An Act

ENROLLED SENATE
BILL NO. 1772

By: Anderson of the Senate

and

Martin (Scott), Nations and Collins of the House

An Act relating to mental health; amending 43A O.S. 2001, Sections 1-103, as last amended by Section 1, Chapter 401, O.S.L. 2008, 2-103, as last amended by Section 3, Chapter 401, O.S.L. 2008, 2-104, as last amended by Section 2, Chapter 217, O.S.L. 2003, 2-105, 2-106, as last amended by Section 5, Chapter 113, O.S.L. 2004, 2-108, as amended by Section 7, Chapter 488, O.S.L. 2002, Section 8, Chapter 488, O.S.L. 2002, as last amended by Section 7, Chapter 195, O.S.L. 2005, 2-205, as amended by Section 9, Chapter 195, O.S.L. 2005, 2-207, as amended by Section 9, Chapter 150, O.S.L. 2005, 3-201, 3-302, as last amended by Section 13, Chapter 348, O.S.L. 2005, Section 14, Chapter 488, O.S.L. 2002, as last amended by Section 1, Chapter 130, O.S.L. 2007, 3-315, as last amended by Section 2, Chapter 130, O.S.L. 2007, 3-317, as last amended by Section 5, Chapter 97, O.S.L. 2006, Section 18, Chapter 488, O.S.L. 2002, as last amended by Section 3, Chapter 196, O.S.L. 2003, Section 16, Chapter 195, O.S.L. 2005, as last amended by Section 4, Chapter 130, O.S.L. 2007, Section 18, Chapter 195, O.S.L. 2005, as last amended by Section 5, Chapter 130, O.S.L. 2007, 3-415, as last amended by Section 12, Chapter 97, O.S.L. 2006, 3-424, as amended by Section 11, Chapter 113, O.S.L. 2004, 3-453, as last amended by Section 8, Chapter 401, O.S.L. 2008, 3-460, as last amended by Section 10, Chapter 401, O.S.L. 2008, 3-601, as last amended by Section 13, Chapter 97,

O.S.L. 2006, 5-206, as last amended by Section 12, Chapter 401, O.S.L. 2008, 5-208, as last amended by Section 1, Chapter 389, O.S.L. 2009, 5-209, as amended by Section 37, Chapter 46, O.S.L. 2003, 5-306, as last amended by Section 15, Chapter 401, O.S.L. 2008, 5-309, as amended by Section 46, Chapter 150, O.S.L. 2005 and 5-415, as last amended by Section 22, Chapter 97, O.S.L. 2006 (43A O.S. Supp. 2009, Sections 1-103, 2-103, 2-104, 2-106, 2-108, 2-109, 2-205, 2-207, 3-302, 3-306.1, 3-315, 3-317, 3-318, 3-320, 3-322, 3-415, 3-424, 3-453, 3-460, 3-601, 5-206, 5-208, 5-209, 5-306, 5-309 and 5-415), which relate to the Mental Health Law; modifying definitions; modifying provisions related to terms of office; modifying provisions related to certain farm operations; modifying provisions related to authorized sources of funding; modifying provisions related to certain lease term; providing for confidentiality of information; prescribing procedures related to judicial proceedings involving confidential information; providing for statutory construction; authorizing certain summary information; prescribing content of summary information; authorizing release of summary information to certain entities; modifying provisions related to the Office of Consumer Advocacy and the Advocate General; modifying provision related to internal audit; modifying provisions related to approval of the Board of Mental Health and Substance Abuse Services; modifying definitions of the Unified Community Mental Health Services Act; imposing restriction related to community mental health center; providing for effect of failure to comply with certain rules and standards; providing for revocation, suspension or nonrenewal of certifications; imposing duties upon behavioral health case manager; imposing duties with respect to eating disorder treatment programs; imposing duties with respect to gambling addiction treatment programs; requiring promulgation of rules related to peer recovery support specialists; prescribing procedures; authorizing fees;

prescribing requirements related to titles; imposing duties; providing for revocation, suspension or nonrenewal of certifications; providing for effective duration of certifications; imposing duties with respect to substance abuse treatment programs; modifying provision related to rights of consumer in substance abuse facility; imposing duty with respect to alcohol or drug substance abuse course; imposing duty with respect to alcohol or drug assessment personnel; modifying definitions; modifying provisions related to emergency detentions; modifying certain time period related to detention; modifying provisions related to admissions to state mental hospitals; modifying period of time related to hearing on petitions related to persons requiring treatment; repealing 43A O.S. 2001, Sections 3-316, as amended by Section 16, Chapter 150, O.S.L. 2005, 3-406, as last amended by Section 10, Chapter 113, O.S.L. 2004, 3-414, as amended by Section 23, Chapter 488, O.S.L. 2002 and 3-422, as amended by Section 25, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2009, Sections 3-316, 3-406, 3-414 and 3-422), which relate to the Mental Health Law; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-103, as last amended by Section 1, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, 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;

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

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

4. "Board" means the "Board of Mental Health and Substance Abuse Services" as established by this law;

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

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

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

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

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

10. Whenever in this law or in any other law, or in any rule or order made or promulgated pursuant to this law or to any other law, or in the printed forms prepared for the admission of consumers or for statistical reports, the words "insane", "insanity", "lunacy",

"mentally sick", "mental disease" or "mental disorder" are used, such terms shall have equal significance to the words "mental illness";

11. "Licensed mental health professional" means:

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

b. a physician licensed pursuant to Section 480 et seq. or Section 620 et seq. of Title 59 of the Oklahoma Statutes ~~who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions~~,

c. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,

d. a professional counselor licensed pursuant to Section 1901 et seq. of Title 59 of the Oklahoma Statutes,

e. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,

f. a licensed marital and family therapist as defined in Section 1925.1 et seq. of Title 59 of the Oklahoma Statutes,

g. a licensed behavioral practitioner as defined in Section 1930 et seq. of Title 59 of the Oklahoma Statutes,

h. an advanced practice nurse as defined in Section 567.1 et seq. of Title 59 of the Oklahoma Statutes specializing in mental health, or

i. a physician's assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental

health therapeutic, diagnostic, or counseling functions;

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

13. a. "Person requiring treatment" means:

(1) a person who because of a mental illness of the person represents a risk of harm to self or others, or

(2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others.

b. Unless a person also meets the criteria established in subparagraph a of this paragraph, person requiring treatment 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 mentally retarded or developmentally disabled person as defined in Title 10 of the Oklahoma Statutes,

(3) a person with seizure disorder,

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

(5) a person who is homeless.

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

14. "Petitioner" means a person who files a petition alleging that an individual is a person requiring treatment;

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

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

17. "Individualized treatment plan" means a proposal developed during the stay of an individual in a facility, under the provisions of this title, which is specifically tailored to the treatment needs 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;

18. "Risk of harm to self or others" means:

a. a substantial risk of immediate physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other significant self-inflicted bodily harm,

b. a substantial risk of immediate physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons,

c. having placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious and immediate threats,

d. there exists a substantial risk that without immediate intervention severe impairment or injury will result to the person alleged to be a person requiring treatment, or

e. a substantial risk of immediate serious physical injury to self, or immediate death, as manifested by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community.

Unless a person also meets the criteria established in subparagraphs a, b, c, d, or e of this paragraph, "risk of harm to self or others" does not mean a person who is homeless; and

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

SECTION 2. AMENDATORY 43A O.S. 2001, Section 2-103, as last amended by Section 3, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 2-103), is amended to read as follows:

Section 2-103. A. The Board of Mental Health and Substance Abuse Services shall be composed of eleven (11) members, appointed by the Governor, with the advice and consent of the Senate, ~~as follows~~ and unless otherwise indicated, a board member term is for seven (7) years unless reappointed. Board members shall meet the following criteria:

1. One member, who shall be a physician licensed to practice in this state, and one member, who shall be a psychiatrist certified as a diplomate of the American Board of Psychiatry and Neurology, shall both be appointed from a list containing the names of not less than three physicians and not less than three psychiatrists submitted to the Governor by the Oklahoma State Medical Association;

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

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

4. Three members, qualified by education and experience in the area of substance abuse recovery, who shall be appointed from a list of not less than ten names submitted to the Governor by a state association of substance abuse recovery programs or organizations ~~for terms ending on December 31, 2002, December 31, 2004, and December 31, 2006, respectively~~; and

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

B. ~~Upon expiration of the initial terms of each of the four members, a successor shall be appointed for a full term of seven (7) years.~~

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

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

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

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

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

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

~~I.~~ H. Members of the Board of Mental Health and Substance Abuse Services shall be allowed to serve on the State Board of Medical Licensure and Supervision during members' terms on the Board of Mental Health and Substance Abuse Services.

SECTION 3. AMENDATORY 43A O.S. 2001, Section 2-104, as last amended by Section 2, Chapter 217, O.S.L. 2003 (43A O.S. Supp. 2009, Section 2-104), is amended to read as follows:

Section 2-104. A. ~~The Board of Mental Health and Substance Abuse Services is authorized to discontinue farm operations or any portion of the farm operations at any time it feels it is in the best interest of the Department of Mental Health and Substance Abuse Services and this state.~~

~~B.~~ The ~~Board~~ Department of Mental Health and Substance Abuse Services may declare equipment which is surplus to the needs of the Department to the Department of Central Services. The Department of Central Services shall dispose of the surpluses as provided by law.

~~C.~~ B. The Department of Central Services shall be the purchasing agency for all facilities for which appropriations are made in the Mental Health Law, but shall not have authority to determine the propriety of purchases of institutions over which the Department of Central Services is not the controlling entity.

~~D.~~ C. The ~~Board~~ Department is authorized to spend funds for the development of recreational facilities on state-owned land outside the facility grounds.

SECTION 4. AMENDATORY 43A O.S. 2001, Section 2-105, is amended to read as follows:

Section 2-105. ~~(a)~~ On and after July 1, 1967, the Board of Mental Health and Substance Abuse Services shall be the Mental Health and Substance Abuse Services Authority of the State of Oklahoma~~, and is authorized to receive grants of federal funds for the purpose of combating or preventing mental illness, including but not limited to funds for the treatment, care, rehabilitation, or training of the mentally ill, or for the establishment or expansion of any program of facilities or research projects relating to the mentally ill, or for construction of research centers and other facilities for the mentally ill, and is authorized to cooperate in any reasonable manner with the federal agency or agencies granting such federal funds for such purposes, including compliance with any conditions prescribed by federal authorities for the granting of such funds. The Board of Mental Health and Substance Abuse Services shall serve as the sole designated state agency for receiving, disbursing, or administering federal funds for any of the aforesaid purposes, provided federal law requires such an agency and the Board~~

~~of Mental Health and Substance Abuse Services is eligible to be such an agency under federal law. Construction projects, and applications therefor for any of the aforesaid purposes, shall not require the approval of any other state agency. Provided, that this section shall not prevent any other agency from receiving, disbursing, or administering federal grants for any of the aforesaid purposes in accordance with federal law.~~

~~(b) In order to provide for an orderly transition to the Board of Mental Health and Substance Abuse Services of such of the aforesaid functions as are now vested in other public agencies, this section shall not affect the construction by other public agencies of community mental health facilities, or the maintenance by other public agencies of programs for mental health, or the furnishing by other public agencies of mental health services in child guidance centers, or the receipt by other public agencies of federal funds for any of such purposes.~~

SECTION 5. AMENDATORY 43A O.S. 2001, Section 2-106, as last amended by Section 5, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2009, Section 2-106), is amended to read as follows:

Section 2-106. A. 1. The Board of Mental Health and Substance Abuse Services, the Commissioner of Mental Health and Substance Abuse Services or any employee of the Department of Mental Health and Substance Abuse Services designated by the Commissioner may solicit and receive contributions, gifts and donations for use by the Department of Mental Health and Substance Abuse Services, or to any institution therein. The Board of Mental Health and Substance Abuse Services shall accept, hold in trust and authorize the use of any grant or devise of land, or any donation or bequest of money, or other personal property made to the Department of Mental Health and Substance Abuse Services, or to any institution therein, so long as the terms of the grant, donation, bequest, gift, or will are carried out.

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

B. The Board may lease any property owned or held in trust to any other state agency, political subdivision, federal agency, county, municipality or a nonprofit organization for a period not to exceed fifty (50) years. ~~An original lease may be for a period not to exceed ten (10) years with up to four ten year options.~~

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

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

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

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

SECTION 6. AMENDATORY 43A O.S. 2001, Section 2-108, as amended by Section 7, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2009, Section 2-108), is amended to read as follows:

Section 2-108. A. When the Department of Mental Health and Substance Abuse Services has reason to believe that any individual receiving services from a facility operated by, certified by, or under contract with the Department has been wrongfully deprived of liberty, or is cruelly, negligently or improperly treated, or inadequate provision is made for the individual's appropriate medical care, proper supervision and safe keeping, the Department may ascertain the facts or may require an investigation of the facts.

B. The Board shall establish and maintain a fair, simple and expeditious system for resolution of complaints of all individuals receiving such services.

C. Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials, and reports related to investigations by the Department into allegations of consumer abuse, neglect, or mistreatment shall be confidential and contain privileged information. Accordingly, such records, materials, and reports

shall not be open to public inspection nor their contents disclosed, nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid.

1. An order of the court authorizing the inspection, release, or disclosure of information, records, materials, and reports related to investigations by the Department shall be entered by a court only after a review of the records and a determination, with due regard for the confidentiality of the information and records and the privilege of the persons identified in the records, that a compelling reason exists, any applicable privilege has been waived, and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

2. This section shall not be construed to prohibit the Department from summarizing the allegation or allegations made, facts and evidence gathered, and any findings of an investigation pursuant to this section. The summary may be provided to the following individuals and entities, provided the individuals or entities agree to protect the summary from disclosure:

a. the person suspected of abuse, neglect or improper treatment,

b. the person subject to the alleged abuse, neglect or improper treatment,

c. the person who reported the allegation,

d. the state and federal oversight, licensing or accrediting agency,

e. the administrator of a facility certified by or under contract with the Department at which the alleged abuse, neglect or improper treatment occurred,

f. any persons necessary to implement appropriate personnel action against the person suspected of abuse, neglect or mistreatment if evidence is found to support the allegation, and

g. the appropriate law enforcement agency, district attorney's office or any other entities as required by state and federal law.

SECTION 7. AMENDATORY Section 8, Chapter 488, O.S.L. 2002, as last amended by Section 7, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2009, Section 2-109), is amended to read as follows:

Section 2-109. A. The ~~Board~~ Department of Mental Health and Substance Abuse Services is authorized and directed to establish the Office of Consumer Advocacy within the Department of Mental Health and Substance Abuse Services and to employ such personnel as may be necessary to carry out the purposes of ~~Section 2-108 of~~ this ~~title~~ section.

~~1. The chief administrative officer of the Office of Consumer Advocacy shall be the Advocate General, who shall be an attorney admitted to practice in the State of Oklahoma with a minimum of three (3) years experience. The Advocate General shall report to the Board and be supervised by the Board, and may be dismissed only for cause.~~

~~2. The Advocate General shall have the following powers and duties:~~

~~a. to serve as an advocate, but not as an attorney, for individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, and, if an individual needs legal counsel, advise the individual of the right to seek counsel and refer the individual to counsel, if necessary,~~

~~b. to supervise personnel assigned to the Office of Consumer Advocacy,~~

~~c. to monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department,~~

~~d. to investigate unresolved grievances and allegation of abuse, neglect and improper treatment of individuals~~

~~receiving services from facilities operated by, subject to certification by or under contract with the Department,~~

~~e.~~ ~~to~~ The Office of Consumer Advocacy shall have access to facilities operated by, subject to certification by or under contract with the Department and the records of such facilities~~. Reasonable access shall be granted for the purposes of conducting investigations of abuse, neglect and improper treatment, and performing other activities as necessary to monitor care and treatment provided by such facilities,~~

~~f.~~ ~~to access the~~, including but not limited to, records of individuals receiving services ~~from facilities operated by, subject to certification by or under contract with the Department~~. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed ~~by the Advocate General,~~

~~g. to submit a report of the results of investigations of abuse to the appropriate district attorney and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency,~~

~~h. to make recommendations to the Commissioner of Mental Health and Substance Abuse Services and provide regular or special reports regarding investigations and unresolved grievances to the Commissioner and the Board, and~~

~~i. to perform such other duties as assigned by the Board~~.

B. The Advocate General and the staff of the Office of Consumer Advocacy shall not act as attorneys on behalf of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, except that they shall have the authority to file habeas corpus actions on behalf of such individuals and appear on their behalf in civil commitment and criminal post-commitment proceedings, and also appear

on behalf of Department consumers in proceedings for writs of mandamus.

C. Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials and reports related to investigations by the Office of Consumer Advocacy are confidential and contain privileged information. Accordingly, such records, materials and reports shall not be open to public inspection nor their contents disclosed, nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid.

~~1.~~ An order of the court authorizing the inspection, release or disclosure of information, records, materials and reports related to investigations by the Office of Consumer Advocacy shall be entered by a court only after a review of the records and a determination, with due regard for the confidentiality of the information and records and the privilege of the persons identified in the records, that a compelling reason exists, any applicable privilege has been waived and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

~~2. This section shall not be construed as prohibiting the Department or the Office of Consumer Advocacy from summarizing the outcome of an investigation, stating the allegation and finding. The summary may be provided to the following individuals and entities as long as the individuals or entities agree to protect the summary from disclosure:~~

~~a. the person suspected of abuse, neglect or improper treatment,~~

~~b. the person subject to the alleged abuse, neglect or improper treatment,~~

~~c. the person who reported an allegation,~~

~~d. the state and federal oversight, licensing or accrediting agency, and~~

~~e.~~ ~~the administrator of a facility certified by or under contract with the Department at which the alleged abuse, neglect or improper treatment occurred.~~

SECTION 8. AMENDATORY 43A O.S. 2001, Section 2-205, as amended by Section 9, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2009, Section 2-205), is amended to read as follows:

Section 2-205. The Department of Mental Health and Substance Abuse Services is hereby directed to employ one or more internal auditors to establish and perform an effective and comprehensive internal audit program. Such program shall include, but not be limited to, reviews of accounting procedures, internal control, financial management and compliance with laws, regulations, policies and executive and legislative directives for the Department's administrative offices, institutions, community mental health centers and contractors. Internal audit final reports~~,~~ shall be made ~~directly~~ available to the Governor, the State Auditor and Inspector, the Legislative Service Bureau, the Board of Mental Health and Substance Abuse Services and the Commissioner of Mental Health and Substance Abuse Services.

SECTION 9. AMENDATORY 43A O.S. 2001, Section 2-207, as amended by Section 9, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2009, Section 2-207), is amended to read as follows:

Section 2-207. The Commissioner of Mental Health and Substance Abuse Services~~, with the consent of the Board of Mental Health and Substance Abuse Services,~~ may employ persons to assist in collecting the amount due the state for the care and treatment of consumers, and may employ counsel to institute such actions or proceedings as the Commissioner may deem proper to enforce the claim of the state for the care and treatment of a consumer against the consumer.

SECTION 10. AMENDATORY 43A O.S. 2001, Section 3-201, is amended to read as follows:

Section 3-201. The Commissioner~~, with the approval of the Board of Mental Health and Substance Abuse Services,~~ may establish a statewide system of precare and aftercare services, to include receiving hospital services and halfway houses, in relation to the admission and discharge of patients from state mental hospitals.

Physical facilities for these services may be leased, purchased, or constructed by the State of Oklahoma or donated to the Department of Mental Health and Substance Abuse Services. Contracts for such services may be negotiated with professional persons, privately owned facilities, or publicly operated facilities. These services may be operated separately or in connection with existing state mental hospitals. These services shall be used for the care and treatment of the mentally ill, especially for those whose condition makes it likely that hospitalization will be necessary and for those patients discharged from state mental hospitals who require periodic outpatient supervision and treatment. Such services shall operate in accordance with the regulations established by the Commissioner.

SECTION 11. AMENDATORY 43A O.S. 2001, Section 3-302, as last amended by Section 13, Chapter 348, O.S.L. 2005 (43A O.S. Supp. 2009, Section 3-302), is amended to read as follows:

Section 3-302. As used in the Unified Community Mental Health Services Act:

1. "Certified behavioral health case manager" means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health case management services within the confines of a mental health facility, or services for alcohol and drug dependents, that is operated by the Department or contracts with the state to provide behavioral services;

2. "Case management" means the application of case management principles and practices of linking, advocacy and referral in partnership with the consumer to support the consumer in self-sufficiency and community tenure for consumers of mental health or substance abuse services;

3. "Catchment area or service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services;

4. "Community mental health center" means a facility offering:

a. a comprehensive array of community-based mental health services, including, but not limited to, ~~inpatient treatment,~~ outpatient treatment, ~~partial~~

~~hospitalization,~~ emergency evaluation and care, consultation ~~and~~, education, rehabilitation services, and aftercare, and

b. certain services at the option of the center, including, but not limited to, ~~prescreening, rehabilitation services, pre-care and aftercare~~ inpatient treatment, training programs, and research and evaluation programs;

5. "Community mental health services", in conformance with federal requirements, means services for the treatment of ~~alcoholism, drug addiction or abuse, and~~ mental illness and co-occurring substance abuse disorders, and the prevention, diagnosis, or rehabilitation of such persons;

6. "Mental health facility" means:

a. a community mental health center,

b. an outpatient facility offering diagnostic and treatment services,

c. a day care facility offering a treatment program for children or adults suffering from mental or emotional problems, or

d. community residential mental health programs and facilities which provide supervised residential care, counseling, case management or other similar services to children or adults suffering from mental or emotional problems; and

7. ~~"Day treatment program" means a structured, comprehensive program designed to improve or maintain a person's ability to function in the community, which includes, but is not limited to, nonresidential, partial hospitalization programs, and day hospital programs; and~~

~~8.~~ "Program of assertive community treatment" means a facility, agency or organization that offers or provides a self-contained clinical team, under the medical supervision of a licensed

psychiatrist, to provide needed treatment, rehabilitation, and support services to individuals with serious mental illness who have severe symptoms and impairments not effectively remedied by available treatments or to individuals who resist or avoid involvement in other needed mental health services.

SECTION 12. AMENDATORY Section 14, Chapter 488, O.S.L. 2002, as last amended by Section 1, Chapter 130, O.S.L. 2007 (43A O.S. Supp. 2009, Section 3-306.1), is amended to read as follows:

Section 3-306.1 A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of a facility or organization that desires to be certified as a community mental health center. No community mental health center shall operate or continue to operate unless the facility complies with the rules and standards promulgated by the Board and is certified as required by this section.

B. Applications for certification as a community mental health center shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms. The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may certify the community mental health centers for a period of three (3) years subject to renewal as provided in the rules promulgated by the Board.

C. The Department of Mental Health and Substance Abuse Services is authorized to establish and collect certification and renewal fees for certification of community mental health centers as provided in Section 3-324 of this title.

D. Certified community mental health centers shall comply with standards adopted by the Board. Such standards shall be in compliance with:

1. The Joint Commission on Accreditation of Healthcare Organizations;

2. The Commission on Accreditation of Rehabilitation Facilities; or

3. Approved medical and professional standards as determined by the Board.

E. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

SECTION 13. AMENDATORY 43A O.S. 2001, Section 3-315, as last amended by Section 2, Chapter 130, O.S.L. 2007 (43A O.S. Supp. 2009, Section 3-315), is amended to read as follows:

Section 3-315. A. The Board of Mental Health and Substance Abuse Services shall adopt minimum standards for program certification for residential care homes operating as community residential mental health programs as provided in this section. The standards shall be adopted as rules and promulgated by the Board of Mental Health and Substance Abuse Services pursuant to the provisions of the Administrative Procedures Act.

B. The program certification standards adopted by the Board shall provide for a system of classification of community residential mental health programs based upon the level of care required by residents of the facility and establish minimum program certification standards for each classification. The program certification standards adopted by the Board for each classification shall be such that residential care facilities having a valid contract with the Department and licensed by the State Department of Health on July 1, 1988, shall be qualified and eligible for program certification within an appropriate classification.

C. The Department shall terminate the contract of any home that fails to meet contract provisions regarding financial statements.

D. The Department of Mental Health and Substance Abuse Services is authorized to establish and collect certification and renewal fees for certification of community residential mental health facilities and programs as provided in Section 3-324 of this title.

E. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

SECTION 14. AMENDATORY 43A O.S. 2001, Section 3-317, as last amended by Section 5, Chapter 97, O.S.L. 2006 (43A O.S. Supp. 2009, Section 3-317), is amended to read as follows:

Section 3-317. A. The Board of Mental Health and Substance Abuse Services, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, shall certify community-based structured crisis centers for the provision of nonhospital emergency services for mental health and substance abuse crisis intervention. The Board shall promulgate rules for the certification of community-based structured crisis centers.

B. No community-based structured crisis center shall operate or continue to operate unless the facility complies with the rules promulgated by the Board and is certified as required by this section.

C. For the purposes of this section, "community-based structured crisis center" means any certified community mental health center or facility operated by the Department which is established and maintained for the purpose of providing community-based mental health and substance abuse crisis stabilization services including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse treatment services.

D. The Department of Mental Health and Substance Abuse Services is authorized to establish and collect certification and renewal fees for certification of community-based structured crisis centers as provided in Section ~~9~~ 3-324 of this ~~act~~ title.

E. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

SECTION 15. AMENDATORY Section 18, Chapter 488, O.S.L. 2002, as last amended by Section 3, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2009, Section 3-318), is amended to read as follows:

Section 3-318. A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of behavioral health case managers who are employed by

the state or by behavioral services providers contracting with the state to provide behavioral health services. Such rules and standards shall address criteria for certification and renewal, including minimum education requirements, examination and supervision requirements, continuing education requirements, and rules of professional conduct.

B. Application for certification as a behavioral health case manager shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms. The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may certify the behavioral health case manager for a period of two (2) years subject to renewal as provided in the rules promulgated by the Board.

C. The Board is authorized to establish an application and renewal fee of no more than One Hundred Dollars ($100.00) to defray the costs incurred in the certification process.

D. Behavioral health case managers certified by the Board or the Commissioner shall only use the title "certified behavioral health case manager" if employed by the state or by behavioral services providers contracting with the state to provide behavioral health services. This section shall not be construed to permit the certified behavioral health case manager to practice any of the following professions or use the following titles unless also licensed or accredited by the appropriate authority: physician, psychologist, clinical social worker, professional counselor, marital and family therapist, behavioral practitioner, or alcohol and drug counselor.

E. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

F. No behavioral health case manager shall operate or continue to operate as a behavioral health case manager unless the case manager complies with the rules promulgated by the Board and is certified as required by this section.

SECTION 16. AMENDATORY Section 16, Chapter 195, O.S.L. 2005, as last amended by Section 4, Chapter 130, O.S.L. 2007 (43A O.S. Supp. 2009, Section 3-320), is amended to read as follows:

Section 3-320. A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of eating disorder treatment programs and for private facilities and organizations that offer eating disorder treatment services in this state. Such facilities and organizations shall be known as "Certified Eating Disorder Treatment Programs".

B. For purposes of this section, "eating disorder treatment" means any treatment for anorexia nervosa, bulimia nervosa, or any other severe disturbances in eating behavior specified in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

C. Applications for certification as a certified eating disorder treatment program, pursuant to the provisions of this section, shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms. The Board, or the Commissioner upon delegation by the Board, may certify the program for a period of three (3) years subject to renewal as provided in the rules promulgated by the Board. Nothing in this section shall preclude the Department from making inspection visits to a program to determine program compliance.

D. Hospitals licensed by the State Department of Health shall be exempt from certification requirements. In addition, licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, licensed marital and family therapists, registered nurses, licensed behavioral practitioners, and licensed professional counselors shall be exempt from certification requirements; provided, however, these exemptions shall only apply to individual professional persons in their private practices and not to any eating disorder treatment program operated by such person.

E. The Department of Mental Health and Substance Abuse Services is authorized to establish and collect certification and renewal fees for certification of eating disorder treatment programs as provided in Section 3-324 of this title.

F. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

G. No eating disorder treatment program shall operate or continue to operate unless the facility complies with the rules promulgated by the Board and is certified as required by this section.

SECTION 17. AMENDATORY Section 18, Chapter 195, O.S.L. 2005, as last amended by Section 5, Chapter 130, O.S.L. 2007 (43A O.S. Supp. 2009, Section 3-322), is amended to read as follows:

Section 3-322. A. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of gambling addiction treatment programs and for private facilities and organizations which offer gambling addiction treatment services in this state. These facilities and organizations shall be known as "Certified Gambling Addiction Treatment Programs".

B. Applications for certification as a certified gambling addiction treatment program, pursuant to the provisions of this section, shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms. The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may certify the program for a period of three (3) years, subject to renewal as provided in rules promulgated by the Board. Nothing in this section shall preclude the Department from making inspection visits to a program to determine program compliance.

C. Hospitals licensed by the State Department of Health shall be exempt from certification requirements. In addition, licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, licensed marital and family therapists, registered nurses, licensed behavioral practitioners, and licensed professional counselors shall be exempt from certification requirements; provided, however, these exemptions shall only apply to individual professional persons in their private

practices and not to any gambling addiction treatment program operated by the person.

D. Facilities providing services for gambling addiction shall comply with standards promulgated by the Board; provided, that the certification requirements and standards shall not apply to programs and services offered by other state agencies. The gambling addiction treatment programs certified pursuant to the provisions of this section shall cooperate with inspection personnel of the state and shall promptly file all reports required by the Department. Failure to comply with rules and standards of the Board shall be ground for revocation of certification, after proper notice and hearing.

E. The Department of Mental Health and Substance Abuse Services is authorized to establish and collect certification and renewal fees for certification of gambling addiction treatment programs as provided in Section 3-324 of this title.

F. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

G. No gambling addiction treatment program shall operate or continue to operate unless the facility complies with the rules promulgated by the Board and is certified as required by this section.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-326 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Board of Mental Health and Substance Abuse Services shall promulgate rules for certification of peer recovery support specialists who are employed by the state or by behavioral services providers contracting with the state to provide behavioral health services. Such rules shall address criteria for certification and renewal, including minimum education requirements, examination and supervision requirements, continuing education requirements, and rules of professional conduct.

B. Application for certification as a peer recovery support specialist shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms. The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may certify the peer recovery support specialist for a period of two (2) years subject to renewal as provided in the rules promulgated by the Board.

C. The Board is authorized to establish an application and renewal fee of no more than One Hundred Dollars ($100.00) to defray the costs incurred in the certification process.

D. A peer recovery support specialist certified by the Board or the Commissioner shall only use the title "certified peer recovery support specialist" if employed by the state or by behavioral services providers contracting with the state to provide behavioral health services. This section shall not be construed to permit the certified peer recovery support specialist to practice any of the following professions or use the following titles unless also licensed or accredited by the appropriate authority:

1. Physician;

2. Psychologist;

3. Clinical social worker;

4. Professional counselor;

5. Marital and family therapist;

6. Behavioral practitioner; or

7. Alcohol and drug counselor.

E. No peer recovery support specialist shall operate or continue to operate as a peer recovery support specialist unless the peer recovery support specialist complies with the rules promulgated by the Board and is certified as required by this section.

F. Failure to comply with rules promulgated by the Board shall be grounds for revocation, suspension, or nonrenewal of certification.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-327 of Title 43A, unless there is created a duplication in numbering, reads as follows:

All certifications issued by the Department of Mental Health and Substance Abuse Services shall only be effective for the time period specified by rules and standards promulgated by the Board of Mental Health and Substance Abuse Services or specifically enumerated in Title 43A of the Oklahoma Statutes. Unless a renewal of certification has been issued in accordance with the rules and standards promulgated by the Board, certifications shall be deemed expired as a matter of law. No further action by the Department shall be required to remove an expired certification.

SECTION 20. AMENDATORY 43A O.S. 2001, Section 3-415, as last amended by Section 12, Chapter 97, O.S.L. 2006 (43A O.S. Supp. 2009, Section 3-415), is amended to read as follows:

Section 3-415. A. 1. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification for private facilities and organizations which provide treatment, counseling and rehabilitation services directed toward alcohol- and drug-dependent persons. These facilities and organizations shall be known as "Certified Services for the Alcohol and Drug Dependent". Only certified facilities may receive and assist alcohol- and drug-dependent persons by providing treatment and rehabilitation.

2. Any person violating the requirement that only certified facilities may receive and assist alcohol- and drug-dependent persons by providing treatment to alcohol- and drug-dependent persons, upon conviction, shall be guilty of a misdemeanor. Except as otherwise provided in this section, no substance abuse treatment program shall operate or continue to operate unless the facility complies with the rules promulgated by the Board and is certified as required by this section.

B. Applications for certification as a certified service for the alcohol- and drug-dependent person pursuant to the provisions of this section shall be made to the Department of Mental Health and Substance Abuse Services on prescribed forms.

C. The Board, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may certify the facility for a period of thirty-six (36) months subject to renewal as provided.

D. The Board or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, may postpone, deny renewal of, revoke, or suspend the certification of the facility for failure to comply with rules and standards promulgated by the Board.

E. The following are exempt from the provisions of the Oklahoma Alcohol and Drug Abuse Services Act:

1. Individual persons in private practice as licensed physicians, licensed psychologists, licensed social workers, registered nurses, licensed professional counselors, licensed marriage and family therapists, licensed behavioral practitioners, individual members of the clergy, and certified alcohol or drug abuse counselors. The exemption shall apply only to individual professional persons in their private practice and not to any treatment facility operated by the person;

2. Properly licensed hospitals, psychiatric and medical surgical facilities;

3. Programs or facilities operated by a state agency;

4. Programs conducted and facilities operated by Alcoholics Anonymous; or

5. Programs conducted and facilities operated by the Salvation Army.

F. Certified services for the alcohol- or drug-dependent person shall comply with standards adopted by the Board. Such standards shall require that treatment and therapeutic methods shall be in compliance with:

1. The Joint Commission on Accreditation of Healthcare Organizations;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation (COA); or

4. Approved medical and professional standards as determined by the Board.

G. Any facility or organization certified to provide certified services shall cooperate with inspection personnel of the state and shall promptly file all reports required by the Board.

H. All claims by and accomplishments publicized by any applicant for certification or any certified alcohol- or drug-dependent organization, including but not limited to consumer count and success rates, shall be documented and verifiable by the Board.

I. The Department of Mental Health and Substance Abuse Services is authorized to establish and collect certification and renewal fees for certification of private facilities and organizations which provide treatment, counseling and rehabilitation services directed toward alcohol- and drug-dependent persons, as provided in Section ~~9~~ 3-324 of this ~~act~~ title.

J. Any materials or information received by the Department from an applicant regarding the applicant's financial status shall not be construed to be open records pursuant to the Oklahoma Open Records Act.

SECTION 21. AMENDATORY 43A O.S. 2001, Section 3-424, as amended by Section 11, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2009, Section 3-424), is amended to read as follows:

Section 3-424. A. Subject to the restrictions imposed by subsection B of this section, a consumer in an inpatient or residential mental health or substance abuse facility has the right to:

1. Receive a reasonable number of visitors at reasonable times;

2. Reasonable access to make and receive telephone calls;

3. Communicate by uncensored and sealed mail; and

4. Writing materials and reasonable amounts of postage if unable to procure the same.

B. The rights provided in subsection A of this section are subject to the general rules of the facility and may be restricted by the treatment team ultimately responsible for the consumer's treatment to the extent that the restriction is necessary to the consumer's welfare, to protect another person, or to the security of the facility; provided, however, the right to communicate with legal counsel, a treatment advocate, or the Department may not be denied.

C. If a restriction is imposed under this section, the reasons for the restriction and the duration of the restriction shall be documented in the consumer's clinical record. The treatment team shall inform the consumer, the treatment advocate, and, if appropriate, the consumer's parent or guardian of the clinical reasons for the restriction and the duration of the restriction.

SECTION 22. AMENDATORY 43A O.S. 2001, Section 3-453, as last amended by Section 8, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 3-453), is amended to read as follows:

Section 3-453. A. Alcohol and drug substance abuse courses shall be offered only by nonprofit educational institutions of higher learning, governmental or nonprofit organizations.

B. Enrollment fees for those attending the courses shall be set by the Department of Mental Health and Substance Abuse Services and shall be within a range of not less than Sixty-five Dollars ($65.00) and not more than:

1. One Hundred Fifty Dollars ($150.00) for a ten-hour course; and

2. Three Hundred Sixty Dollars ($360.00) for a twenty-four-hour course.

C. Ten percent (10%) of each fee collected shall be remitted by the institution or organization offering alcohol and drug substance abuse courses to the State Treasurer to be credited to the Community-based Substance Abuse Revolving Fund in the State Treasury and shall be used to provide substance abuse services to the indigent or to provide specialized training to alcohol and drug substance abuse course facilitators. Five percent (5%) of each fee collected by the Department shall be used for the administrative costs related to providing such services.

D. Enrollment in the course shall not be limited to persons ordered to enroll, attend and successfully complete the course.

E. All alcohol and drug substance abuse courses related to driver license revocation and course facilitators shall be approved and certified by the Department of Mental Health and Substance Abuse Services.

F. The Department of Mental Health and Substance Abuse Services is authorized to promulgate rules governing:

1. Minimum curriculum requirements for such courses;

2. Facilities, equipment and instructional materials for such courses;

3. Minimum qualifications for course facilitators;

4. Grounds for reprimand and for revocation, suspension or nonrenewal of the authority to conduct such courses and for revocation of a facilitator's certification;

5. Attendance requirements; and

6. Guidelines for certifying to the Department of Mental Health and Substance Abuse Services and the Department of Public Safety successful completion of such course.

G. The Department of Mental Health and Substance Abuse Services shall require that each ten-hour course shall be conducted in no less than three sessions of no more than three and one-half (3 1/2)

hours each on three (3) separate days. For a twenty-four-hour course, the Department shall require that:

1. Each such course shall consist of at least twenty-four (24) hours;

2. Each such course shall consist of no more than two (2) hours of education on any given day, nor more than four (4) hours in a given week, and shall not contain more than ten percent (10%) films on any one specialized area; and

3. No more than twenty-four students shall be allowed in a given class.

H. Any institution or organization authorized under this act to conduct an alcohol and drug substance abuse course shall certify to the Department of Public Safety all persons who successfully complete such course.

I. Any person participating in a substance abuse treatment program recommended as a result of an assessment pursuant to Section 3-460 of this title shall be required to pay all or part of the actual cost incurred for treatment of the person, if the court determines the person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the person shall pay.

J. Application fees for certification of course facilitators shall be set by the Board of Mental Health and Substance Abuse Services to defray the costs of administering the program and shall be:

1. Not less than One Hundred Dollars ($100.00) and not more than Two Hundred Dollars ($200.00) upon initial application; and

2. Not less than Twenty-five Dollars ($25.00) and not more than Fifty Dollars ($50.00) upon annual renewal.

K. The Director of the Office of State Finance shall transfer unobligated monies generated from the fees in subsection C of this section, deposited before November 1, 2005, from the Department of Mental Health and Substance Abuse Services Revolving Fund to the

Community-based Substance Abuse Revolving Fund, in amounts calculated by the Department.

L. No alcohol or drug substance abuse course shall operate or continue to operate unless it is operated in compliance with the rules promulgated by the Board and is certified as required by this section.

SECTION 23. AMENDATORY 43A O.S. 2001, Section 3-460, as last amended by Section 10, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 3-460), is amended to read as follows:

Section 3-460. A. The Department of Mental Health and Substance Abuse Services shall certify assessment personnel for the purpose of conducting alcohol and drug assessment and evaluation programs related to driver license revocation.

B. Application fees for certification of assessment personnel shall be set by the Department to defray the costs of administering the program and shall be:

1. Not less than One Hundred Dollars ($100.00) and not more than Two Hundred Dollars ($200.00) upon initial application; and

2. Not less than Twenty-five Dollars ($25.00) and not more than One Hundred Fifty Dollars ($150.00) upon triennial renewal.

C. The fee for those undergoing an assessment and evaluation pursuant to this section shall be One Hundred Sixty Dollars ($160.00). A fee of Fifteen Dollars ($15.00) shall be remitted by the individual undergoing an assessment and evaluation directly to the Department of Public Safety pursuant to Section 6-212 of Title 47 of the Oklahoma Statutes.

1. The Department of Public Safety shall remit ninety percent (90%) of the Fifteen Dollar ($15.00) fee collected pursuant to this section to the State Treasurer to be credited to the Community-based Substance Abuse Revolving Fund in the State Treasury and shall be used by the Department of Mental Health and Substance Abuse Services.

2. Ten percent (10%) of each Fifteen Dollar ($15.00) fee collected by the Department of Public Safety pursuant to this section shall be deposited into the Department of Public Safety Revolving Fund, as created in Section 2-144.1 of Title 47 of the Oklahoma Statutes, to be used for administrative costs associated with the duties imposed by this section.

D. The Board of Mental Health and Substance Abuse Services is authorized to promulgate such rules as are necessary to implement the provisions of this act. Failure to comply with rules and standards promulgated by the Board shall be grounds for revocation, suspension or nonrenewal of certification.

E. The Director of the Office of State Finance shall transfer any unobligated monies generated by the fees in subsection C of this section, deposited before ~~the effective date of this act~~ November 1, 2005, from the Department of Mental Health and Substance Abuse Services Revolving Fund to the Community-based Substance Abuse Revolving Fund, in amounts calculated by the Department.

F. No alcohol or drug assessment personnel shall operate or continue to operate as such unless the alcohol or drug assessment personnel comply with the rules promulgated by the Board and are certified as required by this section.

SECTION 24. AMENDATORY 43A O.S. 2001, Section 3-601, as last amended by Section 13, Chapter 97, O.S.L. 2006 (43A O.S. Supp. 2009, Section 3-601), is amended to read as follows:

Section 3-601. A. Any Class II controlled dangerous substance, when used in this state by an opioid substitution treatment program for persons with a history of opioid addiction to or physiologic dependence on controlled dangerous substances, shall only be used:

1. In treating persons with a history of addiction for two (2) years or more;

2. In treating persons with a one-year history of opioid addiction to or physiologic dependence on controlled dangerous substances, as defined by the Code of Federal Regulations, and documentation of attempting another type of treatment; or

3. If clinically appropriate, the program physician may waive the requirement of a one-year history of opioid addiction for consumers within six (6) months of release from a penal institution, for consumers with a pregnancy verified by the program physician, or for consumers having previously received treatment for opioid addiction and within two (2) years of discharge from that treatment episode.

B. Any conviction for a violation of the provisions of this section or any rules promulgated pursuant to the provisions of this section shall be a felony.

C. For the purposes of this section, "opioid substitution treatment program" means a person, private physician, or organization that administers or dispenses an opioid drug to a narcotic addict for the purposes of detoxification or maintenance treatment or provides, when necessary and appropriate, comprehensive medical and rehabilitation services. A private physician who administers buprenorphine with a waiver from the Drug Enforcement Administration shall not be considered an opioid substitution treatment program. An opioid substitution treatment program shall be certified by the Board of Mental Health and Substance Abuse Services, or the Commissioner of Mental Health and Substance Abuse Services upon delegation by the Board, and registered with the federal Drug Enforcement Administration for the use of an opioid drug to treat narcotic addiction.

D. The ~~Department~~ Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for the certification of all programs, private facilities, and organizations which provide opioid substitution treatment directed to those physiologically dependent on or addicted to opioids. These facilities and organizations shall be known as "Opioid Substitution Treatment Programs". Only certified facilities may receive and assist opioid-dependent and addicted persons by providing Class II controlled substances in opioid substitution treatment and rehabilitation.

E. The ~~Department~~ Board of Mental Health and Substance Abuse Services shall promulgate rules and standards regulating the treatment and services provided by opioid substitution treatment programs. Failure to comply with rules and standards promulgated by

the Board shall be grounds for revocation, suspension or nonrenewal of certification.

F. Opioid substitution treatment programs shall notify the Department of Mental Health and Substance Abuse Services of plans to close or relocate within a minimum of thirty (30) days prior to closure or relocation.

G. Failure to comply with rules and standards promulgated by the ~~Department~~ Board of Mental Health and Substance Abuse Services pursuant to this act shall be grounds for reprimand, suspension, revocation or nonrenewal of certification.

SECTION 25. AMENDATORY 43A O.S. 2001, Section 5-206, as last amended by Section 12, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 5-206), is amended to read as follows:

Section 5-206. As used in Sections 5-206 through 5-209 of this title:

1. "Mental health evaluation" means the examination of a person, either in person or via telemedicine, who appears to have a mental illness or be alcohol- or drug-dependent by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of:

a. determining if a petition requesting involuntary commitment or treatment is warranted, or

b. completing a ~~certificate of~~ mental health evaluation pursuant to Section 5-414 of this title, or

c. both subparagraphs a and b of this paragraph;

2. "Initial assessment (medical necessity review)" means the examination of a person, either in person or via telemedicine, who appears to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment, whose

condition is such that it appears that emergency detention may be warranted by a licensed mental health professional at a facility approved by the Commissioner of Mental Health and Substance Abuse Services, or a designee, as appropriate for such examination to determine if emergency detention of the person is warranted;

3. "Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed ~~seventy-two (72)~~ one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond ~~a seventy-two hour~~ this period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by this act;

4. "Protective custody" means the taking into protective custody and detention of a person pursuant to the provisions of Section 5-208 of this title until such time as an emergency examination is completed and a determination is made as to whether or not emergency detention is warranted; and

5. "Prehearing detention" means the court-ordered detention of a person who is alleged to be mentally ill, alcohol-dependent, or drug-dependent in a facility approved by the Commissioner as appropriate for such detention, pending a hearing on a petition requesting involuntary commitment or treatment as provided by Section 5-415 ~~or 9-102~~ of this title.

SECTION 26. AMENDATORY 43A O.S. 2001, Section 5-208, as last amended by Section 1, Chapter 389, O.S.L. 2009 (43A O.S. Supp. 2009, Section 5-208), is amended to read as follows:

Section 5-208. A. 1. A consumer in protective custody as provided by Section 5-207 of this title shall be subject to an initial assessment at the appropriate facility by a licensed mental health professional within twelve (12) hours of being placed in protective custody for the purpose of determining whether emergency detention of the consumer is warranted. The initial assessment of the consumer shall include an appropriate screening and assessment

process, as determined by the Department of Mental Health and Substance Abuse Services, designed to identify possible alcohol or drug abuse or dependency.

2. If, upon examination, the licensed mental health professional determines that the consumer is not a person requiring treatment or that the condition of the consumer is such that emergency detention is not warranted, the consumer shall either be returned by an officer immediately to the point where the consumer was taken into protective custody and released or taken to the home or residence of such consumer or to an alternative facility. If the home or residence of the consumer is a nursing home or group home, such home shall not refuse the return of the consumer to his or her residence.

3. If, upon examination, the licensed mental health professional determines that the consumer is a person requiring treatment to a degree that emergency detention is warranted, the licensed mental health professional shall immediately prepare a statement describing the findings of the examination and stating the basis for the determination, and the consumer shall be detained in emergency detention for a period not to exceed ~~seventy-two (72)~~ one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention pending a hearing on a petition requesting involuntary commitment or treatment.

4. During the emergency detention period:

a. a mental health evaluation of the consumer shall be conducted by two licensed mental health professionals and, if the consumer appears to have a mental illness or be alcohol- or drug-dependent and be a consumer requiring treatment, and

b. reasonable efforts shall be made to determine whether the consumer has a current and unrevoked advance directive executed pursuant to the Advance Directives for Mental Health Treatment Act.

B. If a licensed mental health professional, designated to have the responsibility by the executive director or person in charge of

a hospital, or the executive director or person in charge of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention believes a voluntary consumer to be a person requiring treatment to a degree that emergency action is necessary, the hospital or facility may detain such consumer in emergency detention for a period not to exceed ~~seventy-two (72)~~ one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, only on the following conditions:

1. The consumer has refused to consent or has withdrawn consent to voluntary treatment;

2. The consumer has been examined by a licensed mental health professional who has determined that the consumer is a person requiring treatment, the condition of the consumer is such that emergency detention is warranted, and a statement has been prepared as provided in subsection A of this section; and

3. The executive director or person in charge or the designee shall provide for a mental health evaluation of the consumer by two licensed mental health professionals.

C. Whenever it appears that a consumer detained pursuant to the provisions of this section is no longer a person requiring treatment and will not require treatment beyond the period of detention, the consumer shall be discharged and returned by an officer to the point where he or she was taken into protective custody, or if the consumer had not been in protective custody, the consumer shall be taken to the home or residence of the consumer or to an alternative facility. If the home or residence of the consumer is a nursing home or group home, it shall not refuse the return of the consumer to his or her residence.

D. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the person has refused to consent to voluntary treatment, a licensed mental health professional conducting an evaluation of the person or the executive director of the facility in which the person is being detained, or the designee of the executive director, shall immediately file a petition or request the district attorney to file a petition with the district court as

provided by Section 5-410 of this title ~~or Section 9-102 of this title~~, and may request a court order directing prehearing detention when such detention is necessary for the protection of the person or others.

SECTION 27. AMENDATORY 43A O.S. 2001, Section 5-209, as amended by Section 37, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2009, Section 5-209), is amended to read as follows:

Section 5-209. A. A person may be detained in emergency detention more than ~~seventy-two (72)~~ one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, only if the facility in which the person being detained is presented with a copy of an order of the district court authorizing further detention. Such order may be entered by the court only after a petition has been filed seeking involuntary commitment or treatment pursuant to the provisions of Section 5-410 ~~or 9-102~~ of this title.

B. If a copy of an order for further detention is not delivered to the facility by the end of the period of emergency detention, the person alleged to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment shall be discharged from the facility in which detained unless said person has applied for voluntary treatment.

C. The person being held in protective custody or emergency detention shall be asked to designate any person whom such person wishes informed regarding the detention. If the person being held in protective custody is incapable of making such designation, the peace officer holding the person in protective custody shall notify within twenty-four (24) hours of taking the person into protective custody, other than the person initiating the request for protective custody, the attorney, parent, spouse, guardian, brother, sister, or child who is at least eighteen (18) years of age of the person. Failure of the sheriff to find such person shall within a reasonable time be reported to the administrator of the facility. Such fact shall be made a part of the records of the facility for the person being detained.

SECTION 28. AMENDATORY 43A O.S. 2001, Section 5-306, as last amended by Section 15, Chapter 401, O.S.L. 2008 (43A O.S. Supp. 2009, Section 5-306), is amended to read as follows:

Section 5-306. The application described in Section 5-305 of this title shall be accompanied by a certificate in duplicate signed by a licensed doctor of medicine or osteopathic physician who is duly licensed to practice his such profession by the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma Board of Osteopathic Examiners, who is not related by blood or marriage to the person being examined, and who has no interest in the estate of the person being examined. This certificate shall include the following:

1. A statement that a physician licensed in this state has personally examined the person;

2. A statement that such physician is not related by blood or marriage to the person being examined and has no interest in the estate of the person being examined;

3. A determination that the person has a mental illness that requires inpatient admission;

4. A statement that the person may not be held at the facility for longer than ~~seventy-two (72)~~ one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, past the time when such person has revoked consent to stay for treatment;

5. Information on the benefits and side effects of the treatment the person will receive in an inpatient setting;

6. Certification that the person has made a knowing and willing consent to voluntary inpatient treatment; and

7. The physician's signature made under penalty of perjury.

SECTION 29. AMENDATORY 43A O.S. 2001, Section 5-309, as amended by Section 46, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2009, Section 5-309), is amended to read as follows:

Section 5-309. No consumer admitted to a state mental hospital under the provisions of the Mental Hospital Voluntary Admission Procedures Act shall be detained in a mental hospital against the will of the person more than ~~seventy-two (72)~~ one hundred twenty

(120) hours or five (5) days, excluding weekends and holidays, after the consumer gives notice in writing to the executive director of the facility of the desire of the consumer to be discharged from the facility. The executive director of the facility may designate one or more employees of the facility to receive a notification provided by this section with the same effect as if delivered to the executive director personally.

SECTION 30. AMENDATORY 43A O.S. 2001, Section 5-415, as last amended by Section 22, Chapter 97, O.S.L. 2006 (43A O.S. Supp. 2009, Section 5-415), is amended to read as follows:

Section 5-415. A. Upon receiving a petition alleging a person to be a person requiring treatment, the court shall set a day and time for the hearing.

1. If the person alleged to be a person requiring treatment does not have an attorney, the court shall immediately appoint an attorney for the person.

2. If a copy of a mental health evaluation is not attached to the petition at the time it is filed, the court shall immediately order a mental health evaluation of the person as provided by Section 5-414 of this title.

B. If the court deems it necessary, or if the person alleged to be a person requiring treatment demands, the court shall schedule the hearing on the petition as a jury trial to be held within ~~seventy-two (72)~~ one hundred twenty (120) hours or five (5) days of the demand, excluding weekends and holidays, or within as much additional time as is requested by the attorney of such person upon good cause shown.

C. The court, at the hearing on the petition, shall determine by clear and convincing evidence whether the person is a person requiring treatment.

1. The court shall take evidence and make findings of fact concerning the person's competency to consent to or refuse the treatment that may be ordered, including, but not limited to, the consumer's right to refuse medication.

2. If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits of the licensed mental health professionals who evaluated the person and the mental health evaluation.

3. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.

D. After the hearing, when the court determines that the person is not a person requiring treatment, the court shall dismiss the petition and, if the person is being detained, order the person to be discharged from detention.

E. After the hearing, when the court determines the person to be a person requiring treatment, the court shall order the person to receive the least restrictive treatment consistent with the treatment needs of the person and the safety of the person and others.

1. The court shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization and may direct the submission of evidence as to the least restrictive treatment alternative or may order a mental health examination.

2. If the court finds that a program other than hospitalization is appropriate to meet the treatment needs of the individual and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization that is appropriate for a period set by the court, during which time the court shall continue its jurisdiction over the individual as a person requiring treatment.

3. If the court orders the person to be committed for involuntary inpatient treatment, the court shall commit the person to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's

needs or to a private facility willing to accept the person for treatment.

4. The person shall be delivered to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.

5. If the person is placed in the custody of the Department, the Department may designate two or more facilities to provide treatment and if the person to be treated or a parent, spouse, guardian, brother, sister or child, who is at least eighteen (18) years of age, of the person, expresses a preference for one such facility, the Department shall attempt, if administratively possible, to comply with the preference.

6. The person shall be discharged from inpatient treatment at such time as the person no longer requires treatment as determined by the executive director of the facility or the designee of the executive director, or as otherwise required by law.

F. The court shall make and keep records of all cases brought before it.

1. No records of proceedings pursuant to this section shall be open to public inspection except by order of the court or to employees of the Department of Mental Health and Substance Abuse Services, the person's attorney of record, or persons having a legitimate treatment interest.

2. Bonded abstractors may be deemed to be persons having a legitimate interest for the purpose of having access to records regarding determinations of persons requiring treatment under this section.

SECTION 31. REPEALER 43A O.S. 2001, Sections 3-316, as amended by Section 16, Chapter 150, O.S.L. 2005, 3-406, as last amended by Section 10, Chapter 113, O.S.L. 2004, 3-414, as amended by Section 23, Chapter 488, O.S.L. 2002 and 3-422, as amended by Section 25, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2009, Sections 3-316, 3-406, 3-414 and 3-422), are hereby repealed.

SECTION 32. This act shall become effective November 1, 2010.

Passed the Senate the 20th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of April, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 21st **day of** May, 20 10, **at** 10:30 **o'clock** A **M.**

By:

Approved by the Governor of the State of Oklahoma the 26th **day of** May, 20 10, **at** 5:45 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 27th **day of** May, 20 10, **at** 2:50 **o'clock** P **M.**

By: