ENGROSSED SENATE
BILL NO. 1915

By: Cain of the Senate

and

Worthen of the House

An Act relating to mental health and substance abuse services; amending 43A O.S. 2001, Sections 1-103, as last amended by Section 1, Chapter 195, O.S.L. 2005, 1-109, as last amended by Section 3, Chapter 195, O.S.L. 2005, Section 14, Chapter 488, O.S.L. 2002, 3-315, as amended by Section 16, Chapter 46, O.S.L. 2003, 3-317, as amended by Section 17, Chapter 488, O.S.L. 2002, Section 19, Chapter 488, O.S.L. 2002, Section 16, Chapter 195, O.S.L. 2005, Section 18, Chapter 195, O.S.L. 2005, 3-403, as last amended by Section 4, Chapter 196, O.S.L. 2003, 3-415, as last amended by Section 17, Chapter 150, O.S.L. 2005, 3-601, as last amended by Section 22, Chapter 150, O.S.L. 2005, 3-602, as last amended by Section 25, Chapter 46, O.S.L. 2003, 5-206, as last amended by Section 16, Chapter 113, O.S.L. 2004, 5-207, as last amended by Section 26, Chapter 195, O.S.L. 2005, 5-208, as last amended by Section 38, Chapter 150, O.S.L. 2005, 5-410, as last amended by Section 1, Chapter 191, O.S.L. 2004, 5-411, as amended by Section 38, Chapter 488, O.S.L. 2002, 5-412, as amended by Section 39, Chapter 488, O.S.L. 2002, 5-414, as amended by Section 41, Chapter 488, O.S.L. 2002, 5-415, as last amended by Section 48, Chapter 150, O.S.L. 2005, 5-416, as last amended by Section 49, Chapter 150, O.S.L. 2005, 5-501, as last amended by Section 50, Chapter 150, O.S.L. 2005, 5-502, as last amended by Section 2, Chapter 110, O.S.L. 2005, 5-503, as last amended by Section 3, Chapter 110, O.S.L. 2005, Section 4, Chapter 110, O.S.L. 2005, 5-506, as last amended by Section 5, Chapter 110, O.S.L. 2005, 5-507, as last amended by Section 7, Chapter 130, O.S.L. 2003, 5-508, as last amended by Section 6, Chapter 110, O.S.L. 2005, 5-509, as last amended by Section 9, Chapter 130, O.S.L. 2003 and 5-512, as last amended by Section 12, Chapter 130, O.S.L. 2003 (43A O.S. Supp. 2005, Sections 1-103, 1-109, 3-306.1, 3-315, 3-317, 3-319, 3-320, 3-322, 3-403, 3-415, 3-601, 3-602, 5-206, 5-207, 5-208, 5-410, 5-411, 5-412, 5-414, 5-415, 5-416, 5-501, 5-502, 5-503, 5-505.1, 5-506, 5-507, 5-508, 5-509 and 5-512), which relate to the Department of Mental Health and Substance Abuse Services; clarifying language; authorizing the Department of Mental Health and Substance Abuse Services to establish and collect certain fees; setting limit on certain fees; authorizing the Department of Mental Health and Substance Abuse Services to enter into certain contracts; authorizing the Board of Mental Health to postpone, deny renewal of, revoke or suspend certain certification in specified circumstances; authorizing

the Department of Mental Health and Substance Abuse Services to promulgate certain rules; expanding authorized treatment to certain persons for substance abuse; deleting requirements for certificate of evaluation; specifying certain admittance of minors; deleting certain time restrictions on inpatient treatment; requiring certain notification from district attorney; repealing 43A O.S. 2001, Section 3-312, as amended by Section 1, Chapter 28, O.S.L. 2003 (43A O.S. Supp. 2005, Section 3-312), which relates to advisory committee; providing for codification; providing an effective date; and declaring an emergency.

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 1, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2005, 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 Section 480 et seq. or 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 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 Social Worker's Licensing Act,

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

g. a licensed behavioral practitioner as defined in Section 1930 et seq. of Title 59 of the Oklahoma Statutes, or

h. an advanced practice nurse as defined in 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, <u>or</u>

(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. 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;

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 <u>significant</u> 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 and immediate threats,

d. there exists a ~~reasonable certainty~~ substantial risk that without immediate ~~treatment~~ intervention 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 immediate serious physical ~~impairment or~~ injury to self, or immediate death, 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.

Unless a person also meets the criteria established in subparagraphs a through e of this paragraph, risk or harm to self or others does not mean a person who is homeless.

SECTION 2. AMENDATORY 43A O.S. 2001, Section 1-109, as last amended by Section 3, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2005, 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, but information disclosed pursuant to one of these exceptions must be limited to the minimum amount of information necessary:

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;

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;

14. Mental health records may be disclosed to parties in a judicial or administrative proceeding in cases involving a claim for personal injury or death against any practitioner of the healing arts, a licensed hospital, or a nursing facility or nursing home licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental condition of any other person or deceased person by or through whom the person rightfully claims;

15. Disclosure of patient-identifying information when it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody and the release is to a law enforcement authority for the purpose of identification and apprehension; and

16. 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 3. AMENDATORY Section 14, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2005, Section 3-306.1), is amended to read as follows:

Section 3-306.1 A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of a facility or organization that desires to be certified as a community mental health center.

B. Applications for certification as a community mental health center 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 community mental health centers for a period of three (3) years subject to renewal as provided in the rules promulgated by the Board.

C. The ~~Board~~ Department of Mental Health and Substance Abuse Services is authorized to establish ~~an application~~ and collect certification and renewal ~~fee of no more than One Hundred Fifty Dollars ($150.00) to defray the costs incurred in the certification process~~ fees for certification of community mental health centers as provided in Section 9 of this act.

D. The Department shall not enter into a contract with a community mental health center unless it is certified pursuant to this section.

E. Certified community mental health centers shall comply with standards adopted by the Board. Such standards 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.

F. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

SECTION 4. AMENDATORY 43A O.S. 2001, Section 3-315, as amended by Section 16, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2005, Section 3-315), is amended to read as follows:

Section 3-315. A. The Board of Mental Health and Substance Abuse Services shall adopt minimum standards for program certification for residential care homes operating as community residential mental health programs as provided in this section. The standards shall be adopted as rules and promulgated by the Board of Mental Health and Substance Abuse Services pursuant to the provisions of the Administrative Procedures Act.

B. The program certification standards adopted by the Board shall provide for a system of classification of community residential mental health programs based upon the level of care required by residents of the facility and establish minimum program certification standards for each classification. The program certification standards adopted by the Board for each classification shall be such that residential care facilities having a valid contract with the Department and licensed by the State Department of Health on July 1, 1988, shall be qualified and eligible for program certification within an appropriate classification.

C. The Department <u>of Mental Health and Substance Abuse Services</u> shall not enter into a contract with a residential care home unless such home is certified as a community residential mental health program. The Department shall terminate the contract of any home

that fails to meet contract provisions regarding financial statements.

D. The Department is authorized to establish and collect certification and renewal fees for certification of community residential mental health facilities and programs as provided in Section 9 of this act.

SECTION 5. AMENDATORY 43A O.S. 2001, Section 3-317, as amended by Section 17, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2005, Section 3-317), is amended to read as follows:

Section 3-317. A. The Board of Mental Health and Substance Abuse Services, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, shall certify community-based structured crisis centers for the provision of nonhospital emergency services for mental health and substance abuse crisis intervention. The Board shall promulgate rules for the certification of community-based structured crisis centers.

B. No community-based structured crisis center shall operate or continue to operate unless the facility complies with the rules promulgated by the Board and is certified as required by this section.

C. For the purposes of this section, "community-based structured crisis center" means any certified community mental health center or facility operated by the Department which is established and maintained for the purpose of providing community-based mental health and substance abuse crisis stabilization services including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse treatment services.

D. The Department of Mental Health and Substance Abuse Services is authorized to establish and collect certification and renewal fees for certification of community-based structured crisis centers as provided in Section 9 of this act.

SECTION 6. AMENDATORY Section 19, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2005, Section 3-319), is amended to read as follows:

Section 3-319. A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of facilities or organizations that desire to be certified as a program of assertive community treatment for the provision of community-based comprehensive treatment for persons with serious mental illness and related disorders.

B. Applications for certification as a program of assertive community treatment 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 of assertive community treatment for a period of three (3) years subject to renewal as provided in the rules promulgated by the Board. The Department is authorized to establish and collect certification and renewal fees for certification as programs of assertive community treatment as provided in Section 9 of this act.

C. The Department shall not enter into a contract with a program of assertive community treatment unless it is certified pursuant to this section.

D. No program of assertive community treatment shall operate or continue to operate unless the program complies with the rules promulgated by the Board and is certified as required by this section.

E. Failure to comply with regulations and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

SECTION 7. AMENDATORY Section 16, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2005, Section 3-320), is amended to read as follows:

Section 3-320. 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, registered nurses, 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 establish and collect ~~from each applicant the sum of Three Hundred Dollars ($300.00) to defray the costs incurred in the~~ certification ~~procedure~~ and renewal

fees for certification of eating disorder treatment programs as provided in Section 9 of this act.

SECTION 8. AMENDATORY Section 18, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2005, Section 3-322), is amended to read as follows:

Section 3-322. 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, registered nurses, 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 establish and collect ~~from each applicant the sum of Three Hundred Dollars ($300.00) to defray the costs incurred in the~~ certification ~~procedure~~ and renewal fees for certification of gambling addiction treatment programs as provided in Section 9 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-324 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Department of Mental Health and Substance Abuse Services is hereby authorized to establish and collect certification and renewal fees for certification of any program the Department is authorized by law to certify, to defray the costs incurred in the certification and renewal inspections and procedures.

B. The application and renewal fees for certification shall not exceed Three Hundred Dollars ($300.00).

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-325 of Title 43A, unless there is created a duplication in numbering, reads as follows:

The Department of Mental Health and Substance Abuse Services is authorized to contract with public and private entities for the purpose of providing treatment, evaluation, prevention and other services related to the Department’s duties set forth in this Title.

SECTION 11. AMENDATORY 43A O.S. 2001, Section 3-403, as last amended by Section 4, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2005, Section 3-403), is amended to read as follows:

Section 3-403. As used in the Oklahoma Alcohol and Drug Abuse Services Act:

1. "Approved treatment facility" means any facility which:

a. offers either inpatient, intermediate or outpatient treatment to any person suffering from alcohol or drug abuse, or alcohol- or drug-related problems, and

b. is certified by the Board of Mental Health and Substance Abuse Services;

2. An "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the community;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

4. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as the direct result of the consumption of alcohol or drugs;

5. "Medical detoxification" means diagnostic and treatment services performed by licensed facilities for acute alcohol intoxication, delirium tremens and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician and attendant

medical personnel including nurses, interns and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol;

6. "Nonmedical detoxification" means detoxification services for intoxicated clients with no apparent physical or neurological symptoms requiring medical treatment as a result of their intoxication. Nonmedical detoxification includes providing a bed, oral administration of fluids, three meals a day and the taking of the client's temperature, blood pressure and pulse at least once every six (6) hours for the duration of the client's stay in the nonmedical detoxification service;

7. "Inpatient treatment" means the process of providing residential diagnostic and treatment services on a scheduled basis;

8. "Intermediate care" means an organized therapeutic environment in which a client may receive diagnostic services, counseling, vocational rehabilitation and/or work therapy while benefiting from the support which a full or partial residential setting can provide. Intermediate care should provide a transition between the inpatient detoxification facility and reintegration into community life. Intermediate care must include provision for a bed, three meals a day and medical support if needed;

9. "Transitional living facility" and "halfway house" means an approved treatment facility which offers or provides temporary residential accommodations, meals, supervision at all times residents are in the facility or on facility premises, and services, including counseling, short-term supportive care, case management, mental health services or treatment services ~~to residents pursuant~~

~~to a contract with the Department of Mental Health and Substance Abuse Services~~;

10. "Short-term supportive care" means a service rendered to any person residing in a halfway house or transitional living facility which is sufficient to assist the person to meet or achieve an adequate level of daily living and to learn or develop adequate daily living skills. Daily living skills shall include, but not be limited to, resident participation in meal preparation and routine housekeeping and laundry tasks. Short-term supportive assistance includes, but is not limited to, assistance in the preparation of meals, housekeeping, laundry tasks and personal hygiene. Short-term supportive assistance shall not include medical services or personal care as defined in Section 1-820 of Title 63 of the Oklahoma Statutes; and

11. "Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcohol-dependent, intoxicated and drug-dependent persons.

SECTION 12. AMENDATORY 43A O.S. 2001, Section 3-415, as last amended by Section 17, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2005, 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,~~ The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may postpone, deny renewal of, revoke, or suspend the certification of the facility for 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. The following are exempt from the provisions of the Oklahoma Alcohol and Drug Abuse Services Act:

1. Individual persons in private practice as licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, and certified alcohol or drug abuse counselors. The exemption shall apply only to individual professional persons in their private practice and not to any treatment facility operated by the person;

2. Properly licensed hospitals;

3. Programs or facilities operated by a state agency;

4. Programs conducted and facilities operated by Alcoholics Anonymous; or

5. Programs conducted and facilities operated by the Salvation Army.

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;

3. The Council on Accreditation (COA); or

4. 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 consumer count and success rates, shall be documented and verifiable by the Board.

I. The ~~Board~~ Department is ~~hereby~~ authorized to establish and collect ~~from each applicant the sum of One Hundred Dollars ($100.00) annually to help defray the costs incurred in the~~ certification ~~procedure~~ and renewal fees for certification of private facilities and organizations which provide treatment, counseling and rehabilitation services directed toward alcohol and drug dependent persons, as provided in Section 9 of this act.

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 13. AMENDATORY 43A O.S. 2001, Section 3-601, as last amended by Section 22, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2005, Section 3-601), is amended to read as follows:

Section 3-601. A. Any Class II controlled dangerous substance, when used in this state by an opioid substitution treatment program for persons with a history of opioid addiction to or physiologic dependence on controlled dangerous substances, shall only be used:

1. In treating persons with a history of addiction for two (2) years or more;

2. In treating persons with a one-year history <u>of opioid addiction to or physiologic dependence on controlled dangerous substances</u>, as defined by the Code of Federal Regulations, and documentation of attempting another type of treatment; or

3. If clinically appropriate, the program physician may waive the requirement of a one-year history of opioid addiction for consumers within six (6) months of release from a penal institution, for consumers with a pregnancy verified by the program physician, or for consumers having <u>previously</u> received treatment <u>for opioid addiction</u> within two (2) years of discharge <u>from that treatment episode</u>.

B. Any conviction for a violation of the provisions of this section or any rules promulgated pursuant to the provisions of this section shall be a felony.

C. For the purposes of this section, "opioid substitution treatment program" means a person, private physician, or organization that administers or dispenses an opioid drug to a narcotic addict for the purposes of detoxification or maintenance treatment or provides, when necessary and appropriate, comprehensive medical and rehabilitation services. A private physician who administers buprenorphine with a waiver from the Drug Enforcement

Administration shall not be considered an opioid substitution treatment program. An opioid substitution treatment program shall be approved by the Board of Mental Health and Substance Abuse Services, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, and registered with the federal Drug Enforcement Administration for the use of an opioid drug to treat narcotic addiction.

D. The Department shall promulgate rules and standards for the certification of all programs, private facilities and organizations which provide opioid substitution treatment directed to those physiologically dependent on or addicted to opioids. These facilities and organizations shall be known as "opioid substitution treatment programs". Only certified facilities may receive and assist opioid dependent and addicted persons by providing Class II controlled substances, in opioid substitution treatment and rehabilitation.

E. The Department shall promulgate rules and standards regulating the treatment and services provided by opioid substitution treatment programs.

~~D.~~ F. Opioid substitution treatment programs shall notify the Department of Mental Health and Substance Abuse Services of plans to close or relocate within a minimum of thirty (30) days prior to closure or relocation.

G. Failure to comply with rules and standards promulgated by the Department pursuant to this act shall be grounds for reprimand, suspension, revocation or nonrenewal of certification.

SECTION 14. AMENDATORY 43A O.S. 2001, Section 3-602, as last amended by Section 25, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2005, Section 3-602), is amended to read as follows:

Section 3-602. A. A course of treatment in an opioid substitution treatment program may include, but shall not be limited to, short-term detoxification, interim maintenance treatment or

comprehensive maintenance treatment depending on the availability of such services and the needs of the individual.

B. The Department of Mental Health and Substance Abuse Services shall approve any drug and the formulations to be used in an opioid substitution treatment program and the Board of Mental Health and Substance Abuse Services shall promulgate rules establishing guidelines for the maximum daily dose, not to exceed limits set by the Code of Federal Regulations. Pregnancy tests for women shall be conducted upon admission to an opioid substitution treatment program and at least annually thereafter, unless otherwise indicated.

SECTION 15. AMENDATORY 43A O.S. 2001, Section 5-206, as last amended by Section 16, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2005, Section 5-206), is amended to read as follows:

Section 5-206. As used in Sections 5-206 through 5-209 of this title:

1. "~~Evaluation~~ Mental health evaluation" means the examination of a person who appears to have a mental illness or be alcohol- or drug-dependent by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of:

a. determining if a petition requesting involuntary commitment or treatment is warranted, or

b. completing a certificate of evaluation pursuant to Section 5-414 of this title, or

c. both subparagraphs a and b of this paragraph;

2. "~~Emergency examination~~ Initial assessment" or "medical necessity review" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or a drug-

dependent person and a person requiring treatment, whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional at a facility approved by the Commissioner of Mental Health and Substance Abuse Services, or a designee, as appropriate for such examination to determine if emergency detention of the person is warranted;

3. "Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by this act;

4. "Protective custody" means the taking into protective custody and detention of a person pursuant to the provisions of Section 5-208 of this title until such time as an emergency examination is completed and a determination is made as to whether or not emergency detention is warranted; and

5. "Prehearing detention" means the court-ordered detention of a person who is alleged to be mentally ill, alcohol-dependent, or drug-dependent in a facility approved by the Commissioner as appropriate for such detention, pending a hearing on a petition requesting involuntary commitment or treatment as provided by Section 5-415 or 9-102 of this title.

SECTION 16. AMENDATORY 43A O.S. 2001, Section 5-207, as last amended by Section 26, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2005, 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~~ statement 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~~ statement. 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. If the person is medically stable, the 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~~ an initial assessment. If, subsequent to an ~~emergency examination~~ initial assessment, 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~~ initial assessment to conduct an ~~emergency examination~~ initial assessment 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 17. AMENDATORY 43A O.S. 2001, Section 5-208, as last amended by Section 38, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-208), is amended to read as follows:

Section 5-208. A. 1. A consumer in protective custody as provided by Section 5-207 of this title shall be subject to an ~~emergency examination~~ initial assessment at the appropriate facility by a licensed mental health professional within twelve (12) hours of being placed in protective custody for the purpose of determining whether emergency detention of the consumer is warranted.

2. If, upon examination, the licensed mental health professional determines that the consumer is not a person requiring treatment or that the condition of the consumer is such that emergency detention is not warranted, the consumer shall either be returned by an officer immediately to the point where the consumer was taken into protective custody and released or taken to the home

or residence of such consumer or to an alternative facility. If the home or residence of the consumer is a nursing home or group home, such home shall not refuse the return of the consumer to his or her residence.

3. If, upon examination, the licensed mental health professional determines that the consumer is a person requiring treatment to a degree that emergency detention is warranted, the licensed mental health professional shall immediately prepare a statement describing the findings of the examination and stating the basis for the determination, and the consumer shall be detained in emergency detention for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention pending a hearing on a petition requesting involuntary commitment or treatment.

4. During the emergency detention period:

a. a ~~full examination and~~ mental health evaluation of the consumer shall be conducted by two licensed mental health professionals and, if the consumer appears to have a mental illness or be alcohol- or drug-dependent and be a consumer requiring treatment~~, the completion of a certificate of evaluation as provided by Section 5-414 of this title~~, and

b. reasonable efforts shall be made to determine whether the consumer has a current and unrevoked advance directive executed pursuant to the Advance Directives for Mental Health Treatment Act.

B. If a licensed mental health professional, designated to have the responsibility by the executive director or person in charge of a hospital, or the executive director or person in charge of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention believes a voluntary consumer to be a person requiring treatment to

a degree that emergency action is necessary, the hospital or facility may detain such consumer in emergency detention for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, only on the following conditions:

1. The consumer has refused to consent or has withdrawn consent to voluntary treatment;

2. The consumer has been examined by a licensed mental health professional who has determined that the consumer is a person requiring treatment, the condition of the consumer is such that emergency detention is warranted, and a statement has been prepared as provided in subsection A of this section; and

3. The executive director or person in charge or the designee shall provide for a ~~full examination and~~ mental health evaluation of the consumer by two licensed mental health professionals ~~and, if the person appears to be a person requiring treatment, the completion of a certificate of evaluation~~.

C. Whenever it appears that a consumer detained pursuant to the provisions of this section is no longer a person requiring treatment and will not require treatment beyond the period of detention, the consumer shall be discharged and returned by an officer to the point where he or she was taken into protective custody, or if the consumer had not been in protective custody, the consumer shall be taken to the home or residence of the consumer or to an alternative facility. If the home or residence of the consumer is a nursing home or group home, it shall not refuse the return of the consumer to his or her residence.

D. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the person has refused to consent to voluntary treatment, a licensed mental health professional conducting ~~an~~ a mental health evaluation of the person or the executive director of the facility in which the person is being detained, or the designee

of the executive director, shall immediately file a petition or request the district attorney to file a petition with the district court as provided by Section 5-410 of this title or Section 9-102 of this title, and may request a court order directing prehearing detention when such detention is necessary for the protection of the person or others.

SECTION 18. AMENDATORY 43A O.S. 2001, Section 5-410, as last amended by Section 1, Chapter 191, O.S.L. 2004 (43A O.S. Supp. 2005, Section 5-410), is amended to read as follows:

Section 5-410. A. The following persons may file or request the district attorney to file a petition with the district court, upon which is hereby conferred jurisdiction, to determine whether an individual ~~has a mental illness and~~ is a person requiring treatment, and to order the least restrictive appropriate treatment for the person:

1. The father, mother, husband, wife, brother, sister, guardian or child, over the age of eighteen (18) years, of an individual alleged to ~~have a mental illness and to~~ be a person requiring treatment;

2. A licensed mental health professional;

3. The executive director of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention;

4. An administrator of a hospital that is approved by the Joint Commission on Accreditation of Healthcare Organizations; provided, however, in any involuntary commitment procedure in which a hospital is the petitioner pursuant to the provisions of this section, the hospital may participate in such hearing without retaining their own legal counsel if the hospital provides as a witness a mental health therapist or a licensed mental health professional;

5. A person in charge of any correctional institution;

6. Any peace officer within the county in which the individual alleged to ~~have a mental illness and to~~ be a person requiring treatment resides or may be found; or

7. The district attorney in whose district the person resides or may be found.

B. The petition shall contain a statement of the facts upon which the allegation is based and, if known, the names and addresses of any witnesses to the alleged facts.

1. The petition shall be verified and made under penalty of perjury.

2. A request for the prehearing detention of the individual alleged to ~~have a mental illness and to~~ be a person requiring treatment may be attached to the petition.

3. If the individual alleged to ~~have a mental illness and to~~ be a person requiring treatment is being held in emergency detention, a copy of the ~~certificate of~~ mental health evaluation shall be attached to the petition.

C. The inpatient mental health treatment of minors shall be pursuant to the provisions of the Inpatient Mental Health Treatment of Minors Act.

SECTION 19. AMENDATORY 43A O.S. 2001, Section 5-411, as amended by Section 38, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2005, Section 5-411), is amended to read as follows:

Section 5-411. A. An individual alleged to ~~have a mental illness and to~~ be a person requiring treatment shall have the following rights:

1. The right to notice, as provided by Section 5-412 of this title;

2. The right to counsel, including court-appointed counsel, and if the person has no counsel, that the court shall appoint an attorney to represent the person at no cost if the person is an indigent person and cannot afford an attorney;

3. The right to a hearing and the right to a closed hearing, unless the person requests otherwise;

4. Upon request, right to a jury trial. The jury shall be composed of six persons having the qualifications required of jurors in courts of record;

5. The right to be present at the hearing on the petition or jury trial. The person shall be present at the hearing or jury trial unless the court finds that the presence of the person alleged to be a ~~mentally ill~~ person requiring treatment makes it impossible to conduct the hearing or trial in a reasonable manner or that the presence of the person would be injurious to the health or well-being of such person.

a. The court shall not decide in advance of the hearing, solely on the basis of the ~~certificate of~~ mental health evaluation, that the person alleged to be a ~~mentally ill~~ person requiring treatment should not be allowed nor required to appear.

b. Prior to issuing an order excluding the person from the hearing or jury trial, the court shall find, based upon clear and convincing evidence, that alternatives to exclusion of the person were attempted;

6. The right to present and to cross-examine witnesses. The petitioner and witnesses identified in the petition shall offer testimony under oath at the hearing on the petition. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.

B. An individual alleged to be or found by a court to ~~have a mental illness and~~ be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.

C. No statement, admission or confession made by the person alleged to ~~have a mental illness and to~~ be a ~~mentally ill~~ person requiring treatment shall be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time directly or in any manner or form.

D. An attorney appointed by the court to represent a person alleged to have a mental illness or substance dependency and to be a person requiring treatment shall be a licensed and actively practicing attorney who shall represent the person until final disposition of the case. The court may appoint a public defender where available.

1. The attorney appointed by the court shall meet and consult with the person within one (1) day of notification of the appointment. The attorney shall immediately, upon meeting with the person alleged to be a person requiring treatment, present to such person a statement of the rights, including all rights afforded to persons alleged to ~~have a mental illness and to~~ be persons requiring treatment by the Oklahoma and the United States Constitutions.

2. The court-appointed attorney shall be replaced by another attorney if:

a. the person alleged to ~~have a mental illness and to~~ be a person requiring treatment prefers the services of an attorney other than the one initially appointed for the person,

b. the preferred attorney agrees to accept the responsibility, and

c. the person alleged to ~~have a mental illness and to~~ be a person requiring treatment or the preferred attorney notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person within one (1) day of employment or appointment. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost.

3. The attorney fees for all services shall be paid by the person alleged to be a person requiring treatment. However, if the person alleged to be a person requiring treatment, or a person empowered pursuant to law to act on behalf of such person, submits an affidavit that such person is indigent and unable to pay attorney fees, the attorney fees shall be paid from the court fund, after a determination by the court that such person is indigent. The amount of such fee shall be set by the court.

4. The attorney representing the person alleged to ~~have a mental illness and to~~ be a person requiring treatment shall notify the court of any current and unrevoked advance directive that has been executed by such person pursuant to the Advance Directives for Mental Health Treatment Act and provide a written copy of the advance directive, if available, to the court and a representative of the district attorney's office.

SECTION 20. AMENDATORY 43A O.S. 2001, Section 5-412, as amended by Section 39, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2005, Section 5-412), is amended to read as follows:

Section 5-412. A. Notice of the date, time and place of the hearing on a petition alleging a person to ~~have a mental illness and to~~ be a person requiring treatment shall be delivered to such person at least one (1) day prior to the hearing. Notice shall be personally delivered to the person together with a copy of the petition and~~, if applicable,~~ copies of the ~~certificate of~~ <u>mental health</u> evaluation, ~~the affidavit of the peace officer,~~ and any order of the court directing prehearing detention ~~or an evaluation of the person~~.

B. The notice shall contain the following information:

1. The definitions provided by Section 1-103 of this title of a "mental illness" and a "person requiring treatment";

2. If applicable, that the court has ordered the mental health evaluation of the person by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of conducting an evaluation of the person alleged to ~~have a mental illness and to~~ be a person requiring treatment and ~~executing a certificate of evaluation~~ stating their findings, and the time and place of the evaluation;

3. That, upon request, the hearing on the petition may be conducted as a jury trial and the jury shall be composed of six persons having the qualifications required of jurors in courts of record;

4. That the petitioner and witnesses identified in the petition may offer testimony under oath at the hearing on the petition;

5. If applicable, that the court has appointed an attorney for the person alleged to ~~have a mental illness and to~~ be a person requiring treatment who shall represent the person until final disposition of the case and that if the person is indigent, the court shall pay the attorney fees;

6. That, if the person is found at the hearing or at a jury trial to ~~have a mental illness and to~~ be a person requiring treatment under this act, the court will take evidence and make findings of fact concerning the person's competency to consent or to refuse the treatment that is ordered, including, but not limited to, the right of the person to refuse psychotropic medications; and

7. That the person alleged to ~~have a mental illness and to~~ be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.

C. The person delivering the copy of the notice and petition to the person alleged to ~~have a mental illness and to~~ be a person requiring treatment shall, at the time of delivery, explain the content, purpose and effect of the notice and the legal right to judicial review by habeas corpus.

D. 1. A copy of the notice, the petition, and the attachments to the petition, if any, shall also be delivered at least one (1) day prior to the hearing to:

a. the individual initiating the request for protective custody, emergency detention, involuntary commitment or prehearing detention,

b. the attorney or court-appointed counsel of the person, to the district attorney, and to the public defender, if any,

c. the facility, if any, in which the person is detained in emergency detention,

d. the Department of Mental Health and Substance Abuse Services, and

e. a parent, spouse, guardian, brother, sister or child who is at least eighteen (18) years of age of the person alleged to ~~have a mental illness and to~~ be a person requiring treatment and who is not the individual initiating the petition or a request for protective custody, emergency detention, involuntary commitment or prehearing detention. Notice shall also be delivered to any other person as may be ordered by the court.

2. The notice required by this subsection may be served personally or by certified mail. When notice is served personally,

the person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of the state when so ordered by the court.

E. Notice of orders of a court directing ~~an~~ a mental health evaluation or prehearing detention of a person alleged to ~~have a mental illness and to~~ be a person requiring treatment shall be delivered in substantially the same manner as provided by subsection A of this section. Notice of a court order directing ~~an~~ a mental health evaluation of the person shall be delivered at least one (1) day before the evaluation, and as many additional days as are requested by the person alleged to ~~have a mental illness and to~~ be a person requiring treatment or the attorney of such person as are reasonable without prejudice to the person. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case.

SECTION 21. AMENDATORY 43A O.S. 2001, Section 5-414, as amended by Section 41, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2005, Section 5-414), is amended to read as follows:

Section 5-414. A. If a ~~certificate of~~ mental health evaluation is not attached to a petition alleging a person to ~~have a mental illness and to~~ be a person requiring treatment at the time the petition is filed, the court shall order the person who is the subject of the petition to undergo ~~an~~ a mental health evaluation by two licensed mental health professionals, and a ~~certificate of~~ mental health evaluation to be completed and filed with the court prior to the hearing.

1. The mental health evaluation shall be conducted on an outpatient basis unless the court has issued an order for prehearing detention.

2. A copy of all petitions, orders, affidavits, police reports and other relevant documents shall accompany the person to the place where the mental health evaluation is to be conducted.

3. Upon completion of the mental health evaluation, the facility shall transmit a copy of the ~~report of~~ evaluation prepared by the licensed mental health professionals ~~conducting the evaluation and the certificate of evaluation~~ to the court and to the attorney of record for the person evaluated.

B. The report of the licensed mental health professionals conducting ~~an~~ the mental health evaluation pursuant to this section shall include written findings as to whether:

1. The person being evaluated appears to ~~have a demonstrable mental illness and is~~ be a person requiring treatment as defined in this title, and is reasonably likely to benefit from mental health or substance abuse treatment; and

2. Based on the following, inpatient treatment is the least restrictive alternative that meets the needs of the person:

a. reasonable efforts have been made to provide for the mental health or substance abuse treatment needs of the person through the provision of less restrictive alternatives and the alternatives have failed to meet the treatment needs of the person, or

b. after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the person is such that less restrictive alternatives are unlikely to meet the treatment needs of the person.

~~C. The certificate of evaluation shall be substantially in the following form and signed by two licensed mental health professionals who have participated in the evaluation of the person. At least one of the licensed mental health professionals shall be a psychiatrist who is a diplomate of the American Board of Psychiatry~~

~~and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions:~~

~~NOTICE OF CERTIFICATION~~

~~To the District Court of _____ County,~~

~~State of Oklahoma~~

~~The authorized agency providing evaluation services in the County~~

~~of _____ has evaluated the condition of:~~

~~Name _____~~

~~Address _____~~

~~Age _____~~

~~Sex _____~~

~~Marital status _____~~

~~We have evaluated the person and make the following findings:~~

_____

_____

_____

_____

_____

~~The findings are based on the following:~~

_____

_____

_____

_____

~~The above-named person has been informed of this evaluation, and has been advised of, but has not been able or willing to accept referral to, the following services:~~

_____

_____

_____

_____

_____

~~We hereby state that a copy of this certificate of evaluation has been delivered to the attorney of the above-named person.~~

SECTION 22. AMENDATORY 43A O.S. 2001, Section 5-415, as last amended by Section 48, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-415), is amended to read as follows:

Section 5-415. A. Upon receiving a petition alleging a person to ~~have a mental illness and to~~ be a person requiring treatment, the court shall set a day and time for the hearing.

1. If the person alleged to ~~have a mental illness and to~~ be a person requiring treatment does not have an attorney, the court shall immediately appoint an attorney for the person.

2. If a copy of a ~~certificate of~~ mental health evaluation is not attached to the petition at the time it is filed, the court shall immediately order ~~an~~ a mental health evaluation of the person as provided by Section 5-414 of this title.

B. If the court deems it necessary, or if the person alleged to ~~have a mental illness and to~~ be a person requiring treatment demands, the court shall schedule the hearing on the petition as a jury trial to be held within seventy-two (72) hours of the demand, excluding weekends and holidays, or within as much additional time as is requested by the attorney of such person upon good cause shown.

C. The court, at the hearing on the petition, shall determine by clear and convincing evidence whether the person ~~has a mental illness and~~ is a person requiring treatment.

1. The court shall take evidence and make findings of fact concerning the person's competency to consent to or refuse the treatment that may be ordered, including, but not limited to, the consumer's right to refuse medication.

2. If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits of the licensed mental health professionals who evaluated the person and the ~~certificate of~~ mental health evaluation.

3. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to ~~have a mental illness and to~~ be a person requiring treatment may also be called as a witness and cross-examined.

D. After the hearing, when the court determines that the person ~~does not have a mental illness and~~ is not a person requiring treatment, the court shall dismiss the petition and, if the person is being detained, order the person to be discharged from detention.

E. After the hearing, when the court determines the person to ~~have a mental illness and to~~ be a person requiring treatment, the court shall order the person to receive the least restrictive treatment consistent with the treatment needs of the person and the safety of the person and others.

1. The court shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization and may direct the submission of evidence as to the least restrictive treatment alternative or may order a ~~precommitment screening~~ mental health examination.

2. If the court finds that a program other than hospitalization is appropriate to meet the treatment needs of the individual and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization that is appropriate for a period set by the court, during which time the court shall continue its jurisdiction over the individual as a person requiring treatment.

3. If the court orders the person to be committed for involuntary inpatient treatment, the court shall commit the person to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.

4. The person shall be delivered to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.

5. If the person is placed in the custody of the Department, the Department may designate two or more facilities to provide treatment and if the person to be treated or a parent, spouse, guardian, brother, sister or child, who is at least eighteen (18) years of age, of the person, expresses a preference for one such facility, the Department shall attempt, if administratively possible, to comply with the preference.

6. The person shall be discharged from inpatient treatment at such time as the person no longer requires treatment as determined by the executive director of the facility or the designee of the executive director, or as otherwise required by law.

F. The court shall make and keep records of all cases brought before it.

1. No records of proceedings pursuant to this section shall be open to public inspection except by order of the court or to employees of the Department of Mental Health and Substance Abuse Services, the person's attorney of record, or persons having a legitimate treatment interest.

2. Bonded abstractors may be deemed to be persons having a legitimate interest for the purpose of having access to records regarding determinations of persons requiring treatment under this section.

SECTION 23. AMENDATORY 43A O.S. 2001, Section 5-416, as last amended by Section 49, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-416), is amended to read as follows:

Section 5-416. A. The court, in considering a commitment petition filed under Section 5-410 or Section 9-102 of this title, shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization, or without addressing the competency of the consumer to consent to or refuse the treatment that is ordered including, but not limited to, the rights of the consumer:

1. To be heard concerning the treatment of the consumer; and

2. To refuse medications.

B. 1. If the court, in considering a commitment petition filed under Section 5-410 or Section 9-102 of this title, finds that a program other than hospitalization is adequate to meet the treatment needs of the individual and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization is appropriate for a period set by the court. During this time the court:

a. shall have continuing jurisdiction over the individual as a person requiring treatment, and

b. shall periodically, no less often than annually, review the treatment needs of the individual and determine whether or not to continue, discontinue, or modify the treatment.

2. If at any time it comes to the attention of the court from a person competent to file or request the filing of a petition, pursuant to subsection A of Section 5-410 of this title, that the individual ordered to undergo a program of alternative treatment to hospitalization is not complying with the order or that the alternative treatment program has not been sufficient to prevent harm or injury which the individual may be inflicting upon himself

or others, the court may order the person to show cause why the court should not:

a. implement other alternatives to hospitalization, modify or rescind the original order or direct the individual to undergo another program of alternative treatment, if necessary and appropriate, based on written findings of the court, or

b. enter an order of admission pursuant to the provisions of this title, directing that the person be committed to inpatient treatment and, if the individual refuses to comply with this order of inpatient treatment, the court may direct a peace officer to take the individual into protective custody and transport the person to a public or private facility designated by the court.

3. The court shall give notice to the person ordered to show cause and hold the hearing within seventy-two (72) hours of the notice. The person ordered to undergo a program of alternative treatment shall not be detained in emergency detention pending the show cause hearing unless, prior to the emergency detention, the person has undergone an ~~emergency examination~~ initial assessment and a determination is made that emergency detention is warranted.

4. If an order of alternative treatment will expire without further review by the court and it is believed that the individual continues to require treatment, a person competent to file or request the filing of a petition, pursuant to subsection A of Section 5-410 of this title, may file or request the district attorney file either an application for an extension of the court's previous order or an entirely new petition for a determination that the individual is a person requiring treatment.

5. A hearing on the application or petition filed pursuant to paragraph 4 of this subsection shall be held within ten (10) days

after the application or petition is filed, unless the court extends the time for good cause. In setting the matter for hearing, the court shall consider whether or not the prior orders of the court will expire during the pendency of the hearing and shall make appropriate orders to protect the interests of the individual who is the subject of the hearing.

C. Prior to ordering the inpatient treatment of an individual, the court shall inquire into the adequacy of treatment to be provided to the individual by the facility, and inpatient treatment shall not be ordered unless the facility in which the individual is to be treated can provide such person with treatment which is adequate and appropriate to such person's condition.

D. Nothing in this section shall prohibit the Department of Mental Health and Substance Abuse Services or the facility or program providing the alternative treatment from discharging a person admitted pursuant to this section, at a time prior to the expiration of the period of alternative treatment, or any extension thereof. The facility or program providing the alternative treatment shall file a report with the court outlining the disposition of each person admitted pursuant to this section within forty-eight (48) hours after discharge.

E. Notice of any proceedings pursuant to this section shall be given to the person, the person's guardian, the person's attorney, and the person filing the petition or application.

SECTION 24. AMENDATORY 43A O.S. 2001, Section 5-501, as last amended by Section 50, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-501), is amended to read as follows:

Section 5-501. A. Sections 5-501 through 5-513 of this title shall be known and may be cited as the "Inpatient Mental Health and Substance Abuse Treatment of Minors Act".

B. The Oklahoma Legislature hereby declares that the public policy of this state is to:

1. Assure adequate treatment of minors needing mental health treatment or treatment for drug or alcohol abuse;

2. Establish behavioral standards for determination of dangerousness of persons in need of such treatment;

3. Require the use of the least restrictive alternative in the determination of the method of treatment;

4. Provide orderly and reliable procedures for admission or commitment of minors alleged to be in need of inpatient mental health treatment or treatment for drug or alcohol abuse consistent with due process of law; and

5. Protect the rights of consumers hospitalized pursuant to law.

C. It is the intent of the Legislature that:

1. Mental health and substance abuse treatment services shall be provided in the manner most likely to preserve, support and strengthen the family of the minor and to assist the minor and the family of the minor;

2. Minors needing mental health services or substance abuse treatment shall, to the maximum extent possible, receive those services on an outpatient basis; and

3. Inpatient evaluation and treatment services shall be utilized only as necessary to preserve the health or safety of the minor or for the protection of others in the case of a minor who, as a result of a demonstrable mental illness or drug or alcohol dependence, can be expected to intentionally or unintentionally seriously and physically injure another person.

D. A minor may be admitted for inpatient mental health or substance abuse treatment only pursuant to the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

SECTION 25. AMENDATORY 43A O.S. 2001, Section 5-502, as last amended by Section 2, Chapter 110, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-502), is amended to read as follows:

Section 5-502. As used in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act:

1. "Minor" means any person under eighteen (18) years of age;

2. "Minor in need of treatment" means a minor:

   a. who has a demonstrable mental illness or who is drug or alcohol dependent and as a result of that mental illness or dependency can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person, and who has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation, or

   b. who has a demonstrable mental illness or is drug or alcohol dependent of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the life of the minor:

      (1) family relations,

      (2) school performance,

      (3) social interactions,

      (4) ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or

      (5) self-protection.

A determination regarding the ability of the minor to perform independently such basic tasks shall be based upon the age of the minor and the reasonable and appropriate expectation of the abilities of a minor of such age to perform such tasks.

The term "minor in need of treatment" shall not mean a minor afflicted with epilepsy, a developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually

active unless the minor also meets the criteria for a minor in need of treatment pursuant to subparagraph a or b of this paragraph;

3. "Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor sixteen (16) years of age or older or by a parent of the minor;

4. "Individualized treatment plan" means a specific plan for the care and treatment of an individual minor who requires inpatient mental health treatment. The plan shall be developed with maximum involvement of the family of the minor, consistent with the desire of the minor for confidentiality and with the treatment needs of the minor, and shall clearly include the following:

a. a statement of the presenting problems of the minor, short- and long-term treatment goals and the estimated date of discharge. The short- and long-term goals shall be based upon a clinical evaluation and shall include specific behavioral and emotional goals against which the success of treatment can be measured,

b. treatment methods and procedures to be used to achieve these goals, which methods and procedures are related to each of these goals and which include, but are not limited to, specific prognosis for achieving each of these goals,

c. identification of the types of professional personnel who will carry out the treatment procedures including, but not limited to, appropriate licensed mental health professionals, education professionals, and other health or social service professionals, and

d. documentation of the involvement of the minor or the parent of the minor or legal custodian in the development of the treatment plan and whether all persons have consented to such plan;

5. "Inpatient treatment" means treatment services offered or provided for a continuous period of more than twenty-four (24) hours in residence after admission to a mental health or substance abuse treatment facility for the purpose of observation, evaluation or treatment;

6. "Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit to the minor, or to protect the minor or others from physical injury;

7. "Less restrictive alternative to inpatient treatment" means and includes, but is not limited to, outpatient counseling services, including services provided in the home of the minor and which may be referred to as "home-based services", day treatment or day hospitalization services, respite care, or foster care or group home care, as defined by Title 10 of the Oklahoma Statutes, through a program established and specifically designed to meet the needs of minors in need of mental health treatment, or a combination thereof;

8. "Licensed mental health professional" means a person who is not related by blood or marriage to the person being examined or does not have any interest in the estate of the person being examined, and who is:

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

b. a physician licensed pursuant to Chapter 11 or Chapter 14 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 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 Act,

f. a licensed marital and family therapist as defined in Chapter 44A 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 of Title 59 of the Oklahoma Statutes, specializing in mental health.

For the purposes of this paragraph, "licensed" means that the person holds a current, valid license issued in accordance with the laws of this state;

9. "Mental health evaluation" means an examination or evaluation of a minor for the purpose of making a determination whether, in the opinion of the licensed mental health professional making the evaluation, the minor is a minor in need of treatment and, if so, is in need of inpatient treatment and for the purpose of preparing reports or making recommendations for the most appropriate and least restrictive treatment for the minor;

10. "Mental health facility" means a public or private hospital or related institution as defined by Section 1-701 of Title 63 of the Oklahoma Statutes offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation of Healthcare Organizations, or a facility operated by the Department of Mental Health and Substance Abuse Services and designated by the Commissioner of the Department of Mental Health and Substance Abuse Services as appropriate for the inpatient evaluation or treatment of minors;

11. "Mental illness" means a substantial disorder of the child's thought, mood, perception, psychological orientation or memory that demonstrably and significantly impairs judgment, behavior or capacity to recognize reality or to meet the ordinary demands of life. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior;

12. "Parent" means:

a. a biological or adoptive parent who has legal custody of the minor or has visitation rights, or

b. a person judicially appointed as a legal guardian of the minor, or

c. a relative within the third degree of consanguinity who exercises the rights and responsibilities of legal custody by delegation from a parent, as provided by law;

13. "Person responsible for the supervision of the case" means:

a. when the minor is in the legal custody of a private child care agency, the Department of Human Services or the Office of Juvenile Affairs, the caseworker or other person designated by the agency to supervise the case, or

b. when the minor is a ward of the court and under the court-ordered supervision of the Department of Human Services, the Office of Juvenile Affairs or a statutorily constituted juvenile bureau, the person designated by the Department of Human Services, the Office of Juvenile Affairs or juvenile bureau to supervise the case;

14. "~~Medical~~ Initial assessment" or "medical necessity review" means ~~an assessment~~ the examination of current and recent behaviors and symptoms of a minor who appears to be mentally ill, alcohol-dependent, or drug-dependent and a minor requiring treatment, whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional at a facility approved by the Commissioner of Mental Health and Substance Abuse Services, or a designee, as appropriate for such examination to determine if emergency detention of the minor is warranted, and whether ~~an~~ admission for inpatient mental illness or drug or alcohol dependence treatment or evaluation constitutes the least restrictive level of care necessary. ~~The review shall be performed by a licensed mental health professional~~;

15. "Ward of the court" means a minor adjudicated to be a deprived child, a child in need of supervision, or a delinquent child;

16. "Treatment" means any planned intervention intended to improve the functioning of a minor in those areas which show impairment as a result of mental illness or drug or alcohol dependence; and

17. "Prehearing detention order" means a court order that authorizes a facility to detain a minor pending a hearing on a petition to determine whether the minor is a minor in need of treatment.

SECTION 26. AMENDATORY 43A O.S. 2001, Section 5-503, as last amended by Section 3, Chapter 110, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-503), is amended to read as follows:

Section 5-503. A. A parent of a minor or a minor sixteen (16) years of age or older may consent to the voluntary admission of the minor for inpatient mental health or substance abuse treatment.

B. Upon the application of a minor sixteen (16) years of age or older or a parent of a minor, a mental health or substance abuse

facility may admit the minor for inpatient evaluation or treatment if the person in charge of the facility, or a designee, determines the minor to be clinically eligible for such admission, and:

1. After ~~a medical necessity review~~ an initial assessment, a licensed mental health professional determines and states in writing that there is reasonable cause to believe that the minor may be a minor in need of treatment and that an evaluation is necessary to properly determine the condition and treatment needs of the minor, if any; and

2. After an outpatient or inpatient mental health evaluation, a licensed mental health professional determines and states in writing that in the opinion of the professional, the minor is a minor in need of treatment and:

a. the minor appears to have a mental illness or drug or alcohol dependence serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment, and

b. based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the minor:

(1) reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the minor, or

(2) after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor, and

c. the minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

The consenting parent shall have the opportunity to discuss the findings with a person involved in the treatment of the minor.

C. The determinations and written statements of a licensed mental health professional made pursuant to this section shall, upon the admission of the minor for inpatient evaluation or treatment, be made a part of the medical record of the minor.

D. Inpatient treatment of a minor admitted under this section may not ~~exceed thirty (30) consecutive days~~ continue unless continued inpatient treatment has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the condition of the minor. This finding is subject to the review provisions contained in Section 5-512 of this title.

E. A mental health or substance abuse treatment facility may request that the district attorney file a petition alleging a minor to be a minor in need of treatment and require inpatient treatment when the parent consenting to the admission of a minor or when the minor age sixteen (16) years or older who had previously consented to admission revokes such consent and the person in charge of the facility, or a designee, determines that the condition of the minor is such that the minor should remain in the facility. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility in writing of the refusal to file.

F. A minor who is in the legal custody of the Department of Human Services or the Office of Juvenile Affairs, or who is a ward

of a court may be admitted to a hospital or other facility for inpatient mental health or substance abuse treatment only pursuant to the provisions of Section 5-507 of this title.

1. A public or private child care agency having legal custody of a minor may request the district attorney to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment.

2. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be interpreted to prohibit or preclude the provision of outpatient treatment or services including, but not limited to, outpatient evaluation, counseling, educational, rehabilitative or other mental health and substance abuse services to the minor, as necessary and appropriate, in the absence of a specific court order for such services.

G. 1. An order of a court committing a minor to a facility for inpatient mental health or substance abuse evaluation or treatment shall not, by itself, relieve a parent of the obligation to provide for the support of the minor nor of liability for the cost of treatment provided to the minor.

2. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be interpreted to:

a. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, or agency having custody of the minor or providing the treatment, or

b. abrogate the right of the minor to any benefits provided through public funds for which the minor is otherwise eligible.

3. An order committing a minor to a facility for inpatient mental health or substance abuse treatment shall not by itself serve

to preclude a subsequent adjudication which finds the minor to be delinquent, in need of supervision or deprived nor shall it cause the vacation of any such order of adjudication previously entered.

H. If the parent who consented to the admission of a minor under this section revokes such consent at any time, the minor shall be discharged within forty-eight (48) hours unless the district attorney is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of this title. <u>If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility in writing of the refusal to file.</u>

I. If a minor sixteen (16) years of age or older who consented to treatment subsequently revokes their consent at any time, the minor shall be discharged within forty-eight (48) hours unless the district attorney is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of this title or the parent of the minor subsequently consents to the treatment of the minor. <u>If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility in writing of the refusal to file.</u>

SECTION 27. AMENDATORY Section 4, Chapter 110, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-505.1), is amended to read as follows:

Section 5-505.1 A. Any minor who appears to be mentally ill, alcohol-dependent, or drug-dependent to a degree that immediate emergency action is necessary may be taken into protective custody and detained pursuant to the provisions of this section.

B. Any peace officer who reasonably believes that a minor is a minor in need of treatment as defined in Section 5-502 of ~~Title 43A of the Oklahoma Statutes~~ <u>this title</u> shall take the minor into

protective custody and shall transport the minor to a mental health or substance abuse treatment facility for evaluation. Peace officers providing such transportation services shall be entitled to reimbursement pursuant to Section 1-110 of ~~Title 43A of the Oklahoma Statutes~~ this title.

C. The officer shall prepare a written affidavit indicating the basis for the belief of the officer that the minor is a minor in need of 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 parent of the minor or the attorney of the minor 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 personal observation of the officer, the officer shall not be required to prepare a written affidavit. However, the person upon whose statement the officer relies shall sign a third-party statement indicating the basis for such belief of the person that the minor is a minor in need of 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. A minor in protective custody shall be subject to ~~a medical necessity review~~ an initial assessment at the appropriate facility by a licensed mental health professional for the purpose of determining whether emergency detention is warranted.

1. If the licensed mental health professional determines that the minor is not a minor in need of treatment or that the condition of the minor is such that emergency detention is not warranted, the minor shall be returned immediately to the point where the minor was taken into protective custody and released or the minor may be taken to the home or residence of the minor or to an alternative facility.

2. If the licensed mental health professional determines that the minor is a minor in need of treatment to a degree that emergency

detention is warranted, the minor shall be detained in emergency detention for a period not to exceed five (5) days, excluding weekends and holidays. The detention may exceed five (5) days, excluding weekends and holidays, upon a court order authorizing detention pending a hearing on a petition requesting involuntary commitment or treatment.

E. If a licensed mental health professional designated to have such responsibility by the executive director of a hospital, or the administrator of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention believes a minor to be a minor requiring treatment to a degree that emergency action is necessary, the administrator may detain such minor in emergency detention for a period not to exceed five (5) days, excluding weekends and holidays, only on the following conditions:

1. The minor sixteen (16) years of age or older or parent of the minor has refused to consent or has withdrawn consent to voluntary treatment;

2. The minor has been examined by a licensed mental health professional who has determined that the minor is a minor in need of treatment, the condition of the minor is such that emergency detention is warranted, and ~~an~~ a mental health evaluation ~~report~~ has been prepared as provided in Section 5-508 of ~~Title 43A of the Oklahoma Statutes~~ this title; and

3. The administrator or the designee of the administrator shall provide for ~~a medical necessity review~~ an initial assessment of the minor by a licensed mental health professional.

F. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the minor sixteen (16) years of age or older or parent of the minor has refused to consent to voluntary treatment, a licensed mental health professional conducting ~~a medical necessity~~

~~review~~ an initial assessment of the minor or the administrator of the facility in which the minor is being detained, or the designee of the administrator, shall immediately file a petition or request the district attorney to file a petition with the district court as provided by Section 5-509 of ~~Title 43A of the Oklahoma Statutes~~ this title, and may request a court order directing prehearing detention when detention is necessary for the protection of the person or others. If the district attorney refuses to file a petition, the district attorney must notify the requesting facility of the refusal to file.

SECTION 28. AMENDATORY 43A O.S. 2001, Section 5-506, as last amended by Section 5, Chapter 110, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-506), is amended to read as follows:

Section 5-506. A. Any parent, guardian, or law enforcement officer may request the administrator of a facility or designee to conduct ~~a medical necessity review~~ an initial assessment of a minor to determine whether the minor is a minor requiring treatment.

B. Following ~~a medical necessity review~~ an initial assessment, a minor may be admitted or detained on an emergency basis in a mental health or substance abuse treatment facility that is willing to admit or detain the minor for a period not to exceed five (5) days from the time of admission or detention, excluding weekends and legal holidays. The admission or detention for an emergency basis may only exceed five (5) days, excluding weekends or holidays, if the facility receives a prehearing detention order authorizing detention pending a hearing on a petition to determine whether the minor is a minor in need of treatment and to require inpatient treatment.

C. 1. A minor admitted or detained pursuant to this section shall be evaluated by a licensed mental health professional to determine whether the minor is a minor in need of treatment.

a. If the licensed mental health professional determines that the minor is a minor in need of treatment, the licensed mental health professional shall submit ~~a report of~~ the mental health evaluation to the district attorney within forty-eight (48) hours, excluding weekends or holidays, of admission, detention, or revocation of the consent of the minor sixteen (16) years of age or older or to the parent.

b. If the licensed mental health professional determines that the minor is not a minor in need of treatment, the minor shall immediately be discharged.

2. Upon admission or detention of a minor pursuant to this section, the person requesting the petition shall immediately notify the district attorney. The district attorney shall file a petition as provided in Section 5-509 of this title within three (3) days of receipt of the report and shall request a prehearing detention order from the court authorizing further detention of the child in the facility pending a hearing on a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment and further order of the court. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility in writing of the refusal to file.

a. If the court finds probable cause exists that the minor is a minor in need of treatment, the court shall issue a prehearing detention order authorizing the facility to detain the minor until the hearing on the petition and to immediately set a date and time for a hearing on the petition. A certified copy of the prehearing detention order shall constitute authority for a facility to detain or continue to detain the minor who is the subject of the order.

b. If the court does not find probable cause exists that the minor is a minor in need of treatment, the court shall dismiss the petition and request for a prehearing detention order and order the release of the minor to the minor's parent.

SECTION 29. AMENDATORY 43A O.S. 2001, Section 5-507, as last amended by Section 7, Chapter 130, O.S.L. 2003 (43A O.S. Supp. 2005, Section 5-507), is amended to read as follows:

Section 5-507. A. No minor who is taken into custody pursuant to Section 7003-2.1 of Title 10 of the Oklahoma Statutes as an alleged deprived child, or who has been adjudicated a ward of the court shall be admitted to a hospital or mental health or substance abuse treatment facility:

1. On an emergency basis except as provided by this section;

2. For inpatient treatment except upon a commitment order of the court pursuant to the provisions of subsection D of this section and after a finding that the minor requires such services as provided by Section 5-512 of this title.

B. After ~~a medical necessity review~~ <u>an initial assessment</u> and a determination that a minor is a minor in need of treatment, the minor may be admitted to a hospital or mental health or substance abuse treatment facility on an emergency basis for a period not to exceed five (5) days from the time of admission, excluding weekends and holidays. On the next business day following admission, notice of such admission shall be given by the person responsible for the supervision of the case, as applicable, to the minor's attorney, Court Appointed Special Advocate (CASA) or guardian ad litem, the court and district attorney.

C. A minor admitted on an emergency basis pursuant to this section shall be evaluated and ~~a report~~ <u>the mental health evaluation</u> submitted to the district attorney within forty-eight (48) hours of admission, excluding weekends and holidays. The <u>mental health</u>

evaluation shall be performed by a licensed mental health professional at the facility.

D. If after an inpatient or outpatient mental health evaluation it appears that the minor may require inpatient treatment, the district attorney shall file a petition as provided by Section 5-509 of this title within three (3) days after receiving the mental health evaluation report requesting an order committing the minor to a facility for inpatient treatment. After the filing of a petition and upon issuance of a prehearing detention order, the minor may be detained in the facility for no longer than necessary for a hearing on the petition as provided by Section 5-510 of this title or further order of the court.

E. Nothing in this section shall be interpreted to preclude or prohibit a parent having physical custody of a minor who is a ward of the court from arranging for an emergency admission of the minor. In such cases, the parent shall immediately notify the person responsible for the supervision of the case of the admission.

SECTION 30. AMENDATORY 43A O.S. 2001, Section 5-508, as last amended by Section 6, Chapter 110, O.S.L. 2005 (43A O.S. Supp. 2005, Section 5-508), is amended to read as follows:

Section 5-508. A. The ~~report~~ mental health evaluation of a licensed mental health professional prepared pursuant to Section 5-506 or 5-507 of this title shall include written findings as to whether:

1. The minor appears to be a minor in need of treatment and is reasonably likely to benefit from treatment;

2. Based upon the following, inpatient treatment is the least restrictive alternative that meets the needs of the minor:

a. reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives

have failed to meet the treatment needs of the minor, or

b. after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor; and

3. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

B. Any ~~report of a~~ mental health evaluation of a minor alleged to be a minor in need of treatment that recommends that the minor be found to be eligible for inpatient mental health or substance abuse treatment shall be signed by the licensed mental health professional examining the minor.

C. The parents, all public agencies, and all providers or programs which have treated or are treating the minor shall cooperate with the person conducting a mental health evaluation for the purpose of providing ~~a report~~ the mental health evaluation to a district attorney or to a district court and shall promptly deliver, as otherwise provided by law, all records related to the treatment or education of the minor.

SECTION 31. AMENDATORY 43A O.S. 2001, Section 5-509, as last amended by Section 9, Chapter 130, O.S.L. 2003 (43A O.S. Supp. 2005, Section 5-509), is amended to read as follows:

Section 5-509. A. A petition alleging a minor to be a minor in need of treatment shall be filed by a district attorney and may be filed by a district attorney only after receipt and review of the ~~report of~~ mental health evaluation by a licensed mental health professional stating that in the opinion of the professional the minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or

attempt to inflict serious bodily harm to himself or herself or another person if services are not provided, and upon the request of:

1. A parent, a public or private child care agency having legal custody of the minor, or a mental health or substance abuse treatment facility; or

2. When the minor is a ward of the court, the Department of Human Services, the Office of Juvenile Affairs or juvenile bureau having supervision of the case or by the parent of the minor with the consent of the applicable agency, or juvenile bureau having supervision of the case.

B. If after receipt and review of the ~~report of~~ mental health evaluation conducted by a licensed mental health professional:

1. The district attorney declines to file a petition, the district attorney must immediately notify the requesting facility in writing of the refusal to file, and the minor shall be discharged to the custody of the consenting parent or public or private agency having custody of the minor; or

2. The petition is filed, a copy of the ~~report of~~ mental health evaluation conducted by the licensed mental health professional shall be attached to the petition and notice shall be given as provided by Section 5-510 of this title.

C. 1. The proceeding shall be entitled "In the matter of _____, a minor alleged to be in need of inpatient mental health or substance abuse treatment".

2. The petition shall allege that the minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided and has engaged in one or more recent overt acts or made significant recent threats which substantially support that

expectation and shall be verified and may be based upon information and belief. The petition shall set forth:

a. with particularity the facts which bring the minor within the purview of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act,

b. the name, age and residence of the minor,

c. the names and residences of the parents of the minor,

d. the name and residence of the legal guardian of the minor, if one,

e. the name and residence of the person or persons having custody or control of the minor,

f. the name and residence of the nearest known relative, if no parent or guardian can be found,

g. the relief requested, and

h. an endorsement of witnesses intended to be called by the petitioner.

D. Upon the filing of a petition pursuant to this section, if the minor has been admitted to a facility, the facility shall ensure that a proposed individual treatment plan for the minor is prepared and submitted to the court at least twenty-four (24) hours prior to the time set for the hearing.

SECTION 32. AMENDATORY 43A O.S. 2001, Section 5-512, as last amended by Section 12, Chapter 130, O.S.L. 2003 (43A O.S. Supp. 2005, Section 5-512), is amended to read as follows:

Section 5-512. A. At the hearing the court shall determine whether by clear and convincing evidence:

1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided, and has engaged in one

or more recent overt acts or made significant recent threats which substantially support that expectation; and

2. The minor is a minor in need of treatment proposed in the individualized treatment plan and is likely to benefit from such treatment.

B. After a hearing, the court shall order the minor to receive the least restrictive care and treatment appropriate for the treatment needs of the minor until such time as the care and treatment are no longer necessary.

C. The court shall not commit a minor to a facility for inpatient treatment unless the court determines:

1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided, and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or

2. That all reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the minor; or

3. After a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor; and

4. There are no comparably effective services available to the minor that are less physically intrusive or restrictive.

D. Whenever, after a hearing, the court finds that the minor:

1. Is not a minor in need of treatment the court shall dismiss the case; or

2. Is a minor in need of treatment but does not require inpatient treatment, the court may order treatment or services through a less restrictive alternative to inpatient mental health or substance abuse treatment, which may include ordering the minor to take medication as prescribed by a physician and, upon a finding that it is in the best interests of the minor, the court may order the parents or other adult persons living in the home of the minor to comply with reasonable conditions relating to the treatment of the minor.

E. Whenever, after a hearing, the court finds that the minor is a minor in need of treatment and requires inpatient treatment in a mental health or substance abuse treatment facility, the court shall order the commitment of the minor to a mental health or substance abuse treatment facility ~~for not more than thirty (30) days~~ until the minor is no longer a "minor in need of treatment" as determined by medical staff, subject to the review provisions contained in this section, and:

1. When the minor is in the custody of a parent or legal guardian, order the parent or legal guardian to make arrangements for the admission of the minor to a public or private mental health or substance abuse treatment facility appropriate for the inpatient care and treatment of minors which is willing to admit the minor for treatment; and

2. When the minor is in the custody of the Department of Human Services or the Office of Juvenile Affairs, order the Department or Office, as applicable, to make arrangements for the placement of the minor in a public or private mental health or substance abuse treatment facility appropriate for the inpatient treatment needs of the minor.

F. Whenever the court commits a minor to a mental health or substance abuse treatment facility for inpatient treatment pursuant to this section, the court shall set the matter for review and shall

review the matter not more than thirty (30) days from the date of commitment and shall continue to review the matter at intervals of not more than thirty (30) days until the minor is discharged from inpatient treatment. Not less than three (3) days prior to the review hearing, the mental health or substance abuse treatment facility shall submit a report regarding the minor's progress and treatment and make a recommendation as to whether the minor needs inpatient care and the reasons therefor.

SECTION 33. REPEALER 43A O.S. 2001, Section 3-312, as amended by Section 1, Chapter 28, O.S.L. 2003 (43A O.S. Supp. 2005, Section 3-312), is hereby repealed.

SECTION 34. Section 10 of this act shall become effective July 1, 2006.

SECTION 35. Sections 1 through 9 and 11 through 33 of this act shall become effective November 1, 2006.

SECTION 36. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 6th day of March, 2006.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

_____
Presiding Officer of the House
of Representatives