An Act

ENROLLED SENATE
BILL NO. 725

By: David of the Senate

and

Derby of the House

An Act relating to mental health and substance abuse; amending 43A O.S. 2011, Section 1-103, which relates to definitions; designating licensed drug and alcohol counselors as licensed mental health professionals; amending 43A O.S. 2011, Section 1-109, which relates to confidential and privileged information; classifying certain communications by licensed mental health professionals or licensed drug and alcohol counselors as confidential and privileged; providing for access to certain information by a consumer of a licensed mental health professional or a licensed alcohol and drug counselor; and providing an effective date.

SUBJECT: Licensed mental health professionals

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

SECTION 1. AMENDATORY 43A O.S. 2011, 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~~ the Mental Health 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, an opioid substitution treatment 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.~~ the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or ~~Section 620 et seq. of Title 59 of the Oklahoma Statutes~~ the Oklahoma Osteopathic Medicine Act,

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~~ the Licensed Professional Counselors Act,

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~~ the Marital and Family Therapist Licensure Act,

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

h. an advanced practice nurse as defined in ~~Section 567.1 et seq. of Title 59 of the Oklahoma Statutes~~ the Oklahoma Nursing Practice Act 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, or

j. a licensed drug and alcohol counselor/mental health ("LADC/MH") as defined in the Licensed Alcohol and Drug Counselors Act;

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

13. a. "Person requiring treatment" means a person who because of his or her mental illness or drug or alcohol dependency:

(1) poses 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,

(2) poses 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,

(3) has 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,

(4) is in a condition of severe deterioration such 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. 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 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.

d. 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; and

18. "Telemedicine" means the practice of health care delivery, diagnosis, consultation, evaluation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine uses audio and video multimedia telecommunication equipment which permits two-way 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. 2011, Section 1-109, is amended to read as follows:

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

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

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

B. A person who is or has been a consumer of a physician, ~~psychotherapist,~~ a licensed mental health professional as defined in Section 1-103 of this title, a licensed alcohol and drug counselor as defined in Section 1871 of Title 59 of the Oklahoma Statutes, a mental health facility, a drug or alcohol abuse treatment facility or service, or other agency for the purpose of mental health or drug

or alcohol abuse care and treatment shall be entitled to personal access to his or her mental health or drug or alcohol abuse treatment information, except the following:

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

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

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

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

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

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

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

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

a. the specific name or general designation of the program or person permitted to make the disclosure,

b. the name or title of the individual or the name of the organization to which disclosure is to be made,

c. the name of the consumer whose records are to be released,

d. the purpose of the disclosure,

e. a description of the information to be disclosed,

f. the dated signature of the consumer or authorized representative or both when required,

g. a statement of the right of the consumer to revoke the release in writing and a description of how the consumer may do so,

h. an expiration date, event or condition which, if not revoked before, shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given, and

i. if the release is signed by a person authorized to act for a consumer, a description of the authority of such person to act.

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

a. the expiration date has passed or the expiration event or condition is known to have occurred or to exist,

b. the release has not been filled out completely with respect to an element described in paragraph 1 of this section,

c. the release is known to have been revoked, or

d. any material information in the release is known to be false.

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

a. information has already been released in reliance thereon,

b. the authorization was obtained as a condition of obtaining insurance coverage and other law provides the insurer with the right to contest a claim under the policy or the policy itself, or

c. the release was executed as part of a criminal justice referral.

4. Disclosure regarding a deceased consumer shall require either a court order or a written release of an executor, administrator or personal representative appointed by the court, or if there is no such appointment, by the spouse of the consumer or, if none, by any responsible member of the family of the consumer. As used in this paragraph, "responsible family member" means the parent, adult child, adult sibling or other adult relative who was actively involved in providing care to or monitoring the care of the patient as verified by the physician, psychologist or other person responsible for the care and treatment of such person.

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

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

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

2. Communications to law enforcement officers regarding information directly related to the commission of a crime on the premises of a facility or against facility personnel, or a threat to commit such a crime. Such communications involving persons with substance abuse disorders shall be limited to the circumstances surrounding the incident, consumer status, name and address of that individual and the last-known whereabouts of that individual;

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

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

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

b. "qualified service organization agreement" means a written, signed agreement between a health care provider and an outside entity which provides services to the health care provider's consumers that are different from the services provided by the health care provider, that allows the health care provider to communicate consumer information necessary for the outside entity to provide services to the health care provider's consumers without the need for an authorization signed by a consumer and in which the outside entity acknowledges that in receiving, storing, processing or otherwise dealing with any consumer information from the health care provider it is fully bound by the provisions of 42 C.F.R., Part 2 and, if necessary, will resist any efforts in judicial

proceedings to obtain access to consumer information, except as permitted by 42 C.F.R., Part 2, and

c. "qualified service organization/business agreement" means a written, signed agreement between a health care provider and an outside entity which provides services to the health care provider's consumers that are different from the services provided by the health care provider, that allows the health care provider to communicate consumer information necessary for the outside entity to provide services to the health care provider's consumers without the need for an authorization signed by a consumer, and in which the outside entity acknowledges that in receiving, storing, processing or otherwise dealing with any consumer information from the health care provider it is fully bound by the provisions 42 C.F.R., Part 2 and, if necessary, will resist any efforts in judicial proceedings to obtain access to consumer information, except as permitted by 42 C.F.R., Part 2. The agreement must also contain elements required by federal privacy regulations in 45 C.F.R., Parts 160 & 164;

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

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

7. Communications necessary for audit and evaluation activities;

8. When a program or facility director determines that an adult person with a substance abuse disorder has a medical condition which prevents the person from "knowing or effective action on his or her own behalf", the program or facility director may authorize

disclosures for the sole purpose of obtaining payment for services. If the person has been adjudicated incompetent, the facility must seek permission to disclose information for payment from the legal guardian;

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

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

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

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

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

14. Mental health records may be disclosed to parties in a judicial or administrative proceeding in cases involving a claim for personal injury or death against any practitioner of the healing arts, a licensed hospital, or a nursing facility or nursing home licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental

condition of any other person or deceased person by or through whom the person rightfully claims;

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

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

SECTION 3. This act shall become effective November 1, 2013.

Passed the Senate the 6th day of March, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 8th day of April, 2013.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 9th day of April, 20 13, at 2:43 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 12th day of April, 20 13, at 11:09 o'clock A M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 12th day of April, 20 13, at 1:39 o'clock P. M.

By: Kerry V. Parman