

SB 598

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THE STATE SENATE
Monday, February 23, 2009

Senate Bill No. 598
As Amended

SENATE BILL NO. 598 - By: Anderson and Crain of the Senate and
Martin (Scott) of the House.

[mental health - Department of Mental Health and Substance
Abuse Services - definitions - codification - effective
date]

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-103, as
last amended by Section 1, Chapter 401, O.S.L. 2008 (43A O.S. Supp.
2008, 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;

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

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

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

10 7. "Facility" means any hospital, school, building, house or
11 retreat, authorized by law to have the care, treatment or custody of
12 an individual with mental illness, or drug or alcohol dependency,
13 gambling addiction, eating disorders, or an individual receiving
14 methadone treatment for dependency purposes only, including, but not
15 limited to, public or private hospitals, community mental health
16 centers, clinics, satellites or facilities; provided that facility
17 shall not mean a child guidance center operated by the State
18 Department of Health;

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

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

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

11 11. "Licensed mental health professional" means:

- 12 a. a psychiatrist who is a diplomate of the American
13 Board of Psychiatry and Neurology,
14 b. a physician licensed pursuant to Section 480 et seq.
15 or Section 620 et seq. of Title 59 of the Oklahoma
16 Statutes who has received specific training for and is
17 experienced in performing mental health therapeutic,
18 diagnostic, or counseling functions,
19 c. a clinical psychologist who is duly licensed to
20 practice by the State Board of Examiners of
21 Psychologists,
22 d. a professional counselor licensed pursuant to Section
23 1901 et seq. of Title 59 of the Oklahoma Statutes,

- 1 e. a person licensed as a clinical social worker pursuant
2 to the provisions of the Social Worker's Licensing
3 Act,
4 f. a licensed marital and family therapist as defined in
5 Section 1925.1 et seq. of Title 59 of the Oklahoma
6 Statutes,
7 g. a licensed behavioral practitioner as defined in
8 Section 1930 et seq. of Title 59 of the Oklahoma
9 Statutes,
10 h. an advanced practice nurse as defined in Section 567.1
11 et seq. of Title 59 of the Oklahoma Statutes
12 specializing in mental health, or
13 i. a physician's assistant who is licensed in good
14 standing in this state and has received specific
15 training for and is experienced in performing mental
16 health therapeutic, diagnostic, or counseling
17 functions;

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

21 13. a. "Person requiring treatment" means:

- 1 (1) a person who because of a his or her mental
2 illness of the person represents a risk of harm
3 to self or others, or
4 ~~(2) a person who is a drug or alcohol dependent~~
5 person and who as a result of dependency
6 represents a risk of harm to self or others or
7 drug or alcohol dependency:
8 (a) poses a substantial risk of physical harm in
9 the near future to self as manifested by
10 evidence or serious threats of or attempts
11 at suicide or other significant self-
12 inflicted bodily harm, or
13 (b) poses a substantial risk of physical harm in
14 the near future to another person or persons
15 as manifested by evidence of violent
16 behavior directed toward another person or
17 persons, or
18 (c) has placed another person or persons in a
19 reasonable fear of violent behavior directed
20 towards such person or persons or serious
21 physical harm to them as manifested by
22 serious and immediate threats, or

1 (d) is in a condition such that, without
2 intervention, there exists a substantial
3 risk that severe impairment or injury will
4 result to the person in the near future, or
5 (e) poses a substantial risk of serious physical
6 injury to self in the near future, or death
7 in the near future, as manifested by
8 evidence that the person is unable to
9 provide for and is not providing for his or
10 her basic physical needs.

11 (2) The mental health or substance abuse history of
12 the person may be used as part of the evidence to
13 determine whether the person is a "person
14 requiring treatment". The mental health or
15 substance abuse history of the person shall not
16 be the sole basis for this determination.

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

20 (1) a person whose mental processes have been
21 weakened or impaired by reason of advanced years,
22 dementia, or Alzheimer's disease,

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

4 (3) a person with seizure disorder,

5 (4) a person with a traumatic brain injury, or

6 (5) a person who is homeless;

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

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

11 16. "Private hospital or facility" means any general hospital
12 maintaining a neuro-psychiatric unit or ward, or any private
13 hospital or facility for care and treatment of a person having a
14 mental illness, which is not supported by the state or federal
15 government. The term "private hospital" or "facility" shall not
16 include nursing homes or other facilities maintained primarily for
17 the care of elderly and disabled persons;

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

22 a. a statement of treatment goals or objectives, based
23 upon and related to a clinical evaluation, which can

1 be reasonably achieved within a designated time
2 interval,
3 b. treatment methods and procedures to be used to obtain
4 these goals, which methods and procedures are related
5 to each of these goals and which include specific
6 prognosis for achieving each of these goals,
7 c. identification of the types of professional personnel
8 who will carry out the treatment procedures, including
9 appropriate medical or other professional involvement
10 by a physician or other health professional properly
11 qualified to fulfill legal requirements mandated under
12 state and federal law,
13 d. documentation of involvement by the individual
14 receiving treatment and, if applicable, the accordane
15 of the individual with the treatment plan, and
16 e. a statement attesting that the executive director of
17 the facility or clinical director has made a
18 reasonable effort to meet the plan's individualized
19 treatment goals in the least restrictive environment
20 possible closest to the home community of the
21 individual; and

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

- 1 ~~a. a substantial risk of immediate physical harm to self~~
2 ~~as manifested by evidence or serious threats of or~~
3 ~~attempts at suicide or other significant self-~~
4 ~~inflicted bodily harm,~~
- 5 ~~b. a substantial risk of immediate physical harm to~~
6 ~~another person or persons as manifested by evidence of~~
7 ~~violent behavior directed toward another person or~~
8 ~~persons,~~
- 9 ~~c. having placed another person or persons in a~~
10 ~~reasonable fear of violent behavior directed towards~~
11 ~~such person or persons or serious physical harm to~~
12 ~~them as manifested by serious and immediate threats,~~
- 13 ~~d. there exists a substantial risk that without immediate~~
14 ~~intervention severe impairment or injury will result~~
15 ~~to the person alleged to be a person requiring~~
16 ~~treatment, or~~
- 17 ~~e. a substantial risk of immediate serious physical~~
18 ~~injury to self, or immediate death, as manifested by~~
19 ~~evidence that the person is unable to provide for and~~
20 ~~is not providing for the basic physical needs of the~~
21 ~~person and that appropriate provision for those needs~~
22 ~~cannot be made immediately available in the community.~~

1 ~~Unless a person also meets the criteria established in~~
2 ~~subparagraphs a, b, c, d, or e of this paragraph, "risk of harm to~~
3 ~~self or others" does not mean a person who is homeless; and~~

4 19. "Telemedicine" means the practice of health care delivery,
5 diagnosis, consultation, evaluation, treatment, transfer of medical
6 data, or exchange of medical education information by means of
7 audio, video, or data communications. Telemedicine uses audio and
8 video multimedia telecommunication equipment which permits two-way
9 real-time communication between a health care practitioner and a
10 patient who are not in the same physical location. Telemedicine
11 shall not include consultation provided by telephone or facsimile
12 machine.

13 SECTION 2. AMENDATORY 43A O.S. 2001, Section 2-205, as
14 amended by Section 9, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2008,
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

1 centers and contractors. Internal audit final reports, shall be
2 made ~~directly~~ available to the Governor, the State Auditor and
3 Inspector, the Legislative Service Bureau, the Board of Mental
4 Health and Substance Abuse Services and the Commissioner of Mental
5 Health and Substance Abuse Services.

6 SECTION 3. AMENDATORY Section 9, Chapter 97, O.S.L. 2006
7 (43A O.S. Supp. 2008, Section 3-324), is amended to read as follows:

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

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

16 C. Site visit fees shall not exceed Three Hundred Dollars
17 (\$300.00) per visit.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3-326 of Title 43A, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The Board of Mental Health and Substance Abuse Services
22 shall promulgate rules for certification of peer recovery support
23 specialists who are employed by the state or by behavioral services

1 providers contracting with the state to provide behavioral health
2 services. Such rules shall address criteria for certification and
3 renewal, including minimum education requirements, examination and
4 supervision requirements, continuing education requirements, and
5 rules of professional conduct.

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

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

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

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

8 E. Failure to comply with rules promulgated by the Board shall
9 be grounds for revocation, suspension, or nonrenewal of
10 certification.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3-327 of Title 43A, unless there
13 is created a duplication in numbering, reads as follows:

14 The Board of Mental Health and Substance Abuse Services is
15 hereby authorized to promulgate rules that establish the setting and
16 collection of fines for failure to meet the required rules for
17 certification. Such fines shall not replace nor prevent the
18 Department from seeking other sanctions against a program it
19 certifies for failure to meet the required rules for certification.

20 SECTION 6. This act shall become effective November 1, 2009.

21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-18-09 - DO
22 PASS, As Amended and Coauthored.