

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2798

By: Pfeiffer

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5
6 AS INTRODUCED

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

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

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

19 Section 6802. As used in this act, "telemedicine" means the
20 ~~practice of health care delivery, diagnosis, consultation,~~
21 ~~treatment, including but not limited to, the treatment and~~
22 ~~prevention of strokes, transfer of medical data, or exchange of~~
23 ~~medical education information by means of audio, video, or data~~
24 ~~communications. Telemedicine is not a consultation provided by~~
telephone or facsimile machine mode of delivering health care
through the use of synchronous or asynchronous telecommunications

1 technologies capable of assisting a provider to deliver patient
2 health care services, including but not limited to assessment,
3 diagnosis, treatment, and remote monitoring of a patient,
4 consultation with a patient, transfer of medical data, patient and
5 professional health-related education, public health services, and
6 health administration, in compliance with all applicable state and
7 federal laws, including the Health Insurance Portability and
8 Accountability Act (HIPAA), Section 1320 of Title 42 of the United
9 States Code, and the Health Information Technology for Economic and
10 Clinical Health Act (HITECH), Sections 300jj through 300jj-52 of
11 Title 42 of the United States Code.

12 SECTION 2. AMENDATORY Section 1, Chapter 228, O.S.L.
13 2017 (59 O.S. Supp. 2020, Section 478), is amended to read as
14 follows:

15 Section 478. A. As used in this act:

16 1. "Store and forward technologies" means the transmission of a
17 patient's medical information from an originating site to the
18 physician or practitioner at the distant site; provided, photographs
19 visualized by a telecommunications system shall be specific to the
20 patient's medical condition and adequate for furnishing or
21 confirming a diagnosis or treatment plan;

22 2. "Telemedicine" means the ~~practice of health care delivery,~~
23 ~~diagnosis, consultation, evaluation and treatment, transfer of~~
24 ~~medical data or exchange of medical education information by means~~

1 ~~of a two-way, real-time interactive communication, not to exclude~~
2 ~~store and forward technologies, between a patient and a physician~~
3 ~~with access to and reviewing the patient's relevant clinical~~
4 ~~information prior to the telemedicine visit.~~

5 "Telemedicine" and "store and forward technologies" shall not
6 include consultations provided by telephone audio-only
7 communication, electronic mail, text message, instant messaging
8 conversation, website questionnaire, nonsecure video conference or
9 faesimile machine mode of delivering health care through the use of
10 synchronous or asynchronous telecommunications technologies capable
11 of assisting a provider to deliver patient health care services,
12 including but not limited to assessment, diagnosis, treatment, and
13 remote monitoring of a patient, consultation with a patient,
14 transfer of medical data, patient and professional health-related
15 education, public health services, and health administration, in
16 compliance with all applicable state and federal laws, including the
17 Health Insurance Portability and Accountability Act (HIPAA), Section
18 1320 of Title 42 of the United States Code, and the Health
19 Information Technology for Economic and Clinical Health Act
20 (HITECH), Sections 300jj through 300jj-52 of Title 42 of the United
21 States Code.

22 SECTION 3. AMENDATORY 43A O.S. 2011, Section 1-103, as
23 last amended by Section 29, Chapter 475, O.S.L. 2019 (43A O.S. Supp.
24 2020, Section 1-103), is amended to read as follows:

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

4 1. "Department" means the Department of Mental Health and
5 Substance Abuse Services;

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

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

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

14 5. "Commissioner" means the individual selected and appointed
15 by the Board to serve as Commissioner of Mental Health and Substance
16 Abuse Services;

17 6. "Indigent person" means a person who has not sufficient
18 assets or resources to support the person and to support members of
19 the family of the person lawfully dependent on the person for
20 support;

21 7. "Facility" means any hospital, school, building, house or
22 retreat, authorized by law to have the care, treatment or custody of
23 an individual with mental illness, or drug or alcohol dependency,
24 gambling addiction, eating disorders, an opioid substitution

1 treatment program, including, but not limited to, public or private
2 hospitals, community mental health centers, clinics, satellites or
3 facilities; provided, that facility shall not mean a child guidance
4 center operated by the State Department of Health;

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

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

11 10. Whenever in this law or in any other law, or in any rule or
12 order made or promulgated pursuant to this law or to any other law,
13 or in the printed forms prepared for the admission of consumers or
14 for statistical reports, the words "insane", "insanity", "lunacy",
15 "mentally sick", "mental disease" or "mental disorder" are used,
16 such terms shall have equal significance to the words "mental
17 illness";

18 11. "Licensed mental health professional" means:

19 a. a psychiatrist who is a diplomate of the American
20 Board of Psychiatry and Neurology,

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

23 c. a physician licensed pursuant to the Oklahoma
24 Allopathic Medical and Surgical Licensure and

1 Supervision Act or the Oklahoma Osteopathic Medicine
2 Act,

3 d. a clinical psychologist who is duly licensed to
4 practice by the State Board of Examiners of
5 Psychologists,

6 e. a professional counselor licensed pursuant to the
7 Licensed Professional Counselors Act,

8 f. a person licensed as a clinical social worker pursuant
9 to the provisions of the Social Worker's Licensing
10 Act,

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

13 h. a licensed behavioral practitioner as defined in the
14 Licensed Behavioral Practitioner Act,

15 i. an advanced practice nurse as defined in the Oklahoma
16 Nursing Practice Act,

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

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

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

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

4 (1) poses a substantial risk of immediate physical
5 harm to self as manifested by evidence or serious
6 threats of or attempts at suicide or other
7 significant self-inflicted bodily harm,

8 (2) poses a substantial risk of immediate physical
9 harm to another person or persons as manifested
10 by evidence of violent behavior directed toward
11 another person or persons,

12 (3) has placed another person or persons in a
13 reasonable fear of violent behavior directed
14 towards such person or persons or serious
15 physical harm to them as manifested by serious
16 and immediate threats,

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

21 (5) poses a substantial risk of immediate serious
22 physical injury to self or death as manifested by
23 evidence that the person is unable to provide for
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1 and is not providing for his or her basic
2 physical needs.

3 b. The mental health or substance abuse history of the
4 person may be used as part of the evidence to
5 determine whether the person is a person requiring
6 treatment or an assisted outpatient. The mental
7 health or substance abuse history of the person shall
8 not be the sole basis for this determination.

9 c. Unless a person also meets the criteria established in
10 subparagraph a or b of this paragraph, "person
11 requiring treatment" or an "assisted outpatient" shall
12 not mean:

13 (1) a person whose mental processes have been
14 weakened or impaired by reason of advanced years,
15 dementia, or Alzheimer's disease,

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

19 (3) a person with seizure disorder,

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

21 (5) a person who is homeless.

22 d. A person who meets the criteria established in this
23 section but who is medically unstable, or the facility
24 holding the person is unable to treat the additional

1 medical conditions of that person, should be
2 discharged and transported in accordance with Section
3 1-110 of this title;

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

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

9 16. "Private hospital or facility" means any general hospital
10 maintaining a neuro-psychiatric unit or ward, or any private
11 hospital or facility for care and treatment of a person having a
12 mental illness, which is not supported by the state or federal
13 government. The term "private hospital" or "facility" shall not
14 include nursing homes or other facilities maintained primarily for
15 the care of elderly and disabled persons;

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

- 20 a. a statement of treatment goals or objectives, based
21 upon and related to a clinical evaluation, which can
22 be reasonably achieved within a designated time
23 interval,

- 1 b. treatment methods and procedures to be used to obtain
2 these goals, which methods and procedures are related
3 to each of these goals and which include specific
4 prognosis for achieving each of these goals,
5 c. identification of the types of professional personnel
6 who will carry out the treatment procedures, including
7 appropriate medical or other professional involvement
8 by a physician or other health professional properly
9 qualified to fulfill legal requirements mandated under
10 state and federal law,
11 d. documentation of involvement by the individual
12 receiving treatment and, if applicable, the accordance
13 of the individual with the treatment plan, and
14 e. a statement attesting that the executive director of
15 the facility or clinical director has made a
16 reasonable effort to meet the plan's individualized
17 treatment goals in the least restrictive environment
18 possible closest to the home community of the
19 individual;

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

1 ~~real-time communication between a health care practitioner and a~~
2 ~~patient who are not in the same physical location. Telemedicine~~
3 ~~shall not include consultation provided by telephone or facsimile~~
4 ~~machine~~ mode of delivering health care through the use of
5 synchronous or asynchronous telecommunications technologies capable
6 of assisting a provider to deliver patient health care services,
7 including but not limited to assessment, diagnosis, treatment, and
8 remote monitoring of a patient, consultation with a patient,
9 transfer of medical data, patient and professional health-related
10 education, public health services, and health administration, in
11 compliance with all applicable state and federal laws, including the
12 Health Insurance Portability and Accountability Act (HIPAA), Section
13 1320 of Title 42 of the United States Code, and the Health
14 Information Technology for Economic and Clinical Health Act
15 (HITECH), Sections 300jj through 300jj-52 of Title 42 of the United
16 States Code;

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

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

2 a. is either currently under the care of a facility
3 certified by the Department of Mental Health and
4 Substance Abuse Services as a Community Mental Health
5 Center, or is being discharged from the custody of the
6 Oklahoma Department of Corrections, or is being
7 discharged from a residential placement by the Office
8 of Juvenile Affairs,

9 b. is suffering from a mental illness,

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

12 d. has a history of lack of compliance with treatment for
13 mental illness that has:

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

1 a secure juvenile facility or placement in a
2 specialized residential program for juveniles, or
3 (2) prior to the filing of the petition, resulted in
4 one or more acts of serious violent behavior
5 toward self or others or threats of, or attempts
6 at, serious physical harm to self or others
7 within the last twenty-four (24) months,

8 e. is, as a result of his or her mental illness, unlikely
9 to voluntarily participate in outpatient treatment
10 that would enable him or her to live safely in the
11 community,

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

17 g. is likely to benefit from assisted outpatient
18 treatment; and

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

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

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