

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1499 By: David of the Senate  
3 and  
4 Echols of the House  
5  
6

7 [ mental health - Department of Mental Health and  
8 Substance Abuse Services - outpatient treatment -  
codification - effective date ]  
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11 AUTHOR: Add the following House Coauthor: Shelton  
12 AMENDMENT NO. 1. Page 1, line 10, strike the enacting clause  
13 Passed the House of Representatives the 16th day of April, 2014.  
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16 \_\_\_\_\_  
Presiding Officer of the House of  
Representatives  
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18 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2014.  
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21 \_\_\_\_\_  
Presiding Officer of the Senate  
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1 ENGROSSED SENATE  
2 BILL NO. 1499

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6 [ mental health - Department of Mental Health and  
7 Substance Abuse Services - outpatient treatment -  
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9

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

11 SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-103, as  
12 last amended by Section 1, Chapter 213, O.S.L. 2013 (43A O.S. Supp.  
13 2013, Section 1-103), is amended to read as follows:

14 Section 1-103. When used in this title, unless otherwise  
15 expressly stated, or unless the context or subject matter otherwise  
16 requires:

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

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

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

1           4. "Board" means the "Board of Mental Health and Substance  
2 Abuse Services" as established by the Mental Health Law;

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

6           6. "Indigent person" means a person who has not sufficient  
7 assets or resources to support the person and to support members of  
8 the family of the person lawfully dependent on the person for  
9 support;

10          7. "Facility" means any hospital, school, building, house or  
11 retreat, authorized by law to have the care, treatment or custody of  
12 an individual with mental illness, or drug or alcohol dependency,  
13 gambling addiction, eating disorders, an opioid substitution  
14 treatment program, including, but not limited to, public or private  
15 hospitals, community mental health centers, clinics, satellites or  
16 facilities; provided that facility shall not mean a child guidance  
17 center operated by the State Department of Health;

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

21          9. "Care and treatment" means medical care and behavioral  
22 health services, as well as food, clothing and maintenance,  
23 furnished to a person;

24

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

8 11. "Licensed mental health professional" means:

- 9 a. a psychiatrist who is a diplomate of the American  
10 Board of Psychiatry and Neurology,
- 11 b. a physician licensed pursuant to the Oklahoma  
12 Allopathic Medical and Surgical Licensure and  
13 Supervision Act or the Oklahoma Osteopathic Medicine  
14 Act,
- 15 c. a clinical psychologist who is duly licensed to  
16 practice by the State Board of Examiners of  
17 Psychologists,
- 18 d. a professional counselor licensed pursuant to the  
19 Licensed Professional Counselors Act,
- 20 e. a person licensed as a clinical social worker pursuant  
21 to the provisions of the Social Worker's Licensing  
22 Act,
- 23 f. a licensed marital and family therapist as defined in  
24 the Marital and Family Therapist Licensure Act,

- 1 g. a licensed behavioral practitioner as defined in the  
2 Licensed Behavioral Practitioner Act,  
3 h. an advanced practice nurse as defined in the Oklahoma  
4 Nursing Practice Act ~~specializing in mental health,~~  
5 i. a physician's assistant who is licensed in good  
6 standing in this state ~~and has received specific~~  
7 ~~training for and is experienced in performing mental~~  
8 ~~health therapeutic, diagnostic, or counseling~~  
9 ~~functions, or~~  
10 j. a licensed drug and alcohol counselor/mental health  
11 ("LADC/MH") as defined in the Licensed Alcohol and  
12 Drug Counselors Act;

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

16 13. a. "Person requiring treatment" means a person who  
17 because of his or her mental illness or drug or  
18 alcohol dependency:

- 19 (1) poses a substantial risk of immediate physical  
20 harm to self as manifested by evidence or serious  
21 threats of or attempts at suicide or other  
22 significant self-inflicted bodily harm,  
23 (2) poses a substantial risk of immediate physical  
24 harm to another person or persons as manifested

1 by evidence of violent behavior directed toward  
2 another person or persons,

3 (3) has placed another person or persons in a  
4 reasonable fear of violent behavior directed  
5 towards such person or persons or serious  
6 physical harm to them as manifested by serious  
7 and immediate threats,

8 (4) is in a condition of severe deterioration such  
9 that, without immediate intervention, there  
10 exists a substantial risk that severe impairment  
11 or injury will result to the person, or

12 (5) poses a substantial risk of immediate serious  
13 physical injury to self or death as manifested by  
14 evidence that the person is unable to provide for  
15 and is not providing for his or her basic  
16 physical needs.

17 b. "Assisted outpatient" means a person who:

18 (1) is eighteen (18) years of age or older, and

19 (2) is suffering from a mental illness, and

20 (3) is unlikely to survive safely in the community  
21 without supervision, based on a clinical  
22 determination, and

23 (4) has a history of lack of compliance with  
24 treatment for mental illness that has:

1                   (a) prior to the filing of a petition, at least  
2                   twice within the last thirty-six (36) months  
3                   been a significant factor in necessitating  
4                   hospitalization or treatment in a hospital  
5                   or residential facility, or receipt of  
6                   services in a forensic or other mental  
7                   health unit of a correctional facility or  
8                   local correctional facility, not including  
9                   any current period, or period ending within  
10                   the last six (6) months, during which the  
11                   person was or is hospitalized or  
12                   incarcerated, or

13                   (b) prior to the filing of the petition,  
14                   resulted in one or more acts of serious  
15                   violent behavior toward self or others or  
16                   threats of, or attempts at, serious physical  
17                   harm to self or others within the last  
18                   eighteen (18) months, not including any  
19                   current period, or period ending within the  
20                   last six (6) months, in which the person was  
21                   or is hospitalized or incarcerated, and

22                   (5) is, as a result of his or her mental illness,  
23                   unlikely to voluntarily participate in outpatient  
24

1                   treatment that would enable him or her to live  
2                   safely in the community, and

3           (6) in view of his or her treatment history and  
4           current behavior, is in need of assisted  
5           outpatient treatment in order to prevent a  
6           relapse or deterioration which would be likely to  
7           result in serious harm to the person or persons  
8           as defined by this section, and

9           (7) is likely to benefit from assisted outpatient  
10           treatment.

11       c.   The mental health or substance abuse history of the  
12       person may be used as part of the evidence to  
13       determine whether the person is a person requiring  
14       treatment or an assisted outpatient. The mental  
15       health or substance abuse history of the person shall  
16       not be the sole basis for this determination.

17       ~~e.~~

18       d.   Unless a person also meets the criteria established in  
19       subparagraph a or b of this paragraph, person  
20       requiring treatment or an assisted outpatient shall  
21       not mean:

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

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

4 (3) a person with seizure disorder,

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

6 (5) a person who is homeless.

7 ~~d.~~

8 e. A person who meets the criteria established in this  
9 section, but who is medically unstable, or the  
10 facility holding the person is unable to treat the  
11 additional medical conditions of that person should be  
12 discharged and transported in accordance with Section  
13 1-110 of this title;

14 14. "Petitioner" means a person who files a petition alleging  
15 that an individual is a person requiring treatment or an assisted  
16 outpatient;

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

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

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

16 19. "Recovery and recovery support" means nonclinical services  
17 that assist individuals and families to recover from alcohol or drug  
18 problems. They include social support, linkage to and coordination  
19 among allied service providers, including but not limited to  
20 transportation to and from treatment or employment, employment  
21 services and job training, case management and individual services  
22 coordination, life skills education, relapse prevention, housing  
23 assistance, child care, and substance abuse education;

1        20. "Assisted outpatient program" means a system to arrange for  
2 and coordinate the provision of assisted outpatient treatment, to  
3 monitor treatment compliance by assisted outpatients, to evaluate  
4 the condition or needs of assisted outpatients, to take appropriate  
5 steps to address the needs of such individuals and to ensure  
6 compliance with court orders; and

7        21. "Assisted outpatient treatment" means outpatient services  
8 which have been ordered by the court pursuant to a treatment plan  
9 approved by the court to treat an assisted outpatient's mental  
10 illness and to assist the person in living and functioning in the  
11 community, or to attempt to prevent a relapse or deterioration that  
12 may reasonably be predicted to result in suicide or the need for  
13 hospitalization.

14        SECTION 2.        AMENDATORY        43A O.S. 2011, Section 5-416, is  
15 amended to read as follows:

16        Section 5-416. A. The court, in considering a commitment  
17 petition filed under Section 5-410 ~~or Section 9-102~~ of this title,  
18 shall not order hospitalization without a thorough consideration of  
19 available treatment alternatives to hospitalization, or without  
20 addressing the competency of the consumer to consent to or refuse  
21 the treatment that is ordered including, but not limited to, the  
22 rights of the consumer:

- 23        1. To be heard concerning the treatment of the consumer; and
- 24        2. To refuse medications.

1 B. 1. If the court, in considering a commitment petition filed  
2 under Section 5-410 ~~or Section 9-102~~ of this title, finds that a  
3 program other than hospitalization, including an assisted outpatient  
4 treatment program, is adequate to meet the treatment needs of the  
5 individual and is sufficient to prevent injury to the individual or  
6 to others, the court may order the individual to receive whatever  
7 treatment other than hospitalization is appropriate for a period set  
8 by the court. During this time the court:

9 a. shall have continuing jurisdiction over the individual  
10 as a person requiring treatment or an assisted  
11 outpatient, and

12 b. shall periodically, no less often than annually,  
13 review the treatment needs of the individual and  
14 determine whether or not to continue, discontinue, or  
15 modify the treatment.

16 2. If at any time it comes to the attention of the court from a  
17 person competent to file or request the filing of a petition,  
18 pursuant to subsection A of Section 5-410 of this title, that the  
19 individual ordered to undergo a program of alternative treatment to  
20 hospitalization is not complying with the order or that the  
21 alternative treatment program has not been sufficient to prevent  
22 harm or injury which the individual may be inflicting upon himself  
23 or others, the court may order the person to show cause why the  
24 court should not:

1 a. implement other alternatives to hospitalization,  
2 modify or rescind the original order or direct the  
3 individual to undergo another program of alternative  
4 treatment, if necessary and appropriate, based on  
5 written findings of the court, or

6 b. enter an order of admission pursuant to the provisions  
7 of this title, directing that the person be committed  
8 to inpatient treatment and, if the individual refuses  
9 to comply with this order of inpatient treatment, the  
10 court may direct a peace officer to take the  
11 individual into protective custody and transport the  
12 person to a public or private facility designated by  
13 the court.

14 3. The court shall give notice to the person ordered to show  
15 cause and hold the hearing within seventy-two (72) hours of the  
16 notice. The person ordered to undergo a program of alternative  
17 treatment shall not be detained in emergency detention pending the  
18 show cause hearing unless, prior to the emergency detention, the  
19 person has undergone an initial examination and a determination is  
20 made that emergency detention is warranted.

21 4. If an order of alternative treatment will expire without  
22 further review by the court and it is believed that the individual  
23 continues to require treatment, a person competent to file or  
24 request the filing of a petition, pursuant to subsection A of

1 Section 5-410 of this title, may file or request the district  
2 attorney file either an application for an extension of the court's  
3 previous order or an entirely new petition for a determination that  
4 the individual is a person requiring treatment or an assisted  
5 outpatient.

6 5. A hearing on the application or petition filed pursuant to  
7 paragraph 4 of this subsection shall be held within ten (10) days  
8 after the application or petition is filed, unless the court extends  
9 the time for good cause. In setting the matter for hearing, the  
10 court shall consider whether or not the prior orders of the court  
11 will expire during the pendency of the hearing and shall make  
12 appropriate orders to protect the interests of the individual who is  
13 the subject of the hearing.

14 C. Prior to ordering the inpatient treatment of an individual,  
15 the court shall inquire into the adequacy of treatment to be  
16 provided to the individual by the facility, and inpatient treatment  
17 shall not be ordered unless the facility in which the individual is  
18 to be treated can provide such person with treatment which is  
19 adequate and appropriate to such person's condition.

20 D. Nothing in this section shall prohibit the Department of  
21 Mental Health and Substance Abuse Services or the facility or  
22 program providing the alternative treatment from discharging a  
23 person admitted pursuant to this section, at a time prior to the  
24 expiration of the period of alternative treatment, or any extension

1   thereof. The facility or program providing the alternative  
2   treatment shall file a report with the court outlining the  
3   disposition of each person admitted pursuant to this section within  
4   forty-eight (48) hours after discharge.

5       E. Notice of any proceedings pursuant to this section shall be  
6   given to the person, the person's guardian, the person's attorney,  
7   and the person filing the petition or application.

8       F. If the petition alleges the person to be an assisted  
9   outpatient, the court upon hearing evidence shall determine if the  
10   person is an assisted outpatient. The court shall not order  
11   assisted outpatient treatment unless a licensed mental health  
12   professional, in consultation with an assisted outpatient treatment  
13   program, develops and provides to the court a proposed written  
14   treatment plan. A licensed mental health professional shall testify  
15   to explain the proposed written treatment plan unless the parties  
16   stipulate upon mutual consent that such licensed mental health  
17   professional need not testify.

18       G. The court may order temporary assisted outpatient treatment  
19   pending receipt of the written treatment plan; provided, the court  
20   shall set a hearing to receive such treatment plan and testimony of  
21   a licensed mental health professional no later than the third day,  
22   excluding Saturdays, Sundays and holidays, immediately following the  
23   date of the temporary order. The parties may stipulate upon mutual  
24   consent that such testimony need not be provided. If no required

1 written treatment plan and testimony is forthcoming, the temporary  
2 outpatient treatment order shall be terminated.

3 H. A copy of any court order for assisted outpatient treatment  
4 shall be served personally, or by mail, facsimile or electronic  
5 means, upon the assisted outpatient, the assisted outpatient  
6 treatment program and all other parties to the action.

7 I. The initial order for assisted outpatient treatment shall be  
8 for a period of one (1) year. Within thirty (30) days prior to the  
9 expiration of the order, any person permitted to file a petition  
10 pursuant to the provisions of Section 5-410 of this title may  
11 petition to extend the order of outpatient treatment. Notice shall  
12 be given in accordance with the provisions of Section 5-412 of this  
13 title. The court shall hear the petition, review the treatment plan  
14 and determine if the assisted outpatient continues to meet the  
15 criteria for assisted outpatient treatment and if such treatment is  
16 the least restrictive alternative. If the court finds the assisted  
17 outpatient treatment should continue, it shall make such an order  
18 extending the assisted treatment an additional year and order the  
19 treatment plan updated as necessary. If the court's disposition of  
20 the motion does not occur prior to the expiration date of the  
21 current order, the current order shall remain in effect for up to  
22 thirty (30) additional days until such disposition. Subsequent  
23 extensions of the order may be obtained in the same manner.

1       J. In addition to any other right or remedy available by law  
2 with respect to the order for assisted outpatient treatment, the  
3 assisted outpatient or anyone acting on the assisted outpatient's  
4 behalf may petition the court on notice to the assisted outpatient  
5 treatment program, the original petitioner and all other parties to  
6 the action to stay, vacate or modify the order.

7       K. The assisted outpatient treatment program shall petition the  
8 court for approval before instituting a proposed change in the  
9 assisted outpatient treatment plan, unless such change is authorized  
10 by the order of the court. Such petition shall be filed on notice  
11 to all parties in the original action; provided that if the assisted  
12 outpatient informs the court that he or she agrees to the proposed  
13 material change, the court may approve such change without a  
14 hearing.

15       L. Where, in the clinical judgment of a licensed mental health  
16 professional:

17       1. The assisted outpatient has failed or refused to comply with  
18 the assisted outpatient treatment;

19       2. Efforts were made to solicit compliance; and

20       3. Such assisted outpatient appears to be a person requiring  
21 treatment,

22 the licensed mental health professional may cause the assisted  
23 outpatient to be taken into protective custody pursuant to the  
24 provisions of Sections 5-206 through 5-209 of this title or may

1 refer or initiate proceedings pursuant to Sections 5-410 through 5-  
2 415 of this title for involuntary commitment to a hospital or  
3 residential treatment facility. Failure to comply with an order of  
4 assisted outpatient treatment shall not be grounds for involuntary  
5 civil commitment or a finding of contempt of court.

6 SECTION 3. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 5-410.1 of Title 43A, unless  
8 there is created a duplication in numbering, reads as follows:

9 A. Beginning July 1, 2015, the Board of Mental Health and  
10 Substance Abuse Services may certify outpatient treatment programs  
11 and enter into contracts with such programs to provide outpatient  
12 treatment.

13 B. The venue, procedures, and legal rights and protections  
14 applicable to assisted outpatients shall be the same as those for  
15 persons requiring treatment as provided in Title 43A of the Oklahoma  
16 Statutes; provided that the procedures for emergency detention found  
17 in the provisions of Section 5-207 et seq. of Title 43A of the  
18 Oklahoma Statutes shall not apply to assisted outpatients. Assisted  
19 outpatient treatment shall be ordered pursuant to the provisions of  
20 Section 5-416 of this title. No court shall issue an order for  
21 assisted outpatient treatment, except a temporary order as provided  
22 in Section 5-416 of Title 43A of the Oklahoma Statutes, without a  
23 written treatment plan.

24

1 C. The Board of Mental Health and Substance Abuse Services  
2 shall promulgate rules for certification of outpatient treatment  
3 programs.

4 SECTION 4. This act shall become effective November 1, 2014.

5 Passed the Senate the 13th day of March, 2014.

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\_\_\_\_\_  
Presiding Officer of the Senate

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9 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

10 2014.

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Presiding Officer of the House  
of Representatives

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