

1 STATE OF OKLAHOMA

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

3 SENATE BILL 598

By: Crain

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5  
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.  
8 2001, Sections 1-103, as last amended by Section 1,  
9 Chapter 401, O.S.L. 2008, 2-205, as amended by Section  
10 9, Chapter 195, O.S.L. 2005, and Section 9, Chapter 97,  
11 O.S.L. 2006 (43A O.S. Supp. 2008, Sections 1-103, 2-  
12 205 and 3-324), which relate to the Department of  
13 Mental Health and Substance Abuse Services; modifying  
14 definitions; modifying certain reporting requirement;  
15 providing for certain fees; directing the Board of  
16 Mental Health and Substance Abuse Services to  
17 promulgate certain rules; providing for certain  
18 application; authorizing certain fee; prohibiting  
19 certain use of title; providing for certain sanctions;  
20 providing for codification; and providing an effective  
21 date.

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

23 SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-103, as  
24 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           1. "Department" means the Department of Mental Health and  
2 Substance Abuse Services;
- 3           2. "Chair" means the chair of the Board of Mental Health and  
4 Substance Abuse Services;
- 5           3. "Mental illness" means a substantial disorder of thought,  
6 mood, perception, psychological orientation or memory that  
7 significantly impairs judgment, behavior, capacity to recognize  
8 reality or ability to meet the ordinary demands of life;
- 9           4. "Board" means the "Board of Mental Health and Substance Abuse  
10 Services" as established by this law;
- 11           5. "Commissioner" means the individual selected and appointed by  
12 the Board to serve as Commissioner of Mental Health and Substance  
13 Abuse Services;
- 14           6. "Indigent person" means a person who has not sufficient  
15 assets or resources to support the person and to support members of  
16 the family of the person lawfully dependent on the person for  
17 support;
- 18           7. "Facility" means any hospital, school, building, house or  
19 retreat, authorized by law to have the care, treatment or custody of  
20 an individual with mental illness, or drug or alcohol dependency,  
21 gambling addiction, eating disorders, or an individual receiving  
22 methadone treatment for dependency purposes only, including, but not  
23 limited to, public or private hospitals, community mental health  
24 centers, clinics, satellites or facilities; provided that facility

1 shall not mean a child guidance center operated by the State  
2 Department of Health;

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

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

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

15 11. "Licensed mental health professional" means:

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

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- c. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- d. a professional counselor licensed pursuant to Section 1901 et seq. of Title 59 of the Oklahoma Statutes,
- e. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,
- f. a licensed marital and family therapist as defined in Section 1925.1 et seq. of Title 59 of the Oklahoma Statutes,
- g. a licensed behavioral practitioner as defined in Section 1930 et seq. of Title 59 of the Oklahoma Statutes,
- h. an advanced practice nurse as defined in Section 567.1 et seq. of Title 59 of the Oklahoma Statutes specializing in mental health, or
- i. a physician's assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

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

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

2 (1) a person who because of a his or her mental  
3 ~~illness of the person represents a risk of harm to~~  
4 ~~self or others, or~~

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

9 (a) poses a substantial risk of physical harm in  
10 the near future to self as manifested by  
11 evidence or serious threats of or attempts at  
12 suicide or other significant self-inflicted  
13 bodily harm, or

14 (b) poses a substantial risk of physical harm in  
15 the near future to another person or persons  
16 as manifested by evidence of violent behavior  
17 directed toward another person or 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

23 (d) is in a condition such that, without  
24 intervention, there exists a substantial risk

1                   that severe impairment or injury will result  
2                   to the person in the near future, or  
3           (e) poses a substantial risk of serious physical  
4                   injury to self in the near future, or death  
5                   in the near future, as manifested by evidence  
6                   that the person is unable to provide for and  
7                   is not providing for his or her basic  
8                   physical needs.

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

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

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

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

24           (3) a person with seizure disorder,

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

2 (5) a person who is homeless;

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

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

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

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

18 a. a statement of treatment goals or objectives, based  
19 upon and related to a clinical evaluation, which can be  
20 reasonably achieved within a designated time interval,

21 b. treatment methods and procedures to be used to obtain  
22 these goals, which methods and procedures are related  
23 to each of these goals and which include specific  
24 prognosis for achieving each of these goals,

- 1 c. identification of the types of professional personnel  
2 who will carry out the treatment procedures, including  
3 appropriate medical or other professional involvement  
4 by a physician or other health professional properly  
5 qualified to fulfill legal requirements mandated under  
6 state and federal law,
- 7 d. documentation of involvement by the individual  
8 receiving treatment and, if applicable, the accordance  
9 of the individual with the treatment plan, and
- 10 e. a statement attesting that the executive director of  
11 the facility or clinical director has made a reasonable  
12 effort to meet the plan's individualized treatment  
13 goals in the least restrictive environment possible  
14 closest to the home community of the individual; and

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

- 16 ~~a. a substantial risk of immediate physical harm to self~~  
17 ~~as manifested by evidence or serious threats of or~~  
18 ~~attempts at suicide or other significant self-inflicted~~  
19 ~~bodily harm,~~
- 20 ~~b. a substantial risk of immediate physical harm to~~  
21 ~~another person or persons as manifested by evidence of~~  
22 ~~violent behavior directed toward another person or~~  
23 ~~persons,~~

1 ~~c. having placed another person or persons in a reasonable~~  
2 ~~fear of violent behavior directed towards such person~~  
3 ~~or persons or serious physical harm to them as~~  
4 ~~manifested by serious and immediate threats,~~

5 ~~d. there exists a substantial risk that without immediate~~  
6 ~~intervention severe impairment or injury will result to~~  
7 ~~the person alleged to be a person requiring treatment,~~  
8 ~~or~~

9 ~~e. a substantial risk of immediate serious physical injury~~  
10 ~~to self, or immediate death, as manifested by evidence~~  
11 ~~that the person is unable to provide for and is not~~  
12 ~~providing for the basic physical needs of the person~~  
13 ~~and that appropriate provision for those needs cannot~~  
14 ~~be made immediately available in the community.~~

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

18 19. "Telemedicine" means the practice of health care delivery,  
19 diagnosis, consultation, evaluation, treatment, transfer of medical  
20 data, or exchange of medical education information by means of audio,  
21 video, or data communications. Telemedicine uses audio and video  
22 multimedia telecommunication equipment which permits two-way real-  
23 time communication between a health care practitioner and a patient

1 who are not in the same physical location. Telemedicine shall not  
2 include consultation provided by telephone or facsimile machine.

3 SECTION 2. AMENDATORY 43A O.S. 2001, Section 2-205, as  
4 amended by Section 9, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2008,  
5 Section 2-205), is amended to read as follows:

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

19 SECTION 3. AMENDATORY Section 9, Chapter 97, O.S.L. 2006  
20 (43A O.S. Supp. 2008, Section 3-324), is amended to read as follows:

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

1 certify, to defray the costs incurred in the certification and  
2 renewal inspections and procedures.

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

5 C. Site visit fees shall not exceed Three Hundred Dollars  
6 (\$300.00) per visit.

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

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

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

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 certification.

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

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1       The Board of Mental Health and Substance Abuse Services is hereby  
2 authorized to promulgate rules that establish the setting and  
3 collection of fines for failure to meet the required rules for  
4 certification. Such fines shall not replace nor prevent the  
5 Department from seeking other sanctions against a program it  
6 certifies for failure to meet the required rules for certification.

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

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