

ENROLLED HOUSE
BILL NO. 2999

By: Steele, McAffrey and
Pittman of the House

and

Crain of the Senate

An Act relating to mental health; amending 43A O.S. 2001, Section 2-103, as last amended by Section 3, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 2-103), which relates to the Board of Mental Health and Substance Abuse Services; modifying provisions related to terms of office; amending 43A O.S. 2001, Section 3-101, as last amended by Section 5, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 3-101), which relates to facilities maintained by the Department of Mental Health and Substance Abuse Services; making maintenance of certain facilities by Department discretionary; amending 43A O.S. 2001, Section 10-104, as last amended by Section 3, Chapter 68, O.S.L. 2007 (43A O.S. Supp. 2009, Section 10-104), which relates to report required for vulnerable adult suffering abuse; adding municipal employees to entities required to make report; providing for services by certified alcohol and drug counselor providers through certain date; providing for interpretation; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 2-103, as last amended by Section 3, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 2-103), is amended to read as follows:

Section 2-103. A. The Board of Mental Health and Substance Abuse Services shall be composed of eleven (11) members, appointed by the Governor, with the advice and consent of the Senate, ~~as follows.~~ Each term is for a seven-year period and members may be reappointed to subsequent terms. Board members shall meet the following criteria:

1. One member, who shall be a physician licensed to practice in this state, and one member, who shall be a psychiatrist certified as a diplomate of the American Board of Psychiatry and Neurology, shall both be appointed from a list containing the names of not less than three physicians and not less than three psychiatrists submitted to the Governor by the Oklahoma State Medical Association;

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

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

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

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

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

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

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

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

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

~~G.~~ F. The duties of the Board shall pertain to the care, treatment, and hospitalization of persons with mental illness, or alcohol- or drug-dependent persons.

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

~~I.~~ H. Members of the Board of Mental Health and Substance Abuse Services shall be allowed to serve on the State Board of Medical Licensure and Supervision during members' terms on the Board of Mental Health and Substance Abuse Services.

SECTION 2. AMENDATORY 43A O.S. 2001, Section 3-101, as last amended by Section 5, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 3-101), is amended to read as follows:

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

1. Griffin Memorial Hospital, Norman;
2. Oklahoma Forensic Center, Vinita;
3. Children's Recovery Center of Oklahoma, Norman;
4. Tulsa Center for Behavioral Health, Tulsa;
5. Carl Albert Community Mental Health Center, McAlester;
6. Jim Taliaferro Community Mental Health Center, Lawton;

7. Central Oklahoma Community Mental Health Center, Norman;
8. Bill Willis Community Mental Health and Substance Abuse Services Center, Tahlequah;
9. Northwest Center for Behavioral Health, Woodward;
10. Oklahoma County Crisis Intervention Center, Oklahoma City;
11. Norman Alcohol and Drug Treatment Center, Norman; and
12. Rose Rock Recovery Center, Vinita.

SECTION 3. AMENDATORY 43A O.S. 2001, Section 10-104, as last amended by Section 3, Chapter 68, O.S.L. 2007 (43A O.S. Supp. 2009, Section 10-104), is amended to read as follows:

Section 10-104. A. Any person having reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, or exploitation shall make a report as soon as the person is aware of the situation to:

1. The Department of Human Services; or

2. The municipal police department or sheriff's office in the county in which the suspected abuse, neglect, or exploitation occurred.

B. Persons required to make reports pursuant to this section shall include, but not be limited to:

1. Physicians;

2. Operators of emergency response vehicles and other medical professionals;

3. Social workers and mental health professionals;

4. Law enforcement officials;

5. Staff of domestic violence programs;

6. Long-term care facility personnel, including staff of nursing facilities, intermediate care facilities for persons with

mental retardation, assisted living facilities, and residential care facilities;

7. Other health care professionals;

8. Persons entering into transactions with a caretaker or other person who has assumed the role of financial management for a vulnerable adult;

9. Staff of residential care facilities, group homes, or employment settings for individuals with developmental disabilities; ~~and~~

10. Job coaches, community service workers, and personal care assistants; and

11. Municipal employees.

C. 1. If the report is not made in writing in the first instance, as soon as possible after it is initially made by telephone or otherwise, the report shall be reduced to writing by the Department of Human Services, in accordance with rules promulgated by the Commission for Human Services, or the local municipal police or sheriff's department whichever entity received the initial report. The report shall contain the following information:

- a. the name and address of the vulnerable adult,
- b. the name and address of the caretaker, guardian, or person having power of attorney over the vulnerable adult's resources if any,
- c. a description of the current location of the vulnerable adult,
- d. a description of the current condition of the vulnerable adult, and
- e. a description of the situation which may constitute abuse, neglect or exploitation of the vulnerable adult.

2. If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the report.

D. If the initial report is made to the local municipal police department or sheriff's office, such police department or sheriff's office shall notify, as soon as possible, the Department of Human Services of its investigation.

E. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a term not exceeding one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

F. 1. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

2. The same immunity from any civil or criminal liability shall also be extended to previous employers of a person employed to be responsible for the care of a vulnerable adult, who in good faith report to new employers or prospective employers of such caretaker any misconduct of the caretaker including, but not limited to, abuse, neglect or exploitation of a vulnerable adult, whether confirmed or not.

G. Any person who willfully or recklessly makes a false report shall be civilly liable for any actual damages suffered by the person being reported and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury.

H. 1. Every physician or other health care professional making a report concerning the abuse, neglect or exploitation of a vulnerable adult, as required by this section, or examining a vulnerable adult to determine the likelihood of abuse, neglect or exploitation, and every hospital in which a vulnerable adult is examined or treated for abuse, neglect or exploitation shall disclose necessary health information related to the case and provide, upon request by either the Department of Human Services or

the local municipal police or sheriff's department receiving the initial report, copies of the results or the records of the examination on which the report was based, and any other clinical notes, x-rays or photographs and other health information which is related to the case if:

- a. the vulnerable adult agrees to the disclosure of the health information, or
- b. the individual is unable to agree to the disclosure of health information because of incapacity; and
 - (1) the requesting party represents that the health information for which disclosure is sought is not intended to be used against the vulnerable adult in a criminal prosecution but to provide protective services pursuant to the Protective Services for Vulnerable Adults Act,
 - (2) the disclosure of the information is necessary to conduct an investigation into the alleged abuse, neglect or exploitation of the vulnerable adult subject to the investigation, and
 - (3) immediate enforcement activity that depends upon the disclosure:
 - (a) is necessary to protect the health, safety and welfare of the vulnerable adult because of incapacity, or
 - (b) would be materially and adversely affected by waiting until the vulnerable adult is able to agree to the disclosure.

2. If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the disclosed health information.

I. After investigating the report, either the county office of the Department of Human Services or the municipal police department or sheriff's office, as appropriate, shall forward its findings to the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred.

J. Any state or county medical examiner or physician who has reasonable cause to suspect that the death of any vulnerable adult may be the result of abuse or neglect as defined by Section 10-103 of this title shall make a report to the district attorney or other law enforcement official of the county in which the death occurred. The report shall include the name of the person making the report, the name of the deceased person, the facts or other evidence supporting such suspicion, and any other health information that may be of assistance to the district attorney in conducting an investigation into the matter.

K. No employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-406.1 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Until June 30, 2013, the Department of Mental Health and Substance Abuse Services and the Oklahoma Health Care Authority shall continue to purchase, on a fee-for-service basis, therapy provided by certified alcohol and drug counselors, as defined in Chapter 43B, Section 1871 of Title 59 of the Oklahoma Statutes, provided such therapy is provided by certified alcohol and drug counselors employed from organizations or individuals under contract with the Department of Mental Health and Substance Abuse Services or the Oklahoma Health Care Authority.

B. Nothing in this section shall prohibit the Board of Mental Health and Substance Abuse Services or the Oklahoma Health Care Authority Board from initiating or terminating contracts with certified substance abuse providers, establishing contract limits, developing or modifying reimbursement schedules, or otherwise managing appropriated resources on behalf of the state.

SECTION 5. This act shall become effective November 1, 2010.

Passed the House of Representatives the 17th day of May, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of May, 2010.

Presiding Officer of the Senate