

1 **SENATE FLOOR VERSION**

2 April 5, 2021

3 ENGROSSED HOUSE
4 BILL NO. 1689

By: Newton and **Bell** of the
House

5 and

6 McCortney of the Senate

7
8
9 An Act relating to telemedicine; amending 36 O.S.
10 2011, Section 6802, which relates to telemedicine;
11 defining term; amending 43A O.S. 2011, Section 1-103,
12 as last amended by Section 29, Chapter 475, O.S.L.
13 2019 (43A O.S. Supp. 2020, Section 1-103), which
relates to definitions; defining term; amending
14 Section 1, Chapter 228, O.S.L. 2017 (59 O.S. Supp.
15 2020, Section 478), which relates to telemedicine;
16 defining term; and providing an effective date.

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

18 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6802, is
19 amended to read as follows:

20 Section 6802. As used in this act, "telemedicine" means the
21 practice of health care delivery, diagnosis, consultation,
22 treatment, including, but not limited to, the treatment and
23 prevention of strokes, transfer of medical data, or exchange of
24 medical education information by means of audio, video, or data

1 communications. Telemedicine ~~is not a~~ includes consultation
2 provided by telephone ~~or facsimile machine~~.

3 SECTION 2. AMENDATORY 43A O.S. 2011, Section 1-103, as
4 last amended by Section 29, Chapter 475, O.S.L. 2019 (43A O.S. Supp.
5 2020, Section 1-103), is amended to read as follows:

6 Section 1-103. When used in this title, unless otherwise
7 expressly stated, or unless the context or subject matter otherwise
8 requires:

9 1. "Department" means the Department of Mental Health and
10 Substance Abuse Services;

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

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

17 4. "Board" means the Board of Mental Health and Substance Abuse
18 Services as established by the Mental Health Law;

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

22 6. "Indigent person" means a person who has not sufficient
23 assets or resources to support the person and to support members of
24

1 the family of the person lawfully dependent on the person for
2 support;

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

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

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

18 10. Whenever in this law or in any other law, or in any rule or
19 order made or promulgated pursuant to this law or to any other law,
20 or in the printed forms prepared for the admission of consumers or
21 for statistical reports, the words "insane", "insanity", "lunacy",
22 "mentally sick", "mental disease" or "mental disorder" are used,
23 such terms shall have equal significance to the words "mental
24 illness";

1 11. "Licensed mental health professional" means:

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

4 b. a psychiatrist who is a diplomate of the American
5 Osteopathic Board of Neurology and Psychiatry,

6 c. a physician licensed pursuant to the Oklahoma
7 Allopathic Medical and Surgical Licensure and
8 Supervision Act or the Oklahoma Osteopathic Medicine
9 Act,

10 d. a clinical psychologist who is duly licensed to
11 practice by the State Board of Examiners of
12 Psychologists,

13 e. a professional counselor licensed pursuant to the
14 Licensed Professional Counselors Act,

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

18 g. a licensed marital and family therapist as defined in
19 the Marital and Family Therapist Licensure Act,

20 h. a licensed behavioral practitioner as defined in the
21 Licensed Behavioral Practitioner Act,

22 i. an advanced practice nurse as defined in the Oklahoma
23 Nursing Practice Act,

24

1 j. a physician's assistant who is licensed in good
2 standing in this state, or

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

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

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

12 (1) poses a substantial risk of immediate physical
13 harm to self as manifested by evidence or serious
14 threats of or attempts at suicide or other
15 significant self-inflicted bodily harm,

16 (2) poses a substantial risk of immediate physical
17 harm to another person or persons as manifested
18 by evidence of violent behavior directed toward
19 another person or persons,

20 (3) has placed another person or persons in a
21 reasonable fear of violent behavior directed
22 towards such person or persons or serious
23 physical harm to them as manifested by serious
24 and immediate threats,

1 (4) is in a condition of severe deterioration such
2 that, without immediate intervention, there
3 exists a substantial risk that severe impairment
4 or injury will result to the person, or

5 (5) poses a substantial risk of immediate serious
6 physical injury to self or death as manifested by
7 evidence that the person is unable to provide for
8 and is not providing for his or her basic
9 physical needs.

10 b. The mental health or substance abuse history of the
11 person may be used as part of the evidence to
12 determine whether the person is a person requiring
13 treatment or an assisted outpatient. The mental
14 health or substance abuse history of the person shall
15 not be the sole basis for this determination.

16 c. Unless a person also meets the criteria established in
17 subparagraph a or b of this paragraph, "person
18 requiring treatment" or an "assisted outpatient" shall
19 not mean:

20 (1) a person whose mental processes have been
21 weakened or impaired by reason of advanced years,
22 dementia, or Alzheimer's disease,
23
24

1 (2) a person with intellectual or developmental
2 disability as defined in Title 10 of the Oklahoma
3 Statutes,

4 (3) a person with seizure disorder,

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

6 (5) a person who is homeless.

7 d. A person who meets the criteria established in this
8 section but who is medically unstable, or the facility
9 holding the person is unable to treat the additional
10 medical conditions of that person, should be
11 discharged and transported in accordance with Section
12 1-110 of this title;

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

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

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

1 17. "Individualized treatment plan" means a proposal developed
2 during the stay of an individual in a facility, under the provisions
3 of this title, which is specifically tailored to the treatment needs
4 of the individual. Each plan shall clearly include the following:

- 5 a. a statement of treatment goals or objectives, based
6 upon and related to a clinical evaluation, which can
7 be reasonably achieved within a designated time
8 interval,
- 9 b. treatment methods and procedures to be used to obtain
10 these goals, which methods and procedures are related
11 to each of these goals and which include specific
12 prognosis for achieving each of these goals,
- 13 c. identification of the types of professional personnel
14 who will carry out the treatment procedures, including
15 appropriate medical or other professional involvement
16 by a physician or other health professional properly
17 qualified to fulfill legal requirements mandated under
18 state and federal law,
- 19 d. documentation of involvement by the individual
20 receiving treatment and, if applicable, the accordance
21 of the individual with the treatment plan, and
- 22 e. a statement attesting that the executive director of
23 the facility or clinical director has made a
24 reasonable effort to meet the plan's individualized

1 treatment goals in the least restrictive environment
2 possible closest to the home community of the
3 individual;

4 18. "Telemedicine" means the practice of health care delivery,
5 diagnosis, consultation, evaluation, treatment, transfer of medical
6 data, or exchange of medical education information by means of
7 audio, video, or data communications. Telemedicine uses audio and
8 video multimedia telecommunication equipment which permits two-way
9 real-time communication between a health care practitioner and a
10 patient who are not in the same physical location. Telemedicine
11 shall ~~not~~ include consultation provided by telephone ~~or facsimile~~
12 ~~machine~~;

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

21 20. "Assisted outpatient" means a person who:

- 22 a. is either currently under the care of a facility
23 certified by the Department of Mental Health and
24 Substance Abuse Services as a Community Mental Health

1 Center, or is being discharged from the custody of the
2 Oklahoma Department of Corrections, or is being
3 discharged from a residential placement by the Office
4 of Juvenile Affairs,

5 b. is suffering from a mental illness,

6 c. is unlikely to survive safely in the community without
7 supervision, based on a clinical determination,

8 d. has a history of lack of compliance with treatment for
9 mental illness that has:

- 10 (1) prior to the filing of a petition, at least twice
11 within the last thirty-six (36) months been a
12 significant factor in necessitating
13 hospitalization or treatment in a hospital or
14 residential facility, including admission to a
15 community-based structured crisis center as
16 certified by the Oklahoma Department of Mental
17 Health and Substance Abuse Services, or receipt
18 of services in a forensic or other mental health
19 unit of a correctional facility, or a specialized
20 treatment plan for treatment of mental illness in
21 a secure juvenile facility or placement in a
22 specialized residential program for juveniles, or
23 (2) prior to the filing of the petition, resulted in
24 one or more acts of serious violent behavior

1 toward self or others or threats of, or attempts
2 at, serious physical harm to self or others
3 within the last twenty-four (24) months,

4 e. is, as a result of his or her mental illness, unlikely
5 to voluntarily participate in outpatient treatment
6 that would enable him or her to live safely in the
7 community,

8 f. in view of his or her treatment history and current
9 behavior, is in need of assisted outpatient treatment
10 in order to prevent a relapse or deterioration which
11 would be likely to result in serious harm to the
12 person or persons as defined in this section, and

13 g. is likely to benefit from assisted outpatient
14 treatment; and

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

22 SECTION 3. AMENDATORY Section 1, Chapter 228, O.S.L.
23 2017 (59 O.S. Supp. 2020, Section 478), is amended to read as
24 follows:

1 Section 478. ~~A.~~ As used in this act:

2 1. ~~"Store and forward~~ "Store-and-forward technologies" means
3 the transmission of a patient's medical information from an
4 originating site to the physician or practitioner at the distant
5 site; provided, photographs visualized by a telecommunications
6 system shall be specific to the patient's medical condition and
7 adequate for furnishing or confirming a diagnosis or treatment plan;
8 and

9 2. "Telemedicine" means the practice of health care delivery,
10 diagnosis, consultation, evaluation and treatment, transfer of
11 medical data or exchange of medical education information by means
12 of a two-way, real-time interactive communication, not to exclude
13 ~~store and forward~~ store-and-forward technologies, between a patient
14 and a physician with access to and reviewing the patient's relevant
15 clinical information prior to the telemedicine visit.

16 "Telemedicine" and ~~"store and forward~~ "store-and-forward
17 technologies" shall ~~not~~ include consultations provided by telephone
18 audio-only communication, electronic mail, text message, instant
19 messaging conversation, adaptive website questionnaire, ~~nonsecure~~
20 and secure video conference ~~or facsimile machine~~.

21 SECTION 4. This act shall become effective November 1, 2021.

22 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
23 April 5, 2021 - DO PASS
24