

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2896

By: Walker

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5
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.
8 2001, Section 2-103, as last amended by Section 3,
Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009,
9 Section 2-103), which relates to member composition
on the Board of Mental Health and Substance Abuse;
10 clarifying language; amending 43A O.S. 2001, Section
3-406, as last amended by Section 10, Chapter 113,
O.S.L. 2004 (43A O.S. Supp. 2009, Section 3-406),
11 which relates to the duties and powers of the Board
of Mental Health and Substance Abuse Services;
12 modifying certain power; amending 43A O.S. 2001,
Section 3-415, as last amended by Section 12, Chapter
13 97, O.S.L. 2006 (43A O.S. Supp. 2009, Section 3-415),
which relates to certified services for treatment for
14 alcohol- and drug-dependent persons; requiring that
certified services be in compliance with certain
15 laws; amending 43A O.S. 2001, Section 3-416, as
amended by Section 18, Chapter 150, O.S.L. 2005 (43A
16 O.S. Supp. 2009, Section 3-416), which relates to the
establishment of certain standards; adding certain
17 standard; amending 43A O.S. 2001, Section 5-502, as
last amended by Section 138, Chapter 234, O.S.L. 2009
18 (43A O.S. Supp. 2009, Section 5-502), which provides
certain definitions; modifying definition; and
19 providing an effective date.

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22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
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1 SECTION 1. AMENDATORY 43A O.S. 2001, Section 2-103, as
2 last amended by Section 3, Chapter 401, O.S.L. 2008 (43A O.S. Supp.
3 2009, Section 2-103), is amended to read as follows:

4 Section 2-103. A. The Board of Mental Health and Substance
5 Abuse Services shall be composed of eleven (11) members, appointed
6 by the Governor, with the advice and consent of the Senate, as
7 follows:

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

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

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

22 4. Three members, qualified by education and experience in the
23 area of substance abuse recovery, who shall be appointed from a list
24 of not less than ten names submitted to the Governor by a state

1 association of substance abuse recovery programs or organizations
2 for terms ~~ending~~ whose initial appointment ended on December 31,
3 2002, December 31, 2004, and December 31, 2006, respectively; and

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

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

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

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

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

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

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

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

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

11 SECTION 2. AMENDATORY 43A O.S. 2001, Section 3-406, as
12 last amended by Section 10, Chapter 113, O.S.L. 2004 (43A O.S. Supp.
13 2009, Section 3-406), is amended to read as follows:

14 Section 3-406. The Board of Mental Health and Substance Abuse
15 Services shall have the following duties and powers:

16 1. Survey and analyze the state's needs and formulate a
17 comprehensive plan for the long-range development, through the
18 utilization of federal, state, local and private resources, of
19 adequate services and facilities for the prevention of alcohol and
20 drug dependence and the diagnosis, treatment and rehabilitation of
21 alcohol- and drug-dependent persons;

22 2. Promote, develop, establish, coordinate and conduct unified
23 programs for the prevention of alcohol and drug dependence and the
24 diagnosis, treatment and rehabilitation of alcohol- and drug-

1 dependent persons and, within funds available, implement and
2 administer such programs;

3 3. Direct and carry on basic clinical, epidemiological, social,
4 psychological and statistical research in alcohol and drug
5 dependence within the funds available therefor;

6 4. Provide consultation, education and training in the
7 prevention of alcohol and drug dependence and in the diagnosis,
8 treatment and rehabilitation of alcohol- and drug-dependent persons,
9 for those persons with program responsibility, either separately or
10 in conjunction with other agencies, public or private;

11 5. In cooperation with other public or private agencies,
12 provide public education on the nature and results of alcohol and
13 drug abuse and on the potentials of prevention and rehabilitation in
14 order to promote public understanding, interest and support;

15 6. Disseminate information relating to public and private
16 services and facilities in the state available for the assistance of
17 alcohol- and drug-dependent persons;

18 7. Gather information and maintain statistical and other
19 records relating to alcohol- and drug-dependent persons in the
20 state. The Board may require specified reports from those
21 organizations and agencies engaged in the treatment and
22 rehabilitation of alcohol- and drug-dependent persons;

23 8. ~~Have the power to~~ In compliance with the laws of the state,
24 including, but not limited to the medical and professional licensure

1 and credentialing laws and regulations adopted by the medical and
2 professional licensure and credentialing boards, enter into
3 agreements and joint financial arrangements, including agreements
4 and arrangements with public and private agencies, to do or cause to
5 be done that which may be necessary or desirable to carry out the
6 purposes of the Oklahoma Alcohol and Drug Abuse Services Act;

7 9. Solicit and accept on behalf of the state any gift, grant,
8 devise or bequest. All monies so received shall be deposited in a
9 special depository account with the State Treasurer and may be
10 expended for all or any purpose set forth in this act upon a voucher
11 signed by the Commissioner of the Department of Mental Health and
12 Substance Abuse Services;

13 10. Assign funds under the Oklahoma Community Mental Health
14 Services Act to support programs of treatment and rehabilitation of
15 alcohol- and drug-dependent persons;

16 11. Prepare and present a budget to carry out the programs
17 provided for in the Oklahoma Alcohol and Drug Abuse Services Act;

18 12. Promote the inclusion of alcoholism and drug abuse as a
19 covered illness in all health and disability insurance programs;

20 13. Cooperate with the Department of Corrections in
21 establishing and conducting programs to provide treatment for
22 alcohol- and drug-dependent persons incarcerated in or on parole
23 from penal institutions; and
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1 14. Assist in the development of and cooperate with alcohol and
2 drug abuse education and treatment programs for the people of
3 Oklahoma.

4 SECTION 3. AMENDATORY 43A O.S. 2001, Section 3-415, as
5 last amended by Section 12, Chapter 97, O.S.L. 2006 (43A O.S. Supp.
6 2009, Section 3-415), is amended to read as follows:

7 Section 3-415. A. 1. The Board of Mental Health and Substance
8 Abuse Services shall promulgate rules and standards for
9 certification for private facilities and organizations which provide
10 treatment, counseling and rehabilitation services directed toward
11 alcohol- and drug-dependent persons. These facilities and
12 organizations shall be known as "Certified Services for the Alcohol
13 and Drug Dependent". Only certified facilities may receive and
14 assist alcohol- and drug-dependent persons by providing treatment
15 and rehabilitation.

16 2. Any person violating the requirement that only certified
17 facilities may receive and assist alcohol- and drug-dependent
18 persons by providing treatment to alcohol- and drug-dependent
19 persons, upon conviction, shall be guilty of a misdemeanor.

20 B. Applications for certification as a certified service for
21 the alcohol- and drug-dependent person pursuant to the provisions of
22 this section shall be made to the Department of Mental Health and
23 Substance Abuse Services on prescribed forms.

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1 C. The Board, or the Commissioner of Mental Health and
2 Substance Abuse Services upon delegation by the Board, may certify
3 the facility for a period of thirty-six (36) months subject to
4 renewal as provided.

5 D. The Board or the Commissioner of Mental Health and Substance
6 Abuse Services upon delegation by the Board, may postpone, deny
7 renewal of, revoke, or suspend the certification of the facility for
8 failure to comply with rules and standards promulgated by the Board.

9 E. The following are exempt from the provisions of the Oklahoma
10 Alcohol and Drug Abuse Services Act:

11 1. Individual persons in private practice as licensed
12 physicians, licensed psychologists, licensed social workers,
13 registered nurses, licensed professional counselors, licensed
14 marriage and family therapists, licensed behavioral practitioners,
15 individual members of the clergy, and certified alcohol or drug
16 abuse counselors. The exemption shall apply only to individual
17 professional persons in their private practice and not to any
18 treatment facility operated by the person;

19 2. Properly licensed hospitals, psychiatric and medical
20 surgical facilities;

21 3. Programs or facilities operated by a state agency;

22 4. Programs conducted and facilities operated by Alcoholics
23 Anonymous; or
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1 5. Programs conducted and facilities operated by the Salvation
2 Army.

3 F. Certified services for the alcohol- or drug-dependent person
4 shall comply with standards adopted by the Board in compliance with
5 the laws of the state including the licensure and credentialing laws
6 and regulations adopted by the various medical and professional
7 licensure and credentialing boards of the state. Such standards
8 shall require that treatment and therapeutic methods shall be in
9 compliance with:

10 1. The Joint Commission on Accreditation of Healthcare
11 Organizations;

12 2. The Commission on Accreditation of Rehabilitation
13 Facilities;

14 3. The Council on Accreditation (COA); or

15 4. Approved medical and professional standards as determined by
16 the ~~Board~~ licensure and credentialing laws and regulations adopted
17 by the state and by the various medical and professional licensure
18 boards of the state.

19 G. Any facility or organization certified to provide certified
20 services shall cooperate with inspection personnel of the state and
21 shall promptly file all reports required by the Board.

22 H. All claims by and accomplishments publicized by any
23 applicant for certification or any certified alcohol- or drug-

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1 dependent organization, including but not limited to consumer count
2 and success rates, shall be documented and verifiable by the Board.

3 I. The Department of Mental Health and Substance Abuse Services
4 is authorized to establish and collect certification and renewal
5 fees for certification of private facilities and organizations which
6 provide treatment, counseling and rehabilitation services directed
7 toward alcohol- and drug-dependent persons, as provided in Section 9
8 of this act.

9 J. Any materials or information received by the Department from
10 an applicant regarding the applicant's financial status shall not be
11 construed to be open records pursuant to the Oklahoma Open Records
12 Act.

13 SECTION 4. AMENDATORY 43A O.S. 2001, Section 3-416, as
14 amended by Section 18, Chapter 150, O.S.L. 2005 (43A O.S. Supp.
15 2009, Section 3-416), is amended to read as follows:

16 Section 3-416. In establishing standards for treatment services
17 and rules of operation, the Authority and approved treatment
18 facilities shall be guided by the following standards:

19 1. If possible a consumer shall be treated on a voluntary
20 rather than an involuntary basis-i

21 2. A consumer shall be initially referred to outpatient
22 treatment or intermediate care unless he is found to require
23 inpatient treatment-i

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1 3. A person shall not be denied treatment solely because he has
2 withdrawn from treatment against medical advice on a prior occasion
3 or because he has relapsed after earlier treatment-i

4 4. No person shall be refused treatment because of sex or age
5 unless the approved treatment facility which refuses treatment
6 refers the person to another approved treatment facility with which
7 it has a written referral agreement and which provides services
8 appropriate to the person's sex or age group-i

9 5. Restrictions on acceptance of persons by an approved
10 treatment facility shall be published by the facility and made
11 available to the public-i

12 6. Consumers shall receive treatment in compliance with the
13 statutes and regulations of the medical and professional licensure
14 and credentialing boards governing the various treatment providers;

15 7. An individualized treatment plan shall be prepared and
16 maintained on a current basis for each consumer-i

17 ~~7.~~ 8. Family members of the consumer shall be included in the
18 treatment services when possible and appropriate-i

19 ~~8.~~ 9. Community-based treatment shall be encouraged and
20 emphasized to make treatment available to persons in their home
21 communities-i; and

22 ~~9.~~ 10. Consumers shall be encouraged to agree to such further
23 diagnosis and treatment as will be of benefit to them.

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1 SECTION 5. AMENDATORY 43A O.S. 2001, Section 5-502, as
2 last amended by Section 138, Chapter 234, O.S.L. 2009 (43A O.S.
3 Supp. 2009, Section 5-502) is amended to read as follows:

4 Section 5-502. As used in the Inpatient Mental Health and
5 Substance Abuse Treatment of Minors Act:

6 1. "Minor" means any person under eighteen (18) years of age;

7 2. "Minor in need of treatment" means a minor:

8 a. who has a demonstrable mental illness or who is drug
9 or alcohol dependent and as a result of that mental
10 illness or dependency can be expected within the near
11 future to inflict or attempt to inflict serious bodily
12 harm to himself or herself or another person, and who
13 has engaged in one or more recent overt acts or made
14 significant recent threats which substantially support
15 that expectation, or

16 b. who has a demonstrable mental illness or is drug or
17 alcohol dependent of sufficient severity to cause
18 substantial impairment or disability in at least two
19 of the following major areas of functioning in the
20 life of the minor:

21 (1) family relations,

22 (2) school performance,

23 (3) social interactions,

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- 1 (4) ability to perform independently the basic tasks
2 of personal hygiene, hydration and nutrition, or
3 (5) self-protection.

4 A determination regarding the ability of the minor to perform
5 independently such basic tasks shall be based upon the age of the
6 minor and the reasonable and appropriate expectation of the
7 abilities of a minor of such age to perform such tasks.

8 The term "minor in need of treatment" shall not mean a minor
9 afflicted with epilepsy, a developmental disability, organic brain
10 syndrome, physical handicaps, brief periods of intoxication caused
11 by such substances as alcohol or drugs or who is truant or sexually
12 active unless the minor also meets the criteria for a minor in need
13 of treatment pursuant to subparagraph a or b of this paragraph;

14 3. "Consent" means the voluntary, express, and informed
15 agreement to treatment in a mental health facility by a minor
16 sixteen (16) years of age or older or by a parent of the minor;

17 4. "Individualized treatment plan" means a specific plan for
18 the care and treatment of an individual minor who requires inpatient
19 mental health treatment. The plan shall be developed with maximum
20 involvement of the family of the minor, consistent with the desire
21 of the minor for confidentiality and with the treatment needs of the
22 minor, and shall clearly include the following:

- 23 a. a statement of the presenting problems of the minor,
24 short- and long-term treatment goals and the estimated

1 date of discharge. The short- and long-term goals
2 shall be based upon a clinical evaluation and shall
3 include specific behavioral and emotional goals
4 against which the success of treatment can be
5 measured,

6 b. treatment methods and procedures to be used to achieve
7 these goals, which methods and procedures are related
8 to each of these goals and which include, but are not
9 limited to, specific prognosis for achieving each of
10 these goals,

11 c. identification of the types of professional personnel
12 who will carry out the treatment procedures including,
13 but not limited to, appropriate licensed mental health
14 professionals, education professionals, and other
15 health or social service professionals, and

16 d. documentation of the involvement of the minor or the
17 parent of the minor or legal custodian in the
18 development of the treatment plan and whether all
19 persons have consented to such plan;

20 5. "Inpatient treatment" means treatment services offered or
21 provided for a continuous period of more than twenty-four (24) hours
22 in residence after admission to a mental health or substance abuse
23 treatment facility for the purpose of observation, evaluation or
24 treatment;

1 6. "Least restrictive alternative" means the treatment and
2 conditions of treatment which, separately and in combination, are no
3 more intrusive or restrictive of freedom than reasonably necessary
4 to achieve a substantial therapeutic benefit to the minor, or to
5 protect the minor or others from physical injury;

6 7. "Less restrictive alternative to inpatient treatment" means
7 and includes, but is not limited to, outpatient counseling services,
8 including services provided in the home of the minor and which may
9 be referred to as "home-based services", day treatment or day
10 hospitalization services, respite care, or foster care or group home
11 care, as defined by Section 1-1-105 of Title 10A of the Oklahoma
12 Statutes, through a program established and specifically designed to
13 meet the needs of minors in need of mental health treatment, or a
14 combination thereof;

15 8. "Licensed mental health professional" means a person who is
16 not related by blood or marriage to the person being examined or
17 does not have any interest in the estate of the person being
18 examined, and who is:

- 19 a. a psychiatrist who is a diplomate of the American
20 Board of Psychiatry and Neurology,
- 21 b. a physician licensed pursuant to Chapter 11 or Chapter
22 14 of Title 59 of the Oklahoma Statutes who has
23 received specific training for and is experienced in,
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1 performing mental health therapeutic, diagnostic, or
2 counseling functions,

3 c. a clinical psychologist who is duly licensed to
4 practice by the State Board of Examiners of
5 Psychologists,

6 d. a professional counselor licensed pursuant to Chapter
7 44 of Title 59 of the Oklahoma Statutes,

8 e. a person licensed as a clinical social worker pursuant
9 to the provisions of the Licensed Social Workers Act,

10 f. a licensed marital and family therapist as defined in
11 Chapter 44A of Title 59 of the Oklahoma Statutes,

12 g. a licensed behavioral practitioner as defined in
13 Chapter 44B of Title 59 of the Oklahoma Statutes, ~~or~~

14 h. an advanced practice nurse, as defined in Chapter 12
15 of Title 59 of the Oklahoma Statutes, specializing in
16 mental health, or

17 i. a licensed alcohol and drug counselor licensed
18 pursuant to Chapter 43B of Title 59 of the Oklahoma
19 Statutes.

20 For the purposes of this paragraph, "licensed" means that the person
21 holds a current, valid license issued in accordance with the laws of
22 this state;

23 9. "Mental health evaluation" means an examination or
24 evaluation of a minor for the purpose of making a determination

1 whether, in the opinion of the licensed mental health professional
2 making the evaluation, the minor is a minor in need of treatment
3 and, if so, is in need of inpatient treatment and for the purpose of
4 preparing reports or making recommendations for the most appropriate
5 and least restrictive treatment for the minor;

6 10. "Mental health facility" means a public or private hospital
7 or related institution as defined by Section 1-701 of Title 63 of
8 the Oklahoma Statutes offering or providing inpatient mental health
9 services, a public or private facility accredited as an inpatient or
10 residential psychiatric facility by the Joint Commission on
11 Accreditation of Healthcare Organizations, or a facility operated by
12 the Department of Mental Health and Substance Abuse Services and
13 designated by the Commissioner of the Department of Mental Health
14 and Substance Abuse Services as appropriate for the inpatient
15 evaluation or treatment of minors;

16 11. "Mental illness" means a substantial disorder of the
17 child's thought, mood, perception, psychological orientation or
18 memory that demonstrably and significantly impairs judgment,
19 behavior or capacity to recognize reality or to meet the ordinary
20 demands of life. "Mental illness" may include substance abuse,
21 which is the use, without compelling medical reason, of any
22 substance which results in psychological or physiological dependency
23 as a function of continued use in such a manner as to induce mental,
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1 emotional, or physical impairment and cause socially dysfunctional
2 or socially disordering behavior;

3 12. "Parent" means:

4 a. a biological or adoptive parent who has legal custody
5 of the minor or has visitation rights, or

6 b. a person judicially appointed as a legal guardian of
7 the minor, or

8 c. a relative within the third degree of consanguinity
9 who exercises the rights and responsibilities of legal
10 custody by delegation from a parent, as provided by
11 law;

12 13. "Person responsible for the supervision of the case" means:

13 a. when the minor is in the legal custody of a private
14 child care agency, the Department of Human Services or
15 the Office of Juvenile Affairs, the caseworker or
16 other person designated by the agency to supervise the
17 case, or

18 b. when the minor is a ward of the court and under the
19 court-ordered supervision of the Department of Human
20 Services, the Office of Juvenile Affairs or a
21 statutorily constituted juvenile bureau, the person
22 designated by the Department of Human Services, the
23 Office of Juvenile Affairs or juvenile bureau to
24 supervise the case;

1 14. "Initial assessment (medical necessity review)" means the
2 examination of current and recent behaviors and symptoms of a minor
3 who appears to be mentally ill, alcohol-dependent, or drug-dependent
4 and a minor requiring treatment, whose condition is such that it
5 appears that emergency detention may be warranted by a licensed
6 mental health professional at a facility approved by the
7 Commissioner of Mental Health and Substance Abuse Services, or a
8 designee, as appropriate for such examination to determine if
9 emergency detention of the minor is warranted, and whether admission
10 for inpatient mental illness or drug- or alcohol-dependence
11 treatment or evaluation constitutes the least restrictive level of
12 care necessary;

13 15. "Ward of the court" means a minor adjudicated to be a
14 deprived child, a child in need of supervision, or a delinquent
15 child;

16 16. "Treatment" means any planned intervention intended to
17 improve the functioning of a minor in those areas which show
18 impairment as a result of mental illness or drug or alcohol
19 dependence; and

20 17. "Prehearing detention order" means a court order that
21 authorizes a facility to detain a minor pending a hearing on a
22 petition to determine whether the minor is a minor in need of
23 treatment.

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SECTION 6. This act shall become effective November 1, 2010.

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