

1 ENGROSSED SENATE  
2 BILL NO. 1772

By: Anderson of the Senate

3 and

4 Martin (Scott) of the House

5  
6  
7 [ mental health - Department of Mental Health and  
8 Substance Abuse Services - information confidential -  
9 modifying reporting requirement - modifying fees -  
10 promulgate rules - codification -  
11 effective date ]

12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 43A O.S. 2001, Section 2-108, as  
15 amended by Section 7, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2009,  
16 Section 2-108), is amended to read as follows:

17 Section 2-108. A. When the Department of Mental Health and  
18 Substance Abuse Services has reason to believe that any individual  
19 receiving services from a facility operated by, certified by, or  
20 under contract with the Department has been wrongfully deprived of  
21 liberty, or is cruelly, negligently or improperly treated, or  
22 inadequate provision is made for the individual's appropriate  
23 medical care, proper supervision and safe keeping, the Department

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1 may ascertain the facts or may require an investigation of the  
2 facts.

3 B. The Board shall establish and maintain a fair, simple and  
4 expeditious system for resolution of complaints of all individuals  
5 receiving such services.

6 C. Except as otherwise specifically provided in this section  
7 and as otherwise provided by state or federal laws, the information,  
8 records, materials, and reports related to investigations by the  
9 Department into allegations of consumer abuse, neglect, or  
10 mistreatment shall be confidential and contain privileged  
11 information. Accordingly, such records, materials, and reports  
12 shall not be open to public inspection nor their contents disclosed,  
13 nor shall a subpoena or subpoena duces tecum purporting to compel  
14 disclosure of such information be valid.

15 1. An order of the court authorizing the inspection, release,  
16 or disclosure of information, records, materials, and reports  
17 related to investigations by the Department shall be entered by a  
18 court only after a review of the records and a determination, with  
19 due regard for the confidentiality of the information and records  
20 and the privilege of the persons identified in the records, that a  
21 compelling reason exists, any applicable privilege has been waived,  
22 and such inspection, release or disclosure is necessary for the  
23 protection of a legitimate public or private interest.

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1        2. This section shall not be construed to prohibit the  
2 Department from summarizing the allegation or allegations made,  
3 facts and evidence gathered, and any findings of an investigation  
4 pursuant to this section. The summary may be provided to the  
5 following individuals and entities, provided the individuals or  
6 entities agree to protect the summary from disclosure:

- 7            a. the person suspected of abuse, neglect or improper  
8            treatment,
- 9            b. the person subject to the alleged abuse, neglect or  
10           improper treatment,
- 11           c. the person who reported the allegation,
- 12           d. the state and federal oversight, licensing or  
13           accrediting agency,
- 14           e. the administrator of a facility certified by or under  
15           contract with the Department at which the alleged  
16           abuse, neglect or improper treatment occurred,
- 17           f. any persons necessary to implement appropriate  
18           personnel action against the person suspected of  
19           abuse, neglect or mistreatment if evidence is found to  
20           support the allegation, and
- 21           g. the appropriate law enforcement agency, district  
22           attorney's office or any other entities as required by  
23           state and federal law.

1 SECTION 2. AMENDATORY Section 8, Chapter 488, O.S.L.  
2 2002, as last amended by Section 7, Chapter 195, O.S.L. 2005 (43A  
3 O.S. Supp. 2009, Section 2-109), is amended to read as follows:

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

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

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

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

- 1           b.    to supervise personnel assigned to the Office of  
2                    Consumer Advocacy,
- 3           c.    to monitor and review grievance procedures in  
4                    facilities operated by, subject to certification by or  
5                    under contract with the Department,
- 6           ~~d.    to investigate unresolved grievances and allegation of~~  
7                    ~~abuse, neglect and improper treatment of individuals~~  
8                    ~~receiving services from facilities operated by,~~  
9                    ~~subject to certification by or under contract with the~~  
10                   ~~Department,~~
- 11          ~~e.~~   to access facilities operated by, subject to  
12                    certification by or under contract with the Department  
13                    and the records of such facilities. Reasonable access  
14                    shall be granted for the purposes of ~~conducting~~  
15                    ~~investigations of abuse, neglect and improper~~  
16                    ~~treatment, and performing other activities as~~  
17                    ~~necessary to monitor~~ monitoring the care and treatment  
18                    provided by such facilities,
- 19          ~~f.~~
- 20          e.   to access the records of individuals receiving  
21                    services from facilities operated by, subject to  
22                    certification by or under contract with the  
23                    Department. Records that are confidential under state  
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1 and federal law shall be maintained as confidential  
2 and not be redisclosed by the Advocate General,

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

7 ~~h.~~

8 f. to make recommendations to the Commissioner of Mental  
9 Health and Substance Abuse Services and provide  
10 regular or special reports regarding ~~investigations~~  
11 ~~and unresolved grievances~~ and consumer care to the  
12 Commissioner and the Board, and

13 ~~i.~~

14 g. to perform such other duties as assigned by the Board  
15 and Commissioner.

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

1 C. Except as otherwise specifically provided in this section  
2 and as otherwise provided by state or federal laws, the information,  
3 records, materials and reports related to ~~investigations~~ or prepared  
4 by the Office of Consumer Advocacy in performance of the duties  
5 prescribed in this section are confidential and contain privileged  
6 information. Accordingly, such records, materials and reports shall  
7 not be open to public inspection nor their contents disclosed, nor  
8 shall a subpoena or subpoena duces tecum purporting to compel  
9 disclosure of such information be valid.

10 ~~1.~~ D. An order of the court authorizing the inspection, release  
11 or disclosure of information, records, materials and reports ~~related~~  
12 ~~to investigations~~ prepared by the Office of Consumer Advocacy shall  
13 be entered by a court only after a review of the records and a  
14 determination, with due regard for the confidentiality of the  
15 information and records and the privilege of the persons identified  
16 in the records, that a compelling reason exists, any applicable  
17 privilege has been waived and such inspection, release or disclosure  
18 is necessary for the protection of a legitimate public or private  
19 interest.

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

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

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

7 ~~c. the person who reported an allegation,~~

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

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

13 SECTION 3. AMENDATORY 43A O.S. 2001, Section 2-205, as  
14 amended by Section 9, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2009,  
15 Section 2-205), is amended to read as follows:

16 Section 2-205. The Department of Mental Health and Substance  
17 Abuse Services is hereby directed to employ one or more internal  
18 auditors to establish and perform an effective and comprehensive  
19 internal audit program. Such program shall include, but not be  
20 limited to, reviews of accounting procedures, internal control,  
21 financial management and compliance with laws, regulations, policies  
22 and executive and legislative directives for the Department's  
23 administrative offices, institutions, community mental health  
24 centers and contractors. Internal audit final reports, shall be

1 made ~~directly~~ available to the Governor, the State Auditor and  
2 Inspector, the Legislative Service Bureau, the Board of Mental  
3 Health and Substance Abuse Services and the Commissioner of Mental  
4 Health and Substance Abuse Services.

5 SECTION 4. AMENDATORY Section 9, Chapter 97, O.S.L. 2006  
6 (43A O.S. Supp. 2009, Section 3-324), is amended to read as follows:

7 Section 3-324. A. The Department of Mental Health and  
8 Substance Abuse Services is hereby authorized to establish and  
9 collect certification ~~and~~ fees, renewal fees, and site visit fees  
10 for ~~certification of~~ any program the Department is authorized by law  
11 to certify, to defray the costs incurred in the certification and  
12 renewal inspections and procedures.

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

15 C. Site visit fees shall not exceed Three Hundred Dollars  
16 (\$300.00) per visit.

17 SECTION 5. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 3-326 of Title 43A, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. The Board of Mental Health and Substance Abuse Services  
21 shall promulgate rules for certification of peer recovery support  
22 specialists who are employed by the state or by behavioral services  
23 providers contracting with the state to provide behavioral health  
24 services. Such rules shall address criteria for certification and

1 renewal, including minimum education requirements, examination and  
2 supervision requirements, continuing education requirements, and  
3 rules of professional conduct.

4 B. Application for certification as a peer recovery support  
5 specialist shall be made to the Department of Mental Health and  
6 Substance Abuse Services on prescribed forms. The Board, or the  
7 Commissioner of Mental Health and Substance Abuse Services upon  
8 delegation by the Board, may certify the peer recovery support  
9 specialist for a period of two (2) years subject to renewal as  
10 provided in the rules promulgated by the Board.

11 C. The Board is authorized to establish an application and  
12 renewal fee of no more than One Hundred Dollars (\$100.00) to defray  
13 the costs incurred in the certification process.

14 D. A peer recovery support specialist certified by the Board or  
15 the Commissioner shall only use the title "certified peer recovery  
16 support specialist" if employed by the state or by behavioral  
17 services providers contracting with the state to provide behavioral  
18 health services. This section shall not be construed to permit the  
19 certified peer recovery support specialist to practice any of the  
20 following professions or use the following titles unless also  
21 licensed or accredited by the appropriate authority:

- 22 1. Physician;
- 23 2. Psychologist;
- 24 3. Clinical social worker;

- 1 4. Professional counselor;
- 2 5. Marital and family therapist;
- 3 6. Behavioral practitioner; or
- 4 7. Alcohol and drug counselor.

5 E. Failure to comply with rules promulgated by the Board shall  
6 be grounds for revocation, suspension, or nonrenewal of  
7 certification.

8 SECTION 6. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 3-327 of Title 43A, unless there  
10 is created a duplication in numbering, reads as follows:

11 The Board of Mental Health and Substance Abuse Services is  
12 hereby authorized to promulgate rules that establish the setting and  
13 collection of fines for failure to meet the required rules for  
14 certification as a certified peer recovery support specialist. Such  
15 fines shall not replace or prevent the Department from seeking other  
16 sanctions against a program it certifies for failure to meet the  
17 required rules for certification.

18 SECTION 7. This act shall become effective November 1, 2010.  
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