

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1710

By: Billy

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5  
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.  
8 2001, Section 1-109, as last amended by Section 2,  
9 Chapter 97, O.S.L. 2006 (43A O.S. Supp. 2006, Section  
10 1-109), which relates to privileged and confidential  
11 nature of medical records and physician/client  
12 communications; adding requirements for a valid  
13 release for certain information; adding defect for  
14 invalidity of release; providing for verbal  
15 revocation of consent for certain programs; providing  
16 for consent with respect to minors; specifying  
17 requirements before disclosure of certain information  
18 by court order; adding condition for exception to  
19 required authorization; striking permitted disclosure  
20 of certain records in certain proceedings; amending  
21 63 O.S. 2001, Section 2602, which relates to the  
22 right of self-consent; requiring consent under  
23 certain circumstances; and providing an effective  
24 date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-109, as  
last amended by Section 2, Chapter 97, O.S.L. 2006 (43A O.S. Supp.  
2006, 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

1 communications between a physician or psychotherapist and a consumer  
2 are both privileged and confidential. In addition, the identity of  
3 all persons who have received or are receiving mental health or drug  
4 or alcohol abuse treatment services shall be considered confidential  
5 and privileged.

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

13 3. Except as otherwise provided in this section, ~~such~~ the  
14 information shall ~~not~~ only be disclosed to ~~anyone~~ ~~not~~ persons  
15 involved in the treatment of the patient or related administrative  
16 work.

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

23 1. Information contained in notes recorded in any medium by a  
24 mental health professional documenting or analyzing the contents of

1 conversation during a private counseling session or a group, joint  
2 or family counseling session, and that is separated from the rest of  
3 the ~~patient's~~ medical record of the patient;

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

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

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

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

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

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

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

- 4 a. the specific name or general designation of the  
5 program or person permitted to make the disclosure,
- 6 b. the name or title of the individual or the name of the  
7 organization to which disclosure is to be made,
- 8 c. the name of the consumer whose records are to be  
9 released,
- 10 d. the purpose of the disclosure,
- 11 e. a description of the amount and type of information to  
12 be disclosed,
- 13 f. the dated signature of the consumer or authorized  
14 representative or both when required,
- 15 g. a statement of the right of the consumer to revoke the  
16 release in writing, and the exceptions to the right to  
17 revoke, and a description of how the consumer may do  
18 so,
- 19 h. an expiration date, event or condition which, if not  
20 revoked before, shall ensure the release will last no  
21 longer than reasonably necessary to serve the purpose  
22 for which it is given, ~~and~~

- 1 i. if the release is signed by a person authorized to act  
2 for a consumer, a description of the authority of such  
3 person to act, and  
4 j. a statement concerning the ability of the program to  
5 condition treatment, payment, enrollment, or  
6 eligibility of benefits on the patient agreeing to  
7 sign the consent, by stating either that the program  
8 may not condition these services on the patient  
9 signing the consent, or the consequences for the  
10 patient refusing to sign the consent.

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

- 13 a. the expiration date has passed or the expiration event  
14 or condition is known to have occurred or to exist,  
15 b. the release has not been filled out completely with  
16 respect to an element described in paragraph 1 of this  
17 section subsection,  
18 c. the release is known to have been revoked, ~~or~~  
19 d. any material information in the release is known to be  
20 false, or  
21 e. any of the required elements for a proper consent  
22 form, established by this section or any other state  
23 or federal law, are not satisfied.  
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1           3. A revocation of a release as provided in this section shall  
2 be in writing and may be made at any time, except when:

3           a. information has already been released in reliance  
4           thereon,

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

9           c. the release was executed as part of a criminal justice  
10          referral, or

11          d. substance abuse treatment programs covered by 42 CFR,  
12          Part 2 must honor verbal revocations of consent.

13          4. Disclosure regarding a deceased consumer shall require  
14 either a court order or a written release of an executor,  
15 administrator or personal representative appointed by the court, or  
16 if there is no such appointment, by the spouse of the consumer or,  
17 if none, by any responsible member of the family of the consumer.

18 As used in this paragraph, "responsible family member" means the  
19 parent, adult child, adult sibling or other adult relative who was  
20 actively involved in providing care to or monitoring the care of the  
21 patient as verified by the physician, psychologist or other person  
22 responsible for the care and treatment of such person.

23          5. Consent and disclosure regarding minor consumers requires  
24 the consent of the minor in all cases where the minor is seeking

1 alcohol or substance abuse treatment or services. The consent to  
2 disclose or release records of the parent or legal guardian is only  
3 additionally required if the consent was required for the minor to  
4 obtain treatment or services.

5 6. Consent and disclosure regarding minor consumers seeking  
6 mental health treatment or services can be obtained by getting the  
7 consent of the parent, legal guardian, or the minor in the cases  
8 where the minor is able to seek treatment or services without the  
9 parental or guardian consent. The consent of the minor is required  
10 if the minor sought the treatment or services without parental or  
11 guardian consent.

12 D. Except as otherwise permitted, mental health and alcohol or  
13 substance abuse treatment information may not be disclosed without  
14 valid patient authorization or a valid court order issued by a court  
15 of competent jurisdiction. For purposes of this section, a subpoena  
16 by itself is not sufficient to authorize disclosure of mental health  
17 ~~and alcohol or substance abuse~~ treatment information. For the  
18 purposes of this section, a subpoena, or valid search warrant  
19 executed by court order, is not sufficient to authorize disclosure  
20 of alcohol or substance abuse treatment information. Courts shall  
21 take measures necessary to preserve the confidentiality of consumers  
22 and protect consumers from public scrutiny.

23 1. Court orders requiring the release or disclosure of mental  
24 health records are required to contain the following elements:

- 1           a. a finding that the consumer and the holder of the  
2           records received notice of the request to release  
3           mental health records, and the consumer and the holder  
4           of the records had the opportunity to respond orally  
5           or in writing to the court,
- 6           b. a finding of good cause for the disclosure that  
7           outweighs the right of the consumer to  
8           confidentiality,
- 9           c. a list of the specific records to be disclosed. An  
10           entire medical record of a consumer shall not be  
11           ordered disclosed unless the entire record is  
12           specifically determined to be reasonably necessary to  
13           accomplish the purpose of the requested disclosure,
- 14           d. a time-frame on the validity of the court order, and  
15           e. the limited purpose of the requested disclosure, which  
16           disclosure shall be the minimum amount of information  
17           necessary to achieve the purpose of the requested  
18           disclosure, and disclosure shall be limited to the  
19           persons who need the information for that purpose.

20           2. Court orders requiring the release or disclosure of alcohol  
21           or substance abuse records are required to contain the following  
22           elements and shall be obtained in a confidential manner, unless the  
23           patient requests otherwise:  
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- 1        a. a finding that the consumer and the holder of the  
2        records received notice of the request to release the  
3        mental health records and had the opportunity to  
4        respond orally or in writing to the court. If the  
5        information sought is for the criminal investigation  
6        and prosecution purposes, only the holder of the  
7        records is required to be notified,
- 8        b. a finding of good cause for the disclosure that  
9        outweighs the right of the consumer to  
10       confidentiality,
- 11       c. a list of the specific records to be disclosed. An  
12       entire medical record of a consumer shall not be  
13       ordered disclosed unless the entire record is  
14       specifically determined to be reasonably necessary to  
15       accomplish the purpose of the requested disclosure,
- 16       d. a time-frame on the validity of the court order,
- 17       e. the limited purpose of the requested disclosure, which  
18       disclosure shall be the minimum amount of information  
19       necessary to achieve the purpose of the requested  
20       disclosure, and disclosure shall be limited to the  
21       persons who need the information for that purpose, and
- 22       f. a court order releasing confidential consumer  
23       communications by a program to a third party shall  
24       include the determination that the release is

1           necessary to protect against a threat to life or  
2           serious bodily injury, is necessary to investigate or  
3           prosecute a serious crime, or is in connection with a  
4           proceeding in which the consumer previously presented  
5           evidence concerning the same confidential  
6           communications.

7           3. If the information sought by the request is available  
8           through some other means, the court shall not issue an order of  
9           disclosure.

10           E. An authorization shall not be required for the following  
11           uses and disclosures, but information disclosed pursuant to one of  
12           these exceptions must be limited to the minimum amount of  
13           information necessary:

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

17           2. Communications to law enforcement officers regarding  
18           information directly related to the commission of a crime on the  
19           premises of a facility or against facility personnel, or a threat to  
20           commit ~~such~~ a crime. ~~Such communications involving persons with~~  
21           ~~substance abuse disorders~~ Communications shall be limited to the  
22           circumstances surrounding the incident, consumer status, name and  
23           address of that individual and the last-known whereabouts of that  
24           individual;

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

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

9           a. "business associate agreement" means a written signed  
10 agreement between a health care provider and an  
11 outside entity which performs or assists in the  
12 performance of a function or activity involving the  
13 use or disclosure of individually identifiable health  
14 information on behalf of the health care provider,

15           b. "qualified service organization agreement" means a  
16 written, signed agreement between a health care  
17 provider and an outside entity which provides services  
18 to the health care provider's consumers that are  
19 different from the services provided by the health  
20 care provider, that allows the health care provider to  
21 communicate consumer information necessary for the  
22 outside entity to provide services to the health care  
23 provider's consumers without the need for an  
24 authorization signed by a consumer and in which the

1 outside entity acknowledges that in receiving,  
2 storing, processing or otherwise dealing with any  
3 consumer information from the health care provider it  
4 is fully bound by the provisions of 42 C.F.R., Part 2  
5 and, if necessary, will resist any efforts in judicial  
6 proceedings to obtain access to consumer information,  
7 except as permitted by 42 C.F.R., Part 2, and

8 c. "qualified service organization/business agreement"

9 means a written, signed agreement between a health  
10 care provider and an outside entity which provides  
11 services to the health care provider's consumers that  
12 are different from the services provided by the health  
13 care provider, that allows the health care provider to  
14 communicate consumer information necessary for the  
15 outside entity to provide services to the health care  
16 provider's consumers without the need for an  
17 authorization signed by a consumer, and in which the  
18 outside entity acknowledges that in receiving,  
19 storing, processing or otherwise dealing with any  
20 consumer information from the health care provider it  
21 is fully bound by the provisions 42 C.F.R., Part 2  
22 and, if necessary, will resist any efforts in judicial  
23 proceedings to obtain access to consumer information,  
24 except as permitted by 42 C.F.R., Part 2. The

1 agreement must also contain elements required by  
2 federal privacy regulations in 45 C.F.R., Parts 160 &  
3 164;

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

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

13 7. Communications necessary for audit and evaluation  
14 activities;

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

23 9. Reporting of such information as otherwise required by law;  
24 provided, however, such disclosure may not identify the person

1 directly or indirectly as a person with a substance abuse disorder  
2 and shall be limited to the minimum amount of information necessary  
3 to comply with the legal requirement;

4 10. Communications to coroners, medical examiners and funeral  
5 directors for the purpose of identifying a deceased person,  
6 determining a cause of death, or other duties as authorized by law  
7 and as necessary to carry out their duties; provided, however, such  
8 disclosure may not identify the person directly or indirectly as a  
9 person with a substance abuse disorder;

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

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

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

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

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

17       ~~16.~~ 15. When failure to disclose the information presents a  
18 serious threat to the health and safety of a person or the public;  
19 provided, however, such disclosure may not identify the person  
20 directly or indirectly as a person with a substance abuse disorder.

21       SECTION 2.       AMENDATORY       63 O.S. 2001, Section 2602, is  
22 amended to read as follows:

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1 Section 2602. A. Notwithstanding any other provision of law,  
2 the following minors may consent to have services provided by health  
3 professionals in the following cases:

4 1. Any minor who is married, has a dependent child or is  
5 emancipated;

6 2. Any minor who is separated from his parents or legal  
7 guardian for whatever reason and is not supported by his parents or  
8 guardian;

9 3. Any minor who is or has been pregnant, afflicted with any  
10 reportable communicable disease, drug and substance abuse or abusive  
11 use of alcohol; provided, however, that such self-consent only  
12 applies to the prevention, diagnosis and treatment of those  
13 conditions specified in this section. Any health professional who  
14 accepts the responsibility of providing such health services also  
15 assumes the obligation to provide counseling for the minor by a  
16 health professional. If the minor is found not to be pregnant nor  
17 suffering from a communicable disease nor drug or substance abuse  
18 nor abusive use of alcohol, the health professional shall not reveal  
19 any information whatsoever to the spouse, parent or legal guardian,  
20 without the consent of the minor;

21 4. Any minor parent as to his child;

22 5. Any spouse of a minor when the minor is unable to give  
23 consent by reason of physical or mental incapacity;

1       6. Any minor who by reason of physical or mental capacity  
2 cannot give consent and has no known relatives or legal guardian, if  
3 two physicians agree on the health service to be given; or

4       7. Any minor in need of emergency services for conditions which  
5 will endanger his health or life if delay would result by obtaining  
6 consent from his spouse, parent or legal guardian; provided,  
7 however, that the prescribing of any medicine or device for the  
8 prevention of pregnancy shall not be considered such an emergency  
9 service.

10       If any minor falsely represents that he may give consent and a  
11 health professional provides health services in good faith based  
12 upon that misrepresentation, the minor shall receive full services  
13 without the consent of the minor's parent or legal guardian and the  
14 health professional shall incur no liability except for negligence  
15 or intentional harm. Consent of the minor shall not be subject to  
16 later disaffirmance or revocation because of his minority.

17       B. The health professional shall be required to make a  
18 reasonable attempt to inform the spouse, parent or legal guardian of  
19 the minor of any treatment needed or provided under paragraph 7 of  
20 subsection A of this section. When a minor is being evaluated,  
21 diagnosed, or treated for alcohol or substance abuse, the health  
22 professional shall not inform the spouse, parent, or legal guardian  
23 of the information associated with those activities without the  
24 consent of the minor. In all other instances the health

1 professional may, but shall not be required to inform the spouse,  
2 parent or legal guardian of the minor of any treatment needed or  
3 provided. The judgment of the health professional as to  
4 notification shall be final, and his disclosure shall not constitute  
5 libel, slander, the breach of the right of privacy, the breach of  
6 the rule of privileged communication or result in any other breach  
7 that would incur liability.

8 Information about the minor obtained through care by a health  
9 professional under the provisions of this act shall not be  
10 disseminated to any health professional, school, law enforcement  
11 agency or official, court authority, government agency or official  
12 employer, without the consent of the minor, except through specific  
13 legal requirements or if the giving of the information is necessary  
14 to the health of the minor and public. Statistical reporting may be  
15 done when the minor's identity is kept confidential.

16 The health professional shall not incur criminal liability for  
17 action under the provisions of this act except for negligence or  
18 intentional harm.

19 SECTION 3. This act shall become effective November 1, 2007.

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21 51-1-6164 SAB 01/10/07

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