

- 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
10 Abuse Services" as established by ~~this law~~ the Mental Health Law;
- 11 5. "Commissioner" means the individual selected and appointed
12 by 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, an opioid substitution
22 treatment program, including, but not limited to, public or private
23 hospitals, community mental health centers, clinics, satellites or
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1 facilities; provided that facility shall not mean a child guidance
2 center operated by the State 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
7 health services, as well as food, clothing and maintenance,
8 furnished to a 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,
14 such terms shall have equal significance to the words "mental
15 illness";

16 11. "Licensed mental health professional" means:

17 a. a psychiatrist who is a diplomate of the American
18 Board of Psychiatry and Neurology,

19 b. a physician licensed pursuant to ~~Section 480 et seq.~~
20 the Oklahoma Allopathic Medical and Surgical Licensure
21 and Supervision Act or ~~Section 620 et seq. of Title 59~~
22 ~~of the Oklahoma Statutes~~ the Oklahoma Osteopathic
23 Medicine Act,

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- 1 c. a clinical psychologist who is duly licensed to
2 practice by the State Board of Examiners of
3 Psychologists,
- 4 d. a professional counselor licensed pursuant to ~~Section~~
5 ~~1901 et seq. of Title 59 of the Oklahoma Statutes~~ the
6 Licensed Professional Counselors Act,
- 7 e. a person licensed as a clinical social worker pursuant
8 to the provisions of the Social Worker's Licensing
9 Act,
- 10 f. a licensed marital and family therapist as defined in
11 ~~Section 1925.1 et seq. of Title 59 of the Oklahoma~~
12 ~~Statutes~~ the Marital and Family Therapist Licensure
13 Act,
- 14 g. a licensed behavioral practitioner as defined in
15 ~~Section 1930 et seq. of Title 59 of the Oklahoma~~
16 ~~Statutes~~ the Licensed Behavioral Practitioner Act,
- 17 h. an advanced practice nurse as defined in ~~Section 567.1~~
18 ~~et seq. of Title 59 of the Oklahoma Statutes~~ the
19 Oklahoma Nursing Practice Act specializing in mental
20 health, ~~or~~
- 21 i. a physician's assistant who is licensed in good
22 standing in this state and has received specific
23 training for and is experienced in performing mental
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1 health therapeutic, diagnostic, or counseling
2 functions; or

3 j. a licensed drug and alcohol counselor/mental health
4 ("LADC/MH") as defined in the Licensed Alcohol and
5 Drug Counselors Act;

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

9 13. a. "Person requiring treatment" means a person who
10 because of his or her mental illness or drug or
11 alcohol dependency:

12 (1) poses a substantial risk of immediate physical
13 harm to self as manifested by evidence or serious
14 threats of or attempts at suicide or other
15 significant self-inflicted bodily harm,

16 (2) poses a substantial risk of immediate physical
17 harm to another person or persons as manifested
18 by evidence of violent behavior directed toward
19 another person or persons,

20 (3) has placed another person or persons in a
21 reasonable fear of violent behavior directed
22 towards such person or persons or serious
23 physical harm to them as manifested by serious
24 and immediate threats,

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

5 (5) poses a substantial risk of immediate serious
6 physical injury to self or death as manifested by
7 evidence that the person is unable to provide for
8 and is not providing for his or her basic
9 physical needs.

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

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

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

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

- (3) a person with seizure disorder,
- (4) a person with a traumatic brain injury, or
- (5) a person who is homeless.

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

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

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

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

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

- 1 a. a statement of treatment goals or objectives, based
2 upon and related to a clinical evaluation, which can
3 be reasonably achieved within a designated time
4 interval,
- 5 b. treatment methods and procedures to be used to obtain
6 these goals, which methods and procedures are related
7 to each of these goals and which include specific
8 prognosis for achieving each of these goals,
- 9 c. identification of the types of professional personnel
10 who will carry out the treatment procedures, including
11 appropriate medical or other professional involvement
12 by a physician or other health professional properly
13 qualified to fulfill legal requirements mandated under
14 state and federal law,
- 15 d. documentation of involvement by the individual
16 receiving treatment and, if applicable, the accordance
17 of the individual with the treatment plan, and
- 18 e. a statement attesting that the executive director of
19 the facility or clinical director has made a
20 reasonable effort to meet the plan's individualized
21 treatment goals in the least restrictive environment
22 possible closest to the home community of the
23 individual; and
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1 18. "Telemedicine" means the practice of health care delivery,
2 diagnosis, consultation, evaluation, treatment, transfer of medical
3 data, or exchange of medical education information by means of
4 audio, video, or data communications. Telemedicine uses audio and
5 video multimedia telecommunication equipment which permits two-way
6 real-time communication between a health care practitioner and a
7 patient who are not in the same physical location. Telemedicine
8 shall not include consultation provided by telephone or facsimile
9 machine.

10 SECTION 2. AMENDATORY 43A O.S. 2011, Section 1-109, is
11 amended to read as follows:

12 Section 1-109. A. 1. All mental health and drug or alcohol
13 abuse treatment information, whether or not recorded, and all
14 communications between a physician or ~~psychotherapist~~ licensed
15 mental health professional as defined in Section 1-103 of this
16 title, or a licensed alcohol and drug counselor as defined in
17 Section 1871 of Title 59 of the Oklahoma Statutes, and a consumer
18 are both privileged and confidential. In addition, the identity of
19 all persons who have received or are receiving mental health or drug
20 or alcohol abuse treatment services shall be considered confidential
21 and privileged.

22 2. Such information shall only be available to persons actively
23 engaged in the treatment of the consumer or in related
24 administrative work. The information available to persons actively

1 engaged in the treatment of the consumer or in related
2 administrative work shall be limited to the minimum amount of
3 information necessary for the person or agency to carry out its
4 function.

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

8 B. A person who is or has been a consumer of a physician,
9 ~~psychotherapist,~~ a licensed mental health professional as defined in
10 Section 1-103 of this title, a licensed alcohol and drug counselor
11 as defined in Section 1871 of Title 59 of the Oklahoma Statutes, a
12 mental health facility, a drug or alcohol abuse treatment facility
13 or service, or other agency for the purpose of mental health or drug
14 or alcohol abuse care and treatment shall be entitled to personal
15 access to his or her mental health or drug or alcohol abuse
16 treatment information, except the following:

17 1. Information contained in notes recorded in any medium by a
18 mental health professional documenting or analyzing the contents of
19 conversation during a private counseling session or a group, joint
20 or family counseling session, and that is separated from the rest of
21 the patient's medical record;

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

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1 3. Information that is otherwise privileged or prohibited from
2 disclosure by law;

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

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

10 6. Information requested by an inmate that a correctional
11 institution has determined may jeopardize the health, safety,
12 security, custody or rehabilitation of the inmate or other person;
13 and

14 7. Information obtained under a promise of confidentiality and
15 the access requested would be reasonably likely to reveal the source
16 of the information.

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

20 a. the specific name or general designation of the
21 program or person permitted to make the disclosure,

22 b. the name or title of the individual or the name of the
23 organization to which disclosure is to be made,
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- c. the name of the consumer whose records are to be released,
- d. the purpose of the disclosure,
- e. a description of the information to be disclosed,
- f. the dated signature of the consumer or authorized representative or both when required,
- g. a statement of the right of the consumer to revoke the release in writing and a description of how the consumer may do so,
- h. an expiration date, event or condition which, if not revoked before, shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given, and
- i. if the release is signed by a person authorized to act for a consumer, a description of the authority of such person to act.

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

- a. the expiration date has passed or the expiration event or condition is known to have occurred or to exist,
- b. the release has not been filled out completely with respect to an element described in paragraph 1 of this section,
- c. the release is known to have been revoked, or

1 d. any material information in the release is known to be
2 false.

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

5 a. information has already been released in reliance
6 thereon,

7 b. the authorization was obtained as a condition of
8 obtaining insurance coverage and other law provides
9 the insurer with the right to contest a claim under
10 the policy or the policy itself, or

11 c. the release was executed as part of a criminal justice
12 referral.

13 4. Disclosure regarding a deceased consumer shall require
14 either a court order or a written release of an executor,
15 administrator or personal representative appointed by the court, or
16 if there is no such appointment, by the spouse of the consumer or,
17 if none, by any responsible member of the family of the consumer.

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

23 D. Except as otherwise permitted, mental health and alcohol or
24 substance abuse treatment information may not be disclosed without

1 valid patient authorization or a valid court order issued by a court
2 of competent jurisdiction. For purposes of this section, a subpoena
3 by itself is not sufficient to authorize disclosure of mental health
4 and alcohol or substance abuse treatment information.

5 E. An authorization shall not be required for the following
6 uses and disclosures, but information disclosed pursuant to one of
7 these exceptions must be limited to the minimum amount of
8 information necessary:

9 1. Disclosure by a health care provider of mental health
10 information necessary to carry out another provider's own treatment,
11 payment, or health care operations. Such disclosures shall be
12 limited to mental health information and shall not include substance
13 abuse information;

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

21 3. A review preparatory to research, research on decedents
22 information or research conducted when a waiver of authorization has
23 been approved by either an institutional review board or privacy
24 board;

1 4. Communications pursuant to a business associate agreement,
2 qualified service organization agreement or a qualified service
3 organization/business associate agreement. As used in this
4 paragraph:

5 a. "business associate agreement" means a written signed
6 agreement between a health care provider and an
7 outside entity which performs or assists in the
8 performance of a function or activity involving the
9 use or disclosure of individually identifiable health
10 information on behalf of the health care provider,

11 b. "qualified service organization agreement" means a
12 written, signed agreement between a health care
13 provider and an outside entity which provides services
14 to the health care provider's consumers that are
15 different from the services provided by the health
16 care provider, that allows the health care provider to
17 communicate consumer information necessary for the
18 outside entity to provide services to the health care
19 provider's consumers without the need for an
20 authorization signed by a consumer and in which the
21 outside entity acknowledges that in receiving,
22 storing, processing or otherwise dealing with any
23 consumer information from the health care provider it
24 is fully bound by the provisions of 42 C.F.R., Part 2

1 and, if necessary, will resist any efforts in judicial
2 proceedings to obtain access to consumer information,
3 except as permitted by 42 C.F.R., Part 2, and

4 c. "qualified service organization/business agreement"

5 means a written, signed agreement between a health
6 care provider and an outside entity which provides
7 services to the health care provider's consumers that
8 are different from the services provided by the health
9 care provider, that allows the health care provider to
10 communicate consumer information necessary for the
11 outside entity to provide services to the health care
12 provider's consumers without the need for an
13 authorization signed by a consumer, and in which the
14 outside entity acknowledges that in receiving,
15 storing, processing or otherwise dealing with any
16 consumer information from the health care provider it
17 is fully bound by the provisions 42 C.F.R., Part 2
18 and, if necessary, will resist any efforts in judicial
19 proceedings to obtain access to consumer information,
20 except as permitted by 42 C.F.R., Part 2. The
21 agreement must also contain elements required by
22 federal privacy regulations in 45 C.F.R., Parts 160 &
23 164;

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

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

10 7. Communications necessary for audit and evaluation
11 activities;

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

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

23 10. Communications to coroners, medical examiners and funeral
24 directors for the purpose of identifying a deceased person,

1 determining a cause of death, or other duties as authorized by law
2 and as necessary to carry out their duties; provided, however, such
3 disclosure may not identify the person directly or indirectly as a
4 person with a substance abuse disorder;

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

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

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

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

1 the physical or mental condition of that person in issue by the
2 commencement of any action, proceeding, or suit for damages, or
3 where any person has placed in issue the physical or mental
4 condition of any other person or deceased person by or through whom
5 the person rightfully claims;

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

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

17 SECTION 3. This act shall become effective November 1, 2013.

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19 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND FINANCIAL
20 SERVICES, dated 03/28/2013 - DO PASS.

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