



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

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

11           B. A person who is or has been a consumer of a physician,  
12 psychotherapist, mental health facility, a drug or alcohol abuse  
13 treatment facility or service, or other agency for the purpose of  
14 mental health or drug or alcohol abuse care and treatment, or such  
15 person's treatment advocate as defined in Section 1-109.1 of this  
16 title, shall be entitled to personal access to his or her mental  
17 health or drug or alcohol abuse treatment information, except the  
18 following:

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

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

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

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

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

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

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

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

22                   a. the specific name or general designation of the  
23                   program or person permitted to make the disclosure,  
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- b. the name or title of the individual or the name of the organization to which disclosure is to be made,
- 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
- d. any material information in the release is known to be false.

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

- a. information has already been released in reliance thereon,
- b. the authorization was obtained as a condition of obtaining insurance coverage and other law provides the insurer with the right to contest a claim under the policy or the policy itself, or
- c. the release was executed as part of a criminal justice referral.

4. Disclosure regarding a deceased consumer shall require either a court order or a written release of an executor, administrator or personal representative appointed by the court, or if there is no such appointment, by the spouse of the consumer or, if none, by any responsible member of the family of the consumer. As used in this paragraph, "responsible family member" means the parent, adult child, adult sibling or other adult relative who was actively involved in providing care to or monitoring the care of the

1 patient as verified by the physician, psychologist or other person  
2 responsible for the care and treatment of such person.

3 D. Except as otherwise permitted, mental health and alcohol or  
4 substance abuse treatment information may not be disclosed without  
5 valid patient authorization or a valid court order issued by a court  
6 of competent jurisdiction. For purposes of this section, a subpoena  
7 by itself is not sufficient to authorize disclosure of mental health  
8 and alcohol or substance abuse treatment information.

9 E. An authorization shall not be required for the following  
10 uses and disclosures, but information disclosed pursuant to one of  
11 these exceptions must be limited to the minimum amount of  
12 information necessary:

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

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

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

5           4. Communications pursuant to a business associate agreement,  
6 qualified service organization agreement or a qualified service  
7 organization/business associate agreement. As used in this  
8 paragraph:

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

15           b. "qualified service organization agreement" means a  
16 written, signed agreement between a health care  
17 provider and an outside entity which provides services  
18 to the health care provider's consumers that are  
19 different from the services provided by the health  
20 care provider, that allows the health care provider to  
21 communicate consumer information necessary for the  
22 outside entity to provide services to the health care  
23 provider's consumers without the need for an  
24 authorization signed by a consumer and in which the

1 outside entity acknowledges that in receiving,  
2 storing, processing or otherwise dealing with any  
3 consumer information from the health care provider it  
4 is fully bound by the provisions of 42 C.F.R., Part 2  
5 and, if necessary, will resist any efforts in judicial  
6 proceedings to obtain access to consumer information,  
7 except as permitted by 42 C.F.R., Part 2, and

8 c. "qualified service organization/business agreement"

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

1 agreement must also contain elements required by  
2 federal privacy regulations in 45 C.F.R., Parts 160 &  
3 164;

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

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

13 7. Communications necessary for audit and evaluation  
14 activities;

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

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

4           10. Communications to coroners, medical examiners and funeral  
5 directors for the purpose of identifying a deceased person,  
6 determining a cause of death, or other duties as authorized by law  
7 and as necessary to carry out their duties; provided, however, such  
8 disclosure may not identify the person directly or indirectly as a  
9 person with a substance abuse disorder;

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

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

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

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1        14. Mental health records may be disclosed to parties in a  
2 judicial or administrative proceeding in cases involving a claim for  
3 personal injury or death against any practitioner of the healing  
4 arts, a licensed hospital, or a nursing facility or nursing home  
5 licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma  
6 Statutes arising out of patient care, where any person has placed  
7 the physical or mental condition of that person in issue by the  
8 commencement of any action, proceeding, or suit for damages, or  
9 where any person has placed in issue the physical or mental  
10 condition of any other person or deceased person by or through whom  
11 the person rightfully claims;

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

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

23        SECTION 2.        AMENDATORY        43A O.S. 2011, Section 1-109.1, is  
24 amended to read as follows:

1 Section 1-109.1. A. 1. Every adult having a mental illness as  
2 defined in Section 1-103 of this title who is under the care of a  
3 licensed mental health professional shall be informed by the  
4 licensed mental health professional or the mental health treatment  
5 facility that the consumer has the right to designate a family  
6 member or other concerned individual as a treatment advocate.

7 2. The individual designated as a treatment advocate shall act  
8 at all times in the best interests of the consumer.

9 3. The patient may change or revoke the designation of a  
10 treatment advocate at any time and for any reason.

11 4. The treatment advocate may participate in the treatment  
12 planning and discharge planning of the consumer to the extent  
13 consented to by the consumer and as permitted by law.

14 5. A person holding the powers vested in a guardianship of the  
15 person, a grant of general health care decision-making authority or  
16 designation of health care proxy contained in an advance directive  
17 for health care, or a durable power of attorney with health care  
18 decision-making authority shall be the treatment advocate for the  
19 patient by operation of law.

20 B. 1. The Board of Mental Health and Substance Abuse Services  
21 shall promulgate rules for all facilities certified by the  
22 Department of Mental Health and Substance Abuse Services as to the  
23 design, contents, and maintenance of a treatment advocate consent  
24 form.

1           2. The contents of the consent form, at a minimum, shall  
2 include a statement indicating that the treatment advocate  
3 understands that all mental health treatment information is  
4 confidential and that the treatment advocate agrees to maintain  
5 confidentiality.

6           C. This section shall not apply to inmates of the Oklahoma  
7 Department of Corrections.

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

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10 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04/09/2013 -  
11 DO PASS, As Amended.

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