

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 2890

By: Rosecrants

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 2011, Section 1-109, as last amended by Section 1, Chapter 155, O.S.L. 2013 (43A O.S. Supp. 2019, Section 1-109), which relates to disclosure of confidential and privileged information; prohibiting certain entities from contacting law enforcement under certain circumstances for persons seeking treatment; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-109, as last amended by Section 1, Chapter 155, O.S.L. 2013 (43A O.S. Supp. 2019, Section 1-109), is amended to read as follows:

Section 1-109. A. 1. All mental health and drug or alcohol abuse treatment information, whether or not recorded, and all communications between a physician or licensed mental health professional as defined in Section 1-103 of this title, or a licensed alcohol and drug counselor as defined in Section 1871 of Title 59 of the Oklahoma Statutes, and a consumer are both privileged and confidential. In addition, the identity of all

1 persons who have received or are receiving mental health or drug or
2 alcohol abuse treatment services shall be considered confidential
3 and privileged.

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

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

14 B. A person who is or has been a consumer of a physician, a
15 licensed mental health professional as defined in Section 1-103 of
16 this title, a licensed alcohol and drug counselor as defined in
17 Section 1871 of Title 59 of the Oklahoma Statutes, a mental health
18 facility, a drug or alcohol abuse treatment facility or service, or
19 other agency for the purpose of mental health or drug or alcohol
20 abuse care and treatment, or such person's treatment advocate as
21 defined in Section 1-109.1 of this title, shall be entitled to
22 personal access to his or her mental health or drug or alcohol abuse
23 treatment information, except the following:

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

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

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

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

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

17 6. Information requested by an inmate that a correctional
18 institution has determined may jeopardize the health, safety,
19 security, custody or rehabilitation of the inmate or other person;
20 and

21 7. Information obtained under a promise of confidentiality and
22 the access requested would be reasonably likely to reveal the source
23 of the information.

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

- 4 a. the specific name or general designation of the
5 program or person permitted to make the disclosure,
- 6 b. the name or title of the individual or the name of the
7 organization to which disclosure is to be made,
- 8 c. the name of the consumer whose records are to be
9 released,
- 10 d. the purpose of the disclosure,
- 11 e. a description of the information to be disclosed,
- 12 f. the dated signature of the consumer or authorized
13 representative or both when required,
- 14 g. a statement of the right of the consumer to revoke the
15 release in writing and a description of how the
16 consumer may do so,
- 17 h. an expiration date, event or condition which, if not
18 revoked before, shall ensure the release will last no
19 longer than reasonably necessary to serve the purpose
20 for which it is given, and
- 21 i. if the release is signed by a person authorized to act
22 for a consumer, a description of the authority of such
23 person to act.

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

- 3 a. the expiration date has passed or the expiration event
4 or condition is known to have occurred or to exist,
- 5 b. the release has not been filled out completely with
6 respect to an element described in paragraph 1 of this
7 ~~section~~ subsection,
- 8 c. the release is known to have been revoked, or
- 9 d. any material information in the release is known to be
10 false.

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

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

21 4. Disclosure regarding a deceased consumer shall require
22 either a court order or a written release of an executor,
23 administrator or personal representative appointed by the court, or
24 if there is no such appointment, by the spouse of the consumer or,

1 if none, by any responsible member of the family of the consumer.

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

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

13 E. An authorization shall not be required for the following
14 uses and disclosures, but information disclosed pursuant to one of
15 these exceptions must be limited to the minimum amount of
16 information necessary:

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

22 2. Communications to law enforcement officers regarding
23 information directly related to the commission of a crime on the
24 premises of a facility or against facility personnel, or a threat to

1 commit such a crime. Such communications involving persons with
2 substance abuse disorders shall be limited to the circumstances
3 surrounding the incident, consumer status, name and address of that
4 individual and the last-known whereabouts of that individual;

5 3. A review preparatory to research, research on decedents'
6 information or research conducted when a waiver of authorization has
7 been approved by either an institutional review board or privacy
8 board;

9 4. Communications pursuant to a business associate agreement,
10 qualified service organization agreement or a qualified service
11 organization/business associate agreement. As used in this
12 paragraph:

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

19 b. "qualified service organization agreement" means a
20 written, signed agreement between a health care
21 provider and an outside entity which provides services
22 to the health care provider's consumers that are
23 different from the services provided by the health
24 care provider, that allows the health care provider to

1 communicate consumer information necessary for the
2 outside entity to provide services to the health care
3 provider's consumers without the need for an
4 authorization signed by a consumer and in which the
5 outside entity acknowledges that in receiving,
6 storing, processing or otherwise dealing with any
7 consumer information from the health care provider it
8 is fully bound by the provisions of 42 C.F.R., Part 2
9 and, if necessary, will resist any efforts in judicial
10 proceedings to obtain access to consumer information,
11 except as permitted by 42 C.F.R., Part 2, and

12 c. "qualified service organization/business agreement"

13 means a written, signed agreement between a health
14 care provider and an outside entity which provides
15 services to the health care provider's consumers that
16 are different from the services provided by the health
17 care provider, that allows the health care provider to
18 communicate consumer information necessary for the
19 outside entity to provide services to the health care
20 provider's consumers without the need for an
21 authorization signed by a consumer, and in which the
22 outside entity acknowledges that in receiving,
23 storing, processing or otherwise dealing with any
24 consumer information from the health care provider it

1 is fully bound by the provisions of 42 C.F.R., Part 2
2 and, if necessary, will resist any efforts in judicial
3 proceedings to obtain access to consumer information,
4 except as permitted by 42 C.F.R., Part 2. The
5 agreement must also contain elements required by
6 federal privacy regulations in 45 C.F.R., Parts 160 &
7 and 164;

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

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

17 7. Communications necessary for audit and evaluation
18 activities;

19 8. When a program or facility director determines that an adult
20 person with a substance abuse disorder has a medical condition which
21 prevents the person from "knowing or effective action on his or her
22 own behalf", the program or facility director may authorize
23 disclosures for the sole purpose of obtaining payment for services.
24 If the person has been adjudicated incompetent, the facility must

1 seek permission to disclose information for payment from the legal
2 guardian;

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

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

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

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

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

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

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

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

1 F. Any entity operating under the Oklahoma Department of Mental
2 Health and Substance Abuse Services, any entity that provides
3 services under contract with the Department or any state agency
4 collaborating with the Department shall be prohibited from
5 contacting law enforcement when an individual seeking mental health
6 or substance abuse services has an active warrant for:

7 1. Nonpayment of fines, fees or other costs for a nonviolent
8 misdemeanor crime; or

9 2. Failure to appear for a hearing related to nonpayment of
10 fines, fees or other costs for a nonviolent misdemeanor crime.

11 SECTION 2. This act shall become effective November 1, 2020.

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