

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1878

By: Coates

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5  
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.  
8 2001, Section 1-109, as last amended by Section 2,  
9 Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009,  
10 Section 1-109), which relates to confidentiality;  
11 clarifying language; providing for certain  
12 exemptions; requiring certain notifications for the  
13 release of specified information; modifying  
14 conditions under which certain release is not valid;  
15 modifying certain exceptions; modifying certain  
16 definitions; requiring certain restrictions; and  
17 providing an effective date.

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

19 SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-109, as  
20 last amended by Section 2, Chapter 401, O.S.L. 2008 (43A O.S. Supp.  
21 2009, Section 1-109), is amended to read as follows:

22 Section 1-109. A. 1. All mental health and drug or alcohol  
23 abuse treatment information, whether or not recorded, and all  
24 communications between a physician or psychotherapist and a consumer  
are both privileged and confidential. In addition, the identity of  
all persons who have received or are receiving mental health or drug

1 or alcohol abuse treatment services shall be considered confidential  
2 and privileged.

3 2. Such information shall only be available to persons actively  
4 engaged in the treatment of the consumer or in related  
5 administrative work. The information available to persons actively  
6 engaged in the treatment of the consumer or in related  
7 administrative work shall be limited to the minimum amount of  
8 information necessary for the person or agency to carry out its  
9 function.

10 3. Except as otherwise provided in this section, such  
11 information shall not be disclosed to anyone not involved in the  
12 treatment of the patient or related administrative work.

13 B. A person who is or has been a consumer of the services of a  
14 physician, psychotherapist, mental health facility, a drug or  
15 alcohol abuse treatment facility ~~or service~~, or other agency for the  
16 purpose of mental health or drug or alcohol abuse care and treatment  
17 shall be entitled to personal access to his or her mental health or  
18 drug or alcohol abuse treatment information, except the following:

19 1. ~~Information~~ Psychotherapy notes, which is information  
20 contained in notes recorded in any medium by a mental health  
21 professional documenting or analyzing the contents of conversation  
22 during a private counseling session or a group, joint or family  
23 counseling session, and that is separated from the rest of the  
24 patient's medical record. Psychotherapy notes excludes medication

1 prescription and monitoring, counseling session start and stop  
2 times, the modalities and frequencies of treatment furnished,  
3 results of clinical tests, and any summaries of diagnoses,  
4 functional status, treatment plan, symptoms, prognosis, and progress  
5 to date;

6 2. Information compiled in reasonable anticipation of or for  
7 use in a civil, criminal or administrative action or proceeding;

8 3. Information that is otherwise privileged or prohibited from  
9 disclosure by law;

10 4. Information the person in charge of the care and treatment  
11 of the patient determines to be reasonably likely to endanger the  
12 life or physical safety of the patient or another person;

13 5. Information created or obtained as part of research that  
14 includes treatment; provided, the patient consented to the temporary  
15 suspension of access while the research is ongoing. The patient's  
16 right of access shall resume upon completion of the research;

17 6. Information requested by an inmate that a correctional  
18 institution has determined may jeopardize the health, safety,  
19 security, custody or rehabilitation of the inmate or other person;  
20 and

21 7. Information obtained under a promise of confidentiality and  
22 the access requested would be reasonably likely to reveal the source  
23 of the information.

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1 C. 1. A valid written release for disclosure of mental health  
2 or drug or alcohol abuse treatment information shall have, at a  
3 minimum, the following elements:

- 4 a. the specific name or general designation of the  
5 program or person permitted to make the disclosure,
- 6 b. the name or title of the individual or the name of the  
7 organization to which disclosure is to be made,
- 8 c. the name of the consumer whose records are to be  
9 released,
- 10 d. the purpose of the disclosure,
- 11 e. a description of the information to be disclosed,
- 12 f. the dated signature of the consumer, ~~or~~ authorized  
13 representative, or both when required by state or  
14 federal law,
- 15 g. a statement of the right of the consumer to revoke the  
16 release in writing and a description of how the  
17 consumer may do so,
- 18 h. an expiration date, event or condition which, if not  
19 revoked before, shall ensure the release will last no  
20 longer than reasonably necessary to serve the purpose  
21 for which it is given, ~~and~~
- 22 i. if the release is signed by a person authorized to act  
23 for a consumer, a description of the authority of such  
24 person to act,

1           j.    a communicable disease notification that complies with  
2                    state and federal laws, and

3           k.    a confidentiality notice or warning regarding the  
4                    redisclosure of substance abuse information that  
5                    complies with state and federal laws.

6           2.    A release is not valid if the document submitted has any of  
7 the following defects:

8           a.    the expiration date has passed or the expiration event  
9                    or condition is known to have occurred or to exist,

10          b.    the release has not been filled out completely with  
11                    respect to an element described in paragraph 1 of this  
12                    section,

13          c.    the release is known to have been revoked, or

14          d.    any material information in the release is known or  
15                    suspected to be false.

16          3.    A revocation of a release as provided in this section shall  
17 be in writing and may be made at any time, except when:

18          a.    information has already been released in reliance  
19                    thereon,

20          b.    the authorization was obtained as a condition of  
21                    obtaining insurance coverage and other law provides  
22                    the insurer with the right to contest a claim under  
23                    the policy or the policy itself, ~~or~~

1 c. the release was executed as part of a criminal justice  
2 referral, or

3 d. the revocation is for substance abuse information  
4 which is protected by 42 C.F.R., Part 2, which does  
5 not mandate a written revocation.

6 4. Disclosure regarding a deceased consumer shall require  
7 either a court order or a written release of an executor,  
8 administrator or personal representative appointed by the court, or  
9 if there is no such appointment, by the spouse of the consumer or,  
10 if none, by any responsible member of the family of the consumer.

11 As used in this paragraph, "responsible family member" means the  
12 parent, adult child, adult sibling or other adult relative who was  
13 actively involved in providing care to or monitoring the care of the  
14 patient as verified by the physician, psychologist or other person  
15 responsible for the care and treatment of such person.

16 D. Except as otherwise permitted, mental health and alcohol or  
17 substance abuse treatment information may not be disclosed without a  
18 valid ~~patient~~ authorization or a valid court order issued by a court  
19 of competent jurisdiction. For purposes of this section, a subpoena  
20 by itself is not sufficient to authorize disclosure of mental health  
21 and alcohol or substance abuse treatment information.

22 E. An authorization shall not be required for the following  
23 uses and disclosures, but information disclosed pursuant to one of  
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1 these exceptions must be limited to the minimum amount of  
2 information necessary:

3 1. Disclosure by a health care provider of mental health  
4 information necessary to carry out another provider's own treatment,  
5 payment, or health care operations. Such disclosures shall be  
6 limited to mental health information and shall not include substance  
7 abuse information;

8 2. Communications to law enforcement officers regarding  
9 information directly related to the commission of a crime on the  
10 premises of a facility or against facility personnel, or a threat to  
11 commit such a crime. Such communications involving persons with  
12 substance abuse disorders shall be limited to the circumstances  
13 surrounding the incident, consumer status, name and address of that  
14 individual and the last-known whereabouts of that individual;

15 3. A review preparatory to research, research on decedents  
16 information or research conducted when a waiver of authorization has  
17 been approved by either an institutional review board or privacy  
18 board;

19 4. Communications pursuant to a business associate agreement,  
20 qualified service organization agreement or a qualified service  
21 organization/business associate agreement. As used in this  
22 paragraph:

23 a. "business associate agreement" means a written signed  
24 agreement between a health care provider and an

1 outside entity which performs or assists in the  
2 performance of a function or activity involving the  
3 use or disclosure of individually identifiable health  
4 information on behalf of the health care provider,

5 b. "qualified service organization agreement" means a  
6 written, signed agreement between a health care  
7 provider and an outside entity which provides services  
8 to the health care ~~provider's~~ provider or its  
9 consumers that are different from the services  
10 provided by the health care provider, that allows the  
11 health care provider to communicate consumer  
12 information necessary for the outside entity to  
13 provide services to the health care ~~provider's~~  
14 provider or its consumers without the need for an  
15 authorization signed by a consumer and in which the  
16 outside entity acknowledges that in receiving,  
17 storing, processing or otherwise dealing with any  
18 consumer information from the health care provider it  
19 is fully bound by the provisions of 42 C.F.R., Part 2  
20 and, if necessary, will resist any efforts in judicial  
21 proceedings to obtain access to consumer information,  
22 except as permitted by 42 C.F.R., Part 2, and

23 c. "qualified service organization/business agreement"  
24 means a written, signed agreement between a health

1 care provider and an outside entity which provides  
2 services to the health care ~~provider's~~ provider or its  
3 consumers that are different from the services  
4 provided by the health care provider, that allows the  
5 health care provider to communicate consumer  
6 information necessary for the outside entity to  
7 provide services to the health care ~~provider's~~  
8 provider or its consumers without the need for an  
9 authorization signed by a consumer, and in which the  
10 outside entity acknowledges that in receiving,  
11 storing, processing or otherwise dealing with any  
12 consumer information from the health care provider it  
13 is fully bound by the provisions 42 C.F.R., Part 2  
14 and, if necessary, will resist any efforts in judicial  
15 proceedings to obtain access to consumer information,  
16 except as permitted by 42 C.F.R., Part 2. The  
17 agreement must also contain elements required by  
18 federal privacy regulations in 45 C.F.R., Parts 160 &  
19 164;

20 5. Reporting under state law incidents of suspected child abuse  
21 or neglect to the appropriate authorities; provided, however, for  
22 disclosures involving an individual with a substance abuse disorder,  
23 this exception does not allow for follow-up communications;

1           6. Disclosure of consumer-identifying information to medical  
2 personnel who have a need for information about a consumer for the  
3 purpose of treating a condition which poses an immediate threat to  
4 the health of any individual and which requires immediate medical  
5 intervention;

6           7. Communications necessary for audit and evaluation  
7 activities, provided that restrictions placed on a substance abuse  
8 treatment program pursuant to 42 C.F.R., Section 2.53 are met;

9           8. When a program or facility director determines that an adult  
10 person with a substance abuse disorder has a medical condition which  
11 prevents the person from "knowing or effective action on his or her  
12 own behalf", the program or facility director may authorize  
13 disclosures for the sole purpose of obtaining payment for services.  
14 If the person has been adjudicated incompetent, the facility must  
15 seek permission to disclose information for payment from the legal  
16 guardian;

17           9. Reporting of such information as otherwise required by law;  
18 provided, however, such disclosure may not identify the person  
19 directly or indirectly as a person with a substance abuse disorder;

20           10. Communications to coroners, medical examiners and funeral  
21 directors for the purpose of identifying a deceased person,  
22 determining a cause of death, or other duties as authorized by law  
23 and as necessary to carry out their duties; provided, however, such  
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1 disclosure may not identify the person directly or indirectly as a  
2 person with a substance abuse disorder;

3 11. Communications to organ procurement organizations or other  
4 entities engaged in procurement, banking, or transplantation of  
5 cadaveric organs, eyes or tissue for the purpose of facilitating  
6 organ, eye or tissue donation and transplantation; provided,  
7 however, such disclosure may not identify the person directly or  
8 indirectly as a person with a substance abuse disorder;

9 12. Disclosure to professional licensure boards investigating  
10 alleged unethical behavior towards a patient; provided, however,  
11 such disclosure may not identify the person directly or indirectly  
12 as a person with a substance abuse disorder;

13 13. Disclosure to the parent of a minor for the purpose of  
14 notifying the parent of the location of his or her child; provided,  
15 however, such disclosure may not identify the person directly or  
16 indirectly as a person with a substance abuse disorder;

17 14. Mental health records may be disclosed to parties in a  
18 judicial or administrative proceeding in cases involving a claim for  
19 personal injury or death against any practitioner of the healing  
20 arts, a licensed hospital, or a nursing facility or nursing home  
21 licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma  
22 Statutes arising out of patient care, where any person has placed  
23 the physical or mental condition of that person in issue by the  
24 commencement of any action, proceeding, or suit for damages, or

1 where any person has placed in issue the physical or mental  
2 condition of any other person or deceased person by or through whom  
3 the person rightfully claims;

4 15. Disclosure of consumer-identifying information when it  
5 appears from all the circumstances that the individual has escaped  
6 from a correctional institution or from lawful custody and the  
7 release is to a law enforcement authority for the purpose of  
8 identification and apprehension. Such disclosures shall be limited  
9 to mental health information and shall not include substance abuse  
10 information; and

11 16. When failure to disclose the information presents a serious  
12 threat to the health and safety of a person or the public; provided,  
13 however, such disclosure may not identify the person directly or  
14 indirectly as a person with a substance abuse disorder.

15 SECTION 2. This act shall become effective November 1, 2010.

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