

# An Act

ENROLLED SENATE  
BILL NO. 755

By: Ivester of the Senate

and

Sherrer and Hoskin of the  
House

An Act relating to treatment advocates; amending 43A O.S. 2011, Sections 1-109, as amended by Section 2 of Enrolled Senate Bill No. 725 of the 1st Session of the 54th Oklahoma Legislature, and 1-109.1, which relate to disclosure of information and treatment advocates; authorizing access to certain information by treatment advocate; providing for certain persons to be deemed treatment advocates; and providing an effective date.

SUBJECT: Health care treatment authority

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-109, as amended by Section 2 of Enrolled Senate Bill No. 725 of the 1st Session of the 54th Oklahoma Legislature, 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 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, 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, or such person's treatment advocate as defined in Section 1-109.1 of this title, 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 2. AMENDATORY 43A O.S. 2011, Section 1-109.1, is amended to read as follows:

Section 1-109.1. A. 1. Every adult having a mental illness as defined in Section 1-103 of this title who is under the care of a licensed mental health professional shall be informed by the licensed mental health professional or the mental health treatment

facility that the consumer has the right to designate a family member or other concerned individual as a treatment advocate.

2. The individual designated as a treatment advocate shall act at all times in the best interests of the consumer.

3. The patient may change or revoke the designation of a treatment advocate at any time and for any reason.

4. The treatment advocate may participate in the treatment planning and discharge planning of the consumer to the extent consented to by the consumer and as permitted by law.

5. A person holding the powers vested in a guardianship of the person, a grant of general health care decision-making authority or designation of health care proxy contained in an advance directive for health care, or a durable power of attorney with health care decision-making authority shall be the treatment advocate for the patient by operation of law.

B. 1. The Board of Mental Health and Substance Abuse Services shall promulgate rules for all facilities certified by the Department of Mental Health and Substance Abuse Services as to the design, contents, and maintenance of a treatment advocate consent form.

2. The contents of the consent form, at a minimum, shall include a statement indicating that the treatment advocate understands that all mental health treatment information is confidential and that the treatment advocate agrees to maintain confidentiality.

C. This section shall not apply to inmates of the Oklahoma Department of Corrections.

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

Passed the Senate the 28th day of February, 2013.

*Jack Lemmon*  
Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2013.

*Mike Fisher*  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 18<sup>th</sup>

day of April, 20 13, at 1:35 o'clock P M.

By: *Audrey Beckwell*

Approved by the Governor of the State of Oklahoma this 24<sup>th</sup>

day of April, 20 13, at 3:05 o'clock P 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 24<sup>th</sup>

day of April, 20 13, at 5:00 o'clock P M.

By: *John V. Panner*