

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL 459

By: Treat

AS INTRODUCED

An Act relating to the Department of Mental Health and Substance Abuse Services; amending 43A O.S. 2011, Sections 1-103, as last amended by Section 1, Chapter 246, O.S.L. 2017 and 2-201 (43A O.S. Supp. 2018, Section 1-103), which relate to definitions and the Director of the Department; requiring that Director be appointed by Governor with advice and consent of the Senate and serve at the pleasure of the Governor; modifying powers and duties of Board of Mental Health and Substance Abuse Services; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-103, as last amended by Section 1, Chapter 246, O.S.L. 2017 (43A O.S. Supp. 2018, 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. "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 Abuse  
8 Services as established by the Mental Health Law;

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

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 psychiatrist who is a diplomate of the American  
18               Osteopathic Board of Neurology and Psychiatry,
- 19           c. a physician licensed pursuant to the Oklahoma  
20               Allopathic Medical and Surgical Licensure and  
21               Supervision Act or the Oklahoma Osteopathic Medicine  
22               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. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

1       13.   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  
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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  
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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. "Petitioner" means a person who files a petition alleging  
5 that an individual is a person requiring treatment or an assisted  
6 outpatient;

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

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

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

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



1 real-time communication between a health care practitioner and a  
2 patient who are not in the same physical location. Telemedicine  
3 shall not include consultation provided by telephone or facsimile  
4 machine;

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

13 20. "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,

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

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

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

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

22 f. in view of his or her treatment history and current  
23 behavior, is in need of assisted outpatient treatment  
24 in order to prevent a relapse or deterioration which  
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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. "Assisted outpatient treatment" means outpatient services  
6           which have been ordered by the court pursuant to a treatment plan  
7           approved by the court to treat an assisted outpatient's mental  
8           illness and to assist the person in living and functioning in the  
9           community, or to attempt to prevent a relapse or deterioration that  
10          may reasonably be predicted to result in suicide or the need for  
11          hospitalization.

12          SECTION 2.        AMENDATORY        43A O.S. 2011, Section 2-201, is  
13          amended to read as follows:

14          Section 2-201. A. A Commissioner of Mental Health and  
15          Substance Abuse Services shall be appointed by the ~~Board of Mental~~  
16          ~~Health and Substance Abuse Services. The Commissioner may only be~~  
17          ~~removed by the Board for cause~~ Governor, with the advice and consent  
18          of the Senate, and shall serve at the pleasure of the Governor. The  
19          Commissioner shall meet at least one of the following  
20          qualifications:

21               1. Possession of a Doctor of Medicine Degree and a license to  
22               practice medicine in this state;

23               2. Possession of an Osteopathic Medicine Degree and a license  
24               to practice medicine in this state;

1       3. Possession of a Doctor of Public Health Degree;

2       4. Possession of a Doctoral Degree in Psychology and a license  
3 to practice psychology in this state;

4       5. Possession of a Master of Public Health Degree and a minimum  
5 of five (5) years of supervisory experience in the administration of  
6 health services; or

7       6. Possession of a Master of Arts or Master's Degree in  
8 Business Administration, Social Science or a related field and a  
9 minimum of five (5) years of supervisory experience in the  
10 administration of health services.

11       B. The salary of the Commissioner shall be fixed by the Board.

12       SECTION 3. This act shall become effective November 1, 2019.

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