

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 15. CONSUMER RIGHTS**

SUBCHAPTER 1. GENERAL PROVISIONS

450:15-1-1. Purpose

This Chapter implements 43A O.S. §§ 2-108, 2-109 and addresses the rights of individuals receiving services, either voluntarily or involuntarily from facilities operated by, certified by or under contract with, the Department of Mental Health and Substance Abuse Services, ~~and~~ outlines the rules governing the operation of the ODMHSAS Office of Consumer Advocacy, and including addresses investigations of alleged consumer rights violations conducted by that Office ~~the Department~~.

450:15-1-2. Definitions

The following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by staff responsible for the consumer's health, safety, or welfare, including but not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) use of mechanical restraints without proper authority;
- (E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or
- (F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a consumer.

"Advocate" means an employee of the Office of Consumer Advocacy, who provides assistance to consumers in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, ~~conducts investigations~~ and seeks to improve the quality of the consumer's life and care.

"Advocate General" means the chief administrative officer of the ODMHSAS Office of Consumer Advocacy.

"Board" means Board of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contacts.

"Consumer committee" or **" Consumer government"** means any established group within the facility comprised of consumers, led by consumers and which meets regularly to address consumer concerns to support the overall operations of the facility.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse services.

"Designated record set" means health information, in any medium including paper, oral, video, electronic, film, audio and digital, maintained by or for facilities operated by ODMHSAS for the purpose, in whole or in part, for making decisions about a consumer, that is:

(A) The medical records about a consumer including but not limited to the intake, screenings, assessments, history and physical examination, psychosocial evaluation, consultation report(s), treatment and continuing care plan, medication record(s), progress notes, psychometric/psychological testing results, discharge assessment, discharge plan, discharge summary, physician orders, immunization record(s), laboratory reports, ancillary therapy notes and reports, and case management records; or

(B) The eligibility, billing and payment information and minimum data sets maintained by or for the facility.

(C) Records that are sometimes filed with the medical records but are not part of the designated record set include:

(i) Administrative records including court commitment paperwork, critical incident reports or peer review documents; and

(ii) Information compiled in anticipation of litigation.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Exploitation" or **"exploit"** means an unjust or improper use of the resources of a consumer for the profit or advantage, pecuniary or otherwise, of a person other than the consumer through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means a public or private agency, corporation, partnership, or other entity operated or certified by ODMHSAS or with which ODMHSAS contracts to provide the physical custody, detention or treatment of consumers.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person. As used in this subchapter, guardian includes a general or limited guardian of the person, a general or limited guardian of the estate, a special guardian, and a temporary guardian.

"Licensed mental health professional" or "LMHP" means:

- (A) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;
- (B) a physician licensed pursuant to Section 480 et seq. or Section 620 et seq. of Title 59 of the Oklahoma Statutes who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (C) a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) a professional counselor licensed pursuant to Section 1901 et seq. of Title 59 of the Oklahoma Statutes;
- (E) a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act;
- (F) a licensed marital and family therapist as defined in Section 1925.1 et seq. of Title 59 of the Oklahoma Statutes;
- (G) a licensed behavioral practitioner as defined in Section 1930 et seq. of Title 59 of the Oklahoma Statutes;
- (H) an advanced practice nurse as defined in Section 567.1 et seq. of Title 59 of the Oklahoma Statutes specializing in mental health; or
- (I) a physician's assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed mental health professional" or "LMHP" as defined in Title 43A §1-103 (11).

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, and rights violation.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any

person who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Mistreatment" means an act or omission that results in or creates an unreasonable risk of harm to a consumer and that also:

(A) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices; or

(B) unintentional excessive or unauthorized use of force.

"Money" means any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

"Neglect" means:

(A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;

(B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. §256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. §256(A)(1)(a) and maintained in the Office of Administrative Rules.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Privacy Officer" means the employee of ODMHSAS designated to provide guidance on state and federal privacy laws.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Resident" means a person residing in a residential care facility certified by ODMHSAS.

"Resident committee" or **"Resident government"** means any established group within the facility comprised of residents, led by residents and which meets regularly to address resident concerns to support the overall operations of the facility.

"Residential care facility" or **"RCF"** means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act 63 O.S., §§1-819 through 1-840, other than a hotel, fraternity or sorority house, or college or university dormitory, which is certified pursuant to 43 O.S. §3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"Restraint" refers to manual, mechanical and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier.

"Sexual abuse" includes:

- (A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by staff;
- (B) oral, anal or vaginal penetration of a consumer by staff;
- (C) the anal or vaginal penetration of a consumer by staff with any other object; or
- (D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by staff; or
- (E) indecent exposure by staff providing services to the consumer.

"Sexual exploitation" by staff with regard to a consumer includes:

- (A) staff allowing, permitting or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, which results in harm to a consumer; or
- (B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene or pornographic photographing, filming or depicting of a consumer in those acts as defined by state law.

"Staff" means an agent or employee of a public or private institution or facility responsible for the care of a client or consumer and providing services to the client or consumer.

"Treatment Advocate" is a family member or other concerned individual designated by a consumer to participate in treatment and discharge planning, and acts in the best interest of and serves as an advocate for the consumer.

"Verbal Abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors by staff that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-8. Right to freedom from mistreatment, abuse and neglect

- (a) Staff shall not mistreat, physically, sexually, verbally or otherwise abuse any consumer. Visitors or other consumers shall not be permitted to physically, sexually, verbally or otherwise abuse any consumer. Staff shall not neglect any consumer.
- (b) The facility director shall ensure a critical incident report is completed for each alleged occurrence of abuse or neglect and a copy is forwarded to the ODMHSAS division that is designated Office of Consumer Advocacy for to review or investigation investigate allegations of mistreatment, abuse or neglect.

(c) In cases of sexual or physical abuse, the person in charge of the facility shall promptly inform the County Sheriff or the District Attorney so that a criminal investigation can be initiated.

PART 3. CONSUMER GRIEVANCE PROCEDURE

450:15-3-45. Consumer grievance policy and procedures

Facilities shall have a written grievance policy that includes:

- (1) A written notice of the grievance procedure is provided to each consumer or guardian and, to an individual of the consumer's choice;
- (2) Time frames for the grievance procedures which allow for an expedient resolution of consumer grievance(s);
 - (A) Inpatient and residential programs shall be a seven (7) day timeframe;
 - (B) Outpatient, intensive outpatient and day treatment programs shall be a fourteen (14) day timeframe;
 - (C) Crisis stabilization, medical detoxification and social detoxification programs shall have a three (3) day timeframe;
- ~~(3) The provision of written notification to the consumer of the grievance outcome and mechanism by which an individual may appeal the outcome;~~
- ~~(4) ODMHSAS operated facility procedures shall include a process by which the consumer may appeal the grievance outcome to the Consumer Advocacy Division. The Consumer Advocacy Division shall develop procedures for such external appeals;~~
- ~~(5) A procedure for advising the consumer he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division and the mechanism for contacting the Consumer Advocacy Division;~~
- ~~(6) Name(s) of the individual(s) responsible for coordinating the program's grievance procedure and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision making is the subject of a grievance, decision making authority shall be delegated;~~
- (5) The provision of written notification to the consumer of the grievance outcome and mechanism by which an individual may appeal the outcome;
- (6) ODMHSAS operated facility procedures shall include a process by which the consumer may appeal the grievance outcome to the Commissioner or designee;
- (7) A mechanism to monitor the grievance process and improve performance based on outcomes;
- (8) An annual review of the grievance policy and procedure; and
- (9) The ongoing monitoring of the grievance process and, based on outcomes, adjust and improve processes.

PART 11. RESIDENT RIGHTS, MENTAL HEALTH RESIDENTIAL CARE FACILITIES

450:15-3-81. Resident rights

(a) Each resident shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged by due

process of law by a court of competent jurisdiction. Each facility shall insure each resident has the rights specified as follows.

- (1) Each resident has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.
- (2) Each resident has the right to a safe, sanitary, and humane living environment.
- (3) Each resident has the right to a humane psychological environment protecting them from harm, abuse, and neglect.
- (4) Each resident has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve his or her functioning.
- (5) Each resident has the right to receive services suited to his or her condition and needs for treatment without regard to his or her race, religion, gender, ethnic origin, age, degree of disability, handicapping condition, legal status, sexual orientation.
- (6) Each resident, on admission, has the absolute right to communicate his or her change of address with a relative, friend, clergy, or attorney, by telephone or mail.
- (7) Each resident shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.
- (8) Each resident has the right to uncensored, private communications including, but not limited to, letters, telephone calls, and personal visits. Copies of any personal letter, sent or received, by a resident shall not be kept in his or her clinical record.
- (9) No resident shall ever be neglected or sexually, physically, verbally, or otherwise abused.
- (10) Each resident has the right to easy access to his or her personal funds on deposit with the facility, and shall be entitled to an accounting for said funds. A limitation on access to such funds may be made when it is determined, and documented, as essential to prevent the resident from unreasonably and significantly dissipating their assets.
- (11) Each resident has the right to have his or her own clothing and personal possessions. This right may be forfeited, or limited, only if the personal property is determined to be potentially dangerous to the client, or others, or if the property is determined to be functionally unsafe.
- (12) Each resident shall have the right to practice his or her own religious beliefs, and afforded the opportunity for religious worship. No client shall ever be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.
- (13) The records of each resident shall be treated in a confidential manner.
- (14) Each resident has the right to refuse to participate in any research project or medical experiment without informed consent of the resident, as defined by law. A refusal to participate shall not affect the services available to the resident.
- (15) A resident may voluntarily participate in work therapy, and shall be paid just compensation for such participation. However, each resident is responsible for personal care and housekeeping tasks without compensation.
- (16) The community residential mental health facility shall provide residents who are leaving at the request of the community residential mental health facility all funds and property belonging to him or her at the time of his or her departure.
- (17) Each resident shall have the right to establish and to participate in a resident

committee or resident government.

(18) Each resident has the right to assert grievances with respect to any alleged infringement of these stated rights of residents, or any other subsequently statutorily granted rights.

(19) No resident shall ever be retaliated against, or subject to, any adverse conditions because of having asserted his or her rights as aforesaid in this section.

(b) Each affected facility shall have written policy and implementing procedures, and shall provide documented staff training to insure the implementation of each and every resident right stated in this section.

(c) Each affected facility shall have written policy and implementing procedures to insure each resident enjoys, and has explained to him or her, these rights; and these rights are visibly posted in both resident and public areas of the facility.

(d) ~~The ODMHSAS Office of Consumer Advocacy Department~~, in any investigation or monitoring shall have access to residents, RCF records and RCF staff as set forth in OAC 450:15-7-3.

SUBCHAPTER 7. OFFICE OF CONSUMER ADVOCACY AND DEPARTMENT INVESTIGATIONS

PART 1. DUTIES OFFICE OF CONSUMER ADVOCACY

450:15-7-2. Office of Consumer Advocacy purpose and authority

(a) ~~The Office of Consumer Advocacy Board is authorized by 43A O.S. § 2-108 2-109 to conduct investigations on behalf of the Board to determine if a client or consumer of services from a facility operated by, certified by or under contract with the Department has been wrongfully deprived of liberty or cruelly, negligently or improperly treated or has had inadequate provisions made for the his or her medical care, supervision and safe keeping, to establish the Office of Consumer Advocacy within the Department.~~

(b) ~~The Office of Consumer Advocacy shall conduct investigations into allegations of physical abuse, neglect, exploitation, mistreatment, sexual abuse and other consumer rights violations carry out the powers and duties of the Office of Consumer Advocacy as set forth in this Subchapter.~~

(c) ~~The Office of Consumer Advocacy shall conduct investigations for the purpose of having an independent and objective administrative investigation of suspected consumer maltreatment in order to protect consumers from further maltreatment, to deter and prevent maltreatment, to rule out unfounded allegations and to allow the Board and the Department to hold violators accountable.~~

450:15-7-3. Advocate General

The Advocate General shall be an attorney appointed by the Board. He or she is responsible for the Office of Consumer Advocacy and coordinates its system-wide implementation. The Advocate General shall have the following powers and duties:

~~(1) To serve as an advocate for consumers. If a consumer needs legal counsel, the Advocate General shall advise the consumer of his or her right to seek counsel and refer the individual to counsel, if necessary.~~

~~(2) To supervisory supervise personnel assigned to the Office of Consumer Advocacy.~~

~~(3) To monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department.~~

~~(4) To investigate unresolved grievances and allegations of improper treatment of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department.~~

~~(5) To access facilities operated by, subject to certification by or under contract with the Department. Reasonable access shall be granted for the purposes of conducting investigations of abuse, neglect and improper treatment and performing other activities as necessary to monitor care and treatment provided by such facilities. These investigations may be unannounced and or unscheduled as determined by the Advocate General Department.~~

~~(6) To access and copy necessary records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Advocate General.~~

~~(7) To visit each facility that is operated by, subject to certification by or under contract with the Department at least one (1) time per fiscal year to ensure the facility has made adequate provisions for the medical care, supervision and safekeeping of all ODMHSAS consumers, and to provide a status report, either verbally or in writing, to the facility's executive director regarding the findings of such visit.~~

~~(7) To submit a report of the results of investigations of abuse to the appropriate district attorney, licensing board and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency.~~

~~(8)(8) To make Make recommendations to Commissioner and provide regular or special reports regarding investigations and unresolved grievances or other issues affecting consumer rights and quality of care to the Commissioner and Board.~~

~~(9) To carry out the powers and duties of the Office of Consumer Advocacy.~~

~~(9)(10) To perform other duties as assigned by the Board or Commissioner.~~

450:15-7-4. ODMHSAS facility advocacy Office of Consumer Advocacy powers and duties

The Advocate General shall assign an Advocate to monitor and investigate allegations of abuse, neglect, mistreatment or rights violations the care and treatment of individuals receiving services at each facility operated by, certified by or under contract with the ODMHSAS; and to carry out the purpose and duties of the Office of Consumer Advocacy. The Office of Consumer Advocacy shall have the following powers and duties:

- (1) To serve as an advocate for consumers and to ensure the highest quality of care to all consumers at facilities operated by, subject to certification by, or under contract with the Department.
- (2) If a consumer needs legal counsel, the Advocate shall advise the consumer of his or her right to seek counsel and refer the individual to counsel, if necessary.
- (3) To monitor his or her assigned facilities to ensure the facilities have made adequate provisions for the medical care, supervision and safekeeping of all DMHSAS consumers, and to provide a monthly status report, either verbally or in writing, to the facility's executive director regarding these issues.
- (4) To access facilities operated by, subject to certification by or under contract with the Department. Reasonable access shall be granted for the purposes of performing activities as necessary to monitor care and treatment provided by such facilities. These investigations may be unannounced and or unscheduled as determined by the Department.
- (5) To access and copy necessary records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Office of Consumer Advocacy.
- (6) To be proactive in the enforcement of the provisions of the Mental Health and Substance Abuse Consumer Bill of Rights.
- (7) To timely report any issue(s) of which the Office of Consumer Advocacy becomes aware that may adversely affect consumer care through the proper chain of command, beginning at the lowest level, in order to timely resolve such issue(s).
- (8) To assist consumers in filing grievances.
- (9) To assist in transitioning consumers who are committed to the Oklahoma Forensic Center pursuant to 22 O.S. §§1175.1 et seq. to appropriate alternative placements in accordance with 22 O.S. §§1175.1. et seq.
- (10) To file habeas corpus actions on behalf of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, and appear on their behalf in civil commitment and criminal post-commitment proceedings, and appear on behalf of Department consumers in proceedings for writs of mandamus.
- (11) To monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department.
- (12) To assist consumers in filing grievances and to review and take appropriate action to resolve unresolved grievances and allegations of improper treatment of individuals receiving services from facilities operated by the Department.
- (13) To perform other duties as assigned by the Board or Commissioner.

PART 2. INVESTIGATIONS

450:15-7-6. Reporting suspected maltreatment

(a) **Reporting Requirements.** ODMHSAS employees who have reason to believe that maltreatment of a consumer has occurred shall report such information to the Office

of ~~Consumer Advocacy~~ ODMHSAS Inspector General. This reporting requirement also extends to employees of facilities which contract with or are certified by ODMHSAS. Persons unsure of what to report are directed call the ~~Office of Consumer Advocacy Inspector General~~ at 1-888-699-6605 1-405-522-4058 or [Kim's new cell/800 number]. Questions regarding this reporting requirement may also be made by e-mailing: [new e-mail address that isn't Kim's direct e-mail; e.g., complaints@odmhsas.org or investigations@odmhsas.org].

(b) **Method of Reporting.** Any person obligated to report an allegation of suspected abuse, neglect, mistreatment, or exploitation of consumers shall contact the ~~Office of Consumer Advocacy Inspector General~~ in Norman Oklahoma City, Oklahoma by telephone (1-405-573-6605 522-4058 or 1-888-699-6605) [Kim will get new cell/800 number] twenty-four (24) hours a day, seven (7) days a week. Reports may also be made by e-mailing: [new e-mail address that isn't Kim's direct e-mail; e.g., complaints@odmhsas.org or investigations@odmhsas.org] or by faxing a critical incident report to 1-405-573-6647522-6851.

450:15-7-7. Administrator's responsibilities regarding allegations reportable to the ~~Office of Consumer Advocacy~~ Department

(a) Immediate protection for safety, health, and welfare. If the ~~Office of Consumer Advocacy~~ Department receives an allegation of maltreatment involving a consumer from anyone other than the executive director of the facility or provider responsible for the consumer, ~~Office of Consumer Advocacy~~ the Department will promptly notify the facility executive director of the allegation.

(b) Upon becoming aware of an allegation of maltreatment involving a consumer, the facility administrator shall ensure the safety, protection, and needed medical attention of any consumer named in the allegation and other consumers receiving services from the facility or provider.

(c) When criminal activity is alleged the facility executive director shall immediately notify the appropriate law enforcement authority.

450:15-7-8. Processing reports of maltreatment received by the ~~Office of Consumer Advocacy~~ Department

The ~~Office of Consumer Advocacy~~ Department shall record and keep all investigations conducted. The findings of each investigation shall be reported to the appropriate division within the Department for review and disposition.

450:15-7-9. Investigation procedures

(a) The ~~Office of Consumer Advocacy~~ Department shall conduct a prompt investigation of the allegation and shall be subject to the ODMHSAS Investigations policy. The ~~Advocate~~ investigator shall contact the applicable facility executive director, or designee, to arrange for document production, site visits and interviews.

(b) The Department shall have the authority to access facilities operated by, subject to certification by or under contract with the Department. Reasonable access shall be granted for the purposes of conducting investigations of abuse, neglect and improper

treatment. These investigations may be unannounced and or unscheduled as determined by the Department.

~~(b)~~(c)The applicable facility executive director, or designee, shall arrange for the Advocate investigator to have immediate and direct access to the alleged victim(s) in the report who is still a consumer of the facility. During an investigation, the facility shall provide the Advocate investigator access to all employees, consumers or clients, facilities, files and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between ODMHSAS and a contractor or revocation, non-renewal or suspension of certification or both.

~~(e)~~(d)Interference includes, but is not limited to:

- (1) Intimidating, harassing or threatening a party to the investigation;
- (2) Retaliation against a consumer or employee for reporting an allegations; or
- (3) Denial of Advocate investigator access to clients, employees, facilities, witnesses, records or other relevant information as requested by the investigator.

450:15-7-10. Rights and responsibilities of accused individuals

During the investigation process, an individual accused of maltreatment of a consumer or an individual identified to have information about the allegation(s) has the right to:

- (1) Be advised of the nature of the allegations made against him or her in the allegation;
- (2) Be advised of the investigative process involving maltreatment;
- (3) Be interviewed by ~~the Advocate~~ an investigator and allowed to give his or her position regarding the allegation;
- (4) Submit or supplement a written statement relating to the allegations;
- (5) Seek advice from other parties concerning his or her rights and responsibilities in ~~Office of Consumer Advocacy~~ Department investigations;

450:15-7-11. Responsibilities

During the investigative process, an individual accused of maltreatment of a consumer shall:

- (1) Be available for interviews and accommodate the Advocate investigator in scheduling of interviews;
- (2) Refrain from any action which interferes with the investigation, including any action which intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
- (3) Provide pertinent information and respond fully and truthfully to questions asked.
- (4) Refrain from intentionally misdirecting investigator by falsehoods or omissions.

450:15-7-12. Educational employees

This subsection applies to an employee of a school district providing contract educational services on-site at a facility who is either a witness or an individual accused of maltreatment of a consumer in an investigation opened by the ~~Office of Consumer Advocacy~~ Department.

- (1) The executive director of the facility where the incident took place shall notify the

principal of the school of the nature of the allegation and the name of the assigned ~~Office of Consumer Advocacy Advocate~~ investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the ~~Office of Consumer Advocacy~~ Department investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients or consumers at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients or consumers.

450:15-7-14. Investigative interviews

The ~~Advocate~~ investigator shall interview or attempt to interview persons known or identified to have information about the allegation. If an injury is alleged, the ~~Advocate~~ investigator or other appropriate person shall observe and note apparent injuries, and obtain pertinent medical documentation, including photographs. An attorney or other representative of the person being interviewed may attend an interview only as a silent observer with prior permission of the ~~Advocate General Department~~.

(1) The ~~Office of Consumer Advocacy Advocate~~ Department shall conduct a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each individual accused of the maltreatment. When possible, all other witnesses shall be interviewed prior to interviewing the accused individual(s).

(2) The ~~Office of Consumer Advocacy~~ investigator shall tape record interviews. Tape recordings of interviews remain with the ~~Office of Consumer Advocacy~~ Department's investigative file. ~~Office of Consumer Advocacy~~ Investigative files and tape recordings are not public documents due to the confidential and privileged information contained in the interviews.

(3) The ~~Advocate~~ investigator shall inform persons interviewed of the investigative process.

(4) The ~~Advocate~~ investigator shall verbally inform each accused individual of the allegation(s). The name of the person making the report of the allegation shall not be disclosed.

(5) During the interview with an individual accused of maltreatment of a consumer, the ~~Advocate~~ investigator shall provide the individual an opportunity to respond to the allegation(s). Following the initial interview, if the ~~Advocate~~ investigator obtains information to which the accused individual did not have an opportunity to respond, the ~~Advocate~~ investigator shall conduct another interview with the individual. The ~~Advocate~~ investigator shall advise the accused individual of the substance of the new information and provide an opportunity to present a response.

(6) If ~~the Advocate needs~~ there is a need to interview a person who is deaf, hard of hearing, or is non-English speaking, the investigator, with the assistance of the Office of Consumer Advocacy, shall arrange oral or sign language interpreter

services by an independent and qualified interpreter.

(7) To schedule an interview with an accused individual, the Advocate investigator shall contact ~~by phone or regular mail~~ the executive director of the facility, or designee, or provider that employs the accused individual. If a reasonable time has passed without being able to schedule an interview, the Advocate investigator shall contact the executive director of the facility, or designee, or provider to request the employee be required to participate. If the accused individual refuses to participate in the investigation, the report shall be completed without the accused individual's statement and a finding shall be made based on available information. For other persons needing to be interviewed, the Advocate investigator shall follow the same.

(8) If a person fails to appear for a scheduled interview without good cause, the Advocate investigator shall complete the investigative report without interviewing that person. The investigative report shall include an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

~~(9) The Advocate shall conduct an exit conference, either in person or by telephone, with the executive director when the information-gathering portion of the investigative process is completed. The Advocate shall complete the written investigative report within 30 days of the date of the exit conference and a summary letter shall be sent to the executive director of a contract or certified facility.~~

450:15-7-15. Investigative report and findings

(a) After completing the information-gathering portion of the investigative process, the Advocate investigator shall prepare a written investigative report minimally containing:

- (1) The allegation(s) made to the Office of Consumer Advocacy Department, the location of the alleged incident(s), and the assigned Office of Consumer Advocacy case number;
- (2) A statement of any injuries sustained by the alleged victim(s);
- (3) The applicable definition(s) of the type of maltreatment at issue such as abuse, neglect, exploitation, or mistreatment;
- (4) The finding(s) in accordance with subsection (b) of this Section;
- (5) A list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when and if interviewed face to face or by telephone;
- (6) The name, address, and telephone numbers of any interpreter used during the investigation;
- (7) An explanation of the basis for the finding(s);
- (8) Any areas of concern relating to the referral identified during the investigation regarding that facility, that provider, or practices or procedures which have implications for the safety, health, or welfare of clients;
- (9) A list of relevant documents and records reviewed during the investigation; and
- (10) A list of attachments to the report.

(b) The investigative finding options are:

- (1) **"Supported"** which means the available information establishes that it is more likely than not that the alleged abuse, neglect, or mistreatment occurred;
- (2) **"Unsupported"** which means the available information established that it is

unlikely that the alleged abuse, neglect, or mistreatment occurred; or

(3) "~~Unable to support~~ Inconclusive" which means the available information was not sufficient to establish whether or not the alleged abuse, neglect, or mistreatment occurred.

(c) Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials and reports related to investigations by the ~~Office of Consumer Advocacy~~ Department are confidential and contain privileged information. Accordingly, such records, materials and reports shall not be open to public inspection nor their contents disclosed nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid pursuant to 43A O.S. §1-109(C).

(d) An order of the court authorizing the inspection, release or disclosure of information, records, material and reports related to investigations by the ~~Office of Consumer Advocacy~~ Department shall be entered by a court only after a review of the records and a determination, with due regard for confidentiality of the information and records and the privilege of the persons identified in the records that a compelling reason exists, any applicable privilege has been waived and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

(e) The ~~Office of Consumer Advocacy~~ Department shall provide results of investigations as follows:

(1) A copy of the final ~~Office of Consumer Advocacy~~ investigation ~~investigative~~ report shall be sent to the Commissioner, designated Deputy Commissioner, the Chief Operating Officer, the General Counsel and the executive director of a the appropriate ODMHSAS operated facility.

(2) When an executive director of a facility that is operated by the Department is named as an individual accused of maltreatment of a consumer in the allegation, the final report will not be forwarded to that individual.

~~(2)~~(3) A summary of the allegation and finding shall be sent to the executive director of a state certified or contract facility that is subject to certification by or under contract with the Department.

~~(3)~~(4) When an executive director of a facility that is subject to certification by or under contract with the Department is named as an individual accused of maltreatment of a consumer in the allegation, a summary of the investigative report shall not be forwarded to that individual, and the Office of Consumer Advocacy investigator shall forward a summary of the investigative report to the chair of the board of directors of the facility.

~~(4) A copy of all Office of Consumer Advocacy reports shall be sent to the Legal Division of the ODMHSAS.~~

(5) A summary of the allegations and finding shall be provided to the Board and a copy of the report shall be provided upon request of the Board.

(6) The Department shall notify the person suspected of the abuse, neglect or improper treatment and the person subject to the alleged abuse, neglect, or improper treatment of the Department's findings.

~~(6)~~ (7) Upon request, The Department or the Office of Consumer Advocacy may summarize the outcome of an investigation, stating the allegation and the finding.

The summary may be provided to the person suspected of the abuse, neglect or improper treatment, the person subject to alleged abuse, neglect or improper treatment, the person who reported an allegation and the executive director of a facility certified by or under contract with the Department at which the alleged abuse, neglect, or improper treatment occurred.

(f) ~~The Office of Consumer Advocacy~~ Department shall maintain the original report, supporting documents, and pertinent recorded tapes in locked file cabinets in accordance with the applicable ODMHSAS records management and disposition plan.

(g) The Department shall submit a report of the results of investigations of abuse to the appropriate district attorney and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency.

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