

1 ENGROSSED SENATE
2 BILL NO. 673

By: McCortney of the Senate

3 and

4 Newton of the House

5
6 An Act relating to telemedicine; amending 36 O.S.
7 2011, Section 6802, which relates to definitions;
8 amending 43A O.S. 2011, Section 1-103, as last
9 amended by Section 29, Chapter 475, O.S.L. 2019 (43A
10 O.S. Supp. 2020, Section 1-103), which relates to
11 definitions; amending Section 1, Chapter 228, O.S.L.
12 2017 (59 O.S. Supp. 2020, Section 478), which relates
13 to definitions; making certain definitions uniform;
14 amending Section 2, Chapter 228, O.S.L. 2017 (59 O.S.
15 Supp. 2020, Section 478.1), which relates to
16 establishment of physician-patient relationship
17 through telemedicine; deleting obsolete language; and
18 providing an effective date.

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

20 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6802, is
21 amended to read as follows:

22 Section 6802. As used in ~~this act~~ the Oklahoma Telemedicine
23 Act, "telemedicine" means ~~the practice of health care delivery,~~
24 ~~diagnosis, consultation, treatment, including but not limited to,~~
~~the treatment and prevention of strokes, transfer of medical data,~~
~~or exchange of medical education information by means of audio,~~
~~video, or data communications. Telemedicine is not a consultation~~
~~provided by telephone or facsimile machine~~ technology-enabled health

1 and care management and delivery systems that extend capacity and
2 access, which includes:

- 3 a. synchronous mechanisms, which may include live
4 audiovisual interaction between a patient and a health
5 care professional or real-time provider to provider
6 consultation through live interactive audiovisual
7 means,
- 8 b. asynchronous mechanisms, which include store and
9 forward transfers, online exchange of health
10 information between a patient and a health care
11 professional and online exchange of health information
12 between health care professionals, but shall not
13 include the use of automated text messages or
14 automated mobile applications that serve as the sole
15 interaction between a patient and a health care
16 professional,
- 17 c. remote patient monitoring, and
- 18 d. other electronic means that support clinical health
19 care, professional consultation, patient and
20 professional health-related education, public health
21 and health administration.

22 SECTION 2. AMENDATORY 43A O.S. 2011, Section 1-103, as
23 last amended by Section 29, Chapter 475, O.S.L. 2019 (43A O.S. Supp.
24 2020, Section 1-103), is amended to read as follows:

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

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

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

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

12 4. "Board" means the Board of Mental Health and Substance Abuse
13 Services as established by the Mental Health Law;

14 5. "Commissioner" means the individual selected and appointed
15 by the Board to serve as Commissioner of Mental Health and Substance
16 Abuse Services;

17 6. "Indigent person" means a person who has not sufficient
18 assets or resources to support the person and to support members of
19 the family of the person lawfully dependent on the person for
20 support;

21 7. "Facility" means any hospital, school, building, house or
22 retreat, authorized by law to have the care, treatment or custody of
23 an individual with mental illness, or drug or alcohol dependency,
24 gambling addiction, eating disorders, an opioid substitution

1 treatment program, including, but not limited to, public or private
2 hospitals, community mental health centers, clinics, satellites or
3 facilities; provided, that facility shall not mean a child guidance
4 center operated by the State Department of Health;

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

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

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

18 11. "Licensed mental health professional" means:

19 a. a psychiatrist who is a diplomate of the American
20 Board of Psychiatry and Neurology,

21 b. a psychiatrist who is a diplomate of the American
22 Osteopathic Board of Neurology and Psychiatry,

23 c. a physician licensed pursuant to the Oklahoma
24 Allopathic Medical and Surgical Licensure and

Supervision Act or the Oklahoma Osteopathic Medicine 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
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 person with intellectual or developmental
17 disability 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 facility
24 holding the person is unable to treat the additional

1 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 technology-enabled health and care management and delivery
5 systems that extend capacity and access, which includes:

6 a. synchronous mechanisms, which may include live
7 audiovisual interaction between a patient and a health
8 care professional or real-time provider to provider
9 consultation through live interactive audiovisual
10 means,

11 b. asynchronous mechanisms, which include store and
12 forward transfers, online exchange of health
13 information between a patient and a health care
14 professional and online exchange of health information
15 between health care professionals, but shall not
16 include the use of automated text messages or
17 automated mobile applications that serve as the sole
18 interaction between a patient and a health care
19 professional,

20 c. remote patient monitoring, and

21 d. other electronic means that support clinical health
22 care, professional consultation, patient and
23 professional health-related education, public health
24 and health administration;

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

9 20. "Assisted outpatient" means a person who:

- 10 a. is either currently under the care of a facility
11 certified by the Department of Mental Health and
12 Substance Abuse Services as a Community Mental Health
13 Center, or is being discharged from the custody of the
14 Oklahoma Department of Corrections, or is being
15 discharged from a residential placement by the Office
16 of Juvenile Affairs,
17 b. is suffering from a mental illness,
18 c. is unlikely to survive safely in the community without
19 supervision, based on a clinical determination,
20 d. has a history of lack of compliance with treatment for
21 mental illness that has:
22 (1) prior to the filing of a petition, at least twice
23 within the last thirty-six (36) months been a
24 significant factor in necessitating

1 hospitalization or treatment in a hospital or
2 residential facility, including admission to a
3 community-based structured crisis center as
4 certified by the Oklahoma Department of Mental
5 Health and Substance Abuse Services, or receipt
6 of services in a forensic or other mental health
7 unit of a correctional facility, or a specialized
8 treatment plan for treatment of mental illness in
9 a secure juvenile facility or placement in a
10 specialized residential program for juveniles, or
11 (2) prior to the filing of the petition, resulted in
12 one or more acts of serious violent behavior
13 toward self or others or threats of, or attempts
14 at, serious physical harm to self or others
15 within the last twenty-four (24) months,
16 e. is, as a result of his or her mental illness, unlikely
17 to voluntarily participate in outpatient treatment
18 that would enable him or her to live safely in the
19 community,
20 f. in view of his or her treatment history and current
21 behavior, is in need of assisted outpatient treatment
22 in order to prevent a relapse or deterioration which
23 would be likely to result in serious harm to the
24 person or persons as defined in this section, and

g. is likely to benefit from assisted outpatient treatment; and

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

SECTION 3. AMENDATORY Section 1, Chapter 228, O.S.L. 2017 (59 O.S. Supp. 2020, Section 478), is amended to read as follows:

Section 478. ~~A. As used in this act:~~

~~1. "Store and forward technologies" means the transmission of a patient's medical information from an originating site to the physician or practitioner at the distant site; provided, photographs visualized by a telecommunications system shall be specific to the patient's medical condition and adequate for furnishing or confirming a diagnosis or treatment plan;~~

~~2. "Telemedicine" means the practice of health care delivery, diagnosis, consultation, evaluation and treatment, transfer of medical data or exchange of medical education information by means of a two-way, real-time interactive communication, not to exclude store and forward technologies, between a patient and a physician~~

1 ~~with access to and reviewing the patient's relevant clinical~~
2 ~~information prior to the telemedicine visit.~~

3 ~~"Telemedicine" and "store and forward technologies" shall not~~
4 ~~include consultations provided by telephone audio-only~~
5 ~~communication, electronic mail, text message, instant messaging~~
6 ~~conversation, website questionnaire, nonsecure video conference or~~
7 ~~facsimile machine~~ Section 478.1 of this title, "telemedicine" means
8 technology-enabled health and care management and delivery systems
9 that extend capacity and access, which includes:

10 a. synchronous mechanisms, which may include live
11 audiovisual interaction between a patient and a health
12 care professional or real-time provider to provider
13 consultation through live interactive audiovisual
14 means,

15 b. asynchronous mechanisms, which include store and
16 forward transfers, online exchange of health
17 information between a patient and a health care
18 professional and online exchange of health information
19 between health care professionals, but shall not
20 include the use of automated text messages or
21 automated mobile applications that serve as the sole
22 interaction between a patient and a health care
23 professional,

24 c. remote patient monitoring, and

1 d. other electronic means that support clinical health
2 care, professional consultation, patient and
3 professional health-related education, public health
4 and health administration.

5 SECTION 4. AMENDATORY Section 2, Chapter 228, O.S.L.
6 2017 (59 O.S. Supp. 2020, Section 478.1), is amended to read as
7 follows:

8 Section 478.1. A. Unless otherwise prohibited by law, a valid
9 physician-patient relationship may be established by an allopathic
10 or osteopathic physician with a patient located in this state
11 through telemedicine, provided that the physician:

12 1. Holds a license to practice medicine in this state;

13 2. Confirms with the patient the patient's identity and
14 physical location; and

15 3. Provides the patient with the treating physician's identity
16 and professional credentials.

17 B. ~~Telemedicine and store and forward technology~~ encounters
18 shall comply with the Health Insurance Portability and
19 Accountability Act of 1996 and ensure that all patient
20 communications and records are secure and confidential.

21 C. ~~Telemedicine encounters and encounters involving store and~~
22 ~~forward technologies~~ in this state shall not be used to establish a
23 valid physician-patient relationship for the purpose of prescribing
24 opiates, synthetic opiates, semisynthetic opiates, benzodiazepine or

1 carisprodol, but may be used to prescribe opioid antagonists or
2 partial agonists pursuant to Sections 1-2506.1 and 1-2506.2 of Title
3 63 of the Oklahoma Statutes.

4 D. A physician-patient relationship shall not be created solely
5 based on the receipt of patient health information by a physician.
6 The duties and obligations created by a physician-patient
7 relationship shall not apply until the physician affirmatively:

- 8 1. Undertakes to diagnose and treat the patient; or
- 9 2. Participates in the diagnosis and treatment of the patient.

10 SECTION 5. This act shall become effective November 1, 2021.

11 Passed the Senate the 1st day of March, 2021.

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13 _____
14 Presiding Officer of the Senate

15 Passed the House of Representatives the ____ day of _____,
16 2021.

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18 _____
19 Presiding Officer of the House
20 of Representatives
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