

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1772

By: Anderson

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5
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.
8 2001, Sections 2-108, as amended by Section 7,
9 Chapter 488, O.S.L. 2002, Section 8, Chapter 488,
10 O.S.L. 2002, as last amended by Section 7, Chapter
11 195, O.S.L. 2005, 2-205, as amended by Section 9,
12 Chapter 195, O.S.L. 2005 and Section 9, Chapter 97,
13 O.S.L. 2006 (43A O.S. Supp. 2009, Sections 2-108, 2-
14 109, 2-205 and 3-324), which relate to the Department
15 of Mental Health and Substance Abuse Services; making
16 certain information confidential; prohibiting
17 disclosure of certain information; providing for
18 certain order of the court; permitting disclosure of
19 certain summaries to specified persons; deleting
20 certain requirements of the Advocate General;
21 modifying certain powers and duties of the Advocate
22 General; modifying language; deleting language
23 permitting disclosure of certain summaries to
24 specified persons; modifying certain reporting
requirement; modifying certain fees; directing the
Board of Mental Health and Substance Abuse Services
to promulgate certain rules; providing for certain
application; permitting certain certification;
directing the Board to establish certain fee;
providing for use of certain title; making certain
exceptions; providing for noncompliance; providing
for codification; and providing an effective date.

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

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

4 Section 2-108. A. When the Department of Mental Health and
5 Substance Abuse Services has reason to believe that any individual
6 receiving services from a facility operated by, certified by, or
7 under contract with the Department has been wrongfully deprived of
8 liberty, or is cruelly, negligently or improperly treated, or
9 inadequate provision is made for the individual's appropriate
10 medical care, proper supervision and safe keeping, the Department
11 may ascertain the facts or may require an investigation of the
12 facts.

13 B. The Board shall establish and maintain a fair, simple and
14 expeditious system for resolution of complaints of all individuals
15 receiving such services.

16 C. Except as otherwise specifically provided in this section
17 and as otherwise provided by state or federal laws, the information,
18 records, materials, and reports related to investigations by the
19 Department into allegations of consumer abuse, neglect, or
20 mistreatment shall be confidential and contain privileged
21 information. Accordingly, such records, materials, and reports
22 shall not be open to public inspection nor their contents disclosed,
23 nor shall a subpoena or subpoena duces tecum purporting to compel
24 disclosure of such information be valid.

1 1. An order of the court authorizing the inspection, release,
2 or disclosure of information, records, materials, and reports
3 related to investigations by the Department shall be entered by a
4 court only after a review of the records and a determination, with
5 due regard for the confidentiality of the information and records
6 and the privilege of the persons identified in the records, that a
7 compelling reason exists, any applicable privilege has been waived,
8 and such inspection, release or disclosure is necessary for the
9 protection of a legitimate public or private interest.

10 2. This section shall not be construed to prohibit the
11 Department from summarizing the allegation or allegations made,
12 facts and evidence gathered, and any findings of an investigation
13 pursuant to this section. The summary may be provided to the
14 following individuals and entities, provided the individuals or
15 entities agree to protect the summary from disclosure:

- 16 a. the person suspected of abuse, neglect or improper
17 treatment,
- 18 b. the person subject to the alleged abuse, neglect or
19 improper treatment,
- 20 c. the person who reported the allegation,
- 21 d. the state and federal oversight, licensing or
22 accrediting agency,

- 1 e. the administrator of a facility certified by or under
2 contract with the Department at which the alleged
3 abuse, neglect or improper treatment occurred,
4 f. any persons necessary to implement appropriate
5 personnel action against the person suspected of
6 abuse, neglect or mistreatment if evidence is found to
7 support the allegation, and
8 g. the appropriate law enforcement agency, district
9 attorney's office or any other entities as required by
10 state and federal law.

11 SECTION 2. AMENDATORY Section 8, Chapter 488, O.S.L.
12 2002, as last amended by Section 7, Chapter 195, O.S.L. 2005 (43A
13 O.S. Supp. 2009, Section 2-109), is amended to read as follows:

14 Section 2-109. A. The Board of Mental Health and Substance
15 Abuse Services is authorized and directed to establish the Office of
16 Consumer Advocacy within the Department of Mental Health and
17 Substance Abuse Services and to employ such personnel as may be
18 necessary to carry out the purposes of ~~Section 2-108~~ of this title
19 section.

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

3 2. The Advocate General shall have the following powers and
4 duties:

5 a. to serve as an advocate, but not as an attorney, for
6 individuals receiving services from facilities
7 operated by, subject to certification by or under
8 contract with the Department, and, if an individual
9 needs legal counsel, advise the individual of the
10 right to seek counsel and refer the individual to
11 counsel, if necessary,

12 b. to supervise personnel assigned to the Office of
13 Consumer Advocacy,

14 c. to monitor and review grievance procedures in
15 facilities operated by, subject to certification by or
16 under contract with the Department,

17 ~~d. to investigate unresolved grievances and allegation of~~
18 ~~abuse, neglect and improper treatment of individuals~~
19 ~~receiving services from facilities operated by,~~
20 ~~subject to certification by or under contract with the~~
21 ~~Department,~~

22 e. to access facilities operated by, subject to
23 certification by or under contract with the Department
24 and the records of such facilities. Reasonable access

1 shall be granted for the purposes of ~~conducting~~
2 ~~investigations of abuse, neglect and improper~~
3 ~~treatment, and performing other activities as~~
4 ~~necessary to monitor~~ monitoring the care and treatment
5 provided by such facilities,

6 ~~f.~~

7 e. to access the records of individuals receiving
8 services from facilities operated by, subject to
9 certification by or under contract with the
10 Department. Records that are confidential under state
11 and federal law shall be maintained as confidential
12 and not be redisclosed by the Advocate General,

13 ~~g. to submit a report of the results of investigations of~~
14 ~~abuse to the appropriate district attorney and, if the~~
15 ~~individual is a juvenile in the custody of a state~~
16 ~~agency, submit a report to that state agency,~~

17 ~~h.~~

18 f. to make recommendations to the Commissioner of Mental
19 Health and Substance Abuse Services and provide
20 regular or special reports regarding ~~investigations~~
21 ~~and unresolved grievances~~ and consumer care to the
22 Commissioner and the Board, and

23 ~~i.~~

1 determination, with due regard for the confidentiality of the
2 information and records and the privilege of the persons identified
3 in the records, that a compelling reason exists, any applicable
4 privilege has been waived and such inspection, release or disclosure
5 is necessary for the protection of a legitimate public or private
6 interest.

7 ~~2. This section shall not be construed as prohibiting the~~
8 ~~Department or the Office of Consumer Advocacy from summarizing the~~
9 ~~outcome of an investigation, stating the allegation and finding.~~
10 ~~The summary may be provided to the following individuals and~~
11 ~~entities as long as the individuals or entities agree to protect the~~
12 ~~summary from disclosure:~~

13 a. ~~the person suspected of abuse, neglect or improper~~
14 ~~treatment,~~

15 b. ~~the person subject to the alleged abuse, neglect or~~
16 ~~improper treatment,~~

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

18 d. ~~the state and federal oversight, licensing or~~
19 ~~accrediting agency, and~~

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

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

4 Section 2-205. The Department of Mental Health and Substance
5 Abuse Services is hereby directed to employ one or more internal
6 auditors to establish and perform an effective and comprehensive
7 internal audit program. Such program shall include, but not be
8 limited to, reviews of accounting procedures, internal control,
9 financial management and compliance with laws, regulations, policies
10 and executive and legislative directives for the Department's
11 administrative offices, institutions, community mental health
12 centers and contractors. Internal audit final reports~~7~~ shall be
13 made ~~directly~~ available to the Governor, the State Auditor and
14 Inspector, the Legislative Service Bureau, the Board of Mental
15 Health and Substance Abuse Services and the Commissioner of Mental
16 Health and Substance Abuse Services.

17 SECTION 4. AMENDATORY Section 9, Chapter 97, O.S.L. 2006
18 (43A O.S. Supp. 2009, Section 3-324), is amended to read as follows:

19 Section 3-324. A. The Department of Mental Health and
20 Substance Abuse Services is hereby authorized to establish and
21 collect certification ~~and~~ fees, renewal fees, and site visit fees
22 for ~~certification of~~ any program the Department is authorized by law
23 to certify, to defray the costs incurred in the certification and
24 renewal inspections and procedures.

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

3 C. Site visit fees shall not exceed Three Hundred Dollars
4 (\$300.00) per visit.

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

8 A. The Board of Mental Health and Substance Abuse Services
9 shall promulgate rules for certification of peer recovery support
10 specialists who are employed by the state or by behavioral services
11 providers contracting with the state to provide behavioral health
12 services. Such rules shall address criteria for certification and
13 renewal, including minimum education requirements, examination and
14 supervision requirements, continuing education requirements, and
15 rules of professional conduct.

16 B. Application for certification as a peer recovery support
17 specialist shall be made to the Department of Mental Health and
18 Substance Abuse Services on prescribed forms. The Board, or the
19 Commissioner of Mental Health and Substance Abuse Services upon
20 delegation by the Board, may certify the peer recovery support
21 specialist for a period of two (2) years subject to renewal as
22 provided in the rules promulgated by the Board.

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

4 D. A peer recovery support specialist certified by the Board or
5 the Commissioner shall only use the title "certified peer recovery
6 support specialist" if employed by the state or by behavioral
7 services providers contracting with the state to provide behavioral
8 health services. This section shall not be construed to permit the
9 certified peer recovery support specialist to practice any of the
10 following professions or use the following titles unless also
11 licensed or accredited by the appropriate authority:

- 12 1. Physician;
- 13 2. Psychologist;
- 14 3. Clinical social worker;
- 15 4. Professional counselor;
- 16 5. Marital and family therapist;
- 17 6. Behavioral practitioner; or
- 18 7. Alcohol and drug counselor.

19 E. Failure to comply with rules promulgated by the Board shall
20 be grounds for revocation, suspension, or nonrenewal of
21 certification.

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

1 The Board of Mental Health and Substance Abuse Services is
2 hereby authorized to promulgate rules that establish the setting and
3 collection of fines for failure to meet the required rules for
4 certification as a certified peer recovery support specialist. Such
5 fines shall not replace or prevent the Department from seeking other
6 sanctions against a program it certifies for failure to meet the
7 required rules for certification.

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

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