", the program or facility director may authorize disclosures for the sole purpose of obtaining payment for services. If the person has been adjudicated incompetent, the facility must seek permission to disclose information for payment from the legal guardian;

9. Reporting of such information as otherwise required by law; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder;

10. Communications to coroners, medical examiners and funeral directors for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law

and as necessary to carry out their duties; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder;

11. Communications to organ procurement organizations or other entities engaged in procurement, banking, or transplantation of cadaveric organs, eyes or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder; ~~and~~

12. Disclosure to professional licensure boards investigating alleged unethical behavior towards a patient; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder;

13. Disclosure to the parent of a minor for the purpose of notifying the parent of the location of his or her child; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder; and

14. When failure to disclose the information presents a serious threat to the health and safety of a person or the public; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder.

SECTION 4. AMENDATORY 43A O.S. 2001, Section 1-110, as last amended by Section 5, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2004, Section 1-110), is amended to read as follows:

Section 1-110. A. Sheriffs and peace officers shall be responsible for transporting individuals to and from designated sites or facilities for the purpose of examination, emergency detention, protective custody and inpatient services.

B. A municipal law enforcement agency shall be responsible for any individual found within such municipality's jurisdiction. The county sheriff shall be responsible for any individual found outside of a municipality's jurisdiction, but within the county.

C. The law enforcement agency transporting an individual to and from designated sites or facilities pursuant to the provisions of this section shall maintain responsibility for the transportation of such individual pending completion of the examination, emergency detention, protective custody and inpatient services.

D. Sheriffs and peace officers shall be entitled to reimbursement from the Department of Mental Health and Substance Abuse Services for transportation services associated with minors or adults requiring examination, emergency detention, protective custody and inpatient services.

~~C.~~ E. Any transportation provided by a sheriff or deputy sheriff or a peace officer on behalf of any county, city, town or municipality of this state, to or from any facility for the purpose of examination, admission, interfacility transfer, medical treatment or court appearance shall be reimbursed in accordance with the provisions of the State Travel Reimbursement Act.

F. Nothing in this section shall prohibit a law enforcement agency from entering into a lawful agreement with any other law enforcement agency to fulfill the requirements established by this section.

SECTION 5. AMENDATORY 43A O.S. 2001, Section 2-103, as amended by Section 5, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2004, Section 2-103), is amended to read as follows:

Section 2-103. A. The Board of Mental Health and Substance Abuse Services shall be composed of eleven (11) members, appointed by the Governor, with the advice and consent of the Senate, as follows:

1. One member, who shall be a physician licensed to practice in this state, and one member, who shall be a psychiatrist certified as a diplomate of the American Board of Psychiatry and Neurology, shall both be appointed from a list containing the names of not less than

three physicians and not less than three psychiatrists submitted to the Governor by the Oklahoma State Medical Association;

2. One member, who shall be an attorney licensed to practice in this state and shall be appointed from a list of not less than three names submitted to the Governor by the Oklahoma Bar Association;

3. One member, who shall be a psychologist, licensed to practice in this state, who shall be appointed from a list of not less than three names submitted to the Governor by the Oklahoma State Psychological Association;

4. Three members, qualified by education and experience in the area of substance abuse recovery, who shall be appointed from a list of not less than ten names submitted to the Governor by a state association of substance abuse recovery programs or organizations for terms ending on December 31, 2002, December 31, 2004, and December 31, 2006, respectively; ~~and~~

5. One member, qualified by experience in the area of ~~treating~~ domestic violence or sexual assault, who shall be appointed from a list of not less than three names submitted to the Governor by a state association of domestic violence and sexual assault programs or organizations for a term ending December 31, 2000; and

6. Three members who shall be citizens of this state, at least one of whom shall be either a current or former consumer of mental health services.

B. Upon expiration of the initial terms of each of the four members, a successor shall be appointed for a full term of seven (7) years.

C. No person shall be appointed a member of the Board who has been a member of the Legislature of this state within the preceding five (5) years.

D. The Board shall elect from among its members a chair and a vice-chair. The chair may call meetings at any time.

E. All regularly scheduled meetings of the Board shall be held at the Central Office of the Department of Mental Health and Substance Abuse Services, Oklahoma City, Oklahoma, unless otherwise scheduled. Six members shall constitute a quorum at any meeting, and all action may be taken by an affirmative vote of the majority of the members present at any such meeting.

F. The action taken by the Board on any matter, or any document passed by the Board, shall be considered official when such action is placed in writing and signed by the chair or vice-chair.

G. The duties of the Board shall pertain to the care, treatment, and hospitalization of persons with mental illness, alcohol- or drug-dependent persons, and victims of domestic violence or sexual assault.

H. Members of the Board of Mental Health and Substance Abuse Services shall be allowed their necessary travel expenses pursuant to the provisions of the State Travel Reimbursement Act.

SECTION 6. AMENDATORY 43A O.S. 2001, Section 2-107, as amended by Section 4, Chapter 217, O.S.L. 2003 (43A O.S. Supp. 2004, Section 2-107), is amended to read as follows:

Section 2-107. A. 1. There is hereby created in the State Treasury a revolving fund for the Department of Mental Health and Substance Abuse Services to be designated the "Capital Outlay Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of income as provided in this section <u>and any monies transferred by the Department into the fund</u>.

2. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department for the purposes described in this section <u>and for improvements to real property owned by the Department or held in the Department's trust as authorized by Section 2-111 of this title</u>. Expenditures from the fund shall be made upon warrants issued by the State Treasurer

against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. On and after July 1, 1988, no easement, right-of-way, oil and gas lease or surface lease on any land used or occupied by any institution, under the jurisdiction of the Board of Mental Health and Substance Abuse Services, shall be granted or conveyed without the approval of the Board. All monies hereafter received or derived from such easements, rights-of-way and leases, including, but not limited to, rentals and royalties for leases and from sale of equipment, shall be deposited in the Capital Outlay Fund of the Department of Mental Health and Substance Abuse Services and used by the Board for capital improvement at any Department of Mental Health and Substance Abuse Services facility <u>and for improvements to real property owned by the Department or held in the Department's trust as authorized by Section 2-111 of this title</u>, except as otherwise provided by the Legislature.

SECTION 7. AMENDATORY 43A O.S. 2001, Section 2-109, as amended by Section 6, Chapter 113, O.S.L. 2004, is amended to read as follows:

Section 2-109. A. The Board of Mental Health and Substance Abuse Services is authorized and directed to establish the Office of Consumer Advocacy within the Department of Mental Health and Substance Abuse Services and to employ such personnel as may be necessary to carry out the purposes of Section 2-108 of this title.

1. The chief administrative officer of the Office of Consumer Advocacy shall be the Advocate General, who shall be an attorney admitted to practice in the State of Oklahoma with a minimum of three (3) years experience. The Advocate General shall report to the Board and be supervised by the Board, and may be dismissed only for cause.

2. The Advocate General shall have the following powers and duties:

a. to serve as an advocate, but not as an attorney, for individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, and, if an individual needs legal counsel, advise the individual of the right to seek counsel and refer the individual to counsel, if necessary,

b. to supervise personnel assigned to the Office of Consumer Advocacy,

c. to monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department,

d. to investigate unresolved grievances and allegation of abuse, neglect and improper treatment of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department,

e. to access facilities operated by, subject to certification by or under contract with the Department and the records of such facilities. Reasonable access shall be granted for the purposes of conducting investigations of abuse, neglect and improper treatment, and performing other activities as necessary to monitor care and treatment provided by such facilities,

f. to access the records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Advocate General,

g. to submit a report of the results of investigations of abuse to the appropriate district attorney and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency,

h. to make recommendations to the Commissioner of Mental Health and Substance Abuse Services and provide regular or special reports regarding investigations and unresolved grievances to the Commissioner and the Board, and

i. to perform such other duties as assigned by the Board.

B. The Advocate General and the staff of the Office of Consumer Advocacy shall not act as attorneys on behalf of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, except that they shall have the authority to file habeas corpus actions on behalf of such individuals and appear on their behalf in civil commitment and criminal post-commitment proceedings, and also appear on behalf of Department consumers in proceedings for writs of mandamus.

C. Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials and reports related to investigations by the Office of Consumer Advocacy are confidential and contain privileged information. Accordingly, such records, materials and reports shall not be open to public inspection nor their contents disclosed, nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid.

1. An order of the court authorizing the inspection, release or disclosure of information, records, materials and reports related to investigations by the Office of Consumer Advocacy shall be entered by a court only after a review of the records and a determination, with due regard for the confidentiality of the information and

records and the privilege of the persons identified in the records, that a compelling reason exists, any applicable privilege has been waived and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

2. This section shall not be construed as prohibiting the Department or the Office of Consumer Advocacy from summarizing the outcome of an investigation, stating the allegation and finding. The summary may be provided to the following individuals and entities as long as the individuals or entities agree to protect the summary from disclosure:

a. the person suspected of abuse, neglect or improper treatment,

b. the person subject to the alleged abuse, neglect or improper treatment,

c. the person who reported an allegation,

d. the state and federal oversight, licensing or accrediting agency, and

e. the administrator of a facility certified by or under contract with the Department at which the alleged abuse, neglect or improper treatment occurred.

SECTION 8. AMENDATORY 43A O.S. 2001, Section 2-203, is amended to read as follows:

Section 2-203. The Commissioner of Mental Health and Substance Abuse Services shall classify as a part of the Merit System of Personnel Administration all positions for which there are established Merit System Classifications, except those positions unique to hospital and clinic functions, those positions held by employees of the Department of Mental Health and Substance Abuse Services who perform behavioral health services, those positions in facilities that were formerly privately operated but are now under the operational and management control of the Department, or those associated administrative and support employees whose salaries are

paid from contractual agreements with managed care companies, health maintenance organizations, preferred provider organizations, hospital or health care networks, insurance plans, private business or other government agencies; provided, the employment of personnel whose salaries are paid from such contractual agreements shall be limited to the duration of the contracts or renewals thereof under which such personnel are employed. Provided further, no employee shall have the salary of that employee decreased as a result of the classification action herein directed.

SECTION 9. AMENDATORY 43A O.S. 2001, Section 2-205, is amended to read as follows:

Section 2-205. The Department of Mental Health and Substance Abuse Services is hereby directed to employ one or more internal auditors to establish and perform an effective and comprehensive internal audit program. Such program shall include, but not be limited to, reviews of accounting procedures, internal control, financial management and compliance with laws, regulations, policies and executive and legislative directives for the Department's administrative offices, institutions, community mental health centers and contractors. Internal audit ~~reports, including initial and~~ final reports, shall be made directly to the Governor, the State Auditor and Inspector, the Legislative Service Bureau, the Board of Mental Health and Substance Abuse Services and the Commissioner of Mental Health and Substance Abuse Services.

SECTION 10. AMENDATORY 43A O.S. 2001, Section 2-303, is amended to read as follows:

Section 2-303. There is hereby created in the State Treasury a revolving fund for the Department of Mental Health and Substance Abuse Services to be designated the "Department of Mental Health and Substance Abuse Services Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies received by each facility and office of the

Department as reimbursements from persons and agencies for the care of patients; reimbursements from other state agencies and entities of government; all reimbursements received by the Department from the United States government or pursuant to proceedings in district court to enforce claims for the cost of care and treatment of patients; ~~proceeds from enrollment fees for alcohol and drug substance abuse courses;~~ earnings and proceeds in the conduct and management of the dairy, farm, truck, garden, livestock and any industries of ~~said~~ such facilities; receipts from sale of excess byproducts, excess property and salvage items; certification fees; gifts, donations and bequests; and receipts from other ancillary services, not otherwise provided by law.

All monies accruing to the credit of ~~said~~ such fund are hereby appropriated and may be budgeted and expended by the Department of Mental Health and Substance Abuse Services for the general operating expenses of facilities and offices of the Department of Mental Health and Substance Abuse Services. ~~No additions to the existing buildings or construction of any new buildings shall be paid for from the fund, unless provided for by law.~~ Expenditures from ~~said~~ the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 11. AMENDATORY Section 2, Chapter 354, O.S.L. 2003 (43A O.S. Supp. 2004, Section 2-311), is amended to read as follows:

Section 2-311. There is hereby created in the State Treasury a revolving fund for the Department of Mental Health and Substance Abuse Services to be designated the Community-based Substance Abuse Revolving Fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department of Mental Health and Substance Abuse Services from low-point beer permits pursuant to Section 163.7 of Title 37 of the

Oklahoma Statutes, enrollment fees for alcohol and drug substance abuse courses pursuant to the provisions of Section 3-453 of this title, and fees from certification of assessment agencies and assessment personnel pursuant to the provisions of Section 3-460 of this title. All monies accruing to the credit of ~~said~~ the fund are hereby appropriated and may be budgeted and expended by the Department of Mental Health and Substance Abuse Services for the purpose of providing training and administrative services pursuant to the provisions of Sections 3-453 and 3-460 of this title, and contracting with private facilities, organizations and tribal programs to provide treatment, counseling, rehabilitation, and other related services directed toward alcohol- and drug-dependent persons. Expenditures from ~~said~~ the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 12. AMENDATORY 43A O.S. 2001, Section 3-101, as last amended by Section 2, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2004, Section 3-101), is amended to read as follows:

Section 3-101. The facilities within the Department of Mental Health and Substance Abuse Services, which shall be maintained for residents of the state, are:

1. Griffin Memorial Hospital, Norman;

2. Oklahoma Forensic Center, Vinita;

3. Oklahoma Youth Center, Norman;

4. Tulsa Center for Behavioral Health;

5. Carl Albert Community Mental Health Center, McAlester;

6. Jim Taliaferro Community Mental Health Center, Lawton;

7. Central Oklahoma Community Mental Health Center, Norman;

8. Bill Willis Community Mental Health and Substance Abuse Services Center, Tahlequah;

9. Northwest Center for Behavioral Health, Woodward; ~~and~~

10. Oklahoma County Crisis Intervention Center, Oklahoma City;

11. Norman Alcohol and Drug Treatment Center; and

12. Vinita Alcohol and Drug Treatment Center.

SECTION 13. AMENDATORY 43A O.S. 2001, Section 3-108, is amended to read as follows:

Section 3-108. The Commissioner of Mental Health and Substance Abuse Services is hereby authorized and directed to establish an appropriate room or ward for ~~proper treatment and rehabilitation of minor addicts of regulated narcotic drugs~~ alcohol and other drug treatment services for adolescents, with special emphasis ~~to~~ on the rehabilitation of a patient during treatment, and to provide an adequate program for reestablishment into society upon release.

SECTION 14. AMENDATORY 43A O.S. 2001, Section 3-314.1, as last amended by Section 2, Chapter 389, O.S.L. 2004 (43A O.S. Supp. 2004, Section 3-314.1), is amended to read as follows:

Section 3-314.1 A. The Board of Mental Health and Substance Abuse Services shall adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic and sexual assault services in this state. These facilities shall be known as "Certified Domestic Violence Shelters" or "Certified Domestic Violence Programs" or "Certified Sexual Assault Programs" or "Certified Treatment Programs for Batterers", as applicable.

B. Applications for certification as a certified domestic violence shelter, domestic violence program, sexual assault program or treatment program for batterers, pursuant to the provisions of this section, shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms. The Board, or the Commissioner upon delegation by the Board, may certify the shelter or program for a period of three (3) years subject to renewal as provided in the rules promulgated by the Board. Nothing in this

section shall preclude the Department from making inspection visits to a shelter or program to determine contract or program compliance.

C. Licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, licensed marital and family therapists, licensed behavioral practitioners, and licensed professional counselors shall be exempt from certification requirements; provided, however, these exemptions shall only apply to individual professional persons in their private practice and not to any domestic violence program or sexual assault program operated by such person.

D. Facilities providing services for victims or survivors of domestic abuse or sexual assault ~~and~~, any dependent children of such victims or survivors, or services to batterers shall comply with standards adopted by the Board; provided, that the certification requirements and standards adopted by the Board shall not apply to programs and services offered by the State Department of Health and the Department of Human Services. The domestic violence or sexual assault programs certified pursuant to the provisions of this section shall cooperate with inspection personnel of the state and shall promptly file all reports required by the Department. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation of certification, after proper notice and hearing. Certified domestic violence shelters and domestic violence and sexual assault programs shall report client services electronically using a unique identifier for services reported as domestic violence and sexual assault services. Certified domestic violence shelters and domestic violence and sexual assault programs shall not be required to electronically report data which:

1. Would disclose the identity of individual receiving domestic violence and/or sexual assault services; or

2. Could increase the risk of harm to the client if reported.

E. The Department 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.

SECTION 15. AMENDATORY 43A O.S. 2001, Section 3-314.2, as amended by Section 8, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2004, Section 3-314.2), is amended to read as follows:

Section 3-314.2 A. The Attorney General, the Department of Mental Health and Substance Abuse Services ~~and~~ or any district attorney may bring an action for an injunction against any domestic violence program or sexual assault program found to be in violation of the provisions of Section 3-314.1 of this title or of any order or determination of the Department.

B. In any action for an injunction brought pursuant to this section, any findings of the Department, after hearing and due notice, shall be prima facie evidence of the facts found therein.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-320 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of eating disorder treatment programs and for private facilities and organizations that offer eating disorder treatment services in this state. Such facilities and organizations shall be known as "Certified Eating Disorder Treatment Programs".

B. For purposes of this section, "eating disorder treatment" means any treatment for anorexia nervosa, bulimia nervosa, or any other severe disturbances in eating behavior specified in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

C. Applications for certification as a certified eating disorder treatment program, pursuant to the provisions of this section, shall be made to the Department of Mental Health and

Substance Abuse Services on prescribed forms. The Board, or the Commissioner upon delegation by the Board, may certify the program for a period of three (3) years subject to renewal as provided in the rules promulgated by the Board. Nothing in this section shall preclude the Department from making inspection visits to a program to determine program compliance.

D. Licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, licensed marital and family therapists, licensed behavioral practitioners, and licensed professional counselors shall be exempt from certification requirements; provided, however, these exemptions shall only apply to individual professional persons in their private practices and not to any eating disorder treatment program operated by such person.

E. The Department is hereby authorized to collect from each applicant the sum of Three Hundred Dollars ($300.00) to defray the costs incurred in the certification procedure.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-321 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General, the Department of Mental Health and Substance Abuse Services, or any district attorney may bring an action for an injunction against any eating disorder treatment program found to be in violation of the provisions of Section 15 of this act, or any order or determination of the Department.

B. In any action for an injunction brought pursuant to the provisions of this section, any findings of the Department, after hearing and due notice, shall be prima facie evidence of the facts found therein.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-322 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of gambling addiction treatment programs and for private facilities and organizations which offer gambling addiction treatment services in this state. These facilities and organizations shall be known as "Certified Gambling Addiction Treatment Programs".

B. Applications for certification as a certified gambling addiction treatment program, pursuant to the provisions of this section, shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms. The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may certify the program for a period of three (3) years, subject to renewal as provided in rules promulgated by the Board. Nothing in this section shall preclude the Department from making inspection visits to a program to determine program compliance.

C. Licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, licensed marital and family therapists, licensed behavioral practitioners, and licensed professional counselors shall be exempt from certification requirements; provided, however, these exemptions shall only apply to individual professional persons in their private practices and not to any gambling addiction treatment program operated by the person.

D. Facilities providing services for gambling addiction shall comply with standards promulgated by the Board; provided, that the certification requirements and standards shall not apply to programs and services offered by other state agencies. The gambling addiction treatment programs certified pursuant to the provisions of this section shall cooperate with inspection personnel of the state and shall promptly file all reports required by the Department. Failure to comply with rules and standards of the Board shall be

ground for revocation of certification, after proper notice and hearing.

E. The Department is hereby authorized to collect from each applicant the sum of Three Hundred Dollars ($300.00) to defray the costs incurred in the certification procedure.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-323 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General, the Department of Mental Health and Substance Abuse Services, or any district attorney may bring an action for an injunction against any gambling addiction treatment program found to be in violation of the provisions of Section 17 of this act, or any order or determination of the Department.

B. In any action for an injunction brought pursuant to the provisions of this section, any findings of the Department, after hearing and due notice, shall be prima facie evidence of the facts found therein.

SECTION 20. AMENDATORY 43A O.S. 2001, Section 3-415, as amended by Section 24, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2004, Section 3-415), is amended to read as follows:

Section 3-415. A. 1. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification for private facilities and organizations which provide treatment, counseling and rehabilitation services directed toward alcohol- and drug-dependent persons. 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 and rehabilitation.

2. Any person violating the requirement that only certified facilities may receive and assist alcohol- and drug-dependent

persons by providing treatment to alcohol- and drug-dependent persons, upon conviction, shall be guilty of a misdemeanor.

B. 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 Department of Mental Health and Substance Abuse Services on prescribed forms.

C. The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, 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 rules and standards promulgated by the Board, pending state or federal investigations, or verified complaints concerning matters affecting the proper operation or ownership of the facility, the Board may postpone, deny renewal of, revoke, or suspend the certification of the facility.

E. Licensed physicians, licensed psychologists, licensed social workers, registered nurses, licensed professional counselors, licensed marriage and family therapists, licensed behavioral practitioners, individual members of the clergy, and certified alcohol or drug abuse counselors are exempt from the regulations 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, psychiatric and medical surgical facilities, programs or facilities operated by a state agency, programs conducted and facilities operated by Alcoholics Anonymous, or the Salvation Army are also exempt from the provisions of the Oklahoma Alcohol and Drug Abuse Services Act.

F. Certified services for the alcohol – or drug-dependent person shall comply with standards adopted by the Board. 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.

G. 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 Board.

H. 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.

I. The Board 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.

J. Any materials or information received by the Department from an applicant regarding the applicant's financial status shall not be construed to be open records pursuant to the Oklahoma Open Records Act.

SECTION 21. AMENDATORY 43A O.S. 2001, Section 3-452, as last amended by Section 5, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2004, Section 3-452), is amended to read as follows:

Section 3-452. Except as otherwise provided by law, in any case in a municipal or district court of proper jurisdiction wherein the defendant is charged with actual physical control of or operation of a motor vehicle while under the influence of or impaired by alcohol or a drug, the court may:

1. Upon a plea of guilty or nolo contendere, or stipulation by the defendant, or a verdict, but before a judgment of guilt is

entered, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the condition that the defendant enroll in, attend and successfully complete, at his or her own expense, an alcohol and drug substance abuse course or an alcohol and drug substance abuse treatment program, or both as identified by an assessment conducted by a certified ~~assessment agency or~~ assessor; or

2. Upon a conviction, suspend the execution of sentence, with or without probation, upon the condition that the defendant enroll in, attend and successfully complete, at his or her own expense, an alcohol and drug substance abuse course or an alcohol and drug substance abuse treatment program as provided by Section 3-453 of this title.

SECTION 22. AMENDATORY 43A O.S. 2001, Section 3-453, as last amended by Section 6, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2004, Section 3-453), is amended to read as follows:

Section 3-453. A. Alcohol and drug substance abuse courses shall be offered only by nonprofit educational institutions of higher learning, governmental or nonprofit organizations.

B. Enrollment fees for those attending the courses shall be set by the Department of Mental Health and Substance Abuse Services and shall be within a range of not less than Sixty-five Dollars ($65.00) and not more than:

1. One Hundred Fifty Dollars ($150.00) for a ten-hour course; and

2. Three Hundred Sixty Dollars ($360.00) for a twenty-four-hour course.

C. Ten percent (10%) of each fee collected shall be remitted by the institution or organization offering alcohol and drug substance abuse courses to the State Treasurer to be credited to the ~~Department of Mental Health and~~ Community-based Substance Abuse ~~Services~~ Revolving Fund in the State Treasury and shall be used to

provide substance abuse services to the indigent. Five percent (5%) of each fee collected by the Department shall be used for the administrative costs related to providing such services.

D. Enrollment in the course shall not be limited to persons ordered to enroll, attend and successfully complete the course.

E. All alcohol and drug substance abuse courses related to driver license revocation and course ~~instructors~~ facilitators shall be approved and certified by the Department of Mental Health and Substance Abuse Services.

F. The Department of Mental Health and Substance Abuse Services, in consultation with D.U.I. School Administrators of Oklahoma, is authorized to promulgate rules governing:

1. Minimum curriculum requirements for such courses;

2. Facilities, equipment and instructional materials for such courses;

3. Minimum qualifications for course ~~instructors~~ facilitators;

4. Grounds for reprimand and for revocation, suspension or nonrenewal of the authority to conduct such courses and for revocation of an ~~instructor's~~ facilitator's certification;

5. Attendance requirements; and

6. Guidelines for certifying to the Department of Mental Health and Substance Abuse Services and the Department of Public Safety successful completion of such course.

G. The Department shall require that each ten-hour course shall be conducted in no less than three sessions of no more than three and one-half (3 1/2) hours each on three (3) separate days. For a twenty-four-hour course, the Department shall require that:

1. Each such course shall consist of at least twenty-four (24) hours;

2. Each such course shall consist of no more than two (2) hours of education on any given day, nor more than four (4) hours in a

given week, and shall not contain more than ten percent (10%) films on any one specialized area;

3. Each ~~instructor~~ facilitator shall be certified and ~~have at least three (3) years' teaching experience~~ shall:

a. possess a bachelor's degree in behavioral or health care sciences education, psychology, social work or chemical dependency,

b. possess at least two (2) years of verifiable full-time equivalent experience in the addiction treatment field,

c. provide documentation verifying observation of one complete alcohol and drug substance abuse course conducted by a certified facilitator. Such observation must be completed and verified to the Department prior to attending facilitator training,

d. provide proof of attendance at a facilitator training session and pass the Department's certification examination for the ten-hour alcohol and drug substance abuse course facilitator, and

e. provide verification of having conducted a complete alcohol and drug substance abuse course under the supervision of a certified alcohol and drug substance abuse course facilitator or a Department representative;

4. The facilitator candidate shall be allowed one (1) year to complete all training requirements. Failure to meet all requirements within one (1) year shall result in denial of certification. To be reconsidered, the candidate shall be required to reapply to the Department;

5. A facilitator for a twenty-four-hour alcohol and drug substance abuse course shall:

a. be a ten-hour facilitator in good standing with a minimum of one (1) year of experience,

b. attend the twenty-four-hour alcohol and drug substance abuse course facilitator training and pass the Department certification examination for the twenty-four-hour alcohol and drug substance abuse course facilitator, and

c. conduct a complete twenty-four-hour alcohol and drug substance abuse course under the supervision of a certified alcohol and drug substance abuse course facilitator or a Department representative; and

~~4.~~ 6. No more than twenty-four (24) students shall be allowed in a given class.

H. Any institution or organization authorized under this act to conduct an alcohol and drug substance abuse course shall certify to the Department of Public Safety all persons who successfully complete such course.

I. Any person participating in a substance abuse treatment program recommended as a result of an assessment pursuant to Section 3-460 of this title shall be required to pay all or part of the actual cost incurred for treatment of the person, if the court determines the person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the person shall pay.

J. Application fees for certification of course ~~instructors~~ facilitators shall be set by the Board to defray the costs of administering the program and shall be:

1. Not less than One Hundred Dollars ($100.00) and not more than Two Hundred Dollars ($200.00) upon initial application; and

2. Not less than Twenty-five Dollars ($25.00) and not more than Fifty Dollars ($50.00) upon annual renewal.

K. The Director of the Office of State Finance shall transfer unobligated monies generated from the fees in subsection C of this section, deposited before the effective date of this act, from the Department of Mental Health and Substance Abuse Services Revolving Fund to the Community-based Substance Abuse Revolving Fund, in amounts calculated by the Department.

SECTION 23. AMENDATORY 43A O.S. 2001, Section 3-460, as amended by Section 23, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2004, Section 3-460), is amended to read as follows:

Section 3-460. A. The Department of Mental Health and Substance Abuse Services shall certify ~~assessment agencies and~~ assessment personnel for the purpose of conducting alcohol and drug assessment and evaluation programs related to driver license revocation.

B. Application fees for certification of assessment personnel shall be set by the Department to defray the costs of administering the program and shall be:

1. Not less than One Hundred Dollars ($100.00) and not more than Two Hundred Dollars ($200.00) upon initial application; and

2. Not less than Twenty-five Dollars ($25.00) and not more than Fifty Dollars ($50.00) upon annual renewal.

C. The fee for those undergoing an assessment and evaluation pursuant to this section shall be One Hundred Seventy-five Dollars ($175.00), and ten percent (10%) of each fee collected shall be remitted by the assessment agency or personnel to the State Treasurer to be credited to the ~~Department of Mental Health and~~ Community-based Substance Abuse ~~Services~~ Revolving Fund in the State Treasury and shall be used to provide substance abuse services to the indigent. Five percent (5%) of each fee collected by the Department shall be used for the administrative costs related to providing such services. One Dollar ($1.00) from each assessment

fee collected shall be designated for training assessment personnel in the best practice, evaluation and assessment procedures.

D. The Board is authorized to promulgate such rules as are necessary to implement the provisions of this act.

E. The Director of the Office of State Finance shall transfer any unobligated monies generated by the fees in subsection C of this section, deposited before the effective date of this act, from the Department of Mental Health and Substance Abuse Services Revolving Fund to the Community-based Substance Abuse Revolving Fund, in amounts calculated by the Department.

SECTION 24. AMENDATORY 43A O.S. 2001, Section 5-101, as last amended by Section 3, Chapter 394, O.S.L. 2003, is amended to read as follows:

Section 5-101. A. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care, and who is not in confinement in ~~a~~ any jail or ~~adult lockup~~ correctional facility on a criminal charge or conviction and who has no criminal charges pending against him or her, may be admitted to and confined in a facility within the Department of Mental Health and Substance Abuse Services, a state psychiatric hospital, or a licensed private institution by compliance with any one of the following procedures:

1. Emergency admission;

2. On voluntary application; or

3. On involuntary court commitment.

B. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care and who has criminal charges pending against him or her but is not confined in ~~a~~ any jail or ~~adult lockup~~ correctional facility may be admitted to a facility within the Department or a licensed private institution pursuant to the provisions of subsection A of this section; provided, the facility or hospital shall be authorized to

take such reasonable steps as necessary to assure the protection of the public, the residents of the facility or hospital and the person~~,~~ including, but not limited to, segregation and private facilities. Provided further, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by Title 22 of the Oklahoma Statutes.

C. 1. Any person confined pursuant to a criminal charge shall only be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of Title 22 of the Oklahoma Statutes.

2. No person shall be deprived of his or her liberty on the grounds that such person is, or is supposed to have, a mental illness or is in need of mental health treatment, except in accordance with the provisions of the Mental Health Law.

SECTION 25. AMENDATORY 43A O.S. 2001, Section 5-104, is amended to read as follows:

Section 5-104. Any ~~physician~~ person who falsely certifies to the mental illness, alcohol dependency, or drug dependency of any person, or whose false certificates as to mental illness, alcohol dependency, or drug dependency of any person is proved to be the result of negligence or deficient professional skill, or who signs such a certificate for pecuniary reward, or promise thereof, or other consideration of value or operating to his or her advantage, other than the professional fee usually paid for such service, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be ~~sentenced to pay~~ punished by payment of a fine not to exceed One Thousand Dollars ($1,000.00), or ~~to~~ imprisonment in the county jail not to exceed one (1) year, or both such fine and imprisonment.

SECTION 26. AMENDATORY 43A O.S. 2001, Section 5-207, as last amended by Section 17, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2004, Section 5-207), is amended to read as follows:

Section 5-207. A. Any person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that immediate emergency action is necessary may be taken into protective custody and detained as provided pursuant to the provisions of this section. Nothing in this section shall be construed as being in lieu of prosecution under state or local statutes or ordinances relating to public intoxication offenses.

B. Any peace officer who reasonably believes that a person is a person requiring treatment as defined in Section 1-103 of this title shall take the person into protective custody. The officer shall make every reasonable effort to take the person into custody in the least conspicuous manner.

C. The officer shall prepare a written affidavit indicating the basis for the officer's belief that the person is a person requiring treatment and the circumstances under which the officer took the person into protective custody. The officer shall give a copy of the statement to the person or the person's attorney upon the request of either. If the officer does not make the determination to take an individual into protective custody on the basis of the officer's personal observation, the officer shall not be required to prepare a written affidavit. However, the person stating to be mentally ill, alcohol-dependent, or drug-dependent or the person upon whose statement the officer relies shall sign a written statement indicating the basis for such person's belief that the person is a person requiring treatment. Any false statement given to the officer by the person upon whose statement the officer relies shall be a misdemeanor and subject to the sanctions of Title 21 of the Oklahoma Statutes.

D. ~~The~~ <u>If the person is medically stable, the</u> officer shall immediately transport the person to the nearest facility designated by the Commissioner of Mental Health and Substance Abuse Services as an appropriate facility for emergency examinations. If, subsequent

to an emergency examination, it is determined that emergency detention is warranted, the officer shall transport the person to the nearest facility, designated by the Commissioner as appropriate for such detention, that has bed space available. If it is determined by the facility director or designee that the person is not medically stable, the officer shall transport the person to the nearest hospital or other appropriate treatment facility.

E. The parent, brother or sister who is eighteen (18) years of age or older, child who is eighteen (18) years of age or older, or guardian of the person, or a person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that emergency action is necessary may request the administrator of a facility designated by the Commissioner as an appropriate facility for an emergency examination to conduct an emergency examination to determine whether the condition of the person is such that emergency detention is warranted and, if emergency detention is warranted, to detain the person as provided in Section 5-206 of this title.

SECTION 27. AMENDATORY 43A O.S. 2001, Section 7-101, as amended by Section 39, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2004, Section 7-101), is amended to read as follows:

Section 7-101. A. The person in charge of a facility within the Department of Mental Health and Substance Abuse Services shall discharge a patient or permit the patient to leave the facility as provided herein.

B. The person in charge shall discharge a patient:

1. Who is no longer a risk to self or others as defined in Section 1-103 of this title; and

2. Who is capable of surviving safely in freedom alone or with the help of other state agencies, private entities, or willing and responsible family members or friends; provided, however, nothing in this section or Section 7-102 of this title shall be construed as

requiring any state agency or private entity to provide services except as voluntarily agreed to by the agency and consumer; and

3. For whom a discharge plan has been developed pursuant to the provisions of Section 7-102 of this title.

C. The person in charge may grant a convalescent leave or visiting status to a patient in accordance with policies prescribed by the Commissioner. The facility granting a convalescent leave or visiting status to a patient has no responsibility in returning the patient to the facility should such become necessary. A convalescent leave or visiting status may be granted rather than a discharge when the patient's complete recovery can be determined only by permitting the patient to leave the facility. The person in charge shall discharge a patient who has not returned to the facility within twelve (12) months from the time a convalescent leave or visiting status was granted. Any return from convalescent leave or visiting status must be on a voluntary basis.

D. In accordance with policies prescribed by the Commissioner, a person in charge may transfer a patient to an outpatient or other nonhospital status when, in the opinion of the person in charge, such transfer will not be detrimental to the public welfare or injurious to the patient and the necessary treatment may be continued on that basis; provided however, that before transferring the patient, the person in charge shall ensure that appropriate financial resources and appropriate services are available to receive and care for such patient after such transfer.

E. The person in charge of the facility shall notify the court that committed the patient that the patient has been discharged. Such notification shall be within forty-eight (48) hours after the actual discharge.

F. The expense of returning a patient from convalescent leave, outpatient status or visiting status shall be that of:

1. The party removing the patient from the facility; or

2. The Department. When it becomes necessary for the patient to be returned from the county where the patient happens to be, the Department shall reimburse the county pursuant to the provisions of the State Travel Reimbursement Act.

G. In the event authorization is necessary to accomplish the return of the patient to the facility, such authority is hereby vested in the judge of the district court in the county where the patient is located. Upon receipt of notice that the patient needs to be returned to the facility, the judge shall cause the patient to be brought before the court by issuance of a citation directed to the patient to appear and show cause why the patient should not be returned to the facility. The judge shall, if clear and convincing evidence is presented by testimony under oath that the patient should be returned to the facility, enter an order returning the patient. If there is a lack of clear and convincing evidence showing the necessity of such return, the patient shall immediately be released. Law enforcement officers are authorized to take into custody, detain and transport a patient pursuant to a citation or an order of the judge of the district court.

H. An attending physician of any patient admitted to a private facility may discharge a patient or permit the patient to leave the facility subject to the same provisions applicable to the discharge or release of a patient by the person in charge of a state facility.

SECTION 28. AMENDATORY 43A O.S. 2001, Section 9-101, as amended by Section 47, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2004, Section 9-101), is amended to read as follows:

Section 9-101. A. An alcohol- and/or drug-dependent person may apply for voluntary treatment directly to an approved treatment facility. A minor may apply for voluntary treatment subject to the provisions of Section 2602 of Title 63 of the Oklahoma Statutes. A minor not empowered by Section 2602 of Title 63 of the Oklahoma Statutes to consent to voluntary treatment or an incompetent person

may apply for voluntary treatment with the approval of the minor's parent, spouse or legal guardian. A parent of a minor may consent to the voluntary admission and treatment of the minor directly to an approved treatment facility for substance abuse treatment.

B. Subject to rules adopted by the Board of Mental Health and Substance Abuse Services, the administrator in charge of an approved treatment facility may determine who shall be admitted for treatment. When a person is refused admission to an approved treatment facility, the administrator, subject to rules adopted by the Board, shall refer the person to another approved treatment facility for treatment if possible and appropriate.

C. When a patient receiving inpatient care leaves an approved treatment facility, the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the approved treatment facility that the patient is an alcohol- or drug-dependent person who requires help, the facility shall arrange for assistance in obtaining supportive services and residential facilities if possible and appropriate.

D. If the patient is a minor or an incompetent person, the request for discharge from an inpatient or residential facility shall be made by a parent, spouse, or legal guardian, or by the minor if the minor was voluntarily admitted.

SECTION 29. REPEALER 43A O.S. 2001, Section 1-109, as last amended by Section 6, Chapter 168, O.S.L. 2004 (43A O.S. Supp. 2004, Section 1-109), is hereby repealed.

SECTION 30. This act shall become effective November 1, 2005.

50-1-1525 CJ 6/13/2015 1:19:44 AM