

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2822

By: Lepak

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to the Department of Mental Health
10 and Substance Abuse Services; amending 43A O.S. 2011,
11 Sections 1-103, as last amended by Section 1, Chapter
12 246, O.S.L. 2017, 2-101, 2-103, as amended by Section
13 1, Chapter 280, O.S.L. 2017, 2-106 and 2-111, as last
14 amended by Section 1, Chapter 139, O.S.L. 2017 (43A
15 O.S. Supp. 2017, Sections 1-103, 2-103 and 2-111),
16 which relate to the Board of Mental Health and
17 Substance Abuse Services; modifying definitions;
18 authorizing Governor to appoint Commissioner;
19 providing for determination of compensation; making
20 Board an advisory body; transferring duties to the
21 Commissioner; modifying powers and duties of the
22 Board; and providing an effective date.

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

24 SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-103, as
last amended by Section 1, Chapter 246, O.S.L. 2017 (43A O.S. Supp.
2017, 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. 3. "Board" means the Board of Mental Health and Substance
10 Abuse Services as established by the Mental Health Law;

11 5. 4. "Commissioner" means the individual selected and
12 appointed by the ~~Board~~ Governor to serve as Commissioner of Mental
13 Health and Substance Abuse Services;

14 6. 5. "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. 6. "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
24

1 facilities; provided, that facility shall not mean a child guidance
2 center operated by the State Department of Health;

3 ~~8.~~ 7. "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.~~ 8. "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.~~ 9. Whenever in this law or in any other law, or in any rule
10 or order made or promulgated pursuant to this law or to any other
11 law, or in the printed forms prepared for the admission of consumers
12 or for statistical reports, the words "insane", "insanity",
13 "lunacy", "mentally sick", "mental disease" or "mental disorder" are
14 used, such terms shall have equal significance to the words "mental
15 illness";

16 ~~11.~~ 10. "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 psychiatrist who is a diplomate of the American
20 Osteopathic Board of Neurology and Psychiatry,
- 21 c. a physician licensed pursuant to the Oklahoma
22 Allopathic Medical and Surgical Licensure and
23 Supervision Act or the Oklahoma Osteopathic Medicine
24 Act,

- d. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- e. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,
- f. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,
- g. a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,
- h. a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,
- i. an advanced practice nurse as defined in the Oklahoma Nursing Practice Act,
- j. a physician's assistant who is licensed in good standing in this state, or
- k. a licensed drug and alcohol counselor/mental health (LADC/MH) as defined in the Licensed Alcohol and Drug Counselors Act;

~~12.~~ 11. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

~~13.~~

1 12. a. "Person requiring treatment" means a person who
2 because of his or her mental illness or drug or
3 alcohol dependency:

4 (1) poses a substantial risk of immediate physical
5 harm to self as manifested by evidence or serious
6 threats of or attempts at suicide or other
7 significant self-inflicted bodily harm,

8 (2) poses a substantial risk of immediate physical
9 harm to another person or persons as manifested
10 by evidence of violent behavior directed toward
11 another person or persons,

12 (3) has placed another person or persons in a
13 reasonable fear of violent behavior directed
14 towards such person or persons or serious
15 physical harm to them as manifested by serious
16 and immediate threats,

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

21 (5) poses a substantial risk of immediate serious
22 physical injury to self or death as manifested by
23 evidence that the person is unable to provide for
24

1 and is not providing for his or her basic
2 physical needs.

3 b. The mental health or substance abuse history of the
4 person may be used as part of the evidence to
5 determine whether the person is a person requiring
6 treatment or an assisted outpatient. The mental
7 health or substance abuse history of the person shall
8 not be the sole basis for this determination.

9 c. Unless a person also meets the criteria established in
10 subparagraph a or b of this paragraph, person
11 requiring treatment or an assisted outpatient shall
12 not mean:

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

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

19 (3) a person with seizure disorder,

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

21 (5) a person who is homeless.

22 d. A person who meets the criteria established in this
23 section, but who is medically unstable, or the
24 facility holding the person is unable to treat the

1 additional medical conditions of that person should be
2 discharged and transported in accordance with Section
3 1-110 of this title;

4 ~~14.~~ 13. "Petitioner" means a person who files a petition
5 alleging that an individual is a person requiring treatment or an
6 assisted outpatient;

7 ~~15.~~ 14. "Executive director" means the person in charge of a
8 facility as defined in this section;

9 ~~16.~~ 15. "Private hospital or facility" means any general
10 hospital maintaining a neuro-psychiatric unit or ward, or any
11 private hospital or facility for care and treatment of a person
12 having a mental illness, which is not supported by the state or
13 federal government. The term "private hospital" or "facility" shall
14 not include nursing homes or other facilities maintained primarily
15 for the care of elderly and disabled persons;

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

- 21 a. a statement of treatment goals or objectives, based
22 upon and related to a clinical evaluation, which can
23 be reasonably achieved within a designated time
24 interval,

- b. treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to each of these goals and which include specific prognosis for achieving each of these goals,
- c. identification of the types of professional personnel who will carry out the treatment procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law,
- d. documentation of involvement by the individual receiving treatment and, if applicable, the accordance of the individual with the treatment plan, and
- e. a statement attesting that the executive director of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the home community of the individual;

~~18.~~ 17. "Telemedicine" means the practice of health care delivery, diagnosis, consultation, evaluation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine uses audio and video multimedia telecommunication equipment which permits

1 two-way real-time communication between a health care practitioner
2 and a patient who are not in the same physical location.

3 Telemedicine shall not include consultation provided by telephone or
4 facsimile machine;

5 ~~19.~~ 18. "Recovery and recovery support" means nonclinical
6 services that assist individuals and families to recover from
7 alcohol or drug problems. They include social support, linkage to
8 and coordination among allied service providers, including but not
9 limited to transportation to and from treatment or employment,
10 employment services and job training, case management and individual
11 services coordination, life skills education, relapse prevention,
12 housing assistance, child care, and substance abuse education;

13 ~~20.~~ 19. "Assisted outpatient" means a person who:

- 14 a. is either currently under the care of a facility
15 certified by the Department of Mental Health and
16 Substance Abuse Services as a Community Mental Health
17 Center, or is being discharged from the custody of the
18 Oklahoma Department of Corrections, or is being
19 discharged from a residential placement by the Office
20 of Juvenile Affairs,
21 b. is suffering from a mental illness,
22 c. is unlikely to survive safely in the community without
23 supervision, based on a clinical determination,

d. has a history of lack of compliance with treatment for mental illness that has:

(1) prior to the filing of a petition, at least twice within the last thirty-six (36) months been a significant factor in necessitating hospitalization or treatment in a hospital or residential facility, or receipt of services in a forensic or other mental health unit of a correctional facility, or a specialized treatment plan for treatment of mental illness in a secure juvenile facility or placement in a specialized residential program for juveniles, or

(2) prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last twenty-four (24) months,

e. is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community,

f. in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which

1 would be likely to result in serious harm to the
2 person or persons as defined in this section, and
3 g. is likely to benefit from assisted outpatient
4 treatment; and

5 ~~21.~~ 20. "Assisted outpatient treatment" means outpatient
6 services which have been ordered by the court pursuant to a
7 treatment plan approved by the court to treat an assisted
8 outpatient's mental illness and to assist the person in living and
9 functioning in the community, or to attempt to prevent a relapse or
10 deterioration that may reasonably be predicted to result in suicide
11 or the need for hospitalization.

12 SECTION 2. AMENDATORY 43A O.S. 2011, Section 2-101, is
13 amended to read as follows:

14 Section 2-101. A. 1. There is hereby established in this
15 state a Department of Mental Health and Substance Abuse Services.

16 2. This Department's ~~governing board shall be the Board of~~
17 ~~Mental Health and Substance Abuse Services, and its~~ chief executive
18 officer shall be the Commissioner of Mental Health and Substance
19 Abuse Services. The Commissioner shall be appointed by the
20 Governor, with the advice and consent of the Senate, and shall serve
21 at the pleasure of the Governor and may be removed or replaced
22 without cause. Compensation for the Commissioner shall be
23 determined pursuant to Section 3601.2 of Title 74 of the Oklahoma
24 Statutes.

1 3. The Department of Mental Health and Substance Abuse Services
2 shall exercise all functions of the state in relation to the
3 administration and operation of all state facilities for the care
4 and treatment of the mentally ill and drug- or alcohol-dependent
5 persons.

6 B. All references in the Oklahoma Statutes to the Department of
7 Mental Health or the Board of Mental Health shall be construed to
8 refer to the Department of Mental Health and Substance Abuse
9 Services or the Board of Mental Health and Substance Abuse Services,
10 respectively.

11 SECTION 3. AMENDATORY 43A O.S. 2011, Section 2-103, as
12 amended by Section 1, Chapter 280, O.S.L. 2017 (43A O.S. Supp. 2017,
13 Section 2-103), is amended to read as follows:

14 Section 2-103. A. The Board of Mental Health and Substance
15 Abuse Services shall be an advisory body to the Commissioner of
16 Mental Health and Substance Abuse Services and shall be composed of
17 eleven (11) members, appointed by the Governor, with the advice and
18 consent of the Senate. Effective January 14, 2019, all duties and
19 powers of the Board shall be transferred to the Commissioner. Any
20 provision in statute that provides to the Board authority that is
21 not advisory in nature shall be deemed to grant the duty or power to
22 the Commissioner. Each term is for a seven-year period and members
23 may be reappointed to subsequent terms. Board members shall meet
24 the following criteria:

1 1. One member, who shall be an allopathic physician licensed to
2 practice in this state and appointed from a list containing the
3 names of not less than two allopathic physicians and not less than
4 two psychiatrists submitted to the Governor by the Oklahoma State
5 Medical Association;

6 2. One member shall be an osteopathic physician licensed to
7 practice in this state, appointed from a list containing the names
8 of not less than two osteopathic physicians and not less than two
9 psychiatrists submitted to the Governor by the Oklahoma Osteopathic
10 Association;

11 3. One member, who shall be an attorney licensed to practice in
12 this state and shall be appointed from a list of not less than three
13 names submitted to the Governor by the Board of Governors of the
14 Oklahoma Bar Association;

15 4. One member, who shall be a psychologist, licensed to
16 practice in this state, who shall be appointed from a list of not
17 less than three names submitted to the Governor by the Oklahoma
18 State Psychological Association;

19 5. Three members, qualified by education and experience in the
20 area of substance abuse recovery, who shall be appointed from a list
21 of not less than ten names submitted to the Governor by a state
22 association of substance abuse recovery programs or organizations;
23 and
24

1 6. Four members who shall be citizens of this state, at least
2 one of whom shall be either a current or former consumer of mental
3 health services.

4 B. At least one physician appointed pursuant to paragraph 1 or
5 paragraph 2 of subsection A of this section shall be a psychiatrist
6 certified as a diplomate of the American Board of Psychiatry and
7 Neurology, or as a diplomate of the American Osteopathic Board of
8 Neurology and Psychiatry.

9 C. No person shall be appointed a member of the Board who has
10 been a member of the Legislature of this state within the preceding
11 five (5) years.

12 ~~D. The Board shall elect from among its members a chair and a~~
13 ~~vice chair. The chair may call meetings at any time.~~

14 ~~E. All regularly scheduled meetings of the Board shall be held~~
15 ~~at the Central Office of the Department of Mental Health and~~
16 ~~Substance Abuse Services, Oklahoma City, Oklahoma, unless otherwise~~
17 ~~scheduled. Six members shall constitute a quorum at any meeting,~~
18 ~~and all action may be taken by an affirmative vote of the majority~~
19 ~~of the members present at any such meeting.~~

20 ~~F. The action taken by the Board on any matter, or any document~~
21 ~~passed by the Board, shall be considered official when such action~~
22 ~~is placed in writing and signed by the chair or vice chair.~~

1 ~~G. The duties of the Board shall pertain to the care,~~
2 ~~treatment, and hospitalization of persons with mental illness, or~~
3 ~~alcohol or drug dependent persons.~~

4 ~~H. Members of the Board of Mental Health and Substance Abuse~~
5 ~~Services shall be allowed their necessary travel expenses pursuant~~
6 ~~to the provisions of the State Travel Reimbursement Act.~~

7 ~~I.~~ Members of the Board of Mental Health and Substance Abuse
8 Services shall be allowed to serve on the State Board of Medical
9 Licensure and Supervision and the State Board of Osteopathic
10 Examiners during members' terms on the Board of Mental Health and
11 Substance Abuse Services.

12 SECTION 4. AMENDATORY 43A O.S. 2011, Section 2-106, is
13 amended to read as follows:

14 Section 2-106. A. 1. The ~~Board of Mental Health and Substance~~
15 ~~Abuse Services, the~~ Commissioner of Mental Health and Substance
16 Abuse Services or any employee of the Department of Mental Health
17 and Substance Abuse Services designated by the Commissioner may
18 solicit and receive contributions, gifts and donations for use by
19 the Department of Mental Health and Substance Abuse Services, or to
20 any institution therein. The ~~Board of Mental Health and Substance~~
21 ~~Abuse Services~~ Commissioner shall accept, hold in trust and
22 authorize the use of any grant or devise of land, or any donation or
23 bequest of money, or other personal property made to the Department
24 of Mental Health and Substance Abuse Services, or to any institution

1 therein, so long as the terms of the grant, donation, bequest, gift,
2 or will are carried out.

3 2. The ~~Board~~ Commissioner may invest and reinvest any funds and
4 may lease any real or personal property, may sell any personal
5 property and may invest the proceeds, for the benefit of the
6 Department or any institution therein unless prevented by the terms
7 of the grant, donation, bequest, gift or will.

8 B. The ~~Board~~ Commissioner may lease any property owned or held
9 in trust to any other state agency, political subdivision, federal
10 agency, county, municipality or a nonprofit organization for a
11 period not to exceed fifty (50) years.

12 C. The Department must annually account to the State Auditor
13 and Inspector for all monies or property received or expended by
14 virtue of this section. The account shall state:

15 1. The source of the monies or property received with the
16 actual date of its receipt;

17 2. The particular use or place for which it was expended; and

18 3. The balance on hand showing the place of deposit of the
19 unexpended balance.

20 SECTION 5. AMENDATORY 43A O.S. 2011, Section 2-111, as
21 last amended by Section 1, Chapter 139, O.S.L. 2017 (43A O.S. Supp.
22 2017, Section 2-111), is amended to read as follows:

23 Section 2-111. A. 1. The ~~Board~~ Commissioner of Mental Health
24 and Substance Abuse Services is hereby authorized and directed to

1 create a trust into which all real property held by or for the
2 benefit of the Department of Mental Health and Substance Abuse
3 Services shall be transferred.

4 2. The trust shall provide that:

- 5 a. the property placed into the trust may never be sold,
6 except for the tracts specifically described in
7 subparagraph c of this paragraph, if it is determined
8 by the trustees for the Department's Real Property
9 Trust and by the Department that such a sale is in the
10 best interests of the Department, and then the
11 proceeds shall be used exclusively for tangible
12 infrastructure improvements that benefit the persons
13 served by the Department, otherwise the property shall
14 be held in perpetuity for the sole benefit of the
15 Department,
- 16 b. the property held by the trust which is not needed for
17 use by the Department may be leased or rented to
18 others and all income received from such leases or
19 rentals shall be payable to the Department for use by
20 the Department to fulfill the purposes of the
21 Department, except as provided in subparagraph d of
22 this section,
- 23 c. the following tract or tracts of land may be sold as
24 set forth in subparagraph a of this paragraph:

1 (1) Land owned by the Department located in Sections
2 20 and 29, Township 9 North, Range 2 West,
3 Cleveland County, Oklahoma,

4 (2) Land owned by the Department located in Block 5
5 of Culbertson Heights Addition to the City of
6 Oklahoma City, Oklahoma County, Oklahoma, and

7 (3) Land owned by the Department located in Section
8 27, Township 9 North, Range 2 West, Cleveland
9 County, Oklahoma, and

10 d. under no condition should any real property held in
11 trust be sold to fund prevention, mental health or
12 addiction treatment services.

13 B. Upon the creation of the trust authorized in subsection A of
14 this section, the Office of Management and Enterprise Services is
15 directed to provide all necessary assistance to the Department of
16 Mental Health and Substance Abuse Services to identify and transfer
17 all property held by or for the benefit of the Department of Mental
18 Health and Substance Abuse Services to the trust. Except as
19 provided in subsection C of this section, the Office of Management
20 and Enterprise Services is authorized and directed to provide all
21 requested assistance to the Department of Mental Health and
22 Substance Abuse Services in leasing property placed in such trust.

23 C. The Commissioners of the Land Office are authorized and
24 directed to provide all requested assistance to the Department of

1 Mental Health and Substance Abuse Services in leasing mineral
2 interests placed in such trust.

3 SECTION 6. This act shall become effective January 14, 2019.
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5 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/28/2018 - DO PASS,
6 As Amended and Coauthored.
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