

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 1689, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator McCortney

1689-DC-FS-Req#2093
4/19/2021 2:05 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

FLOOR SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1689

By: Newton and Bell of the
House

and

McCortney of the Senate

FLOOR SUBSTITUTE

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

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

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

Section 6802. As used in ~~this act~~ the Oklahoma Telemedicine Act, "telemedicine" means ~~the practice of health care delivery, diagnosis, consultation, treatment, including but not limited to,~~

1 ~~the treatment and prevention of strokes, transfer of medical data,~~
2 ~~or exchange of medical education information by means of audio,~~
3 ~~video, or data communications. Telemedicine is not a consultation~~
4 ~~provided by telephone or facsimile machine~~ technology-enabled health
5 and care management and delivery systems that extend capacity and
6 access, which includes:

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

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

21 c. remote patient monitoring, and

22 d. other electronic means that support clinical health
23 care, professional consultation, patient and
24

1 professional health-related education, public health
2 and health administration.

3 SECTION 2. AMENDATORY 43A O.S. 2011, Section 1-103, as
4 last amended by Section 29, Chapter 475, O.S.L. 2019 (43A O.S. Supp.
5 2020, Section 1-103), is amended to read as follows:

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

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

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

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

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

19 5. "Commissioner" means the individual selected and appointed
20 by the Board to serve as Commissioner of Mental Health and Substance
21 Abuse Services;

22 6. "Indigent person" means a person who has not sufficient
23 assets or resources to support the person and to support members of
24

1 the family of the person lawfully dependent on the person for
2 support;

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

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

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

17 10. Whenever in this law or in any other law, or in any rule or
18 order made or promulgated pursuant to this law or to any other law,
19 or in the printed forms prepared for the admission of consumers or
20 for statistical reports, the words "insane", "insanity", "lunacy",
21 "mentally sick", "mental disease" or "mental disorder" are used,
22 such terms shall have equal significance to the words "mental
23 illness";

24 11. "Licensed mental health professional" means:

- a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,
- b. a psychiatrist who is a diplomate of the American Osteopathic Board of Neurology and Psychiatry,
- c. a physician licensed pursuant to the Oklahoma 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

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

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

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

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

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

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

(2) a person with intellectual or developmental disability as defined in Title 10 of the Oklahoma Statutes,

(3) a person with seizure disorder,

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

2 (5) a person who is homeless.

3 d. A person who meets the criteria established in this
4 section but who is medically unstable, or the facility
5 holding the person is unable to treat the additional
6 medical conditions of that person, should be
7 discharged and transported in accordance with Section
8 1-110 of this title;

9 14. "Petitioner" means a person who files a petition alleging
10 that an individual is a person requiring treatment or an assisted
11 outpatient;

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

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

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

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

1 18. "Telemedicine" means ~~the practice of health care delivery,~~
2 ~~diagnosis, consultation, evaluation, treatment, transfer of medical~~
3 ~~data, or exchange of medical education information by means of~~
4 ~~audio, video, or data communications. Telemedicine uses audio and~~
5 ~~video multimedia telecommunication equipment which permits two-way~~
6 ~~real-time communication between a health care practitioner and a~~
7 ~~patient who are not in the same physical location. Telemedicine~~
8 ~~shall not include consultation provided by telephone or facsimile~~
9 machine technology-enabled health and care management and delivery
10 systems that extend capacity and access, which includes:

- 11 a. synchronous mechanisms, which may include live
12 audiovisual interaction between a patient and a health
13 care professional or real-time provider to provider
14 consultation through live interactive audiovisual
15 means,
- 16 b. asynchronous mechanisms, which include store and
17 forward transfers, online exchange of health
18 information between a patient and a health care
19 professional and online exchange of health information
20 between health care professionals, but shall not
21 include the use of automated text messages or
22 automated mobile applications that serve as the sole
23 interaction between a patient and a health care
24 professional,

- c. remote patient monitoring, and
- d. other electronic means that support clinical health care, professional consultation, patient and professional health-related education, public health and health administration;

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

20. "Assisted outpatient" means a person who:

- a. is either currently under the care of a facility certified by the Department of Mental Health and Substance Abuse Services as a Community Mental Health Center, or is being discharged from the custody of the Oklahoma Department of Corrections, or is being discharged from a residential placement by the Office of Juvenile Affairs,
- b. is suffering from a mental illness,
- c. is unlikely to survive safely in the community without 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, including admission to a
8 community-based structured crisis center as
9 certified by the Oklahoma Department of Mental
10 Health and Substance Abuse Services, or receipt
11 of services in a forensic or other mental health
12 unit of a correctional facility, or a specialized
13 treatment plan for treatment of mental illness in
14 a secure juvenile facility or placement in a
15 specialized residential program for juveniles, or
16 (2) prior to the filing of the petition, resulted in
17 one or more acts of serious violent behavior
18 toward self or others or threats of, or attempts
19 at, serious physical harm to self or others
20 within the last twenty-four (24) months,

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

- 1 f. in view of his or her treatment history and current
2 behavior, is in need of assisted outpatient treatment
3 in order to prevent a relapse or deterioration which
4 would be likely to result in serious harm to the
5 person or persons as defined in this section, and
6 g. is likely to benefit from assisted outpatient
7 treatment; and

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

15 SECTION 3. AMENDATORY Section 1, Chapter 228, O.S.L.
16 2017 (59 O.S. Supp. 2020, Section 478), is amended to read as
17 follows:

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

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

1 2. ~~"Telemedicine" means the practice of health care delivery,~~
2 ~~diagnosis, consultation, evaluation and treatment, transfer of~~
3 ~~medical data or exchange of medical education information by means~~
4 ~~of a two-way, real-time interactive communication, not to exclude~~
5 ~~store and forward technologies, between a patient and a physician~~
6 ~~with access to and reviewing the patient's relevant clinical~~
7 ~~information prior to the telemedicine visit.~~

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

- 15 a. synchronous mechanisms, which may include live
16 audiovisual interaction between a patient and a health
17 care professional or real-time provider to provider
18 consultation through live interactive audiovisual
19 means,
- 20 b. asynchronous mechanisms, which include store and
21 forward transfers, online exchange of health
22 information between a patient and a health care
23 professional and online exchange of health information
24 between health care professionals, but shall not

1 include the use of automated text messages or
2 automated mobile applications that serve as the sole
3 interaction between a patient and a health care
4 professional,

5 c. remote patient monitoring, and

6 d. other electronic means that support clinical health
7 care, professional consultation, patient and
8 professional health-related education, public health
9 and health administration.

10 SECTION 4. AMENDATORY Section 2, Chapter 228, O.S.L.

11 2017 (59 O.S. Supp. 2020, Section 478.1), is amended to read as
12 follows:

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

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

18 2. Confirms with the patient the patient's identity and
19 physical location; and

20 3. Provides the patient with the treating physician's identity
21 and professional credentials.

22 B. Telemedicine ~~and store and forward technology~~ encounters
23 shall comply with the Health Insurance Portability and
24

1 Accountability Act of 1996 and ensure that all patient
2 communications and records are secure and confidential.

3 C. Telemedicine encounters ~~and encounters involving store and~~
4 ~~forward technologies~~ in this state shall not be used to establish a
5 valid physician-patient relationship for the purpose of prescribing
6 opiates, synthetic opiates, semisynthetic opiates, benzodiazepine or
7 carisprodol, but may be used to prescribe opioid antagonists or
8 partial agonists pursuant to Sections 1-2506.1 and 1-2506.2 of Title
9 63 of the Oklahoma Statutes.

10 D. A physician-patient relationship shall not be created solely
11 based on the receipt of patient health information by a physician.
12 The duties and obligations created by a physician-patient
13 relationship shall not apply until the physician affirmatively:

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

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

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18 58-1-2093 DC 4/19/2021 2:05:32 PM
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