

1 **SENATE FLOOR VERSION**

2 February 18, 2013

3 SENATE BILL NO. 725

By: David of the Senate

4 and

5 Derby of the House

6
7
8 An Act relating to mental health and substance abuse;
9 amending 43A O.S. 2011, Section 1-103, which relates
10 to definitions; designating licensed drug and alcohol
11 counselors as licensed mental health professionals;
12 amending 43A O.S. 2011, Section 1-109, which relates
13 to confidential and privileged information;
14 classifying certain communications by licensed mental
15 health professionals or licensed drug and alcohol
16 counselors as confidential and privileged; providing
17 for access to certain information by a consumer of a
18 licensed mental health professional or a licensed
19 alcohol and drug counselor; and providing an
20 effective date.

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

22 SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-103, is
23 amended to read as follows:

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

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

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

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

7 4. "Board" means the "Board of Mental Health and Substance
8 Abuse Services" as established by this law;

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

12 6. "Indigent person" means a person who has not sufficient
13 assets or resources to support the person and to support members of
14 the family of the person lawfully dependent on the person for
15 support;

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

24

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

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

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

14 11. "Licensed mental health professional" means:

15 a. a psychiatrist who is a diplomate of the American
16 Board of Psychiatry and Neurology,

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

22 c. a clinical psychologist who is duly licensed to
23 practice by the State Board of Examiners of
24 Psychologists,

- 1 d. a professional counselor licensed pursuant to ~~Section~~
2 ~~1901 et seq. of Title 59 of the Oklahoma Statutes~~ the
3 Licensed Professional Counselors Act,
- 4 e. a person licensed as a clinical social worker pursuant
5 to the provisions of the Social Worker's Licensing
6 Act,
- 7 f. a licensed marital and family therapist as defined in
8 ~~Section 1925.1 et seq. of Title 59 of the Oklahoma~~
9 ~~Statutes~~ the Marital and Family Therapist Licensure
10 Act,
- 11 g. a licensed behavioral practitioner as defined in
12 ~~Section 1930 et seq. of Title 59 of the Oklahoma~~
13 ~~Statutes~~ the Licensed Behavioral Practitioner Act,
- 14 h. an advanced practice nurse as defined in ~~Section 567.1~~
15 ~~et seq. of Title 59 of the Oklahoma Statutes~~ the
16 Oklahoma Nursing Practice Act specializing in mental
17 health, ~~or~~
- 18 i. a physician's assistant who is licensed in good
19 standing in this state and has received specific
20 training for and is experienced in performing mental
21 health therapeutic, diagnostic, or counseling
22 functions; or
- 23
24

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

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

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

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

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

18 (3) 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 serious
22 and immediate threats,

23 (4) is in a condition of severe deterioration such
24 that, without immediate intervention, there

1 exists a substantial risk that severe impairment
2 or injury will result to the person, or

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

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

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

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

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

23 (3) a person with seizure disorder,

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

1 (5) a person who is homeless.

2 d. A person who meets the criteria established in this
3 section, but who is medically unstable, or the
4 facility holding the person is unable to treat the
5 additional medical conditions of that person should be
6 discharged and transported in accordance with Section
7 1-110 of this title;

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

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

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

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

23 a. a statement of treatment goals or objectives, based
24 upon and related to a clinical evaluation, which can

1 be reasonably achieved within a designated time
2 interval,

3 b. treatment methods and procedures to be used to obtain
4 these goals, which methods and procedures are related
5 to each of these goals and which include specific
6 prognosis for achieving each of these goals,

7 c. identification of the types of professional personnel
8 who will carry out the treatment procedures, including
9 appropriate medical or other professional involvement
10 by a physician or other health professional properly
11 qualified to fulfill legal requirements mandated under
12 state and federal law,

13 d. documentation of involvement by the individual
14 receiving treatment and, if applicable, the accordance
15 of the individual with the treatment plan, and

16 e. a statement attesting that the executive director of
17 the facility or clinical director has made a
18 reasonable effort to meet the plan's individualized
19 treatment goals in the least restrictive environment
20 possible closest to the home community of the
21 individual; and

22 18. "Telemedicine" means the practice of health care delivery,
23 diagnosis, consultation, evaluation, treatment, transfer of medical
24 data, or exchange of medical education information by means of

1 audio, video, or data communications. Telemedicine uses audio and
2 video multimedia telecommunication equipment which permits two-way
3 real-time communication between a health care practitioner and a
4 patient who are not in the same physical location. Telemedicine
5 shall not include consultation provided by telephone or facsimile
6 machine.

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

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

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

1 information necessary for the person or agency to carry out its
2 function.

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

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

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

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

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

24

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

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

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

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

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

- 18 a. the specific name or general designation of the
19 program or person permitted to make the disclosure,
20 b. the name or title of the individual or the name of the
21 organization to which disclosure is to be made,
22 c. the name of the consumer whose records are to be
23 released,
24 d. the purpose of the disclosure,

- 1 e. a description of the information to be disclosed,
2 f. the dated signature of the consumer or authorized
3 representative or both when required,
4 g. a statement of the right of the consumer to revoke the
5 release in writing and a description of how the
6 consumer may do so,
7 h. an expiration date, event or condition which, if not
8 revoked before, shall ensure the release will last no
9 longer than reasonably necessary to serve the purpose
10 for which it is given, and
11 i. if the release is signed by a person authorized to act
12 for a consumer, a description of the authority of such
13 person to act.

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

- 16 a. the expiration date has passed or the expiration event
17 or condition is known to have occurred or to exist,
18 b. the release has not been filled out completely with
19 respect to an element described in paragraph 1 of this
20 section,
21 c. the release is known to have been revoked, or
22 d. any material information in the release is known to be
23 false.
24

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

3 a. information has already been released in reliance
4 thereon,

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

9 c. the release was executed as part of a criminal justice
10 referral.

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

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

21 D. Except as otherwise permitted, mental health and alcohol or
22 substance abuse treatment information may not be disclosed without
23 valid patient authorization or a valid court order issued by a court
24 of competent jurisdiction. For purposes of this section, a subpoena

1 by itself is not sufficient to authorize disclosure of mental health
2 and alcohol or substance abuse treatment information.

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

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

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

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

23 4. Communications pursuant to a business associate agreement,
24 qualified service organization agreement or a qualified service

1 organization/business associate agreement. As used in this
2 paragraph:

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

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

1 proceedings to obtain access to consumer information,
2 except as permitted by 42 C.F.R., Part 2, and

3 c. "qualified service organization/business agreement"

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

23 5. Reporting under state law incidents of suspected child abuse
24 or neglect to the appropriate authorities; provided, however, for

1 disclosures involving an individual with a substance abuse disorder,
2 this exception does not allow for follow-up communications;

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

8 7. Communications necessary for audit and evaluation
9 activities;

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

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

21 10. Communications to coroners, medical examiners and funeral
22 directors for the purpose of identifying a deceased person,
23 determining a cause of death, or other duties as authorized by law
24 and as necessary to carry out their duties; provided, however, such

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

16 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
17 February 18, 2013 - DO PASS

18
19
20
21
22
23
24