

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 1280

By: Lawson

AS INTRODUCED

<StartFT>An Act relating to Mental Health and Substance Abuse Services; amending 43A O.S. 2011, Sections 1-103, as last amended by Section 1, Chapter 246, O.S.L. 2017 and 3-461 (43A O.S. Supp. 2018, Section 1-103), which relate to the Mental Health and Substance Abuse Services Law; modifying definitions; adding qualification for assisted outpatient treatment; modifying licensure requirements for ADSAC assessors; and providing an effective date. <EndFT>

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-103, as last amended by Section 1, Chapter 246, O.S.L. 2017 (43A O.S. Supp. 2018, 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 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 psychiatrist who is a diplomate of the American Osteopathic Board of Neurology and Psychiatry,
- c. a physician licensed pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act,
- d. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- e. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,
- f. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,

- g. a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,
- h. a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,
- i. an advanced practice nurse as defined in the Oklahoma Nursing Practice Act,
- j. a physician's assistant who is licensed in good standing in this state, or
- k. a licensed drug and alcohol counselor/mental health (LADC/MH) as defined in the Licensed Alcohol and Drug Counselors Act;

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

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 or an assisted outpatient. The mental health or substance abuse history of the person shall not be the sole basis for this determination.
- c. Unless a person also meets the criteria established in subparagraph a or b of this paragraph, "person requiring treatment" or an "assisted outpatient" shall not mean:
- (1) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,

- (2) a 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 or an assisted outpatient;

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 accordancy of the individual with the treatment plan, and
- e. a statement attesting that the executive director of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the home community of the individual;

18. "Telemedicine" means the practice of health care delivery, diagnosis, consultation, evaluation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine uses audio and video multimedia telecommunication equipment which permits two-way 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;

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

20. "Assisted outpatient" means a person who:

- a. is either currently under the care of a facility certified by the Department of Mental Health and Substance Abuse Services as a Community Mental Health Center, or is being discharged from the custody of the Oklahoma Department of Corrections, or is being discharged from a residential placement by the Office of Juvenile Affairs,
- b. is suffering from a mental illness,

- c. is unlikely to survive safely in the community without supervision, based on a clinical determination,
- d. has a history of lack of compliance with treatment for mental illness that has:
  - (1) prior to the filing of a petition, at least twice within the last thirty-six (36) months been a significant factor in necessitating hospitalization or treatment in a hospital or residential facility, including admission to a community-based structured crisis center as certified by the Oklahoma Department of Mental Health and Substance Abuse Services, or receipt of services in a forensic or other mental health unit of a correctional facility, or a specialized treatment plan for treatment of mental illness in a secure juvenile facility or placement in a specialized residential program for juveniles, or
  - (2) prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last twenty-four (24) months,
- e. is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community,

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

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

SECTION 2. AMENDATORY 43A O.S. 2011, Section 3-461, is amended to read as follows:

Section 3-461. A. For purposes of this section:

1. "ADSAC assessor" means an individual certified by the Department of Mental Health and Substance Abuse Services to conduct the ADSAC assessment;

2. "Alcohol and drug substance abuse course ADSAC assessment" means an assessment process certified by the Department of Mental Health and Substance Abuse Services designed to identify the severity of the alcohol or other drug problems, risks of recidivism and the most appropriate

referral(s) required for license reinstatement, including intensity and duration of clinical interventions;

3. "Alcohol and drug substance abuse treatment program" means a program certified by the Department of Mental Health and Substance Abuse Services for the treatment of alcohol and drug abuse, or alcoholism and drug dependency;

4. "Assessment agency" means an institution or organization certified by the Department to provide alcohol and drug assessments and evaluations related to driver license revocation; and

5. "Satisfactory completion of an assessment" means the participant has successfully completed the requirements of the assessment and the individual conducting the assessment certifies the completion of the requirements to the Department of Public Safety through the Oklahoma Department of Mental Health and Substance Abuse Services.

B. Alcohol and drug substance abuse course assessments shall be offered only by individuals certified by the Department of Mental Health and Substance Abuse Services. Each assessor shall be certified and shall:

1. Possess two (2) years or more of verifiable full-time-equivalent counseling experience in the addiction treatment field;

2. Provide documentation verifying observation of one complete alcohol and drug substance abuse course assessment conducted by a certified assessor. Such observation must receive prior authorization by the Department;

3. Provide proof of attendance at an assessor training course and pass the Department's certification examination for the alcohol and drug substance abuse course assessor;

4. Provide verification of having conducted a complete alcohol and drug substance abuse course assessment under the supervision of a certified alcohol and drug substance abuse course assessor approved by a Department representative;

5. Be allowed one (1) year to complete all requirements related to the assessment application. Failure to meet all requirements within one (1) year shall result in denial of certification. To be reconsidered, the candidate shall be required to reapply to the Department; and

6. Be licensed as a licensed mental health professional as defined in Section 1-103 of this title or certified as an alcohol and drug counselor pursuant to Section 1871 et seq. of Title 59 of the Oklahoma Statutes.

C. The Department of Mental Health and Substance Abuse Services shall promulgate rules and standards regulating the ADSAC assessment and assessment process. Failure to comply with rules and standards promulgated by the Department pursuant to this act shall be grounds for reprimand, suspension, revocation or non-renewal of an assessor's certification.

D. Any individual certified to conduct alcohol and drug substance abuse course assessments pursuant to this section shall certify to the Department of Public Safety through the Oklahoma Department of Mental

Health and Substance Abuse Services all persons who successfully complete such assessments.

SECTION 3. This act shall become effective November 1, 2019.

57-1-5071 SH 12/26/18