

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2023

By: Lepak

AS INTRODUCED

<StartFT>An Act relating to the Department of 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, 2-101, 2-103, as amended by Section 1, Chapter 280, O.S.L. 2017, 2-106 and 2-111, as last amended by Section 1, Chapter 139, O.S.L. 2017 (43A O.S. Supp. 2018, Sections 1-103, 2-103 and 2-111), which relate to the Board of Mental Health and Substance Abuse Services; modifying definitions; authorizing Governor to appoint Commissioner; providing for determination of compensation; making Board an advisory body; transferring duties to the Commissioner; modifying powers and duties of the Board; 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.~~ 3. "Board" means the Board of Mental Health and Substance Abuse Services as established by the Mental Health Law;

~~5.~~ 4. "Commissioner" means the individual selected and appointed by the ~~Board~~ Governor to serve as Commissioner of Mental Health and Substance Abuse Services;

~~6.~~ 5. "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.~~ 6. "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.~~ 7. "Consumer" means a person under care or treatment in a facility pursuant to the Mental Health Law, or in an outpatient status;

~~9.~~ 8. "Care and treatment" means medical care and behavioral health services, as well as food, clothing and maintenance, furnished to a person;

~~10.~~ 9. 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.~~ 10. "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.~~ 11. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

~~13.~~

12. 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.~~ 13. "Petitioner" means a person who files a petition alleging that an individual is a person requiring treatment or an assisted outpatient;

~~15.~~ 14. "Executive director" means the person in charge of a facility as defined in this section;

~~16.~~ 15. "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.~~ 16. "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 accordence 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.~~ 17. "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.~~ 18. "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.~~ 19. "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, 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.~~ 20. "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 2-101, is amended to read as follows:

Section 2-101. A. 1. There is hereby established in this state a Department of Mental Health and Substance Abuse Services.

2. This Department's ~~governing board shall be the Board of Mental Health and Substance Abuse Services, and its~~ chief executive officer shall be the Commissioner of Mental Health and Substance Abuse Services. The Commissioner shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at the pleasure of the Governor and may be removed or replaced without cause. Compensation for the

Commissioner shall be determined pursuant to Section 3601.2 of Title 74 of the Oklahoma Statutes.

3. The Department of Mental Health and Substance Abuse Services shall exercise all functions of the state in relation to the administration and operation of all state facilities for the care and treatment of the mentally ill and drug- or alcohol-dependent persons.

B. All references in the Oklahoma Statutes to the Department of Mental Health or the Board of Mental Health shall be construed to refer to the Department of Mental Health and Substance Abuse Services or the Board of Mental Health and Substance Abuse Services, respectively.

SECTION 3. AMENDATORY 43A O.S. 2011, Section 2-103, as amended by Section 1, Chapter 280, O.S.L. 2017 (43A O.S. Supp. 2018, Section 2-103), is amended to read as follows:

Section 2-103. A. The Board of Mental Health and Substance Abuse Services shall be an advisory body to the Commissioner of Mental Health and Substance Abuse Services and shall be composed of eleven (11) members, appointed by the Governor, with the advice and consent of the Senate. All duties and powers of the Board shall be transferred to the Commissioner. Any provision in statute that provides to the Board authority that is not advisory in nature shall be deemed to grant the duty or power to the Commissioner. Each term is for a seven-year period and members may be reappointed to subsequent terms. Board members shall meet the following criteria:

1. One member, who shall be an allopathic physician licensed to practice in this state and appointed from a list containing the names of not less than two allopathic physicians and not less than two psychiatrists submitted to the Governor by the Oklahoma State Medical Association;

2. One member shall be an osteopathic physician licensed to practice in this state, appointed from a list containing the names of not less than two osteopathic physicians and not less than two psychiatrists submitted to the Governor by the Oklahoma Osteopathic Association;

3. 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;

4. 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;

5. 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; and

6. 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. At least one physician appointed pursuant to paragraph 1 or ~~paragraph~~ 2 of subsection A of this section shall be a psychiatrist certified as a diplomate of the American Board of Psychiatry and Neurology, or as a diplomate of the American Osteopathic Board of Neurology and Psychiatry.

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

~~E. 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. 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. 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. 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.~~ 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 and the State Board of Osteopathic Examiners during members' terms on the Board of Mental Health and Substance Abuse Services.

SECTION 4. AMENDATORY 43A O.S. 2011, 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~~ Commissioner 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~~ Commissioner 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~~ Commissioner 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.

C. The 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 5. AMENDATORY 43A O.S. 2011, Section 2-111, as last amended by Section 1, Chapter 139, O.S.L. 2017 (43A O.S. Supp. 2018, Section 2-111), is amended to read as follows:

Section 2-111. A. 1. The ~~Board~~ Commissioner of Mental Health and Substance Abuse Services is hereby authorized and directed to create a trust into which all real property held by or for the benefit of the Department of Mental Health and Substance Abuse Services shall be transferred.

2. The trust shall provide that:

- a. the property placed into the trust may never be sold, except for the tracts specifically described in subparagraph c of this paragraph, if it is determined by the trustees for the Department's Real Property Trust and by the Department that such a sale is in the best interests of the Department, and then the proceeds shall be used exclusively for tangible infrastructure improvements that benefit the persons served by the Department, otherwise the property shall be held in perpetuity for the sole benefit of the Department,
- b. the property held by the trust which is not needed for use by the Department may be leased or rented to others and all income received from such leases or rentals shall be payable to the Department for use by the Department to fulfill the purposes of the Department, except as provided in subparagraph d of this section,
- c. the following tract or tracts of land may be sold as set forth in subparagraph a of this paragraph:
 - (1) Land owned by the Department located in Sections 20 and 29, Township 9 North, Range 2 West, Cleveland County, Oklahoma,
 - (2) Land owned by the Department located in Block 5 of Culbertson Heights Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, and

(3) Land owned by the Department located in Section 27,
Township 9 North, Range 2 West, Cleveland County,
Oklahoma, and

d. under no condition should any real property held in trust
be sold to fund prevention, mental health or addiction
treatment services.

B. Upon the creation of the trust authorized in subsection A of this
section, the Office of Management and Enterprise Services is directed to
provide all necessary assistance to the Department of Mental Health and
Substance Abuse Services to identify and transfer all property held by or
for the benefit of the Department of Mental Health and Substance Abuse
Services to the trust. Except as provided in subsection C of this
section, the Office of Management and Enterprise Services is authorized
and directed to provide all requested assistance to the Department of
Mental Health and Substance Abuse Services in leasing property placed in
such trust.

C. The Commissioners of the Land Office are authorized and directed
to provide all requested assistance to the Department of Mental Health
and Substance Abuse Services in leasing mineral interests placed in such
trust.

SECTION 6. This act shall become effective November 1, 2019.