

# An Act

ENROLLED SENATE  
BILL NO. 673

By: McCortney of the Senate

and

Newton of the House

An Act relating to telemedicine; amending 36 O.S. 2011, Section 6802, which relates to definitions; amending 43A O.S. 2011, Section 1-103, as last amended by Section 29, Chapter 475, O.S.L. 2019 (43A O.S. Supp. 2020, Section 1-103), which relates to definitions; amending Section 1, Chapter 228, O.S.L. 2017 (59 O.S. Supp. 2020, Section 478), which relates to definitions; making certain definitions uniform; amending Section 2, Chapter 228, O.S.L. 2017 (59 O.S. Supp. 2020, Section 478.1), which relates to establishment of physician-patient relationship through telemedicine; deleting obsolete language; and providing an effective date.

SUBJECT: Telemedicine

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

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

Section 6802. As used in ~~this act~~ the Oklahoma Telemedicine Act, "telemedicine" means ~~the practice of health care delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of strokes, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine~~ technology-enabled health

and care management and delivery systems that extend capacity and access, which includes:

- a. synchronous mechanisms, which may include live audiovisual interaction between a patient and a health care professional or real-time provider to provider consultation through live interactive audiovisual means,
- b. asynchronous mechanisms, which include store and forward transfers, online exchange of health information between a patient and a health care professional and online exchange of health information between health care professionals, but shall not include the use of automated text messages or automated mobile applications that serve as the sole interaction between a patient and a health care professional,
- c. remote patient monitoring, and
- d. other electronic means that support clinical health care, professional consultation, patient and professional health-related education, public health and health administration.

SECTION 2. AMENDATORY 43A O.S. 2011, Section 1-103, as last amended by Section 29, Chapter 475, O.S.L. 2019 (43A O.S. Supp. 2020, 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 person with intellectual or developmental disability 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 accordance 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~~ technology-enabled health and care management and delivery systems that extend capacity and access, which includes:

- a. synchronous mechanisms, which may include live audiovisual interaction between a patient and a health care professional or real-time provider to provider

consultation through live interactive audiovisual means,

- b. asynchronous mechanisms, which include store and forward transfers, online exchange of health information between a patient and a health care professional and online exchange of health information between health care professionals, but shall not include the use of automated text messages or automated mobile applications that serve as the sole interaction between a patient and a health care professional,
- c. remote patient monitoring, and
- d. other electronic means that support clinical health care, professional consultation, patient and professional health-related education, public health and health administration;

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

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

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

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

~~"Telemedicine" and "store and forward technologies" shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference or facsimile machine~~ Section 478.1 of this title, "telemedicine" means technology-enabled health and care management and delivery systems that extend capacity and access, which includes:

- a. synchronous mechanisms, which may include live audiovisual interaction between a patient and a health care professional or real-time provider to provider consultation through live interactive audiovisual means,

- b. asynchronous mechanisms, which include store and forward transfers, online exchange of health information between a patient and a health care professional and online exchange of health information between health care professionals, but shall not include the use of automated text messages or automated mobile applications that serve as the sole interaction between a patient and a health care professional,
- c. remote patient monitoring, and
- d. other electronic means that support clinical health care, professional consultation, patient and professional health-related education, public health and health administration.

SECTION 4. AMENDATORY Section 2, Chapter 228, O.S.L. 2017 (59 O.S. Supp. 2020, Section 478.1), is amended to read as follows:

Section 478.1. A. Unless otherwise prohibited by law, a valid physician-patient relationship may be established by an allopathic or osteopathic physician with a patient located in this state through telemedicine, provided that the physician:

1. Holds a license to practice medicine in this state;
2. Confirms with the patient the patient's identity and physical location; and
3. Provides the patient with the treating physician's identity and professional credentials.

B. ~~Telemedicine and store and forward technology~~ encounters shall comply with the Health Insurance Portability and Accountability Act of 1996 and ensure that all patient communications and records are secure and confidential.

C. ~~Telemedicine encounters and encounters involving store and forward technologies~~ in this state shall not be used to establish a valid physician-patient relationship for the purpose of prescribing

opiates, synthetic opiates, semisynthetic opiates, benzodiazepine or carisprodol, but may be used to prescribe opioid antagonists or partial agonists pursuant to Sections 1-2506.1 and 1-2506.2 of Title 63 of the Oklahoma Statutes.

D. A physician-patient relationship shall not be created solely based on the receipt of patient health information by a physician. The duties and obligations created by a physician-patient relationship shall not apply until the physician affirmatively:

1. Undertakes to diagnose and treat the patient; or
2. Participates in the diagnosis and treatment of the patient.

SECTION 5. This act shall become effective November 1, 2021.

Passed the Senate the 1st day of March, 2021.

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Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2021.

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_