

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1574

By: Coody

4
5
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.
8 2001, Section 1-103, as last amended by Section 1,
9 Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2008,
10 Section 1-103), which relates to definitions;
11 modifying definition; amending 43A O.S. 2001, Section
12 5-410, as last amended by Section 18, Chapter 97,
13 O.S.L. 2006 (43A O.S. Supp. 2008, Section 5-410),
14 which relates to a petition regarding a person
15 requiring treatment; expanding list of those persons
16 authorized to file a petition; and providing an
17 effective date.

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

19 SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-103, as
20 last amended by Section 1, Chapter 401, O.S.L. 2008 (43A O.S. Supp.
21 2008, Section 1-103), is amended to read as follows:

22 Section 1-103. When used in this title, unless otherwise
23 expressly stated, or unless the context or subject matter otherwise
24 requires:

1. "Department" means the Department of Mental Health and
Substance Abuse Services;

1 2. "Chair" means the chair of the Board of Mental Health and
2 Substance Abuse Services;

3 3. "Mental illness" means a substantial disorder of thought,
4 mood, perception, psychological orientation or memory that
5 significantly impairs judgment, behavior, capacity to recognize
6 reality or ability to meet the ordinary demands of life;

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

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

12 6. "Indigent person" means a person who has not sufficient
13 assets or resources to support the person and to support members of
14 the family of the person lawfully dependent on the person for
15 support;

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

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

4 9. "Care and treatment" means medical care and behavioral
5 health services, as well as food, clothing and maintenance,
6 furnished to a person;

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

14 11. "Licensed mental health professional" means:

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

17 b. a physician licensed pursuant to Section 480 et seq.
18 or Section 620 et seq. of Title 59 of the Oklahoma
19 Statutes who has received specific training for and is
20 experienced in performing mental health therapeutic,
21 diagnostic, or counseling functions,

22 c. a clinical psychologist who is duly licensed to
23 practice by the State Board of Examiners of
24 Psychologists,

- 1 d. a professional counselor licensed pursuant to Section
2 1901 et seq. of Title 59 of the Oklahoma Statutes,
3 e. a person licensed as a clinical social worker pursuant
4 to the provisions of the Social Worker's Licensing
5 Act,
6 f. a licensed marital and family therapist as defined in
7 Section 1925.1 et seq. of Title 59 of the Oklahoma
8 Statutes,
9 g. a licensed behavioral practitioner as defined in
10 Section 1930 et seq. of Title 59 of the Oklahoma
11 Statutes,
12 h. an advanced practice nurse as defined in Section 567.1
13 et seq. of Title 59 of the Oklahoma Statutes
14 specializing in mental health, or
15 i. a physician's assistant who is licensed in good
16 standing in this state and has received specific
17 training for and is experienced in performing mental
18 health therapeutic, diagnostic, or counseling
19 functions;

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

23 13. ~~a-~~ "Person requiring treatment" means+

1 ~~(1) a person who because of a mental illness of~~
2 ~~the person represents, or due to the drug or~~
3 ~~alcohol dependence of the person:~~

4 a. poses a risk of physical harm to self or others as
5 manifested by serious threats or attempts at suicide
6 or other significant self-inflicted bodily harm, or

7 ~~(2) a person who is a drug or alcohol dependent~~
8 ~~person and who as a result of dependency~~
9 ~~represents a risk of harm to self or others.~~

10 b. ~~Unless a person also meets the criteria established in~~
11 ~~subparagraph a of this paragraph, person requiring~~
12 ~~treatment shall not mean:~~

13 ~~(1) a person whose mental processes have been~~
14 ~~weakened or impaired by reason of advanced years,~~
15 ~~dementia, or Alzheimer's disease,~~

16 ~~(2) a mentally retarded or developmentally disabled~~
17 ~~person as defined in Title 10 of the Oklahoma~~
18 ~~Statutes,~~

19 ~~(3) a person with seizure disorder,~~

20 ~~(4) a person with a traumatic brain injury, or~~

21 ~~(5) a person who is homeless~~

22 poses a risk of serious physical harm to another
23 person as manifested by violent behavior to another,
24 or by serious threats or actions that have placed

1 another person in reasonable fear of violent behavior,
2 or by actions or inaction that present a serious
3 danger to a person in his or her care,

4 c. is, because of the nature of the illness, unable to
5 understand the need for treatment and who, if not
6 treated, is reasonably expected to suffer or continue
7 to suffer mental or emotional deterioration to the
8 point that the person is reasonably expected to become
9 harmful to self or others, or

10 d. poses a risk of serious physical injury to self as
11 manifested by evidence that the person is unable to
12 provide for his or her basic needs for food, clothing,
13 shelter, health, or safety.

14 For purposes of this paragraph, the past behavior or history of the
15 person may be considered;

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

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

20 16. "Private hospital or facility" means any general hospital
21 maintaining a neuro-psychiatric unit or ward, or any private
22 hospital or facility for care and treatment of a person having a
23 mental illness, which is not supported by the state or federal
24 government. The term "private hospital" or "facility" shall not

1 include nursing homes or other facilities maintained primarily for
2 the care of elderly and disabled persons;

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

7 a. a statement of treatment goals or objectives, based
8 upon and related to a clinical evaluation, which can
9 be reasonably achieved within a designated time
10 interval,

11 b. treatment methods and procedures to be used to obtain
12 these goals, which methods and procedures are related
13 to each of these goals and which include specific
14 prognosis for achieving each of these goals,

15 c. identification of the types of professional personnel
16 who will carry out the treatment procedures, including
17 appropriate medical or other professional involvement
18 by a physician or other health professional properly
19 qualified to fulfill legal requirements mandated under
20 state and federal law,

21 d. documentation of involvement by the individual
22 receiving treatment and, if applicable, the accordence
23 of the individual with the treatment plan, and
24

1 e. a statement attesting that the executive director of
2 the facility or clinical director has made a
3 reasonable effort to meet the plan's individualized
4 treatment goals in the least restrictive environment
5 possible closest to the home community of the
6 individual;

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

8 a. a substantial risk of immediate physical harm to self
9 as manifested by evidence or serious threats of or
10 attempts at suicide or other significant self-
11 inflicted bodily harm,

12 b. a substantial risk of immediate physical harm to
13 another person or persons as manifested by evidence of
14 violent behavior directed toward another person or
15 persons,

16 c. having placed another person or persons in a
17 reasonable fear of violent behavior directed towards
18 such person or persons or serious physical harm to
19 them as manifested by serious and immediate threats,

20 d. there exists a substantial risk that without immediate
21 intervention severe impairment or injury will result
22 to the person alleged to be a person requiring
23 treatment, or
24

1 e. a substantial risk of immediate serious physical
2 injury to self, or immediate death, as manifested by
3 evidence that the person is unable to provide for and
4 is not providing for the basic physical needs of the
5 person and that appropriate provision for those needs
6 cannot be made immediately available in the community.

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

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

19 SECTION 2. AMENDATORY 43A O.S. 2001, Section 5-410, as
20 last amended by Section 18, Chapter 97, O.S.L. 2006 (43A O.S. Supp.
21 2008, Section 5-410), is amended to read as follows:

22 Section 5-410. A. The following persons may file or request
23 the district attorney to file a petition with the district court,
24 upon which is hereby conferred jurisdiction, to determine whether an

1 individual is a person requiring treatment, and to order the least
2 restrictive appropriate treatment for the person:

3 1. ~~The father, mother, husband, wife, brother, sister, guardian~~
4 ~~or child, over the age of eighteen (18) years, Any adult having~~
5 knowledge of an individual alleged to be a person requiring
6 treatment;

7 2. A licensed mental health professional;

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

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

18 5. A person in charge of any correctional institution;

19 6. Any peace officer within the county in which the individual
20 alleged to be a person requiring treatment resides or may be found;
21 or

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

24

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

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

6 2. A request for the prehearing detention of the individual
7 alleged to be a person requiring treatment may be attached to the
8 petition.

9 3. If the individual alleged to be a person requiring treatment
10 is being held in emergency detention, a copy of the mental health
11 evaluation shall be attached to the petition.

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

15 SECTION 3. This act shall become effective November 1, 2009.

16

17 52-1-5805 SAB 01/06/09

18

19

20

21

22

23

24